Chapter 3

BELARUS

*Alexey Anischenko, Olga Grechko and Maria Yurieva**

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

The Republic of Belarus is a unitary state with a uniform system of law and regulations. The same procedures for dispute resolution are applicable throughout the country.

The legal system of the Republic of Belarus belongs to the Roman-Germanic law tradition. The main characteristics of the legislation include optimal generalisation of a rule of law, dividing of law into public and private, separation of different branches of law. A normative legal act is the main legal source.

The legal acts of the Republic of Belarus are divided into two groups: legislative acts and secondary legislation. The Constitution is the fundamental law of the Republic of Belarus and has supreme legal force. Legislative acts also include laws enacted by the Parliament as well as Edicts and Decrees of the President. Decisions of the government as well as legal acts of ministries and other governmental departments and acts of municipal authorities are the acts of secondary legislation.

Precedent is not recognised in Belarus as a legal source and the courts may not refer in the judgments to the previous decisions. They have full discretion to decide the particular case as they deem appropriate under the applicable law. However, the plenums of supreme courts may review the existing court practice and issue resolutions encompassing interpretation of particularly relevant legal issues. Such resolutions have a legal force of an act of secondary legislation. Presidiums of supreme courts also used to issue resolutions on different procedural and substantive issues. Those resolutions do not have legislative force but also shall be taken into account by the courts when considering disputes.

The court system in Belarus is based on the principles of territoriality and specialisation.

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* Alexey Anischenko is a partner and Maria Yurieva and Olga Grechko are associates at Vlasova Mikhel and Partners Law Firm.

According to the principle of specialisation the courts are divided into

a civil courts, including military courts and judicial bodies responsible for resolving disputes on patent matters,

b economic (commercial) courts, and

c the Constitutional Court of the Republic of Belarus.

There is an ongoing discussion on the proposed establishment of specialised courts such as labour, family or juvenile courts, but there is no firm decision made so far.

Civil courts execute justice by way of civil, criminal and administrative procedures. Economic (commercial) courts execute justice by means of economic and administrative procedures.

Each of the abovementioned procedures has its own codified procedural law, namely the Code of Civil Procedure ('the CCP'), the Code of Criminal Procedure, the Code of Economic Procedure ('the CEP') and the Code of Procedure and Execution for Administrative Offences, the latter being applied by both civil and economic courts.

The Constitutional Court exercises judicial control over the constitutionality of normative legal acts in the state.

Under the principle of territoriality civil courts are divided into:

a district (town) courts, inter-garrison military courts;

b regional (and the city of Minsk) courts, Belarusian Military Court;

c Supreme Court of the Republic of Belarus.

The system of economic courts is formed of:

a Economic courts of each of six regions and of Minsk;

b Supreme Economic Court of the Republic of Belarus.

The courts of higher instance mainly serve as appellate (cassation or supervisory) courts but also may serve as courts of first instance for particular cases (disputes with state authorities, disputes involving state secrets, etc.).

II THE YEAR IN REVIEW

The major issues in 2008 were changes and amendments introduced to the CEP, which entered into force in July 2008.

The most substantial innovations relate to the procedure in the appellate instance. First of all, the appellate instance was made an obligatory prerequisite for progress of the case to the cassation instance. Until then there were a lot of cases when the aggrieved parties were intentionally ignoring appellate courts.

Second, appellate courts were authorised to reconsider the case as the court of first instance if the procedural rules were substantially violated during the initial consideration of that case.

Thirdly, any third parties whose interests were violated by the decision of the court of the first instance were granted the right to file an appeal against such a decision.

Also some minor amendments were introduced in relation to the rules regulating the conduct of proceedings in appellate courts, including those governing admissibility of new evidences.

One practically important change was made in regard to the procedure in the court of the first instance. Under the old legislation it was not possible for the court of the first instance to proceed with the main hearing if any of the parties had not come to the preparatory hearing, even if duly notified. This provision was often used for dilatory tactics by respondents and now the rule has been changed in a way that the respondent's default in appearance does not prevent the court from considering the case, provided that the respondent was duly notified and the court possesses enough evidence to decide the case. If the claimant fails to come to the preparatory hearing, the court still may proceed if the claimant submitted an appropriate application asking the court to decide the case in his absence.

