An overview of the Belarusian Legal System

- Belarusian legal system in general
- The division of powers and court system in Belarus
- Legal entities in Belarus
- IP in Belarus
- Interaction with other legal systems
BELARUSIAN LEGAL SYSTEM IN GENERAL

HISTORICAL ROOTS OF BELARUSIAN LEGAL SYSTEM

The sources of Belarusian Feudal Law rank high among the world’s other famous ancient legal sources:

- Statutes of the Grand Duchy Litovskae of 1529, 1566 and 1588 years
- The Polish Constitution of 1791

The legal system of the Republic of Belarus was essentially influenced by those states, which influenced our country in particular historical periods:

- Poland - during the 17th-18th centuries (it was a Union)
- Russia - during the 19th-20th centuries (after annexation of Belarusian territory by Russian Empire)
- the Union of Soviet Socialist Republics (USSR)

and this fact surely affected the legal system of today’s Belarus.
Legal system of the Republic of Belarus belongs to the Roman-Germanic Law Family ("civil law"). And its main characteristics are:

- Optimal generalization of the rule of law
- The division of law into public and private law
- Main source of law is normative legal act

### Legislative acts:
- Acts of the President of the Republic of Belarus

### Secondary legislation:
- Acts of the Council of Ministers of the Republic of Belarus
- Acts of the Ministries of the Republic of Belarus
- Acts of the Constitutional Court of the Republic of Belarus, the Supreme Court of the Republic of Belarus, the Highest Economic Court of the Republic of Belarus
- Acts of the Local Councils of Deputies and Local Executive Committees
BRANCHES OF LAW

A branch of law is the basic structural division of the system of law of Belarus.

Belarus’ system of law currently consists of the following branches:
- constitutional law
- civil law
- administrative law
- criminal law
- labour law
- family law
- land law
- financial law
- law of criminal procedure
- law of civil procedure
- law of execution of criminal punishment, etc.

THE REPUBLIC OF BELARUS IS

unitary democratic social legal

state

Art. 1 of the Constitution
THE DIVISION OF POWERS AND COURT SYSTEM IN BELARUS

Legislative power

The President is the Head of the State and he does not belong to any of these branches

Judiciary
LEGISLATIVE POWER

**Belongs to Parliament**

*The House of Representatives consist of 110 directly elected deputies.*

*The Council of the Republic consist of 64 members (56 are indirectly elected and 8 are appointed by the President).*

EXECUTIVE POWER

**Is carried out by the Government**

*(the Council of Ministers)*

*Is headed by the Prime-Minister.*
**CONSTITUTIONAL BASICS OF THE COURT SYSTEM**

- The judicial power belongs to courts
- All judges act independently and obey only the Law
- Judges can't carry out other activities except teaching and research
- There are sole-judge and collective hearings of cases
- Open consideration of case
- Delivery of justice on the basis of competitiveness and equality of parties
- Sides have the right to appeal against the judicial act
- Persons have right of judicial protection
- Persons have right of legal assistance (incl. the one conducted by advocates)
- Presumption of innocence
- Elective and appointed judiciary

**THE COURT SYSTEM OF BELARUS**

- The Constitutional Court of the Republic of Belarus
- The Subsystem of common courts
- The Subsystem of economic courts
- The system is unitary but decentralized
THE CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS

- The Constitutional Court controls the accordance of legal acts to the Constitution of the Republic of Belarus
- The Constitutional Court consists of 12 judges
- Term of office is 11 years (re-electable)
- Max. age of a judge is 70 years

6 judges are elected by the Council of the Republic (the upper House of the Parliament)
6 judges are appointed by the President

The chairman is appointed by the President from among judges on the consent of the Council of the Republic

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS

- decides the validity of the legal act on the basis of inquiry of
  - the President of the Republic of Belarus
  - the House of Representatives
  - the Council of the Republic
  - the Supreme Court
  - the Highest Economic Court
  - the Council of Ministers
- carries out the preliminary control of drafts of laws
- on behalf of the President of the Republic of Belarus officially interprets the decrees of the President
- on the basis of inquiry of the above mentioned officials (state bodies) sets forth a position on the documents adopted by the foreign states or international organisations (in the case that such documents affect the interests of Belarus)
THE SUBSYSTEM OF COMMON COURTS

The Supreme Court of the Republic of Belarus

- Court of the Minsk-City
- Brest regional court
- Homel regional court
- Hrodna regional court
- Mahilou regional court
- Minsk regional court
- Viciebsk regional court
- Belarusian Military Court
- 154 district (town) courts
- 6 inter-garrison courts (Minsk, Babruisk, Barysau, Brest, Hrodna, Viciebsk)

JURISDICTION OF CRIMINAL CASES

- Generic characteristic
  - nature of the crime
- Territorial characteristic
  - site of crime
- Personal characteristic
  - nature of the case
- Case characteristic
  - crime committer
  - papers (state secrets)
- Discretional characteristic
  - several crimes
  - expression of will of judicial official

Forum connexitatis

- is determined by
- several crimes
- expression of will of judicial official
JURISDICTION OF CIVIL CASES

Common courts hear cases in which one of the parties is a natural person:

- cases in action proceeding
- disputes from administrative relations (appeals from decisions of election committee, decree of a state body in case of commitment of administrative violation, etc.)
- cases of special proceeding (declaration of absence, declaration of death, emancipation, etc)
- cases of mandatory proceeding (recovery of debt without court hearings)

The main rule is that case should be heard at the place of residence of defendant.

