



# Doing Business in Belarus

2012 edition

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This overview has been prepared and compiled by experts of **Revera Consulting Group** with the participation of specialists of the Ministry of Economy on basis of Belarusian legislation as of February, 2012 for informational purposes only.

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The company's experts appeal constantly the World Bank's professionals in order to make a report on business climate in the Republic of Belarus.

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- Currency Regulation and Foreign Trade
- Commercial Disputes
- Administrative Disputes
- Mediation
- Antimonopoly Law
- Tax Consulting
- Support of corporate procedures
- M&A, Due Diligence
- Investment Project Support
- Employment Law
- Intellectual property and IT technologies

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## 1.1. Business Entities

There are no specific requirements for foreigners wishing to establish a business in Belarus. Investors, whether Belarusian or foreign, benefit from equal legal treatment and have the same right to conduct business operations in Belarus by incorporating separate legal entities. The procedure requires the fulfillment of certain legal formalities (registration in The Single State Register of Legal entities and individual entrepreneurs).

Companies are required to have their own name, authorized fund (the minimal amount of which is established for several forms of entities by law), management, registered offices and bank accounts.

Companies established in Belarus are subject to Belarusian law, but agreements concluded by Belarusian companies can be governed by the law chosen by the parties.

The Belarusian legislation allows and defines the following legal forms of business entity:

- **Individual entrepreneur** (Индивидуальный предприниматель, abbreviation is **ИП**);
- **Peasant (farm) economy** (Крестьянское (фермерское) хозяйство, abbreviation is **КФХ**);
- **Production cooperative** (Производственный кооператив, abbreviation is **ПК**);
- **Private unitary enterprise** (Частное унитарное предприятие, abbreviation is **УП**);
- **General Partnership** (Полное товарищество, abbreviation is **ПТ**);
- **Special Partnership** (Коммандитное товарищество, abbreviation is **КТ**);
- **Additional-liability company** (Общество с дополнительной ответственностью, abbreviation is **ОДО**);
- **Limited-liability company** (Общество с ограниченной ответственностью, abbreviation is **ООО**);
- **Open joint-stock company** (Открытое акционерное общество, abbreviation is **ОАО**);
- **Closed joint-stock company** (Закрытое акционерное общество, abbreviation is **ЗАО**).

Other forms of doing business are representative offices and branches of foreign companies.

A legal entity in Belarus in any above mentioned forms can be created:

- With the status of a commercial organization with foreign investments;
- Without the status of a commercial organization with foreign investments.

Attention should be paid to the fact that such distinction concerns the status only, as a set of the law rules determining features of creation and activity of the legal entity and not the organizational legal form.

Most businesses in Belarus are legal entities, organized in forms of private unitary enterprise, limited-liability company, additional-liability company, closed joint-stock company, and open joint-stock company, as above-mentioned forms are the most convenient to perform business activities.

### 1.1.1. Private unitary enterprise

Private unitary enterprise is a commercial organization not endowed with the right of ownership to property consolidated to it by the owner. The founder is the owner of property of private unitary enterprise. Individual or legal entity can be a founder of private unitary enterprise.

The founding document of private unitary enterprise is the Charter. The main body of private unitary enterprise is director, which is appointed by owner. Owner of unitary enterprise can be a director at the same time.

Powers of director of private unitary enterprise can be transferred under contract to other commercial organization (the management organization) or to individual entrepreneur (managing director) under the decision of the owner.

Belarusian legislation does not provide minimal amount of share capital for private unitary enterprise. The size of share capital is determined by the owner himself.

A unitary enterprise shall be liable for its obligations with all of the property belonging to it and shall not be liable for obligation of its founder. Owner of private enterprise has got subsidiary liability for obligations of enterprise if the economic insolvency (bankruptcy) of enterprise has been caused by him (her).

### **1.1.2. Limited-liability company**

A limited-liability company is a company with a number of shareholders not more than fifty, whose authorized fund is divided into shares of certain sizes that are stated in the founding documents.

Belarusian legislation does not provide minimal amount of the authorized fund for the limited-liability company; the size of authorized fund is determined by the founders themselves.

The founding document of the Limited-liability company is the Charter approved by the founders.

Organizational structure of the limited-liability company includes:

- Shareholders General Meeting.

Shareholders General Meeting is the supreme authority of the Limited-liability company that decides the most important questions of company activity.

- Board of Directors or Supervisory Board.

The Board of Directors (Supervisory Board) is formed in the cases provided for by legislation and (or) the company's charter.

- Executive authority – Directorate or Director.

Powers of the executive authority can be transferred under agreement to other commercial organization (the management organization) or to individual entrepreneur (managing director) under the decision of Shareholders General Meeting of the company.

- Auditor or internal Audit Commission – the control authority of the company.

### **1.1.3. Additional-liability company**

Additional-liability company is a business entity with the number of shareholders not more than fifty, which authorized fund is divided into shares of certain sizes that are stated in the founding documents. With regard to the additional-liability company, the same rules and regulations provided for by the legislation for limited-liability company (the founding document, the number of participants, the size of authorized fund, organizational structure, etc.) are applied.

The only difference between the additional-liability company and the limited liability company is that the shareholders of additional-liability company jointly bear subsidiary responsibility for the obligations of the additional-liability company with their property within the limits determined by the charter of the company, but not less than the amount provided for by the legislative acts, in proportion to the contributions of participants in the authorized fund of the additional-liability company. The charter of the additional-liability company may provide for a different procedure for distribution of additional responsibility among its participants.

At present, the minimum size of the subsidiary responsibility of the additional-liability company shall be not less than the amount equivalent to 50 basic units.

The size of the basic unit is provided for by the legislation of the Republic of Belarus, on February 1, 2012 it amounts 35 000 rubbles, which is approximately equal to 3 Euro.

Starting from April 1, 2012 the basic unit shall be fixed at the rate of 100 000 Belarusian rubbles, which is approximately equal to 9 Euro.

#### **1.1.4. Closed joint-stock company**

The number of shareholders in the closed joint stock company cannot exceed 50.

Minimal allowed size of authorized fund for the Closed joint-stock company is 100 base units.

Authorized fund is divided into a number of stocks having the same nominal value.

The only founding document of the Closed joint-stock company is the Charter.

The organization structure of Closed joint-stock company includes the same elements as the Limited-liability company.

Shareholders are not liable for its obligations and bear the risk of losses associated with its activities of society within the limits of the value of their stocks.

A shareholder may alienate its own shares only with the consent of other shareholders and/or to a limited number of individuals. Closed joint-stock company is not entitled to carry out an open subscription for stocks issued by it or otherwise offer for the purchase to unlimited number of persons.

#### **1.1.5. Open joint-stock company**

Number of shareholders in the open joint-stock company is not limited.

The minimum size of the authorized fund for the open joint-stock companies is 400 basic units.

The authorized fund is divided into a number of shares of equal nominal value.

Founding document of the open joint-stock company is the Charter.

The organizational structure of the open joint-stock company includes all the same elements as the organizational structure of a limited-liability company.

Shareholders are not liable for the obligations of the open joint-stock company and bear the risk of losses associated with the activity of the company within the value of their shares.

Shareholder may dispose of its shares to the unlimited number of persons without the consent of other shareholders.

Open joint-stock company has the right to conduct an open subscription on the shares issued by it and free sale of them on the conditions prescribed by the legislation.

#### **1.1.6. Representative offices and branches of business entities**

Business entities have the right to establish representative offices and branches.

A representative office of a foreign company (представительство) is its detached division located on the territory of Belarus, carrying out protection and representation of interests of the organization. The representation of the foreign company is not a legal entity, and it has the right to be engaged in business on the territory of the Republic of Belarus only on behalf and by order of the company represented by it.

A branch of a foreign company is its detached division located on the territory of Belarus that can exercise all or part of its functions, including the functions of representation.

The property of the representative offices or branches of the legal person is accounted separately on the balance of the legal person, which has created these representative offices or branches.

Belarusian legislation does not allow foreign business entities to establish branches that is why foreign organizations have the right to establish detached divisions only in the form of representative offices.

### **1.1.7. Business reorganization and liquidation**

Liquidation of a company may be carried out voluntarily by the decision of the owner of the company (founders, shareholders) or in other cases as prescribed by law (by economic court or by state registering authority).

The owner (founders, shareholders) or body of a company empowered by the Charter takes a decision of liquidation of a company, appoints the liquidation commission (appoints the liquidator), who are responsible for the implementation of all the formalities associated with the liquidation process and establish procedure and term of liquidation.

Business reorganization in Belarus is regulated by Belarusian legislation and can be realized in the form of a consolidation, merger, division, separation and transformation.

## **1.2. Ways of Doing Business by Foreign Organizations and Individuals in Belarus**

Foreign individuals and legal entities can choose one of three following ways of doing business in Belarus:

1. Establishing of legal entity in one of above listed forms (commercial organization with foreign investments or without them);
2. Doing business through permanent representative office on the territory of the Republic of Belarus.

### **1.2.1. Entity with the status of the commercial organization with foreign investments**

Foreign individuals and legal entities are entitled to establish in Belarus legal entities of any legal forms (except for Peasant (farm) economy as only Belarusian citizens and foreign individuals permanently residing in Belarus have the right to participate in it), either with or without the status of organization with foreign investments

Commercial organization is recognized as commercial foreign organization, if its authorized fund contains 100 % of foreign investments. If authorized fund of commercial organization comprises both share of foreign investors and share of legal entities or individuals of Belarus, such organization is called commercial joint organization.

The main criterion of differentiation of entities founded by the foreign companies, in having and not having the status of the organization with foreign investments is the minimal size of foreign investments in the authorized fund of the created commercial organization. To acquire the status of a commercial organization with foreign investments the amount of foreign investments should not be less than 20 000 U.S. Dollars. 50 % of payments to authorized fund of such an organization should be made in the first year after the registration. The remaining 50 % should be contributed before the second year after the registration expires.

Currently for the commercial organizations with foreign investments the following preferences are stipulated:

50 % of payments to share capital of such an organization should be made in the first year after the registration. The remaining 50 % should be contributed before the second year after the registration expires.

liquidation of the commercial organizations with foreign investments cannot be initiated by authorized state bodies administratively, and can be made only in the judicial order.

there is no need to obtain a special permit for employment of foreign citizens in the Republic of Belarus for hiring a foreign citizen as a leader;

The founding document the ability to use foreign currency in payment of wages to foreign workers and those who are stateless and do not have a residence permit of the Republic of Belarus. The possibility of wage payments in foreign currency must be provided in the founding

documents of an organization, the local normative legal acts or in the labor agreement (contract) with a foreign worker

Additional benefits are stipulated only for commercial organizations with foreign investments which are registered and carrying out activity in settlements with a population of up to 50 thousand person. The list of such settlements is defined by the Government.

### **1.2.2. Doing business through permanent representative office in Belarus**

Doing business through permanent representative office in Belarus, according to the Tax Code of the Republic of Belarus, means doing business by virtue of:

1. solitary subdivision of foreign organization, with accreditation in the Ministry of Foreign Affairs of the Republic of Belarus;
2. agent (organization or individual, operating on behalf and/or in favor of foreign organization).

### **1.2.3. Establishment of representative office in Belarus**

Representative offices of foreign legal entities and other organizations are established and operate in Belarus in accordance with the permission, given by the Ministry of Foreign Affairs of the Republic of Belarus.

Such representative office is not recognized as legal entity by Belarusian law.

Representative offices of foreign organizations may be established for the purpose of operation on behalf of the parent organization the name of which is mentioned in the permit to open a representative office, including:

#### **1. For representative offices of commercial organizations, for:**

- effective promotion of international agreements of the Republic of Belarus on trade, economy, finance, science, technologies and transport cooperation, seeking opportunities for further development and improvement of such cooperation and expanded exchange of economic, commercial and technological information;
- survey of commodity markets of Belarus;
- investigation of opportunities for investment in Belarus;
- establishment of foreign and joint ventures;
- promotion of trade and economic ties between countries;
- representation and protection of interests of a commercial organization;
- selling of tickets and bookings of seats by air, railway, automotive and sea transport companies;
- other purposes, including those of public utility, not prohibited by the legislation of Belarus for such representative offices.

#### **2. For representative offices of non-commercial organizations:**

- social support and protection including improving the welfare of low income people, social rehabilitation of the unemployed, disabled and other persons who due to their physical or intellectual condition or other circumstances are unable to exercise their rights and legal interests by themselves;
- training of the population to overcome the consequences of the natural disasters, ecological, industrial and other catastrophes, and to prevent accidents;
- aid to the victims of natural disasters, ecological, industrial and other catastrophes, social, ethnic, religious conflicts, victims of repressions, refugees and forced migrants;
- assisting the strengthening of peace, friendship and consent among nations, prevention of social, ethnic and religious conflicts;
- assisting the strengthening of prestige and value of family in society;
- assistance in protection of motherhood, childhood, and fatherhood;
- assistance in activities in the sphere of education, science, culture, art, enlightenment, spiritual development of a person;

- assistance in activities in the sphere of prophylactics and protection of public health, as well as promotion of a healthy way of life, improvement of the moral and psychological state of citizens;
- assistance in activities in the sphere of physical culture and mass sport;
- protection of environment and animals;
- protection and maintenance of buildings and other objects and territories having a historical, cultural, cult or nature importance and burial places;
- other purposes of public utility.

### **3. For representative offices of educational organizations:**

- carrying out advertising and informational work;
- study of the experience of educational organizations in the Republic of Belarus;
- assistance in entering into agreements on cooperation between educational organizations;
- assistance in sharing experience and information in the area of education and science.

#### **1.2.4. Doing business through the agent**

Another way of doing business by foreign organization in Belarus is operating through the agent – Belarusian organization or individual entrepreneur under the agency contract.

Agent is a legal entity or individual, operating on behalf and/or in favor of foreign organization and/or authorized to conclude contracts or negotiate on essential terms of contracts.

According to the Tax Code of the Republic of Belarus, doing business through the agent is considered as operating through permanent representative office for the purposes of taxation. That is why foreign organization, operating through the agent, is obliged to pay tax on profit, gained in Belarus. Taxes of foreign organization are to be paid by the agent at place of its tax registration.

Doing business through the agent is an alternative to establishment of representative office with accreditation in the Ministry of Foreign Affairs.

If the agent operates in the frameworks of its ordinary course of business (independent agent or agent with independent status), it is not recognized as permanent representative offices for the purposes of taxation. The agent acts in the frameworks of ordinary course of business if it operates independently without instructions and control, made by foreign organization and if business risk for the results of its activity lies on the agent and not on the foreign organization which it represents. In such a case foreign organization does not pay the tax on profit but pays tax on income of foreign organizations that does not carry out activity by virtue of permanent representative office.

According to Belarusian legislation it is required to obtain special permissions (licenses) in order to perform certain types of activities. Foreign organizations can obtain license to perform certain types of activities only if they have a permanent representative office with accreditation in the Ministry of Foreign Affairs. So, it is impossible to perform licensed activities by the agent because of this rule.

Provisions, stipulating exclusivity of relations under agency contract with participation of Belarusian person, are unlawful according to Belarusian legislation. The contract conditions, providing refusal of contracts with other suppliers or purchasers do not correspond to Belarusian legislation and may be invalidated under Belarusian law.

### **1.3. Labour Relations and Working Conditions**

#### **1.3.1. Information on the employment market**

According to the official statistics, in the period of January-November 2011 the employed population was over 4.6 million of citizens, and unemployment at the end of December 2011



amounted to 0.6% of the economically active population, that is 0.1% lower than in the corresponding period of 2010.

### **1.3.2. Legal regulation of employment**

In Belarus employment is primarily regulated by the Labour Code of the Republic of Belarus. Moreover, there are many other acts of legislation that settle more specific issues of labour relations.

According to the Labour Code, an employment agreement has to be in the written form. The conditions that must be included in the provisions of the contract are also named in the Labour Code.

The highest state authority that is responsible for public policy of labour and employment is the Ministry of Labour and Social Protection of the Republic of Belarus.

### **1.3.3. Working hours and rest hours**

Standard working time cannot be more than 40 hours per week. For certain categories of employees reduced working time is provided. Working week is with 5 or 6 six working days with common weekend on Sunday. The normal working period is eight hours daily with a one-hour lunch break. There are specific norms for night work, work in weekends and holidays, employment of juveniles etc.

Any overtime work has to be remunerated additionally.

Employers are obliged to pay holiday pay. The minimum period of annual holiday is 24 days.

In addition, there are public holidays that are non-working:

- 1 January – New Year
- 7 January – Orthodox Christmas
- 8 March – International Women's Day
- according to Orthodox calendar – Radunitsa
- 1 May – Day of Solidarity of workers
- 9 May – Day of Victory
- 3 July – Independence Day
- 7 November – Day of October Revolution
- 25 December – Catholic Christmas

### **1.3.4. Payment for labour**

Commercial organizations and individual entrepreneurs are free to determine the wage conditions taking into account the complexity of work, skills of workers, working conditions and so on. At the same time the Unified Wage Scale of the Republic of Belarus can be applied in setting wage conditions.

The minimal amount of wages is determined by state and is compulsory (1 000 000 Belarusian rubles on February 1, 2012<sup>1</sup>), there is no maximal amount determined. Wage payments are included in the cost of production and sales of goods (works, services) and are also counted in the price formation and taxation.

## **1.4. Foreign Employees**

### **1.4.1. Entry into the territory of the Republic of Belarus**

As a general rule, the entry of foreigners into the territory of Belarus can be realized only after obtaining visas of the Republic of Belarus.

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<sup>1</sup> On February 1, 2012, the official exchange rate of Belarusian ruble in relation to Euro is 11 010 rubbles.

Currently there is no requirement to obtain visas for citizens of Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Russian Federation, Moldova, Uzbekistan, Tajikistan, Ukraine and Cuba.

There are following types of visas in Belarus:

1. **B (transit visa)** – Transit visa is issued for single, double and multiple transit passage through the territory of the Republic of Belarus till the end of the declared time that cannot be more than one year and is valid within 2 days from the date of entry of foreigner into the territory of the Republic of Belarus.

2. **C (short-term visa)** – Short-term visa is issued for single, double and multiple entry into the territory of the Republic of Belarus till the end of the declared time that cannot be more than 90 days for certain purposes including labour activity.

3. **D (long-term visa)** – Long-term visa is issued for the one year with the right of stay on the territory of the Republic of Belarus for up to 90 days for certain purposes.

Short-term visa C (with the right to work) is issued to persons willing to enter country for the purpose of work by a labour contract.

In addition, in some cases, foreigners can obtain long-term visa type D, for example, to maintain business relations on the basis of agreement between the Belarusian legal entity and a foreigner or foreign organization where he works which confirms the presence of stable business relationship, or documents of the Belarusian legal entity (including statutory), confirming that the foreigner is a director or founder of a commercial organization with foreign investments. Long-term visa type D may be also obtained by foreign nationals working in the staff of a representative office of a foreign organization. Visas described above are issued by diplomatic missions and consular offices of the Republic of Belarus.

Citizens of states where there are no diplomatic missions and consular offices of the Republic of Belarus apply for visa to the General Consular Department of the Ministry of Foreign Affairs of the Republic of Belarus and bodies of border guard of the Republic of Belarus.

#### 1.4.2. Stay on the territory of the Republic of Belarus

All the foreigners staying in Belarus must **register** in the domiciliary body of internal affairs **within 5 days** except for weekends, holidays and days that are declared non-working by the President of the Republic of Belarus.

International agreements of the Republic of Belarus can provide longer terms of stay in the Republic of Belarus without registration in the domiciliary body for certain categories of foreigners.

For example, the citizens of Lithuania, Latvia, Russian Federation and Ukraine can stay on the territory of the Republic of Belarus without registration for 30 days from the day of entry. In case of stay on the territory of Belarus for more than 30 days they are bound to register in the domiciliary body in general order.

The foreigners can temporarily stay and permanently or temporarily reside on the territory of the Republic of Belarus.

All the foreigners on the territory of Belarus that do not have the permission for the temporal or permanent residence are subject to the rules of the **regime of temporary stay**. The **term of temporary stay** of a foreigner on the territory of the Republic of Belarus depends on the visa issued to him (her) and cannot **exceed 90 days in the year**.

International agreements of the Republic of Belarus may provide longer terms of temporary stay in the Republic of Belarus without obtaining permissions for temporary or permanent residence.

If a foreigner wishes to stay in Belarus for more than 90 days in year (or for more than term determined in international agreement), he (she) will have to get permission for temporary or permanent residence.

**The permission for temporary residence** is issued to foreigners that entered Belarus for certain purposes, including labour, business and other activities. Decision on granting of such permission is made by the body of internal affairs at domiciliary place of a foreigner.

**Multiple entry-exit visas:** foreigners who have obtained permissions for temporary residence can get entry-exit visa, including multiple one. Such a visa is issued by the office on citizenship and migration of the body of internal affairs for the term of one year but not longer than the term of the permission for temporary residence.

**The permission for permanent residence** gives foreigners the right for permanent residence in the Republic of Belarus. It is issued by the Ministry of Internal Affairs and by other bodies of internal affairs only for the certain categories of foreigners that are determined by the legislation of the Republic of Belarus.

### **1.4.3. Permission for labour activity**

Foreigners have the right for labour activity on the territory of the Republic of Belarus are subject to obtaining the special permission for labour activity and conclusion of labour contract

Labour contract concluded with foreign citizen that does not have permission on permanent residence in the Republic of Belarus, shall contain additional conditions defining order, conditions of termination, amending and prolongation of labour contract, and also conditions of transfer to the Republic of Belarus, nutrition, living, medical service. Contract is concluded in the written form on Russian and/or Belarusian language, and also on mother tongue or other language known to foreigner.

The term of labour contract cannot exceed the duration of the special permit.

Special permit is granted to foreigner under the request of employer by subdivisions on citizenship and migration of bodies of internal affairs of the Republic of Belarus for the term of **one year**.

There is no need to receive special permit for labour activity in the Republic of Belarus for foreigners that:

1. Have got permissions for permanent residence in the Republic of Belarus;
2. Are employed in other order, provided in international agreement of the Republic of Belarus (for example, citizens of Russian Federation that are excluded from the regulation on attraction and usage of foreign employees);
3. Are founders of commercial organizations with foreign investments that have been registered as legal entities in Belarus for work in those organizations;
4. Work in representative offices of foreign firms in Belarus.

Foreign citizens that do not have permission on permanent residence in the Republic of Belarus can seek employment by themselves or with assistance of legal entities, individual entrepreneurs and foreign organizations that render recruitment services. However, citizens of Belarus and foreigners permanently residing in Belarus have the priority right of employment.

Belarusian organizations that employs more than 10 foreigners not having permission on permanent residence in the Republic of Belarus shall receive permission on employment of foreign labour force.

### **1.4.4. Business activity**

Foreigners temporary staying and residing in the Republic of Belarus do not have the right to carry out business activity in the Republic of Belarus without establishment of legal entity.

## **1.5. Licensing**

In order to carry out certain types of activities obtaining special permission (license) is required.

At the moment, licensed types of activities are as follows:

1. Advocacy activity;

2. Banking activity;
3. Veterinary activity;
4. Activity in the field of automobile transport;
5. Activity in the field of usage of atomic energy and sources of ionizing radiation;
6. Activity in the field of industrial safety;
7. Activity in the field of telecommunication;
8. Gambling activity;
9. Activity on the procurement (purchase) of junk and refuses of ferrous and non-ferrous metals;
10. Activity on providing fire security;
11. Activity on rendering of psychological aid;
12. Activity on design and production of strict security forms and special materials of its protection from forgery;
13. Activity on technical security of information particularly with cryptographic methods including usage of electronic digital signature;
14. Activity connected with influence on environment;
15. Activity connected with precious metals and precious stones;
16. Activity connected with cryptographic security of information and means of surreptitious obtaining of information;
17. Activity connected with transaction of narcotic substances, psychotropic drugs and its precursors;
18. Activity connected with health improvement of children abroad;
19. Activity connected with carrying out of control of radioactive contamination;
20. Activity connected with employment of citizens abroad, gathering and distribution (including worldwide computer net Internet) of data on individuals with purpose of their acquaintance;
21. Activity connected with production of military purpose;
22. Activity connected with manufacture of alcohol, non-food alcohol-containing production, non-food ethanol and tobacco production;
23. Activity connected with production of aluminum, lead, zinc, stannic, copper and cast of finished and semi-finished products from aluminum and non-ferrous heavy metals;
24. Activity connected with duty weapons and civilian weapons and its ammunition, collecting and exhibition of weapons and ammunition;
25. Publishing activity;
26. Medical activity;
27. Educational activity;
28. Legal services rendering;
29. Wholesale and retail trade of oil products;
30. Wholesale trade and storage of alcohol, non-food alcohol-containing production, non-food ethanol and tobacco production;
31. Security guard activity;
32. Polygraphic activity;
33. Professional and exchange activities with securities;
34. Retail trade of alcohol drinks and (or) tobacco production;
35. Insurance activity;
36. Pharmaceutical activity;
37. Private notary activity.

Licenses are issued to legal entities and individual entrepreneurs of the Republic of Belarus, foreign legal entities and organizations created according to legislation of foreign states subject to presence of representative office on the territory of the Republic of Belarus established in order provided for by legislation, and also to individuals (for carrying out advocacy activity, private notary activity and collecting and exhibition of weapons and ammunition).

To obtain a license one should submit to state licensing authority an application with assistant documents and pay state due that is as a general rule is amounted to 8 basic units.

Application is reviewed by licensing body within 15 working days from the day of receipt of documents, this term can be prolonged for a period of evaluation and (or) examination of compliance of capabilities of license candidate with license requirements and conditions no longer than 10 days.

License is granted for a term no less than 5 and no more than 10 years. License is valid on the whole territory of the Republic of Belarus or its part defined in license, if the legislation provides that license on certain type of activity is valid on the territory of the Republic of Belarus defined in it (e.g., activity in the field of telecommunication). Type of activity on which license is issued can be carried out only holder of license without transfer of right of carrying it out to other legal person or individual. Separate subdivisions including branches carry out licensed type of activity on the base of license issued to legal entity.

Entrepreneurial activity carried out without license when obtaining license is compulsory or with a violation of rules and conditions of carrying out of types of activities defined by license is a ground for bringing to administrative liability and connected with receiving profit on a large scale to criminal liability.

Relations arising from investment activity on the territory of Belarus are regulated by the Investment Code of the Republic of Belarus, regulatory legal acts of the President of the Republic of Belarus and other laws of the Republic of Belarus, including international treaties in which the Republic of Belarus participates, and investment agreements signed by the Republic of Belarus.

Under the Investment Code of the Republic of Belarus, an investment is any property, including monetary resources, securities, equipment and intellectual property that belongs to the investor, and property rights, allocated for investment operations in order to gain profits and/or attain some other specific result.

### 2.1. Forms and sources of investment

There are two forms of investment according to the Investment Code of the Republic of Belarus:

1. the creation of a legal entity (you can read about it in the part “Business entities”):

2. acquisition of property or property rights, namely:

2.1. a share in the authorized fund of a legal entity, including by virtue of an increase of the authorized fund of the legal entity;

2.2. real estate;

2.3. securities;

2.4. rights to use the intellectual property;

2.5. concession;

2.6. equipment;

2.7. other fixed assets.

The sources of investment can be:

– own funds of investor, including amortization funds, net profit after taxation and other mandatory payments, including funds received from sale of shares in the authorized fund of an entity;

– borrowed and attracted funds, including loans of banks and non-bank credit and financial organizations, loans of founders (shareholders) and other legal entities and individuals, bonded loans.

### 2.2. Guarantees of investors rights and protection of investments

The Investment Code of the Republic of Belarus guarantees the right to private ownership.

The Republic of Belarus guarantees:

– investors legally acquired ownership and other property rights, and undertakes obligation to protect those rights;

– equal rights to all investors engaged in investment activity regardless of the form of ownership, as well as equal and discrimination-free protection of the rights and lawful interests of investors;

– stability of investors rights, as set out in the Investment Code, to engage in and cease investment activity.

Investors have the right, at their sole discretion, to decide upon and engage, in compliance with the legislation of the Republic of Belarus, in all actions arising from ownership, utilization (use) and disposal of objects and results of investment activity.

Investors may appeal to the court for challenging actions (omission) of state authorities or their officers, administrative and territorial governmental bodies or their officers, and acts of state authorities of the Republic of Belarus or administrative and territorial governmental



bodies of the Republic of Belarus, if such actions / omissions or acts violate rights of an investor and / or cause losses and other damage.

Damage, including losses incurred as a result of actions or failures to act of state authorities or their officers, administrative and territorial government bodies or their officers, and acts of state authorities of the Republic of Belarus or administrative and territorial government bodies of the Republic of Belarus, shall be reimbursed from the respective budget as determined by a court ruling.

Guarantees to use results and other individual provisions of performing investment activities

### **2.3. Guarantees of the Use of the Investment Activity Results and Investment Protection**

Investors may at their sole discretion dispose of income (revenue) generated as a result of investment activities, including reinvesting it in Belarus in accordance with the legislation of Belarus.

Reinvestment means investment of income (revenue) generated by the Investor as a result of investment activities in investments located in Belarus. Foreign investors are guaranteed the right to repatriate any profits or earnings received in Belarus as a result of investment activity to locations outside Belarus following the payment of all taxes and other mandatory charges as established by the legislation of the Republic of Belarus, as well as any proceeds from the full or partial sale of invested assets upon the termination of investment activity.

