

## **General Provisions on Foreign Investments on the Territory of the Republic of Belarus**

(For more detailed information contact to National Investment Site of the Republic of Belarus:  
<http://www.invest.belarus.by> )

The following organizations and persons are being admitted as foreign investors in the Republic of Belarus:

- Foreign states and their political subdivisions on behalf of the authorized bodies;
- The international organizations;
- Foreign legal persons;
- Foreign organizations which are not legal persons founded as per legislation of the foreign states;
- Foreign citizens;
- Physical persons (citizens of the Republic of Belarus and the person without citizenship) constantly living outside the Republic of Belarus.

The investors are granted the right to carry out investment activity in any of the listed forms:

- Foundation of the legal person;
- Purchase of property or rights of property, namely;
- Shares in the authorised capital of the legal person, including cases of increase in the authorised capital of the legal person;
- Real estate;
- Securities;
- The rights for the objects of the intellectual property;
- Concessions;
- Equipment;
- Other fixed assets.

The sources of investments can be the following:

- Own funds of the investors, including redemption funds, the profit which has been retained after payment of taxes and other compulsory payments, including the funds received from sale of the shares in the authorised capital of the legal person;
- Borrowed and debt funds, including bank credits and credits of nonbank credit and finance organizations, loans of the founders (participants) and other legal and physical persons, bond loans.

Legal regime of the foreign investments, the conditions of activity of the foreign investors and legal persons being founded with their participation can not be less favorable, than the corresponding regime for property and property rights, and also

the conditions for investment activity of the legal and physical persons of the Republic of Belarus.

## **Features of Legal Status of the Commercial Organizations with Foreign Investments**

Foreign investors have the right to establish on the territory of the Republic of Belarus legal persons with any volume of foreign investments and in any organizational - legal forms, and also their branches and representations.

Legal persons in the authorised capital of which foreign investments comprise the volume equivalent to not less than USD 20000.00 and which pursue extraction of the profit as the basic purpose of their activity and (or) distribute the received profit between the participants, are considered to be the commercial organizations with foreign investments on the territory of the Republic of Belarus. Legal persons get the status of the commercial organizations with foreign investments from the date of the state registration of the commercial organizations with foreign investments.

The commercial organizations with foreign investments and also foreign investors carry out payment of taxes, duties and make use of tax and customs privileges according to the tax and customs legislation of the Republic of Belarus if other is not stipulated by the International contracts of the Republic of Belarus.

## **Order and Terms of Formation of the Authorised Capital of the Commercial Organizations with Foreign Investments**

The Authorized Capital stated in the constituent documents of the commercial organization with foreign investments (except for the commercial organization with foreign investments in the form of a Public Corporation) should be formed not less than by 50 % within the first year from the date of State registration of this organization due to deposits to it by each of the founders of not less than 50 % of the share and in full - before expiration of two years from the date of registration.

The Authorized Capital of the commercial organization with foreign investments in the form of a Public Corporation stated in the constituent documents should be formed in full before State registration of such organization.

The Authorized Capital of the commercial organization with foreign investments should be declared in US dollars, and in case of foundation of the commercial organization with foreign investments in the form of joint-stock company or with use of the property of the Republic of Belarus - as well as in the official monetary unit of the Republic of Belarus.

The Founders (participants) of the commercial organization with foreign investments have the right to bring deposits to the Authorized Capital of this organization in monetary and (or) non-monetary form.

The fact of formation of the Authorised Capital of the organization is subject to auditor check and should be proved by the Auditor Conclusion in the form authorized by Decision № 85 of the Ministry of Finance of the Republic of Belarus dated 30.06.2005. Not later than 30 days from the date of termination of the corresponding period of formation of the Authorised Capital the organization is obliged to give in the body which has registered it the Auditor Conclusion on formation of the Authorised Capital.

However in practice the founders quite often are not stacked in the stipulated dates. Among the reasons one can state financial difficulties, judicial disputes and other. Sometimes two days are short of because of delay in transfer of money from the servicing bank of the founder which is in the other country, in the servicing bank of the commercial organization. In these cases the organization are obliged to receive sanction to change the terms of formation of the Authorised Capital to the side of increase.

