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BUILDING BRIDGES

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New currency regulations in Belarus |
Another step towards liberalization

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→ Overview

In the entire modern history of Belarus, the restrictions in the field of currency transactions have been known as one of the primary impediments for businesses. Multiple extensive and rigid regulations formed a separate branch of domestic laws, which should have been carefully examined by businesses before making whatever steps. Several legal and business tools have been significantly encumbered or even made impossible for implementation due to strict currency laws.

In the meantime, the recent years have been marked with constant liberalization of currency regulations. In 2019 several types of currency transactions for businesses (such as acquisition of shares in foreign companies, extension of loans to foreign residents) were

exempted from the mandatory clearance of the National Bank of the Republic of Belarus (“**National Bank**”) as the primary precondition for their performance.

Finally in 2020, after the rounds of protracted negotiations and discussions, the Belarusian Parliament adopted the recast Law on currency regulation and currency control (the “**Law**”), which enters into force only on **July 9, 2021**.

The revised Law envisages a substantially different approach to the treatment of currency transactions and decreases the scope of their administrative burden.

Below please find the summary of the key changes, marking a substantial relief in the Belarusian currency regulations.

→ Key changes

Free performance of currency transactions

New approach to currency transactions

In its previous edition, the Law provided for a complex classification of currency transactions into the ongoing and the capital ones. The said classification required a careful examination of any anticipated operation with a foreign person from the perspective of eventual clearance of the National Bank or the need of other formalities.

The primary relief provided for by the revised Law was marked by the **substantially different approach to currency transactions**. The revised Law shifts away from complex classification and provides for a simple and clear distinction between the transactions:

- which are prohibited; and
- the allowed ones without whatever permits.

Business currency transactions

Subject to Article 13 of the revised Law the transactions in relations between Belarusian and foreign business entities are performed without restrictions. This means, that by default as from July 9, 2021, Belarusian businesses are entitled to perform **whatever cross-border transactions without the need of a permit of the National Bank**.



Currency transactions with individuals

As from July 9, 2021, Belarusian individuals are no longer required to obtain a clearance of the National Bank for operations with foreign persons. This, therefore, allows the performance of certain cross-border transactions, which were earlier subject to a permit of the National Bank, *inter alia*, the ones as follows:

- acquisition of shares and securities of foreign legal entities;
- extension of certain loans to foreign residents;
- acquisition of immovable property located outside of Belarus.

This significantly simplifies investment procedures for Belarusian nationals and may foster investment activity at foreign markets.

Accounts in foreign banks

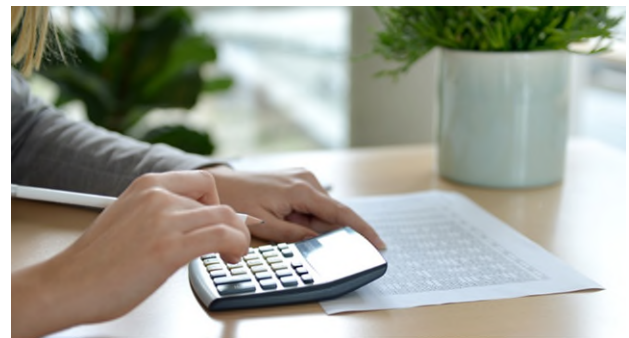
Finally, in virtue of the revised Law Belarusian companies will be allowed **setting bank accounts abroad without the need to obtain a permit of the National Bank**. The same applies to Belarusian nationals, although such relief was granted for them earlier. By default Belarusian residents become entitled to perform multiple operations with the usage of their foreign accounts, including the ones as follows:

- transfer of funds from Belarusian accounts into the foreign ones and vice versa without restrictions;
- receipt of funds from foreign persons at the accounts in foreign banks in the cases provided for by the revised Law, *inter alia*, as follows:

a. under credit / loan agreements;

b. in the form of investment gains (e.g. dividends).