The state guarantees protection of investments in accordance with the legislative acts of the Republic of Belarus.

Investments may not be nationalized or requisitioned without consideration, nor may any measures equivalent to nationalization and requisition in terms of their consequences be applied to such investments.

Nationalization and requisitioning shall only be possible subject to the timely and full compensation of the cost of nationalized or requisitioned investment assets and other damages resulted from nationalization or requisition.

The procedure and conditions for nationalization and requisition and payment of compensation with regard to nationalized or requisitioned investment assets and other damages caused by nationalization or requisition, shall be established by the Investment Code and laws of the Republic of Belarus.

Compensation for the value of nationalized or requisitioned investment assets shall be equal to the market value of such assets determined under the procedure approved by the President of the Republic of Belarus or by the Government of the Republic of Belarus on his instructions. In addition, such compensation shall include interest accrued at the official rate of Belarusian ruble to the respective foreign currency for the period from the date of actual nationalization or requisition or a public announcement to the same effect until the date of actual payment of compensation. The said interest rate should not be lower than the respective interest rates effective at the London Interbank Market (LIBOR).

The value of nationalized or requisitioned investment assets is reimbursed in the official monetary unit of the Republic of Belarus to domestic investors and in the currency of original investment to foreign investors.

Investor may challenge the amount of compensation for nationalized or requisitioned investment assets in court.

### **2.4. State support of investment activities**

The state supports investment activities with the view to attract investments to the economy of the Republic of Belarus.

The state support of investment activities is offered in the form of the following:

- sovereign guarantees of the Republic of Belarus;
- centralized investment resources.

The state may introduce other types of support of investment activities and additional guarantees for investors.

The type, scope and duration of government support provided to organizations implementing new and advanced technologies shall be determined on a case-by-case basis by a decision of the President of the Republic of Belarus.

The guarantees of the Government of the Republic of Belarus shall be provided to lenders with respect to foreign loans or loans from banks of the Republic of Belarus being extended for implementation of investment projects.

Decisions on government support of investment projects implemented using foreign loans or loans of the banks of the Republic of Belarus against the guarantees of the Government of the Republic of Belarus; use of funds of centralized investment resources; government participation in establishing companies with foreign investment; shall be made basing on the government due diligence of investment projects to be performed by the Ministry of Economy.

The main criteria of investment project evaluation by means of government due diligence are as follows:

- Relevance of the investment project and its fitness for the industry development strategy;
- Financial position of investing organization;
- Technical, technological and financial feasibility and expediency of the investment project with consideration to the expected conditions for the investment activity;
- Feasibility of investment costs and the expediency of government participation in the investment project;
- Scientific and technological level of technologies involved and/or created;
- Competitiveness of products (work or services) to be sold, the prospects for the market, and the effectiveness of the investor's marketing strategy;
- Comparative analysis of the effectiveness and sustainability of the investment project.

## **2.5. Investments by means of conclusion of investment agreement**

Investment projects on the territory of the Republic of Belarus can be implemented by means of conclusion of the investment agreement between investor or investors and Republic of Belarus (hereinafter – investment agreement) on terms and conditions determined by the Investment Code of the Republic of Belarus, the Presidential Decree № 10 dated August 6, 2009 "On creating of additional conditions for investment activity in Belarus" (hereinafter – Decree № 10) and other legislative acts.

The general rule of concluding of investment agreement is the intention of the investor to realize investment project on the territory of Belarus.

The parties to the investment agreement are the Republic of Belarus and national and/or foreign investors, on the other part.

Investment agreement is concluded on the decision of:

- Republican state body, other state organization subordinated by the Government of the Republic of Belarus, Administrative Department of the President of the Republic of Belarus, regional (Minsk City) executive committee. Conclusion of investment agreement in such order allows to benefit all favours and preferences provided for by the Decree № 10 (above mentioned favours and preferences are listed in Paragraph 2.6. of this review).

- The Government of the Republic of Belarus by agreement with the President of the Republic of Belarus in case of granting to investor (or to the enterprise created with participation of the investor) favours and preferences not provided for by legislation, including issues of privatization. Conclusion of investment agreement in such order requires business plan of the investment project and state complex expertise of investment project, but its

application allows providing for in the investment agreement of any favours and preferences, including ones that are not provided for by legislation.

For the conclusion of investment agreements of the first level the business plan of the investment project, implemented in the framework of the investment agreement (hereinafter - the investment project), and government due diligence of investment projects are not required. The business plan of the investment project and government due diligence of investment projects is required only in the case of the implementation of investment project of the second level and providing to the investors and (or) organization, created in the established order in the Republic of Belarus by this investor or with his participation, additional benefits and privileges, which are not established by legislative acts, the Decree № 10 and other decisions of the President of the Republic of Belarus. Mandatory provisions of such agreements include the following:

- object, scope and terms of investments, terms of implementation of investment project, term of validity of investment agreement;
- rights and obligations of the investment agreement signatories;
- liability of investment agreement parties for failure to meet terms and conditions of the investment agreement terms, including compensation of real damage to investor, arising from illegal actions (inactions) of state authorities or authorities of executive committees, as well as the right of the Republic of Belarus to withdraw from an agreement in case of nonobservance or inappropriate observance of obligations by investor;
- requirements about confidentiality of the information;
- procedure and body of dispute;
- the procedure for and body empowered to settle disputes (including international arbitration for foreign investors) arising from the investment agreement. If investor is foreign legal entity or natural person of foreign state court, arbitration court, established on the territory of foreign state can be indicated as body, responsible for dispute resolution, if this court is defined as competent body by international agreements of the Republic of Belarus.

## **2.6. Guarantees and benefits for the investor**

1. Guarantee of damage compensation, caused by illegal actions (inactions) of state bodies and authorities of executive committees;

2. Investor has the right to:

– build the objects, provided in the investment project, together with elaboration, expertise and approving of required documentation for each stage of construction and to project simultaneously successive stages of such construction;

– obtain without tender a land plot for construction, provided by the investment project with preparation of all necessary documents, concerning land plot allotment simultaneously with construction works performing;

– build the objects, provided in the investment project, with the right of removal of objects of flora without realization of makeup pays of cost of deleted objects of flora;

– deduct in full of the sums of the VAT paid at acquisition (import in territory of the Republic of Belarus) of all goods, works, services, the property rights used for designing, building (reconstruction), equipment of the objects provided by the investment project, irrespective of the sums of the VAT estimated on realization;

– to select without carrying out of the contract auctions of the general design organization, the general contractor, subcontractors and other subjects for building of objects under the investment project.

3. Investor is exempt from:

– transferring of payment for the right to conclude a contract on the lease of land plot;

– payment of the land tax or a lease payment for the land plot (that were in state ownership) given for the investment project, for the term of designing and building till

December, 31st of the year following after year of end of building;

- compensation of losses of agriculture and/or forestry production, caused by expropriation of land plots for realization of investment project;

- payments into innovative funds for the period of term of the investment agreement;

- payments of import duties and VAT (taking into account the international obligations of the Republic Belarus) to the tax bodies in case of import of technological facilities and relative repair parts for the objects, connected with realization of investment project, the customs territory of the Republic of Belarus;

- payment of state due for permission for labour activity in Belarus for foreigners, attracted by investor in the frameworks of realization of the investment project. Above-mentioned citizens are exempt from state due for permission for temporary staying in the Republic of Belarus;

- Exemption from the VAT and the profits tax at gratuitous transfer to the investor from the Republic of Belarus of real estate and other fixed assets for implementation of investment project.

## **2.7. Investments in form of concessions**

Investment activity with regard to the subsoil, bodies of water, forests, lands, and assets that are wholly owned by the Government, as well as activities over which the Government enjoys exclusive rights may be carried out on the basis of concession agreements and investment agreements.

Objects of concession can be the following:

- right to carry out the certain kinds of activity to which in accordance with legislative acts of the Republic of Belarus the exclusive right of the state is assigned—under the decision of the President of the Republic of Belarus;

- entrails of the earth, waters, forests, lands, and also the objects (including the enterprises as a whole or their parts) that are in accordance with legislative acts of the Republic of Belarus can be only in the ownership of the state—in accordance with the list approved by the President of the Republic of Belarus.

The list of objects of concession is approved by the Decree of the President of the Republic of Belarus of № 44 dated January 28, 2008 including gypsum, iron ore deposit, the deposit of bentonite, clay deposit, chalk deposit, the deposit of sand and gravel material, the field oil shale and subsurface area for the searching of the scattered hydrocarbon (oil shale) gas in certain areas of Belarus.

A concession agreement means an agreement concluded by the Republic of Belarus with an investor (concessionaire) envisaging the transfer of the right to engage in a particular activity within the territory of Belarus which is normally exclusively operated by the Government for a consideration and for a specified period of time, or envisaging the transfer of the right to use property owned by the Republic of Belarus.

Concession agreements shall be awarded through tender or auction. Concession agreements shall be concluded without tender or auction only in the following cases:

- with the investor executed the geological survey at their own expense;

- according to the decision of the President of the Republic of Belarus.

For the provision of subsoil for use in accordance with the concession agreement or investment agreement with the Republic of Belarus investor no later than 12 months from the date of its conclusion shall pay to the republican budget:

- one-time payment for subsoil;

- the costs of compensation incurred by the State to carry out exploration work in the amount determined by the Ministry of Natural Resources and Environment.

It is also established that terms and conditions of concession agreements shall remain in force throughout the validity term of such agreements. These terms and conditions may be

amended only by mutual consent of the parties, unless otherwise stipulated by the concession agreement.

## **2.8. Investment agent**

Status of investment agents interred into the legislation of the Republic of Belarus in 2009 by Presidential Decree of № 413 dated August 6, 2009 "On providing individuals and entities the authority to represent the interests of the Republic of Belarus in attracting investments to the Republic of Belarus."

Investment agent is a person, authorized to represent interests of the Republic of Belarus on attracting of investments to the Republic of Belarus. This status is aimed to develop the work on attracting of investments into Belarusian economy.

Investment agent can be business entity or individual entrepreneur of the Republic of Belarus and foreign persons, including foreign citizens, which are not registered as individual entrepreneurs.

Powers of investment agent are implemented for the purposes of development of administrative and territorial subdivision and branches of Belarusian economy, as well as of investment projects realization.

Business entities and natural persons, willing to obtain the status of investment agent, have to apply to state body or regional executive committee (Executive Committee of City of Minsk) and attach the following documents:

- application;
- copy of certificate of state registration;
- information about applicant;
- contract on granting of investment agent powers.

In case of successful decision of state body or regional executive committee (Executive Committee of City of Minsk), applicant is awarded a contract on representing of interests of the Republic of Belarus.

In the frameworks of representing of interests of Belarus investment agent can perform such activities as negotiating with prospective investors, elaboration of mechanism of investment project realization, drafting of documents. Investment agent has the right to provide counseling and legal services to prospective investors.

Legislation of Republic of Belarus aimed at improving the legal and economic relations in the field of state property privatization and transformation of state-owned unitary enterprises into joint stock companies. That is made in order to create the conditions for attracting investment and development of an efficient economy.

### 3.1. The concept of privatization

According to the current legislation privatization of state property (hereinafter – privatization) means selling privatization objects to subjects of privatization on the terms and conditions provided by legislation.

Privatization objects are:

- enterprises as property complexes of state unitary enterprises;
- shares (stocks in authorized funds) of economic companies which are in the ownership of the Republic of Belarus or in the ownership of administrative and territorial units.

Subjects of privatization are: individuals, including individual entrepreneurs, foreign citizens and stateless persons, legal persons of the Republic of Belarus, foreign legal persons as well as foreign states, their administrative and territorial units, international organizations and foreign organizations that are not legal persons, with the exception of state organizations and economic companies in the statutory funds of which the number of shares (stocks), belonging to the Republic of Belarus and/or its administrative and territorial units, exceeds 50 percent.

Privatization is implemented through the sale of:

- shares (stocks in authorized funds) at an auction;
- shares (stocks in authorized funds) by a competitive bidding;
- enterprises as property complexes at an auction;
- enterprises as property complexes by a competitive bidding;
- shares of an open joint-stock company according to the results of trust management.

Sale of a privatization object without holding an auction (competitive bidding) is carried out in the event of the sale of shares of an open joint-stock company according to the results of trust management and in other cases established by the President of the Republic of Belarus.

Plans for privatization formed on a three year period by privatization bodies (hereinafter – privatization bodies). Privatization bodies are State Committee on Property of Republic of Belarus and local funds of state property, local executive and administrative bodies for property which are in the ownership of administrative-territorial units. Plans for privatization into open joint-stock companies shall be published in the print mass media determined by the Council of Ministers of the Republic of Belarus, and shall be placed in Internet on the sites of privatization bodies. Under the decision of the President of the Republic of Belarus decision some powers of privatization bodies can be implemented by other state agencies (organizations), for example by National agency for investment and privatization.

### 3.2. The procedure of privatization

Privatization is carried out on the basis of privatization body's decision. The privatization body shall prepare a draft decision on privatization, unless otherwise established by this Law:

- an enterprise as a property complex on the basis of the conclusion of the commission on privatization; stocks shares (stocks in authorized funds) which are in the ownership of the Republic of Belarus on the basis of proposals of state bodies, state organizations;



–shares (stocks in authorized funds) which are in the ownership of administrative and territorial units under the procedure determined by relevant local Councils of Deputies.

After decision the privatization body carries out the publication of the information about the auction (competitive bidding) for the sale of an object of privatization.

Privatization body organizes auction (competitive bidding) for the sale of an object of privatization, which sets the amount of the deposit (no more than 10 percent of the initial selling price of the object of privatization) accepts applications for participation in the auction (competitive bidding), creates a commission on conducting the auction (competitive bidding) on the sale of the objects of privatization. The commission on conducting the auction (competitive bidding) on the sale of objects of privatization determines the participant, who wins the competitive bidding, and draws up a protocol on results of the auction (competitive bidding) on the sale of the object of privatization

The initial sale price of an enterprise as property complex which have a number of employees of up to 100 persons, whose outstanding financial liabilities on the date of determining the estimated cost of the enterprise as a property complex is equal to the balance cost of assets or exceeds this cost, when it is sold through a competitive bidding the estimated cost is to be one base unit on the date of holding the competitive bidding, established in accordance with acts of legislation.

Sale of the objects of the privatization is carried out at the open auctions (competitive biddings) only for monetary funds.

The enterprise as property complex is transferred to the customer after the state registration of contract of sale under the transfer act. State registration of the transfer of the ownership of the enterprise as property complex is carried out after the full payment of the object of the privatization by the buyer in accordance with the contract of sale. The ownership of the enterprise as property complex is transferred to the buyer from the moment of state registration of the transfer of the ownership.

Payment for the object of privatization is to be made not later than 30 working days from the date of the contract of sale, unless otherwise stated in the decision on privatization. Buyers should know that the punishment for the breach of the payment period is tough: fine in the amount of 10 percent of the purchase price for the object of privatization and a penalty interest in the amount of 1/360 of the refinancing rate of the National Bank, established on date of remittance of funds (making payments), on the unpaid sum for each day of delay.

### **3.2.1. Sale of shares (stocks in authorized funds) and enterprises as property complexes at auction**

Sale of shares (stakes in authorized funds) and enterprises as property complexes at the auction is carried out when the buyer is not required to fulfill any conditions.

Sale at the auction to the subjects of the privatization of shares of the closed joint stock companies and stakes in authorized funds of other economic companies is carried out in compliance with the order of offering of such shares, stakes in authorized funds to their participants, those economic companies, third persons in accordance with the legislative acts.

### **3.2.2. Sales of shares (stocks authorized funds) at a competitive bidding**

Sale of shares (stocks in authorized funds) is carried out at a competitive bidding, when the purchaser is required to fulfill certain conditions set forth in the decision on privatization.

Sale of shares of Closed Joint Stock Companies at a competitive bidding and shares in authorized funds of other economic companies shall be carry out in compliance with the order of offering of such shares, shares in authorized funds to their participants, those economic companies, third persons in accordance with the legislative acts.

The following conditions can be stated in the decision on privatization through sales of shares (stocks in authorized funds) at a competitive bidding:

- amount, time constraints and spheres of investment;
- preservation and (or) creation of a certain number of jobs within a certain period;
- preservation of the sphere of business activity of the business entity within a certain period;
- preservation and funding for a certain period of social facilities that the economic company have in the ownership or under a contract of gratuitous use;
- other conditions.

### **3.2.3. Sale of enterprises as property complexes at a competitive bidding**

Sale of enterprises as property complexes is carried out at a competitive bidding, when the purchaser is required to fulfill certain conditions which are set forth in the decision on privatization.

The following conditions can be stated in the decision on privatization through the sale of enterprises as property complexes at a competitive bidding:

- amount, time constraints and spheres of investment;
- preservation and (or) creation of a certain number of jobs within a certain period;
- retraining and (or) advanced training of employees;
- preservation within a certain period of the range of manufactured products (types of works, services);
- preservation within a certain time of the sphere of business activity of the state unitary enterprise;
- other conditions.

In the event of sale of an enterprise as property complex at a competitive bidding with the establishment of an initial sale price equal to one base amount, the owner of the privatized enterprises as property complex is required to repay the indebtedness on financial obligations of the state unitary enterprise the property complex of which he has acquired, to keep a certain amount of jobs, to ensure operational and commercial activities of the enterprise and meet the other conditions of the contract of sale.

### **3.2.4. Sale of shares of open joint stock company according to the Results of trust management**

Sale of part of shares (no more than 10 percent of the authorized fund) owned by the Republic of Belarus or administrative and territorial unit of open joint-stock companies, the debt on financial obligations of which within two years preceding the date of the decision on privatization is equal to book value assets or more for two years preceding the date of taking the decision on privatization, mainly (at least 14 months) are equal to balance sheet value of assets or exceeds its assets, can be carried out according to the results of trust management of shares of unprofitable open joint stock company.

Shares of unprofitable open joint-stock companies owned by the Republic of Belarus or an administrative and territorial unit may be transferred into trust management with the right to buy out those shares according to the results of trust management to the subjects of privatization – professional securities market participants. Without special permission (license) for professional and exchange activities on securities, the trust management of shares of unprofitable open joint-stock companies, with the right of to buy out those shares according to the result of trust management may be performed by other subjects of privatization in the cases established by the President of the Republic of Belarus.

Transfer to the subjects of privatization in accordance with the decisions on the privatization shares of unprofitable open joint-stock companies into the trust management with the right to buy out those shares according to the results of trust management is carried out on a competitive bidding, and in case the competitive bidding has been recognized to have failed on the grounds specified in indent 2 of part 6 of this article – according to the result of direct negotiations with sole participant of the competitive bidding.

Privatization body accepts applications for participation in competitive bidding, sets up a contest commission to conduct the competitive bidding. The contest commission determines the participant, who has won competitive bidding, and draws up minutes on the results of the competitive bidding.

The competitive bidding is considered invalid if:

- application Form in the competitive bidding is filed only by one party;
- no applications for participation in the competitive bidding was filed;
- only one participant or none of the participants appeared at the competitive bidding.

A competitive bidding is considered to have no result if among the applications filed by the participants of the competitive bidding under the terms of the competitive bidding none of the proposals of the participants of the competitive bidding does not correspond to those terms.

The winner of the competitive bidding is deemed to be the participant whose all proposals, according to the conclusion of the commission on conducting the competitive bidding, correspond to the terms of the competitive bidding or contain better terms in comparison with the terms of the competitive bidding.

The participant, who has won the competitive bidding and the contest commission shall sign minutes on the results of the competitive bidding on the day of the competitive bidding.

The procedure for conducting the competitive bidding on the transfer of the shares of unprofitable open joint-stock companies into the trust management with the right to buy out a part of those shares according to the results of the trust management and for concluding the contract on trust management of shares with the right to buy out a part of those shares according to the results of the trust management (hereinafter – contract of trust management with right to buy out) as well as for control over its fulfillment is determined by the Council of Ministers of the Republic of Belarus with regard to the requirements of this Law and other legislative acts.

The subject of the privatization that concluded a contract of trust management with the right to buy out, after the termination of the trust management and in case he fulfilled all conditions of the contract of trust management with the right to buy out has the right to purchase a part of the shares transferred to him into trust management, in the ownership under a contract of sale subject to conditions specified in the contract of trust management with the right to buy out. Sale price of shares of unprofitable open joint-stock companies is determined by their nominal value in accordance with the charters of those companies on the date of the conclusion of the contract of trust management with right to buy out.

In the case of breach of the contract of trust management with right to buy out the subject of privatization has no right to repurchase the shares of unprofitable open joint stock company and bears the liability provided by the contract of trust management with the right to buy out.

### **3.2.5. Transformation of the state unitary enterprises into the open joint stock companies**

Decisions on the transformation of the state unitary enterprises into the open joint stock companies are made in accordance with the approved plans on transformation of the state unitary enterprises into the open joint stock companies:

– concerning the republican unitary enterprises employing 1,000 people or more – by the republican body of state administration for managing state property;

– concerning the republican unitary enterprises employing less than 1,000 people – by the territorial bodies of the republican body of state administration for managing state property;

– concerning municipal unitary enterprises – by the appropriate local executive and administrative authorities.

The founders of the open joint stock companies created in the process of transformation of state unitary enterprises are the privatization bodies. The founders of open joint-stock companies other than the state (hereinafter - the founders other than the state) may be the subjects of privatization who have made monetary and/or non-monetary contributions to the authorized funds of the open joint-stock companies.

The choice of other founders other than the state is to be made by the privatization body by holding a competitive bidding, and in case the competitive bidding has been recognized to have failed on the ground that an application for participation in the competitive bidding was handed in by a single participant, - by the direct negotiations of the privatization body with the single participant of the competition.

The privatization body accepts applications for participation in the competitive bidding, creates a commission on conducting the competitive bidding. The commission on conducting the competitive bidding determines the participant who won the competitive bidding, and draws up a protocol on the results of the competitive bidding on selecting the founder other than the state. The winner of the competitive bidding is deemed to be the participant whose all proposals, according to the conclusion of the commission on conducting the competitive bidding, correspond to the terms of the competitive bidding or contain better terms in comparison with the terms of the competitive bidding.

State bodies, state organizations, local administrative and executive bodies shall, during the transformation of state unitary enterprises into the open joint-stock companies:

– create sectoral commissions for the transformation of the state unitary enterprises into the open joint stock companies (hereinafter “sectoral commission”);

– ensure the creation of the commissions for transformation of the state unitary enterprises into the open joint stock companies (hereinafter “commission for the transformation”) by the subordinate (making part thereof) state unitary enterprises.

The sectoral commission includes representatives of the state body, state organization, local administrative and executive body that have in its subordination (making part thereof) the being transformed state unitary enterprise.

Works on transformation of the state unitary enterprise into open joint-stock company are performed by the commission for transformation. The commission for transformation includes representatives of the collective of workers of the state unitary enterprises and representatives of the state body, state organization, local administrative and executive body to which the state unitary enterprise being transformed is subordinated (makes part of).

The amount of authorized fund of the open joint-stock company is determined based on the balance sheet value of assets and liabilities of the state unitary enterprise or several state unitary enterprises on January, 1st of the year in which the transformation is being conducted, under the procedure established by the republican body of state administration for managing state property, and in the event of participation of the founder other than the state, also based on the value of the contribution of such a founder, determined in accordance with acts of legislation, and may not be below the minimum size established by legislative acts.

The sectoral commission negotiates the project of the transformation of the state unitary enterprise into the open joint stock company, prepares the conclusion on the possibility of establishing of the open joint stock company.

Based on the conclusion of the sectoral commission, the privatization body makes a decision on the establishment of an open joint stock company in the course of in the process of

transformation of the state unitary enterprise, or in the course of transformation of a few state unitary enterprises.

### **3.2.6. Reorganization of the open joint stock company by joining to it of a state unitary enterprise**

Decisions on the consent to join the state unitary enterprise, or several state unitary enterprises to the open joint stock company are taken by the privatization bodies.

After the decision on consent to join the state unitary enterprise, or several state unitary enterprises to the open joint stock company has been taken, state bodies, state organizations, a corresponding local executive and administrative body shall:

- provide the creation by the subordinated state unitary enterprises (making part thereof) of the commissions on joining the state unitary enterprise or several state unitary enterprises to the open joint-stock companies (hereinafter – the commission on joining);

- create sectoral commissions on joining the state unitary enterprise or several state unitary enterprises to the open joint-stock company (hereinafter in this article – sectoral commissions on joining).

In the event of joining to an open joint-stock company of several state unitary enterprises which are in subordination (make part) of several state bodies, state organizations and/or local executive and administrative bodies, the sectoral commission on joining is to be created under the procedure determined by the republican body of state administration for managing state property.

The works on joining of the state unitary enterprise, or several state unitary enterprises to the open joint stock company are performed directly by the commission on joining.

Appraisal of the value of property of the state unitary enterprise or several state unitary enterprises being joined is determined based on the balance sheet value of assets and liabilities of that enterprise (those enterprises) on January 1<sup>st</sup> of the year in which the joining is conducted, under the procedure established by the republican body of state administration for managing state property.

For the purpose of joining a state unitary enterprise or several state unitary enterprises to an open joint-stock company the contract on joining that determine the procedure and conditions of joining is to be concluded between the state unitary enterprise or the several state unitary enterprises and open joint-stock company. The contract on joining is subject to the approval by general meeting of shareholders of the open joint-stock company and the founder (founders) of the state unitary enterprise (state unitary enterprises). After the approval of the contract on joining, a joint general meeting of shareholders of the open joint-stock company and the founder (founders) of the state unitary enterprise (state unitary enterprises) is to take the decision on increase of the authorized fund of the open joint-stock company, on an additional issue of shares of the open joint-stock company, their transfer to the ownership of the Republic of Belarus or an administrative and territorial unit and on introduction of changes and additions into the statute of the open joint-stock company. The procedure of voting on the joint general meeting is determined by the contract on joining or at that joint meeting.

When a state unitary enterprise or several state unitary enterprises join to an open joint-stock company, its (their) rights and a duties pass according to the transfer act (transfer acts) to the open joint-stock company to which joining is carried out.



## 4. Construction and immovable property

### 4.1. Immovable property

A general notion of immovable is given by Civil Code of the Republic of Belarus, according to which to immovable things (immovable property, immovable) shall be relegated land plots, subsoil plots, solitary water objects, and all that is firmly connected with the land. The main feature of immovable objects is the fact of impossibility to move such objects without incommensurate damage to their purpose.

### 4.2. State registration of immovable property, rights and deals with it (hereinafter – state registration)

The immovable property, rights and deals with it are subject to the state registration in cases, provided by the legislative acts.

The main document which regulates state registration is the law of the Republic of Belarus № 133-3 dated the 22nd of June 2002 “On state registration of immovable property, rights and deals with it” (hereinafter – the Law “On state registration of immovable property”). According to the mentioned Law state registration is a legal act of state admission and confirmation of a fact connected with creation, changing, disappearance of immovable property, rights to it and encumbrances on it, as well as transactions with it.

There is a Common state register of immovable property, rights to it and deals with it which contains information and documents regarding registered objects of immovable property in the Republic of Belarus.

Objects of state registration according to the law “On state registration of immovable property” are as follows:

- creation, changing, disappearance of immovable property;
- occurrence, changing, termination of rights to immovable property including parts in rights, except parts in right of common ownership of common household and limitations (encumbrances) on rights over immovable property according to the above-mentioned law and other legislative acts;
- transaction with immovable property which is subject to state registration according to legislative acts of the Republic of Belarus;

State registration is carried out in relation to the following types of immovable property:

- land plots – a part of the land surface having their boarder and purpose and firmly connected with constructions (buildings, structures) located on it;
- constructions (buildings, structures) which include any objects built on or under land intended for long-term use, the creation of which is recognized as completed in accordance with laws of the Republic of Belarus and the purpose, location, dimensions of which are described in the documents of the Common state register of immovable property.
- incomplete conserved constructions – a conserved object of construction, creation of which as construction is permitted in accordance with legislation of the Republic of Belarus, but not accomplished.
- isolated premises (including inhabited) which are understood as the inner space of a construction (building, structure) separated from other related parts of the construction by
  - bridgings, walls, division walls, having an independent entrance from auxiliary premise (entrance hall, corridor, walkway, staircase, elevator hall etc.) or from public area (area around the house, street etc.) directly or from other premises or territory by using servitude, the purpose, location in the construction, the area of which is described in the documents of the Common state register of immovable property;



- parking place – a stall intended for placing a vehicle, which is a part of a construction belonging to a legal entity or an individual and registered as an object of immovable property.
- enterprise as a property complex used in the entrepreneurial activity. The enterprise includes all types of property intended for its activity, including land plots, buildings, structures, equipment, inventory, raw material, production, claims, debts, as well as trade name, trademark, service mark and other exclusive rights.
- other types of immovable property in cases stipulated by legislative acts of the Republic of Belarus.

Thus, immovable property not included in the above-mentioned list and obligatory state registration of which is not provided by legislative acts (laws, decrees, edicts) is not subject to state registration.

The legal significance of the state registration is that it is only since the moment of its realization:

- immovable property is recognized as created, changed, eliminated;
- right, limitation (encumbrance) of a right to immovable property arises, is being transferred and is terminated;
- transaction is recognized as concluded.

