

Certain amendments concerning foreign-economic activity order, labor and shared construction issues have been made in November.

We would like to draw your attention to Belarusian Government announcing holding of an auction on the best investment proposal on establishment of the monitoring centre in the sphere of the gambling industry in the Republic of Belarus.

Apart from information on legislative changes, we would like to call your attention to analytical material as regards regulation of certification within the frame of the Customs Union.

You are welcome to address Arzinger & Partners for detailed information, we will be glad to render you support.

FOREIGN-ECONOMIC ACTIVITY

Breaking
news!

Recent alterations to the Edict No. 178, handling the order of carrying out foreign-economic operations, which we had written about earlier, provided the Government and the National Bank with authority to set deadline for accomplishment of foreign-economic operations on certain kinds of foreign-economic agreements different from those established by currency legislation, and to determine conditions of prolongation of deadline for completion of currency operations.

The Government and the National Bank took advantage of the provided opportunity and adopted the corresponding list of foreign-economic operations. The list is closed and is not subject to broad interpretation.

Thus, the term for accomplishment of the foreign-economic operation under delivery of expensive motor and tractor agricultural equipment and its spare parts shall be no later than 720 calendar days from the date of delivery. The term under import of goods (works, services, etc.), makespan (term for rendering, term for execution) of which exceeds legislatively determined terms, shall be accomplished within term set by the agreement, but no later than 180 calendar days from the date of payment.

Moreover, terms for accomplishment of foreign-economic operations can be prolonged under application of the resident by the National Bank (its main regional departments) under fulfilment of certain conditions, the list of which was adopted on November 5, 2011. Such conditions are the following:

- claim on non-fulfilment of obligations by the non-resident under the agreement, accepted by the court prior to termination of term prolonged by the National Bank;
- obligatory accomplishment of the previous operation, in relation to which the permit to prolongation of terms had been issued;
- absence of facts of bringing to administrative responsibility for breach of currency legislation in the year foregoing the application date;



- observance of legislative requirements by the resident to carrying out of the operation, in relation to which the permit to prolongation of accomplishment terms is requested;
- absence of recurring application for prolongation of terms on deals concluded with the same non-resident during the year foregoing the application date.

The National Bank determines obligation to fulfil one of listed conditions or their body, depending on the type of operation, specific character of the resident's activity and (or) other circumstances.

Resolution of the Council of Ministers of the Republic of Belarus and the National Bank of the Republic of Belarus of November 5, 2011 No. 14438/22 "On determination of terms for accomplishment of foreign-economic operations on certain kinds of foreign-economic agreements and on conditions of prolongation of terms for accomplishment of foreign-economic operations".



EXCHANGE CONTROL

The order of currency exchange under participation of legal entities and individual entrepreneurs has been slightly changed in November.

Thus, currency operation subject – the resident - has the right to open one special bank account in foreign currency for keeping of currency bought in the internal currency market. The special account shall be opened in the bank where the current (settlement) account in the foreign currency is opened, or, in case of its absence, in the bank, where the current (settlement) account in Belarusian roubles is opened. An opportunity of opening of several special accounts is subject to permit of the National Bank.

Besides, henceforward it is allowed to buy foreign currency in the internal currency market only for cancelling a credit in foreign currency, which is obtained from banks, and for fulfilment of obligations under contracts of guarantee under such loan agreements.

Resolution of the Board of Directors of the National Bank of the Republic of Belarus of October 17, 2011 No. 448 "On making amendments and alterations to the Instruction on the order of carrying out of currency exchange operations under participation of legal entities and individual entrepreneurs."



LABOR REGULATIONS

We would like to remind, that in July legal entities were given the right to decide independently whether they would use the Unified tariff schedule of employees of the Republic of Belarus (hereinafter – URS) at the determining terms and conditions of remuneration of their employees or would be defining employees' salaries without using URS.

The Ministry of Labor and Social Security has bend before Belarusian businessmen and developed Recommendations on use of flexible remuneration systems in commercial organizations (hereinafter – Recommendations). Recommendations contain procedure of formation of flexible remuneration systems, as well as examples of their application.

