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How foreign investors can alienate a share in a Belarusian entity?

Issues of sanctions and countersanctions have been one of the main topics for discussion during the last 3 years. Belarus followed Russia and adopted the list of so called “unfriendly states” by the Resolution of the Council of Ministers of the Republic of Belarus “On the List of Foreign States Committing Unfriendly Acts against Belarusian Legal entities and/or Individuals” N209 dated 06.04.2022 (hereinafter – “unfriendly” states).

The ‘flagman’ act regulating countersanctions, however, is not the Resolution on “unfriendly states” but the Presidential Edict “On Additional Measures to Secure the Stable Performance of the Economy” dated March 14, 2022 N93 (hereinafter – “Edict N93”).

In terms of corporate countersanctions it imposed restrictions on “unfriendly” shareholders of companies according to the list adopted by the Council of Ministers. It prohibited withdrawals, reorganizations, alienation of shares, registration of any changes in shareholding structure for the companies included in the list.

On October 19, 2023, Edict of the President of Belarus N326 (hereinafter – “[Edict N326](#)”) brought amendments to the provisions of Edict N93. It abolished the list of companies with “unfriendly” shareholders and imposed prohibitions on:

- ▶ alienation of shares in Belarusian legal entities owned by residents of “unfriendly” states;
- ▶ reorganization of such legal entities;
- ▶ withdrawal of shareholders from “unfriendly” states from such legal entities;
- ▶ alienation of immovable property by residents of “unfriendly” states or legal entities, more than 25% of the share capital of which belongs to residents of “unfriendly” states.

The abovementioned transactions and the state registration of such transactions are possible only under the following conditions:

- obtained permit of the Government;
- payment of at least 25% of the market price of the alienated shares (stocks) to the local budget.

The procedure of issuance of the said Governmental permit was not set by Edict N326 and was clarified with the Resolution of Council of Ministers of the Republic of Belarus N27 dated 12.01.2024 (hereinafter – “[Resolution N27](#)”).

What is the procedure for obtaining a permit?

1. Assessment

Belarusian company itself shall conduct an assessment of **the market value** of alienated shares (stocks) or alienated immovable property. The assessment shall be performed by a state organization carrying out assessment activities, preferably at the place of registration.

2. Application

The next step is submission of an application to regional, Minsk City Executive Committees at the place of registration of a legal entity (hereinafter – “Executive Committees”). The form of the application and information to be included into the application are not established so it can be submitted in a free form. However, we recommend to include in the application the economic reasoning for the transaction and the guarantees for the state that the transaction is real and the company (and its workers) won’t be abandoned.

Application shall be filed with the following attachments:

- information on the activities of the legal entity;
- balance sheet of the legal entity with appendices to it;
- a copy of the assessment report;
- a legalized extract from the commercial register of the country of establishment of the resident of the "unfriendly" state;
- a copy of an identity document (for individuals);
- statement of the depo account (in case of alienation of stocks);
- information on the acquirer (**the composition and form of such information is NOT established by the Resolution N27**);
- other documents at the discretion of the Executive Committees.

In practice, we expect that "other information" may include, in particular, a business plan, information on sources of financing of the transaction, copies of decisions of governing bodies of the companies involved in the transaction on making the deal or reorganization, draft of the transfer deed etc.

3. Consideration by the Executive Committee

Within 5 working days, the Executive Committees decide on acceptance or refusal to accept the application. Executive Committees decide on the possibility of a transaction within 30 working days *from the date of submission of all necessary documents*.

It is important to note, that the term of consideration is dependent on the submission of documents, i.e. documents requested by the Executive Committee additionally, and not the receipt of the application).

4. Overview by the State Property Committee (hereinafter – “SPC”)

Executive committees pass the information to the SPC, which drafts the Resolution of the Government on issuance the permit. The draft is agreed with the Ministry of Justice and the Ministry of Finance (in case of alienation of stocks).

5. Adoption of Resolution

When adopted, the Resolution on issuance of the permit is sent to the SPC, the Ministry of Finance, the Ministry of Justice, the Ministry of Economy, and the Executive Committees. Executive committees send copies of the Resolution to the applicant

within 5 working days. The resolution is valid for **1 year**, the transaction must be closed within that time frame. If the transaction is not closed within 1 year term the new assessment is required and the permit is obtained under the common procedure.

6. Exit tax

The applicant shall pay the exit tax in the amount, manner, and within the terms stipulated in the Resolution. The amount of the exit tax to be paid is **NOT LESS** than 25% of the market value of shares (stocks) or immovable property. It means, depending on the assessment report the exit tax may be significantly more than 25%. We suppose, there may be situations of low or negative market value of shares (stocks). In such case we expect the amount of exit tax to be calculated based on the value of the transaction.

It is also remain uncertain whether the exit tax payable in case of reorganization (except spin-offs) or intragroup transactions.

7. State registration

After obtaining the permit the documents for the state registration of changes for the legal entity can be submitted to the registration authorities. The documents shall additionally contain a copy of the Resolution on issuance of permit and a payment instruction for exit tax payment.

Who shall apply?

The list of possible Applicants is quite short. It can be:

- ▶ the owner of the property (in case of alienation of the immovable property);
- ▶ the shareholder (stockholder) from "unfriendly" state;
- ▶ the legal entity itself.

It means that acquirer in the transaction cannot be the Applicant for the permit.

What happens with the exit tax if the deal is not closed (within the 1-year term or in general)?

Paid exit tax may be refunded in case of failure to close a transaction involving the alienation of immovable property upon submission of an application by the payer with a justification for the refund and confirmation of the legitimacy of such refund.

Such an option is not provided for transactions on alienation of shares (stocks).

In case the resolution on issuance of a permit for a transaction expired earlier than closing, it is necessary to apply for the permit again.

What happens if there is a change in the essential terms of the transaction?

In case of any essential changes (for example, change of the acquirer or the price), a new permit shall be obtained under a common procedure.

CONCLUSION

After almost 2 years of M&A market lull we expect outburst of transactions with foreign capital. For now, the only possible way for foreign investors to withdraw capital from Belarus is through obtaining the Governmental permit, however the established

procedure still begs many questions. There are grounds to expect the exceptions being defined in the near future (for example, for redomiciliation and intragroup transactions)

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