As a general rule according to Civil Code transactions with immovable property are subject to state registration. Non-observance of the obligation to provide state registration of a transaction leads to its nullity, so no rights and obligations arise from such a transaction and the parties have to return all received in such a transaction.

There are exceptions from this rule provided by the legislation of the Republic of Belarus. According to the Decree of the President of the Republic of Belarus dated the 19th of December, 2008 № 24 “On some issues of lease of constructions (buildings, structures, isolated premises, parking places” the following objects are not subject to state registration:

- lease and sublease contracts, the contracts of uncompensated use of immovable property ( construction (building, structure), isolated premises, parking place) regardless the term of lease, sublease, uncompensated use as well as agreements intended to change or terminate above-mentioned contracts;
- rights to immovable property arising from above-mentioned contracts. These contracts are considered as concluded from the date of its signing by parties.

State registration is carried out by territorial organizations on the registration of immovable property subordinated to the State Committee on Property of the Republic of Belarus.

Time-limits of administrative procedures as well as fees connected with state registration are established by legislation.

### **4.3. Land plots**

Land plot is one of types of immovable property which are subject to state registration as a general rule.

According to legislation of the Republic of Belarus legal entities can own land plots on following titles: ownership, permanent or temporary use, lease. One of the main principles in land laws is a principle of purpose use. Consequences of non-compliance with this rule are that a title for a land plot (including ownership) may be terminated.

The use of land plots is paid in the Republic of Belarus. The forms of payment for a land plot are land tax or rent.

For the use of a land plot privately owned, permanently or temporarily used, land tax is to be paid according to the legislation.

Rent is to be paid for the use of land plots granted on lease.

The procedure of collection of rent for the use of land plots, owned by the state is established by the President of the Republic of Belarus.

### **4.3.1. Ownership**

Land plots can be privately owned by private legal entities of the Republic of Belarus, foreign states, international organizations

Land plots owned by the state can be transferred to private ownership as a result of the auction and without auction. The legal grounds and the procedure of allocation of land plots owned by the state are established by the Edict of the President of Republic of Belarus dated the 27th, December, 2007 № 667 “On seizure and assignment of land plots”.

The disposal of a land plot privately owned is implemented on the basis of a civil law transaction.

### **4.3.2. Permanent use**

Permanent use is one of the forms of a land plot use without predetermined term which terminates in cases provided by legislation.

Commercial private legal entities can use under permanent use title land plots which had been transferred to them before Land Code entered in force, or if the title for permanent use of a land plot was transferred to them from other legal entities, as well as if a land plot was transferred:

- for maintenance of objects of immovable property owned by state;
- construction of apartment dwelling buildings (except dwelling buildings of higher comfort according to the criteria stipulated by legislative acts); maintenance of apartment dwelling buildings; construction and (or) maintenance of garages and parking lots.

### **4.3.3. Lease**

Land plots can be granted on lease to legal entities of the Republic of Belarus as well as to foreign legal entities, their representative offices, foreign states, diplomatic missions and consular posts of foreign states, international organizations and their representative offices.

The grant on lease of land plots privately owned is carried out on the basis of a civil law transaction.

Land plots owned by the state can be granted on lease at an auction as a general rule. But there is a list of cases stipulated by legislation in which land plots can be granted on lease without an auction. For example land plots can be granted on lease without an auction to an investor for realization of projects provided by investment agreement with the Republic of Belarus, to organizations for construction of objects of engineering and transport infrastructure, construction of objects of roadside service.

Time-terms and other conditions of a land plot lease are determined by the lease contract. But the time-term of a land plot allocated for agriculture should be not less than ten years, the time-term of a land plot owned by the state and allocated for construction and (or) maintenance of capital buildings should be not less than the time-term of the construction works and (or) operation of these capital buildings. In any case the time-term of the land plot lease should not exceed ninety nine years.

## **4.4. Construction**

The basis of the construction legislation is defined by the law of the Republic of Belarus dated the 5th of July, 2004 № 300-3 “On architecture, town- planning and construction activities in the Republic of Belarus”.

According to the above-mentioned law, construction of buildings and structures is carried out on the basis of authorization. State bodies in charge of preparation and granting of permits following applications of organizations interested in construction are executive committees, their departments, specialized municipal unitary enterprises. The set of permits is defined by legislation and can vary depending on type and place of construction.

The following major documents are included in the list of obligatory permits:

- local executive committee's decision on permission to carry out design and exploration works and construction of the object;
- architectural planning task;
- advice of coordinating organizations;
- technical conditions on engineering support of the object.

Availability of permits is a necessary condition for customer to enter into a contract for development of project documentation and an independent-work contract for execution of works on construction of an object.

Project documentation is subject to mandatory state expertise as a general rule. List of objects for which project documentation is not subject to mandatory state expertise is provided by legislation. State expertise is paid and is to be carried out by specialized state enterprises - the republican unitary enterprise "Glavgosstoyexpertiza" or subsidiaries of the republican unitary enterprises "Glavgosstoyexpertiza" in Minsk and in other regions. The term provided by legislation for state expertise constitutes 15 days from date of presentation of all necessary documents. Project documentation for which positive advice of state expertise is received can be approved by construction customer and can be transferred for work.

There are special requirements provided by legislation for the process of determination of contractor for the construction of the object. For objects not financed from the state budget or non-budget funds and funds attracted under the guarantee of state agencies, the conduction of contract auctions is obligatory if the cost of construction exceeds 50 000 base units.

In such cases a contractor for construction of an object is determined only as a result of an auction. The cases when financing of the construction is fully financed by foreign investors are exempt from this rule

### 5.1. Payments and Financial Statements

As a general rule payments between legal entities and individual entrepreneurs in Belarus are carried out on a cashless basis.

Nevertheless, some transactions between legal entities and their separate parts and individual entrepreneurs (hereinafter – business entities) are permitted in cash.

Cash transactions are carried out for the obligations arising from civil-law relations including by depositing money directly to banks and charging this payment in the current (settlement) bank account. The total amount of cash settlements cannot exceed 300 basic units (at the date of 01.02.2012 base unit is about 3 euro, starting from 01.04.2012 the base unit will be about 9 euro) in a day.

Except banks' cash registers the receiving of cash from business entities in the amount of not more than 300 basic units is carried out by:

- Business entities engaged in the exhibition industry – for their services (except areas lease payments);
- Business entities performing wholesale trade through stores-warehouses and business entities performing retail trade – for the goods purchased from them;
- Bodies, which control the markets, – for their services in accordance with rules of trade in the markets of the Republic of Belarus (except for the rental of retail space);
- Business entities selling fuel and providing services directly related to the transportation of cargo (transportation of passengers) – for fuel and services (transport washing, minor forced repair of transport, documents execution for carriage of dangerous goods, parking lots, telephone and fax, terminal services (connection with boarder control of transport and cargo), escorting of cargo (in exception cases).

Cash payments to the budget and state budget funds are made without size limits.

Some legal entities and individual entrepreneurs are not allowed to make cash transactions. They are:

- Legal entities and individual entrepreneurs engaged in alcoholic, inedible alcohol-containing products, inedible ethyl alcohol, tobacco raw material, tobacco wholesale trade.
- Legal entities in state of liquidation, as well as individual entrepreneurs with regard to which there is a decision on termination of their activity, legal entities and individual entrepreneurs with regard to which bankruptcy proceedings has been started.

The sources for the cash payments are:

- cash received from the current (settlement) bank accounts, card accounts;
- cash received into the cash registers of legal entities and individual entrepreneurs in the form of repayment of previously issued for payments cash;
- revenue;
- personal money of the employees of legal entities that are used in the interests of legal entities on the basis of the contracts with employer.

#### 5.1.1. The procedure of using the cash

Cash of legal entities, branches and individual entrepreneurs, who have opened operating bank account (hereinafter for the purposes of this clause 3.1.2. – business entities), is subject to mandatory transferring and keeping in appropriate accounts in the banks.

Business entities must deliver cash through their authorized persons:

- to banks;
- to employees of collection service;

– to the organizations of the Ministry of Communications and Informatization of Belarus.

Business entities determine the procedure and the deadlines for delivering of the revenue themselves in the written order of the chief executive of the business entity.

While setting the deadlines of the revenue the business entity should take into account the necessity of the turnover acceleration and timely flow of cash into the banks, providing of the safety, specifics of a the business entity.

Business entities should report to the servicing bank (by the decision of the bank's chief executive or of the person authorized by him) set deadlines of the delivering of the revenue, the quantity of revenue, planned for delivery to the bank, as well as information about changes in the deadlines of the delivering of the revenue and it's quantity, in terms defined by the contract between the business entity and the servicing bank.

Business entities may spend the cash from the revenue to meet their needs arising during their activity (including for the payments into the budget, state funds), in the order and amount, specified in the legislation for the implementation of future expenses (subject to the existence of such amounts). For example, for using cash from the revenue for travel expenses the business entities should take into account the norms of reimbursement of travel expenses, established by the Belarusian legislation.

Cash can also be received by the business entities in the serving banks for the purposes, established by law, and must be spent for the purposes indicated in the receipt, according to which this cash was received.

### **5.1.2. Financial statements**

Annual financial accounting reports of business entities are the primary source of information about the results of their economical activity and their financial position. It allows to find out about the income and expenditures incurred by organizations, contribute to the prevention of negative results of the economic activities of the organization and reveal reserves for its financial stability.

These reports are of interest not only to these business entities and their parent organizations, but also to external users: controlling state bodies, banks, credit organizations, counterparties and etc., because they provide information about the presence and movement of assets and liabilities, as well as about the use of materials, labor and financial resources in accordance with approved standards.

The Ministry of Finance of the Republic of Belarus is the governmental body that provides method guidance of accounting reports and determines composition of annual financial accounting reports, i.e. in what order it should be compiled and in what way it should be presented to the interested persons.

An organization prepares the accounts for the period of month, quarter and year. In this case, monthly and quarterly financial accounting reports are the intermediate reports.

Nowadays, annual financial accounting reports of Belarusian legal entities include the following documents:

- 1. Balance Sheet**
- 2. Income Statement**
- 3. Statement of Changes in Capital**
- 4. Statement of Cash Flow**

Except that four forms an explanatory note should be attached to annual accounting reports. An explanatory note must contain:

- description of organization's main activities, main indicators of its activity;
- means of accounting applied in company according to accounting policy;
- additional information on balance sheet items, income statement, statement of changes in capital, statement of cash flow, statement of the targeted use of funds received, presented in the order in which items are shown in these reports;

- additional information which is not contained in balance sheet, income statement, statement of changes in capital, statement of cash flow, statement of the targeted use of funds received but pertinent for understanding of accounting reports by its users;

- other information disclosure of which is provided by legislation.

With the change of entrance balance sheet in explanatory note is disclosed the reasons of changes.

Organization's financial accounting reports for the month consist of balance sheet.

Organization's financial accounting reports is composed with considering of activity indicators of its branches, representative offices and other separate units, including those with separate balance.

Indicators of financial accounting reports are stated in millions of Belarusian rubles in integers.

Some organizations have the right not to exercise bookkeeping and accounting and keep records in a special book (ledger) for recording income and expenses. These organizations include organizations and individual entrepreneurs, which apply the simplified taxation system, except:

- organizations, employing over 15 people and the amount of gross revenue of which on an accrual basis since the beginning of the tax period exceeds 3, 4 billion of Belarusian rubbles;

- republican and municipal unitary enterprises which possess their property on the right of economic management;

- economic companies with respect to which the state lawfully may determine the decisions made by these economic companies.

The annual accounting reports must submitted within 90 days after the end of the year.

Mandatory publication of annual accounting reports is provided by the laws of Belarus for the following subjects:

- open joint-stock companies;

- banks;

- insurance companies;

- insurance brokers.

Other organizations can publish their annual accounts at will.

For the violation of the procedure of making financial accounting reports there is an administrative liability in the form of fine ranging from 5 to 20 basic units (as of 01.02.2012 base unit is about 3 euro, from 01.04.2012 the base unit will be about 9 euro).

It should be noted that at the moment in Belarus regulations which will provide the application of a broad-based international financial reporting standards are developed.

## 5.2. Pricing

Legal relationship in field of pricing in Republic of Belarus are regulated by law of Republic of Belarus of May 10, 1999 № 255-3 "On pricing".

As a general rule in Belarus there are free prices (tariffs) used in respect of goods (works, services).

The exception to this rule is the regulation of prices (tariffs) in respect of:

- the goods (works, services) of monopolistic economic entities;

- certain goods (works, services), a specific list of which is established by Presidential Edict of February 25, 2011 № 72 "About some measures of regulating prices (tariffs) in the Republic of Belarus" (public facilities for citizens, paid medical services, petrol, gas, spirits, alcohol, tobacco, carriage and transportation services, paid educational services, socially important goods, precious stones and metals and many others).

Towards the regulated goods (works, services) republican state administration bodies, regional and Minsk city executive and administrative bodies within the powers granted to them by law, shall direct (administrative) regulation of prices (tariffs) by setting:

- fixed prices (tariffs);



- limited prices (tariffs);
- limits of trade allowances (discounts) to the prices;
- limited cost-effectiveness standards used to determine the amount of profit to be included in the regulated price (tariff);
- procedures for determining and applying the prices (tariffs);
- declaration of prices (tariffs).

### **5.3. Banking system**

Banking system of Belarus is regulated under the Banking Code of the Republic of Belarus and consists of:

- the National Bank of the Republic of Belarus (it is the central bank of the Republic of Belarus, which regulates the credit relations and currency, determines the procedure of payments and has the exclusive right of money emission);
- other banks (31 banks are registered at a point in February 1, 2012, except for the National Bank).

Most Belarusian banks are organizations with foreign capital.

#### **5.3.1. Banking Principles**

The main principles of banking activities include the following:

1. Obligatory licensing of banks and non-banking credit and financial institutions engaged in banking activities (hereinafter – Banking License);
  2. independence of banks and non-banking credit and financial institutions in their activities and non-interference of government authorities, except for extent provided by laws of the Republic of Belarus;
  3. Division of liabilities among banks, non-banking credit and financial institutions and the state;
  4. compliance with safety functioning standards introduced by the National Bank of the Republic of Belarus (hereinafter – the National Bank) to ensure stability and soundness of the banking system in the Republic of Belarus.
  5. the right of individuals and legal entities to choose banks and non-banking credit and financial institutions at their discretion;
  6. guarantees of confidentiality of clients transactions, accounts and deposits;
  7. guarantee of recovery of funds placed by bank depositors;
- Banking License is issued by the National Bank.
- Banking License is issued to a bank together with the certificate of state registration.

#### **5.3.2. Bank's authorized fund**

A bank's authorized fund shall be formed by contributions (assets) of its founders (participants). The authorized fund of bank comprises the minimum amount of the bank assets to safeguard the interests of its creditors.

The minimum amount of the authorized fund of bank is determined by the National Bank upon the approval of the President of the Republic of Belarus. Commencing on February 1, 2012, minimum amount of the authorized fund of bank is to be established in Belarusian rubles in the amount equivalent to 5 000 000 Euros.

On establishing a bank the minimum amount of its authorized fund shall be formed solely by means of cash contributions from its founders. The formation of authorized fund shall be formed solely by means of own funds of the bank shareholders, and the increase of the authorized fund can be made by means of own funds of the bank shareholders (owner of assets), of other persons, and/or of the bank. Own funds of shareholders (owner of assets), other persons, and/or of the bank comprise legitimately acquired financial resources or other assets owed by the named persons by virtue of ownership or other proprietary rights.

The maximum amount of property (non-monetary) contributions to the authorized fund of the bank is 20% of its authorized fund. The authorized fund of bank shall be fully paid up prior to the bank state registration.

Monetary contributions to an authorized fund of bank shall be made to a temporary account opened by the bank founders or by the bank in case of its authorized fund increase at the National Bank or other bank as agreed with the National Bank. The procedure for the transfer of funds to the temporary account with the National Bank or other bank as agreed with the National Bank and for recovery of these funds in case of denial of state registration of the bank or state registration of additions and (or) amendments to organizational documents of the bank shall be established by the National Bank.

### **5.3.3. Terms and conditions for obtaining a Banking License**

Banking License is issued to a bank together with the certificate of state registration of the bank.

The bank shall carry out certain operations only upon expiry of the two years period after the date of its state registration and subject to its stable financial position during the last two years and availability normative fund in the amount equivalent not less than:

25 000 000 Euros as on the first day of the month of submitting the documents for registration of amendments and (or) changes to the list of operations that may be performed by bank – to carry out banking operations on raising money from individuals who are not individual entrepreneurs for contributions (deposits), on opening and maintaining bank accounts of individuals;

5 000 000 Euros as on the first day of the month of submitting the documents for registration of amendments and (or) changes to the list of operations that may be performed by bank– to carry out banking operations on opening and conducting accounts in precious metals, on purchasing and sailing precious metals and (or) jewels, on placing precious metals and (or) jewels in contributions (deposits).

### **5.3.4. State registration of banks**

Before filing the documents required for state registration of a newly created bank one of its founders or its representative submits to the National Bank application for approval of the name of a newly created bank.

The documents submitted to the National Bank for state registration of a bank shall include:

1. Application;
2. The bank's charter;
3. Extract from the Minutes of the shareholders meeting (resolution by the assets owner) on approval of the bank's charter, nominees for CEO of the bank and the bank's Chief Accountant;
4. Documents confirming that the bank's authorized fund has been fully paid up (bank balance statement of temporary account, expert report on reliability of property appraisal in case of non-monetary contribution to the authorized fund and other documents in accordance with the legislation of the Republic of Belarus);
5. Copies of organizational documents and certificates of state registration for corporate founders, audit reports on the accuracy of their accounting (financial) statements, disclosing the presence of own resources being contributed to the bank's authorized fund and a statement by tax authorities confirming due performance by corporate founders of budget payment liabilities and of (or) state target budget and (or) non-budget funds liabilities;
6. Information on individual founders: copy of work record book certified by the most recent employer (for the unemployed individuals - statement by the employment agency or copy of pension ID certified by the social security agency at place of residence), statement by

internal affairs body confirming absence of outstanding or upheld conviction for property offenses and (or) economic crimes;

7. A document confirming the bank's right to reside at its registered address (place of residence of the bank's standing executive body) specified in organizational documents;

8. Personal data forms for nominees for CEO and bank's chief accountant positions filled in by these nominees and confirming the following facts:

8.1. For CEO - higher education in law or economics and a minimum of three years' work experience as department manager or manager of other bank division, certified copy of diploma and extract from the work record book;

8.2. For Chief Accountant - higher education in economics and a minimum of three years' work experience as a bank accountant, certified copy of diploma and extract from the work record book;

8.3. Absence of outstanding or upheld conviction record confirmed by the statement of internal affairs body that include information about being suspected or accused of a criminal case;

9. Documents confirming contributions to the bank's authorized fund:

9.1. copies of payment receipts confirming contributions to the authorized fund - per each investor;

9.2. extract from the Minutes of the meeting of founders (resolution by the assets owner) on approval of the appraisal's evaluation of assets in case of non-monetary contribution to the authorized fund;

9.3. expert report on reliability of the appraisal's evaluation in case of non-monetary contribution to the authorized fund;

10. Business plan, procedure of preparation and assessment criteria for which are determined by the National Bank;

11. Documents confirming the bank's technical ability to carry out operations per list determined by the National Bank;

12. A payment order confirming payment of a state duty for the bank's state registration;

13. Sample illustration of corporate seal in duplicate.

For state registration of banks in the form of a joint stock company, the following additional documents shall be submitted to the National Bank:

1. A notarized copy of the bank's Articles of Association of a joint-stock company;

2. The list of founders (participants) indicating their respective contributions, number, category and nominal amount of shares distributed among them and share interests in the total volume of the bank's authorized fund.

### **5.3.5. Additional requirements as to organizations and activity of banks with foreign investments and subsidiaries of foreign banks in the Republic of Belarus**

The limit (quota) for foreign capital participation in the banking system of the Republic of Belarus is set at no more than 50 percent. The said quota shall be derived as the ratio of total non-resident capital in aggregate authorized funds of banks with foreign investment and subsidiaries of foreign banks, and the total authorized fund of banks registered in the Republic of Belarus.

The National Bank shall stop registration of banks with foreign investment and subsidiaries of foreign banks once foreign capital participation in the banking system of the Republic of Belarus reaches the established limit (quota).

Banks with foreign investment shall be obliged to submit advance applications to the National Bank for authorization of increases in the bank's authorized fund using non-resident resources and (or) disposal of shares to non-residents. Applications shall be considered by the National Bank within thirty days of the date of submission. In the absence of a notice by the National

Bank of the adopted decision within this period of time, the authorization shall be deemed duly obtained.

Transactions involving disposal of shares to non-residents that are concluded without the authorization of the National Bank shall be deemed void.

The National Bank shall be entitled to forbid any increase in the authorized fund of a bank using non-resident resources and (or) any disposal of shares to non-residents where such actions would result in the limit (quota) for foreign capital participation in the banking system of the Republic of Belarus being exceeded.

The National Bank shall be entitled to introduce restrictions on banking operations for banks with foreign investment and subsidiaries of foreign banks if the respective foreign states operate similar restrictions on the activities of banks with investment by Belarusian citizens and (or) legal entities.

### **5.3.6. Subsidiary or representative office of a foreign bank**

Foreign banks are entitled to establish in the Republic of Belarus subsidiaries (subsidiary) and to open representative offices.

Representative office of a foreign bank is not regarded as a legal entity and carries out its activity basing on the Regulation approved by the parent bank by which it was established.

A representative office of a foreign bank shall not be entitled to carry out banking operations and other activities, except for protection and representation of interest of the parent bank by which it was established, including consulting and (or) information services.

Denial of application for opening a representative office of a foreign bank may be passed due to the following:

- The information provided is incorrect;
- The Regulation on the representative office does not comply with the legislation of the Republic of Belarus.

Representative offices of foreign banks in the Republic of Belarus shall be established for a maximum term of three years. The operating term of a representative office of foreign bank may be extended by the Deputy Chairman of the Board of Director's decision at the request of the respective foreign bank provided for the foreign bank applies to the National Bank not later than one month before the expiry of the permit to establish a representative office.

If such request is not filed within the specified term, the representative office record is excluded from the register of foreign bank representative offices, hereof the National Bank within five days notifies the foreign bank.

The decision on authorization of the opening of a representative office of a foreign bank or denial of such authorization shall be made by the Board of the National Bank within two months of the date of submission of the documents.

## 6. Currency Control

Residents and non-residents of the Republic of Belarus alike are permitted with authorized banks to hold ruble accounts and in any foreign currency, the official rate of Belarusian ruble to which established the National Bank of the Republic of Belarus.

The Currency Control Law separates transactions, involving foreign currency and securities in foreign currency, into two types as follows:

1. **Current currency operations** (which are treated with fewer restrictions);
2. **Currency operations associated with movements of capital** (the residents as a general rule are required a permission of the National Bank of the Republic of Belarus).

Current currency operations are made between Belarusian residents and foreigners without restrictions, except currency operations on gift agreement (particularly donation), which require a permission of the National Bank of the Republic of Belarus).

The legislation provides a closed list of **current operations**:

1. Transfers of foreign currency to and from the Republic of Belarus, for making settlements (without deferment of payment) for the export and import of goods (works, services and results of intellectual activities), except the export and import of money, stocks and real estate;
2. Transfer of foreign currency for making settlements for leasing (financial leasing);
3. Transfers to and from the Republic of Belarus, of interest payments, dividends and other income, arising from investments;
4. Non-trading transfers to and from the Republic of Belarus such as:
  - transfer and receipt of cash for the payment of wages and salaries, stipends, pensions, alimony payments, state benefits, allowances and compensation, as well as disbursements for damages incurred by employees, as a result of accident or occupational condition, resulting from work related activities;
  - transfer of cash to pay an employee's business trip outside the Republic of Belarus;
  - transfer and receipt of cash connected to the acceptance of an inheritance;
  - transfer and receipt of cash relating to the burial of a deceased person, including grants and financial assistance for burial, transportation and other expenses;
  - the reception of monetary compensation by victims of political repression, members of their families and heirs;
  - transfer of cash for maintaining diplomatic missions and consular institutions of the Republic of Belarus abroad;
  - receipt of cash by courts, the international arbitration court, law enforcement bodies, offices of notary public, the notarial bureaus, in connection with their activity, and also by state bodies or other organizations in the process of fulfillment by their public officials of notarial actions;
  - transfer and receipt of cash under the judgment decisions and rulings of the court and other law-enforcement bodies;
  - transfer, connected with the registration, entrance, membership fees to funds, religious or international organizations, as implementing other charges in connection with participation in international organizations;
  - transfer and receipt of Belarusian rubles, foreign currency, transfer and receipt of other currency values on contracts of donation, (including contributions), contracts of granting of the non-paid (sponsor's) help in accordance with the laws of the Republic of Belarus;
  - getting residents from nonresidents currency values for storage;
  - transfers related to payment of taxes and other compulsory payments to the budget, which are established by legislation of the Republic of Belarus or foreign states, as well as their return;
  - transfers related to payment of dues and other payments to patent authorities;

- transfers related to the return of erroneously and (or) excess of transferred cash;
- other currency transactions enumerated in a list established by the President of the Republic of Belarus or on behalf of the Council of Ministers as well as international treaties of the Republic of Belarus. There is no such a lists established by the President of the Republic of Belarus or on behalf of the Council of Ministers today.

Currency operations **associated with movements of capital** are those, which are not considered as Current currency operations. These are:

- acquisition of stocks, spread out among founders, s well as acquisition of a share in Charter capital or property of non-resident;
- acquisition of security papers, emitted by non residents, from non-residents, except acquisition of stocks, spread out among founders;
- acquisition of property, situated outside the Republic of Belarus and considered as real estate under Belarusian law;
- placements of money in banks non-residents or money transfer to non-residents (except banks non-residents) under the terms and condition of trust management;
- the extradition and receipt of financial credits and/or loans;
- settlements on obligations of resident (except bank), which is guarantor, surety before non-resident according to the guarantee or surety contract, concluded by them ;
- settlements on obligations of resident (except bank) toward non-residents (except bank) according to debt transfer agreement or assignment of claim agreement.

Currency operations by residents associated with movements of capital require permissions of the National Bank of the Republic of Belarus, if other rules are not stipulated by Law or by the President of the Republic of Belarus. To implement these foreign exchange transactions by non-residents permits the National Bank is not required.

## 6.1. Implementation of Foreign-Trade Operations

Export and import transactions are traditionally subject to special oversight by the public authorities. Today according to the Edict of the President of the Republic of Belarus of March 27, 2008 № 178, for each foreign trade contract, providing compensatory transfer of goods, total value of which, taking into account all appendixes and amendments to the contract, makes 3000 Euro in equivalent or more, a resident is obliged to register the transaction in its servicing bank before fulfilling his obligations to non-residents. Registration takes place as of the date of submission of the document by which the foreign-trade contract is executed. The fee for registration of the transaction is not charged by banks.

The rule on mandatory registration of the transaction no longer applies to each separately signed appendix to the foreign trade contract, when in accordance with the terms of the contract its execution is carried out on the basis of the separately signed additions, as well as to the foreign trade contracts providing for compensatory transfer of protected information, exclusive rights to the results of the intellectual activities, works and services.

Under the Belarusian legislation advance payments for import by Belarusian residents in favor of non-residents require a permission of the National Bank of the Republic of Belarus, except for the cases as follows:

1. Advance payments that are made by residents of Belarus from accounts opened in banks of Belarus in foreign currencies at the expense of importers in foreign currency that is acquired after November 15, 2008 as:

- contributions to authorized fund;
- foreign donations;
- dividends and other investment income;
- interest on the loan agreements concluded with non-residents;
- interest for the allocation of foreign currency bank accounts;
- interest on debt obligations of banks Belarus.



2. Advance payments that are made by residents of the Republic of Belarus from the accounts opened in foreign currency in banks of the Republic of Belarus, at the expense of foreign currency received under loan agreements (credit agreements) concluded with non-residents.

3. Advance payments that are made by residents of Belarus from the accounts opened in foreign currency in banks of Belarus, at the expense of revenue available in foreign currency. In particular, revenue is cash in foreign currency received from legal entities and individuals under agreements including:

- with resident legal entities and non-resident individuals engaged in entrepreneurial activity on a reimbursable basis: the transfer of goods, proprietary information, exclusive rights of intellectual property, property rent, works and services;

- from the banks of Belarus, the non-resident banks, other foreign credit institutions: financing (factoring) on monetary obligations arising from the transactions mentioned above, or registration (purchase) of securities, performing the function of settlement documents for such transactions;

- with individuals: the realization of goods (works, services) for foreign currency in Belarus and abroad;

- with closed Joint Stock Company "Belarusian Oil Company" - the realization of oil products;

- with closed Joint Stock Company "Belarusian Potash Company" - the realization of potash;

- with resident legal entities (commissioners): reimbursable transfer of goods for export sales by consignor.

4. Advance payments that are made by residents of Belarus from accounts opened in banks of Belarus to non-residents registered in the Russian Federation or the Republic of Kazakhstan, on foreign trade agreements providing for the import of Russian goods, works and services.

