

DECREE OF THE PRESIDENT OF THE REPUBLIC OF AZERBAIJAN

on approval of the 'Regulations on maintaining a state registry for encumbrance of movable property' and the 'Amount of the fee for use of the state registry for encumbrance of movable property'

Guided by Para 32, Article 109 of the Constitution of the Republic of Azerbaijan, in connection with the application of Law 667-VQ of the Republic of Azerbaijan 'on Encumbrance of Movable Property' dated 2 May 2017 I **decide:**

1. To approve the 'Regulations on maintaining a state registry for encumbrance of movable property' (attached).

2. To approve the 'Amount of the fee for use of the state registry for encumbrance of movable property' (attached).

3. The Cabinet of Ministers of the Republic of Azerbaijan:

3.1. develop and submit to the President of the Republic of Azerbaijan proposals on adjusting acts of the President of the Republic of Azerbaijan to this Decree within three months;

3.2. adjust normative legal acts of the Cabinet of Ministers of the Republic of Azerbaijan to this Decree within three months and inform the President of the Republic of Azerbaijan;

3.3. keep under control adjustment of normative legal acts of central executive power bodies to this Decree and inform the President of the Republic of Azerbaijan on its implementation within five months;

3.4. in accordance with Article 4.2 of the Law of the Republic of Azerbaijan on Encumbrance of Movable Property, establish a list of information systems to be integrated to the registry to enter notices on public and municipal encumbrance to the state registry for encumbrance of movable property within three months and take measures to integrate those systems to the register;

3.5. solve other issues arising from the Decree.

4. *The Central Bank of the Republic of Azerbaijan* solve the issues arising from this Decree.

5. The Ministry of Justice of the Republic of Azerbaijan adjust normative legal acts and normative acts of central executive power bodies to this Decree and inform the Cabinet of Ministers of the Republic of Azerbaijan.

Ilham ALIYEV,
President of the Republic of Azerbaijan

Baku city, 29 March 2018

№ 1901

Regulations on maintaining the state registry for encumbrance of movable property

1. General provisions

1.1. These Regulations regulate organization of the operation of, maintaining, use and data protection of the state registry for encumbrance of movable property (hereinafter – the register) in accordance with Article 20.10 of the Law of the Republic of Azerbaijan ‘on Encumbrance of Movable Property’ (hereinafter – the Law) and.

1.2. The register is a public information system consisting of a systematized set of notices on occurrence of encumbrances on movable property, changes in, termination of and objections to encumbrances.

1.3. The registry is organized as an electronic information system, operates continuously for entering and searching notices.

1.4. The definitions used herein bear the following meanings:

1.4.1. operator – *the Central Bank of the Republic of Azerbaijan*;

1.4.2. user – encumbrance holder, encumbrance issuer, debtor or a person conducting a search in the register.

1.5. Other definitions used herein bear the meanings specified in the Law.

2. Principles of maintaining the register

2.1. The registry is maintained in the state language of the Republic of Azerbaijan. The registry interface is developed in Azerbaijani, English and Russian languages.

2.2. The registry is unique, rests upon a single form, method and principles.

2.3. Formation, maintenance, use and protection of the data stored in the register is carried out through the information system providing mutual exchange of information based on electronic technologies.

2.4. The information system should provide the following:

2.4.1. prompt entry of information into the database, storage and processing there in an unchanging and readable manner;

2.4.2. registration of notices entered to the register;

2.4.3. integration to other related state and municipal information systems.

2.5. A protection system is established to prevent loss, distortion and illegal access to the information included in the register.

2.6. The *Central Bank of the Republic of Azerbaijan* organizes formation and maintenance of hardware and software to create, manage, improve and ensure effective use of the information system of the register.

2.7. Only licensed software and hardware and certified security devices are used in the information system of the registry.

3. Operator's functions

3.1. The operator:

3.1.1. organizes the operation and management of the registry, provides sustainable, uninterrupted, prompt and secure supply of services through the registry, takes measures to increase and improve its functionalities;

3.1.2. ensures secure integration of information systems to the registry and their interaction;

3.1.3. ensures reliability, accessibility, storage and protection of the information entered to the registry;

3.1.4. ensures operation, technical service, repair and maintenance of technical and technological infrastructure of the registry carries out scheduled preventive work;

3.1.5. ensures operation of its backup center in case of violation of security of the registry, accident (error) in the main equipment, inform users, as well as owners of information systems provided for in sub-item 3.1.2 herein, takes appropriate action to eliminate the accident (error);

3.1.6. controls sustainable and uninterrupted operation of information systems integrated to the registry;

3.1.7. ensures information security in accordance with the procedure established by normative legal acts, and protection of information, access to which is restricted by law;

3.1.8. controls sequence of registration numbers given to notices via the register;

3.1.9. ensures that technical support information and other information to help users, as well as answers to frequently asked questions, are posted on the registry page;

3.1.10. ensures that registered notices and the information to be disclosed are open to every searcher;

3.1.11. based on the request of the person seeking information in the registry, provides a report on results of the search as an electronic document or a report certified on paper in the manner prescribed by Item 11.2 herein;

3.1.12. discharges other functions arising from these Regulations.

