

**Baker  
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**Doing Business in  
Azerbaijan**

**2017**



**Baker McKenzie** Doing Business in Azerbaijan



# Doing Business in Azerbaijan

2017

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## Table of Contents

1.	Republic of Azerbaijan – An Overview .....	3
1.1	Location, Area, and Topography .....	3
1.2	Demographics.....	3
1.3	Government Organization .....	3
1.4	Results of Elections and Political Considerations .....	4
1.5	Foreign Relations and International Organizations .....	5
1.6	Economy.....	5
2.	Foreign Investment in Azerbaijan .....	8
2.1	Introduction .....	8
2.2	Foreign Investment.....	8
2.3	Guarantees Available to Foreign Investors .....	9
2.4	Bilateral Investment Treaties.....	11
2.5	Foreign Investment under Privatization Programs ...	13
3.	Establishing a Legal Presence .....	16
3.1	Introduction .....	16
3.2	Representative Offices and Branches .....	16
3.3	Forming a Commercial Legal Entity .....	19
3.4	Non-Commercial Organizations.....	29
3.5	Public Legal Entities .....	31
3.6	Subsidiaries and Dependent Companies .....	32
3.7	Liquidation of a Legal Entity .....	35
4.	Securities Market.....	38
4.1	Introduction .....	38
4.2	Issuance and Placement of Investment Securities .....	39
4.3	Regulation of Securities Market.....	42
5.	Licenses .....	46
5.1	Introduction .....	46

5.2	Issuance of Licenses .....	47
5.3	Application for a License .....	50
5.4	Suspension and Termination of a License.....	50
5.5	Consequences of Operating without an Appropriate License .....	51
6.	Taxation.....	52
6.1	Taxation Environment.....	52
6.2	Administration of Taxes.....	55
6.3	Types of Tax.....	55
6.4	Double Taxation Treaties .....	61
6.5	Transfer Pricing.....	64
6.6	Accounting .....	65
7.	Currency Regulation.....	66
7.1	Introduction .....	66
7.2	Foreign Exchange.....	66
7.3	Import/Export of Foreign Currency in Cash by Individuals.....	69
8.	Employment .....	70
8.1	Introduction .....	70
8.2	Direct Employment .....	70
8.3	Compensation in Foreign Currency.....	70
8.4	Work Books.....	71
8.5	Probationary Period.....	71
8.6	Minimum Wage.....	71
8.7	Working Week .....	71
8.8	Holidays .....	71
8.9	Sick Leave .....	72
8.10	Maternity Leave .....	72
8.11	Dismissal .....	72
8.12	Cost of Employment.....	73



8.13	Income Tax.....	73
8.14	Foreign Workers in Azerbaijan.....	73
9.	Property Rights.....	75
9.1	Introduction.....	75
9.2	Limitations on Ownership.....	75
9.3	Use of Land.....	75
9.4	Land Transfers.....	77
9.5	Registration of Immovable Property.....	78
9.6	Mortgages.....	79
10.	Language Policy.....	80
11.	Civil Legislation.....	82
12.	Banking.....	84
12.1	Description of the Banking System.....	84
12.2	Licensing.....	86
12.3	Standards for Domestic Banks.....	86
12.4	Banks with Foreign Participation.....	86
12.5	Liquidation and Reorganization of Banks.....	87
12.6	Non-Banking Activity of Banks.....	87
13.	Intellectual Property.....	89
13.1	Introduction.....	89
13.2	State Patent Issuing Agencies.....	89
13.3	International Conventions.....	90
13.4	Registration.....	90
13.5	Patent Protection, Utility Models, and Industrial Design.....	90
13.6	Trademarks and Geographic Designations.....	91
13.7	Domain Names.....	91
13.8	Copyright.....	92
13.9	Computer Programs and Databases.....	92
13.10	Anti-Piracy.....	92



14.	Product Liability .....	94
	14.1 Background .....	94
	14.2 Product Quality.....	95
	14.3 Protection from Unfair Competition .....	95
15.	Specific Industries .....	97
	15.1 Oil and Gas .....	97
	15.2 Power.....	100
	15.3 Telecommunications .....	107
	15.4 Construction .....	111
16.	The Judicial System.....	115
	16.1 Courts .....	116
	16.2 Judges .....	117
	16.3 Enforcement of foreign court judgments.....	117
	16.4 International arbitration .....	118
17.	Climate Change .....	119
	17.1 General .....	119
	17.2 Greenhouse Gas Emissions .....	120
	17.3 Designated National Authority.....	121
	17.4 Clean Development Mechanism .....	122
	17.5 Paris Agreement .....	122
18.	Insurance .....	124
	18.1 Introduction .....	124
	18.2 Establishment and Licensing.....	125
	18.3 Regulation .....	126
	18.4 Foreign Elements in the Insurance Sector .....	128
	18.5 Domestic standards.....	129
	18.6 Insurance Intermediaries .....	130



## Preface

Baker McKenzie has been providing sophisticated legal advice and services to the world's most dynamic global enterprises for over 60 years now.

With a network of more than 4,200 locally qualified, internationally experienced lawyers in 77 offices across 47 countries, we have the knowledge and resources to deliver the broad scope of quality services required to respond effectively to both international and local needs – consistently, with confidence, and with sensitivity to cultural, social, and legal differences.

Active in the former USSR and the Commonwealth of Independent States (“CIS”) for over 40 years, and with offices in Almaty, Baku, Kyiv, Moscow, and St. Petersburg, we have always had one of the largest legal practices in the CIS. Leveraging the expertise of our worldwide network of specialists, we offer the best possible legal advice in all aspects of investment in the region, including corporate law, banking and finance, securities and capital markets, venture capital, competition law, tax and customs, real estate and construction, labor and employment, intellectual property, and dispute resolution.

On October 20, 1998, having established a presence in Baku six months earlier, Baker McKenzie became the first international law firm to be granted a license to practice law in Azerbaijan.

Since gaining independence in 1991, Azerbaijan has adopted new legislation at a rapid pace. It is a country with a legal system in ongoing development. In response to the need for accurate, up-to-date information, *Doing Business in Azerbaijan* has been prepared as a general guide for companies operating in or considering investment in Azerbaijan. It is intended to present an overview of the key aspects of the Azerbaijani legal system and the regulation of business activities in the country.

The information contained in this guide is current as of the date below. We would be happy to provide you with updates on the material contained in this guide, or with further information regarding a specific industry or area of Azerbaijani law in which you might have a particular interest.

Baker & McKenzie – CIS, Limited  
February 2017



# 1. Republic of Azerbaijan – An Overview

## 1.1 Location, Area, and Topography

Bounded by the Caspian Sea to the east and the Greater Caucasus mountain range to the north, the Republic of Azerbaijan has a total land area of 86,600 square kilometers (km<sup>2</sup>). Sharing borders with Georgia, Russia, Turkey, Iran, and Armenia, Azerbaijan has long been the geographical center of the region's oil industry.

## 1.2 Demographics

With a population of over 9.705,6 million (as of the beginning of 2016), Azerbaijan enjoys a young demographic profile with some 27.1 percent of the population between 14 and 29 years old and only 6.2 percent at retirement age.

The population is evenly distributed between urban and rural areas, with 53.1 percent residing in and around cities. Some 9.1 percent of the estimated workforce of more than 4.71 million is engaged in agriculture and forestry, while 24.1 percent works in industry and construction.

While Azerbaijan is constitutionally a secular state, the vast majority (93 percent) of the population is Muslim. The official language is Azerbaijani, a Turkic language.

## 1.3 Government Organization

The country's Constitution was ratified by popular referendum in November 1995 and is Azerbaijan's first Constitution as an independent state. It provides for a unicameral parliament (the National Assembly – the Milli Majlis) with members elected for five year terms. While the Constitution previously provided for both majority voting and proportional representation; nowadays, following amendments to the Constitution in 2002, National Assembly members are elected by majority vote only.

According to the recent amendments to the Constitution, approved on October 11, 2016, the President is elected for a seven-year term by popular vote. With the consent of the National Assembly (Milli Majlis), the President appoints the Prime Minister and other members of the Cabinet of Ministers. The President is also vested with the authority to appoint and dismiss the First Vice-President and vice-presidents of the Republic of Azerbaijan.

Judicial power in Azerbaijan is exercised by a court system whose independence is guaranteed by the Constitution. The Constitutional Court resolves issues relating to the compliance of laws, governmental acts, court decisions and international treaties with the Constitution. It resolves disputes among branches of Government and interprets the Constitution and laws on issues related to human rights and fundamental freedoms. The Supreme Court of the Republic of Azerbaijan is the court of last resort for civil, criminal, administrative, and other matters.

#### 1.4 Results of Elections and Political Considerations

The current President, Ilham Aliyev, was elected in October 2003 and re-elected for a second presidential term in October 2008. Ilham Aliyev was re-elected for a third presidential term in October 2013.

On February 21, 2017, following the amendments to the Constitution of the Republic of Azerbaijan adopted on the referendum in September 2016, the Azerbaijani President appointed Mehriban Aliyeva, the First Lady of Azerbaijan, the First Vice-President of the Republic of Azerbaijan.

Since the 2015 parliamentary elections the majority of National Assembly seats have been held by members of the New Azerbaijan Party, established by former President Heydar Aliyev.

Following the May 1994 ceasefire in the armed conflict with Armenia over the Daglig Qarabag (Nagorno-Karabakh) region of Azerbaijan, the political situation in Azerbaijan has been stable. The resolution of



the Nagorno-Karabakh conflict is being mediated by the Organization for Security and Cooperation in Europe (“OSCE”).

## 1.5 Foreign Relations and International Organizations

Since gaining independence, Azerbaijan has become a member of many international organizations, including the United Nations, OSCE, the Council of Europe, the European Bank for Reconstruction and Development, the World Bank, the International Monetary Fund (“IMF”), Interpol, the Organization for Black Sea Economic Cooperation, the Black Sea Trade and Development Bank, and the Asian Development Bank. It enjoys observer status in the World Trade Organization (“WTO”), it has joined the Partnership for Peace program of the North Atlantic Treaty Organization (“NATO”), and it participates in the European Union’s New Neighborhood Policy. Azerbaijan has been a member of the Commonwealth of Independent States (“CIS”) since September 1993.

## 1.6 Economy

### 1.6.1 Background

Azerbaijan possesses fertile agricultural land, considerable oil and gas reserves, and a relatively developed industrial sector. However, the legacy of Soviet central planning and the instability of the early 1990s, which was largely due to deteriorating trade relations with former Soviet partners and the conflict in Nagorno-Karabakh, resulted in a significant decline in economic output. By 1995, for example, output had declined by 50 percent in the petrochemical and machine-building industries, although less dramatically in light industries.

Most of Azerbaijan’s industrial enterprises are located in Baku, Sumgayit, and Ganja. Heavy industry consists of petroleum extraction and refining, metallurgy, aluminum mining and refining, petrochemicals, and chemical production. Light industry consists of food processing, textiles, and wine production. Baku’s main industries are oil and gas equipment and light manufacturing; Sumgayit’s production focuses on chemical and petrochemical products, textiles,

and aluminum smelting; and Ganja is home to an aluminum refining plant and also specializes in textiles, machine building, and metallurgy.

The effect of the economic decline of the early 1990s has also been evident in agriculture – a critically important sector in Azerbaijan, employing about 37 percent of the labor force. Cotton is Azerbaijan’s leading cash crop, together with grapes (for wine production), fruit, nuts, vegetables, and tobacco.

### 1.6.2 Gross Domestic Product

Since the economic downturn in the early 1990s, Azerbaijan’s economy has been increasing at a rapid pace. The long awaited production from offshore fields developed by a consortium of international oil and gas companies together with the State Oil Company of the Republic of Azerbaijan, completion of the major Baku-Tbilisi-Ceyhan and South Caucasus (Shah Deniz) oil and gas pipelines, and global demand for oil and gas have all exercised a significant influence on the Azerbaijani economy in recent years.

For 2012, the gross domestic product (GDP) was AZN 52,282.9 billion; and per capita GDP AZN 5,587.87. For 2013, GDP was AZN 57 billion and per capita at GDP AZN 6,132.00. The figures for 2014 were as follows: GDP AZN 53,744 billion with per capita at AZN 5,670.00. GDP for 2015 was AZN 54,352 billion with per capita at AZN 5,600.41. The GDP for 2016 was at the rate of AZN 59,987,7 billion with per capita at AZN 6,180.73

### 1.6.3 Unemployment, Wages and Inflation

Official statistics as of December 2015 indicate that approximately 234,700 people are unemployed, although the actual figure is probably higher. The average monthly wage as of .December 2016 was AZN



494.3 (USD 285.78<sup>1</sup>). The inflation rate as of December, 2016 was 12.4 percent compared to 4 percent in December 2015.

#### 1.6.4 Foreign Trade and Balance of Payments

The Government has made a significant effort to attract foreign investment in the domestic oil and gas industry, which has grown sharply since 1995 as a result of the increase in the number of oil contracts signed with foreign companies during this period.

Total foreign trade in 2015 was approximately USD 20 billion, of which imports accounted for approximately USD 9.2 billion and exports USD 10.8 billion.

#### 1.6.5 Internal and External Debt

Azerbaijan has a relatively low level of external debt (one of the lowest among CIS countries), estimated in October 2016 at USD 7.650.7 billion.

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<sup>1</sup> **Note:** Please note that all the USD figures are based on the official rate of AZN for February 15, 2017 (AZN 1 equals to USD 1,7296)



## 2. Foreign Investment in Azerbaijan

### 2.1 Introduction

Foreign investment in Azerbaijan is regulated by a number of international treaties and agreements, and by domestic legal acts, including the *Law on Protection of Foreign Investment* dated January 15, 1992 (the *Foreign Investment Law*); the *Law on Investment Activity* dated January 13, 1995 (the *Investment Activity Law*); the *Law on Investment Funds*, dated October 22, 2010 (the *Investment Funds Law*); the Law On Privatization of State Property dated May 16, 2000 (the “*Privatization Law*”) and the Second Program for Privatization of State Property of the Republic of Azerbaijan (the “*Second Privatization Program*”), as well as laws regulating specific sectors of the Azerbaijani economy.

### 2.2 Foreign Investment

Foreign investors (foreign entities, governments, international organizations, and individuals permanently residing outside Azerbaijan) may engage in any investment activity not prohibited by Azerbaijani law. Pursuant to the *Foreign Investment Law*, foreign investment may take any of the following forms:

- Participation in entities established jointly with legal entities and citizens of the Republic of Azerbaijan;
- Establishment of enterprises wholly owned by foreign investors;
- Purchase of enterprises, proprietary complexes, buildings, structures, shares in enterprises, other shares, bonds, securities, and other kinds of property which, under the laws of the Republic of Azerbaijan, may be owned by foreign investors;



- Acquisition of rights to use land and other natural resources, as well as other proprietary rights; and
- Conclusion of agreements with legal entities and citizens of the Republic of Azerbaijan providing for other forms of foreign investment.

Enterprises with foreign investment include joint ventures, enterprises wholly owned by foreign investors, and representations (offices and branches) of foreign legal entities.

### 2.3 Guarantees Available to Foreign Investors

Under Azerbaijani law, foreign investments are provided with the following guarantees:

- A “not-less-favored” regime for foreign investors: except as otherwise provided for in an applicable bilateral investment or other treaty or the *Foreign Investment Law*, foreign investors have the same rights as local investors and may, additionally, be granted preferential rights not accorded to local investors.
- Foreign investors have the right to repatriate profits, revenues, and other amounts received in connection with investments, provided that all applicable Azerbaijani taxes have been paid.
- When a change in Azerbaijani legislation adversely affects an investment, the application of that change is subject to a 10-year moratorium. The moratorium has the force of law and is automatically enforceable and binding upon all Azerbaijani state agencies. Legislation that governs national security, defense, public order, morality, public health, and environmental protection, as well as acts affecting credits and finances, fall outside the scope of the moratorium. However, under the *Investment Activity Law*, subsequent acts (including acts governing defense, national security, public order, and

tax) adversely affecting investment terms should not apply to the investor for the term of an “investment contract.”

- Nationalization is possible by resolution of the National Assembly under exceptional circumstances to prevent harm to the people or state interests of the Republic of Azerbaijan. Confiscation is possible only under circumstances of natural disaster, epidemics, and other extraordinary situations by a decision of the Cabinet of Ministers. In both cases foreign investors are entitled to compensation that must be “prompt, adequate and effective.”
- Free access to international arbitration. The use of arbitration for dispute resolution is generally possible where two conditions are present: the law does not specifically prohibit a particular type of dispute from being submitted to an arbitration tribunal; and the parties agree to transfer specific disputes to the international tribunal.

Incentives may be available to foreign investors and enterprises with foreign investment in certain sectors of the Azerbaijani economy, notably the energy sector. These are granted by legislative acts regulating those sectors, as well as by agreements concluded by the state with investors. The President of the Republic of Azerbaijan approved the Decree on Additional Measures to Promote Investment dated January 18, 2016, endorsing regulations on stimulating investment in Azerbaijan using investment certificates (the “Regulations”). An Investment Certificate grants individuals and legal entities tax and customs privileges and can be obtained by confirming payment of at least 10 percent of the statutory minimum investment under the investment project and submitting a business plan along with a copy of a taxpayer registration certificate.

The Presidential Decree *On Establishment of Areas of Economic Activity and Administrative Territorial Units (in which the Investments shall be Carried out), as well as the Minimum Amount of Investment*, dated April 20, 2016, determines areas of economic activity and



administrative territorial units (in which the investments shall be carried out), as well as the minimum amount of investment to be considered for the grant of the Investment Certificate in accordance with the Regulations.

Bilateral investment treaties and other treaties on foreign investment provide additional guarantees to foreign investors, and are aimed at establishing a more favorable investment climate. Under Azerbaijani law international treaties prevail over local law regulating the same issue (except for the Constitution and acts adopted by referendum).

## 2.4 Bilateral Investment Treaties

Azerbaijan has ratified 47 bilateral treaties on the mutual protection of investments as shown in Table 1 below, with several more treaties currently under negotiation. Azerbaijan is also party to a number of multilateral treaties concerning foreign investment.<sup>2</sup>

**Table 1: Bilateral Investment Treaties**

	Country	Signed	Ratified
1	Turkey	February 9, 1994	June 14, 1994
2	USA	August 1, 1997	April 14, 1998
3	Pakistan	October 9, 1995	March 12, 1996
4	Germany	December 22, 1995	June 25, 1996
5	Great Britain	January 4, 1996	March 15, 1996
6	Georgia	March 8, 1996	April 19, 1996
7	Uzbekistan	May 27, 1996	July 16, 1996
8	Kazakhstan	September 16, 1996	November 15, 1996
9	Ukraine	March 25, 1997	June 6, 1997

<sup>2</sup> The convention on the Protection of Investor Rights was signed by CIS countries on March 28, 1997. Turkmenistan, Uzbekistan and Ukraine, however, did not sign this Convention.

	<b>Country</b>	<b>Signed</b>	<b>Ratified</b>
10	Kyrgyzstan	April 23, 1997	June 26, 1997
11	Poland	August 26, 1996	February 13, 1998
12	Iran	October 28, 1996	December 1, 1998
13	Italy	September 25, 1997	February 17, 1998
14	Moldova	November 27, 1997	December 8, 1998
15	Lebanon	February 11, 1998	December 4, 1998
16	France	September 1, 1998	November 27, 1998
17	Austria	July 4, 2000	October 24, 2000
18	Egypt	October 24, 2002	May 13, 2003
19	Romania	October 29, 2002	December 5, 2003
20	Finland	February 26, 2003	May 13, 2003
21	Belgium-Luxemburg Economic Union	May 18, 2004	October 26, 2004
22	Bulgaria	October 7, 2004	March 1, 2005
23	Greece	June 21, 2004	October 26, 2004
24	Saudi Arabia	March 10, 2005	May 10, 2005
25	Tajikistan	March 15, 2007	June 5, 2007
26	Korea	April 23, 2007	October 1, 2007
27	Hungary	May 18, 2007	October 1, 2007
28	Latvia	October 3, 2005	March 1, 2006
29	Switzerland	February 23, 2006	April 10, 2007
30	United Arab Emirates	November 20, 2006	April 10, 2007
31	Lithuania	June 8, 2006	April 10, 2007
32	Israel	February 20, 2006	October 1, 2007
33	Qatar	August 28, 2007	October 19, 2007
34	Croatia	October 2, 2007	February 1, 2008
35	Jordan	May 5, 2008	October 2, 2008



	Country	Signed	Ratified
36	Syrian Arab Republic	July 8, 2009	September 30, 2009
37	Kuwait	February 10, 2009	April 28, 2009
38	Serbia	May 13, 2010	September 30, 2010
39	China	May 27, 2010	June 16, 2010
40	Mauritania	July 15, 2010	October 22, 2010
41	Uzbekistan	September 27, 2010	February 11, 2011
42	Czech Republic	May 17, 2011	September 30, 2011
43	Montenegro	September 16, 2011	December 13, 2011
44	Albania	February 09, 2012	May 22, 2012
45	Macedonia	April 23, 2013	June 21, 2013
46	Russia	September 29, 2014	December 16, 2014
47	San-Marino	September 25, 2015	December 18, 2015

In addition to the conventions listed in 16.3 below, Azerbaijan signed a multilateral treaty on the mutual protection of investments with the OPEC Fund for International Development on November 19, 2002, which was ratified on December 9, 2003.

## 2.5 Foreign Investment under Privatization Programs

The privatization process in Azerbaijan occurred in two stages. The first stage, from 1995 to 1998, ended up being extended, however, until the adoption of the *Second Privatization Program* in 2000.

