

GETTING BELARUS TO THE TOP 30 COUNTRIES WITH THE BEST BUSINESS CLIMATE

The authors of report are:

Alexei Pikulik (head of the working group)

Maxim Znak, Alexei Lashuk,

Elena Rakov, Marina Roshina.

The report is edited by Alexei Pikulik and Vitali Silitski

Summary

This study assesses the opportunities and proposes policies to ensure Belarus's entry in list of thirty countries with the most favorable conditions of doing business (World Bank "Doing Business Report"). The task of bringing Belarus to the top thirty countries with the best business climate has been announced by the President of Belarus Alexander Lukashenka in 2008. According to the BISS, taking into account changes in legislation already in force in 2010 and the adoption of recommendations of the report, Belarus has a chance to be in the "Top Twenty" in the 2012 report. Recommendations of the report ensuring the rating increase for Belarus are complementary rather than alternative to an existing (ongoing) policies, in particular, the legislative changes adopted in 2009 and planned for 2010 (see Monitoring economic liberalization BISS).

Considering the opportunities to improve the business climate in the country, BISS observes rather peculiar kind of institutional evolution recently developing in Belarus: economic liberalization and improving the quality of market regulation is being pursued not much due to the pressures and needs of the institutional growth of the national market actors; rather, they are driven by the tactics of the government to attract investment. The first wave of liberalization of the business environment in 2007-2008 was made possible largely due to the cooperation of the Government of Belarus to the World Bank and its sub-unit, the International Finance Corporation, that advised the Government of Belarus on the facilitation of business registration and establishment of the start-up conditions for doing business. This initial reform stage virtually ignored the areas of Getting credit, Paying taxes, investment protection, and conditions of foreign trade. Continuation of "promotion" of Belarus in the business climate rating requires reforms in these areas, some of which are proposed below. Among them:

- simplification and stabilization of the tax legislation of Belarus, reduction of social taxes and deductions, expansion of the electronic declaration for business entities;
- Recognition in Belarus of the certificates issued by recognized international trade certification bodies in other countries, simplification of the rules of origin of

goods; the removal or simplification of the statistical reporting; abolition of banks' functions of currency control; simplification the leasing, tax, and prospect of legislation enabling the country to develop the transport sector and logistics infrastructure;

- Changing the law to protect minority shareholders' rights and protection of shareholders in the event of improper actions by business entities;
- Creation of market and state (credit bureaus, guarantee funds), institutions that facilitate the access of economic entities to credit, development of competition in the banking market.

BISS notes "ambiguity" of some aspects of the methodology of Doing Business Report, which allows the Belarusian government to exploit the existing loopholes in the report's methodology and make a face-lift for economic institutions to match the expectations of external actors. Such an institutional evolution does not necessarily bring forward a credible model for effective regulation of the economy. The latter is hardly possible due to a low accountability of the Belarusian state and immunity of the government to the expectations of market players. Addressing these underlying factors inhibiting the creation of Belarus truly free market economy will require a fundamental reform and revision of the government's approach to the economic policy making and relations with private business.

This being said, we believe that even half-hearted reforms undertaken for image boost may have a positive effect on the country and will help to maintain a positive momentum evolution of both economic policy and the mindset of the ruling elite; will help to reduce anti-market stereotypes in Belarusian society. At the same time, bringing Belarus to ten thirty (or even twenty) list of the countries with the best business climate should not mean the end of the reforms in Belarus. Given the importance of the ratings such as Doing Business in promoting reform in countries with non-market economy, we also call for the correction of a methodology for assessing the business climate to make it more effective tool for assessing progress and promoting the reform process.

Introduction

President Alexander Lukashenka set in 2008 before the Government of Belarus the task bring the country to the list of top thirty counties in the world with the best business climate. As a result of approximately 80 legal acts and some liberalization of the investment climate, Belarus improved its position by 24 points in the World Bank ranking (hereinafter WB): Belarus ranked 82th in the 2009 and jumped to 58th place in the "Doing Business 2010 ". It should be noted that Belarus ranks 106 in 2006 report.

Is this a significant achievement? No, if the goal was to improve the rating of any price in the shortest possible time. Yes, when it comes to the progress in economic liberalization and improving the quality of government regulation. To illustrate this thesis, we use a simple metaphor: to get excellent grade at an exam does not always mean to know the subject flawlessly.

Hence, we follow in this paper an extremely pragmatic (and, alas, cynical) goal: that is, to draw a road map for Belarus to get into top thirty countries in the WB report without necessarily carrying out comprehensive structural economic reforms. We recognize that our original hypothesis, "the Belarusian authorities have done all very simple changes to improve the rating (that is, changing the rules for registration and closure of companies) and have reached an impasse, realizing that further progress in the rating will require aggressive modification of socio-economic model," was not confirmed. There is a considerable space for maneuver in the remaining policy areas. We therefore offer the government an extended 'cheat sheet' for a fast-track progress to the top of the ranking.

This paper is structured as follows. The first chapter provides a brief interpretation of the structure of the World Bank report. The second, third, fourth and fifth chapters are devoted to the analysis of items in the report of the World Bank, in which Belarus demonstrates the worst performance rating: "Paying taxes", "Trading across borders", "Protecting Investors" and "Getting credit". Each of these chapters has a symmetric structure: a) a brief description of the WB methodology b) the main causes of "bad" rating, c) specific actions to help improve the rating.

I. Structure of the "Doing Business" Report

Since 2004, the World Bank (further: WB) presented the overall ranking of 183 countries on ease of doing business index, consisting of ten individual line ratings.¹ The table below presents these lines and demonstrates priority areas for reforming of the economy of Belarus.

| Ease of... | Doing Business 2010 | Doing Business 2009 | Rating Change |
|-------------------------------|---------------------|---------------------|---------------|
| General rating | 58 | 82 | +24 |
| Company registration | 7 | 98 | +91 |
| Obtaining construction permit | 44 | 63 | +19 |
| Hiring the workforce | 32 | 40 | +8 |
| Property registration | 10 | 13 | +3 |
| Getting credit | 113 | 109 | -4 |
| Investor protection | 109 | 105 | -4 |
| Paying taxes | 183 | 183 | 0 |
| trading across borders | 129 | 134 | +5 |
| Contract enforcement | 12 | 14 | +2 |
| Company liquidation | 74 | 74 | 0 |

As can be seen from the table, a substantial work remains to be done the following areas: obtaining construction permits;² liquidation of companies; Getting credit; Protecting investors; Paying taxes; and trading across borders. We single out the last four categories as priority areas for a significant improvement in the rating and dwell on them below.

