M&A
in Belarus
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Contents

Introduction

This guide is dedicated to the process of mergers and acquisitions (M&A) in Belarus and provides a comprehensive overview of the key aspects that investors shall take into consideration when planning an M&A deal.

Target Audience

The guide will be useful for companies from various sectors, including industry, agriculture, IT, trade, finance, and other areas, considering:

- Entering the Belarusian market through the acquisition of existing companies;
- Selling assets to Belarusian or international investors;
- Attracting investments from various sources.

The document is also aimed at internal company specialists such as:

- **Legal departments –** to understand legislative requirements and procedures related to M&A in Belarus;
- **Company executives and business owners –** for making strategic decisions regarding mergers, acquisitions in Belarus and attracting investments into Belarusian companies.

Key Questions Addressed by the Guide

1. What types of companies can be established in Belarus, and what are their main differences?
2. What are the procedures for selling shares in Belarusian companies?
3. What are the alternatives available for acquiring shares in Belarusian entities instead of acquiring them based on share purchase agreement?
4. What are the permits required for M&A transactions in Belarus?

The guide is designed to help companies and investors correctly and efficiently organize M&A transactions in accordance with Belarusian legislation.

If you have any questions, you can always contact our team of consultants:

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General comments on the country profile

Belarus is located on the eastern edge of Europe and serves as a significant trading route between Europe and the Commonwealth of Independent States (CIS). Its strategic location plays an essential role in fostering trade, economic growth, and international tourism.

At the highest administrative level, Belarus is divided into six regions, with the capital city, Minsk, holding a special status. The regions are further divided into districts. Major cities, apart from Minsk, include Brest, Mogilev, Grodno, Gomel, and Vitebsk.

Belarus is rich in natural resources such as potassium salts, wood, peat, granite, dolomite, limestone, clay, sand, and small oil and natural gas deposits. Forests are one of its key renewable resources, placing Belarus among Europe's top ten forested countries.

The official currency is the Belarusian ruble (BYN).

Belarus follows a legal system influenced by the legal traditions of continental Europe. It belongs to the Romano-Germanic legal family, characterized by a well-defined structure that organizes the law into branches and institutions. The country does not operate on a judicial precedent system; only written laws are binding.

Belarus is open for business, as evidenced by its developing market, skilled and industrious workforce, low wages and taxes, a thriving IT sector, and visa-free entry policies.

Main types of companies

Belarusian legislation envisages different types of companies that can be incorporated in Belarus. However, in practice business is usually structured as either a limited liability company or a joint-stock company (that further can be divided in closed joint-stock companies and open joint-stock companies).

Main aspects	Limited Liability Company	Closed Joint-Stock Company	Open Joint-Stock Company
Number of shareholders	No more than 50	The number of shareholders is not restricted unless the Charter envisage that such number shall not exceed the threshold provided therein.	The number of shareholders is not restricted
Amount of the charter capital	Any amount starting from BYN 1 (approx. EUR 0.3)	Any amount but not less than BYN 4,200 (approx. EUR 1,200)	Any amount but not less than BYN 16,800 (approx. EUR 4,800)
Profit distribution procedure	The profit can be distributed among its shareholders either proportionately to their shares (as a general rule) or disproportionately (if it is stipulated by the Charter).	The Company pays dividends proportionately to the ordinary shares owned by each shareholder. However, shareholders owing preferential shares may receive fixed amount of dividends indicated for such preferential shares	
Possibility to establish votes disproportionality to the number of shares	It is legally possible to envisage in the company's Charter number of votes disproportionate to the number of shares (e.g., a shareholder owing 50% of shares can have 51% of votes).	Each ordinary share grants one vote. Thus the number of votes is proportionate to the number of ordinary shares owned by a shareholder. Owners of preferential shares does not vote unless the company fails to pay dividends to them.	

