

# **Purchase of Real Property in Belarus: Modelling and Evaluation**

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**Key words:** Republic of Belarus, real property, purchase, mortgage, modelling, transaction cost, Corruption Perceptions Index (CPI).

## **SUMMARY**

The most active sector of the real property market in Belarus deals with privately owned apartments (mainly in multi-stored buildings), whereas the land market is regarded as undeveloped and strongly regulated by the state. This paper addresses purchase as a specific case of property transfer with special emphasis on the available mortgage system. It is also aimed at identifying the obstacles in property purchasing, particularly in its organisational framework that hinder development of the real property market.

Specifically the paper considers purchase of a land plot with a single-family house on it both held in private ownership by the same owner. The purchase process is presented in Unified Modelling Language (UML) notion and the developed models are supplemented with explanatory text.

Moreover, the paper assesses transaction cost (expressed in time term) of this particular purchase for the parties involved (i.e. seller and buyer) and compares it with the similar data for several European countries taken from "Doing Business in 2005" (World Bank 2004). It also argues that long administrative procedures for property purchase extend the grounds for corruption as parties may try to speed up the process by bribing public officials.

# Purchase of Real Property in Belarus: Modelling and Evaluation

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## 1. INTRODUCTION

Functioning of any national economy directly depends on efficiency of property market that can in turn be increased by the well-developed and reliable banking and mortgage systems. This paper addresses purchase as a specific case of property transfer with special emphasis on the available mortgage system. It is also aimed at identifying the obstacles in property purchasing, particularly in its organisational framework that hinder development of real property market.

The most active sector of real property market in Belarus deals with privately owned apartments (mainly in multi-stored buildings). According to the available statistics<sup>1</sup>, 10% of the flats held in private ownership are annually involved in property transfers. On the other hand, the land market is regarded as undeveloped and strongly regulated by the state. It can be proven by statistics for Polotsk district. Of 3082 sale contracts<sup>2</sup> certified by public notaries during the first half of 2003 in Polotsk district (which is mainly rural district) only 27 concern sale of either land or land plots with buildings on it (less than 1%). It is thus obvious that there is an urgent need to activate this sector of property market and thereby to increase its efficiency.

The scope of this paper lies within the scope of the objectives of the COST Action G9 “Modelling Real Property Transactions<sup>3</sup>”. The paper logically continues the discussion of cadastral processes in Belarus first addressed in the paper “Modelling of Land Privatisation Process in Belarus” (Vaskovich 2004a) and presented during the Workshop on Standardization in the Cadastral Domain (Bamberg, December 2004)<sup>4</sup>. While the mentioned paper dealt with land privatisation that can be considered as a combination of subdivision and sale processes, this paper focuses primarily on purchase of real property in Belarus that is one of the most frequently used types of property transfer besides gift, inheritance, etc. In particular this paper considers a specific case of purchase of land plot with a single-family house on it both held in private ownership by the same owner. With the purpose of further analysis, purchase is presented in Unified Modelling Language (UML) notion. Furthermore, the existing procedure of getting a loan for financing the purchase is separately described and analysed. The developed models are supplemented with explanatory text.

Generally speaking, purchase is transfer of ownership that in turn means only a change of title, while the registered land plot and building stay unchanged and do not cause any changes in the State land cadastre. Figure 1 presents the whole purchase in UML notion (Activity diagram). Figure 2 depicts in detail the attendant process of getting a loan to finance purchase

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<sup>1</sup> ”Argumenty i Fakfy v Belarusi”, newspaper, № 48, 2003.

<sup>2</sup> Sale contracts of, for example, cars, other movables, immovables etc.

<sup>3</sup> <http://costg9.plan.auc.dk/>

<sup>4</sup> <http://www.kinf.wiai.uni-bamberg.de/SICD/>

of real property. The models developed here are generalised and partly simplified in comparison with the reality and might need further refinement.