Other amendments to the CEP cover a number of minor procedural questions related to particular types of proceeding, including those of execution.

Several changes that were introduced to the CCP during 2008 were of minor importance and mainly related to family disputes and to regulations applicable to payment of state fees.

Apart from amendments to the CEP and CCP there were several particularly important resolutions of the plenums of both supreme courts. Those resolutions clarified and made uniform existing court practice in regard to contractual disputes, disputes over the subsidiary liability, and labour disputes arising out of contractual form of employment.

Finally, in 2008 economic courts continued with the experimental application of Section 17 of the CEP providing for court-attached conciliation subject to the parties consent. According to the official statistics the experiment proves to be successful as more than 70 per cent of cases that were mediated are settled amicably.

III COURT PROCEDURE

Protection of infringed or disputed civil rights is carried out by the civil court, economic court or arbitration court subject to their jurisdiction established under procedural law or if allowed by law – in accordance with the agreement of the parties. Hence the court procedure will vary depending upon the nature of the claim and respectively the court in which the claim is to be considered.

Disputes arising from commercial (economic) relations are considered by economic courts under the procedure stipulated by the CEP that was adopted on 15 December 1998 and last amended on 8 July 2008.

Economic courts exercise justice by resolving commercial disputes that arise from civil, administrative and other legal relations and parties to which are either legal entities of private entrepreneurs. Such disputes will include but not be limited to:

a disagreements arising while concluding statutory contracts;

b disagreements arising while concluding the contracts agreed by the parties;

c changing and annulment of the contract;

d non-fulfilment or improper fulfilment of the obligations;

e acknowledgement of right, including the property right;
f claims of property from another's unlawful possession by the owner or other lawful possessor;
g infringement of the right of owner or other lawful possessor that is not connected with the depriving of possession;
h compensation of damages.

Civil disputes arising out of relations involving individuals, families or labour relations shall be considered by civil courts under the procedure stipulated by the CCP, adopted on 11 January 1999 and last amended on 13 November 2008. Civil courts consider disputes arising out of civil, family, labour, housing, land relations, relations with regard to using land resources as well as the environment, if at least one of the parties to the dispute is an individual (not private entrepreneur).

A separate area of law, where the civil court, represented by Patent Board of the Supreme Court, has exclusive jurisdiction relates to intellectual property.

In case of conflict of jurisdictions civil courts will have a priority if not otherwise specifically provided by the law.

i Overview of court procedure

As stated above, the CEP provides the legal basis for procedure to be followed when the case is considered by economic court whereas the rules of civil procedure are laid down in the CCP. More detailed procedural regulations on particular matters are laid down in the resolutions of the plenums and presidiums of both supreme courts.

The main institutional difference between the two systems of courts is that civil courts do not have an appeal instance and therefore the judgment of the court of the first instance may only be challenged in cassation or through the supervisory procedure.

ii Procedures and time frames

Procedures and time frames in economic courts

Legal procedure in the economic court is of adversarial nature and based on the principle of equality of rights of the parties. Court hearings in the economic courts are public in most of the cases.

Cases in economic courts can be considered both individually and collegially. In most of the cases in the first instance, even if it is in the Supreme Economic Court, the dispute will be resolved by a single judge.

Economic courts of appellate, cassation and supervisory instances shall consider cases collegially. Appeal and cassation courts normally sit in panels of three judges, whereas the supervisory instance is represented by a presidium or plenum of the Supreme Economic Court.

In accordance with the general rule of jurisdiction the action is to be brought to the economic court at the defendant's place of location or place of residence. The claim to the defendant, whose place of location is not known, can be submitted to the court at the place of location of his or her property or at the last known place of his or her location in the Republic of Belarus. A counterclaim shall be always submitted to the court that considers the primary claim.

The claimant and the respondent are considered as the parties of the case and shall have equal procedural rights to present their case and bear equal procedural duties.

Third persons may participate in the case if it affects or may affect their legal rights by means of either submitting their independent claims concerning the subject matter of the dispute or without making such a claim.

