

**THE INVESTMENT CODE OF THE REPUBLIC OF BELARUS**  
**June 22, 2001 No. 37-Ç**

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This Code establishes the general legal conditions for engaging in investment activity in the Republic of Belarus. It aims to encourage and to offer government support to investment activity, and to protect the rights of investors in the Republic of Belarus.

**GENERAL PART**

**SECTION I**  
**GENERAL PROVISIONS**

**Chapter 1**  
**General concepts applicable to investment activity**

**Article 1. Investments**

Investments are deemed to refer to any property, including monetary resources, securities, equipment and results of intellectual activity held to investors under ownership or other material rights, as well as other property rights, invested by investors in investment objects for the purpose of generating profit (income) and/or achieving other measurable objectives.

**Article 2. Investment activity**

Investment activity is deemed to refer to actions carried out by a legal entity and/or physical person and/or State (administrative or territorial unit of a State) involving investments in the production of goods (work and services), or any other use thereof, for the purpose of generating profit (income) and/or achieving other measurable objectives.

**Article 3. Investors**

Investors are deemed to be entities (legal entities or physical persons, the State as represented by its authorized bodies, and administrative and territorial units thereof, as represented by their authorized bodies) which are engaged in the forms of investment activity established by Article 5 hereof.

Investors shall enjoy rights and bear responsibilities and risks arising from the placement of investments.

Investors shall be classified as either domestic or foreign for the purposes of determining the appropriate regulation regime.

The following are classified as foreign investors in the Republic of Belarus:

- foreign States and the administrative and territorial units thereof, as represented by their authorized bodies;
- international organizations;
- foreign legal entities;
- foreign citizens;
- physical persons (citizens of the Republic of Belarus and stateless persons) with permanent residency outside the borders of the Republic of Belarus.

Specific regulation of the activity of foreign investors shall be established by this Code and by other legislation of the Republic of Belarus, including the international treaties to which the Republic of Belarus is party.

#### **Article 4. Object of investment activity**

The following are deemed objects of investment activity:

- real-estate property, including enterprises as property complexes;
- securities;
- intellectual property.

The legislation of the Republic of Belarus shall identify assets held in the exclusive ownership of the Republic of Belarus. Exclusive ownership of assets by the Republic of Belarus shall not preclude the possibility of investment activity with regard to the said assets.

The legislation of the Republic of Belarus shall establish the list of assets with regard to which investment activity by all investors with the exception of the Republic of Belarus shall be prohibited.

#### **Article 5. Forms of investment activity**

The following forms of investment activity may be carried out in the Republic of Belarus:

- the creation of legal entities;
- the acquisition of property rights, and namely:
  - interests in the share capital of legal entities;
  - real estate property;
  - securities;
  - rights to intellectual property assets;
  - concessions;
  - equipment;
  - other fixed assets.

#### **Article 6. The legal regulation of investment activity**

Relations arising from investment activity in the Republic of Belarus shall be regulated by this Code, other legislative instruments of the Republic of Belarus, including the international agreements to which the Republic of Belarus is signatory, and investment agreements signed with the Republic of Belarus.

Investment activity by legal entities and physical persons of the Republic of Belarus in foreign states shall be regulated by this Code, other legislative instruments of the Republic of Belarus, including the international agreements to which the Republic of Belarus is signatory, and the legislation of the country in which the investment activity is performed.

In the event that international agreements currently in force, to which the Republic of Belarus is signatory, establish different regulations to those established by this Code and other legislative instruments of the Republic of Belarus, the terms established by such international agreements shall take precedence.

### **Chapter 2 Government regulation of investment activity**

#### **Article 7. The objectives of government regulation of investment activity**

Government regulation of investment activity shall be carried out with the aim of encouraging investor activity, attracting foreign investors into the Republic, and protecting the rights of investors in the Republic of Belarus.

### **Article 8. The forms and methods of government regulation of investment activity**

Government regulation of investment activity shall involve:

1. Direct participation by the government in investment activity by means of:
  - 1.1. the adoption of government investment programs and their financing from the Republic's budget;
  - 1.2. the provision of centralized investment resources from the Republic's budget for the financing of investment projects on the basis of the principles of consideration, fixed term, and recoverability;
  - 1.3. the provision of Belarussian Government guarantees for loans secured for the implementation of investment projects;
  - 1.4. the comprehensive government due diligence of investment projects;
  - 1.5. the provision of concessions to domestic and foreign investors.
2. The creation of favorable conditions for the development of investment activity by means of:
  - 2.1. the provision of government support to investors;
  - 2.2. the protection of investors' rights;
  - 2.3. the establishment of free economic zones in the Republic of Belarus;
  - 2.4. the establishment of terms and conditions for the ownership, use and disposal of land, subsoil, water resources, and forests;
  - 2.5. the establishment of measures to counter monopolies and unfair competition;
  - 2.6. the establishment of conditions for the privatization of government-owned assets;
  - 2.7. the encouragement of the development of a securities market;
  - 2.8. the establishment of effective budgetary, financial, tax, monetary, lending and currency policies;
  - 2.9. the use of other forms and methods of government regulation in accordance with the legislation of the Republic of Belarus.

## **Chapter 3**

### **Guarantees of the rights of investors and the protection of investments**

#### **Article 9. Guarantees of investor rights**

The Government guarantees investors' legally acquired ownership and other material rights, as well as property rights, and undertakes to protect those rights.

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

The Government guarantees the stability of the rights of investors, as established by this Code, to engage in and disengage from investment activity.

Investors shall 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 the ownership, utilization and disposal of objects and results of investment activity.

**Article 10. Guarantees on the utilization of the results of investment activity**

Investors shall have the right, at their sole discretion, to dispose of profits (earnings) yielded by their investment activity, including their reinvestment in the Republic of Belarus in accordance with the legislation of the Republic of Belarus.

Reinvestment shall be deemed to refer to the investment of profits (earnings) yielded by investment activity into investment objects located in the Republic of Belarus.

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

**Article 11. Protection of investments**

The Government guarantees the protection of investments in accordance with the legislation of the Republic of Belarus.

Investments shall be immune from nationalization without consideration, requisition, and measures equivalent to nationalization and requisition in terms of their consequences. Nationalization and requisitioning shall only be possible subject to the timely and full compensation of the cost of the nationalized or requisitioned investment assets and other damages caused as a result of nationalization or requisition. The procedure and conditions for nationalization and requisition and the payment of compensation with regard to nationalized or requisitioned investment assets and other damages caused as a result of nationalization or requisition, shall be established by this Code and the legislation of the Republic of Belarus.

**Article 12. Compensation of the cost of nationalized or requisitioned investment assets**

Compensation payments with regard to nationalized or requisitioned investment assets shall be equivalent to the real value of said assets at the moment immediately preceding the earlier of the nationalization or requisition, or the date of the public announcement on the nationalization or requisition. Moreover, compensation payments to domestic investors shall include interest calculated on the basis of the appropriate currency as quoted by the National Bank of the Republic of Belarus, and compensation payments to foreign investors shall include interest payments calculated on the basis of the LIBOR rate, with respect to the period between the date of nationalization or requisition or the date of the public announcement to that effect, and the date of remittance of the compensation amount.

Compensation with regard to the cost of nationalized or requisitioned investment assets shall be paid to domestic investors in the currency of the Republic of Belarus and to foreign investors in the currency in which the investment was originally made.

Investors shall enjoy the right to appeal in court against the amount of compensation paid with regard to nationalized or requisitioned assets.

**Article 13. Guarantees against unlawful actions (inaction) of government bodies and their officials**

Investors shall enjoy the right to appeal in court against actions (inaction) of government bodies or their officials and local self-governance bodies or their officials, as well as regulations issued by the

government bodies of the Republic of Belarus or local self-governance bodies, in the event that the said actions or regulations infringe upon the investors' rights or cause them losses or other damages.

Damages, including losses incurred as a result of actions by government bodies or their officials and local self-governance bodies or their officials, or as a result of regulations issued by government bodies of the Republic of Belarus or local self-governance bodies, shall be compensated from the appropriate treasury by court order.

The procedure for the compensation of damages and losses shall be established by the legislation of the Republic of Belarus.

## **SPECIAL PART**

### **SECTION II GOVERNMENT SUPPORT FOR INVESTMENT ACTIVITY IN THE REPUBLIC OF BELARUS**

#### **Chapter 4**

#### **The objectives, sources and forms of government support for investment activity**

##### **Article 14. General provisions**

Investors shall have the right to obtain government support in the course of investment activity and the implementation of investment projects.

Government support shall be provided with a view to encouraging investment into the economy of the Republic of Belarus.

In accordance with this Code, an investment project shall be deemed to refer to the total package of documentation describing a plan to make and use an investment, and the implementation of that plan, with a view to achieving a specific target result within a specified period of time.

##### **Article 15. Forms of government support**

Government support shall be provided to investment projects in the form of:

- tax and customs exemptions;
- guarantees of the Government of the Republic of Belarus;
- centralized investment resources.

Government support may be provided to investment activity in other forms and through the provision of supplementary guarantees to investors.

##### **Article 16. Sources of financing for government support**

Government support to investment projects shall be financed from the national and/or local budgets, and from other sources.