This first wave of privatization allowed for four methods of privatization of state-owned property: privatization of small enterprises; privatization of medium- and large-scale enterprises; privatization of banks (later excluded from the program); and the sale of shares in specialized investment funds (this last method did not develop into an effective privatization tool).

All privatized medium- and large-scale enterprises (except those already existing as joint stock companies) were to be restructured into joint stock companies, the shares of which were to be distributed through discount sales to employees of the privatized enterprises, voucher auctions<sup>3</sup>, investment tenders, or cash auctions.

Because the first privatization program did not fully achieve its objectives, new legislation was created -- the *Privatization Law*, which came into effect on August 11, 2000, and the *Second Privatization Program*, one day later on August 12, 2000. Together, these allowed for the privatization of the remaining large-scale enterprises and “strategic units” in the telecommunications, chemical and petrochemical, and metallurgy sectors. While the new program introduced certain new methods of privatization (such as “special project” privatization designed to attract strategic investors), it retained the principal methods provided under the first program.

Under the general principles of the *Privatization Law*, all state-owned property (except certain categories prohibited by law) may be privatized. Property types that may not be privatized include subsoil reserves, military facilities, certain entities and organizations funded by the state budget, other property units of state importance, and certain public facilities. The main authority responsible for implementing the *Second Privatization Program* and for coordinating the activities of other authorities related to privatization is the State Committee on Property Issues.

According to the *Second Privatization Program*, the most significant state assets are privatized by a decision of the President, who also approves foreign investors’ participation in such privatizations; other properties which qualify for privatization are privatized by a decision of the State Committee on Property Issues.

Specific conditions may apply to the participation of foreign investors in privatization tenders. If foreign investors participate in privatization

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<sup>3</sup> Voucher privatization ended on January 1, 2011.



by reinvesting funds earned in Azerbaijan, prior to participating in auctions and investment tenders they must submit a statement on such funds approved by the tax authorities to the State Committee on Property Issues.

On October 21, 2016 the Cabinet of Ministers of Azerbaijan issued Order No. 550 with (i) the list of state enterprises to be maintained under the state property in the medium-term period and (ii) the list of non-profile enterprises and assets subject to privatization. Additionally, the State Committee on Property Issues has developed the draft of the *Third State Privatization Program* (the “Third Privatization Program”) and the draft is currently being reviewed by the Presidential Administration. Among the main objectives of the *Third Privatization Program* is to attract foreign investments, increase efficiency and transparency in respective sectors and save budgetary funds. Nevertheless, the government does not plan to privatize certain strategic assets. The funds derived from the implementation of the *Third Privatization Program* are planned to be invested in further development of non-oil sector.



## 3. Establishing a Legal Presence

### 3.1 Introduction

Establishing a legal presence in the Republic of Azerbaijan is regulated mainly by the *Civil Code*<sup>4</sup> effective September 1, 2000, as amended (the Civil Code), and the *Law on State Registration and the State Register of Legal Entities*<sup>5</sup>, as amended.

A foreign investor wishing to establish an entity in Azerbaijan may choose either a limited presence, in the form of a representative office or a branch, or a full presence in a number of legal organizational forms.

In 2008 Azerbaijan introduced a “one-stop shop” system of registration of local commercial legal entities and foreign commercial legal entities’ representative offices or branches, with a greatly simplified registration procedure that allows persons wishing to engage in business in Azerbaijan to interact and file all documents with a single state authority, the Ministry of Taxes, in the process of establishing a legal presence.

### 3.2 Representative Offices and Branches

#### 3.2.1 Legal Status

Neither a representative office nor a branch of a foreign legal entity is considered an Azerbaijani legal entity. Under the *Civil Code*, a representative office is a separate subdivision of a legal entity (including, presumably, a foreign entity) that represents and protects the legal entity’s interests. A branch is also a separate subdivision of a legal entity engaging in some or all of the functions of the legal entity, including the functions of a representative office. These definitions

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<sup>4</sup> Approved by *Law No. 779-IQ of the Republic of Azerbaijan*, dated December 28, 1999.

<sup>5</sup> *Law No. 560-IIQ of the Republic of Azerbaijan, On State Registration and the State Register of Legal Entities*, dated December 12, 2003.



suggest that the scope of a branch's activities is wider than that of a representative office.

Since a representative office may only represent and protect the interests of a legal entity, without engaging in the functions of a legal entity, a representative office generally may not engage in commercial or business activity. A branch, on the other hand, being able to carry out all or part of a legal entity's functions, may engage in business or commercial activity.

### 3.2.2 Registration

Branches and representative offices of foreign *commercial* legal entities are registered with the Ministry of Taxes, while branches and representative offices of foreign *non-commercial* legal entities are registered with the Ministry of Justice.

The Ministry of Taxes is required to effect registration within two business days of submission of the necessary documents; the Ministry of Justice within 40 business days.

Since 2009 the only registration required for branches and representative offices of foreign non-commercial legal entities is an agreement between the foreign legal entity and the Ministry of Justice.

The Cabinet of Ministers of the Republic of Azerbaijan enacted Resolution No. 43, dated March 16, 2011, approving the Regulations for Negotiating and Entering into an Agreement Concerning Registration of Branches and Representative Offices of Foreign Non-Commercial Legal Entities in the Republic of Azerbaijan (the "Regulations"). Pursuant to the Regulations, a letter (free form) stating the foreign entity's objectives and the benefits to Azerbaijan of the entity's presence must be submitted to the Ministry of Justice. The Regulations, however, do not mention the timeframe for consideration of the letter, or the procedures to be followed if the letter fails to convince the ministry of the foreign entity's benefits to Azerbaijan.

Statutory changes further provide that the deputy head of a foreign non-commercial legal entity's branch or representative office in Azerbaijan must be a citizen of the Republic of Azerbaijan.

The state duty for registration of a branch or representative office of a foreign legal entity is AZN 220 (USD 127.19).

In order to be registered as a representative office or a branch, an applicant must submit an application to the Ministry of Taxes (for foreign commercial legal entities) or the Ministry of Justice (for foreign non-commercial legal entities) along with a set of statutorily required corporate and other documentation. Both representative offices and branches operate in Azerbaijan on the basis of regulations (similar to a charter) approved by the parent legal entity. A representative office and a branch are subject to the same registration procedure and submit largely the same set of documents for state registration. Documents from the parent entity must be notarized and apostilled (legalized) in the home country. Any document in a language other than Azerbaijani must be accompanied by a notarized translation into Azerbaijani.

The Ministry of Taxes and the Ministry of Justice accept documents with an apostille issued abroad by member countries of the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. An apostille normally involves fewer formalities than legalization. The acceptability in Azerbaijan of an apostille certification issued in a particular foreign country, and vice versa, should be checked with the relevant authorities before proceeding with such certification. As the Federal Republic of Germany objected to Azerbaijan's accession to the 1961 Hague Convention, German apostilles are not recognized in Azerbaijan and vice versa.

Following state registration, a representative office or branch needs to obtain an official seal and to open bank accounts.



### 3.3 Forming a Commercial Legal Entity

Commercial legal entities established in Azerbaijan are subject to state registration with the Ministry of Taxes, which is required to effect registration within two business days of submission of the necessary documents.

The state registration duty for banks, insurance companies and certain other types of companies is AZN 220 (USD 127.19); for ordinary companies it is AZN 11 (USD 6.35).

Under the *Civil Code*, legal entities may be either commercial or non-commercial. The *Civil Code* provides for the following organizational forms of commercial legal entities:

- Joint Stock Companies;
- General Partnerships;
- Limited Partnerships;
- Limited Liability Companies;
- Additional Liability Companies; and
- Cooperatives.

Azerbaijani entities are generally incorporated or established pursuant to a founders' agreement and a charter. A founders' agreement is not required at the creation of companies with one participant. The founders' agreement governs the rights and obligations of the founders and the relations between the founders and the entity. The charter generally governs the structure and management of the entity and the rights of participants and shareholders in connection therewith. Certain provisions of the founding documents defined in the *Civil Code* are mandatory.

Pursuant to Law No. 382, dated June 12, 2012, approving amendments to the law *On State Registration and the State Register of Legal Entities*, information on the founders (participants) and their shares in the charter capital of commercial legal entities is considered a commercial secret and may only be disclosed to third persons under specific circumstances.

Azerbaijani corporate law fixes a minimum amount of charter capital for JSCs. In certain cases (such as for banking and insurance companies) additional requirements are imposed by specific legislation.

### 3.3.1 Joint Stock Company (“JSC”)

#### 3.3.1.1 Nature of JSCs

A JSC is a legal entity whose charter capital is divided into a certain number of shares, which are securities. JSC shareholders are liable for the obligations of the JSC only to the extent of their shares’ value.

#### 3.3.1.2 Types of JSCs

A JSC may be either open or closed.

A closed JSC with more than 50 shareholders must be reorganized into an open JSC. The shares of a closed JSC are distributed only among the founders and may be transferred to third parties only upon the shareholders’ failure to exercise the right of first refusal and upon a closed JSC’s failure to purchase such shares.

Shares of an open JSC are publicly sold and may be alienated by shareholders to third parties without restriction.

#### 3.3.1.3 Creation of JSCs

A sole individual or legal entity may be the founder or shareholder of a JSC.

The process of establishing a JSC is initiated at the founders’ meeting, which adopts the founders’ agreement, if applicable, and the charter of



the JSC. It includes state registration of the JSC, state registration of the share issue, placement of the issued shares, and registration of the report on the results of the placement. The par value of the shares of a newly established JSC must be paid by the founders prior to state registration of the JSC. Subsequent to establishment, the JSC's shares may be placed either among the founders in closed JSCs or through a public offering in open JSCs. An open JSC may conduct the public offering itself or through a stock exchange.

#### 3.3.1.4 Charter Capital

The charter capital of a JSC is divided into a fixed number of shares of a stated par value. The minimum charter capital is AZN 2,000 (USD 1,156.33) for a closed JSC, and AZN 4,000 (USD 2,312.67) for an open JSC.

The charter capital of a JSC must be fully paid on or before the date of the JSC's state registration. If the net worth of a JSC's assets is less than the amount of its charter capital at the end of any fiscal year the JSC must decrease its charter capital and register the decrease with the Ministry of Taxes.

#### 3.3.1.5 Charter Capital Contributions

Contributions to the charter capital of a JSC may be made in cash or in kind. The value of the contributions made in kind must be confirmed by the founders' meeting. Payment for publicly placed shares must be made in cash.

#### 3.3.1.6 Shares

Shares in a JSC are investment securities, and their issuance must be registered with the Chamber of Control over the Financial Markets. Only a JSC may be an issuer of shares. Shares may be either common or preferred; preferred shares may not be issued in an amount exceeding 25 percent of the charter capital. Shares may be merged, divided, or converted into other shares. The shares in a JSC may be denominated only in AZN.

### 3.3.1.7 Rights of Shareholders

The shareholders of a JSC have the following rights, among others: the right to receive the JSC's declared dividends, the right to vote at the general meeting of shareholders, the right of access to the JSC's records, and the right to receive dividends and a share of the property of a JSC upon liquidation, after payment of creditors. Shareholders owning preferred shares have a preferential right to dividends and to distributed assets upon liquidation, but do not have the right to vote unless so provided in the JSC's charter. Shareholders have one vote for each share of common stock owned.

### 3.3.1.8 Management Structure

#### **General Meeting of Shareholders**

The General Meeting of Shareholders ("GMS") has exclusive competence in:

- amending the JSC's charter and charter capital;
- appointing and terminating the JSC's management bodies and their members;
- approving the JSC's annual reports, balance sheets and financial statements, as well as distribution of its dividends and losses; and
- reorganizing and liquidating the JSC.

The GMS makes its decisions unanimously or by a simple or qualified majority of votes present at the GMS. The minimum number of votes necessary to make a decision must be set forth in the JSC's charter. A quorum for a GMS is present if shareholders owning (at least) 60 percent of the voting shares participate in the GMS.

A GMS must be held at least once a year. Any GMS other than the annual GMS is considered an extraordinary GMS. Either the executive



body, the Board of Directors (Supervisory Council), the internal auditor (Audit Commission), or a group of shareholders holding at least 10 percent of the shares may call an extraordinary GMS. Any annual or extraordinary GMS must be called with notice (containing an agenda) thereof being sent to each shareholder, and an announcement of the GMS published in an official mass-media press outlet (except for closed JSCs) at least 45 days before the GMS.

### **Board of Directors (Supervisory Council)**

A JSC with more than 50 shareholders must have a Board of Directors with the number of members specified in the JSC's charter. The member may be shareholders or outsiders. The Board of Directors monitors the activity of the JSC's executive body and performs other functions entrusted to it by the GMS. A member of the Board of Directors may not serve as a member of the JSC's executive body.

### **Executive Management**

A JSC's executive management may consist of a collegial executive body (a management board) or a sole executive body (general director). The executive body is responsible for the JSC's day-to-day management. It reports to the Board of Directors/Supervisory Council and to the GMS. Pursuant to a GMS resolution, the JSC may be managed by an outside sole entrepreneur or another commercial legal entity.

Both JSC shareholders and outsiders may be members of a collegial executive body. Neither members of the Board of Directors nor shareholders holding (more than) 20 percent of the shares may be members of the executive management. The management board or general director is competent to make any decision not within, either by law or the founding documents, the exclusive competence of the GMS or the Board of Directors.

### **Internal Audit Commission/Auditor**



The internal audit commission/auditor is mandatory for JSCs with more than 50 shareholders. This body monitors the finances and business operations of the JSC and prepares a review of the JSC's annual reports and accounts. The audit commission must conduct an audit at the end of the financial year pursuant to a resolution of the GMS, or at the request of a group of shareholders collectively holding more than 10 percent of shares, the executive management, or the Board of Directors/Supervisory Council, as well as in other cases provided for in the JSC's charter.

### 3.3.2 General Partnership ("GP")

A GP is a legal entity that is formed by at least two sole proprietors and/or commercial legal entities, i.e., the general partners. Partners are jointly and severally liable for the partnership's liabilities. To the extent that the partnership lacks sufficient assets to cover its obligations, the partners are personally liable for its obligations. Participation in the GP by each partner is considered to be an entrepreneurial activity. Individuals and/or legal entities may participate in only one GP at a time.

#### 3.3.2.1 Rights of Partners

A partner may withdraw from a GP under the terms and procedures provided for in the founding documents without causing the dissolution of the GP. The withdrawing partner must provide the other partners with at least six months' notice prior to the actual date of withdrawal. The withdrawing partner will receive payment for the market value of his or her interest in the partnership.

The withdrawing partner may transfer his or her participatory interest in the GP to any other person only with the consent of the other partners. The remaining partners have a preemptive right to acquire the participatory interest.

The remaining partners and the withdrawing partner are equally liable, for a period of two years following approval of the annual accounts for the year of the withdrawal, for the GP's debts arising prior to the



withdrawal. Additionally, a newly admitted partner is liable for all partnership debts of the GP, including those which arose prior to his or her admittance.

### 3.3.2.2 Management Structure

The supreme body of a GP is the general meeting of partners (“GMP”). The issues addressed at the GMP are essentially the same as those addressed at the GMS of a JSC.

The management of the GP’s activities is conducted with the unanimous consent of all partners except where the GP’s charter provides otherwise. Each general partner has only one vote and may act on behalf of the GP unless otherwise provided for by the GP’s charter.

### 3.3.3 Limited Partnership (“LP”)

An LP is a legal entity having one or more general partners and one or more limited partners – individuals and/or legal entities. General partners are personally liable for the partnership’s obligations. The liability of limited partners is limited to the amount of their contributions. A person may participate as a general partner only in one LP. Similarly, a partner of a GP may not participate as a general partner in an LP.

#### 3.3.3.1 Rights of Partners

A partner may withdraw from an LP without causing the dissolution of the LP. The withdrawing partner must provide the other partners with at least six months’ notice prior to the actual date of withdrawal. The LP must pay the withdrawing partner the value of his or her participatory interest.

#### 3.3.3.2 Management Structure

The management of an LP’s activities is conducted by the general partners.

### 3.3.4 Limited Liability Company (“LLC”)

An LLC is an entity established by one or more individuals and/or legal entities contributing their participatory interests to the charter capital. The sole participant in an LLC may not be a company having only one participant/shareholder (either an individual or a legal entity). The participants in an LLC are normally liable only to the extent of their contributions. An LLC is not responsible for the obligations of its participants to third parties.

Azerbaijani law provides different registration regimes for foreign and local investment LLCs. According to Law No. 284, dated December 30, 2011, approving amendments to the law *On State Registration and the State Register of Legal Entities*, a local investment LLC (an LLC founded by an Azerbaijani citizen and/or a legal entity registered in Azerbaijan), in addition to ordinary paper-based registration, can be registered electronically. Certain restrictions apply, for example the person must use a charter template recommended by the Ministry of Taxes.

#### 3.3.4.1 Rights of Participants

A participant in an LLC has the same basic rights as those provided to a shareholder of a JSC. A participant in an LLC is not liable for the LLC’s obligations and bears the risk of loss for the LLC’s activities only to the extent of the value of his or her contribution to the LLC’s charter capital.

#### 3.3.4.2 Management Structure

The supreme governing body of an LLC is the general meeting of participants (“GMP”). A GMP must be held at least annually. A GMP dealing with the results of annual activity must be held no later than four months following the end of the reporting year. Any GMP other than the annual GMP is an extraordinary GMP, and such a GMP may be called at the initiative of the executive management, Board of Directors, or internal audit commission (auditor), or at the demand of LLC participants holding at least 10 percent of the total votes in the



LLC. The issues addressed at the GMP are essentially the same as those addressed at the GMS of a JSC.

Between GMPs, the Board of Directors or the Supervisory Council (if such has been provided for in the founding documents of the LLC), composed of participants or outsiders, supervises the LLC's executive body.

An LLC's executive management may be either a collegial body (management board) or a sole manager. A member of the Board of Directors may not be a member of the executive management. An LLC may hire an outside manager (either an individual or entity) if provided for in the charter.

An LLC may have an internal audit commission (auditor) if this is provided for in its founding documents. If the LLC does not have an audit commission the functions of this body may be performed by the Board of Directors (Supervisory Council), if such exists.

### 3.3.4.3 Charter Capital

The charter capital consists of the contributions of the participants. The charter capital of an LLC is divided into a fixed number of participatory interests set forth in the LLC's charter. Azerbaijani law does not establish a minimum charter capital requirement for an LLC.

Pursuant to Law No. 287, *On Amendments to the Civil Code of the Republic of Azerbaijan*, dated December 30, 2011, if the charter of an LLC does not specify a period for making charter capital contributions, the founding participants must make their contributions by the date of the LLC's state registration. Should the charter of an LLC specify a period for the payment of charter capital, the founding participants must make their contributions within the specified timeframe, which should not exceed three months. The value of "in-kind" contributions (e.g., equipment, property) or contributions in the form of property rights is determined by a resolution of the GMP.

### 3.3.5 Additional Liability Company (“ALC”)

An ALC is an entity established by one or more individuals and/or legal entities contributing their shares to the charter capital. The legal structure of an ALC is similar to that of an LLC. The distinction between an ALC and an LLC is that the participants in the former may assume liability for the company in excess of their contributions as regulated by the charter.

### 3.3.6 Cooperative

A cooperative is a voluntary union of at least five individuals and legal entities for the purpose of satisfying the material and other needs of the participants through the consolidation of their material contributions. Depending on the purpose of their activity, cooperatives may be of different kinds, such as consumer cooperatives and condominiums.

#### 3.3.6.1 Rights of Members

In essence, a member of a cooperative enjoys the same rights available to founders of other types of legal entities, including the right to participate in the management of the cooperative, unless the membership is associative. Unless otherwise provided for in the charter of the cooperative, the members of a cooperative have the right to obtain membership in other cooperatives.

#### 3.3.6.2 Cooperative's Property

The members of a cooperative must make contributions to the share fund in full, prior to the state registration of the cooperative. The cooperative's property is divided into shares among its members, in accordance with the charter.

If, pursuant to the results of the fiscal year, a cooperative suffers financial losses, the members must cover such losses by way of additional contributions made not later than two months from the date of approval of the annual balance sheet. The cooperative members



bear secondary liability for the cooperative's obligations to the extent of the unpaid portion of their additional contributions.

### 3.3.6.3 Management Structure

The supreme management body of a cooperative is the general meeting of members. Each member of the cooperative has one vote at the general meeting, without regard to the size of its contribution to the share fund. A cooperative with more than 50 members may have a Supervisory Council that controls the activities of the cooperative's executive bodies. The executive bodies of a cooperative are a Management Board and/or a chairman of the cooperative. A member of the Supervisory Council or Management Board of a cooperative may not be a member of another similar cooperative.

## 3.4 Non-Commercial Organizations

An Azerbaijani non-commercial or not-for-profit organization is an entity created to engage in various social and economic activities not related to the generation of profit and the distribution of such profit to its founders. Because an Azerbaijani non-commercial organization is treated as a legal entity it may own property, enter into contracts, acquire ownership and intellectual property rights and incur obligations in its own name, maintain an independent balance sheet, maintain settlement accounts and other bank accounts, and act as a claimant and defendant in courts and arbitration tribunals. All non-commercial legal entities are registered with the Ministry of Justice, which is required to effect registration within 40 business days of submission of the necessary documents. Azerbaijani non-commercial organizations are presumed to engage in non-commercial activities.