The main objective of the paper is to reveal the disadvantages and the bottlenecks of property purchase in Belarus through identifying its general activities performed by respective stakeholders and presenting these activities in a sequential order. Additionally the paper identifies and discusses the way, in which purchase of real property can be financed (i.e. mortgage procedure). Another objective is to assess transaction cost (expressed in time term) of this particular purchase for the parties involved (i.e. seller and buyer) and compare it with the similar data for several European countries taken from “Doing Business in 2005” (World Bank 2004). This paper does not set as an objective to prepare and propose a new simplified or more efficient model for property purchase in Belarus even if it is an ultimate goal of the author’s research. Eventual proposal of a new model is matter of future studies.

## **2. MODELLING**

Cadastral domain modelling is becoming a ‘hot’ research topic within international surveying community. It is proven by the growing number of related projects (e.g., FIG, COST Action G9, etc). The main attention of researchers is given to modelling of property related information kept by different databases, while process modelling lies quite behind. This paper addresses process modelling, namely purchase of real property with application to one specific country in transition - Belarus.

From system analysis’s point of view, purchase can be considered as a system (or business process) and can thus be analysed through system approach and eventually improved. Therefore, the overall goal of modelling is to enable any system to improve work so it can produce greater profits and, thus, provide services more efficiently. In other words, modelling is a tool for identifying bottlenecks of a system and, thus, for lowering costs.

System development or revision usually consists of four phases, namely planning, analysis, design, and implementation (Dennis et al. 2005). This paper focuses mainly on planning and analysis, while design and implementation phases are normally responsibilities of decision makers and are not dealt with here.

By UML modelling, system is visualised including its components and relations among them to facilitate analysis.

## **3. PURCHASE OF REAL PROPERTY**

To start discussing purchase, the term “real property” needs to be defined according to the Belarusian legislation as ‘real property is what is defined as real property in a nation’s legislation’ (Paasch 2004). The Civil Code of Belarus states that real property is, among others, land as well as anything strongly connected to land (i.e. fixtures) such as, for example, buildings, forest, plantations, etc. While land plot is identified by a unique cadastral number consisting of eighteen digits and owner proves ownership by possessing the State Act on

land, building is distinguished by an inventory number and the registration certificate serving as a proof of ownership to building. Ownership to land and attached building might be separated in Belarus. In other words, they might be owned by different persons (legal or natural). For example, a person can hold building in ownership and lease from another person or the state land where building is situated. In Sweden, on the contrary, “real property” is land<sup>5</sup>, and everything connected to land is considered as fixtures or improvements to land and, therefore, do not need to be registered<sup>6</sup>.

It is worth to note that the land administration system of Belarus is now in the process of transforming the “old” Soviet system with ‘soil’ cadastre and registration of building and related property rights into a new one, consisting of a modern land cadastre as well as registration system not only of buildings but also of related property rights to buildings and land. The special requirement for registration of building (considered as separate real property) is that prior building, registration of land must be done, namely first unique cadastral number to land plot is to be assigned and existing property rights are to be registered, and only after that, building be registered and registration certificate on building be issued. Thus, registration of buildings, houses, etc is inseparably linked with registration of land and follows the latter.

Moreover, several changes regarding land administration have been done in Belarus since declaring independence in 1991. Reforming process became particularly active after the adaptation of the State registration Act in 2002. Since then, property registration (including registration of rights to land and buildings) is fully under responsibility of a single governmental body - the Committee on Land Resources, Geodesy and Cartography. This organisational reform goes in line with the recommendations of international experts who are convinced of higher efficiency of such an institutional arrangement for property registration<sup>7</sup>.

The prospective development of property registration system is aimed at establishing “one window” service that will facilitate getting title to property for end-users and thereby will stir property market to greater activity.

### 3.1 Specific features

Belarus belongs to ‘notary-operated’ countries such as, for example, the Netherlands (Zevenbergen 2004), France, and Germany (Hurndall 1998). It implies mandatory attestation of purchase contract by a licensed notary (either public or private). The Belarusian Ministry of Justice monitors notaries’ activities and issues licenses. The institution of notaries is inherited from the Soviet time when all transactions had to be attested by notaries. It is planned that in the nearest future registrars will also be entitled to attest purchase contracts. This will in turn introduce competition between the institutions and thereby lower transaction cost.