The usage of foreign bank accounts is also allowed for Belarusian businesses in the course of performance of foreign-trade contracts (export/import operations). In the meantime the funds received at foreign bank accounts of Belarusian businesses under export/import transactions **are subject to a mandatory repatriation** at Belarusian bank accounts (please refer to the section below).



→ Key changes

Foreign-trade transactions

Repatriation of income

When it comes to fulfillment of foreign-trade contracts, Belarusian businesses are under legal obligation to follow so-called “deadlines for completion of foreign-trade transactions”. Subject to the Edict of the President of the Republic of Belarus No. 178 dated 27.03.2008 (the “**Edict 178**”) as a general rule a Belarusian business entity shall ensure the compliance with the deadlines as follows:

Ongoing rules	
Import to Belarus	Export from Belarus
Delivery of the goods (performance of services, works) by its foreign counterparty within 90 days following prepayment	Receipt of the payment for the goods delivered (services, works performed) from its foreign counterparty within 180 days

Such periods are fixed and cannot be modified in contractual provisions. Failure to

comply with the said periods may lead to a penalty in the amount up to the value of such transactions.

The amendments into currency regulations introduce substantially different approach and adds more flexibility into performance of currency transactions as outlined below.

New rules	
Import to Belarus	Export from Belarus
A Belarusian business entity which performs import operation shall ensure the return of prepayment in case of default upon due performance of obligations by a foreign counterparty within the period defined contractually upon discretion of the parties	A Belarusian business entity which performs export operation shall ensure the receipt of the remuneration within the period defined contractually upon discretion of the parties

Moreover, such “repatriation period” set forth in contractual provisions is deemed extended by the period required for performance of payment via banking systems, although such period for “intra-banking operations” shall not exceed 30 days.

It shall be noted, that the Edict 178, having a prevailing force over the Law, has not been modified yet, although it is more than likely that such modification will be implemented once the revised Law enters into force.

Usage of foreign bank accounts

As a general rule, in the course of foreign-trade transactions it is a duty of Belarusian businesses to credit their foreign gains at their accounts in Belarusian banks in full. The revised Law envisages the list of cases, when the foreign earnings of Belarusian businesses being subject to repatriation can be reduced and thus left at foreign accounts. Such cases comprise, *inter alia*, the ones as follows:

- expenses connected with performance of services abroad;
- expenses connected with the operation of the company’s foreign branch/representative office;

- amounts of taxes levied abroad.

Such amounts therefore can be retained at foreign bank accounts without the need of their transfer to Belarus.

As to the rest amounts of foreign earnings not covered by the exceptions, the funds credited at foreign bank accounts of Belarusian companies shall be remitted to Belarusian ones within **5 business days**. This rule applies with respect to the funds:

- received in connection with export operations;
- received as the return of prepayment within import operations.



→ Key changes

Currency agreements

Overview

It shall be noted, that the revised Law introduces the new term – “currency agreement”. Roughly, this term comprises any agreement which contemplates performance of operations:

- between Belarusian and foreign residents; and/or
- with the usage of foreign currency or foreign securities.

Currency agreements shall mandatory contain the contractual provisions as follows:

- Payment deadline for the goods/services/works/property rights which have been transferred/rendered towards a foreign resident;
- Duty of a foreign resident to return an advance payment in case of its undue performance of contractual obligations as well as the period of such return.

Moreover, an execution of a currency agreement may trigger the need of a formal procedure – registration of an agreement via the e-portal of the National Bank (the “E-portal”).

Basis for registration

Effective from July 9, 2021 Belarusian residents are under legal obligation to register currency agreements via the E-portal subject to joint fulfillment of the criteria as follows:

Registration of currency agreements

An agreement is concluded between a Belarusian resident and a non-resident.