II. Paying taxes

Of ten indicators of the annual WB Doing Business Report, it is taxation where Belarus invariably gets the worst rating among all 183 countries included in the study. Thus, there is considerable potential for improving the country's rating on this indicator.

II a. The methodology used by the WB

Assigning a rating of the country in terms of Paying taxes, the WB experts estimate three main indicators, each weighed at 33,3%:

1. tax payments
2. time cost
3. tax rate

All three indicators are calculated on the basis of a standard medium enterprise, a leading business within the country, all the parameters of which are presented in detail in the section "Assumptions about the company."³

¹ Remarkably, the number of countries and indicators varied from one report to another.

² Authors' own experience showed about 180 approvals are needed to obtain a permit for construction within the borders of Minsk.

³ According to the WB 2010 methodology, such was a limited liability company (Ltd.) owned by the local capital and having five physical persons as founders, one of whom is a manager. The statutory capital was to be 1.02 per capita incomes measured for the end of 2007 (USD 4621.2). The Ltd. Is in Minsk, works since January 1, 2007, acquired all the assets on the balance and hired all the employees by that time. It carries out usual production or commercial activities, does not export or import, and does not deal with goods under special rules, such as tobacco or alcohols, has no privileges except stipulated by its age and size. A company owns two plots of land, one building, equipment, office equipment, computers, one truck, leases one truck, and has 60 employees. The company makes losses in the first years, its turnover is

The indicator **tax payments** reflects the total number of taxes and royalties, frequency and method of payment since the second year of the enterprise's existence. Moreover, if tax records are filed in electronic form by most medium-sized enterprises, then regardless of the actual frequency of provision of the reports it is presumed that reporting is filled once per year. In cases where two or more taxes or fees are paid on the same form, each of such payments is considered as one payment.

The indicator **time costs** reflects the required number of hours spent by employees of the company to prepare reporting and payment of three types of taxes: the corporate income tax, sales tax and VAT, and labor taxes (contributions to the social security fund). Preparation time includes time spent on gathering information about on tax payment. Time for filing tax statements include the time spent filling out tax forms and the implementation of calculations. Time for taxes includes the time spent on the payment of taxes through the Internet or in the office of tax service.

Indicator **tax rate** reflects the value of the tax burden on business and is expressed as a percentage of its profit and takes into account five categories of taxes: taxes on income and profits of legal persons, labor taxes (payments to social security fund), property taxes, turnover taxes and other taxes (local taxes and taxes on vehicles and fuels, etc.). Taxes on consumer withheld at source, such as VAT and sales tax, are not included.

Currently, Belarus demonstrates the following indicators: the number of tax payments - 107 (percentage rank 0.989). As the number of hours spent on the calculation of taxes - 900 hours (percentage rank 0.967). Finally, the total tax burden on profit 99,7% (0,97 percent grade).

II b. Main reasons for Belarus's low rating

The main reasons for the low rating of Belarus in the WB 2010 report (we emphasize that the evaluation for the rankings in 2010 took as an example the payment of all taxes as at 31.12.2008 – I.e. only 2008 was actually taken into account) were:

- large number of taxes (10 categories of taxes in 2008. - not taking into account paid on one form).
- reporting and payment of almost all types of taxes on the monthly bases, meaning 12 tax payments per year, and a large number of overall payments (107 in 2008).
- lack of opportunities for electronic filing of tax reports (if it was used for all types of taxes, the number of tax payments would have been considered to be 10 in 2008).
- complexity of tax and social legislation (many of the regulations, a large number of exceptions and amendments in the calculation of taxes), leading to unnecessarily large amount of time required to do taxes (900 hours in 2008, as opposed to 202 to 320 in other CIS countries).
- high rate of deductions to social funds (39,5% of commercial profits in 2008) and a relatively high income tax rate (24%).

II c. Recommendations to improve the rating of Belarus

We have to make a reservation that a special part of the Tax Code had been put into force on January 1, 2010. This act completely abolished turnover taxes responsible for 35% of the 98.5% tax burden in the earlier rankings; and allows income tax and VAT to be paid on the quarterly rather than monthly basis, which reduces the number of payments four times and at the same time significantly reduces the amount of time for tax accounting. Finally, the special part of the Tax Code was amended to the principle of cost accounting for the purposes of income tax, which would significantly affect the time needed to calculate taxes. Obviously, these changes are taken to improve the rating, which would inevitably lead to improved ratings in 2012, but will not have a direct impact on the rating of next year, because these changes become effective after December 31, 2009.

1.050 per capita incomes, profits before taxes are 20%, 50% of profits are paid in the second year as dividends, A company sells one plot of land profitably in the second year of work, spends about 2 per capita incomes for fuel. The founder manager spends 10% of per capita income on business trips (including 20% of personal expenses, 20% for entertainment of the clients, and 60% per diem). A study takes into account all the taxes and fees paid by a company during the second year of work (that is, in 2008). See:

<http://www.russian.doingbusiness.org/MethodologySurveys/PayingTaxes.aspx>.

Belarus's rating for Paying taxes can be improved by a number of measures, described below. These measures are offered in addition to the adopted in 2009 and already enforced progressive changes in the tax laws of the Republic of Belarus. in itself will help Belarus to climb from last place in the rating of the WB. It is also necessary to note once again that the purpose of the proposed measures is not reform the tax laws of the country as a whole, but only improve the rating of Belarus in the WB study.

Thus, to improve the rating of Belarus is necessary to consider options to further reduce the amount of taxes and duties, and abolish unnecessary and inappropriate payments that do not provide significant revenue to the budget but require significant labor costs for tax reporting and payment. The following taxes mentioned in the WB study need to be removed: a tax on services (Chapter 29 of the Special Part of the Tax Code) and area development duty (Chapter 31 of the General Part of the Tax Code). Rates of these taxes amount to a maximum of 5% and 3% of profits, respectively while statements to be provided four times a year, which is time-consuming and adversely affects the ranking.