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<sup>5</sup> 3D-properties can also be created by subdivision procedures since 2004.

<sup>6</sup> Jordabalken and Fastighetsbildningslagen (Land Code and Real Property Formation Act)

<sup>7</sup> For reasoning see Mattsson (2004)

Only citizens permanently living in Belarus are entitled to hold land in private ownership<sup>8</sup>, while foreigners can possess in private ownership only flats and houses (on leased land)<sup>9</sup>. The foreign states are entitled to own land only for placing the embassies on the territory of Belarus and with the condition that a similar land plots will be granted to the Republic of Belarus for the same purpose on the territory of the foreign states<sup>10</sup>.

Furthermore, legal entities (including those with share of foreign investment) are also restricted to hold land in private ownership. They can get land in private ownership only through *privatisation* of state property or implementation of *investment projects*.

In conclusion, private land ownership is strictly regulated in Belarus and it is not out of place to mention that only 15% of land in Belarus can potentially be privatised. Moreover, agricultural land cannot be sold either to individuals or to legal entities.

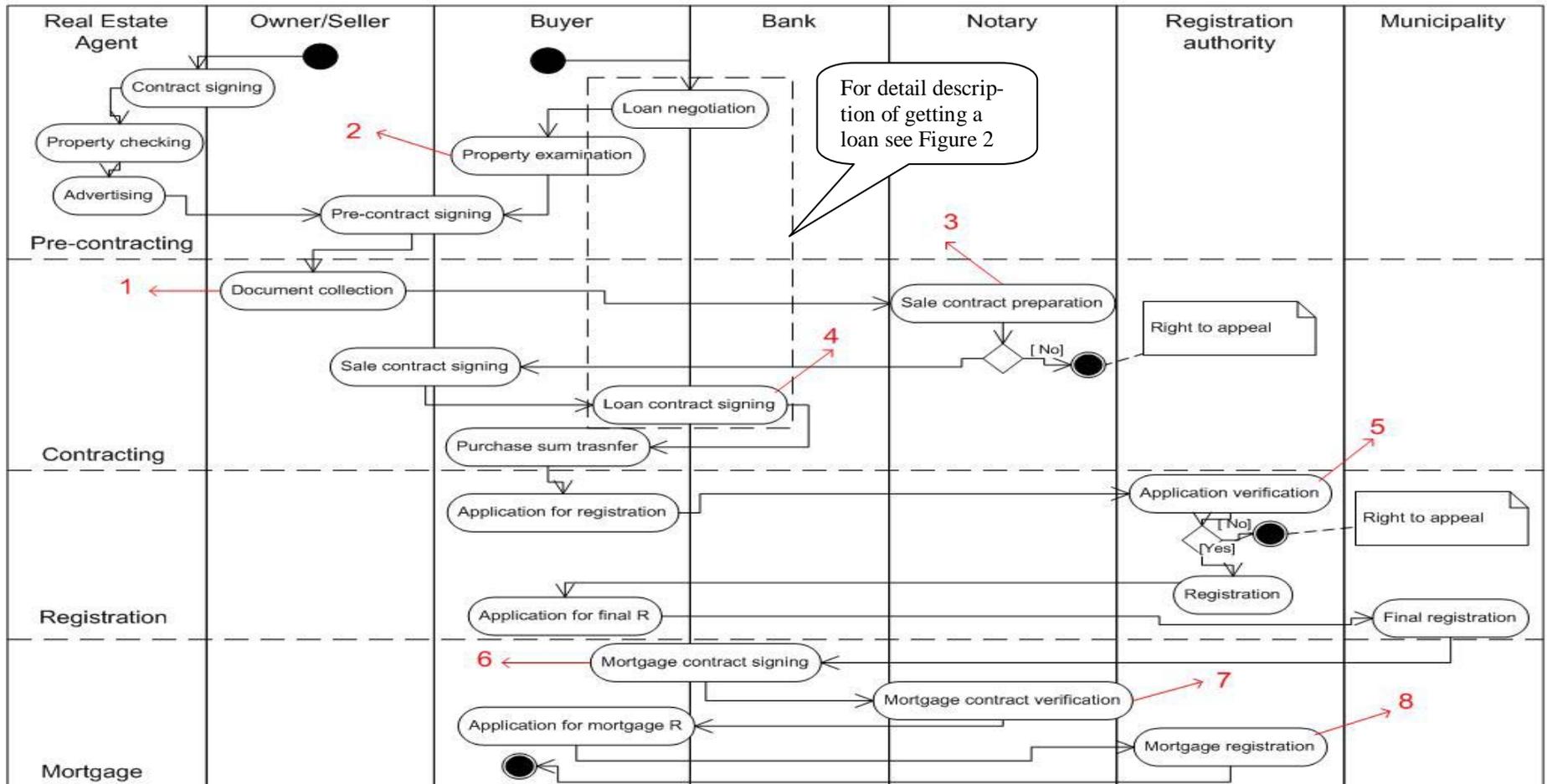
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<sup>8</sup> Land Code, 1999

