

A brief overview of the changes in the law of the Republic of Belarus on the commercial real estate market in 2014

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ENHANCEMENT OF THE LAND LEGISLATION OF THE REPUBLIC OF BELARUS

The Act of the Republic of Belarus of January 4, 2014 No. 107-3 "On Making Alterations and Addenda to Certain Acts of the Republic of Belarus on the Regulation of Law Relations" came into effect on January 12, 2014.

In particular, the Law amended some of the functions of the state bodies in the land use and protection field. The norms defining the terms of reference of city and district executive committees were also brought into line with a previously adopted document. The committees were empowered to form the lists of land plots allotted for the subsequent allocation for facility construction according to investment contracts signed by the government to the following persons:

- investors;
- organizations founded in the Republic of Belarus by or with the participation of investors.

NEW FOR LEASING

Edict of the President of the Republic of Belarus dated February 15, 2014 No. 99 "On the issues of leasing activities regulation" came into effect on September 1, 2014.

The National Bank of Belarus was entrusted with ample powers to the regulation and control of leasing activity, therefore the Board of the National Bank of the Republic of Belarus adopted the Resolution dated August 18, 2014 No.526 "On approval of the Rules of leasing activity".

One of the innovations of this Edict is that in the capacity of a lessee may act not only a legal entity, as it was before September 1, 2014, but also a private individual. In order to protect the rights and legal interests of private individuals as lessees, the Rules contemplate the lessor's obligation to allocate in accessible places certain amount of the information about the terms and conditions of the lease agreement, in particular about the cost of the leased asset, schedule and size of lease payments, payment procedure, the amount of remuneration of the lessor or the procedure of its definition, etc.

Allocation between the parties of responsibilities on state registration of the leased asset, the rights on this asset and (or) the lease agreement, on making alterations to the information on state registration in case of the termination of the lease agreement, if this registration is necessary, should be provided in the agreement, if it is not established by the Law. Previously in the absence of this condition in the lease agreement the duty on state registration of the leased asset, the rights on this asset and (or) the lease agreement was imposed upon the lessee.

The consequences of termination of the lease agreement were established, providing the redemption of the leased asset, as well as the consequences of early return of the leased asset.

Thus, if the termination of the lease agreement is caused by the lessor's failure to fulfill its obligations or the improper fulfillment of any such obligations:

- the lessee shall return the leased asset to the lessor;
- except as otherwise provided in the agreement, the lessor shall return to the lessee the part of the lease payments equal to the actually reimbursed cost of the leased asset;
- except as otherwise provided in the agreement, the lessor shall compensate the lessee's losses resulting from the termination of the lease agreement.

It is not required to bring into conformity with the Rules leasing, subleasing and sale and purchase agreements on the property acquired for subsequent leasing concluded before September 1, 2014 as they are valid till complete fulfillment of the obligations by the parties.

AMENDMENTS TO THE TAX LEGISLATION OF THE REPUBLIC OF BELARUS

Law of the Republic of Belarus dated December 31, 2013 No. 96-3 "On alterations and amendments to some laws of the Republic of Belarus on issues of entrepreneurial activity and taxation" entered into legal force in January 2014.

In particular, some amendments to the Tax Code on the procedure of tax calculation in 2014 were made. The list of objects for real estate tax was changed:

- for the purposes of real estate taxation permanent structures (buildings and facilities) include not only permanent structures (buildings and facilities) subject to the state registration, and transfer acts but also other projects related to buildings and facilities for the purposes of determination of standard useful lives of fixed assets according to tax legislation;
- the objects of taxation on property subject to state registration include permanent structures (buildings, facilities), their parts and parking lots
- prior to their state registration. Accordingly, there is a determined procedure of recognizing the payers of the property tax for those facilities, organizations facilities are registered in balance sheets.

As the list of objects of taxation was enlarged, the procedure of determining the real estate tax base was supplemented with clauses on the

determination of the tax base of permanent structures (buildings and facilities), their parts and parking places that are not on the book as fixed assets.

Determination of the tax base of these objects in based on their cost stated on the books.

There is a restriction on tax allowances on permanent structures (buildings and facilities) deemed to have material historical and cultural value and included in the State List of Cultural Properties of the Republic of Belarus according to the approved list of such properties. Thus, tax allowance is not applied to the organizations that use the aforementioned permanent structures (buildings and facilities) for entrepreneurial activity, including allocation of management bodies, accounting and other departments of these organizations.

This restriction is not implied to permanent structures (buildings, facilities) of budget-financed and non-profit cultural organizations.

The Law enshrines the procedure of calculating the land plot area exempt from the tax in case tax-exempt permanent structures (buildings and facilities) (hereinafter - projects), their parts and non-tax-exempt projects are located there. According to the established order tax-exempt land plot area is determined on the basis of the share of tax-exempt projects' area in the total area of all projects.

Land tax rates were increased (the average rate - 1.13). Since 2014 land tax rates were significantly increased for the organizations with land plots available for car markets allocation - from 0.55% up to 3%.

