

## **Investment activity in the Republic of Belarus**

General legal conditions of performance of investment activity in Belarus are determined by the Investment Code of the Republic of Belarus, which is aimed at stimulating state support of investment activities, as well as protection of the rights of investors in the territory of the Republic of Belarus. For example, the Investment Code of the Republic of Belarus provides guarantees of use of results of investment activities and investment protection.

Foreign investors in the Republic of Belarus in accordance with the Investment Code of the Republic of Belarus shall be recognized:

foreign states and their administrative-territorial units in the person of authorized state bodies;

international organizations;

foreign legal entities;

foreign organizations that are not legal entities and established in accordance with the legislation of foreign states;

foreign citizens.

In accordance with the legislation foreign investors have equal rights with the Belarusian legal entities and individuals.

In accordance with the second part of Art. 51 of the Investment Code of the Republic of Belarus, mineral wealth, waters, forests, lands, as well as objects, which in accordance with the legislation of the Republic of Belarus belong to the exclusive property of the state, may be transferred to the concession, including a transfer to a foreign investor.

In accordance with Article 5 of the Investment Code of the Republic of Belarus investment activities in the Republic of Belarus shall be conducted in the following forms:

- creating a legal entity;

- acquisition of property or property rights, and namely:

in the authorized capital of a legal entity, including the cases of increase of the authorized capital of a legal entity;

real estate;

securities;

rights to intellectual property objects;

concessions;

equipment;

other fixed assets.

According to the Investment Code of the Republic of Belarus the state guarantees to an investor the right of ownership and other proprietary rights, as well as legally acquired property rights, and protects these rights.

The investor is entitled to dispose at his own discretion of profit (income) generated as the result of investment activities, including performance of reinvestment on the territory of the Republic of Belarus in accordance with the legislative acts of the Republic of Belarus.

The foreign investor is guaranteed after payment by him (it) of all taxes and other obligatory payments established by the legislation of the Republic of Belarus an unimpeded transfer out of the Republic of Belarus of belonging to him (it) profit (income) received in the territory of the Republic of Belarus as a result of performance of investment activities including transfer of the proceeds from total or partial disposal of investment property upon termination of the investment activities.

### **Participation of foreign investors in the privatization of state property**

In accordance with the Law of the Republic of Belarus "On privatization of state property and the transformation of state unitary enterprises into open joint stock companies" (January 19, 1993 No. 2103-XII, as amended on July 16, 2010) foreign investors are entitled to buy state property in the process of privatization.

In accordance with Article 1 of the mentioned Law of the Republic of Belarus **objects of privatization** of state property are the enterprises as property complexes of state unitary enterprises, and stocks (shares in authorized capitals) of business entities being in the ownership of the Republic of Belarus or in the ownership of the administrative-territorial units.

**Cooperation with investors** in the sphere of privatization is envisaged through the sale of:

- stocks (shares in authorized capitals) at an auction;
- stocks (shares in authorized capitals) at a competitive tender;
- enterprises as property complexes at an auction;
- enterprises as property complexes at a competitive tender;
- stocks of an open joint stock company on the results of trust management.

**Decision on the sale of stocks** at an auction or at a competitive tender in the process of privatization shall be adopted in accordance with the Decree of the President of the Republic of Belarus dated March 20, 1998 No. 3 "On privatization of state property in the Republic of Belarus" (as amended on March 11, 2011):

in respect of stocks of open joint stock companies, which do not belong to strategically important and are included in the plan of privatization of the objects of privatization approved by the Council of Ministers of the Republic of Belarus in consultation with the President of the Republic of Belarus - by the State Property Committee;

in respect of stocks of open joint stock companies, which are included in the list of legal entities ensuring the operation of strategically important sectors of the economy and (or) serving other important state needs that is to be approved by the Council of Ministers of the Republic of Belarus in consultation with the President of the Republic of Belarus - by the President of the Republic of Belarus.

**A seller of the stocks** is the State Property Committee of the Republic of Belarus and the organizer of the biddings is the State Property Fund of the State Property Committee of the Republic of Belarus. A tender or an auction is open to all legal entities

and individuals, including foreign ones, with the exception of the Belarusian legal persons, whose share of state ownership in the authorized capital is 50 percent or more.