<sup>9</sup> To learn more about the existing system of land tenure in Belarus, see Vaskovich (2004b)

<sup>10</sup> The Decree of the President of Belarus, 2003

# Belarus Purchase of real property with assistance of real estate agent and mortgage



**Figure 1** Purchasing real property in Belarus

### 3.2 Description of purchase

This paper is not aimed at providing a detail description of purchase of real property. Only some main features and peculiarities of this process are to be considered below. This particular case of purchase of land plot with residential house on it is addressed with assistance of a real estate agent and getting a loan for financing the purchase (see Figure 1).

The whole purchase can be divided into four phases<sup>11</sup> depending on a specific goal to be reached in the course of the process: *pre-contracting phase* includes preparatory activities on property market where main stakeholders are seller, real estate agent, buyer and to some extent buyer's bank. The *contracting phase* is aimed at implementing the main purchase activities – contract signing including notary attestation and purchase sum transfer. *Registration phase* is to make purchase valid against third parties from the moment of state registration. And, finally, *mortgage phase* is to secure loan by the purchased property, i.e. this property serves as collateral. The phases in turn can also be broken up into smaller activities producing corporeal (documents, contracts, etc) and incorporeal (decision, approval, etc) results.

The successive chain of activities for property purchase in Belarus looks as follows: seller initiates purchase and contacts real estate agent who is supposed to act on his/her behalf in this transaction. Real estate agent examines property conditions on the spot, advertises it and connects seller and buyer through signing a pre-contract. Pre-contract is not mandatory but all parties involved wish to secure their positions until signing the final contract. Prior going to notary for purchase contract preparation and attestation, seller has to prepare and/or collect, among others, documents proving his/her ownership right to land and building. Purchase contract is signed by both parties and attested by notary. The contract identifies the parties and the purchasing property, as well as the conditions of payment (deadline, way of payment, etc). Money is transferred from buyer's bank to seller's one and property transfer act is signed. Since that, buyer is in possession of real property and legally responsible for all damages that might occur as well as for insurance and payments for services like water supply, hitting, etc. Buyer is interested in registering property as soon as possible as it provides security against third parties but, nevertheless, application for registration shall be submitted and signed by both parties (!). At time of submission, application is recorded in the book with the time and the date of submission. Then registrar checks the case and, if any inconsistencies are found, registrar is entitled to postpone registration. This decision can be appealed in court. In a normal case registration period is restricted by seven working days. If all submitted documents are correct and valid, registrar enters records in the register and issues the State Act on land and the registration certificate on house for new owner. Final registration ends the registration phase and means endorsement of the State Act on land by the Head of municipality and making record in a municipality's registration book. This activity is, on the contrary, carried out by buyer and does not require presence of seller.

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<sup>11</sup> The phases are partly taken from the results of the forthcoming research by Ferlan, Mattsson, Sumrada and firstly presented by Sumrada (2004).