According to Decision № 837 of the Government of the Republic of Belarus dated June, 3, 1999 the right in exceptional cases to increase the terms of formation of the Authorized Capitals of the organizations with foreign investments for the term of about six months from the date of termination of the corresponding period of formation of the Authorised Capitals. Now this authority remains with the Ministry of Foreign Affairs and has not been transferred to the Regional Executive Committees and the Minsk City Executive Committee.

As the grounds for change of the term of formation of the Authorised Capital it is possible to consider orientation of activity of the organization for production, number of workers, export of production, manufacturing of import replacing products (works, services), the size of the Authorised Capital and also participation in social programs on the territory of the Republic of Belarus.

These grounds and the reasons of delayed formation of the Authorised Capital should be stated in the Application and are documentary confirmed with the corresponding documents.

Besides it is necessary for organization to secure with petition of the Regional Executive Committee at the place of location of the organization or petition of other Republican State bodies (if available). In case when the founder of the organization is the State Enterprise or the enterprise which Authorized Capital has been formed from the shares of the state ownership, representation of the petition of the Ministry of Economics of the Republic of Belarus is a must.

In case of necessity of extension of the terms of formation of the Authorized Capitals of the commercial organizations with foreign investments for the term over six months from the date of termination of the period of formation of the Authorized Capitals established by the legislation, the Ministry of Foreign Affairs in due order offers to extend the terms of formation of the Authorized Capital of such organizations in the Council of Ministers of the Republic of Belarus.

### **State Registration of Amendments and Additions being Introduced to the Constituent Documents of the Commercial Organizations with Foreign Investments**

In case of amendment of the data reflected in the constituent documents of the commercial organization with foreign investments in the cases established by the legislation of the Republic of Belarus, its founders (participants) are obliged within 30 days to introduce the respective alterations to the constituent documents of this organization.

The documents necessary for registration of amendments and additions regarding the data being introduced to the United State Register of legal entities and individual entrepreneurs, should be submitted by the commercial organization with foreign investments in the registering authority within 30 days from the date of amendments and additions in the constituent documents if otherwise is not stipulated by the legislation of the Republic of Belarus.

The registering authority registers the amendments and additions in the constituent documents of the commercial organization with foreign investments regarding the data brought in the United State Register of the legal entities and individual entrepreneurs, within not more than 15 days from the date of submission of necessary documents, and within 10 days informs the Ministry of Justice of the Republic of Belarus of these amendments and additions.

### **Transformation of the Commercial Organization without Foreign Investments into the Commercial Organization with foreign Investments**

According to Article 81 of the Investment Code of the Republic of Belarus the commercial organization with foreign investments also can be founded by purchasing by the foreign investor of a share of participation or shares in the operating legal entity without foreign investments, therefore the size of foreign investments in the Authorized Capital of such legal entity will make the sum not less than USD 20000.00 in equivalent.

Depending on the organizational and legal form of the operating legal entity various mechanisms of purchasing by the legal entity of the status of the enterprise with foreign investments will be applied also.

In joint-stock companies this mechanism can be as follows:

1. If this is Close Corporation, first of all the investor - the third party should become the shareholder of the given society. This takes place as a result of purchasing of the shares of the Corporation by it (one share is enough). For this purpose the General Meeting of Shareholders of the Society takes place with the agenda of purchasing of the shares of the concrete shareholder, during which all shareholders of the Corporation and the Corporation itself refuse the right of primary purchase of the shares. The contract of sale and purchase of the share should be registered at the professional participant of a securities market.

The following stage of the given process is increase of the Authorised Capital of a Corporation by change of a nominal value of the share or increase of their quantity due to the sums of reassessment of the available property (fixed assets, incompleated construction and the non-installed equipment). Thus the Authorized Capital should not exceed the size of the net wealth of the Corporation.

After that in the course of the General Meeting of the participants of the Corporation they take the Decision on carrying out the closed subscription for shares, the closed subscription for shares is being carried out, the Decision on share issue and about increase in the Authorized Capital of the Corporation is being taken. If as a result of the carried out closed subscription for shares the sum of the paid by the investor and offered for subscription shares amounted to not less than USD 20000.00 at the rate of the National Bank of the Republic of Belarus, the Corporation gets the status of the Enterprise with Foreign Investments.

