

IACAM

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on Collaboration in Arbitration Matters

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Questions and answers on the Procedure for Recognition and Enforcement of Decisions of Foreign Arbitration Courts in BELARUS

1. Please name some of the largest arbitration courts in Belarus?

- International Arbitration Court at the Belarusian Chamber of Commerce and Industry (IAC at the BelCCI) (<https://iac.by/>)
- INTERNATIONAL ARBITRATION COURT "THE CHAMBER OF ARBITRATORS AT THE UNION OF LAWYERS" (<https://arbchamber.by/>)

2. What law in Belarus governs the activities of arbitration courts?

- Law of the Republic of Belarus on Arbitration Courts (<https://pravo.by/document/?guid=3871&p0=H11100301>);
- Law of the Republic of Belarus on International Arbitration (Arbitration) Court (<https://pravo.by/document/?guid=3871&p0=h19900279>);
- Civil Procedure Code of the Republic of Belarus (<https://pravo.by/document/?guid=3871&p0=hk9900238>);
- Economic Procedural Code of the Republic of Belarus (<https://pravo.by/document/?guid=3871&p0=HK9800219>).

3. What law governs the recognition and enforcement of foreign arbitration awards in Belarus?

Civil Procedure Code of the Republic of Belarus, Appendix 4 "Execution in the Republic of Belarus of decisions of foreign courts and arbitrations (arbitration courts)" (<https://pravo.by/document/?guid=3871&p0=hk9900238>)*;

* Regulates in the Republic of Belarus the execution by the courts of decisions of arbitrations (arbitral tribunals), if the party to the case is a citizen who is not an entrepreneur, carrying out his activities without forming a legal entity.

Economic Procedure Code of the Republic of Belarus, Chapter 28 "Proceedings on the recognition and enforcement of decisions of foreign courts and foreign arbitral awards" (<https://pravo.by/document/?guid=3871&p0=HK9800219>)*

*Regulates relations in the sphere of economic and economic activity.

4. In what year did Belarus join the 1958 New York Convention?

Belarus (Belarusian SSR) joined on November 15, 1960.

5. Which court in Belarus looks at an application for recognition and enforcement of a foreign arbitration award?

If the party to the case is a citizen who is not an entrepreneur, carrying out his activities without forming a legal entity.

The issue of permitting the enforcement of decisions of arbitrations (arbitral tribunals) is considered at the request of the recoverer by the regional, Minsk city court at the place of residence (location) of the debtor, and if the debtor does not have a place of residence (location) in the Republic of Belarus or the place of residence (location) of the debtor is unknown, - at the location of his property.

In other cases, applications for recognition and enforcement of a foreign arbitral award are submitted by the recoverer to the court considering economic cases in the Republic of Belarus at the location or place of residence of the debtor or at the location of the debtor's property, if the location or place of residence of the debtor is unknown.

6. Does Belarus's legislation provide a mandatory period for the voluntary execution of an arbitration award?

The term for voluntary execution of the decision of the International Arbitration Court at the Belarusian Chamber of Commerce and Industry is indicated in the decision itself and, as a rule, is 5 days from the date of its receipt by the defendant.

If no deadline is set in the decision of the arbitration court, it is subject to mandatory execution within 3 days from the date of its entry into force.

7. What documents are attached to an application for recognition and enforcement of a foreign arbitration award?

Attached to the application:

1. duly certified original foreign arbitral award or its duly certified copy (a certified translation into Russian or Belarusian is also required);
2. the original arbitration agreement or its duly certified copy (a certified translation into Russian or Belarusian is also required).
3. a document confirming the payment of the state fee (or the details of such a document, if payment is made through the ERIP non-cash payment system).

In confirmation of the legal status of a foreign participant in the process, as a rule, an extract from the commercial register (register) is submitted.

8. In what language are documents submitted? How is the translation of the documents attached to the application carried out?

Documents or their translation must be in Belarusian and (or) Russian; the authenticity of the translator's signature must be certified by a notary. Documents can be certified without the presence of a translator if such a translator is known to the notary (included in the register of translators) or with the present if such a translator is not known to the notary, but with the provision of documents confirming knowledge of the language (languages).

9. What fee is payable when applying for the recognition and enforcement of a foreign arbitration tribunal in Belarus?

Consideration of an application for recognition and enforcement of a foreign arbitral award in accordance with clause 14. Appendix 15 to the Tax Code of the Republic of Belarus - 10 base units (as of 22.04.2022 - about 110 euros).

If the party to the case is a citizen who is not an entrepreneur, carrying out his activities without forming a legal entity, such an application is not subject to state duty.

