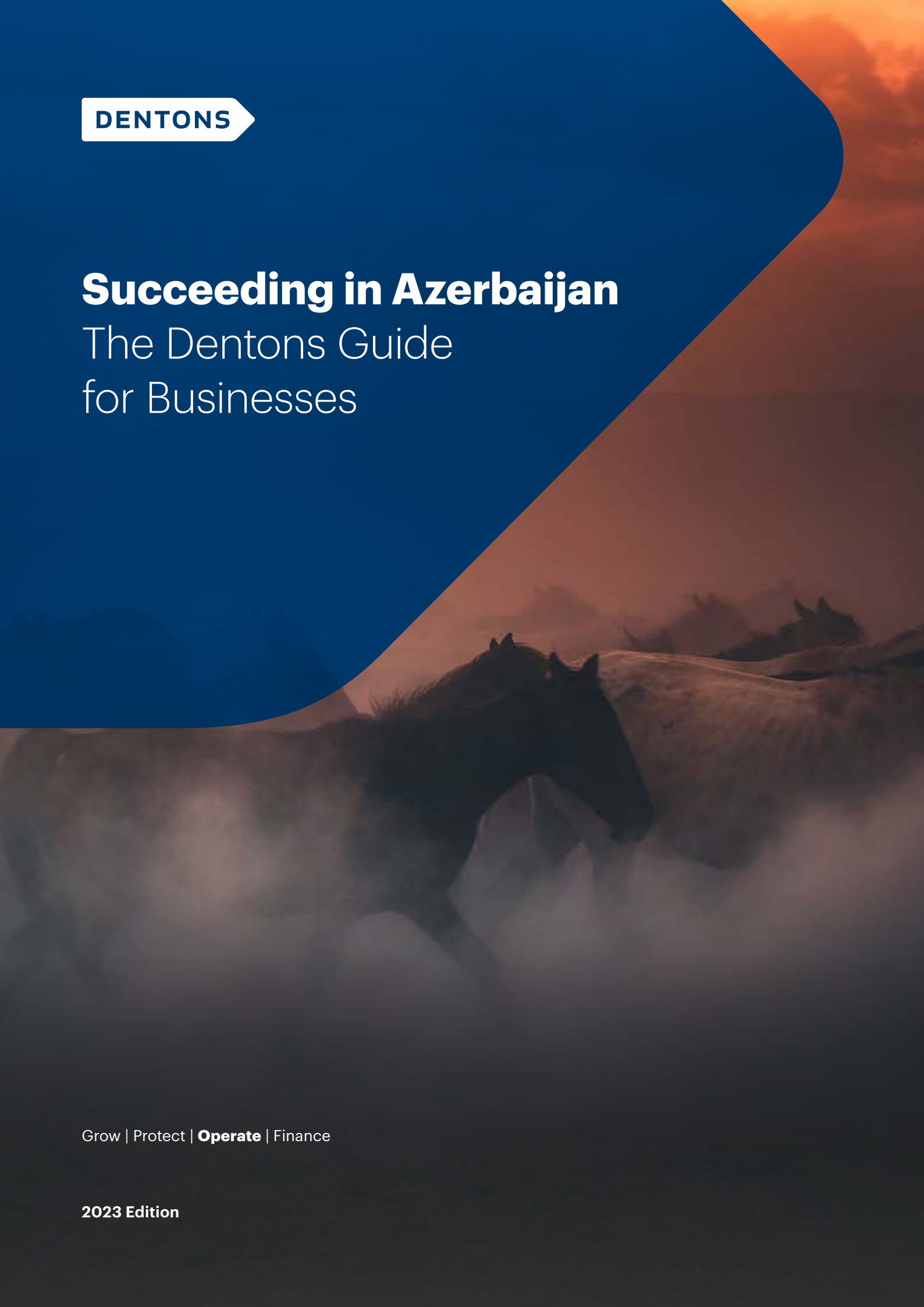
DENTONS

# Succeeding in Azerbaijan

## The Dentons Guide for Businesses



Grow | Protect | **Operate** | Finance

**2023 Edition**

# The Dentons guide for businesses
## 2023 Edition

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*The information given in this Guide is generally accurate as of 1 May 2023.*

# Dedication

This book is dedicated to the beautiful country and the warm people of Azerbaijan.

# Contents

# Preface

This booklet is the 16th edition of our business guide, which represents the collective knowledge and experience of our Firm after many years advising clients in Azerbaijan. Dentons is the world's first polycentric global law firm. Driven to provide clients a competitive edge and connected to the communities where its clients want to do business, we know that understanding local cultures is crucial to successfully completing a deal, resolving a dispute or solving a business challenge. Now the world's largest law firm, Dentons' global team builds agile, tailored solutions to meet the local, national and global needs of private and public clients of any size, with more than 12,000 lawyers in more than 200 locations, across Africa, Asia Pacific, Canada, Central Asia, Europe, Latin America, the Middle East, Central Asia and the Caucasus, the UK and the US.

Active in this jurisdiction since 1990, and having opened our permanent Baku office in 1999, Dentons in Azerbaijan covers a full range of local and international business transactions in the private and public markets, including related corporate restructuring and financing. From initial strategy through the due diligence phase, all the way to post-transaction integration, our professionals deal with all corporate, competition, tax, commercial, banking, employment and real estate aspects of corporate and finance transactions.

The oil-rich economy of Azerbaijan, where the international petroleum industry began in the mid-19th century, experienced a prolonged second oil boom following independence in 1991. The opening of new export routes via the Baku-Tbilisi-Ceyhan oil pipeline and the South Caucasus Pipeline system for gas has led to public spending increases in infrastructure projects and Azerbaijan's modernization. More recently, renewable energy sources have been targeted as a key sector for development, and diversification of the economy and the development of new industries remain a national priority. Openness to foreign investment has aided Azerbaijan's transition to a market economy, and wide-ranging reforms have improved its overall macroeconomic environment.

We have seen many legal developments in Azerbaijan during the years since its independence, including the enactment of a modern Civil Code, the streamlining of activities requiring licenses and permits, the establishment of centralized property and mortgage registries, the adoption of international financial reporting standards, the establishment of special economic zones and industrial parks and the introduction of a single window system for company registration, immigration/work permit formalities and customs processing, together with remarkable advancements in e-government.

In the final *Doing Business* report, published by the World Bank and the IFC in 2021, Azerbaijan received a very favorable ranking of 34th (out of 190 countries) in an independent evaluation of the ease of doing business. Within specific categories, Azerbaijan placed especially well in the areas of getting credit (1st), starting a business (9th), enforcing contracts (28th), paying taxes (40th) and registering property (44th).

The Dentons Guide is general in nature, intending only to highlight some of the principal issues of interest to those present in this market. For companies and financial institutions considering an activity in Azerbaijan, we hope that it will serve as a good and practical introduction to the legal and business environment in the country.

This edition is very much a group effort on the part of Dentons' rapidly growing team in Baku.

We also appreciate the valuable feedback we have received from clients and friends of the Firm on the usefulness of the guide for their activities in Azerbaijan.

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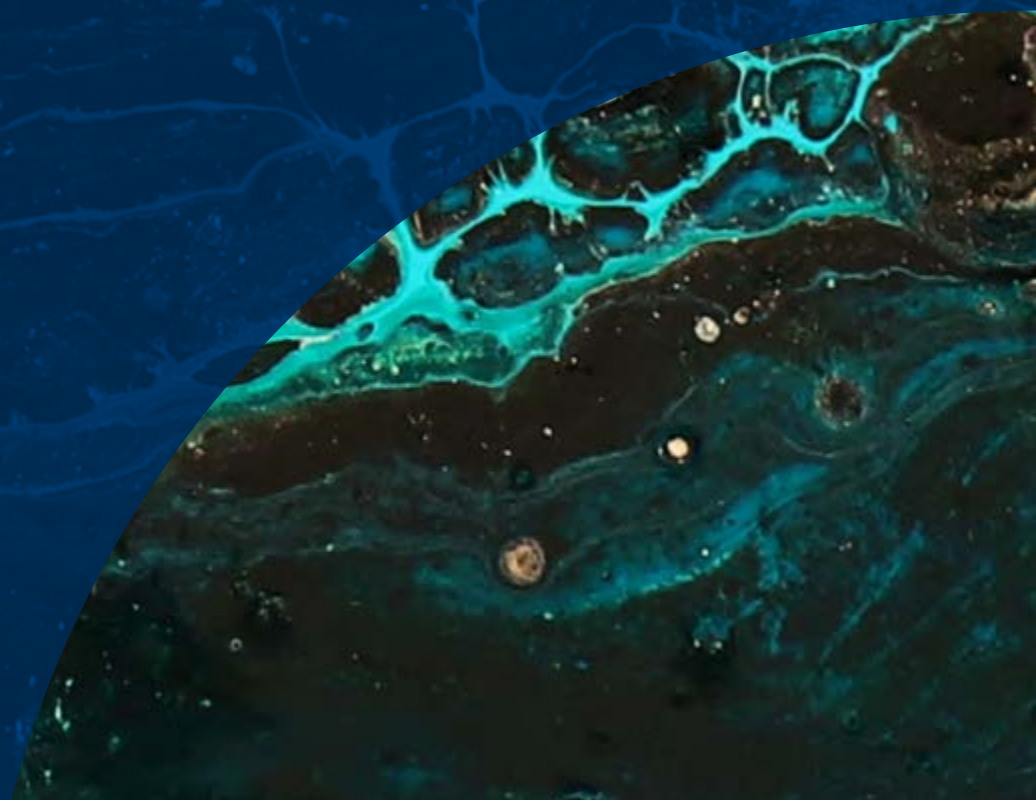
Chapter 1

# Coming to Azerbaijan: Visas, work permits and police registrations



## Work and visitor visas

The Migration Code of the Republic of Azerbaijan, dated 2 July 2013, sets out that, in addition to diplomatic and service visas intended for official visits, there are several types of entry visas possible, including for labor, work, tourism, sports and other types of activity. Entry visas are divided into single entry-exit (valid from three days to three months), double entry-exit and multiple entry (valid from six months to two years). Currently, with few exceptions, visitors must obtain visas from the country of departure prior to arrival in Azerbaijan. It is also a good idea to have an invitation letter from a business in Azerbaijan available for presentation.

In order to obtain a multiple-entry visa, an invitation letter from a business in Azerbaijan is required by the Azerbaijani embassy granting the visa. Formalities for submitting invitation letters vary from one embassy to another – sometimes these can be delivered directly to the embassy by fax or email from the enterprise (or even delivered by the applicant in person), but in other cases the embassy may require the invitation letter to be sent to the visa-issuing embassy via the Azerbaijani Ministry of Foreign Affairs. In still other cases, the Ministry of Foreign Affairs advises that the applicant must arrive in Azerbaijan using a single-entry visa and then apply in person to the Consular Department of the Ministry of Foreign Affairs in Baku to be issued a multiple-entry visa.

According to the Migration Code, a foreign national hired by an employer must arrive in Azerbaijan with a labor visa (valid up to 90 days).

All of the following documents must be filed with the Embassy of Azerbaijan in the employee's country of residence in order to obtain a multiple entry visa:

- A letter of invitation on the employer's letterhead;
- A standard application form;
- Two color photographs of the employee;
- A copy of the original medical insurance certificate (where an inviting party does not undertake medical services);
- The employee's passport;
- State duty (Normally, US$250 for a one-year multiple entry visa; however, for nationals of countries that charge higher visa fees to citizens of the Republic of Azerbaijan, the amount of the state duty may be higher.).

A relatively new e-visa procedure exists for visitor visas processed through the Azerbaijan Service and Assessment Network (ASAN), the e-Government portal. Now, it takes only a few days to obtain online single-entry tourist, labor and work visas valid for 30 days, by providing a scanned copy of the foreign national's passport and information about arrival and departure dates.

Taking into account the COVID-19 pandemic, several additional rules and visa restrictions might apply. You may become familiar with the current rules and restrictions on the official web site of the State Migration Service (migration.gov.az).

## Work permits

Each foreign employee planning to work in Azerbaijan is required to have an individual work permit, which must be obtained by the employer for such purposes. The decision on issuing a work permit is made by the State Migration Service in accordance with a "single window" or "one-stop-shop" principle, considering the opinion of the Ministry of Labor and Social Protection of the Population. All of the documents required for obtaining a work permit must be filed with the State Migration Service. The delivery of the work permits is also carried out by this body.

An employment contract with a foreign employee may not be concluded prior to obtaining a work permit and may not be in effect for a period exceeding the duration of the work permit, which itself may not exceed one year. An application for the renewal (extension) of a work permit must be filed with the State Migration Service at least 30 days prior to expiration. The state duty payable for obtaining a work permit for a period of one year is AZN 1,000 (approx. US$590). The fee payable for the renewal of a permit for a period of one year is also AZN 1,000.

A work permit is not needed for the following:

- A person on a business trip for a period not exceeding 90 days per year carrying out specific types of activities determined in a list published by the relevant executive authority.
- A person engaging in independent entrepreneurial activity.
- A director and any deputy of a representative office or branch of a foreign legal entity.
- A director and any deputy director of a legal entity incorporated in the Republic of Azerbaijan and having a foreign legal entity or a foreign individual as at least one of its shareholders

The employer must file the following documents with the State Migration Service:

- An application for an individual work permit (stating the employer's name, organizationallegal form, and legal address, along with the full name, citizenship, mailing address of the employee's permanent place of residence, date and place of birth, sex, specialization, details of employment within the last five years and the anticipated position and address of the place of work of the employee in Azerbaijan).
- Two photos on a red background (3 x 4).
- A notarized copy of the qualifications of the foreign employee for the position for which he or she is being hired (a copy of a diploma/degree; professional qualifications/certifications).
- Justification for employment of the foreign individual in the particular position.
- A copy of the document authorizing the foreigner's stay in Azerbaijan if such person is present in Azerbaijan on other grounds (i.e., a copy of the visa); this condition presumably has effect only in respect of employees who are already legally in Azerbaijan but do not have a work permit.
- A copy of the foreigner's identification document.
- A medical certificate on the foreigner's health condition issued by a medical institution approved by the State Migration Service.
- Notarized registration documents of the employer
- Documents confirming the foreigner's address in Azerbaijan (e.g., notarized consent of the landlord, notarized copy of the landlord's national ID card; notarized copy of an extract from the Register of Immovable Property in respect of the premises).

A work permit becomes void if the employment contract concluded between the employer and foreign employee is terminated or revoked. In cases where an employment contract has been terminated, the employer must notify the State Migration Service within five days.

## Registration at place of residence and stay

Foreign nationals planning to remain in Azerbaijan for more than 15 days must be registered at their place of residence and stay in Azerbaijan.

For this purpose, within 15 days from the date of the arrival of the foreign national at a hotel, sanatorium, rest home, boarding house, campground, tourist base, apartment or other living space, the administration or owner of such living space (the receiving party) should submit to the State Migration Service an application on the registration of the foreign national at the place of residence and stay, together with a scanned copy of the foreign national's passport. Foreign nationals may also submit such applications themselves. No state duty is payable for the registration of foreign nationals at their places of residence and stay. Failure to register at such place of residence may result in administrative penalties for the foreign national or administration of the receiving party.

The registration application must be submitted by email (qeydiyyat@migration.gov.az); an electronic application form is available on the website of the State Migration Service (www.migration.gov.az). After receipt of the application form, the State Migration Service will register the foreign national at the place of residence and stay and provide written notification to the receiving party within one working day.

Foreign nationals are registered for the following periods:

- Persons arriving under a visa – for the period indicated in the visa.
- Persons arriving under a visa-free regime – for 90 days.
- However, the receiving party or the foreign national must inform the State Migration Service upon the foreign national's departure, whereupon the State Migration Service shall cancel the registration.

Whenever a foreign national changes his or her place of residence and stay he/she should be registered at the new place of residence and stay according to the procedure above.

Useful websites:

- Ministry of Foreign Affairs – www.mfa.gov.az (English version available).
- State Migration Service – www.migration.gov.az (English version available).

## How Dentons can help

Dentons has assisted many companies and individuals in obtaining visas, work permits and residence permits in Azerbaijan. Dentons can also advise on employment contracts, work visas and other issues related to immigration and residence in Azerbaijan. However, the application for obtaining a work permit must be submitted by the employer itself or by an employee of the company designated for that purpose. A power of attorney for this purpose issued to a nonemployee of the company will not be accepted by the State Migration Service.

Chapter 2

# Setting up and closing down operations

## Choosing a local presence

Azerbaijan currently permits essentially three main types of corporate entity that are of greatest interest to those wishing to establish a local subsidiary:

- Limited liability company (LLC);
- Closed joint-stock company (JSC-C);
- Open joint-stock company (JSC-O).

The Civil Code (2000), unlike earlier legislation, does not provide for the state enterprise as an organizational legal form (nor is there any mention of the municipal enterprise). In theory, all state and municipal enterprises should be organized in one of the forms specified by the Code – in most cases, in the form of limited liability companies or joint-stock companies, but this is not always the case (see, e.g., SOCAR). Traditionally, JSCs and LLCs are considered the most appropriate vehicles for establishing joint ventures with local partners.

The JSC and LLC forms are similar in many respects (e.g., both require at least one founder; shareholders/participants enjoy limited liability; the same tax treatment applies; pre-emptive rights exist). However, in certain respects the LLC form of legal entity offers more flexibility in structuring the internal operations of a company, and fewer registration and reporting requirements apply than in the case of a JSC (e.g., JSCs require the registration of securities and the publication of financial statements).

The minimum charter capital requirements for JSCs have been established as follows:

- JSC-Cs – AZN 2,000;
- JSC-Os – AZN 4,000.

The charter capital of JSCs must be paid in full before it can be registered. In the case of an LLC, it may be paid within three months from the date of registration with the relevant state authorities. Currently, there is no fixed minimum charter capital that is applicable to LLCs, subject to a general requirement that the charter capital must be sufficient to satisfy the claims of creditors.

The registration procedures and state registration fees, (AZN 15, around US$9) are the same for both types of entity. All entities (with the exception of noncommercial organizations, which are registered by the Ministry of Justice) are to be registered with the State Tax Service under the Ministry of the Economy) as part of a "single window" or "one-stop-shop" process. The State Tax Service subsequently informs the State Social Protection Fund, the local tax authority and the State Employment Center about such registration. In the case of JSCs, the issued shares must be registered with the Central Bank of the Republic of Azerbaijan and the National Depositary Center of the Republic of Azerbaijan.

## Representative offices and branches

Many foreign companies operate in Azerbaijan through either representative offices or branches. Both of these forms may engage in some or all of the functions of the founder. Technically, representative offices should be limited to activities of a preparatory or auxiliary nature. Although, in practice, there is essentially little difference between the treatment of the two forms, it is recommended that activities requiring a license be conducted through a branch (or a locally incorporated company), rather than through a representative office. The state registration duty for both branches and representative offices is AZN 300.

The following is a non-exhaustive list of the documents which must be provided to the State Tax Service under the Ministry of the Economy for the registration of a branch office (or a representative office):

- A board resolution approving the establishment of the local officeRegulations of the local office.
- A power of attorney in favor of Dentons' personnel authorizing them to complete the registration formalities on behalf of the founder.
- A power of attorney in favor of Dentons' personnel authorizing them to complete the registration formalities on behalf of the proposed Director of the local office.

- A power of attorney for the director of the local office.
- A certificate of incorporation of the company establishing the local office.
- The charter/bylaws of the company establishing the local office.

All of the above documents should be notarized and legalized or, where applicable, apostilled. A list of countries which are parties to The Hague Convention of 5 October 1961 *On Abolishing the Requirement of Legalisation for Foreign Public Documents*, by which an apostille may be substituted for the more cumbersome legalization procedure, can be viewed at http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=41. (Please note that public documents originating in certain signatory countries, including Germany, also require full legalization; an apostille from such countries is not accepted).

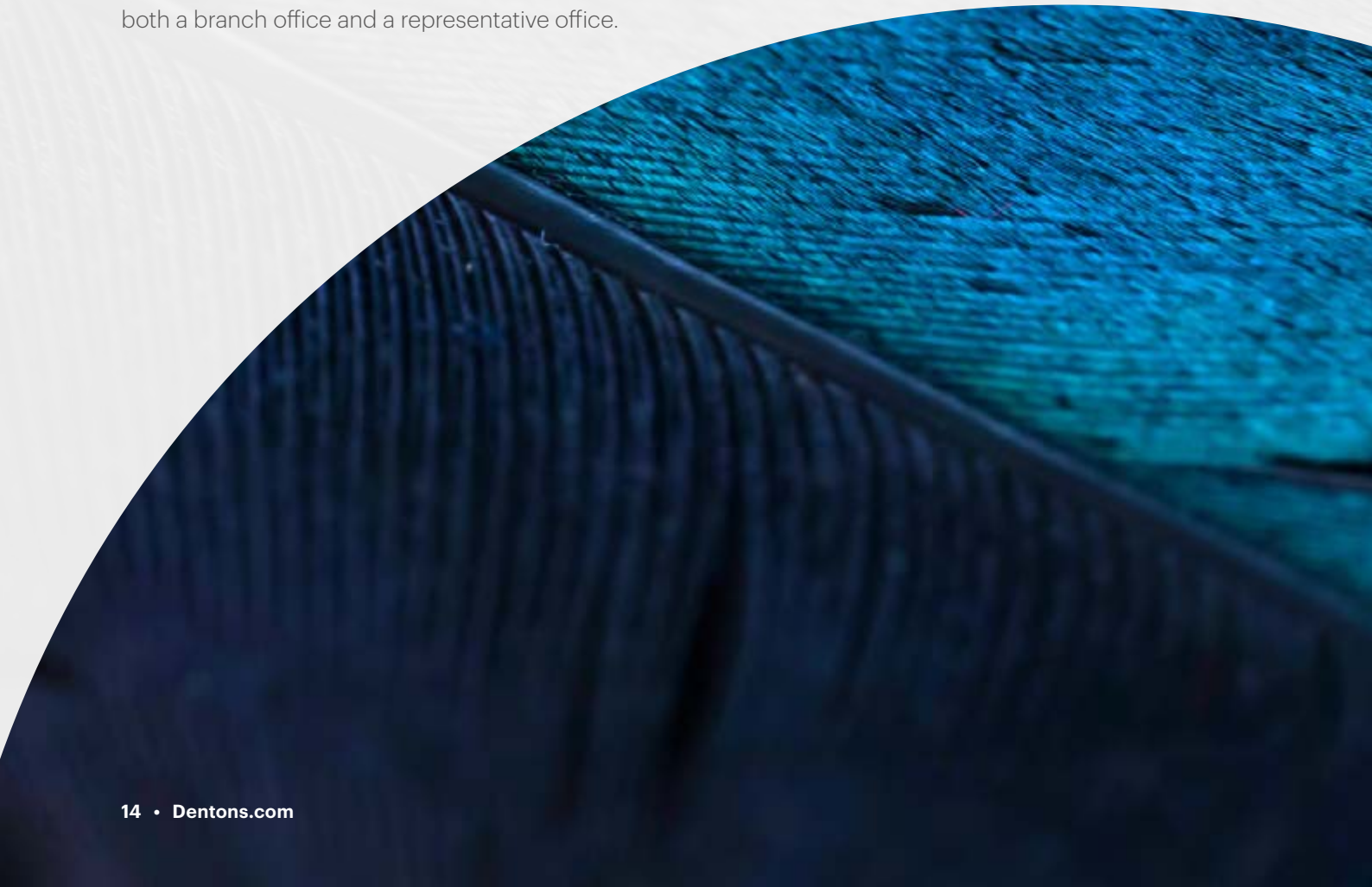
In addition to the above documents, the company must also provide a copy of the passport of the director and a power of attorney from the future director authorizing Dentons to appoint him/her to the director's position. These requirements apply to both a branch office and a representative office.

## Additional formalities

After registration with the State Tax Service, a number of additional steps need to be taken before the local presence is operational. These include:

- Procuring the corporate/representative office/branch seal.
- Obtaining permission from the State Tax Service to open bank accounts.
- Obtaining notarized signature samples on bank account signature cards from the selected bank in Azerbaijan.
- Opening bank accounts.

One should also budget for local translation/notarization expenses of at least US$750 (not including VAT) – possibly more if the documents are voluminous.



## Tax-only registrations

In some cases, a tax-only registration is possible. This is generally permitted for companies that do not have permanent establishments in Azerbaijan and are domiciled in countries with which Azerbaijan has a double-tax treaty.

## Liquidation and office closures

Legal entities, branches and representative offices must undergo a number of steps prior to deregistration.

**a.** Approval of a formal statement (stating assets and liabilities) on the solvency of the legal entity and indicating a 12-month deadline for the settlement of claims with the creditors. (The statement must be approved at the request of the members of the executive body of the company not earlier than 20 days prior to the liquidation resolution. If the company's executive body states that it is impossible to adopt a formal declaration of solvency, the company's general meeting can appoint an independent auditor to approve its own conclusion on the solvency of the legal entity. An audit report is considered an appropriate official statement).

**b.** Adoption of a resolution on the liquidation and the appointment of a liquidator/ liquidation commission.

**c.** Not later than 10 days from the date of the adoption of the liquidation resolution, the publication of a notice of liquidation in the official press, specifying a period of at least two months for the submission of claims. This notice must be published in the same manner two additional times: a second publication 15–20 days after the first publication and a third publication 15–20 days after the second publication.

**d.** Sending a notification on liquidation to all known creditors (if any).

**e.** Submission of the formal statement (referred to in (a) above), the resolution on liquidation and the seal of the entity to the registration department within 15 days from the date of the adoption of the liquidation resolution.

**f.** Ordering a new seal for the entity with the notation "in the process of liquidation" for further use by the liquidation commission (liquidator).

**g.** Collecting and submitting documents produced in the course of the existence of the entity to the State Archives and obtaining a letter from the State Archives confirming the submission of all documents required to be archived.Notifications to the Audit Department of the State Tax Service with requests for closing audits.

**h.** Completing various reports and documents requested by the tax authorities.

**i.** Preparing a preliminary liquidation balance within ten days of the expiration of the two-month period for filing claims.

**j.** Settlements with creditors (to be completed within 12 months).

Within five days of completing settlements with creditors, the liquidation balance and a statement of the plan for the allocation of the remaining assets to the owner of the entity are compiled. These documents must be approved by the owner of the entity within not later than 45 days. Such property is subject to transfer to the owner of the entity within 10 days.

Submission of the required clearances from the necessary state bodies, the liquidation balance, the asset distribution plan, the document confirming the allocation of the remaining assets to the owner and other documents provided by legislation to the registration department of the State Tax Service within 10 days from the date of the allocation of the assets.

