

Land Rights of Foreign Subjects In Belarus

Foreign subjects' ownership right to land in Belarus is limited to and can be exercised in certain cases, mainly the usage of land is carried out on other types of land rights.

Business

1. Ownership right

The Code of the Republic of Belarus on land (hereafter – Land Code) doesn't provide for foreign legal entity's ownership right to land. However, foreign investors can exercise this right indirectly by creating entities on the territory of Belarus, since land plots can be transferred to the ownership of Belarusian entities, including those with foreign investments.

But there are land plots that are not subject to privatization under article 13 of the Land Code, specifically lands of agricultural designation, nature protection, recreational, recreation, historical and cultural purpose, lands of the forest fund, lands of the water fund, lands under roads and other transport communications, common-use lands.

Additionally, the following types of land plots aren't subject to privatization:

where state ownership's real estate objects are located;

in territories exposed to radioactive contamination (evacuation zones (exclusion zones), zones of priority resettlement and zones of subsequent resettlement from which the population has been resettled);

on the areas of explored mineral deposits;

provided for the intended use excluding their provision for ownership in accordance with approved city and other localities general plan, urban detailed planning project, land surveying schemes of districts and land surveying documentation.

Possibilities of privatization

According to article 1 of the Law of the Republic of Belarus of 19.01.1993 No. 2103-XII "On privatization of state property and transformation of state unitary enterprises into open joint-stock companies" (hereafter - Privatization law), foreign entities can be subjects of privatization of state property.

It is possible to obtain a land plot in accordance with Privatization law by purchasing a privatization target at an auction, by tender or as the result of trust management (article 4 of the Privatization law). The privatization targets are enterprises as property complexes and shares (shares in authorized funds), which may include land plots by decision of the government body. However, such cases are rare in practice.

Also a land plot can be obtained after gaining ownership right for capital buildings located on it owing to the legislative principle of unity of the fate of the land plot and buildings located on it. Note that obtaining of the land plot is carried out at the cadastral value – the fee for the transfer of land from state ownership to private ownership. Cadastral value is determined by mechanisms roughly corresponding to the procedure for assessing the market value of land in states with a developed land market.

2. Leasehold

Foreign entities and their representative offices can lease land plots. The possibility of obtaining such a right for foreign entities, in contrast to the right of ownership is not limited and its exercise depends on the purpose of the plot providing.

Lease contracts are concluded either with government bodies or with Belarusian land owners, with the lease of buildings located on the land plot.

State's land plots are usually leased for a longer period. Also, the advantages can include the fact that when leasing land from the state it is possible to build a capital buildings on it with the extension of the lease term for the entire period of building's operation. Such a building can be alienated with the automatic transfer of the lease right to the buyer.

3. Provision of land plots for extraction of mineral resources

Ministry of Natural Resources and Environmental Protection of the Republic of Belarus conducts competitions to select investors for these purposes of usage plots. For example, the following competitions were already held: choosing of the investor for commercial development of the Petrikov deposit of potassium salts with construction of a mining and beneficiation complex; choosing investors for extraction and processing of granite for Sitnic deposit of building stone and construction based on it is mountain-concentrating combine.

4. Concession

According to the Law of the Republic of Belarus dated 12.07.2013 No. 63-Z "On concessions", foreign companies (investors) can purchase a land plot for temporary use by entering into a concession agreement on a non-gratuitous or gratuitous basis for a period of up to 99 years (art.1, 36).

5. Preferential regimes

China-Belarus Industrial Park «Great Stone» (the Park).

Residents of the Park and investors are granted land plots on the right of ownership, lease, sublease. There is an exemption from land tax and simplified procedure for obtaining land plots as soon as possible. Obtaining land plots is possible at the investor's choice for lease or ownership with infrastructure (roads, engineering networks). The following preferences also apply:

- ability to design and construct according to EU or Chinese standards without forcible adaptation to Belarusian standards;
- exemption from loss recovery to the state related with occupation of a land plot;
- residents don't need to obtain certificates of compliance for the right to carry out construction activities;
- simplified procedure for commissioning construction objects;
- goods used for construction and equipment of production facilities can be imported without paying customs duties and VAT.

