



Azerbaijani Legal Updates

New changes to director's duties and liabilities under the Civil Code of Azerbaijan

Under the recent amendments to the Civil Code, Azerbaijani parliament has introduced new provisions increasing liability of officers of the management bodies of local companies such as limited liability companies and joints stock companies before these legal entities and their shareholders.¹

Before the amendments, the Civil Code stipulated that persons acting on behalf of a legal entity and persons who are represented at the management bodies (supervisory board (board of directors) or executive body) of a legal entity (hereinafter the "Directors") shall (i) act in an honest, professional and reasonable manner, (ii) be loyal to the interests of a legal entity and its shareholders, (iii) place the interests of the legal entity over those of his/her own (iv) demonstrate prudence in the course of fulfillment of his/her duties for the benefit of the legal entity he/she is representing." Under the recent amendments, in addition to aforementioned requirements such persons are required to be fair and unbiased while making decisions.

¹ The Law on Amendments to the Civil Code dated 03 April 2018 (officially published on 25 April 2018).

The Code expressly states that in case of a breach of such duties, the Director should compensate the legal entity, at the demand of shareholders, for all damages caused to the legal entity. Recent amendments stipulate that any shareholder having at least a 5% participation interest in the charter capital of the legal entity is entitled to make such demand.

We note that until recent amendments the Azerbaijani law did not determine the scope of cases when the Directors could have been held liable for their actions. The recent amendments make such scope clear by envisaging that the Directors who do not fulfill or improperly perform their statutory duties are liable for damages caused to the legal entity or the shareholder in the following specific cases:

- (i) paying bonuses to the members of the governing bodies of a legal entity while the legal entity operates with losses or paying a disproportionate amount of bonuses which is incomparable with the legal entity's profit;
- (ii) the disposal or use of property of a legal entity with significantly lower prices and conditions than the market prices/conditions;
- (iii) entering into contracts with related parties by violating the law or jeopardizing the interests of the legal entity ;
- (iv) a purchase of goods (works, services) by the legal entity on the basis of contracts with significantly higher prices than their real value;
- (v) embezzlement or waste of assets of a legal entity for the purpose of misappropriation of tangible or intangible assets and rights thereto for himself, for related parties or for other persons;
- (vi) entering into agreements unfairly prejudicial to the interests of the company's shareholders.

According to the recent amendments, if any of the circumstances stated above occurs, the Director who causes damages to the legal entity may be dismissed from office by a decision of the general meeting. In addition, such Director may still be held liable for the damages caused to the legal entity. Moreover, the affected parties to the transactions concluded by such Director have a right to file a lawsuit in court to declare such transactions as null and void.

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