

Legal updates:

In this issue, we would like to bring to your attention a brief overview of the recent amendments to the legislation concerning the following:

- Amendments to the Criminal Code;
- Commodity nomenclature of foreign economic activity of Azerbaijan
- Living wage minimum for 2018;
- State support to entrepreneurs for expansion of access to the financial resources;
- Accession to the Vienna Convention on the Law of Treaties.

⇒ Amendments to the Criminal Code

The Law on Amendments to the Criminal Code was published on 9 November 2017 (the “Amendments”).

To start with, it should be noted that the Amendments establish a new penalty - restriction of liberty under which a sentenced person not fully isolated from society is kept under control at his/her place of residence. Such control is exercised by prohibition to leave a sentenced person's place of residence or certain area completely or at some designated time of the day. The Amendments determine obligations of a person sentenced to restriction of liberty (such as carrying electronic means of control), the term of restriction of liberty (from 6 months to 5 years), the list of persons who cannot be sentenced to restriction of liberty (e.g. foreigners and stateless persons).

In accordance with the above, sanctions for a number of crimes have been revised. As such, restriction of liberty has been envisaged as one of the alternative penalties *inter alia* for the following crimes:

- Illegal entrepreneurship;
- False entrepreneurship;
- Illegal use of trademarks;
- Deceit of consumers or manufacture and selling of lower-quality production;
- Deliberate bankruptcy.

It should be noted that in a number of the above-mentioned crimes restriction of liberty has substituted corrective works or other penalties.

The Amendments also establish a new concept of “especially large amount” of damage caused or income gained as a result of violation. For instance, large amount of damage caused or income gained as a result of evasion from customs duties, taxes and state social insurance contributions will now vary from AZN 100,000 to AZN 500,000 while the amount of damage caused or income gained as a result of violation exceeding AZN 500,000 should be considered “especially large amount” and entail harsher penalty.



The article concerning release from criminal liability for committing economic crimes has been adopted. In contrast to previous provisions, application of the mentioned release *is not limited* to crimes committed for the first time. Thus, from now on the only condition for release from criminal liability will be:

- payment of the damage or income gained as a result of a crime in full (e.g. for evasion from customs duties, taxes and state social insurance contributions); or
- payment of the damage or income gained as a result of a crime in full *and additional amount equal to the said damage or income* for particular crimes (e.g. for evasion from payment of customs duties committed repeatedly or resulting in causing damage or gaining income in especially large amount).

Among others it is worth to mention that under the Amendments, an employer may be released from criminal liability for engaging employees to work without effective employment agreement if employer duly concludes employment agreement with the engaged employees and fully pays required taxes and state social insurance contributions that have been evaded as a result of the mentioned crime. However, such release from criminal liability can be applied only once. By way of background information, it is worth to remind that criminal liability for engaging employees to work without effective employment agreement is applicable when the number of employees equals to or exceeds ten persons.

As for the effective date of the Amendments, it should be noted that amendments concerning application of restriction of liberty shall become effective once the corresponding amendments regarding restriction of liberty and application of the electronic means of control are enacted to the Criminal Penalties Execution Code. In the meantime, other mentioned amendments came into effect on 1 December 2017.

⇒ **Commodity nomenclature of foreign economic activity of Azerbaijan, rates of import customs duties and rates of export customs duties**

On 17 November 2017 the Cabinet of Ministers issued the Decree approving "Commodity nomenclature of foreign economic activity of Azerbaijan, rates of import and export customs duties" (the "Decree") for the following purposes:

- increasing efficiency of foreign economic activity by improving the customs tariffs mechanism;
- producing competitive goods;
- protecting domestic market;
- strengthening state support for sustainable development of non-oil sector;
- simplifying the customs duties system;
- bringing the codes of commodity nomenclature of foreign economic activity in line with the new version of the International Harmonized System.

Previously, rates were envisaged by the "Rates of customs duties on goods imported to Azerbaijan" and the "List of goods subject to export

customs duty and rates of export customs duties". Accordingly, the above two documents were revoked on the basis of the Decree.

⇒ **Living wage minimum for 2018**

According to the Law "On living wage for 2018" (in this section, the "Law"), the minimum living wage will be determined for main social-demographic groups as follows:

- AZN 173 countrywide average;
- AZN 183 for working-age population;
- AZN 144 for pensioners;
- AZN 154 for children.

The Law will come into force on 1 January 2018.

Please note that this amendment will affect calculation of personal income tax. Thus, individuals whose monthly income gained at the principal place of work is less than AZN 2500 are exempt from personal income tax in the amount of living wage minimum within country, which is AZN 173. Meanwhile, individuals, whose annual income is less than AZN 30000 are exempt from personal income tax in the amount of 12 living minimums within country, *i.e.* AZN 2076.

⇒ **State support to entrepreneurs for expansion of access to the financial resources**

Please note that based on the Presidential Decree on "Certain measures with regard to state support to entrepreneurs for expansion of access to the financial resources" dated 15 September 2017 Credit Guarantee Fund of the Republic of Azerbaijan (the "Fund") has been established. The main purposes of the Fund are to expand access of entrepreneurs to the financial resources and to stimulate the entrepreneurship activity, as well as to develop the credit system based on risk allocation in financial sphere. Meanwhile, it should be noted that the Fund guarantees the loans received by entrepreneurs from authorized banks in AZN.

Please note that for the purposes of regulating and ensuring the activity of the Fund, the President signed the Decree on ensuring of activity of the Fund on 29 November 2017 approving *inter alia* the following:

- ***Charter of the Fund;***
- ***Rule on provision of guarantee on loans received by entrepreneurs in AZN regulating requirements on provision of guarantee by the Fund, respective application procedure, guarantee payment conditions, as well as other issues related to guarantee;***
- ***Rule on application of credit rating system and other risk management tools within the Fund envisaging rules on determination***



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of credit rating system and other risk management tools for the purposes of reducing the risks in Fund's activities;

- Rule on provision of subsidies for interest rates on loans received by entrepreneurs in AZN stipulating grounds for provision of subsidies, respective application procedure, payment of subsidies. Please note that based on the Decree subsidies are provided for the interest accrued on loans received by entrepreneurs in AZN during 1 January - 31 December 2018.

At the high level, the following are the main requirements for the envisaged guarantee:

- Entrepreneurship should be carried out in Azerbaijan;
- Entrepreneur (resident legal entity or individual) should be engaged in non-oil sector;
- The loan should be taken for financing entrepreneurship needs;
- Entrepreneur should request a loan at the authorized bank.

Each particular loan falling under the above-mentioned criteria should meet the following requirements:

- The loan should not be less than AZN 30,000;
- Aggregate amount of the guaranteed loans of the borrower (or the group of related borrowers) should not exceed AZN 3,000,000 in all of the authorized banks;
- Loan maturity should not exceed 7 years (2 years if loan is taken for financing of working capital);
- Line of credit period should not exceed 12 months;
- Grace period should not exceed 2 years.

⇒ **Accession to the Vienna Convention on the Law of Treaties**

Please note that the Law on Accession to the Vienna Convention on the Law of Treaties ("**Convention**") dated 23 May 1966 (in this section, the "**Law**") was published on 22 November 2017. For your information, the Convention regulates international treaties concluded between states in written form and governed by international law. As such, the Convention does not apply to international agreements concluded between states and other subjects of international law or between such other subjects of international law (e.g. business agreements), or to international agreements not in written form.

Furthermore, it should be noted that based on the Presidential Order on application of the Law dated 21 November 2017, preparation of draft law on "International Treaties" considering the provisions of the Convention was assigned to the Cabinet of Ministers.

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