

ON THE PROCEDURE OF OPENING AND ACTIVITY OF REPRESENTATIVE OFFICES OF FOREIGN COMPANIES AND ORGANIZATIONS ON THE TERRITORY OF BELARUS

As of February 2023

1. The Procedure of Creation

The key legal acts governing the procedure on opening and functioning of representative offices of foreign organizations (hereinafter - the “**RO**”) on the territory of Belarus are Article 51-1 of the Civil Code of Belarus (entered into force by the Law No. 7-3 dated 03.05.2001) and Regulations on the Procedure on Opening and Functioning of Representative Offices of Foreign Organizations on the Territory of the Republic of Belarus”, approved by the Resolution of the Council of Ministers of Belarus No. 408 dated 30.05.2018 (hereinafter - the “**Regulations**”).

RO of legal entities and other organizations registered under the established procedure in a foreign country, governing bodies of administrative and territorial units of foreign countries (hereinafter - “foreign organization” or “foreign organizations”) can be opened and carry out activities on the territory of Belarus on the basis of permissions issued by the regional executive committees or Minsk City Executive Committee.

In case a RO is located on the territory of Great Stone Industrial Park, the permission is issued by the Administration Great Stone Industrial Park.


In accordance with the Regulations, RO can be established for the purposes of conducting activities for and on behalf of the foreign organization the name of which is indicated in the permission on opening of RO. Purposes, for which RO may be established, depend on whether the organization which opens its RO is a commercial or non-commercial one.

RO of commercial foreign organization can be established only to **conduct activities of preparatory or auxiliary character for and on behalf of the foreign organization it represents** inter alia:

- assistance in implementation of international treaties of Belarus concerning cooperation in the sphere of trade, economy, finance, science and technology, transport, exploring opportunities of further development of such cooperation, improvement of forms of such cooperation, setting and promoting economic, commercial, scientific and technical information exchange;
- research of Belarusian commodity markets;
- research of opportunities for investment activities in the Republic of Belarus;

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- incorporation of commercial companies with the participation of foreign investors;
 - sale and booking of tickets of aviation, railway, automobile and sea transportation companies;
 - other socially useful activities.

RO of non-commercial foreign organization can be established only to **conduct** the following activities for and on behalf of the foreign organization it represents:

- social support and protection of citizens, including improvement of financial state of the neediest, social rehabilitation of the unemployed, the disabled and other persons who due to their physical or intellectual peculiarities and/or other circumstances cannot independently realize their rights and legal interests;
- preparation of population for overcoming of consequences of accidents, industrial accidents, other emergency situations, disasters, natural hazards, natural or other calamities, ethnic, cultural or religious conflicts and rendering assistance to cope with their consequences, as well as providing help for the victims of repressions, refugees and forced migrants;
- assistance in strengthening of peace, friendship and harmony among nations, as well as preventing social, ethnic and religious conflicts;
- assistance in strengthening of family prestige in the society;
- assistance in protection of childhood, motherhood and fatherhood;
- assistance in activities in such spheres as education, science, culture, art, moral development of personality;
- assistance in activities in the sphere of prophylactics and protection of the citizens' health, as well as propaganda of the healthy lifestyle, improvement of moral and psychological state of the citizens;
- assistance in activities in the sphere of physical culture and mass sport;
- protection of the environment and animals;
- protection and proper maintenance of buildings, facilities and territories having historical, cultural, spiritual or environmental importance and burial places;
- other socially useful activities.

RO of foreign educational organization can be opened in Belarus in order to promote international cooperation in educational field.

Issuance of the permission on opening of RO for other socially useful activities is carried out by the registration authorities after consultation with the concerned state agencies of the Republic of Belarus.

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In addition, representation of interests of the foreign organization may be performed without opening of RO by individuals assigned to Belarus to hold negotiations.

The permission on opening of RO is issued for indefinite term.

Foreign organization interested in opening of its RO in Belarus should submit a written application to the registration authorities in accordance with the established procedure.