4. Notices entered to the registry

4.1. The following notices are entered to the registry:

4.1.1. an encumbrance notice;

4.1.2. a notice on changes to encumbrance;

4.1.3. a notice on termination of encumbrance;

4.1.4. a notice on objection to encumbrance.

4.2. Notices on state and municipal encumbrances can be entered through other electronic information systems integrated to the registry.

4.3. Damage caused by inclusion in the register of a notice containing information that differs significantly from the agreement on encumbrance, or failure to include a

notice in the cases and within the period specified in Article 25.1 of the Law, is indemnified by the institution or the person that enters or should enter that notice to the registry.

4.4. The activity of the registry is financed in accordance with Article 27 of the Law from the fees collected for the use of the registry and other sources not prohibited by law.

5. Entry of the encumbrance notice to the registry

5.1. The encumbrance notice entered to the registry in accordance with Article 21.1 of the Law (hereinafter – encumbrance notice) includes the following information:

5.1.1. if the encumbrance holder is an individual, his/her first, last, middle names, registration address, a personal identification number (FIN) and, *if any*, a taxpayer's identification number (TIN), contact numbers, if a foreigner, his/her passport series, number and contact information;

5.1.2. if the encumbrance holder is a state or municipal body, as well as a legal entity, its name, legal address, taxpayer's identification number (TIN) and contact information, if it is a foreign legal entity, its full name and contact information in Latin letters;

5.1.3. if the debtor or the encumbrance issuer is an individual, his/her first, last, middle names and address, FIN and, *if any*, taxpayer's identification number (TIN), contact information, and if he/she is a foreigner, his/her passport series, number and contact information;

5.1.4. if the debtor or the encumbrance issuer is a a state or municipal body, as well as a legal entity, its name, legal address, TIN and contact information, if it is a foreign legal entity, its full name and contact information in Latin letters;

5.1.5. description of the subject of encumbrance;

5.1.6. validity of the encumbrance notice;

5.1.7. confirmation of the consent of the encumbrance issuer to inclusion of information in the registry by marking the appropriate field;

5.1.8. the amount of the main liability secured by the encumbrance (*ceiling*);

5.1.9. debtor's gender (if an individual);

5.1.10. whether a debtor is a new or repeat customer;

5.1.11. the area of activity of the debtor;

5.1.12. the type of movable property;

5.1.13. confirmation of non-performance or improper performance of liabilities by the debtor in case of encumbrance under the law by marking the appropriate field;

5.1.14. information on the basis for the encumbrance (contract, decision of the state body, municipality or court, law) and the relevant basis;

5.2. The information specified in the notice included in the registry, except for those specified in sub-items 5.1.8 - 5.1.14 herein, are open to all persons conducting search in the registry.

5.3. The information specified in sub-items 5.1.8 – 5.1.12 herein, are used for the purposes of official statistics.

5.4. The information specified in sub-items 5.1.6 - 5.1.12 herein are not required to be included in encumbrance notices specified in Article 4.2 of the Law on the basis of the decision of the state body, municipality or court.

5.5. In accordance with Article 21.3 of the Law, the encumbrance notice is entered in the registry in the following cases and by the following persons:

5.5.1. if the encumbrance arises based on a contract, by the owner of the encumbrance based on that contract or before the entry into force of the contract in accordance with the procedure provided for in Article 21.4 of the Law;

5.5.2. if the encumbrance arises on the basis of a decision of a state body, municipality or court, after the decision enters into force by the person who appealed to the state body, municipality or court that made the decision, or by the enactment itself at the initiative of these bodies;

5.5.3. in case the encumbrance arises based on law, by the owner of the encumbrance (creditor) after the fact of non-fulfillment or improper fulfillment of obligations by the debtor is revealed;

5.6. An encumbrance notice arising under a contract may be entered into the registry by the encumbrance holder with the written consent of the encumbrance issuer before the encumbrance agreement is signed between the parties. In this case, the encumbrance holder should conclude a contract with the encumbrance issuer within 30 (thirty) days from the date of registration of the encumbrance notice or terminate the encumbrance notice immediately. In this case, if the encumbrance holder does not include in the registry the information on conclusion of the contract with the encumbrance issuer, the encumbrance notice is automatically removed from the registry at 24.00 on the 30th (thirtieth) day after the registration of the encumbrance notice.

5.7. A written consent of the encumbrance issuer is required for inclusion of the encumbrance notice arising under the contract in the registry. Such a consent should be specified in the contract or in a separate document.