For the remaining tax is necessary to reduce the number of times the provision of tax and number of payments per year. Most of tax reporting and payment of tax should be made as of today on a quarterly basis, or 4 times a year. The WB will improve significantly if the majority of medium-sized enterprises will use electronic reporting form, as it will, regardless of the actual frequency of the provision of tax reporting and payments, be interpreted in the report that companies pay taxes once per year. The following table illustrates the changes in the rating of the indicator "tax payments" in the light of recent changes in legislation (as of 07/03/2010) and a possible change in the event of widespread use of electronic declaration.

| Tax/payment | Number of payments in 2008 (WB 2010) | Number of payments in 2010 (as of now) | Number of payments if electronic declaration is used |
|---|--|--|---|
| Social contributions to the Fund of Social Protection of Population | 12 | 12 | 1 |
| Turnover tax | 12 | - | 1 |
| Profit tax | 12 | 4 | 1 |
| Real estate tax | 7 | 4 | 1 |
| Transport duty | 12 | - | - |
| Environmental duty | 12 | 4 | 1 |
| Land duty | 4 | 4 | 1 |
| Mandatory accident insurance | 12 | 12 | 1 |
| VAT | 12 | 12 | 1 |
| Sales tax | 12 | - | - |
| Area development sury | - | 4 | 1 |
| TOTAL | 107 (181 th place in the rating out of 183) | 56 (164-166 th place: Antigua, Cabo Verde, Guinea) | 9 (21-29 th place: Argentina, Canada, Denmark, Dominican Republic, Ireland, Kazakhstan, Netherlands, Peru, South Africa) |

Electronic tax declaration is put into operation in Belarus from April 1, 2009 and has yet to be used widely since then, partly because of the complexity of the system and payments charged on subscription and electronic signature by the Republican Unitary Enterprise "Information and Publishing Center of Taxes and Duties". The real reason for the limited use of electronic tax reporting in Belarus, however, is remainig uncertainty of the accounting staff about how to correctly fill the tax forms. The fact is that until recently it was so complicated that the average accountant prefers to personally deliver the report documents the tax office to have the

opportunity to correct deficiencies, instead of filing an electronic document, receipt of which is a legal fact. In addition, it is not clear why the charge for using the system (about \$ 100) is so high. Indeed, a similar system for free has long been used FSZN that evokes rent behavior of players, setting these rules.

In this regard, it is necessary to further simplify the system of tax and social legislation in order to reduce the amount of time spent by employees of the company for training, calculation, and payment of taxes; and to increase the confidence of the accounting preparing and submitting electronic declarations.

It should be noted that the adoption of the Special Part of the Tax Code would significantly reduce the number of regulations governing taxation; however, the content of legal norms requires further optimization. Reducing the number of exemptions, deductions and factors for calculating the tax base and tax rates have a positive impact on the rating of the Republic of Belarus in the WB report, as it will facilitate the work of accountants and consequently reduce the time costs recognized in the study.

The stability of tax legislation, i.e., insignificance of changes occurring once a year at most, is an important prerequisite for reducing the time spent by enterprises to explore legislative novelties and prepare tax reporting; and for improving the rating, respectively. According to the WB methodology, the time spent by an accountant for the study of changes in tax legislation and enforcement framework accounting company in line with the latest changes is considered separately. First of all, one should eliminate the practice of retroactively introducing the standards, which traditionally attracts a large amount of additional work by accountants.

Finally, it is necessary to reduce the income tax rate and deductions to social funds, thereby reducing the total tax burden from the excessive 99,7% of the commercial profit of the average enterprise in 2008.

It should be noted in general that obtaining a higher rating can be achieved without a significant reduction of tax rates. Simplification tax laws, as well as changing the methodology and practice of paying taxes would be sufficient for this goal. Reducing the tax burden is impossible without giving up the financing of social programs, so technical measures would have the priority in Belarus . Their introduction requires considerable preparatory work, however. Still, it would allow to raise the rating of the country without a significant reduction in the amounts of taxes collected in the budget and social funds.

In addition, further changes are possible if contributions to the Social Protection Fund are reduced. This can be achieved, for example, by establishing a fixed fee for compulsory social insurance at 34% of the living wage for all employees working full-time, with the provision that a wage above the subsistence budget may be taxed according to a written request by an employee. In this case, 50% of mandatory social payments will be deducted from the salary of the employee, and the remaining 50% will be paid by the employer. This will preserve the foundations of the social insurance system, but reduce the overall tax burden on the employer and give employees the right to choose.

III.Trading across borders

III-a. The methodology used by the WB

Trading across borders index deals with all procedural requirements and documentation⁴ for exporting or importing a standard cargo by ocean transportation, starting with the signing of a contract between two parties and ending with the delivery of goods, as well as with the

⁴The documents include bank papers, custom declarations, port documents, import licenses, and other official documents exchanged by the parties. Documents submitted at the same time are considered as different documents.

associated time and cost. In the case of exports of goods all the procedures are taken into account, starting from packaging at the factory prior to shipment from the port. In the case of imports, all the procedures from the arrival of goods at the port of destination before its delivery to a company warehouse are being addressed.⁵

The final rating is calculated on the basis of arithmetic mean three sub-indicators:

- documents required by customs and other authorities;
- time required for carrying out import or export operations (preparation of documents, customs clearance, inspection, registration of documents for the port, shipping, etc.)⁶;
- costs associated with export and import operations (in USD for one 20 feet container⁷). This includes all fees associated with the completion of the export or import of goods.⁸

It should be noted that this rating in to the least extents connected with the legislation of Belarus.

III-b. Reasons for Belarus's low rating

The Belarusian government demands to issue eight papers within 16 days for exports. Export of one container costs about USD 1772. For the import of goods, eight papers must be submitted within 21 days, at the cost of USD 1770. In comparison, six papers are required in the neighboring Lithuania whose processing takes 10 days. Exporting one container costs USD 870 (28th place). (NB: We question the figure of USD 870 and give our own calculations).⁹

Conditions for the import are roughly the same. Similar conditions exist in Latvia (22th place in the world), Poland (42), Romania (46th), Macedonia (62th). The best countries according to this indicator are Singapore, Hong Kong, Estonia, Finland, United Arab Emirates, Denmark, Sweden, South Korea, Norway and Panama; where all procedures relating to import or export occupy no more than five days, require three to five documents, and cost way less. (A comparison of Belarus with other countries in this ranking, temporal and financial costs associated with the clearance of import and export procedures, as well as a list of documents for export-import operations in Belarus are listed in the Appendix.)