The resources to be allocated for the financing of government support to investment projects in the forms outlined by this Code shall be established by the Law on the Budget of the Republic of Belarus for the financial (budgetary) year in question.

The local government and self-governance bodies shall also be authorized to provide other forms of support to investment activity within the framework of their local budgets.

### **Article 17. Tax and customs duty exemptions**

With a view to encouraging investment activity, investors shall be provided with tax and customs duty exemptions in accordance with the tax and customs legislation of the Republic of Belarus.

### **Article 18. Guarantees provided by the Government of the Republic of Belarus**

Government guarantees are deemed to constitute obligations undertaken on behalf of the Republic of Belarus by the Government of Belarus guaranteeing the performance by borrowers (investors) of their obligations to creditors.

Government guarantees shall be provided to creditors with respect to loans from foreign institutions or Belarussian banks for the implementation of investment projects.

The procedure for the provision of government guarantees is established by this Code and other legislative instruments of the Republic of Belarus.

### **Article 19. Centralized investment resources**

Centralized investment resources are government financial resources, including the resources of the national budget, allocated for the financing of government support to investment projects.

The procedure for the allocation of centralized investment resources is established by this Code and other legislative instruments of the Republic of Belarus.

## **Chapter 5**

### **Government due diligence of investment projects**

#### **Article 20. General provisions**

Government due diligence of investment projects shall be carried out with a view to issuing conclusions to be used as a basis for decision-making on the provision of government support thereto.

Government due diligence shall be carried out by the Ministry of the Economy of the Republic of Belarus with respect to investment projects funded by foreign loans or loans provided by Belarussian banks and guaranteed by the Government of Belarus, in the event of the allocation of centralized investment resources, in the event of government participation in the establishment of an enterprise with foreign investments, and in the event of the provision of tax and customs duty exemptions on an individual basis.

The Government of Belarus also reserves the right to establish the conditions under which investment projects are subject to assessment only by a national government agency (association) to which the investor (initiator of the investment project) is subordinate, if any, or other authorized national government agency.

#### **Article 21. Criteria for the assessment of investment projects**

The main criteria for the government due diligence of investment projects are as follows:

- the suitability of the timing of the investment project and its compatibility with the development strategy of the industry in question;
- the financial condition of the investor;

- the technical, technological and financial feasibility and expediency of the investment project in the light of the expected conditions for the investment activity;
- the expediency of the expenses planned within the framework of the investment project and the expediency of government participation in the investment project;
- the scientific and technological level of the technologies involved/created;
- the competitiveness of the goods (work and services) to be produced, 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.

## **Article 22. The procedure for the government due diligence of investment projects**

Government due diligence of investment projects shall be completed within a thirty-day period of the receipt of project documentation by the Ministry of the Economy of the Republic of Belarus. In the event of the need for a scientific or technical feasibility study or the need to obtain supplementary information, the timeframe for the government due diligence of the investment project may be extended by the Ministry of the Economy of the Republic of Belarus up to a maximum of sixty days. Notification of such extension shall be provided to the investor prior to the expiration of the thirty-day period following the receipt by the Ministry of the Economy of the Republic of Belarus of the materials concerning the investment project.

The government due diligence of investment projects shall be carried out on the basis of the following materials and conclusions:

1. The written application submitted by the investor (initiator of the investment project) together with the attached:

- 1.1. business plan;
- 1.2. for non-resident foreign investors - a legalized extract from the commercial register of the country of origin or other equivalent proof of the legal status of the foreign investor in accordance with the legislation of the investor's country of residence (the said documents must be legalized within a period of one year prior to their submission);
- 1.3. a conclusion issued by the national government agency (association), if any, to which the investor (initiator of the investment project) is subordinate, or which exercises jurisdiction over issues linked with the production of goods (work and services) envisaged by the investment project;
- 1.4. an audit conclusion on the financial condition of the investor (initiator of the investment project).

2. Conclusions of the following bodies as requested by the Ministry of the Economy of the Republic of Belarus:

- 2.1. The Ministry of Finance of the Republic of Belarus - on the current and projected debts of the investor (initiator of the investment project); on any previous government support provided to the investor; on the amount of income lost to the budget as a result of the provision of exemptions, and compensation for such losses; on the expediency of providing government support for the investment project in question, and, in the event that loans provided by foreign banks are guaranteed by the Republic of Belarus - on the foreign currency revenue expected from the project, on the terms of the loan, and on the possible ways of using the loan;
- 2.2. The State Committee of the Republic of Belarus on Science and Technology - on scientific and technological level of technologies involved in investment projects for which government support designated for projects based on new and advanced technologies is sought; for investment projects involving foreign loans guaranteed by the Government of Belarus; and for other investment projects in the instances and under the terms established by the Government of Belarus.

The Ministry of the Economy of the Republic of Belarus may, at the request or with the approval of the investor (initiator of the investment project), invite independent experts, including foreign specialists, to participate in the government due diligence of an investment project. In such cases, the cost of carrying out the independent assessment shall be borne by the investor (initiator of the investment project).

Strict commercial confidentiality shall be maintained with regard to information contained in materials submitted for the government due diligence of investment projects.

The conclusion on the results of the government due diligence shall be issued to the investor (initiator of the investment project) within five days of its completion.

In the event of a negative conclusion, the investment project may be revised and re-submitted.

A negative conclusion may be issued in the event of a negative assessment of the criteria established by Article 21 of this Code.

Re-submitted investment projects shall be examined within the timeframe established for investment projects submitted for the first time, in accordance with the procedures established by this Article.

In the event of the submission of materials which are at variance with the terms of the legislation, the related investment project shall not be examined and no government due diligence shall be carried out with regard thereto. The investor (initiator of the investment project) shall be notified to that effect within 14 days and an explanation of the grounds for refusal shall be provided.

Government due diligence conclusions shall be valid for a period of one year for the purposes of making a decision of the provision of government support.

The Ministry of the Economy, the Ministry of Finance, the State Committee on Science and Technology, other government management bodies authorized or engaged to examine investment projects, and/or other legal entities and physical persons shall be responsible under the legislation of the Republic of Belarus for the timely completion of assessments within the timeframe established by this Chapter.

### **Article 23. Specific provisions regarding the performance of government due diligences**

In order to determine the scientific and technological level of the technology that the investor intends to develop, acquire or use, investment projects for which government support designated for projects based on new and advanced production technologies or government support in the form of guarantees provided by the Government of Belarus on foreign loans is sought, and other investment projects in the instances and in accordance with the terms established by the Government of Belarus, shall be subject to scientific and technological review in the course of the government due diligence thereof.

The scientific and technical review of investment projects shall be carried out by the State Committee of the Republic of Belarus on Science and Technology.

The criteria and procedure for the performance of scientific and technological reviews shall be established by the legislation of the Republic of Belarus. The scientific and technological review of investment projects shall be completed within a period of thirty days following the submission of the materials on the investment project to the State Committee of the Republic of Belarus on Science and Technology.

**Article 24. Specific provisions regarding the government due diligence of investment projects implemented using foreign loans provided on the basis of Belarussian Government guarantees**

In order to obtain Belarussian Government guarantees with regard to foreign loans, a positive government due diligence conclusion must first be issued together with a conclusion issued by the Ministry of Finance of the Republic of Belarus, and the investment project must then be submitted to the Ministry of Foreign Affairs of the Republic of Belarus.

The Ministry of Foreign Affairs of the Republic of Belarus then prepares and submits the investment project materials to the Government of the Republic of Belarus within thirty days of their receipt.

**Article 25. Specific provisions regarding the government due diligence of investment projects initiated by small businesses**

With the exception of the instances established by the second part of Article 20 of this Code, the government due diligence of investment projects initiated by small businesses, seeking government support as established by the legislation, shall be carried out by the Ministry for Business Enterprise and Investment in accordance with the procedure established by the legislation of the Republic of Belarus.

The government due diligence of the investment projects of small businesses shall be completed within a period of thirty days following the receipt of the project materials by the Ministry for Business Enterprise and Investment.

In the event of the need to obtain supplementary information, the duration of the assessment may be extended by the Ministry for Business Enterprise and Investment to a maximum of sixty days. The investor shall be provided with notice of the extension prior to the expiration of the thirty-day period following the receipt of the materials by the Ministry for Business Enterprise and Investment.

**Chapter 6  
Belarussian Government guarantees on foreign loans**

**Article 26. General Provisions**

Belarussian Government guarantees shall be provided to foreign lenders on the basis of decisions reached by the Government of Belarus as approved by the President of Belarus.

Foreign lenders are deemed to be foreign states and their administrative and territorial units, international organizations, and foreign legal entities providing foreign currency loans to the Republic of Belarus or to Belarussian legal entities (hereinafter - "investors/borrowers").

Foreign loans shall be secured and repaid in accordance with the terms established by international agreements and/or inter-bank agreements, and/or individual loan agreements.

**Article 27. The procedure for the adoption of decisions on the borrowing of foreign loans under guarantee from the Government of Belarus**

Proposals on the borrowing of loans under guarantee from the Government of Belarus submitted by foreign lenders or the Belarussian initiator of the loan (investor/borrower) to a national government agency(association) shall be submitted by the said national government agency(association) for consideration of their expediency to the Ministry of the Economy, the Ministry of Finance, the Ministry of Foreign Affairs, and the National Bank of the Republic of Belarus. In the event of the issuance of a positive conclusion, the issue shall be referred to the Government of Belarus.

