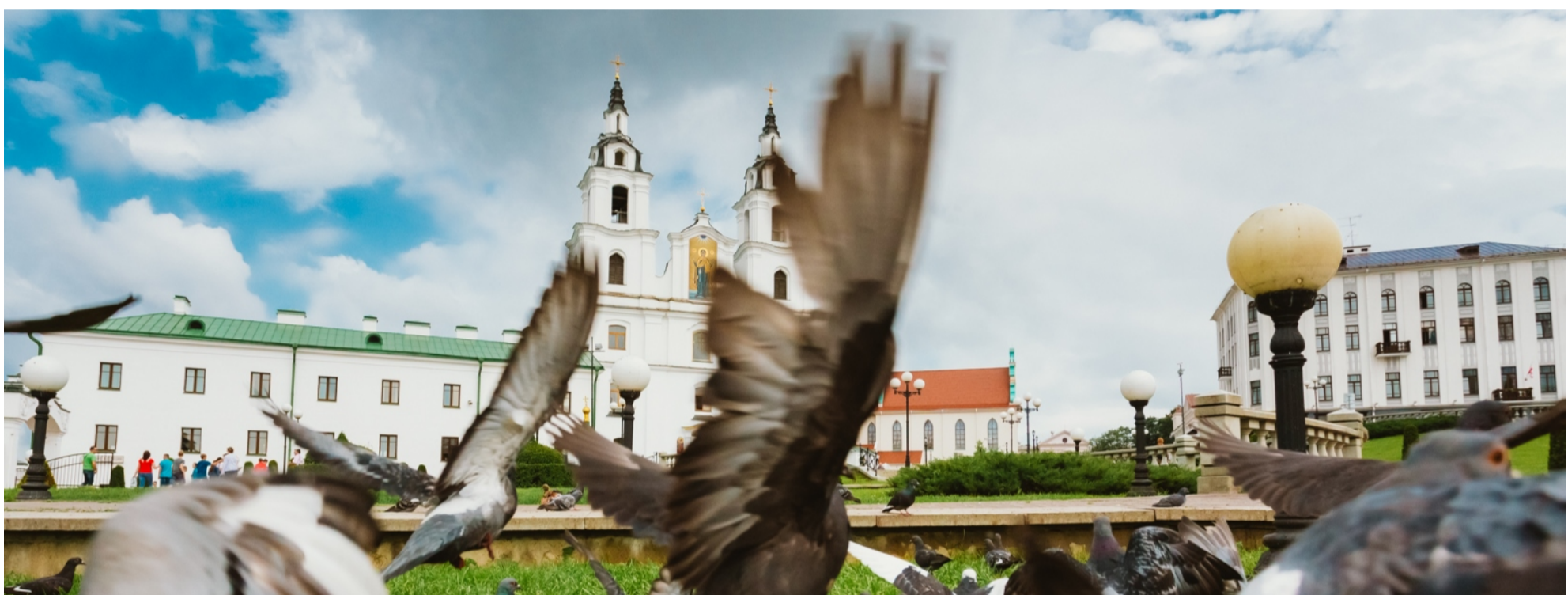


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Typical features of the Belarusian M&A market

The first article of the three-part series focuses on specifics of the transaction process



Entitled [Belarus M&A Deal Point Study](#), ten leading Belarusian law firms have jointly conducted major research into the Belarusian M&A market in 2019. The results of the project shed light on typical features of M&A transactions in Belarus and the specifics of the transaction process, including general provisions of acquisition contracts. In our three-part series of articles, we will highlight the most important outcomes of the study.

Recent years of growth and development of private businesses have resulted in remarkable changes in the Belarusian M&A market. In previous “good years” (2008, 2012) a notable part of M&A (merger & acquisition) was due to one-off transactions or deals involving a significant public component (major telecommunication companies, oil & gas sector). **Nowadays**, when the will and the commercial potential for privatising state companies are limited, it is **private businessmen** who feel more eager and willing to **explore new business opportunities via M&A**. The positive trend in the Belarusian M&A market is also inspired by the tremendous [rise of the IT sector](#) recently, especially following the additional benefits for residents of the High-Tech Park – the main preferential regime for IT companies – introduced by Presidential Decree No. 8 on the Development of the Digital Economy.