5. Advance payments that are made from accounts opened in banks of Belarus to non-residents in foreign trade operations carried out under foreign trade contract providing for the import by the following residents of Belarus:

- residents with special permits (licenses) for carrying passengers and freight – on costs associated with transportation of cargo and passengers, as well as payment of taxes and charges, passing through the territory of foreign states;

- forwarding organizations – for the costs associated with imports of services undertaken by railway, air and sea transport.

### 7.1. General Information

The Tax Code of the Republic of Belarus, which is made up from the Primary part and Special Part, is the main document that defines the structure of the tax system in the country.

The Primary Part formulates the notions of tax obligation, taxpayers, and an object of taxation. It also contains regulations regarding tax accounting and control, and describes the procedure of appealing decisions made by tax authorities. The Tax Code was adopted on January 1, 2004.

The Special Part of the Tax Code, entering into legal force on January 1, 2010, regulates particular taxes and duties, defines taxpayers, objects of taxation, rates, procedure of tax calculation and payments of respective taxes and duties.

According to the Tax Code of the Republic of Belarus, tax payments are subdivided into republican taxes, duties (tariffs) and local taxes and duties.

**Republican taxes include the following:**

- value added tax;
- profit tax;
- excises;
- tax on income of foreign organizations, which do not operate through permanent representative office in Belarus;
- income tax on individuals;
- property taxes;
- land tax;
- ecological tax;
- tax on extraction (subtraction) of natural resources;
- duty for passage of automobile vehicles of foreign states on public roads of the Republic of Belarus;
- off-shore duty;
- stamp duty;
- consular fees;
- state due;
- patenting duties;
- custom tariffs and duties.

**Local taxes and duties include the following:**

- dog owners tax;
- resort levy;
- levy for packer shippers.

**There are also other types of payments:**

- dues to the Social Welfare Fund for social needs;
- dues paid by employers for obligatory insurance of employees against professional illnesses and accidents at production facilities.

### 7.2. Taxation of Business Entities

Together with general taxation system there are specific regimes of taxation, which provide a number of benefits, reduced tax rates, a complete or partial deferral of some taxes or even full exemption.

## 7.2.1. The general system of taxation: primary payments

**1. Excises** are used for the following types of goods:

- spirit;
- ethyl rectified industrial alcohol;
- alcoholic beverages;
- non-food alcohol-containing production;
- beer, beer cocktail;
- low alcoholic beverage with overall volume part of alcohol from 1.2 to 7 %, wines with overall volume part of alcohol from 1.2 to 7 %;
- tobacco;
- gasoline;
- diesel and bio-diesel fuel;
- boat fuel;
- liquefied hydrocarbon gas and natural compressed fuel gas, used as automotive fuel;
- diesel motor oil and/or carburetor (injector) engine oil;
- station wagons and vehicles, including converted to trucks.
- food alcohol-containing production;
- ciders.

Excise rates for goods can be set in absolute amounts on a physical unit of measurement of the goods (fixed (specific) rate) or in percentage points from the cost of goods (added value rates).

### **2. The value added tax is included into the price of products and services.**

Major VAT rates:

- 0 %;
- 0.5 %;
- 9.09 %;
- 10 %;
- 16.67 %;
- 20 %.

#### **0 % on the sale of:**

- goods placed under the customs procedure for export and exported (without obligation to re-importation into the territory of Belarus) to the states members of the Customs Union;
- activities (services) connected with accompanying, loading, transfer and other similar activities directly connected with the selling of exported goods, which are placed under the customs procedure of export, as well as goods exported (without obligation to re-import into the territory of the Republic of Belarus) in the states - members of the Customs Union;
- exported transport services including transit transportation, and also exported work (services) to produce goods from take-back feedstock;
- repair works (modernization, re-equipment) of aircraft and their engines, units of trains, performed for foreign organizations or individuals.

#### **0.5 %:**

- on import into territory of Belarus from the states members of the Custom Union of rough and cut diamonds of all sorts and other precious stones for production needs.

#### **9.09 %:**

- on sales of goods (works, services) at administered retail prices taking into consideration the VAT.

#### **10 %:**

– on sale of goods of Belarusian origin from crop production (with the exception of floriculture, growth of ornamental plant), bee-farming, livestock breeding, (with the exception of fur farming), fishery;

– on importation and (or) sale on the territory of the Republic of Belarus of foodstuffs and goods for children that are included in the list approved by the President of the Republic of Belarus;

– on the sale of goods of own manufacture by residents of free economic zone on the territory of Republic Belarus which were manufactured by them on the territory of free economic zone and are import substitution according with list of import substitution goods, defined by the Government of the Republic of Belarus in coordination with the President of the Republic of Belarus;

**20 %** on the sale of property rights, as well as the sale of goods (works, services) excluding above listed, with the exception of those exempted from taxation and not recognized as subject to VAT.

The sum of VAT, subject to payment to state budget, is defined as difference between general sum of tax, calculated at the end of reporting period and the sums of tax reductions. Calculated sum of VAT is determined on an accrual basis since the beginning of the tax period at the end of each reporting period.

As a general rule, VAT deductions are made on an accrual basis in limits of sums of VAT, calculated after realization of the goods (works, services), proprietary interests. Exception to this rule are the amounts of VAT on goods (works, services) subject to taxation at the rate of 0% and 10%; on the purchased (imported, created) fixed assets; on goods sold from the storage locations in the foreign countries and not subject to VAT. The deduction of the amount of VAT is made in full regardless of the calculated amount of VAT.

The following sums of VAT are recognized as tax reductions:

1. Sums, presented for payment by sellers, registered as taxpayers in the Republic of Belarus, to a taxpayer while purchasing the goods (works, services), proprietary interests in Belarus.

2. Sums, paid by taxpayer for import of the goods to the territory of Belarus.

3. Sums, paid to state budget for the goods (works, services), purchased on the territory of the Republic of Belarus from foreign organizations, which are not registered as taxpayers in the Republic of Belarus.

Tax period of VAT is 1 year.

Reporting period of VAT is a calendar month or a calendar quarter by choice of taxpayer.

Taxpayers submit tax declaration (calculation) to the tax bodies not later than 20<sup>th</sup> date of month, following expired reporting period.

Payment of VAT is made not later than 22<sup>nd</sup> date of month, following expired reporting period.

**3. Profit tax.** The object for profit tax is accrual profit as well as dividends and similar incomes, gained by Belarusian organizations.

Accrual profit of Belarusian organizations is the sum of profit from realization of the goods (works, services), proprietary interests and non-realization incomes, mitigated to the sum of non-realization expenses.

Proceeds from the sale of goods is determined on the basis of transaction price and the tax authorities have the right to calculate profit tax on the basis of market price. This provision shall apply in foreign-trade transactions **cost** more than 20 billion of Belarusian rubbles and real estate transactions, when the market price deviates by more than 20%.

Main tax rate of profit tax 18%

The rate of tax on dividends is **12 %**.

Tax period of profit tax is calendar year.

Taxpayers submit profit tax declaration (calculation) on the results of tax period to the tax bodies no later than 20<sup>th</sup> March of year, following the expired tax period.

Profit tax for the tax period shall be calculated cumulatively from the beginning of the tax period as the product of the tax base reduced by the amount of benefits, as well as the amount of losses carried by the profit of the tax period and tax rate.

As a general rule, taxpayers shall calculate the amount of profit tax payable by the current payments, by one of the following methods:

1. Based on the results of the taxpayer activities for the tax period directly preceding the current tax period. Profit tax payable on current payments for each period is 1/4 of the amount of profit tax for the tax period directly preceding the current tax period.

2. Based on the amount of profit tax, estimated on the results of the current tax period, which shall be not less than 80 % of the actual amount of profit tax for the current tax period. Profit tax payable on current payments for each period shall be 1/4 of the estimated amount of profit tax.

Taxpayers make the following payments:

– amount of profit tax payable by current payments – not later than 22<sup>nd</sup> March, 22<sup>nd</sup> June, 22<sup>nd</sup> September and 22<sup>nd</sup> December;

– amount of profit tax on the results of expired tax period reduced by the amount of profit tax payable on the results of expired reporting periods, and since the tax period in 2011 – the amount of profit tax on the results of expired tax period reduced by the amount of profit tax payable by current payments on time – not later than 22<sup>nd</sup> March of the year following the expired tax period.

#### **4. Profit tax of foreign organizations which do not operate in Belarus by virtue of the permanent representative office**

The object of taxation is the following income received by taxpayer from sources in Belarus:

▪ conveyance fee, freight (including demurrage and other payments arising from the transportation) in connection with the carrying out of international carriage (excluding the carriage fees and freight in connection with international carriage of goods by sea), as well as for the provision of freight forwarding services (except services of forwarding activities in the organization of international carriage of goods by sea);

▪ interests (coupon) income from any kinds of debts no matter of way of registration, including:

○ income on credits and loans;

○ income from securities, which terms of issue is intended to gain profits in the form of interests (discount);

○ income from the use of temporary available funds in bank accounts in Belarus;

▪ royalty;

▪ dividends and similar income;

▪ income from the sale of goods in the territory of the Republic of Belarus under the contracts, commission and other similar civil-law contracts;

▪ income from holding and (or) participation in concert and entertainment events, including attractions, zoos, circus programs in Belarus;

▪ income in the form of penalties (fines) and other types of sanctions for breach of contract;

▪ income from research, development work, development of design and technological documentation for the prototype (experimental batch) of products, from the manufacture and testing of prototypes (experimental batch) products, pre-project work and project work (preparation of feasibility studies, engineering efforts and other similar works);

▪ income from the performance of innovative work, including research and developmental work, development of design and technological documentation for prototypes

(experimental batch) of goods, manufacturing and testing of prototypes (experimental batch) of goods, design and project work (preparation of feasibility studies, engineering design and other similar work);

- income from the guarantee and/or surety;
- income from the provision of disk space and/or a communication channel for placing information on the server and services for its maintenance;
- income from the alienation of:
  - real estate situated in Belarus;
  - enterprise (or part thereof) as a property complex located in the territory of Belarus, owner of which is a foreign organization;
  - securities in the territory of Belarus (except for stocks) and/or its retirement;
  - shares in the authorized fund (stocks) of organizations in Belarus, or its parts;
- income from services:
  - consulting, accounting, auditing, marketing, legal, engineering;
  - trust management of real estate situated in the territory of Belarus;
  - courier;
  - mediation;
  - management;
  - recruitment and/or selection of personnel, including individuals, to carry out their professional activities;
- –in education;
  - training;
  - possession of property;
  - insurance;
  - advertising (except for income paid to foreign organizations associated with the participation of Belarusian organizations and Belarusian entrepreneurs in trade fairs in foreign countries);
    - installation, commissioning, testing, maintenance, measurement, testing lines, machinery, equipment, devices, appliances, buildings and intangible assets in the territory of Belarus (except for income derived from training, consultation and/or services in installation, commissioning, testing, measuring and testing lines, machinery, equipment, appliances, fixtures and facilities, which are indispensable for the foreign trade contract for their purchase of the property (on temporary use));
    - maintenance and protection of freights (excluding revenues from services on obligatory maintenance and protection of freights, stipulated by the legislation of the state through which territory the freight is moved, provided by the foreign state organizations, the legislation of which established requirements for such obligatory maintenance and protection);
- income from real estate situated in the territory of Belarus, handed into trust management;
- income from the processing of data including data processing activities with the user's software or own software (the full data processing, data preparation and data entry, automated data processing), hosting services (storage of Web pages, enabling them to modify and placement on the Internet for public access), services for the sale of computer time as well as income from activities with database including database development, data storage, access to databases, search portals and search engines on the Internet services (except income from the use of an automated system of interbank payments, international payment systems, international telecommunications transmission systems for information about payment and (or) making payments).

The tax base of profit tax is defined as total income, for certain types of income are allowed to deduct the documented costs.

The rates of profit tax are depended from type of income and are amounted 6 % , 10 % , 12 % and 15 %.



Tax period of profit tax is a calendar month, which accounts for the date of the obligation to pay profit tax.

The tax declaration (calculation) of profit tax is submitted by legal entity of Belarus, foreign organization or individual entrepreneur, accrued and/or pay income of a foreign organization which does not operate in Belarus through the permanent representative office, to tax bodies at the place of registration of these legal entities, foreign organizations, or individual businessmen not later than 20<sup>th</sup> of the month following the tax period.

Profit tax is to be paid not later than 22<sup>nd</sup> of the month following the tax period.

**5. Real estate tax.** The object of taxation for organizations are buildings and structures including above norm unaccomplished construction and also parking places.

Taxable amount of real estate tax is defined by organization on the basis of buildings, structures and parking places, existing to the 1<sup>st</sup> January of calendar year based on residuary value and value of buildings and other real estate of above norm unaccomplished construction.

As a general rule, annual tax rate of real estate tax for organizations is 1 %. Local authorities may establish raising factors to the rate of tax.

Tax period of real estate tax is one calendar year.

The tax return is filed with (to) the tax authorities not later than March 20 of the year.

Real estate tax is to be paid by organizations at each quarter not later than 22<sup>nd</sup> of the third month of each quarter in the amount of one fourth of real estate tax annual amount.

**6. Ecological tax** is levied on entities that exploit natural resources and entities which pollute the environment. The law stipulates a number of rates for the ecological tax. Depending on the particular subject of taxation there are fixed rates for emissions of pollutants into the air and wastewater discharges, storage and disposal of industrial wastes, import of ozone-destroying substances to the territory of Belarus, including those contained in the products.

Tax period of ecological tax, except the ecological tax for import of ozone-destroying substances to the territory of Belarus, is one calendar quarter.

Tax payers submit each quarter tax declaration (calculation) to tax bodies not later than 20<sup>th</sup> of month, following expired tax period.

Ecological tax is to be paid each quarter not later than 22<sup>nd</sup> of month, following expired tax period.

### **7. Tax for the extraction (removal) of natural resources.**

The tax base is defined as the actual volume of extracted (withdrawn) natural resources. A list of these resources is determined by the Tax Code of the Republic of Belarus and includes extraction of:

- forming, glass-making and mortar sand;
- sand-gravel mixtures;
- building and facing stone;
- surface and underground water;
- waters, polymetallic water concentrate, mineralized water which is extracted to maintain pressure in oil recovery;
- ground for land structures;
- clay, sand clay, clay loam and bergmeal;
- bentonitic clay;
- potassium salt (in terms of potassium oxide) and halite;
- oil;
- chalk-stone, malm, limestone and dolomite;
- plaster-stone (anhydrite);
- ironstone;
- peat with a humidity of 40%;

- sapropel with a humidity of 60%;
- bog oak;
- amber;
- gold;
- grape snail;
- chironomid larvae;
- green frog (pond, edible, laker);
- adder;
- brown coal (in terms of standart fuel);
- oil shale (in terms of standart fuel).

Tax rates are set in the Belarusian rubles to the volume of production (withdrawal) of natural resources (excepting potassium salt and oil).

The tax period of tax for the extraction (removal) of natural resources excepting for tax for the extraction (removal) of natural resources for oil shall be the calendar quarter.

The tax period of tax for the extraction (removal) of natural resources for oil shall be the calendar month.

Tax declarations (calculations) for the tax for the extraction (removal) of natural resources must be submit to the tax office no later than the 20th day of the month following the expired tax period. Payment is made quarterly not later than the 22th of the month following the expired tax period.

The amount of the tax for the extraction (removal) of natural resources excepting tax for the extraction (removal) of natural resources for oil and potassium salt may be calculated by payers based on the established annual limits and the corresponding tax rates for the extraction (removal) of natural resources. In this case, the tax declarations (calculations) shall be submitted no later than April 20 of the calendar year, based on the established annual limit. The tax is paid at the end of tax period, not later than the 22th of the month following the reporting quarter, amounting to one-fourth of the calculated tax amount for the extraction (removal) of natural resources. At the end of the year, based on the actual volume of extraction (removal) of natural resources, recalculation of the amount of tax which should be paid is held and the tax declarations (calculations) are submitted no later than 20th of January following the expiration of a year.

#### **8. Land tax is levied on land plots, situated on the territory of Belarus:**

– belonging to individuals under the right of ownership, lifetime inheritable possession or temporary use as well as inherited

– belonging to organizations under the right of ownership, permanent or temporary use.

Taxable amount of land tax is generally defined in the amount of cadastre value of land plot.

Tax rate of land tax depends on the function of land plot. Local councils of deputies have the right to increase (decrease) the rate of land tax to certain categories of taxpayers but no more than twice .

Tax period of land tax is calendar year.

Tax payers – organizations submit tax declarations (calculations) of land tax to the tax bodies each year not later than 20<sup>th</sup> of February of current year. Tax declarations (calculations) regarding newly granted land plots are to be submitted not later than 20<sup>th</sup> of month, following the month, in which the decision of competent state body was approved, serving as a ground for creation or handing over of a right to a land plot.

Land tax is to be paid during tax period each quarter by equal parts not later than 22<sup>nd</sup> of 2<sup>nd</sup> month of each quarter. Land tax for lands, for which the authorized state body made a decision which is the basis for the creation or passage of a right to the land in November, is to be paid not later than 22<sup>nd</sup> of December. Land tax for rural lands is to be paid not later than 15<sup>th</sup>

April, 15<sup>th</sup> July, 15<sup>th</sup> September, 15<sup>th</sup> November in the amount of one quarter in the sum of one quarter of annual sum.

Land tax on rented land plots is levied in the amount, defined by legislation, by the procedure similar to the calculation of land tax.

### **9. Obligatory insurance payments to the Social Welfare Fund and Pension Fund. Insurance fees of obligatory insurance against professional illnesses and accidents at production facilities.**

The amounts of obligatory insurance payments against retirement, disability, loss of breadwinner (pension insurance) for employer is 28 %.

The amount of obligatory fees of insurance in case of temporary incapacity for work, pregnancy and childbirth, care for children under 3 years, granting of one day-off in month to mother (father, guardian), bringing up the child with disabilities in the age of under 18 years, death of insured person or a member of his (her) family (social insurance) for employers, natural persons independently paying obligatory insurance payments (except for citizens working outside of Belarus), Belgosstrakh (for persons who obtain surcharge to monthly average wage or insurance temporary disablement allowance) is 6 %.

Payments of obligatory insurance fees to the Social Welfare Fund and Pension Fund are made by payers at single payment.

The objects of charge by insurance fees to Social Welfare Fund are all monetary and/or natural payments, calculated in favour of working citizens under all grounds, irrespectively on sources of financing (hereinafter – payments), including remuneration under civil-law contracts except for those provided for by a list of payments, which are not subject to insurance fees to the Fund, approved by the Counsel of Ministers of the Republic of Belarus. Payments cannot exceed the amount of four average wages in the Republic of Belarus for month, previous the month in which obligatory insurance fees are to be paid.

Insurance fees of obligatory insurance against professional illnesses and accidents at production facilities are calculated on the basis of premiums to be paid out under labour and civil-law contracts. The rates are calculated in percentages depending on the risks of insured accidents. The latter depend on the types of business activities of employer

**10. Income tax of individuals.** The object of taxation of income tax of individuals is income earned by taxpayers from the sources in Belarus as well as abroad.

Organizations, hiring employees on the basis of labour contract or civil-law contract, fulfill obligations of tax agents and withhold the tax from incomes of citizens and transfer it to state budget. The most spread source of income of natural persons is remuneration for labour paid by organizations, including money and other allowances. Belarusian legislation provides various deductions reducing taxable income of individuals.

General rate of income tax is 12 %.

Tax agents are obliged to withhold calculated sum of income tax of individuals directly from income of payer at the moment of remuneration.

Tax agent has to withhold calculated sum of income tax form individuals. Such a withholding is produced from any monetary assets paid to taxpayer by tax agent. Withholding is to be made at the moment of payment to a taxpayer or to third parties on behalf of him (her).

### **7.3. Special Tax Regimes**

Belarusian legislation provides the following special tax regimes for business entities:

- Simplified tax system;
- Single tax from individual entrepreneurs and other persons;
- Single tax for producers of agricultural products;

- Tax for gambling business;
- Tax on income from lottery activity;
- Tax on income from electronic interactive games
- Charge for craft activities;
- Charge for rendering the service in the field of rural tourism.

### 7.3.1. Simplified tax system

The scope of the system is activity of small enterprises with the level of income no higher than the size, stated by the legislation. Organizations, willing to apply simplified tax system are required to satisfy the following criteria: simultaneous observance of average number of workers and a total gain within first nine months of the year previous the year from which the system is applied: number of workers shall be not more than 100 persons (for legal entities), the amount of their gross proceeds for the nine month on an accrual basis makes no more than 9 000 000 000 belarusian rubles (for individual entrepreneurs).

Under simplified tax system a vast number of taxes are replaced by one tax with simplified procedure of calculation.

- Simplified tax system cannot be applied by organizations and individual entrepreneurs with regard to certain types of activity: Produce of excisable goods (produce of alcohol, tobacco production and others);

- Sale of jewellery;
- Performing;
- Lottery activity;
- Professional activity on securities market;
- Activity within the ordinary partnership (the group);
- Activity as a resident of free economic zones, special tourist and recreational park "August Channel" or the Park of High Technologies;
- Activities for the organization and holding of interactive electronic games;
- Organizations that carry out:
  - Real estate activity;
  - Insurance business (insurance companies including mutual insurance companies, insurance associations);
  - Organizations that produce in the Republic of Belarus agricultural products and pay a single tax for agricultural producers;
  - Banking (banks);
  - Activity in the gambling;
- Individual entrepreneurs in part of activities which shall be paid with a single tax from entrepreneurs and other persons;

If gross proceeds for calendar year on an accrual basis exceeds 12 000 000 000 belarusian rubles and (or) the number of employees more than 100 than organization is obliged to go to generally established tax system.

Currently business entities can use following variants of simplified tax system:

- tax at a rate of 7 % – for legal entities and individual entrepreneurs, which do not pay VAT;
- tax at a rate of 5 % – for legal entities and individual entrepreneurs, which do pay VAT;
- tax at a rate of 2 % – for legal entities and individual entrepreneurs with regard to earnings from realization of the goods, services and proprietary interests to the objects of intellectual property outside the territory of Belarus;
- tax at a rate of 15 % – for legal entities and individual entrepreneurs, using gross income as a base of taxation.

Organizations with average number of employees since the beginning of the year to the reporting period including not more than 15 people and individual entrepreneurs who have gross proceeds not more than 3 400 000 000 Belarusian rubles per year, engaged in retail trade and (or) providing catering services have the right to apply gross income as a base of taxation. Gross income is defined as the difference between gross proceeds and the purchase cost of goods sold during the reporting period.

For the other entities taxation base is proceeds and non-sale income.

For businesses with the location in the small towns and rural areas, who engaged in the production of goods (works, services) in these places, tax rates are set in the amount:

- Five (5) percent - for organizations and individual entrepreneurs, not liable to pay value added tax;
- Three (3) percent - for organizations and individual entrepreneurs that pay value added tax.

Business entities with less than 15 people and a gross revenue up to 3.4 billion of Belarusian rubles, paying tax in accordance with simplified tax system are exempt from conducting accounting recording and reporting and make recording in the book (ledger) of incomes and expenses of legal entities and individual entrepreneurs, using simplified tax system.

Tax period of tax under the simplified tax system is calendar year.

Reporting period of tax under the simplified tax system is recognized as:

- calendar month – for entities applying simplified tax system with payment of VAT monthly;
- calendar quarter - for entities applying simplified tax system without payment of VAT or with payment of VAT quarterly.

Taxpayers submit profit tax declaration (calculation) on the results of tax period to the tax bodies no later than 20<sup>th</sup> March of year, following the expired tax period.

Tax declaration is submitted no later than 20<sup>th</sup> day of the month following the expired tax period.

Tax under simplified tax system is paid no later than 22<sup>th</sup> day of the month following the expired tax period.

### **7.3.2. The single tax from individual entrepreneurs and other individuals (hereinafter in this paragraph - a single tax)**

The payers of the single tax are individual entrepreneurs and individuals not involved in entrepreneurial activities.

The payers are exempt from the next taxes:

- income tax on income earned by them in carrying out the activities, which are the subject of the single tax;
- value added tax, except for the value-added tax levied on import of goods into the territory of the Republic of Belarus;
- ecological tax;
- tax for the extraction (removal) of natural resources;
- local taxes and fees, which are paid for the activities, which are the subject of the single tax.

Payment of the single tax is a mandatory regime of taxation for individual entrepreneurs and individuals performing certain activities, providing services and performing certain work.

The tax base is determined by a single tax payers on the basis of ongoing activities and (or) the number of shops and other commercial facilities, retail spaces on the market, the proceeds from the sale of goods (works, services).

Activities for which individuals pay a single tax are following: services for growing agricultural products; providing services for crushing grain; livestock grazing; tutoring; household cleaning; caring for children and adults; services performed by domestic workers: washing and ironing of bed linen and other things; walking pets and care for them; buying food; cooking; washing dishes; the payment from the person served for the use of living quarters and utilities; weddings music service; anniversaries and other celebrations service; the activities of independent actors, entertainers, musicians; master of ceremonies services; photography, production of photographs; sale of kittens and puppies on condition of keeping of a pet (cat, dog); keeping services, care and training of domestic animals except farm animals; providing secretarial services and translation services; provision of services provided by means of automatic devices for measuring the weight, growth; repair and alteration of knitwear, furs, apparel and headwear.

List of activities for which individual entrepreneurs pay a single tax are broader and are defined in the Article 296 of the Tax Code of the Republic of Belarus and include food and nonfoods retail trade (without limitation of square of selling space (place) and its number), catering and provision of other services to consumers.

The tax period of the single tax is a calendar year.

The reporting period of the single tax is a calendar month.

The single tax is paid by individual entrepreneurs generally - at the place of tax registration of each month no later than 28<sup>th</sup> of the month preceding the month of activities; by individuals not engaged in business activities – at the place of tax registration or at the place of sale of goods (works, services) before the sale of goods (works, services). The basic single tax rate for the reporting month are set in a fixed amount in Belarusian rubles, depending on the type and location of the activity and size of between 40 thousand rubles to 7000 rubles.

If proceeds from the sale of goods (works, services) exceed 30 times amount of single tax for corresponding reporting period than addition payment of single tax is calculated by individual entrepreneurs at a rate of eight (8) percent of the amount of such excess.

### **7.3.3. Single tax for producers of agricultural products**

Single tax for producers of agricultural products is set at a rate of 1 % of gross proceeds.

Payment of single tax replaces payments of all taxes, duties, and other obligatory payments to state budget and non-budgetary funds, land rents, royalties in the innovation funds, which are formed in accordance with the legislation; except excises; VAT; tax, charges (duties) on goods imported (exported) into the territory of the Republic of Belarus; state dues; patent fees; consular fees; offshore duty; stamp duty; fees for travel of foreign states motor vehicles on public roads of the Republic of Belarus; the income tax on dividends and similar income; obligatory insurance payments to Social Welfare Fund of the Ministry of Labour and Social Security.

### **7.3.4. Tax on gambling business**

The activities in the gambling business is carried out exclusively by legal entities of the Republic of Belarus.

Organizations are exempt from VAT and profit tax in the sum of income received from gambling business. As for activities which do not relate to gambling, organizations pay taxes according to the common rules.

The objects of tax on gambling business are: gambling tables; slot machines; bookmaker office counters; totalizator counters.

The rate of tax on gambling business is defined in Euro on each object of taxation in month. Tax rates vary depending on location of casino, slot machines, bookmaker office counters; totalizator counters.



These objects are registered in the tax office in witness whereof the payer certificate is issued.

The tax rates on gambling installed on the unit object of taxation in the following amounts:

360770000 rubles. - Game table;

1374000 rubles. - A slot machine;

12296000 rub. - Cash sweepstakes;

3698000 rub. - Cash bookmaker.

Amount of tax on gambling business is calculated as the product of the tax base and tax rate determined for corresponding object of taxation for tax on gambling business at the location of the object.

The tax period of the tax on gambling is a calendar month. Payment of tax on gambling is made no later than on the 22th of the month following the expired tax period.

### **7.3.5. Tax on income from lottery activity**

Tax payers are organizations, which organize lotteries. Only state, state bodies, local executive committees, state legal entities can be organizers of lotteries on the territory of the Republic of Belarus.

Payers are exempt from VAT and profit tax in the sum of incomes earned from organization of lotteries. Other incomes are taxable according to the common rules.

The rate of tax is 8 % of income from lottery activity in month.

### **7.3.6. Tax on income from organization of electronic interactive games**

Tax on income from organization of electronic interactive games is paid by legal entity which organize electronic interactive games and replaces VAT (except VAT at import) and profit tax.

The rate of tax is 8% of income from lottery activity in month.

### **7.3.7. Charge for craft activities**

The object of taxation is craft activities of different types, implemented by individuals. List of such activities is determined by the President of the Republic Belarus.

The rate of Charge (regardless of the number of these activities which are carried out) shall be equal to one base unit (35,000 rubles, from 01.04.2012 – 100000 rubles) per calendar year. Base unit is determined on the date of payment.

The tax period for Charge for craft activities is calendar year.

The charge is paid before the beginning of the craft activities.

For every following year the charge is paid no later than 28<sup>th</sup> of the last month in current calendar year in which craft activities are carried out.