Proposals by foreign non-banking lending and financial organizations on the provision of loans guaranteed by the Government of Belarus shall be submitted for consideration to a bank duly authorized by the Government of Belarus in accordance with the procedure established by the Government of Belarus. In the event of a positive decision on the part of the authorized bank, the further consideration of the matter shall be carried out in accordance with the procedure established by the first part of this Article.

Negotiations shall be held with the representatives of foreign lenders on the basis of a decision reached by the Government of Belarus with regard to the signing of the agreement referred to in paragraph 26 of this Code.

**Article 28. The procedure for the provision of Belarussian Government guarantees on foreign loans**

Investment projects that envisage a Belarussian Government guarantee for a foreign loan that have received a positive conclusion following government due diligence shall be submitted by the Ministry of Foreign Affairs to the Government of Belarus.

Guarantees by the Government of Belarus to carry out the obligations of the investor/borrower with regard to a foreign lender shall be provided by the Government of Belarus subject to the approval of the President of Belarus.

**Article 29. The procedure for documenting agreements on the repayment of international loans**

Following the adoption by the Belarussian Government of a decision to provide a guarantee on a foreign loan, and prior to the issue of the said guarantee and the signing of an international agreement and/or inter-bank agreement, and/or individual loan agreement, the investor (borrower) shall sign with the Minister of Finance, or a bank authorized by the Government of Belarus to service foreign loans (hereinafter - the agent bank), and the guarantor bank, an agreement on the procedure for the use and repayment of the foreign loan.

Material conditions of the said agreement shall be a commitment on the part of the investor (borrower) to fulfill the obligations arising from the loan, and the investor's (borrower's) liability in the event of default, including the right of the Ministry of Finance, in the instances and in accordance with the procedures established by the Belarussian legislation, unilaterally to debit the investor's (borrower's) bank account for any amounts outstanding for repayment on the loan.

The agent bank and/or the investor (borrower) shall have the right to make repayments on the foreign loan only following the signing of the agreement on the procedure for its use and repayment.

Investment project financing shall be subject to the holding of auctions (tenders) by the investor (borrower) for the procurement of the goods (work and services) necessary to carry out the project (hereinafter - "procurement auctions/tenders") and the awarding of contracts on the basis thereof.

**Article 30. Specific provisions regarding procurement auctions (tenders) financed using foreign loans**

Procurement auctions (tenders) shall not be held in the event of the provision of targeted loans. However, the technical and economic feasibility study of the investment project shall contain a description of the grounds for the selection of particular goods (work or services) and a comparison of the technical characteristics and cost of the product in question with equivalents produced by other domestic and foreign manufacturers.

Investors (borrowers) or foreign trade organizations authorized thereby shall comply with the Belarussian legislation when holding procurement auctions (tenders) within the framework of investment projects (with the exception of the instances established by the fourth paragraph of this Article).

Any costs incurred in connection with the organization and holding of procurement auctions (tenders) shall be covered by the investor (borrower).

In the event that the foreign lender provides a loan on condition of an international procurement auction (tender), the said auction (tender) shall be held by the investor (borrower) in accordance with the terms established by the lender and shall be supervised by representatives of the lender and by the Ministry of Foreign Affairs of Belarus.

### **Article 31. Monitoring of the use and repayment of foreign loans**

The agent bank, the guarantor bank, the Ministry of Finance of Belarus, the national government agency to which the investor (borrower) is subordinate, if any, and any other currency control authority as established by the legislation of Belarus shall be responsible for monitoring the proper and timely use and repayment of financing secured under foreign loans.

### **Article 32. The procedure for executing Belarussian Government guarantees on foreign loans**

Should the investor (borrower) default on the repayment of a foreign loan, and in the event that it proves impossible to collect the amount due from that investor (borrower) in accordance with the established procedures, the guarantor bank shall undertake the obligations in question.

In the event that the investor (borrower) and the guarantor bank both default on the repayment of the loan and the foreign lender serves a repayment order on the Belarussian Government in accordance with the Belarussian Government guarantee, the Ministry of Finance of Belarus shall, upon decision of the Government of Belarus, settle the outstanding debt using funds allocated by the Law of the Republic of Belarus Concerning the Budget for the Financial (Budget) Year in question.

A procedure for the restructuring of the foreign debt and the repayment by the investor (borrower) of the amount owed to the national budget shall be defined by the Government of Belarus on the basis of principles of consideration, fixed term, and recoverability.

## **Chapter 7**

### **The conditions and procedures for the provision of Belarussian Government guarantees with regard to loans provided by Belarussian banks**

#### **Article 33. General provisions**

Belarussian Government guarantees may be provided to Belarussian banks with regard to loans extended to investors (borrowers) for the financing of investment projects.

#### **Article 34. The conditions for the provision of Belarussian Government guarantees**

A condition for the provision of Belarussian Government guarantees with regard to loans extended by Belarussian banks shall be the issuance by the government due diligence authority of a positive conclusion with regard to the investment project in question. Draft decisions on the provisions of guarantees shall be approved by the Ministry of the Economy of Belarus and the Ministry of Finance of Belarus before being submitted by the national government agency to which the investor

(borrower) is subordinate, if any, to the Government of Belarus or to the Ministry for Business Enterprise and Investment.

Belarussian Government guarantees shall be provided on the basis of decisions reached by the Government of Belarus.

**Article 35. The procedure for the provision and execution of Belarussian Government guarantees**

Following the adoption by the Government of Belarus of a decision to guarantee a loan provided by a Belarussian bank, the Ministry of Finance shall issue the Belarussian Government guarantee and define the procedure for the execution by the Belarussian Government of its obligations arising from the guarantee.

In the event of the inappropriate use by the investor (borrower) of a bank loan received under guarantee from the Belarussian Government, the Ministry of Finance shall have the right to terminate the Belarussian Government guarantee.

Decisions on the termination of Belarussian Government guarantees shall be adopted by the Government of Belarus in accordance with the Civil Code of the Republic of Belarus.

**Article 36. Monitoring of the use and repayment of loans provided by Belarussian banks**

The lender bank, the Ministry of Finance of Belarus, and the national government agency(association) that applied to the Belarussian Government for the provision of a guarantee, shall be responsible for monitoring the proper and timely use and repayment of loans provided by Belarussian banks in accordance with the legislation of Belarus.

**Chapter 8**

**Government support for production based on new and advanced technologies**

**Article 37. General provisions**

In order to set up and develop industries based on new and advanced technologies in the Republic of Belarus, tax and customs duty exemptions and other forms of government support to organizations implementing such technologies shall be established by the legislation of Belarus.

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

**Article 38. The procedure for the provision of government support to industries and organizations using new and advanced technologies**

Government support may be provided only to those organizations which are included in the list of industries and organizations using new and advanced technologies, as approved by the Government of Belarus.

The Ministry of the Economy shall consider investment project-materials and prepare the list of industries and organizations using new and advanced technologies, plus the type, scope, and duration of the proposed government support, and submit the said materials and list for approval to the Government of Belarus in accordance with the procedure established by the Government of Belarus.

### **Article 39. Evaluating the effectiveness of government support**

Evaluations of the effectiveness of government support to organizations using new and advanced technologies shall be carried out by the national government agency(association) to which the investor is subordinate, if any, or by a body authorized by the Government of Belarus, and by the Ministry of the Economy.

## **Chapter 9 Centralized investment resources**

### **Article 40. General provisions**

Centralized investment resources from the national budget shall be provided for in the annual State Investment Program in an amount equivalent to at least 10 per cent of the total public capital investments envisaged by the Law of the Republic of Belarus on the Budget for the Next Financial (Budgetary) Year. The said resources shall be allocated on the basis of principles of consideration, fixed term, and recoverability in the form of:

- funds for the financing of investment projects;
- Belarussian Government guarantees on bank loans in accordance with the terms established by Chapter 7 of this Code.

Government support in the form of direct allocations from centralized investment resources shall be provided on condition that the investor's own funds account for at least 20 per cent of the total investments made under the investment project in question.

### **Article 41. The procedure for the provision of government support using centralized investment resources**

The scope of government support provided in the form of direct allocations from centralized investment resources shall be determined on the basis of the category of investment project and shall be established by a decision of the Government of Belarus. The criteria for the classification and categorization of investment projects shall be established by the Government of Belarus.

The Ministry of the Economy shall review and select investment projects that have already received positive government due diligences, for the provision of government support in the form of direct allocations of centralized investment resources.

Based on the results of the review of investment projects, the Ministry of the Economy shall prepare a list of investment projects eligible for the allocation of centralized investment resources and shall submit the said list within the framework of the annual Government Investment Program for approval to the Government of Belarus.

Government support shall be provided on a priority basis to investment projects involving the use of new and advanced technologies.

### **Article 42. Specific provisions regarding the financing of investment projects from centralized investment resources**

Investment projects shall be financed subject to the organization by the investor of auctions (tenders) for the procurement of the goods (work and services) required to carry out the investment project, and the awarding of supplier contracts on the basis of such auctions (tenders).

