

ELECTRONIC REGISTRATION AVAILABLE TO FOREIGN FOUNDERS

Under the amendment to the Law on State Registration and State Register of Legal Entities, the notions of a *limited liability company (LLC) with foreign investment* and *electronic state registration of LLC with foreign investment* are introduced.

Foreign and stateless persons wishing to establish an LLC (presumably, without any local or foreign co-founders) must fill in online an application and e-sign it together with a customised charter generated by the system. Another document to file electronically is a scan of the document proving the address of the LLC. A confirmation of filing and the registration documents following completion of the e-registration are e-mailed to the foreign/stateless founder.

The amendment clarifies that any foreigner (as opposed to a foreigner with the right to reside in Azerbaijan permanently) can found the LLC.

The amendment is effective 18 October 2017 (although we understand its implementation is taking longer).

CRS AUTOMATIC EXCHANGE OF INFORMATION

[In our October 2016 update](#), we highlighted tax reforms for 2016, including implementation of the “common reporting standard” (CRS). Azerbaijan is now a signatory of the [Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information \(CRS MCAA\)](#) and the first exchange of information by Azerbaijan pursuant to it is due [by September 2018](#).

OF EXECUTION (ENFORCEMENT OF JUDGMENTS)

As you know, the most pressing issues of the recent years have been the currency devaluation that has taken place in the country and the debt crisis having emerged following the change of the US Dollar exchange rate. If, in the onset of the developments, most of the debate has been primarily between the banks and populace, subsequently, complaints, whether substantiated or not, of individuals in relation to compulsory execution measures of bailiffs (execution officers) of relevant court instances have built on top of the bank-individual confrontation. To be precise, the public that is unaware of the cases and amounts of payments to be legally made for compulsory execution measures is now dissatisfied with the relevant courts and execution bodies.

The currency devaluation in the country since February 2015 and the US Dollar exchange rate increase have resulted in an extreme rise in all court instances of the number of actions and claims by banks against individuals for debt collections. If, at the outset, dissatisfaction of individuals was caused by the banks' firm stance against them not allowing any reliefs for repayment, the situation now has, to a certain extent, changed.

The banks, having appreciated the efficiency of debt collection upon enforcement of court judgments that have taken legal effect, are demanding, following a compromise during enforcement of a judgment, monthly repayments of loans (debt) in smaller amounts. This mechanism, while prolonging a repayment period, is less than efficient as far as the collection, itself, is concerned. In this case, an individual obligor, having resolved a problem with the bank, is facing another challenge – an obligation to pay to the bailiffs seven per cent of the amount to be collected from him/her for the enforcement of a court judgment having taken legal effect.

Under the Law of the Republic of Azerbaijan, *On Execution*, a bailiff must resolve to commence the execution within three days of receipt of the document (writ) of execution. In the resolution, the bailiff designates a period of ten days at most from the execution start date for the obligor to voluntarily discharge claims included in the document of execution and so notifies the obligor. The notification provides for the compulsory, upon expiration of the term, execution of the said claims and withholding from the obligor of the execution charge and costs related to implementing the execution measures.

Therefore, should an individual obligor of the bank voluntarily execute the judgment in ten days from his/her official receipt of the resolution to start the execution, the execution charge of seven per cent of the amount due will not be applied. To the contrary, if the period of ten days is exceeded by even a day, an agreement over the term and manner of an individual obligor's repayment of debt would have no significance. Upon expiration of the term for voluntary discharge, at any rate, the individual must remit seven per cent of the total amount due to the execution officers' special fund.

For example, under a court judgment that has taken legal effect, an individual must pay to a bank USD10,000 of debt. In relation to this, the individual receives from the execution department a resolution to start execution proceedings and a notification for voluntary implementation of the judgment in ten days. Naturally, the individual obligor unable to make a one-off repayment starts negotiations with the bank over a manner of repayment, which may take more than ten days.

Further, assume that an individual has agreed with the bank a repayment schedule and this has taken him/her not ten, but fifteen days. However, the term given for a voluntary execution of the judgment will have expired and, regardless of the manner of discharge the individual and bank agreed upon, the obligation of the obligor to pay the execution charge in the amount of seven per cent of USD10,000 debt, *i.e.*, USD700, will have arisen.

The Law on Execution distinguishes between *execution charge* and *costs related to implementation of execution procedures*. In the example above, the charge for the execution of the court judgment is the execution charge (that is causing concerns of individual obligors).

Funds expendable for arranging for and implementation of the execution procedures are considered the costs in relation to implementation of execution procedures. Included in these costs are the funds payable for relocating, maintaining, and selling of an obligor's property, translators (interpreters), experts, postal transfer of withheld amount to a claimant, and other necessary execution procedures.

From the implementing practice, we see that many individual obligors and lawyers as well may be confusing *execution charge* with *costs in relation to implementation of execution procedures* and *vice versa*. This is so because execution officers themselves when demanding the seven per cent execution charge from an individual obligor reason it as a demand *for compulsory execution procedures*. In reality though and as per the example above, sending to an individual obligor of the resolution to start execution proceedings and notification to have the obligation discharged voluntarily is the only action included in the compulsory execution procedures implemented by an execution officer.

We believe there is a need to summarise the practice of implementing the *execution charge* and *costs in relation to implementation of execution procedures* provisions of the Law on Execution.

**PLEASE CONTACT US FOR ANY QUESTIONS AND FURTHER
INFORMATION AT:**

BM Morrison Partners
Tel: (994 12) 497 19 14; 497 19 15
Fax: (994 12) 497 19 13
E-mail: info@bmlawaz.com

©2017 BM Morrison Partners. All rights reserved.

* Information in our updates does not constitute legal or other professional advice.