5.8. The consent of the encumbrance issuer is not required for inclusion in the register of the decision of the state body, municipality or court, as well as the encumbrance notice arising in accordance with the law.

5.9. The description of the subject of encumbrance in the register should be given in such a way that based on this description it would be possible to reasonably identify movable property, rights and requirements (substitutable or non-substitutable items, consumer goods, complex property, as well as their accessories or components, etc.).

5.10. The description of the subject of encumbrance may indicate that the subject of encumbrance consists of all existing or future movable property of the encumbrance issuer. Such a description may also include a specific type (category) of movable property, receivables or a portion thereof.

5.11. The Operator places explanatory notes in the register on the procedure for describing the subject of the encumbrance.

6. Inclusion of the notice on objection to encumbrance to the registry

6.1. If the encumbrance issuer considers that the information specified in the notice entered in the registry is incorrect and the encumbrance holder refuses to change or terminate the notice within 5 (five) working days from the date of notice or the changes do not satisfy the encumbrance issuer or the debtor, the debtor or the encumbrance issuer has the right to include in the registry of encumbrances a notice on objection to encumbrance (hereinafter - the notice on objection to encumbrance).

6.2. The notice on objection to encumbrance includes:

6.2.1. the registration number of the objected encumbrance notice;

6.2.2. the information specified in sub-items 5.1.3 and 5.1.4 herein on the person who enters the notice on objection to encumbrance to the register;

6.2.3. substantiated information on the circumstances that led to the change or termination of the notice on the objected encumbrance;

6.2.4. confirmation of the notification of the encumbrance holder on inaccuracy of the information specified in the notice and his/her refusal to change or terminate the notice within 5 (five) working days from the date of receipt of the notification by ticking the appropriate box;

6.3. Inclusion of a notice on objection to encumbrance in the registry does not terminate the notice on objection to encumbrance, and objection notices in the registry are open to all searchers.

6.4. Complaints against the notice on objection to encumbrance, as well as refusal to change or terminate the encumbrance notice are considered at courts.

7. Entering a notice on making changes to encumbrance to the register

7.1. The encumbrance holder enters changes to encumbrance to the registry from the moment he/she becomes aware of the relevant change (hereinafter - the notice on change to encumbrance) if:

7.2. the subject of encumbrance is replaced or any change is made to the subject of encumbrance, including conversion of one type of movable property into another type of movable property, as well as changes in the description of the subject of encumbrance.

7.3. the encumbrance holder, the encumbrance issuer or the debtor is replaced based on law and contract.

7.4. change is made to the information specified in sub-items 5.1.1 – 5.1.4 herein.

7.5. validity of the encumbrance notice is changed based on the law and contract.

7.6. in other cases specified by the law and the contract.

7.7. The notice on change to encumbrance includes the following:

7.7.1. the registration number of the encumbrance notice changed;

7.7.2. information on the institution or the person who entered the notice on change to encumbrance in the register, provided for in sub-items 5.1.1 and 5.1.2 herein;

7.7.3. information on the cases that are the basis for inclusion of a notice on change to encumbrance in the registry, except for notices on state and municipal encumbrances entered into the registry through other integrated electronic information systems;

7.7.4. in case of changes to the subject of encumbrance or replacement of the debtor, confirmation of the encumbrance issuer's consent to inclusion of information in the registry by marking the appropriate field (except if the encumbrance holder is a state body or municipality).

7.8. For approval specified in sub-clause 7.7.4 herein, consent is required in accordance with the procedure provided for in clause 5.7 herein.

7.9. Once the notice on change to encumbrance is entered in the registry, the encumbrance notice to be changed is automatically replaced with a new one and old information is replaced by the new one by the encumbrance holder according to the change.

8. Entering a notice on termination of encumbrance to the register

8.1. Within 5 (five) working days after the debtor has fully fulfilled the liability related to the encumbrance included in the registry, the encumbrance holder should enter in the registry a notice on termination of encumbrance (hereinafter - the notice on termination of encumbrance), provided that the encumbrance notice is not deleted from the list of information automatically visible in the registry through other electronic information systems integrated into the registry after the specified period expires.

8.2. If there are several encumbrance holders (joint creditors) in one encumbrance notice and the right of encumbrance of one of them is terminated, the notice on termination of encumbrance applies only to the right of the encumbrance holder who has consented to it.

8.3. The notice on termination of encumbrance should include:

8.3.1. the registration number of the terminated encumbrance notice;

8.3.2. information specified in sub-items 5.1.1 and 5.1.2 herein on the person who enters the notice on termination of encumbrance to the registry;

8.3.3. confirmation of cancellation of the encumbrance by marking the appropriate field, taking into account Item 8.2 herein.