Thus, obtaining documents is quite a time-consuming process. For example, a common problem for the country is receiving certificates of origin. Certification is long and expensive, while the country does not recognize the certificates issued in other countries. Another problem is the statistical declaration (although it does not affect the ranking, based on the case study described WB), since it requires specific skills and involves completion of a large number of documents. In order to implement bank exchange controls, an exporter (importer), has to fill a bank application for foreign transactions (FS / IN), containing information about the fact and conditions of foreign

⁵ An average company within this index has 60 or more employees, located in the largest city of the country, is nationally-owned, instituted as Ltd., and exports 10% of its sales. The goods are transported in 20 feet containers. The good is not dangerous or for military use, does not need refrigeration or other special conditions for keeping, does not require fito sanitary norms to be observed, expect for international ones.

⁶ Time costs are calculated in whole days. The time spent on a procedure is calculated from the moment of its beginning to the moment of its conclusion. If the time can be cut for a fee, a shorter procedure is considered. It is presumed that neither an exporter or an importer waste time, and both immediately start the remaining procedures. Procedures may be carried out in parallel are considered as simultaneous. The time for waiting between procedures, for example during the unloading the cargo, is taken into account.

⁷ 1 foot equals 30,48 cm.

⁸ Costs of obtaining documents, administrative fees for customs clearance and technical control, warehouse and loading/unloading expenses, payments for internal transportation. Tariffs and customs duties not included.

⁹ The WB estimates consider the closest port, which is Klaipeda for Belarus. The delivery of a container to Klaipeda is set at 870 and 1200 USD accordingly for empty and loaded container. This seriously affectes the rating. Our calculations show the following. If the container is delivered to Klaipeda by train (using the Viking, see: <http://belint.by/viking>), a loaded 20 feet container will cost Euro 147.53 to pass through Lithuania and additional 229.71 through Belarus, (the rates given for loaded and empty containers, hence the price is for the entire use of a container, including the way back. Accordingly, the entire expenditure is about 400 Euro, which is considerably less than the WB numbers. Air shipment of a container to Minsk is Euro 460, which is still less. Hence, the cost of delivery of a container is USD 632, which alone brings Belarus up to 95th place in the ranking and gives 0.01 overall improvement in the percentage rank.

trade transactions as well as the cessation of obligations to foreign trade operations. All this, according to WB experts, lengthens and complicates the implementation of foreign trade operations.

III-c. Recommendations to improve Belarus's rating

It should be noted that foreign economic activity had been liberalized in Belarus to some extent, as reflected by better WB ratings for trading across borders. Thus, a time-consuming and a formalized mechanism for filling the passport of transaction was replaced on April 1, 2009, with the registration of a transaction in the bank according to the application principle. Registration will take place on the day the document certifying the bargain was issued. Importers and exporters got to enjoy other privileges as well.

However, Belarus has, in our opinion, a room for a further significant improvement of the trading across borders rating by means of reducing both time and financial costs for clearance of export-import operations. Thus, excessive emphasis is being placed in the management of export-import transactions on the control (in particular, of the flow of currency into the country), with control functions performed a variety of organizations (tax offices, customs committee, banks, etc.). Furthermore, the process is bureaucratic, often because it requires a variety of documents. Accordingly, a more efficient policy alternative may be simplification of procedures, elimination of certain provisions and requirements, and replacement of control of export-import operations at each stage of their commission with periodic comprehensive audits of enterprises.

Accordingly, for the implementation of the existing potential for improving this indicator, do the following:

- Recognize validity of certificates issued by recognized international trade certification bodies in other countries on the territory of the Republic of Belarus, without the need to obtain a certificate issued by certification bodies of the Republic of Belarus;
- Change the rules for confirming the origin of products in order to make eligible for this purpose declarations of origin of goods freight, transport or other shipping documents containing information about the country of origin;
- abolish or greatly simplify statistical declaration;
- abolish the foreign exchange controls by the banks (which will result in automatic of a number of documents to be submitted to the bank);
- extend the practice of electronic goods declaration;
- simplify leasing, tax, and so legislation to develop the country's transport sector and logistics infrastructure, intensify competition within them, which would entail a more rapid movement of goods within the country.

IV. Protecting investors

IV-a. Methodology used by WB

The WB assessed in the study the degree of protection of minority shareholders in case of a wrongful use of the assets by company's directors. This indicator has three components:

- transparency of transactions between related parties (the index of disclosure of the transaction);
- responsibility for dishonesty (Director Liability Index);
- the ability of shareholders to sue directors and responsible persons of companies for misconduct (ease of prosecution of directors index).

The indices are measured on a scale of 0 to 10, with higher values indicating greater disclosure, greater liability of directors, greater powers of shareholders to the transaction, and better investor protection.

Experts analyzed the hypothetical case of a hypothetical transaction and assessed the degree of investors' protection by a specific legislation (see: <http://russian.doingbusiness.org/MethodologySurveys/ProtectingInvestors.aspx>). Information was obtained from interviews of corporate lawyers and is based on an analysis of the legislation

on securities, company law, and the rules of evidence.

IV-b. Reasons for Belarus's low rating

The main reason for a low rating is the narrowness of the segment analyzed according to the methodology of the case. Despite the fact that there are enough progressive rules to protect investors in the Belarusian legislation, the rankings take into account only one, rather unclearly defined, aspect, namely the minority shareholders protection. A large number of issues is related to the right of direct appeal by shareholders to the court if their rights are violated.

According to the applicable law, parties may only take indirect measures to protect their rights (for example, after considering the matter at a general shareholders' meeting)¹⁰. Several studies emphasized the need to give shareholders the right to defend their rights directly. Introduction of the corresponding changes in the legislation will allow to avoid the catastrophically low rating (1 point) and to increase it in this segment up to 9 points.

