



Starting business in Belarus: legal forms, guarantees & privileges

The Pan-Baltic M&A and Business Law Firm

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Belarus

- After seven decades as a constituent republic of the USSR, Belarus attained its independence in 1991. It has retained closer political and economic ties to Russia than any of the other former Soviet republics. Belarus and Russia signed a treaty on a two-state union on 8 December 1999 envisioning greater political and economic integration. Although Belarus agreed to a framework to carry out the accord, serious implementation has yet to take place. Since his election in July 1994 as the country's first president, Aleksandr LUKASHENKO has steadily consolidated his power through authoritarian means. Government restrictions on freedom of speech and the press, peaceful assembly, and religion remain in place (CIA)

Belarus

- Population 9,648,533 (July 2010 est.)
- Urban population: 73% of total population (2008)
- Belarusian 81.2%, Russian 11.4%, Polish 3.9%, Ukrainian 2.4%, other 1.1%
- Life expectancy at birth (2010 est.)
 - male: 64.95 years
 - female: 76.67 years
- Capital city Minsk

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Belarus

- GDP (purchasing power parity), USD 120.7 billion (2009)
- GDP per capita 12,500 (2009)
- GDP composition per sector: agriculture: 9.2%, industry: 41.8%, services: 49% (2009)
- Labor force: 5 million
- Unemployment: Does not exist

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General Information on the Legal System in Belarus

- The legal system belongs to the Romano-German legal family with insignificant role of precedents.
- The types of legal acts:
 - Constitution (supreme law of the country)
 - Codes
 - Decrees, Edicts and Directives of the President
 - Laws of the Parliament
 - Decisions of the Government
 - Bylaws

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Contractual principles

- Freedom of contract
- Restrictions on ownership of real properties
 - Not possible for foreigners
- Weak protection of intellectual property rights
- Complicated laws; functioning of the laws and presidential decrees is oftentimes hard to enforce without conflicts
- Tax laws are extremely complicated and accounting activities even more complicated

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Court system

- Independent courts, but the ruling decision-makers have strong influence in the appointment process
 - Supreme Court (judges are appointed by the president); Constitutional Court (half of the judges appointed by the president and half appointed by the Chamber of Representatives)
- In general the similar kind of three instance structure as in Finland
- Great differences in the experience and knowledge of the judges in lower courts
- Winning against the State might be close to impossible
- Arbitration is recognised, but not always

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Doing business in Belarus: organizational and legal forms

Limited Liability Company (LLC) is the type preferred by most foreign investors. Main advantages are:

- Low costs of foundation / relatively easy to establish
- No minimum authorized capital requirement
- Easy transfer of shares
- Easy exit from the company
- Simple management structure

Alternative company forms:

- Added liability company
- Unitary enterprise
- Closed joint-stock company

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LLC under Belarusian laws

Shareholders

- At least 2 (natural persons/legal entities, foreign/Belarusian - any combination possible)

Management

- Supreme managing body - General meeting of the shareholders
- Board of Directors: number of the members is not limited
- In the Board of Directors, there is Director General with prevailing power
- Directors, Director General may be foreign citizens
- Supervisory board for general management and control over the company's activity may be established.

Timing

- Registration takes 2 weeks on the average

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Commercial Organization with Foreign Investments („COFI“)

COFI is a commercial company with special legal status. In order to become a COFI, an LLC should:

- have at least one foreign shareholder
- have an authorized capital exceeding the equivalent of USD 20 000

Major Privileges for COFI:

- a foreign director may be hired without obtaining a special license to recruit foreign labor force
- gradual formation of authorized capital: 50% should be contributed during the 1st year, 50% during the 2nd year after incorporation

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Guarantees and incentives provided to foreign investors by Belarusian laws: 1/3

Main investment law in Belarus is the **Investments Code of 2001**.

Major Guarantees:

- The right to private property and other legally acquired titles
- Equality of the rights granted to the investors, both government and private ones, equal protection of their rights and lawful interests without any discrimination
- Stability of the investors' rights in the course of their business activity
- Free disposal of property and the results of investment activity

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Guarantees and incentives provided to foreign investors by Belarusian laws: 2/3

- Free disposal of the profit: reinvestment, repatriation
- Protection of investments against nationalization, requisitioning or measures of similar effect without a timely and full compensation to the investor
- Protection against unlawful actions of government authorities

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Guarantees and incentives provided to foreign investors by Belarusian laws: 3/3

Additional tools to stimulate foreign investors' activity:

- **Investment agreement** which may be concluded with the Republic of Belarus directly and provide additional guarantees by the government concerning taxes and customs duties, environmental regulations, expatriation of profits, etc.
- **Concessions** for investment activity with regard to water, forest, underground resources and other objects in government's exclusive property

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International treaties of Belarus

- Belarus - Finland:
 - Agreement on Promotion and Protection of Investment of 2006
 - Agreement on Avoidance of Double Taxation and Prevention of Tax Evasion with Regard to Income Tax of 2007
- Belarus - Estonia:
 - Agreement on Promotion and Protection of Investment of 2009
 - Agreement on Avoidance of Double Taxation and Prevention of Tax Evasion with Regard to Income Tax of 1997
- International Convention on Settlement of Investment Disputes between States and Nationals of Other States of 1965
- Convention Establishing the Multilateral Investment Guarantee Agency of 1985

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Special issues to look out for when establishing a company in Belarus 1/2

- Register a trademark and a domain name as early as possible
- Contents, form, legalization, translation of documents provided for incorporation by foreign shareholders
- Contents of the constituent documents: division of competences between the managing bodies, powers of the Director, decision-making procedures
- Director: pay attention to the contents of the labor contract, limitation of powers in the contract and the Company's Articles.

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Special issues to look out for when establishing a company in Belarus 2/2

- Premises: depending on company's profile, search for office / warehouse / etc. may take time as well
- To be able to perform licensed types of activities, the company should comply with certain licensing requirements
- To have excellent accountant

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Licensed types of business activity

At present, there are numerous types of business activity subject to licensing (obtaining a special permit). Licenses commonly needed by companies with foreign investment include, *inter alia*:

- License for carriage of passengers and goods
- License to recruit foreign labor force
- License for freight forwarding
- License to open a customs warehouse
- License to provide security services to natural and legal persons
- License for retail trade
- License for activities in the sphere of industrial safety
- *NB! From January 1, 2011 several types of business activity will be exempt from licensing requirements (including recruitment of foreign labour force, retail trade, carriage).*

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Procedure of obtaining a license

- By default, any license should be issued within 1 month after the respective application has been filed
- This period may be prolonged in case licensing authority decides to verify company's ability to perform licensed activity
- In practice, obtaining some licenses takes longer than standard period (e. g., 2 - 6 months in case with the license to recruit foreign labor force)
- Besides filing a basic package of documents along with the application, the company may need to present additional proof of compliance with special licensing requirements (personnel with special qualifications, availability of special manufacturing assets, special premises, etc.)

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Belarus privatization

Belarusian Government has approved:

- Privatization Plan for 2008 - 2010
- List of public companies in which the Government will sell its shares in 2008 - 2010

Around 600 companies are for sale.

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Basic privatization procedures under Belarusian laws

- Letter of Intent (LOI) sent by the foreign investor to the State Committee on Property/ Branch Ministry/ State Concern
- Based on the LOI, the Committee prepares a draft decision on sale of the government-owned shares
- Draft decision approved by government authorities supervising the company in question
- The President issues the Decree on sale of the shares
- The Committee arranges evaluation of the shares
- Shares are sold at a public tender
- Average duration of the procedure: 6-7 months in total
- **But: most notable privatizations (telecom, banking sectors) are conducted through direct sale negotiations.**

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Privatization Plan 2008 - 2010

It is recommended to join the privatization process at an early stage when:

- negotiations with the company's employees are held
- initial decision on privatization is made
- basic terms of privatization are approved by government authorities.

The investor then acts as the founder of the privatized company along with the State, provided that he wins at the tender. The main criteria during the selection is the **investment plan** provided by the investor.

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Alternative Ways of Obtaining Preferential Treatment 1/2

- Establishing a company in a Free Economic Zone (FEZ)
- 6 FEZs (1 per administrative region)
- Preferences:
 - tax free profits for five years, then a 50% exemption
 - exemptions from real estate tax
 - 50% discount on VAT on import substituting goods manufactured within FEZ
 - and others.

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Alternative Ways of Obtaining Preferential Treatment 1/2

- Establishing a company in a High Technologies Park
- Preferences:
 - Exemption from taxes, including VAT, profit tax, and customs duties. Employee income tax - 9 % (exemptions effective until 2020), etc.
 - A company shall not necessarily be physically located in the Park

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Banking and insurance

- Banking sector is almost fully controlled by local State owned banks
 - Local lending is heavily to apartment buyers
 - Interest rates are very high in local currency, hard currency loans are almost impossible to get
- Insurance providers are mainly local, some foreign firms have established their businesses in Belarus
 - Insurance prices are relatively high
 - Not all forms of insurance are possible

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Thank you!

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