After registering title to property, buyer has to make a mortgage contract with bank. In this way bank secures return of loan through mortgaging the purchased property. Mortgage contract is to be signed by parties, attested by notary and registered. After this, purchase of real property is completed.

#### **4. PURCHASE FINANCING**

The credit and especially mortgage systems in Belarus are underdeveloped and experience a lack of legal regulations for their efficient functioning. This is the reason why mortgage system is not widely utilised by the citizens. According to Kholopik<sup>12</sup>, only 10% of all loans granted by the Belarusian banks in 1999 are secured by property<sup>13</sup>. It partly depends on weak banking system and small liquidity of banks, partly on absence of simple and clear mortgage process, partly on the economical policy of the state.

At present not everyone who wishes to buy real property by borrowing money from bank in Belarus is entitled to do so. Only people who urgently need place to live are entitled to get loans. It might be explained by the fact that the Belarusian banks experience a lack of spare cash and the government, therefore, regulates loan distribution among the indigent citizens. Moreover, the banks are hindered by the Housing law from seizing collateral in a case of debtors' defaults. It keeps back development of a robust mortgage system and proves that Belarus still has economy strongly regulated by the state.

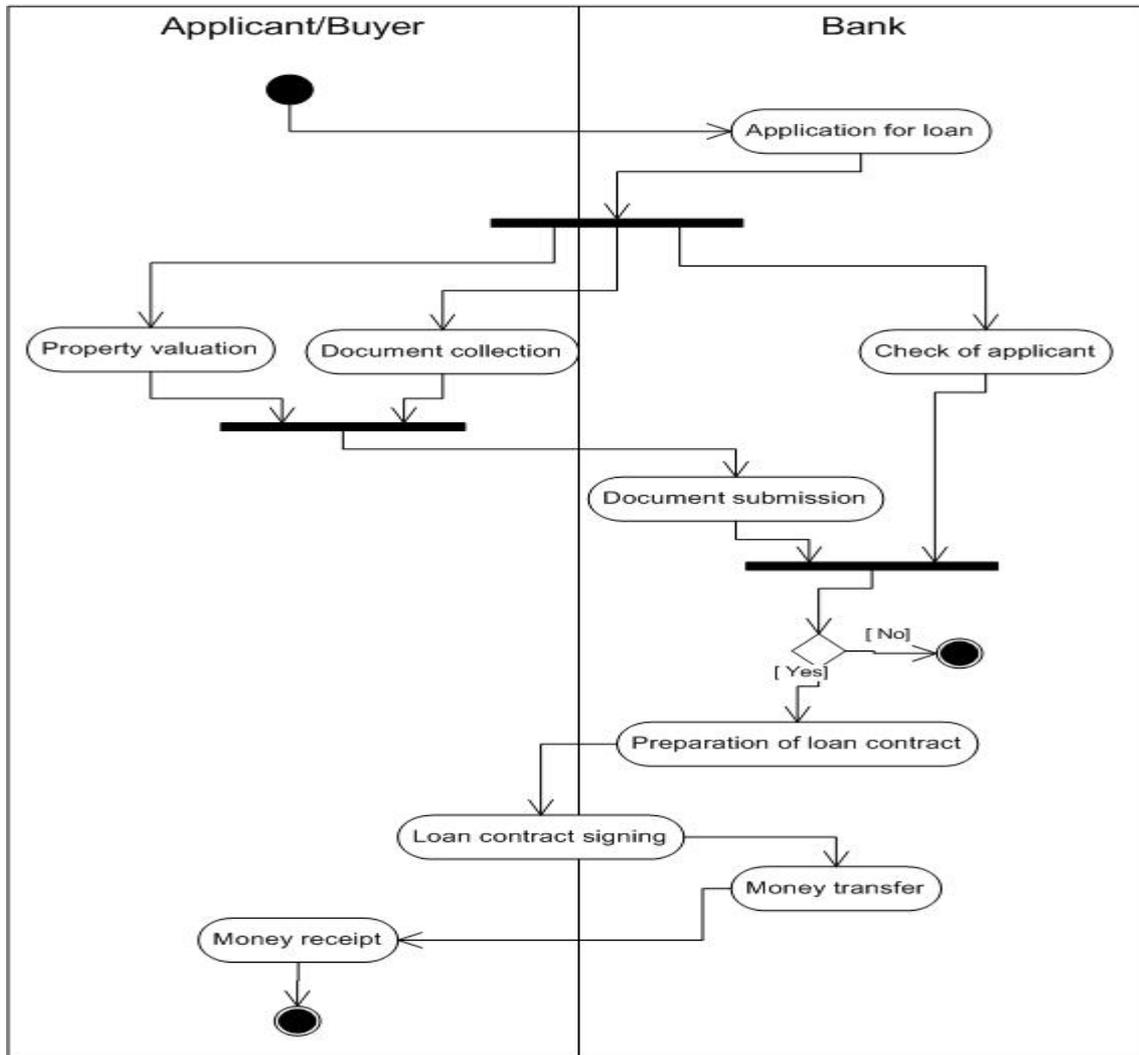
Purchase financing employed now in Belarus is presented in UML notion on Figure 2. It starts with application to a bank. When preliminary consent of bank for granting loan is received, applicant collects documents proving his/her income and income of other family's members. If it is not enough, up to 9 warrantors of financial obligation are required. Applicant is obliged to submit a property valuation report including assessed value of purchasing property to bank. It is necessary for loan calculation, which in turn cannot be higher than 75-90% (subject to banks) of assessed value. If purchase price and assessed value are different, bank proceeds from the lower of two figures (i.e. assessed value and purchase price). Loan is normally issued for a 10 year period with 9,5-12% of annual interest rate. Prior granting a loan, bank checks applicant (e.g., employment, income, criminal register, etc.). If bank is satisfied with the results, parties make loan contract. Next day after signing loan contract, bank transfers money to the applicant's bank account. Thus on this phase of purchase, return of loan is secured by the applicant's income.