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Sale of shares in LLCs and JSCs

Form of a transaction, registration issues, preemptive rights

Sale of a share in Limited Liability Company (LLC)

The procedure for selling shares in an LLC depends on the number of shareholders in the company. If LLC has two or more shareholders, the right of first refusal must be observed, allowing the other shareholders the opportunity to purchase the shares before they are sold to a third party. Thus, the procedure for selling a share in an LLC is as follows:

Step 1. Observing the right of first refusal by other shareholders of LLC (this step does not apply if LLC has only one shareholder)

A shareholder intending to sell their share in an LLC must notify the other shareholders and an LLC itself on their intent to sell shares. Such notification shall provide information on the sale conditions, including the price, amount of the shares to be sold, payment terms, and any other relevant details. The other shareholders have the right to either purchase the shares under the specified terms or decline the purchase. If the shareholders decline to purchase the shares with their own funds, the shares can be acquired by an LLC itself. The decision on acquisition in such a case is passed by the shareholders at the general shareholders' meeting and passed by the simple majority of votes (please note that the selling shareholder also votes at this meeting). If the general shareholders' meeting does not pass a decision on acquisition of the shares by an LLC itself, they may then be sold to a third party.

Step 2. Execution of the share purchase agreement

To sell the shares in an LLC the seller and the buyer shall enter into relevant share purchase agreement. The agreement is concluded in simple written form, unless the LLC's Charter or requires notarization (or the parties agree to notarize). The parties shall envisage in the relevant agreement the following terms: the price, amount of the shares to be sold, payment terms which shall be the same as those disclosed previously to other shareholders and an LLC itself. It is also advisable to agree on the moment of the title transfer over the shares (it can be any moment, e.g., the moment of signing of the agreement or the moment of price payment, etc.).

Step 3. Notification of an LLC on acquisition and adoption of a corporate resolution to approve amendments to the Charter

The acquisition of title over the shares in Belarus does not automatically transfer the shareholder's rights to the acquirer. The acquirer shall be considered as a shareholder by an LLC and its other shareholders once an LLC is notified on the transfer of title. From this moment the acquirer can vote at general shareholders' meetings, can execute

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preemptive right of purchase and so on.

Step 4. State registration of the Charter of LLC

In order to be considered as a shareholder of an LLC by any third party (except for an LLC and its other shareholders, see Step 3 above), an LLC must include the acquirer as the new shareholder in its Charter and register an updated Charter with the local registration body. An LLC has two months from the date of the share transfer to register amendments to its Charter. A specific set of documents must be prepared for the state registration of these amendments including documents on legal status of the acquirer (certificate of good standing or excerpt from the trade register of foreign companies and the notarized copy of the passport for foreign citizens). Once the documents are submitted to the registration body the registration is made on the day of submission.

Sale of stocks in Open Joint-Stock Company (OJSC) / Closed Joint-Stock Company (CJSC)

Before any sale of stocks, it is essential to check for any restrictions on their sale (for example, whether the stocks are pledged, under arrest, etc.). This information can be obtained from a statement of the "depot" account status and by identifying which account in the depository holds the stocks.

Additionally, it is important to be aware of a legal restriction: individuals with access to insider information in the securities market (such as the director or other affiliated persons of the joint-stock company) are prohibited from disposing of their stocks for six months from the date of acquisition.

Sale of stocks in OJSC

A stockholder of an OJSC may sell their stocks only on an organized market, i.e., through a stock exchange trading system. Currently, Belarus has only one stock exchange—Belarusian Currency and Stock Exchange (BCSE) through which stocks of OJSC can be sold.

In general, the procedure for selling stocks in OJSC includes the following steps:

Step 1. Execution of the commission agreement with a broker

Transactions for the purchase and sale of stocks in OJSC on the BCSE can only be conducted through a broker. Therefore, the selling stockholder must enter into a commission agreement with a broker, under which the broker will execute the sale transaction on the BCSE on behalf of the broker but at the expense of the stockholder.