### 3.4.1 Forms of non-commercial organizations

Under the Civil Code, non-commercial organizations may be created in any of the following forms: (1) public associations, (2) foundations (funds), and (3) unions of legal entities. There are also other forms such as professional associations and trade unions.

### 3.4.1.1 Public Associations

A public association is a voluntary not-for-profit organization created by individuals or legal entities to engage in activities in their common interest.

A public association's members lose any ownership or other rights to property transferred to the public association, including their membership contributions. They are not responsible for the public association's obligations, in the same way that the public association is not responsible for the obligations of its members.

In the event of the liquidation of a public association, any property remaining after liquidation is allocated for the purposes specified in the charter. Where this is not possible, such property is remitted to the state budget.

### 3.4.1.2 Foundations (Funds)

A foundation or fund is a not-for-profit organization created by individuals and/or legal entities to engage in public, charitable, educational, and other kinds of social activities. As there is no requirement for a minimum number of founders, an Azerbaijani fund may be created by one individual or legal entity. Moreover, funds are not based on membership, i.e., the founders of the fund do not become its members. A fund's founders are not responsible for the fund's obligations. Similarly, a fund is not responsible for the obligations of its founders.

In 2009 Azerbaijani law introduced a minimum (initial) charter capital requirement of AZN 10,000 (USD 5,781.68) for Azerbaijani funds.

The management structure of a fund must be established by a charter approved by the founders. The law does not grant the founders the right to participate in the management of the fund through any kind of general meetings. All management decisions are made by the governing bodies established by the charter. If, according to the charter, the governing bodies do not have such right, the fund's



charter may be amended only by a court, based on an application of the fund's governing bodies.

A fund may be liquidated only pursuant to a court decision, and in cases established by law. After liquidation, a fund's remaining property must be used for the purposes specified in the charter. If this is impossible, such property must be remitted to the state budget.

#### 3.4.1.3 Unions of Legal Entities

A union of legal entities is an organization created by business or non-commercial entities to facilitate cooperation and coordination of their entrepreneurial or non-commercial activities, and to represent and protect their common interests. A union is not responsible for the obligations of its corporate members. Corporate members, however, are responsible for the union's obligations to the extent provided under the union's charter.

If, pursuant to a decision of its members, a union of legal entities is to engage in any commercial activity, then such union must either: (1) be reorganized into a commercial company or partnership; or (2) establish or participate in a commercial company.

#### 3.4.2 Branch and representative offices of foreign non-governmental organizations

Pursuant to Law No. 1078-IVQD, dated October 17, 2014, approving amendments to the law *On State Registration and the State Register of Legal Entities*, foreign non-governmental organizations can establish one branch or representative office in the Republic of Azerbaijan. If a foreign non-governmental organization is separated, acquired by or merges with another entity, or changes its legal form, the branch or representative office of such foreign non-governmental organization in the Republic of Azerbaijan shall be liquidated.

### 3.5 Public Legal Entities

Law No. 97-VQ *On Public Legal Entities*, dated December 29, 2015 ("PLE Law") regulates the establishment, operation and organization



of public legal entities (“PLEs”). State-owned entities such as State Oil Company of the Azerbaijan Republic (SOCAR) are not covered by the PLE Law.

The PLE Law primarily regulates PLEs established and operating in fields of state and public importance. In particular, medical institutions, orphanages, closed and open types of special educational institutions, pre-school educational institutions, secondary schools, primary vocational schools, specialized secondary schools, higher education institutions, special educational institutions established by the state or municipalities are listed among the types of PLEs subject to the Law. In 2016 several state bodies were transformed into PLEs by the decrees of the President of the Republic of Azerbaijan.

Under the PLE Law, PLEs are non-state or non-municipal organizations established on behalf of the state and municipality or by a public legal entity with the purpose to engage in activities of national and public significance. PLEs may engage in commercial activity provided such activity serves to and complies with the goals established at the moment of its formation and set forth in the charter of the PLE.

PLEs are established on behalf of the state by the relevant executive authority specified by the President of the Republic of Azerbaijan (and by the relevant municipal bodies on behalf of the municipality) and obtain the status of a legal entity upon state registration by the Ministry of Taxes of the Republic of Azerbaijan.

The charter capital of PLEs is formed on the account of assets contributed to by its founder(s).

Reorganization and liquidation of PLE shall be carried out in accordance with its charter and in the manner provided in the law.

### **3.6 Subsidiaries and Dependent Companies**

Regardless of whether it was established in Azerbaijan or elsewhere, a legal entity may form a subsidiary in Azerbaijan in one of the three



legal forms available for commercial purposes, i.e., JSC, LLC, or ALC. A subsidiary is a separate and distinct legal entity; the parent enterprise contributes property to its subsidiary but, typically, is not liable for the obligations of the subsidiary. Exceptions to this rule concern liability to third parties, liability to other (minority) shareholders, and liability in bankruptcy. For instance, a parent company may be held liable for the obligations of its subsidiary in bankruptcy if such bankruptcy was caused by the fault of the parent company in connection with the execution of its instructions. Additionally, a parent company and its subsidiary are jointly and severally liable for obligations incurred by the latter as a direct result of the implementation of instructions of the former even if the former is not in bankruptcy. Laws governing specific types of activity, such as banking, could vary these general rules.

As a matter of law, a company is considered a subsidiary if another legal entity, by virtue of a majority shareholding in the company's charter capital or by virtue of an agreement between them, can determine the resolutions adopted by that company.

An LLC or a JSC may be deemed dependent on another company or partnership if the other company or partnership holds more than 20 percent of the charter capital of an LLC or voting shares of a JSC. A company or partnership acquiring such qualifying ownership must promptly publicize the information on acquisition.

### 3.6.1 Related party transactions

Significant amendments were introduced by the law *On Amendments to the Civil Code of the Republic of Azerbaijan*, dated May 15, 2015, that regulate transactions between legal entities and parties related to them. According to those amendments, any agreement or other related transaction between legal entities and a party related to them (a "Related Party") is considered as a related party transaction.

Following persons are considered as Related Parties:

1. Heads and members of the board of directors (supervisory board) and executive body of a legal entity;
2. Head of structural units (*e.g. branches, representative offices, offices, etc.*) of a legal entity;
3. Relatives (spouses, parents, including spouse's parents, grandparents, children, adopted children, siblings) of the persons listed under 1 and 2 above;
4. Any person directly or indirectly holding at least 10 percent of the shares or a 10 percent participatory interest of the charter capital of the legal entity;
5. Legal entities in which the persons listed under 1, 2 and 4 above directly or indirectly participate;
6. A legal entity holding at least 20 percent of the shares in the charter capital of the legal entity;
7. Persons holding at least 20 percent of the shares/ a 20 percent participatory interest in the charter capital of the legal entities listed under 4 and 6 above;
8. The heads of the boards of directors (supervisory board) and executive bodies of the legal entities listed under 4 and 6 above.

Some limitations may apply based on the value of the related party transaction. If the amount of the related party transaction to be entered into with a related party equals to or exceeds 5 percent of the total value of the legal entity's assets, such transaction requires the opinion of an independent auditor engaged by the legal entity and a decision adopted at the general meeting of the legal entity's shareholders/participants by a simple majority of votes.



If the amount of the related party transaction is less than 5 percent of the total value of the legal entity's assets, such transaction can be concluded by a decision of the general meeting of the participants/shareholders of the legal entity, board of directors (supervisory board) or the executive body of the legal entity in accordance with the charter of the legal entity. If the head of the sole executive body of the legal entity, or persons listed under 3 and 5 above, are acting as the Related Parties, such transaction can be concluded by the relevant resolution of the board of directors (supervisory board) or, in its absence, by the general meeting of shareholders/participants of the legal entity.

The Related Party does not have the right to participate in the voting in connection with such transactions.

The conclusion of a transaction in violation of the above threshold requirements will trigger liability for the persons causing damage to the legal entity. Additionally, such a transaction may be challenged by the legal entity or any of its participants if a counterparty was aware of the violation at the moment of conclusion of the transaction.

### 3.7 Liquidation of a Legal Entity

The liquidation process can be divided into several stages.

The first stage includes adoption of a decision on liquidation by the founder(s) or an authorized body of a legal entity, the establishment of a liquidation commission/liquidator, the adoption of liquidation terms and procedure. A maximum of 20 days prior to the adoption of a decision on liquidation, the executive body of a legal entity should adopt a declaration of solvency confirming that the legal entity is capable of repaying the claims of all creditors within 12 months. If an executive body is unable to adopt such a declaration of solvency, an independent auditor could be engaged to issue its opinion on the legal entity's solvency.

Within 10 days of its appointment, the liquidation commission/liquidator should publish the first announcement on liquidation of the legal entity in the official press, indicating the procedure and the term for submitting creditors' claims. This announcement should be published in the same manner two more times at intervals of 15-20 days. The term for submission of creditors' claims should not be less than 60 days following publication of the first announcement on the liquidation of a legal entity.

The liquidation commission/liquidator should submit an application together with the above documents and corporate stamp to the relevant executive body responsible for the state registration of legal entities within 15 days of its appointment. Information on the liquidation of a legal entity should be entered into the state register within five days after receipt of the application.

The next stage is adoption of necessary measures by the liquidation commission/liquidator to identify the creditors and collect accounts receivable, notification of creditors, application to the responsible state authorities to identify if there are any debts to the state budget or non-budget state funds. The liquidation commission/liquidator prepares an intermediate liquidation balance sheet within 10 days following the expiration of the period for the submission of the creditors' claims, including information on the assets of the legal entity, creditors' claims and accounts receivable.

The liquidation commission/liquidator should then prepare the liquidation balance sheet and a report reflecting the plan for distribution/use of the remaining assets within five days following settlement of all creditors' claims. The liquidation balance sheet and the report should be approved by the founder(s) or authorized body of the legal entity within 45 days from the preparation date.

Further, within 10 days following the approval of the liquidation balance sheet, the liquidation commission/liquidator should ensure distribution/use of the remaining assets in accordance with the approved plan.



The last stage is the submission by the liquidation commission/liquidator of an application to remove the legal entity from the state register, submitted with the required documents to the relevant executive body responsible for the state registration of legal entities within 10 days from the distribution/use of the remaining assets. If the submitted documents are sufficient, the relevant executive body should issue a decision on removal of the legal entity from the state register within seven days.

The length of the liquidation process should not be more than one year starting from the date of entry of the information on the liquidation of the legal entity into the state register of legal entities. Failure to complete the liquidation process within a year means that the liquidation process will have to be started again from the beginning.

The above procedure for liquidation of legal entities equally applies to the liquidation (de-registration) of branch and representative offices of foreign legal entities in Azerbaijan.

## 4. Securities Market

### 4.1 Introduction

The securities market in Azerbaijan is regulated primarily by the provisions of the *Civil Code*, the new law *On Securities Market*<sup>6</sup> and regulations adopted by the Chamber of Control over the Financial Markets, a public legal entity established by the Presidential Order on February 3, 2016.

Under the Civil Code, security is an instrument certifying existence of contractual relations between its holder and issuer and the holder's rights arising from the said contract. An issuer is a person that carried out the issue, placement or distribution of securities.

Securities may be issued as registered or bearer securities. In the case of registered securities, certificates bear the name of holder or their ownership is registered with a central depository. In the case of bearer securities, the issuer must perform obligation to the bearer (person possessing security).

Depending on method of placement, securities may be of two types:

- Investment securities, such as shares and bonds, which are placed through separate issuances and, regardless of the time of their acquisition, have equal rights thereunder within the respective issuances; and
- Non-investment securities, which are placed otherwise and have different rights, such as options, warrants, privatization checks, futures, mortgage certificates, bills of lading, and so on.

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<sup>6</sup> Law No. 1284-IVQ of the Republic of Azerbaijan, *On Securities Market*, dated May 15, 2015



Depending on physical nature, the Civil Code distinguishes two forms of securities:

- Documentary (or “certificated”), which are printed in special manner to exclude fraud risks and in which the rights of holders to securities are established by a paper document. The specific requirements for documentary securities are determined by the Chamber of Control over the Financial Markets; and
- Non-documentary (or “non-certificated”), where the rights of holders to securities are evidenced by entries made in a deposit account held by a central depository.

## 4.2 Issuance and Placement of Investment Securities

The issuance of investment securities involves the following stages:

- Resolution of the issuer’s authorized body on the issuance of investment securities;
- Preparation of an issuance prospectus or information memorandum of investment securities (if the investment securities are placed publicly);
- State registration of the issuance of investment securities and issuance prospectus or information memorandum (if applicable) with the Chamber of Control over the Financial Markets;
- Publication of information from the issuance prospectus or information memorandum in the mass media (if the investment securities are placed publicly);
- Placement or start of trade on regulated markets of the investment securities;



- Submission of the report on results of the issuance of the investment securities with the Chamber of Control over the Financial Markets; and
- Publication in the mass media of the report on results of the issuance of the investment securities (if the investment securities are placed publicly).

The law *On Securities Market* introduced certain new concepts previously unknown under the Civil Code, such as the information memorandum and the basic emission prospectus. The information memorandum may be drafted instead of the issuance prospectus, where (1) investment securities are offered to and placed among the shareholders of merged entities; (2) investment securities are offered to and placed among the shareholders of divided entities; (3) value of to-be-issued investment securities is below the value determined by the Chamber of Control over the Financial Markets; (4) total nominal value of the investment securities issued by issuer within one calendar year does not exceed value established by the Chamber of Control over the Financial Markets; and (5) offering is made to institutional investors.

In addition, the issuer is exempt from drafting issuance prospectus in the following cases:

- issuance of investment securities by state or municipality, Central Bank of the Republic of Azerbaijan or international organizations to which the Republic of Azerbaijan is party;
- issuance of investment securities guaranteed by state;
- price of investment securities offered to each investor is less than the amount established by the Chamber of Control over the Financial Markets;



- issuance of investment securities serving as substitution to payment of dividends and which do not require any payment from shareholders;
- public offer on regulated markets within one calendar year of investment securities that constitute less than 10 per cent of issuer's charter capital;
- conversion of investment securities;
- closed placement of investment securities.

A basic emission prospectus is drafted when several issuances of investment securities (except shares) is contemplated within one calendar year. The rules established under the law *On Securities Market* applicable to issuance prospectus also apply to basic emission prospectus.

Placement of investment securities, *i.e.* their transfer from the issuer to initial holder, may be of two types:

- “Closed”, in which the securities are placed by offering them to less than 50 persons or by indication of purchasing investors in the resolution on issuance of investment securities; or
- “Public”, in which the securities are placed by offering them to indefinite number of people or to more than 50 persons by publication in the mass media.

The new detailed disclosure requirements for information contained in issuance prospectuses and information memoranda were established by the Chamber of Control over the Financial Markets in 2016.

An issuance of investment securities is deemed accomplished upon successful placement of the whole amount of investment securities

stated in the issuance prospectus, information memorandum or the resolution on issuance of investment securities.

## 4.3 Regulation of Securities Market

### 4.3.1 General

Professional participants in securities markets include investment companies, stock exchanges, clearing agencies, investment fund depositaries and a central depository. They must be created in the form of joint stock companies and are subject to licensing (except for central depository).

The licenses are issued for indefinite term. The licensing process includes two stages:

1. consideration of preliminary application filed by person so authorized by founders;
2. consideration of final application upon state registration of applicant entity.

### 4.3.2 Investment Company

An investment company is as a joint stock company having a license and whose primary activity consists of rendering primary and auxiliary investment services. Investment companies must be issued a single license for activities including those of a broker, dealer and underwriter.

Primary investment services include the following:

- acceptance and execution of clients' orders in relation to transactions with securities or derivative financial instruments;
- management of individual investment portfolios;
- provision of investment advice;



- placement and underwriting of securities (with and without an underwriting commitment);
- transacting with securities and derivative financial instruments for their own account as a member of depository or stock exchange;
- margin trading.

Auxiliary investment services include the following:

- management of clients' securities accounts, including execution of transactions related to encumbrance of securities and derivative financial instruments;
- lending funds or securities to investors for trading with securities and derivative financial instruments;
- conduct of investment and financial analysis related to securities and derivative financial instruments;
- acting as a security trustee for secured bonds;
- foreign exchange activities in relation to conducting primary investment services.

#### 4.3.3 Stock Exchange

A stock exchange organizes public sale of securities and derivative financial instruments. A stock exchange can be formed as an open or closed joint stock company and must hold a license issued by the Chamber of Control over the Financial Markets. Its primary activity includes organization and administration of regulated markets.

The stock exchange must adopt internal regulations such as, *e.g.*, trading regulations of securities and derivatives; terms and procedures of trading, trading halt and exclusion from trading of securities and derivatives; listing and delisting requirements; rules of entering into

deeds and their termination at the stock exchange; rules of price determination of securities and derivatives at the stock exchange; rules of trading days and trading hours at the stock exchange; *etc.*

With the adoption of the law *On Securities Market*, investment companies replaced the previous members of the stock exchange - brokers and dealers. The stock exchange must have at least three members holding valid licenses and complying with the internal regulations of the stock exchange.

The Baku Stock Exchange was established at the end of December 1999; its shareholders include banks and investment companies.

#### 4.3.4 Clearing Agency

A clearing agency can be established as an open or closed joint stock company and must hold a license issued by the Chamber of Control over the Financial Markets. The unique activity of the clearing agency includes the collection, examination, comparison of information, netting of positions, reversion of obligations, change of claims for determination of mutual obligations in transactions concerning securities and derivative financial instruments. The clearing agency must have at least three members, and only investment companies and banks may be members of the clearing agency.

The clearing agency must adopt internal regulations such as, *e.g.*, rules on operations relating to clearing activity; rules on requirements for members of clearing agency; rules on security and effectiveness; rules on exchange of information for clearing activity; *etc.*

#### 4.3.5 Central Depository

The central depository is a non-commercial entity established by the Chamber of Control over the Financial Markets. The main obligations of the central depository include the maintenance and registration (recordation) of securities, record keeping of accounts of securities holders, registration of securities holders and registration of encumbrances of securities, grant of extracts from accounts to clients.



The central depository may engage in clearing activity without a license.

The depositories of investment companies and investment funds may become members of the central depository.

The National Depository Center, a state-owned closed joint stock company established in 1997, is a licensed public registrar for the Azerbaijani securities market.

## 5. Licenses

### 5.1 Introduction

Activities requiring licenses are stipulated by newly adopted *Law on Licenses and Permits of the Republic of Azerbaijan*, dated March 15, 2016 (“the Law”), which abrogates previous rules, provides a simplified licensing procedure and shortens the list of licensable activities from 37 to 29 and introduces 86 other activity types, requiring state permits. The Law unifies the licensing rules for all types of licenses and permits and specifies: (a) the business activities subject to licensing, (b) the licensing authorities, and (c) the procedures for issuing licenses and permits. Additionally, Presidential Decree No. 310 dated March 28, 2000, establishes certain limits and exceptions to the general licensing rules.

Licenses and permits may be granted to Azerbaijani citizens and legal entities, as well as to the branches and representative offices of foreign legal entities and foreign citizens. An international agreement may recognize a license obtained by a foreign entity in its home country.

Licenses and permits are granted without discrimination to any entity that satisfies the requirements for the specific license or permit. Thus (with certain exceptions) foreign investors may obtain licenses and permits under the same conditions and in accordance with the same procedures as Azerbaijani nationals.

A license or permit holder may not transfer a license or a permit to another legal entity or individual unless otherwise provided for by law.

A license is issued for an unlimited period of time. A permit is normally issued for an unlimited period of time, unless otherwise provided in the legislation. Moreover, all licenses effective as of June 1, 2016 (the date on which the Law entered into force) are deemed to be issued for an unlimited period.



## 5.2 Issuance of Licenses

The issuance, suspension, restoration and liquidation of licenses and permits is principally regulated by the Law which sets out, among other things, the procedure for obtaining licenses and permits and the list of activities requiring a license or a permit. According to the Law, the Azerbaijani Ministry of Economy issues all types of business licenses (except for licenses in the fields related to the situations, deriving from the state security). It also directs the Azerbaijani Ministry of the Economy to exercise overall control of business licensing in Azerbaijan and to maintain a unified state register of licenses. Permits are issued by the state authorities responsible for the fields of activities for which such permits are required.

According to the Law, licenses and permits can also be applied for and obtained electronically, i.e., through the License and Permits Electronic Portal. Thus, all licenses (except for those in fields having a state security component) are granted by the Ministry of the Economy at the State Agency for Public Service and Social Innovations under the President of the Republic of Azerbaijan (“ASAN Service”) or by the Electronic License and Permits internet portal. Permits are granted by the state authorities responsible for the respective field of activity for which the permit is required or by the Electronic License and Permits internet portal.

Table 2 contains a partial list of licensed activities and the government agencies responsible for issuing licenses. As the Law does not apply to the licensing of business activities in the financial markets, this is not addressed in the below Table 2.



