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Major Kazakhstan Legislation Changes for 2017

The Law on Amendments Intended to Improve Business Conditions^[1] (the “Business Improvement Law”) came into effect on 12 March 2017, except certain provisions.

The purpose of the Business Improvement Law is to further improve the investment climate in line with the general policy of the country to support local entrepreneurs and foreign investors.

The Business Improvement Law amends 7 codes and 38 laws of the Republic of Kazakhstan.

Legal Division of Invalid Transactions into Voidable and Void

One of the main changes introduced by the Business Improvement Law is the division of invalid transactions into voidable and void (Article 157 of the Civil Code^[2]). Before, such division existed only in legal doctrine and not in the legislation. The difference between voidable and void transactions is that, in order to be held invalid, voidable transaction shall be challenged in court, whereas void transaction is invalid ab initio by the virtue of law and without any court decision.

The change is intended to decrease the number of disputes in relation to void transaction (since it will now be obvious to the parties that the transaction is void/invalid ab initio by the virtue of law and that there is no sense in challenging it in the court). However, if one of the parties disagrees that the transaction is void, it can still apply to the court (though the perspective of such cases would be low).

The Business Improvement Law clarified that void transactions include, inter alia, transactions that have not been notarised/concluded in written form where such notarisation/written form was required by law (Article 153.2, 154.1 of the Civil Code).

Decrease of Amount of Penalties by Court

Previously, a Kazakh court at its own discretion could decrease the amount of penalties indicated in the contract or requested by the party. Following adoption of the Business Improvement Law, such decrease is possible only upon relevant request of a debtor (Article 297 of the Civil Code).

Simplification of Requirements Applicable to Pledge Agreements

Article 307 of the Civil Code establishes mandatory provisions of a pledge agreement. Absence of such provisions in a pledge agreement makes it void.

The Business Improvement Law simplified such mandatory provisions. Firstly, value of the pledged property shall now be indicated only in relation to the pledge of immovable property (before, it was mandatory for the pledges of both immovable and movable property). Secondly, the Business Improvement Law abolished the mandatory requirement to indicate the value of pledged property in 2 currencies – KZT and currency of the secured obligation (Article 307 of the Civil Code).

These amendments are intended to remove unnecessary requirements and to make pledging property easier. For example, the previously mandatorily required value of pledged movable property did not make a lot of sense since it could be established as any figure at discretion of the parties and was not useful for any purpose.

Amendment of Rules Applicable to Pledge of Goods in Circulation

Previously, the agreement for pledge of goods in circulation had to mandatorily provide for the minimal value of pledged goods (i.e. the total value of the pledged goods in circulation could not be less than this minimum at all times). Now, such minimal value of the pledged goods can be established by parties at their discretion (Article 327 of the Civil Code).

Obligation of Pledgee to Terminate Pledge of Movable Property in 1 Day

The Business Improvement Law introduced the requirement for a pledgee under movable pledge agreement to file the application for termination of the pledge to the relevant registration body within 1 business day upon performance of the secured obligations (Article 10 of the Law on Registration of Pledges of Movable Property[3]). There is no similar obligation for a pledgee under pledge of immovable property.

This novelty seems to create practical difficulties, especially for foreign pledgees who might not be able to deliver the application from abroad within 1 day upon the moment of the secured obligations performance.

Obligation of Individual Entrepreneur to Conclude Public Agreements

A public agreement is an agreement stipulating the obligations of an entrepreneur to sell goods, carry out works or render services which such an entrepreneur shall provide for in relation to any potential customer due to the character of its business activity (e.g. transport services, electricity etc). As a general rule, the conditions of a public agreement shall be equal to all customers and an entrepreneur cannot prefer one customer over another in the conclusion of public agreements.

Previously, the above obligation applied to commercial legal entities only, now it also applies to individual entrepreneurs (Article 387 of the Civil Code).

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[1] Law of the Republic of Kazakhstan dated 27 February 2017 No. 49-VI “On Introduction of Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Issues of Improvement of Civil, Banking Legislation and Improvement of Conditions for Entrepreneurial Activity”

[2] Civil Code (General Part) of the Republic of Kazakhstan dated 27 December 1994

[3] The Law of the Republic of Kazakhstan dated 30 June 1998 No. 254-I “On Registration of Movable Property Pledge”

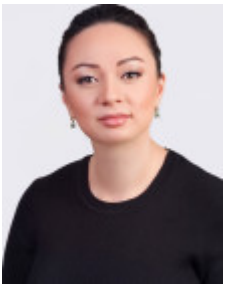
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