According to the legislation upon the sale at a competitive tender or an auction of blocks of stocks in the amount of 5 percent or more in the authorized capital of open joint stock companies located in the city of Minsk and regional cities **an initial price of the stocks** shall be set according to their market value. In other cases the initial price of stocks offered for sale shall be set by according to the reported value of the stocks.

**Decisions on privatization** shall be adopted in respect of enterprises as property complexes being in the ownership of:

the Republic of Belarus - by the President of the Republic of Belarus or a state body authorized by him (it);

the administrative-territorial units - in the manner determined by relevant local Councils of Deputies. In the cases stipulated by the legislative acts decisions on privatization are taken in consultation with the President of the Republic of Belarus.

**The initial selling price of an enterprise** as a property complex upon the sale at an auction (a competitive tender) (except for the case of sale of the enterprise as a property complex with a number of employees up to 100 people, outstanding financial liabilities of which as of the date of determining the estimated value of the enterprise as a property complex equals the book value of enterprise's assets or exceeds it) shall be determined according to its estimated value, unless otherwise established by the President of the Republic of Belarus.

Estimated value of an enterprise as a property complex shall be determined as of the first day of the month and is valid for 12 months as from the date, on which it was defined.

The initial selling price of an enterprise as a property complex with a number of employees up to 100 people, outstanding financial liabilities of which as of the date of determining the estimated value of an enterprise as a property complex equals the book value of the assets or exceeds it, upon the sale at a competitive tender shall be one base value as of the day of holding the tender established in accordance with the acts of legislation.

**A loss-making state organization** may be sold to a legal entity through a tender in the process of privatization in accordance with the Edict of the President of the Republic of Belarus dated February 25, 2008 No. 113 "On the procedure and conditions of sale to legal entities of enterprises as property complexes belonging to loss-making state organizations".

**Mandatory conditions** of the sale for buyers are:

implementation of an investment project and social programs to support the collective of employees;

assumption of outstanding obligations of the loss-making state organization;

maintenance of jobs, creation of additional jobs in accordance with the investment project.

**The initial selling price of the enterprise** shall be set in the amount of 20 percent of its estimated value. In the case, where the estimated value of the enterprise equals zero or is a negative quantity, its selling price will be one base value.

**Buyers will be provided with:**

a deferral for three years of debt redemption in the payment of taxes, charges (duties) to the republican budget, payment of customs charges; repayment budgetary loans, including interest for their use, and budgetary facilities;

an extension for three years for payment of taxes, charges (duties) to the republican budget, for six months - payment of customs charges and for two years - for payment of mandatory payments to the Social Welfare Fund.

A buyer shall channel monetary funds released due to a deferral (an extension) to financing of investment in capital assets and replenishment of circulating assets of the acquired enterprise.

In addition, in the process of transformation of state enterprises into open joint-stock companies investors may act as **another than a State founder** of such open joint stock companies, subject to depositing cash and (or) non-cash contributions into authorized capitals.

The selection of other than the state founders is performed by means of holding a competitive tender, and in the event of recognizing the competitive tender as failed due to the fact that an application for participation in the competitive tender was submitted only by one participant - on the results of direct negotiations of a body for privatization with a single participant of the competitive tender.

**The procedures** of holding an auction (a competitive tender) for the sale of objects of privatization, determining of the initial selling price of stocks (shares in authorized capitals) of business entities, as well as holding a competitive tender for selection of other than the State founder are established by the resolution of the Council of Ministers of the Republic of Belarus dated December 31, 2010 No. 1929 "On introduction of amendments and additions to certain laws of the Republic of Belarus and recognizing as ceased to be in force certain legislative acts of the Republic of Belarus and their individual provisions on the issues of privatization of state property".

**The Plan of privatization** of objects of privatization being in the ownership of the Republic of Belarus for the years 2011-2013 and **the Plan of transformation** of the republican unitary enterprises into open joint stock companies for the years 2011-2013 are approved by the resolution of the Council of Ministers of the Republic of Belarus of March 21, 2011 No. 348.

**Investor's participation in auctions, competitive tenders for acquisition of real estate units**

**The Procedure for disposal of** state property (excluding residential buildings and living accommodations) is determined by the Edict of the President of the Republic of Belarus dated September 14, 2006 No. 575 "On the procedure of disposal of state property".