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<sup>12</sup> Mr. Kholopik K. is the Head of the Commission on housing, construction, trade and privatisation of the House of Representatives of the Republic of Belarus.

<sup>13</sup> <http://www.news.agency.by/cgi-bin/archive.cgi?action=article&part=articles&num=96>

## BELARUS Getting a loan



**Figure 2** Getting a loan for financing of property purchase

## 5. EVALUATION

### 5.1 Transaction cost

Transaction cost can theoretically be assessed from three different perspectives, namely for the parties directly involved in purchase (i.e. buyer and seller), administration (i.e. service providers such as registration authority, notary, etc) and national economy as a whole (Frank 2004). This paper discusses only the cost born by the parties, since costs for administration and national economy are difficult to calculate due to inaccessibility of the statistical data.

Transaction cost is usually expressed either in monetary or time terms. Time in turn can also be transformed in monetary term but it is not matter of this investigation. In our case, transaction cost is expressed in days spent totally by seller and buyer to complete purchase. All calculations presented below are approximate and might not always reflect a particular case.

The methodology applied here is taken from the report “Doing Business in 2005” (World Bank 2004) that is in turn a forthcoming research project by Simeon Djankov, Facundo Martin and Caralee McLiesh. In contrast to “Doing Business”, just two indicators, namely number of activities (or procedures in “Doing Business) and time (calculated in days) are applied in this paper. To say more, assistance of real estate agent is not taken into calculation as it is an optional activity and might often be skipped by parties.

