

ANALYSIS OF THE INTRODUCTION OF THE ESCROW LEGAL INSTITUTION IN UZBEKISTAN

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Abstract:

The article analyzes the concept of the conditional deposit (escrow) agreement. The main legal characteristics of the contract and the specific features of its legal regulation are considered. The escrow contract is considered consensual (based on an agreement between the parties), but depending on the deposited object, it may also be real (executed by transferring the property). The article emphasizes the two-sided obligation nature of the contract, which involves parties such as the depositor, beneficiary, and escrow agent. The conditional deposit agreement ensures the protection of the rights and legal interests of the parties concerning the transfer of property obligations.

Keywords: conditional deposit agreement, escrow, depositor, beneficiary, escrow agent.

In September 2024, the President of the Republic of Uzbekistan discussed pressing issues in the construction sector, setting out measures for developing the construction industry and building materials sector¹. It was emphasized that construction is a vital industry that drives the growth of all sectors of the economy, increasing demand for construction materials, equipment, and labor, creating new jobs, and developing infrastructure around new projects.

According to the President's statement, in the last seven years, \$9 billion has been invested in the construction materials sector, leading to the establishment of nearly 5,000 new enterprises and the creation of 94,000 permanent jobs. Production has doubled, and there are now more than 150 companies with annual turnovers exceeding 100 billion soms. The scale of construction has doubled over the past five

¹ <https://president.uz/uz/lists/view/7564>



years, and thanks to the introduction of \$650 million worth of new products, the share of imports in the construction sector has decreased from 31% to 25%. The export market for construction materials has expanded to 58 countries, with over 20 trade warehouses and more than 50 stores opened abroad.

However, the industry still faces challenges, though many opportunities remain. The President analyzed these issues and outlined new initiatives and tasks during the meeting. One key issue in housing construction is fraud and misunderstandings. To address this, a guaranteed escrow system for purchasing real estate will be introduced. In this system, developers sign contracts with banks to facilitate the sale of their properties. Individuals looking to purchase homes will not transfer funds directly to the developer, but instead, the money will be deposited with the bank. The bank will act as a “bridge” between the developer and the buyer, releasing the funds to the developer as a resource only after the property is built on time and to the required quality standards, thus ensuring the timely and quality delivery of the home to its new owner.

Before delving into the legal aspects of the escrow system, it is essential to understand its historical roots. The term “escrow” originates from the French word “escroue”, which means a scroll or a piece of parchment, referring to a third party temporarily holding a document or property². In Anglo-Saxon and German legal systems, an escrow agent (Treuhand) is a third party responsible for transferring deposited property to the beneficiary once certain conditions are met. An escrow agent (trusted agent, escrow agent, Treuhänder) is responsible for holding another party's assets (money, securities, legal documents, etc.) in an escrow account until specific conditions are fulfilled³. Academic literature highlights the widespread use of escrow agent relationships in foreign legal systems. For example, in Germany, an escrow account agreement is not named as such but is recognized as a contract that includes elements of legal structure. It is regarded in Anglo-Saxon law as an escrow agency agreement and is applied in practice⁴. For instance, in the case of “Hudgins v. Krawetz” (Texas App., 1977), the escrow agent was described as a “neutral” third

² Online Etymology Dictionary. URL: <https://www.etymonline.com/search?q=escrow> (Дата обращения 20 мая 2019 г.). – Текст электронный.

³ Василевская Л. Ю. Договор счета эскроу: проблемы правовой квалификации / Л. Ю. Василевская // Электронное приложение к «Российскому юридическому журналу». – 2016. – № 2. – С. 37-49.

⁴ Мухамедова Э. Э. Ученые записки Крымского федерального университета имени В. И. Вернадского Юридические науки. – 2019. – Т. 5 (71). № 4. – С. 292.



party holding documents or other property until specific conditions of the agreement were met, at which point the escrow agent was required to execute the payment or transfer of the property as instructed by the parties to the agreement⁵.

In Uzbekistan's national civil legislation, the escrow institution was introduced in the draft of the new Civil Code of the Republic of Uzbekistan, initiated by the Ministry of Justice and published on the portal for public discussion of legislative documents. According to this draft, Chapter 50 is titled "Conditional Deposit (Escrow)", and seven articles regulate the relationships involved in an escrow agreement⁶.

