



**REPUBLIC OF
BELARUS**

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General overview



Due to its geographical position Belarus is a trade hub between the EU and the CIS states and is particularly suitable as a starting point to open up the markets of the customs union of the Eurasian Economic Community (EAEC) between Russia, Belarus and Kazakhstan. As a member of EAEC, Belarus offers a domestic market of 170 million consumers.

Numerous German companies have operations in Belarus, whereby in recent years in particular the focus has been on the area of plant engineering for industrial facilities. Many projects were realised with partly very good results for the involved companies. These successes have contributed significantly to the continuing high attractiveness of the market.

However, differences in the business culture and contract design and the challenges in dealing with the authorities occasionally lead to misunderstandings or problems.

As a result of the relatively recent establishment of the legal and economic systems and the ensuing lack of legal practice there are also a number of deficits in terms of legal certainty (especially also in tax law) with regard to the restrictions due to foreign exchange or customs regulations, in connection with cross-border debt enforcement and the enforcement of court rulings which have to be addressed in advance with the appropriate measures.

Furthermore, German companies should observe the following particularities:

- › As far as there was no local company, up to now the registration of a representative office for the exercise of business activities in Belarus in most cases was mandatory in order to avoid the offence of an illegal activity. On February 1, 2014 numerous changes came into effect with regard to the activity of representative offices. As a result, in future representative offices are no longer allowed to exercise commercial activities. If you have a representative office in Belarus, you should immediately get in contact with us.
- › Numerous activities, in particular in the construction and assembly field require corresponding certificates. An exercise of the activity without the appropriate certification can have serious consequences. An examination is recommendable at an early stage.
- › Especially in the field of plant construction it is important to carefully differentiate between assembly and supervisory work. This difference has important consequences for requirements for authorisation, the legal basis for the activity and the financial accounting. These differences and the correct terminology must already be taken into account with the structure of the offer and the contract design.

- › The acquisition of a Belarus company requires the observance of numerous particularities of the legal system (e.g. acquisition only via asset deal/no single shareholders) and the obligation to register as a condition for the legal effectiveness of contracts. Errors can quickly lead to the acquisition losing its validity.
- › Larger projects with the involvement of the state the main legal and tax conditions are regulated in “investment contracts”. These conditions take priority and can deviate considerably from the generally valid legal regulations. A careful examination is consequently essential.
- › The majority of properties in the Republic of Belarus are owned by the state. It should be taken into account that each property has to be assigned an intended purpose (for example for location of industrial or retailing facilities). The violation of this obligation can result in measures such as the withdrawal of the property.
- › From a historical point of view the EAEC members have numerous (and also legal) points in common. The decisive differences are, however, often hidden in the detail. This is particularly true for contracts which, for example, were designed for use in west-European legal systems. This means that when using contracts an examination is necessary to check for compliance with the national Belarus law and whether an adjustment to the national particularities is required.
- › For agreements on the place of jurisdiction (e.g. in favour of EU countries), it should be observed that the corresponding rulings are usually not recognised in Belarus. The effectiveness of arbitration clauses and the recognition and enforceability of arbitration awards must be exactly analysed.
- › Pricing details in Belarus contracts in principle include sales tax. The obligation to pay sales tax and withholding taxes should be checked in advance and explicitly included in the contract.
- › The labour law in Belarus is excessively bureaucratic and due to its application in the light of the socialist traditions is very friendly to employees. The design of the employment contract should take this fact into consideration and in particular the less flexible application of employment law regulations.
- › From a tax point of view it should be particularly observed that in the case of a representative office which fulfils the conditions of a branch office subject to tax, a tax loss carry-forward is not possible. For the allocation of the parent company expenses only the direct method is accepted.

- › A refund of input tax surpluses for representative offices is in principle only possible in the course of liquidation.
- › High inflation rates (annual rate currently approx. 20-25 %) lead to taxable currency profits with foreign exchange accounts. Receivables and input tax refund claims in Belarus roubles (BLR) experience massive losses in value. Free conversion is only possible to a limited extent and under certain conditions there is the obligation to convert into Belarus roubles (BLR).
- › Numerous forms of documentation are subject to formal legal requirements. An invoice does not (with a few exceptions) constitute an accounting document. The decisive documents are delivery acceptance documents which must be signed by both contract parties. There are considerable accounting differences between Belarus GAP and HGB/IFRS which without a correct transition can often lead to differences which cannot be resolved in the affected financial accounting.