The process is completed upon the receipt of a document from the State Tax Service confirming deregistration.

The total duration of the process for the liquidation of a legal entity must not exceed one year from the date of submitting the documents to the registration department. Exceeding this period would entail the recommencement of the liquidation process, though in practice the one-year period generally can be extended where the failure to liquidate within the deadline was due to the inability of the tax authorities to schedule a closing tax audit or for other reasons outside the control of the liquidating party.

## How Dentons can help

Dentons has assisted many companies in establishing a presence in Azerbaijan, whether as a representative office, branch or local legal entity. Dentons provides a full registration service, including model documents, instructions on the procedures, fulfillment of all registration formalities and practical advice during the process.

Dentons also has considerable experience in the suspension of activity, closing and reorganization of local offices and subsidiaries.

Chapter 3

# Corporate governance

## Introduction

The legislation dealing with JSCs and LLCs in Azerbaijan is found primarily within several sections of the Civil Code. These provisions sometimes lack clarity and detail. The mandatory corporate governance principles that exist with respect to entities in these legal forms are subsumed within these sections of the Civil Code. There are other pieces of legislation that supply additional corporate governance rules – they apply to companies engaged in certain types of activities, such as financial institutions, insurance companies, investment companies, investment funds, agricultural cooperatives, etc. This chapter is not intended to cover such entities, even though they may be mentioned occasionally.

In addition to the mandatory corporate governance principles, there is also a set of Azerbaijani Corporate Governance Standards prepared by a working group consisting of representatives of the Ministry of the Economy of the Republic of Azerbaijan and the International Finance Corporation. These standards were prepared based on the 2004 Edition of the OECD Principles of Corporate Governance and are of a voluntary nature.

One of the difficulties encountered in considering the corporate governance of LLCs and JSCs is that the rules are not uniform, and the concept of implicit repeal sometimes leaves it unclear as to whether an older provision is still in force. Furthermore, in general the law restricts the term "director" to members of the board of directors (supervisory board), which only a JSC-O and an entity of public importance[1] is required to have in place. The broader term "officer" is used in various laws, and penalties for improper or inadequate performance of duties are imposed on "officers" though not "directors." The term "officers," however, is also not defined.

Good corporate governance ideally should involve:

- Independence from the State in decision-making;
- Transparency of decision-making;
- Financial transparency;
- Responsibility and accountability;
- Good internal controls;
- Good recordkeeping (minutes of meetings, accounts, etc.);
- Effective flows of information.

Transparency and avoiding conflicts of interest are fundamental principles of good governance, but extra care is required where there is one dominant shareholder. Although the law states that the general meeting of shareholders is the highest body of corporate governance (and it is this body which is exclusively responsible for making changes to the charter, approving the annual financial statements and similar actions of highest importance), it is the board of directors (sometimes referred to as the supervisory board) and the executive body (sometimes referred to as the management board) where the main aspects of governance are exercised.

In a JSC, the power to appoint and terminate members of the executive management board may be vested by the charter in the supervisory board. Only a JSC is required to have a two-tier board structure (having both a supervisory board and a management board), and then only where it has more than 50 shareholders or where it qualifies as an entity of public importance. An LLC is not required to have a two-tier board structure, with the exception of entities of public importance, but it may optionally choose to have a supervisory board by so providing in its charter or where it qualifies as an entity of public importance.

1. Such as financial institutions, insurance companies, investment companies, investment funds, as well as companies with an annual revenue of at least AZN 120 million, having 1,500 employees and/or having assets valued at AZN 300 million.

## The general meeting of shareholders

The Civil Code reserves to the general meeting of shareholders certain major matters, such as approving changes to the charter, increases in the charter capital, a reorganization or winding-up of the company, annual statements and the distribution of profits, and the election of the supervisory board and finance/audit committee.

Both LLCs and JSCs must hold a general meeting of participants/shareholders not less than once per annum. LLCs are required to hold an annual general meeting within four months of the end of the year, while a JSC must do so not later than within six months of the end of the financial year. An extraordinary general meeting of an LLC or a JSC may be convened by the directors, the management board (where no supervisory board exists), or the audit committee, or at the request o shareholders representing at least 10% of the votes.

The annual general meeting is convened by the directors (or, where there is no supervisory board, by the executive body). For a JSC-O, in addition to sending notices to all shareholders, at least 45-days' notice of an annual general meeting must be given by publication in the mass media. For an extraordinary general meeting of shareholders, the notice period is only 30 calendar days. JSCs that are banks may also convene a general meeting of shareholders without any notice at all, provided, however, that 100% of all shareholders are present in person or in proxy.

The notice must provide certain basic details, including an agenda and details on how shareholders may familiarize themselves with background materials to the agenda items. Closed JSCs are only required to notify shareholders in writing.

Resolutions of general meetings of JSCs must be notified to the shareholders within 15 days. The minutes must be signed by the chairman and secretary and must be sealed. The minutes must specify certain information, such as the time and place of the general meeting, its agenda, the number of shares represented at the meeting, the results of the voting in respect of each issue put to a vote, as well as the precise text of each resolution passed.

The law provides for methods of counting votes at general meetings in JSCs with more than 100 shareholders: A panel of at least three tellers is required. The members of, and candidates to, the supervisory and management boards and the audit committee may not be appointed as tellers. The tellers must add to the minutes of the meeting a record of the results of the vote.

In relation to a JSC-O a transaction which exceeds 25% of the net asset value of the company must be approved by the general meeting of shareholders, and the method of disclosing the details of such transactions should be specified in the charter.

Voting at a general meeting is usually carried out in person or by proxy, unless the charter expressly permits votes to be cast in writing. Resolutions of a general meeting of shareholders must be recorded in the form of minutes (in duplicate and prepared within three working days of the meeting), which must be signed by the chairman and secretary and sealed. This appears to be the only reference in the Civil Code to the functions of a secretary in the context of company administration. Generally, there is no requirement to have a formal company secretary position. Shareholders are entitled to review the minutes on demand.

The right to vote by preferred shareholders at shareholder meetings is strictly limited to issues concerning reorganization, liquidation and certain charter amendments (unless the charter grants them other rights).

## Directors and management: Independence and qualifications

In general, the laws of Azerbaijan do not require directors serving on the supervisory board or executive officers to possess any special qualification, nor does a prior criminal record normally disqualify a director or officer from such position (unless the JSC is, for example, a bank, an insurance company, an investment company, or an investment fund.)

Supervisory board members, who are elected by the general meeting of shareholders, are, at least in theory, independent from the management and from the audit committee. A supervisory board director may not also serve as a member of the management board, though he/she is allowed to serve as an audit committee member.

The State has the right to appoint board members in cases where it continues to own at least 25.5% of an enterprise following privatization. However, a shareholder holding more than 20% of the shares of a JSC may not be a member of the management board.

A member of the supervisory board of a JSC may be appointed for a period not exceeding three years, other than for banks, in which the terms of both supervisory board and management board members may not exceed four years. There appear to be no statutorily established limits on the reappointment of members of the management board. The appointment of the management board is carried out by the participants/shareholders in a general meeting, except that in a JSC this authority may be delegated to the supervisory board. The head of the executive management should enter into an agreement with the LLC, which would normally be signed by the chairman of the general meeting of participants at which the head is appointed.

Management of both LLCs and JSCs may be collegial, in the form of an executive management board, or it may consist of one person, who may be independent of the owners or a representative of one or more owners.

Members of the supervisory and/or management board of both LLCs and JSCs may be removed from their position by the general meeting of shareholders for causing damage to the company.

## Audit committee (or Auditor)

A JSC is required to have an audit committee that is independent of its supervisory and management boards, if it has more than 50 shareholders (other companies may provide for audit committees in their charters), or where it qualifies as an entity of public importance. A shareholder or a member of the management board may not be a member of the audit committee. Published financial statements must be audited by an independent external auditor. Audits of a JSC are carried out at the request of the audit committee (or by resolution of a general meeting, the directors or management or at the request of more than 10% of the shareholders).

An LLC may have an audit committee (or a sole auditor) but is not required to do so, unless the LLC has more than 50 participants or where it qualifies as an entity of public importance. Shareholders or management board members of an LLC may not be members of the audit committee, while supervisory board members may serve on the audit committee. An LLC is required to appoint an independent external auditor.

## Related-party transactions

Regulations on related party transactions now extend to all Azerbaijani legal entities (previously, similar regulations existed only for issuers of investment securities, banks and certain other regulated entities) The regulations apply to any transaction or series of related transactions between a legal entity and a related party with respect to such legal entity.

In general, "related party" is defined quite broadly and includes the following:

1. The chairmen and members of the management and supervisory boards of a company.
2. Heads of divisions, branches and departments of the company.
3. Relatives of persons listed under items 1 and 2 above.
4. Shareholders of the company (whether legal entities or individuals) holding (whether directly or indirectly) at least 10% of the shares in the company.
5. Legal entities in which persons listed under items 1, 2 and 4 above (whether directly or indirectly) hold shares.
6. Legal entities in which the company in question holds at least 20% of the shares.
7. Persons (whether legal entities or individuals) holding (whether directly or indirectly) at least 20 percent of the shares in entities listed under items 4 and 6 above.
8. Chairmen of the management and supervisory boards of legal entities listed under items 4 and 6 above.
9. Other persons related to banks and investment funds set forth in, respectively, the Law *"On Banks"* and Law *"On Investment Funds"*.

In the event that the value of a related-party transaction is equal to or exceeds five% of the relevant company's assets, the transaction may be entered into based on the opinion of an independent auditor engaged by the company and a resolution of the general meeting of its shareholders adopted by a simple majority. A shareholder of the company who is a related party in relation to the transaction in question may not cast a vote during the general meeting of shareholders.

If the value of the related-party transaction is less than five% of the company's assets, the transaction must be approved by either the general meeting of shareholders, the supervisory board or the management board of the company (with exceptions related to certain regulated entities), in accordance with the charter of the company. For this purpose, a member of the supervisory board or the management board of the company or a shareholder of the company who is the related party in relation to the transaction in question may not cast a vote.

If the related party is the chairman of a management board that consists of one person, or persons listed under items 3 and 5 above, the transaction must be approved either by the supervisory board of the company or by the general meeting of shareholders if no supervisory board is established.

The law also establishes liability for damage inflicted upon the company caused by such company entering into a related-party transaction in violation of relevant approval procedures. Such transaction also can be rescinded by the company or any of its shareholders.

Finally, the law requires that the chairman and members of the supervisory board of a company must disclose to the shareholders of the company in writing the fact that they are related parties in relation to a transaction with the company, as well as the details of their interests in such transaction. A similar requirement applies to the chairman and members of the management board of a company and any other related party, except that the latter must address the disclosure to the supervisory board (or to the general meeting of shareholders if no supervisory board is established).

Shareholders of JSCs also have the right to require a review of relevant agreements, presumably, prior to approving these transactions.

## Directors' and officers' duties

The function of a supervisory board is to carry out control over the activity of the executive body (the management board). In addition to limited provisions listed in the Civil Code, the charter (the constitutive document) of each company also defines and establishes the duties of the directors. Penalties (administrative and criminal) may be levied on officers who fail to fulfill their duties or who do so inadequately. In the vast majority of cases, these penalties are applied to the general director or, where the matter relates to an accounting or tax offense, the chief accountant.

The management board of a JSC must, in theory, provide background information relating to any general meeting agenda item within a prescribed period prior to the meeting. However, a shareholder must request the information, and it is not clear whether the information must be provided to all shareholders or, as is the most likely interpretation, only to the shareholder requesting the information.

According to the law, the shareholders of a JSC have the right to apply to a court or other competent authority for damage suffered by the JSC or its shareholders as a result of a concluded transaction.

Finally, there is administrative and criminal liability for violating related-party transaction regulations.

## Fiduciary duties

Rudimentary indications of fiduciary duties were introduced into Azerbaijani corporate governance standards several years ago. Although not labeled as such, the language in the law suggests that the duties include the duty of good faith, the duty of care and the duty of loyalty.

Specifically, a person acting on behalf of a legal entity, including a member of the supervisory board or the management board, must discharge his/her duties (i) in good faith, (ii) in a professional/reasonable manner and with due care and (iii) must remain loyal to the interests of the company and its shareholders/participants and put the interests of the company before his/her own interests.

The law also provides that a fiduciary who fails to discharge his or her duties in accordance with the stated standards is liable for any damage suffered by the company of which he or she is a fiduciary as a result of such breach of duty. A list of specific actions and behaviors was introduced into the Civil Code, attempting to clarify what exactly duties of good faith, care and loyalty entail (e.g., payments of executive bonuses, when a company is operating at a loss or where the bonus is disproportionate to the company's profitability levels, etc.).

A shareholder or participant holding at least 10% of the company's charter capital may 'step into the shoes of a company that has suffered damage as a result of the actions or inaction of fiduciaries and may demand that such fiduciaries compensate the company for this damage. Recent amendments to the law require access to relevant information and documents, subject to complying with confidentiality requirements.

## Criminal liability for legal entities

Criminal liability – which previously applied only to physical persons, such as members of the management of a legal entity – now extends to legal entities themselves as well. Based on amendments to the Criminal Code adopted in 2012, legal entities may be subject to criminal liability for actions of officers of a legal entity that benefited or were taken for the protection of such a legal entity.

Criminal liability may arise for legal entities in connection with human trafficking; involuntary servitude; the legalization, knowing possession, use and disposal of funds and other property obtained illegally; terrorism and the financing of terrorism; computer hacking; the creation, use and distribution of computer viruses; abuse of office; the receiving or giving of bribes; as well as corruption-related crimes among others.

The following punitive measures may be taken against legal entities:

- Financial sanctions.
- Confiscation of illegally obtained property.
- Deprivation of the right to engage in certain activities.
- Forced liquidation of a legal entity.

While punitive measures in the form of the forced liquidation of a legal entity may only be a primary penalty, financial sanctions can be both primary and auxiliary penalties. Measures such as confiscation and deprivation of the right to engage in certain activities can only be auxiliary penalties.

Relevant amendments were also made to the Criminal Procedural Code and the Code of Implementation of Criminal Penalties.

## Conclusion

The existing rules of corporate governance that apply in Azerbaijan are mandatory, and therefore they must be followed. However, at present they are not fully adequate to ensure the protection of minority shareholders or the efficient operation of JSCs and LLCs. The current business environment in Azerbaijan, which includes a strong state sector, large industrial holdings with dominant market positions and close ties to the government, lingering corruption and a rule of law that is still developing, makes the establishment of good corporate governance principles all the more important. Ideally, theshortcomings in the existing rules should be addressed in the constitutive documents and internal regulations of such entities.

## How Dentons can help

Dentons has considerable experience conducting due diligence of companies and establishing joint ventures in Azerbaijan, including through the use of complex offshore structures for investment. As corporate governance professionals, Dentons can advise on effective governance structures and procedures, in order to provide more reliable corporate governance principles, compensating by contract or through internal company rules for the existing inadequacies under laws of general application.

Chapter 4

# Banking and finance

## Overview

The Azerbaijani banking system is characterized by a relatively small number of banks, and a concentrated market, in which the Central Bank of Azerbaijan (CBA) has replaced the now dissolved Financial Market Supervisory Authority as the central regulatory body.

Credit institutions are divided into banks and nonbank credit institutions. Banks are subject to the licensing terms prescribed by the CBA and, in general, may carry out all types of banking operations stipulated by the existing legislation, while nonbank credit institutions are permitted to conduct only certain types of such activities (for example, only banks are allowed to accept deposits).

## Size

With only two banks still partially owned by the state, the remaining domestic banks and branches of foreign banks in Azerbaijan are now privately owned. According to statistics current as of March 2023, the total assets of Azerbaijani banks were approximately AZN 44.84 billion.[2]

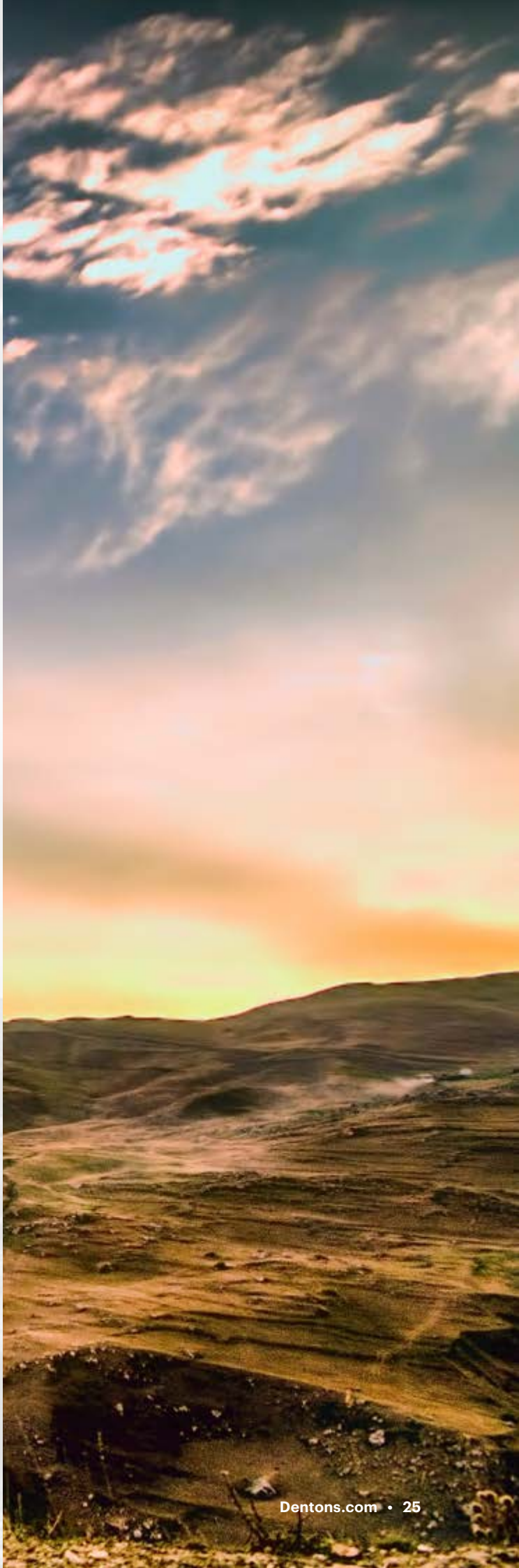
## Legislation, supervision and transparency

Banking legislation is fairly well-developed in Azerbaijan, both at the level of primary laws and at the level of various implementing regulations.

Azerbaijani banks provide financial reports in accordance with international financial reporting standards. Mandatory external audits (i.e., by independent auditors) have also been introduced, making the system more transparent, which has encouraged and reassured domestic and foreign investors' confidence.

In addition, the CBA is moving towards a broader application of the Basel III standards, including the application of leverage norms, the performance of preparatory work for the management of short-term liquidity and the improvement of the internal institutional potential for the purpose of the sustainability of banks in light of financial risks.

2. Central Bank of Azerbaijan Statistical Bulletin, No. 03 (276), March 2023.



# Regulatory framework, money laundering

## Banking and finance

The principal laws in the area of the establishment and operation of banks are the Law "*On Banks*" and the Law "*On Nonbank Credit Institutions*." The existing system of legislation also encompasses a large number of implementing regulations, dealing, *inter alia*, with issues of licensing, the establishment and acquisition of subsidiaries, participation in other legal entities, corporate governance and requirements for managerial personnel.

## Money laundering

According to the Azerbaijani Criminal Code the following activities are crimes associated with money laundering and terrorism financing:

1. Financing extremism and terrorist activity.
2. Money laundering or laundering other unlawfully acquired property.

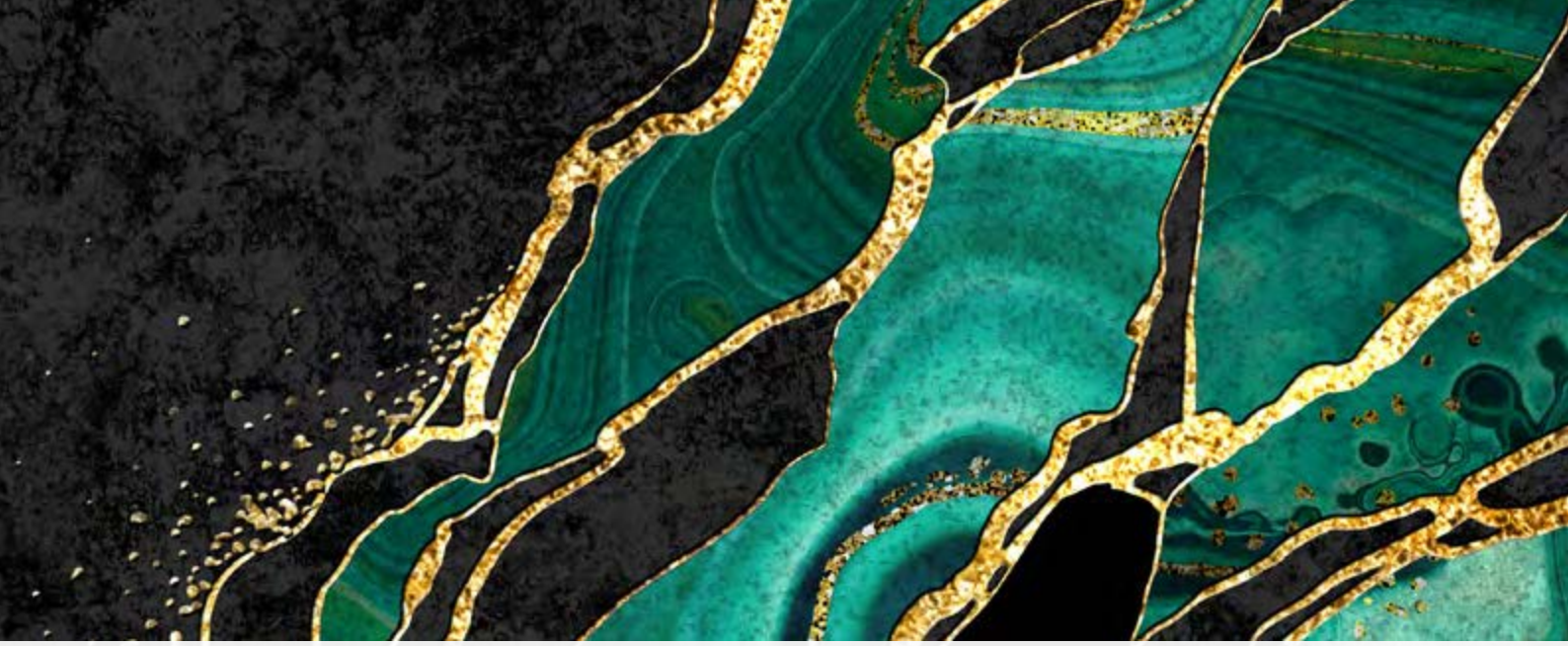
The legislation in Azerbaijan on crimes associated with the legalization of unlawfully acquired property and terrorism financing mainly consists, among other regulations, of the new laws "*On the Legalization of Property Obtained Through Crime and the Fight Against the Financing of Terrorism*"[3] and "*On Targeted Financial Sanctions*," which were adopted by the Milli Majlis (Azerbaijan's parliament) on 30 December 2022 (effective as of 1 February 2023), as well as chapters in the Criminal Code of the Republic of Azerbaijan, the Code of Administrative Violations of the Republic of Azerbaijan, the regulations of the Financial Monitoring System (FMS) and the CBA.

The FMS is charged with the unified regulation and control, the coordination of activities, as well as participation in the formation of state policy in connection with the prevention of the legalization of criminally obtained property and the financing of terrorism.

### 1. The law "On the Legalization of Property Obtained Through Crime and the Fight Against the Financing of Terrorism"

The law "*On the Legalization of Property Obtained Through Crime and the Fight Against the Financing of Terrorism*" regulates legal relations in connection with the detection and prevention of the legalization of property obtained through crime and the financing of terrorism, and the creation of conditions that exclude the possibility of using the country's economic system for illegal purposes. In this respect, these laws are intended to enable the fulfillment by the government of the obligations arising from the international agreements to which the Republic of Azerbaijan is a party, as well as regulate legal relations connected with the implementation of effective domestic and international cooperation in order to protect the interests of the state and society.

3. With the adoption of this new law, the previous law of the Republic of Azerbaijan "*On the Fight Against the Legalization of Money or Other Property Obtained Through Crime and the Financing of Terrorism*" No 767-IIIQ, dated 10 February 2009, has been repealed.



The requirements of this law apply to nonfinancial institutions and professionals (i.e., realtors, advocates, notaries, independent persons providing legal, accounting, and tax consulting services, as well as branches and representative offices of such foreign legal entities in the Republic of Azerbaijan) in the following cases:

- Where realtors conduct transactions on the sale and purchase of the real estate.
- Where notaries, advocates and independent persons providing legal, accounting and tax consulting services perform the following transactions or participate in such transactions:
  - the sale and purchase of real estate;
  - the management of a client's cash, securities or other property;
  - the management of a customer's bank, warehouse, postal, payment and cash accounts;
  - the establishment of legal entities, the provision and management of their activities, the organization of the collection of funds for these purposes, as well as the sale and purchase of shares in legal entities.

The above law sets forth the requirements that apply to financial institutions and organizations on taking the relevant preventive measures in the field of the fight against the legalization of property obtained through crime and the financing of terrorism. These entities are:

- Credit institutions;
- Local and foreign insurers;
- Reinsurers and insurance brokers engaged in collective life insurance activities;
- Investment companies;
- Investment funds;
- Managers of these funds;
- Representative offices of Foreign investment funds;
- The central depository;
- The national operator of postal communication;
- Pawnbrokers;
- Persons providing financial leasing services;
- Virtual asset service providers and persons licensed for currency exchange activities;
- Nonfinancial institutions and professionals (in certain cases).

The law, among other things, determines the operations to be monitored, sets forth the applicable monitoring and control measures and regulates domestic and international cooperation.

### 2. The law "On Targeted Financial Sanctions"

The law "*On Targeted Financial Sanctions*" determines the legal basis and procedure for the application of targeted financial sanctions in order to prevent terrorism, the financing of terrorism and the proliferation of weapons of mass destruction, including the financing of the proliferation of weapons of mass destruction, in accordance with the relevant resolutions of the United Nations Security Council.

Targeted financial sanctions (i.e., prohibitions aimed at preventing the direct or indirect use of assets by individuals and institutions subject to sanctions, or measures to freeze the assets of such individuals and institutions), without replacing measures applied within the framework of criminal proceedings, are preventive in nature and include various measures (such as the freezing of assets, or a ban on the provision of assets, economic resources or financial and other related services) in order to prevent terrorism, terrorist financing and the proliferation of weapons of mass destruction.