Persons participating in the case may familiarise themselves with the case materials, propose disqualifications and make applications, present evidence, ask questions to other persons participating in the case, to witnesses and experts with the court permission, submit written and oral explanations to the court, bring their arguments in regard to all questions arising at the course of the case consideration.

Besides the persons participating in the case, witnesses, experts, interpreters, specialists and representatives may take part in the court proceedings.

Belarusian legislation provides for two means of settling the dispute in the economic court, namely simplified documentary procedure and action procedure.

Simplified procedure

The simplified procedure is applicable only to the disputes dealing with collecting money and execution upon property. Within the simplified procedure the court does not hold court hearings and resolves the dispute upon the examination of written documents submitted by the parties.

It is in particular possible to initiate the simplified documentary procedure if the creditor possesses a written document whereby the debtor expressly acknowledges an obligation to pay. In such a situation the creditor may submit an application with the court along with the documents confirming the claim and the document confirming the copy of the application was sent to the debtor.

The court considers the application within 20 days from the date the application was received. If all formal requirements with regard to the application and to the documents attached are observed and the debtor does not object in written form (i.e., submits a negative response to the application) the court shall issue an order awarding the creditor the claimed subject to further voluntary execution by the debtor or enforcement procedures initiated by the creditor.

If the debtor objects the application for simplified procedure he is generally expected to provide reasons for that, however in practice the pure statement that there is a dispute with regard to obligation may serve as a sufficient ground for the court to reject the application and direct parties to the action proceedings.

In case the application for initiating the simplified procedure is returned by the court the creditor may well proceed with action proceedings and the state fee paid for filing of the application for simplified procedure shall be returned to the applicant.

Action proceedings

Action proceedings are initiated by way of submitting a claim to the court. The judge who is appointed to consider the claim shall within five days decide whether the claim complies with the formal requirements set forth in the CEP. If all formalities are duly observed, the judge issues an order on accepting the claim and initiating action proceedings. By this order the judge shall set the date for preliminary court hearing that

shall be held within 15 days from the date the claim was received by the court. The order is sent to the parties or their representatives by registered mail.

Both parties are called for the preliminary court hearing. However failure of a party to appear in the preliminary court hearing does not prevent the court from proceeding as a matter of principle.

In the preliminary court hearing the judge undertakes measures to conciliate the dispute and guide the parties to amicable settlement, decides on the applications submitted (e.g., application for calling witnesses), defines whether the evidence submitted by parties are satisfactory for rendering the decision, considers other questions and performs other necessary procedural actions.

As the result of the preliminary hearing, the judge shall issue the order on appointment of the case for the main hearing.

Under article 175 of the CEP, the case in the commercial court is to be considered within a month from the date the court issued an order on appointment of the case for the main hearing if both parties are located in the Republic of Belarus. If one of the parties is located abroad and has no representative in Belarus the case is to be considered within seven months if otherwise is not provided for by an international treaty. In certain complicated cases the term for considering the case can be prolonged by the chairman of the respective economic court for two months and one year respectively.

The higher instances have also tight time frames for considering appeals. Thus the appeal instance has to deliver its decision within 15 days after the date when the appeal was filed with the court (the appellant has only 15 days after the decision of the court of the first instance was announced for filing the appeal. Exceptionally the chairman of the appeal court or his deputy may grant an additional 15 days to consider the appeal.

The cassation appeal can be submitted by the appellant within one month after the contested decision became effective. The cassation instance has than one month to consider the appeal without possibility of prolongation.

Finally, supervisory appeal may be filed within one year after the decision in question came into force. The supervisory process is two-tier and somewhat complicated but overall it shall not take more than five months in cases when the supervisory protest was indeed submitted to the presidium or plenum of the Supreme Economic Court.

In practice all abovementioned terms are strictly observed by the judges and even having doubts on the sufficiency of evidence the judge would tend to render the decision rather than apply for extension of time limit.

Procedures and time frames in civil courts

Procedures and time frames in civil courts do not in principle differ a lot from those to be observed by economic courts.