IV-c. Recommendations to improve Belarus's rating

Based on the reviewed methodology for assessing the investment climate used in WB rankings, we consider it possible to achieve maximum points in the rankings without fundamentally altering the legal regulation on business entities.

We suggest to amend the Law of the Republic of Belarus "On Business Associations". There are other ways of making these changes as well. First, a Presidential Decree "On measures to improve the investment climate" or "On some issues of legal regulation of relations with affiliated persons of business entities" may be promptly signed. It's also possible to adopt a separate Law on Affiliated Persons of Commercial Organizations.¹¹

It is sufficient, for a significant improvement of the ranking, to introduce two legislative changes:

1. Style Part 8 of the Art. 56 of the Law of the Republic of Belarus "On Business Associations" in the new form: "In the event when an affiliated person incurs damages to a business association through the failure to submit information specified in subsections fourth, sixth and seventh of this article; or when an executive body, a supervisory board or any affiliated person concludes a transaction on the obviously unfavorable terms for the company and / or other members of society, and where the interest of an affiliate had been established; the perpetrators shall bear the solidarized liability to compensate damages to the society and/or participants on the demand of the executive body of the society or a general meeting, unless otherwise provided by other legislation.»

2. Supplement parts 6-7 of the Art. 57 of the Law of the Republic of Belarus "On Business Associations" to read: "Before a transaction where there is an established interest of affiliated person is considered, an audit commission (auditor) of the company must submit to a body deciding on the transaction a full information about the transaction to be committed, the interest an affiliate may have in the transaction, and customary conditions for similar transactions. In the case of a decision on the transaction, where there is an established interest of an affiliate, is committed on the decision of the supervisory board, the company shall inform each of the parties, or publish information on the conditions of the transaction and the reasons for the establishment of the interest of an affiliate in the national mass media.»

Any member of society who owns five percent or more stake in the company shall be entitled at any time to get all documents relating to transactions with other entities. Details on the company's transactions in which there is an established interest of affiliates shall be included in the annual report based on the conclusion of the External Auditor (Audit Commission). "

The methodology used in the rating also proves that the current rating does not fully reflect the

¹⁰ For example, this conclusion was made in the PhD thesis of M.A. Drozdovskaya "The right to the share in the statutory fund of the limited liability company," where the notion "subsidiary creditor" was also introduced

¹¹ Such law was proposed, for example, by O. Chemkareva in her dissertation "Civil and legal status of the affiliated persons of commercial organizations"

content of the current legislation of the Republic of Belarus. We offer a comparison chart with scores for each question for the current situation and the situation in the case the legislative changes proposed above are enacted. Note that points exhibited in the second column are to be further substantiated by the creator of the rating in order to improve the current position in the ranking; however, assigning points cannot be made unambiguously in each separate case.

| Issues | Current rating | Possible rating increase taking into account current legislative norms (Some points may be lost due to the interpretation of the methodology) | Rating if changes are adopted |
|-------------------------------|-----------------------|---|--------------------------------------|
| General rating | 4.7 | 7 | 9.7 |
| <i>Information disclosure</i> | 5 | 9 | 10 |
| 1.1 | 3 | 3 | 3 |
| 1.2 | 0 | 2 | 2 |
| 1.3 | 2 | 2 | 2 |
| 1.4 | 0 | 2 | 2 |
| 1.5 | 0 | 0 | 1 |
| <i>Directors' liability</i> | 1 | 3 | 9 |
| 2.1 | 0 | 0 | 2 |
| 2.2 | 0 | 0 | 2 |
| 2.3 | 0 | 1 | 1 |
| 2.4 | 0 | 0 | 1 |
| 2.5 | 0 | 0 | 1 |
| 2.6 | 0 | 1 | 1 |
| 2.7 | 1 | 1 | 1 |
| <i>Shareholders' suits</i> | 8 | 9 | 10 |
| 3.1 | 4 | 4 | 4 |
| 3.2 | 2 | 2 | 2 |
| 3.3 | 0 | 1 | 1 |
| 3.4 | 1 | 1 | 1 |
| 3.5 | 1 | 1 | 1 |
| 3.6 | 0 | 0 | 1 |
| Final place | 109 | 15 (Saudi Arabia) | 1 (New Zealand) |

We do not recommend other changes. For example, there is, in our view, there is need to create a special public authority to evaluate of transactions with related parties, as this may entail significant costs with little (one point) increase in the rating.

Proposed legislative changes will help to protect minority shareholders (participants). This, however, will endow these individuals with additional rights that may give way to some abuses. Additional procedures for transactions with affiliated entities shall be introduced (such as preparation of information by an independent body - the auditor (Audit Commission), as well as a regulation to guarantee each party an access to, or publish the information about the transaction, if so decided by the supervisory board) and will somehow complicate the process of conducting business activities.

IV. Getting credit

The growth in business activity is directly related to facilitating the access to financial resources. Whatever stage of the life cycle any business is located at, it can not survive without credit. The need for additional financing is particularly urgent at the formation and development stage. The government, having declared liberalization of the Belarusian economy, shall consider easing the access to credit as a key element of improving the business climate.

IV-a. Methodology used by WB.

Assigning Belarus the rating for Getting credit, WB experts assess creditors and lenders' rights and sharing of credit information. Indicators are divided into two groups. The first group of indicators deals with the effectiveness of legislation for bankruptcy. The second group takes into account the volume, quality and accessibility of credit information contained in public and private credit registries.

Legal Rights Index measures the extent to which the legislation for bankruptcy protects the rights of borrowers and lenders and thus facilitates access to credit. The index has a scale from 0 to 10. The higher the score, the more effective legislation to ensure and bankruptcy.

Credit Information Index measures the effectiveness of rules that affect the volume, availability and quality of credit information in credit registries. The index has a scale from 0 to 6. The higher the score, the more detailed information contained in credit registries. If the registry does not work and contains less than about 0.1% of the population, a country receives a score of 0.

Index for coverage of state credit registry estimates the number of individuals and companies whose details have been contained in the registry for the previous 5 years. In the absence of public credit registry, a country receives a score of 0.