The cost of organizing and holding procurement auctions (tenders) shall be borne by the investor.

A payment schedule shall be prepared, agreed with creditors and endorsed by the Ministry of Finance based on the results of the procurement auction (tender).

#### **Article 43. Monitoring of the proper use of government support resources**

Monitoring of the proper use of allocated centralized investment resources shall be exercised by the Ministry of Finance of Belarus, the national government agency(association) to which the investor is subordinate, if any, or by a body authorized by the Government of Belarus.

### **Chapter 10 Investment agreements with the Republic of Belarus**

#### **Article 44. General provisions**

Investment agreements may be concluded with investors for the purposes of providing government support to the implementation of individual investment projects that are of particular importance to the economy of Belarus.

#### **Article 45. The parties to an investment agreement**

The following shall be the parties to investment agreements:

- on the one hand - the Republic of Belarus, represented by the Government of Belarus or a national government agency appointed thereby;
- on the other hand - a domestic and/or foreign investor.

#### **Article 46. The terms of investment agreements**

The following terms shall be included on a mandatory basis in all investment agreements:

- the term of validity of the investment agreement;
- the investment object and the scope of the investment;
- the rights and obligations of the investor, including the obligation to comply with the law on the protection of the environment and the rational use of natural resources, and the law on labor and safety;
- additional legal guarantees offered by the Republic of Belarus for the duration of the agreement with regard to the tax and customs regime, environmental standards, and other issues of concern to the investor applicable at the date of the agreement, as well as an undertaking to issue the permit documentation required to carry out the investment project;
- the liability of the parties for failure to observe the terms of the investment agreement;
- the procedure for and body charged with the settlement of disputes (including international arbitration in the case of foreign investors) arising from the investment agreement.

In addition to the said mandatory terms, an investment agreement may also include the following:

- mutual obligations undertaken by the parties to develop the industrial and social infrastructure of the region;
- the procedure for amending the investment agreement;
- the investor's right to export from Belarus goods and profit (income) resulting from the implementation of the investment agreement and owned by the investor;
- obligations undertaken by the foreign investor to hire and train citizens of Belarus, the terms of the use of technologies, and undertakings on the part of the investor to train employees of the newly created organization following the completion of the implementation of the investment project;

- other terms, depending on the nature of the investment project.

Investment agreements with foreign investors may include provisions whereby the government waives its sovereign immunity, immunity from preliminary security of costs under a court claim, and immunity from the enforcement of court and/or arbitration rulings.

**Article 47. The procedure for the conclusion of investment agreements**

The Government of Belarus or the national government agency authorized thereby shall review investor proposals on the subject and terms of proposed investment agreements in accordance with the procedure established by the Government of Belarus.

Investment agreements shall be signed on the basis of decisions reached by the Government of Belarus and approved by the President of Belarus.

Investment agreements shall be entered into the public registry of investment agreements. The procedure for the maintenance of the said registry shall be established by the Government of Belarus.

**Article 48. The stability of the terms of an investment agreement**

The terms of an investment agreement shall remain in force for the entire period of the agreement's validity. Amendments shall only be possible subject to the mutual consent of the parties, unless otherwise established by the investment agreement.

**SECTION III**  
**SPECIFIC PROVISIONS REGARDING INVESTMENT ACTIVITY CARRIED OUT ON**  
**THE BASIS OF CONCESSIONS**

**Chapter 11**  
**General provision on concessions**

**Article 49. General provisions**

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 concessions.

**Article 50. The concept of "concession"**

A concession is deemed to constitute an agreement concluded by the Republic of Belarus with an entity as listed in Article 52 of this Code envisaging the transferal for a consideration and for a specified period of time of the right to engage in a particular activity within the territory of Belarus, which activity is normally the sole preserve of the Government, or envisaging the transferal of the right to use property owned by the Republic of Belarus.

**Article 51. The objects of concession agreements**

The following may constitute the objects of concession agreements:

- the right to engage in certain types of activity which, in accordance with the legislation of Belarus, are the exclusive preserve of the State - by a decision of the President of Belarus;
- the subsoil, bodies of water, forests, lands, and assets which, in accordance with the legislation of Belarus may only be owned by the Republic of Belarus - on the basis of the list approved by the President of Belarus.

More than one object may be entrusted to a concessionaire under a concession agreement.

**Article 52. The parties to a concession agreement**

The following shall be the parties to concession agreements:

- on the one hand - the Republic of Belarus, represented by the Government of Belarus or the national government agency authorized thereby (the concession authority);
- on the other hand - domestic investors, including privately-owned legal entities and/or legal entities in which the Republic of Belarus, its administrative and territorial units, or government organizations hold up to 25 per cent of the capital, and/or foreign investors (concessionaires).

**Article 53. The types of concession agreement**

The following are considered to be concession agreements for the purposes of this Code:

- full concession agreements;
- production sharing concession agreements;
- concession agreements on the provision of services (performance of work).

**Article 54. Full concession agreements**

Full concession agreements are the agreements that grant to the concessionaire ownership rights with regard to the resulting product. Unless otherwise established by the concession agreement, the concessionaire shall pay all taxes and other mandatory charges established by the legislation of Belarus.

#### **Article 55. Production sharing concession agreements**

Production sharing concession agreements are the agreements that envisage the sharing of the resulting products between the concessionaire and the Republic of Belarus in accordance with the procedure and in the proportion established by the concession agreement.

In accordance with the terms of the agreement, the concessionaire shall be fully or partially exempted from the payment of taxes and other mandatory charges established by the legislation of Belarus in consideration for transferring to the Republic of Belarus ownership rights over a share in the production.

#### **Article 56. Concession agreements on the provision of services (performance of work)**

Concession agreements on the provision of services (performance of work) are the agreements that envisage the transferal to the Republic of Belarus of ownership rights over the resulting product under the agreement. The concessionaire shall be entitled to a fee in consideration for the services provided (work performed).

In the event of the conclusion of a concession agreement on the provision of services (performance of work), which agreement entails a risk, the concessionaire's fee shall only be paid following the achievement of the result described in the concession agreement.

In the event of the conclusion of a concession agreement on the provision of services (performance of work) with regard to which no such risk exists, the concessionaire's fee shall be paid regardless of the actual results.

#### **Article 57. The legislation of the Republic of Belarus regulating relationships arising in connection with the conclusion and implementation of concession agreements**

The conclusion and implementation of concession agreements shall be regulated by this Code, the terms of the concession agreements, other legislative instruments of the Republic of Belarus, and the international agreements to which the Republic of Belarus is party.

The provisions contained in the legislation on leasing shall apply to concession agreements insofar as the present Code and other legislative instruments regulating relationships arising with regard to the use of assets under concession arrangements do not establish otherwise.

The use of the subsoil and other natural resources under concession agreements shall be regulated by the legislation of the Republic of Belarus on the subsoil and other natural resources, with account taken of the provisions of this Code. The provisions envisaging special permits for the use of the subsoil and government approval of the right to use natural resources shall not apply for the term of a concession agreement.

### **Chapter 12**

#### **The procedure for concluding concession agreements**

#### **Article 58. The drafting of concession proposals**

The Government of Belarus and/or national government agency (association) authorized thereby shall prepare concession proposals and organize the negotiation of concession agreements on the basis of decisions by the President of Belarus on the need to grant a concession with regard to a particular form of activity or type of asset owned by the Republic of Belarus.

#### **Article 59. General provisions on the procedure for selecting a concessionaire**

Concessionaires shall be selected on the basis of tenders or auctions, with the exception of the instances set forth in the fourth paragraph of this Article.

Unless otherwise stated in the concession proposal, tenders and auctions shall be held on a public and open basis. All participants in the said tenders and auctions shall have equal rights and opportunities.

The Government of Belarus may decide to open a particular concession agreement tender or auction to domestic or foreign investors only.

Concession agreements may be concluded without a tender or auction in the following instances only:

- in the event of the receipt of one application only;
- by a decision of the President of Belarus, when for the sake of national security or the defense of the country the concession agreement must be negotiated directly with a particular investor.

#### **Article 60. The body responsible for organizing tenders and auctions**

Tenders and auctions for the conclusion of concession agreements shall be organized and held by the national government agency authorized by the Government of Belarus (hereinafter - the concession authority).

#### **Article 61. Tender and auction commissions. Tender and auction rules**

The concession authority shall create a tender or auction commission. The tender or auction commission shall include representatives of the national government agency and independent experts (including foreign experts if required).

The nature of and rules concerning the work of the tender or auction commission shall be approved by the concession authority in accordance with the procedure established by the Government of Belarus.

The rules of the tender or auction and the fee for participation in the tender or auction shall be established by the concession authority in accordance with a decision reached by the Government of Belarus.

#### **Article 62. Announcement of tenders and auctions**

Announcements on tenders and auctions shall be published in the national press and/or in foreign periodicals in cases where the participation of foreign investors is solicited. The announcements shall be published at least six months prior to the established deadline for the submission of applications to participate in the tender or auction.