The courts of the first instance normally consider the case with a sole judge, whereas the courts of cassation and supervisory instances operate in panels of three or more judges.

The case in the first instance court under the general rule shall be considered within two months from the date when the claim was filed.

An appellant may file a cassation appeal, giving reasons, within 10 days of receiving the decision, which shall be considered within one month thereafter unless prolonged for no more than two months by the chairman of the cassation court.

Supervisory appeals in civil cases could be filed within three years from the date when the contested decision entered into force and shall be considered one month after the respective case materials were submitted for examination to the court of supervisory instance.

Like the CEP, the CCP also provides for a possibility to use fast-track simplified documentary procedure and stipulates some specific procedural rules in relation to particular types of disputes, like cases on adoption of children, emancipation etc.

iii Class actions

Both commercial and civil procedural legislation allow consolidation of legal actions.

Class actions in economic disputes

Consolidation of legal actions is regulated by Article 165 of the CEP. According to this article, the claimant may consolidate different claims in the single application if they are interconnected either by their origin (legal facts that gave rise to such claims) or through evidence submitted by the claimant. Furthermore, the court may consolidate a number of similar cases to which the same persons are parties.

However, in practice, economic courts are usually very reluctant to accept consolidated claims and to consolidate proceeding on their own motion.

Class actions in civil disputes

Consolidation of legal actions is provided for by virtue of Article 250 of the CCP. Under the CCP class actions are allowed when the parties have the claims that are related to one type of procedure. Consolidation of claims can be made either by the parties to the dispute or at the discretion of the judge in court.

Class actions in civil courts are mostly used by consumer rights protection organisations.

iv Representation in proceedings

As provided by article 62 of the Constitution, everybody has a right to legal assistance for the purposes of performing protection of rights and freedoms including the right to use advocates and other representative in courts. According to Section 7 of the CEP and Section 9 of the CCP the following persons can participate in proceedings as representatives:

a statutory representatives of individualss: parents, spouses, custodians, etc.;
b executive bodies and personnel of legal entities;
c advocates and attorneys, attested and licensed by the Ministry of Justice.

The representatives shall present to the court duly executed power of attorney or other documents, confirming their authority as prescribed by the legislation. By way of example power of attorney issued outside Belarus shall be certified by the notary and legalised or apostilled if the foreign country does not have a treaty on mutual recognition of official documents.

iv Service out of the jurisdiction

Due notification of the party (regardless of whether natural or legal) even if located outside Belarus around the time and place of the hearing is considered as the prerequisite for consideration and resolution of the dispute. Failure to provide a proof that the party was notified of the proceedings shall result in invalidation of the decision made in the absence of proper notification.

Belarus is a party to a number of international treaties that could be used for service of process to the party that has not its representative or place of business in Belarus by means of mutual procedural assistance between the courts of respective jurisdictions. Those treaties might be classified in three main groups:

International treaties of universal character

a The Hague Convention on Civil Procedure of 1 March 1954;

b The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965;

c The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 18 October 1970;

d The Hague Convention on International Access to Justice of 25 October 1990.

Regional conventions (involving CIS countries)

a Convention for settlement of disputes connected with commercial activities (Kiev Convention) of 20 March 1992;

b Convention on legal assistance and legal relations on civil, family and criminal matters (Minsk Convention) of 22 January 1993.

c Convention on legal assistance and legal relations on civil, family and criminal matters (Kishinev Convention) of 7 October 2002;

Bilateral agreements for legal assistance on civil matters

Belarus has such effective agreements with 10 countries: Italy, Hungary, Cuba, the Czech Republic, Vietnam, Poland, Latvia, Lithuania, Finland and China.

The court is also free to use any appropriate means to ensure that the respondent was duly notified about the court hearing and has sufficient time to prepare and present its case. In the absence of an international treaty, the court may act in accordance with the generally accepted international principles of *courtoisie internationale* and use diplomatic channels for service of process outside its jurisdiction.