Step 2. Execution of the sale by the broker on the BCSE

First of all the selling stockholder must instruct the depository to "block" the stocks for the sale. This instruction specifies that the sale will be conducted by the designated broker with whom the stockholder has entered into a commission agreement. After that the broker submits a sale order to the BCSE trading system. Based on this order the stocks are sold in the BCSE's trading system. Once the transaction in the BCSE trading system is completed, the funds for the stocks are transferred to the broker's account and the stocks are transferred to the buyer's "depot" account (and from that moment, the stocks are considered to have been transferred to the buyer's ownership). The broker further transfers the corresponding amount of money to the selling stockholder's account based on the commission agreement. It is worth mentioning that before purchasing stocks of OJSC, any person intending to acquire more than 50% of the stocks must disclose their intention to make such an acquisition on the unified financial market portal and acquire all stocks of an OJSC should other stockholders decide to sell the stocks. In addition, any person who has acquired, on the basis of an agreement, the right to dispose of the number of votes in the amount of 5 percent or the number of votes has become more or less 5, 10, 15, 20, 25, 30, 50 or 75 percent of the total number of votes attributable to the voting stocks of an OJSC must disclose information about such acquisition on the unified financial market portal.

Sale of stocks in CJSC

Unlike in OJSC, transactions for the sale of stocks in CJSC are conducted in the unorganized market, i.e., outside the stock exchange trading system. Moreover, the involvement of a broker is required only for registering the executed contract. In general, the procedure for selling stocks in CJSC includes the following steps:

Step 1. Conclusion of the stock purchase agreement

The agreement is concluded directly between the seller and the buyer in simple written form and registered with the broker. Failure to comply with this requirement renders the transaction invalid.

Step 2. Transfer of stocks to the buyer

Once the agreement is signed and registered the seller instructs their depository to transfer the stocks to the buyer's "depot" account. From this moment on, the buyer acquires ownership of the stocks.

Important: the Charter of CJSC may grant other stockholders a right of first refusal for the purchase of stocks. In this case, before selling the stocks to a third party, the seller must follow this procedure, i.e., send notifications to the other stockholders about the sale, wait for their response, and, if all other stockholders decline to purchase the stocks, proceed with selling the stocks to a third party.

When selling stocks in OJSC or CJSC, i.e., in the case of a change in the stockholder composition, the legislation does not require the OJSC or CJSC to register changes and/or amendments to the Charter with the executive committee, as is required for an LLC.

Issuance of shares for investors in LLCs and JSCs

Form of a transaction, registration issues, preemptive rights

As an alternative to the direct purchase of shares from shareholders, the investor can join the company through acquiring newly issued shares (in JSCs) or by contributions to the charter capital (in LLCs).

LLCs

Third parties can be admitted to an LLC as new shareholders if this is not prohibited by the company's charter. The procedure for making a contribution to an LLC by a third party includes the following steps:

1. A third party decides to make a contribution to the charter capital of an LLC and submits an application to the LLC on the intention to make a contribution, which must contain:

- Amount of the contribution
- Composition of the property to be contributed (i.e., cash or contributions in-kind)
- Deadlines and proposed procedure of contribution's transfer to an LLC
- The amount of the share in the charter capital the investor wants to receive based on such contribution.

2. The LLC's director or supervisory board considers the application, assessing the possibility to increase the charter capital of the LLC (whether there are no impeding circumstances).

4. If there is a possibility to increase the charter capital of the LLC at the expense of the contribution of an investor, the director or supervisory board of the LLC initiates the convening and holding of the general meeting of the shareholders of the LLC, which must unanimously adopt a resolution on the increase of the charter capital, containing the procedure and terms of the increase, by all shareholders unanimously.

5. If the decision to increase the charter capital of the LLC is adopted, the contribution is made by the investor.

6. Once the contribution is made, the investor and the LLC's director should register the amendments to the LLC's charter indicating the investor as the new shareholder.