The said announcements shall contain a brief description of the conditions of the tender or auction and the assets offered under concession arrangements, as well as the contact details of the authority or organization from which further information may be obtained. The said authority/organization

shall have available a copy of the draft concession agreement approved by the Government of Belarus, or by the concession authority on the behalf of the Government.

### **Article 63. Applications to participate in tenders and auctions**

Investors wishing to participate in a tender or auction shall submit to the concession authority a written application containing the following data:

- the name of the investor (in the case of private individuals - the name and citizenship of the investor), and the names of the shareholders (for open joint-stock companies - shareholders holding 5 per cent or a greater interest in the company) or owners (founders) of investors which are legal entities;
- the jurisdiction in which the corporate investor was established, and the jurisdiction(s) in which the shareholders (for open joint-stock companies - shareholders holding 5 per cent or a greater interest in the company) or owners (founders) of the corporate investor were established, provided the said shareholders or owners (founders) are legal entities, and the jurisdiction of permanent residency of the investor and its shareholders or owners (founders);
- the place of location of the corporate investor (place of residency of the individual investor) and its shareholders (for open joint-stock companies - shareholders holding 5 per cent or a greater interest in the company) or owners (founders);
- information confirming the experience and ability of the investor to use the technical and organizational resources needed to implement the concession agreement;
- information confirming the experience and ability of the investor to mobilize the finances needed to implement the concession agreement;
- confirmation of the payment of a fee for participation in the tender or auction.

Depending on the nature of the concession object, including the nature of the activity that constitutes the object of the concession agreement, the concession authority may require the participants in the auction or tender to supply additional information as stated in the announcement on the tender or auction.

In the event of the submission by several investors of a joint tender or auction bid, the said investors shall provide the details, as established by this Article, on each member of the group and on the proposed distribution of responsibilities for compliance with the terms of the tender or auction.

Information received with regard to the participants in a tender or auction shall be treated as a commercial secret.

Applications shall be deemed accepted subject to compliance with the terms established by this Article. Investors shall have the right to amend their bids until such time as the submission deadline expires.

Investors shall not be reimbursed for the cost of participating in tenders and auctions.

### **Article 64. The adoption of decisions on the basis of the results of tenders and auctions**

The successful bidder shall be selected by the concession authority on the basis of the conclusion reached by the tender or auction commission.

The concession authority shall publish the results of the tender or auction in the press within 30 days of the approval thereof by the tender or auction committee.

### **Article 65. Appeals, disputes, and annulment of tender or auction results**

The results of a tender or auction may be appealed by the bidders in court.

The annulment of a tender or auction shall constitute grounds for the non-conclusion of an agreement with the winner.

In the event that the results of the tender or auction are declared invalid following the conclusion of the concession agreement, the annulment of the concession agreement shall proceed in accordance with the legislation of Belarus.

#### **Article 66. The procedure for the preparation and conclusion of concession agreements**

Within fifteen days of the announcement of the results of the tender or auction, the concession authority shall inform the winner of procedure and place designated for the negotiation of the draft concession agreement. The parties shall then negotiate the terms of the concession agreement, which shall be based upon the basic concession agreement terms established by this Code and other legislation of the Republic of Belarus and upon the draft concession agreement approved by the Government of Belarus or by the concession authority by order of the Government of Belarus, and shall sign the agreement within three months of the announcement of the results of the tender or auction. In the event of failure to sign an agreement within the timeframe specified herein, the investor shall have the right to refer the dispute to the court.

The Government of Belarus or, by order of the Government, the concession authority, shall sign concession agreements on behalf of the Republic of Belarus.

Concession agreements shall be registered in the public registry of concession agreements. The procedure for the maintenance of the said registry shall be established by the Government of Belarus.

### **Chapter 13**

#### **The terms of concession agreements and their implementation**

##### **Article 67. Terms subject to inclusion in concession agreements**

All concession agreements shall contain the following terms on a mandatory basis:

- the duration of the concession agreement;
- the types of activity carried out in accordance with the concession agreement or a description of the assets that constitute the object of the agreement;
- the decision-making powers of the parties with regard to the implementation of the agreement;
- the concession authority's obligations vis-?-vis the concessionaire as regards the issuance of permit documentation thereto for the performance of the activity envisaged by the agreement;
- a description of the ownership rights pertaining to the products and profits (earnings) yielded, in accordance with the terms of this Code;
- the extent of the national territory or part thereof in which the concessionaire has the right, including the exclusive right, to engage in particular types of activity (in the event that the object of the concession agreement is the right to engage in a particular type of activity), and the program and schedule of work to be carried out in accordance with the concession agreement;
- an undertaking on the part of the concessionaire to observe the Belarussian legislation on labor and safety;
- an undertaking on the part of the concessionaire to observe the Belarussian legislation on the protection of the environment and the rational use of natural resources;
- the procedure for reviewing the activity of the concessionaire;

- the liability of the parties;
- the procedure for and authority charged with resolving disputes (including international arbitration for foreign investors) arising from concession agreements.

In addition to the above mandatory provisions, a concession agreement may also include the following:

- the concessionaire's obligations with regard to the financing of activities envisaged by the agreement;
- the nature of and procedure for government participation in concession agreements;
- any obligations undertaken by the concessionaire with regard to the use of new and advanced technologies;
- the mutual undertakings of the parties to develop the industrial and social infrastructure of the region;
- the procedure for amending the concession agreement;
- the concessionaire's rights to export from Belarus the concessionaire's share of the product or profit yielded through the implementation of the concession agreement;
- any undertakings on the part of the concessionaire to use goods (work and services) produced in Belarus in the course of the implementation of the agreement on condition that the said goods (work and services) are competitive;
- any undertaking by a foreign concessionaire to hire and train citizens of Belarus;
- other terms, depending on the nature of the concession agreement and the specific nature of the concession object.

#### **Article 68. Special conditions subject to inclusion in full concession agreements**

Payment in consideration for the right to utilize the concession object shall be a mandatory condition of all full concession agreements. If necessary, and provided that such a provision is compatible with the rest of the concession agreement, a concession agreement may contain provision obliging the concessionaire to sell a proportion of the product yielded under the concession agreement on the domestic Belarussian market.

#### **Article 69. Special conditions subject to inclusion in concession agreements on production sharing**

The following provisions shall also be included in concession agreements on production sharing:

- the procedure to be followed in determining the total volume of production;
- the procedure to be followed in identifying the proportion of the production to be retained by the concessionaire in consideration for the investment, and the procedure for the valuation of the said proportion of the production;
- the procedure to be followed in sharing the production between the parties, and the procedure to be followed in transferring that portion of the production which constitutes government share to the concession authority.

#### **Article 70. Special conditions subject to inclusion in concession agreements on the provision of services (performance of work)**

The following provisions shall also be included in concession agreements on the provision of services (performance of work):

- the amount and procedure to be followed for the payment of the concessionaire's fee as established by the terms of the agreement;
- the procedure to be followed in transferring the product forming the subject of the agreement to the concession authority or entity designated thereby.

Concession agreements on the provision of services (performance of work) may also include provisions on the purchase by the concessionaire of a part of the production, or on the payment of the concessionaire's fee in the form of a part of the production.

#### **Article 71. Payments by the concessionaire**

In the event that the concession agreement envisages payments in consideration for the concession object, the amount of the payments may be grouped or stated separately for each of the concession objects in accordance with the agreement.

Payments in consideration for concession objects shall be treated as revenues of the national budget.

#### **Article 72. Term of concession**

A concession agreement may be concluded for a period not exceeding 99 years. Upon the expiration of the term of the agreement, a concessionaire who has complied with the principal terms of the concession agreement in a *bona fide* manner shall enjoy a priority right to renew the agreement. Moreover, the President of Belarus, or at the President's instructions, the Government of Belarus may at the request of the concessionaire extend the term of the concession agreement without holding a tender or auction.

Concessionaires shall submit written applications for the extension of their concession agreements to the concession authority at least one year prior to the expiration of the term of validity of the concession agreement.

#### **Article 73. A concessionaire's right to information**

For the purposes of carrying out the activity specified in the concession agreement, concessionaires shall have the right to make use at their own expense of all information of an economic, industrial, scientific, technical or other nature related to objects that are the property of the Republic of Belarus, and to obtain the said information in accordance with the procedures established by the legislation of Belarus.

#### **Article 74. The conditions for the fulfillment of concession agreements**

Concessionaires who have concluded concession agreements under the terms of this Code shall be free to select their approach to the performance of the activity envisaged by the agreement.

#### **Article 75. Sovereign immunity**

Concession agreements concluded with foreign investors may include provisions whereby the government waives its sovereign immunity, immunity from preliminary security of costs under a court claim, and immunity from the enforcement of court and/or arbitration rulings.

#### **Article 76. The stability of the terms of concession agreements**

The terms of a concession agreement shall remain in force for the entire period of the agreement's validity. Amendments shall only be possible subject to the mutual consent of the parties, unless otherwise established by the concession agreement.

### **SECTION IV**

## **THE ACTIVITIES OF FOREIGN INVESTORS AND COMMERCIAL ORGANIZATIONS WITH FOREIGN INVESTMENT IN THE TERRITORY OF BELARUS**

### **Chapter 14 General provisions**

#### **Article 77. The activities of foreign investors in Belarus**

Foreign investors shall enjoy the right to engage in any form of investment activity in Belarus as established by Article 5 of this Code.