Under an escrow agreement, the depositor agrees to deposit property with an escrow agent to fulfill an obligation to transfer the property to another person. The escrow agent is responsible for safeguarding the property and delivering it to the beneficiary when the specified conditions in the agreement are met. The escrow agreement must be entered into between the depositor, the beneficiary, and the escrow agent, and it must specify the period during which the property will be held in escrow. The term of the escrow agreement should not exceed five years. If an agreement is made for a longer term or without specifying a term, it is deemed to be valid for five years. The escrow agreement must be notarized, except in cases where cashless funds and/or dematerialized securities are deposited.

When the conditions specified in the escrow agreement for transferring the property to the beneficiary arise (including when the beneficiary or a third party performs actions specified in the agreement or upon reaching the deadline or occurrence of an event specified in the agreement), the escrow agent must transfer the deposited property to the beneficiary in accordance with the terms of the escrow agreement. If the conditions for transferring the property to the beneficiary do not arise during the term of the escrow agreement, the escrow agent is obligated to return the received property to the depositor. Movable property (including cash, documentary securities, and documents), non-cash funds, and non-documentary securities may be the objects of deposit. Once the property is transferred to the escrow agent and throughout the duration of the escrow agreement, the depositor cannot dispose of the property

⁵ Богданов Д. Е. Богданова С. Г. Правовая природа договора условного депонирования (эскроу) / Д. Е. Богданов, С. Г. Богданова // Вестник Университета имени О.Е. Кутафина (МГЮА). – 2018. – № 10. – С. 55-66.

⁶ <https://regulation.gov.uz/uz/d/23980>



unless otherwise specified by the agreement. The depositor's obligation to transfer the property to the beneficiary is considered fulfilled once the property is transferred to the escrow agent. The parties may enter into an agreement with the escrow agent for bilateral escrow, which involves the deposit of property to be mutually exchanged between the parties (mutual escrow).

The escrow agent may demand remuneration for fulfilling their obligations unless otherwise stipulated in the agreement. The obligations of the depositor and beneficiary to pay the escrow agent are joint unless otherwise stipulated in the agreement. The escrow agent cannot use or withhold the property received from the depositor to ensure their payment or security unless otherwise specified in the agreement. Upon examining the main characteristics of the escrow agreement, it is concluded that this agreement is consensual. In the definition of the agreement, the depositor agrees to transfer the property to the escrow agent for the purpose of transferring it to the beneficiary. Thus, the escrow agreement is considered concluded upon the mutual consent of the parties and agreement on all essential terms⁷. The escrow agreement is a bilateral obligation. Despite the complex composition of the parties (depositor, beneficiary, and escrow agent), mutual obligations arise between the escrow agent and either the depositor or the beneficiary. In the escrow agreement, the escrow agent remains a permanent party on one side, while the "owner of the property" on the other side can either be the depositor or the beneficiary.

Moreover, the depositor and the beneficiary are jointly obligated to pay the escrow agent unless otherwise specified in the agreement. The grounds for terminating the agreement also confirm their similar legal status, as the depositor and beneficiary have the right to jointly withdraw from the agreement by notifying the escrow agent in writing or in another form specified in the agreement. Despite the bilateral nature of the obligations in the escrow agreement, the composition of the parties is characterized by the presence of the escrow agent, depositor, and beneficiary. The depositor is the party that deposits the property with the escrow agent for the purpose of fulfilling the obligation to transfer it to another party (the beneficiary). The escrow agent is the party responsible for receiving the property from the depositor for

⁷ Мухамедова Э. Э. Ученые записки Крымского федерального университета имени В. И. Вернадского Юридические науки. – 2019. – Т. 5 (71). № 4. – С. 293.



safekeeping and transferring it to the beneficiary when the conditions specified in the agreement arise. The beneficiary is the party that receives the property when the conditions specified in the agreement arise.