JSC

A third party may acquire stocks in a joint-stock company not only by purchasing stocks from existing stockholders, but also by acquiring newly issued stocks from the company itself. The procedure for acquiring stocks in this way includes the following steps:

1. Adoption by the general meeting of stockholders or the sole stockholder of the joint stock-company of a decision to increase the charter capital by issuing additional stocks at the expense of third parties or the sole stockholder of the joint stock-company makes a decision to increase the charter capital the next step is to conduct a closed subscription. The duration of a closed subscription should not exceed six months, but it can be extended by a decision of the general meeting of stockholders or a decision of the sole stockholder. During the closed subscription period, a closed subscription agreement is concluded, and the full payment in favor of the company is made by the investor.

2. After that the new general meeting of stockholders is held that must approve the results of the subscription. Once this is done it is required to introduce amendments and (or) additions to the charter related to the increase of its charter capital and state registration of these amendments and (or) additions to the charter.

3. Once the amendments to the JSC's charter are registered, the JSC should file documents to the Securities Department of the Ministry of Finance for registration of the additional share issue and its transfer to centralised registration in the depository system and transfer of ownership of stocks.

4. Once the stocks are registered by the Securities Department of the Ministry of Finance, the JSC transfers them to the "depo" account of the investor. The transfer of stocks to the depository account ("depo") of this third party must be completed no later than 10 business days from the date of the state registration of the additional stock issuance. From the moment of this transfer the stocks are considered to be owned by the investor.

5. Disclosure of information on the unified financial market portal on the acquisition on the basis of an agreement by any person of the right to dispose of the number of votes in the amount of 5 percent or the number of votes has become more or less 5, 10, 15, 20, 25, 30, 50 or 75 percent of the total number of votes attributable to the voting stocks (only for open joint-stock companies).

Converted loans

According to Belarusian legislation, under a convertible loan agreement, one party (the lender) lends money to the borrower (which is always a target company) while the borrower upon the occurrence of a certain event specified in the agreement must either:

- transfer to the lender shares (or part of shares) earlier acquired by the borrower from other shareholders, or
- issue shares in favor of the lender.

At the same time, the lender is not obliged to return the loan unless otherwise agreed by the parties. In other words, a convertible loan shall result in acquisition of shares by the lender and not return of the loan unless otherwise agreed between the lender and the borrower.

A convertible loan is not just a way to raise funds but a flexible tool that helps businesses grow while allowing investors to minimize risks. This type of loan is typically used when the company itself, rather than its shareholders, needs funding (i.e., cash-in transaction). Instead of repaying the loan, the investor receives a share in the company's charter capital. This allows for postponing the final decision: whether to enter the company's capital or take the money back. It is usually implemented in the following cases:

a. **Startups and venture investments.** New companies with promising ideas but without stable revenue often need funding. A convertible loan solves the problem of valuing a startup: the investor first provides funds and then, depending on the company's success, can convert the loan into a share.

b. **A safe option for risky projects.** Investors are often hesitant to invest in companies with uncertain prospects. A convertible loan reduces their risks: initially, they act as creditors, and if the business succeeds, they become co-owners.

c. **Additional financing for growth.** This tool is useful not only for startups but also for established companies. For example, when a business needs funds to launch a new production line or expand operations, loan repayment and interest may be too burdensome.

Key characteristics of a convertible loan usually (but not always) are:

a. **Initially, it functions as a regular loan, potentially accruing interest.** However, the key feature is that instead of a traditional cash repayment, the investor gains the right (or obligation) to exchange their loan amount for a share in the company upon the occurrence of a predetermined event.

b. **The loan converts under specific conditions:**

i. **Qualified financing round** – if the company secures a new investment round, the loan may automatically convert into a share.

ii. **Maturity Date** – if the loan remains unpaid by the agreed-upon date, it may be converted into shares.

iii. **Exit Event (Company Sale)** – in the event of a business sale, the loan either converts into shares or the investor receives a predetermined payout. It is important to note that the borrower is obligated to repay the lender the loan amount (principal) instead of issuing the agreed-upon shares and to pay interest only if such repayment terms are specified in the loan agreement.

c. **Discount rate on conversion.** Early investors receive an advantage — the ability to convert their loan into share at a more favorable price than later investors. This incentivizes early-stage investments.

d. **Valuation cap.** A maximum company valuation is set for the conversion process. This protects early investors from a sharp increase in business value before their entry into the company.

e. **Interest rate.** Unlike traditional loans, interest on a convertible loan may not be paid in cash but instead capitalized, increasing the amount subject to conversion.