### **7.3.8. Charge for rendering the service in the field of rural tourism.**

The object of this taxation is rendering the services in the field of rural tourism. Such activities include not business activities of individuals, private (peasant) farms, which provide living quarters (before ten) to accommodate tourists; ensure tourists with food (mainly using their own production), organize the cognitive, sporting and cultural entertainment tours and programs, provide other services relating to the reception, accommodation, transport and other services for tourists.

Payers in the part of income derived from the implementation of service activities in the field of rural tourism are exempted from payment of taxes, dues (duties).

The rate of duty (regardless of number of ongoing activities to provide services in the field of rural tourism) shall be equal to one base unit (35,000 rubles, from 01.04.2012 – 100000 rubles) per calendar year. Base unit is determined on the date of payment.

Tax collection period is a calendar year.

Payment of the fee is made before the commencement of the provision of services in the field of rural tourism.

## **7.4. Taxation of certain categories of taxpayers**

In addition to special tax regimes in the legislation of the Republic of Belarus the taxation of certain categories of taxpayers is defined.

### **7.4.1. Taxation in free economic zones**

Currently in Belarus there are six free economic zones: «Minsk», «Brest», «Gomel-Raton», «Mogilev», «Grodno-Invest», «Vitebsk».

Taxation in free economic zones is specified by granting a list of privileges and benefits (exemption from payments of import custom duties, some other payments, and reduced tax rates).

The benefits of this regime apply to the following sales of free economic zones residents:

- of goods (works, services) of own production, produced by these residents in the territory of free economic zone for non-residents out of the Republic of Belarus;

- of import-substitution goods of own production, produced by these residents in the territory of free economic zone, on the territory of the Republic of Belarus;

- of goods (works, services) of own production, produced by these residents in the territory of the free economic zones for other residents of the free economic zones.

Tax privileges of residents:

- rate of profit tax is reduced on 50 % (but no more than 12 %);

- profit of free economic zone residents, gained from realization of the goods (works, services) of their own production, is exempt from taxes during 5 years starting from declaration of profit;

- exemption from real estate tax for buildings, located on the territory of free economic zones, irrespectively of their designated function;

- payment of VAT at the rate of 10% from realization of the goods of own production, which are manufactured on the territory of Belarus and are recognized as import-substituting production.

- exemption from land tax for land within the boundaries of free economic zones to residents of free economic zones registered as such from the January 1, 2012, for projects construction - for the period of design and construction of these projects, but not more than five years from the date of this registration.

Custom privileges:

- custom regime of free custom zone (without fulfillment of obligation on payment of import custom duties, taxes, except levy for custom clearance);

- exemption from import custom duties, VAT and excises, levied by custom bodies, on processing of the goods inserted under the regime of free custom zone and free circulation.

Some of above listed privileges are only applied with regard to realization of the goods:

- outside Belarus;

- import-substituting goods, produced by free economic zone residents on the territory of free economic zone;

- by free economic zones residents of the goods, which where produced by other free economic zones residents on the territory of free economic zone.

In order to become a resident of free economic zone, it is necessary to satisfy the following requirements:

- place of business – the territory of free economic zone;

- conclusion of contract with free economic zone administration, concerning the terms of activities within free economic zone;

- range of investments not less than 1 000 000 Euros.

#### **7.4.2 Taxation of High Technologies Park residents**

High Technologies Park was created in order to develop high-tech production in Belarus. The main direction of activity of High Technologies Park residents is elaboration of software and informational systems.

The regime is applied by organization and individual entrepreneurs, which are registered as High Technologies Park residents and which carry out certain types of activity, connected with software, data processing with, fundamental and applicable researches, experimental works in the sphere of natural and technical sciences.

Tax privileges of High Technologies Park residents:

1. Exemption from:

- Profit tax (excluding profit tax on dividends);
- VAT on turnovers from realization of the goods (works, services, proprietary interests to the objects of intellectual property);
- Land tax from land plots in limits of High Technologies Park for the period of construction of buildings, designated to business activity of High Technologies Park residents, but no longer than for three years;
- Real estate tax on fixed assets and objects of unaccomplished construction of High Technologies Park residents, situated on the territory of High Technologies Park (excluding leased fixed assets and objects of unaccomplished construction);
- Off-shore duty in case of payment (transfer) of dividends to founders (shareholders).

2. Obligatory insurance fees are not compounded on income of employees of High Technology Park residents, which exceeds the amount of one monthly average wage in the Republic of Belarus.

3. Income of individuals, earned during calendar year under labour contracts, as well as income of individual entrepreneurs – High Technologies Park residents, are taxable at a rate of 9 %.

4. reduced tax of 5 % for foreign organizations, which do not operate through permanent representative office in Belarus, gained by High Technologies Park residents on dividends, interest (coupon) income from debt, royalties, license agreements.

Customs privileges:

- exemption from custom duties and VAT in case of import of the goods to the custom territory of Belarus for the purposes of business activity.

#### **7.4.3. Taxation in small settlements**

Legal entities established and carrying out activity on the territory of Belarus in small towns (under 50 thousand of people) since April 1st, 2008 are subject to special tax regime that is aimed to inspire development of small towns economy.

Special regime does not apply to banks, non-bank financial organizations, insurance companies and professional participants of stock exchange, residents of Free Economic Zones and High Technologies Park and others).

Specifics of taxation:

1. Companies are exempt from:

- profit tax with regard to the goods of its own production within 7 years since establishment;
- other taxes and duties, except VAT, excises, stamp, off-shore levy, state due, custom duties, land tax, ecological tax, taxes that it calculate, withhold and transfer as tax agents, within 5 years since establishment.

Additional advantages:

– exemption from import customs duties and VAT on technologic facilities, components and spare parts imported into custom territory of Belarus in order to contribute the rest part to or increase of authorized fund of legal entities subject to this special regime.

## 7.5. Taxation of Individuals

Individuals who are not involved into entrepreneurial activities pay the following taxes in Belarus:

- income tax on individuals;
- land tax;
- real estate tax.

The primary tax is income tax. It is paid on incomes from labour activity, works (services) provided under civil law contracts; royalties; and on other incomes.

The calculation of the income tax is carried out according to a flat rate.

The rate of 15 % applies to income of individual entrepreneurs, private notaries and advocates which operating individually.

The rate of 9 % is used for the following incomes:

– income received by individuals (with the exception of workers who service and guard buildings and territories) working for residents of High Technologies Park under labour contracts;

– individual entrepreneurs that are residents of High Technologies Park;

– individuals working under labour contracts within the frameworks of a business project in the field of innovative technologies initiated by non-residents of High Technologies Park.

In all other cases the tax is calculated at the rate of 12 %.

## 7.6. Agreements on Avoidance of Double Taxation

In order to avoid double taxation the Republic of Belarus signed a vast number of bilateral agreements with other states. Currently there are 63 such agreements with different countries (including Austria, Armenia, Azerbaijan, Bahrain, Belgium, Bulgaria, Great Britain, Hungary, Venezuela, Vietnam, Denmark, Egypt, Israel, India, Iran, Ireland, Spain, Italy, Kazakhstan, Qatar, Cyprus, China, Democratic People's Republic of Korea, Kyrgyzstan, Kuwait, Latvia, Lebanon, Lithuania, Macedonia, Malaysia, Moldova, Mongolia, Netherlands, United Arab Emirates, Oman, Pakistan, Poland, Romania, Russia, Saudi Arabia, Slovakia, Slovenia, Syria, USA, Tajikistan, Thailand, Turkey, Turkmenistan, Uzbekistan, Ukraine, Finland, France, Germany, Croatia, Switzerland, Sweden, Czech Republic, Estonia, Yugoslavia, South Africa, Japan).

### 7.6.1. Rates of tax on profits in the form of dividends in agreements on avoidance of double taxation

No	Types of international agreements on avoidance of double taxation	States	Tax rates	Conditions of tax rates application
1	Tax is paid <b>only in state that is location of dividend beneficiary.</b>	Great Britain*		
2	Rate of tax levied in <b>state that is location of payer of dividends</b> is differentiated depending on many factors and can be more or less than 12% rate, provided for by Belarusian legislation.	Austria* Belgium* Hungary* Venezuela* Italy* Korea* Macedonia* Finland* Croatia* Switzerland* Yugoslavia* SAR*	Up to 5%	With a <b>not less than 25 %</b> share in the authorized fund.
			Up to 15%	In all other cases.
		Armenia*	Up to 10%	With a <b>not less than 30 %</b> share in the authorized fund.
			Up to 15%	In all other cases.

		India* Iran* Pakistan* Slovakia* Turkey*	Up to 10%	With a <b>not less than 25 %</b> share in the authorized fund.
			Up to 15%	In all other cases.
		Cyprus*	Up to 5%	With a <b>not less than 200 000 Euros</b> share in the authorized fund.
			Up to 10%	With a <b>not less than 25 %</b> share in the authorized fund.
			Up to 15%	In all other cases.
		Netherlands*	Up to 5%	With a <b>not less than 25 %</b> share in the authorized fund.
			Up to 15%	In all other cases.
			Only in state that is location of dividend beneficiary.	With a share of <b>not less than 50%</b> with a cost of <b>not less than 250 000 Euros</b> .
		UAE*	Up to 5%	With a <b>not less than 100 000 Euros</b> share in the authorized fund.
			Up to 10%	In all other cases.
		Poland*	Up to 10%	With a <b>not less than 30 %</b> share in the authorized fund.
			Up to 15%	In all other cases.
		Germany*	Up to 5%	With a share of <b>not less than 20%</b> with a cost of <b>not less than 81 806.70 Euros</b> .
			Up to 15%	In all other cases.
		Sweden*	Only in state that is location of dividend beneficiary.	With 100% share in the authorized fund, but only with regard to profit, from which dividends are paid, that is received from industrial or manufacturing activity, or rural, forest and fish industry or tourism (including restaurants and hotels). However, such exemption is not applied, when profit, from which dividends are paid, is exempted from tax in another state.
			Up to 5%	With a <b>not less than 30 %</b> share in the authorized fund.
			Up to 10%	In all other cases.
3	Rate of tax levied in state that is the location of dividends payer, shall not exceed <b>5%</b> .	Bahrain* Qatar* Kuwait* Oman* Saudi Arabia* Slovenia*	Up to 5%	
4	Rate of tax levied in state that is the location of dividends payer, shall not exceed <b>7.5%</b> .	Lebanon*	Up to 7.5%	
5	Rate of tax levied in state that is the location of dividends payer, shall not exceed <b>10%</b> .	Bulgaria* Israel* China* DPRK* Latvia* Lithuania* Mongolia* Romania* Thailand* Czech Republic* Estonia*	Up to 10%	
6	Rate of tax levied in state that is the location of dividends payer, shall not exceed <b>15%</b> , that is more than tax rate of 12%, provided for by Belarusian legislation.	Azerbaijan* Vietnam* Denmark* Egypt* Kazakhstan* Kirgizstan* Malaysia* Moldova* Russia* Syria* Tajikistan* Turkmenistan*	Up to 15%	

		Uzbekistan* Ukraine* Japan*		
7	Rate of tax levied in state that is the location of dividends payer, shall not exceed <b>18%</b> .	Spain	Up to 18%	
8	Tax is paid only in <b>state that is the location of dividends payer.</b>	France	Up to 15%	
9	Rate of tax levied in <b>state that is location of payer of dividends</b> is differentiated depending on many factors and cannot be more than 12% provided for by Belarusian legislation.	Ireland*	Up to 5%	With a <b>not less than 25 %</b> share in the authorized fund.
			Up to 10%	In all other cases.

«\*» means that in order to apply for rules on place of payment and tax rate provided for by corresponding agreement, dividends beneficiary should be true owner of dividends.

### 7.6.2. Rates of tax on profits in the form of interests in agreements on avoidance of double taxation

№	Types of international agreements on avoidance of double taxation	States	Tax rates	Conditions of tax rates application
1	Tax is paid <b>only in state of permanent location of interests beneficiary.</b>	Great Britain Denmark Spain	Is defined in accordance with the legislation of state of permanent location of interests beneficiary.	
2	Rate of tax levied in <b>state that is location of payer of interests</b> is differentiated depending on many factors and cannot be more than 10% provided for by Belarusian legislation.	Switzerland*  SAR*	Up to 5% Up to 8% Up to 5% Up to 10%	With any types of loans provided by bank. In all other cases. If interests beneficiary is bank or any financial institution that is resident of SAR. In all other cases.
3	Rate of tax levied in <b>state that is the location of interests payer, shall not exceed 5%.</b>	Austria* Bahrain* Hungary* Venezuela* Iran* Qatar* Cyprus* Kuwait* Lebanon* Netherlands* UAE* Oman* Saudi Arabia* Slovenia* Finland* Germany* Sweden* Czech Republic* Ireland*	Up to 5%	
4	Rate of tax levied in <b>state that is the location of interests payer, shall not exceed 8%.</b>	Yugoslavia* Italy*	Up to 8%	
5	Rate of tax levied in <b>state that is the location of interests payer, shall not exceed 10%.</b>	Azerbaijan* Armenia* Belgium* Bulgaria* Vietnam* Egypt* Israel* India* Kazakhstan* China* DPRK*	Up to 10%	



		Korea* Kyrgyzstan* Latvia* Lithuania* Macedonia* Moldova* Mongolia* Pakistan* Poland* Russia* Romania* Slovakia* Syria* Tajikistan* Thailand* Turkmenistan* Turkey* Uzbekistan* Ukraine* Croatia* Estonia* Japan*		
6	Rate of tax levied in state that is the location of interests payer, shall not exceed 15%.	Malaysia*	Up to 15%	
7	Tax is paid only in state that is the location of interests payer.	France	Up to 10%	Except for interests on bank credits and loans and interests on commercial loans, that are taxed in state that is the location of interests beneficiary with tax rates provided for in this state.

«\*» means that in order to apply for rules on place of payment and tax rate provided for by corresponding agreement, interests beneficiary should be true owner of interests.

### 7.6.3. Rates of tax on profits in the form of royalty in agreements on avoidance of double taxation

№	Types of international agreements on avoidance of double taxation	States	Tax rates	Conditions of tax rates application
1	Tax is paid only in state that is the location of royalty beneficiary.	Great Britain* Denmark (P) Poland* France (PEC) USA (PEC)		
2	Rate of tax levied in state that is location of payer of royalty is differentiated depending on many factors and cannot be more than 15% rate, provided for by Belarusian legislation.	Venezuela*	Up to 5%	When using or granting right on usage of any copyright on product of science, any software, trademark or for usage or granting right on usage of all types of equipment and vehicles.
			Up to 10%	In all other cases.
		Israel*	Up to 5%	When granting or using any copyright on product of literature, science and art (except for video films) or when using or granting right on usage of industrial, commercial or scientific equipment or vehicles.
			Up to 10%	In all other cases.
Malaysia*	Up to 10%	When using or granting right of usage of any patent, trademark, blueprint or model, plan, secret formulae or process, or copyright on science product, or for usage or granting right of usage of industrial, trade or science equipment, or for information on industrial, trade or science experience.		

			<b>Up to 15%</b>	When using or granting right of usage of cinematographic films or tapes for radio broadcasting and television, any copyright on product of literature or art.
		<b>Netherlands*</b>	<b>Up to 3%</b>	When using or granting right of usage of any patent, trademark, blueprint or model, plan, secret formulae or process, or copyright on science product, or for information on industrial, trade or science experience.
			<b>Up to 5%</b>	When using or granting right of usage of any industrial, trade or science equipment, including road vehicles.
			<b>Up to 10%</b>	When using or granting right of usage of cinematographic films or tapes for radio broadcasting and television, any copyright on product of literature, science or art.
		<b>UAE*</b>	<b>Up to 5%</b>	When using or granting right of usage of any copyright on products of science, any patent, trademark, blueprint or model, plan, secret formulae or process, or for usage or granting right of usage of industrial, trade or science equipment, or for information on industrial, trade or science experience.
			<b>Up to 10%</b>	When using or granting right of usage of cinematographic films or tapes for radio broadcasting and television, any copyright on product of literature or art.
		<b>Slovakia*</b>	<b>Up to 5%</b>	When granting right of usage of any copyright on products of literature, science and art, including video films or films or tapes and other means of image or sound transition.
			<b>Up to 10%</b>	When using or granting right of usage of any patent, trademark, blueprint or model, plan, secret formulae or process, or for information on industrial, trade or science experience or vehicles.
		<b>Germany*</b>	<b>Up to 3%</b>	When using or granting right of usage of copyright on product of science, patent, trademark, design or model, plan, secret formulae or process, or for information on industrial, trade or science experience.
			<b>Up to 5%</b>	When using or granting right of usage of copyright on products of literature or art, including video films and films or tapes for radio broadcasting and television, or for usage of any types of equipment and vehicles.
		<b>Switzerland*</b>	<b>Up to 3%</b>	When using or granting right of usage of any patent, secret formulae or process, or for information on industrial, trade or science experience.
			<b>Up to 5%</b>	When using or granting right of usage of any industrial, trade or science equipment, including vehicles.
			<b>Up to 10%</b>	In all other cases.
		<b>Sweden*</b>	<b>Up to 3%</b>	When using or granting right of usage of any patent, secret formulae or process, or for information on industrial, trade or science experience.
			<b>Up to 5%</b>	When using or granting right of usage of any industrial, trade or science equipment.
			<b>Up to 10%</b>	In all other cases.
		<b>SAR*</b>	<b>Up to 5%</b>	When using or granting right of usage of any industrial, trade or science equipment, including vehicles.
			<b>Up to 10%</b>	In all other cases.

		<b>Japan*</b>	Only in state of location of royalty beneficiary.	When using or granting right of usage of any copyright on product of literature, art or science, including cinematographic films and films or tapes for radio broadcasting or television.
			<b>Up to 10%</b>	When using or granting right of usage of any patent, trademark, blueprint or model, plan, secret formulae or process, or for granting right of usage of industrial, trade or science equipment, or for information on industrial, trade or science experience.
<b>3</b>	Rate of tax levied in state that is location of payer of royalty cannot be more than 5%.	Austria* Bahrain* Belgium*(S) Hungary* Iran* Qatar* Cyprus* Korea* Lebanon* Ireland* Slovenia* Finland*	<b>Up to 5%</b>	Exception: profits from usage or granting right of usage of copyrights on literature, dramaturgic and musical products (except for profits from video films and any means of play of image or sound, used for radio broadcasting or television), are levied by tax only in state of location of royalty beneficiary.
		<b>Spain*</b>		
<b>4</b>	Rate of tax levied in state that is location of payer of royalty cannot be more than 6%.	<b>Italy*</b>	<b>Up to 6%</b>	
<b>5</b>	Rate of tax levied in state that is location of payer of royalty cannot be more than 10%.	Azerbaijan*(CP) Armenia* Bulgaria* China* DPRK* Kuwait* Latvia* Lithuania* Macedonia* Mongolia* Oman*(S) Russia* Turkey* Croatia*(S) Czech Republic* Estonia* Yugoslavia* Saudi Arabia*	<b>Up to 10%</b>	
<b>6</b>	Rate of tax levied in state that is location of payer of royalty cannot be more than 15%.	Vietnam* Egypt* India* Kazakhstan* China* Kirgizstan*(CP) Moldova* Pakistan* Romania* Tajikistan* Thailand* Turkmenistan*(CP) Uzbekistan*(CP) Ukraine*	<b>Up to 15%</b>	

7	Rate of tax levied in state that is location of payer of royalty cannot be more than 18%.	Syria*	Up to 18%	

«\*» means that in order to apply for rules on place of payment and tax rate provided for by corresponding agreement, royalty beneficiary should be true owner of royalty.

Used abbreviations:

«P» – program

«PEC» – program for electronic computer

«S» – software

«CP» – computer program

### 8.1. Forms of Insurance

Activities of any insurance organizations, insurance brokers established outside the Belarus within the territory of the Belarus without state registration at the Ministry of Finance of the Republic of Belarus (hereinafter referred to as “the Ministry of Finance”) and obtaining a special permit (license) for carrying out of insurance activities are illegal and prohibited.

There is voluntary and mandatory insurance.

Voluntary insurance shall be carried out through entering into an insurance contract by and between the insured and the insurer in compliance with the legislation.

The terms on which such voluntary insurance contract is concluded shall be specified in the Rules of the respective type of insurance which are to be approved by such insurer or by the insurers association and agreed with the Ministry of Finance. The validity period of any voluntary life insurance or additional pension insurance contracts may not be less than three years.

Mandatory insurance is effected by any state-owned insurance organizations and/or by any other insurance organizations, provided more than 50 % of shares (common or other voting shares) in the authorized fund is owned by the Republic of Belarus and/or its territorial administrative units, unless otherwise is provided for by the acts of the President of the Republic of Belarus.

The Government shall guarantee insurance payments under any type of insurance with regard to life insurance, any kinds of mandatory insurance, provided insurance contracts have been entered into with the State insurance organizations.

#### 8.1.1. Objects of insurance

The insurance objects are property interests that do not contradict to the legislation and are connected with:

- infliction of any damage to health or life of the insured or any other individual mentioned in the insurance contract (personal insurance other than life insurance);
- reaching by individuals of a certain age, or occurrence of any other insured circumstance provided for in the insurance contract (personal insurance with regard to the life insurance);
- loss (destruction) of any property owned, used or disposed of by the insured or any other beneficiary mentioned in the insurance contract; or infliction of any damage to their property rights, including losses incurred from entrepreneurship as a result of non-fulfillment or improper fulfillment by the contractors of business entity of their respective obligations, or as a result of changing conditions of such entrepreneurship beyond reasonable control of the entrepreneur (property insurance);
- liability for the obligations arising in case of any damage to life, health, or property of any other persons inflicted by the insured or by any other persons on whom such responsibility may be imposed; or liability under the insurance contract (liability insurance).

Objects of mandatory insurance in Belarus are:

- buildings that belong to individuals;
- liability of vehicle owners;
- carrier liability to passengers;
- health and lives of foreign nationals and stateless persons temporarily staying or temporarily residing in Belarus;
- liability of commercial organizations engaged in real estate activities;
- property interests of the insured connected with the loss of crops, livestock and poultry;

- liability of time (crisis) managers in a process of case of economic insolvency (bankruptcy);
- lives and health from industrial accidents and occupational diseases;
- objects of mandatory state insurance at the expense of the state budget;
- other objects of mandatory insurance determined by acts of President of Republic of Belarus or by laws.

### **8.1.2. Insurers**

The notion insurers means any commercial organization established for carrying out of insurance activities that have obtained special permits (licenses) for carrying out insurance activities (hereinafter the insurers or insurance organizations).

Legal entities of Belarus, as well as foreign legal entities that carry out their activities on the territory of Belarus, citizens of Belarus and persons without citizenship who permanently reside in the Belarus, shall insure their property interests in Belarus only with the commercial organizations that have been established for the purpose of carrying out insurance activities and have obtained special permits (licenses) for carrying out insurance activities in Belarus, except for cases mentioned below:

1. The Republic of Belarus and its territorial administrative units, state bodies, state legal persons, and legal persons, decisions of which may be determined by the state due to holding of the controlling block of shares or in another way according to the legislation, shall insure their property interests, except for life insurance, in Belarus and only in the insurance organizations – state legal persons or legal persons, more than 50 % of the authorized fund (ordinary or other voting shares) of which belong to the State and/or its territorial administrative units, provided otherwise established by the President of the Republic of Belarus.

2. In case of carrying out of state procurements of goods, provided that the supplier of such goods is a non-resident of Belarus, the goods shall be insured by legal persons and individual entrepreneurs, who carry out procurement of goods, or by suppliers of goods, if they supply the goods on CIF and CIP conditions (according to the effective version of INCOTERMS), with the state insurance organizations and/or insurance organizations, more than 50 % of the authorized fund (ordinary or other voting shares) of which belong to the State and/or its territorial administrative units. If the above-mentioned insurance organizations refuse to render insurance, the legal person and the individual entrepreneur, who carry out state procurement of goods or supplier of such goods may get insurance in other insurance organizations.

3. Commercial organizations established after April 1, 2008 (except for those established in result of reorganization) which reside and carry out their activity in areas with population lower than 50 thousand people at the output of goods (works, services) of own production and their realization have the right to insure their property interests in insurance organizations, insurance brokers established outside the Belarus.

4. Foreign citizens who are temporarily staying in Belarus, and persons without citizenship who temporarily stay or temporarily reside on the territory of Belarus have the right to insure their property interests in Belarus with Belarusian commercial organizations that have been established for the purpose of carrying out insurance activities and have obtained special permits (licenses) for carrying out insurance activities in Belarus, provided that their obligation to be insured with mentioned organizations is not stipulated by this Edict.

### **8.1.3. State registration**

Insurance organizations and insurance brokers are registered in the Ministry of Finance.

The authorized fund of the insurance organization should be paid in full by its founders prior to the date of its state registration.



Insurance organization that is subsidiary (affiliate) to the foreign investor has the right to exercise in the Republic of Belarus insurance activities, if the foreign investor is an insurance organization for not less than 10 years engaged in insurance activities in accordance to the law of the appropriate state.

Quota of the share of foreign insurers in the authorized fund of the insurance organizations of the Republic of Belarus is set up by the Council of Ministers by agreement with the President and it is 30 %.

If such quota is exceeded, Ministry of Finance stops registration of insurance organizations with foreign investments and/or issuing to such organizations licenses for insurance activities.

Professional requirements to the nominee to the post of CEO, deputy CEO and chief accountant of the insurance organization, insurance brokers, and also the managing personnel of subdivisions of the insurance organization, insurance brokers are determined by the Ministry of Finance.

#### **8.1.4. Authorized fund**

The minimal amount of authorized fund is determined in the amount equivalent to:

- For insurer does not providing life insurance – 1 000 000 Euros;
- For insurer providing life insurance – 2 000 000 Euros;
- For insurer providing only reinsurance – 5 000 000 Euros.

Minimal amount of authorized fund should be contributed in foreign currency and/or Belarusian rubles at the National Bank exchange rate determined for the corresponding currency to Euro as of the date of the relevant decision of founders, shareholders and asset owners. The share of the authorized fund exceeding its minimal amount may be contributed by the insurer founders in non-monetary form as stipulated by relevant legislation and organizational documents of the organization.

Contribution by foreign investors of their shares (stock) in the authorized fund of insurers and insurance brokers should be done in monetary funds only. After state registration insurer shall at all times have funds available in banks of the Republic of Belarus in the amount of the minimum required authorized fund. Contributed assets shall belong to the founders (shareholders) by virtue of ownership (be in their commercial operation or executive management), required and usable for the insurer operations.

Shareholder's contributions to the authorized fund (shares in the authorized fund), except for contribution (share) of the Republic of Belarus and/or its administrative and territorial units to the charter fund of an insurance organization, established in a form of a joint stock company, limited liability company and additional liability company should not exceed 35 % of the authorized fund.

#### **8.1.5. Activities of insurers**

Insurers may only be engaged in insurance and investment activities and activities on assessment of insurance risk and amount of loss, assessment and examination of movable and real property with regard to insurance and issue of reports on its condition, activities on providing services of technical, medical and financial nature to another insurer and insured (insured, suffered or other person claiming for insurance compensation) with the purpose of fulfilling agreements entered into with them on insurance, on providing services to other insurance company in identifying the reason, nature of the loss in case of occurrence of insured event.

Insurers providing life insurance cannot be engaged in any other type of insurance.

Insurance companies of Belarus are obliged to:

- insure the risk of fulfillment of 10 % of its obligations under voluntary insurance agreements other than life insurance, exceeding the legally established standard of liability with subsequent annual increases of insurance liabilities at 10 % only in an insurance organization

created by the Council of Ministers of the Republic of Belarus in the form of a public entity to carry out insurance activity solely on reinsurance (hereinafter – Reinsurance Organization), in the manner prescribed by law, on the basis of concluded reinsurance contracts;

– notify reinsurance organization about concluded with other insurance organizations reinsurance contracts in the manner prescribed by the Ministry of Finance.

Insurance companies that are subsidiaries or dependent economic entities with respect to foreign investors, can not exercise in the Republic of Belarus life insurance, compulsory insurance, including mandatory state insurance, property insurance related to the implementation of supply, provision of services or the performance of contract work for governmental needs, as well as insurance of property interests of the Republic of Belarus and its administrative-territorial item.

**Intermediary insurance activity** is insurance activity by insurance agents and insurance brokers.

Insurance companies may not act as insurance agents or brokers.

Any individual, except for individual entrepreneurs, and organizations other than the insurance ones may act as insurance agents.

An insurance agent is an individual that does not have the status of an individual entrepreneur and carries out activities on the basis of a labour contract or any other civil contract, insurance intermediation in the field of insurance concerned with life insurance – in the name of several insurance organizations, and in the field of insurance concerned with any other types of insurance – in the name of only one insurance organization. An individual performing intermediary insurance activity should have at least general secondary education.

An insurance agent is an organization that carries out insurance intermediation in the name of any insurance organization on the basis of a civil contract. Should such an organization be a state-owned legal person, or a state bank, or a bank authorized to service the State programs, or a Republican State-owned organization, it shall be entitled to carry out insurance intermediation as for all types of voluntary and mandatory insurance. Any other organizations shall only be entitled to carry out insurance intermediation in the field of voluntary insurance.

An insurance agent acts within the powers given by the insurer and performs intermediate insurance activity on his behalf. The rights and obligations arising from acts committed by an insurance agent are acquired by insurer.

Insurance agents are required to pass the insurance premiums they received to the insurer or to transfer them to his bank account.