Rödl & Partner has had its own office in Minsk (Rödl & Partner IOOO) since 2007. The focus of our activities is in the fields of trade law, corporate law, labour law, the law governing commercial agents and distribution, support for foreign direct investments and M&A consulting, cross-border and national tax compliance and the fine-tuning for tax arrangements. In addition, we naturally also offer financial accounting and auditing services.

Our customers include a number of the largest international company groups and a series of well-known (in particular German and Austrian) Mittelstand companies.

Founding of a company

The three most common legal forms in Belarus are the company with limited liability (“OOO”), the joint stock company (“OAO” and “ZAO”) and the so-called “unitary enterprise”.

As each joint stock company according to Belarus law requires at least two shareholders and the founding of a OOO is the most common and easiest, this description relates exclusively to the founding of an OOO by two foreign companies. In total, the OOO is less regulated than the ZAO and more flexible in terms of the structure of the articles of association and the deviation to legal regulations.

The company is founded the moment when registration in the uniform, state registry takes place. The company can only start its daily operations when a company stamp has been manufactured and the bank accounts of the company have been opened and activated.

The procedure for the state registration of an OOO usually consists of the following steps:

- › Preparation of the documentation for state registration (approx. 30 calendar days):
 - » Obtaining of extracts from the commercial register (for legal entities as shareholders);
 - » Apostille and notarial translation of the extracts from the commercial register (for legal entities as shareholders), notarial translation of passports of the shareholders (for natural persons as shareholders);
 - » Co-ordination of the future company name with the registration authority;
 - » Obtaining of the guarantee letter of the landlord about his willingness to make corresponding premises available to the future company.
 - » Resolution concerning the founding of a subsidiary with preparation of the corresponding protocol (contract) which includes a definition of the share capital, office address of the company (for the founding decision the address of the company must be given), future types of activity of the company (at least the purpose of the activity) and the candidates for the position of the director and the financial accounting officer, whereby the documentation is subject to Belarus corporate law.
 - » Opening of a provisional settlement account at a Belarus bank and the deposit of the share capital (application to open an account with the foundation document enclosed);
 - » Confirmation of the articles of association by a shareholders' meeting and the signing of the articles of association by the shareholders.
- › State registration at the registry (application for registration with enclosure of the postulated and notarially certified translated commercial register extracts and notarially certified translated passports of the shareholders, articles of association, certification of the payment of the registration fee, CD with articles of association in .doc or .rtf format) takes place on the day of the application and confirmations concerning registration at the tax authority, social security funds, statistical bodies and the state insurance company "Belgosstrakh" are issued within 5 working days (approx. 8 calendar days);
- › The notification of information via director and financial accounting officer to the tax authority (approx. 1 calendar day);
- › The manufacture of the company stamp (application with enclosure of the articles of association with registration note from the registration authority) (approx. 4 calendar days);
- › The opening of a settlement account at the Belarus bank takes place on the day the application is made (application with enclosure of copy of the articles of association, shareholders' resolution concerning the appointment of the director, identification card of the director, bank card with sample signatures of the persons with power of representation which are certified by the imprint of the stamp), transfer of the share capital to the current account and closing of the provisional settlement account (approx. 1 calendar day);
- › Furthermore, the book for violation and instructions and the book for audits from the tax authority are handed over as defined by law.

Therefore, realistically speaking, the founding of a joint stock company takes approximately 40 to 50 calendar days.

Takeover of a company

The takeover of a company is made by the sale of company shares or the acquisition of a company in an asset deal.

The procedure for the acquisition of the company in an asset deal is more complicated and therefore in practice not very common. The contract of the company acquisition in an asset deal does not require notarial certification. The legal transaction secured by property with the company, on the other hand, is subject to state registration including registration of the transfer of title for the corresponding real estate and is only valid from the date of the registration.