**Table 2: Licensing of Activities**

<b>Type of Activity</b>	<b>Executive Agency</b>
Utilization and neutralization of industrial toxic waste	Ministry of Economy
Collection of raw material of wild medicinal plants	Ministry of Economy
Private medical activity	Ministry of Economy
Pharmaceutical activity (production, wholesale and retail sale of medicine)	Ministry of Economy
Production, import, export and transit of precursors	Ministry of Economy
Educational activity	Ministry of Economy
Communication activity	Ministry of Economy
Television and radio broadcasting	Ministry of Economy
Manufacture of various stamps and seals	Ministry of Economy
Fire safety activity	Ministry of Economy
Diagnostics and Other Technical Inspections of Equipment and Facilities Operated at Potentially Hazardous Objects	Ministry of Economy
Engineering and exploration works of building and facilities subject to construction permits	Ministry of Economy



<b>Type of Activity</b>	<b>Executive Agency</b>
Construction and installation works of building and facilities subject to construction permits	Ministry of Economy
Planning of buildings and facilities subject to construction permits and notification requirements	Ministry of Economy
Installation and repair of lifting devices, metallurgical equipment, boiler rooms and containers operating under pressure	Ministry of Economy
Private security activity	Ministry of National Security (in certain cases) or Ministry of Internal Affairs
Activity in the field of design and production of devices for protection of information	Ministry of Transportation, Communication and High Technologies
Establishment of biometric technologies and maintenance of such technologies	Ministry of Transportation, Communication and High Technologies
Formation and maintenance of personal data information resources and establishment of information systems	Ministry of Transportation, Communication and High Technologies

### 5.3 Application for a License

The Law approves business licensing rules in Azerbaijan . In particular, an applicant must submit all documents specified in The Law and other applicable regulations, and pay the required state fee, after which (subject to fulfillment of all application requirements) a license is issued within 10 business days for an unlimited duration and a permit is issued within 7 business days, also for an unlimited duration if there are no other statutory rules applicable to that permit.

Under the new rules, during the process of review of a license and a permit application the license issuing authority reserves the right to obtain an opinion of the relevant state body, as well as to engage experts or specialists for the purposes of investigation of applications and obtaining a qualified opinion. If implementation of the licensed activity is related to certain facilities, the license issuing authority must conduct an onsite assessment of the conformity of such facilities to the information reflected in the documents enclosed with the license application.

### 5.4 Suspension and Termination of a License

An issued license may be suspended in the following cases:

- At the voluntary decision of the license holder;
- In case non-compliance of the license or the permit holder with the requirements of the respective supervising or license/permit issuing authority is revealed; and
- Other cases specified by law.

An issued license may be terminated in the following cases:

- At a voluntary decision of the license holder;
- In case the period of the permit expires;



- By court order;
- Upon liquidation of the legal entity, branch of representative office of a foreign legal entity or suspension of entrepreneurial activity of the individual license holder;
- In case incorrect information in the application documents is revealed; and
- Other cases specified by law.

## 5.5 Consequences of Operating without an Appropriate License

The penalties for operating without a license may be severe, and an individual or entity may be held liable under the *Code on Administrative Offenses* and the *Criminal Code*.

## 6. Taxation

### 6.1 Taxation Environment

The basis of the Azerbaijani tax system was first established with the adoption of the *Law on the Fundamentals of the Economic Independence of the Republic of Azerbaijan* dated May 25, 1991. The system has since undergone further development; following almost three years of parliamentary and government review the first codified digest of Azerbaijani tax legislation, the *Tax Code* (the *Tax Code*), was adopted on July 11, 2000. The *Tax Code* superseded most of the tax legislation preceding it.

The *Tax Code* is divided into two main parts: General and Special. The General Part describes the tax system, lists defined terms used in the *Tax Code*, discusses the powers and duties of the tax authorities, provides penalties for noncompliance with tax laws, sets out the procedural rules for taxpayers to appeal actions taken by the tax authorities, and addresses general issues of tax payment and collection. The Special Part of the *Tax Code* deals with each of the taxes imposed by the *Tax Code*: income tax of individuals, profit (corporate income) tax, value-added tax (“VAT”), excise, property tax, land tax, highway tax, subsoil use tax and simplified tax (“ST”).

In furtherance of the provisions of the Constitution, the *Tax Code* stipulates a three-level tax system, with state taxes levied at the first level, taxes of the Nakhchivan Autonomous Republic within Azerbaijan at the second, and local or municipal taxes at the third. Taxes listed in the *Tax Code* are levied at the state or autonomous republic level or at the state/autonomous republic level and municipal level.

Taxes levied at the state level consist of all taxes listed in the Special Part of the *Tax Code*, with the exception of land (excluding agricultural lands used for their intended purpose under the certificate issued by the relevant executive authority, as well as the same lands the use of which is not possible due to the irrigation, melioration and



other agro-technical reasons) and property taxes payable by individuals, subsoil use taxes (applicable only to those minerals consumed at the local level), and profit taxes of enterprises owned by municipalities whose liabilities are payable at the local level. Taxes levied at the second level include all taxes listed in the Special Part of the *Tax Code* and payable in the Nakhchivan Autonomous Republic. Municipal taxes include land and property taxes payable by individuals, subsoil use taxes (applicable only to those minerals consumed at the local level), and profit taxes of entities owned by municipalities. Other obligatory payments which are payable at the municipal level are determined by acts adopted at the state level.

The *Tax Code* also recognizes the existence of special tax regimes, distinct from those described above. Such regimes are, by and large, applicable to contracting and subcontracting parties in oil and gas production sharing agreements (“PSAs”). While tax regimes applicable under PSAs differ individually, generally they provide for lower withholding tax rates, exemption from VAT, and simplified reporting and accounting procedures.

Additionally, in 2008 the *Tax Code* recognized tax regimes that may exist in special economic zones. The *Law on Special Economic Zones*, which became effective in April 2009, sets a preferential tax regime applicable to residents of special economic zones. Pursuant to the law, residents are subject to 0.5 percent simplified tax on their profits. Furthermore, no other taxes (excluding income taxes of employees) are applicable for such residents. Notwithstanding the establishment of the tax regime for special economic zones, no such zones were established until March 17, 2016, then the President of the Republic of Azerbaijan signed Order No. 1912 on measures regarding the creation of a free trade zone-type special economic zone in the Alat settlement of the Garadagh region of Baku (including the territory of the new Baku International Sea Trade Port) on March 17, 2016. Starting from 2013 the *Tax Code* introduced significant tax privileges for residents of industrial and technology parks. Such privileges include exemption from profit tax and property tax for seven years for the legal entities

and individual entrepreneurs that are residents of such industrial and technology parks. All types of goods imported from residents of industrial parks for the purposes of their activities are exempt from import VAT for 5 years starting from May 1, 2016 on the basis of a document issued by the relevant executive authority. Moreover, zero-rated VAT is applied to the provision of goods, performance of works and services for the purposes of the same activities by contractors to the residents of these industrial parks, or by subcontractors to the contractors of such residents for a period of 5 years starting from May 1, 2016.

Pursuant to the amendments to the *Tax Code* made in November 2013 tax incentives and exemptions can only be identified in the *Tax Code*. Moreover, these incentives and exemptions can not be stipulated in other normative legal acts including production sharing agreements, similar agreements of this kind, as well as laws on special economic zones. This amendment contradicts over two decades of practice in production sharing agreements.

Under the amendments to the *Tax Code* made in October 2015 the right to leave the country may be limited as a way to ensure payment of tax debts and interest, as well as financial sanctions imposed due to a breach of the tax legislation. This limitation is applied to individuals, as well as managers of legal entities.

The Presidential Decree on Additional Measures to Promote Investment considers the relevant tax and customs incentives for investors that are included in the *Tax Code* and Law No 687-IVQ of the Republic of Azerbaijan on Customs Tariffs dated June 13, 2013 (the *Law on Customs Tariffs*) from January 19, 2016. The amendments to the *Tax Code* introduce a 7-year exemption from paying 50 percent of the income/profit tax and a full exemption from property tax and land tax whereas, under the amendments to the *Tax Code* and the amendments to the *Law on Customs Tariffs*, Investment Certificate holders will be exempt for seven years from paying customs duties and value added tax on machinery, technological



equipment and devices imported for investment purposes in priority industries.

## 6.2 Administration of Taxes

The collection of taxes is administered by the Ministry of Taxes and its divisions; accordingly, tax control is exercised by the Ministry of Taxes. In certain cases, where a determination must be made as to the appropriate payment of customs duties, tax control is also exercised by customs authorities.

All Azerbaijani enterprises, representative offices, branches, and individuals engaged in business activities, as well as foreign entities and individuals conducting business activity in Azerbaijan through a “permanent establishment” (“PE”), and in certain other cases as specified under the *Tax Code*, must register with the tax authorities whether or not their activities are taxable in Azerbaijan.

Pursuant to the last amendments to the *Tax Code* (the *Law On Amendments to the Tax Code of the Republic of Azerbaijan* dated December 16, 2016), taxpayers can now seek and obtain formal advance tax rulings from the tax authority on specific transactions, which will bring certainty to their tax planning and substantial mitigation and even the avoidance of potential tax sanctions. At the same time, the new additions make it possible to carry out electronic audits through directly or remotely accessing the financial (accounting) information of tax payers.

The tax amendments also oblige financial institutions to exchange financial information of their clients with the tax authority. In addition, the *Tax Code* allows the tax authority to monitor financial institutions to ensure that they properly observe their duties.

## 6.3 Types of Tax

The most significant taxes levied at the state level are listed below.



### 6.3.1 Corporate Income (Profit) Tax

Azerbaijani legal entities are subject to a corporate income (profit) tax of 20 percent on their worldwide income. Certain types of payments due to such entities are taxed at the source of payment. For instance, dividends paid by resident enterprises (as defined in the *Tax Code*) and interest payable by a resident or PE or on behalf of a PE (except for interest payable to banks and leasing institutions in Azerbaijan) are subject to a 10 percent tax withheld at the source of payment.

Enterprises that are not required to register for VAT purposes and whose taxable operations for all months during a consecutive 12-month period amount to AZN 200,000 (USD 115,633.67) or less, may be subject to the ST, which is levied on the gross proceeds of a business and applied at a rate of 4 percent in Baku and 2 percent elsewhere. Following the amendments to the *Tax Code* made in 2015, persons engaged in trade and public catering (including restaurants) are subject to the ST at a rate of 6 percent and 8 percent respectively.

Entities and persons involved in the transportation of passengers and cargo in Azerbaijan, as well as real estate developers and providers and operators of sports gambling games also pay simplified tax at special rates.

Foreign legal entities operating in Azerbaijan are also subject to a 20 percent corporate income tax on profits earned through their PEs in Azerbaijan. Foreign legal entities are likewise subject to income tax withheld on dividends and interest (except for interest payable to nonresident banks and PEs of leasing institutions) at a rate of 10 percent, whether or not such income was obtained through a PE.

Similarly, tax is withheld from the income of a foreign entity obtained from a source in Azerbaijan other than its PE. Such income is typically subject to 10 percent withholding tax (“WHT”), with communication and freight fees subject to 6 percent WHT, insurance premiums subject to 4 percent WHT, and rent and royalties subject to 14 percent WHT. In the meantime, according to the very recent changes to the *Tax Code*, all direct and indirect payments made to



offshore (tax heaven) entities by resident entities and permanent establishments of non-resident entities will be subject to 10 percent WHT. 10 percent WHT is also applied to any transfers to non-resident web (bitcoin) wallets through the local banks processing such payments. At the same time, local banks must withhold 1 percent tax from cash withdrawals made by resident entities and individual entrepreneurs.

The tax base for resident enterprises and PEs is gross annual income less allowable deductions. The aggregate annual income of a resident taxpayer includes all incomes irrespective of source. The income of a nonresident taxpayer consists only of Azerbaijani source income.

Deductions include all expenses connected with deriving income, including mandatory payments, bad debts, and depreciation. Deductions for business trips (the part of expenses exceeding limits set by the Cabinet of Ministers of Azerbaijan), entertainment, and certain other expenses may be limited. Nonresidents may generally make deductions only for such items of income obtained through their PEs. Together with the 10 percent branch remittance tax, the overall effective rate of taxation of nonresidents operating in Azerbaijan through a PE is 28 percent.

Expenditure on acquisition of capital assets may be depreciated at rates stated in the *Tax Code*.

### 6.3.2 Individual Income Tax

Individual income is taxed progressively, and employers are obliged to withhold income tax from employees' salaries as well as from certain other kinds of monetary and other compensation. The effective progressive tax rate ranges from 0 percent for certain exempt income up to 25 percent for those in the highest tax bracket. Individuals who carry out their business activities without creating a legal entity (i.e. individual entrepreneurs) are subject to 20 percent income tax. Residents of Azerbaijan are obliged to pay income tax on worldwide income, while nonresidents are taxed only on income originating from

sources in Azerbaijan. Different tax rates may apply to individuals engaged in entrepreneurship.

### 6.3.3 VAT

VAT is imposed on the turnover of most goods, work, and services in Azerbaijan and on the importation of goods. VAT is charged by the seller of goods, the provider of services or, in the case of imported goods, by customs officials. Input VAT, payable by a taxpayer for purchased goods, work and services, as well as for the importation of goods into Azerbaijan, represents a business expense and may be offset against output VAT collectable by a business from selling its own goods, work and services. The VAT rate is 18 percent of the price of goods, work, and services or of the customs value of goods.

Separate VAT registration is required under the *Tax Code*. The *Tax Code* also includes a reverse-charge VAT collectable by Azerbaijani tax residents, acting in the capacity of tax agents, when non-residents, that are not required to register as VAT payers in Azerbaijan, render services or work subject to local VAT. A VAT deposit single treasury account was introduced in 2008 as a measure for improving VAT administration and preventing abuses with VAT offsets and remittances.

Import and turnover of certain goods (as well as work and services for certain purposes) are exempt from VAT, which means the refund of certain input VAT in the chain is not allowed. Financial services are an example of such an exemption. Certain other transactions are zero-rated, which is essentially an exemption with credit giving rise to the recovery of input VAT. The export of goods is an example of a zero-rated transaction.

From January 1, 2010, paper VAT invoices were replaced by electronic VAT invoices, the turnover of which is processed through a system administered by the Ministry of Taxes.

The recent amendments to the *Tax Code* made in 2016 introduced the free-VAT concept for the goods which are not for production or



commercial purposes. Thus, any VAT paid for the abovementioned goods by foreigners and stateless persons will be paid back in accordance with the legislation.

The last amendments to the *Tax Code* also provide for certain VAT exemptions, such as 3 years' exemption for the sale of poultry and sale of toxic assets of insolvent banks. Moreover, now VAT will only apply to the retailer's margin rather than to the whole price of a locally-produced agricultural product.

Moreover, under these recent amendments, the on-line provision of works and services will also be subject to VAT. Such VAT must be discharged by registered taxpayers or by banks if the buyer of the respective works or services is not a registered tax payer.

#### 6.3.4 Subsoil Use Taxes

Companies engaged in the extraction of subsoil resources are subject to a subsoil use tax, the rate of which as stipulated in the *Tax Code* depends on the mineral extracted. Additionally (or, in some cases, alternatively), subsoil users may be subject to various payments, the method of calculation and application of which are stipulated by a contract between the companies undertaking such activities and the relevant state agency.

#### 6.3.5 Excise

Excise is imposed on a consumption basis and is applied upon the departure of excisable goods from the production site or from the importation of excisable goods. Excise rates vary according to the goods produced or imported and are subject to frequent changes. Excise paid for goods used for the production of other excisable goods can be offset against the excise charged for finished products. Alternatively, such excise can be reclaimed from the state budget. The export of excisable goods is subject to a rate of zero percent.

### 6.3.6 Highway Tax

Highway tax is imposed upon the entry of foreign-registered vehicles into the Republic of Azerbaijan, as well as on persons who own or use any type of vehicle, in an amount dependent on the type and weight of the vehicle, the distance to be traveled in Azerbaijan, the number of seats, engine capacity, axle load, and the nature of imported products. The highway tax is also indirectly applicable to vehicles used locally through taxation of automobile petrol, diesel, and liquid gas and is payable by producers and importers of such petroleum products.

The 2016 amendments to the *Tax Code* exempt foreign countries' trucks, motor vehicles, trailers and semi-trailers from highway taxes for 3 years starting from June 1, 2016 under certain circumstances determined by the legislation.

### 6.3.7 Property Tax

Property tax is assessed annually on the book value of fixed assets maintained by a resident or nonresident enterprise. Property tax is also levied on both resident and nonresident individuals owning properties in Azerbaijan. Rates differ depending on the type of asset and its value.

### 6.3.8 Land Tax

Land tax is imposed on the owners and users of land (defined under the *Tax Code*). The Cabinet of Ministers determines standard rates for agricultural land depending on the location, quality, and purpose of the land plot. The tax is payable by both resident and nonresident individuals, and resident and nonresident enterprises.

### 6.3.9 Social Taxes and Charges

All employers in Azerbaijan are required to make contributions to the State Social Protection Fund on the salaries and other qualifying income of their employees, including foreign employees (except foreign employees of companies operating under certain production sharing agreements or similar agreements, a list of which is set in

law). The amount is based on the qualifying gross income paid to employees and is assessed at a general rate of 22 percent, payable by the employer at its own expense. Employees are also obliged to contribute, with employers withholding three percent of their qualifying gross income for this purpose.

Individuals working under service and similar agreements, and certain other categories of individuals, are subject to social tax at different rates (depending on the location in Azerbaijan where such persons are engaged in business, the type of business conducted, etc.).

## 6.4 Double Taxation Treaties

Azerbaijan has entered into and implemented bilateral treaties for the avoidance of double taxation with 51 countries. These countries are listed in Table 3 below. As may be gleaned from the table, treaties with Jordan, Spain, Sweden, Malta and Denmark have been signed by the parties and await their ratification by the Parliament of the Republic of Azerbaijan.

**Table 3: Double Taxation Treaties**

	Country	Date of Ratification by Azerbaijan	Date of Implementation	Dividends (not higher than)	Interest (not higher than)	Royalties (not higher than)
1.	Great Britain	September 29, 1995	October 18, 1991	10/15	10	5/10
2.	Norway	June 25, 1996	January 1, 1997	10	10	10
3.	Pakistan	June 25, 1996	January 1, 1998	10	10	10
4.	Uzbekistan	July 16, 1996	January 1, 1997	10	10	10
5.	Kazakhstan	November 15, 1996	January 1, 1998	10	10	10
6.	Turkey	December 27, 1996	January 1, 1998	12	10	10
7.	Georgia	April 15, 1997	January 1, 1998	10	10	10
8.	Poland	February 13, 1998	January 1, 2006	10	10	10

	<b>Country</b>	<b>Date of Ratification by Azerbaijan</b>	<b>Date of Implementation</b>	<b>Dividends (not higher than)</b>	<b>Interest (not higher than)</b>	<b>Royalties (not higher than)</b>
9.	Russia	April 10, 1998	January 1, 1999	10	10	10
10.	Moldova	December 8, 1998	January 1, 2000	8/15	10	10
11.	Ukraine	March 24, 2000	January 1, 2001	10	10	10
12.	Austria	October 24, 2000	January 1, 2002	5/10/15	10	5/10
13.	Belarus	February 1, 2002	January 1, 2003	15	10	10
14.	France	February 19, 2002	January 1, 2006	10	10	5/10
15.	Romania	December 5, 2003	January 1, 2005	5/10	8	10
16.	Lithuania	September 10, 2004	January 1, 2005	5/10	10	10
17.	Belgium	October 26, 2004	January 1, 2007	5/10/15	10	5/10
18.	Italy	October 26, 2004	January 1, 2011	10	10	5/10
19.	Germany	March 1, 2005	January 1, 2006	5/15	10	10/5
20.	China	June 14, 2005	January 1, 2006	10	10	10
21.	Canada	December 30, 2005	January 1, 2007	15	10	0/10
22.	Latvia	March 1, 2006	January 1, 2007	5/10	10	5/10
23.	Czech Republic	March 1, 2006	January 1, 2007	8	10	10
24.	Finland	April 21, 2006	January 1, 2007	5/10	10	5/10
25.	Luxembourg	October 2, 2006	July 2, 2009	5/10	10	5/10
26.	Switzerland	April 10, 2007	January 1, 2008	5/15	10	5/10
27.	UAE	April 10, 2007	July 25, 2007	5/10	7	5/10
28.	Qatar	October 19, 2007	March 11, 2008	7	7	5

	Country	Date of Ratification by Azerbaijan	Date of Implementation	Dividends (not higher than)	Interest (not higher than)	Royalties (not higher than)
29.	Tajikistan	October 19, 2007	October 23, 2007	10	10	10
30.	Estonia	December 18, 2007	November 27, 2008	5/10	10	10
31.	Bulgaria	April 1, 2008	November 25, 2008	8	7	5/10
32.	Japan	April 1, 2008	December 28, 1991	15	10	0/10
33.	South Korea	May 18, 2008	January 1, 2009	7	10	5/10
34.	Hungary	June 13, 2008	December 15, 2008	8	8	8
35.	Jordan	N/A	N/A	N/A	N/A	N/A
36.	Netherlands	December 16, 2008	December 18, 2009	5/10	10	5/10
37.	Greece	April 3, 2009	January 1, 2011	8	8	8
38.	Kuwait	November 25 28, 2008	January 01, 2009	7	10	5/10
39.	Iran	April 28, 2009	January 1, 2011	10	10	10
40.	Serbia	September 30, 2010	January 1, 2011	10	10	10
41.	Slovenia	September 30. 2011	January 1, 2013	8	8	5/10
42.	Croatia	May 22, 2012	January 1, 2014	5/10	10	10
43.	Macedonia	June 21, 2013	January 1, 2014	8	8	8
44.	Montenegro	May 24, 2013	January 1, 2014	10	10	10
45.	Bosnia & Herzegovina *	December 28, 2012	January 1, 2014	10	10	10
46.	Spain	N/A	N/A	N/A	N/A	N/A
47.	Saudi Arabia	September 30, 2014	January 1, 2016	5/7	7	10
48.	Vietnam	November 11, 2014	January 1, 2015	10	10	10



	Country	Date of Ratification by Azerbaijan	Date of Implementation	Dividends (not higher than)	Interest (not higher than)	Royalties (not higher than)
49.	San Marino	May 2, 2016	January 1, 2017	5/10	10	5/10
50.	Sweden	N/A	N/A	N/A	N/A	N/A
51.	Malta	N/A	N/A	N/A	N/A	N/A
52.	Denmark	N/A	N/A	N/A	N/A	N/A

\* *The text of the agreement is not available.*

## 6.5 Transfer Pricing

The adoption of the *Tax Code* introduced several detailed tests with regard to transfer pricing. While the presumption was that for tax assessment purposes the price agreed to by the parties to a contract was the market price, there were exceptions under which the tax authorities may exercise control over the contract price. Specifically, such control was considered in barter or import-export transactions, transactions between affiliated parties (as defined by the *Tax Code*), price fluctuations of more than 30 percent in transactions involving similar or identical goods, work, or services within 30 days, or where the assets of an enterprise are insured for a value exceeding their residual value.

