

AMENDMENTS TO CIVIL CODE

In June 2015, amendments were introduced to the Civil Code of the Republic of Azerbaijan, which are related to the transactions conducted between related parties. The said amendment will play significant role in corporate governance taking into account that quite often related persons conduct transactions with each other.

The amendments can be divided into two important parts. The first part provides for the description and clarification of “related parties/persons” in relation to a legal entity, while the second part deals with the types of transaction conducted between related persons and limitations imposed in connection thereto.

Related Persons

The following are considered “related persons” in relation to a legal entity:

- 1 Heads and members of management board (supervisory board) or executive body of the entity
- 2 Heads of branches, representative offices, departments, and the like
- 3 Relatives (spouses), including parents and grandparents of a spouse, children, adopted children and siblings of the persons mentioned in 1 and 2 above
- 4 Any person owning at least ten per cent share in the entity
- 5 Entities, where persons mentioned in 1, 2 and 4 above participate directly or indirectly
- 6 Legal person owning at least ten per cent share of an entity
- 7 Any person owning at least 20 per cent share in legal entities mentioned in 4 and 6 above
- 8 Heads of management board (supervisory board) or executive body of legal entities mentioned in 4 and 6 above

Transaction Limitations

The amendments also introduce certain requirements that must be complied with, depending on the transaction value.

If the value of a transaction between related persons is equal to or more than five per cent of a legal entity’s assets, such transaction can be executed only pursuant to an independent auditor’s report and resolution of the general meeting of a legal entity passed by a simple majority of the votes. Related person having interest in the transaction cannot participate in the voting.

The main issue which is unclear under the above amendments is an “independent auditor’s report” as the amendments do not provide what issues such report should cover. The instructions were given by the President of the Republic to the Cabinet of Ministers of the Republic of Azerbaijan as well as relevant executive bodies to ensure that the relevant legal acts are brought in line with the newly introduced changes within three months of the amendments.

Until the aforesaid measures are executed and relevant legal acts are brought in line with the newly introduced amendments, it is unlikely that legal entities will not be able to execute transactions with related persons if the value of the transaction is equal to or more than five per cent of their assets.

The requirements applicable to the transaction with a total value less than five per cent of a legal entity's assets are not as restricted and such transactions are approved by the general meeting, management board (supervisory board) or executive body pursuant to the entity's charter. Related person having interest in the transaction cannot participate in the voting.

When transactions are conducted in breach of the above provisions, the persons in charge will be liable for damages caused to the legal entity. If another party is aware that the transaction is conducted in breach of the above provisions, the legal entity or any of its participants can challenge such transaction.

**PLEASE CONTACT US FOR ANY QUESTIONS AND FURTHER
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