The sale of the company shares is made with a simple contract in writing, whereby a notarial form is not required. In principle, shareholders have a right of first refusal regarding the share (or its fraction) of a shareholder who is selling his share (or fraction of a share).

Legal forms of business

In Belarus, most legal entities are companies with limited liability.

Company with limited liability, OOO (Obschestvo s ogranichennoj otvetstvennostju)

- › Joint stock company
- › Basis is the articles of association
- › No minimum share capital defined by law
- › Share capital must be paid in full within 12 months of the state registration
- › Min. 2 and max. 50 shareholders
- › Liability of the shareholders is limited to their contribution to the share capital of the OOO

Public limited company, OAO (Otkrytoje akzionernoje obschestvo)

- › Joint stock company
- › Basis is the memorandum and articles of association
- › Share capital: min. 400 basic units (basic unit since October 1, 2013 = BYR 130,000)
- › Share capital must be paid in full within 12 months of the state registration

- › Number of shareholders: unlimited
- › Circulation of the shares is unrestricted
- › Publicly unrestricted subscription of shares
- › Closed limited additional subscription of shares

Closed joint stock company, ZAO (Zakrytoje akzionernoje obschestvo)

- › Share capital: min. 100 basic units (basic unit since October 1, 2013 = BYR 130,000)
- › Number of shareholders: max. 50 persons
- › Sale of shares only after approval of other shareholders
- › No public subscription of shares
- › Closed limited additional subscription of shares

Unitary enterprise, UP (unitarnoje predprijatije)

- › Basis is the articles of association
- › Legal entity with no right of ownership to capital assets and whose owner is the founder
- › A unitary enterprise is founded by a single person
- › The company assets cannot be divided into shares (a distribution leads to conversion to a company or liquidation)
- › No minimum amount of share capital
- › Share capital must be paid in full within 12 months of the state registration

Company management

The shareholders' meeting and the managing director (usually called director) are obligatory management bodies of a company. The executive board and supervisory board are established as is required. On the other hand, a joint stock company with more than 50 shareholders must have a supervisory board.

The shareholders' meeting is the most important management body of a company. The managing director does not require additional power of representation to represent the company externally. He can issue the power of representation to other representatives, can conclude legal transactions and can call a shareholders' meeting.

- › Managing director contract in the form of an employment contract or civil legal agreement (with a legal entity or sole trader)
- › Selection of possible regulations:
 - » Restriction of secondary employment of the managing director

- » Full financial liability for damage caused
- » Additional possibilities for notice of termination:
 - » With the change of a shareholder – acc. to his decision,
 - » With a process of overindebtedness (insolvency proceedings) – after decision of the asset owners,
 - » With the cancellation of the employment contract according to a resolution of the shareholder (usually with settlement to the amount of 3 salary months)
- › Notice of termination during illness or holiday not possible

Foreign exchange law

Resident persons are prohibited in principle of using foreign currency to conduct their transactions.

Currency transactions between resident persons and foreigners are carried out using foreign currency. For legal entities and sole traders, there is in principle an obligation to sell 30 % of the currency proceeds on the domestic market.

A foreign trade agreement must be made in writing and must also include the terms of payment, i.e. the payment obligation of a party before or after the performance of the other party.

Residents are in principle prohibited to make advance payments from accounts at Belarus banks to non-residents for import deliveries.

Exceptions are:

- › Advance payments made by a letter of credit;
- › Payments made from available currency proceeds from the importer (resident);
- › Advance payments in favour of residents of the customs union;
- › Corresponding authorisation from the national bank of the Republic of Belarus.

Each foreign trade transaction from residents of Belarus must be registered at the bank to the extent that the purchase price of the goods is 3,000 euros or above.

There is no obligation to register for the following foreign trade transactions:

- › Facilities for foreign trade transactions for goods
- › Transfer of business secrets, trademark protection rights, work and services.

The payment to residents of the Republic of Belarus for exports from Belarus must in principle at the latest be made within 90 calendar days after fulfilment (execution of performance of the services).

For imports the deadline for the incoming goods is 60 calendar days after the day of payment.

If the deadline for the production of imported goods (execution of work, performance of services) exceeds the legal deadline, an application for an extension of the deadline to a higher level state body or the executive committee can be made before the deadline has passed, but which cannot exceed 180 calendar days after the day of payment.