In addition to other issues, the law defines the assets to which the targeted financial sanctions are applied and, determines the rules of application of the prescribed sanctions, as well as their application to contracts concluded or liabilities incurred by sanctioned individuals and legal entities prior to their inclusion in international lists[4] It also provides the rules for the formation of the international lists and domestic list[5] .

### 3. Other regulations

Following the provisions of the law "*On the Legalization of Property Obtained Through Crime and the Fight Against the Financing of Terrorism*," the FMS and the CBA approved the promulgation of a number of regulations aimed at the further implementation of various provisions of the law.

## Compliance supervision

Azerbaijani law authorizes the CBA to review the financial statements, accounting books, documents and other records of banks and to require explanations on matters relating to the accounts and financial statements of the bank.

## Deposit insurance

According to the law "*On Deposit Insurance*," dated 29 December 2006, all licensed banks which accept deposits are members of the Azerbaijani Deposit Insurance Fund (ADIF) and, as of now, 26 banks, including two state-owned banks and two branches of foreign banks, have become members of the ADIF. The ADIF insures deposits at each member bank for up to 100% of the eligible deposit balance.

The definition of eligible deposits in the Law "*On Deposit Insurance*" has been expanded as follows:

4. Based on the law "*On Targeted Financial Sanctions*," international lists are defined as lists of individuals and institutions to be sanctioned by the sanctions committees of the United Nations Security Council, established for the purpose of preventing terrorism and the financing of terrorism, as well as the proliferation and financing of the proliferation of weapons of mass destruction.
5. The law "*On Targeted Financial Sanctions*" defines the domestic list as a list of individuals and institutions that should be sanctioned within the framework of the fight against terrorism and the financing of terrorism, based on rulings of the courts of the Republic of Azerbaijan.

- Funds belonging to individuals placed in a notary's deposit account (for example, in the course of real estate transactions) are considered eligible for deposit insurance upon the occurrence of an insurance event;
- Funds not exceeding AZN 20,000 deposited in bank accounts opened by individuals for the purposes of entrepreneurial activities.

In addition, as of 5 April 2021, the ceiling for insurance compensation to be received by the holders of eligible deposits (which had temporarily been suspended by Presidential Decree) was increased from AZN 30,000 to AZN 100,000.

Any matured obligations of the depositor vis-à-vis the banks in which eligible deposits were made are set off for the purposes of calculating the final payout by the ADIF.

## Criminal liability

The conduct of financial operations and other transactions with monetary funds or other property that was unlawfully acquired, as well as the use of such funds or other property, can lead to criminal liability, including imprisonment for a period from three to six years for any person who has abused or exceeded the authority of his or her office.

## Mergers and acquisitions

The law contains a number of provisions which envisage various notices, approvals and permissions that apply in Azerbaijan in connection with the proposed acquisition of a qualified shareholding in an Azerbaijani bank.

A qualified shareholder entails the ownership of at least 10% of the shares or voting rights in the target legal entity, whether such ownership is direct or indirect. The legislation also provides a definition for a "bank holding," which means a direct or indirect holding in an undertaking which represents 50% or more of the capital or the voting rights or which makes it possible to exercise significant influence over the management of the undertaking in which the holding subsists.

### 1. CBA approval for the purchase of shares in a bank

Under the law *"On Banks,"* the prior written consent of the CBA must be obtained in order for any person to become a qualified shareholder of a bank in Azerbaijan or to create a bank holding with respect to a bank in Azerbaijan. The consent of the CBA is also required each time any such purchase would cause the purchaser's shareholding to equal or exceed the thresholds of 20%, 33%, 50% and more than 50% of the bank's charter capital.

### 2. Consent of the antimonopoly authority

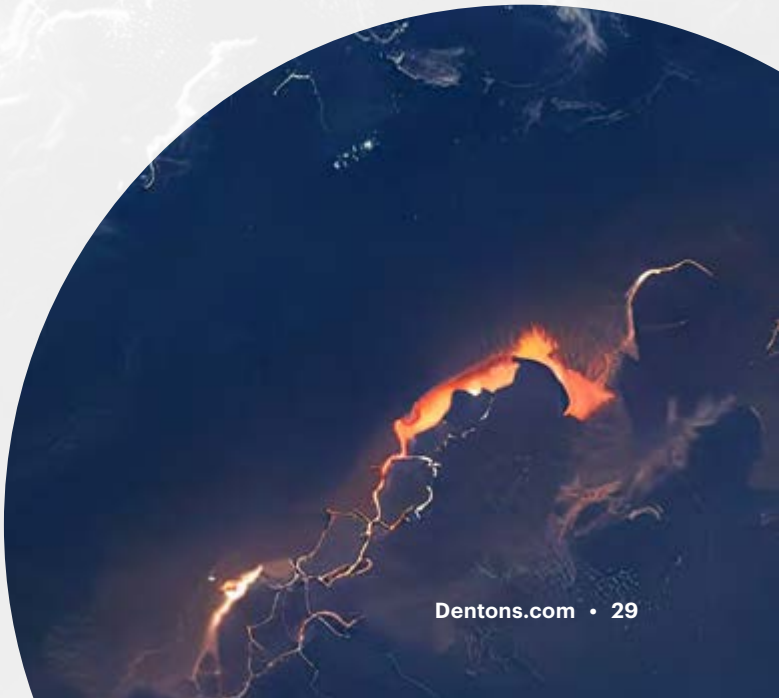
The State Agency for Antimonopoly Policy and Consumer Market Supervision under the auspices of the Ministry of the Economy must provide, among other things, its consent for the acquisition of more than 20% of the shares of a bank.

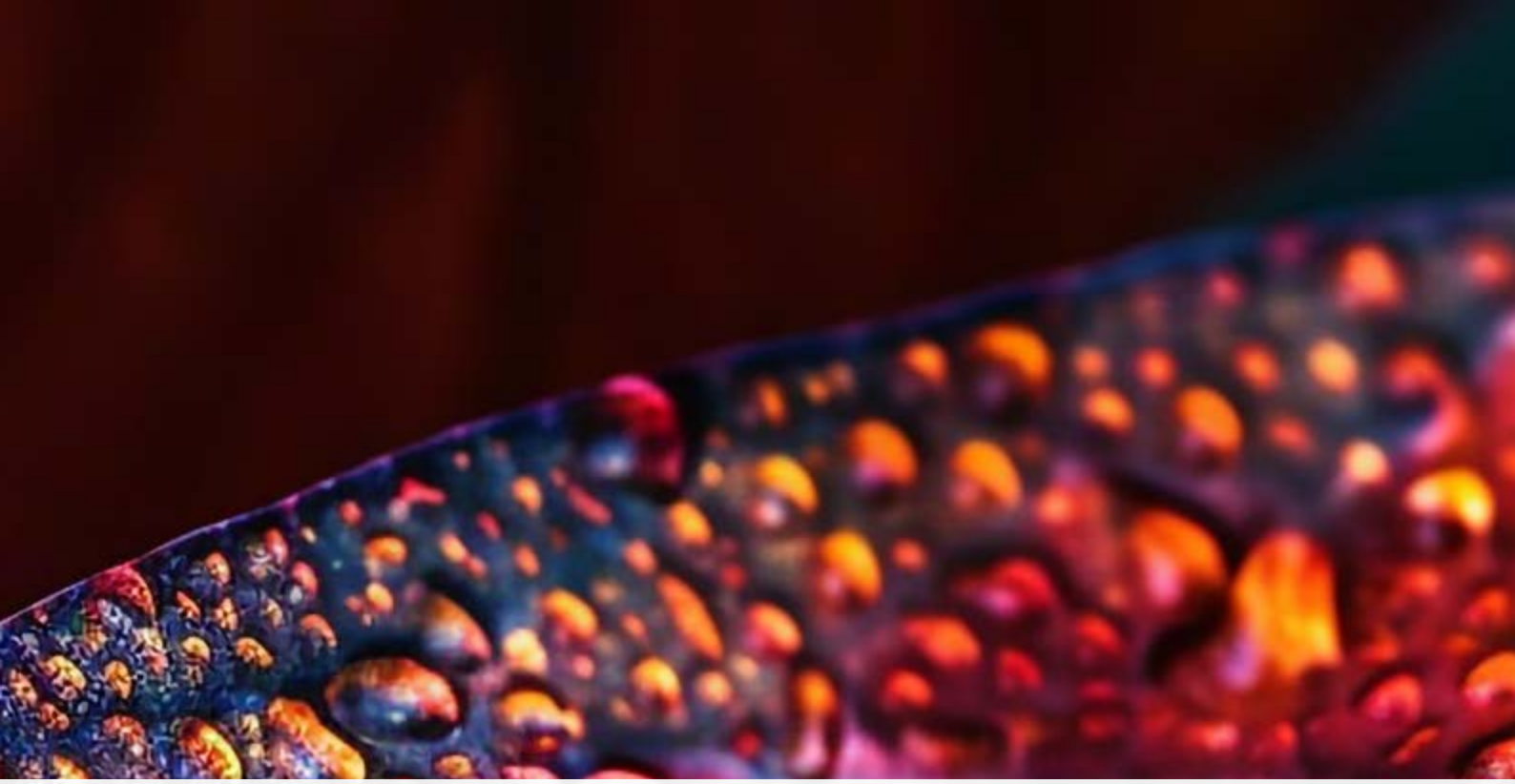
### 3. Registration with the CBA and Ministry of Taxes

All banks must be organized as open joint-stock companies, and all newly issued shares must be registered with the CBA. The registration of any amendment to the charter of a bank with the State Tax Service under the Ministry of Economy of the Republic of Azerbaijan is also required.

### 4. Name

The name of a bank must contain the word *"bank"* or derivations of that word. We also note that, under the existing legislation, the name of a subsidiary bank should contain a reference to the name of its parent bank.





# Prudential norms and disclosure

## Capital requirements

According to the Basel II capital methodology, the CBA requires the monthly reporting of capital ratios. Minimum capital adequacy ratios are 5% for Tier I capital and 10% for Total capital (the sum of Tier I and Tier II capital) for banks that are not considered to be of systemic importance. For banks of systemic importance, the relevant requirements are increased periodically to reach 6% and 12% by 2020. Tier II capital is allowed to equal, but may not exceed, 100% of Tier I capital. Further, all banks must maintain a leverage ratio at a level not below 4% (or 5% for banks of systemic importance). (The CBA has proposed to introduce certain temporary regulatory relief for banks aimed at the alleviation of the negative effects of the COVID-19 pandemic and the related volatility in international oil markets to the economy. This relief is said to include lowering the Tier I and Tier II requirements for banks.)

A bank's total capital may not be less than AZN 50 million. Any new bank must have charter capital (an element of Tier I capital) of AZN 50 million.

## Disclosure of information

### 1. Financial Disclosure and Transparency

Banks have a duty to disclose all material information, including their financial condition, operating results and information about ownership and management, to the *main users of information* in a timely manner. (The main users of information are defined as *existing and potential shareholders, market participants and other interested persons*.)

Banks in Azerbaijan are subject to several financial disclosure requirements set forth by the CBA. The Central Bank's regulations are applicable to banks since they are issuers of investment securities (stock). The CBA rules set forth minimum disclosure requirements for banks' annual reports, as well as establish a more frequent disclosure timeline for certain types of information.

In particular, a bank must provide the *main users of information* with its consolidated annual report, prepared based on International Financial Reporting Standards and audited by an external auditor, along with the auditor's opinion, no later than five months after the end of the respective year. The annual financial reports of the bank must be published in the mass media or on the official website of the bank. Additionally, information related to the bank's activities and the risks that it faces must be disclosed at least once a year, unless such information has

materially changed, in which case such changes must be disclosed no less frequently than once every six months. Information about the composition and adequacy of the bank's capital must be disclosed at least once per quarter (no later than within the first month of the next quarter).

### 2. Disclosure to the Centralized Credit Registry

In accordance with the law "*On Banks,*" the CBA established a Centralized Credit Registry (CCR). It is charged with collecting the credit histories of borrowers and making them available to banks. Information on any loans to individuals and legal entities must be reported to the CCR. This information includes the amount of the loan, the purpose of the loan, the maturity date, any delays in the repayment of the loan or interest and the status of the loan. (The CBA has proposed introducing certain temporary measures for borrowers aimed at alleviating the negative effects on the economy of the COVID-19 pandemic and related volatility in international oil markets. These measures are expected to include certain relief in terms of reporting loan information to the CCR.)

### 3. Disclosure to the Financial Monitoring Service

Additionally, information about certain transactions must be disclosed to the Financial Monitoring Service of Azerbaijan (FMS), which was established by the CBA. Such transactions include those with funds or other property associated with (i) banks registered in certain countries (territories) or (ii) individuals or legal entities registered in, or having residency in, a permanent business or a bank account in those countries or territories. This requirement also applies to transactions with persons included on certain lists based on the relevant UN resolutions, as well as the legislation of the Republic of Azerbaijan and international agreements to which it is a signatory.

The FMS periodically approves and publishes a list of high-risk countries/jurisdictions likely participating in the legalization of illegal proceeds or other illegal property, financing terrorism, supporting transnational crimes, as well as those connected with armed separatism, extremism, mercenaries, the illegal circulation of narcotic drugs or psychotropic substances. It also publishes a list of designated persons.

## Corporate governance

The Azerbaijani corporate governance regime applicable to banks consists primarily of several provisions in the Civil Code, the law *"On Banks"* and the Rules *"On the Implementation of Corporate Governance Standards in Banks"* (Corporate Governance Rules). The CBA also has promulgated a number of standards and instructions intended to guide banks in their preparation for and implementation of corporate governance standards.

The Corporate Governance Rules are aimed at the implementation of high corporate governance standards and set forth the basis for the corporate/organizational structure of a local bank, its activities and corporate behavior.

The rules in question define corporate governance as a method of prudential governance that ensures the identification of the strategic responsibilities of the bank on the basis of its strategic outlook (vision), the precise allocation of responsibilities at all levels of the bank's management, the suitability of the members of the bank's management to the positions that they are holding, the implementation of detailed internal control systems for the purposes of effective risk management, as well as ensuring the effective use of internal and external audits for the purposes of achieving transparent governance.

The rules also identify those areas that are necessary to ensure the effective implementation of good corporate governance, as follows:

- Implementation of a strategic planning process.
- Creating an effective organizational structure.
- Determining the reporting system, implementing the budget planning process.
- Ensuring that financial reporting is in compliance with the International Financial Reporting Standards.
- Ensuring the availability of an effective system of internal controls and risk management systems.
- Disclosing accurate, comprehensive, and impartial information, reflecting the bank's activities in a timely manner.
- Ensuring the availability and development of reliable management information systems that provide a systematic flow of extensive and clear information about the current financial state of the bank and its operations.
- Creating an internal auditing structure that constantly enhances the productivity of and improves and strengthens internal controls.
- Determining internal auditing policies and strategies.
- Ensuring full and timely disclosure of direct and indirect interests that may create conflicts of interest for the bank for the purposes of avoiding such conflicts.
- Ensuring that administrators place the interests of the bank above their personal interests.
- Taking measures to prevent any damage to the reputation of the bank or the deterioration of its financial position by virtue of persons related to the bank.
- Ensuring the compliance of bank activities with relevant legal acts.

## Fiduciary duties

Each member of a bank's management board and supervisory board must discharge his/her duties: (i) in good faith; and (ii) in a professional, reasonable manner and with due care; and (iii) must remain loyal to the interests of the company and its shareholders/participants and place the interests of the company before his/her own interests.

Members of the management board or supervisory board may not delegate their fiduciary duties to other administrators.

Additionally, each member of the supervisory board must:

- Be well-informed about the financial affairs of the bank by regularly and independently analyzing the reports of the management board and other committees of the bank.
- Be up to date about the developments and trends in banking and other financial markets.

- Cast a vote only based on his/her personal judgment and beliefs for the purposes of defending the bank's interests.
- When casting votes or adopting decisions, not uphold the interests of one shareholder/group of shareholders over the others, nor be influenced by them, as well as not adopt any decisions that are contrary to the bank's interests or undertake long-term risks for short-term gains.
- Defend the legitimate interests of the bank, not publicly criticize the other members of the supervisory board or management board.
- Not let his/her business activities affect the bank.
- Keep confidential any information related to the bank, persons related to the bank, bank customers and other people with whom the bank has business dealings that are obtained in his/her capacity as a member of the supervisory board, except where disclosure is mandated by law.
- Discuss problems related to the internal controls, financial results and the implementation of the strategic plan of the bank with the relevant officers of the bank.
- Ensure the independence of the audit committee.
- Not interfere with the activities of the internal auditors, but rather provide a recommendation to the audit committee in relation to the main directions of the internal audit plan and make sure that the internal audit department is subordinated to the audit committee.
- Ensure that the necessary information and documents related to the bank and persons related to the bank are provided for review to the internal auditor, who further has an opportunity to meet relevant employees.
- Assess at least once a year the professional skills of each member of the management board and their contributions toward the profitability of the bank, that their work has maintained the bank's financial stability, timely achievement of the strategic goals as well as their suitability to their positions.

The responsibilities of the members of the supervisory board go beyond the mere acceptance of reports on progress, opinions or recommendations from the management board or other bank administrators. They should be ready to question and object to these for the benefit of the bank and its depositors, despite positions taken by the shareholders and other members of the supervisory board.

## Conflicts of interest

Each member of the supervisory board, the audit committee and the management board, as well as the members of their families, must disclose any significant commercial interests that they might have to the supervisory board and the management board upon becoming a member of a bank's management body, and afterwards in accordance with the internal procedures of the bank.

In cases where a matter up for discussion is related to the interests of any member(s) of the supervisory board, management board, audit committee, any other committee or working group of the bank, or employees of the internal audit department, they must disclose their interests before discussions begin. They must also withdraw from such discussions and not participate in decision-making. The presence of such member or employee may not be counted towards establishing the applicable quorum.

## Potential liability of bank administrators

Further to amendments to the Law "*On Banks*," the liquidator now has the authority to investigate the circumstances that led to the bank's liquidation and to inform the relevant authorities of the results of such investigation, including the names of any potential suspects, as well as to apply to the courts on behalf of the bank, presumably for the purposes of seeking compensation for damage suffered by the bank. The language of the relevant provisions of the law is rather broad and could be interpreted to include bank administrators (members of the management and supervisory boards of the bank, heads of its branches, etc.) and, possibly, even shareholders of the bank.

## Resolution of an insolvent bank

A bank resolution regime deals with various matters related to the appointment of a temporary administrator by the CBA for an initial period of nine months, which could be extended for a further three months. This section sets forth in detail circumstances that would warrant the appointment of a temporary administrator by CBA, the principles under which the temporary administrator would manage the insolvent bank and the powers of such administrator, as well as the possible outcomes for distressed banks.

Circumstances that would lead to the appointment of a temporary administrator for a distressed bank are as follows:

- The aggregate capital of the bank falls to 25% or less of the minimum aggregate capital established for banks, or its adequacy ratio falls to 3 percent or less.
- The bank cannot perform its payment obligations as they become due or does not have sufficient liquidity at the moment of performance of obligations.
- The bank's license is revoked on the grounds specified in the Law on Banks.

Possible outcomes for distressed banks include the following:

- The insolvent bank into a healthy bank.
- Transfer of assets and liabilities of an insolvent bank (fully or partially) to an acquiring bank.
- Establishment of a bridge bank, the transfer of healthy assets and liabilities of an insolvent bank (fully or partially) to the bridge bank, and the sale of the bridge bank to investors.
- Sale of an insolvent bank to investors.
- Liquidation of an insolvent bank.

The temporary administrator is to manage the distressed bank for an initial period of nine months, which could be extended for an additional three months, and should achieve the following:

- Merger of an insolvent bank into a healthy bank.
- Transfer of assets and liabilities of an insolvent bank (fully or partially) to an acquiring bank.
- Establishment of a bridge bank, the transfer of healthy assets and liabilities of an insolvent bank (fully or partially) to the bridge bank and the sale of the bridge bank to investors.
- Sale of an insolvent bank to investors.
- Liquidation of an insolvent bank.

(Different financial rehabilitation rules apply to banks of systemic importance.)

Once appointed, the temporary administrator is also granted broad powers, including the removal of the management of the bank and assumption of their powers, as well as the approval of all transactions with or on behalf of the bank during the temporary administration.

During the period when a bank is under temporary administration, a court may be requested by the CBA to order a complete or partial moratorium on payments on deposits of legal entities and individuals, as well as payments under other obligations of the bank. The stated purpose of such measures is to allow for the valuation of assets and assessment of financial standing of the bank during the period of temporary administration, as well as to prevent a reduction in asset value.

## Voluntary debt restructuring of bank obligations

This framework allows banks to force a voluntary debt restructuring of the bank's obligations vis-à-vis its creditors, except for claims of depositors that are eligible for deposit insurance.

The process of voluntary debt restructuring begins with a resolution of the supervisory board of the bank if the bank is unable to comply, or there is a risk of the inability on the part of the bank to comply, with the demands of its creditors due to the absence or lack of funds or the impossibility to use funds for other reasons. The CBA will then have up to 20 calendar days to review the resolution of the supervisory board and to enter into a written agreement with the bank.

The bank then would prepare a draft restructuring plan to be submitted to the CBA for its approval, after which the bank would file an application with a court asking for approval of the commencement of the voluntary restructuring of the bank's obligations. The bank would be required to publish notices in the local and international press about the court decision, as well as inform its creditors of the obligations which are subject to restructuring.

From the effective date of the court decision on the voluntary restructuring of the bank's obligations, the bank would be entitled to:

- Suspend the performance of sale and purchase agreements, exchange and gift agreements, or any other agreements providing for the disposal of any assets of the bank, and to suspend the conclusion of agreements creating any risks for the bank, including, loan, credit and guarantee agreements or agreements providing any kind of financing.
- Suspend, in full or in part, the performance of the obligations that are subject to restructuring.

The above-mentioned restrictions would apply for 180 calendar days, a term that could be extended an unlimited number of times, each time for a period not exceeding 180 calendar days, upon application of the bank, as acknowledged by the CBA.

The bank would be able to introduce changes to the draft restructuring plan in the course of the voluntary debt restructuring of the bank's obligations, in which case such amendments must be submitted to the CBA for approval 30 calendar days prior to the creditors' meeting. Once approved by the CBA, the final draft of the restructuring plan would be presented for the creditors' approval during a creditors' meeting. The restructuring plan would be approved by creditors holding at least two-thirds of the total bank obligations which are subject to restructuring and will be binding for all creditors the claims of which have been included into the restructuring plan. Once approved by the creditors, the restructuring plan would be presented to the court for final approval. Members of the supervisory board, the audit committee and the management board must disclose any transaction with shares of the bank to which they are a party in the mass media.

## How Dentons can help

In the banking and finance sector, Dentons combines its long experience and in-depth knowledge of domestic legislation with international banking and financial sector experience in London, Frankfurt, Paris, New York and Hong Kong, among other jurisdictions. This enables the Firm to devise appropriate solutions for clients, selecting from local law financial structures and the most suitable offshore law mechanisms, in addition to issuing legal opinions under English, New York, German and French law, as well as under Azerbaijani law.

Dentons is an acknowledged leader in Azerbaijan in the provision of banking and finance advice. We have acted as general counsel for the major foreign banks operating in Azerbaijan, as well as micro-finance banks and other financial institutions. Our office is experienced in trade finance, project finance and lease finance, as well as Islamic finance and capital markets work, including the first successful Eurobond listing by an Azerbaijani financial institution.

In addition to our vast knowledge and experience in the field of conventional banking, we are also well-situated to advise clients on matters related to Islamic banking and finance, including a review and comment on contractual documents and advice on specific products.

Chapter 5

# Investment funds

## Introduction

Except for activities conducted by the State Oil Fund of Azerbaijan (SOFAZ), investment fund activity has been almost non-existent in Azerbaijan, even though the previous (now superseded) Law *"On Investment Funds,"* dated 30 November 1999, had been in force for many years.

## Investment Funds Law

The cornerstone of the legislation on regulating the activities of investment funds is the current law *"On Investment Funds,"* dated 22 October 2010 (the Investment Funds Law). This law repealed the prior 1999 law. In the Alat Free Economic Zone matters related to investment funds are regulated by a special Law on the Alat Free Economic Zone.

The Investment Funds Law is fairly detailed and sets forth provisions regulating a wide array of subjects, such as the establishment, licensing and management of investment funds; the issuance, placement and redemption of shares in investment funds; the composition and value of the assets of investment funds; the requirements for fund managers; the procedure that applies to the acquisition of a major shareholding; marketing activities for investment funds; the reorganization, liquidation and bankruptcy of investment funds; and state supervision over the activities of investment funds.

The Investment Funds Law does not apply to legal entities created by the State for the purposes of the fulfillment of state investment policy or to entities created by such legal entities. It appears from this section of the law that SOFAZ, which was arguably created for the purposes of the fulfillment of the state investment policy, is expressly exempted from the scope of this law, contributing to the somewhat confusing status of SOFAZ, its assets and its activities.

The law also provides for the promulgation of a number of rules and regulations primarily by the CBA, some of which have been adopted already by the previous regulators, the former State Securities Committee and the former Financial Market Supervisory Authority (FIMSA).

## Investment funds defined

An investment fund is defined as a financial institution established in the form of (i) a joint-stock investment fund or (ii) a mutual investment fund, created for the purpose of generating profit by making investments using the capital it has raised in accordance with an investment declaration.

***(i) Joint-stock investment fund (JSIF).*** This is an open joint-stock company having a license to engage in the activities of a JSIF, whose **sole** activity consists in investing funds raised by the placement of its common stock in securities and other property, including real estate, for the purposes of gaining profit and in accordance with an investment declaration.

A JSIF may not engage in any other business activity or establish any subsidiaries, nor may it issue any securities other than common bearer stock. A JSIF must obtain the relevant license for such activity from the CBA and must register with the Registry of the Investment Funds and the Investment Fund Managers maintained by the CBA (the Registry).

**a.** *JSIF management:* The Investment Funds Law sets forth a number of deviations from the general provisions related to the management of joint-stock companies contained in the Civil Code. For instance, a JSIF must have a supervisory board consisting of at least three directors, regardless of the number of its shareholders. Also, the law requires that at least one of the JSIF directors be an independent director (a person who is not a related party to the JSIF).

There is also an additional notification requirement regarding the convocation of general meetings of shareholders of the JSIF.

Other matters related to JSIF management are governed by the relevant provisions contained in the Civil Code, to the extent not amended by, or in contradiction to, the Investment Funds Law.

