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LAND RIGHTS ACQUISITION BY THE INVESTOR

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Land Rights Acquisition by the investor

In accordance with legislation of the Republic of Belarus, there are several (both general and special) options for obtaining rights to a land plot by the investor. In this article we give a summary of the options for the construction of commercial real estate by legal entities and individual entrepreneurs.

Granting the land plot for implementation of the investment agreement

According to the Regulation on seizing and granting land plots established by the Edict of the President of the Republic of Belarus dated December 27, 2007 No. 667 (hereinafter - Regulation), land plots are granted to an investor (organization implementing an investment project) for the construction of the real estate object under the investment agreements with the Republic of Belarus, during the effect of such agreements. Granting the land plot is performed without holding an auction, paying a fee for the right to conclude a lease agreement. The investor is exempted from reimbursement of agricultural and/or forestry production losses; payment of land tax for the period of construction until December 31 of the year following the commissioning of the object.

Complete List of benefits and preferences granted without a separate decision of the Council of Ministers made with the approval of the President, is established by Decree No. 10.

The list of land plots for further granting to investors, is formed by district (city) executive committees. Such list is compiled on the basis of town-planning certificates of land plots, prepared in accordance with the approved city (and other settlements) master plans. The list and information about land plots and investment projects are posted on the websites of local executive committees.

Before applying to the appropriate authority with an application to conclude an investment agreement, the investor needs to select a land plot from the list of land plots, and check compliance of the purpose of the land plot specified by the executive committee with the purpose of the planned object. After concluding an investment agreement, investor needs to apply to the local executive committee at the location of the requested land plot with an application for granting the plot.

For reference: for certain regions there are special electronic platforms with up-to-date information on land plots and not only - for example, the Minsk Regional Center for Investment and Privatization (<https://rlt.by/>) or the Minsk City Real Estate Center (<https://mgcn.by/>). However, information there provided mainly in Russian.

Considering the fact that the right to support measures might be lost upon termination of the investment agreement due to non-execution or improper execution of the obligations by the investor (the most common condition is the incompleteness of construction within the term established by the investment agreement), from the date of such termination, the executive committee has grounds for seizure from the investor of a land plot previously granted without an auction for the construction of real estate objects stipulated by the investment agreement, including those with unfinished construction objects located on the land plot, we recommend to carefully assess the possibilities to complete the investment project on time before concluding an investment agreement. In our opinion the conclusion of an investment agreement is

reasonable only if the land plot proposed by the executive committee is fully suitable for the implementation of the project, and the share of the payment for the right to lease in the total price of the investment project is significant.

Transfer of land rights due to purchase of real estate

According to Article 55 of the Code of the Republic of Belarus on Land dated July 23, 2008 No. 425-3, when permanent structures (buildings, constructions), uncompleted permanent structures or shares in the rights to these facilities are transferred to the purchaser, the rights to the land plot on which they are located and, if located on leased land plots, the rights and obligations under the respective land plot lease agreements for the remaining lease term are also transferred.

The purchase of existing real estate for its adaptation to the needs of the investor through reconstruction, construction of new real estate objects, including the demolition of all or part of the purchased objects, is a very common practice.

In this regard, it would be useful to recall that the ownership of real estate is not an unconditional guarantee of a favorable consideration when you apply to the executive committee for a building permit. The requirements of the urban planning documents may include the preservation of the existing characteristics of the building or even its demolition. Accordingly, when planning the development of an investment project based on existing real estate objects, it is necessary to study the current town-planning regulations, obtain information about the possibilities of finding new requirements at different stages of coordination before actually buying the object.

In addition, there may be situations when the development of real estate in the needed direction does not contradict the regulations, but is unreasonable due to the specifics of engineering and transport infrastructure - for example, access roads, parking lots are not available or their number will not meet the requirements for the new facility, utility systems are old, worn out or unable to deliver the necessary capacity to the facility or provide the necessary volume of consumption. Such possible negative scenarios should be the subject of preliminary feasibility study.

The recommendations above are also relevant for cases of acquiring control over legal entities that are owners of real estate and land-users through corporate procedures or the acquisition of an enterprise as a property complex.

Other cases

Indeed, the situations described above do not exhaust all possible cases of an investor acquiring rights to land.

Land plots for the construction and management of objects can be granted:

- in a declarative order (*land plots granted for the for the construction of commercial facilities for the production of goods (works, services) upon this principle are mainly located far from the major cities*),;

- based on the results of an auction (after payment of the fee for the right to conclude a lease agreement) or an auction with conditions for the right to design and construction of permanent structures (after payment of the fee for the right to conclude a lease agreement and

fulfillment of other auction's conditions such as, for instance, demolition of structures that belong to third parties and paying them compensations);

- by decision of the President of the Republic of Belarus or in accordance with a program approved by the President of the Republic of Belarus or the Council of Ministers of the Republic of Belarus, which determines the characteristics of the real estate object for the construction and maintenance of which a land plot is granted.

A completely separate procedure, in accordance with the Edict of the President of the Republic of Belarus dated May 12, 2017 No. 166, exists for granting land plots to residents of the Chinese-Belarusian industrial park "Great Stone" or investors: a land plot can be purchased or leased from a joint Belarusian-Chinese company for the development of an industrial park on the basis of an application to such a company with the approval of the park administration, or subleased from another resident of the park with the approval of the joint company and the park administration. Construction permits are issued by the park administration and the joint company.



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