

RELATED PARTY TRANSACTIONS OF BANKS AND INSURERS

In following the suit of regulating related party transactions, the legislature passed new laws dated 6 May 2016 amending the Law on Banks and Law on Insuring (with effect from 5 June 2016 and 4 June 2016, respectively) to add further details to the regulation of those.

Unlike other companies in Azerbaijan, banks and insurance companies are required to get all their related party transactions approved by higher bodies while the five per cent threshold is used to determine whether the approval can come from the board of directors or, in insurance companies, also its executive body (unless the transaction requires a shareholder approval by reason of exceeding 25 per cent of the net assets' value of the bank or insurance company or for other reasons) or it should be from the shareholders general meeting (because of its value constituting five or more per cent of the bank's or insurer's assets).

Related persons for the banks are substantially the same as listed in the Civil Code (direct and indirect shareholders and affiliates, members of the governing bodies, and their relatives), save that, unlike other entities, they include also chief accountants and internal auditors of a bank and their relatives.

As mentioned, a bank or insurance company must have its related party transactions approved by either its board of directors (in insurance companies, the approval can be from an executive body) if a transaction value does not reach five per cent of its assets and by a simple vote of its shareholders' general meeting should the threshold be exceeded. If the transaction is with a shareholder or a director, such shareholder or director may not participate in a decision making on the issue. Another condition for a bank to enter a five-or-more-per cent related party transaction is to get an independent auditor's opinion (such is not required, however, for transactions with a value lower than the value of five per cent of the bank's assets).

For a failure to follow the rules of making related party transactions, such as arranging for an independent audit opinion and adequate corporate approval, banks are brought to administrative liability ranging from AZN15,000 to AZN20,000 while their officers are penalised in an amount from AZN2,000 to AZN2,500.

The same liability would be imposed [on a bank] for a failure by its administrator qualifying as *a related party* to disclose its/his status and background of its/his interest in the concerned transaction in the manner provided by the Civil Code, *i.e.* to the board of directors or (where a director is involved as a related party) shareholders' general meeting of a bank to act as a party to such transaction.

The liability for insurance companies is softer as the penalty ranges from AZN1,000 to AZN1,500 on an officer and from AZN10,000 to AZN15,000 on a company.

The developments have not, however, eased the original restrictions generally prohibiting making soft loans and loans to related persons which would make the bank exceed ten per cent (or three per cent when the related person is an individual) of its total capital per a loan to a related person or 20 per cent from its total capital for an aggregate of loans to its related persons. Banks would have also to observe other applicable prudential requirements for a related person transaction.

The insurance companies likewise remain under the original restrictions requiring them to transact with related persons on an arms' length basis and, with respect to a defined scope of deals (procuring insurance or reinsurance, making borrowings, *etc.*) and observing a limit on aggregate of such deals set at ten per cent of the company's assets.

STRENGTHENING LIABILITY FOR ECONOMIC VIOLATIONS

Although thresholds triggering criminal liability for certain economic violations have been increased (the higher threshold of AZN7,000 being replaced by AZN100,000) with effect from 1 June 2016, the financial sanctions for those are now more stringent.

For unlawful entrepreneurship, including a failure to obtain a licence where necessary or undertake state (tax) registration causing a damage or earning a revenue in amount of AZN20,000 and more, a penalty in the amount from two to five fold of such damage or revenues would be imposed as a part of criminal liability.

The same financial sanctions would apply for a borrowing made by providing misleading information about the borrower's financial or business activity and for most other economic crimes.

Administrative liability for certain violations concerning transactions with securities, disclosure of commercial or bank secrets, use of trademarks, and false bankruptcy have also been increased from certain fixed amounts (such as AZN300 or AZN2,000) to amounts expressed as two to four fold of damage caused by, or revenue derived from such actions.

Meanwhile, those liable for unlawful or false entrepreneurship or evasion from tax or customs duties committed for the first time would be released from the administrative liability effective 1 June 2016 (with obviously a retroactive effect) subject to paying the damages in full or transferring all revenues earned by such actions to the state budget.

FURTHER BENEFITS FOR INDUSTRIAL PARKS

By recent amendments, the residents of industrial parks having the relevant evidence in hands were exempted from the customs duties and value added tax in relation to all their imports (as opposed to previous exemptions applicable to certain imports (*e.g.*, technologies) for a five year period with effect from 1 May 2016.

Starting the same date, any supplies by contractors and subcontractors directly engaged in activities in industrial parks set up by a decision of an authorised agency would be subject to the value added tax at "0" per cent for five years.

Foreigners engaged by residents and their immediate contractors and subcontractors in activities in industrial parks are excluded from persons covered by the mandatory state social insurance for the term of five years starting also 1 May 2016.

EXPANSION OF WORK PERMIT EXEMPTION

By Law No 223-VQD, dated 6 May 2016, and the supporting Presidential Decree, the list of those employees, in relation to whom a work permit need not be obtained, has been expanded to include non-Azerbaijani (i) CEOs and deputy CEOs of local entities where at least one founder is foreign as well as (ii) specialists engaged in shipbuilding employed by residents and contractors of the Qaradag Industrial Park.

**PLEASE CONTACT US FOR ANY QUESTIONS AND FURTHER
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