An agreement provides for a currency transaction out of the list stipulated statutory, *inter alia*:

- export/import settlements;
- obtaining / extension of a loan, credit;
- acquisition of securities, shares;

Registration of currency agreements

- certain transactions with immovable property;
- depositing of funds in foreign banks

Contractual price threshold is met

The contractual price thresholds, triggering the need of the agreement's registration via the E-portal, are as follows:

Contractual price thresholds	
Amount	Comments
The contractual price is not defined	This also covers framework contracts , which do not envisage contractual price
2,000 basic units or more (as of now BYN 58,000 or ca. EUR 18,700)	With respect to agreements concluded by Belarusian residents being natural persons
4,000 basic units or more (as of now BYN 116,000 or ca. EUR 37,400)	With respect to agreements concluded by Belarusian businesses

Registration procedure and deadlines

Currency agreements shall be registered by Belarusian residents remotely via the E-portal. This can be done:

- By a Belarusian resident itself; or

→ Key changes

Restrictive measures

The revised Law directly provides for the list of restrictive measures which can be imposed by state authorities. Thus, "in case of a threat to the economic safety and as a matter of exception" the authorities may impose particular currency restrictions. Such restrictions comprise, *inter alia*, the ones as follows:

- prohibition for performance of certain currency transactions;
- setting limits and periods for performance of currency transactions;
- mandatory disposal of foreign currency at the domestic market.

- Via a Belarusian bank.

The deadline for a registration depends on the date which occurs earlier, i.e.:

- Commencement of fulfillment of contractual obligations (e.g. performance of works under a contract). In this case an agreement shall be subject to registration prior to fulfillment of contractual obligations; or
- Receipt of funds under an agreement at the account of a Belarusian resident. If this is the case, an agreement shall be subject to a registration within 7 business days upon receipt of funds.

Please note

The duty for a registration covers both the agreements to be concluded as well as the ongoing ones, which have not been fulfilled yet.

Subsequent provision of information

It shall be noted, that after the registration of currency agreements, Belarusian residents shall submit the information about the course of fulfillment of such agreements on a monthly basis.

The respective information which scope is defined statutory shall be submitted via the E-portal no later than on the 15th day of each month following the reporting (previous) one.

Upon complete performance of the registered currency agreements, Belarusian residents shall submit the respective confirmation within 15 calendar days.

The cases of an "economic threat" which may trigger the currency restrictions comprise, *inter alia*, the ones as follows:



- high fluctuation of a Belarusian rouble;
- negative development of the state payment balance.

The maximum period of currency restrictions shall not exceed 1 year. In the meantime, the revised Law has not provided for a

substantially different approach. From the practical perspective Belarusian authorities have been imposing such measures in virtue of the special Edicts of the President. Thus, **the revised Law merely formalizes the possibility** of imposing restrictive measures into the new form.

→ Summary

Key changes

- Simple and clear distinction between permitted currency transactions and the prohibited ones.
- Businesses are entitled to perform whatever cross-border transactions without a permit of the National Bank.
- Belarusian residents are entitled to open accounts in foreign banks without a permit of the National Bank.
- Possibility of investment activity abroad for Belarusian natural persons without a permit of the National Bank.
- New flexible approach to repatriation of foreign earnings:
 - Belarusian companies shall ensure the receipt of earnings from foreign counterparties under foreign-trade contracts within the period defined contractually;
 - Earnings under foreign-trade contracts can be credited at foreign bank accounts prior to repatriation.
- Mandatory registration of certain agreements with foreign residents.

→ To-do steps

Despite multiple positive amendments the revised Law introduces the **new registration procedure**, which may affect cross-border contracts already concluded or to be concluded by Belarusian residents. Such duty covers both the new contracts and the ongoing ones. Even the framework agreements which provide for contractual performance on a non-recurrent basis may be subject to the registration via the E-portal.

In addition, in virtue of the revised Law a currency agreement shall contain **mandatory contractual clauses**.

Therefore, it is of essence for Belarusian businesses to conduct a “due

diligence” of their agreements with foreign residents in order to clarify:

- the need for a registration via the E-portal; and
- the need for a modification of contractual provisions.

Since the revised Law enters into force **on July 9, 2021** and thus the deadline is approaching, it is of essence to proceed with the review of currency agreements in a short run.

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