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# SETTLEMENTS BY ESCROW ACCOUNT

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Application of Escrow account and Escrow agent's service are one of the most common methods of effecting settlements on transactions in the world commercial practice. Settlements by Escrow account are not so common in Russia because of some reasons, however in Europe and USA this kind of settlements is as popular as classical methods of settlements like Letter of Credit and Collection.

Essence of settlements by Escrow account is in releasing of money, securities, documents establishing rights, assets or other subject of transaction in favour of one party during performing the certain commitments on transaction by this party to the other party.

Traditionally they are used when two or more parties enter into commodity-money relations. In foreign practice settlements by Escrow account are often used in case of turnover of securities, purchase and sale of real property.

When effecting settlements by Escrow account there are always at least three subjects: two parties of transaction and Escrow agent. Escrow agent is a holder of Escrow account on which funds for settlements on transaction are deposited. The relations between parties of transaction and Escrow agent are regulated with special Escrow Agreement. As a rule, the agreement is tripartite; it is necessary for both parties to be able to control the conditions of releasing funds that are blocked on Escrow account.

The main part of agreement with Escrow agent is instructions to Escrow agent. These instructions determine Escrow agent's duties and procedure of their performing. Escrow agent's instructions include the following provisions:

- transaction price and its general provisions;
- terms on mortgage;
- procedure of passing of rights concerning the subject of transaction;
- documents subject to signing and surrendering to Escrow agent by the parties;
- procedure of keeping record on Escrow account by the agent (flow of documents);
- definite terms concerning the releasing of funds from Escrow account;
- closing date of transaction;
- Escrow agent's commission and procedure of its payment;
- releasing of Escrow agent from liability.

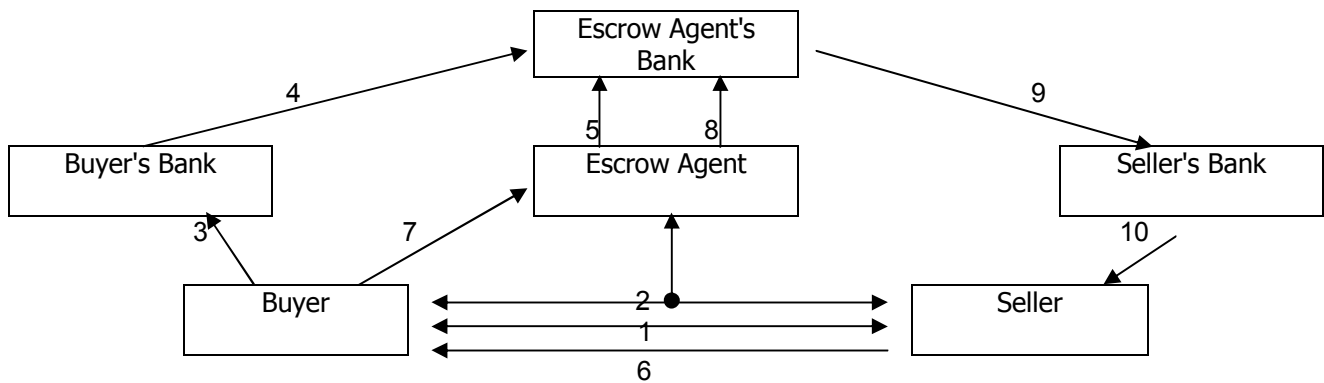
The scope of instructions may vary depending on duties of Escrow agent. Escrow agent shall be instructed to control on his own the execution of transaction and contents of relevant documentation, or the parties shall estimate by themselves the accuracy of performing mutual commitments on transaction.

In the latter case Escrow agent shall obtain the confirmation from both parties of transaction that all terms for releasing of funds are fulfilled. This confirmation is drawn up with the bilateral letter (Letter of Authority / State of Authority) form of which is advisable to adjust in advance as Addendum to the Escrow Agreement. The latter variant is more preferable as it assumes consent of both parties of transaction to release funds from Escrow account.

If Escrow agent does not obtain the confirmation concerning fulfillment of terms for releasing of funds from Escrow account till specified date (Closing date) the agent shall pay back the funds to the buyer and close Escrow account.

Agreement with Escrow agent often provides the case when before closing Escrow account the agent shall notify the parties of transaction about this closing so that they may raise their objections. If the objections are actually made Escrow agent must consider them and, if necessary, ask for additional information required for taking the final decision.

The system of settlements by Escrow account schematically looks as follows:



1. Sale contract;
2. Tripartite Escrow Agreement;
3. Order for remittance of funds;
4. Remittance of funds to Escrow account;
5. Blocking of funds on Escrow account;
6. Delivery of goods and documentation required under terms of transaction and Escrow Agreement, signing of Letter of Authority;
7. Submission of Letter of Authority to Escrow agent;
8. Releasing of funds from Escrow account;
9. Remittance of funds to the Seller's account;
10. Confirmation of funds receipt.

Abroad, the settlements on transactions using Escrow accounts are common enough. This method of effecting the settlements is a reliable guarantee of performing the parties' obligations on transactions.

Unfortunately, in the Russian Federation there is no law regulation that would allow using Escrow agents' services in case of internal settlements; besides there is some negative stereotype regarding Escrow services in Russia.

The matter is that Escrow account is a sub-account of Escrow agent; it means that the party of transaction may pass funds into Escrow account but charging off this account is made only by the order of Escrow agent. In case Escrow agent is a fraud it can happen that the funds blocked on Escrow account shall not reach the buyer.

This problem can be resolved using correct approach to the choosing of Escrow agent. As a rule, Escrow agents are large Lawyer Companies, Financial Structures, Brokers. Besides Escrow services are licensing activity in many countries (in USA for instance), it allows to eliminate a large number of unscrupulous agents all at once.

Escrow agents are often the banks. In this case contracts and required documentation are signed and handed over directly in bank, in the bank's representative presence who immediately releases the funds from Escrow account.

The settlements through Escrow agents are often used in case of execution of vessels sale contract (MOA); the reason is that such transactions are executed not by the way of simple handover of a vessel but by means of effecting certain legal acts by one of the parties (the seller). In the purpose of guarantee that all necessary formalities are fulfilled the parties resort to Escrow agents services.

As for the transaction on buying of vessel the system of settlements by Escrow account as follows:

1. Search of Escrow agents, achieving of preliminary agreement;
2. Adjustment with the seller the vessel sale terms, candidacy of Escrow agent and the terms of Escrow Agreement;
3. Signing of MOA and Escrow Agreement;

Major instructions of Escrow agent are releasing of funds only upon receiving Letter of Authority from the parties.

Conditions of signing of Letter of Authority by the parties:

- Signing of MOA and Bill of Sale;
  - Submission of shipping papers, certificates and documents of classification society;
  - Signing of Certificate of Acceptance concerning handover of vessel;
  - Submission of Certificate of Vessel Exclusion from Register Book by the seller;
4. Opening Escrow account by Escrow agent;
  5. Receiving funds on Escrow agent's account.
  6. Blocking funds on Escrow account by Escrow agent;
  7. Signing of Letter of Authority by the parties after fulfillment of all formalities;
  8. Handover of Letter of Authority to Escrow agent;
  9. Opening Escrow account, remittance of funds into the seller's account;
  10. Payment of Escrow agent's commission.