The following documents should be attached to the application:

1. legalized extract from the trade register of the state of incorporation or other equivalent proof of the legal status either of foreign organization or governing body of administrative and territorial unit of a foreign state in accordance with the legislation of the state of incorporation or notarized copy of these documents (the extract should be issued not later than 6 months prior to submission of the documents to the registration authorities);
2. Power of Attorney for the Head of RO legalized under the established procedure, except for the cases when the Head of RO is the head of the foreign organization and such information can be found in the document mentioned in para. 1 above;
3. Power of Attorney for the person authorized to take actions connected with establishment of RO, legalized under the established procedure, except for the cases when the authorized person is the head of the foreign organization and such information can be found in the document mentioned in para.1 above;
4. Articles of RO approved by the foreign organization;
5. Program (project) of activity (for RO of non-commercial foreign organizations);

All the documents mentioned above should be submitted in one of the state languages of Belarus - Russian or Belarusian. The translation of the documents should be certified in accordance with the established procedure by notary or by diplomatic or consular departments of Belarus abroad.

6. document confirming the payment of state fee for the permission on opening of RO.

To open RO, it is necessary to determine its location (legal address) beforehand.

The following state fees are established for issuance of permission on opening of RO:

- **65 basic units*** - for RO of **commercial foreign organization**;
- **20 basic units*** - for RO of **non-commercial foreign organization** and RO of foreign organizations carrying out charitable activities only

** Since 01.01.2023, 1 (one) basic unit equals to 37 BYN (approximately 13 US dollar or 12 euro).*

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RO is considered to be established and is eligible to conduct its activity on the territory of Belarus from the date the decision on issue of permission on opening of RO was taken by registration authorities. The date of issuance of the permission on opening of RO is the date the decision on issuance of the permission is taken by the registration authorities.

RO should submit documents required for registration as taxpayer to the relevant local inspection of the Ministry of Taxes and Dues of Belarus within 10 working days from the date of receipt of the permission on opening of RO. RO also should submit documents required for registration as the payer of compulsory insurance payments to corresponding department of the Social Security Fund, submit documents for registration as the payer of compulsory insurance against accidents at work and occupational diseases to the relevant division of Belarusian State Insurance Agency “Belgosstrakh”, as well as open bank accounts.

Moreover, within a month from the date the permission was issued, the Head of RO should provide the registration authorities with written information on the staff list, telephone numbers and fax of RO, as well as information that the foreign organization is registered with the above-mentioned authorities.

The activity of RO is terminated in the following cases:

- in case of liquidation of the foreign organization;
- in accordance with the decision of the registration authorities in case an international agreement by virtue of which RO was opened is terminated, unless otherwise is provided in the agreement;
- in accordance with the decision of the foreign organization which has opened RO. The decision of the foreign organization on the termination of its RO activity should be submitted to the registration authorities;
- in accordance with the decision of the registration authorities in case RO is not carrying out activity for which RO has been opened within 6 months in a row from the date of establishment of RO, as well as in case RO does not comply with written request of the registration authorities to eliminate the violations committed by RO;
- in case an interested state body of Belarus makes corresponding request to the registration authorities;
- in accordance with the decision of the registration authorities in case number of the foreign citizens - employees of RO is exceeded.

2. Legal Status

RO is not a legal entity. RO is a separate structural department of a foreign organization located on the territory of Belarus which ensures the protection of rights and representation of interests

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of the foreign organization and other functions that are not in conflict with the legislation of the Republic of Belarus.

In accordance with aims of activities, RO may act legally for and on behalf of the foreign organization that it represents, including entering into agreements, acquiring property and personal non-property rights and fulfilling obligations, being plaintiff and defendant in court. As a rule, RO enter into and execute transactions in order to ensure material, technical and informational support of the activities of RO on the territory of the Republic of Belarus. The scope of the authority of RO is established by the foreign organization which created RO taking into account the applicable laws of the Republic of Belarus.

Socially useful activities of RO should be carried out on the basis of programs and projects that correspond to the priority orientation of activities of the foreign organization, approved by this organization. Giving the grants (financial, material and other resources, granted on the competition basis) by RO outside the scope of the realized programs and projects is prohibited. According to the para. 2 and 24 of the Decree of the President of Belarus dated 25.05.2020 No. 3 “On Provision of Free Gratuitous Aid”, even a single provision of grants for the purposes prohibited by the legislation (e.g. organization of events aimed at political and mass agitation activities among population) can cause termination of the activities of the mentioned-above RO.