The last amendments to the *Tax Code*, introduced a brand-new Article 14-1 to the *Tax Code* to govern transfer pricing rules. The Article sets out four methods of determining transfer pricing and provides a list of transactions where transfer pricing would be applied during the calculation of taxes.

The *Tax Code* previously introduced certain anti-avoidance provisions, such as a limitation on the deductibility of interest payable between affiliated parties and taxation on the income of controlled foreign operations. Following the 2916 amendments to the *Tax Code*, now the tax authority may scrutinize aggressive tax planning practices



and assess taxes based on factual economic indicators by ignoring such tax avoidance mechanisms and pricing.

## 6.6 Accounting

According to the *Law on Accounting*, which became effective in June 2004, a phase-in process was underway at that time which aimed to bring accounting standards in Azerbaijan into compliance with International Financial Reporting Standards (IFRS). The timeline for completion of this process varied according to the area of activity. Small entrepreneurs had to transfer to either simplified accounting or, at their choice, National Accounting Standards for Commercial Entities starting from 2006, while “publicly important” commercial entities (banks, insurers, and other large businesses) started reporting under IFRS starting from 2008. Other commercial entities had to transfer to either IFRS or, at their choice, National Accounting Standards for Commercial Entities also starting from 2008. Municipal bodies, state budget organizations, and state off-budget funds and non-governmental organizations transferred to the National Accounting Standards for Budget Organizations and for Non-Governmental Organizations, respectively, starting from 2009.

## 7. Currency Regulation

### 7.1 Introduction

The Azerbaijani manat (AZN) was introduced in 1992. Currency in Azerbaijan is regulated by the Central Bank of the Republic of Azerbaijan (the “CBA”). One manat is currently equal to approximately USD 0.57.

### 7.2 Foreign Exchange

Foreign exchange transactions are governed by the *Law on Currency Regulation* (the *Currency Law*).<sup>7</sup> The Chamber of Control over the Financial Markets and the CBA administer the overall enforcement of currency regulation. Various aspects of foreign currency regulation also cover precious metals, foreign securities, and other matters.

Azerbaijan’s currency control legislation distinguishes between “residents” and “nonresidents,” with residents being subject to Azerbaijani currency regulation prior to being subject to regulation under the laws of other jurisdictions. The definition of “resident” includes private individuals having a permanent place of residence in Azerbaijan and legal entities established in accordance with Azerbaijani legislation. Branches and representative offices of foreign entities established in Azerbaijan do not fall within the definition of resident.

Subject to compliance with certain procedures, resident entities may freely open accounts in and outside Azerbaijan. Nonresidents may freely open and operate foreign currency accounts at Azerbaijani banks.

Azerbaijani currency operations rules allow only the following bank transfers: (1) payments (including advance payments) for imported goods or services by residents and non-residents (in case of advance

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<sup>7</sup> Law No. 910 of the Republic of Azerbaijan, *On Currency Regulation*, dated October 21, 1994 (the *Currency Law*).



payments, documents confirming import of goods or services must be provided to the bank within 180 days); (2) payments by residents and non-residents under re-export contracts; (3) refunds of advance payments received by residents and non-residents under export contracts which have been terminated; (4) payments by resident entities to their foreign representative offices, branches, and affiliates for a specified and declared purpose; (5) repayments by residents and non-residents of principal, interest, fees, and penalties on foreign loans and other debt obligations; (6) payments of dividends by residents to non-residents; (7) repatriation of foreign investments, including transfers of revenues and other amounts, by non-residents; (8) payments under labor agreements by residents and non-residents to non-resident employees; (9) payments by residents and non-residents for litigation, arbitration, notary and other mandatory fees, scholarships, pensions, alimony and related costs, as well as inheritance payments by non-residents; (10) payments by residents and non-residents for participation in international organizations, conferences and other events; education and medical treatment; copyright, patents and franchising; and fees to foreign publishers, libraries, databases; (11) payments for personal purposes, such as transfers by resident individuals of up to USD 10,000 per month to close relatives; transfers by resident and non-resident individuals of any amounts earlier transferred to Azerbaijan or brought in cash and declared to customs authorities; and transfers for other purposes by resident and non-resident individuals of up to USD 1,000 per day, but no more than USD 10,000 per month; and (12) transfers by residents and non-residents for exporting capital, provided that such transfers are made for equity investments, acquisition of securities, and acquisition of ownership rights on land, subsoil, buildings, as well as other rights to immovable property.

Currency operations without opening a bank account are subject to the following legal regime:

1. they can only be carried out by resident and non-resident individuals;

2. outbound money transfers by resident and non-resident individuals are limited to the equivalent of USD 1,000 per day, but no more than USD 10,000 per month; and
3. inbound money transfers are accepted without any limitation.

Both residents and nonresidents must comply with the following requirements:

- The manat is the only currency for payment under a contract for the sale and purchase of goods and services in Azerbaijan.
- The purchase, sale, and exchange of foreign currency in Azerbaijan must be carried out through authorized banks or authorized non-banking financial institutions. Transactions conducted outside these institutions are prohibited.

Currency operations are divided into routine currency operations and operations involving the movement of capital. Routine currency operations include:

- transfers for the payment of goods and services under import/export contracts with a term of payment not exceeding 180 days;
- transfers in connection with the financing of export/import transactions with a term not exceeding 180 days;
- transfers of dividends, interest, and other income from deposits, investments, credits, and other operations; and
- non-commercial transfers, for example transfers of inheritance, wages, pensions, or alimony.

Operations involving the movement of capital include all other non-routine currency operations, for example:



- direct investment in entities for the purpose of deriving profit and obtaining control over the entity;
- purchase of securities;
- payments for ownership and other rights to immovable property;
- import/export transactions under credit terms of more than 180 days; and
- any other currency operation not deemed a routine currency operation.

Currency operations involving the movement of capital must be performed by resident entities in the manner approved by the CBA. The CBA, however, has not yet established any procedure. In effect, no licensing of currency operations involving the movement of capital is required at present.

Foreign exchange regulations are less restrictive for nonresidents largely due to the fact that nonresidents' bank accounts outside Azerbaijan are not regulated by Azerbaijani currency control rules.

### 7.3 Import/Export of Foreign Currency in Cash by Individuals

Resident and nonresident individuals are treated equally with regard to the import/export of foreign currency in cash. There are no limitations on the amount of foreign currency an individual may bring into Azerbaijan, provided that such amount is declared to the Azerbaijani customs authorities. Upon submission of supporting documents, individuals may freely remove foreign currency from Azerbaijan in an amount not exceeding the amount brought into the country and declared to the customs authorities (or otherwise legally imported).

## 8. Employment

### 8.1 Introduction

Employment and labor matters in the Republic of Azerbaijan are regulated by the *Labor Code*, which became effective on July 1, 1999, as amended, together with other laws and regulations issued pursuant to the *Labor Code*. As defined by the *Labor Code*, an employer is an owner or its/his/her duly authorized manager, or an individual who has the authority to conclude, terminate, or amend employment contracts with employees.

To engage individuals in provision of any works (services), an employer must have valid employment contracts with them. Conclusion, amendment or termination of an employment contract becomes valid after its registration in the electronic database of the Ministry of Labor and Social Protection of the Population of the Republic of Azerbaijan and electronic confirmation of registration being sent to the employer.

An employment contract must contain certain information set by the Labor Code.

### 8.2 Direct Employment

Individuals are guaranteed freedom of choice in employment, according to their desires, abilities, and training. It is possible for businesses operating in Azerbaijan to hire employees directly without having to go through intermediary agencies. Employment contracts may not stipulate less favorable working conditions than those provided for by statutory law.

### 8.3 Compensation in Foreign Currency

All salaries paid in Azerbaijan must be paid in AZN. In practice, due to currency control restrictions and practical difficulties with AZN transfers abroad, most foreign employees receiving their salaries abroad are paid in foreign currencies.



## 8.4 Work Books

An employer must make an appropriate entry in the work book of an employee for whom it is his or her primary place of employment for more than five days. A work book is a record of employment and is the key to establishing the employee's rights to state-provided pension benefits. An employee entering into an employment contract (except in cases where he or she has never been employed before) must present the employer with his or her work book. However, this requirement does not apply to forced migrants, refugees, foreigners, or stateless persons.

## 8.5 Probationary Period

To be effective, a probationary period may be stated in an employment contract and may not exceed three months.

## 8.6 Minimum Wage

Employee remuneration may not be lower than the minimum monthly wage, currently AZN 116 (USD 67.06).

## 8.7 Working Week

The regular working week is 40 hours, reduced for certain groups of people. As a rule, overtime may not be compulsory unless necessary for state defense, public safety, the guaranteed supply of public utilities, and in certain other situations. The duration of overtime work may not exceed a certain limit established by the *Labor Code*. For each hour of overtime work, an employee must be compensated at a rate of at least twice his or her normal hourly rate.

## 8.8 Holidays

The *Labor Code* provides for 19 official non-working days, 18 of which are public holidays and the other a day of national mourning. If one of these official non-working days falls on a day off (Saturday or Sunday), the business day following the official non-working day is



non-working. Election days are also non-working days. Work on official public holidays and other non-working days is compensated with higher pay.

The minimum paid annual leave is 21 calendar days, or more for certain groups of employees.

## 8.9 Sick Leave

Compensation for the first 14 days of sick leave is provided by the employer. Compensation for the remaining days is provided by the State Social Protection Fund.

## 8.10 Maternity Leave

Generally, women are entitled to paid maternity leave for 70 calendar days prior to childbirth and 56 days (70 in certain cases) after childbirth. Maternity allowances are paid by the State Social Protection Fund, not the employer.

## 8.11 Dismissal

The *Labor Code* provides the following grounds for dismissal: liquidation of an entity, downsizing, employee's unsuitability for the position, employee's non-performance or gross violation of his or her job duties, failure of employee to prove him/herself during probationary period and employee reaching a certain age limit (applies only for those, financed from the state budget). If an employer has a trade union and an employee is a member of that trade union, to dismiss the employee due to downsizing or the employee's non-performance or gross violation of his or her job duties, the employer must obtain the consent of the trade union. There are also certain restrictions covering the dismissal of certain categories of employees. In some cases an employer is required to report an employee's dismissal to the appropriate state authorities.



## 8.12 Cost of Employment

Employers are required to pay social security contributions (see Section 6.3.9 above) for their employees.

From 2010 employers must insure their employees against occupational illness and workplace injury. Depending on the industry and occupational hazards, insurance premiums for this mandatory coverage vary from 0.2 to 2.0 percent of an employee's annual gross salary.

## 8.13 Income Tax

The employer is obliged to withhold income taxes for its employees (see Section 6.3.2 above) and certain social security contributions as described in Section 6.3.9 (above).

## 8.14 Foreign Workers in Azerbaijan

Foreign employees working in Azerbaijan, except for those who have entered into an employment contract with a legal entity of a foreign country in that country and fulfill their labor duties in an enterprise (branch, representative office) operating in Azerbaijan, are subject to Azerbaijani labor law.

Generally foreign nationals wishing to work in Azerbaijan are required to obtain a work permit. This requirement does not apply to certain foreign nationals (e.g. heads and deputy heads of branches and representative offices of foreign legal entities, heads and deputy heads of an LLC with at least one foreign shareholder, people visiting Azerbaijan on business trip(s) for up to 90 cumulative days per rolling year with regard to certain sectors of the economy, etc.). Work permits are issued by the migration authorities. A work permit may be issued for up to one year and may be extended an unlimited number of times (each extension may be for up to one year). Conclusion of employment contracts with foreign nationals prior to obtaining work permits for them is prohibited.

Foreign nationals, except for those from certain countries, coming to Azerbaijan must have visas. Starting from July 2016, foreigners may obtain an electronic Azerbaijani tourist visa through an authorized Azerbaijani travel agency. This visa can be obtained by electronically submitting the relevant documents and does not require a personal visit to the respective consular office.

The migration authorities may require foreign nationals to apply for a temporary residence permit. A temporary residence permit is issued for the period corresponding to the validity of the relevant work permit and may be extended an unlimited number of times. Unless a foreign national has obtained a temporary residence permit, on each visit lasting for more than ten days he or she must register at his or her place of residence in Azerbaijan within ten days from arrival.



## 9. Property Rights

### 9.1 Introduction

Legislation regulating land rights in Azerbaijan primarily consists of the Land Code of the Republic of Azerbaijan dated June 2, 1999 (the *Land Code*); the law *On Land Reform* dated July 16, 1996 (the *Land Reform Law*); the law *On Land Lease* dated March 17, 1999 (the *Land Lease Law*); the law *On the Land Market* dated May 7, 1999 (the *Land Market Law*); the law *On Withdrawal of Land for Governmental Needs* dated April 20, 2010; and other legislative acts. Land rights are also regulated by the relevant provisions of the *Civil Code*.

### 9.2 Limitations on Ownership

The *Land Code* recognizes state, municipal, and private ownership of land in Azerbaijan. All types of ownership rights are equal. Only Azerbaijani citizens and Azerbaijani legal entities (including enterprises with foreign investment) may legally own land in Azerbaijan. International organizations, foreign legal entities, stateless persons, foreign citizens and states may lease land in Azerbaijan, although they may not own land and may not be granted a purchase option on a lease.

Certain categories of land are the exclusive property of the state or municipalities and may only be leased by or granted for the use of private persons. Individuals may own land within the limits established by law.

### 9.3 Use of Land

In addition to ownership, the *Land Code* recognizes perpetual and temporary land use rights, lease rights, and easements.

Perpetual or temporary land use rights are granted free of charge. Temporary land use rights are divided into two categories: (i) short term (up to 15 years) and (ii) long term (up to 99 years for lands under private ownership and up to 45 years for lands under state or

municipality ownership). The terms of a temporary land use right may be extended appropriately either by the authorities that granted the right (*if the land is under state or municipal ownership*) or by a new agreement between the parties (*if the land is under private ownership*). Perpetual land use rights are granted for an indefinite period. The holder of such rights is liable only to land tax for the land use. Perpetual land use rights are granted to a limited number of persons listed in the *Land Code* for certain purposes, such as ensuring the rights of the population needed for their apartments to be viable. These persons may be entitled to a temporary land use right which is granted by the state and municipalities only in exceptional circumstances where the period of operation is known in advance. This rule does not apply to the construction of apartments.

Landowners may grant perpetual or temporary land use rights under an agreement with the land user. In this case, land use terms are defined by the agreement between the landowner and the land user.

Land lease is the use of land for a definite period and for a fee. Leases are concluded for a period agreed upon by the parties. Rental payments for the lease of privately held land plots are freely negotiable. Rental payments for state or municipally owned land plots are determined according to market conditions, but may not be less than specified statutory rents. With regard to agricultural land, discounts on statutory rents are available, depending on market conditions in the agricultural sector.

Landowners and holders of perpetual or temporary land use rights may, if the conditions of the land use so provide, lease land as lessors. Under the *Land Lease Law*, foreign individuals and legal entities may only be lessees or sub-lessees of land plots. Purchase option provisions in land lease agreements concluded with foreign individuals and legal entities are prohibited.

Lessees may sublease leased land parcels by the consent of the landowner lessors.



An easement is a right to the restricted use of a third party's land such as an access road, *etc.* It may be established by an agreement between interested parties or by a court. Generally the easement holder must pay for the easement right, unless otherwise provided for by law. Easements established on agricultural land for enterprises or individuals engaged in agriculture are free. Easement rights remain in place upon the transfer of land and land use rights.

## 9.4 Land Transfers

Landowners have the right to transfer their land by sale, contribution to charter capital, mortgage, exchange, grant, or by other means, subject to certain restrictions established by law. A foreign owner must sell a land parcel within one (1) year if such land parcel was transferred to the foreigner as an inheritance or gift or as result of foreclosure. State or municipal authorities, as the case may be, have the right to enforce a mandatory sale if a foreigner fails to comply with this requirement.

The state or municipality (depending on the status of the land) may transfer land parcels from the state or municipal fund, respectively, into the ownership or use of citizens and legal entities of Azerbaijan, with or without payment. For certain land plots of state or municipal funds transfer into private ownership is prohibited or, if it is allowed, requires that such transfer be made on a tender basis. Land users and lessees have the right to transfer their land use rights, subject to restrictions that may be imposed by the landowner.

The value of land set forth in land transactions must correspond to market value and, in any case, may not be less than the minimum statutory value fixed by law. All land-use rights, including easements and servitudes and transactions therewith, are subject to state registration. Land transactions are subject to notarization.

## 9.5 Registration of Immovable Property

All ownership rights to immovable property, including land rights, must be registered with the State Register of Immovable Property of the State Committee for Property Issues. Under the law *On State Registration of Immovable Property*<sup>8</sup> (the *Immovable Property Law*), ownership rights to land, subsoil plots, isolated bodies of water, and any other thing securely attached to a land plot, i.e., objects that may not be moved without causing disproportionate damage to their function, including forests, longstanding plantations, buildings, and structures, as well as ownership rights to premises under construction and lease and use rights, are also subject to state registration.

Under the Immovable Property Law, the mortgage of immovable property as well as of premises under construction must likewise be registered. The right to lease or to use immovable property needs to be registered if such right is going to last more than eleven (11) months. Under Azerbaijani law, information contained in the Register of Immovable Property is not open to the public and is available only to the property owners.

On September 5, 2012, the President of the Republic of Azerbaijan adopted a decree on the activity of the State Agency for Public Services and Social Innovations. The main objectives of the agency are to improve the services provided to citizens by State authorities, undertake integration of information databases of State authorities, and further the establishment of electronic public services in Azerbaijan.

ASAN Service centers were established as main structural divisions of the agency. The agency primarily operates through such centers. The agency has a range of responsibilities related to property registration issues such as:

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<sup>8</sup> Law No. 713-IIQ of the Republic of Azerbaijan, *On State Registration of Immovable Property*, dated June 29, 2004.



- notarial services;
- registration of real estate transactions (issuance of extracts on real estate rights, as well as certificates on encumbrance of real estate issued from the state register); and
- issuance of cadastral certificates.

## 9.6 Mortgages

Mortgages are regulated by the *Civil Code*, the law *On Mortgage*<sup>9</sup> (the *Mortgage Law*) and the new supplementary regulations, which have broadened the mortgage market. Immovable property, including immovable property under construction, and movable property with registered proprietary rights, may be mortgaged and re-mortgaged.

The *Mortgage Law* introduces mortgage certificates as a type of security registered with the state registry. A mortgage certificate is issued by a mortgagee and certifies the holder's: (i) mortgage and (ii) priority right to claim satisfaction without the need to produce additional evidence of the mortgagor's underlying obligation, and (iii) right to claim seizure in the circumstances specified by the law.

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<sup>9</sup> Law No. 883-IIQ of the Republic of Azerbaijan, *On Mortgage*, dated April 15, 2005.



## 10. Language Policy

Under the Constitution and the *Law on the Official Language*, which became effective January 4, 2003 (the *Official Language Law*), the state language is Azerbaijani. The Azerbaijani alphabet is based on Latin script. Azerbaijani is the official language of administration, legislation, court proceedings, and recordkeeping in all state agencies, state-owned enterprises, organizations, businesses, and other entities in Azerbaijan.

All state bodies, local authorities, state agencies, political parties, non-governmental organizations (funds and public associations), trade unions, and legal entities (including their representative or branch offices) are required to use Azerbaijani in their official interactions and transactions.

Adult foreigners and stateless persons applying for a permanent residence permit in Azerbaijan must pass an interview organized by the government authorities to ascertain the foreigners' and stateless persons' Azerbaijani language proficiency.

As a rule, and unless otherwise established by the relevant law (such as that governing notaries), any notarization, legalization, registration, or other form of formalization of a foreign-language document requires translation into Azerbaijani with subsequent notarization of the translation.

Letterheads, signage, and other items of official paperwork, announcements, advertisements, price tags, labels, and certifications must be in Azerbaijani and, additionally, may be in other languages where necessary or desirable (such as in the case of goods exported from Azerbaijan, individual passports, etc.). For services rendered to foreigners, a foreign language may be used together with Azerbaijani.

The rules of Azerbaijani spelling are set out in the *Rules of Azerbaijani Orthography* approved by Resolution No. 108 of the Azerbaijani Cabinet of Ministers on August 5, 2004, which, as a rule,



require that words from other languages using the Latin script be spelt in Azerbaijani. The State Language Commission was formed in 2001 to address the official use of Azerbaijani.

## 11. Civil Legislation

The *Civil Code*, adopted on December 28, 1999, and effective from September 1, 2000, forms the basis of civil law in Azerbaijan. The *Constitutional Law on Normative-Legal Acts*<sup>10</sup> provides for the supremacy of the *Civil Code* over other laws and codes that govern civil law agreements, transactions and acts. Further, Article 2.6 of the *Civil Code* establishes the general supremacy of the *Civil Code* over other legal acts adopted in furtherance of laws regulating civil law relations. The *Civil Code* does not generally regulate proprietary relationships based on administrative or other forms of subordination, including tax, financial, and administrative relationships.

