The Law of 27 February 2017

The law of 27 February 2017 introduced very important amendments to the civil legislation, which entail significant consequences, both for future transactions and for transactions made in the past. Due to the fact that the Law of 27 February 2017 contains amendments to a wide range of legislative acts that may affect the activities of economic entities, we strongly recommend that you carefully study this Law.

Among other things, the Law of 27 February 2017 introduces significant changes in the regulation of the institution of invalidity of transactions in civil legislation. It should be noted that even before the adoption of the Law of 27 February 2017, the Supreme Court of the Republic of Kazakhstan in its Regulatory Resolution of 7 July 2016 concluded that the Civil Code of the Republic of Kazakhstan had already provided for the division of invalid transactions into voidable and void transactions. However, the RK Supreme Court had not provided clear criteria for distinguishing between voidable and void transactions; such criteria were provided for by the Law of 27 February 2017.

Voidable and void transactions

The novelties relate, first of all, to the division of the concept of “invalid transaction” into two categories — voidable and void transactions. The term “voidable transaction” is defined in Article 157.1 of the RK Civil Code as “an invalid transaction on the grounds established by the RK Civil Code or other legislative acts, by virtue of its recognition as such by the court.” The term “void transaction” is defined in Article 157.1 of the RK Civil Code as “an invalid transaction on the grounds expressly provided for by legislative acts, regardless of such recognition.” In other words, a voidable transaction is recognized as invalid by virtue of a court decision, and no court decision is required to invalidate a void transaction; it is invalid by virtue of its recognition as such by law.

Examples of void transactions

Please see below some significant, in our opinion, cases of referring invalid transactions to void ones:

- Transactions aimed at achieving a criminal purpose, the unlawfulness of which is established by a court verdict (order) (Article 158.1 of the RK Civil Code)
- Transactions made without obtaining the necessary authorization or after the expiration of the permit (Article 15.1 of the RK Civil Code)
- Transactions on the encumbrance of strategic facilities with the rights of third parties, committed without the
Practical consequences of the adoption of the Law of 27 February 2017

In order to recognize a voidable transaction as invalid, the person concerned (or the appropriate state body or prosecutor) must apply to the court with a request to recognize the transaction as invalid. As a general rule, if the statute of limitations is missed, the court, at the request of the respondent, must refuse to satisfy the claim for invalidating the transaction. Thus, according to the general rule, if the statute of limitations is missed, the voidable transaction may not be invalidated.

As for void transactions, since a void transaction is invalid, regardless of its recognition by the court, there is no need for the person concerned (or the appropriate state body or the prosecutor) to apply to the court with a lawsuit seeking invalidation of the transaction. Accordingly, the issue of the statute of limitations is irrelevant for invalidation of a void transaction.

Due to the importance of the amendments introduced by the Law of 27 February 2017, we recommend that you read this normative legal act carefully in order to obtain the full information about the amendments made by it.

1. RK Law “On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Improving Civil, Banking Legislation and Improving the Conditions for Entrepreneurial Activity” dated 27.02.17 No. 49-VI (hereinafter, the Law of 27 February 2017), published on 1 March 2017 and coming into force 10 days after its publication
2. Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated 7 July 2016 No. 6 “On Certain Issues of Invalidity of Transactions and Application by Courts of the Consequences of their Invalidity” (hereinafter, the Regulatory Resolution of 7 July 2016)}

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