The only object of the insurance broker activity is the insurance intermediation.

An insurance broker is not entitled to carry out:

- activity by order of insurance companies established outside the Republic of Belarus;
- other activity, except insurance intermediation;
- intermediation activity with regard to types of mandatory insurance, reinsurance of the types of mandatory insurance;
- intermediation activity with regard to type of voluntary insurance, not specified in its special permit (license) for carrying on insurance business.

Intermediate activity related to execution of insurance agreements on behalf of foreign insurers in the Republic of Belarus on behalf of insurance organizations established outside the Republic is prohibited.

### **8.1.6. Restrictions imposed on insurance activities**

The activities performed on mandatory insurance are subject to the following restrictions:

- Mandatory insurance shall be effected by any State insurance organizations and/or by any other insurance organizations, provided more than **50 %** of share (common or other voting shares) in authorized fund thereof is owned by the Republic of Belarus and/or its territorial

administrative units, save otherwise is provided for by the acts of the President of the Republic of Belarus;

– “Belgosstrakh” Republican Unitary Insurance Company shall be the only insurer for such types of mandatory insurance as mandatory insurance of any buildings owned by individuals, mandatory insurance of liability of any commercial organizations involved in relating activity, for any damage inflicted in the course of carrying out these activities, mandatory insurance of agricultural products, mandatory insurance from accidents at work and occupational diseases.

#### **8.1.7. Features of ensuring the financial stability of insurers**

Insurance organization form reserves from the received insurance premiums to ensure fulfillment of its engagements:

- in the types of insurance connected to life insurance (mathematical reserves),
- in the types of insurance other than life insurance (technical provisions);
- in the mandatory insurance from industrial accidents and occupational diseases, mandatory insurance with state support of crop, livestock and poultry (a special insurance pool).

Insurance organization invests and allocates funds of insurance reserves in the manner determined by the Council of Ministers with the concurrence of the President of the Republic of Belarus.

Insurance reserve funds are not subject to withdrawal from the insurance company, have intended purpose, are used only for insurance payments and are not included into the value of the property of the organization, corresponding with the share of the shareholder in the authorized fund. Property, acquired through such means is a subject to separate accounting.

Means of these reserves should be invested and placed on the terms of repayment, profitability, liquidity and diversification.

Solvency of insurance companies to ensure the fulfillment of its obligations under the insurance, including coinsurance and reinsurance, is assessed according to criteria of solvency determined by the Ministry of Finance.

The insurer, who has accepted the obligations that exceed its ability to pay, is obliged to conclude a contract of reinsurance of the insurance risk which was accepted according to the contract of insurance.

### 9.1. Monopolistic Activity: General Information

The Law of the Republic of Belarus “On counteraction to monopolistic activity and development of competition” (hereinafter referred to as “the Law”) defines monopolistic activity as actions (inactions) of business entities, state bodies, aimed to non-admission, limitation or elimination of competition, as well as actions (inactions) causing damage to consumer rights, freedoms and legal interests.

There are 3 types of monopolies allowed in Belarus: state monopoly, natural monopoly and special monopoly.

State monopoly is the system of social relations according to which state bodies or organizations have exceptional right to carry out certain types of activities (including business activities),

The following types of activities are natural monopolies in Belarus:

- transportation of petrol and oil products through main pipelines;
- transportation of gas through main and distribution pipelines;
- transfer and distribution of electric and thermal energy;
- centralized water supply and water disposal;
- electrical communication and postal services;
- railroad services,
- services of transport terminals and airports;
- exploitation and services of airlines, management of air traffic.

**Special monopoly** is the system of social relations in the goods market with no or limited competition.

Realization of antimonopoly policy in the Republic of Belarus is conducted by antimonopoly body – the Department of price policy of the Ministry of Economics.

Antimonopoly control in Belarus includes the following types of activity: control over transactions with stock, shares in authorized funds of business entities, reorganization and liquidation of business entities; approval for registration of holding companies, unions, associations and other alliances of business entities.

#### 9.1.1. Antimonopoly control for creation and reorganization of holding companies

As a general rule, creation, reorganization of holding companies, associations, unions and other alliances of business entities are to be effected upon approval of the antimonopoly body.

Creation and reorganization of holding companies are regulated by the Edict of the President of the Republic of Belarus № 660 «On some issues related to creation and activity of holding companies». In accordance with the Edict in order to register a holding company a management company of such holding (owner or authorized representative) must obtain the approval of the antimonopoly body before creation of holding. Thus, it is impossible to create a holding in the Republic of Belarus without the approval issued by antimonopoly body.

After having considered the application of management company the antimonopoly body has the right to either:

- approve the creation (reorganization) of holding company, or
- make a reasonable decision declining the approval, if the creation (reorganization) of holding company may lead to appearance or strengthening of dominating position on goods market and/or limitation of competition, as well as if during the application process the antimonopoly body discovers the fact that the information submitted is inaccurate and/or incomplete.

The approval or reasonable refusal is to be made within 30-days period of the application and is deemed to be valid during 12 months after issuing.

### **9.1.2. Antimonopoly control for transactions with stock (shares)**

According to Clause 12 of the Law the following transactions with stocks (shares) require the approval of the antimonopoly body:

- a business entity covering more than 30 % of certain goods purchases the shares in the authorized fund of another business entity dealing with the same goods;
- a business entity covering more than 30 % of certain goods enters into transactions with stock of another business entity dealing with the same goods;
- any legal entity or individual, foreign state, international organization purchases more than 25 % of stock (shares) in authorized fund of a business entity, as well as makes a transaction giving to such persons the decision-making power with regard to any business entity having the dominant position on goods market;
- legal entity or individual, the groups of thereof, as well as foreign state, international organization or the bodies thereof acquire control over the business activity of a business entity or carry out functions of its management body (so-called “acquisition of control”).

Regarding the last case from the list above, the provision of the Law seems to be vague as it stipulates no explicit criteria to define which transactions should be considered as acquiring control over activity of the company.

These criteria are listed in the Edict of the President of the Republic of Belarus № 499 “On some measures on improvement of antimonopoly regulation and developing of competition” dated October 13, 2009. According to the Edict the antimonopoly body is entitled to approve acquisition of more than 20% of stocks or shares in the authorized fund of a legal entity (under share purchase agreement, trust agreement, joint venture agreement, agency), if balance sheet value of assets of such legal entity exceeds 100 000 base units as of last reporting date or range of revenues generated from marketing products (works, services) exceeds 200 000 base units following the results of fiscal year.

That is the only case when approval is mandatory. In any other cases there is no need to apply for it.

Normally, it takes 30 days to obtain the decision. As in the case with holding company the decision may be either positive or negative. Negative one is issued if a transaction may result to appearance or strengthening of dominant position of a business entity on goods market and/or limitation of competition.

### **9.1.3. Non-compliance with the obligation to obtain the approval**

#### **Civil law consequences**

In accordance with Clause 12 (6) of the Law a transaction made in breach of the Law which has resulted to appearance or strengthening of dominant position of a business entity on goods market and/or limitation of competition, may be invalidated by an action of the antimonopoly body or any interested party in a judicial proceeding.

Non-compliance with this obligation itself will not cause invalidation. Essential condition is the fact that a transaction has resulted appearance or strengthening of dominant position of a business entity on goods market and/or limitation of competition. However this must be proved in court.

#### **Administrative liability**

Administrative liability is prescribed for an officer of legal entity. According to Clause 11.24. of the Code of the Republic of Belarus on administrative offences the amount of fine for such offense is from 20 (165 Euros) up to 50 base units (412 Euros).

#### **Criminal liability**

Non-compliance with the requirement of the Law falls within the scope of criminal liability in the case if within 1 year of administrative punishment an officer of legal entity has committed the same offense. Under Clause 244 of the Criminal Code of the Republic of Belarus the punishment for such a crime is up to 2 years of imprisonment.

#### **9.1.4. Anti-monopoly control over the activities of economic entities with dominant position**

In case if the position of a business entity in the market or several business entities recognized as dominant position such then the volume of production and product quality, price levels and other indicators of activity of such business entity (entities) fall under special state control aimed to identify whether there is abuse of such domain position.

Control of production volume and quality of goods is carried out by competition authorities on the basis of statistical reports provided by corresponding business entities.

The activities of companies holding a dominant position in the market of the Republic of Belarus are controlled through audits conducted by antitrust authorities.

Monitoring the level of prices and rates of economic entities with dominant position in the markets of the Republic of Belarus is carried out by setting thresholds for the levels of profitability and declaration of prices.

### **9.2. Illicit Competition**

According to the Belarusian legislation illicit competition is any action, aimed to limitation or elimination of competition by violation of right to free competition of other business entities, as well as violation of consumer rights and interests.

The forms of illicit competition can be such actions as illegal using of company name, trade mark and service trademark, illegal copying of goods exterior of other business entity, distribution of inaccurate or mutilate information about activity and goods of competitor in Mass Media and others.

Illicit competition in the Belarus is prohibited. The legislation of the Republic of Belarus provides for judicial and administrative procedure of defense from illicit competition as well as civil, administrative and criminal sanctions for illicit competition.

### **9.3. Common principles and rules of competition in the Eurasian Economic Community**

In the frameworks of the CES the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan have entered into the Agreement on common principles and rules on competition of December 12, 2010. To find more information about the provisions of this Agreement please refer to Sub Section 11.2.3 of Section 11 «Common economic Space».



### 10.1. General Information about the Customs Union

The Customs Union is the international organization based on the “Eurasian economic community” by three member-states: the Republic of Belarus, the Russian Federation, the Republic of Kazakhstan for the purpose of trade and economic integration aimed to creation of common customs territory and using unified regulations of trade with third countries.

The Customs Union is based on the Treaty on the Creation of Common Customs Territory and Formation of the Customs union dated October 6, 2006.

#### **Basic principles of the Customs Union:**

1. free transition within the territory of the Customs Union:
  - the goods originated from the territory of the member-states of the Customs Union;
  - released for domestic consumption within any member-state of the Customs Union.
2. The regulation of customs law relations on the level of supranational legislation.
3. The priority of the union legislation before the national legislation.
4. The elaboration of uniform rules and procedures of the customs processing of the goods, imported in the territory of the Customs Union, measures of tariff and non-tariff regulation.

Superior body of the Customs Union is the Interstate Council of Eurasian economic community (hereinafter – the «Interstate Council»), based on two levels – the level of Head of State and the level of Head of Government. The uniform standing regulated body of the Customs Union is the Commission of the Customs union (hereinafter – the «CCU»). As of the date of the Agreement «About Eurasian Economic Commission» (hereinafter – ECC) taking effect the CUC is to be abolished and its competence has to be delivered to ECC.

Judicial functions of the Customs union are carried out by the Court of the “Eurasian Economic Community”. In connection with forming of Customs Union the Eurasian Economic Community Court has the authority to consider cases about accordance between Customs Union legal acts and International agreements that form the Customs Union agreements base, about challenging a decisions and actions (inactions) of Customs Union authorities. The Eurasian EC Court has the authority to judge cases between CCU and Customs Union member states, cases for petitions of Customs Union member-states and Eurasian Economic Community states, cases for petitions of Custom Union agencies and Eurasian Economic Community agencies, cases for petitions of entities and other cases according to the agreement of Customs Union and Eurasian Economic Community. Since January 1, 2012 Eurasian EC Court has thwarted start working with headquarters in Minsk.

The normative base of the Customs Union consists of:

- the international agreements signed by the member-states of the Customs Union.
- the resolutions of the Interstate Council and the CCU adopted pursuant relevant agreements.

The issues which are not regulated by international agreements of the Customs Union, resolutions of of the Interstate Council and the CCU, fall within the scope of legislation of the Republic of Belarus.

### 10.2. Tariff Regulation in the Customs Union

Tariff regulation upon import of the goods is carried out in accordance with the Agreement on uniform customs tariff regulation dated January 25, 2008 that provides formation of Uniform Customs Tariff (hereinafter – the «UCT») to be applied by member-states of the Customs Union.

UCT is a list of rates of customs duties to be used with respect to the goods imported from third countries, systemized in accordance with the Uniform Goods Nomenclature of Foreign-economic activity of the Customs Union.

As a general rule, the rates of duties from UCT are uniform and shall not be subject to change depending on persons importing the goods and other circumstances. The procedure of application of the rates of customs duties is determined by each member-state depending on the state of origin of imported goods and conditions of importation thereof unless otherwise is set out in the uniform customs tariff.

The sums of import customs duties paid out are apportioned pursuant to the normative established by the Treaty on determination and application of procedure regarding enrollment and apportioning of import customs duties (other customs duties, taxes and levies, having equivalent application) as of 20 May, 2010:

Belarus – 4.70 %;

Kazakhstan – 7.33 %;

Russian Federation – 87.97 %.

In accordance with Clause 6 Article 84 of the Customs Code of the Customs Union procedure regarding payment of export customs duties shall be governed by a separate international treaty of the Customs Union member-states. As of today such international treaty has not yet been signed, but in relations between the Russian Federation and the Republic of Belarus it is applied the Treaty on procedure of payment and enrolment of export duties (other customs duties, taxes and levies, having equivalent application) upon export from the territory of the Republic of Belarus out of the customs territory of the Customs Union of oil and certain types of the goods, produced from oil as of December 12, 2010. According to the said treaty the Republic of Belarus and the Russian Federation do not apply in mutual trade export duties in respect of oil and oil products. Export duties with respect to such goods upon their export from the territory of the Customs Union through the territory of the Republic of Belarus shall be payable at the rates, equal to those applicable in the Russian Federation as of the date of registration of a declaration for the exported goods by the Belarusian Customs bodies. The said bilateral treaty is effective until the trilateral agreement between the Republic of Belarus, the Russian Federation and the Republic of Kazakhstan has entered into force.

### **10.3. Tariff Preferences Applied by the Member States of the Customs Union**

The rates of customs duties under UCT are uniform and may not be changed depending on persons transferring the goods through customs border, types of transactions or other circumstances, except as provided in the Agreement on Uniform Customs and Tariff Regulation.

The member-states of Customs Union can apply tariff preferences only if this is prescribed by the international agreements of Customs Union or decisions of Head of State or CCU. Granting preferences in *ex parte* manner is not allowed.

Specific grounds for granting tariff preferences are set out in the Agreement on Uniform Customs and Tariff Regulation as well as in the decisions of Head of State and CCU.

#### **Basic principles of tariff preferences:**

1. to be applied regardless of the state of origin of the goods;
2. cannot be individual.

#### **Exceptions:**

1. preferences provided in the International agreements of Customs Union members in force, executed before January 1, 2010 until unification or termination of relevant agreements.

The Republic of Belarus has entered into the following international agreement signed before January 1, 2010:

– the Agreement on Creation of Free Trade Zone of April 15, 1994 (member-states of CIC, Georgia);

– the Agreement between the Government of the Republic of Belarus and the Government of the Republic of Serbia on Free Trade between the Republic of Belarus and the Republic of Georgia dated March 31, 2009.

2. individual preferences: each member-state of Customs Union is entitled to provide individual preferences only by approval of CCU.

## **10.4. Uniform Measures of Non-Tariff Regulation in the Frameworks of the Customs Union**

The following measures of non-tariff regulations are allowed within the customs territory of Customs Union:

- export ban (in exceptional cases for the duration not longer than 6 months);
- quantitative restrictions of export and/or import (quota);
- exclusive right to export and/or import;
- foreign-trade licensing;
- supervision for export and/or import.
- measures, concerning foreign trade and initiated on the basis of national interests.

### **10.4.1. Quantitative restrictions of export and/or import (quotas)**

Within the territory of the Customs Union may be applied quantitative restrictions of export and import quotas.

The decision on quotas to be taken by the CCU. CCU apportions quotas among member-states of Customs Union and determines a method of apportionment of quota shares among the subjects of foreign economic activity of Customs Union. If necessary, CCU apportions the volume of import quota among third countries.

The Goods with respect to which export quotas may be applied must be included in the list of the Goods, crucial important for the internal market of the Customs Union. The list of such goods is set out by the CCU.

Export and import quotas are established for indefinite period of time.

Quantitative restrictions do not apply to:

- import of the goods, originated from third country or export of the goods, designated to the territory of any third countries, except cases provided by article 3 of the Agreement on common measures of nontariff regulation regarding to third countries,
- trade of the goods in the frameworks of international treaties on free trade zones.

### **10.4.2. Exclusive right to export and/or import**

In accordance with the decision of CCU the list of the goods to be exported or imported on the basis of exclusive right as well as organisations that are given exclusive right to export (import) certain types of goods is subject to publication.

At the moment, in the Belarus the exclusive right to import alcoholics, fish, seafood and their products after processing, raw tobacco and tobacco products.

The exclusive right of the state is provided for regarding export mineral, potassium and chemical fertilizers.

### **10.4.3. Foreign-trade licensing**

Licences are required in order to export and import the goods stated in the Uniform list of the goods subject to ban and restrictions upon trade with third countries. Issuing licenses are regulated in accordance with the Treaty on rules of licensing in foreign-trade of the goods of June 6, 2009.

Types of licenses:

**- One-time licence**

The term of validity is not longer than 1 year after commencement

**- General licence**

The term of validity is not longer than 1 year after commencement

**- Exclusive licence**

The term of validity is determined by the decision of CCU in each specific case.

Exclusive rights of the state on the basis of licenses are granted with respect to import of alcoholics, fish, seafood and their products after processing, raw tobacco and tobacco products.

## **10.5. Indirect Taxation**

Indirect taxation in the Customs Union is regulated under the Treaty on the Principles of Levying of Indirect Taxes upon Import and Export of the Goods, Supply of Works, Services in Customs Union dated January 25, 2008 (hereinafter – the Treaty on indirect taxation) as well as the Covenants on procedure of levying indirect taxes and mechanisms for their payment upon export and import of the goods in the Customs Union and upon performance of work, providing services in the Customs Union of December 11, 2009.

Bilateral agreements between the member-states of the Customs Union on indirect taxation apply only in as much as their provisions are compatible with the Treaty on indirect taxation).

Member states of Customs Union hold internal procedures to denounce bilateral agreements on indirect taxation between countries of Customs Union, which include:

Covenant between Government of the Republic of Belarus and Government of Russian Federation on the termination of international treaties on indirect taxation, which was signed on July 14, 2011 by the Minister of Finance of the Republic of Belarus A.M. Harkovets and Minister of Finance of Russian Federation S.D.Shatalov;

Covenant between Government of the Republic of Belarus and Government of the Republic of Kazakhstan on the termination of Agreement between Government of the Republic of Belarus and Government of the Republic of Kazakhstan on principles of levying of indirect taxes upon export and import of goods (works) dated February 2, 1999 and signed November 8, 2011 by the Ministers of Finance of the Republic of Belarus and the Republic of Kazakhstan.

### **10.5.1. Indirect taxation upon export of the goods**

Upon export of the goods zero rate of VAT and/or exemption from payment of excises are applied on condition if there is evidence of export.

The term for verification of relevance of zero rate is 180 calendar days from the date of delivery (shipping) of the goods.

### **10.5.2. The principles of indirect taxation upon import of the goods**

Upon import of the goods in the territory of a member-state of the Customs Union from the territory of another member-state of the Customs Union indirect taxes are levied by the tax authorities of importer. If in accordance with the laws of member-state's jurisdiction no taxes are charged upon import of the goods than no taxes to be payable.

The rates of taxes are determined in accordance with the legislation of importing country.

### **10.5.3. Indirect taxation upon carrying out of works, providing services**

The taxes are to be levied within the member-state of the Customs Union that is considered as place of carrying out of works, providing services.

Upon carrying out of works, providing services the tax base, tax rates, procedure of tax levying as well as exemption are stated according to the laws of the member-state of the Customs Union, the territory of which is considered as place of supply.

## **10.6. Supervision for Security and Quality of the Goods in the Frameworks of the Customs Union**

Supervision for security and quality of the goods within the territory of the Customs Union means registration, testing, and confirmation of conformity (declaration, certification of the products), examination, registration of security of the products, veterinary control, quarantine control and phytosanitary control.

### **10.6.1. Certification (declaration of conformity)**

In the frameworks of the Customs Union all member-states mutually recognise the results of certification (declaration of conformity). But in order for member-states to recognize certification (declaration) of the goods there are the requirements to be met:

- the same requirements of technical regulatory acts in respect to specific goods within three member-states of the Customs Union;
- testing of the products by certified laboratory in one of 3 member-states of the Customs Union;
- certification (declaration of conformity) – in certified body if one of 3 member-states of the Customs Union;
- single CU certificate.

There is no mandatory rule saying where to pass through testing or make certification. For example, Belarusian producer may pass through certification in the Russian Federation or Kazakhstan and then use the certificate within the Republic of Belarus.

Single Customs Union certificate (declaration of conformity) is valid within the whole customs territory of the Customs Union and is recognised without re-issuance or compliance with any additional procedures. Single CU certificate is issued not only with regard to the goods produced in the Customs Union but also with regard to the goods to be imported from third countries. However this is not applicable to imported goods subject to confirmation of conformity as declaration of conformity is not allowed, only certification.

Unfortunately today single CU certification does not cover all types of the goods. Currently the Customs Union is in process of unification of technical regulatory acts – Technical Rules aimed to establish the common uniform requirements for all member-states of the Customs Union.

As of 1 February 2012 the CCU has adopted 24 Customs Union Technical Rules:

- On safety of railway rolling stock;
- On safety of high-speed railway transport;
- On safety of railway transport infrastructure;
- On safety of low voltage equipment;
- On safety of packages;
- On safety of fireworks;
- On safety of products, intended for children and adolescents;
- On safety of toys;
- On safety of perfumes and cosmetics;
- On safety of machines and equipment;
- Safety of lift;
- On safety of equipment for work in explosive environments;
- On requirements to automobile and aviation gasoline, diesel and marine fuel, jet fuel and heating oil;
- Safety of motor road;

On safety of gas-fired mechanisms (instruments);  
On safety of corn;  
On safety of wheel (tire) transport ( carrier vehicle);  
Technical order on fat-and-oil production;  
On safety of food production;  
Food Production marking( Marking of food production);  
On safety of light industry production;  
On safety of body armor facilities;  
Technical order on juice production (from) of fruits and vegetables;  
Electromagnetic compatibility of technical facilities (tools);

These Technical orders have different terms of taking effect. First of all the Technical Rules “On safety of fireworks” will come into force on 15 February 2012, the last of the above-mentioned Technical Rules Safety of motor road” will come into force on 15 February 2015.

### **10.6.2. Registration of security of the goods**

Import and circulation of particular goods within the Customs Union are made only on the basis of the document confirming state registration of security in respect of the goods. That covers such products as foodstuff, child products, chemical, biologic raw materials and other products, directly connected with human body.

In accordance with the Agreement on sanitary measures in the Customs Union of December 11, 2009 all member-states mutually recognize the documents of state registration, confirming security of the goods if:

- the goods are stated in the Uniform List of the products subject to registration within the Customs Union;
- the documents certify compliance of the goods with the Uniform Requirements of the Customs Union;
- the document are issued in certified laboratory or certified body of any member-state of the Customs Union;
- CU single document is issued in respect to such goods.

### **10.6.3. Veterinary control**

In the Customs Union there is the Uniform List of controllable goods of animal origin as well as uniform requirements for all three member-states of the Customs Union.

Importation of controllable goods must be followed by relevant permit of body of the Customs Union (issued for one year term and volume stated in the permit) and veterinary certificate issued by a competent body of body the exporter.

Circulation of controllable goods within the Customs Union is made on the basis of single certificate, issued within the Customs Union.

### **10.6.4. Quarantine and phytosanitary control**

With regard to vegetable products such as fruits, vegetables, flowers and other products, transport boxes, package, soil, organisms in the Customs Union there also the Uniform List of controllable products and single requirements to relevant goods. Imported goods shall comply with phytosanitary requirements of that member-state of the Customs Union where the point of destination of controllable products is located and be followed by phytosanitary certificate .

## **10.7. Customs Measures Protecting the Intellectual Property Objects**

In the frameworks of the Customs Union there is single customs register of IP objects of three member-states of the Customs Union (hereinafter – the «Single Register») aimed at



common protection of IP objects within the Customs Union. The Single Register does not replace national registers, which are considered valid each in respect of relevant country.

As of today national registers of each member-state:

- Belarus: 67 objects (as of February 1, 2012);
- Russian Federation: 1340 objects;
- Kazakhstan: 849 objects.

In order to include IP objects in the Single Register it is necessary to submit the application followed with a list of required documents. One application is to be submitted in respect to one IP object. The Intellectual Property Objects are added in the Single Register free of charge.

The application may be submitted by proprietor, several proprietors (including if different proprietors in different countries have the title over the same IP – in case if there is their common consent), representative, having permanent representative office in the territory of the Customs Union under the power of attorney valid within the whole territory of the Customs Union (a proprietor can serve as the representative).

The Intellectual Property objects are added in the Single Register for the duration not longer than 2 years. This term can be extended unlimited number of times on base of titleholder's (his attorney) application but each time not longer than for 2 years. The intellectual property object can be added in the Single Register United for no longer than the term of intellectual property object's legal protection in Customs Union member state in which the term is expired earlier.

**Consequences of listing IP object in the Single Register:**

If during customs processing customs authorities discover a breach they are obliged to:

- suspend release into free circulation for up to 10 days (may be prolonged one more time for extra 10 days);
- notify within 1 day the declaring and proprietor of such suspension as well as of the reasons and terms thereof;
- then whether arrest (confiscate) or cancel the resolution on suspension.

If there is no breach found the proprietor will indemnify the damage to a declarant

Based on information as of February 1, 2012 there has not been any IP object registered so far.

# 11. Common Economic Space

## 11.1. General information about the Common Economic Space (CES)

The uniform economic space (CES) is the space consisting of territories of the Parties (the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation) on which the same mechanisms of adjustment the economy based on market principles and application of harmonized rules of law function, a uniform infrastructure exists and agreed tax, monetary, monetary, trading and the customs policy, providing free movement of the goods, services, the capital and labor power is conducted.

## 11.2. Legal and regulatory framework of the Common Economic Space

The Common Economic Space of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation is formed by the following Agreements:

	Name of agreement	The agreement date	Place of conclusion	Law of The Republic of Belarus on Ratification
<b>Section I. Economic Policy</b>				
1	the Agreement on coordinated macroeconomic policy	09.12.2010	Moscow	28.12.2010 № 205-3
2	the Agreement on common principles and rules on regulation of activity of natural monopolies	09.12.2010	Moscow	28.12.2010 № 206-3
3	the Agreement on common principles and rules on competition	09.12.2010	Moscow	28.12.2010 № 207-3
4	the Agreement on common rules on granting of industrial subsidies	09.12.2010	Moscow	28.12.2010 № 208-3
5	the Agreement on common rules on state support of agriculture	09.12.2010	Moscow	28.12.2010 № 216-3
6	the Agreement on the state (municipal) procurement	09.12.2010	Moscow	28.12.2010 № 211-3
7	the Agreement on trade in services and investment in the CES member states	09.12.2010	Moscow	28.12.2010 № 209-3
8	the Agreement on common principles of regulation in the field of protection and defence of intellectual property rights	09.12.2010	Moscow	28.12.2010 № 217-3
<b>Section II. Free Movement of Capital; Monetary Policy</b>				
9	the Agreement on creation of conditions on financial markets for free movement of capital	09.12.2010	Moscow	28.12.2010 № 213-3
10	the Agreement on the agreed principles of monetary policy	09.12.2010	Moscow	28.12.2010 № 212-3
<b>Section III. POWER INDUSTRY, Transport, TELECommunication</b>				
11	the Agreement on the organization, management, operation and development of common markets of crude oil and petroleum in the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation	09.12.2010	Moscow	28.12.2010 № 221-3
12	the Agreement on ensuring access to the services of natural monopolies in the power industry sector, including the basics of pricing and tariff policy	19.11.2010	St. Petersburg	28.12.2010 № 214-3
13	the Agreement on rules on access to services of natural monopolies in the sector of gas transportation through gas transportation systems, including the basics of pricing and tariff policy	09.12.2010	Moscow	28.12.2010 № 210-3
14	the Agreement on regulation of access to railway transportation services, including basics of tariff policy	09.12.2010	Moscow	28.12.2010 № 215-3
<b>Section IV. Free movement of workers</b>				

15	Agreement on cooperation against illegal migration from third countries	19.11.2010	St. Petersburg	28.12.2010 № 219-3
16	Agreement on legal status of migrant workers and their family members	19.11.2010	St. Petersburg	28.12.2010 № 220-3
Section V. TECHNICAL REGULATION				
17	Agreement on common principles and rules on technical regulation in the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation	18.11.2010	St. Petersburg	28.12.2010 № 218-3

In the analysis and use in the work of the Agreements forming the legal framework of the Common Economic Space, it should be considered that despite the entry into force of the Agreements, some provisions stipulated by these Agreements enter into force later (up to 2017), others require the adoption of domestic instruments for realization.

### 11.2.1 The Agreement on Coordinated Macroeconomic Policy

The Agreement<sup>2</sup> on coordinated macroeconomic policy was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 205-3.

The Agreement defines the objectives, principles, guidelines for carrying out of coherent macroeconomic policy, the order of its coordination, a list of indicators of economic development and integration cooperation of the parties, as well as the stages of negotiation.