**b.** *Issuance of shares.* In addition to adhering to the general list prescribed by the joint-stock company provisions of the Civil Code, any issuance of shares by a JSIF must be accompanied by two additional categories of documents: (i) copies of the agreements with the manager and the depository of the fund, and (ii) both full and summary versions of the investment declaration. The JSIF may issue shares of common stock only after it has obtained the relevant license from the CBA. The shareholders' registry of the JSIF is maintained by a central depositary, while transactions in relation to them are concluded via investment companies.

***(ii) Mutual investment fund (MIF).*** This is a professionally managed pool of funds that is owned by the participants in the MIF under a right of common property. MIFs do not have the status of legal entity; thus, they avoid the Azerbaijani corporate profit tax. MIFs are created by a decision of the investment fund manager. An MIF is considered formed when it has raised the minimum capital required by the CBA or set forth in the management rules, whichever is higher.

mIFs must be registered with the Registry, which takes place upon the registration of the management rules of the MIF with the CBA.

There can be three forms of MIFs: (a) open-ended, (b) interval and (c) closed-ended:

**a.** *Open-ended mutual investment fund (OMIF)*: This is a mutual investment fund that sells and redeems its shares at least once per week, and the assets of which consist of money and securities.

**b.** *Interval mutual investment fund (IMIF)*: This is a mutual investment fund that sells and redeems its shares at least once per year and the assets of which consist of money and securities.

**c.** *(Closed-ended mutual investment fund (CMIF)*: This is a mutual investment fund that sells and redeems its shares upon the expiration of the term for which the CMIF was created. The assets of a CMIF may consist of money, securities and real estate.

Shares in MIFs are denominated in Azerbaijani manats (AZN), must be paid for in cash and have no nominal value. The calculation of their value must be in accordance with the relevant rules. Shares in MIFs may not serve as an underlying asset of the derivatives, and they may be offered to potential participants only after the management rules of the MIF have been duly registered and published in accordance with the law.

An investment fund manager may issue an unlimited number of shares in OMIFs and IMIFs, while the number of shares in a CMIF is limited to the figure set forth in its management rules. The sale and redemption of the placed IMIF and CMIF shares must be concluded through the stock exchange, while shares in OMIFs are placed by the investment fund manager for not less than their value as of the date of the sale.

All participants in an MIF enjoy equal rights, and no single participant may own more than 50% of the shares in an MIF. MIF participants are not liable for the obligations of the MIF, and losses incurred as a result of a change in the market value of the MIF's assets are limited by their respective contributions to the MIF. Likewise, MIFs are not liable for the obligations of their participants, whose creditors may direct their claims only against the shares actually owned by such participants in the MIF.

## Investment fund manager

Only a legal entity organized under the laws of Azerbaijan, having asset management as its sole area of activity, holding the relevant license and having the necessary minimum charter capital, may be an Investment Fund Manager. An investment fund may have only one investment fund manager at a time, unless some of the assets of such investment fund are located outside of Azerbaijan. A foreign investment fund manager may be appointed only with the consent of the CBA.

Investment fund managers manage investment funds (JSIFs and MIFs) for the benefit of the shareholders/participants of such funds, based on a management contract and in accordance with the management rules. There are also a number of requirements set forth in the law that the officials of investment fund managers must satisfy (e.g., the absence of a conviction involving a crime against property, economic crimes or especially serious crimes).

## Licensing

The review of an application for the issue of the applicable license to JSIFs or MIFs is conducted in two stages – initial and final. Upon completion of an initial review, the CBA issues a document, which, together with other documents, must be submitted to the State Tax Service under the Ministry of the Economy for the state registration of a JSIF or an MIF. The licenses are not limited by time.

Foreign investment funds' or fund managers' representative offices may conduct their *activities* upon receipt of the written consent of the CBA. The Investment Funds Law defines a representative office as a subdivision of an investment fund or fund manager located somewhere other than at the location of the investment fund or fund manager, the activities of which are limited to representing the interests of the investment fund or fund manager and protecting such interests.

## JSIF acquisitions

Along with the general requirements contained in various other acts of legislation (e.g., antimonopoly consent), the prior written consent of the CBA must be obtained for the acquisition (whether directly or indirectly) of a major shareholding in a JSIF (i.e., 10%). In addition, such consent would also be required each time a purchase will cause the purchaser's shareholding to equal or exceed the thresholds of 20%, 33% or 50%, subject to the condition that that no person may own more than 50% of the charter capital of a JSIF.

Unlike the acquisition of a major shareholding in a bank or an insurance company, where the relevant regulator is deemed to have consented to such acquisition if it fails to object within a certain period of time, no such provision is provided regarding CBA consent, which may potentially cause significant delays in closing acquisitions of JSIFs.

Additionally, there are restrictions related to legal entities and/or their founders, the major shareholders or beneficiaries of which are incorporated in certain offshore jurisdictions (the list is to be determined by the Cabinet of Ministers of the Republic of Azerbaijan).[6]

## Reporting, disclosure and marketing

Investment funds must prepare financial reports in accordance with international financial reporting standards (IFRS), and an independent auditor must approve such reports. Such independent auditor must comply with the standards set forth by the regulator of the auditor's profession, as well as those of the CBA.

6. See *"List of Offshore Zones the [Legal Entities and Physical] Persons of Which May Not Be Shareholders in Licensed Persons in the Securities Market"* adopted by the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan dated 6 January 2017.

JSIFs and MIFs must disclose certain information to investors in the offices where such JSIF or MIF accepts orders for the sale and redemption of their shares. The minimum scope of such information is set forth in the law. The law also requires that the management rules be posted on the official website of the investment fund manager.

The Investment Funds Law requires that the advertising of the investment fund manager and of JSIF must not be inaccurate, misleading or in contradiction to the investment declaration. Importantly, the law introduces the concept of "material information," which is necessary for making a decision by an investor and requires the disclosure of such material information together with the risks associated with the investment.

All advertising and sales materials must be submitted to the CBA. If it discovers any illegal content, it will order that the dissemination of such materials cease.

Additionally, the Investment Funds Law goes so far as to require that the investment fund manager or professional participants in the securities market provide investors with a separate risk statement and have them countersign the statement. If the investment fund manager or the underwriter fail to do so, they may be liable to the investors for any losses from such investment.

## Bankruptcy

Unlike the law *"On Banks,"* which sets out its own bankruptcy rules, the Investment Funds Law refers to the provisions of the law *"On Insolvency and Bankruptcy"* for issues pertaining to the bankruptcy of a JSIF to the extent not covered by, or in contradiction to, those of the law.

## How Dentons can help

Dentons is experienced in the regulation of investment funds and is well equipped to advise on any transactions related to their establishment and marketing, as well as to investments and other operations involving such funds.

Chapter 6

# Secured transactions

## Overview

Generally, a secured transaction is a loan or a credit transaction in which the lender acquires a security interest in collateral owned by the obligor or a third-party security provider, entitling it to foreclose on the collateral in the event of the obligor's default. The terms of the relationship are governed by a security agreement.

Secured transactions in post-independent Azerbaijan have become an important part of the law and the economy of the country, as the State housing fund was privatized, and the overall volume of lending has dramatically increased. Allowing lenders to create a security interest in collateral owned by an obligor or a third-party security provider, coupled with a centralized registry of rights over immovable property and relatively effective enforcement mechanisms, have provided lenders with greater remedies in case of a default by the obligor.

Secured transactions law entered a new era in mid-2017, when the Milli Majlis adopted the law *"On Secured Transactions with Movable Property."* The law follows the so-called Functional Approach developed by UNICITRAL, i.e., it relies on a concept of "security interest" that includes all types of rights in movable property (except for movable property that is registered in an official registry and securities that are subject to state registration) created by agreement to secure the payment or other performance of an obligation, regardless of the form of the transaction or the terminology used by the parties, as well as on a public registry that provides notice of a security right to third parties. As such, the new law applies to usufructs, secured transactions, retention-of-title sales, landlord's, tenant's and warehouse owner's liens, the leasing of certain movable property, the right of retention, factoring, etc.

## Security agreements

Azerbaijani law regards security agreements as legal devices by which a pledgor (borrower) pledges to a pledgee (lender) assets and/or rights that it owns in order to secure the performance of an obligation. In Azerbaijan, a security agreement is a written document which is an accessory to a loan agreement (or any other agreement, the obligations under which are secured by that security agreement.) Agreements creating a security interest over certain assets and/or rights are required to be notarized and/or publicly registered. As a rule, the pledgor retains the legal title to, and is entitled to occupy and/or use, the assets and/or rights, unless and until the pledgor fails to perform the secured obligations.

Prior to the adoption of the law *"On Secured Transactions with Movable Property,"* any security interest in Azerbaijan could be enforced by means of a public auction, except in the event that the collateral was money or a monetary value. This requirement was arguably premised on the perception that a public auction was a transparent procedure that provided greater assurance of obtaining the best market price for the collateral, by requiring that the highest bidder win the auction. However, the fact that, in practice, auction prices in Azerbaijan rarely exceed the established starting price supports the view that participation in public auctions is dominated by interested parties and property speculators, who are unlikely to bid higher than the total amount of secured obligations, plus related expenses.

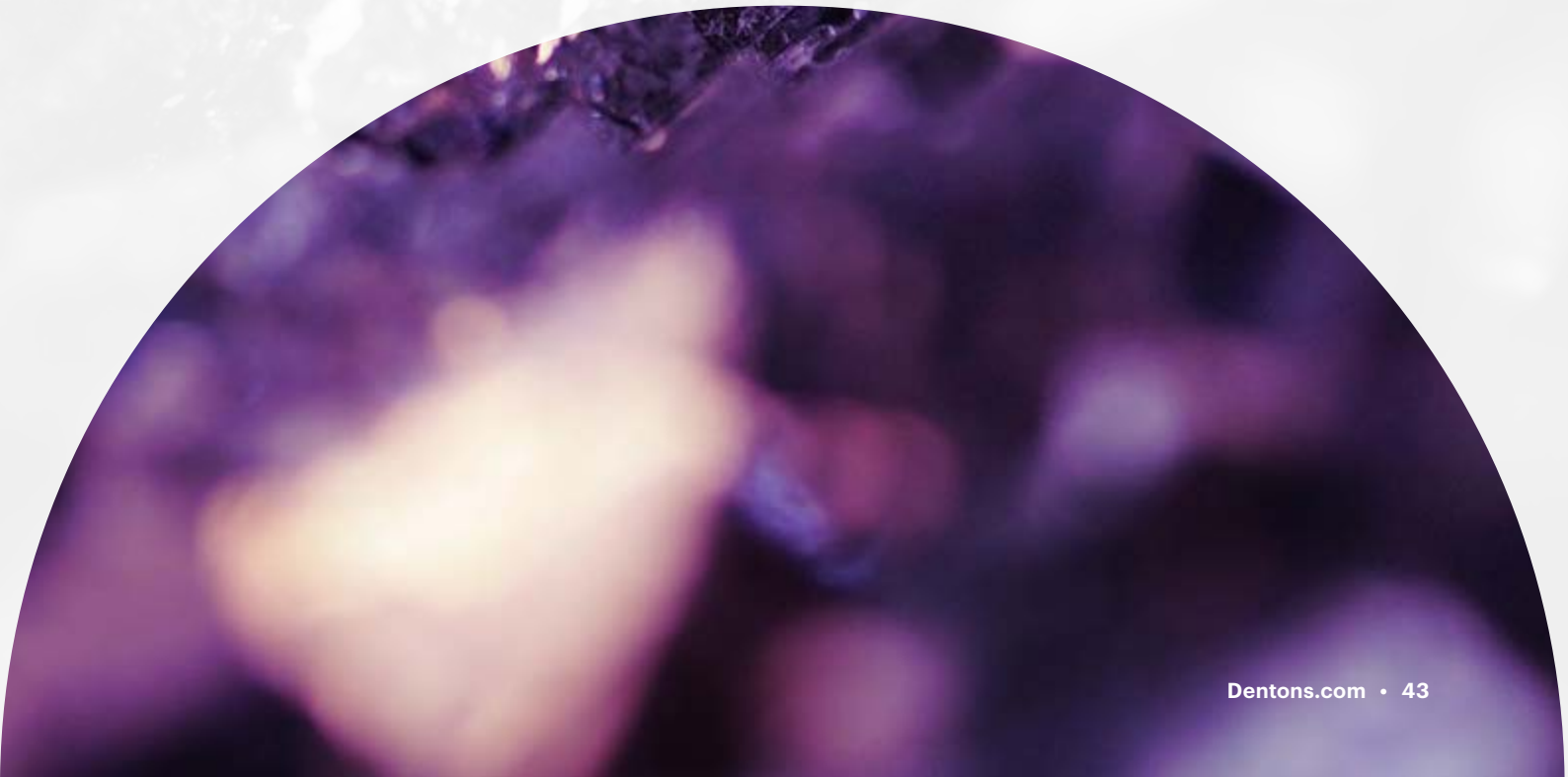
As detailed later in this Chapter, the law *"On Secured Transactions with Movable Property"* adopted a different approach to enforcement, though it only applies to existing or future movable property and related rights and claims, except for movable property that is registered in an official registry (e.g., vehicles, tractors, etc.) and securities that are subject to state registration.

## The law of secured transactions

The legislation on secured transactions in Azerbaijan consists mainly of a chapter in the Civil Code of the Republic of Azerbaijan, the law "On Mortgages," the law *"On Secured Transactions with Movable Property"* and numerous rules on the perfection of various types of security interest.

## Types of security interest

There are six major types of proprietary security interests in Azerbaijan: a (i) pledge of assets (including movable property and goods in the custody of a pawnshop), (ii) pledge of rights, (iii) pledge of cash, (iv) pledge over assets in circulation (a floating charge), (v) mortgage (hypothec), and (vi) financial pledge.



### *(i) Pledge of assets*

A pledge of assets is one of the most widely provided security interests in Azerbaijan. This may be explained by the fact that the creation of this type of security requires fewer formalities. Depending on the agreement between the parties, a pledge of assets may or may not be possessory. In Azerbaijan, only non-registrable assets can be subject to a pledge of assets (for registrable assets please see below the section related to mortgages (hypothec). This pledge is perfected by entering into a written security agreement signed by both parties and the delivery of the pledged asset into the possession of the pledgee, if so provided by the security agreement.

#### Pledge of goods in a pawnshop

A pledge of goods in a pawnshop is a form of possessory security, and accordingly, the pledged goods (usually personal property) must be physically delivered to the custody of the beneficiary of the pledge (the pledgee). In Azerbaijan, such a pledgee must be a licensed organization professionally engaged in this type of business. This pledge is perfected by the pledgor providing the pledgee with the pledge receipt (ticket).

The pledgee has no power of sale in the event of a default on the secured obligations. Instead, the pledgee must enforce the security interest through an open auction of the pledged good. The difference in this type of security is that the security interest is terminated upon such sale of the pledged good, even if the proceeds of the sale are insufficient to satisfy the secured obligations. To mitigate this risk, pawnshops usually require a greater loan-to-collateral ratio.

### *(ii) Pledge of rights*

A pledge of rights is generally a form of non-possessory security. In other words, the pledgor retains the title to, and may exercise, the rights so pledged. An exception is when the pledged rights are evidenced by a documented security, in which case such security must be delivered into the pledgor's possession or deposited with a bank or a notary public, unless the parties agree otherwise.

In Azerbaijan, only alienable rights may be pledged, i.e., rights that are attached to the person of the pledgor may not be pledged (e.g., bodily injury claims, alimony). The pledge of rights is perfected by notifying the obligor under the pledged rights. Registration of the pledge of rights is also required in cases where the pledged rights are themselves registrable.

### *(iii) Pledge of cash*

Under a pledge of cash agreement, the pledgor must deposit cash into a deposit account with a bank or a notary. Although the pledgor retains the title to the cash, the pledgor is not entitled to use it. Unless otherwise agreed, any interest that has accrued on such cash deposited with a bank is owned by the pledgor. Such pledge is perfected by entering into a written pledge of cash agreement, to which the bank where the cash is deposited must be a party.

### *(iv) Pledge of assets in circulation (floating charge)*

A pledge over assets in circulation (a floating charge) is a non-possessory security interest over a certain category of the pledgor's assets without attaching to any asset in particular, and, thus, allowing the charge to float until an event of default occurs. This provides the pledgor the freedom to deal with or dispose of the assets, and any subsequent holder of such assets takes them free of any security interest. Only non-registrable movable property may be the subject of a floating charge (e.g., goods, raw materials, etc.)

The floating charge is perfected by entering into a written pledge agreement.

***Provisions applicable to subsections (i)–(iv) above***

As mentioned above, the law "*On Secured Transactions with Movable Property*" applies to the pledge of assets, the pledge of rights, the pledge of cash and the pledge over assets in circulation (floating charge), as well as to a security interest created further to certain provisions of the Civil Code listed in the law, in relation to any existing or future movable property, and related rights and claims, except for movable property that is registered in an official registry (e.g., vehicles, tractors, etc.) and securities that are subject to state registration.

A security interest created in relation to movable property under the law will apply to fixtures, proceeds (whether in cash or in kind), any compensation received by the security provider from the forced sale, requisition or nationalization of the collateral, as well as to any insurance proceeds in relation to the collateral.

## Types of security interest

There are two types of security interest provided for in the 2017 law: the state and municipality security interest (State Security Interest) and the Private Security Interest.

A State Security Interest is created by operation of various provisions of the law and must be publicized in accordance with the law.

A Private Security Interest is created by entering into a contract or by operation of certain provisions of the Civil Code listed in the new law. Publicity in relation to a private security interest is optional, though it will affect the priority ranking of the particular private security interest.

## Publicity

The new law provides for three ways of publicizing the security interest:

- Registering the security interest with the registry.
- Acquiring actual possession over the collateral.
- Exercising control over the collateral.

A security interest holder may apply one or more publicity methods listed above or may change the publicity method any time during the validity period of the security interest. The priority ranking will not change, so long as the security interest has not lapsed.

# Priority

The priority rules in relation to collateral are as follows:

- Claims of a security interest holder that has disclosed its interest using one of the methods described above.
- Claims of a security interest holder that has not disclosed its interest using one of the methods described above.
- All other claims.

Notwithstanding anything stated in the law, claims of security interest holders in relation to cash in a bank account will be discharged in the manner prescribed in the Civil Code.

Where there are several security interest holders that have disclosed their interests in relation to the same collateral, the general rule in priority ranking is "first in time, first in right." There are several exceptions to this rule listed in the new law, including purchase money (acquisition finance), proceeds, purchase in the ordinary course of business, rules for the right of retention, fixtures, accessions and commingled goods.

## Enforcement

Depending on the type of collateral or the methods of publicizing, there are several methods set forth in the law to enforce a security interest. For instance, among other methods, where collateral is:

- Cash (receivables), the security interest holder may demand the payment of cash (receivables) to it.
- In the possession of the security provider, the security interest holder may foreclose on the collateral (subject to an agreement with the security provider) or may apply to the court or a notary to demand foreclosure.
- In the possession of a security interest holder, the latter may foreclose upon and sell the collateral.

The security interest holder must satisfy the claims of all security interest holders having a higher priority ranking.

## Registry

The current registry has been created for the purposes of implementation of the law to be operated by the CBA, which can be accessed at https://mpcr.cbar.az.

### *(v) Mortgage (Hypothec)*

In Azerbaijan, a security interest over immovable property, as well as over registrable movable property, is called a mortgage (or hypothec); a mortgage is created by entering into a notarized and publicly registered agreement or by issuing a security (a mortgage certificate). A person mortgaging an asset in favor of the beneficiary of the mortgage retains the legal title to, and is entitled to occupy and use, the mortgaged asset.

There are three possible ways to enforce a mortgage – enforcement through a court proceeding (judicial enforcement), by a notary writ (extrajudicial enforcement) or through an open market sale. The purchaser of the collateral takes it free of the mortgage, and in the event there is any unsatisfied secured obligation, the mortgagor must compensate the difference.

## Judicial enforcement

Judicial enforcement is available for a mortgagee, irrespective of the specific method of enforcement that the parties have agreed in the mortgage agreement. It is also the only manner by which to enforce a mortgage in cases where the residence of a mortgagor is unknown.

Judicial enforcement entails numerous statutory steps and formalities, each of which has its own content, filing and timing requirements. Its main disadvantages are: (i) it is a lengthy and costly process (taking up to two years); (ii) it involves a sale by public auction under the supervision of bailiffs; and (iii) it requires a statutory distribution of the proceeds. Despite the foregoing, judicial enforcement is the only approach which ensures completion of the enforcement without interruption.

## Extrajudicial enforcement

If the mortgage agreement contains an extrajudicial enforcement clause, or if the mortgage was formalized by the issuance of a mortgage certificate, the mortgagee may also proceed with an extrajudicial enforcement of the mortgage.

Extrajudicial enforcement also requires compliance with the prescribed statutory steps, including a possible appeal of the extrajudicial enforcement by the mortgagor in court. Therefore, the most important advantage of this method, i.e., avoidance of the involvement of local courts, can easily be eliminated by such appeal. In Azerbaijan, extrajudicial enforcement requires a sale by public auction and the statutory distribution of the proceeds.

## Open market sale

Azerbaijani law provides for party autonomy with regard to the method of sale, e.g., in a manner other than a sale by public auction. However, in this case, the mortgagee is allowed to participate in the sale and acquire the collateral only after the initial sale is unsuccessful.

An obvious advantage of an open market sale over a forced sale is its expediency, which allows both parties to save time and money on legal costs, auction fees and accrued interest. Additionally, a sale through a property broker and with the cooperation of the mortgagor may potentially yield a higher price for the property, thereby serving the best interests of both parties. Given that this option is largely premised on cooperation from the mortgagor, it is reasonable to expect that the mortgagor will vacate the premises of the foreclosed property voluntarily, eliminating the need for a forced eviction. Finally, an open market sale avoids the involvement of local courts and bailiffs, and, thus, avoids the costs associated with court proceedings and enforcement.

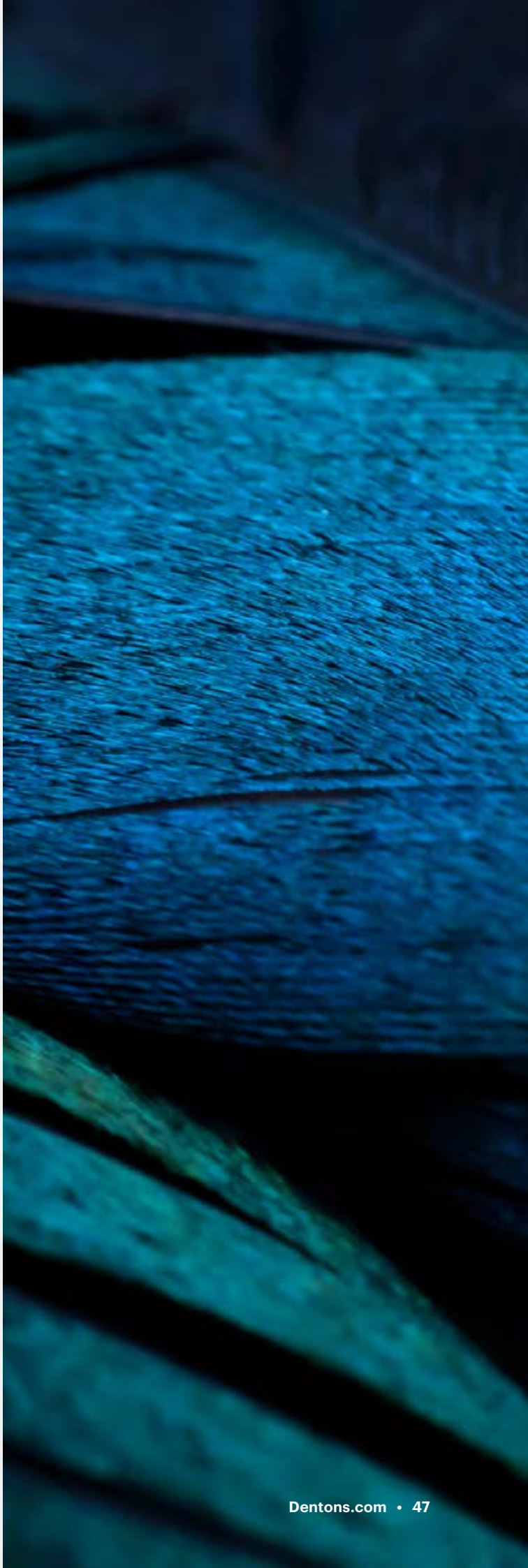
***(vi) Financial pledge***

In Azerbaijan, a pledge agreement is considered to be a financial pledge in the following situations:

- It is entered into for the purpose of securing the performance of financial obligations in regulated markets.
- The collateral under such pledge agreement is in the form of money or securities traded on a regulated market or derivative financial instruments.
- The pledgee or the pledgor is the Central Bank of the Republic of Azerbaijan, a central depositary, a bank, an insurance company or an investment company.
- The debt secured by the pledge is used only for carrying out purchase and sale transactions in a regulated market.

## How Dentons can help

Dentons is very experienced in all aspects of secured lending and the enforcement of pledges and mortgages in Azerbaijan, including the drafting and negotiation of security documentation, the registration of mortgages, the enforcement of security interests and court proceedings in respect of secured transactions.



Chapter 7

# Taxation and social security

## Introduction – Taxes in Azerbaijan

The Tax Code (2000) includes a comprehensive list of all taxes applicable in Azerbaijan and prohibits the imposition of any taxes that are not specified by the Code. The following taxes are specified:

- Personal income tax;
- Corporate (profits) tax;
- Value Added Tax (VAT);
- Excise tax;
- Assets tax;
- Land tax;
- Road tax;
- Mineral resources tax;
- Simplified tax.

Social security contributions, unemployment insurance and obligatory medical insurance contributions are not defined as "taxes" but, for the sake of convenience, they are also dealt with briefly below.

The Tax Code acknowledges that the taxes payable under specific tax regimes (such as PSAs, RSAs and HGAs regimes) are governed by the terms of regulations established by the respective agreements (as separately described in Chapter 8).

## Income tax and social security

Both resident and non-resident physical persons may be payers of income tax. A person is a "resident" in any calendar year (which is also the tax year) if he or she is in Azerbaijan for an aggregate of more than 182 days during that year. Residents are subject to income tax on worldwide income, whether or not received in Azerbaijan (there are certain exceptions for foreign workers in the oil industry). The taxable income of a non-resident is limited to income from sources in Azerbaijan.

Certain types of income are not subject to income tax, e.g., the reimbursement of business trip expenses, housing and food benefits. Income tax is assessed on a progressive basis with two tax bands, 14% and 25% (the top rate applying to monthly income over AZN 2,500). Starting from 1 January 2019, employees working outside the oil and gas industry and outside the state sector have been granted a seven-year exemption from the payment of income tax with regard to monthly income of up to AZN 8,000, and on amounts exceeding AZN 8,000, income tax is assessed at the rate of 14%.