In accordance with the above-mentioned Edict alienation of property being in the ownership of the Republic of Belarus such as: buildings, structures, isolated premises (except for residential buildings and living accommodations), not yet completed by construction of capital facilities (except for not yet completed by construction

residential buildings and living accommodations), transfer mechanisms, other real estate, the value of which exceeds 10 thousand base values shall be carried out by a decision of the President of the Republic of Belarus.

The alienation of buildings, structures, premises, incomPLETED constructions, devices, the value of which is from 5 thousand to 10 thousand base values, shall be carried out by the decision of the republican bodies of state administration, other state organizations subordinated to the Government of the Republic of Belarus, as agreed with the Council of Ministers of the Republic of Belarus.

The alienation of buildings, structures, premises, incomPLETED constructions, devices, the value of which is up to 5 thousand base values, shall be carried out by the decision of the republican bodies of state administration, other state organizations subordinated to the Government of the Republic of Belarus, as agreed with the State Property Committee of the Republic of Belarus.

Sale of real property units being in state property shall be performed at auctions or through a competitive tender. The sale of objects to a particular buyer is possible.

**Bidders** at the auction may be: individuals including individual entrepreneurs, legal entities that are resident in the Republic of Belarus, as well as individuals including individual entrepreneurs, legal entities that are non-resident of the Republic of Belarus.

The Edict of the President of the Republic of Belarus dated February 13, 2007 No. 77 "On some issues of lowering the initial selling price of the property being in the republican ownership" established that the initial selling price at biddings of property being in the republican ownership may be lowered:

after the first unsuccessful or frustrated biddings for the sale of the object of the republican property - by 20 percent;

after the second unsuccessful or frustrated biddings for the sale of the object of the republican property - by 50 percent inclusive;

In the case, where the objects have not been sold again, they shall be put up for auction using the method of lowering the initial price.

Objects, except for those located in regional centres and in the city of Minsk, that are included in the list approved by the Council of Ministers of the Republic of Belarus, may be sold at an auction with an initial selling price equal to one base value, as well as transferred to the uncompensated use for specific investment projects, followed by gratuitous transfer to the ownership (the Edict of the President of the Republic of Belarus dated February 27, 2007 No. 108 "On some measures for commercializing the unused state property").

### **On the regulation of relations in the field of use of land plots on the territory of the Republic of Belarus**

In the sphere of land relations a step by step sequence of actions of parties concerned and the minimum possible terms for execution of each phase of the withdrawal and granting of land plots is established.

This process is carried out according to the principle of "single window". An investor is entitled to obtain from a land management organization a full range of services for preparation of necessary land use materials and performance of registration actions.

According to the Edict of the President of the Republic of Belarus dated December 27, 2007 No. 667 "On withdrawing and granting of land plots" land plots for construction of facilities are to be provided on the results of lease auctions held by local executive committees or auctions for the sale of land into private ownership **including the sale to non-state legal entities of the Republic of Belarus.**

A term of lease of a land plot provided for the construction and (or) maintenance of capital structures, shall be set for the duration not less than the normative period of construction and (or) operation of these capital structures, but it cannot exceed ninety-nine years.

The legislation of the Republic of Belarus also allows obtaining land plots without holding of auctions for such purposes as:

- construction and maintenance of real estate units intended for the production of goods, performance of works and provision of services in settlements with a population of less than 50 thousand people and inter-settlement areas;

- construction and maintenance of real estate objects in free economic zones;

- construction of facilities of engineering-transport and social infrastructure, mining of mineral resources including peat;

- construction and maintenance of housing blocks (except for houses of superior comfort);

- placement of real estate units, if the construction of these units and the investor are determined by the decision of the President of the Republic of Belarus or by the program approved by the President of the Republic of Belarus or the Council of Ministers of the Republic of Belarus;

- in other cases by the decision of the President of the Republic of Belarus.

The Land Code of the Republic of Belarus provides the possibility of acquisition of land plot into private ownership by non-state legal entities of the Republic of Belarus without holding an auction for the maintenance of capital constructions (buildings, structures) belonging to them by the right of ownership and located on the land plots acquired by them into private ownership, as well as in other cases determined by the President of the Republic of Belarus.

An investor may be granted an extension of payment for the right to conclude land plots lease contracts or an extension of payment for land plots granted into private ownership by the decisions of regional, Minsk City, city (in cities of regional subordination) and district executive committees.