Tax return (calculation) for land tax (rent for land plots) hasn't significantly changed in comparison with 2013: only few editorial changes were made, including changes to Annexes 1 and 5.

Resolution of the Ministry of Taxes and Duties of the Republic of Belarus, Ministry of Finance of the Republic of Belarus, Ministry of Labour and Social Protection of the Republic of Belarus and National Statistics Committee of the Republic of Belarus of February 25, 2014 No. 11/7/8/26 "On alterations and amendments to the Resolution of the Ministry for Taxes and Levies of the Republic of Belarus, Ministry of Finance of the Republic of Belarus, Ministry of Labour and Social Protection of the Republic of Belarus and Ministry of Statistics and Analysis of the Republic of Belarus

of April 19, 2007 No.55/60/59/38" came into effect on March 26, 2014.

In 2014 alterations and amendments to the form of revenue and expenditure ledger for organizations and individual entrepreneurs applying the simplified tax system were made. The most significant changes concerned the procedure of maintenance of real estate objects.

THE NEW LAW ON TRADE AND PUBLIC CATERING

The Law of the Republic of Belarus of January 8, 2014 No. 128-3 "On state regulation of trade and catering in the Republic of Belarus" came into effect on July 22, 2014.

The Law has established that stationary trade and catering entities, shopping centers, markets and other entities shall be regarded as established from the moment of their registration in the Trade Register. The information about these entities should be placed on the web site of the Ministry of Trade of the Republic of Belarus.

There were established and detailed the rights of subjects of trade and catering in the organization and carrying out their activity.

Civil contracts containing terms that do not meet the requirements of the Law shall be brought into conformity with it within three months after entering the Law into force (from July 23, 2014 to October 22, 2014 inclusive). Before bringing into compliance with the Law civil contracts will be valid to the extent not inconsistent with the Law.

Resolution of the Council of Ministers of July 16, 2014 No.686 "On creation and functioning of the markets" where the procedure of establishment and organization of markets was defined entered into legal force on July 22, 2014.

There were established the grounds for refusal to issue a permit for the establishment of the market and harmonization of the market plan, including the discrepancy between the location of the market and the layout of stationary trade entities, stationary catering entities, shopping centers, markets on the territory of the administrative-territorial unit; the presence of unreliable information in the documents submitted; submission of counterfeit, forged or invalid documents.

The Resolution defines the procedure of termination of market. The procedure of market stalls allotment was adjusted. There was established the procedure of generation and

maintenance of sellers registry and contract registry for the market administration.

The list of goods prohibited for sale was also adjusted.

NEW FOR CONSTRUCTION AND ARCHITECTURE

Resolution of the Council of Ministers of the Republic of Belarus of March 23, 2014 No. 252 "On certain issues of attestation of legal entities and individual entrepreneurs, managers, specialists of organizations and individual entrepreneurs working in the field of construction" entered into legal force on March 1, 2014. The Resolution has led to the introduction of the Provision on attestation of managers, individual entrepreneurs and specialists of organizations working in the field of architecture and urban and construction planning, performing works on buildings' and constructions' inspection; and the Provision on attestation of legal entities and individual entrepreneurs performing special kinds of architecture and urban and construction planning activities (its elements), performing works on buildings' and constructions' inspection.

Resolution of the Council of Ministers No. 6 of January 8, 2014 "On approval of the Provision on the money refund procedure in case of the termination of participation in equity construction, the termination of membership in developers association, the termination of contract of sale of living quarters constructed under the state order" entered in legal force on January 15, 2014.

The basis for the refund is still the application of an interested party (in case of the termination of membership in developers association, the termination of agreement of the development of equity construction object– corresponding developer's decision). Such an application now is written in an arbitrary form. Moreover, the refund can be provided after unilateral refusal of the equity holder or developer to work within the agreement.

The Edict of the President of the Republic of Belarus of January 14, 2014 No. 26 "On measures on improvement of construction activity" came into effect on April 1, 2014.

The Edict made significant changes to the legal regulation of the construction industry.

Now for performing special kinds of architecture and urban and construction planning activities defined by the Council of Ministers of the

Republic of Belarus business entities shall pass certification and obtain a certificate of compliance.

The Edict has established the duty of a customer (developer) to develop and to affirm pre-design (pre-investment) documentation before development of design documentation.

Also the Edict introduces the responsibility of the contractor (in terms of building contract) to provide the guarantee to execute his obligations for the living quarters, social-cultural and municipal objects in case of detection of the works executed in unsatisfactory quality during the guarantee period.

Simultaneous designing and construction of objects is forbidden by the Edict, except for cases determined by the President of the Republic of Belarus.

In the Resolution of the Council of Ministers of January 30, 2014 No.85 "On alterations and amendments to the Resolution of the Council of Ministers of November 18, 2011 No.1553" that came into effect on April 1, 2014 the amendments to the Provision on the procedure of setting the fixed contract price for construction of objects (including the stages of construction work) were made. The procedure of setting the customer price was specified. The new order of customer price and construction budget adjustment was established. The form of payment schedule in construction was changed.