Recent amendments to the Tax Code introduced certain privileges concerning income tax for individuals working for taxpayers performing system integration, software development and activities performed outside a technology park as a resident

| Starting from 1 January 2023, for a period of 3 years | | Starting from 1 January 2026, for a period of 7 years | |
|---|---|---|---|
| On amounts up to AZN 8,000 | At the rate of 0% | On a monthly amount | At the rate of 5% |
| On amounts exceeding AZN 8,000 | At the rate of 5% | | |

In addition to income tax, each employee is also subject to a 3% social security (State Social Protection Fund) contribution (the employer pays 22%) and 0.5% unemployment insurance (the employer also pays 0.5%). Effective 1 January 2019, social security contributions for employees working in the non-oil and gas industry and the non-state sector are subject for seven years to a 10% withholding of social insurance contributions (with employers paying 15%) on monthly income exceeding AZN 200.

Most foreign employees working in Azerbaijan in the non-oil sector are subject to social security payments, but they should check whether a social security treaty exists with their home countries, as such treaties might provide an exemption.

Income taxes are withheld by employers and must be paid by the 20th of the month following the month of payment.

## Obligatory Medical Insurance

According to the Law of the Republic of Azerbaijan, "*On Medical Insurance*" (1999, as amended), the payment of obligatory medical insurance contributions is required for citizens of the Republic of Azerbaijan working under employment agreements at the following rates:

- Payable by the employer:
  2% of the employee's monthly salary up to AZN 8,000 and 0.5% of any amount in excess of AZN 8,000P;
- ayable by the employee:
  2% of the employee's monthly salary up to AZN 8,000 and 0.5% of any amount in excess of AZN 8,000.

Employers are required to calculate and pay the abovementioned contributions on a monthly basis, together with the salary payments (but no later than the 15th day of the month following the salary payment). The obligatory medical insurance requirements (including the%age rates) for other categories of insured individuals (e.g., individuals registered for conducting entrepreneurial activity, individuals working under civil law contracts, etc.) are different from those applicable to employees. The law also contains provisions on various other requirements in the field of obligatory medical insurance, including reporting, sanctions for violations and administrative matters.

Obligatory insurance against loss of professional labor capability as a result of accidents at work and professional illness

Companies are required to insure employees against the loss of labor capability resulting from accidents at work and professional illnesses. The obligatory insurance payments are approved on an annual basis at rates not exceeding 2% of the salary fund of the employees.

## Corporate profits tax

A resident enterprise pays corporate profits tax on worldwide income. A non-resident enterprise carrying on business in Azerbaijan through a permanent establishment is liable for tax on profit gained from such activity. In addition to profits tax, the permanent establishment will pay a 10% branch withholding tax on all remittances of net profit made abroad and local entities will pay 10% tax on payment of dividends. The rate of corporate profits tax is 20%.

## Deductible expenses

All expenses connected with the earning of income are deductible for tax purposes unless otherwise specifically stated. Nondeductible expenses include business trip expenses exceeding the norms established by the Cabinet of Ministers, costs (including transport costs) incurred in obtaining and installing fixed assets and other costs of a capital nature, benefits provided to employees that are not taxable as income of the employee, etc.

## Loss relief

Losses may be carried forward for five years.

## Depreciation and amortization

Certain categories of assets are not depreciable for tax purposes. These include land, fine art, buildings or structures of historical or architectural value, stud animals, libraries, film stock and fixed assets kept in a warehouse that have not been put into operation.

Short-life assets (i.e., assets with a life of less than one year) are written off and not depreciated.

Depreciable fixed assets (i.e., assets with a useful life of more than one year) are divided into the following classes or pools, including:

- Buildings and structures – up to 7% p.a.
- on a reducing balance basis.
- Machinery and equipment – up to 20% p.a. on a reducing balance basis.
- Computing devices which is a product of high technologies – up to 25% p.a. on a reducing balance basis.
- [Motor] vehicles – up to 25% p.a. on a reducing balance basis.
- Working animals – up to 20%.
- Geological exploration costs and development costs preparatory to the extraction of natural resources – up to 25% p.a. on a reducing balance basis.
- Intangible assets with a life of more than one year – depreciated over the useful life of the asset or, where the useful life cannot be determined, at up to 10% p.a. on a reducing balance basis.
- Other fixed assets – up to 20%.

Taxpayers qualified as micro and small business subjects are entitled to deduct from income higher depreciation costs by applying coefficients (2 and 1.5 to the abovementioned rates, respectively).

Depreciation is calculated in respect of each class of assets, although each building/structure is regarded as a separate class. However, if the asset is sold at a profit over its residual value, the difference is added to taxable income and if sold at less than residual value, the difference is deducted from income (i.e., the difference does not reduce or increase the pooled category). Where the residual value of a fixed asset at the end of the year is less than AZN 500 or less than 5% of the initial value, the residual value is deducted from income.

The taxpayer may choose not to take all the depreciation to which it is entitled. The taxpayer may apply a lower rate of depreciation and carry forward to the next or later years the amount of forgone depreciation.

The taxpayer may apply for a three-month extension of the date for filing a profits tax return, if the application is made before the due date and all taxes due have been paid. If these conditions are fulfilled, the extension is automatically given though, for the purposes of calculating late payment interest etc., the extension will have no effect.

## Tax accounting

Where accounting records, etc., are either not available or not sufficient to permit the tax authorities to establish income, the tax authorities may resort to information relating to analogous taxpayers.

In some cases (e.g., certain related-party transactions,) market value may be substituted by the tax authorities for the actual price.

Micro-business subjects, based on their own election, can keep records of income and expenses on either a cash or an accruals basis. However, small, medium and large business entities must use only the accruals method. In respect of medium and large businesses, the requirement for using the accruals method was applicable from 1 January 2022, and for small businesses, from 1 January 2023.

## Payment of corporate profits tax

Companies must pay in advance, within 15 days of the end of each calendar quarter, 25% of the tax paid in the previous year. As an alternative, the taxpayer may opt to apply to the current quarter's gross income the ratio of tax to gross income in the previous year.

Advance profits tax payments for taxpayers without activity or with non-taxable profit (income) in the previous year are calculated on a cumulative quarterly basis in accordance with the tax rate for the year. Advance tax payments must not be less than 75% of the profits tax due. The tax authorities must be advised of the payment within 15 days of the end of the relevant quarter.

Taxpayers must pay over any balance of taxes before the due date for filing the tax return (for legal entities and permanent establishments, 31 March of the year following the relevant fiscal year). Upon request, profits tax returns may be deferred by up to three months if taxes due have been paid.

Profits tax (and other taxes) which has been overpaid may be netted off against other taxes due. Although in theory taxes overpaid may be refunded, this is highly unlikely in practice.

## Value added tax

VAT is generally charged on businesses operating in Azerbaijan. The Tax Code refers to three specific categories of transaction (or supply): exempt (e.g., financial services), taxable but zero-rated (e.g., exports), and taxable at the full rate of 18%. For ease, a reference in this chapter to "input" VAT is a reference to VAT on "purchases" while a reference to "output" VAT is a reference to VAT on "sales."

Imported goods are taxable supplies unless specifically exempted. The contribution of assets (except for imported assets) to the share capital of an enterprise is an exempt supply.

Imported services are generally subject to a VAT reverse charge. The buyer of the service is treated as a tax agent and will calculate and pay VAT on the payment to the non-resident service provider. The payment order confirming the transfer of the VAT due to the tax authorities is treated as a VAT invoice, giving the tax agent the right to a VAT credit.

The obligatory VAT registration threshold is turnover exceeding AZN 200,000 in any 12-month period.

Input VAT is generally creditable against output VAT. Input VAT is only creditable where payment is made other than in cash and tax is paid using a VAT "deposit" account. In addition to some VAT exemptions (e.g., the provision of financial services) the supply of certain services and goods may be VAT zero-rated, e.g., the export of goods and services. No input VAT is available for VAT incurred in connection with expenses which are not tax deductible for corporate profits tax purposes.

A taxpayer carrying out both transactions subject to VAT and exempt transactions will be entitled to take a credit for input VAT on an apportioned basis having regard to turnover subject to VAT as a proportion of total turnover.

VAT returns must be filed on a monthly basis by the 20th of the following month.

## Simplified tax

Small businesses and sole traders not liable for VAT registration and providing services to the general public, as well as certain other categories of taxpayers (e.g., persons involved in catering activity with a turnover during consecutive 12 months exceeding AZN 200,000) may become payers of simplified tax. Payers of simplified tax do not pay VAT or profits tax (or, in the case of sole traders, income tax on income from entrepreneurial activity).

Certain businesses are payers of simplified tax irrespective of their turnover. Such businesses include, for example, persons involved in the transportation of cargo and passengers (except for international transportation), operators and sellers of sports betting games and owners of residential or non-residential areas selling their properties (with certain exceptions).

## Transnational group of companies

A "Transnational Group of Companies" means a group of companies which includes two or more companies that are residents in different countries, or a company that is resident in one country and operates through a permanent representation in another country. Any reference to a "company" that is included in the Transnational Group of Companies means the company, its subsidiary and dependent entities, as well as its branches and representative offices.

If the total income of the Transnational Group of Companies exceeds the AZN equivalent of €750 million for the fiscal year (as determined by the financial statements of the group), then the company that is a member of the Transnational Group of Companies and a resident of the Republic of Azerbaijan must submit a special report to the tax authority.

A financial sanction of AZN 1,000 is applicable for failure by taxpayer to submit the electronic report in prescribed manner and time.

## Taxes on capital gains

No special regime exists for the taxation of capital gains, the gains of enterprises being taxed at the ordinary profits tax rate. No gain or loss arises if:

**a.** Assets are transferred between spouses.

**b.** Assets are transferred between former spouses as part of a divorce settlement.

**c.** Assets are unintentionally or involuntarily destroyed, liquidated or sold and the proceeds are reinvested in an asset of the same or similar nature before the end of the second year following the year in which the liquidation or sale took place.

**d.** Movable and immovable property, intangible assets, as well as enterprises in the form of property complexes, are transferred by legal entities and individuals to the balance of the state bodies (institutions), including funds established for public and social purposes, the list of which is approved by the body (institution) determined by the relevant executive authority, free of charge.

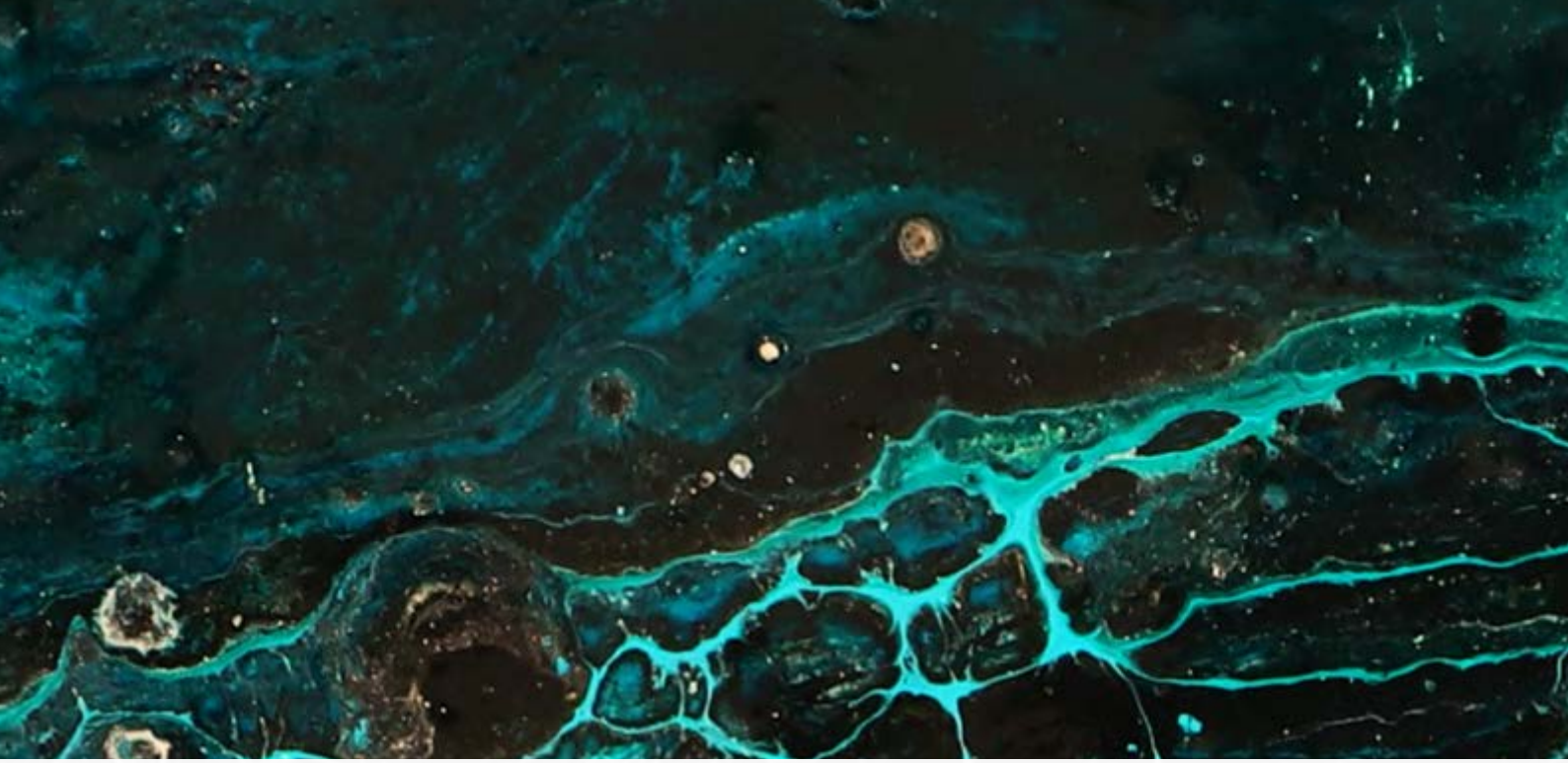
## Withholding taxes

Dividends paid by an Azerbaijan resident enterprise are subject to a 10% withholding tax at the source. This is a final tax (i.e., individuals and Azerbaijan legal entities are not subject to further tax on dividend income).

Interest paid by an Azerbaijan resident or the permanent establishment of a non-resident is subject to a withholding tax at the source of 10%.

Dividends paid by persons who perform system integration, software preparation and development activities outside a technology park as a resident of the technology park are not taxed at the source for a period of 10 years, starting from the accounting year in which the technology park registration certificate is obtained. Moreover, if income from interest paid by a resident or a non-resident's permanent representation, or on behalf of such representation, to a resident individual, a permanent representation of a non-resident individual in the Republic of Azerbaijan (except for individuals engaged in financial leasing) or a non-resident who does not have a permanent representation in the Republic of Azerbaijan, including from interest on a loan paid under financial leasing operations, is derived from Azerbaijani source, then tax at the source of payment would be applicable at the rate of 10%, taking into account any other applicable benefits provided under the Tax Code. The withholding tax is a final tax for individuals. In the case of companies, the tax withheld is creditable against the final profits tax liability.

Individual owners (participants, shareholders) of resident entities that maintain a record of income and expenses and are not registered for VAT purposes, where the volume of transactions of which is less than AZN 200,000 during any month(s) of 12-month consecutive period, are exempted from



the dividend tax. In addition, starting from 1 February 2023, dividend, discount (the difference resulting from the placement of a bond at a price lower than the nominal amount) and interest income paid on shares and bonds publicly offered and traded on a regulated market by resident legal entities in the territory of the Republic of Azerbaijan for a period of five years, as well as outside the country's borders, are also subject to seven-year tax relief.

In general, income from the lease of movable or immovable property paid by an Azerbaijan-resident company to an individual is subject to a final withholding tax of 14%. No tax is withheld from payments to Azerbaijani companies.

Royalties paid to an individual by an Azerbaijan-resident company or the permanent establishment in Azerbaijan of a non-resident is subject to a withholding tax at source of 14%. A "royalty" is basically defined as a payment received for the right to use (or assignment of) literary, artistic or scientific works, software, cinematographic films and other nonmaterial assets, patents, trademarks, designs or models, plans, know-how and processes, information concerning industrial, commercial or scientific experience; or the right to use (or assignment of) industrial, commercial or scientific equipment.

See the Appendix for the withholding tax rates on payments to residents and non-residents.

## Profits tax returns

The following businesses must file tax returns by 31 March following the end of the calendar (i.e., fiscal) year:

- Resident enterprises.
- Nonresidents with Azerbaijan source income.

  who have not been taxed at the source and tax

  agents appointed by them.
- Nonresident enterprises with permanent establishments in Azerbaijan.
- Private notaries, individuals who have received income not taxed at the source of payment, or resident individuals receiving income outside the borders of the Republic of Azerbaijan, including income from royalties.
- Noncommercial organizations receiving income from business activity.

The cessation of business or closure of a permanent establishment of a non-resident, or the liquidation of an Azerbaijan enterprise, requires the liquidation commission to file a final tax return within 30 days of the date determined for closure, covering the period from the beginning of the year up to the date of closure/cessation.

## Controlled foreign corporation

Recently, the Tax Code defined a new term – *controlled foreign corporation* – that is a non-resident enterprise for tax purposes.

The profit of a corporation that is not considered resident of the Republic of Azerbaijan will be taxed in Azerbaijan in the following cases:

- If a resident of the Republic of Azerbaijan, either itself or along with an interdependent resident or non-resident, possesses directly or indirectly more than 50% of the voting rights in a foreign corporation or owns more than 50% of its authorized capital or has the right to obtain more than 50% of the profits of this foreign corporation; and
- If the tax actually paid on the profit of the controlled foreign corporation is equal to or is less than 75% of the profit tax payable under the Tax Code; and
- If more than 30% of the annual income of the controlled foreign corporation consists of the following income:
  - interest received from financial assets;
  - royalties received from intellectual property;
  - income from the sale of shares and participatory interests;
  - income from a financial lease;
  - income from insurance, banking and other financial operations;
  - income from enterprises that receive income from goods and services that do not create any economic value.

## Taxation in liberated territories

Residents of a "territory liberated from occupation" includes legal entities and individuals registered for tax purposes in the territories liberated from occupation and carrying out activities directly in these territories.

Starting from 1 January 2023, for a period of 10 years, residents of a territory liberated from occupation are exempt from profit (income), property, land and simplified tax, provided that the following activities and operations are not subject to the tax exemptions applied in liberated territories:

- Activities in the field of financial services.
- Cargo transportation services by motor vehicles.
- Provision of goods (works, services) by a contractor (with the exception of resident contractors carrying out production activities within the territory liberated from occupation) at the expense of the state budget

The importation of machinery, technological equipment and installations according to areas of economic activity and commodity nomenclatures, as well as raw materials and materials, by residents of liberated territories that are registered for VAT purposes, are exempt from VAT for a period of 10 years from 1 January 2023. on the basis of a supporting document issued by the body (institution) determined by the relevant executive authority.

Dividend income of shareholders of legal entities that are residents of a territory liberated from occupation, is exempt from tax for a period of 10 years from 1 January 2023.

## Oil and gas industry

Various exploration, development and production sharing agreements, risk service agreements and pipeline agreements provide for a special tax regime for companies operating in the oil and gas sector. These are covered in a separate chapter.

*Useful websites*:

- Ministry of Taxes – www.taxes.gov.az (English version available).
- State Social Protection Fund – www.sspf.gov.az (English version available).

## How Dentons can help

Dentons is an acknowledged leader in Azerbaijan in the provision of tax services. Dentons has assisted companies in all aspects relating to tax matters, including:

- Defending taxpayers in the courts – Dentons has successfully defended taxpayers against claims made by the tax authorities.
- Operating payrolls, filing tax and social security reports.
- Planning tax strategies.
- Conducting comprehensive tax reviews to ensure taxes are being properly accounted for.
- Preparing calendars of tax payments due.
- Assisting with tax-only registration.
- Interviewing prospective accounting staff.

Choosing the right people is important to any organization; however, special factors in Azerbaijan (including the sale of jobs, the forging of certificates, etc.) mean that careful selection, especially for positions of trust, is critical. An independent review can give an unbiased assessment.

# Tax rates – at a glance

Effective at 1 May 2023

| Tax | Rate | Notes |
|---|---|---|
| Profits tax | 20% | |
| Value added tax | 18% | Exempt and zero-rate categories exist |
| Assets tax | 1% | For enterprises, different rates will apply to individuals. |
| Land tax | Various rates, according to size, location and use. | E.g., in Baku, the rate is AZN 10 per 100$m^2$ of land for commercial, construction or industrial use for a land plot up to 10,000 $m^2$. |
| Road tax | Various rates applicable to non-resident owners of vehicles entering the territory of Azerbaijan and using the respective territory for the transportation of passengers and cargo, according to the period of stay in Azerbaijan, number of seats, load, distance etc.; persons involved in the production in or import to Azerbaijan of petrol, diesel fuel and liquid gas. | E.g., US$15 for vehicles in transit with up to 2,000 $cm^3$ engine capacity and duration of up to one month.<br>AZN 0.02 added to the wholesale price (including VAT and excise) of a liter of petrol, diesel fuel or liquid gas produced for local consumption or to the customs value (including VAT and excise) determined in accordance with the Customs Code not less than market value of the wholesale price of a liter of imported petrol, diesel fuel or liquid gas in Azerbaijan. |
| Minerals resources tax | According to type and volume of mineral extracted | E.g., tax on extraction of iodine/bromine waters is AZN 0.04 per m3. |

| Tax | Rate | Notes |
|---|---|---|
| Excise tax | Various rates | Items that are subject to excise tax include:<br>• Beer, spirits, alcoholic beverages, energy drinks Tobacco, other smoking tobacco (except for industrial tobacco), "homogenized" or "reconstituted" tobacco, chewed or snuffed tobacco, as well as hookah tobacco, tobacco and tobacco products consumed as a result of heating (steam), fluids for electronic cigarettes.<br>• Vehicles, buses (except for those operating on liquefied gas), yachts and petroleum products.<br>• Imported platinum, gold and jewelry made from themImported fur and leather products.<br>For example, excise duty rates for vehicles with up to 2,000 $cm^3$ engine capacity is AZN 0.3 per each $cm^3$, Imported gold and platinum and certain jewelry products made therefrom are exempt from excise tax for a period of 3 years from 1 January 2021. |
| Simplified tax | Various rates | Different rates apply to persons in the transportation sector, operators and sellers of sports betting games, catering activity. |

# Income tax – at a glance

(on monthly income of employees during a period of seven years starting from 1 January 2019)

## In the oil and gas industry and the state sector:

| Taxable monthly amount (AZN) | Income tax |
|---|---|
| Up to 2,500 | 14% |
| Above 2,500 | AZN 350 + 25% of the excess |

## In the non-oil and gas sector and the non-state sector:

| Monthly income subject to tax (AZN) | Income tax rate |
|---|---|
| Up to 8,000 | 0% |
| Above 8,000 | 14% on the amount exceeding AZN 8,000 |

# Social protection fund contributions

(on monthly income of employees during a period of seven years starting from 1 January 2019)

| Contributions | Rates |
|---|---|
| Employer's contributions | 22% of employee earnings |
| Employee's contributions | 3% of earnings |

## In the non-oil and gas industry and the non-state sector:

| Contributions | Rates (applicable to monthly earnings exceeding AZN 200) |
|---|---|
| Employer's contributions | 44 AZN + 15% of earnings exceeding AZN 200 |
| Employee's contributions | 6 AZN + 10% of earnings exceeding AZN 200 |

# Non-resident withholding tax

| Azerbaijan source income of non-residents (not attributable to a permanent establishment) | Withholding Tax Rates |
|---|---|
| Dividends and repatriation of profit by permanent establishment (also known as "branch tax") | 10% |
| Interest | 10% |
| Lease of movable and immovable property (other than that paid by a lessee being a physical person) | 14% |
| Royalties | 14% |
| Insurance or reinsurance premiums | 4% |
| Payments for international communication services | 6% |
| Payments for international transportation services | 6% |
| Winnings from lotteries and sports games less participation expenses | 10% |
| Payments to entities established in countries with beneficial taxation | 10% |
| Payments to electronic money wallets belonging to non-residents | 10% |
| Payments to person established/registered in countries or territories subject to preferential taxation as well as payments to countries or territories subject to preferential taxation (with certain exceptions) | 10% |
| Other income from an Azerbaijan source for the supply of immovable property or performance of works or services (excluding employment income) | 10% |

# List of countries with which Azerbaijan has concluded a treaty on the avoidance of double-taxation

Effective at 1 MAY 2023

| | Country | Date of signing | Date of entry into force |
|---|---|---|---|
| 1 | Austria | 4 July 2000 | 23 February 2001 |
| 2 | Belarus | 8 August 2001 | 29 April 2002 |
| 3 | Belgium | 18 May 2004 | 12 August 2006 |
| 4 | Bosnia and Herzegovina | 18 October 2012 | 26 December 2013 |
| 5 | Bulgaria | 12 November 2007 | 25 November 2008 |
| 6 | Canada | 7 September 2004 | 23 January 2006 |
| 7 | China | 17 March 2005 | 17 August 2005 |
| 8 | Croatia | 12 March 2012 | 18 March 2013 |
| 9 | Czech Republic | 24 November 2005 | 16 June 2006 |
| 10 | Denmark | 17 February 2017 | 31 December 2017 |
| 11 | Estonia | 30 October 2007 | 27 November 2008 |
| 12 | Finland | 29 September 2005 | 29 November 2006 |
| 13 | France | 20 December 2001 | 1 October 2005 |
| 14 | Georgia | 18 February 1997 | 1 December 1997 |
| 15 | Germany | 25 August 2004 | 28 December 2005 |
| 16 | Greece | 16 February 2009 | 11 March 2010 |
| 17 | Hungary | 18 February 2008 | 15 December 2008 |
| 18 | Iran | 10 March 2009 | 25 January 2010 |
| 19 | Israel | 13 December 2016 | 28 December 2017 |
| 20 | Italy | 21 July 2004 | 28 April 2010 |

| | Country | Date of signing | Date of entry into force |
|---|---|---|---|
| 21 | Japan | 30 May 2005/27 December 2022 | 11 April 2008 |
| 22 | Jordan | 5 May 2008 | 5 February 2016 |
| 23 | Kazakhstan | 16 September 1996 | 7 May 1997 |
| 24 | Korea | 19 May 2008 | 25 November 2008 |
| 25 | Kuwait | 10 February 2009 | 18 April 2012 |
| 26 | Latvia | 3 October 2005 | 19 April 2006 |
| 27 | Lithuania | 2 April 2004 | 13 November 2004 |
| 28 | Luxembourg | 16 June 2006 | 2 July 2009 |
| 29 | Macedonia | 19 April 2013 | 12 August 2013 |
| 30 | Malta | 29 April 2016 | 30 September 2016 |
| 31 | Moldova | 27 November 1997 | 28 January 1999 |
| 32 | Montenegro | 12 March 2013 | 4 November 2013 |
| 33 | Morocco | 5 March 2018 | NOT YET IN FORCE |
| 34 | Netherlands | 22 September 2008 | 18 December 2009 |
| 35 | Norway | 24 April 1996 | 19 September 1996 |
| 36 | Pakistan | 10 April 1996 | 1 July 1997 |
| 37 | Poland | 26 August 1997 | 20 January 2005 |
| 38 | Qatar | 28 August 2007 | 11 March 2008 |
| 39 | Romania | 29 October 2002 | 29 January 2004 |
| 40 | Russian Federation | 3 July 1997 | 3 July 1998 |

| | Country | Date of signing | Date of entry into force |
|---|---|---|---|
| 41 | San Marino | 8 September 2015 | 2 May 2016 |
| 42 | Saudi Arabia | 13 May 2014 | 1 May 2015 |
| 43 | Serbia | 13 May 2010 | 1 December 2010 |
| 44 | Slovenia | 9 June 2011 | 10 September 2012 |
| 45 | Spain | 23 April 2014 | 13 January 2021 |
| 46 | Sweden | 10 February 2016 | 30 September 2016 |
| 47 | Switzerland | 23 February 2006 | 13 July 2007 |
| 48 | Tajikistan | 13 August 2007 | 11 February 2008 |
| 49 | Turkey | 9 February 1994 | 1 September 1997 |
| 50 | Turkmenistan | 22 November 2018 | 12 March 2019 |
| 51 | UAE | 20 November 2006 | 25 July 2007 |
| 52 | UK | 23 February 1994 | 29 September 1995 |
| 53 | Ukraine | 30 July 1999 | 3 July 2000 |
| 54 | Uzbekistan | 27 May 1996 | 2 November 1996 |
| 55 | Vietnam | 19 May 2014 | 11 November 2014 |

Chapter 8

# Taxation of oil and gas activities

## Introduction

The taxation of oil and gas activities in Azerbaijan is largely regulated by a series of exploration, development and production sharing agreements (PSAs) and Risk Service Agreements (RSAs) dealing with specific deposits (mostly offshore, though some agreements also deal with onshore deposits) and inter-governmental pipeline agreements relating to export pipelines (EPAs).

