

30 April 2018

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Amendments to the Civil Code on liabilities of directors, contract invalidity and transfer of shares

Law on amendments to the Civil Code of Republic of Azerbaijan of 03 April 2018, extends fiduciary duties of directors, changes composition of audit committee of the companies and brings additional rights and duties for shareholders in transfer of shares. The amendments took effect on 23 April 2018.

The key features of the Law are:

Any authorized representatives of a company, as well as members of the management (board of directors and executive body) to be liable for damages to the company or its shareholder at the following cases (*Article 49.4 of the Civil Code*):

1. Payment of bonuses to the members of the management while company running in loss or paid bonuses are disproportional to the income of the company;
2. Sale or lease of property of company in significantly low terms and price from market conditions;
3. Making contracts with the people related to the company (people related to the company are defined under Article 49-1 of the Civil Code) violating laws and threatening interests of the company;
4. Procurement of goods and services significantly higher than real value;
5. Embezzlement or wasting property of the company for his, people related to the company or other people's benefit;
6. Making unjust contracts in relation to shareholders.

These above cases are also referred at Article 339.1 of the Civil Code as one of the grounds for invalidity of contract. The other grounds are making a contract by abuse of power, deception and coercion or under threat of intimidation etc.

The law on amendments determines mechanism of enforcement of the above cases. In case of any of the above happens or there is a reasonable doubt, holder of at least five percent of the shares of the company may claim to scrutinize documents related to those cases from representatives of the company, as well as members of the management. The claim of the shareholder should be performed and authorized copies of those documents should be provided within five working days (*Article 49.6 of the Civil Code*).

Members of management and shareholders cannot be members of audit committee, but members of board of directors can be members of audit committee (*Articles 91.4.3 and 107-12.3*).

Option of limited liability companies to limit in articles of association shareholder's right to sell shares to third parties was removed. On the other hand shareholders of limited liability companies are obliged to offer their shares to other shareholders when they want to sell shares to third parties (*Article 91.3 of the Civil Code*).

Establishment of new Intellectual Property Agency

On April 20, 2018, the President of the Republic of Azerbaijan signed a Decree on measures to improve governance in the field of protection of intellectual property rights, consumer market control, standardization and metrology.

According to the said Decree, following measures shall be taken:

- (i) The Intellectual Property Agency of the Republic of Azerbaijan (hereinafter - the Intellectual Property Agency) is to be established by way of reorganization through merger of the Copyright Agency of the Republic of Azerbaijan with the Patent and Trademarks Center;
- (ii) On the basis of the State Service for Antimonopoly Policy and Consumer Rights Protection under the Ministry of Economy of the Republic of Azerbaijan, the State Agency for the Control of Antimonopoly and Consumption Market of the Republic of Azerbaijan (hereinafter - the State Agency) is to be established as a central executive body;
- (iii) The State Committee for Standardization, Metrology and Patent of the Republic of Azerbaijan is to be abolished;
- (iv) The authority of the abolished Committee in conjunction with the technical regulation, standardization, metrology, conformity assessment, accreditation and quality management shall be passed to the State Agency and the authorities in respect to the protection of industrial properties are to be passed to the Intellectual Property Agency;
- (v) The powers of founders of public legal entities of "Azerbaijan Metrology Institute", "Azerbaijan Institute of Standardization" and "Azerbaijan Accreditation Center" are to be transferred to State Agency of the Republic of Azerbaijan.

In accordance with the said decree, within the period of the reorganization the "Copyright Agency of the Republic of Azerbaijan" and "the Patent and Trademarks Center" will continue their activities until the date of state registration of the newly established "Intellectual Property Agency".

Amendments to the Law on Bankruptcy and Insolvency

Law on amendments to the Law on Bankruptcy and Insolvency (the “Law”) was signed on 23 April 2018 and brings measures on voluntary arrangement about debtors.

Definition of voluntary arrangement under the law is changed from “debtor’s reorganization” to “recovery of debtor’s ability to meet his obligations”. Voluntary arrangement is an alternative to insolvency proceedings and is construed as assisting to debtor to meet his obligations for preventing liquidation of debtor by providing a financial aid by its owner, creditors and other people. Like the insolvency proceedings, the voluntary arrangement proceeding is approved by the Court.

Voluntary arrangement plan (the “Plan”), its definition and proceedings were included to the law under Article 41-1. Voluntary arrangement is carried out according to the Plan. Content of the Plan is determined by the Cabinet of Ministers. The Plan is adopted by the assembly of the debtors and approved by the Court according to the requirements of Article 9 of the Law.

Article 41-2 of the Law determines the following legal consequences of Court’s judgment on commencement of voluntary arrangement proceedings:

- (i) Shareholders of debtor and its management are prohibited to use, lease, sell or make any transaction about property of debtor;
- (ii) Enforcement of judgements of the Courts against debtor on claims of all creditors, shareholders as well as members of management of debtor are stayed and filing a suit against debtor by the said persons are not allowed;
- (iii) Claims of all creditors as well as debiting bank account for undisputed claims and claims to debtor’s property are not allowed.

BHM Legal Update is organized by themes about major legal processes which aim to alert businesses about significant laws, legislative changes and landmark court decisions. This material should not be construed as legal advice or legal opinion.

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