The deadlines for foreign trade transactions can on the application of a Belarus contract party be extended by the national bank of the Republic of Belarus.

Financing possibilities

In Belarus companies can be financed by banks, state capital and private capital. The taking of credit and its repayment is noted in the borrowing history of each borrower.

Banks have the right to view the borrowing history of each borrower and in order to provide capital require a business plan which details the income and payments of the company and the cash flow statement, etc.

Real estate und acquisition of land

In the Republic of Belarus a legal entity has the following possibilities with regard to land:

- > Leasehold rights,
- > Right to continuous or occasional use;
- > Private property rights

Due to historical reasons, the majority of the real estate in the Republic of Belarus is owned by the state. It should be taken into account that each property has its assigned purpose (for example, the location distribution of industrial or retail real estate). The violation of this obligation can lead to measures such as the withdrawal of the respective property.

A foreign company may only have rights to property in the form of a leasehold right.

An investor can acquire the right of private ownership of real estate owned by the state when the local authorities carry out an auction. Prior to state registration, concerning the erection of buildings planned for the investment project and the rights to these buildings, the investor is not yet entitled to process transactions with such properties and (or) with the allocated piece of land which could transfer the rights to a third party or lead to such a possibility.

Labour law

The content of the employment contract is agreed by the contract parties under consideration of the defined obligations according to the labour code including details regarding the employer and employee, place of work and position of the employee, rights and obligations of the parties, and if applicable the duration of the employment contract, working time and holiday arrangements, remuneration conditions, etc.

The employment contract is concluded in writing and can be either for a limited or indefinite period. Employment contracts are valid as indefinite to the extent that they do not include a reference to their limitation. Instead of the employment contract a special employment contract (limited employment contract of at least one year up to a maximum of five years) can be concluded which in comparison to general labour law is characterised by certain particularities. An extension of the limited employment contract is in principle non-binding. For a limited employment contract the parties are obliged to notify the other party of the non extension of the employment relationship at the latest one month before expiry of the employment contract.

The maximum regular weekly working time amounts to 40 hours. In general it is not foreseen to offset overtime hours with free days. However, it is allowed provided the employer and employee agree to it. A max. increase of 4 overtime hours within 2 consecutive days and a max. 120 hours per year is possible with compensation in the form of additional free days or additional remuneration.

In addition to the usual documents such as an employment contract and job description, the employer is also obliged to prepare his own forms signed by the managing director which are required in the case of taking on a worker or the notice of termination of an employee. The same is true for holidays and business trips.

Each employee must have a so-called work book which lists the working time, position and reasons for the notice of termination. The employer must register all the work books. Each month a table must be prepared (checklist for the working time) with all calendar days and all employees which lists the individual days of attendance, absence and sick days, etc.

The minimum wage by law (monthly and hourly) must be upheld by employers as the legal minimum for the remuneration of work done by employees. In the course of the year the amount of the minimum wage is subject to correction under consideration of inflation.

Dismissal protection

Some groups of employees are protected against arbitrary notice of termination by the employer. This includes, for example, pregnant women, women with children up to the age of three, single mothers with children up to the age of fourteen, handicapped persons, members of commissions for industrial disputes and employees conducting public duties (members of parliament, those on military service, participants in a criminal proceedings, etc.). The notice of termination in the listed cases can only be made for an important reason (liquidation, misappropriation of employer's assets, etc.).

The employee can file suit against notice of termination within one month at the commission for industrial disputes or before court. In the other cases the employee can file suit within three months after the legal violation is known. In the case of reinstatement the employee is entitled to a settlement to the amount of the average wage for the whole time of the loss of earnings. Instead of the reinstatement the court can order a settlement to the amount of 10 times the average monthly wage. In the case of reinstatement the employee has a right to financial compensation. In this case the responsible person of the company administration bears the subsidiary financial liability.