Although PSAs originated as ordinary commercial agreements, most have been enacted into law. In addition, the Tax Code applies to the extent that the specific PSAs/RSAs and EPAs so permit. This chapter gives an overview of the general principles of taxation set out in these types of agreements and looks at some of the difficulties that may arise for taxpayers operating under more than one such agreement. The following summary is a general outline only; no attempt is made to deal with the details and nuances of specific PSAs/RSAs/EPAs or the Tax Code.

The Tax Code states that, in the event of a conflict, the provisions, of PSAs/RSAs, EPAs or the oil and gas law[7] take precedence over the Code (and normative legal acts enacted in accordance with the Code) regardless of whether such provisions were adopted prior to the Tax Code's its entry into force. Leaving aside issues of the legality or effectiveness of attempting to bind the legislature in this way, it might be expected that persons operating under the umbrella of PSAs/RSAs, and – in some respects – EPAs, could function without reference to the contents of the Code. However, this will not always be the case, in particular where a taxpayer has a combination of both PSA/RSAs (or EPA) and non-PSA/RSA (or EPA) income. Indeed, with respect to employees who are Azerbaijani nationals, domestic tax legislation has always applied, even to those working within the framework of a PSA/RSA or EPA.

Furthermore, it may well be that, in some circumstances taxpayers to which the Code alone applies may be in a better position than those subject to PSA/RSA/EPA tax provisions.

## PSAs/RSAs and EPAs – introduction

Azerbaijan has concluded some 30 or so PSAs and several RSAs with various Contractor Parties (i.e., field participants), though not all of them are fully operational at present. The first PSA, and to date the most important by large measure, was entered into on 20 September 1994 (*Agreement on the Joint Development and Production Sharing for the Azeri and Chirag Fields and the Deep-Water Portion of the Gunashli Field in the Azerbaijan Sector of the Caspian Sea*. On 14 September 2017 the parties to the original PSA signed an amended and restated ACG PSA (the ACG PSA).

There are two host government agreements with participants which deal with export pipelines: the first relating to the export of oil (commonly known as the Baku-Tbilisi-Ceyhan (BTC) pipeline) and the other relating to natural gas (the South Caucasus Pipeline System – the SCP System).

Both PSAs/RSAs and EPAs have one thing in common: the participants or contractor parties themselves (excluding the State Oil Company of the Azerbaijan Republic – SOCAR) are taxed in accordance with the detailed provisions of such agreements. Those agreements set out less detailed provisions (often supplemented by separate tax protocols agreed with the tax authorities) relating to foreign employees, value added tax, import/export duties and suppliers of goods and services. Although there is much duplication in the agreements, there are occasionally some very significant differences (e.g., the rate of tax), and it is not possible to detail all the differences here.

## Export pipeline agreements

Taking the EPAs first, each participant is, in principle, made liable for profits tax. In the BTC agreement, it applies, ostensibly, the law in force on 1 January 1999, and the rate of profits tax is set at 27%, i.e., the rate applicable on 1 January 2000. The SCP System agreement also sets 27% as the rate of profits tax but applies the law in force on 1 January 2001.

7. No such law exists at the time of writing

Having stated that the profits tax law (albeit the law in effect at differing times) is to be applied, in fact the EPAs set out a detailed regime for the calculation of taxable income. This regime essentially makes tax deductible all expenses relating directly or indirectly to the pipeline projects and establishes special depreciation rates. It also sets out administrative procedures relating to filing tax returns, etc. Furthermore, no taxes (including taxes on interest, royalties and dividends) are imposed with respect to payments made "in connection with" main export pipeline activities to "Entities" (a broadly defined term) established outside Azerbaijan.

In addition to dealing with the participants, the EPAs also deal with suppliers of goods or services to the pipeline participants or their affiliates in connection with the pipeline projects. In general, no taxes are imposed or withheld with respect to payments to suppliers. Suppliers also have no tax compliance or filing obligations arising from or related, directly or indirectly, to the main export pipeline activities.

Foreign employees involved in the main export pipeline projects are liable for income tax in Azerbaijan, but only if present in the country for more than 182 days in a calendar year. Such foreign employees are taxable only on that part of their income earned as a direct result of employment in Azerbaijan. Taxes are payable by the employer by withholding. No social insurance contributions are payable in respect of such employees. Azerbaijani citizens are taxed according to Azerbaijani legislation in force from time to time, and social security contributions are payable in respect of them.

Basically, the assignment of any rights or obligations of a pipeline participant is free of tax.

Goods (works, services, technology) supplied to pipeline participants are subject to value added tax at the rate of zero%, as are the import and export of petroleum/gas through the pipelines and the import (export) of goods, etc., in connection with the pipeline activities. Eligible persons must obtain certificates from the tax authorities declaring their special status, and these are presented to suppliers in order to ensure the right VAT treatment.

Imports and exports are free of duties and taxes to the extent that the supplies are for use in connection with the pipeline project.

## Production Sharing Agreements and Risk Service Agreements

PSAs and RSAs have similar but more complex tax provisions than those of EPAs. The differences are largely in the manner in which suppliers and foreign employees are taxed.

In PSAs and RSAs, basically, each participant is referred to as a Contractor and suppliers are referred to as Sub-contractors. Suppliers incorporated overseas are known as Foreign Sub-contractors (FSCs). The Contractors are, in principle, made liable for profits tax. In the ACG PSA, it applies, ostensibly, the law in force on 1 January 1993 and the rate of profit tax is set at 25%.

However, as with EPAs, PSAs and RSAs set out detailed regimes for the calculation of taxable income. These regimes essentially make tax deductible all expenses incurred in carrying out Hydrocarbon Activities in Azerbaijan or elsewhere. Special depreciation rates are applicable. PSAs/RSAs also set out administrative procedures relating to filing tax returns, making advance payments of tax, etc. Although in the ACG PSA, the Contractors are directly liable for their own taxes, in other PSAs this obligation is often borne by SOCAR.

In addition to dealing with the Contractors, PSAs/RSAs provide a special tax regime for companies operating in the oil and gas sector. This, in relation to Sub-contractors/FSCs, may be summarized as follows:

- FSCs are normally subject to withholding tax on payments made to them with regard to work and services (though there are some PSAs where FSCs pay profits tax and file profits tax returns, e.g., the Muradhanli, Jafarli and Zardab PSA). With certain exceptions, the sale of goods is not subject to withholding taxes other than on any markup in respect of sales in Azerbaijan. The rate of withholding tax varies from 5% to 5.5%, 6%, 6.25%, 6.75%, 7.5% and 8%, depending on the particular PSA.
- In some PSAs, the withholding tax provisions for FSCs apply only prior to the commencement of the development and production periods. Once that period has commenced, normal profits tax provisions may apply (except that those

provisions and the rate of tax may be historic, fixed at the time of entering into the PSA).

- Only tax resident foreign employees of FSCs are payers of income tax, and the concept of "residency" is defined differently from EPAs and non-PSA related tax legislation. Such foreign employees are taxable only on that part of their income earned as a direct result of employment in Azerbaijan. Taxes are payable by the employer by a withholding mechanism. Social insurance contributions are not payable in respect of foreign employees under certain PSAs (e.g., ACG PSA) but under other PSAs/RSAs the situation may be different, and the relevant PSA/RSA should be consulted separately. Residence is, basically, defined as being present in Azerbaijan for more than 182 days in the year, or being present for more than 30 consecutive days or 90 cumulative days in the year (in which case tax is payable in respect of income earned after the 30th/90th day). However, "rotators" and other foreign employees who are routinely in Azerbaijan for more than 90 days in the year, and who perform their primary employment in Azerbaijan, will be tax resident *ab initio*.
- Subcontractors are exempt with credit (zero% rate) from VAT in connection with hydrocarbon activities.
- Subcontractors have the right to import into, and re-export from, the Republic of Azerbaijan free of any taxes and restrictions in their own name the following: all equipment, materials, machinery and tools, vehicles, spare parts, goods and supplies (excluding foodstuffs, alcohol and tobacco products).
- An FSC is not normally obliged to file any tax return with the Ministry of Taxes in respect of any income or profit that it earns from its business activities in the Republic of Azerbaijan in connection with hydrocarbon activities, nor does it have any other tax compliance or filing obligation (other than filing returns for withholding tax and VAT and providing information, which may be required, relating to the FSC's employees) in connection with hydrocarbon activities

Azerbaijani citizens are taxed according to Azerbaijan legislation in force from time-to-time and social security contributions are payable in respect of them.

## Multi-PSA/RSA/EPA operations

The EPA/PSA/RSA regimes have, in general, been beneficial to taxpayers by setting out a more or less certain method of calculating, paying and reporting taxes. However, in particular for FSCs operating under more than one PSA, the benefit of simplicity can transform itself into a cumbersome and complex web of reporting requirements, tax rates and so on.

There are numerous withholding tax rates in operation: 5% (applying to the Azeri-Chirag and deep water Gunashli fields, Shafag-Asiman); 5.5% (Kurovdaq, Absheron); 6% (Zigh Hovsan), 6.25% (Shah Deniz); 6.75% (Pirshaat); 7.5% (Mishovdag-Kelameddin, Padar); 8% (Kursangi-Karabagli and certain other PSAs), and 10% (Muradhanli, Jafarli and Zardab – for Foreign Sub-contractors which are not registered for tax purposes in Azerbaijan). The rates are set by assuming a deemed profit, usually 25%,[8] and applying a fixed rate of corporate profits tax (varying rates ranging from 20% to 32%). The withholding tax rates are fixed (i.e., they are unaffected by any changes in general rate of profits tax.)

The first issue that an FSC might face when operating under more than one PSA, either simultaneously or sequentially, will be that of reporting. Each of the PSAs has its own reporting regime. In principle, these are very similar but there are differences in detail, a variety of formats for tax returns, etc. Although, as certain PSAs have been terminated, the rules applying to some of those remaining have been brought into conformity with one another, some differences still exist.

The next contentious issue might be which rate of withholding tax is to apply to a particular transaction. This problem could arise in two situations: first, where providing general or global services to related parties which may be operating under different PSAs but which share certain services (e.g., office space). In this situation, the recipient of the service will normally provide a copy of its VAT certificate entitling

8. However, under the ACG PSA, the profitability rate is 20%.

it to zero-rating for VAT purposes and will determine which rate of withholding to apply. The certificate will normally make clear for whom the service is being provided. The second, and more difficult area, is where there is a chain of FSCs, one (FSC1) providing general long-term services (e.g., housing, office space) to the other, where the service user (FSC2) is operating under more than one PSA. In this case FSC2 has to decide which rate of withholding to apply. One solution might be to apply the highest rate of withholding tax (currently, 8%), which may not be technically correct but may satisfy the tax authorities.

Any FSC providing non-PSA services will face additional difficulties. It will have expenses, but part of its income will already have been taxed. The tax authorities will expect a portion of the expenses, therefore, to be disallowed in computing tax on the non-PSA income. The simplest method of doing this is to apportion the expenses among PSA and non-PSA income in the same ratio.

***Example***

An FSC has PSA income of 500 (before tax at 5% under the Azeri-Chirag PSA) and non-PSA income of 400 (before tax). FSC's expenses are 600. Such FSC's non-PSA taxable income after expenses will be calculated as follows:

Non-PSA income x Expenses
= Allowable expenses
Total income

400 x 600 = 266

*900*

Taxable income will be 400-266 = 134

However, where it is possible to establish with some accuracy which expenses relate to PSA income, only those expenses should be disallowed.

Some other PSA issues

- Under most PSAs, the supply of goods by an FSC for Hydrocarbon Activities is exempt from tax altogether. The FSC must ensure that it can clearly document the cost of goods or it risks being subject to profits tax (though not necessarily at the current rate) on the full amount received
- In some PSAs, the withholding tax provisions for FSCs apply only prior to the commencement of development and production periods. Once that period has commenced, normal profits tax provisions apply (except that those provisions and the rate of tax may be historic, fixed at the time of entering into the PSA). However, a further complication is that the PSA may provide that, even after the commencement of the development and production period, for short-term contracts or contracts below a certain value, the withholding tax regime will continue to apply[9]
- Under the tax protocols of some PSAs, a sub-contractor is under an obligation to inform its sub-contractors, in the prescribed way that services are being provided under that particular PSA.[10] This is often overlooked
- VAT: The PSAs/RSAs and tax protocols apply a zero-rate of VAT to goods and services provided in connection with Hydrocarbon Activities. Sometimes, however, a taxpayer may have to bear the VAT and apply for a refund or make an offset against other taxes.

9. See, for example, the Agreement on the Exploration, Development and Production Sharing for the Araz, Alov and Sharg Prospective Areas in the Azerbaijan Sector of the Caspian Sea, 20 July 1998.
10. See, for instance, the Protocol Concerning Taxation of Foreign Subcontractors, Art. 2.5, made under the Agreement on the Exploration, Development and Production Sharing for the Shah Deniz Prospective Area in the Azerbaijan Sector of the Caspian Sea, 4 June 1996 (the Shah Deniz PSA).

### Export Activity Law

The law *On the Implementation of a Special Economic Regime for Oil and Gas Activity for Export Purposes,* 2009 (Export Activity Law) provides for a special taxation, customs, and currency regime which is very similar to PSA and EPA regimes (though the law explicitly states that it does not apply to PSA or EPA operations or to other oil and gas operations carried out in the territory of Azerbaijan).

The Export Activity Law applies to local contractors (with or without foreign investment) and to their local or foreign subcontractors involved in oil and gas activities (including the exploration for and the sale and purchase of oil and natural gas) oriented towards exports (e.g., the supply of goods, works and services in connection with oil and gas operations conducted *outside* of Azerbaijan). The Export Activity Law will be in force for 15 years, unless further extended.

The taxation regime under the Export Activity Law allows the contractor to choose between taxation under the Tax Code and the payment of profits tax by the withholding mechanism at the rate of 5% of the total payment due. Foreign subcontractors will pay profits tax only by the withholding mechanism. Among other noticeable tax advantages under the Export Activity Law are the following:

- No dividend or interest tax for contractors and foreign subcontractors.
- No net profit remittance tax for foreign subcontractors.
- Exemption from the assets and land taxes.

## Conclusion

Dealing with oil and gas taxation in Azerbaijan is a complex affair. There is no one set of rules which is applicable to all such activities. This chapter has touched briefly upon some of the issues which foreign investors might meet in dealing with upstream and midstream operations, but each PSA/RSA/EPA must be reviewed independently. Special care must be taken when working under more than one such regime. While these agreements are generally designed to lift some of the tax burden from participants and their suppliers, the traps can be all the more unexpected.

*Useful website*:

- Ministry of Taxes – www.taxes.gov.az (English version available)

## How Dentons can help

Dentons has represented clients in the oil and gas sector of Azerbaijan for many years. Our services have included:

- Defending taxpayers in the courts.
- Operating payrolls, filing tax and social security reports.
- Analyzing tax protocols.
- Planning tax strategies.
- Conducting comprehensive tax reviews to ensure taxes are being properly accounted for.
- Interviewing prospective staff – choosing the right people is important to any organization, but special factors in Azerbaijan (including the sale of jobs and qualifications, the forging of educational certificates etc.) mean that careful selection, especially for positions of trust, is critical. An independent review can give an unbiased assessment .

Chapter 9

# Renewable Energy

## Introduction

Azerbaijan has always been a key oil and gas jurisdiction, though the country also has great potential for renewable energy sources. Until now the legal framework has been rather slow to develop. However, the long-awaited law on renewable energy sources was finally adopted in 2021 and landmark projects in the wind and solar sectors have been signed. Renewable Energy Sources (RES) also being used under a broader program of infrastructure renewal.

The new Law of Azerbaijan "On the Use of Renewable Energy Sources in the Production of Electricity," No. 339-VIQ, dated 31 May 2021 (Renewable Energy Law) was signed into law by the President and published on 14 July 2021, together with a Presidential Decree on the implementation of the Renewable Energy Law.

The Renewable Energy Law addresses guaranteed tariffs, foreign investment and other support mechanisms, scientific research and the promotion of active consumers. In addition, certain incentives are envisaged for investors selected in accordance with the Renewable Energy Law for the implementation of RES projects in Azerbaijan, including guaranteed offtake, guaranteed connection, priority in transmission and distribution and long-term land leases.

# Creation of an Atlas for RES territories

For the purpose of the effective use of the country's RES potential, the Renewable Energy Law envisages the creation of an Atlas for the RES Potential of the Republic of Azerbaijan, which will be an integral part of an information system (database) that will be coordinated by the Ministry of Energy of the Republic of Azerbaijan.

The Atlas is compiled based on proposals from the Ministry of Energy containing information about the landscape, location, size, boundaries, type of ownership, and the population residing in such territories. These proposals are then evaluated and approved by the Cabinet of Ministries, granting the status of RES territories to such land plots (bodies of water).

## Selection of Investors

The Renewable Energy Law prescribes two methods for selecting investors for the generation of electricity using RES – (i) auctions, and (ii) direct negotiations.

If the selection of an investor is conducted in form of an auction, the winner of the auction shall be the lowest bidder in relation to the purchase price for electricity subject to guaranteed offtake. The Ministry of Energy is the authorized body to organize RES auctions.

The selection of investors using the direct negotiations method is carried out in the following cases, with the consent of the President of the Republic of Azerbaijan:

- When pilot projects and other projects of strategic importance are being implemented.
- If the auction is unsuccessful.

The following contracts are to be concluded with the selected investors:

- An Investment Agreement with the Ministry of EnergyA Power Purchase Agreement with the guaranteed buyer (to be determined by the President)A Connection Agreement with a state electric power enterprise or energy supply enterprise, depending on the network to which the power plant is to be connectedTariffs

The tariffs for electricity to be generated from RES are calculated for each kilowatt-hour of electricity transmitted to the electricity network.

Generally, the Renewable Energy Law provides that the electricity to be generated from RES is to be sold at wholesale tariffs determined by the Tariff Council of the Republic of Azerbaijan, except:

- where the investor was selected through the auction method, in which case the tariffs proposed by the winning (lowest) bid shall apply;
- where the investor was selected through direct negotiations, in which case the tariffs negotiated directly with the Ministry of Energy shall apply.

## Licensing

Investors are required obtain permits for the generation of electricity in excess of the limits set by the Cabinet of Ministers of Azerbaijan (i.e., 150 kilowatts in relation to the electricity generated from RES). The design, construction and installation of the RES facility are subject to the Town Planning and Construction Code, and other normative legal acts on city building and construction and technical norms.

## Recent developments and plans

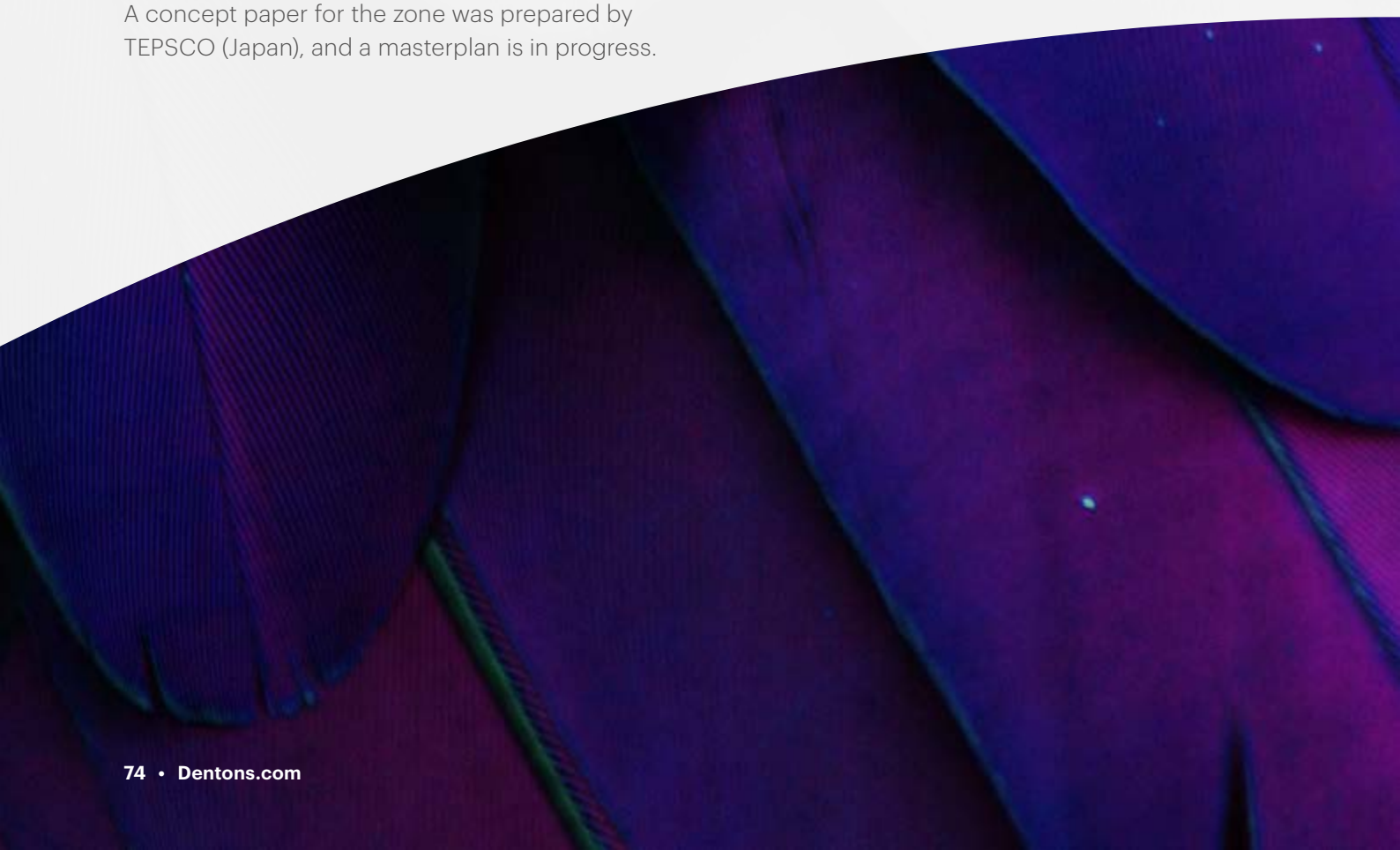
In late 2020, ACWA Power (Saudi Arabia) signed an investment agreement, a power purchase agreement and a transmission connection agreement for a 240 MW onshore wind project. In April 2021, Masdar (UAE) signed project documents for the construction and operation of a 230 MW solar PV plant. Gamma Solutions (Spain) with support from the Asian Development Bank signed a pilot floating solar PV project on Lake Boyukshor as part of the regional Floating Solar Energy Development Systems project.

In the aftermath of the 2020 war in Nagorno-Karabakh, a Green Energy Zone was declared for infrastructure development in certain regions. A concept paper for the zone was prepared by TEPSCO (Japan), and a masterplan is in progress.

The Ministry of Energy of the Republic of Azerbaijan and BP subsequently signed in March 2021 a Memorandum of Understanding to cooperate in assessing the potential and conditions required for large-scale decarbonized and integrated energy and transport systems, including renewable energy projects in the regions and cities of Azerbaijan.

The Ministry of Energy of the Republic of Azerbaijan also signed in June 2021 an Implementation Agreement on cooperation to evaluate and implement a project with bp to build a 240MW solar power plant in the Zangilan and Jabrayil region of Azerbaijan.

Moreover, the Ministry of Energy of the Republic of Azerbaijan and Australia's Fortescue Future Industries signed in December 2022 a framework agreement on joint cooperation on the study and development of renewable energy projects and the potential of green hydrogen in Azerbaijan. The agreement envisages the investigation and implementation of projects with a total capacity of up to 12 GW to produce renewable energy and green hydrogen in Azerbaijan.



Azerbaijan has committed to reducing its GHG emissions by 35% by 2030 under the Paris Agreement and, more recently, at COP26 it undertook additional voluntary obligations to reduce GHG emissions by 40% by 2050.

It is expected that in the coming months a series of new regulations and other enactments will be introduced in connection with the implementation of the Renewable Energy Law.