8.4. If the encumbrance holder fails to enter the notice on termination of encumbrance to the register within the period specified in Item 8.1 herein, the debtor may apply in writing to the encumbrance holder.

8.5. Complaints against refusal of the encumbrance holder to include the termination notice in the registry are considered in court and compulsory termination of the encumbrance in the registry is allowed only based on a valid court decision.

8.6. Immediately after entering the notice on termination of encumbrance in the registry, the encumbrance notice is automatically deleted from the list of information in the registry.

9. Registration and publication of notices

9.1. The notice is registered online by entering information in the registry and is assigned a unique registration number consisting of a combination of numbers and (or)

letters. The registration number is required to include subsequent notices referring to that notice in the registry.

9.2. The registry software checks integrity of the information included in the notice.

9.3. In case of deficiencies in the information entered in the registry (non-payment of the registration fee, reference to invalid or incorrect notices in notices on changes to, termination of or objection to encumbrance, incomplete fields in notices), the notice is refused to be registered and the user is informed on deficiencies in real time.

9.4. After the registry software confirms that the notice has been entered in the registry, the notice is entered into the register and a receipt is sent to the user confirming entry of the notice in the registry.

9.5. The receipt confirming inclusion of the notice in the registry contains the date and time of registration of the notice (hours, minutes and seconds), registration number and information on that notice provided for herein.

9.6. The notification should appear in the registry from the moment the receipt confirming its inclusion in the registry is sent to the user and the date and time (hours, minutes, and seconds) are indicated in the note on the published notice.

9.7. The registry that registers or refuses to register the notice does not determine accuracy and authenticity of the information contained in the notice and is based only on the criteria provided for in Item 9.3 herein.

9.8. The person who enters the notice in the registry is responsible for accuracy of information in the notice.

10. Entry into force and expiration of the notice

10.1. The notice is deemed to have entered into force for the persons conducting a search from the moment it appears in the registry.

10.2. The encumbrance notice is valid for the period specified in it, and the encumbrance notice may be terminated in advance before the expiration of the period of encumbrance without termination of the encumbrance in the registry, except based on a court decision that has entered into force.

10.3. Validity of the encumbrance notice may be extended at any time before the expiration of the period specified in the notice by entering a notice on change to encumbrance in the registry one or more times based on a law or a contract.

10.4. Inclusion of the notice on change to encumbrance envisaging extension of the period extends the period of the encumbrance notice to the period specified in the change. In this case, the extension is after the expiration of the previous period of the notice.

10.5. The registry software provides information on invalid notices for storage within 10 (ten) years from the date of their invalidation.

11. Search for information in and an extract from the registry

11.1. Search for information on the debtor or the encumbrance issuer in the registry is carried out based on one or more of the following indicators:

11.1.1. state or municipal body, as well as the taxpayer's identification number (TIN) of the legal entity;

11.1.2. foreign legal entity's full name in Latin letters;

11.1.3. for an individual his/her FIN code;

11.1.4. for a foreigner his/her passport's series and number;

11.1.5. a unique registration number of the encumbrance notice in the register.

11.2. The Registry generates a report on results of the search as an electronic document or on paper, stamped by the Central Bank of the Republic of Azerbaijan and signed by the *Governor* of ~~the Management Board~~ (or another official authorized by him/her) to the person who conducts a search via the registry based on his/her inquiry.

11.3. The report on search results in the registry contains the following information:

11.3.1. information on availability of the notice in accordance with the indicators specified in Item 11.1 herein;

11.3.2. the registration number, date and hour of the notice;

11.3.3. information specified in the notice included in the registry and open to all searchers, except for those specified in sub-items 5.1.8 - 5.1.14 herein.

11.4. The registry archives an electronic copy of the approved report on results of the search and information on the date and time of the search, as well as search criteria.

11.5. An official report on results of the search is only a report certified on paper in accordance with Item 11.2 herein.

12. Fee for using the register

12.1. Usage fee in the amount set by the President of the Republic of Azerbaijan is paid for inclusion of notices on encumbrance and change to encumbrance in the registry, as well as for submission of a paper-based report on search results to the person seeking information in the registry.

12.2. Entry of notices on objection to encumbrance, notices on state or municipal encumbrance in the registry, as well as search of information in the registry and submission of the report on search results as electronic document to the person seeking information through the registry is free of charge.

12.3. The fee for using the registry is paid non-cash to the bank account of the Operator specified in the registry.

Approved
by Decree No.1901 of
the President of the Republic of Azerbaijan
dated 29 March 2018

Amount of the fee on use of the state registry for encumbrance of movable property

The following fee is charged for the use of the state registry for encumbrance of movable property:

1. For entry of encumbrance notice to the register – AZN2 (*two*).
2. For entry of encumbrance change notice to the register – AZN1 (*one*).
3. For submission of a paper-based report on results of search – AZN1 (*one*).