Recommendations define the following types of flexible remuneration systems:

1. system, based on a tariff schedule, developed by an organization itself;
2. system, based on a commission system – a wage rate directly depends on a growth of amount of sold products, goods (works, services), reduction of stocks and receipt of currency proceeds and other indicators characterizing the effectiveness of organization's activity as well as of its branches;
3. system, based on “floating wages” – determination of tariff rates (wages) in the current month resulting from work, carried out in a previous month taking into account personal contribution of each employee. Meanwhile, the criteria, according to which a particular amount of wages in a current month, shall be determined in local regulatory legal acts;
4. system, based on grades. Grade system is composed of all (particular) occupations or job positions, allocated among respective grades, depending on job complexity and tensity, its conditions and employee's qualification. Grade system evaluates significance of employee's occupation, his (her) position.

Resolution of the Ministry of Labor and Social Protection of October 21, 2011 No. 104 “On adoption of Recommendations on use of flexible remuneration system in commercial organizations”.





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CONSTRUCTION

The Edict of the President of the Republic of Belarus of February 7, 2006 No. 87 “On some measures on reduction of unfinished and not preserved construction objects (dwelling houses, dachas)” will come into force on March 1, 2012, and from here on the terms for construction of dwelling houses, dachas will be raised up to three years. However, taking into account citizens' financial situation and other reasonable excuses, the abovementioned term can be increase by decision of a local executive committee, but not more than by two years.

Land users, not having an opportunity to finish construction of a dwelling house, dacha in a fixed period, are obliged to carry out preservation of unfinished construction objects and improvement of land plots. The term of such preservation shall not exceed three years.

Moreover, procedures of withdrawal and allotment of agricultural land plots for purposes, unrelated to the purpose of such land, transfer of such land to other categories, shall be performed by local executive committees solely after adjustment of location of the respective land plots with the President of the Republic of Belarus.

Edict of the President of the Republic of Belarus of November 11, 2011 No. 520 “On certain measures on improvement of relations in the sphere of construction, withdrawal and allotment of land plots”



As mentioned before, amendments to Regulations on real estate developer-organizations, made in August of this year, obligated real estate developer-organizations to conclude contracts of construction of residential (non-residential) premises with each of its members under terms and provisions, defined by the Council of Ministers of the Republic of Belarus.

In the beginning of November the Council of Ministers defined provisions of such contracts. Essential provisions of a contract of construction of residential (non-residential) premises with members of a real estate developer-organization are the following:

- subject of a contract;
- terms (date, month, year) of the beginning and the end of construction, grounds and procedure of their revision;
- cost of residential (non-residential) premises, grounds and procedure of its revision;
- payment procedure;
- procedure of repayment in case of termination of a contract;
- rights and obligations of the parties;
- procedure of alteration and termination of a contract;
- parties' liability.

Resolution of the Council of Ministers of the Republic of Belarus of November 5, 2011 No. 1490 "On procedure and provisions of conclusion of a construction contract of residential (non-residential) premises in real estate developer-organizations".



The Belarusian legislative body adopted the Regulation on procedure of drawing up and submission of information by developers, conducting shared construction of multiple-dwelling residential houses (hereinafter – Regulation) on November 8, 2011.

Thus, a developer is obliged to submit the information (the list of required documents can be found in annexes to the Regulation) to a local executive body issuing permission documentation regarding shared construction every three month.

Information shall be submitted in a written form and in a form of an electronic document for each quarter, if at least one contract of shared construction has been concluded during that quarter, or if a developer has had unexecuted obligations under such contract. Information shall be submitted to the authorized body till the end of a month following the reporting quarter.

The Regulation comes into force in three month.

Resolution of the Council of Ministers of November 8, 2011 No. 1497 "On additional requirements to developers, conducting shared construction of multi-dwelling residential houses".