## Upcoming legislation

Recently, the Milli Majlis, published the draft of a forthcoming *Law On Electrical Energy* (Draft Electricity Law) containing many aspects of regulation that are significantly different from the legislative rules currently in force.

The Draft Electricity Law considers the liberalization of the power market by introducing, among other things, new market players, such as transmission system operators, market operators, distribution system operators (and closed distribution system operators), suppliers (and authorized suppliers), and free and non-free consumers and active consumers.

Once approved, the Draft Electricity Law will allow the wholesale and retail sale (to free consumers) of electricity at market prices, as opposed to regulated prices currently in force.

These and other changes mentioned in the Draft Electricity Law should lead to the dissolution of the existing state monopolies and open the market to more participants.

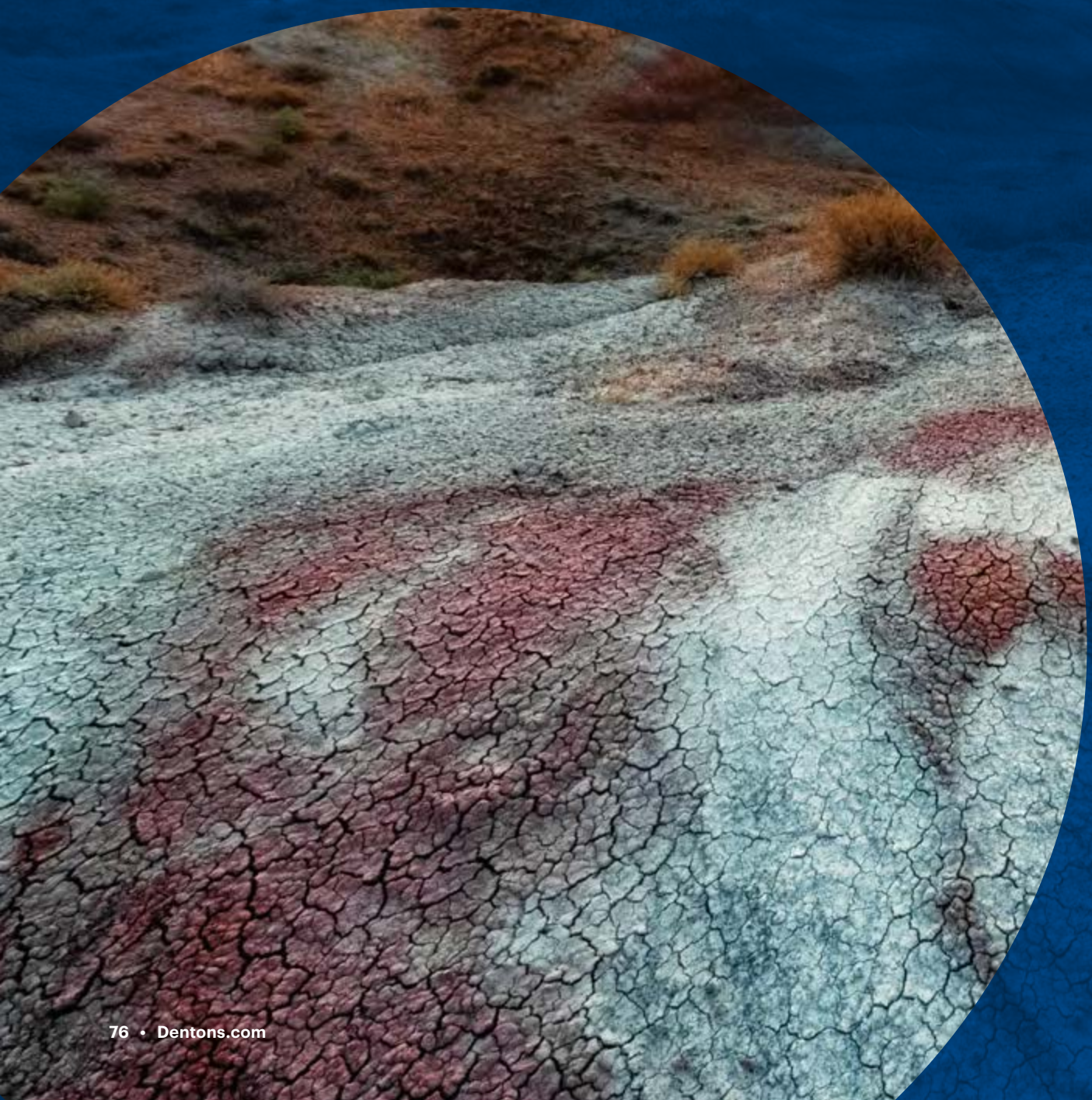
The implementation of the above changes is contemplated in three phases, ending on 1 July 2028.

## How Dentons can help

Dentons has advised leading companies and financial institutions in connection with renewable energy projects in Azerbaijan, including some of the largest most prominent projects realized to date. Many of our lawyers have also assisted in the development of the legal regime for the regulation of renewable energy in the country, and we have regularly advised on the structuring of specific RES projects where the existing legal regime is incomplete, at times with input from our global team of more than 1,000 energy specialists.

Chapter 10

# Trade: imports and exports



## Introduction

Since the breakup of the Soviet Union, Azerbaijan has significantly liberalized its trade regulations. Resolutions and decrees on the liberalization of trade were issued as far back as 1992.

Nonetheless, significant restrictions on the export of "strategic goods" or "goods of strategic importance" existed until 1994. The list of strategic goods used to be quite extensive and included, *inter alia*, oil and oil products, electricity, ferrous metals and products made of ferrous metals, non-ferrous metals, aluminum and products made of aluminum, cotton, glass, tobacco, handmade carpets, etc. Since that time, the restrictions in respect of strategic goods have largely been lifted. Presently, with some exceptions (see below), physical persons and legal entities are theoretically free to conduct their export-import business as they see fit. However, licensing or certification requirements in a number of cases continue to impose obstacles and impede trade. Furthermore, statutory contradictions and uncertainties remain in relation to the procedures for the licensing and certification of import-export transactions.

## Restricted export-import business

A limited group of products requiring some form of approval, certification, licensing or positive opinion for the purpose of export or import activity remains.

**1.** For different purposes, the following group of goods, work, services and products of intellectual activities (controlled goods) are subject to export controls by the Azerbaijani authorities:

- Goods and technologies subject to export controls in accordance with the international treaties to which the Republic of Azerbaijan is a party.
- Military goods, including weapons of mass destruction and their means of delivery.
- Dual purpose goods which can be used in the creation and preparation of the weapons of mass destruction, weapons, military equipment and supplies.
- Explosives and radioactive substances, materials and equipment having radioactive origin, sources and installations of ionizable rays.
- Other goods determined by the President of the Republic of Azerbaijan, including those that are subject to export controls due to the ultimate purpose for utilization or the ultimate user.

Controls are carried out by the relevant state authorities through the examination of export transactions and the issuance of special permits. Exporting legal entities or individual entrepreneurs must obtain a special permit from these authorities for the export of controlled goods. Before the issuance of a special permit, these authorities must examine the export transaction in order to verify the information provided concerning the exporter, the exported goods, their ultimate users and the final destination. Export transactions with certain controlled goods are also subject to post-export examination for compliance with the terms and conditions stipulated in the issued special permit.

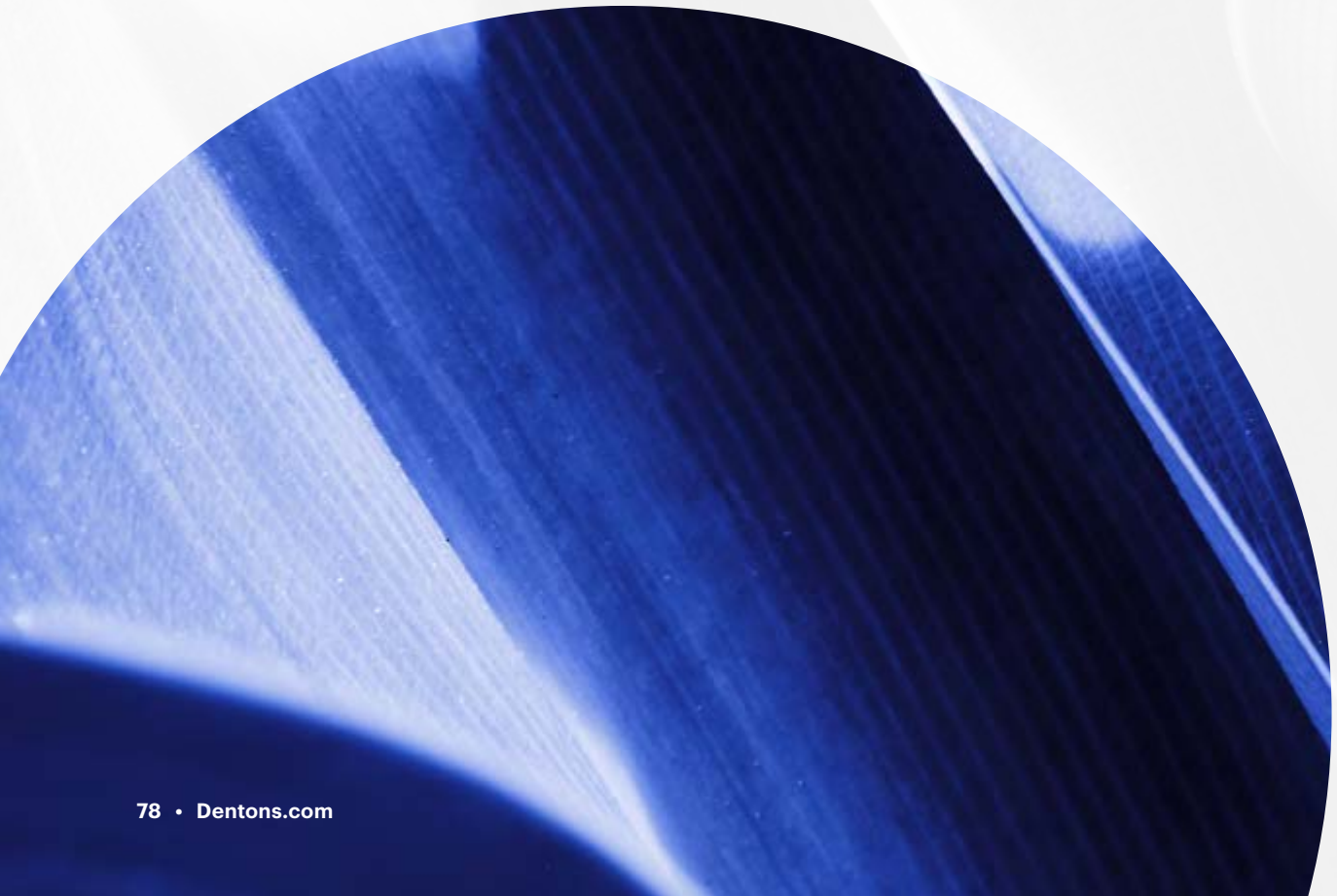
**2.** The export or import of the following goods is carried out exclusively on the basis of a decree of the Cabinet of Ministers:

- Weapons, military equipment (including spare parts required for their production).
- Explosives.
- Nuclear and radioactive materials and technologies (including radioactive wastes), special non-nuclear materials and sources of radioactive radiation.
- Narcotic and psychotropic elements and materials restricted for free circulation.
- Special types of scientific or technical information and technology necessary for the production of weapons.
- Blood and blood components and preparations made from them.
- The export of unprocessed diamonds.

Such goods may not be exported on credit or on consignment.

**3.** The export or import of the following goods and services is carried out based upon the issuance of an opinion by certain state authorities.

| Export | State Authority |
|---|---|
| Wild animals and plants and animal bones found in excavations. | The Ministry of Ecology and Natural Resources |
| Raw materials extracted from wild animals and plants for the production of medicines (including snake and scorpion venom). | The Ministry of Ecology and Natural Resources;<br>The Ministry of Health |
| Information on the location of natural resources and thermal energy fields. | The Ministry of Ecology and Natural Resources |
| Inventions, know-how and results of scientific research (except for those falling under export control). | Academy of Science,<br>IP Agency |
| Works of art and antiques. | The Ministry of Culture |
| Controlled psychotropic substances. | The Ministry of Health |
| Cultural wealth included in the State List of national cultural property in relation to exhibitions, guest performances, presentations, international cultural events and restoration work. | The Ministry of Culture |



| Import | State Authority |
|---|---|
| Insecticides. | Food Safety Agency |
| Medicines and medical equipment, including controlled psychotropic substances. | The Ministry of Health |
| Veterinary drugs and substances. | Food Safety Agency |
| Construction activity (engineering-survey, design, construction and betterment works). | The State Town Planning and Architectural Committee, the Ministry of Emergency Situations, the Ministry of Ecology and Natural Resources |
| Freight and passenger transportation, forwarding services. | The "Azerbaijan Railways" CJSC, the Ministry of Digital Development and Transport |
| Communication services (international, intercity, city, village, cellular, trunk radio, cable TV installation and use, speeded post services). | The Ministry of Digital Development and Transport |
| Legal services | The Ministry of Justice |

These goods may not be exported on credit or consignment (Rules of Regulation of Import-Export Transactions in the Republic of Azerbaijan, approved by Presidential Decree No. 609, dated 24 June 1997.)

## Prohibition of the export of scrap metal

The export of ferrous and non-ferrous scrap metal has been temporarily suspended (since 2001) by presidential decree.

## Export of foodstuffs to EU countries

The export of foodstuffs from the Republic of Azerbaijan to EU countries is possible only based upon the issuance of a certificate by the Food Safety Agency of the Republic of Azerbaijan.

## Export-import of goods by PSA contractors

Under certain PSAs (for example, the ACG PSA), contractors, their agents and sub-contractors, have the right to import into, and re-export from, the Republic of Azerbaijan in their own name, free of any taxes and restrictions, the following: all equipment, materials, machinery and tools, vehicles, spare parts, foodstuffs (subject to compliance with applicable regulations pertaining to the import of foodstuffs), goods and supplies necessary in the Contractor's reasonable opinion for the proper conduct and achievement of petroleum operations as defined under the specific PSA. It should be noted that a number of PSAs exclude foodstuffs, alcohol and tobacco from this list.

PSA contractors and their sub-contractors working under a PSA are typically exempt from the provisions of Azerbaijan foreign trade regulations concerning the prohibition, limitation and restriction of the import and export and country of origin restrictions on those items indicated in the paragraph above.

## Goods imported into free economic zones

The Resolution of the Cabinet of Ministers No 29 dated 27 February 2013 "On approving the Rules for the customs bodies to approve the internal-goods status of goods imported into a free economic zone, processed in a free economic zone and in free turnover within a free economic zone," provides that goods imported into a free economic zone shall be granted internal-goods status. In this connection, the importer is entitled to obtain a special certificate issued by the customs authorities based on the relevant paper or electronic application of the importer. This certificate is valid for 12 months.

## Goods imported by the holders of an investment promotion certificate

The Decree of the President of the Republic of Azerbaijan, "On Additional Measures to Promote Investment" No 745, dated 18 January 2016, provides that holders of an investment certificate will be able to obtain tax and customs privileges for export of certain goods.

## Sanctions for the violation of import-export regulations

A violation of import-export regulations is punishable under Azerbaijani law. The Criminal Code and the Code of Administrative Violations of the Republic of Azerbaijan envisage a number of sanctions for such violations.

*Useful websites*: Ministry of the Economy
www.economy.gov.az (English version available)

## How Dentons can help

Dentons has provided clients with trade-related advice during many years. Dentons has assisted companies in all aspects relating to the import and export of goods, including customs duties, labeling, compliance with local and international standards, certification, changes of customs regimes, prepayment for goods and customs disputes.

Chapter 11

# Customs duties and regimes

## Introduction

Almost everyone doing business in Azerbaijan will have encountered difficulties from time to time with the customs authorities. Most of these are resolved without recourse to law, but the occasional lack of transparency and inconsistent application of the customs legislation by customs officers sometimes demands the involvement of lawyers. Even the oil industry, which has special privileges in respect of the importation of goods, encounters regular problems. However, there are also instances when the cooperation of customs officers is required (e.g., in the seizure of counterfeit goods), and customs officials can be accommodating and very helpful. More than with most government agencies, the relationship with the customs authorities is a difficult one.

## Customs legislation

The principal laws and regulations governing the payment of customs duties in Azerbaijan are as follows:

- Customs Code, which took effect on 1 January 2012.
- Law *On Customs Tariffs* of 13 June 2013 (the Tariffs Law).
- Law *On the Implementation of a Special Economic Regime for Oil and Gas Activity for Export Purposes* of 2 February 2009.
- Resolution of the Cabinet of Ministers No. 91 of 22 April 1998, *On Import–Export Duty Rates* (the 1998 Resolution).
- Resolution of the Cabinet of Ministers, No. 500 of 17 November 2017, *On Commodity Nomenclature of Foreign Economic Activity, Rates of Import and Export Customs Duties* (the 2017 Resolution) .

Following the accession of Azerbaijan to the International Convention on the Simplification and Harmonization of Customs Procedures, as revised in 1999 (the Kyoto Convention), a new Customs Code was adopted, which was intended to take into consideration the main principles of the Kyoto Convention, such as transparency, the use of information technologies, the standardization and simplification of documentation, the minimization of customs control, etc.

The Customs Code distinguishes among the following types of payments to the customs authorities:

- Customs duties;
- VAT;
- Excise tax;
- Road tax;
- Customs dues;
- Fees (auction);
- State duties[11].

## Customs duties

Customs duties are divided into three classes:

- Ad valorem duties (i.e., duties calculated in%age terms upon the declared value of goods).
- Specific duties (i.e., duties based on a specific number of units of goods).
- Composite duties (i.e., duties calculated through a combination of the other two methods).[12]

The rates of import and export duties are currently regulated by the provisions of the 2017 Resolution. The 2017 Resolution is based on the nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System. Ad valorem import duties are set at rates ranging from 0 to 15%. Some examples follow: 0% – certain types of oil products, natural gas condensate, 0% – airplanes, helicopters, non-processed aluminum, 5% –various types of stainless steel, 15% – cement, 15% – petroleum coke, petroleum bitumen.

For certain types of goods, the 2017 Resolution prescribes variable rates of duty depending upon, for example, the season of the year.

11. Article 224, the Customs Code
12. Article 226, the Customs Code

Under the Tariffs Law, certain imports are exempt from customs duties, some of which are:[13]

- Goods carried across the border for representative offices of foreign states and their employees.
- Food products and transportation means, as well as personal equipment, spare parts, personal items intended for traveling personnel imported as aid and distributed as such in zones of natural disaster.
- Goods which are in transit and intended for third countries.
- Personal and household items, as well as items necessary for the employment activity of foreign migrant workers in Azerbaijan.
- Certain instances of goods imported in, produced or processed in and exported from special economic zones.
- Imports of technological equipment and structures based on a so called "investment promotion certificate" including for the infrastructure of industrial parks.
- Imports of machinery, technological equipment and plants by legal entities and individuals engaged in entrepreneurial activities without forming a legal entity that are residents of industrial and technological parks established according to a decision of the relevant executive authorities, on the basis of a confirming document of the relevant executive authority for the construction of production facilities of industrial or technological parks, research and development work, established in accordance with the decision of the relevant executive authority – within seven years from the date of registration of the resident in the industrial or technological park

Under the 1998 Resolution, certain imports are exempt from import duties and these include:

- Goods imported for petroleum operations in connection with certain exploration, development and production-sharing agreements and transportation agreements relating to hydrocarbons.
- Goods imported on the basis of financial aid, loans and technical grants of international organizations, foreign governments and foreign persons in accordance with inter-governmental and international treaties of Azerbaijan.
- Goods imported by individuals for distribution free of charge.
- Goods imported on the basis of a document reflecting equipment used in the prevention of force majeure situations and the mitigation of its consequences, confirmed by the Ministry of Emergency Situations.
- Operations relating to the transfer of fixed assets, movable or other property to the State Oil Fund pursuant to agreements of the Republic of Azerbaijan and legal entities representing it, in accordance with the exploration, development and production sharing of hydrocarbons, export pipelines and other agreements resulting therefrom.
- Equipment, data, accessories and materials for the creation and operation of systems of passport control, equipment, data, accessories and materials imported for the purposes of police services, goods imported (in the absence of local provisions) for the purposes of the implementation of tourism investment projects in mountainous areas, 1,300 meters above sea level.
- Certain movable property which is the subject of a leasing agreement.
- Equipment in connection with oil and gas operations for the purpose of exports (based on a list approved by SOCAR).

13. Article 20, the Tariffs Law

- Technologies, equipment and accessory parts imported by the Ministry of the Defense Industry and its subsidiaries for the purpose of the creation and production of defense products.
- Goods imported into a special economic zone (excluding excise goods).
- Sports equipment, technology and goods imported for training of a national team.
- Grain and grain products imported for the purpose of supplying the State Grain Reserve.
- Certain scientific devices and equipment imported on the basis of confirming document of the Azerbaijani National Academy.
- Registration certificates, driving licenses, registration plates and certain equipment imported at the expense of budget funds.
- Gold imported for placing as assets of the State Oil Fund.
- When supported by the relevant documentation issued by the State Agency for Renewable Energy Sources under the Ministry of Energy, structures used for the purpose of renewable energy, as well as equipment, parts and accessories necessary to manufacture such structures.
- The list of structures, parts and equipment which can be imported free of customs duties on the basis of a confirming document from the Ministry of Transport, Communications and High Technologies by legal entities and individual entrepreneurs which are residents of Mingechevir Technological Park has been approved.
- Mazut imported for the production of electrical energy by Azerenerji Joint-Stock Company on the basis of documents issued by the Ministry of Energy.
- New types of coronavirus (COVID-19) vaccines and syringes intended for those vaccines based on the approval document of the Ministry of Health of the Republic of Azerbaijan (for a period of one-to-two years, starting from January 2021).

## VAT on imports and exports

Currently, the standard rate of value-added tax (VAT) in Azerbaijan is 18%. Under the Tax Code the following imports are among those that are exempt from VAT:[14]

- Imports of the national and foreign currency, as well as securities (except for numismatic purposes).
- Imports of gold to be deposited with the Central Bank of the Republic of Azerbaijan and the State Oil Fund of the Republic of Azerbaijan, as well the import of currency valuables of the Central Bank of the Republic of Azerbaijan, monetary resources, commemorative coins and other similar valuables of the Republic of Azerbaijan manufactured abroad.
- Imports of goods, the provision of works and services by the Central Bank of the Republic of Azerbaijan and the State Oil Fund of the Republic of Azerbaijan, connected with obligations stipulated by legislation.
- Imports of machinery, technological equipment and plants by managing organizations or operators of industrial and technological parks on the basis of a confirming document of the relevant executive authority for the establishment and construction of infrastructure, production areas of industrial or technological parks, established in accordance with the decision of the relevant executive authority, as well as for research and development activities.
- Imports of machinery, technological equipment and plants by legal entities and individuals engaged in entrepreneurial activities without forming a legal entity that are residents of industrial and technological parks established according to the decision of the relevant executive authorities, on the basis of a confirming document of the relevant executive authority for the construction of production facilities of industrial or technological parks, the research and development work, established in accordance with the decision of the relevant executive authority – within seven years from the date of registration of the resident in the industrial or technological parks.
- Imports of technical equipment and tools of all types, spare parts, weapons and ammunition used for military purposes by the relevant executive authority, imports of technology, equipment and component parts for the purpose of defense-oriented development and production.
- Commodities imported by humanitarian organizations duly registered in the Republic of Azerbaijan, as well as imports by other legal entities and individuals, subject to receipt of a consent from the organization, established by the relevant executive authority, for humanitarian aid purposes.
- Commodities imported in connection with grant assistance, including technical assistance, and for charitable purposes of countries, governments and international organizations.
- Commodities imported by individuals not for production or commercial purposes, through the customs border in cases and in the manner prescribed by the relevant executive authority.
- Equipment and materials imported in connection with export-oriented oil and gas activities (subject to provision of the list of equipment and materials, imported into the Republic of Azerbaijan in connection with export-oriented oil and gas activities, approved by the relevant executive authority to the customs authorities).
- Goods (except for excisable goods), imported into a special economic zone.
- Imports of technology, technical equipment and facilities by legal entities and individual entrepreneurs on the basis of an approval document given by the relevant executive authority – for seven years from the date of receipt of an investment promotion certificate.
- Aircraft, their spare parts, engines and power plants imported for civil aviation purposes.

14. Article 164, the Tax Code.

- Imports of wheat – for a period starting from 1 January 2017 for seven years.
- Imports of buses working with compressed gas and designed to carry more than 10 people, including the driver – for a period of one to five years starting from January 1, 2020.
- Imports of new coronavirus (COVID-19) vaccines and syringes intended for those vaccines on the basis of the confirmation document of the Ministry of Health of the Republic of Azerbaijan – for a period of one to two years starting from January 2021.

Additionally, under the Tax Code, the provision of financial services is exempt from VAT.

The Tax Code also treats certain imports and exports as subject to VAT but at a zero% rate.[15] These include, among others:

- Exports of goods and certain services.
- With the exception of international postal services, international and transit carriage of passengers and freight, including transit freight forwarding directly related to unloading and warehousing service; services and work directly related to international and transit flights.
- Imports of goods, works or services on the basis of overseas grants.
- Goods and services designed for official use by diplomatic and similar establishments accredited in Azerbaijan, as well as for the needs of diplomatic, administrative and technical staff and their family members having relevant status and who are not nationals of the Republic of Azerbaijan; however, other services obtained from overseas will generally be subject to a VAT reverse charge.
- The sending of gold and other valuables to the Central Bank of Azerbaijan.

## Customs clearance payments

The general rates for customs clearance depending on the cost of goods are the following (per declaration or customs credit order):[16]

- Goods with a value up to AZN 1,000 – the fee is AZN 15;
- Goods with a value from AZN 1,001 to AZN 10,000 – the fee is AZN 60;
- Goods with a value from AZN 10,001 to AZN 50,000 – the fee is AZN 120;
- Goods with a value from AZN 50,001 to AZN 100,000 – the fee is AZN 200;
- Goods with a value from AZN 100,001 to AZN 500,000 – the fee is AZN 300;
- Goods with a value from AZN 500,001 to AZN 1 million – the fee is AZN 600;
- Goods with a value more than AZN 1 million – the fee is AZN 1,000.

However, certain exclusions apply and these are as follows:[17]

- No customs clearance fees are payable for goods that are exempted from custom duties according to the Resolution of the Cabinet of Ministers No. 305 of 14 October 2013.
- No customs clearance fees are payable for imports under grant aid agreements, humanitarian aid and technical assistance.