10. Are parties invited to the court to consider an application for recognition and enforcement of a foreign arbitration court?

Consideration of a petition for permission to enforce a foreign arbitral award is carried out in open court with the debtor notified of the time and place of consideration of the petition.

The failure to appear without a valid reason of the debtor, regarding whom the court knows that the summons was served on him, is not an obstacle to the consideration of the petition. If the debtor applied to the court with a request to postpone the time for consideration of the application and this request was recognized by the judge as valid, the judge postpones the time for consideration and notifies the debtor of the new time for consideration of the application.

* if the party to the case is a citizen who is not an entrepreneur, carrying out his activities without forming a legal entity

Applications for recognition and enforcement of a foreign arbitral award shall be considered in a court session by a judge of the court considering economic cases within a period not exceeding one month from the date of their receipt by the court considering economic cases unless otherwise established by an international treaty of the Republic of Belarus.

The court considering economic cases notifies the persons participating in the case of the time and place of the court session. The failure to appear of the said persons duly notified of the time and place of the court session shall not prevent the consideration of the case.

11. In what cases and for what reasons can an application for issuing a writ of execution be rejected?

Recognition or enforcement of a foreign arbitral award may be refused if there are grounds specified in the New York Convention, as well as below (Article 11 of Appendix 4 of the Code of Civil Procedure of the Republic of Belarus)*:

1) at the request of the party against whom it is directed, if that party presents to the court in which recognition or enforcement is sought, evidence that:

1) one of the parties to the arbitration agreement was incapacitated or the agreement is invalid under the law to which the parties have subjected it, and in the absence of such indication - under the law of the country where the award was made;

2) the party against whom the award was made was not properly notified of the appointment of an arbitrator or of the arbitration, or was otherwise unable to submit its explanation;

3) the award is made on a dispute not covered by the arbitration agreement or not subject to its terms, or contains rulings on matters beyond the scope of the arbitration agreement, however, if rulings on matters covered by the arbitration agreement can be separated from those that are not covered by such agreement, then that part of the award which contains rulings on matters covered by the arbitration agreement may be recognized and enforced;

4) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, in the absence of such agreement, was not in accordance with the law of the country where the arbitration took place;

5) the decision has not entered into force or has been annulled, or its execution has been suspended by the court of the country in which or in accordance with the law of which it was made;

2) if the court finds that:

- the object of the dispute cannot be the subject of arbitration under the law of the Republic of Belarus;
- recognition and enforcement of this arbitral award are contrary to the public policy of the Republic of Belarus.

* if the party to the case is a citizen who is not an entrepreneur, carrying out his activities without forming a legal entity.

According to the economic procedural legislation of the Republic of Belarus, the court refuses to recognize and enforce a foreign arbitral award in whole or in part on the following grounds - the execution of the decision would be contrary to the public policy of the Republic of Belarus unless otherwise established by an international treaty of the Republic of Belarus. Other grounds for refusal are provided for by the Convention.

12. Is it possible to appeal against the decision of the state court to satisfy or refuse to satisfy the application for recognition and enforcement of the decision of a foreign arbitration court?

The ruling of the court may be appealed or protested (by way of supervision) to the Supreme Court of the Republic of Belarus.

13. Is this appeal final or is there still a procedure for appealing against such a determination?

No, the decision in the supervisory court is final and not subject to appeal.

14. Is there a procedure for preliminary enforcement of a foreign arbitration award?

It is possible to apply measures to ensure the execution of an enforcement document issued on the basis of a ruling on the recognition and enforcement of a foreign arbitral award at the stage of enforcement proceedings. Measures to ensure the execution of the executive document may be taken for a period not exceeding until the fulfillment of the requirements contained in the executive document.

15. How is the enforcement of a decision of a foreign arbitration court carried out after its recognition in a state court?

On the basis of a decision of a foreign arbitration court and a court ruling that has entered into legal force to authorize the enforcement of this decision, a writ of execution is issued, which is sent to the recoverer. Actions for the enforcement of a decision of a foreign court are carried out by a bailiff on the basis of the legislation of the Republic of Belarus. Decisions of foreign courts, which do not require enforcement, are recognized without any further proceedings, unless objections are received from the interested person.

*if the party to the case is a citizen who is not an entrepreneur, carrying out his activities without forming a legal entity.

Enforcement proceedings are carried out in the manner prescribed for decisions of Belarusian courts. A writ of execution (a writ of execution in economic cases) is issued as a writ of execution, which can be brought for collection within 6 months from the date of entry into force of the ruling on the recognition and enforcement of a decision of a foreign court.