

Disposition features of property with the participation of legal entities

Notaries have great roles in regulating civil law relations and civil turnover in our modern and constantly renewed society. The duties of notaries include to explain rights and liabilities of civil law parties, help these rights to be carried out and be protected, warn the parties about the notarial results in order to prevent the harm caused by the legal ignorance.

Notaries carry out the notarial acts determined in Article 17 of the “Notary Law”, as well as they notarize agreements on disposition of property.

According to Article 144.1 of the Civil Code, agreements as to disposition of objects entered in state registry of real estate shall be certified by a notary.

Notarization of agreements prevents the occurrence of future civil law disputes.

The agreements on disposition of objects of property in civil turnover, including real estate purchase and sale agreement, gift agreement, property exchange agreement, rent agreement, mortgage agreement, tenancy agreement, lease agreement and other agreements are the most important parts of notarial acts in the country.

Agreements on disposition of property with the participation of legal entities are also the most significant ones.

According to paragraph 43.1 of the Civil Code of the Republic of Azerbaijan, a legal entity is an officially registered and privately established organization, that owns its own property, bears liability for its obligations with the property, has rights to obtain property and personal non-property rights and implement these rights, bears liabilities, acts as a plaintiff or defendant at courts. A legal entity has its own balance sheet.

One of the necessary features of a legal entity is its state registration. Legal ability of a legal entity appears from the moment of its state registration and it is liquidated from the moment of its termination.

A legal entity may be an organization which pursues to take profit as its main purpose (commercial legal entity) or an organization which does not pursue to take profit as its main purpose and does not share profit among the parties (non-commercial legal entity), as well as organizations engaged in activities of nationwide and (or) public importance (public legal entity).

A legal entity is established by one or several individuals and acts in accordance with its officially registered charter after certain certification. Bodies of legal entity act in accordance with the legislation and its charter.

Notaries verify legal abilities of legal entities participating in transaction. When verifying legal abilities of legal entities, notaries get informed about the charter or regulations of the legal entities and also clarify whether they comply with the rights granted to legal entities by its charter or regulations.

Notaries shall not require a power of attorney if the directors of a legal entity or its branches and representative offices have the right to conclude an agreement in accordance with the state registry deed of legal entities, the charter or regulations. In this case, only the registration of legal entities in the state registry is checked. If the legal entity is governed by an elected collegial body, a decision on the election of officials and the division of responsibilities between them is required.

Now it is possible for notaries to obtain information on State Registry of Legal Entities by entering identification numbers of a taxpayer or the name of legal entity in the section "Information on taxpayers" of the "Electronic notary" automated information system. When performing relevant notarial acts, the information contained in the information system shall be printed and attached to the notarial file. With the help of this, the documents submitted by the legal entity can be identified.

In addition, it is checked whether the requirements of Article 9 of the Law of the Republic of Azerbaijan "On state registration and state register of legal entities" are followed, for example, amendments in the constituent documents and subsequent amendments in the registered facts are registered.

When approving agreements on disposition of property, a notary shall require a deed of state registration of property rights, and in the case of unfinished real estate, a certificate of pre-registration of property rights on the building and attach the originals of these documents to the property alienation agreement. In case of disposition of property on the basis of the state registry deed of real estate posted on the "e-government" portal, the deed is obtained by a notary from the state register of real estate in real time in accordance with the "Notary Law" of the Republic of Azerbaijan. The documents confirming real estate rights, description of real estate on the basis of certificates and registration documents, certificate confirming property rights registered in state registry and certificate confirming encumbrance are submitted to a notary by the owner (legal entity) or the representative.

In case of disposition of property belonging to legal entity, unless otherwise provided by the charter, a notary requires the decision written by parties (founders,

shareholders, stockholders, members), higher authority – General Meeting, Board of Directors (Supervisory Board) of the legal entity, but if there is one party (founder, stockholder), a notary requires the order (decision) written by one person. Price and alienation method of legal entity is indicated on the decision.

In case of disposition of property of non-commercial organization, it shall be indicated that the obtained amount will be used for the purposes identified by the charter of the non-commercial organization.

According to Article 99.3 of the Civil Code of the Republic of Azerbaijan, a transaction of more than twenty-five percent of the value of the net assets of an open joint-stock company is a transaction of special significance. The decision on conclusion of the transaction of special significance is made at the General Meeting of stockholders of the joint-stock company and the information on it is revealed.

To ensure the validity and completeness of the legal execution of agreements on disposition of property, the money that parties have to pay to each other should be transferred through a deposit account opened by a notary in a bank account. This bank account is not a notary's current account, but a special deposit account not intended for other notarial transactions, but for the formal and non-cash transfer of amounts to be paid to each other under the contract. Conducting transactions through a notary's deposit account prevents future disputes and ensures transparency.

When an agreement on disposition of property of a legal entity is executed, the funds deposited in the notary's deposit account opened in the bank shall be paid to the account provided by the legal entity on the basis of the notary's payment order.

When disposing of state-owned property, the consent of the Real Estate Service under the Ministry of Economy, and when disposing of municipal property, the decision of the body determined by the charter of the relevant municipality must be submitted to a notary. Also, when disposing of the property of a mortgaged legal entity, the consent of the mortgagee and the conditions specified in the agreement must be complied with.

In addition, when disposing of the property of a legal entity, a notary must comply with the requirements of the Law of the Republic of Azerbaijan "On Struggle against Money Laundering and Terrorist Financing".

Legal entities shall not be subject to the simplified tax provided for in Article 218 of the Tax Code of the Republic of Azerbaijan during the provision (alienation) of residential and non-residential areas owned by legal entities.

It is a fact that compliance with the requirements listed in the notarization of real estate transactions with the participation of legal entities is important in terms of protecting the property rights of legal entities and their founders (participants) identified in the Constitution of the Republic of Azerbaijan.

Notarization of real estate agreements belonging to legal entities ensures stable and indisputable legal regulation of civil turnover and more reliable protection of property rights.

Notarial regulation and its current improved mechanism have made it easier and more professional to document real estate transactions of legal entities, and this process continues to be effective.

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