Trademark law / Industrial property rights

If goods containing intellectual property are introduced for business purposes without the permission of the respective owner of the rights, this constitutes an infringement of trademark law. In this case the owner of the rights is entitled to make an application with the customs authorities for implementation of measures to protect the intellectual property. Such measures include in particular the stop of customs clearance and impoundment of the goods by up to 10 days. The duration of the stop can, if required, be extended by a further 10 days. Customs charges are not due for the implementation of the measures to protect the intellectual property.

The implementation of measures to protect the intellectual property includes documentation verifying the right of ownership to the object with the intellectual property (certification, licence contract, or other) and if applicable the obligation to the owner of the rights to replace his financial loss to the amount of at least 10,000 euros or to conclude an insurance contract for the same value.

If a decision to implement the protective measures is made, the protection of the respective objects is entered into the customs register for objects with intellectual property. Subsequently the protection measures are carried out automatically by the customs authorities for a maximum of two years from the day of the registration. This time period can be extended by the owner of the rights.

Within the deadline for the cessation of the customs clearance the owner of the rights has the opportunity to initiate civil proceedings to establish protective measures through filing suit to end the legal violation, collection of the losses suffered, the removal, destruction and impoundment of goods and imposition of a fine to the amount of the value of the goods.

Such legal protection is granted to trademarks and brand names which are registered at an international level (Madrid agreement for the international registration of marks worldwide, Paris convention for the protection of industrial property), or at a national level (item 12 of the law on trademarks and service marks, order concerning the registration of a mark).

In addition, violations against the laws on the use and exploitation of trademarks and marks can result in legal or criminal proceedings.

Financial accounting obligations

All companies in Belarus including branch offices and representative offices of foreign companies without business activity are obliged to maintain financial accounting.

The regulations on financial accounting in Belarus are included in the law on financial reporting and accounting and are valid for all domestic and foreign legal entities, places of business and representative offices.

The finance ministry has additional regulatory authority during the transition over to the international financial accounting standards.

Each managing director is obliged to set up an own financial accounting department with a financial accounting officer who must report directly to the managing director. Otherwise the corresponding activities must be outsourced to a certified financial accounting company whose financial accounting officer then becomes the financial accounting officer for the ordering party.

The respective financial accounting activity must be carried out to comply with the regulations of the company and are subject to the approval of the managing director.

Foreign branch offices and representative offices are entitled to take on the financial accounting regulations of the originating country to the extent that these do not contradict Belarus law. The financial accounting, however, must (also) be made according to the Belarus legal regulations.

Tax returns / Tax consulting

Income tax

The 183 day regulation is valid for the question of tax residence:

- › For stays up to 183 days: only income is taxable from Belarus sources and payable to the tax authorities through the source of the income on the same day;

German citizens may present a residence certificate according to the double taxation agreement in order to be exempt from Belarus income tax.

- › For stays in excess of 183 days: all income is taxable, the income tax return has to be presented annually to March 1 of the following year:
 - » income tax rate with a flat rate of 12 % must be paid in full by May 15 of the following year;
 - » income as payment in kind: the rental of a flat (payment of goods and services by the company in favour of the taxpayer).

Sales tax

Sales tax is levied on most sales and services, whereby an assessment in particular concerning the obligation to register for sales tax should be made beforehand.

The basic tax rate currently amounts to 20 %. The reduced rates depending on the type of activity are 10 % and 0 % (e.g. for exports etc.). For 2014 a tax increase to 22 % is expected. Tax returns must be presented on a monthly or quarterly basis on day 20 of the month following the reporting period. The sales tax must be paid by day 22 of the following month. Payment modes and deadlines for sales tax to be collected by the customs authorities are determined by the customs law of the customs union, Belarus law on customs regulations and general documentation.

Import sales tax for goods from Russia and Kazakhstan has to be paid to the tax authorities and for imports from outside the Eurasian economic union to the customs authorities.

Withholding tax

Foreign organisations who do not exercise their activity in Belarus through a branch office, but which generate income from sources in the Republic of Belarus are regarded by tax code of the Republic of Belarus as taxpayers with regard to withholding tax. The tax rates are 6 %, 10 %, 12 % and 15 % depending on the type of income. Residents in so-called high-tech parks enjoy tax concessions in the form of a 5 % tax rate. The assessment period is the calendar month in which the income is generated. Tax returns must be presented on a monthly basis by day 20 of the following month after the tax period and the tax must be paid by day 22 of the following month. Upon presentation of a residence certificate, in accordance with the double taxation agreement between Germany and Belarus an exemption from withholding tax is possible.