Indicator of private credit bureau coverage estimates the number of individuals and companies whose details are contained in the Bureau for the previous 5 years. Noteworthy, a private credit bureau is understood to be a private firm or nonprofit organization that maintains a database on the creditworthiness of borrowers (both individuals and legal entities), and facilitates the exchange of information among banks and financial institutions.

IV-b. Main reasons for Belarus's low rating

Legal framework for bank lending is defined by the following rules:

- Chapter 18 of the Banking Code of the Republic of Belarus;
- Chapter 28, 29 of the Civil Code of the Republic of Belarus;
- Instruction on the order of (offering) the bank's money in the form of the loan and their return approved by the resolution of the National Bank of the Republic of Belarus of December 30, 2003 № 226 (as amended);
- Law of the Republic of Belarus "On Credit Histories" and adopted in its execution May 27, 2009 Resolution of the Board of the National Bank № 67 "On the formation of credit histories and credit reports.

In spite of the fact that these regulations comprehensively cover the issues related to the legal regulation of bank lending, several factors complicate or limit the availability of credit. These include:

- High interest rates: as a rule, interest rates on Belarusian ruble loans consist of the refinancing rate plus at least 5,25 point; rates for microcredit programs to small and medium-sized businesses are 25-27% per annum while documents are reviewed for up to 10 days;
- The collateral requirement: some Belarusian banks limit the range assets that can be used as a guarantee of financial obligations to the lender;
- lack of equal access rights to financial resources among the Belarusian economic entities: fully or majority state-owned companies have preferential access whereas small businesses are not considered as reliable borrowers;
- Decisions on granting loans are being made by banks not on the basis of risk assessment and cost-effectiveness of investment projects but rather on the guidance or advice from the government.
- Undeveloped mortgage market, which also limits the range of assets that can be used as a collateral to the lender;
- Lack of banking infrastructure facilities and the ensuring lack of complete information about creditors and debtors. A resolution of the Board of the National Bank № 67 "On the formation of credit histories and credit reports" was only adopted in May 2009. The Belarusian

credit bureau (Credit Registry) was established under the National Bank of Belarus and is the only credit bureau in the country.

IV-c. Recommendations to improve Belarus's rating

The following are suggested changes that indirectly affect the rating of the WB. The main activities aimed at facilitating the access to credit resources of economic entities of different ownership forms, include:

1. Reduce the refinancing rate. According to the main directions of monetary policy of Belarus for 2010, the refinancing rate by the end of 2010 will be 9-12% per annum if the government-projected inflation rate is not overcome. Interest rate policy is focused on the availability of credit for the economic entities and stimulation of opening bank deposits by legal entities and individuals. Interest rates on new ruble loans to non-financial sector will amount to 12-15% per annum at the end of 2010, and 10-13% per annum on new fixed-term ruble bank deposits.

2. Small and medium businesses face around the world the difficulty to get access to banking and other credit facilities due to the inability of small businesses to properly secure the return of the loan. This obstacle could be eliminated by using the guarantees provided by a third party. This role is usually played, in a widespread practice around the world, by guarantee funds created by state and local authorities. These funds issue guarantees to banks offering loans to small and medium businesses. A State Guarantee Fund shall be created in the Republic of Belarus.

3. Extend the prerogatives of the credit bureau to accumulate comprehensive information about the borrower as well as to proliferate both positive and negative information about him. It is advisable to allow the establishment of private credit registry or a private news agency. This institution(s) can provide the data on economic entities not only on the loans received but also on other aspects of economic activity. With the adoption of appropriate measures to secure confidential information and if such organization is based on the commercial basis, positive results such as attraction of investment and improvement of credit ratings can be achieved.

4. Offer the access to the credit registry online.

5. Create conditions for affordable long-term lending to small and medium-sized businesses through fostering competition in the financial services market.

6. Secure access by economic entities to international credit markets through integration of the Belarusian banking system to the world system.

7. Extend the rights to use and dispose of mortgaged property. It is necessary to enact legislation to allow creditor banks to evaluate and take a pledge of land.

Below we offer a legal analysis of the changes entering into force in 2010 following the general logic of constructing the rating.

1. BORROWERS' RIGHTS

1.1. Does the law of the parties to conclude an agreement on non-judicial foreclosure on the mortgaged property?

YES for 2010. Relevant reforms have been undertaken. According to Section 1.2 of the Decree of the President of the Republic of Belarus № 3 (signed on March 1, 2010 and entering into force two months after the official publication) allows satisfaction of the claims by the mortgagee without court hearing on the basis of a notary certified agreement with the mortgagor entered into before or after the onset of the legislation of the grounds for foreclosure on the mortgaged property, except as contemplated in subparagraph 1.3 of this paragraph. However, such an agreement should contain a condition for granting the right mortgagor or mortgagee or other person chosen by the parties to carry out on behalf of the mortgagor sale of mortgaged property in the event of foreclosure on the mortgaged property to satisfy the mortgagee, and can

not provide for transfer of ownership of the mortgaged property to the mortgagee. Also there are special rules for non-judicial appeals to the mortgaged property for the banks.

1.2. Does the law allow to use the right to a concrete movable property without a detailed description of this property as a provision?

YES for 2010. This right existed with respect to the products in circulation that have been mortgaged. Decree № 3 establishes that mortgaging any mortgaged property defined by generic features can be carried out in the manner prescribed by legislative acts for the mortgage of goods in circulation.

Article 338 of the Civil Code. Hypothecation of goods

1. Hypothecation of goods is hereby defined as a mortgage of goods left with the mortgagor who is given the right to change the content and natural form of the mortgaged property (inventory, raw materials, semi finished goods, etc.), provided that their total value does not become less than specified in the mortgage contract.

Decline in value of the mortgaged goods in circulation is allowed according to the fulfilled part of collateralized obligations, unless otherwise is stipulated by the contract.

2. Goods in circulation, alienated by the mortgagor, cease to be a subject to the mortgage from the moment of their transition to ownership, economic control or operational control of the acquirer, while the goods specified in the contract of pledge and purchased by the depositor become subject to the mortgage at the moment when a mortgagor obtains property rights or right of disposal on them.

1.3. Can the right of provision be extended to the future or acquired afterwards values, and can it be automatically extended on the products, changes, or replacement of the goods?