**Table 1** Purchase of real property with mortgage in Belarus: the mandatory activities

Name of activity	Time (days)
1. Collection the documents required for attestation of purchase contract by notary	~ 7 <sup>14</sup>
2. Property inspection and preparation of valuation report	~ 7
3. Notary’s attestation of the purchase contract between seller and buyer	1
4. Loan agreement between buyer and bank	~ 7
5. Application to the registration authority for registration of purchase contract and title to property	7
6. Mortgage agreement with bank	~ 1
7. Notary’s attestation of the mortgage contract between buyer and bank	1
8. Application to the registration authority for registration of mortgage contract	7
<b>Totally</b>	<b>~ 38</b>

All the listed activities are pointed out on Figure 1 by the respective numbers in accordance with their numbers in Table 1. Transaction cost is calculated under the conditions that seller possesses the State Act on land together with the cadastral plan of land plot in question as well as the registration certificate on building and, therefore, there is no need for property definition (otherwise it will prolong the duration of purchase and increase transaction cost for seller). The time of each activity is determined in accordance with existing legislative acts (if applicable) otherwise by the author’s assumptions (the figures with ~ symbol). For example, the time for registrations (both purchase and mortgage contracts) is clearly stated by the State registration Act (2002) and is not to exceed seven working days (in a case of work overload - up to 14 working days).

It has to be pointed out that the total calculated time (38 days) of the transaction is assessed for the ideal conditions of property purchase such as no queues, no delays at any institutions, public officials work effectively, etc. But the real figure might be higher depending on many diverse factors including human one. For example, the first activity, namely Collection the

<sup>14</sup> Figures with symbol ~ are derived from the author’s assumptions

documents required for notary's attestation may take longer time than it is stated in Table 1. It depends mainly on how active seller will be 'running' across authorities and collecting all the documents listed below:

- Certificate about absence of attachments
- Property valuation report
- Tax clearance certificate
- List of all persons living in the house
- Statements from spouse as well as from other adult family's members to permit property transfer

Discussion of purchase of real property in Belarus can be enriched by comparison with the same procedure in other European countries. For this purpose, the report "Doing Business in 2005" (World Bank 2004) is used. It provides a broad overview of property registration in 145 countries all over the world as of January 2004. The following indicators have been used in the report:

1. Number of procedures (i.e. steps)
2. Time (in calendar days)
3. Official costs (as a percentage of the property value)

Let's assume that more administrative procedures mean in general longer process and, therefore, more possibilities for the civil servants to claim bribes. Table 2 unites the data taken from "Doing Business in 2005" for selectively chosen European countries and the respective Corruption Perceptions Indexes (CPI) presented by the Transparency International<sup>15</sup>. The higher Corruption Perceptions Index (with max 10) means the lesser level of corruption.

**Table 2** Property registration and Corruption Perceptions Index in several European countries

Countries	Doing Business in 2005 <sup>16</sup>		Corruption Perceptions Index <sup>17</sup>
	Number of procedures	Time (days)	
1. Sweden	1	2	9,2
2. The Netherlands	4	5	8,7
3. Germany	4	41	8,2
4. Denmark	6	42	8,5
5. Croatia	5	956	3,5
<b>6. BELARUS</b>	<b>7</b>	<b>231</b>	<b>3,3</b>

It is now reasonable to ask why in one country purchase of real property can be registered within one-two days while in some other countries it needs up to three years (e.g. the extreme case of Croatia with 956 days). Large diversity among countries might partly be explained by differences in historical development, existing legal system and administrative structure but

<sup>15</sup> <http://www.transparency.org/index.html>

<sup>16</sup> <http://truu.worldbank.org/doingbusiness/>

<sup>17</sup> <http://www.transparency.org/cpi/2004/cpi2004.en.html#cpi2004>

definitely not all. It might also be due to unwillingness of bureaucracy to introduce changes, i.e. its 'resistance' to changes.

Negative correlation between the number of procedures and the Corruption Perceptions Index can in many cases be found. The reasoning is the fewer number of administrative procedures brings less ground for corruption. This is in general true, let us take an example of Sweden: one procedure and one of the highest PCI, on the contrary, Belarus 7 procedures and 3,3 PCI. But it is not always the case (see, for example, Denmark). It brings us in line with one of the findings of "Doing Business in 2005", namely that inefficient and burdensome administrative structure of the society expands the corruption grounds for bureaucracy who is unwilling to loose its power and unofficial extra income.

