

### **ANTIDUMPING LAW PROMULGATED**

Law No 261-VQ, dated 31 May 2016, of the Republic of Azerbaijan, *On Antidumping, Subsidies, and Countervailing Measures*, is promulgated on 15 July.

To protect economic interests of Azerbaijan, the Law establishes rules of implementing antidumping, subsidy, and countervailing measures against dumping as well as subsidised and dumped imports that damage or threaten to damage the local production. The Law comes as the first act in Azerbaijan that seeks specifically to protect local production from the unfair trade practice of dumping. The key authority in implementing the Law is the Cabinet of Ministers of the Republic of Azerbaijan while the Ministry of Economy is the reviewing authority.

The Law comes into effect in 90 days from the date of publication on 15 July.

### **DONATION AGREEMENTS (DEEDS)**

Lately, donation agreements have taken front places among civil claims filed with courts. More specifically, these are the claims on termination or invalidation of donation agreements.

People donating certain property or commodity as a gift later on, file claim with the relevant courts requesting the termination or invalidation of the donation agreement. Essentially, disputes arise in connection with gifting immovables.

When analysing the subject matter of these disputes, it becomes clear that the reason for the dispute to arise is the personal relationships between the donor and donee and the lack of awareness of the terms of donation agreements contemplated by laws.

Apparently, laws do not limit persons to a special category in order to make them eligible to enter into a donation agreement. This notwithstanding, in practice, it is allowed to conclude donation agreements only among close relatives (father, mother, brother, sister, grandfather, grandmother, and grandchild) in notaries.

The main reason for this is to avoid the cases of tax evasion and fraud. This measure, although, helps prevent the criminal actions mentioned above, however, cannot prevent an occurrence of violations of civil laws arising from contracts between close relatives.

By accepting a gift, the contractual relations among close relatives (family members) end, although personal relations continue. For the reasons mentioned above, donation agreements are allowed to be entered into only among family members and, in practice, donation agreements entered into between a parent and a child are the more frequent ones.

If to take a look at donation agreements entered into before notaries, they all look standard. In all of them, a commodity is donated to a donee unconditionally and the agreement is deemed concluded when the donee accepts the gift.

When taking a deeper look into donation agreements, it becomes clear that although individuals are explained Sections 666-674 of the Civil Code, they are not familiarized with the concept of the donation agreements well enough.

Individuals should know that they can give gifts not only unconditionally, but also subject a gift to certain conditions. Perhaps, due to unclear nature of donation agreements in legislation, for a long time, notaries used standard (unconditional gift) donation agreements.

Section 666.1 of the Civil Code describes a donation agreement as follows:

A donation agreement is an agreement signed in lifetime of the donor, based on which, the donor having transferred *gratis* part of his property enriches donee, at the same time this kind of donation is not conditioned on any reciprocal services on behalf of donee. The donation agreement is considered completed at the moment of acceptance of gift by the donee. If donation was not conditioned by an obligation, it is assumed that the gift is accepted.

At the same time, Sub-Section 670.1 of the Civil Code provides that donation can be subject to fulfilment of certain terms and obligations.

In the definition of donation, the terms “unconditional donation” in Sub-Section 666.1 as well as “subjecting donation to fulfilment of certain terms and conditions” contradict to one of the fundamental principles of law, *i.e.*, principle of legal certainty. This uncertainty was causing difficulties in court practice for protecting individuals’ rights.

Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan of 19 December 2012 on interpretation of Sub-Sections 666.1, 670.1, 670.3 and 673.1 of the Civil Code sheds some light on the definition, terms, and termination of donation agreements.

According to the decision, a donation agreement contemplated in Sub-Section 666.1 of the Civil Code is deemed concluded upon the donee’s acceptance of a gift and is a mutual agreement of parties. Pursuant to Sub-Section 670.1 of the Civil Code, donation may be subjected to terms and conditions, which do not result in benefits to the donor.

More specifically, the donor may subject the donee to the fulfilment of certain terms and conditions. Such terms and conditions should not, however, result in the donor’s enrichment.

Simultaneously, the decision of the Plenum explained the process of filing a suit against the donee in the event the donee fails to fulfil his/her obligations under the donation agreement.

Accordingly, individuals should be aware that not only can they donate gifts unconditionally, but also may subject such donation to the fulfilment of certain terms and conditions.

Therefore, despite the fact that, in Azerbaijan, donations can be between and among only the next of kin (family members), when individuals think of donating gifts, they should seek qualified legal aid.

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