

Belarus

Law of the Republic of Belarus On Investments (2013)

Unofficial translation

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Law of the Republic of Belarus On Investments

Law No. 53-Z

Adopted by the House of Representatives on June 26, 2013

Approved by the Council of the Republic on June 28, 2013

[Preamble]

This Law establishes legal bases and fundamental principles of carrying out investments in the territory of the Republic of Belarus and is directed at attracting investments in the economy of the Republic of Belarus, ensuring guarantees, rights and legitimate interests of investors and their equal protection as well.

Chapter I. General provisions

Article 1. Main terms used in this Law and their definitions

Investments: any property and other objects of civil rights belonging to an investor on the right of ownership, another legal basis which allows him to dispose of such objects being invested in the territory of the Republic of Belarus in ways provided by this Law with a view to receive profit (incomes) and/or achieving another significant result or with other purposes not related to personal, family, household and other likewise use, in particular:

- movable and immovable property, including shares, stakes in the statutory fund, stocks in the property of a commercial organization created in the territory of the Republic of Belarus, monetary means, inclusive of attracted ones, including loans, credits;
- rights of claim having assessment of their value;
- other objects of civil rights having assessment of their value, with the exception of those objects of civil rights the circulation of which is not allowed (objects withdrawn from circulation).

Investors:

- citizens of the Republic of Belarus, foreign citizens and stateless persons residing permanently in the territory of the Republic of Belarus, including individual entrepreneurs, and also legal persons of the Republic of Belarus, carrying out investments in the territory of the Republic of Belarus;
- foreign citizens and stateless persons not residing permanently in the territory of the Republic of Belarus, citizens of the Republic of Belarus residing permanently outside the Republic of Belarus, foreign or international legal persons (organizations not being legal persons), carrying out investments in the territory of the Republic of Belarus (hereinafter – foreign investors).

Article 2. Scope of application of this Law

This Law is applicable to relation connected with carrying out investments in the territory of the Republic of Belarus, with the exception of:

- contributing property to non-commercial organizations in relation to the property of which their founders (participants) do not have ownership or other real rights;
- acquisition of securities, except for shares;
- acquisition or construction by citizens of the Republic of Belarus, foreign citizens or stateless persons of dwelling houses, dwelling promises for residence of these citizens of the Republic of Belarus, foreign citizens or stateless persons and/or members of their families;
- extending loans, credits and repayment thereof, placement of bank deposits.

Article 3. Legislation of the Republic of Belarus in the sphere of investments

The legislation of the Republic of Belarus on investments is based on the Constitution of the Republic of Belarus and consists of this Law and other acts of legislation of the Republic of Belarus.

If a treaty of the Republic of Belarus establishes other rules than those provided by this Law, the rules of the treaty are applied.

Article 4. Ways of carrying out investments

In the territory of the Republic of Belarus investments are carried out in following ways:

- through creation of a commercial organization;
- through acquisition, creation, including by constructing, of immovable property objects, with the exception of cases specified by indent four of Article 2 of this Law;
- through acquisition of rights to intellectual property objects;
- through acquisition of shares, stakes in the statutory fund, stocks in the property of a commercial organization, including instances of increasing the statutory fund of a commercial organization;
- on the basis of a concession;
- in other ways, except for those prohibited by the legislative acts of the Republic of Belarus.

Article 5. Fundamental principles of carrying out investments

Carrying out investments shall be based on the following principles:

- investors and also the state, its bodies and officials shall act within the limits of the Constitution of the Republic of Belarus and the acts of legislation of the Republic of Belarus adopted in accordance therewith (principle of the supremacy of law);

- investors shall be equal before law and enjoy rights without any discrimination (principle of investors equality);
- investors shall carry out investments honestly and reasonably without causing harm to another person, environment, historic-cultural valuables, infringement on rights and interests protected by law of other persons, abuse of rights in other forms (principle of honesty and reasonableness of carrying out investments);
- interference in private affairs is not allowed, with the exception of cases when such an interference is made on the basis of legislative acts of the Republic of Belarus in the interests of national security (including protection of environment and historic-cultural valuables), public order, protection of morality, health of the population, rights and freedoms of other persons (principle of inadmissibility of arbitrary interference in private affairs);
- investors are guaranteed the protection of rights and legitimate interests in court and in other ways provided by the legislation of the Republic of Belarus, including by treaties of the Republic of Belarus (principle of ensuring restoration of violated rights and legitimate interests, court protection thereof).

