

## New Conditions for Investors in Belarus

### **Brief contents:**

- Broader opportunities for project financing
- Additional benefits and preferences
- Changes in investment agreements
- Increased responsibility of state authorities

changes for activities by foreign and national investors. Below you will find an overview of the most important ones.

### **CHOICE OF INVESTMENT PROJECTS**

With the Decree's entry into force, investment agreements will be concluded only for implementing investment projects in priority activities (sectors of the economy) according to a list approved by Regulation of the Council of Ministers of 26 February 2014 No. 197 "On priority activities (sectors of the economy)".

Currently the list is rather broad and includes almost all sectors of the economy: agriculture, the mineral resource industry, cellulose and paper production, healthcare, chemical production, construction, metallurgical production, the woodworking industry, machine building, production of medical equipment, financial activity, food production, textile and garment manufacture, production of electric equipment, vehicle production, and others. Thus, changes to legislation will not essentially reduce investment opportunities.

### **NEW OPPORTUNITIES FOR PROJECT FINANCING**

Previously, legislation prevented an investor from implementing transactions which actually or potentially resulted in transfer of title to allocated land plots and objects envisaged in the investment project prior to state registration.

The Decree has lifted the ban, which means that **objects envisaged in an investment project can be pledged** prior to state registration, i.e. at the investment stage of the project. Thus, the Decree opens up **more options for project financing** to investors.

**Decree of the President of the Republic of Belarus of 12 November 2015 No. 8** introduces important changes to the legal framework for investment, which will enter into force on 15 May 2016 (hereinafter – 'Decree'). The Decree introduces positive

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## ADDITIONAL BENEFITS AND PREFERENCES

Investors are entitled to choose contractors, developers of project documentation and suppliers of goods and services **without both contract tendering and negotiation procedures**. At the same time this rule does not apply to public procurement.

Contractors and developers of project documentation (and their employees) will be exempt from state duty for issuance (prolongation) of licenses for procurement of foreign labour, special work permits and residence permits.

Investors will be able to acquire a land plot without an auction not only for lease, but also by way of ownership.

According to the Decree, an investor that violates the timetable for project implementation may be granted a land plot subject to payment of a fee for the right to conclude a lease agreement. The decision is made by state authorities based on the financial standing of the investor and the degree of completion of the object. This will enable investors to complete projects beyond the previously agreed timetable, although without benefits and preferences.

### Increased responsibility of state authorities

The new Decree establishes the principle of full recovery of damages. Thus, an investor will be able to recover not only **actual damages, but also loss of profit**, incurred as a result of acts (omissions) by officials of the state authorities that conclude an investment agreement on behalf of the state.

Furthermore, reimbursement of sums of benefits and preferences cannot be claimed from the investor if the terms or other conditions of implementing an investment project were violated as a result of acts (omissions) by state officials.

Besides, an investor may be exempted from reimbursement of benefits, preferences and sanctions, or may be granted deferral of payment or payment by instalments subject to a decision of the state authorities.

## CHANGES IN INVESTMENT AGREEMENTS

The list of **essential terms of an investment agreement** has been supplemented by the following:

- timetable for implementation of each stage of the project;
- liability of the investor for violating the timetable for project implementation or any of its stages;
- the duty of the investor to reimburse sums of benefits and preferences on termination of an investment agreement on grounds other than fulfillment of obligations by the investor.

The Decree defines benefits and preferences as sums of taxes, dues (duties) and other mandatory payments, including the fee for the right to conclude a lease agreement and lease payments, which were not paid or were partially paid by the investor.

### Notifying state authorities of changes to the project

The Decree introduces a substantially new obligation for a party to an investment agreement to **notify the competent state authorities** of corporate restructuring, change of owner or change of shareholders no later than two months before actually doing so.

Failure to notify the authorities or committing acts despite objections by the authorities constitutes a ground for the Republic of Belarus to unilaterally repudiate an investment agreement and to claim reimbursement of benefits and preferences from the investor. Thus, the state will be in control of

the restructuring process and changes in ownership in the investment project. At the same time the Decree does not prohibit such actions.

**Recommendation:**

We advise you to consider in good time whether you need to amend investment agreements in order to access the new benefits and preferences granted to investors by the Decree. Newly introduced restrictions have to be taken into consideration as well.

**NOTE:**

- The Decree does not apply to investment agreements concluded before 15 May 2016.
- In order to access the new benefits and preferences an investment agreement has to be amended. The right to a benefit or preference arises from the date of entry into force of the amendments, but in any case not earlier than 15 May 2016.

We will be glad to assist you with any legal matters associated with implementing investment projects in Belarus, amending investment agreements and managing investment risks.

You may find information on investment projects currently under way in Belarus or if looking for an investor in our [bnt Baltic-Belarus-Business-Opportunity-Survey](#).

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