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NEWSLETTER BELARUS

BUILDING BRIDGES

October
2023

New procedure and restrictions for sale of businesses from “unfriendly countries”

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Content of this issue:

- Summary
- Background
- New restrictions
- To-do steps

→ Summary

In the light of the new regulations adopted in Belarus:

- all the Belarusian companies having shareholders from “unfriendly countries” fall under restrictions for market exit;
- the sale of real estate has been prohibited for Belarusian companies, where the shareholders from “unfriendly countries” hold at least 25 percent shares. Thus, the “asset deals” are no longer an option for the market exit, if a Belarusian subsidiary owns real estate in Belarus;

- the sale of shares and real estate for the companies, covered by the restrictions, is possible subject to:
 - one-time governmental clearance; and
 - payment of at least 25 percent of the market value of a share/real estate to be disposed.
- The companies, earlier included into the special list of restricted entities, now have been directly entitled to apply for such governmental clearances.

→ Background

On 14 March 2022 the President of the Republic of Belarus signed its Edict No. 93 (the “Edict 93”), which became the primary “countersanctions law” in the Republic of Belarus. The Edict provides for several restrictions for persons from so called “unfriendly countries”.

“Unfriendly countries”	
EU member states, UK	USA
Norway	Canada
Switzerland	Australia
New Zealand	Iceland
Albania	North Macedonia
Montenegro	Lichtenstein

In order to implement the Edict 93 the Government adopted the List of Belarusian entities, which shareholders from “unfriendly countries” are restricted from disposal of shares they hold (the “List”).

The List included ca. 1800 Belarusian entities as well as their shareholders from “unfriendly countries”. Such shareholders are therefore prohibited from:

- disposal of shares (including their sale);
- withdrawal from shareholding.

In addition, the Belarusian companies included into the List cannot be reorganized.

In the meantime on 21 October 2023 the Edict of the President No. 326 (the “Edict 326”) was officially published, thus amending the Edict 93. The Edict 326 expanded:

- the scope of restrictions; as well as
- the number of companies they affect.

Below please find the overview of key modifications connected with newly adopted restrictions.

→ New restrictions

Restricted transactions

In virtue of clause 1 of the Edict 326 the businesses from “unfriendly countries” should obtain the clearance of the Government (Council of Ministers) for performance of the following transactions:

1. Disposal by shareholders of Belarusian legal entities from “unfriendly countries”

(hereinafter – the “**Foreign shareholders**”) of shares / stocks in Belarusian companies.

2. Disposal of real estate by:

- Belarusian companies, where the Foreign shareholders hold at least 25 percent shareholding; as well as
 - Belarusian unitary enterprises incorporated by the persons from “unfriendly countries”.
3. Reorganization of Belarusian companies having the Foreign shareholders.
 4. Withdrawal of the Foreign shareholders from Belarusian companies.

Therefore, the Edict 326 for the first time implemented prohibition of disposal of real estate owned by businesses from “unfriendly countries”.

Companies affected

It shall be noted that earlier the restrictions were applied merely with respect to the companies included into the List.

→ To-do steps

The new Edict 326 significantly restricts opportunities for the market exit for the businesses from “unfriendly countries”. Please also consider, that performance of the aforesaid transactions without the governmental clearance results in their voidance.

Besides the expansion of restrictions, the new Edict 326 directly stipulates the tool of one-time clearances, which can be obtained by the businesses from “unfriendly countries”. The Government should additionally define the procedure as well as conditions of issuing such clearances. Moreover, the resolutions on disposal of shares / stocks of Belarusian legal entities as well as on their reorganization, as adopted prior to entry of the Edict 326 into force,

Now therefore, based on the content of the Edict 326, the new restrictions apply to almost all Belarusian companies connected with the “unfriendly countries”.

Please note

One of the preconditions for transactions as listed in clauses 1 and 2 above provides for the payment of a contribution to the budget in the amount of at least 25 percent out of the market value of the shares/stocks/real estate to be disposed. The respective appraisal should be performed by a specialized state agency.

should be accomplished according to the regulations, being in force as on the date of such resolutions (i.e. without requirements of the Edict 326). Based on this wording:

- if shareholders of a Belarusian company, not included into the List, commenced an M&A deal; then
- they can accomplish such transaction without the clearance of the Government.

In the meantime further clarifications of this rule will likely follow from the state authorities.

We would be glad to assist you respectively as well as provide you with further information regarding new regulations.

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