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CUSTOMS UNION

The unified certification (confirmation assessment) system of goods has become effective since July 1, 2010 in framework of the Customs Union. Previously suppliers were obliged to execute national confirmation assessment certificates and declaration of conformity to products subject to obligatory confirmation assessment, but from the mentioned date it is enough to have unified confirmation documents: the certificate under the unified form of the Customs Union (hereinafter – the CU) or a conformity declaration under the unified form of the CU.

The declaration of conformity is the document certifying conformity of issued products of the producer (person authorized by the producer, supplier, seller) to technical requirements of the CU.

Conformance certificate is the document, by means of which the certification (conformity assessment) authority certifies conformity of issues products to technical requirements of the CU.

Certification authorities of states – members of the CU, being under the Unified register of certification authorities and testing laboratories (centers) are in charge of issuance of conformity certificates under the Unified form and registration of declarations of conformity under the Unified form. The list of such authorities for each state – member of the CU is available at the web-site www.tsouz.ru.

Issuance of conformity certificates and registration of declarations of conformity under Unified forms is carried out in compliance with rules of national systems of states – members of the CU.



It is of no importance for the unified certification system if the product is imported or produced in the territory of the CU. The Decision of the Commission of the CU No. 620 of April 7, 2011 adopted the unified list of products subject to obligatory conformity assessment in framework of the CU along with issuance of unified documents.

It does not substitute national regulation, it is not a subject of independent control of states – members of the CU, it only fixes those items, in relation to which national legislation of states – members of the CU has been harmonized.

However, after obtainment of the document under the unified form of conformity assessment (certificate or declaration) in relation to these items, e.g. in Belarus, the Belarusian subject will not have to confirm additionally conformity of his products in authorized bodies of Russia or Kazakhstan – the product can freely come into the market.

The exhaustive list, adopted by the Decision of the Commission of the CU No. 620, names groups of goods along with the method of conformity assessment to them.

Producers and importers have the right to obtain conformance certificate of the country of destination to products under the Unified list subject to obligatory conformity assessment, which will be valid only in the territory of this country or the conformance certificate under the Unified form, which will be valid in the territory of all countries – members of the CU without its reissuance to the national certificate.

Products, which are not included into the Unified list, are subject to obligatory confirmation assessment according to the national legislation of the state – member of the CU.

Such situation shall be kept till the beginning of the next year until adoption of technical requirements of the CU. Afterwards a unified certificate or a unified declaration shall be issued to all products.



COMPANY NEWS

The results of the research of the annual international law rating IFLR 1000 Europe, Middle East & Africa: 2012 Edition became known. Thus, “Arzinger & Partners” strengthened its position and took place in the third group of leading law companies, rendering services in the Belarusian market.

On November 10, 2011 Irina Voronchuk, an associate of “Arzinger & Partners”, took part in panel discussion dedicated to “Essential issues of Belarusian labor legislation: regulation of labor in commercial enterprises and representative offices of foreign companies, employment of foreigners in Belarus”.

The round table was held under the auspices of Representation of German Economy in the Republic of Belarus jointly with Belarusian-German Economic Club. More than 30 heads and experts of German firms operating on the Belarusian market took part in that event. Mrs. Voronchuk delivered the report on possibility of paying salary to employees of companies with foreign investments and their branches in the territory of the Republic of Belarus.



You have a wonderful possibility to read articles of “Arzinger & Partners” associates in the last issues of “Law of Commerce and Industry” (issues 10, 11 of 2011). Thus, Evgenia Seregina has prepared the article, dedicated to the alternative ways to carve-out the shares of closely held companies and the procedure of issue of shares as well as pricing at export of goods. Mrs. Voronchuk has dedicated her article to the analysis of the specificity of disputes over compensation of losses.

The article by Alexey Ivasechko, an associate of “Arzinger & Partners”, called “the Algorithm of legal actions on additional issue of shares of joint stock and closely held companies” has been published in ConsultantPlus law data base. Our legislation provides a variety of ways to increase an authorized fund of a joint stock company. The author gives a range of algorithms of legal actions to use that ways.

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