While the Belarusian M&A market still has a long way to go to catch up with international trends (there were 59 deals with a total value of EUR 420-740 million during 2016-2018), the situation continues to evolve with **more and more foreign investors** facing the question of purchasing a business or establishing a joint venture in Belarus. We hope that this series of articles will assist you in finding answers to at least some of the questions related to the specifics of the M&A process in the country. The first part describes the economic and political framework, and highlights the specifics of the transaction process.

General economic and political framework of the Belarusian M&A market

Belarus is an Eastern European country serving as a point of contact between Russia, Ukraine and the EU. Back in Soviet times, the country was considered to be the “assembly shop” of the USSR, characterised by a high concentration of well-known factories (Belaruskali, Minsk Automobile Plant, Minsk Tractor Works, Byelorussian Steel Works, etc.) and competent technical specialists. After the fall of the Soviet empire, Belarus kept its **industrial giants** in state ownership. Currently, most of them face fierce competition from transnational corporations and need to revise their management policies. This situation creates opportunities for future privatisation that may take place upon a change in the government’s approach to defining the terms of potential deals.

The transition to the new economy requires the implementation of **new rules**. The government tends to improve and simplify existing regulations that sometimes may seem complicated or even anachronistic, like in the areas of accounting, construction, and some regulatory issues. While many improvements are still on the way, foreign investors may find it useful to have a reliable local partner or at least some experience in working with Belarus or other CIS countries, especially Russia.

The **ties between Belarus and Russia** are multiple and include close economic and political relations, as well as a common historical and cultural background. The two countries jointly participate in several integration projects, including the Eurasian Economic Union, which contributes to the free movement of goods, services, labour, and capital between its participants (Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia).

Besides the integrational projects, Belarus also adopts a **neutral and diversified foreign policy**. While keeping good relations with Russia and other neighbouring countries, Belarus invests in cooperation with the EU, the USA, China as well as other countries.

The gradual resolution of political tensions and the improvement in the economic situation have triggered a new wave of interest in doing business in Belarus. Positioned 37th in the respective World Bank ranking, Belarus attracts investments in areas such as woodworking, industrial equipment, food processing, financial services and others. In this regard, the **most active fields for M&A are IT, agriculture, food & beverages, retail and construction**.

Specifics of the transaction process

The specifics of the transaction process are mainly based on the features of the Belarusian M&A market in general. With the latter primarily comprising transactions with **private targets** (only 14% of the targets are public companies) and involving **strategic investors** (sellers in 58% of the cases, and buyers in 78%), the transaction process is usually structured as a **negotiated sale** and does not require any complicated procedural or regulatory formalities. Its duration and ease mostly depend on the cooperation and sophistication of the parties. In the simplest transactions between local businessmen, the parties are sometimes willing to sign and close within a week, without any due diligence and lengthy negotiations. At the same time, some major projects, especially privatisations, can last for years and involve complicated tenders. Overall, the **transaction process usually lasts 3-12 months** (62% of the cases) from the start of active negotiations until the closing.

In approximately half of the cases, the start of active negotiations is **formalised by signing a letter of intent**. If the letter of intent is governed by Belarusian law, it generally has a declaratory character and does not impose binding obligations on the parties. The reason for this is that under local regulations the parties cannot be obliged to enter into the main agreement unless the preliminary agreement (i.e. the letter of intent) contains all material terms and conditions of the deal. This provision is especially onerous for targets in the form of a **joint-stock company**, which are all **subject to comprehensive requirements on the content of transfer agreements**. Targets of other company forms are less restricted, but it is still unlikely that the binding nature of the letter of intent will be beneficial for them. Namely, at the very start of the negotiations the parties rarely agree on the purchase price. If the purchase price is not stipulated in the letter of intent, it will be difficult to force the other party to enter into the agreement providing for a specific purchase price. Also, there are as yet no rules or practices that would oblige the party to negotiate in good faith and that may serve as a basis for a claim to the party not cooperating.

In light of the above, **parties usually tend to avoid long discussions** of the letters of intent, and proceed with concluding confidentiality agreements and performing a **due diligence**. The latter is **usually done only by the buyer** and comprises legal (86% of the cases) and financial streams (61% of the cases). Other types of due diligence are ad hoc and depend on the nature of the target's business and the significance of the transaction. The same applies to the scope of the legal due diligence, though there are still some issues of general importance:

- Company establishment and formation of share capital;
- Title to the disposed shares;
- Reorganisations;
- Distribution of dividends;
- Compliance with licensing and other regulatory requirements;
- Financing arrangements;
- Confidentiality issues;
- Disputes.