Foreign investors shall enjoy the right to establish Belarussian legal entities in Belarus without restrictions on the amount of foreign investment or the organizational and legal form, as well as to set up their subsidiaries and representative offices, in accordance with the legislation of Belarus, including the international agreements to which Belarus is a signatory.

Legal entities with the share of foreign investments in their charter capital equivalent to at least USD 20,000 and with the generation of profit (earnings) being their main objective shall be recognized in Belarus as commercial organizations with foreign investment. Such organizations may take the form of limited liability companies, additional liability companies, open joint stock companies, closed joint stock companies, or private foreign companies ("private foreign unitary enterprises"). The procedures to be followed when establishing the said commercial organizations with foreign investment shall be established by this Code and the legislation of Belarus.

The minimum charter capital of other organizations and the procedure for their establishment shall be specified by the legislation of Belarus. Such organizations shall not be eligible for the exemptions established by this Code and the Belarussian legislation for commercial organizations with foreign investment.

#### **Article 78. Restrictions on the activities of foreign investors in Belarus**

Foreign investors shall be prohibited from investing in Belarus in the following sectors:

- the defense and security of the Republic of Belarus, without special authorization by the President of Belarus;
- the manufacturing and sale of narcotic, powerful and toxic substances per the list approved by the Ministry of Health of Belarus.

Foreign investment into the assets of legal entities that occupy a monopoly position on the Belarussian market shall be permitted only with the approval of the Ministry for Business Enterprise and Investment.

#### **Article 79. The legal regime governing foreign investment**

The legal regime governing foreign investment in Belarus and the business conditions for foreign investors and legal entities established with their participation shall not be less favorable than the equivalent regime governing property and property rights and investment conditions for Belarussian legal entities and private individuals, with the exception of the instances established by this Code.

In the event that Belarussian legislation adopted subsequent to the creation of a commercial organization with foreign investment impairs the situation and business conditions for foreign investors and commercial organizations with foreign investment established with their participation (i.e. in the event that additional or increased obligations are imposed thereupon or in the event of a limitation or suppression of their rights), for a period of five years the legislation in effect at the date

of registration of the commercial organization with foreign investment shall apply to the foreign investor, commercial organization with foreign investment, and/or foreign investments.

The foregoing shall not apply to legislative amendments concerning defense, the protection of the environment, or public health issues.

## **Chapter 15**

### **Specific provisions concerning the creation of organizations with foreign investment**

#### **Article 80. Commercial organizations with foreign investment**

Commercial organizations with foreign investment are deemed to be legal entities with a charter capital fully or partially made up by foreign investments.

For the purposes of defining specific provisions concerning registration, all commercial organizations with foreign investment shall be categorized as either commercial joint ventures or commercial foreign organizations.

Commercial joint ventures in Belarus are Belarussian legal entities with a charter capital made up of a contribution from a foreign investor and a contribution from a Belarussian private individual and/or legal entity.

Commercial foreign organizations are Belarussian legal entities in which the charter capital is made up of foreign investments only.

Commercial organizations with foreign investment may engage in any type of activity that is not prohibited by the Belarussian legislation and that is consistent with the objectives stated in the organization's charter.

Certain types of activity, the list of which is established by the legislation of the Republic of Belarus, may be carried out by commercial organizations with foreign investment subject to the receipt of a special permit (license).

#### **Article 81. The creation of a commercial organization with foreign investment**

The establishment of a commercial organization with foreign investment may take place through its incorporation, or following the acquisition by a foreign investor of an interest (shares) in an existing legal entity that did not previously have foreign investment, or through the acquisition of an enterprise's assets in whole or in part.

Decisions on the establishment of a commercial organization with foreign investment shall be taken by the founders (shareholders) at their sole discretion, including in cases whereby a foreign investor buys an interest (shares) in an existing legal entity that did not previously have foreign investment, and in cases of the acquisition of an enterprise's assets in whole or in part in consideration for an amount exceeding the equivalent of USD 20,000. In cases whereby the Belarussian founders (shareholders) of a commercial joint venture are legal entities or private individuals which do not enjoy rights of ownership over invested assets, the decision on the participation of such entities in the establishment of a commercial organization with foreign investment shall be taken in accordance with a procedure established by the owner of the invested assets, or by a body authorized thereby, in accordance with the legislation of Belarus.

#### **Article 82. Subsidiary and associated companies, branches and representative offices of commercial organizations with foreign investment, and their status**

Commercial organizations with foreign investment shall have the right to own subsidiary and associated companies and to establish branches and representative offices both within the territory of Belarus and abroad subject to the terms established by the legislative instruments of Belarus and the relevant foreign states.

Subsidiaries of commercial organizations with foreign investment shall enjoy the same rights and shall register with same authorities as commercial foreign ventures. Associated companies of commercial foreign organizations shall enjoy the same rights and register with the same authorities as commercial foreign organizations in the event that the amount of foreign investment in the charter capital of an associated company is equivalent to at least USD 20,000. Subsidiaries and associated companies of commercial joint ventures shall be registered in accordance with the procedure established with regard to legal entities without foreign investment and shall not enjoy the same rights as commercial organizations with foreign investment.

Branches and representative offices of commercial organizations with foreign investment shall engage in their activities on the basis of regulations approved by the commercial organization with foreign investment. Branches and representatives of commercial organizations with foreign investment shall not have the status of legal entities in Belarus.

#### **Article 83. The state registration of commercial organizations with foreign investment**

With the exception of the state registration of banks, non-bank lending and financial organizations, commercial organizations with foreign investment located in free economic zones, and insurance and reinsurance organizations, the state registration of commercial organizations with foreign investment shall be carried out by the authorized state body (hereinafter - the registration authority).

The state registration of banks, non-bank lending and financial organizations, commercial organizations with foreign investment located in free economic zones, and insurance and reinsurance organizations shall be regulated by other legislative instruments.

Commercial organizations with foreign investment are deemed incorporated as of the date of their state registration.

#### **Article 84. Documents to be submitted for the state registration of commercial joint ventures**

The following documents must be submitted to the registration authority in order to register commercial joint ventures:

- a written application by the founders (signed by all of the founders of the commercial joint venture);
- two notarized originals or copies of the foundation documents of the commercial joint venture;
- for founding parties which are Belarussian legal entities: a notarized copy of the decision of the owner of the assets or entity authorized thereby to establish a commercial joint venture, notarized copies of documents confirming the state registration of the legal entity, and notarized copies of the foundation documents (for each Belarussian legal entity);
- for founding parties which are citizens of Belarus: a copy of the labor book stamped by the most recent employer, or a copy of the pension card endorsed by the social security authority at the place of residence, or a certificate issued by the employment authority;
- for founding parties which are foreign legal entities (organizations): a legalized extract from the trade register of the country of origin or other equivalent proof of the legal status of the foreign investor in accordance with the legislation of the country of location or residence at the date of establishment of the commercial joint venture (the document must be legalized

- within a period of one year prior to the submission of the registration application), with a translation into the Belarussian/Russian language (the translator's signature must be notarized);
- for founding parties which are citizens of foreign states: a copy of the passport with a translation into the Belarussian/Russian language (the translator's signature must be notarized);
  - documents confirming the formation of the charter capital (for commercial joint ventures established in the form of open joint stock companies);
  - a letter of guarantee or other document confirming the right to locate the commercial joint venture at its place of location;
  - a payment order confirming the payment of the state registration fee.

**Article 85. Documents to be submitted for the state registration of commercial foreign organizations**

The following documents must be submitted to the registration authority in order to register commercial foreign organizations:

- a written application by the founders (signed by all of the founders of the commercial foreign organization);
- two notarized originals or copies of the foundation documents of the commercial foreign organization;
- for founding parties which are foreign legal entities (organizations): a legalized extract from the trade register of the country of origin or other equivalent proof of the legal status of the foreign investor in accordance with the legislation of the country of location or residence at the date of establishment of the commercial foreign organization (the document must be legalized within a period of one year prior to the submission of the registration application), with a translation into the Belarussian/Russian language (the translator's signature must be notarized); for founding parties which are citizens of foreign states: a copy of the passport with a translation into the Belarussian/Russian language (the translator's signature must be notarized);
- documents confirming the formation of the charter capital (for commercial foreign organizations established in the form of open joint stock companies);
- a letter of guarantee or other document confirming the right to locate the commercial foreign organization at its place of location;
- a payment order confirming the payment of the state registration fee.

**Article 86. The state-registration procedure, denial of registration, and appealing against registration denials**

Documents submitted for the purpose of the state registration of commercial organizations with foreign investment should be submitted to the registration authority, which in return shall issue a standard receipt. The registration authority shall be prohibited from demanding the submission of any document that is not envisaged by this Code.

The state registration of a commercial organization with foreign investment shall be completed within 15 days of the submission by the founders (shareholders) of the application together with the documents stipulated in Articles 84 and 85 of this Code.