It is noteworthy that the countries in transition have higher level of corruption in comparison with Western European countries especially with the Nordic countries, which have distinctive legal traditions and situated at the top with CPI closer to 10.

Table 3 compares the results from "Doing Business in 2005" and the present study for Belarus.

**Table 3** Purchase of real property in Belarus

BELARUS	Doing Business in 2005	Present research
Number of procedures	7	8
Time (days)	231	38

To be consistent, it is to admit that there is the only distinction between the type of real property addressed in "Doing Business in 2005" and in the present paper: the former describes purchase and registration of real property for industrial use (i.e. non-residential) consisting of land and warehouse on it. It is fully owned by a domestic limited liability company and situated in a peri-urban area of the country's most populous city, whereas this paper describes purchase of property for residential purpose. Nevertheless, it is assumed that there are small insignificant differences in purchasing of both types of properties (at least in number of procedures/activities).

Having analysed Table 3, it is to conclude that the numbers of procedures presented by "Doing Business" and this paper are almost similar (i.e. 7 and 8), while the time assigned for these procedures quite differs. One reasonable explanation might be that time is a subjective/abstract concept and can be estimated differently depending on the initial assumptions and personal judgments of individuals.

In summary, the obstacles of property purchase are to be identified. It is seen from Figure 1 and Figure 2 that several activities of purchase are duplicated, namely registration of title for new owner that takes place first at registration authority and after that, endorsement of title by municipality and recording in municipality's book. Is it really needed?

Moreover, purchase financing in Belarus seems to be irrationally organised. In particular buyer is enforced to make two contracts with bank: one ordinary loan contract for paying to seller and another one - a mortgage contract - for securing return of loan. Mortgage contract must in turn be registered at registration authority. Such a structure does not facilitate property market as it puts heavier burden on stakeholders and increases transaction costs. This statement goes in line with one of the conclusions brought up by de Soto (2000) when he reveals the negative effects of heavy regulations and weak property rights. He argues that high transaction cost for parties hinders development of property market. Thus, the only way for governments de Soto sees in simplification of governmental regulations and getting titles to property. Simplification, simplification, and simplification of institutional arrangements related to property market ought to be the motto of the Belarusian government having growth of GDP as the ultimate goal.

## 6. CONCLUSIONS

One of the conclusions is that property purchase in Belarus is lengthy and cumbersome process demanding much energy, resources, and endurance from buyer and seller. Moreover, purchase is strictly regulated for the foreign legal entities and citizens. Therefore, it needs to be simplified, in the first place, in terms of mortgage, notary institution and registration.

During the Soviet period notaries had monopoly on attestation of all documents including purchase-sale contracts. At present, in line with development of the State registration Act (2002), registrars are also provided with legal power to attest these contracts. Thus, notaries are on the way to loose their monopoly on contract attestation that will, in turn, lower transaction costs for the parties.

One of the ways to improve the situation and increase efficiency of property market in Belarus is to simplify the governmental regulations and restrictions regarding property transfer, decrease the number of mandatory activities (e.g., final endorsement of the State Act on land at municipality). Property transfers are to be simple, easy and understandable for end-users and shall facilitate active functioning of property market.

Purchase financing through mortgaging is underdeveloped and the advantages of mortgaging are underutilised in Belarus. The banks prefer to secure loans by applicant's income not by property. The reason for this is high transaction costs for bank to seize property in a case of debtor's failure, especially when family with children lives on the mortgaged property (it is almost impossible). Thus, the banks are not interested in promoting development of mortgage system under the present conditions and governmental regulations.

Moreover, nowadays it is rather difficult for an ordinary citizen to get a loan to finance purchase (except those urgently need place to live). Thus, this is to say that the capital market is strongly regulated by the state and loan distribution is not market based. In general this leads to inefficient distribution of resources of the whole society and results in lower growth of national economy.

Governmental regulations prescribe some single purchasing activities but at the same time they do not restrict the time period for their implementations (except the State registration Act 2002). Therefore, it creates, thus, the room for bureaucratic delays and, therefore, corruption.

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## **BIOGRAPHICAL NOTES**

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