In carrying out of investments the priority of generally recognized principles of international law is recognized.

Article 6. Restrictions in carrying out of investments

It is not allowed to carry out investments in the property of legal persons having a dominant position on the commodity markets of the Republic of Belarus without the consent of the anti-monopoly body of the Republic of Belarus in the cases provided by the antimonopoly legislation of the Republic of Belarus, and also in activities prohibited by the legislative acts of the Republic of Belarus. Restrictions in carrying out of investments may be also established on the basis of legislative acts of the Republic of Belarus in the interests of national security (including protection of environment and historic-cultural valuables), public order, protection of morality, health of the population, rights and freedoms of other persons.

Chapter II. State regulation in the sphere of investments

Article 7. Performance of state regulation in the sphere of investments

State regulation in the sphere of investments is carried out by the President of the Republic of Belarus, the Government of the Republic of Belarus, the republican body of state administration carrying out regulation and administration in the sphere of investments, other republican bodies of state administration, other state organizations subordinated to the Government of the Republic of Belarus, local executive and administrative bodies, the state organization authorized to represent the interests of the Republic of Belarus on issues of investments attraction in the Republic of Belarus, within the limits of their powers in accordance with the legislation of the Republic of Belarus.

Article 8. Powers of the President of the Republic of Belarus in the sphere of investments

The President of the Republic of Belarus, in the sphere of investments:

- determines the single state policy;
- determines the republican body of state administration carrying out regulation and administration in the sphere of investments;
- determines conditions for conclusion of investment contracts of the Republic of Belarus;
- carries out other powers in accordance with the Constitution of the Republic of Belarus, this Law and other legislative acts of the Republic of Belarus.

Article 9. Powers of the Government of the Republic of Belarus in the sphere of investments

The Government of the Republic of Belarus, in the sphere of investments:

- ensures the implementation of the single state policy;
- determines priority activities (sectors of the economy) for carrying out investments;
- determines the order of conclusion, changing, rescission and state registration of investments contracts
- of the Republic of Belarus;
- carries out other powers imposed by the Constitution of the Republic of Belarus, laws of the Republic of Belarus and acts of the President of the Republic of Belarus.

Article 10. Powers of other state bodies and other state organizations in the sphere of investments

The republican body of state administration carrying out regulation and administration in the sphere of investments, other republican bodies of state administration, and other state organizations subordinated to the Government of the Republic of Belarus, local executive and administrative bodies ensure the implementation of the single state policy in the sphere of investments within the limits of their competence.

The state organization authorized to represent the interests of the Republic of Belarus on issues of investments attraction in the Republic of Belarus ensures the interaction of investors with republican bodies of state administration, other state organizations subordinated to the Government of the Republic of Belarus, local executive and administrative bodies, carries out other powers in accordance with the legislation of the Republic of Belarus.

Chapter III. Guarantees of investors' rights and protection of investments

Article 11. Guarantees for transfer of compensation and other monetary means of foreign investors

Foreign investors are guaranteed an unobstructed transfer outside the Republic of Belarus of the compensation provided by part two and four of Article 12 of this Law.

After the payment of taxes dues (duties), other obligatory payments to the republican and local budgets, state non-budgetary funds established by the legislation of the Republic of Belarus, foreign investors are guaranteed an unobstructed transfer outside the Republic of Belarus of profit (incomes) and other monetary means legally received, connected with carrying out of investments in the territory of the Republic of Belarus, and also of payments being made in favour of a foreign investor and connected with carrying out of foreign investments, including:

- monetary means received by foreign investors after a partial or full termination of the carrying out of investments in the territory of the Republic of Belarus, including monetary means received by foreign investors as a result of alienation of investments, and also of the property being created as a result of carrying out investments, other objects of civil rights;
- monetary means payable as salary to foreign citizens and stateless persons who carry out labour activity under a labour contract;
- monetary means payable to foreign investors according a court resolution.