The registration authority shall provide written notification of the registration of an organization with foreign investment to the following entities: the founding parties (shareholders) of the newly established commercial organization, within five days of the adoption of the decision on registration; the State Tax Committee of the Republic of Belarus for the inclusion of the commercial enterprise in

the Unified State Registry of Legal Entities and Individual Entrepreneurs in the Republic of Belarus, within 10 days of adoption of the decision on registration; and the Ministry for Statistics and Analysis of the Republic of Belarus.

The registration authority shall issue a certificate of registration to the commercial organization and publish the registration details in the press.

State registration may be denied in the event of the violation of the laws of Belarus or the procedure for the establishment of a commercial organization with foreign investment, or in the event that the foundation documents are inconsistent with the laws of Belarus. The registration authority shall be prohibited from basing registration denials on the grounds that the establishment of a commercial organization with foreign investment is unjustified.

Written notification detailing the grounds for the denial of registration shall be sent by the registration authority to the founders (shareholders) of the commercial organization with foreign investment within five days of the adoption of a decision on the denial of registration. The founding parties (shareholders) of the commercial organization with foreign investment may, in accordance with the legislation of Belarus, appeal in court against the denial to proceed with the state registration or the registration denial on the grounds that they see unjustified.

#### **Article 87. The procedure for forming the charter capital**

At least fifty per cent of the charter capital declared in the foundation documents of a commercial organization with foreign investment in the form of a limited liability company, an additional liability company, a closed joint stock company or a private foreign company must be paid up during the first year following the registration of the organization through the contribution by each founder (shareholder) of at least fifty per cent of their respective interests. The remaining balance must be settled within a period of two years following state registration.

The charter capital declared in the foundation documents of a commercial organization with foreign investment established in the form of an open joint stock company must be paid up in full prior to the state registration of the organization.

Increases in the charter capital of commercial organizations with foreign investment in the form of joint stock companies shall be carried out in accordance with the Belarussian legislation on securities.

Commercial organizations with foreign investment in the form of limited liability companies, additional liability companies, closed joint stock companies, and private foreign companies shall present documentary evidence of the formation of their charter capital within the required limits to the registration authority within 30 days of the expiration of the relevant period. Documentary evidence of the formation of the charter capital shall be an audit report.

The Government of Belarus or the national government agency authorized thereby shall enjoy the right to extend the period established by paragraph one of this Article with regard to the formation of the charter capital of commercial organizations with foreign investment.

The registration authority shall issue a certificate on the formation of the charter capital to the commercial organization with foreign investment that submitted a proper documentary evidence of the formation of the charter capital within 10 days of the receipt of the said documentary evidence.

#### **Article 88. Shareholder contributions to the charter capital of commercial organizations with foreign investment**

The charter capital of commercial organizations with foreign investment shall be declared in United States dollars. In the event that the commercial organization with foreign investment takes the form of a joint stock company or includes assets of the Republic of Belarus in its charter capital, the charter capital shall be also declared in the currency of the Republic of Belarus.

The founders (shareholders) of a commercial organization with foreign investment shall enjoy the right to make charter capital contributions in monetary and/or non-monetary form.

The official exchange rate quoted by the National Bank of the Republic of Belarus for the appropriate currency at the date of execution of the agreement on the establishment of a commercial organization with foreign capital and/or the date of approval of the charter shall be used to translate the contribution.

In cases whereby the founder (shareholder) of a commercial organization with foreign investment makes a charter capital contribution in the currency of the Republic of Belarus or in a foreign currency, the said founder (shareholder) shall be obliged to take into account the difference arising between the official exchange rates used to translate the Belarussian currency and foreign currency into United States dollars as quoted by the National Bank of the Republic of Belarus at the date of execution of the agreement on the establishment of the commercial organization with foreign investment and/or the date of approval of its charter, and the date of actual settlement of the contribution.

In the event of a decision to increase the charter capital or a decision to register an existing legal entity as a commercial organization with foreign investment, the founder (shareholder) of the organization shall be obliged to take into account the difference arising between the official exchange rate quoted by the National Bank of the Republic of Belarus at the date of the adoption of the said decision, and the date of actual settlement of the contribution.

Any difference arising as a result of the recalculation, the procedure for which is provided in the fourth and fifth paragraphs of this Article, shall be taken to the reserve fund of the commercial organization with foreign investment.

Non-monetary contributions by a foreign investor must be either imported into Belarus or acquired in Belarus in consideration for payment in foreign or Belarussian currency provided that the Belarussian currency has been received by the investor in the form of the investor's share of the profits earned as a result of the investor's participation in the commercial organization with foreign investment, from another permitted activity, or via the exchange of foreign currency in Belarussian banks. Non-monetary contributions shall be valued as of the date of registration in the balance sheet of the organization with foreign investment.

Non-monetary contributions by founders (shareholders) to a commercial organization with foreign investment shall be subject to appraisal of the accuracy of the valuation thereof in accordance with the procedure established by the legislation of Belarus. Appraisals of the accuracy of the valuation of state-owned assets contributed as a non-monetary contribution to the charter capital of an organization with foreign investment shall be carried out by the Ministry for the Management of State Property and Privatization. The appraised value shall be expressed in the currency in which the charter capital is expressed. A certificate of the accuracy of valuation of non-monetary contributions shall be prepared on the basis of the results of the appraisal. In the absence of the said certificate, the assets shall not be considered as definitively contributed to the charter capital.

**Article 89. The registration of amendments and additions to the foundation documents of commercial organizations with foreign investment**

In the event of any changes in the data contained in the foundation documents of a commercial organization with foreign investment in the instances established by the Belarussian legislation, the founders (shareholders) shall be obliged to introduce the appropriate amendments into the foundation documents within 30 days.

The documentation required for the registration of amendments and additions in the Unified State Registry of Legal Entities and Individual Entrepreneurs shall be submitted by the commercial organization with foreign investment to the registration authority within 30 days of the introduction of the amendments and additions into the foundation documents, unless otherwise established by the Belarussian legislation.

Within fifteen days of the receipt of the said documentation, the registration authority shall register the amendments and additions in the foundation documents of a commercial organization with foreign investment, subject to inclusion into the Unified State Registry of Legal Entities and Individual Entrepreneurs, and within 10 days following their registration notifies the State Tax Committee of the Republic of Belarus of the need to make the amendments and additions in the Unified State Registry of Legal Entities and Individual Entrepreneurs. The registration authority shall also notify the Ministry for Statistics and Analysis of such amendments.

#### **Article 90. The liquidation and reorganization of commercial organizations with foreign investment**

The liquidation of a commercial organization with foreign investment shall be carried out on the basis of a decision by the founders (shareholders), the owner of the assets or an executive body of such an organization duly authorized by the foundation documents to take such a decision, or by court order in the instances established by the legislative instruments of the Republic of Belarus. Failure by a commercial organization with foreign investment to comply with the procedure for the formation of the charter capital established by this Code may serve as grounds for its liquidation.

Announcements on the liquidation of commercial organizations with foreign investment shall be published in the press in accordance with the provisions established by the legislation of Belarus.

The reorganization of a commercial organization with foreign investment shall be carried out in accordance with the legislation of Belarus on the basis of a decision by the founders (shareholders) or the owner of the assets or an executive body of such an organization duly authorized by the foundation documents to take such a decision.

#### **Article 91. Taxation, tax and customs exemptions**

Commercial organizations with foreign investment, and foreign investors, shall make tax and customs payments in accordance with the tax and customs legislation of the Republic of Belarus, unless otherwise established by the international treaties to which the Republic of Belarus is party.

Commercial organizations with foreign investment shall enjoy the same exemptions on tax and customs payments as established by the Belarussian legislation with regard to Belarussian legal entities.

In addition, in accordance with the procedure and terms established by the Belarussian legislation:

1. Profits earned by commercial organizations with foreign investment in which foreign investors hold an interest exceeding 30 per cent shall be exempted from taxation for the first three years in which profits are reported, including the first year of profits, provided that the said profits have been

earned through the sale of goods (work and services) produced by the commercial organization with foreign investment (with the exception of trade and procurement activities).

In the event that the commercial organization with foreign investment is engaged in the production of goods that are of special importance to the country according to the list approved by the Government of Belarus, the rate of profits tax levied on the earnings of the said organization shall be reduced by 50 per cent for a further period of three years.

2. Goods imported into the customs territory of Belarus as the charter capital contribution of a foreign shareholder in a commercial organization with foreign investment shall be exempted from taxes and customs duty on condition that they:

- are fixed assets to be used in production;
- are not excisable;
- are imported within the timeframe established by the charter documents for the formation of the charter capital of a commercial organization with foreign investment; in the event that the commercial organization with foreign investment has been established in the form of a joint stock company - within the timeframe established by the shareholders agreement, and in the event of an increase in the charter capital of a commercial organization with foreign investment in the form of a joint stock company - within the timeframe established by the share subscription agreement.

The Belarussian tax and customs legislation may establish other tax and customs exemptions.

In the event of the liquidation of a commercial organization with foreign investment during the period of tax exemption or within three years of its expiration, the said commercial organization with foreign investment shall be obliged to pay the taxes related to the period during which the exemption was valid.

#### **Article 92. Export and import transactions**

Commercial organizations with foreign investment in which foreign investors hold an interest exceeding 30 per cent shall enjoy the right to export goods (work and services) produced thereby without having to obtain licenses and additional permits. Commercial organizations with foreign investment shall enjoy the right to import goods (work and services) for use in production without licenses.