YES for 2010, if the above-mentioned rules on mortgaged the goods in circulation are taken into account. In addition, same applies, for example, to the mortgage of the real estate or the mortgage of the enterprise as a property complex.

Finally, Art. 5 of the Law on Hypothecation states that the contract provides for a mortgage of property that might be received in full ownership or economic control of the mortgagor in the future. It also provides for the mortgaging of the rights that can be acquired by the mortgagor in the future. Unless otherwise provided by a contract or law, an item used as collateral includes its inseparable fruits. Separate fruits, such as animal litter or the income brought in by the item, can be included in the mortgage only in the limits and in the order prescribed by the contract or the law.

1.4. Is there a common registry of rights to a collateral, sorted by geography, type of property, as well as by the name of mortgagor?

YES for 2010 Such a registry was operational earlier on (according to the decision of the Council of Ministers № 585 of 13.04.1998), but was abolished afterwards. Currently, the Council of Ministers of the Republic of Belarus should ensure the establishment and operation of an open-access integrated information resource on the property rights on the mortgaged property before 1 April 2010 under Section 5 of the Decree № 3.

Thus, four of the eight criteria are met as of today, which implies an automatic increase in the average rank from 0.69 to 0.33 (ie 0.036 for the overall rank), and can improve position for getting credit to the 43th place, and to the 40th place in the overall rating. New issues with mortgaging appeared, however, in 2010 that might negatively affect the rating.

1.5. During the reorganization are excluded whether secured creditors' rights from the obligations that automatically continue running?

The answer is negative for the previous year, and it stems directly from the question posed: according to the Civil Code of the Republic of Belarus, the reorganization is not the suspension of operation. However, a detailed study of the issue (taking into account forms sent to the WB experts) can clarify that reorganization is considered here as a special legal procedure that serves as an alternative to bankruptcy. At the same time, the questionnaire states that in the absence of

special legal procedures to prevent bankruptcy, reorganization should be guided by relevant rules of bankruptcy. This allows us to understand why a positive answer about the exclusion of automatic execution can improve and not worsen the position in the ranking.

Given the norms of the Law on Bankruptcy of the Republic of Belarus, collateralized demands are met in the fourth turn at the expense of the mortgaged property and in the fifth turn at the expense of other property. In this case, the possibility of execution until the completion of bankruptcy proceedings is not provided.

With that in mind, it appears that the correct answer to this question is YES. In this case, referring to previous changes, the rating on Getting credit will stand at 0.23 (an improvement of 0.046 in overall rating), and the overall rating will be at 0.37 (35th place in the rankings).

CONCLUSION

The analysis of the legislative changes coming into force in 2010 confirms a high likelihood that Belarus would reach in 2012 the top thirty countries in the WB rating. Institutional innovation, initiated by the Government of Belarus, is driven by the desire to put Belarus in a better light and reduce the psychological barriers for risk managers of foreign investors. WB ratings used in a variety of correlation patterns of credit rating agencies are likely to reduce the perception of risk from investing in Belarus.

A real improvement of the business climate for the national players may be a side effect of these changes. It should also be noted that these changes are reversible as long as the state will remain the owner of most enterprises. Nevertheless, we definitely consider these changes to be beneficial for the Belarusian society, and propose complementary measures to the government efforts that are already in place.

What is "behind the scenes" of the WB report? First, Doing Business Report compares typologically different economies: in the context of Belarus (a socialist, mixed economy model), in which a giant share of GDP is created in the public sector, some indicators will be different by default from countries with a significant share of the private sector. Secondly, the WB report pays no attention to the strength and effectiveness of institutions and the quality of law enforcement, corruption, human capital, financial system stability, the risks of expropriation of assets of businesses by the State, the level of state capture, macroeconomic stability, quality of regulation of financial markets and so on.

Henceforth even while Belarus may improve its position in the WB rating in the near future, this will only mean that the methodology of the report leaves a loophole for the countries pursuing quantitative changes in lieu of the quality. In one of our upcoming studies, we will try to make proposals for adjusting the methodology, which could considerably improve the Doing Business Report.

APPENDIX 1.**Improved ranking in quantitative terms.**

As a part of the methodology, are assessed various indicators. Answers to these questions always contain numerical information, which is presented in different ways. For example, in answer to question number may mean scores, days, procedures, interest, etc. All the results are brought to a common denominator by calculation of the percentage rank an answer gives to each question for a given economy. The percentage rank is a number from 0 to 1 (not inclusive), which measures how much of data from a numeric array (answers to all economies) have the "worst" value. Depending on the questions posed, a greater numerical value may be the worst, as happens in most cases, or less than the numerical value: as is the case for example, in the Protecting investors category.

Thus, the actual rating is calculated not only for the economy as a whole and for each "section" in the economy in particular, but on each subsection under the section. Namely these data further define the rating. As soon as a percentage rank for each question is calculated within the section, an average percentage rank for all the subsections is defined. The calculated average determine the economy's ranking under this section. An average of all mean values of percentage ranks then determines the overall ranking.

As of today, the average percentage rank for Belarus on all subsections is 0,42, which corresponds to the 58th place. In economics, located at 26-30th places (such as Germany, Israel, New Zealand), the average percentage rank is 0,34. Accordingly, we should strive to achieve the average percentage rank of 0,33. With such a score, Belarus would be at th 25th place. Accordingly, Belarus must improve its average percentage rank by 0.09 to get to the top 30. Given that a study has 10 sections, percentage rank for each of them at 0.09 will give a 10% of the overall increase.

For example, Belarus is at the 109th place in the "protecting investors" section, the corresponding percentage rank is .64, and the current score is 4.7. If the current score on the section becomes equal to 8, a percentage rank will be equal to 0.06 (10th), which means the improvement in the section by .58 and the improvement in the overall average percentage rank by .058 (it will stand at 0,362, or the 33th place). It should be borne in mind that there is no linear relationship between the number of "correct" answers and a place in the ranking. Everything depends on the situation in all economies as a whole. Therefore, if the change in response to a question within the section can give a better overall percentage rank of 0.005, this does not mean that the two correct answers will give 0.01. It is theoretically possible that two points will improve the rating, and a general improvement, for example, may even be in the vicinity of 0.03.