Agreement includes the following basic principles of coordinated macroeconomic policy:

- ensuring sustainable economic growth;
- compliance with the balanced macroeconomic indicators established by the Agreement.

These principles are aimed at creation of favourable conditions for the increase of the internal stability of the economy of the Parties and sustainability as well as the deepening of integration within the Common Economic Space.

The Agreement provided for negotiation by the parties for a three-year period of interval quantitative values of external parameters, used in the development of official forecasts of social economic development of the parties, namely, the price of crude oil of mark Brent, the pace of global economy development and the rate of national currency of the parties to the U.S. dollar and (or) euro.

The Agreement also stipulates that economic policy is formed by the parties within the framework of the quantitative parameters determining the sustainability of economic development: the annual state budget deficit should not exceed 3 percent of GDP, public debt should not exceed 50 percent of GDP and inflation rate should not exceed inflation rate of the member state of the Common Economic Space which has the lowest prices on more than 5 percentage points.

Despite the establishment of quantitative parameters determining the sustainability of economic development obligatory for the parties, the Agreement does not provide for responsibility for the failure to comply with them. Besides, the Agreement stipulates that in exceptional circumstances and taking into account the relevant situation, the parties may soften substantively the quantitative values of macroeconomic indicators determining the sustainability of economic development.

For the carrying out of macroeconomic policy these quantitative parameters enter into force on January 1, 2013. Coordination of realization of agreed macroeconomic policy is entrusted to the Customs Union Commission.

<sup>2</sup> hereinafter terms "Agreement", "Document" are understood as the Agreement of the Uniform economic space, specified in the section title if other are not separately stipulated

## 11.2.2. The Agreement on common principles and rules on regulation of activity of natural monopolies subjects

The Agreement on common principles and rules on regulation of natural monopolies was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 205-3.

For the purposes of the Agreement the natural monopolies are the conditions of the services market in which the creation of competitive environment to satisfy the demand for a particular type of services is impossible or economically unreasonable because of technological peculiarities of production and delivery of these services.

In party states the areas of natural monopolies are divided into 2 groups. The Annex 1 sets out the areas of natural monopolies regulation of which shall be fulfilled in accordance with the Agreement. With regard to the areas of natural monopolies set out in the Annex 2 of the Agreement, the requirements of the national legislation of the Parties are applied.

The areas of natural monopolies to which, in accordance with Annex 1, the Agreement shall be applied are:

	In the Republic of Belarus	In The Republic of Kazakhstan	In the Russian Federation
1	transportation of crude oil and petroleum through oil-trunk pipelines	crude oil and (or) petroleum transportation services through oil-trunk pipelines	transportation of crude oil and petroleum through oil-trunk pipelines
2	transmission and distribution of electric power	transmission and (or) distribution of electric power services	services on transmission of electric power
3		services on the technical dispatching of grid output and electric power consumption; services on organization of balancing of the production-consumption of electric energy	services on operational dispatch management in the electric power industry
4	services rendered by the railway transport communications providing the movement of public transport, traffic control, rail traffic	railway network services	rail traffic

With regard to the Republic of Belarus in the Annex 2 of the Agreement the following areas of natural monopolies, regulation of which is carried out in accordance with national legislation of the Republic of Belarus, were included:

1. transportation of gas through the transmission and distribution pipelines;
2. services of transport terminals, airports; maintenance and operation of the airways, air traffic control;
3. telecommunication and postal services of general use;
4. transmission and distribution of thermal energy;
5. centralized water supply and sewerage.

The Agreement sets out the principles of regulation of the activity of natural monopolies, which also include the observance of the balance of the interests of customers and subjects of natural monopolies; subsequent reduction of the areas of natural monopolies; application of a flexible tariff (price) regulation with regard to the subjects of natural monopolies; reduction of the barriers on entry to domestic markets, including by ensuring an access to the services provided by the subjects of natural monopolies; obligatoriness of the subjects of natural monopolies to conclude the contracts on rendering of services with customers, etc.

The Agreement specifies that the tariff regulation of natural monopolies services is included in the scope of national regulation of natural monopolies (as listed in Annex 1 and Annex 2). Article 5 of the Agreement establishes that the tariff regulation may be realized by:

1) establishment by the national authority in relation to the subjects of natural monopolies of tariffs (prices) for regulated services, including their limits based on the methodology approved by the national authority;

2) establishment (approval) by the national authority of methodology by which the subject of natural monopoly shall establish and apply their own tariffs (prices).

Despite the attribution of the issues concerning the price determination for the services rendered by subject of natural monopolies to the regulation by national legislation, the Agreement established the techniques of the tariff regulation as well as the issues that should be considered when setting tariffs (prices).

Except the tariff regulation the national authorities also regulate an access to the services of natural monopolies subjects including the establishment of pay amount (prices, tariffs and charges) for activation (connection) to the services of the subjects of natural monopolies; protection of the interests of the natural monopolies customers; control of the activities of the subjects of natural monopolies.

The Agreement is basic, its provisions are expanded in separate sectoral (industry) agreements, in particular in the agreements on railway transport, common market of oil, power industry.

### **11.2.3. The Agreement on common principles and rules of competition**

The Agreement on common principles and rules of competition was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 207-3.

The purpose of the Agreement is the formation of common competition policy by the parties to ensure the movement of goods, services, and capital, freedom of economic activity and effective functioning of the goods markets within the common customs territory of the member states, the harmonization of the parties legislation on competition policy and on prevention of actions that can have a negative impact on mutual trade of the parties.

The Agreement applies to the relations connected with the realization of the competition policy on the territories of the parties and to the relations involving business entities of the parties that have or may have a negative impact on the competition in the transboundary markets on the territory of two or more member states of the CES. The criteria for inclusion of the market to the transboundary market must be determined by the Interstate Council of Eurasian Economic Community within 6 months from the date of the entry into force of the Agreement .

The Agreement establishes the common principles and rules on competition, however, it provides for that the Member States of CES are entitled to stipulate in their legislation additional requirements and restrictions with regard to the common principles and rules of competition.

The following common principles of competition are set and defined in the Agreement: equality in the application of provisions of the competition law; inadmissibility of the anti-competitive actions of state authorities; ensuring the effective control over economic concentration; effective administration; effectiveness of the sanctions for anti-competitive actions; information transparency; effective cooperation.

The common rules on the competition effective in the territory of the parties are the following: prohibition on the agreements limiting competition of business entities (subjects of the market), prohibition on abuse of dominant position, and prohibition on unfair competition.

The Agreement establishes the penalties for the violation of competition rules in the amount from 12,000 to 500,000 Russian rubbles. The penalty shall be transferred to the budget of the Party on whose territory breaching business entity (the subject of the market) is registered . Cases concerning the violation of competition rules that have or may have a

negative impact on the competition on the transboundary markets on the territory of two and more parties are brought and considered by the Customs Union Commission.

The implementation of the agreement includes the following stages:

**The first stage.** Creation of the necessary regulatory framework in the field of the competition by making the relevant decisions by the Customs Union Commission (within 12 months from the date of entry into force of the Agreement).

**The second stage.** The harmonization of national legislation of the parties (within 18 months from the date of entry into force of the Agreement). As part of this stage in the Republic of Belarus changes to the legislation on monopolies and promotion of competition in terms of bringing it into conformity with the Agreement should be adopted, the transfer to the Customs Union Commission the power to control transboundary violations and the application of liability to the business entities of the Republic of Belarus.

**The third stage.** Transfer to the Customs Union Commission of the power to control transboundary violations (within 20-24 months from the date of entry into force of the Agreement depending on the violation).

#### **11.2.4. The Agreement on common rules on granting of industrial subsidies**

The Agreement on common rules on granting of industrial subsidies was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 208-3.

Agreement establishes the common rules on granting subsidies on the production, distribution and consumption of goods and the dispute resolution procedure between the state which has granted a subsidy and the aggrieved party.

In accordance with the Agreement subsidies are classified into three categories: acceptable, prohibited and specific. The document allows to provide for subsidies that do not distort Member States mutual trade. Subsidies leading to the damage to sectors of national economy of other countries (tax and customs privileges, benefits in the manufacturing and transportation of goods, other measures that resulted in the displacement of similar goods from the market, fall or rise in prices) are prohibited.

Pursuant to the Agreement, the competent authority of CES Member States (according to the decision of the Council of Ministers on June 17, 2011 № 796, in the Republic of Belarus, it is the Ministry of Economics) can conduct an investigation on compliance of subsidies with the rules provided for. If the competent authority determines that another state provides a specific subsidy, which is detrimental to the sector of national economy, it can submit to the breaching country a statement on the introduction of a compensatory measure.

Statement on the application of a compensatory measure may be satisfied voluntary by the party which received the statement during the period of consideration of the application, or on the results of dispute resolution.

The compensatory measure is the sum of granted subsidy and interest accrued on this sum for the whole period of use. The interest rate of the compensatory measure is equal to the one and a half rate of refinance existing at the time of granting subsidy and set up by the Central (National) Bank of the state which has provided the subsidy.

On January 1, 2017 provision of special subsidies will be possible only if they comply with the Customs Union Commission. Up to this time parties should inform each other annually a month before the next year coming about all subsidies that are planned to be provided from budgets of all levels.

#### **11.2.5. The Agreement on common rules of state support of agriculture**

The Agreement on common rules on state support of agriculture was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 216-3.



The measures of state support for agriculture in the Agreement are classified into measures not having a distorting effect on mutual trade between the parties in agricultural goods, measures having such an effect, and measures having such effect to the maximum extent.

The Agreement provided for that the measures with no distorting effect on trade may be used by the parties without restrictions. Measures providing the most distortive effect on trade should not be used. The level of measures that have distortive effect on trade and calculated as a percentage of the volume of the state support of agriculture to the gross value of agricultural goods produced in the whole, and defined as the permitted volume, shall not exceed 10%.

Since in 2010 with the adoption of the Agreement the level of support of agriculture in the Republic of Belarus amounted to 18% of the gross value of agricultural goods produced (in Kazakhstan – 5.4%, Russia – 6%), an exception from the common rules was made for the Republic of Belarus and it was granted a transitional period until 2016, during which the Republic of Belarus undertakes to reduce the permitted volume as follows:

in 2011 – 16 percent;

in 2012 – 15 percent;

in 2013 - 14 percent;

in 2014 – 13 percent;

in 2015 – 12 percent;

in 2016 – 10 percent.

After joining of any of the parties to the World Trade Organization the level of the measures should be set up within the obligations of this state in the WTO.

In accordance with the Agreement, the parties undertake to inform each other in writing of any programs of state support of agriculture planned in the year following.

In case of violation by one of the parties of the provisions of the Agreement on the application of the measures that have distortive effect on trade in excess of the allowed volume, such party shall immediately cease the provision of such measures, and pay compensation in the rate of the volume of support measures to the other parties.

#### **11.2.6. The Agreement on the state (municipal) procurement**

The Agreement on the state (municipal) procurement was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 211-3.

The Agreement establishes the requirements for public procurement. The main requirements are: the regulation of relations in the field of procurement exclusively in the legislation of the Member State; provision of the national treatment and the most favoured nation treatment; ensuring the informational openness and transparency of the procurement, including by creation an Internet portal by each Party; establishment of a liability for violation of the national legislation on procurement.

The document provides for realization of the procurement by open tender and auction, and, in cases, if it is stipulated by national legislation of the Party, by the request of price bids (quotation request), exchange trading and procurement from a single source or from a single supplier (performer, contractor) as well.

The Agreement provides for the possibility to set up requirements for suppliers and potential suppliers by the national legislation. However, these requirements should not contradict the provisions of the Agreement. Participation of the individual potential suppliers in the procurement may be limited in cases provided for the national legislation, and on the basis of the information included in the suppliers blacklist (this blacklist contains an information about potential suppliers evaded the conclusion of the contract on procurement, and the suppliers, improperly fulfilled their obligations under the procurement contracts concluded with them).

The Agreement detailed requirements for the procedures of each of the procurement methods, as well as an information to be contained in the procurement contract.

There are three stages of the realization of the Agreement:

**The first stage.** Up to January 1, 2012 (for the Russian Federation and the Republic of Belarus): harmonization of the national legislation into conformity with the Agreement and implementation of the informational systems supporting the process of procurement in the electronic form, the imposition of national treatment for the Russian Federation and the Republic of Belarus;

**The second stage.** Up to July 1, 2012 (for the Republic of Kazakhstan): harmonization of the national legislation into conformity with the Agreement and implementation of the informational systems supporting the process of procurement in the electronic form;

**The third stage.** Up to January 1, 2014: the imposition of national treatment to all Member States.

In the course of implementation of this Agreement the Republic of Belarus will need to adjust the legislative acts in the field of public procurement, as well as create and implement informational systems that ensure the procurement process in an electronic form.

### **11.2.7. The Agreement on trade in services and investment in the CES member states**

The Agreement on trade in services and investment in the CES member states was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 209-3.

In accordance with this document, each Party shall accord national treatment to the persons of any other Party with regard to the participation in the privatization and in the trade in services (with exception of the opening of banks, postal services, motor transport, inland water transport, pipeline transport services).

Most favoured nation treatment is accorded with regard to the establishment of enterprises and the trade in services (with exception of the audio-visual services, air, maritime and motor transport services).

With respect to the licensing, the requirements of the publication of the names of the authorities responsible for issuing licenses, the requirements of the establishment of all the licensing requirements in the regulations, and the obligation to issue a license or give a written denial within 30 days from the date of receipt of the application are stipulated.

Each party entrusted with a duty to abolish the existing and do not to impose the new restrictions on transfers and payments in connection with the establishment and activity of the enterprises, as well as trade in services. The exceptions to this rule specified in Article 22 of the Agreement, which stipulates that in case of deterioration of the balance of payments, a substantial reduction in gold and foreign currency reserves, sharp fluctuations of the national currency rate or in case of the threat of such fluctuations, a Party may impose restrictions with regard to the transfer of payments. In addition, these restrictions should not create discrimination between the Parties, cause unnecessary damage to the commercial, economic and financial interests of any other Party and be more burdensome than necessary to overcome the circumstances, and also must comply with Articles of the Agreement of the International Monetary Fund on July 22, 1944, and shall be eliminated step-by-step as the circumstances served to their implementation are disappeared.

### **11.2.8. The Agreement on common principles of regulation in the field of protection and defence of intellectual property rights**

The Agreement on common principles of regulation in the field of protection and defence of intellectual property rights was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 211-3.

The Agreement stipulates the unification of protection and defence of intellectual property within the Common Economic Space, and would help to the domestic actors of the scientific and technical, commercial and industrial and sociocultural spheres to obtain equal conditions of access to the Member States markets.

The Agreement provides for the granting of national treatment on protection and defence of intellectual property rights for other natural and legal persons of the Parties.

With regard to the copyright and neighbouring rights the Agreement makes reference to the different treaties, in particular to the 1971 Berne Convention for the Protection of Literary and Artistic Works, the World Intellectual Property Organization Copyright Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty.

According to the Agreement, Parties introduce a regional principle of exhaustion of the exclusive rights to the trademark, under which the use of the trademark in relation to the goods, that have been lawfully put into the civil turnover in the territory of the Member States of the CES by the possessor of right or by the other persons with his consent, does not violate the exclusive trademark rights (in the current legislation the principle of exhaustion of the exclusive rights to the trademark is limited to the territory of the Republic of Belarus).

The Agreement does not alter the validity of the registration of a trademark prescribed in the Republic of Belarus. Period of validity of the initial registration of a trademark may be prolonged an unlimited number of times on the basis of the trademark owner application submitted within the last year of its operation, each time for at least 10 years.

With regard to patents it is provided that the validity of the exclusive rights to an invention, useful model, industrial design and the patent certifying this right is not less than 20 years for inventions, not less than 5 years for useful models and industrial designs.

The document provides for the establishment of a permanent Coordinating Council on Intellectual Property of the Common Economic Space. Coordinating Council is created in order to implement the functions of coordination and informational and technical cooperation in the field of protection and defence of intellectual property between the agencies of the Parties.

In order to fulfil its obligations under the Agreement, the Republic of Belarus will have to join the 2006 Singapore Treaty on Trademark Law and the 2000 Patent Law Treaty, as well as to bring its national legislation in accordance with the Agreement.

### **11.2.9. The Agreement on creation of conditions on financial markets for free movement of capital**

The Agreement on creation of conditions on financial markets for free movement of capital was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 213-3.

The Agreement is aimed at ensuring the free movement of capital, the development of mutually beneficial cooperation in the financial sector, and the harmonization of the legislation of the CES Member States in the banking sector, the foreign exchange market, the securities market, and in the insurance industry.

The regulation of relations between the Member States of the Agreement in the financial sector is assumed to realize by harmonization of the parties legislation, by the organization of exchange of information between the parties competent authorities on the regulation and development of the financial sphere, by the coordination of positions on the settlement of the risks in the financial market in accordance with international standards, by creation an effective infrastructure for conversion operations with national currencies of the parties, by an agreement of the common requirements for the protection of the rights and interests of the consumers of the insurance services, by coordination of the common principles for determining the business solvency and financial stability of the insurance (reinsurance) organizations.

Harmonization of the positions of the CES Member States on the issues of the unification of the licensing requirements for the financial market participants, supervisory requirements, and procedure for exercising supervision over financial market participants is assumed.

To achieve these goals is supposed to conclude the relevant international treaties.

The implementation of the Agreement will be exercised into the two stages:

The first stage includes the organization of exchange of information between the competent authorities of the Parties.

The second stage (up to December 31, 2013) provides for the harmonization of national legislation of the Parties in conservation of international rules and standards, including the harmonization of licensing requirements for financial market participants, supervisory requirements and procedure for exercising supervision over financial market participants, as well as ensuring placement and circulation of securities of issuers of the Parties throughout the territory of the Common Economic Space, provided the registration of emission (issue) of securities by the regulatory authority of the state of registration of the issuer.

#### **11.2.10. The Agreement on the agreed principles of monetary policy**

The Agreement on the agreed principles of monetary policy was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 212-3.

The Agreement defines the principles on which the Member States of the CES, in order to enhance the role of their national currencies in the foreign trade and investment transactions and mutual convertibility of these currencies, will implement monetary policy.

The Agreement provides for the phased harmonization and convergence of approaches to the formation and implementation of the monetary policy, creation of the institutional and legal conditions for the development of the integration processes in the monetary field, implementation of the economic policies aimed at enhancing credibility of the Member States national currencies.

In order to conduct the agreed monetary policy, Parties shall take measures for the coordination of exchange rate policy of national currencies; creation and ensuring an environment of mutual direct quotations of the Parties national currencies; prevention a multiplicity of the official exchange rates; establishment of the rates of national currencies by the central (national) banks of the Member States on the basis of a course that emerged in the stock market or on the basis of the cross rates of national currency against the U.S. dollar.

Furthermore, the Agreement provides the Parties for the right, in exceptional cases (if the situation cannot be solved by other measures of the economic policy), to introduce the currency restrictions for a period which is not exceeds one year. The negative developments in the balance of payments and exchange rate swings in the national currency are not the only examples of the exceptional cases.

#### **11.2.11. The Agreement on the organization, management, operation and development of common markets of crude oil and petroleum in the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation**

The Agreement on the organization, management, operation and development of common markets of crude oil and petroleum in the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 221-3.

The purpose of the Agreement is to determine the basic principles and activities aimed at establishing of the common markets of crude oil and petroleum of the Member States of the CES, as well as the development of competition in these markets.

The basic principles of relations between the CES Member States are listed in Article 2 of the Agreement, including the principle of non-application in the mutual trade of quantitative

restrictions and export customs duties (other duties, taxes and charges having equivalent value) by the Parties.

Procedure for payment of export customs duties on crude oil and petroleum, when they export outside the common customs territory of the Customs Union, is governed by separate agreements, including the bilateral treaties of Member States of the Common Economic Space.

In accordance with Article 3 of the Agreement implementation of a package of measures on the formation of the common markets of crude oil and petroleum of the CES is stipulated.

Article 4 is established that within the existing technical feasibilities, Parties of the Agreement provide the guaranteed possibility of transportation of crude oil and petroleum by the existing transportation system in the territory of the CES Member States and the national conditions on access to the crude oil and petroleum transportation systems for the CES Member States business entities.

Volumes and directions of the transportation of crude oil produced on the territory of one of the Member States of the CES over the territory of another Member State are defined annually by protocols between the competent authorities of the Parties.

Within the framework of the Agreement, Parties have provided the necessity to effect the unification of norms and standards for crude oil and petroleum up to January 1, 2013.

#### **11.2.12. The Agreement on ensuring access to the services of natural monopolies in the power industry sector, including the basics of pricing and tariff policy**

The Agreement on ensuring access to the services of natural monopolies in the power industry sector, including the basics of pricing and tariff policy was signed in St. Petersburg on November 19, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 214-3.

The Agreement defines the principles of cooperation between the Parties in the realization of the interstate transmission of electric energy (power).

In accordance with the Agreement, the Member States of the CES, within the technical feasibility, ensure free access to the services of natural monopolies in the power industry sector, provided the priority use of these services to support the internal needs of the Parties.

States Members of the CES ensure the transit of electric energy under the concluded contracts, provided the priority support of internal balances of power (capacity) of the national power grid within the existing technical feasibility, without differences in its origin, destination or its owner.

Within the available technical feasibility Parties shall ensure non-discriminatory access to the services of the natural monopoly entities in the power industry sector, provided the priority use of indicated services to support the internal balances of power (capacity) of the national energy systems of the Parties.

The Agreement presumes application of a common Methodology of implementation of interstate transmission of electric energy (power) between the Member States of the CES, which establishes the procedure for determining the technical feasibilities and the volume of the interstate transmission of electric energy (power), as well as the agreed approaches to pricing for services connected with the interstate transmission of electric energy (power).

#### **11.2.13. Agreement on rules on access to services of natural monopolies in the sector of gas transportation through gas transportation systems, including the basics of pricing and tariff policy**

Agreement on rules on access to services of natural monopolies in the sector of gas transportation through gas transportation systems, including the basics of pricing and tariff policy was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 210-3.

The Agreement is aimed to establish the rules of access to services of natural monopoly



entities in the field of transportation of gas through the gas transportation systems, including the basis of pricing and tariff policy is used to the satisfaction of the needs of the Member States of the CES. Separately specified, that the Agreement does not apply to the gas originating from the territory of states that are not parties of the CES, as well

#### **11.2.14. Agreement on regulation of access to railway transportation services, including basics of tariff policy**

Agreement on regulation of access to railway transportation services, including basics of tariff policy was signed in Moscow on December 9, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 215-3.

The purpose of the Agreement is provision of the balance sheet of interests of subjects of natural monopolies in sphere of railway transportation and users railway transportation services in CES.

It is specified in the Agreement that since January, 1st, 2013 at transportations of cargoes inside CES, and also at transportations of cargoes on territory CES or from territory CES the internal tariffs of each state-participant CES are applied.

With a view of provision of equal tariff conditions for all commodity producers in territory CES in the Agreement fixes the obligation of the parties on carrying out of unification till January, 1st, 2013 of tariffs by message kinds (except transit).

Besides, in the Agreement general principles of forming of tariffs are fixed. The method of economically reasonable costs will be applied as the basic method of tariff setting on a railway transportation. Since 2013 possibility of an establishment by authorized bodies of the states of the Parties of extremely minimum and extremely maximum tariffs for transportations of cargoes by railway is provided.

Within the limits of the specified maximum permissible parameters of the organization of a railway transportation have the right to determine independently concrete rates of tariffs depending on a conjuncture of the demand, shown volumes of transportations, being guided thus by a technique established by authorized body of the state of the corresponding Party.

The control of change of a passenger-fare level in a price band are performed by the Customs union Commission.

January, 1st, 2013 the existence current system of an establishment of the exclusive tariffs will cease. However the Agreement provides preserving of an acting order tariff setting for transportations of cargoes in transit through territory of CES. Obligations of the parties on granting, since January, 1st, 2015 of equal access to an infrastructure for carriers of the States of CES are fixed in the Agreement

Uniform rules of access to an infrastructure, proceeding from technology of work of the railway transportation, considering principles of equality of requirements to the carriers, established by the national legal system of the states of the parties ; grantings of access within handling capacity of an infrastructure, proceeding from technical and technological possibilities; carrying out concerning carriers of a uniform price (tariff) policy, etc. should be developed for this purpose till 2013

#### **11.2.15. The Agreement on cooperation against illegal migration from third countries**

The Agreement on cooperation against illegal migration from third countries was signed in St. Petersburg on November 19, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 219-3.

There are no imperative provision concerning counteraction of illegal labor migration in the Agreement. The Agreement determines only directions and forms of co-operation of the Parties on counteraction of illegal labor migration from the third states.



Cooperation of the Parties is performed in exchange forms by legal acts, experience, the information concerning counteraction of illegal labor migration; carrying out of training, seminars and training courses; the organization and special operations on counteraction of illegal labor migration, and also by the conclusion of readmission agreements

The resolution of the Council of Ministers of the Republic of Belarus on March, 31, 2011 № 408 specify the Ministry of Internal Affairs, the Ministry of Labour and Social Protection, the State border committee, the Committee for State Security as authorized bodies on realization the Agreement in the Republic of Belarus.

#### **11.2.16. The Agreement on legal status of migrant workers and their family members**

The Agreement on legal status of migrant workers and their family members was signed in St. Petersburg on November 19, 2010 and ratified by the Law of the Republic of Belarus of December 28, 2010 № 220-3.

The agreement establishes a category of citizens on which its act – there are citizens of one of the countries CES, lawfully being and working on territory of other country CES.

The document gives to the employer the right to involve migrants to labor activity without reception of the corresponding permission. Migrants can work in the states-participants CES without the established quotas and without work permit reception.

At the same time restrictions at employment for migrants with a view of homeland security provision are established.

The measures accepted by the states with a view of social protection from unemployment, aren't considered as discrimination in relation to foreign citizens.

The document provides exemption of the worker-migrant and members of his family from registration within 30 days from the date of entrance on state territory where it finds a job. Term of time stay of the worker-migrant and members of his family in the state-participant CES is determined equal to period of validity of the employment contract with the employer.

In case of dismissal an employment contract after 90 calendar days, the Agreement gives to the worker the right within 15 days to conclude the new employment contract, including with other employer, is perfectly in order and on the conditions provided by the legislation of the state in which it finds a job.

The national legal system of each of the parties regulates questions of an establishment of the list of the documents demanded at employment, preschedule termination of the employment contract, the taxation of incomes of employment, a social assistance (social insurance), except for questions of provision of pensions.

The resolution of the Council of Ministers of the Republic of Belarus on March, 31, 2011 № 407 specify The Ministry of Internal Affairs, the Ministry of Labour and Social Protection, the Ministry of Education, the Ministry of Health, the Ministry of Taxes and Tax Collection as authorized bodies on realization the Agreement in the Republic of Belarus.

#### **11.2.17. The Agreement on common principles and rules of technical regulation in the Republic of Belarus, Republic of Kazakhstan and Russian Federation.**

The Agreement on common principles and rules of technical regulation in the Republic of Belarus, Republic of Kazakhstan and Russian Federation signed in St. Petersburg on November 18, 2010 as ratified by Law of Republic of Belarus of December 28, 2010 № 218-3.

Agreement states that Customs Union Technical Rules have direct effect in the customs territory of Customs Union (territory of the Republic of Belarus, Republic of Kazakhstan and Russian Federation).

To see the list of adopted Technical Rules as of 01.02.2012 please refer to Section 10.6.1. "Certification (declaration of conformity)".

In development of this Agreement the Common list of products for which mandatory requirements are established in the Customs Union (CES) was adopted by the Decision of Commission of Customs Union of January 28, 2011 № 526. Parties are not allowed to establish mandatory requirements in their legislation for products not included in the Common list.

Article 6 of the Agreement provides that for the purposes of assessment (confirmation) of conformity with Customs Union Technical Rules international and regional standards may apply, and in their absence (prior to the adoption of regional standards) - the national (state) standards of the Parties.

Products in respect of which the Customs Union Technical Rule have been adopted are to be released into circulation in the customs territory of the Customs Union only upon condition that they have been passed through necessary assessment procedures (confirmation) of conformity established by Customs Union Technical Rule ( Technical Rules).

At the moment in Belarus protection is granted to the following objects of intellectual property:

### 12.1. Objects of Copyright and Related Rights

The mentioned objects include any works of science, literature and art, that are the result of creative activity, regardless of the purpose and dignity of the works, and how they are expressed (copyrights), as well as performances, phonograms and broadcasting or cable organizations transfer (objects of related rights).

The copyrights have the largest amount of legal protection.

The period of legal protection of copyright and related rights begins with the creation of the object and does not require any formalization. Moral rights of the author (copyright, the right to name, right to inviolability of the work, the right of disclosure, the right to recall) are protected indefinitely. Property rights of the author are protected during his lifetime and within 50 years after his death.

The property rights of the author may be transferred to third parties by the assignment of rights, as well as on the basis of an exclusive or nonexclusive license.

The holder of property rights is entitled to prohibit or authorize the following actions concerning the object:

- reproduction in any form;
- distribution of originals or copies of the object and its renting;
- public performance of objects;
- presentation or showing to the public;
- translation into other languages;
- modifications or other conversion;
- import of copies of the subject;
- other possible actions.