A convertible loan has certain advantages and disadvantages comparing to standard investment instruments (share purchase under a share purchase agreement or share issuance).

For the borrowing company they are:

- ✅ **Flexible fundraising.** A convertible loan allows a company to attract investment without immediately setting its market valuation. This is particularly useful for startups and early-stage companies where accurately determining the business's value is challenging. This approach gives the company time to develop and grow before defining investors' actual share.

- ✅ **No immediate share dilution.** Unlike traditional venture financing rounds, the company does not immediately transfer a portion of its business to a new investor. This enables founders to retain greater control over strategic decisions and avoid excessive influence from external investors during the early stages.

- ✅ **Minimal bureaucracy and lower administrative costs.** Compared to full investment rounds, the process of issuing a convertible loan is simpler and faster. It does not require complex negotiations over company valuation or detailed shareholder agreements. Instead, the loan is structured through a standard loan agreement with predefined conversion terms, reducing both time and financial costs.

- ❌ **Financial obligations to the investor.** If the company fails to secure the next funding round or meet the agreed-upon conditions, the loan must be repaid. This can become a serious issue if the business has not yet reached self-sufficiency and lacks sufficient cash flow.

- ❌ **Risk of unexpected changes in shareholder composition.** At the time of securing the loan, the company may not anticipate who will eventually become its co-owner. Investors who convert their loans into shares may shift the balance of power within the company, potentially leading to unforeseen management or strategic decisions.

For the investor:

- ✅ Protection of invested capital and risk mitigation. A convertible loan is a safer investment option compared to purchasing share in a company at an early stage. If the business does not meet expectations, the investor can demand loan repayment with interest instead of losing money, as often happens with direct startup investments.

- Favorable entry terms via Discount and Valuation Cap. Investors providing a convertible loan usually receive two key benefits:

    - Conversion Discount – the opportunity to exchange the loan for shares at a lower price than future investors.
    - Valuation Cap – a maximum company valuation at which conversion occurs. This protects the investor from an overly high future valuation and allows them to secure a larger ownership stake for the same investment amount.

- **Priority rights in case of company liquidation.** If the company faces financial difficulties or is liquidated, convertible loan holders are in a more favorable position than shareholders. They have the right to recoup their investment before shareholders, making this loan a less risky financial instrument.

- **Risk of non-conversion.** If the company does not secure the next financing round or fails to reach conversion trigger events, the investor may not receive the promised shares. In such a case, they will only get the loan repayment (which may not always be favorable) or face delayed payments if the company experiences financial difficulties.

- **No influence on business management until conversion.** Until the loan is converted into shares, the investor has no voting rights or decision-making power. Unlike shareholders, they cannot influence the company's strategy until the conversion process is triggered.

Governmental approvals of transactions

Antitrust issues, preemptive right of local executive committees, approval by council of ministers

Approval of antitrust authorities

An acquisition of shares (either based on an SPA, via additional issue of shares, via convertible loan and so on) requires approval of the antitrust authorities in Belarus if the purchaser acquires (i) more than 25% of shares or (ii) more than 50% of shares and at least one of the following conditions is met:

1. the net value of the target's assets exceeds BYN 16,800,000 (approx. EUR 5,000,000); or

2. the net value of the acquirer's assets exceeds BYN 16,800,000 (approx. EUR 5,000,000); or

3. the annual income of the target exceeds BYN 33,600,000 (approx. EUR 10,000,000);

4. the annual income of the acquirer exceeds BYN 33,600,000 (approx. EUR 10,000,000);

5. the target or the acquirer are included into Belarusian lists of dominant undertakings.