2. The mechanism of acquiring the status of the Enterprise with Foreign Investments in the Public Corporation is similar to the mechanism established in the Close Corporations.

The peculiarity is approval at the General Meeting of Shareholders of the Corporation of brief information on the terms of public subscription for shares and offering circular of issue of shares, and also the certification of brief information and registration of the offering circular of issue of shares in the Department on Securities at the Ministry of Economics of the Republic of Belarus.

Also it is necessary to remember that in the Close Corporation the subscription is possible only among shareholders of the Corporation, and in the Public Corporation - among uncertain circle of persons.

3. The Limited Liability Society can get the status of the organization with foreign investments into the following order:

1) At the General Meeting of the participants of the Corporation the Application of admission of the investor in the structure of the participants of the Corporation is being considered, the terms of contribution in the Authorized Capital of the

entering participant, his share and so on are being stipulated. If the contribution of the investor in the Authorized Capital amounts to more than USD 20000.00, the Corporation takes the Decision on change of the status and the corresponding documents are being submitted for State registration;

2) Together with the invited investor to carry out the General Meeting of the Participants of the Corporation with the agenda about purchase of a share of the concrete participant of the Corporation , at which all the participants of the Corporation and the Corporation itself refuse the right of primary purchase of a share. In this case the Contract on sale and purchase of a share on the same terms (at the same price) is being concluded with the investor - the third party.

After that the General Meeting of the Participants of the Corporation takes the Decision on increase of the Authorized Capital of the Corporation due to the additional contributions of the participants, about redistribution of shares in the Authorized Capital. In case the contribution of the foreign participant in the Authorized Capital amounts to the sum of more than USD 20000.00, the Corporation takes the Decision on change of the status and petitions before the corresponding Executive Committee for State registration.

## **Liquidation of Commercial Organizations with Foreign Investments**

Liquidation of the commercial organizations with foreign investments is being carried out by the Decision of their founders (participants), the proprietor of the property or the body of this organization authorized for this by the constituent documents, or juridically in the cases stipulated by the Acts of the Republic of Belarus.

The basis for liquidation of the commercial organization with foreign investments can be also non-observance by this commercial organization of the order of formation of the Authorized Capital.

## **Currency Regulation**

Currency regulation in the Republic of Belarus is carried out by the Banking Code, the Law “On Currency Regulation and Currency Control”, the Ordinance of the Board of the National Bank “On Approval of the Rules of Currency Transactions”, and other normative legal acts. Belarus recognizes the priority of universally accepted principles of the international law, and ensures compliance of the country’s currency legislation with the same.

The National Bank, as a currency regulating body, shall:

- fix the official rate of the Belarusian rouble to other foreign currencies;
- regulate circulation of currency values;

- establish the procedure of opening, maintaining, and mode of accounts in any banks and non-banking financial institutions;
- establish the procedure of carrying out currency transactions in the Belarusian roubles between the residents and non-residents;
- establish the rules of exchange trade in foreign currency;
- issues permissions (licenses) for carrying out currency transaction connected with capital flow, etc.

Any natural and juridical persons (residents and non-residents) may open their accounts with the banks of the Republic in the Belarusian roubles and any foreign currency which official exchange rate to the Belarusian rouble was fixed by the National Bank.

It is **obligatorily that any foreign currency shall be sold** by the resident juridical persons. The procedure and amount of sale, as well as the events of full or partial exemption from payment have been established by the Decree of the President of the Republic of Belarus “On Improvement of the Procedure of Obligatory Sale of any Foreign Currency”, and the Ordinance of the Board of the National Bank “On Approval of the Instruction in the Procedure of Obligatory Sale of any Currency Funds by the Belarusian Juridical Persons and Individual Entrepreneurs”.

The routine of currency transactions is more liberal rather for non-residents than for residents. Any settlements between the residents both in the Belarusian roubles and foreign currency shall be effected practically without any restrictions. For settlement of accounts in the Belarusian roubles, non-residents are permitted to use any currency which official exchange rate to the Belarusian rouble was fixed by the National Bank. Any dealings in securities in the Belarusian roubles and foreign currency between non-residents shall be made in the territory of Belarus without any restrictions, save as otherwise is provided for by the Belarusian legislative acts.