The remedies of civil legal protection of copyright and related rights in the event of their violations are:

- removal of material objects with the help of which exclusive rights have been violated, and material objects created in the result of such violation;
- compulsory publication of the violation with information about the actual owner of the violated right;
- recovery of damages, including lost profits;
- compensation in the amount from 10 to 50 thousand base units (on February 1, 2012 the amount of the base units is approximately 3 Euro, and from April 1, 2012 the amount of the base unit will be approximately 9 Euro) instead of damages or collection of income, taking into account the gravity of the offense
- other remedies, provided by the law.

In addition, the legislation provides administrative or criminal liability for certain types of violations of copyright or related rights.

Since December 1, 2011 the new act of the Republic of Belarus "About the copyright and Related Rights" has come into force. Changes have concerned the sphere of collective management of the property rights of authors, the first time main requirements for agreement for the transfer of property rights to the management have been fixed (list of works and (or) objects of related rights, and ways of their usage, the procedure of calculation and payment of remuneration to authors and others). In order to protect the copyright the usage of employee's works has been settled in detail.

Grounds of free (without the consent of the holder and (or) without payment of remuneration) usage of works and objects of related rights have been expended with the new legislation. It is allowed to free reproduction of the copyrights and the objects of related rights, when this reproduction is temporary and constitutes the essential part of technological process of data transmission (for example, automatic copying the image files when browsing web-pages, etc.).

## **12.2. Industrial Property Objects**

### **12.2.1. Inventions, utility models, industrial designs**

Invention in any field of technology gets the legal protection if it is new, relates to product or process, involves an inventive step and is industrially applicable.

A useful model, which has the legal protection is a technical solution relating to the devices that is new and industrially applicable.

An industrial design is understood in law as an artistic or art-design solution for the product that defines its look and is new and original.

Legal protection of inventions, utility models and industrial designs shall be certified by the patent. A patent is valid from the date of application to the National Centre of Intellectual Property (hereinafter – NCIP):

- in respect of inventions – during the 20 years, renewable for not more than 5 years;
- for utility model – within 5 years, renewable for not more than 3 years;
- with regard to industrial design – within 10 years, renewable for not more than 5 years.

Attribution of authorship, the compulsion to co-authorship, illegal disclosure of the essence of the invention, utility model and industrial design before submitting the application concerning them without the permission of the author, as well as violation of the exclusive rights of patent holders entail civil, administrative or criminal liability.

Civil remedies of protection of violated rights are:

- suppression of unlawful acts in violation of copyrights and the threat to their violation;
- recovery of damages;
- obligatory publication of the violation with information about the actual owner;
- removal of material objects with the help of which exclusive rights have been violated, and material objects created in the result of such violation;
- other remedies, provided by the law.

### **12.2.2. Means of individualization**

Means of individualization which has the legal protection in the Republic of Belarus are trademarks (service marks), trade names, geographical indications.

A trademark is a designation that distinguishes the goods or services of one person from the goods or services of others.

The brand name refers to the name of a legal entity used for individualization for civil law purposes.

Geographical indication is recognized designation that identifies goods as originating from the country or the region or locality in that territory, where a certain quality, reputation or other characteristics of the goods are to a large extent linked to its geographical origin.

To obtain legal protection for all of the above means of identification must be registered with the NCIP with the subsequent issuance of a certificate of registration. The term legal protection of trademarks and geographical indications is 10 years, renewable for another 10 years for an unlimited number of times.

The term legal protection of brand names in effect until the liquidation of a legal entity or a change in its corporate name.

Ways to protect the rights of the means of individualization are:

- suppression of unlawful acts that violate the law and posing a threat to their violation;
- reimbursement for damages;
- removal from the product or its packaging the unlawfully used symbols and/or the destruction of images of the notation;
- seizure or destruction of goods with regard to which the notation was illegally used;
- penalty in favor of the aggrieved party in the value of the goods in respect of which was illegally used designation.

The above-mentioned objects of intellectual property are the most common and most often require protection against unauthorized use. However, in addition to these objects of legal protection in Belarus are also selection achievements, integrated circuits, undisclosed information, including production secrets (know-how).

## 13. Consumer Rights Protection and Advertising

Consumer rights in Belarus are protected by the Consumer Rights Protection Law of January 9, 2002. This law stipulates main obligations of seller (manufacturer) and main rights of consumer regarding information about the goods (works, services) and their quality, as well as seller's (manufacturer's) liability towards consumer, procedure and mechanisms of consumer's rights protection.

### 13.1. Information about the Goods and about the Seller (Manufacturer)

Seller (manufacturer) is obliged to provide consumer with full and accurate information about itself and about the goods (works, services).

Information about the seller (manufacturer) includes:

- firm name of organization;
- location and working hours of organization;
- name of branches, representative office (if any);
- information about special permission (license) to perform respective types of activities (number, issued body, term of validity), if relevant.
  - Information about the goods (works, services) includes:
    - name of goods (works, services);
    - types and features of proposed works (services);
    - quantity and completeness of goods;
    - price and terms of payment for the goods (works, services);
    - date of manufacture (service life, shelf life, shelf life of products, results of operations);
    - general consumer characteristics of goods (results of works, services);
    - terms and conditions of effective and safe use;
    - reference to main legal documents which state requirements to the quality of goods (works, services);
      - warranty period if such period is defined;
      - trait identification code if obligatory marking of the goods is provided by legislature;
      - information about the conformity of goods (works, services) which are subject to obligatory confirmation of quality.

For some categories of goods additional information is to be defined.

Information must be communicated to consumers in Belarusian or Russian language clearly and legibly in the documentation accompanying the goods (works, services), on consumer packaging (packing), the label, in catalogs, brochures, advertisements or other information sources, including global computer network. Using a foreign language is permitted only at the request of the consumer.

### 13.2. Duties of the manufacturer (seller or performer)

consumer using the good for its intended purpose - lifetime of the durable good, including complementary parts and components of the basic good, which after a certain period may pose a risk to life, health, heredity, property of the consumer and the environment. The list of such goods is set by the Government of the Republic of Belarus. In particular this list includes: vehicles, electrical appliances, audio visual goods, communications equipment and other goods.

For food, perfume, cosmetics, pharmaceuticals and similar products (results of works) which consumer characteristics may eventually go back, the manufacturer (executor) should set the period of validity and (or) keeping period, during which the good is considered suitable for a intended purpose, retains its characteristics.



In cases, defined by legislature, the manufacturer must also set on the goods (the result of the work, service) length of warranty during which the goods (the result of works, services) must be up to quality. In this case the length of warranty for goods produced outside the Republic of Belarus shall not be less than the length of warranty under the legislation of the Republic of Belarus for similar goods produced in Belarus.

The manufacturer (executor) must make possible the repair and service of the goods, production and supply of spare parts to trade and repair organizations in necessary extent and assortment during the term of production of goods (carrying out works) and after phasing them out – within the lifetime of the goods (the result of works), and in absence of such a term – within the period of ten years from the date of realization of goods (result of works) to consumers. The possibility of repairing and servicing the goods (except real estate) is provided by the seller within the length of warranty, and if the length of warranty is not set or is less than two years - within two years from the date of realization of goods to consumers, unless longer terms are not set by the law and (or) agreement.

### **13.3. Liability of a Seller**

Sale without documents certifying the conformity and (or) without hygienic registration is prohibited regarding such goods as: household appliances, electronic equipment, lighting products, playground equipment, communications equipment, furniture, products for construction, light industry goods, toys, cosmetic products, food products, alcoholic beverages, services and works, and others. The seller is liable for damages caused to consumers by defective goods, including compensation of emotional distress.

The Law determines the main obligations of the seller (manufacturer). According to the Consumer Protection Law, seller (manufacturer) is obliged to provide safety of goods (result of work) within a set of their service life or shelf life or, absent such term, within ten years from date of sale. Upon discovery of defects (non-conformity of goods) consumer may require:

- replacement of a defective product with a product of appropriate quality;
- commensurate reduction of purchase price;
- free elimination of defects;
- compensation of defects incurred by independent elimination of defects;
- termination of the sales contract and refund of money.

A consumer within 14 days after the receipt of the nonfood goods of appropriate quality may return or change it for a similar goods different in size, form, dimension, style, color or completeness, in such a case a difference in price (if any) is to be paid to the seller.

In order to use such a right, a customer needs to observe the following conditions:

- the goods should not be used;
- the consumer qualities need to be conserved;
- a consumer needs to have proofs that the goods have been bought from the seller to whom such a request is addressed.

Certain goods cannot be changed or returned. The list of such goods is set by the Government of the Republic of Belarus.

### **13.4. Advertising**

The legislation of the Republic of Belarus provides obligatory requirements and restrictions concerning:

- advertising of certain goods or services (medical products, products to be used for medical purposes, cosmetic products, alcoholic beverages, beer, tobacco, weapons, narcotics, etc);
- advertising locations (educational establishments, residential areas, etc);
- means of advertising (mass media, television, billboards, etc);
- contents of advertisements (required information, wording, colors, etc).

The following types of advertising require advance approval from state bodies:

- external advertising – regional Executive Committees (Executive Committee of city of Minsk);
- advertising with using of transport – regional Executive Committee (Executive Committee of city of Minsk, and according to the general rule with the subdivision of the State Automobile Inspection of the Ministry of Internal Affairs of the Republic of Belarus);
- advertising of medical products, methods, means, services and works in the sphere of prevention, diagnostics, treatment, rehabilitation and prosthetics, medical techniques and medical equipment and items used for medical purposes, medical technologies, biologically active food additives – the Ministry of Health of the Republic of Belarus;
- advertising of veterinary services – the Ministry of Agriculture and Food Production;
- advertising of services, concerning job placement and education of Belarusian citizens abroad – the Ministry of Internal Affairs.

Such forms of inappropriate advertising as unfair, misleading, unethical, hidden advertising are prohibited under legislation of Belarus.

To make decisions on question of inappropriate advertising is empowered The Ministry of Trade of the Republic of Belarus, as well as local executive and administrative bodies (except the decision to recognize the unfair advertising). The decision about recognition advertisement as inappropriate can contain a requirement to make counter advertising. Counter advertisement in such a case is to be made by the advertiser at its own expense and in terms, stated in the decision.

The National program of accelerated development of services in sphere of information and communication technologies for the period of year 2011 – year 2015 is approved by the decision of the Council of Ministers № 384 dated Mart 28, 2011. The aim of this program is to maintain high rates of development of national infrastructure including improving of the regulatory system in the provision of telecommunication services, data transmission and Internet use.

At the present stage of technologies development the networks can be arranged through the use of wired (cable) and wireless (cable-free) connections. Services of stationary broadband Internet access with data transfer rate from 128 Kb/s and more are among the fastest growing. In order to improve the quality of the service for consumers access to the Internet the external gateway for access to the Internet is constantly expanding to a total capacity of 200 Gbit / s.

Telecommunications services can be provided by:

- **using telecommunications networks;**
- **using the radio frequency spectrum.**

Unified Telecommunications Network of Belarus consists of the following categories of telecommunication networks situated in the territory Belarus:

- public telecommunications network;
- dedicated telecommunications network;
- technological telecommunication network;
- telecommunications networks for special purposes.

The right of radio spectrum using is provided by the allocation of radio frequency bands, radio channel or radio frequencies and/or assignment (purpose) of radio frequency or radio frequency channel. Radio spectrum using without appropriate resolution is prohibited.

Maintenance service activities in the field of public telecommunications (wired and wireless communications, data transmission services in the Internet, etc.) requires obtaining **the license**.

In addition, in Belarus since the February 1, 2010 issues concerning the functioning of **the national segment of the Internet**, which is a set of information networks, systems and resources having Internet connection, located on the territory of the Republic of Belarus and/or using hierarchical names of the national segment of the Internet, have settled by the special act.

Thus, at present:

- Business entities carrying out activities using the Internet, must use only information networks, systems and resources of **the national segment of the Internet, placed on the territory of Belarus** (hosting services should be provided on the territory of Belarus and the server must be physically located on its territory).

- Providers (Internet service providers) have to **identify subscriber devices** (e.g., modems) while providing Internet services, and computer clubs and Internet cafes also must make **user authentication**. In addition, providers and Internet services collective using stations should keep information about provided Internet services for a year.

- There is a **procedure of registration** of information networks, systems and resources of the national segment of the Internet located on the territory of the Republic of Belarus by providers.

According to the legislation of the Republic of Belarus the liability in the form of fines is established for

- realization of goods, performance of works and rendering services on the territory of the Republic of Belarus using information networks, systems and resources with Internet

connection, which are not placed on the territory of the Republic of Belarus and (or) not registered by the established procedure;

- violation of the legislation, which requires to identify subscriber devices while providing Internet services, and (or) users in Internet services collective using stations, to account and store information about the subscriber devices, personal information of users, as well as information about the rendered Internet services;

- violation of the law to restrict users' access of internet services to the information banned for distribution in accordance with legislative acts.

Also in 2010, in the foundations for centralized management of data networks in the country have been made, in particular, the creation of a **Unified republican data network (hereinafter – ERSPD)**.

To ensure the functioning and management of ERSPD (including the accession data networks) Republican Unitary Enterprise “National Center for the exchange of traffic” (hereinafter – NTSOT) was created. Using ERSPD including skipping the international traffic is allowed only through NTSOT which is entitled to join the telecommunications networks of foreign countries.

The main objects of NTSOT are:

- providing of protection against unauthorized access to ERSPD and to the data passing through it, as well as ERSPD management and its development;

- providing of communication of data transmission networks, as well as state agencies and organizations, and other legal entities and individual entrepreneurs in the process of provision of telecommunications services using ERSPD;

- providing of equal access to ERSPD for state agencies and organizations, and other legal entities and individual entrepreneurs;

- organization of settlements for connection of data transmission networks to ERSPD and for providing telecommunications services using ERSPD;

- implementation of technical control of international traffic pass and connection to the telecommunication networks of foreign countries;

- creation of data centers, networks, systems and resources, points of connection to telecommunication networks of foreign countries and ensuring of their functioning.

NTSOT has the right to pass the international traffic, to connect to telecommunication networks, to provide other telecommunications services for reaching of above-mentioned goals. NTSOT also can represent interests of state agencies and organizations, which have data transmission networks connected to ERSPD, for the purposes of concerning functioning and development of ERSPD and investment attraction.

Data transmission networks of legal entities and individual entrepreneurs are connected to ERSPD through NTSOT in the prescribed manner.

Using of ERSPD infrastructure by telecommunications operators, state agencies and organizations, other legal entities and individual entrepreneurs and pass of internetwork traffic including pass of international traffic is held through NTSOT or National telecommunications operator RUP “Beltelecom”.

The court system of the Republic of Belarus consists of the Constitutional Court, general courts and economic courts.

### 15.1. The Constitutional Court

#### 15.1.1. Competence

The Constitutional Court verifies the conformity of legal acts to the Constitution of the Republic of Belarus, international legal acts ratified by the Republic of Belarus, laws of the Republic of Belarus, decrees and edicts of the President of the Republic of Belarus.

#### 15.1.2. Procedure

Only certain entities have the right to appeal to the Constitutional Court with a proposal of verification. They are:

- the President of the Republic of Belarus;
- the House of Representatives of the National Assembly;
- the Council of the Republic of the National Assembly;
- the Supreme Court of the Republic of Belarus;
- the Supreme Economic Court of the Republic of Belarus;
- the Council of Ministers of the Republic of Belarus.

All other subjects are entitled to address to the above-mentioned bodies and persons only with the initiative to verify the conformity of legal acts.

On the result of verification the conformity of legal acts the Constitutional Court accepts the conclusion, which has supreme legal force and direct action.

### 15.2. General Courts

The system of general courts consists of:

- district (city) and military courts;
- regional and Minsk city courts, the Belarusian military court;
- the Supreme Court of the Republic of Belarus.

#### 15.2.1. Competence

General courts consider:

- criminal cases;
- civil cases arising from civil, family, labor, housing, land and other relations provided that at least one of the parties is individual;
  - cases involving creation, legal protection and use of intellectual property, regardless of the parties (only intellectual property judicial board of the Supreme Court of the Republic of Belarus is authorized to consider such cases);
  - cases involving legal entities only if it stipulated by laws of the Republic of Belarus, decrees and edicts of the President of the Republic of Belarus.

Military courts and the Belarusian military court considers civil cases arising from military service relationship, as well as criminal cases of all crimes committed by servicemen.

### 15.3. Economic Courts

The system of economic courts consists of:

- regional economic courts and Minsk City Economic Court;

– the Supreme Economic Court of the Republic of Belarus.

### **15.3.1. Competence**

Economic courts consider:

- cases on economic (business) disputes between legal persons, individual entrepreneurs;
- cases related to realization of entrepreneurial and other economic (business) activities;
- cases on appealing against non-normative legal acts and actions (inactivity) of a state body, which touches on the rights and legitimate interests of the applicant in the sphere of entrepreneurial and other economic activities;
- cases on recognition and enforcement of decisions of foreign courts and foreign arbitral awards on the disputes arising at realization of entrepreneurial and other economic activities;
- cases with participation of the Republic of Belarus, administrative and territorial units of the Republic of Belarus, state bodies, bodies of local government and self-government, organizations, which are not legal persons, officials and citizens in the instances stipulated by laws of the Republic of Belarus, decrees and edicts of the President of the Republic of Belarus.

### **15.3.2. Jurisdiction**

The cases shall be considered on the first instance by the economic courts of the regions and Minsk City Economic Court.

Specified cases shall be considered on the first instance by the Supreme Economic Court of the Republic of Belarus (the cases related to state secrets, disputes between the Republic of Belarus and administrative and territorial units of the Republic of Belarus, etc.)

The Supreme Economic Court of the Republic of Belarus shall have the right to accept to proceedings and to consider any case.

### **15.3.3. Terms**

Considering cases in the court of first instance consists of two main stages:

- preparation of a case for proceedings (as a rule shall be completed by holding the preparatory judicial session not later than 15 days from the date of arrival of the application to the economic court);
- proceedings.

As a rule the case shall be considered by the economic court of the first instance within the time of no more than two months from the date of adoption of the ruling of the economic court on appointment of the case to proceedings.

The term of considering specified cases (disputes over state property, connected with the state registration and liquidation of legal entities and individual entrepreneurs; disputes on the release of property from seizure) is one month from the date of adoption of the ruling of the economic court on appointment of the case to proceedings.

The term of consideration of cases on certain kinds of proceedings (cases on appealing against non-normative legal acts, actions (inactivity) of a state body, cases on recognition and enforcement of decisions of foreign courts and foreign arbitral awards) is one month from the date of arrival of the application (complaint) to the economic court.

The case with participation of foreign persons located outside the Republic of Belarus shall be considered within the term of no more than seven months, unless otherwise established by international treaty of the Republic of Belarus.

The cases with participation of foreign persons, if these persons or bodies of their management, branches, representative offices or their representatives, authorized to conduct the case, reside or live in the territory of the Republic of Belarus, shall be considered in the general terms.

In exceptional cases, taking into account special complexity of the case, the term of consideration of the case can be extended by the chairperson of the economic court or his or



her deputy up to four months, and the cases with participation of foreign persons located outside the Republic of Belarus – up to one year.

#### **15.3.4. Mandative proceedings**

The mandative proceedings means adoption by the economic court of a ruling on an injunction (court order) without consideration and summon of the parties on such demands that are:

- uncontroversial;
- that are recognized (not contested) by the debtor but not satisfied yet;
- with the amount up to 100 base units.

The cases in the order of mandative proceedings shall be considered within twenty days from the date of arrival of the application on institution of mandative proceedings to the economic court.

#### **15.3.5. Proceedings on review of judicial decisions**

The judicial decisions of the economic courts may be appealed in the appeal and cassation instance, in order of supervision.

##### **Appeal instance**

The judicial decisions of the economic court of first instance that do not come into force may be appealed in the appeal instance.

Petitions for appeal shall be considered by the economic court of the appeal instance of the economic court of the region and Minsk City Economic Court.

A petition for appeal can be submitted within 15 days after acceptance by the economic court of the first instance of the appealed judicial decision.

The petition for appeal shall be considered within 15 days from the date of its arrival to the economic court.

In exceptional cases, with account of special complexity of the case, the term for consideration of the petition for appeal can be prolonged by the chairperson of the economic court or his or her deputy, but by no more than 15 days.

##### **Cassation instance**

The judicial decisions of the economic court of first and appeal instances that come into force may be appealed in the cassation instance.

The economic court of the cassation instance is the Cassation Bench of the Supreme Economic Court of the Republic of Belarus.

A cassation appeal can be submitted within one month from the date of coming into force of the appealed judicial decision.

The cassation appeal shall be considered within one month from the date of arrival of the case to the cassation instance.

##### **Order of supervision**

Judicial decisions of the economic courts that have come into force may be reconsidered in the order of supervision only under the protest of the officials which have the right to move the protests.

The following persons shall have the right to move the protests in the order of supervision:

- the Chairperson of the Supreme Economic Court of the Republic of Belarus and his deputies;
- the General Public Prosecutor of the Republic of Belarus and his deputies.

The economic court of the supervising instance shall be:

– the Presidium of the Supreme Economic Court of the Republic of Belarus – with regard to the judicial decisions adopted by the economic courts of the first, appeal and cassation instances;

– the Plenum of the Supreme Economic Court of the Republic of Belarus – with regard to the decisions of the Presidium of the Supreme Economic Court of the Republic of Belarus.

The appeal in exercise of supervision on the judicial decision may be submitted within one year from the date of entry of the judicial decision into legal force.

The appeal in exercise of supervision shall be considered by the official within two months from the date of its arrival.

The protests shall be considered:

– within two months – by the Presidium of the Supreme Economic Court of the Republic of Belarus,

– within three months – by the Plenum of the Supreme Economic Court of the Republic of Belarus.

### 15.3.6. Rates of the state fee

Rates of the state fee for consideration of cases in the economic courts are established by the Special Part of the Tax Code of the Republic of Belarus. Their size depends on type and amount of the claim and other circumstances:

Type of the claim		Rates of the state fee
<b>Claim of ownership with the amount:</b>	up to 100 base units	15 base units
	from 100 to 1 000 base units	5 % from the amount of the claim, but no less than 15 base units
	from 1 000 to 10 000 base units	5 % from 1 000 base units + 3 % from the amount exceeding 1 000 base units
	over 10 000 base units	1% from the amount of the claim, but no less than the amount established in the previous treatment form
<b>Non-property claim submitted by:</b>	legal entities to the Supreme Economic Court of the Republic of Belarus	20 base units for each requirement
	legal entities to other economic courts	10 base units for each requirement
	individual entrepreneurs and individuals	5 base units for each requirement
<b>An application of mandative proceedings with the amount:</b>	up to 100 base units	2 base units
	over 100 base units	5 base units
<b>Appeals:</b>	to appeal instance	40 % from the rate established for non-property claim; 40 % from the rate calculated on the basis of the disputed amount - for the claim of ownership
	to cassation instance	80 % from the rate established for non-property claim; 80 % from the rate calculated on the basis of the disputed amount - for the claim of ownership
	in order of supervision	80 % from the rate established for non-property claim; 80 % from the rate calculated on the basis of the disputed amount - for the claim of ownership

## 16. Contacts of organs of government

### 16.1. The Ministries of the Republic of Belarus

#### **Ministry of Architecture and Construction**

Address 220048, Minsk, Myasnikova st., 39  
Phone/fax 227-26-42 / 200-74-24,  
227-19-34  
Website <http://www.mas.by>  
E-mail [min@mas.by](mailto:min@mas.by)

#### **Ministry of Health**

Address 220048, Minsk, Myasnikova st., 39  
Phone/fax 222-60-33 / 222-46-27  
Website <http://minzdrav.by>  
E-mail [mzrb@belcmt.by](mailto:mzrb@belcmt.by)

#### **Ministry of Foreign Affairs**

Address 220030, Minsk, Lenin st., 19  
Phone/fax 227-29-22 / 227-45-21  
Website <http://www.mfa.gov.by>  
E-mail [mail@mfabelar.gov.by](mailto:mail@mfabelar.gov.by)

#### **Ministry of Taxes and Duties**

Address 220010, Minsk, Sovietskaya st., 9  
Phone/fax 222-49-92, 222-69-49 / 222-64-50, 222-66-87  
Website <http://nalog.by>

#### **Ministry of Natural Resources and Environmental Protection**

Address 220048, Minsk, Kollektornaya st., 10  
Phone/fax 200-66-91 / 200-55-83  
Website <http://www.minpriroda.by>  
E-mail [minproos@mail.belpak.by](mailto:minproos@mail.belpak.by)

#### **Ministry of Industry**

Address 220033, Minsk, Partizansky Ave., 2/4  
Phone/fax 224-95-95 / 224-87-84  
Website <http://www.minprom.gov.by>  
E-mail [minprom4@minprom.gov.by](mailto:minprom4@minprom.gov.by)

#### **Ministry of Communications and Information**

Address 220050, Minsk, Nezavisimosti Ave., 10  
Phone/fax 227-38-61 / 227-21-57  
Website <http://www.mpt.gov.by>  
E-mail [mpt@mpt.gov.by](mailto:mpt@mpt.gov.by)

#### **Ministry of Agriculture and Food**

Address 220050, Minsk, Kirova st., 15  
Phone/fax 227-37-51 / 227-42-96  
Website <http://mshp.minsk.by>  
E-mail [kanc@mshp.minsk.by](mailto:kanc@mshp.minsk.by)

#### **Ministry of trade**

Address 220050, Minsk, Kirova, 8/1  
Phone/fax 227-61-21 / 227-24-80  
Website <http://www.mintorg.gov.by>  
E-mail [mintorg@belpak.by](mailto:mintorg@belpak.by)

**Ministry of Transport and Communications**

Address 220029, Minsk, Checherina st., 21  
Phone/fax 334-11-52 / 292-83-91  
Website <http://www.mintrans.by>  
E-mail [mail@mintrans.by](mailto:mail@mintrans.by)

**Ministry of Finance**

Address 220010, Minsk, Sovetskaya st., 7  
Phone/fax 222-61-37 / 222-45-93  
Website <http://www.minfin.gov.by>  
E-mail [minfin@minfin.gov.by](mailto:minfin@minfin.gov.by)

**Ministry of Economy**

Address 220050, Minsk, Bersona st., 14  
Phone/fax 222-60-48 / 200-37-77  
Website <http://www.economy.gov.by>  
E-mail [minec@economy.gov.by](mailto:minec@economy.gov.by)

**Ministry of Energy**

Address 220030, Minsk, K.Marks st., 14  
Phone/fax 218-21-02 / 218-24-68  
Website <http://www.minenergo.gov.by>  
E-mail [minsecretary@min.energo.net.by](mailto:minsecretary@min.energo.net.by)

**16.2. State Committees of the Republic of Belarus****State Committee on Property**

Address 220005, Minsk, per. Krasnozvezdny, 12  
Phone/fax 288-10-19 / 288-27-25  
Website <http://www.gki.gov.by>  
E-mail [info@gki.gov.by](mailto:info@gki.gov.by)

**State Committee for Science and Technology**

Address 220072, Minsk, Akademicheskaya st., 1  
Phone/fax 284-07-60 / 284-02-79  
Website <http://gknt.org.by>  
E-mail [gknt@gknt.org.by](mailto:gknt@gknt.org.by)

**State Committee for Standardization**

Address 220053, Minsk, Starovilensky trakt, 93  
Phone/fax 233-52-13 / 233-25-88  
Website <http://gosstandart.gov.by>  
E-mail [belst@anitex.by](mailto:belst@anitex.by)

**State Customs Committee**

Address 220007, Minsk, Mogilevskaya st., 45/1  
Phone/fax 218-91-04, 218-90-00 / 218-91-97  
Website <http://www.customs.gov.by>  
E-mail [odo@gtk.belpak.minsk.by](mailto:odo@gtk.belpak.minsk.by)

**16.3. Bodies of local government****Brest Regional Executive Committee**

Address 224005, Brest, Lenina st., 11  
Phone/fax 21-22-37 / 21-22-11  
Website <http://www.brest-region.by>  
E-mail [contact@brest-region.by](mailto:contact@brest-region.by)

**Vitebsk Regional Executive Committee**

Address

Phone/fax

Website

E-mail

210010, Vitebsk, Gogol st., 6

(8 0212) 36-37-73

<http://www.vitebsk-region.gov.by>

vitoblisp@vitebsk.by

**Gomel Regional Executive Committee**

Address

Phone/fax

Website

246050, Gomel, Lenina Ave., 2

74-42-68 / 74-51-19

<http://www.gomel-region.by>**Grodno Regional Executive Committee**

Address

Phone/fax

Website

E-mail

230023, Grodno, Ozheshko st., 3

72-19-14 / 73-05-20

<http://www.region.grodno.by>

Groblisp@mail.grodno.by

**Minsk Regional Executive Committee**

Address

Phone/fax

Website

220030, Minsk, Engels st., 4

500-41-44 / 227-24-15

<http://www.minsk-region.gov.by>**Minsk City Executive Committee**

Address

Phone/fax

Website

220050, Minsk, Nezavisimosti st., 8

227-44-33 / 227-68-66

<http://www.minsk.gov.by>**Mogilev Regional Executive Committee**

Address

Phone/fax

Website

212030, Mogilev, Pervomaiskaya st., 71

32-80-59 / 22-05-11

<http://region.mogilev.by>