Free economic zone (FEZ). No rent is charged for land plots provided for the construction and maintenance of real estate objects to FEZ residents for the implementation of investment projects. The annual rent for land plots located within the boundaries of the FEZ and leased to their residents

is not increased. Exceptions to this rule are established by law (for example non-purpose use). FEZ administrations don't have the right to increase (decrease) by more than two and a half times the amount of annual rent for land plots (with the exception of plots included in the list of inefficiently used).

Investment contract with the Republic of Belarus. Main preferences:

- provision of lease and (or) private ownership of a land plot without holding auctions in the case of implementation of an investment project proposed by a government body;
- exemption from payment for the right to conclude a lease contract for a land plot leased without an auction for the construction of objects provided for in the investment agreement.

Foreign citizens

Current civil legislation allows foreign citizens to obtain ownership of buildings, premises and shares in the right to them on the territory of Belarus without restrictions. The situation is different in case of land plots.

This section focus on the rights of foreign citizens to land in Belarus and potential opportunities in connection with the planned changes to land legislation.

Foreign citizens have the following rights to land in Belarus:

1. Ownership;
2. Lifelong inheritable possession right;
3. Leasehold.

1. Ownership is restricted by the conditions of inheritance and godparenthood. A foreigner can become the owner of a land plot if it's inherited from a Belarusian relative who has been granted private ownership of this land plot (article 12 of the Land Code).

2. Lifelong inheritable possession right. Land plots may be in foreigners' lifelong inheritable possession under the same conditions as the right of ownership: a plot obtained for lifelong inheritable possession vest from a Belarusian relative by inheritance when inheriting dwelling house, apartment in a blocked house, country cottage, garden cottage on such a plot (article 14 of the Land Code).

In both cases "relatives" mean:

close relatives (parents, children, adoptive parents, adopted children, siblings, grandparents, grandchildren, and the testator's spouse);

other related persons having common ancestors before the great-grandfather and great-grandmother.

3. Leasehold. Foreigners can lease land plot from both the state and the private owner. In case of leasing a state land plot it's necessarily to become the winner of the auction for the right to conclude a leasehold contract. In some cases land plot can be obtained without an auction. For example, for the construction and maintenance of single-family and blocked houses in rural areas.

At the same time, regardless of the method of obtaining a lease on a plot, a fee must be paid to the state budget for the right to conclude lease contract with state plots (except some cases).

Thus, leasehold is completely free for foreign citizens.

In practice, there are situations when a Belarusian citizen sells his share in the right to a house with a plot, he is forced to waive private ownership of the plot and draw up lease together with a foreigner.

Also problematic moments arise when the property together with the plot is inherited simultaneously by a citizen of Belarus and a foreigner, in common ownership. Often, the issue of registration of rights to real estate in such cases is carried out exclusively in court.

In particular, for these reasons, the Deputies adopted in the first reading a draft of amendments and additions to the Land Code. Those amendments provide for foreigners and stateless's possibility to acquire private ownership or lifelong inheritable possession of a land plot, rather than receiving only inheritance from a relative.

It is proposed to allow foreign citizens and stateless to register under the ownership and lifelong inheritable possession of land plots, shares in the right to them in the following cases:

- inheriting plots and dwelling houses, country cottages and garden cottages, regardless of the degree of godparenthood with the testator;
- purchasing registered shares in the right of ownership of a land plot and real estate objects located on it;
- division of former spouses' community property or allocate shares from it.

Note that cost of using land rights in Belarus doesn't differ significantly. In particular, the amount of payments for different types of rights determined in accordance with the procedure established by law and identical, except for the leasehold land plots of private ownership when the payment is determined by parties' agreement.

Taking into account the above-mentioned principle of unity of the fate of the land plot and buildings located on it, land conveyancing without buildings in Belarus is limited. The exception is land plots provided to citizens for collective gardening and personal subsidiary farming, since the legislation doesn't provide for the mandatory construction of any buildings on these plots.

It should be kept in mind about the institution of land seizure for state needs. When a privately owned plot is seizure compensation is paid for the cadastral value of the land plot, as well as compensation for the cost of buildings and plantings on the plot. In case of seizure state's land plot acquired to the owner on a different type of right only compensation for the cost of buildings is paid.

Angelina Romanchuk
GRATA International in Belarus