The content of the escrow agreement consists of its terms as a whole, which define the essential terms of the agreement, including its subject and legal structure. Among the essential terms of the escrow agreement is the condition regarding the grounds for transferring the property to the beneficiary. The escrow agreement may stipulate the escrow agent's obligation to verify the grounds for transferring the property to the beneficiary. The agreement may also specify the need for the beneficiary to present documents confirming the grounds for receiving the property, and the escrow agent is obligated to verify these documents based on external signs. If there are reasonable grounds to believe the documents are false, the escrow agent may refrain from transferring the property unless otherwise stipulated in the agreement. When considering the general characteristics of the escrow agreement, attention should be paid to the legal nature of these obligatory relationships. In civil law scholarship, there are different approaches to understanding the nature and legal essence of the escrow agreement. For example, Russian scholars D. K. Dubnova views escrow as a multi-party civil-law obligation⁸, while L. G. Efimova describes escrow as a special personal method of securing the fulfillment of obligations, arguing that it is not mentioned in Article 329 of the Civil Code of the Russian Federation. This is because, in addition to the depositor, the beneficiary also receives an additional debtor—the escrow agent—who is obliged to make payments once the beneficiary fulfills the appropriate condition⁹.

L. Yu. Vasilevskaya, when evaluating the legal nature of the escrow account agreement, highlights the security nature of the escrow obligation, but she emphasizes that this agreement cannot be considered as a means of securing the primary obligation¹⁰. According to the scholar, the escrow account agreement is a

⁸ Дубнова Д. К. Правовая природа договора счета эскроу / Д. К. Дубнова // Юрист. – 2018. – № 2. URL:

<http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=CJI&n=112571#046850778099861423> (Дата обращения – 20 мая 2019 г.). – Текст электронный.

⁹ Ефимова Л. Г. Договор банковского вклада. Гражданско-правовая теория страхования вкладов. Договор банковского счета. Новые виды банковских счетов по Гражданскому кодексу РФ: монография / Л. Г. Ефимова. – М. : Проспект, 2018. С. 362.

¹⁰ Василевская Л. Ю. Договор счета эскроу: проблемы правовой квалификации / Л. Ю. Василевская // Электронное приложение к «Российскому юридическому журналу». – 2016. – № 2. С. 43.



universal structure that guarantees the fulfillment of the primary obligation, but this guarantee is not provided through various security methods but through the special legal regime for property, ensuring its safekeeping and deposit.

B. M. Gongalo and P. V. Krashennnikov consider the escrow agreement to be a secondary, auxiliary obligation related to the primary obligation. For instance, the primary obligation might be a sale agreement, while the auxiliary obligation is the escrow agreement, the main purpose of which is to secure the fulfillment of the primary obligation¹¹.

The escrow agreement, in this context, functions as a supplementary contract that supports a primary obligation, usually a transaction like a sale. The primary obligation is the transfer of property, while the escrow agreement serves as a protective and facilitative tool to ensure that the transfer occurs under specific conditions. In more advanced terms, the escrow agreement acts as a security mechanism. It is structured to protect both the depositor (the one transferring the property) and the beneficiary (the one receiving the property) by placing the property in the hands of an impartial third party, the escrow agent. The role of the escrow agent is to hold the property until the conditions outlined in the primary agreement (e.g., the sale agreement) are satisfied. Once these conditions are met, the agent releases the property to the beneficiary.

The guarantee feature of the escrow agreement is crucial because it mitigates risks by preventing premature transfer of assets or funds and ensures that both parties fulfill their obligations as agreed. It establishes trust in transactions by eliminating the risk of one party defaulting after receiving the asset or payment. Thus, it supports the orderly execution of complex transactions, providing legal protection and reducing uncertainties, which is particularly important in high-stakes agreements like real estate or large-scale corporate transactions.

In essence, the escrow agreement adds a layer of transactional security and accountability between parties, ensuring that assets are only transferred when pre-established conditions are fully met, thus ensuring compliance, fairness, and clarity in bilateral obligations.

¹¹ Гонгало Б. М. Крашенинников П. В. Условное депонирование (эскроу) / Б. М. Гонгало, П. В. Крашенинников // Гражданское право: современные проблемы науки, законодательства, практики: Сборник статей к юбилею доктора юридических наук, профессора Евгения Алексеевича Суханова. – М. : Статут, 2018. С. 156.



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