Transfer of the compensation provided by parts two and four of Article 12 of this Law is carried out, at the option of the foreign investor, in Belarusian rubles or foreign currency to the state indicated by the foreign investor, unless such a transfer contradicts international commitments of the Republic of Belarus.

Transfer of monetary means specified in part two of this Article may be restricted in the order and on the conditions determined by legislative acts of the Republic of Belarus and/or according to a court resolution adopted in accordance with the legislation of the Republic of Belarus and entered into legal force.

Article 12. Protection of property from nationalization and requisition

Property being investments or being created as a result of carrying out investments may not be gratuitously nationalized or requisitioned.

Nationalization is possible only on motives of public necessity and subject to timely and full compensation of the value of the nationalized property and other damages being caused by the nationalization.

The order and conditions of the nationalization, and also payment of the compensation of the value of property being nationalized and other damages being caused by the nationalization are determined in the basis of the law on order and conditions of the nationalization of this property adopted in accordance with the Constitution of the Republic of Belarus.

Requisition is possible only in the events of natural disasters, accidents, epidemics, epizootic and under other circumstances having an extraordinary nature in the interests of the society on a decision of state bodies in the order and on the conditions established by law with payment of the value of the requisitioned property to the investor.

An investor the property of which is requisitioned is entitled, upon termination of the effect of circumstances in relation to which the requisition is effected, to demand through the court the return of remaining property.

The amount of compensation provided by part two and four of this Article may be appealed by the investor in the court.

Article 13. Settlement of disputes between an investor and the Republic of Belarus

Disputes between an investor and the Republic of Belarus arising in the carrying out of investments are settled under a pre-trial procedure through negotiations, unless otherwise established by the legislative acts of the Republic of Belarus.

Disputes between an investor and the Republic of Belarus not regulated under a pre-trial procedure through negotiations within three months from the day of receipt of a written proposal about the regulation thereof are settled through court proceedings in accordance with the legislation of the Republic of Belarus.

If disputes not referred to the exclusive competence of courts of the Republic of Belarus, arisen between an investor and the Republic of Belarus are not regulated under a pre-trial procedure through negotiations within three months from the day of receipt of a written proposal about the regulation thereof under a pre-trial procedure, then such disputes may, at the option of the investor, be regulated also:

- in an arbitration court being established for settlement of each specific disputed according to the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), unless the parties agree otherwise;
- at the International Centre for Settlement of Investment Disputes (ICSID) in the case if this foreign investor is citizen or legal person of a member state of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965.

In the case if a treaty of the Republic of Belarus and/or a contract concluded between an investor and the Republic of Belarus establish/es otherwise in relation to the settlement of disputes between the investor and the Republic of Belarus arising in the carrying out of investments, then provisions of this treaty of the Republic of Belarus and/or the contract concluded between the investor and the Republic of Belarus shall be applied.

Chapter IV. Rights and duties of investors

Article 14. Rights of investors

Investors have the right to exercise their property and non-property rights in accordance with the legislation of the Republic of Belarus.

Investors are recognized to have exclusive right to intellectual property objects.

Investors and/or commercial organizations created in an established manner with participation of an investor (investors) have the right to allotment of land plots in use, lease, ownership in accordance with the legislation of the Republic of Belarus on protection and use of lands.

Article 15. Right to create a commercial organization

Investors have the right to create in the territory of the Republic of Belarus commercial organizations with any volume of investments in any organizational and legal form provided by the legislation of the Republic of Belarus having regard to restrictions established by Article 6 of this Law.

Commercial organizations are created and registered in the territory of the Republic of Belarus in the order established by the legislation of the Republic of Belarus irrespective of the participation in such an organization of a foreign investor.