Belarusian courts would accept a method of service recognised by a foreign court, provided that the defendant has enough time to prepare a defence and has the possibility to present arguments before the court. As a general rule, the foreign party shall be deemed to be properly notified if the documents were served by any appropriate means and mandatory requirements established by the Hague Service Convention or any other applicable international treaty were fulfilled.

vi Enforcement of foreign judgments

Rules on the enforcement of foreign judgments are determined at both – national and international level. Belarus is a party to a number of bilateral and multilateral treaties, including those mentioned in Section III.v. above. Recognition and enforcement shall be granted upon examination of the written application filed with the court by a party in whose favour the decision was made. Foreign judgments shall not be reviewed *per se* by Belarusian courts provided that all of the procedural requirements have been met.

The Belarusian courts would accept jurisdiction of the foreign court provided that the case is not within the exclusive competence of Belarusian courts under Belarusian legislation or the international treaty to which Belarus is a party.

Exclusive jurisdiction of Belarusian courts to consider the dispute involving foreign parties is established in article 236 of the CEP and article 48 of the CCP and includes disputes over state property and real estate, establishment, registration, liquidation and bankruptcy of Belarusian companies, patrimonial disputes, etc.

Enforcement of foreign judgments in commercial courts

The procedure of recognition and enforcement of foreign judgments granted in commercial disputes is allocated in a number of international and bilateral treaties and conventions to which Belarus is a party, in Belarusian procedural legislation and thus shall depend upon the country in which the judgment has been obtained.

Foreign judgments arising out of commercial (economic) disputes and insolvency cases are recognised and enforced according to Chapter 28 of the CEP by virtue of an international treaty to which Belarus is a party or on the basis of the reciprocity principle. The latter principle was used in practice very rarely and there were only reported cases on successful recognition of German, Estonian and French court decision in Belarus on the basis of reciprocity.

Notably, decisions of Russian arbitration (commercial) courts enjoy the preferential regime and are directly enforceable in Belarus without recognition procedure in accordance with the Agreement between the Republic of Belarus and the Russian Federation on Mutual Execution of Court Acts of 17 January 2001.

Enforcement of foreign judgments in civil courts

Foreign judgments arising out of civil disputes involving individuals, family or labour cases are recognised and enforced in Belarus according to article 561 and Annex 4 of the CPC. The only ground for recognition of foreign judgment under the CCP is the international treaty between Belarus and respective foreign state. In the absence of an international treaty the recognition and enforcement of a foreign judgment shall not be possible and the reciprocity principle can not be applied.

vii Assistance to foreign courts

Assistance to foreign courts granted by commercial courts

Belarusian commercial courts shall grant mutual assistance under the procedures set by the international principles of law, international (regional) conventions, agreements, treaties, bilateral and multilateral treaties, and the legislation of the Republic of Belarus. Instructional Guidelines on Legal Assistance when Considering Commercial Disputes

and Enforcing Foreign Judgments with Participation of Foreign Persons were approved by the Resolution of the Presidium of the Supreme Economic Court of 18 October 2006 No. 90.

Mutual assistance can be accomplished in the following forms: service of documents, receiving and forwarding evidences (interrogation of witnesses, receiving written evidence, accomplishing expert examinations, on-site inspections, etc.), providing the official legal information on the effective legislation in a foreign country and the practice of applying it, and ascertaining the content of the foreign law.

As a general rule assistance will be rendered on the basis of an application forwarded by a competent court of an enquiring country and drawn in compliance with the requirements of a respective treaty, and in case no treaty is concluded between the states – in compliance with the national legislation.

According to the article 244 of the CEP the assistance will not be granted by the economic court if that would violate public policy of the Republic of Belarus, does not fall within the competence of economic courts or the court is not able to verify the authenticity of the request for procedural assistance.

Assistance to foreign courts granted by civil courts

Civil courts of the Republic of Belarus shall grant assistance to foreign courts only in case such assistance is provided for by a respectful international treaty (bilateral or multilateral). The procedures under which the application for assistance is to be submitted and requirements with regard to its appearance are determined in a respectful treaty.