The *Civil Code* consists of two parts: the General Part and the Special Part. The articles of the General Part include provisions applicable to persons (individuals and legal entities), property, and property rights; rules governing the enforcement of obligations; and the conclusion, validity, and termination of contracts.

Among the provisions applicable to legal entities are provisions regulating different types and organizational forms of legal entities, and the main principles of a legal entity's establishment, state registration, management, activity, liquidation, and reorganization.

The *Civil Code* introduces detailed provisions on property rights as well as the distinctions between movable and immovable property. Immovable property transactions require both certification by a notary and registration in the state immovable property register. Similar requirements might apply to movable assets as prescribed by other acts.

The *Civil Code* specifically incorporates the principle of freedom of contract pursuant to which parties are free to enter into and agree the terms of contracts, including those not governed in the Special Part of the *Civil Code*. Under the *Civil Code*, parties must nevertheless

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<sup>10</sup> Dated December 21, 2010; came into force on February 21, 2011



comply with the mandatory provisions of the *Civil Code* and other laws. The Special Part of the *Civil Code* contains rules governing particular types of contracts. Apart from types of contracts regulated under the previous *Civil Code* (sale and purchase, lease, loan, commission, transportation, storage and supply), the current *Civil Code* regulates certain “new” types of contracts, such as franchises and concessions. It also regulates inheritance and reimbursement for damage caused through non-contractual relationships, as well as general aspects of various forms of securities transactions.

The current *Civil Code* (unlike its Soviet-era predecessor) addresses intellectual property rights only in general terms and does not address conflict of laws in international transactions; these have been left to specific legislative acts for detailed regulation.

In civil transactions with a foreign element (e.g., where one of the parties is a foreign person), the parties to an agreement may choose a foreign law as the governing law. While there are certain exceptions typical for many jurisdictions, under Azerbaijan’s conflict of laws rules<sup>11</sup>, courts in Azerbaijani must respect and uphold choice of law.

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<sup>11</sup> Primarily, Law No. 889-IQ, of the Republic of Azerbaijan, *On Private International Law*, dated June 6, 2000.

## 12. Banking

### 12.1 Description of the Banking System

Banking in Azerbaijan is regulated by the law *On Banks*,<sup>12</sup> the law *On the Central Bank of the Republic of Azerbaijan*,<sup>13</sup> the Charter of the Chamber of Control over the Financial Markets<sup>14</sup> and normative acts of the Central Bank of the Republic of Azerbaijan (“CBA”) and of the Chamber of Control over the Financial Markets. Both banks and non-bank credit organizations are classified as credit organizations. However, while banks are allowed to conduct all types of banking operations, under the law *On Non-Bank Credit Organizations*<sup>15</sup>, non-bank credit organizations may conduct only certain types of banking operations, such as extending loans, selling and purchasing debt obligations (factoring, forfeiting), financial leasing, issuing guarantees, etc., and are expressly prohibited from accepting deposits.

Azerbaijan has a two-tiered banking system, with the CBA and the Chamber of Control over the Financial Market making up the first tier and the remaining banks making up the second.

The CBA is a public legal entity that operates as the central banking authority and establishes and implements state monetary and currency policy. Maintaining the domestic and external stability of the manat is one of the most important elements of current monetary policy.

The CBA reports to the President of Azerbaijan. Upon nomination by the President, the National Assembly appoints the seven-member board of the CBA. The President appoints the CBA chairman from

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<sup>12</sup> Law No. 590-IIQ of the Republic of Azerbaijan, *On Banks*, dated January 16, 2004, as amended.

<sup>13</sup> Law No. 802-IIQ of the Republic of Azerbaijan, *On the Central Bank of the Republic of Azerbaijan*, dated December 10, 2004.

<sup>14</sup> Decree of the President of the Republic of Azerbaijan on the Charter of the Chamber of Control over the Financial Markets, dated March 10, 2016.

<sup>15</sup> Law No. 933-IIIQ of the Republic of Azerbaijan, *On Non-Bank Credit Organizations*, dated December 25, 2009.



among the board members, approves annual reports, appoints auditors, and has the right to demand any information related to the CBA's activity.

The Chamber of Control over the Financial Markets, in its turn, is a public legal entity that regulates and supervises participants of the securities market, investment funds, insurance and credit organizations (banks, non-banking credit organizations and postal operators) and payment systems and ensures transparency and flexibility in its supervision. The Chamber of Control over the Financial Markets can adopt legal acts regulating the financial markets, issue and revoke licenses of the participants of the financial markets, and carry out inspections of said participants.

As one of the banking supervisory authorities, the Chamber of Control over the Financial Markets establishes minimum charter capital, net worth, and other prudential requirements for them. It also issues regulations on professional qualifications for the senior management and accounting personnel of commercial banks, including branches of foreign banks.

As of the end of 2016 there were 32 banks registered in Azerbaijan. Banks in Azerbaijan must be established by at least three individuals and/or legal entities in the form of an open joint stock company. Political parties, social unions, funds and other non-commercial organizations may not be shareholders in banks.

In addition to core banking operations (such as accepting deposits, issuing loans, and transferring funds), a bank may engage in other operations (such as factoring, clearing, professional activity on the securities market, and other activities) if its license allows.

In 2012 the aggregate capital requirement for banks was increased under the *Rules on the Calculation of Bank Capital and Its Adequacy*. Pursuant to these rules, from January 1, 2015 the minimum aggregate capital requirement for banks is 50 million manats.

## 12.2 Licensing

All banking activities, including the acceptance of deposits, maintenance of correspondent accounts, cash operations, money transfers, and lending, are subject to licensing. Only the Chamber of Control over the Financial Markets has the right to grant and revoke licenses for banking activity, and to permit the establishment of a bank's subsidiaries, branches, and representative offices.

Bank licenses are issued for an indefinite term and are effective as of the date of issuance by the Chamber of Control over the Financial Markets. Bank licenses may not be transferred to third parties.

## 12.3 Standards for Domestic Banks

The Chamber of Control over the Financial Markets establishes prudential regulations for banks (including requirements for minimum capital as well as the monetary and non-monetary proportions of a bank's capital) and reserve fund requirements.

The senior management of all banks (board members, chief accountant and his or her deputies, internal audit director and head and chief accountant of each branch) is subject to certain compulsory standards and is certified by the Chamber of Control over the Financial Markets, which also certifies all persons authorized to sign documents in the name of a bank and its branches.

## 12.4 Banks with Foreign Participation

Foreign banks may operate representative offices, branches, joint ventures, and wholly owned subsidiaries in Azerbaijan.

Foreign individuals and foreign entities registered in offshore areas specified by the Chamber of Control over the Financial Markets, as well as foreign banks and foreign bank holding companies, may not be founders or shareholders of local banks or founders of local subsidiary banks, branches, or representative offices.



Foreign individuals and foreign entities that are not banks may set up, operate, and acquire shares in banks in Azerbaijan. Azerbaijani law does not define the term “bank with foreign participation,” so this term may be broadly construed to embrace virtually all banks with foreign capital, regardless of the extent of foreign ownership.

Banks with foreign participation are subject to the same restrictions as domestic banks, as well as certain additional restrictions. For example, at least one of the members of the board of a subsidiary of a foreign bank or foreign bank holding company operating in Azerbaijan and at least one of the managers of a branch of a foreign bank must be a citizen of the Republic of Azerbaijan.

## 12.5 Liquidation and Reorganization of Banks

Banks may be liquidated or reorganized upon revocation of their licenses by the Chamber of Control over the Financial Markets, by court order (mandatory liquidation), or by a voluntary decision of the bank (voluntary liquidation). Revocation of a banking license by the Chamber of Control over the Financial Markets will initiate general liquidation procedures as provided for by corporate law.

## 12.6 Non-Banking Activity of Banks

Banks are prohibited from conducting the following activities:

- Wholesale and retail trade;
- Production;
- Transportation;
- Agriculture;
- Mining;
- Construction; and



- Insurance.

With the exception of insurance, banks may not engage in the activities above as an affiliate, shareholder, or partner.



## 13. Intellectual Property

### 13.1 Introduction

Since 1996 the Republic of Azerbaijan has implemented a national system for the registration and protection of intellectual property rights. Intellectual property rights in Azerbaijan include all rights to industrial property (including inventions, industrial designs, utility models, trademarks, geographic names, and domain names) and copyright and related rights. Current legislation pertaining to intellectual property includes the *Law on Copyrights and Related Rights*<sup>16</sup> (the *Copyright Law*), the *Law on Trademarks and Geographic Designations*<sup>17</sup> (the *Trademark Law*); the *Law on Patents*<sup>18</sup> (the *Patent Law*), the *Law on the Topology of Integrated Microcircuits*,<sup>19</sup> the *Law on Unfair Competition*<sup>20</sup> (the “*Unfair Competition Law*”) and the *Law on Securing Intellectual Property Rights and Combating Piracy* (the “*Anti-Piracy Law*”)<sup>21</sup>.

### 13.2 State Patent Issuing Agencies

There is currently no central state agency specifically responsible for the protection of intellectual property rights in Azerbaijan. Under existing legislation, the Cabinet of Ministers is empowered to authorize various state agencies to register and protect intellectual property rights in various areas. The State Agency for Standardization,

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<sup>16</sup> Law No. 438-IQ of the Republic of Azerbaijan, *On Copyrights and Related Rights*, dated October 8, 1996.

<sup>17</sup> Law No. 504-IQ of the Republic of Azerbaijan, *On Trademarks and Geographic Names*, dated June 12, 1998.

<sup>18</sup> Law No. 312-IQ of the Republic of Azerbaijan, *On Patents*, dated June 10, 1997.

<sup>19</sup> Law No. 337-IIQ of the Republic of Azerbaijan, *On the Topology of Integrated Microcircuits*, dated May 31, 2002.

<sup>20</sup> Law No. 1049 of the Republic of Azerbaijan, *On Unfair Competition*, dated June 2, 1995

<sup>21</sup> Law of the Republic of Azerbaijan, *On Security of Intellectual Property Rights and Combating Piracy*, dated May 22, 2012

Metrology and Patents was established by *Presidential Decree No. 623* dated December 27, 2001, for patent issuance and trademark registration purposes. Pursuant to *Presidential Decree No. 53* dated November 19, 2008, this institution was transformed into the State Committee for Standardization, Metrology and Patents (the “Patent Committee”). The Copyright Agency of the Republic of Azerbaijan is responsible for the registration of copyrights. On December 7, 2011, pursuant to a decision of the Cabinet of Ministers, the Center for Protection of Intellectual Property Rights under the Copyright Agency was established.

### 13.3 International Conventions

Azerbaijan is party to several international agreements concerning the protection of intellectual property including the *Berne Convention for the Protection of Literary and Artistic Works*, the *Convention Establishing the World Intellectual Property Organization*, the *Performances and Phonograms Treaty of the World Intellectual Property Organization*, the *Copyright Treaty of the World Intellectual Property Organization*, the *Paris Convention for the Protection of Industrial Property*, the *Madrid Agreement Concerning the International Registration of Marks*, the *Protocol regarding the Madrid Agreement Concerning the International Registration of Marks*, the *Patent Cooperation Treaty*, and the *Eurasian Patent Convention*.

### 13.4 Registration

Azerbaijan is a “first to file” and not a “first to use” jurisdiction, meaning early filing and registration of intellectual property rights is essential in ensuring protection.

### 13.5 Patent Protection, Utility Models, and Industrial Design

Patent protection is granted to an invention if it is novel, inventive, and useful. The maximum duration of protection for an invention



patent is 20 years. If the subject matter of an invention patent is a product or process subject to administrative procedures the validity term may be extended for five years.

Utility models are inventions which are granted patent protection if they are new and “industrially applicable.” The term of utility patents is 10 years.

An industrial design right is characterized by an artistic and structural form which determines its external appearance. Patent protection is granted if an industrial design is novel or original. The validity term is 10 years, which may be extended for another five years at the application of the patent owner.

Patents may be assigned and/or licensed by their owner(s) to individuals or legal entities. However, an assignment must be registered with the Patent Committee to be valid. Patent infringement can result in civil, criminal, and administrative charges.

### 13.6 Trademarks and Geographic Designations

The right to a trademark is based on registration with the Patent Committee. Trademark registration is granted for a term of 10 years, renewable repeatedly. Assignments and licenses for trademarks and geographic designations must also be registered.

Legal protection is given to the appellation of the origin of goods based on registration with the relevant state agencies, and to trademarks either existing under international agreements upon the registration thereof, or bearing the status of a well-known trademark. Violation of intellectual property rights can result in civil, criminal, and administrative charges.

### 13.7 Domain Names

There is no separate law regulating domain names as such. However, under the amendments made to the *Trademark Law* dated April 3, 2009, several provisions regulating domain names came into force.

Accordingly, under the *Trademark Law*, if domain names are identical to trade names and trademarks covering identical goods and services and used for commercial purposes, then they will be deemed to infringe the rights of the trademark owner.

## 13.8 Copyright

The *Copyright Law* regulates activities connected to the creation and use of works of science, literature, and the arts (copyright), as well as stage productions, phonograms, programs broadcast by radio or cable, and computer programs and databases (related rights). Copyright protection is normally granted to the author without registration requirements. The right to use a copyrighted work may be assigned by the author. A copyright provides protection for the lifetime of the author and normally for a period of 70 years following his or her death. Azerbaijani copyright law imposes civil, administrative and criminal sanctions for violation of copyright and related rights.

## 13.9 Computer Programs and Databases

Rights to computer programs, databases, and topologies of integrated microcircuits are protected under the *Copyright Law* and the *Law on the Topology of Integrated Microcircuits*. The unauthorized re-creation (copying) of computer programs, alteration of existing programs, and unlawful accessing of legally protected computer information are criminal offenses.

## 13.10 Anti-Piracy

On October 8, 2012 the new law *On Securing Intellectual Property Rights and Combating Piracy* came into effect in the Republic of Azerbaijan. The law introduces the following key features:

- a clear distinction between the legal notions of counterfeit and pirated goods, where pirated goods are defined as copies of audiovisual works, phonograms, computer programs, information collections and books manufactured (produced) or distributed without the consent of the rights owner;



- methods for assessment of the rights owner's losses caused by the infringement;
- the rights owner's *right to information*, which is aimed at facilitating the calculation of incurred damage;
- openness of court decisions, which will be published on a special website and may be distributed at the expense of infringers;
- provisional measures that may be adopted by courts to secure a civil claim, and which are aimed at preventing the manufacture and distribution of infringing goods and protecting evidence.

## 14. Product Liability

### 14.1 Background

Product liability is an emerging legal concept in Azerbaijan principally governed by the new *Civil Code* and the law *On Consumer Protection* dated September 19, 1995 (the *Consumer Protection Law*). The *Consumer Protection Law* addresses basic consumer issues governing the right to enter into agreements to purchase goods and services, the quality and safety of goods and services, information concerning goods and services, and the right to protect consumer rights in court and to be reimbursed for damage caused by any defects, including moral (psychological) harm.

Both the *Civil Code* and the *Consumer Protection Law* recognize implied warranties similar to implied warranties of merchantability and implied warranties of fitness for a particular purpose (or use) and satisfactory quality. A seller or supplier of merchandise, however, is liable for defects in his or her merchandise covered by a warranty only within the warranty period specified by the contract. Notwithstanding this, if the warranty period is less than two years, the buyer can still assert his or her claim due to defects in goods within two years of receiving the goods, provided that the buyer is able to prove that the defects existed in the goods before they were purchased. If merchandise is sold to a buyer without any warranty, the seller of such merchandise would be liable for any latent defects in the merchandise for a “reasonable time” after purchase, but not later than two years from the date the merchandise was transferred to the purchaser.

Sellers and manufacturers may not, directly or indirectly, restrict any consumer protection rights guaranteed under the *Civil Code* and the *Consumer Protection Law*. Provisions of agreements restricting such rights are void. Sellers and manufacturers are obliged to ensure the proper quality of products and have a duty to inform the consumer of any possible defects.



A consumer may claim compensation from a seller and/or manufacturer where a defect exists, where the consumer has received unreliable or incomplete information concerning the product, or where the product has caused injury to health, life, or property. The *Civil Code* imposes liability on manufacturers and sellers for the death, personal injury, and, to some extent, damage to the property of end users regardless of who is at fault. The *Consumer Protection Law* obliges a court to consider the issue of compensation for moral harm when satisfying consumer claims.

## 14.2 Product Quality

Proper quality is determined by legislative norms and technical specifications applicable to a particular product. Certain goods are subject to mandatory certification by state agencies, in accordance with procedures established by legislation. Advertising and distribution of goods without such certification are prohibited.

## 14.3 Protection from Unfair Competition<sup>22</sup>

In accordance with legislation pertaining to competition and monopolies, the following activities constitute unfair competition:

- Spreading false or incorrect information about the goods and services of a competitor;
- Misleading customers as to the function, place of origin, features, usefulness, or quality of goods;
- False advertising;
- Unfair comparison of goods in advertising;
- Unauthorized use of trademarks, names of companies or other branding, as well as copying the shape, packaging, or appearance of the goods of another legal entity;

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<sup>22</sup> A draft *Competition Code* is currently under discussion.



- Unauthorized receipt, use, or disclosure of confidential information, including trade secrets;
- Unauthorized receipt, use, or disclosure of confidential research and development, production, or trade information (including commercial secrets) without the consent of the owner;
- Price fixing and other acts designed to limit competition;
- Mergers of companies designed to limit competition; and
- Restriction of consumers' rights by sole distributors of a product, by virtue of their market position.



## 15. Specific Industries

### 15.1 Oil and Gas

#### 15.1.1 Introduction

Subsoil resources such as oil and gas are the sole and exclusive property of the Azerbaijani state. Rights to engage in subsoil activity may be granted to Azerbaijani citizens and legal entities, as well as to foreign individuals and legal entities.

The main legislation regulating subsoil use in Azerbaijan is the *Law on Subsoil Resources* dated February 13, 1998 (the *Subsoil Law*), which governs the exploration, use, protection, safety, and supervision over the use of subsoil reserves located both within Azerbaijan and on the Azerbaijani sector of the Caspian Sea. At the same time the *Subsoil Law* is not applicable to use of subsoil with regard to energy matters, such as oil and gas. The energy field is regulated by the *Law on Energy* dated November 24, 1998 (the *Energy Law*). The *Energy Law* outlines its scope by providing a list of energy products. The list includes all types of gas but is limited to oil/crude oil and oil/crude oil products extracted from bitumen rocks only.

While regulations of the Ministry of Energy of the Republic of Azerbaijan (the “Energy Ministry”) suggest that control of oil and gas matters is generally vested in this ministry, the State Oil Company of the Republic of Azerbaijan (SOCAR) continues to play an important role in such matters.

#### 15.1.2 Oil and Gas Legislation

In the absence of legislation specifically related to oil and gas, the main legal instruments regulating the oil and gas industry in Azerbaijan remain the *Subsoil Law*, the *Energy Law* and production sharing agreements (PSAs). In recent years there has been a draft *Law on Oil and Gas* under review by working groups within the Government and industry; however this process has ceased at present.

Azerbaijan is a signatory to the Energy Charter Treaty.

#### 15.1.3 A special permit and licensing

Under the *Energy Law*, no person or legal entity may engage in oil or gas exploration, exploitation, production, transportation, distribution or use without a special permit and an energy contract. No rules on issuance of a special permit have been established yet.

Installation and exploitation of liquid and natural gas facilities require a license for such activity. Under the new changes to the list of licensed activities (Decree No. 713) sale of oil and gas is no longer subject to licensing.

#### 15.1.4 Contracts

The *Energy Law* provides that production rights to a specified lot (block) shall be granted on the basis of an “energy contract.” Energy contracts are signed between an authorized state body and a supplier which has obtained a special permit.

Under the *Energy Law*, there are five types of energy contracts:

- Exploration Contracts;
- Development and Production Contracts;
- Contracts on Basic Energy Transportation;
- Contracts on Energy Distribution; and
- Contracts on Subsoil Warehouses.

The law sets different terms for each of these contracts.

Exploration contracts are concluded between a contractor and the Energy Ministry or SOCAR. According to the *Energy Law*, the initial period of an exploration contract shall not be more than 2 (two) years.



This period may be prolonged for an additional 1 (one) year by mutual agreement of the parties.

Development and Production contracts are concluded between a contractor and the Energy Ministry or SOCAR for the exploitation of oil and gas fields. The exploitation term is divided into development and production periods. Pursuant to the Energy Law, the development period may be divided into several periods and be prolonged not more than 8 (eight) years from the contract date. There is no limitation for the production period.

Energy contracts in the production period may be assigned to third parties or a derivative contract may be executed by a contractor with the special consent of the Energy Ministry and come into force after registration.

Energy contracts may be terminated in the following circumstances:

- Discovery of material evidence that provides a basis for termination of the contract;
- Breach of obligations by the contractor; or
- Contractor's failure to properly use rights granted under the contract.

All major oil and gas projects to date have been undertaken on the basis of production sharing agreements (PSAs).

Once the PSA with a contractor is signed, the contract is submitted to the National Assembly, which adopts a law on approval of the PSA. This procedure is outlined in the *Foreign Investment Law*, which underpins the regulatory framework for PSAs.

In recent years there have been some developments in using risk services agreements instead of PSAs. However PSAs remain the main contractual structure applied in this industry.

