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# Amendments to the Civil Code of Belarus

On November 18, 2023, after two years of waiting, amendments to the Civil Code of Belarus were published (hereinafter referred to as the new version of the Civil Code). They affected almost all the current regulation, starting with the registration of a company, ending with its economic activity and liquidation. The changes will take effect from 19.11.2024.

[You can find more detailed information](#)

Below is a small overview of what to prepare for in 2024.

## **The activities of companies based on a model statute.**

The most common organizational and legal form is a limited liability company (LLC). The new version of the Civil Code provides for LLCs the opportunity to act on the basis of a model statute, which will be provided by the Government. It will not provide, for example, information about the name, location and size of the statutory fund of the company, the owner of the property (founders, participants), the size of shares, representative offices and branches. If, however, some of the information shall be provided in accordance with the legislation, then this will be additionally reflected in the Unified State Register of Legal Entities and Individual Entrepreneurs (USR – <https://egr.gov.by/egrn/index.jsp?content=Find>), in which a general note will be made about the action based on the model statute.

## **Receipt of notifications, applications, notices, requirements at the legal address**

Some companies in Belarus have two addresses for the delivery of correspondence: legal and postal. According to the new version of the Civil Code, if legally significant messages were sent to the legal address (that is, specified in the USR), then it will be considered delivered, despite the presence of a postal address. This rule can be ignored if, for example, the agreement specifies the receipt of any notifications, correspondence and other by postal address.

## **Foreign companies will have the right to open branches.**

In Belarus, foreign companies will have the right to establish branches for business activity. It also includes the performance of the function of representative offices. Additionally, restrictions may be set for branches when carrying out business activity.

If a permanent representative office is registered on the territory of Belarus within the framework of taxation, then within six months from 19.11.2024, in order to continue its activity, it is necessary to open a branch (or create an organization, become its part), or stop the activity.

## **Irrevocable power of attorney (PoA)**

In Belarus, an irrevocable PoA has been introduced in the framework of business activity. Several actions shall be performed to do this:

- ▶ explicitly state that the PoA cannot be revoked before the expiration of its validity or can be revoked only in the cases provided for by the PoA.
- ▶ notarize the PoA.

The PoA may be revoked after the termination of the obligation for the performance or enforcement of which it was issued, as

well as at any time in case of abuse of the representative's powers. Retrust is prohibited, unless otherwise provided by the PoA.

### **Fulfillment of homogeneous obligations for several applications: what to do?**

Quite often, the parties of the agreement have several applications for execution, for example, for the supply of food. The question often arose: if the payment order does not specify which application has been paid, which account should be taken into account? In the new version of the Civil Code, an algorithm of actions is established, which can be changed by legislation or by the agreement.

A) Obligations will be considered fulfilled if their due date has come or will come earlier.

B) If the due date comes at the same time or the deadline is not specified (it is impossible to determine), the earliest obligations are considered fulfilled.

C) If the obligations have arisen simultaneously, the performance is counted proportionally.

### **The option to conclude an agreement can be used by all residents of Belarus.**

Previously, only HTP residents (<https://www.park.by/>) could use an option to conclude an agreement where one party provides an irrevocable offer to the other party for the right to conclude one or more agreements (indicating their subject matter) on its terms. This can be done on a reimbursable basis (as a rule, the payment is not counted against the payments under the contract and is not refundable if there is no acceptance) or for other counter-provision.

The counterparty has the right to conclude an agreement by accepting the specified offer in the manner, terms and conditions provided for by the option. The acceptance condition may be, for example, the occurrence of a certain condition.

### **Assurances about the circumstances**

It is often important for foreign counterparties to provide assurance about the circumstances (for example, about the registration of companies, about the availability of licenses, about the consistency of the transaction with corporate documents, about the financial condition). The new version of the Civil Code provides for the possibility of using this institute.

If false assurances were provided that affected the conclusion, execution or termination of the agreement, the counterparty has the right to demand compensation for the real damage caused by the unreliability of such assurances and to pay a penalty (if it is stipulated by the contract). It is possible to renounce the agreement if the assurances were essential at the conclusion of the agreement and not provided otherwise by itself.

It is important to note that the negative consequences of false assurances are impossible in relation to companies with a state share.

### **Factoring can be used by all commercial companies.**

In the previous edition of the Civil Code, it was established that factoring is a banking instrument that can be used exclusively by a bank or a non-bank financial organization. The new version of the Civil Code allows factoring for all commercial companies.

The subject of a factoring agreement can be both an existing and a future monetary claim, either one or several.

*For reference: factoring cannot be used in relation to the obligations of an individual not related to the implementation of business activity.*

In the factoring agreement, the "redeemable" claim must be identified, if the claim arises in the future, then for identification, you can specify the name or details of the document – the grounds for the claim. When the claim is identified, it is necessary to conclude an additional agreement.

A discount or other form specified in the agreement may be provided as a reward.

### **The law applicable to agreements with intellectual property objects.**

At the conclusion of the contract or subsequently, the parties have the right to choose the law to be applied to this agreement (for example, Belarusian law or German law). If this is not done, then conflict of laws rules are subject to application. The new version of the Civil Code provides for separate regulation in relation to intellectual property objects.

A) The law of the country in which the user is allowed to use the license complex applies to the franchise agreement. If there are several countries, then the law of the country where the place of residence or the main place of activity of the copyright holder applies.

B) The law of the country on the territory of which the exclusive right alienated to the acquirer is valid applies to the agreement of assignment of the exclusive right, and if there are several such countries, it is similar to franchise agreements.

C) The law of the country on the territory of which the licensee is allowed to use the result of intellectual activity or means of individualization of participants in civil turnover, goods, works and (or) services applies to the license agreement. If there are several such countries, then the law of the country where the licensor's place of residence or main place of business is located applies.

When concluding other agreements, the law of the country with which the agreement is more closely related applies. The same rule may be applicable to the above-mentioned agreements, if the substance, terms of the contract or the totality of circumstances implies something else than stipulated by the Civil Code.

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