Under article 560 of the CCP the court shall refuse procedural assistance if that will contradict the sovereignty or threaten the security of the state or will not fall within the court's competence.

viii Access to court files

Under article 21 of the CEP and article 17 of the CCP hearings in the courts are open. However there are a number of cases when public access can be limited. Such cases include those unveiling information on state secrets, commercial secrets or other information disclosure of which is prohibited by law. In civil courts the hearings can be closed when considering the information that constitutes adoption secret.

There is no possibility for members of public in Belarus to obtain information about ongoing proceedings as this information can not be tracked via Internet and only representatives of the parties to a dispute can apply to the court in order to receive the permission of the court to examine the materials of the case and make copies at their our expense.

Court files on the proceedings that have already been completed can be given to a person (literally taken out of the premises of the court) only at the permission of the chairman of the court or their deputy. A person can receive access to court files with examining the files in the premises of the court at the permission of the chairman of the court, their deputy, chief of the administrative support center or the judge

Reviews of court cases are being published in periodicals (e.g., *Bulletin of the Supreme Economic Court of the Republic of Belarus*) and in other mass media as well as in legal information databases (e.g., Consultant Plus: Belarus).

ix Litigation funding

Belarusian legislation does not provide for a possibility of a litigation to be supported by a disinterested third party. The commencement of legal proceedings is possible only if the claimant attaches a proof of paying the state fee to the application filed with the court. Under the Law of the Republic of Belarus on State Fees dated 10 January 1992 (last amended on 13 November 2008) state fees shall be paid either by a person that addresses the court or by its authorised representative.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

Professional conduct of lawyers in Belarus is regulated by two main legal acts: the Rules of Professional Ethics of Persons that Render Legal Services (2007) and Rules of Professional Ethics of Advocates (2001) both approved by the Ministry of Justice of the Republic of Belarus, which is a supervising state authority of the legal profession.

Under both sets of rules lawyers may not render legal services to parties whose interests are contrary (conflict of interests) within one dispute in court or more generally – within one deal or transaction.

If there is a conflict of interests, the lawyers should choose a party whose interests they are going to represent. With the consent of the parties, a conflicted lawyer can only promote reconciliation of parties but may not represent both parties in the dispute.

If after the conclusion of the agreement for provision of legal services with the client new circumstances giving rise to the conflict of interest emerge, the lawyer shall inform client about such circumstances or avoid the contract and to ensure that the client was given advance notice to make it practically possible to consult with another lawyer.

Lawyers should keep secret confidential information about activity of a client received in rendering legal services during and after contractual relations.

Without consent of the client the lawyer may disclose information received from the client only at request of the court, prosecution or investigation office in connection with criminal or civil cases under consideration.

If that is required for prevention of money laundering and financing of terrorist activity the lawyer should inform authorised bodies about executed contracts.

If not otherwise provided by the contract with the client confidentiality of information shall cover:

- all materials and documents collected or prepared by lawyers within this case;
- information the lawyer has received from client;
- the nature of legal consultations made directly to or intended for the client;
- information connected with commercial activity, access to which is limited according to the legislation of the Republic of Belarus (trade secret).

Confidentiality of information includes obligation of a lawyer to keep information from disclosure and use, and also prohibition on use for private purposes or interests of the third party.

No Chinese walls or information barriers may be legally used to circumvent conflict of interest rules.

ii Money laundering, proceeds of crime and funds related to terrorism

Lawyers' obligations in relation to prevention of money laundering and financing terrorist activity are set up in the Law of the Republic of Belarus of 19 July 2000 No. 426-3 on Measures for the Prevention of Money Laundering and Financing of Terrorist Activity.

The law defines the main operations subject to special control in Belarus through the following conditions, at least one of which shall be met:

a if a person carrying out financial operation gets suspicious that a financial operation is carried out for the purposes of money laundering or financing of a terrorist organisation, including a financial operation that does not correspond to the purposes of the activity of the person that are stated by constituting documents;

b if in respect of a person that carries out financial operation there is information about his participating in terrorist activity or a person that carries out financial operation is under control of persons that carry out terrorist activity;

c if a person carrying out financial activity is registered, has its place of residence or place of location in state (in territory) that does not participate in international cooperation in field of the prevention of money laundering and financing of terrorist activity or there is information of his carrying out operations through account in bank or non-bank credit organisation registered in mentioned state (in mentioned territory);

d if amount of financial operation is equal or exceeds 2,000 basic units (approximately €18,400) for individuals or is equal or exceeds 20,000 basic units (€184,000) for legal entities and private entrepreneurs and with that is one of the following financial operations: financial operation with cash monetary funds, financial operation with bank accounts and deposits of clients, financial operation of international payment and money transfer (postal, telegraph, digital); financial operation with moveable and real property; financial operations with stock; financial operations on loans and credits, connected with international transfers; financing operation on transfer of an obligation and cession.