The procedure to be followed when determining whether or not a product (work or service) was produced by the commercial organization with foreign investment shall be established by other legislation of the Republic of Belarus.

Exports of goods (work and services) not produced by the commercial organization with foreign investment and imports of goods (work and services) which are not designated for use by the commercial organization with foreign investment in production, shall be carried out in accordance with the Belarussian legislation.

#### **Article 93. Amortization charges**

Commercial organizations with foreign investment shall accrue amortization charges in accordance with the rates and procedures established for legal entities in the Republic of Belarus, unless otherwise established by their foundation documents.

#### **Article 94. Conditions for the sale of goods (work and services)**

Commercial organizations with foreign investment shall enjoy the right to establish the prices for the goods (work and services) produced thereby and the conditions for their sale at their sole discretion, and freely to select suppliers of goods (work and services).

#### **Article 95. Disposal of foreign currency revenues**

Foreign currency revenues from the sale of goods (work and services) produced by a commercial organization with foreign investment with at least 30 per cent of the charter capital owned by a foreign founder (shareholder) shall remain at the disposal of the said organization after all of the taxes and other mandatory charges envisaged by the Belarussian legislation have been paid.

#### **Article 96. The protection and exercising of intellectual property rights**

The protection and exercising of the intellectual property rights of foreign investors and commercial organizations with foreign investment shall be guaranteed by the legislation of the Republic of Belarus and the international agreements to which the Republic of Belarus is party.

#### **Article 97. Labor relations, social security of persons employed by commercial organizations with foreign investment**

Production, labor and associated relations shall be regulated at commercial organizations with foreign investment by means of collective agreements and employment contracts.

The conditions of collective agreements and employment contracts may not provide for less favorable conditions for the employees of a commercial organization with foreign investment than the conditions envisaged by the current Belarussian legislation.

Issues of salary and vacation leave for foreign employees of commercial organizations with foreign investments shall be regulated on an individual basis in the employment contracts concluded therewith. The salaries of foreign employees paid in foreign currency may be transferred abroad.

Social security and social insurance (with the exception of the pension insurance of foreign employees) for employees of commercial organizations with foreign investment shall be regulated by the Belarussian legislation.

#### **Article 98. Control over the activity of commercial organizations with foreign investment**

The government supervision authorities may carry out control reviews to ensure that commercial organizations with foreign investment are compliant with the legislation, strictly within the limits of their jurisdiction and in accordance with the legislation of Belarus. Commercial organizations with foreign investment shall be obliged to submit documentation and other materials detailing their activities to the said authorities for the purposes of the review. Commercial organizations with foreign investment shall have the right to decline any demands of such authorities on issues that lie outside their jurisdiction. A copy of the report on the results of a control review shall be sent to the reviewed commercial organization with foreign investment.

In the event of a control review, the government control authority shall be obliged to keep confidential proprietary information of the commercial organization with foreign investment. The disclosure of information of a commercial organization with foreign investment that constitutes a commercial secret shall entail the liability envisaged by the legislation of Belarus.

### **SECTION V SPECIFIC PROVISIONS ON INVESTMENT IN FOREIGN STATES**

## **Chapter 16** **General provisions on investment in foreign states**

### **Article 99. General provisions**

Legal entities and private citizens of the Republic of Belarus shall enjoy the right to carry out investment activity outside Belarus in accordance with Article 100 of this Code.

Investment activity in the territory of foreign states shall be regulated by this Code, other legislative instruments, the legislation of the state in which the investment activity is carried out, and the international agreements to which the Republic of Belarus is signatory.

### **Article 100. Forms of investment activity in foreign states**

Legal entities and private citizens of the Republic of Belarus may engage in investment activity in foreign states as follows:

- via the establishment of legal entities (hereinafter - organizations), including banks and non-bank credit and financial organizations financed with investments provided by legal entities and private citizens of the Republic of Belarus, as well as branches (representative offices) of Belarussian banks;
- via the acquisition of assets and rights thereto, including:
  - real estate;
  - interests in legal entities registered in foreign states;
  - securities;
- via other mechanisms that are consistent with the legislation of the foreign state and the international treaties to which the Republic of Belarus is signatory.

## **Chapter 17**

### **Specific provisions concerning the opening of accounts and the maintenance of records of investments outside the territory of Belarus**

#### **Article 101. The opening of bank accounts outside the territory of Belarus and the performance of related foreign currency transactions**

Belarussian legal entities and individual entrepreneurs shall obtain a permit from the National Bank of the Republic of Belarus prior to opening a foreign currency bank account outside the territory of Belarus, unless otherwise established by the international treaties to which the Republic of Belarus is signatory or the legislation of the Republic of Belarus.

Applications for permits to open foreign currency bank accounts in a foreign state submitted by Belarussian legal entities and individual entrepreneurs shall be considered in terms of the nature of the planned foreign currency transactions and in accordance with the procedure established by the National Bank of the Republic of Belarus.

#### **Article 102. Accounting for and control over investments in foreign states**

The National Bank of the Republic of Belarus shall be responsible for accounting for and control over investments by Belarussian legal entities and individual entrepreneurs in foreign states, including acquisitions of real estate and securities, and contributions to the charter capital of foreign legal entities.

Contributions of Belarussian assets to the charter capital of legal entities located in the territory of foreign states shall be carried out with the consent of the owner by the body authorized thereby following the appraisal of the accuracy of the valuation of said assets carried out in accordance with the legislation of the Republic of Belarus.

## **SECTION VI CONCLUDING PROVISIONS**

### **Chapter 18 Concluding provisions**

#### **Article 103. The entry into force of this Code**

This Code shall enter into force three months following its official publication, with the exception of Article 104, which shall enter into force as of the date of official publication of this Code.

Until such time as the legislation of the Republic of Belarus is harmonized with the provisions of this Code, the laws and regulations of the Republic of Belarus shall remain in force to the extent that they do not contradict the terms of this Code, unless otherwise established by the Constitution of the Republic of Belarus.

#### **Article 104. The harmonization of other laws and regulations with the terms of this Code**

Within three months of the date of the official publication of this Code, the Government of Belarus shall:

- prepare proposals on the harmonization of the laws and regulations of the Republic of Belarus with the terms of this Code, and submit the said proposals to the Chamber of Representatives of the National Assembly of the Republic of Belarus;
- ensure the harmonization of the laws and regulations of the Republic of Belarus with the terms of this Code in accordance with the established procedure;
- adopt other measures as needed to ensure the implementation of the terms of this Code.

#### **Article 105. The abrogation of certain legislative instruments**

In connection with the adoption of this Code, the following legislative instruments are hereby abrogated:

1. The Law of the Republic of Belarus dated May 29, 1991, "Concerning Investment Activity in the Republic of Belarus" (Bulletin of the Supreme Soviet of the Byelorussian Soviet Socialist Republic, 1991, issue 22, p.300).

2. The Decree of the Supreme Council of the Republic of Belarus dated May 29, 1991, "Concerning the Entry into Force of the Law of the Republic of Belarus "Concerning Investment Activity in the Republic of Belarus" (Bulletin of the Supreme Soviet of the Byelorussian Soviet Socialist Republic, 1991, issue 22, p.301).

3. The Law of the Republic of Belarus dated November 14, 1991, "Concerning Foreign Investments in the Territory of the Republic of Belarus" (Bulletin of the Supreme Council of the Republic of Belarus, 1991, issue 35, p.625; Bulletin of the National Assembly of the Republic of Belarus, 1998, issue 15, p.184).

4. The Decree of the Supreme Council of the Republic of Belarus dated November 14, 1991, "Concerning the Procedure for the Entry into Force of the Law of the Republic of Belarus

"Concerning Foreign Investments in the Territory of the Republic of Belarus" (Bulletin of the Supreme Council of the Republic of Belarus, 1991, issue 35, p.626).

5. The Law of the Republic of Belarus dated April 24, 1992, "Concerning the Introduction of Amendments into the Law of the Republic of Belarus "Concerning Investment Activity in the Republic of Belarus" (Bulletin of the Supreme Council of the Republic of Belarus, 1992, issue 16, p.263).

6. The Law of the Republic of Belarus dated June 16, 1993, "Concerning the Introduction of Amendments and Additions into the Law of the Republic of Belarus "Concerning Foreign Investments in the Territory of the Republic of Belarus" (Bulletin of the Supreme Council of the Republic of Belarus, 1993, issue 22, p.280).

7. The Law of the Republic of Belarus dated February 4, 1994, " Concerning the Introduction of Additions into the Law of the Republic of Belarus "Concerning Investment Activity in the Republic of Belarus" (Bulletin of the Supreme Council of the Republic of Belarus, 1994, issue 11, p.149).

8. The Law of the Republic of Belarus dated December 5, 1997, "Concerning the Introduction of Amendments and Additions into the Law of the Republic of Belarus "Concerning Foreign Investments in the Territory of the Republic of Belarus" (Bulletin of the National Assembly of the Republic of Belarus, 1998, issue 3, p.16).

President Aleksandr LUKASHENKO