Corporation tax

Profit is defined as the deductible difference between income and expenses. The basic tax rate amounts to 18 %. The accounting standards according to the tax regulations can differ from the regulations of commercial accounting. The losses incurred in the previous assessment period can be carried forward into the next year.

Profit tax returns must be presented annually to March 20 of the following year or monthly (e.g. for profits from Belarus organisations from dividends) by day 20 of the following month after the assessment period.

The annual tax must be paid by March 22 of the following year with the deduction of the paid monthly tax payments and the monthly taxes must be paid on a quarterly basis respectively April 22, June 22, September 22 and December 22.

In fact the corporation tax is therefore a cumulative advance payment and hardly depends on the monthly profit.

Special points regarding the company tax audit

The company tax audit is ordered by the tax authorities to audit a certain tax or to audit the whole company. Usually company audits are carried out without a special reason and according to a confirmed and published six month plan. In special cases, the tax authorities can carry out a company audit if there is suspicion that the tax has not been correctly calculated or paid.

Subsequent changes to the tax returns in favour of the taxpayers are possible within 3 years. Regarding disadvantages to the taxpayer, there are in principle no restrictions.

The existing (declared) compensation/offsetting claims for input tax do not become time barred (but they do, however, devalue due to the high annual inflation rate currently at approx. 20 to 25 %).

A recalculation of the tax base by the tax authorities in favour of the state is possible for any time period.

Audit of the annual financial statement and appointment of the auditor of the annual financial statement

The annual financial statement must be presented within 90 days after the end of the financial year. Quarterly financial statements must be presented within 30 days after the end of the quarter.

The statutory audit is compulsory for:

- › organisations whose financial activity is of interest to the population (open joint stock companies, banks, financing institutions, stock exchanges, insurance organisations, etc.);
- › organisations where the state has an interest in their activity and which are controlled by the state (residents of the high-tech park, expert participants of the securities market);
- › all organisations with foreign investments;
- › organisations whose accounting has to comply with the IFRS regulations;
- › organisations whose income from the sale of goods (work, services) exceeds 600,000 euros (according to 2013 law – more than 5 million euros).

The conditions concerning the statutory audit are therefore also subject to the financial accounting law of 2013. In this respect, in the event that the income reaches 5 million euros, a statutory audit has to be carried out.

If the annual accounting was audited according to IFRS rules, the new legislation exempts the organisation from the requirement of a statutory audit of the financial accounting which was prepared according to national legal regulations. Small and medium-sized organisations are exempt from the statutory audit.

Liquidation / Ending of the company

The life cycle of a legal entity ends either through dissolution, liquidation or conversion. The dissolution, conversion or liquidation is decided by a shareholders' resolution. The conversion must be announced to all creditors, whereby with a conversion special protection rights are also valid for creditors.

If, after confirmation of the provisional assessment of the liquidator, the value of the assets of the debtor or legal entity who has decided to wind up the company according to civil law is not sufficient to meet the demands of the creditors, then the application of the debtor must be submitted to the commercial court at the latest 1 month after discovery of the said facts.

Furthermore, it should be taken into account that the reasons for the submission of the application of the creditor regarding insolvency (bankruptcy) of the debtor (application of the creditor) in total are as follows:

- › the creditor has reliable, documented information about the illiquidity of the debtor which is long-term;
- › if the enforcement proceedings on the debtor are not executed within 3 months or in the course of the enforcement the fact is determined that the debtor assets are insufficient in order to meet the claims;

The existence of the backlog against the creditor who has made an application of a creditor to an amount above 100 basic units (1 basic unit = 130,000 BYR).

Other administrative or special bureaucratic points

Due to the bureaucratic method of the working of the public authorities, in the planning phase companies should plan for possible delays which cannot always be prevented.

In particular construction companies should take care to observe that construction activities in Belarus require an administration process which can take a number of months.