According to the law, legal entities and individual entrepreneurs rendering legal services, advocates carrying out on behalf or by order of their clients financial operations connected with sale of real property, cash management, stock or other property, disposal of bank accounts or safekeeping accounts; establishment of legal entities or its separated departments or participation in its management, acquisition or sale of enterprise as property complex should:

a register financial operations that are subject to special control in a document of prescribed form and file it to the financial monitoring body;

b suspend financial operation if at least one of the parties is a person participating in terrorist activity or if the person carrying out financial operation is under control of persons carrying out terrorist activity;

c on demand of the financial monitoring body submit information necessary for carrying out its functions;

d keep duplicate of special forms and documents connected with carrying out of financial operations subject to special control for no less than five years after day of its filling.

Control of activity of lawyers and advocates in part of compliance with the legislation on the prevention of money laundering and financing of terrorist activity is carried out by the Ministry of Justice of the Republic of Belarus.

For breach of order of registration and informing authorised bodies about financing operations subject to special control lawyers can be incurred an administrative liability in form of warning or monetary fine.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

Belarusian law does not contain any specific provision in relation to the protection of privilege of lawyers and advocates in the Republic of Belarus.

Some privileges of advocates and lawyers can be inferred from norms on confidentiality of information received from the client that are stipulated in the Rules of Professional Ethics of Advocates and Lawyers (see Section IV.i above).

Some additional privileges of advocates are envisaged in the Law on Advocacy and are directly connected with the right and obligation to keep legal advice confidential. Thus under the law an advocate may not:

a divulge information that is legally confidential (fact of consulting of client with advocate, content of interviews, examined and drawn up documents and other information connected with providing legal aid and also information about private life of client) as within period of providing legal aid as after finishing relations with client;

b give evidence and explanation on legally confidential matters;

c carry out actions threatening the trust relationship with client.

Advocates can disclose information entrusted by the client to the extent that they consider necessary in case of:

a consent of the client, if disclosure of such information is necessary for providing legal aid;

b supporting the advocate's position when settling a dispute with the client or for supporting the advocate's own defence in an action and based on actions in which the client has participated;

c consultations with other advocates if the client does not oppose such consultations.

In-house lawyers may not disclose information about employers that became known to them while executing labour duties if this information is a trade secret of this organisation according to the local rules of this organisation. However, as state bodies

authorised with control functions may familiarise themselves with information forming trade secrets of market participant, this privilege of in-house lawyers in reality is practically not guaranteed.

ii Production of documents

According to the CEP each party shall prove its own case and the circumstances on which it argues its claim or defence. Belarusian law does not provide for any mandatory disclosure or exchange of documents.

A party is free to choose any appropriate evidence to prove its position in court. This may include any documents – written evidence – containing information about circumstances that may be relevant for the case including acts, contracts, business correspondence, other documents and materials performed in digital form, graphic writing, received by fax, digital or other means of communication or in other way that allows acknowledegment and verification of the document.

All documentary evidences that are fully or in part drawn up in a foreign language shall be accompanied with translation on Russian or Belarusian language and duly certified.

Documents shall be produced in original or in duly certified copy.

