

Legal Alert

Belarus

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Belarus amends its investment legislation

Overview

On 6 August 2009, the President of the Republic of Belarus signed Decree No. 10 *On the Creation of Additional Conditions for Investing in Belarus* (“**Decree No. 10**”).

An investment contract is one of the ways of investing in the Republic of Belarus and enables an investor to obtain State support for an investment project and a waiver of sovereign immunity from suits, cautionary judgments, and enforcement of judgments and/or arbitration awards.

Decree No. 10 introduces a new procedure for entering into investment contracts. It allows investors to be granted preferences and privileges under investment contracts, in addition to those granted under existing legislation, and also regulates the privileges to be granted to investors automatically upon execution of investment contracts. Decree No. 10 enters into force on 8 November 2009 and is not retroactive for investment contracts concluded prior to its effective date.

Investment Contracts

Under Decree No. 10, not only the Government of the Republic of Belarus and its authorized agencies, but also regional executive committees, including the Minsk City Executive Committee, may conclude investment contracts if the investment project is to be implemented within the territory of the respective administrative units.

If an investor is seeking preferences and privileges other than those granted as standard by the laws of the Republic of Belarus, the investment contract can be concluded only by the Government of the Republic of Belarus, subject to prior approval by the President of the Republic of Belarus. Prior to entering into such an investment contract, the investor must present its business plan and its investment project must undergo comprehensive state expert review by the Ministry of the Economy.

All investment contracts are now subject to separate legal review by state agencies. This is likely to involve delays in state agencies signing investment contracts.

The Investment Code of the Republic of Belarus ¹ earlier provided that parties may stipulate in their investment contract that any disputes are to

¹ Investment Code of the Republic of Belarus No. 37-Z dated 22 June 2001 (as amended on 15 July 2008).

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be referred to foreign courts or arbitration. Now Decree No. 10 does not permit foreign law to apply to investment contracts. Therefore, any dispute arising out of an investment contract will be subject to Belarusian legislation.

Privileges for Investors

Decree No. 10 grants certain privileges to investors, including:

- 1) the possibility to speed up the construction permit process when constructing facilities under investment contracts, by carrying out the development, expert review, and approval in due order of design estimates for each stage of the construction contemporaneously with designing the subsequent stages of the construction; ² and
- 2) granting land plots for lease, on a non-tender basis, for construction of facilities within the scope of their investment projects, where the land plot may be documented contemporaneously with the construction ³. The rent determined at the time of conclusion of the lease agreement may not be increased throughout the entire term of implementation of the investment project.

Investors shall be exempted from:

- 1) payments of fees for the right to enter into land lease agreements;
- 2) payments for the allocation of agricultural and/or forestry land for the implementation of their investment projects ⁴;
- 3) payment of import customs duties and VAT (except for VAT payable upon importation of goods from the Russian Federation) upon importation of equipment and spare parts thereof required to implement investment projects. A list of such equipment is subject to prior approval by the executive committee or state agency that has decided to enter into the respective investment contract; and
- 4) payment of the state fee for issuance of work permits to foreigners engaged by the investor to implement the investment project.

Comments

In general, the adoption of Decree No. 10 is a positive measure designed to make investment in the Republic of Belarus more attractive.

On the one hand, removing the need for state expert review of investment projects (unless they are seeking special preferences) means that the execution of investment contracts has become simpler.

² Currently, to proceed to construction, the Contractor is required to obtain over 50 approvals and consents from various state agencies.

³ In the Republic of Belarus, legal entities may not own land. This is why land plots may only be leased. Given that the State owns most land, it is the lessor acting through executive committees.

⁴ The legislation of the Republic of Belarus requires compensation to be paid to previous lessees and the State for losses incurred due to the transfer of agricultural or forestry land for construction. The amount of compensation payable is calculated based on the cadastral value of the land.

On the other hand, the system of decentralized legal review of investment contracts to be carried out by legal departments of state agencies and executive committees means that in practice the execution of investment contracts will be delayed, as currently these legal departments do not have sufficient knowledge and experience in the execution of such contracts, and also there are no uniform requirements for investment contracts.

The procedure for approval of a list of equipment and spare parts thereof will complicate the implementation of investment projects. Thus, the need to replace one piece of equipment with another, which is common practice in business, would require amendment of the investment contract in Belarus, i.e. require approval anew from state agencies. Obtaining such approval often takes a long time. Also, we believe that if an investment project underwent comprehensive state expert review, the state agencies might insist on a repeated expert review upon replacement of equipment.

Please also note that engaging foreigners to implement investment projects will require a special work permit for each such individual⁵. Decree No. 10 does not provide for any help with this, aside from the exemption from the state fee for issue of such permit.

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⁵ Article 11 of Law No. 2339-XII of the Republic of Belarus *On Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus* dated 3 June 1993 (as amended on 26 December 2007).