RO fulfills its activities in compliance with the legislation of Belarus and within scope of authorities granted to it by foreign organization.

To organize the activity of RO, foreign organization may at its own discretion provide RO with property including monetary funds.

Moreover, property as well as monetary funds can be acquired by RO in the Republic of Belarus. All property and monetary funds of RO is the ownership of the foreign organization that created RO irrespective of the methods of acquiring.

RO is entitled to open accounts both in BYN and foreign currency in the banks of the Republic of Belarus. Opening of the accounts takes place after providing the bank with a number of documents the specific list of which is defined by internal regulations of the bank.

RO is entitled to open accounts in BYN and foreign currency in Belarusian banks, as follows:

- current (settlement) account;
- deposit accounts;
- other accounts stipulated by the legislation of the Republic of Belarus.

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Transactions on the current (settlement) account in foreign currency, BYN are carried out by RO without any limitations in relation to the types of transactions (including currency exchange operations, as well as operations with securities).

RO carries out transactions over its foreign currency accounts in cashless form. RO is able to use foreign cash currency to the following aims:

- to pay expenses connected with foreign business trips of employees.

Assets from the foreign currency accounts may be freely transferred abroad by RO or sold for rubles through off-exchange currency market.

Foreign organization administers RO through the Head of RO appointed by the foreign organization and who acts on the basis of the Power of Attorney issued by the foreign organization.

In order to organize its activities, RO is entitled to hire Belarusian and foreign citizens. The number of foreign citizens - employees of RO (including the Head of RO) should not exceed 5 employees. As a general rule, RO should receive a special permit for employment in Belarus for every foreign employee (except for Head of RO and citizens of EEU member states).

Employment in RO proceeds in accordance with labour legislation of Republic of Belarus.

Legislation of Belarus applies to the labour agreement (contract), concluded with a foreign citizen - an employee of RO, in case the labour agreement (contract) is concluded on the territory of Republic of Belarus.

RO is entitled to conclude labor agreements (contracts) with Belarusian citizens - employees of RO.

For execution of one-time work RO may conclude civil-law contracts with Belarusian citizens, including independent-work contracts.

3. Taxation

Taxation of RO proceeds in accordance with tax legislation of the Republic of Belarus. However, where an international agreement concluded by Belarus provides otherwise than the Belarusian tax law, the provisions of the international agreement are adopted.

In accordance with the Tax Code of Belarus (General Part) from 19.12.2002 with further changes and amendments, RO of foreign organization is not considered to be an independent taxpayer, but it merely performs the taxation duties of the foreign organization, which created RO in accordance with objects of taxation and in the amounts that fall on the activities of RO.

Foreign organization is not a tax resident of Belarus and owes a duty to pay taxes only for the activities performed in the Republic of Belarus, for the income from the sources in Belarus and for the property, located on the territory of the Republic of Belarus.

In general RO pays only compulsory payments charged on its wages fund and real estate tax, which rates are indicated below.

- **compulsory payments charged on wages fund of Representative Office** - compulsory insurance payments paid to the Social Safety Fund - **34%**. The RO also has an obligation to calculate and make insurance payments in the amount of 1% for the employee at his\her expense.
- **real estate tax** - The principal legal act governing the payment of this tax is the Tax Code of Belarus (Special Part) from 23.12.2009. The object of taxation is the cost of buildings and constructions, including constructions in progress that are in the possession of RO. The tax rate is 1% per year.

It should also be noted that RO is obliged to assess and withhold the income tax on the income paid to the employees of RO.

We will be happy to provide any further information or assistance should you are interested in the above procedures.

Should you have any further queries, please contact **VMP corporate practice** team partner **Svetlana Dashuk** (svetlana.dashuk@vmp.by) or senior associate **Veronica Perepelitsa** (veronica.perepelica@vmp.by)

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