The procedure for land distribution consists, for example, of the following sections:

- › Investor makes application to the local authorities at the location of the new piece of land. The application must include, among other things, details of the planned position of the building plot and its area, the purpose and planned area of the construction project, the planned scope of the investment and the sources for the financing of the construction project.
- › Preliminary co-ordination of the location of the building plot for the construction project. The procedure takes approx. two months starting from the application until the allocation of the building plot. The preliminary co-ordination of the building plot location is carried out by the local authorities and made in the form of a protocol concerning the selection of the building plot position. After the confirmation of the protocol concerning the selection of the building plot position and before the taking of the decision concerning withdrawal and

allocation of the building plot, the local authorities have no right to assign this building plot to a different person or to confirm such an assignment.

- › Development of the project with allocation of the building plot and taking of the decision concerning withdrawal and allocation of the building plot on the basis of the project. This stage lasts a total of 1.5 to 2 months. After completion of this stage, the local authorities make the decision concerning the allocation of the building plot to the investor.
- › Natural determination of the borders of the allocated building plot on the land, state registration of the property layout and creation of the rights to the property. This stage lasts approx. 1 month. The investor acquires the right to the property after the state registration has taken place and is certified by a state registration.

The authorisation for construction and installation work must be obtained from the local authority and the Minsk Ministry of Architecture and Construction of Belarus for standardisation. After this authorisation has been obtained by the ordering party or building owner the construction and installation work can begin. The authorisation is issued within 3 working days. Its validity is limited to the deadline stated in the project documentation for the execution of the construction work.

Practical examples

Law

Background facts:

The SEP UP is a Belarus company which is 100 % owned by the Finnish company AUG OÜ. SEP is located in a special economic zone and therefore enjoys extensive tax privileges. In February 2011, the German company JUL GmbH concluded a purchase contract with AUG OÜ according to Finnish law concerning the acquisition and sale of all shares of the SEP UP and the purchase price is paid. In April 2011, insolvency proceedings are petitioned against the assets of AUG OÜ.

In May 2011, JUL GmbH as a new shareholder would like to dismiss the previous managing director of SEP UP. Here it turns out that the necessary decisions cannot be taken because in the Belarus commercial register the insolvent AUG OÜ remains listed as the owner of SEP UP.

JUL GmbH contacts Rödl & Partner in Minsk.

Our examination determined that the SEP UP is a company with the legal form of a so-called unitary enterprise. As such it does represent a legal entity, but does not, however, have shares. All the company assets are exclusively owned by the company owner and not by the company. An acquisition of the company through acquisition of shares was therefore not possible. The constitutional registration of the transfer with the registration authority was also not made. Furthermore, the contract is not available in the Russian language, a condition which is a requirement for registration. As a result, according to Belarus law, the legal acquisition of the property of the company has not taken place and on the basis of the available purchase contract due to a violation of the regulations of Belarus law also not possible.

What can be done now?

Rödl & Partner immediately contacted the insolvency administrator of AUG OÜ to ensure his co operation and to prevent conclusion of the insolvency proceedings before a recovery of the acquisition can be made. Communication was taken up with the administration of the special economic zone in order to ensure that the recovery process did not have a negative effect on the existing tax privileges due to the resident status.

For the recovery two alternative solution strategies were drawn up:

- › registration of the SEP UP as a property complex and its subsequent sale to JUL GmbH (asset deal);
- › conversion of SEP UP into a joint stock company with subsequent selling of shares to JUL GmbH.

For sales tax reasons the second variation was chosen. The conversion was made on the basis of the decision of AUG OÜ represented by the Finnish insolvency administrator. The corresponding contractual basis for the acquisition of the shares was drawn up in compliance with the Belarus legal regulations, was signed by the acquiring party and the seller represented by the insolvency administrator and then registered.

JUL GmbH and its affiliated company OKT GmbH & Co. KG were registered in the commercial register as the new shareholders with respectively 99 % and 1 % of the shares. The managing director was legally dismissed by a decision of the shareholders' meeting and a new managing director was appointed.

What should one have done differently from the beginning?

If Rödl & Partner had been involved earlier in the country where the target company is located and a legal examination had been made (due diligence) prior to acquisition of the company, the legal effectiveness of the acquisition and legally sound structuring of the transaction with the corresponding contractual conditions could have been possible.