Foreign investors are entitled, upon creation of a commercial organization, acquisition of shares, stakes in the statutory fund, stocks in the property of a commercial organization, including instances of increasing the statutory fund of a commercial organization, to make their contribution in foreign currency and/or Belarusian rubles, and also a non-monetary contribution having its value assessment, in the order established by the legislation of the Republic of Belarus.

Article 16. Right to benefits and preferences

When carrying out investments into priority activities (sectors of the economy) and in other cases established by legislative acts of the Republic of Belarus and/or international legal acts binding for the Republic of Belarus, investors are entitled to use benefits and preferences in accordance with the legislation of the Republic of Belarus and/or international legal acts binding for the Republic of Belarus.

Article 17. Right to conclusion of a contract (contracts) with the Republic of Belarus

An investor has the right to conclude a contract (contracts) with the Republic of Belarus, related to carrying out investments, in the order and on the conditions established by the legislation of the Republic of Belarus.

For purposes of creating additional conditions for carrying out investments, an investment or investors have the right to conclude an investment contract with the Republic of Belarus.

An investment contract with the Republic of Belarus is concluded on the basis of a decision of a state body and another state organization determined in accordance with the legislative acts of the Republic of Belarus.

An investment contract with the Republic of Belarus must determine:

- object, volume, time limits, and conditions for carrying out investments;
- rights and duties of the investor (investors) and the Republic of Belarus;
- liability of the contract parties for non-compliance with its terms and conditions;
- other conditions determined in accordance with the legislative acts of the Republic of Belarus.

Article 18. Right to attract into the Republic of Belarus of foreign citizen and stateless persons for carrying out labour activity

Investors and/or commercial organizations created in an established manner with participation of an investor (investors) have the right to attract into the Republic of Belarus of foreign citizens and stateless persons, including those not having the permit for permanent residence in the Republic of Belarus, for carrying out labour activity in the Republic of Belarus under labour contracts in accordance with the legislation of the Republic of Belarus.

Articles 19. Duties of investors

Investors are obliged:

- to observe the Constitution of the Republic of Belarus and acts of legislation of the Republic of Belarus adopted in accordance therewith;
- to abstain from committing actions constituting unfair competition, and also actions (omission) directed at preventing, eliminating or restricting the competition, causing harm to rights, freedoms, legitimate interests of other persons;
- exercise other duties established by the legislation of the Republic of Belarus.

Chapter V. Final provisions

Article 20. Introduction of changes into the Investment Code of the Republic of Belarus

[Translation not provided]

Article 21. Transitional provisions

Until acts of legislation of the Republic of Belarus is brought in accordance with the present Law, they are applied in the part not contradicting this Law, unless otherwise provided by the Constitution of the Republic of Belarus.

Commercial organizations which have been recognized as commercial organizations with foreign investments prior to the entry into force of this Law are entitled:

- to use in their names words indicating participation of a foreign investor (foreign investors) till the retirement of the latter from the participants of the commercial organization;

- to form the statutory fund in the amount indicated in the statute (constituent contract for a commercial organization which operates only on the basis of the constituent contract) within two years from the entry into force of this Law in the case if the statutory fund has not been formed in the indicated amount on the date of entry into force of this Law;
- to change the amount of the statutory fund indicated in the statute (constituent contract for a commercial organization which operates only on the basis of the constituent contract), but not less than the minimal amount established by the legislation of the Republic of Belarus, in the order provided by the legislation of the Republic of Belarus.

Article 22. Measures on implementation of provisions of this Law

The Council of Ministers of the Republic of Belarus shall, within a six-month period:

- ensure the bringing of the acts of legislation of the Republic of Belarus in compliance with this Law;
- take other measures necessary for implementation of provisions of the present Law.

Article 23. Entry into force of this Law

This Law enters into force in the following order:

- Articles 1–21 – in six months after the official publication of this Law;
- Article 22 – after the official publication of this Law.

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