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Belarusian legislation defined special restrictive measures in response to unfriendly actions

On July 31, 2023, the Law of the Republic of Belarus No. 280-Z "On the Application of Special Restrictive Measures" came into effect. The law establishes conditions and procedures for applying reciprocal measures to unilateral coercive actions not approved by the UN Security Council and/or not in line with international law, against the Republic of Belarus, its citizens and organisations (**unfriendly actions**).

Special restrictive measures are introduced by the resolution of the Belarusian Government, specifying the measure, subjects, and duration of its application. Such measures can only be imposed on foreign entities.

The law provides for special restrictive measures that can be categorised into 5 groups:

- ▶ customs measures (prohibition of import, transit or export of certain groups of goods, works or services);
- ▶ financial measures (prohibition or restriction of financial transactions);
- ▶ contractual measures (moratorium of obligations performance);
- ▶ diplomatic measures (suspension of international cooperation, suspension or termination of the effect of an international treaty);
- ▶ other measures approved by the Government upon the President's instruction.

Additionally, the Law has established "exclusive" jurisdiction of Belarusian courts for economic disputes involving Belarusian subjects subject to unfriendly actions (*subjective basis*), as well as disputes arising from unfriendly actions against Belarusian entities (*tortious basis*).

This means that Belarusian entities have the right to address an economic court in Belarus for the resolution of such disputes or seek a prohibition to initiate or continue proceedings in a foreign court (arbitration centre).

Please note that the "exclusive" jurisdiction under this Law differs from a similar category under procedural legislation. The new Law allows parties to change the jurisdiction of Belarusian courts through a prorogation or arbitration agreement. Such jurisdiction does not affect the procedure for recognition and enforcement of decisions of foreign courts (arbitration centres) if there are no objections from the Belarusian entity.

The Law includes a new means of protecting the procedural rights of Belarusian entities – a prohibition to initiate or continue proceedings in a foreign court (arbitration centre). Such prohibition is similar to the "anti-suit injunction" in English law. A party to a dispute arising from unfriendly actions against a Belarusian entity can file such an application without paying a state fee (sub-clause 2.11 of clause 2 of Article 285 of the Tax Code). To satisfy the Belarusian "anti-suit injunction", three criteria must be met:

- ▶ the absence of an agreement between the parties on the jurisdiction of the foreign court (arbitration centre),
- ▶ the "exclusive" jurisdiction of the Belarusian court under the Law,
- ▶ the risk of the counterparty resorting to the foreign court.

The Law stipulates two consequences of imposing special restrictive measures:

- ▶ Failure to comply with the established measures will be grounds for liability. At present, Belarusian legislation does not provide for such norms, but in our opinion, they will be adopted shortly.
 - ▶ Imposing special restrictive measures is considered a basis for exemption from liability for improper performance of a contract.
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For more information about the Law, please refer to the following [link](#)

We recommend reading our legal experts' material on the Law

Locations

[BELARUS](#)