This would have avoided the risk of failure of the acquisition and the total loss of the purchase price. This would also have removed the need for the involved recovery process and would have saved a considerable amount of time.

Financial Accounting / Tax Consulting

Background facts:

HGL AG is a subcontractor on a plant construction project in Belarus and manages the activity according to the legal regulations via a Belarus representative office. Due to the fact that originally the project duration was scheduled to be 9 months, registration as a taxable branch office did not take place as in DBA DE-BY an exemption for a period of 12 months is possible.

In fact, however, the project lasted approx. 23 months and therefore the conditions for a taxable branch office according to the double taxation agreement between Germany and Belarus are fulfilled. Registration of the taxable branch office, however, is not made.

The branch office determines it is subject to payment of arrears for corporation tax, sales tax, withholding tax, income tax, interest on arrears and also administrative fines totalling up to 20 % of the unpaid tax.

Due to the high amount of unpaid tax the responsible persons may also be the subject of criminal proceedings, in particular the manager of the representative office (possibly resulting in a fine or even imprisonment) and the company (corporate criminal law: confiscation of the company assets).

What can be done now?

The tax status of the representative office must be changed to that of an economically active representative office, i.e. registration of a taxable branch office has to be made. This must be made at short notice in order to pre-empt a tax audit at the representative office or the client which could lead to a considerable escalation of penalties.

The financial accounting of the representative office has to be changed to that of an economically active representative office and the corresponding entries made or corrected for the previous assessment periods.

For example, the following measures have to be taken:

- › Expenses and income not yet recorded in the Belarus financial accounting must be posted locally.
- › Parent company expenses must be transferred.
- › Requirement for residence certificates (also of further subcontractors)

- › Preparation of tax returns with the calculated sums of taxes and the respective due interest on arrears.
- › Submission of tax returns and payment of taxes and imposed penalties.

Thanks to Rödl & Partner Minsk all of the measures could be realised at short notice and through timely contact with the financial authorities the amount of the fines could be reduced to a minimum, whereby criminal proceedings were therefore avoided.

However, considerable tax arrears had to be made which were only partially recognised in Germany. A particular burden is that a loss carried forward with branch offices in Belarus is not permitted.

What should one have done differently from the beginning?

The possibility of founding a branch office (and in particular the calculation of the deadlines necessary for this) should have been examined under the assumption of a realistic duration for the project.

This is valid for construction and installation work which according to the applicable double taxation agreement is often subject to a time-limited tax privilege. Often the originally planned project duration is exceeded which means constant monitoring is required to establish whether deadlines have been breached. Repeated short activities for the same customer can under some circumstances also lead to the justification of a taxable branch office.

The high time and financial cost for the post-processing, payment of tax arrears and interest on the arrears and penalties could have been avoided by:

- › The timely registration of a taxable branch office.
- › Early agreement of the distribution method of income and expenses between the parent company and branch office in Belarus (according to the possibility of involving the respective tax offices)
- › Thorough documentation and records.
- › Open communication with the responsible persons in the financial accounting of the representative office regarding questions of organisation, for example, for sending employees, use of subcontractors, deliveries of goods, etc.
- › Inspection of contracts, records, files, invoices and other documents for compliance with the Belarus financial accounting regulations.
- › Early contract design support for the customer (in particular regarding regulations for the mode of payment, acceptance records, sales tax) to take the Belarus particularities of the financial accounting and tax treatment into account.

Summary

Due to the high investment requirement especially in the industrial sector and high potential consumption, the Republic of Belarus is an attractive market. German products and services are favoured by decision-makers and remain the first choice for consumers.

As a result of the Republic of Belarus joining EAEC and the implementation of the EAEC requirements, the local legal systems of the EAEC states (Belarus, Russia, Kazakhstan) have been adjusted to each other. In spite of different general conditions and the cultural and language differences, in Belarus investors can find a platform for market entry or expansion of their presence in the EAEC domestic market.

In order to arrange a secure and long-lasting market entry, the experts of Rödl & Partner in Minsk are available to support you with your project business and offer continuous advice in all legal, tax, auditing and financial accounting matters.