Import of any foreign currency, securities and payment documents in foreign currencies by any natural persons to Belarus shall be unrestricted, subject to compliance with all requirements of the customs legislation.

Contribution of any foreign currency and securities to the authorized capital of a resident juridical person shall be made by a non-resident without any additional permission issued by the National Bank. According to a general rule, all on-going currency transactions shall be carried out in accordance with established procedure without any restrictions. The rules of currency transactions related to flow of capital have been simplified for natural and juridical persons.

No restrictions exist as to the amount of purchase of any cash currency by any one natural person in any one exchange station per day, and as to the amount of transaction in the off-exchange money-market.

Subsequently, exchange rate policy of the government will also be directed toward protection and assurance of stability of the Belarusian rouble, in particular, its purchasing power and the rate of exchange to any foreign currency. Improvement of currency regulation through converging and unification of money-market conditions with the Russian Federation will be continued.

## **Investment Climate**

A stable political situation and absence of ethnic or religious conflicts make the country more attractive for the investors.

Belarus created favorable legal conditions for the investors. To intensify the investment activity and improve the investment climate, the following actions are to be implemented in Belarus:

- o signing international treaties and agreements on preventing double taxation and on security of investments;
- o setting up a guarantee credit fund for small business entities providing bank-granted credit guarantees and securities for them;
- o building up an investment potential of the banking sector by attracting the external capital and household resources; and
- o more fully using capacities of free economic zones opening up inner territories for foreign investors and businessmen.

To efficiently use the investments, a list of investment projects of the Republic of Belarus for a period up to 2010 was drawn up. The state would lay special emphasis on implementation of investment projects to modernize production facilities with science-intensive and energy-conservation high technologies, refurbish and develop export-oriented and import-substituting industries in the petrochemical, microelectronic, agricultural machinery, medical, forestry, woodworking and pulp and paper sectors and also in the sphere of modern transport communications, telecommunication, tourism and construction services.

To implement costly investment projects, new investment forms are applied: concessions, project and venture financing and leasing. The investor may enter an investment agreement providing additional guarantees to the investor in terms of economic and other conditions of project implementation in the Belarusian market.

The new Land Code, adopted this year has become a prerequisite for improvement the land issue. In particular, the Code set up a foundation for the development of real estate market by providing the possibility to acquire ownership of land, use it as collateral for bank loans.

In 2009 further improvement of the legislative framework is going on. Recently The President's decree "On additional conditions of investment projects realization on the territory of Belarus" dated 6-th August , 2009 number 10 was adopted, as

well as the Presidential Edict " On granting to individuals and legal entities the authority to represent the interests of the Republic of Belarus on investment attraction into the Republic of Belarus" dated August 6, 2009 № 413. The decree provides for a three-level system of investment contracts. At the first level the investment agreement is based on the decision of the executive committee or a profile ministry. In this case, the investment project is realized within the specific branch of industry or the administrative-territorial unit, and within the competence of a state body or executive committee. At the second level the investment agreement is based on the decision of the Government, unless the investment treaty does not provide the investor privileges and preferences, except provided by legislative acts, by this Decree and other decisions of the President, including privatization cases. At the third level the investment agreement is based on the decision of the Government in coordination with the President of the Republic of Belarus with provision to investor privileges and preferences, not established by legislative acts, including privatization cases. Regardless of the level of the investment agreement, this decree grants additional preferences for the realization of investment projects. In particular, it provides:

- The right to construct investment objects in parallel with the development, of subsequent phases of construction;
- Simplification of obtaining land, without auction, at no charge for making a contract, and with a fixed land rent;
- Exemption from the compensation of losses of agricultural and forestry production caused by the withdrawal of land;
- Exemption from import customs duties and value added tax when importing equipment and spare parts for the objects of the investment project into the territory of Belarus.;
- Exemption from taxes to local budgets.

Edict number 413 has introduced new institutional framework for investment activity - investment agents. Status of the investment agent can obtain both legal entities and private persons capable of conducting the preparation of investment projects for implementation, and negotiate with potential investors. The introduction of this institution shows once again that Belarus is open for investors and is ready for investment cooperation.