Table 1
Summary of proposed measures to improve Belarus's rating

| S C E N A R I O | Place in the rating | Per- centage rank | Depth of credit infor- ma- tion | Pri- vate credit bu- reau | Credit regis- ter | Legal rights | Total for get- ting credit | Ease of getting credit (per- centile) | Get- ting credit (ra- ting) | Disclo- sure of infor- mation on tran- saction | Di- rec- tor's res- pon- sibi- lity | Ease of pro- secu- tion of the direc- tor | Pro- tec- ting inves- tors | Pro- tec- ting inves- tors (per- centile) | Pro- tec- ting inves- tors (ra- ting) | Tax pay- ments (num- ber) | Time cost (hours) | Tax rate (% of profit) | Ease of doing taxes (per- centile) | Paying taxes (ra- ting) | Docu- ments for ex- ports (num- ber) | Time costs (days) | Costs of ex- port (USD per con- tai- ner) | Docu- ments for im- ports (num- ber) | Time costs of im- ports (days) | Costs of import (USD per con- tai- ner) | Inter- national trade (per- centile) | Inter- national trade (ra- ting) |
|--------------------------------------|---------------------------|-------------------------|---|---------------------------------------|-------------------------|-----------------|--|--|---|--|---|--|--|---|---|---------------------------------------|--|---------------------------------|---|----------------------------------|--|---|---|--|---|--|--|--|
| 2010 | 58 | 0,42 | 5 | 0,0 | 23,4 | 2 | 7 | 0,69 | 113 | 5,0 | 1,0 | 8,0 | 4,67 | 0,64 | 109 | 107,0 | 900,0 | 99,7 | 0,97 | 183 | 8 | 16 | 1772 | 8 | 21 | 1770 | 0,59 | 129 |
| 2011 pessi- mist | 30 | 0,34 | 5 | 0,0 | 30,0 | 4 | 9 | 0,47 | 71 | 7,0 | 3,0 | 8,0 | 6,00 | 0,31 | 41 | 88,0 | 600,0 | 79,1 | 0,95 | 183 | 7 | 15 | 1300 | 7 | 16 | 1300 | 0,44 | 85 |
| 2011 base- line | 21 | 0,30 | 5 | 0,0 | 30,0 | 5 | 10 | 0,39 | 61 | 9,0 | 3,0 | 9,0 | 7,00 | 0,11 | 16 | 66,0 | 450,0 | 79,1 | 0,92 | 181 | 6 | 12 | 1000 | 7 | 15 | 1000 | 0,29 | 46 |
| 2012 re- forms | 10 | 0,20 | 6 | 10,0 | 40,0 | 5 | 11 | 0,33 | 43 | 10,0 | 9,0 | 10,0 | 9,67 | 0,01 | 1 | 24,0 | 150,0 | 0,6 | 0,24 | 23 | 5 | 5 | 900 | 5 | 6 | 900 | 0,14 | 15 |
| Propo- sals | | | 1. Create a private register of credit histories or private information agency 2. Provide data on legal entities not only on loans but also on other aspects of economic activities. 3. Increase the coverage of credit histories. 4. Getting the maximum points for legal rights is not possible: the improvements are only possible when the mortgage holders get the absolute rights on the mortgaged property, which may hurt the rights of other creditors and promote abuse. | | | | | | | 1. Change the corporate law to allow suing another partners in the economic association, to improve the partners' access to information; to regulate provision of data on transactions with affiliated persons to state bodies. 2. Clarify the regulations that may detrimentally affect the 2011 rating. | | | | | | | 1. Switch to the quarterly payment of taxes except for ones paid annually. 2. Simplify the income tax calculations to minimize time spent on paying taxes. 3. Decrease fees to the Social Protection Fund. | | | | | 2. Decrease the number of documents for import and export to 6 and 5 accordingly. 3. Minimize transport costs by means of development of logistical centers, special trains, etc. 4. Simplify procedures for customs declaration. | | | | | | |

APPENDIX 2.**Table 1****Belarus in comparison: Trading Across Borders rankings**

| Indicator | Belarus | Europe and Central Asia | OECD Average |
|--------------------------|----------------|--------------------------------|---------------------|
| Documents for exports | 8 | 6.5 | 4.3 |
| Time, days | 16 | 26.8 | 10.5 |
| Costs, USD per container | 1772 | 1581.8 | 1089.7 |
| Documents for imports | 8 | 7.8 | 4.9 |
| Time, days | 21 | 28.4 | 11.0 |
| Costs, USD per container | 1770 | 1773.5 | 1145.9 |

Source: Doing business 2010, WB.

Table 2. explains the necessary procedures and associated costs. Thus, preparing documents for exports takes nine days in Belarus and costs 222, customs processing and technical control takes 2 days and costs USD 200.

Table 2**Time and financial costs of fulfilling formalities for import and export in Belarus**

| Export procedures (2009 г.) | Time, days | Cost, USD |
|---|-------------------|------------------|
| Preparing documents | 9 | 222 |
| Customs clearance and technical control | 2 | 200 |
| Document processing for port and terminal | 2 | 150 |
| Transportation in the country | 3 | 1200 |
| Total | 16 | 1772 |
| Import procedures (2009 г.) | Time, days | Cost, USD |
| Preparing documents | 12 | 220 |
| Customs clearance and technical control | 3 | 200 |
| Document processing for port and terminal | 2 | 150 |
| Transportation in the country | 4 | 1200 |
| Total | 21 | 1770 |

Source: Doing business 2010, Belarus, WB.

Table 3 shows documents necessary for export-import operations

Table 3**Necessary documents for export-import operations in Belarus**

| Export | Import |
|---|---|
| Waybill | Waybill |
| Customs clearance for goods | Customs clearance for goods |
| Certificate of origin | Customs clearance for goods |
| Commercial invoice | Certificate of origin |
| Customs Declaration (statistical declaration) ¹² | Commercial invoice |
| Packing list issued by the producer of goods | Customs Declaration (statistical declaration) |
| Technical standard / hygiene certificate | Packing list issued by the producer of goods |
| Transit document | Transit document |

Source: Doing business 2010, Belarus. WB.

¹² The statistical declaration in Belarus exists in the form of 'cargo customs bill'.