The legislation also provides for the investor a possibility of stage-wise compensation of loss of agricultural and (or) forestry production associated with the withdrawal of agricultural lands, forest lands upon an application of the person concerned.

Investors are exempt from the compensation of losses of agricultural and forestry production:

- upon the implementation of investment projects in accordance with concluded and registered investment agreements.
- upon seizures of agricultural and forest lands for construction of roadside service facilities.

## List of principal normative legal acts

1. Law of the Republic of Belarus dated December 9, 1992 No. 2020-XII “On Business Entities”
2. Law of the Republic of Belarus dated January 19, 1993 No. 2103-XII “On the privatization of state property and the transformation of state unitary enterprises into open joint stock companies” (as amended on July 16, 2010)
3. Law of the Republic of Belarus dated July 15, 2010 No. 169-Z “On the objects, which can only be in the state ownership, and activities, performance of which is an exclusive right of the state”.
4. Decree of the President of the Republic of Belarus dated March 20, 1998 No. 3 "On privatization of state property in the Republic of Belarus" (as amended on March 11, 2011)
5. Edict of the President of the Republic of Belarus dated September 14, 2006 No. 575 "On the procedure of disposal of state property" (as amended on July 19, 2010)
6. Edict of the President of the Republic of Belarus dated February 13, 2007 No. 77 "On some issues of lowering the initial selling price of the property being in the republican ownership"
7. Edict of the President of the Republic of Belarus dated February 27, 2007 No. 108 "On some measures for commercializing the unused state property"
8. Edict of the President of the Republic of Belarus dated December 27, 2007 No. 667 "On withdrawing and granting of land plots"
9. Edict of the President of the Republic of Belarus dated February 25, 2008 No. 113 “On the procedure and conditions of sale to legal entities of enterprises as property complexes belonging to loss-making state organizations” (as amended on September 13, 2010)
10. Edict of the President of the Republic of Belarus dated May 5, 2009 No. 232 “On some questions of holding auctions (competitive tenders)”
11. Resolution of the Council of Ministers of the Republic of Belarus dated December 20, 2006 No. 1687 "On measures for the implementation of the Edict of the President of the Republic of Belarus dated September 14, 2006 No. 575"
12. Resolution of the Council of Ministers of the Republic of Belarus dated March 26, 2008 No. 462 "On certain measures for the implementation of the Edict of the President of the Republic of Belarus dated December 27, 2007 No. 667"
13. Resolution of the Council of Ministers of the Republic of Belarus dated August 8, 2009 No. 1049 "On measures for the implementation of the Edict of the President of the Republic of Belarus dated May 7, 2009 No. 238", Resolution of the Council of Ministers of the Republic of Belarus dated March 11, 2010 No. 342 "On certain measures for the implementation of Edict of the President of the Republic of Belarus dated December 11, 2009 No. 622"
14. Resolution of the Council of Ministers of the Republic of Belarus dated December 31, 2010 No. 1929 "On measures for the implementation of the Law of the Republic of Belarus “On introduction of amendments and additions to certain laws of



the Republic of Belarus and recognizing as ceased to be in force certain legislative acts of the Republic of Belarus and their individual provisions on the issues of privatization of state property” (together with “The Regulations on the procedure of holding a competitive tender for selection of another than the state founder of the open joint stock company established in the process of transforming of a state unitary enterprise”, “The Regulation on the procedure for determining the initial selling price of stocks (shares in authorized capitals) of business entities being in the ownership of the Republic of Belarus”, “The Regulation on the procedure for holding auctions for the sale of objects of privatization”, “The Regulation on the procedure of holding competitive tenders for the sale of objects of privatization”, “Regulation on the procedure of holding a competitive tender for the transfer of stocks of open joint stock companies belonging to the Republic of Belarus or its administrative-territorial unit into trust management, including transfer together with the right of redemption of these stocks on the results of trust management”)

15. Resolution of the Council of Ministers of the Republic of Belarus dated March 21, 2011 No. 348 "On approval of the plan of privatization of objects of privatization being in the ownership of the Republic of Belarus for the years 2011-2013 and the plan of transformation of the republican unitary enterprises into open joint stock companies for the years 2011-2013".