### 15.1.5 Export of Oil and Gas Infrastructure and Expertise

The law *On the Application of a Special Economic Regime to Export Oil and Gas Operations* dated February 2, 2009 (the *Oil and Gas Operations Export Law*) was enacted in an attempt by the Azerbaijani Government to promote the exportation, especially to Caspian littoral states, of oil and gas infrastructure technology and expertise which have accumulated in Azerbaijan over the past years. The law, however, does not apply to activity performed under PSAs, pipeline agreements and/or similar agreements and laws. It is not applicable to the performance of works, services and import-export in relation to oil and gas operations in Azerbaijan and on the Azerbaijani sector of the Caspian Sea, either.

The *Oil and Gas Operations Export Law* applies to the exportation of oil and gas expertise (activity) by qualified contractors and subcontractors and sets a separate tax regime applicable to contractors' and subcontractors' exported oil and gas operations. Moreover, contractors and subcontractors are exempt from paying customs duties and VAT on goods (works and services) imported into Azerbaijan in connection with their export oil and gas operations, and may open and operate bank accounts outside Azerbaijan with a notification (as opposed to the consent presently required in other industries) to the Central Bank of the Republic of Azerbaijan and relevant authorities on their open and closed bank accounts.

Due to elements in the law that differ from the general regime currently in effect, issues are expected to arise in the practical implementation of the law.

## 15.2 Power

### 15.2.1 Legislation

The main legislative acts regulating the power sector are the *Law on Use of Energy Resources* (the *Energy Resources Law*) dated May 30, 1996; the *Law on Electric Energy* (the *Electricity Law*) dated April 3, 1998; the *Law on Electricity and Heat Power Stations* (the *Power*



*Station Law*) dated December 28, 1999 and the *Rules on Use of Electricity* (the *Rules on Use of Electricity*) approved by decision of the Cabinet of Minister No 18 dated February 2, 2005. To satisfy the public's need for electricity and gas, the President adopted the *State Program on Development of the Fuel-Energy Complex of Azerbaijan (2005-2015)*.

To address the growing global concern over air-polluting emissions, in 2004 the President of Azerbaijan approved the *State Program on the Use of Alternative and Renewable Energy Sources in the Republic of Azerbaijan*. Additionally, the Government has announced its intention to grant certain benefits to companies wishing to engage in this business, although specific benefits have yet to be specified in governmental regulations. In 2009 the President created by decree the Agency for Alternative and Renewable Energy Resources at the Energy Ministry, to oversee and facilitate the development of the alternative energy industry in Azerbaijan<sup>23</sup>. Further, on December 29, 2011, the President of Azerbaijan issued a decree directing the agency to develop a national strategy for the use of energy derived from alternative and renewable resources during the period 2012-2020. The strategy is still under development.

Along with the state programs mentioned above, certain other documents have been adopted at the government level to develop the power market in the Republic of Azerbaijan. A recent example of one such document is the *Strategic Road Map on the Development of Public Utilities (power and heat energy, water and gas) in the Republic of Azerbaijan* approved by the Decree of the President of the Republic of Azerbaijan, dated December 6, 2016 (the “*Road Map*”). By providing three strategic visions: (i) Strategic vision up to 2020; (ii) Long-term vision up to 2025; and (iii) Target vision after 2025, the Road Map determines four main directions related to the power energy sector:

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<sup>23</sup> Presidential Decree No. 123, dated July 16, 2009, *On the Establishment of the Agency for Alternative and Renewable Resources at the Ministry for Industry and Energy*

- Optimization of expenses, liberalization of expenses and unbundling of power sector components;
- Diversification of the production profile;
- Diversification of the investment profile through the state financing model and IPPs (independent power producers) model; and
- Use of smart metering and networks.

In the meantime, the following state programs have not been adopted yet, but are in the process of development: (i) the State Program on the Development of the Fuel-Energy Complex of the Republic of Azerbaijan (2015-2025); and (ii) the State Program on the Efficient Use of Energy Resources and the Energy Activity of End-Users (2015-2020).

Legislation on the Azerbaijan power sector has not yet been fully implemented. Many provisions of these laws merely outline the intentions of the state with respect to restructuring the power sector of Azerbaijan and do not reflect its present, true condition.

Under the *Electricity Law*, the energy system of the Republic of Azerbaijan should consist of the following:

- The State Electrical Enterprise,<sup>24</sup> which operates transmission lines of more than 110 kV; dispatch centers; and energy production enterprises. The State Electrical Enterprise purchases energy produced by energy producers for distribution through its transmission network, and conducts cross-border electricity exchanges.

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<sup>24</sup> Currently, the functions of the State Electrical Enterprise are performed by the state-owned Azerenerji JSC.



- Energy suppliers, which are legal entities that purchase electricity from the State Electrical Enterprise or independent energy producers, and sell it to consumers.
- Independent energy producers belonging to the state, various economic entities and private enterprises, which are not part of the common state electrical energy system. These producers generate energy for direct supply to consumers through their own distribution networks or via the State Electrical Enterprise or energy suppliers. These entities may also export their excess power to other countries.

Within the framework of the *Memorandum of Understanding on Strategic Partnership between EU and Republic of Azerbaijan in the Field of Energy*, signed on November 7, 2006, the European Union provides support to Azerbaijan at various levels aimed at the gradual convergence of the European Union's and Azerbaijan's energy legislation and at the integration of their respective energy markets.

#### 15.2.2 Elimination of the State Monopoly in the Power Sector

Some distribution networks of Azerbaijan were operated by private companies under long-term management contracts until recently, when all of these contracts were terminated. In general, privatization of state property began with the First Privatization Program (1995-1998) and in 2000, the second phase of the privatization program was approved by the President to allow privatization of the country's remaining large scale enterprises. Reforms in Azerbaijan's energy sector have also included large-scale privatization. The privatization of distribution networks, however did not bring the expected results and currently distribution networks are managed by state-owned companies.

The Azerbaijani power sector is a vertically integrated, publicly owned monopoly. Except for several small private hydropower stations, the state currently owns all generating facilities and transmission lines of more than 110 kV through Azerenerji JSC.



In an effort to eliminate subsidies for electricity, the Government intended to permit independent power producers (IPPs) to build and operate new power stations in Azerbaijan, and negotiated with several major private players on the international power market. The *Power Station Law* grants favorable conditions for power projects of “national importance,” including state guarantees for the construction of foreign-owned independent power stations, and guarantees the purchase of power produced from renewable energy resources. The Cabinet of Ministers exempted the import of wind power devices from VAT.

Currently the building and reconstruction of power stations are financed from the state budget, while multinational and foreign banks finance power sector restructuring and reconstruction.

### 15.2.3 Licenses

Under the *Electricity Law*, a foreign investor wishing to enter the power market must first obtain a permit to do so, and then must conclude a contract with authorized state agencies to carry out the planned energy-related activities.

As a general rule, special permits to carry out activity in the power sector are granted, and the contractors determined, on a competitive basis. The *Electricity Law* and the *Law On Licenses and Permits* requires that individuals and legal entities obtain special permission to conduct activities for the generation of electricity exceeding certain power limits determined by the Cabinet of Ministers, transmission, distribution and sale of electricity if not otherwise determined by law. In certain cases permission may be issued without a tender by decision of the Energy Ministry. The Cabinet of Ministers determined the following power limits for the application of the generation permit<sup>25</sup>:

- For power plants generating energy from alternative and renewable energy sources - more than 150 KW;

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<sup>25</sup> Decision No 482 of the Cabinet of Ministers, dated November 24, 2016.



- For hydro-power plants and power plants generating power and heat energy through gas derived from bio-mass or other fuel type - more than 500 KW.

The *Electricity Law* also prohibits the construction and operation of high-voltage installations without prior special permission unless otherwise provided by law.

All power projects and production, technological processes, services, facilities, and devices connected with or related to the use of energy resources and their production, transmission, and consumption are subject to mandatory certification, i.e., confirmation of compliance with ecological, sanitary, fire, construction, and health and safety standards. Additionally, major projects, as defined in the *Energy Resources Law*, require a feasibility study.

Pursuant to a resolution of the Cabinet of Ministers, special permits are granted to engage in the design, construction and operation of the following types of alternative energy facilities<sup>26</sup>:

- i. small hydroelectric stations (50 to 10,000 kilowatts),
- ii. geothermal power stations,
- iii. power stations with a capacity exceeding 10 kW in which the electricity is derived from wind, sun or biomass.

#### 15.2.4 Consumption and Distribution

Current Azerbaijani law provides that consumers have the right to choose any energy supplier regardless of its location. Energy is supplied under agreements between consumers and energy suppliers. Agreements on the sale and purchase, transmission, and exchange of electricity and heat must comply with the *Rules on Use of Electricity*. *Energy* consumption is subject to mandatory metering.

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<sup>26</sup> Resolution No. 95, dated May 20, 2010, *On the Issuance of Special Permits for Activities in Alternative and Renewable Energy*

The procedure for disconnecting consumers from the network (or termination of power supply) is regulated by the Rules on Use of Electricity, as well as agreements with consumers. The suspension of, or the disconnection from, the power supply of certain types of consumers is prohibited. The list of such consumers is determined by an authorized state agency.

Under the *Energy Resources Law*, independent power generation facilities are granted the right to use the state-owned energy supply system for transmission of electricity. Distribution network enterprises are obligated to grant such access at tariffs and under conditions established by law on a nondiscriminatory basis. These enterprises, however, have the right to refuse to connect a consumer to the network in exceptional circumstances.

In order to transport and distribute electricity and heat to consumers within a certain area, an agreement with the local executive authorities is required, in addition to obtaining permission. Such an agreement specifies the particular area within which the distributor has the right to operate. Termination of operations specified in the agreement (without the consent of the state authorities) is prohibited.

#### 15.2.5 Antimonopoly Regulation

Entities and facilities in the unified energy system engaged in power production, transmission, distribution, and supply are considered to be natural monopolists, and their activities are regulated by the state. The state may take a number of measures to regulate natural monopolies.

The methods of regulating natural monopolies include setting prices and tariffs, determining which customers the natural monopolists must serve or are required to provide with minimum power supplies, reviewing investments made by natural monopolists, and issuing permits for effectuating certain types of transactions. The particular methods are determined and chosen by the state with respect to each natural monopolies.



The following prices for electricity and heat are subject to state regulation:

- Tariffs for the purchase of electricity/heat by producers;
- Wholesale electricity/heat tariffs;
- Retail electricity/heat tariffs; and
- Import-export electricity tariffs.

The *Electricity Law* requires that tariffs cover all costs connected with the generation, transmission, and distribution of power, and that they ensure the profitability of power enterprises and the development of the energy sector. Major chemical and aluminum producers and steel smelters enjoy discounts when they consume electricity beyond a certain threshold.

Tariffs are calculated by the power enterprises, set by the Tariff (Pricing) Council, and approved by the relevant state authorities.

### 15.3 Telecommunications

Telecommunications is an area of great potential growth in Azerbaijan. The *Law on Telecommunications*<sup>27</sup> (the *Telecoms Law*) is the main legislative act regulating the industry. Additionally, the *Law on Television and Radio Broadcasting*<sup>28</sup> and the *Law on Postal Services*<sup>29</sup> are among the laws governing the telecommunications sector.

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<sup>27</sup> Law No. 927-IIQ of the Republic of Azerbaijan *On Telecommunications*, dated June 14, 2005.

<sup>28</sup> Law No. 345-IIQ of the Republic of Azerbaijan *On Television and Radio Broadcasting*, dated June 25, 2002.

<sup>29</sup> Law No. 714-IIQ of the Republic of Azerbaijan *On Postal Services*, dated June 29, 2004.

Telecommunications services must be licensed. The Ministry of Economy is the agency authorized to issue licenses for express courier services and specific types of telecommunications services including provision of fixed line telephone communication services, cellular (mobile) telephone communication services, radio-trunk and wireless communication services, organization of local and international telecommunication channels, IP-telephony communication services.

The Ministry of Transportation, Communication and High Technologies (the “MTCHT”) continues to act as a policy maker and national regulatory authority in the area of telecommunications, although there have been some initiatives in recent years to establish an independent regulatory authority.

Generally, foreign legal entities and individuals must obtain a license to provide express courier services or licensed telecommunications services on an equal footing with Azerbaijani nationals. However, the licenses issued for foreign legal entities, their branches or representative offices or to foreign individuals can be recognized in Azerbaijan and subsequently this requirement may be waived on the basis of existing international agreements. Licenses are issued for an unlimited period of time.

Under the Telecoms Law, the state has exclusive ownership of all radio frequencies. The Telecoms Law provides that the allocation and use of radio frequencies are subject to state regulation. The State Radio Frequencies Commission (the “Commission”) is authorized to issue radio frequency use permits to telecommunications businesses, whereas the State Radio Frequencies Department allocates and registers radio frequencies on the basis of the Commission’s permit. The rules and procedures for obtaining such permits and for operating at various frequencies are prescribed by the Cabinet of Ministers.

The Telecoms Law also recognizes the right of foreign individuals and legal entities to own and operate networks and devices in Azerbaijan. Such devices must be jointly certified by the MTCHT and the State



Committee for Standardization, Metrology and Patents and their subordinate bodies, as well as by accredited test laboratories.

The *Telecoms Law* requires equal treatment of all telecommunications operators, providers, users, and subscribers. Specifically, the law provides that all telecommunications operators and providers, without regard to their ownership structure, operate on an equal footing.

Pursuant to the *Telecoms Law*, the interconnection of telecommunications networks is conducted under interconnection agreements concluded between operators. An operator is obliged to conclude such agreements with other operators within two months - the law, however, is unclear on when this period starts - seemingly from the moment when the operator is empowered to conduct its telecommunications business.

The Telecoms Law introduces the concept of telephone numbering resources and establishes certain rules for their allocation to telecommunications providers and operators, as well as to legal entities and individuals. Specifically, it requires that the MTCHT make such allocations on the basis of a contract between the MTCHT and operators and providers, and payment of the tariffs approved by the Tariff Council of the Republic of Azerbaijan for a limited or unlimited time period. The MTCHT has approved specific rules on the allocation and use of numbering resources with its Resolution No. 01 dated September 3, 2012.

Foreign capital inflow into the telecommunications industry has evolved primarily in the form of joint ventures with entities subordinate to the MTCHT, which acts as both the ultimate partner and the supervising authority. Such joint ventures are engaged in the production of telecommunications equipment and the operation of telecommunications facilities. However, under Presidential Instructive Order No. 671 On the Privatization of Certain Enterprises and Facilities of the MTCHT of the Republic of Azerbaijan, dated March 29, 2001, the Government announced its intention to privatize the state-owned share of joint ventures in which the MTCHT and its

subordinate enterprises and institutions have participated. In implementation of said order the state share in two major GSM operators has been privatized.

Three cellular communication providers operate in Azerbaijan, the first of which started its activity in 1994. All three provide modern technology services including EDGE. There are a number of cable TV providers and independent TV and radio channels currently operating in Azerbaijan. Internet service provider (ISP) services are not subject to licensing and there are currently around 40 ISPs in Azerbaijan.

According to the draft Law On Amendments to the Law On State Duty, which was discussed at the Parliament on February 1, 2017, the state fee for cellular communication license is approved to be in the amount of AZN 1 million (USD 578,168.36) compared to AZN 22,000 (USD 12,719.40).

The existing telephone network is being upgraded significantly. The provision of Internet services and communication at affordable prices has been developing at a rapid pace.

High Tech Park was established with the decree of the President of Azerbaijan 2012 on the island of Pirallahi (which is a district of Baku city) and is subordinate to the MTCHT. It is the cornerstone project in Azerbaijan's planned high-tech economic development. Its mission is to foster a high-tech economy in Azerbaijan by providing a business-friendly environment composed of state-of-the-art facilities, economic incentives, and business services. The aim is to achieve this by being a change agent in the ecosystem - making policy recommendations that support the high-tech sector, holding a series of events to become the hub of high-tech knowledge activities in the region, and by partnering renowned international institutions that share this vision.

On November 8, 2016, the President of the Republic of Azerbaijan signed a Decree On the Establishment of High Technologies Park under the Azerbaijan National Academy of Sciences (ANAS). The Decree provides for the establishment of a separate legal entity



“ANAS High Technologies Park” LLC. The main purpose of the Park is to strengthen state support for increasing competitiveness and ensure continuous growth of the economy, to develop innovation and highly technological sectors based on contemporary scientific and technological achievements, to conduct scientific research, and to create modern systems on the processing of new technologies.

## 15.4 Construction

### 15.4.1 Legislation

The main legislative acts regulating construction are the *Code on Urban Planning and Construction*, dated June 29, 2012 (the *Construction Code*), and the *Civil Code*. Other legal documents in this area are normative acts of a general nature such as property, land, safety, environmental protection, fire and sanitary regulations; construction rules, norms, and standards; and legislative acts regulating specific sectors where structures or facilities are constructed. Many construction rules and standards of the USSR (GOST and SNIP) are still effective in Azerbaijan.

### 15.4.2 Foreign Contractors

Foreigners and foreign legal entities may conduct construction works in accordance with the *Construction Code*.

### 15.4.3 Construction Permit

With the exceptions stipulated by the law, an owner needs a permit to commence construction works. The application of the owner to the relevant local authority for a permit must contain the following documents:

- (a) document confirming ownership, use or lease rights over the land plot;
- (b) project documentation; and



- (c) if the owner is a legal entity, an extract from the state register of legal entities.

The local authority checks the application for completeness within five (5) days. If any document is missing the local authority notifies the applicant of this and provides ten (10) days to present the missing document.

Once the completeness of the application is ensured, the local authority obtains opinions of the relevant state authorities (e.g., the Ministry of Emergencies, the State Committee for Urban Construction and Architecture). The local authority must also notify the interested persons (close neighbors and neighbors) and take their views into account. Moreover, the local authority must obtain an expert opinion of the General State Department for Expert Examinations under the Ministry of Emergencies (the *ME*) for the permit proceedings. The *Rules On Expert Examination of Construction Projects* were adopted by Presidential Decree No. 348 dated November 17, 2014. These rules determine the mechanism for expert examination of the compliance of construction projects. Overall, the local authority must consider the application for a construction permit within one (1) month if there is a general plan for the territory where the construction shall take place, or within three (3) months if no such general plan exists.

If the application is successful, the local authority provides the applicant with a decision to issue a permit, with a special sign/notice, which is the basis for commencement of the construction works, and the technical conditions for the construction.

If the construction is not commenced within three years of the date of the permit, or if the construction is suspended for three years, the permit loses its effectiveness.

Finally, a completed construction for which a construction permit is required cannot be used without an exploitation permit. The owner of the construction must apply to the local authority with following documents for an exploitation permit:



- (a) construction permit;
- (b) acts issued by relevant organizations confirming that internal and external engineering-communication systems are ready for exploitation;
- (c) letter regarding the address of construction;
- (d) act of acceptance of the elevators for exploitation;
- (e) letter from the local executive authority regarding the acceptance of connected communication lines;
- (f) letter from the Center for Hygiene and Epidemiology regarding the compliance of the construction with sanitary-hygienic and sanitary-epidemiological requirements;
- (g) letter regarding the main project and factual characteristics of the facility;
- (h) letter regarding the financial expenses of the facility (if the object is constructed with state funds);
- (i) act of the facility's compliance with fire safety requirements;
- (j) ecological safety act for industrial and production facilities from the Ministry of Ecology and Natural Resources;
- (k) act of the State Agency for Supervision of Safety in Construction under the *ME* issued along with participation of the representatives of the owner, contractor and the designer regarding the compliance of the construction works with the urban and construction normative acts and the construction project;
- (l) permits for the parts of the construction which were issued before the final and full use of the facility.

Some specific types of facilities require additional documents to obtain an exploitation permit. For example, to obtain an exploitation permit for roads, the owner needs to present an act from the State Traffic Police of the Ministry of Internal Affairs on the readiness of the roads for use.

The local authority must respond to the application within thirty (30) days. It may either reject the application or grant a permit for exploitation of the construction.

Apart from the usual permits, construction works in certain areas (such as cultural and historical reserves) require additional authorization from state authorities.

#### 15.4.4 Suspension and Demolition of Construction

The *ME* has special powers in the construction sphere. Amongst others, it has the power to suspend construction and/or to demolish buildings. The *Construction Code* lists certain grounds for the suspension of construction works.

The *Construction Code* establishes certain rules for demolishing complete or incomplete constructions. The decision on demolition may be issued either by the *ME* or by the courts.



## 16. The Judicial System

The *Code of Civil Procedure*<sup>30</sup> (the *CCP*), *Code of Criminal Procedure*<sup>31</sup> (the *CrPC*), *Code of Administrative Procedure*<sup>32</sup> (the *CAP*), the law *On Enforcement*<sup>33</sup> (the *Enforcement Law*), the law *On Courts and Judges*<sup>34</sup> (the *Courts Law*), the law *On the Constitutional Court* and the law *On the Judicial-Legal Council* are the principal laws governing the dispute resolution process in Azerbaijan.

Moreover, by Presidential Order No. 268, dated February 13, 2014, a new electronic court system must be established. The electronic court system will ensure an electronic receipt of applications, complaints and other documents, electronic circulation of documents and maintenance of case files, automatic distribution of incoming complaints among judges, maintenance of electronic calendars of cases, notification of the parties by electronic communication and other pertinent issues.