The application for approval can be submitted by the acquirer or the target as well as by the shareholders of the acquirer or the target. Once the documents are submitted the antitrust authorities revise them within 10 business days and return them to an applicant if the documents do not comply with the formal requirements. Otherwise, the antitrust authorities pass the resolution on the approval of the transaction within 30 calendar days (including previous 10 business days) and inform the applicant regarding the approval. Nevertheless, the antitrust authorities are entitled to deny issuance of the approval if the transaction results in monopolization of the market by the undertakings or restriction of competition.

Preemptive right of local executive committees

Currently, local executive committees have preemptive right of acquisition of shares in certain companies, namely:

1. shares of a company are included in the relevant lists approved by the local committees (currently only one company is included, namely, JSC Komitern) and were previously acquired by individuals in the course of privatization;

2. shares in companies processing agricultural products previously created as a result of reorganization of state-owned enterprises and collective enterprises (kolhoz).

The seller shall notify the executive committee on the intention to sell the shares. After that the executive committee within 90 days from the date of receipt of the notification is entitled to pass resolution on acquisition of shares or deny its preemptive right. In case of denial of the preemptive right by the local authorities the shares might be sold to the acquirer.

Approval by the Council of Ministers

In accordance with Belarusian law, starting from October 2023, the alienation of shares in Belarusian legal entities by a foreigner (includes both individuals and legal entities) requires the permission of the Council of Ministers (the amount of the share sale isn't important, even 0.1% requires consent). It is also necessary to pay a contribution in the amount determined at the time of issuing the permission, which must be at least 25% of the market value of the alienated shares (the final amount is defined in the course of issuance of the permission). This rule applies if the person is a resident of:

1. Commonwealth of Australia.
2. Member states of the European Union.
3. Canada.
4. Principality of Liechtenstein.
5. Kingdom of Norway.
6. New Zealand.
7. Republic of Albania.
8. Republic of Iceland.
9. Republic of Northern Macedonia.
10. United Kingdom of Great Britain and Northern Ireland.
11. United States of America.
12. Montenegro.
13. Swiss Confederation.

In order to obtain the permission of the Council of Ministers it is necessary to submit an application to the executive committee at the place of registration and attach relevant documents. However, before making a filing to an executive committee, it is necessary to assess the value of the alienated shares with the state appraisal organizations (namely, they are RUE "Institute of Real Estate and Valuation" and National Agency for State Registration and Land Cadastre). Based on the value of the share assessed by these organizations the amount of the contribution to the local budget is calculated by the governmental authorities. Thus, the entire procedure can be divided into several steps:

1. Evaluation of the share (usually takes a month).

2. Submission of the application to the executive committee by the alienating party (the application includes the balance sheet, data on the staff, the volume of goods production, and other documents).

3. The executive committee checks the documents for formal compliance and informs the applicant about the compliance with requirements. Afterwards, it has 30 working days to make a decision on the substance of the case (the executive committee may request additional documents at its discretion). Even if everything is in order with the documents, the executive committee can refuse the deal. The executive committee also determines the contribution amount.

4. The executive committee transfers the decision to the State Property Committee, and the State Property Committee prepares the draft resolution of the Council of Ministers based on the executive committee's decision, and submits it for review to the Ministry of Finance and the Ministry of Justice. Once agreed with the relevant Ministries the draft is transfered to the Council of Ministers. The Council of Ministers adopts the resolution, which is not disclosed to the public. The adopted resolution by the Council of Ministers on granting the permit is sent to the relevant government authorities, after which the executive committee, within 5 working days from the date of receipt, sends the applicant a copy of the permit. The permit from the Council of Ministers is valid for one year.

At the same time, the seller or buyer (or both jointly) must also pay a contribution to the regional budget (Minsk city), as determined in the decision (within the deadlines and according to the procedures defined by this decision).