THE SUBSYSTEM OF ECONOMIC COURTS

The Highest Economic Court of the Republic of Belarus
Economic Court of the Minsk-City
Economic Court of Brest region
Economic Court of Homel region
Economic Court of Hrodna region
Economic Court of Mahilou region
Economic Court of Minsk region
Economic Court of Vicebsk region
JURISDICTION OF ECONOMIC CASES

Economic courts hear cases in which both parties are economic agent:
- cases in action proceeding
- cases of mandatory proceeding (recovery of debt without court hearings)
- disputes from administrative relations (appeals from decree of a state body in case of commitment of administrative violation, etc.)
- cases on establishment of legal facts
- recognition and enforcement of decisions of foreign courts and foreign arbitral court
- hearing of appeals from decisions of international arbitration courts that act in Belarus
- bankruptcy case

The main rule is that case should be heard at the place of residence of defendant.

LEGAL ENTITIES IN BELARUS
TYPES OF COMMERCIAL LEGAL ENTITIES
ACCORDING TO BELARUSIAN LEGISLATION

- Unitary enterprise
- Production cooperative
- Economic company
- Economic partnership
- Farming enterprise

Closed Joint Stock Company
authorized fund min 860 EUR,
2-50 shareholders

Limited Liability Company
(from 2 to 50 members whose liability is limited by the authorized fund)

Economic companies

Open Joint Stock Company
authorized fund min 3,440 EUR, the number of shareholders is unlimited

Additional Liability Company
founders bear subsidiary responsibility (responsibility by their own property for companies’ obligations)
### Economic partnership
- **Nonlimited**
  - (the members are soul entrepreneurs and commercial legal entities)
- **Limited partnership**
  - (contributors exist together with general partners (members))

### Unitary enterprise
- Can be owned by one judicial/natural person or state
- State (the founder is the Republic of Belarus or an administrative unit)
- Private (the founder is a private person including foreigners)

### Production cooperative
- founders (not < 3 members) take personal working participation in cooperative’s activity and bear subsidiary responsibility (responsibility by their own property for companies’ obligations)

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**IN ORDER TO REGISTRATE COMPANY IN BELARUS YOU NEED**

- founders should sign an Article of association (LLC, additional liability company, productive co-operative, unitary enterprise, farming enterprise) or a Memorandum of association (economic partnership); for creation of joint stock company it should be concluded agreement about the creation of a company (joint operation agreement), formatted the authorized fund and held founders’ meeting
- to approve of a company’s name, receive a correspondent certificate in the registration body
- to prepare a letter of guarantee related to the legal address of the company and copies of other documents related to the legal address (technical passport, registration certificate, plan of premises, etc.)
- to prepare an application for registration
- to submit documents to the registration body

After the appropriate documents are submitted and the documents are sealed the company is deemed to be established. **The procedure of registration is finished** with the issuance of Certificate on State Registration of the Legal Entity **within on 1 working day** after the submission of the documents
IP IN BELARUS

THREE PROTECTION SYSTEMS OF IPR IN BELARUS

- Appropriate and profitable IPR protection system
- IP object identification
- IPR protection systems
IMPROVING OF LEGISLATION IN THE SPHERE OF IP

In accordance with art. 51 of the Constitution of the Republic of Belarus, intellectual property is protected by law. The main problem is counterfeit goods (i.e. goods introduced in violation of the rights of the holder).

The Belarusian legislation should be improved in the following areas:

- Due to modern standards legislation on copyright and related rights should create favorable conditions for the creation and protection of investments aimed at its development, to balance the interests of creators and other copyright owners, users, society, state, and to suit the use and protection of copyright and related rights in the digital environment.
- Enforcement of the legal norms highlights the need for further development of the national legislation on copyright and related rights in order to improve conditions for the protection of some objects of copyright and related rights, including computer programs and databases, employee’s (or service) IP objects, agreements on copyright.
- There is the need to improve legal protection of undisclosed information. In accordance with the Civil Code of the Republic of Belarus protected information is the object of civil rights. Unfortunately, the legislator uses concept of “commercial and official secrecy,” “undisclosed information”, “production secrets (know-how)”, without clear definition thereof.
- In order to promote international cooperation and enhance the processes of use of the international legal system of intellectual property protection by national organizations and individual entrepreneurs it is necessary focus on the issue of accession of Belarus to the Treaty on the Law of Trademarks (TLT), signed in Geneve October 27, 1994, Patent Law Treaty (PLT), adopted in Geneve June 1, 2000, and other international treaties in the sphere of intellectual property protection.

GROUPS OF IP OBJECTS

The Civil Code of the Republic of Belarus refers to several groups of intellectual property objects:

- the results of intellectual activity (works of science, literature and art (copyright); performances, phonograms and broadcasting organizations transfer (objects of related rights); inventions, utility models, industrial designs; selection achievements; integrated circuits; undisclosed information, including production secrets (know-how))
- means of individualization of participants of civil turnover, goods, works or services (company names; trademarks and service marks; geographical indications)
- other results of intellectual activity and means of individualization of participants of civil turnover, goods, works or services in the cases stipulated by the Civil Code and other legislative acts
INTERACTION WITH OTHER LEGAL SYSTEMS

- Presently the legal system of the Republic of Belarus is closely interacting with the legal system of Russia. Pursuant to Article 2 of the Treaty between Belarus and Russian Federation “On Creation of the Union State” dated 8 December 1999, the development of a unified democratic legal system is foreseen as one of the objectives of the Union State being created.
- Three States: Belarus, Kazakhstan and Russia set up the Custom Union in July 2010 and now they are unifying their custom rules.
- Belarus is integrated in the development of ties with European Union within the East-European Partnership.

THANK YOU FOR YOUR ATTENTION!