Also, by law No. 330-VQD *On Amendments to the Code of Civil Procedure*, effective as of January 1, 2017, statements of claim, petitions, complaints and other documents in economic disputes may be submitted to the courts either in written form or through an electronic cabinet created within the Electronic Court system. Electronic submissions must be made in accordance with the rules set forth by the law *On Electronic Signature and Electronic Document*.

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<sup>30</sup> The Code of Civil Procedure of the Republic of Azerbaijan, effective as of September 1, 2000.

<sup>31</sup> The Code of Criminal Procedure of the Republic of Azerbaijan, effective as of September 1, 2000.

<sup>32</sup> The Code of Administrative Procedure of the Republic of Azerbaijan, effective as of January 1, 2011.

<sup>33</sup> Law No. IIQ-243 of the Republic of Azerbaijan *On Enforcement*, dated December 27, 2001.

<sup>34</sup> Law No. IQ-310 of the Republic of Azerbaijan *On Courts and Judges*, dated June 10, 1997.

Also, court notices to the parties to economic disputes, which are registered within the Electronic Court system, must be served by means of placing the notices into the electronic cabinets of those parties in the Electronic Court system. The courts shall notify them in this regard either by text message (SMS) or by e-mail. Also, all hearings in economic disputes will be recorded in their entirety by audio-video devices. Audio-video recordings of hearings shall be added to hearing protocols. Parties to economic disputes are entitled to review those audio-video recordings.

However, numerous practical-organizational steps must be taken to make the electronic system fully operable.

## 16.1 Courts

The Republic of Azerbaijan has a three-tiered court system, consisting of the trial courts, appellate courts and the Supreme Court of the Republic of Azerbaijan (the *Supreme Court*). Appellate courts and the *Supreme Court* have civil, criminal, administrative-economic and military panels. Along with this, Azerbaijan has a Constitutional Court, which is separate from the three-tiered court system. Civil proceedings at the trial and appellate courts take three months respectively, while at the *Supreme Court* the timeframe is two months. Decisions of trial courts may be appealed at the appellate courts; decisions of the latter, in turn, may be appealed at the *Supreme Court*. The decisions of the *Supreme Court* are final and binding. In limited cases, the decisions of the *Supreme Court* may be appealed at the Plenum of the *Supreme Court*. The admissibility of these appeals is, however, discretionary and depends on the Plenum. All judgments of the *Supreme Court* and appellate courts must be disseminated electronically within one (1) month.

The Constitutional Court has the authority to review laws and court judgments for compliance with the Constitution. Decisions of the Constitutional Court are published. They are binding upon other courts and must be taken into account when other courts are rendering their decisions.



## 16.2 Judges

The judges of the Constitutional Court, the *Supreme Court*, and appellate courts are appointed by the Milli Majlis (Parliament) on the recommendation of the President. All other judges are appointed by the President on the recommendation of the Judicial Council. The recommendations of the Judicial Council are based on examinations and interviews conducted with the nominees. All judges are initially appointed for a three-year term. Afterward, this term is either prolonged until retirement age (sixty eight (68) for judges of the *Supreme Court* and sixty six (66) for judges of other court instances), or else the judge retires after the first three-year term expires.

## 16.3 Enforcement of foreign court judgments

The procedure for the recognition and enforcement of foreign judgments in Azerbaijan is established by the *CCP*. The *Supreme Court* deals with recognition and enforcement issues. While recognizing and enforcing foreign court judgments in Azerbaijan, the *Supreme Court* must be guided by domestic laws as well as by international treaties to which Azerbaijan is party. Foreign court judgments are recognized based on the reciprocity principle.

Azerbaijan has entered into several bilateral treaties (principally with neighboring states) to facilitate the enforcement of foreign judgments. It is a party to the 2004 CIS Convention *On Mutual Legal Assistance in Civil, Family and Criminal Cases* (the *Kishinev Convention*). The *Kishinev Convention* applies to both individuals and legal entities. Under this convention, citizens and residents of a contracting state are exempt from court and notarial fees and associated costs, and are entitled to receive free legal assistance.

In addition, Azerbaijan is a party to the convention *On Resolving Business Disputes*, dated March 20, 1992 (the *Kiev Convention*). The *Minsk Convention On Mutual Legal Assistance in Civil, Family and Criminal Cases*, dated January 22, 1993, is no longer effective.

There is no specific timeframe within which foreign court judgments must be enforced. In practice, consideration and issuance of a decision on recognition and enforcement may take up to six (6) months.

## 16.4 International arbitration

Foreign investors may rely on the provisions of the *CCP* and the law *On Protection of Foreign Investments* dated January 15, 1992 (the *Foreign Investment Law*) pursuant to which investment disputes may be resolved either by Azerbaijani courts or in accordance with the dispute resolution procedures agreed by the parties. This may include international arbitration, either in Azerbaijan or abroad.

International arbitration in Azerbaijan is conducted in accordance with the rules prescribed by the law *On International Arbitration* dated November 18, 1999 (the *Arbitration Law*). Under these rules, the parties may select independent arbitrators of any nationality, proceedings may be conducted in any language chosen by the parties, the applicable substantive law (except for those matters that must be exclusively resolved under Azerbaijani legislation) and procedural law may be chosen by the parties, and, in general, the parties may stipulate other terms of the arbitration. Where no such terms are stipulated by the parties, the *Supreme Court* may resolve such omissions.

Azerbaijan has acceded to the United Nations Convention *On the Recognition and Enforcement of Foreign Arbitral Awards* dated June 10, 1958. On September 19, 1992, Azerbaijan acceded to the 1965 Washington Convention *On the Settlement of Investment Disputes between States and Nationals of Other States*, which provides for arbitration at the International Centre for Settlement of Investment Disputes (ICSID). Azerbaijan has also ratified the European Convention *On Foreign Commercial Arbitration* dated April 21, 1961.



## 17. Climate Change

### 17.1 General

The Republic of Azerbaijan is a signatory to the *United Nations Framework Convention on Climate Change*, which entered into legal force for Azerbaijan on August 14, 1995 (the “Convention”). Similarly, the *Kyoto Protocol to the Convention* (the “Kyoto Protocol”), effective from February 16, 2005, was ratified by the Republic of Azerbaijan on July 18, 2000, as was the Doha Amendment establishing the second commitment period of the Kyoto Protocol on July 7, 2015 (which amendment will enter into force upon its ratification by at least three quarters of the parties to the Kyoto Protocol).

The Republic of Azerbaijan is also a party to the *Vienna Convention for the Protection of the Ozone Layer*, dated March 22, 1985 (the “Vienna Convention”). On June 12, 1996, the Republic of Azerbaijan ratified the *Montreal Protocol on Substances that Deplete the Ozone Layer*, which aims to eliminate the production of certain substances believed to be responsible for ozone depletion; furthermore, Azerbaijan has acceded to some of the subsequent amendments made to the Montreal protocol.

In 1997, the State Commission on Climate Change, composed of representatives of all relevant ministries and institutions, was established. Azerbaijan has adopted numerous legal acts and state programs regarding the Vienna Convention and other related international documents.

The country’s main environmental problems are wastewater pollution including trans-boundary pollution; emission of harmful substances and greenhouse gases from industrial plants and vehicles; improper disposal of solid municipal and industrial waste including hazardous waste; depletion of biodiversity; and decline in forest resources and fauna.



The Ministry of Ecology and Natural Resources of the Republic of Azerbaijan (MENR) has established relations with international organizations and donor countries in the interest of tackling environmental changes. Partners include UNDP, the UN Environmental Programme, the UN Industrial Development Organization, NATO, the Global Environmental Facility, OECD, the World Bank, the Asian Development Bank, World Wildlife Fund and other agencies. Bilateral cooperation has also been established with several developed countries.

## 17.2 Greenhouse Gas Emissions

In recent years environmental protection and natural resource issues have become widely discussed topics in Azerbaijan.

According to Azerbaijan's Third National Communication to the United Nations Framework Convention on Climate Change, the main sources of carbon dioxide (CO<sub>2</sub>) emissions in the Republic of Azerbaijan are the energy and industrial sectors. While in the energy sector CO<sub>2</sub> emissions come from the burning of fuel (production of energy, oil and gas extraction, transport, and human settlements, etc.), the largest sources of CO<sub>2</sub> emissions in the industrial sector have been mineral materials production and metallurgy.

Methane is emitted by most, if not all, sectors of the Azerbaijani economy.

Nitrous oxide emissions in Azerbaijan have declined significantly since 1990, when levels were measured at 992 GtCO<sub>2</sub>; by 2005 emissions had decreased by 64 percent.

Emissions of the halogen substances perfluorocarbon, hydrofluorocarbon and sulfur hexafluoride are not found at significant levels in Azerbaijan.

The Republic of Azerbaijan is a non-Annex I member of the Convention, and therefore does not have any binding obligations to reduce emissions of greenhouse gases (GHG). No concrete policies or



laws on carbon market issues have been established to date for implementing the Kyoto Protocol. However, Law No. 109-IIQ of the Republic of Azerbaijan *On Protection of Atmospheric Air*, dated March 27, 2001, requires a special permit/license from the MENR for the emission of hazardous substances into the atmosphere. The law defines “harmful substances” as any substances or their mixtures that are released into the atmosphere and that at certain density affect human health and the environment. The rules *On Issuance of Special Permits for Emission of Harmful Substances into the Atmosphere* approved by Resolution No. 112 of the Cabinet of Ministers on July 13, 2002, state that a special permit is a document that allows natural and legal persons to release harmful substances into the air. The special permit is issued for a period of three years. This emissions permit is the only emissions allowance issued in Azerbaijan.

To achieve the purposes of the Kyoto Protocol, the Republic of Azerbaijan has entered into memorandums of understanding with the Federal Republic of Germany and the Kingdom of Denmark on expanding vegetative cover and on capacity-building towards a reduction in GHG emissions.

Both SOCAR, the national oil company, and Azerenerji, the state monopolist for power generation and electricity transmission, are implementing GHG emission projects. This has mostly eliminated the need for central GHG emission plans and targets, since the World Bank reports that in Azerbaijan almost all GHG emissions are generated in the energy sector.

### 17.3 Designated National Authority

Pursuant to Presidential Decree No. 727, dated April 1, 2005, the Climate Change and Ozone Center of the MENR was appointed as the Designated National Authority for the purposes of the Kyoto Protocol.

## 17.4 Clean Development Mechanism

Being a country not listed in Annex B of the Kyoto Protocol, Azerbaijan does not participate in joint implementation or emissions trading mechanisms. Azerbaijan, however, is entitled to sell credits from certified emissions reductions generated from clean development mechanism projects.

## 17.5 Paris Agreement

Azerbaijan was one of the 195 nations to negotiate and adopt the Paris Agreement governing carbon dioxide reduction measures from 2020 on December 12, 2015 (the agreement entered into force on November 4, 2016).

In its Intended Nationally Determined Contribution (INDC), which all countries were asked to publish in the lead up to the Paris conference, Azerbaijan stated that it is targeting a 35 percent reduction in the level of greenhouse gas emissions compared to 1990/base year as its contribution to the global climate change efforts.

According to the INDC, Azerbaijani national greenhouse gas emissions account for 0.1 percent of global emissions, while per capita gas emissions for 2010 equal 5.4 tons of CO<sub>2</sub> equivalent.

Azerbaijan stressed that its INDC is a highly ambitious commitment. The increase of the population of Azerbaijan by approximately 1.1 percent or 100 thousand people per year projected in the official national statistics will increase the demand for energy and other national resources, and this represents one of the main challenges for the reduction of GHG emissions.

In addition, constraints on the implementation of the INDC and specific risks for the country are as follows:

- the remaining occupation of 20 percent of the territory of Azerbaijan and consequent problems of one million refugees and IDPs, massive plunder of natural resources and other



wealth, as well as extermination of flora and fauna in the occupied territories;

- declining prices of oil in the global markets.

Azerbaijan's INDC covers energy, agriculture, waste, land use, land-use change and the forestry sectors and such gases as CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFC and CF<sub>4</sub>.

## 18. Insurance

### 18.1 Introduction

The legal basis for the Azerbaijani insurance system was first established by the law *On Insurance*<sup>35</sup> dated January 5, 1993, subsequently replaced by another law of the same name<sup>36</sup> dated June 25, 1999. The introduction of a new chapter dedicated to insurance, Chapter 50, into the *Civil Code*<sup>37</sup>, and the adoption of a new law, *On Insurance Activity*, effective March 16, 2008<sup>38</sup> (the *Insurance Law*) superseded most of the previous insurance laws. Currently insurance in Azerbaijan (except for social insurance) is regulated primarily by these legal acts. In addition to this core legislation, various insurance-related issues, including compulsory insurance, are regulated by separate laws and regulations.

The *Civil Code* sets forth concepts and mandatory terms for insurance contracts, rights and obligations of the parties, rules for changing the parties and beneficiaries in insurance contracts, rules for termination, and other fundamental insurance-related regulations. The *Insurance Law* provides a general description of the organization of the Azerbaijani insurance market, establishes classes of insurance, and stipulates requirements for the establishment, licensing, operation and liquidation of insurance businesses, including regulation of other participants in the market.

The Azerbaijani insurance system consists of:

- the Chamber of Control over the Financial Markets ; and

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<sup>35</sup> Law No. 436 of the Republic of Azerbaijan *On Insurance*, dated January 5, 1993.

<sup>36</sup> Law No. 696-IQ of the Republic of Azerbaijan *On Insurance*, dated June 25, 1999.

<sup>37</sup> Approved by Law No. 520-IIIQ of the Republic of Azerbaijan, dated December 25, 2007, and effective March 14, 2008.

<sup>38</sup> Law No. 519-IIIQ of the Republic of Azerbaijan *On Insurance Activity*, dated December 25, 2007.



- *professional participants*, including insurers, re-insurers and insurance intermediaries, actuaries, independent auditors and experts, and insurance auxiliaries;
- insured persons and beneficiaries.

The Chamber of Control over the Financial Markets is the Azerbaijan's insurance regulatory authority, with supervisory control over the insurance sector.

## 18.2 Establishment and Licensing

Currently there are 24 insurance companies and one re-insurance company registered in Azerbaijan, of which 21 insurers engage in non-life (general) insurance activity and the other three provide life insurance.

Only an Azerbaijani legal entity in the form of an open joint stock company may become an insurer in Azerbaijan.

Any person (excluding stateless persons, political parties, non-governmental bodies, international organizations other than international financial institutions in which Azerbaijan participates) may be a founder or shareholder of an Azerbaijani insurer.

Engaging in insurance activities in Azerbaijan requires a license. This license specifies the types of insurance that the insurer is authorized to offer. There is also a specific license for reinsurance. Prior to the amendments made to the *Insurance Law* in 2013, an insurance license gave the license holder a right to provide reinsurance services. Now, an insurance license holder must obtain a separate license to provide reinsurance services.

Once initial approval is issued, an insurer must proceed with registration at the Ministry of Taxes, the Azerbaijani corporate registrar, as an open joint stock company. Following corporate registration, the insurer files a second application for final approval and issuance of the license.

Under the *Insurance Law*, licenses for insurance and re-insurance activities are issued for 5 years for newly established open joint stock companies and an indefinite period thereafter.

Along with the mentioned licenses, insurers must also apply to the Chamber of Control over the Financial Markets for relevant permits on carrying out certain insurance types of voluntary or compulsory insurance.

The state fee for obtaining insurance and re-insurance licenses is AZN 11,000 (USD 6,359.85).

### 18.3 Regulation

Only a duly licensed Azerbaijani insurer may insure property interests related to property located or present in the Republic of Azerbaijan.

Insurance in Azerbaijan may be voluntary or compulsory. While the rules, terms and types of compulsory insurance are established by law, insurers authorized to offer voluntary insurance may establish the rules and types of voluntary insurance themselves.

There are a number of laws governing specific types of compulsory insurance. In particular, the Azerbaijani Law *On Compulsory Insurance*, dated June 24, 2011 (the “*Compulsory Insurance Law*”), provides for mandatory real estate insurance, as well as third-party liability insurance for real estate (belonging to legal entities and/or physical persons engaged in entrepreneurship without creating a legal entity) and automobiles. Pursuant to the *Compulsory Insurance Law*, an insurer may not refuse to sign a compulsory insurance contract with a person who applies to the insurer for insurance of his/her relevant risks and has an insurance interest.

Recently, amendments were made to the *Compulsory Insurance Law*, whereby a green card system was established. A green card is an international insurance contract confirming the existence of compulsory insurance of civil liability in connection with the use of a vehicle related to any country that is a member of the Board of



Bureaus (management organization of the Green Card System) and this contract is executed in the form approved by the board, European Economic Commission of the UN and international association of national bureaus of vehicle insurers. Under the system, an automobile registered in the Republic of Azerbaijan must obtain an Azerbaijani green card prior to leaving Azerbaijan for a country where the green card system is used. The changes related to the green card system are effective from January 1, 2016.

Azerbaijani insurers may either provide life insurance or non-life insurance (general insurance). Insurance providers offering life insurance must have the word “life” in their corporate name.

Life insurance has the following types:

- Death insurance;
- Straight life insurance;
- Annuity insurance;
- Disability insurance;
- Terminal illness insurance.

Non-life insurance includes:

- Personal Insurance: accident insurance, medical insurance, travel insurance and other insurance;
- Property insurance: property interests relating to the stability, use or disposal of property (including title insurance);
- Civil liability insurance;
- Credit insurance;
- Compound financial risks insurance; and



- Legal expenses insurance.

To arrange for reinsurance, insurers can make reinsurance pooling arrangements on the basis of joint operating agreements.

Apart from its main activity, an insurer may engage in insurance-related activities not requiring a license, as permitted by the insurance law.

## 18.4 Foreign Elements in the Insurance Sector

Foreign insurers are not allowed to offer insurance directly in the Azerbaijani market. New amendments to the Insurance Law create an exception by enabling risks related to international sea and air transport, as well as space flights, transport and installations (including satellites) for commercial purposes to be insured with foreign insurers. Property interests connected with an insured item located or present in Azerbaijan, however, may be reinsured by foreign insurers directly or through local or foreign brokers. Both foreign insurers and brokers involved in such transactions must comply with the requirements of Azerbaijani insurance law and be registered in the Insurance Register.

Foreign insurers may operate representative offices, joint ventures and wholly-owned subsidiaries in Azerbaijan; however, the establishment of branch offices of foreign insurers is prohibited.

Azerbaijani law imposes a quota on foreign capital in the aggregate capital of insurers operating in Azerbaijan. Currently this quota is set at fifty percent for legal entities and at thirty percent for individuals provided that the share of one foreign individual in an insurer's charter capital does not exceed ten percent. Nevertheless, recent amendments allow one hundred percent foreign capital ownership in Azerbaijani insurance companies for international financial institutions in which the Republic of Azerbaijan participates, foreign insurers, as well as foreign institutional investors (banks and credit organizations, pension funds, investment funds).



#### 18.4.1 Foreign Direct Shareholding

Direct or indirect possession of significant control (20 percent or more shares) or a majority shareholding (50 percent or more shares) in an Azerbaijani insurer requires the prior written approval of the regulatory authority. This requirement applies to both resident and nonresident shareholders of the Azerbaijani insurer.

Under the *Tax Code*, foreign legal entities without a permanent establishment in Azerbaijan are subject to four percent withholding tax on income derived from insurance premiums.

#### 18.4.2 Representative Offices

A foreign insurer may open a representative office in Azerbaijan but not a branch. Since a representative office<sup>39</sup> is not considered a separate legal entity under Azerbaijani law, the representative office only represents and protects the interests of the foreign insurer, without acting as an insurer. Therefore, foreign legal entities' representative offices are not subject to licensing in Azerbaijan. Notwithstanding this, the representative offices of foreign insurers must be registered in the *Insurance Register*, just as other *professional participants* of the Azerbaijani insurance market.

### 18.5 Domestic standards

#### 18.5.1 Capitalization and Surplus Requirements

The minimum charter capital for Azerbaijani insurers is currently AZN 5 million (USD 2,890,841.81) for non-life insurance and AZN 10 million (USD 5,781,683.62) for life insurance. Similarly, the minimum charter capital for Azerbaijani reinsurers is AZN 20 million (USD 11,563,367.25).

The Ministry of Finance has issued a number of legal acts governing reserves, such as the type of compulsory reserves, methods of

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<sup>39</sup> See *Chapter 3 (Establishing a Legal Presence)* for the status of foreign legal entities' representative offices in Azerbaijan.

calculation, assets which can be used for secure reserves, asset structure, investment rules and requirements. Reserve requirements vary depending on the type of insurance (life or non-life insurance).

#### 18.5.2 Corporate Structure and Executives

The general meeting of shareholders, board of directors, management board and audit commission are the governing bodies of an Azerbaijani insurer.

The members of the board of directors, management board and audit commission, head of the internal audit service, chief accountant, and responsible actuary are deemed an insurer's executives. The *Insurance Law* establishes the minimum qualifications for insurance executives. Apart from other requirements, all executives must have a higher education, professional experience (except for actuaries) in certain sectors as provided for by the *Insurance Law*, have no criminal record, and undergo attestation at the relevant regulatory authority (except for members of the board of directors).


The board of directors, management board and audit commission each consist of an odd number of members (not less than three), appointed for a term not exceeding three years. At least one of the members of the board of directors and the audit commission must be independent.

### 18.6 Insurance Intermediaries

In the Azerbaijani insurance system, there are two types of insurance intermediaries: (i) insurance brokers, and (ii) insurance agents. Insurance intermediaries can be either individuals or legal entities. Insurance brokers are fully independent and have no ties to any insurer/reinsurer.

To be an insurance broker or insurance agent, individuals and legal entities must first obtain a license and be entered into the *Insurance Register*.





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