If the party does not have particular evidence in its possession it may file an application to the court to request the person having the evidence in its disposal to produce it before the court. However, as there are no substantial penalties for ignoring such court request it often does not have the required effect and the evidence may still be detained.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

Alternative dispute resolution is not yet widespread in Belarus. There have been basically no alternatives to civil litigation until now and only two in relation to resolving commercial disputes, namely arbitration and court-attached conciliation.

ii Arbitration

Arbitration in Belarus is governed by the Law of the Republic of Belarus No. 279- Z on International Commercial Arbitration dated 9 July 1999 (last amended on 27 December 1999, 'the Arbitration Law'). This is based on the 1985 UNCITRAL Model Law on International Commercial Arbitration although it does have certain variations. In 2008 the drafting of the new law on domestic arbitration started and it is expected this law will be passed by the Parliament in 2009.

The only active arbitration institution in Belarus that is handling both international and domestic commercial disputes in Belarus is the International Arbitration Court of the BelCCI ('the IAC').[1]

1 BelCCI stands for the Belarusian Chamber of Commerce and Industry.

An award granted by the IAC can be annulled to the Supreme Economic Court of the Republic of Belarus under the procedure provided for in Chapter 29 of the CEP. The list of the grounds under which the award can be annulled is given in article 255 of the CEP, which replicates Article 34 of the UNCITRAL Model Law.

Foreign arbitration awards are recognised and enforced in Belarus in the same way as foreign court judgments. Economic courts will be competent to consider the application of the award on an economic (commercial) dispute, whereas civil courts are responsible for recognition and enforcement of awards on private civil disputes.

In the same way as with foreign court judgments, economic courts may use not only the international treaty but also the reciprocity principle as a legal ground for granting recognition and enforcement. To the contrary, civil court may only recognise and enforce the award if there is an international treaty in place. As Belarus is a party to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitration Awards, no major problems with enforcement should be expected. The only important issue to take into account when seeking recognition and enforcement of the foreign arbitration award against the state or state-owned companies is that sometimes the concept of public policy is construed very broadly and may be invoked as a ground for refusal.

Under both the CCP and CEP a foreign arbitration award (likewise a foreign court decision) must be submitted for recognition and enforcement within three years from the date of its entering into legal force.

iii Mediation

There is no obligatory mediation or other alternative dispute resolution tools to be used by the parties before submitting their case to the court unless the parties agree otherwise in their contract.

So far ADR, including mediation, is not widely used. Even if the parties do have an obligatory pre-trial procedure stipulated in their contract in most of the cases they will not involve a third neutral and will limit themselves to direct negotiations or just refrain from any correspondence with each other.

The conciliation procedure is voluntary and conducted by the specialists of the courts. The amicable settlement can be fixed in the amicable agreement being subject to the confirmation by the judge and thereby having the legal force equal to that of the judgment in case any of the parties refuse to fulfil it voluntarily. Besides that 50 per cent of the state fee paid for submission of the claim is returned to the claimant from the state budget if conciliation succeeded.

Taking into account the perceived success of court-attached conciliation and increasing interest among the public to ADR, one could expect that in the near future mediation might become a real alternative to resolution of the disputes in court or through arbitration.

VII OUTLOOK & CONCLUSIONS

According to the official statistics the total amount of civil and commercial disputes that were submitted to courts in Belarus has increased by up to 10 per cent. In the

light of the economic downturn it could be expected that the caseload will continue to grow. That makes it extremely difficult for the judges to observe strict time limits and as a result there will be much more space for ADR promotion and development. Thus the courts, especially commercial courts, are doing a lot to reduce the caseload and to facilitate all means of amicable dispute settlement both in and outside the court.

The first alternative to litigation – that is court attached conciliation – is actually not detached from the court as such and is considered as a stage of the court proceedings. Taking into account positive results of experimental use of conciliation in 2008 and the promotion campaign that was launched to popularise it among the lawyers, continuous growth of court-attached conciliation could be expected.

The second alternative, arbitration, is still not common and widely used for solving commercial disputes, especially those of a purely domestic nature. The main deterring factors that prevent the growth of arbitration in Belarus are the cost and time inefficiency of arbitration in comparison to litigation. If that could be changed on the legislation level, for example by increasing the state fees and extending the time limits for resolving cases in state courts then arbitration would certainly become attractive to lawyers and businessmen.

If the new law on arbitration and possibly on mediation will be effectively passed it may create additional opportunity for promotion of ADR, especially in relation to resolving civil and commercial disputes of domestic nature.