

# Client Alert on Secured Transactions Law in Azerbaijan

July 12, 2017

**In late May 2017 the President of the Republic of Azerbaijan signed the new Law on Secured Transactions with Movable Property. The law was prepared based on the UNCITRAL Model Law on Secured Transactions.**

We summarize below the major aspects of the new law.

## Scope of the Law. Functional Approach

The new law applies to any existing or future movable property, and related rights and claims, except for movable property that is registered in an official registry (e.g., vehicles, tractors, etc.) and securities that are subject to state registration. A security interest created in relation to the movable property under the new law will apply to fixtures, proceeds (whether in cash or in kind), any compensation received by the security provider from the forced sale, requisition or nationalization of the collateral, as well as to any insurance proceeds in relation to the collateral.

The new law adopts the so-called Functional Approach developed by UNCITRAL, i.e., it relies on a concept of "security interest" that includes all types of rights in movable property (except for movable property that is registered in an official registry and securities that are subject to state registration) created by agreement to secure the payment or other performance of an obligation, regardless of the form of the transaction or the terminology used by the parties, as well as on a public registry that provides notice of a security right to third parties. As such, the new law applies to usufructs, secured transactions, retention-of-title sales, landlord's, tenant's, warehouse owner's liens, leasing of certain movable property, right of retention, factoring, etc.

## Types of Security Interest

There are two types of security interest provided for in the new law – the state and municipality security interest (hereinafter, state security interest) and the private security interest.

A State Security Interest is created by operation of various provisions of the Tax Code, the Customs Code, the Law on Social Security, the Code of Administrative Procedure, the Code of Civil Procedure, the Code of Criminal Procedure, and the Law on Enforcement. A state security interest must be publicized in accordance with the law.

A Private Security Interest is created by entering into a contract or by operation of certain provisions of the Civil Code listed in the new law. Publicity in relation to a private security interest is optional, though publicity will affect the priority ranking of a particular private security interest.

## Publicity

The new law provides for three ways of publicizing the security interest:

- i. registering the security interest with the registry;

- ii. acquiring actual possession over the collateral;
- iii. exercising control over the collateral.

A security interest holder may apply one or more publicity methods listed above or may change the publicity method any time during the validity period of the security interest. The priority ranking will not change, so long as the security interest has not lapsed.

## Priority

The priority rules in relation to collateral are as follows:

- i. claims of a security interest holder that has disclosed its interest using one of the methods described above;
- ii. claims of a security interest holder that did not disclosed its interest using one of the methods described above;
- iii. all other claims.

The priority ranking of private security interest holders may be changed based on agreement of the parties. Notwithstanding anything stated in the law, claims of security interest holders in relation cash in a bank account will be discharge in the order prescribed in the Civil Code.

Where there are several security interest holders that have disclosed their interests in relation to the same collateral, the general rule in priority ranking is “first in time, first in right”. There are several exceptions to this rule listed in the new law, including purchase money (acquisition finance), proceeds, purchase in the ordinary course of business, rules for the right of retention, fixtures, accessions, and commingled goods.

## Enforcement

Depending on the type of collateral or the methods of publicizing, there are several ways set forth in the new law to enforce a security interest. For instance, among other methods, where collateral is:

- i. cash (receivables), the security interest holder may demand the payment of cash (receivables) to it;
- ii. in the possession of the security provider, the security interest holder may foreclose on the collateral (subject to an agreement with the security provider) or may apply to the court or a notary to demand foreclosure;
- iii. in possession of a security interest holder, the latter may foreclose upon and sell the collateral.

The security interest holder must satisfy the claims of all security interest holders having a higher priority ranking.

## Registry

The new registry will be created for the purposes of implementation of the new law to be operated by the Financial Markets Supervisory Authority (FIMSA).

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