Clearance fees at double the basic rate are applied where clearance is performed outside of normal working hours or at locations other than those specified for carrying out customs clearance operations.[18]

15. Article 165, Tax Code
16. Article 2.1, the Amounts of Customs Duties adopted by the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan dated 26 April 2016 (Resolution on Customs Duties).
17. Article 2.7, Resolution on Customs Duties
18. Article 1.4, Resolution on Customs Duties

## Excise tax

Under the Tax Code 2000 only consumable alcohol, beer and other alcoholic beverages, tobacco products, automobiles (with the exception of special purpose vehicles equipped with special marks and equipment), yachts for sport and recreation, and other floating vessels for these purposes, petroleum products, imported platinum, gold, jewelry and other household goods prepared therefrom; processed, sorted, framed and mounted diamonds; imported fur products, energy drinks , buses (except for those operating with compressed gas); fluids for electronic cigarettes and tobacco and tobacco products consumed as a result of heating (steam) are subject to excise tax in Azerbaijan.[19]

The rates of excise tax applicable on imports (with the exception of automobiles, leisure and sports yachts and other floating transport designated for such purposes, as well as platinum, gold, jewelry and other domestic items made therefrom; processed, sorted, framed and fixed diamonds) are regulated by the Resolution of the Cabinet of Ministers No. 20 of 19 January 2001 (as amended by Cabinet of Ministers' Resolution No 574, dated 21 December 2017), On Approval of the Rates of Excise Tax Applicable to Goods Imported into the Republic of Azerbaijan. Some examples include:

- Malt beer – AZN 1.9 per liter;
- Wines – AZN 3.6 per liter;
- Cigars containing tobacco, as well as cut-end cigars – AZN 1 per cigar;
- Cigarillos containing tobacco – AZN 31.0 per 1000;
- Cigarettes containing tobacco – AZN 39.0 per 1000;
- Cigars containing tobacco substitutes – AZN 1 per cigar;
- Cigarillos containing tobacco substitutes – AZN 31.0 per 1000;
- Cigarettes containing tobacco substitutes – AZN 39.0 per 1000;
- Fluids for electronic cigarettes – AZN 20 per liter.

## Production sharing and transportation agreements

Under various exploration, development and production sharing agreements and export pipeline agreements in relation to hydrocarbons, the importation of goods is free of import duties and VAT (though it is subject to a customs service/documentation fee), as long as the goods (and services) are used in connection with petroleum operations. This exemption also applies to the sale of goods by contractors and subcontractors to related parties imported into the Republic of Azerbaijan for export purposes under various exploration, development and production sharing agreements and export pipeline agreements in relation to hydrocarbons.

## Customs procedures

There are five types of customs procedures:[20]

- Transit (international and national);
- Warehouse (temporary storage and customs warehouse);
- Free zone;
- Special use (temporary import and end use);
- Processing (internally and abroad).

19. Article 190.1, Tax Code
20. Article 166, Customs Code 2012

Care should be taken to ensure that the correct procedure has been applied to the relevant import.

Presidential Decree No 12, dated 11 November 2008, On the Application of a "Single Window" in the Inspection of Goods and Transportation Means Passing through the State Border Checkpoints of the Republic of Azerbaijan, provides that the inspection of veterinary, phytosanitary, hygienic and other certification, as well as food safety certificates in relation to food products and extracts from the state register of food safety registration for their producers, is carried out by the customs authorities at the border.

## Warehouses

Warehouses are used for the temporary storage of imported goods where, during the term of storage, no customs duties or relevant taxes are paid.[21] In general, customs warehouses may be of an open type or of a closed type (the latter being restricted to the storage of specified goods).[22] The warehouse procedure includes temporary storage and the use of a customs (bonded) warehouse. The maximum term for temporary storage is four months and, for a customs warehouse, it is three years.[23] At the expiration of the temporary storage period, goods should either be declared under a different customs procedure or placed in a customs warehouse.[24] Upon expiration of the customs warehouse period, the goods must be placed under a different customs procedure.[25]

## Temporary imports

Goods may be imported into Azerbaijan for temporary purposes. In general, a temporary import period for goods should not exceed 24 months.[26] Where the purpose of the temporary import has not been achieved, the temporary import period can be extended to 12 months.[27] A temporary importation of goods generally involves the payment on importation of only part of the applicable customs duties and taxes (3% per month of the total which would be payable for goods imported for free circulation) or full exemption from payment until the expiration of the temporary importation period.[28]

*Useful website*: State Customs Committee – www.customs.gov.az (English version available)

## How Dentons can help

Dentons is an acknowledged leader in Azerbaijan in the provision of customs advice. We have assisted companies and individuals in defending demands for excessive duties and dealing with the customs authorities in enforcing prohibitions against the importation of counterfeit and gray market goods.

21. Article 176.2, Customs Code
22. Article 181.2, Customs Code
23. Articles 179.2 and 183.1, Customs Code
24. Article 179.3, Customs Code
25. Article 183.2, Customs Code
26. Article 193.2, Customs Code
27. Article 193.3, Customs Code
28. Article 194, Customs Code

Chapter 12

# Handling audits

## Introduction

In many ways, the strategy for handling tax and other audits by official bodies in Azerbaijan is the same as in any other country. However, Azerbaijan, in this as in many areas, has its own peculiarities which need to be taken into account.

Audits should not be seen as something of which to be afraid. They are a normal part of doing business, and it is important that everyone is aware of this. And, of course, it is important to stress that no attempt should be made to hide documents or provide misleading information to an auditor.

To verify that the audit is a legitimate one, the company should check whether the audit is included in the Register of audits of entrepreneurial activity maintained by the Ministry of Justice.

At the same time, any audit can be time-consuming and disruptive to business and, as such, it is important that the auditors are directed towards what is relevant.

## Tax audits

The tax authorities have broad powers in the conduct of an on-site audit. They are, however, required to give at least 15 days' written notice before the commencement of a routine audit. A routine on-site tax audit may not be carried out more than once a year and should not exceed 30 days in length. Exceptionally, an extension by up to 90 days is possible. The audit may also be suspended for up to nine months in certain cases, including, *inter alia*, where documents required for "conducting objective and complete" on-site tax audits are to be received from abroad.

A routine on-site tax audit, in respect of corporate profits tax, income tax, property and land taxes, cannot exceed the last three calendar years (i.e., three years, excluding the year in which the audit is carried out). In respect of other taxes (e.g., VAT), it cannot exceed the latest three years (i.e., three years, including the year in which this audit is carried out).

An extraordinary tax audit is possible in certain circumstances, including where an application is made for a refund of taxes.

A taxpayer who is asked by the tax authorities to submit documents must submit certified copies within five days of the request.

## Other audits

Other bodies also have the rights of audit or the right to perform statutory checks. For instance, these include the health authorities (in respect of restaurants, hotels, etc.), environmental control (use of water, waste disposal, etc.), the fire department (compliance with fire safety regulations), migration authorities (compliance with migration issues), etc. In such circumstances, the company should ensure that the auditors sign the enterprise's audit control book.

## Some do's and don'ts

In order to ensure that the audit progresses smoothly, a few simple rules should be followed:

- Ensure a room is provided for the auditors to carry out their work. The room should ideally be near facilities e.g., washroom, photocopier etc. and away from others' work areas.
- Ensure that one person is designated as the principal contact with the auditors. This person will normally be someone with direct knowledge of the matters being audited. Consideration should be given to the person acting as liaison with the auditors.
- Be cooperative but businesslike.
- Before releasing documents, ensure that they are relevant to the audit and that the auditors are entitled to request them.
- Keep copies or a record of all documents released.
- If the auditors wish to interview any person, ensure that a management representative is also present and that notes of the meeting are taken.
- Although, outside of criminal proceedings, there are no formal rules of legal privilege, nevertheless, some documents may be subject to protection on the grounds of confidentiality
- Don't panic – to minimize the potential for staff to spread rumors, ensure that everyone is aware that an audit is underway, and that it is a normal part of business

## How Dentons can help

Dentons is an acknowledged leader in Azerbaijan in the provision of legal services. We have assisted companies in all aspects relating to audit matters, including:

- Preparing for, dealing with and responding to audits, including employment and environmental audits.
- Advising taxpayers and other clients of their rights.
- Defending taxpayers in the courts – Dentons has successfully defended taxpayers against claims made by the tax authorities.
- Planning audit strategies.

Chapter 13

# Real estate and property ownership

## Ownership rights

An owner of property has the right to possess, use and dispose of such property freely.

Persons other than owners may also have the right to possess and use and, to some extent, dispose of property belonging to another person. For example, a lessee of an apartment has the right to possess and use the apartment for residential purposes and, where the lease agreement permits, to sublet it. However, the difference between the rights of the owner and the rights of the lessee is that the lessee's rights can be limited by an agreement with, or authorization by, the owner.

This being said, the rights of an owner to possess, use and dispose of property freely may also be limited by legislation and "other means," e.g., by agreement.

Furthermore, the exercise by an owner of ownership rights should not violate the rights of neighbors and third parties and, as such, the owner should not abuse its rights.

The Civil Code allows for a transfer of property to "management" under a power of attorney. A person authorized under the power of attorney must manage the property for the benefit of the owner, or third parties indicated by the owner. The Civil Code does not provide any details on trust relationships. The Statute "On the Management of State Enterprises (Facilities) under Agreements"[29] elaborates upon the rules for the management of property by non-owners (outside the personal sphere.).

Presently, the situation with regard to the nature of ownership rights to the property of state/municipal enterprises remains somewhat unclear. The State Service on Property Issues under the Ministry of the Economy of the Republic of Azerbaijan is in charge of the disposition of state property and exercises control over the management and efficient use of such state property by state enterprises.

The Law "On Public Legal Entities" dated 29 December 2015, regulates issues on the establishment, operation and organization of public legal entities. The charter capital of public legal entities is formed on the basis of assets contributed to it by its founder(s). State and municipal property granted to public legal entities shall be used only in accordance with the purposes reflected in its charters.

## Types of property

The Civil Code provides for tangible and intangible property and for movable and immovable property.

Immovable property includes plots of land, subsurface areas, forests, plantations, buildings, structures and other objects firmly associated with the land, i.e., objects which cannot be removed without causing significant damage (arguably, this may also include pipelines, cables, etc.). Movable property is defined as anything that is not immovable.

## Ownership

The Land Code 1999 provides that foreign persons (including individuals, legal entities, international organizations and foreign states) cannot own land, though they do have the right to lease land. Azerbaijani persons and entities, including entities with foreign participation, can freely own, use or lease land.

"Use" in general may be permanent or temporary, the latter being short-term (up to 15 years) or long-term, which is divided into two categories: private (from 15 to 99 years), and land owned by the state and municipality (from 15 to 49 years), and in such cases only land tax is payable by users. Under a "lease" of land, rent is payable.

Certain land falls within the exclusive jurisdiction of the State (e.g., land situated from 20 to 50 meters from the shore of the Caspian Sea or land granted to state enterprises, institutions and organizations for permanent use, etc.).

29. Approved by Presidential Decree No. 437, dated 9 February 1996

Historical and cultural monuments[30] under private ownership are subject to registration, and the Ministry of Culture must be notified of a proposed sale, as the State has a preemptive right to purchase such monuments.

## Acquisition of ownership rights over immovable property

Ownership and other rights with regard to immovable property must be state registered. A right to possess and use immovable property arises as soon as its sale and purchase agreement is notarized (with the exception of rights, which are created on the basis of a court order or other resolution in legal force and not subject to appeal). A right of disposal, however, does not arise until the property is state registered. Currently, the registration is carried out by the "State Cadastre and Registry of Immovable Property" Public Legal Entity under the State Service on Property Issues (the Registry Service). The Registry Service is charged with recording the ownership and other rights to immovable property in the state register and the compilation and maintenance of a unified register of immovable property.

Some of the services provided by the Registry Service are also performed by the State Agency for Public Service and Social Innovations under the President of the Republic of Azerbaijan (ASAN), which was established by Decree of the President of the Republic of Azerbaijan, No. 685, dated 13 July 2012. According to this Decree, ASAN service centers perform the following services, among others:

- Primary state registration and re-registration of ownership of apartments and the issuance of statements and technical certificates.
- Re-registration of ownership of individual houses and the issuance of statements and technical certificates.
- Reference note of state registration on restrictions (encumbrances) on rights over immovable property.

According to the Civil Code and the Law *"On the Notary"* No. 762-IQ, dated 26 November 1999, it is possible to exchange information and documents between notaries and the Registry Service, including the right to the direct electronic access by notaries to the State Registry, in order to verify the disposal rights and obligations of the owner of immovable property, as well as the existence of encumbrances over property in the Registry Service, including electronic access to information.

The registration of the ownership rights with the Registry Service was streamlined by allowing a notary to immediately send the notarized agreement on the alienation of immovable property to the Registry Service via registered electronic mail information systems and by registered mail.

In case of the alienation of real estate on the basis of extracts from the Registry Service stored on the e-government portal, the extract is made, at the request of the owner, by a notary public or other officials authorized to make such notarial actions in the Registry Service through the electronic information system in real time.

30. According to the Law "On the Protection of Historical and Cultural Monuments" dated 10 April 1998, the list of monuments is approved by the Cabinet of Ministers.

## Land

The situation with respect to land is complicated by the fact that, before the Civil Code came into force in 2000, several bodies were responsible for issuing various land tenure documents, and they were often inefficient in registering rights. The rapid change of the bodies in charge of land allocation decrees and land tenure documents has further aggravated the problem – there have been at least four regimes established since independence: The first was established under the old Land Code 1991; a new regime was established in a package of legislative acts passed after the adoption of the law "On Land Reform" 1996 and the privatization legislation; the third regime arose under the Land Code 1999, which is currently in force; finally, there were a few additional provisions introduced on property rights following the introduction of the Civil Code 2000.

Depending on the circumstances, the Cabinet of Ministers, the State Service on Property Issues under the Ministry of the Economy, the Ministry of Ecology and Natural Resources, local executive authorities or other executive authorities may act as lessors in respect of leases of state-owned land. The same state authorities are authorized to make decisions on the allocation of state-owned land for use.

Under Article 9 of the Law "*On the Management of Municipal Land*," No. 160-IIIQD, dated 29 June 2001, the ownership and lease rights over municipal land must be obtained only through land auctions or tenders, with the exception of cases related to an allocation of land for the construction of an individual housing unit, subject to the restriction established by Article 9.8 of the Law, applicable to citizens of the Republic of Azerbaijan permanently residing and at the same time having a registration address for at least five years in the territory of the same municipality, as well as the transfer of land to state ownership or lease for the purpose of fulfilling obligations arising out of international agreements to which the Republic of Azerbaijan is a party. Further amendments to the Land Code and to the Law "*On the Land Market*," which came into force on 10 December 2008, accorded a priority right in the course of land auctions/tenders for municipal land to certain categories of individuals.

Presidential Decree No. 972, dated 23 October 2003, which approved th Rules "On the Holding of Land Tenders and Auctions for the Transfer of State and Municipal Land into Ownership or Lease" sets out the rules on the transfer of State or municipal owned land into ownership or lease on the basis of land auctions or tenders.

All rights in respect of land owned by private persons are transferred to other persons on the basis of a notarized agreement. In practice, typically, a notary in Azerbaijan will insist on the use of his or her template land sale and purchase agreement, although negotiated terms between the parties can often be inserted into such template agreements.

## Movable property

The Civil Code requires that the sale and purchase of certain movable property be recorded in official registers and that the transfer of such movable property must follow the rules for the sale and purchase of immovable property (Article 650, Civil Code), i.e., sale and purchase agreements must be notarized and registered with the State.

On 11 April 2007, a Presidential Decree approved the Rules "On the Official Registers of Movable Property, the Compilation and Maintenance of such Registers." According to these Rules, the following are among the registrable items of movable property: weapons, motor vehicles, tractors and certain mechanical transportation vehicles, ships, aircraft, trains, films, rare publications, documents of the national archive and moveable historic and cultural monuments.

Article 182 of the Civil Code confirms the rights of a bona fide purchaser to movable property. However, (other than in relation to money, documentary securities or items acquired at auction) a person is not considered a bona fide purchaser if the true owner of the property has lost such property, through theft or otherwise, contrary to his will, or if the acquirer has given no valuable consideration.

## Termination of ownership rights

Ownership rights in immovable property are terminated upon cancellation of the registration by the Registry Service or the complete destruction of the immovable property.

Ownership of movable property will be terminated where the owner surrenders his/her/its ownership right, the property is destroyed, or another person acquires ownership rights in the property.

The Constitution declares that no person may be dispossessed of property without a decision of the court.

The law does, however, provide for compulsory state purchase or confiscation in certain circumstances, for example, for State needs. If such a decision is made by the relevant State authorities and is registered in relation to the acquisition of land plot where a residential building is located, the owners of apartments in such residential building must be notified about the decision in written form. The relevant compensation to the owners of apartments shall be made based on an agreement between the State authority and the owner of the apartment or on a decision of the court.

According to Article 73 of the Land Code, rights over land (other than ownership rights) may be terminated if, for example:

- Land tax payable by users of land, or rent payable by lessees, is not paid for one year without a valid reason.
- The land is purchased by the State in a compulsory manner.
- The ownership over the constructions and installations which are located on the land plot and owned by the owner of such land plot is transferred to other individual or legal entity.
- The land is not used for the granted purpose.
- Without a valid reason, the land is not put to use where granted for agricultural purposes within two years (or within one year where the land has been given for non-agricultural purposes).

## Joint ownership

Property may be under the common ownership of two or more persons, i.e., the share of each owner can be held severally (an independent share of each being determined) or jointly (i.e., without determining a separate share for each). The former is the more usual case.

Articles 226–235 of the Civil Code deal ambiguously with ownership rights in residential apartment blocks and enclosed areas with separate entrances. The ownership right to an apartment, as an integral part of an apartment block, is declared in the Civil Code to be in common (though this is probably not what was intended) with the registered owner of the apartment having the right of possession, use and disposal in respect of the apartment belonging to him or her.

Furthermore, apartment owners have shared ownership of common structures outside or inside their apartments, which service more than one apartment in a residential building, as well as the main (load bearing) constructions, mechanical, electrical, sanitary and technical and other equipment and adjacent land. Owners of apartments cannot independently alienate their shares in the ownership rights over such common property.

Under Article 235 of the Civil Code, the owners of apartments must bear certain common management and other expenses, e.g., expenses incurred with regard to a commonly held piece of land or for the maintenance of common parts.

Where the owner of an apartment fails to pay his/her share of common expenses for three years, the meeting of owners will have the following rights:

- To register a charge over his share in the common parts.
- To take a pledge over moveable property located in the apartment of the defaulting owner.

In practice, these steps are rarely, if ever, taken and would be rather difficult to achieve.

It is noteworthy that a separate code, the Apartment Code, which has been in force since 1 October 2009, also contains provisions in respect of rights in residential apartments. The Apartment Code provides for special rules on the acquisition of residential buildings in emergency situations.

## Compulsory insurance of property

The Law *"On Compulsory Insurance"* No. 165-IVQ dated 24 June 2011 (the Compulsory Insurance Law) sets forth the general principles of two compulsory types of insurance with respect to immovable property: (i) compulsory insurance of immovable property, and (ii) compulsory insurance of civil liability in connection with the use of immovable property. The Compulsory Insurance Law is said to be aimed at protecting the property interests of individuals and legal entities by ensuring that the losses they suffer are compensated, while it expressly excludes the loss of profit.

Two types of compulsory insurance related to the immovable property are defined as follows:

- Compulsory insurance of immovable property – the Compulsory Insurance Law makes it obligatory for the owners or holders of immovable property, whether individuals or legal entities, to obtain loss or damage insurance coverage, with the exception of certain types of immovable property. Among covered insurance events are fire, lightning strikes, natural disasters, natural gas explosions, floods, third party actions, etc.
- Compulsory insurance of civil liability in connection with the use of immovable property has been introduced to insure against damage to health and property of third parties in connection with the use of immovable property, as well as with construction, renovation and other similar works being carried out within the boundaries of such immovable property. The use of immovable property is limited to that by legal entities or individual entrepreneurs for the purposes of their respective entrepreneurial activities. The introduction of this type of insurance is, in our view, particularly important in the light of the high level of construction activity that is going on in the country.

## Compulsory Insurance Bureau

The Compulsory Insurance Law mandates creation of a Compulsory Insurance Bureau and its registration as a public association for the noncommercial purpose of protecting the interests of insured and other injured third parties and ensuring the stability and development of the compulsory insurance system. In order to obtain permission to underwrite compulsory insurance, an insurer must become a member of the Bureau and pay a security deposit.

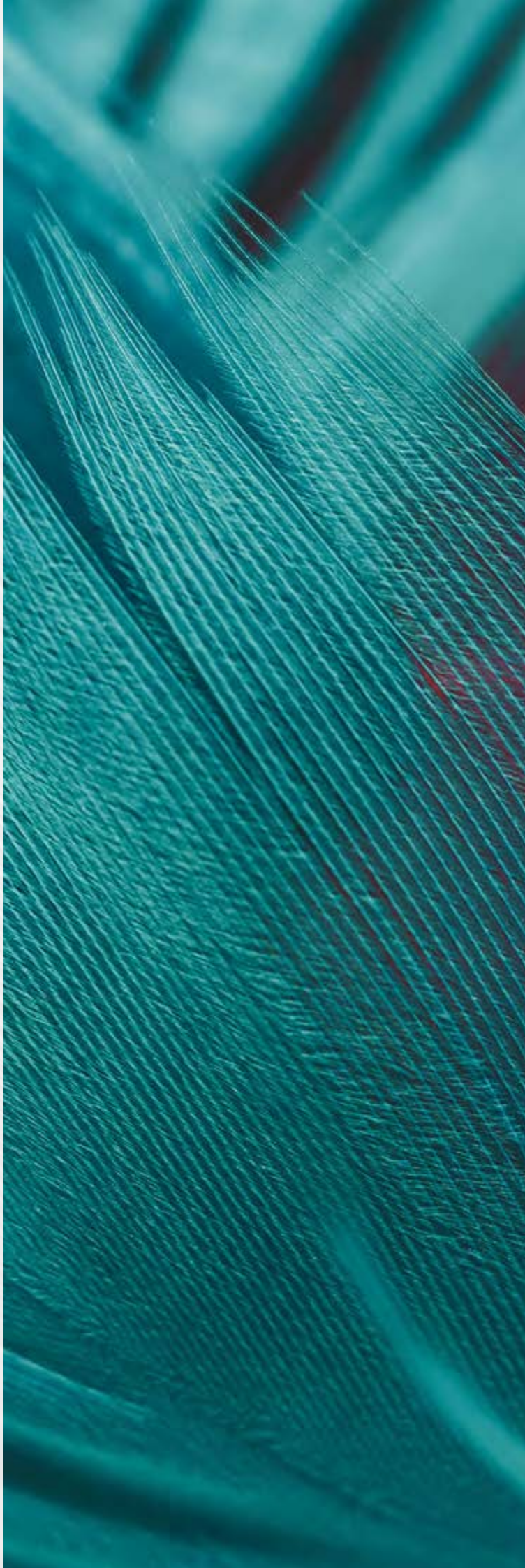
*Useful website*

- Registry Service: dedrx.gov.az

## How Dentons can help

Dentons has acted for owners, vendors and purchasers, financial institutions, investment funds, real estate developers and construction companies, as well as individual and institutional mortgagees. Dentons has assisted companies, financial institutions and diplomatic missions in all aspects relating to the sale, purchase and mortgage of property, including:

- Structuring commercial and residential real estate projects, including the preparation of project and financial documents.
- Reviewing title documents and performing title searches.
- Advising on real property law, construction licenses and permits, taxation issues.
- Drafting or reviewing sale and purchase agreements.
- Successful defense of the rights of property owners in the courts.
- Carrying out comprehensive conveyance services.
- Advising banks and lenders on taking and registering security.



## Frequently asked questions with respect to land and immovable property

1. *Can a foreign national or foreign legal entity (e.g., a registered branch or representative office of a foreign legal entity) own land in Azerbaijan?*

   **No.**

2. *Can a foreign national own real estate property other than land in Azerbaijan?*

   **Yes.**

3. *Can I build on someone else's land?*

   **A landowner may, subject to observing the applicable construction standards and regulations, but also in compliance with the conditions in respect of the designation of the land, construct or demolish buildings on its land or allow other persons to build on it.**

4. *If I build on someone else's land, who owns the building?*

   **You will own the building, as long as all necessary permissions were obtained from the landowner prior to construction.**

5. *If I own a building on someone else's land, can I use the land?*

   **An owner of a building situated on land that belongs to another person has the right to use that part of land on which the building is situated, i.e., it is important to ensure proper access to rights of way to and from the property and rights to the laying on of services.**

6. *What rights does a purchaser of a building get to the land beneath it?*

   **The purchaser of a building usually acquires the right to use the relevant part of land under the same conditions and to the same extent as the seller. A foreign national purchaser of a building will need to lease the land beneath it, due to the prohibition on land ownership by foreigners.**

7. *If I own a building on another person's land, what happens if the land is sold?*

   **The transfer of ownership of land to another person is not in itself a ground for the termination or change in the right to use the land by the owner of a building constructed on it.**

8. *Can a building owner dispose of or demolish a building situated on land owned by another person?*

   **Yes (subject to any contractual provisions between the owner and the user/lessee of the land).**

9. *What happens to buildings constructed on another's land when the right to use the land ceases?*

   **According to the Civil Code, unless otherwise specified by an agreement with the owner of the land, the right of ownership to buildings, structures and other immovable property constructed on the land will transfer to the landowner. However, the Land Code 1999 provides that, unless otherwise envisioned by an agreement with the owner of the land, any temporary constructions must be demolished at the expense of the land user or lessee. The rule under the Law "On Leases" is that any building constructed by the lessee without the permission of the lessor (i.e., the landowner) is the property of the lessor.**

10. *If I buy an apartment, who owns the yard and other ancillary land adjoining the apartment block?*

    **Plots of land adjoining residential buildings owned by the State or a municipality (or which are partly privatized) will remain under the ownership of the state and municipality but will be given for permanent use to the relevant organizations managing such blocks. However, plots of land of completely privatized residential buildings and non-residential buildings attached to them should, in theory, be given to the permanent use of the independent management organizations established by the residents.**

Chapter 14

# Leases

In Azerbaijan, the lease of land and other immovable property is primarily governed by the following laws:

- The Law "*On Leases*" dated 30 April 1992 (the Law on Leases);
- The Law "*On Land Leases*" dated 11 December 1998;
- The Land Code, effective as of 8 August 1999;
- The Civil Code, effective as of 1 September 2000.

In addition to the concept of "lease" there also exists in Azerbaijani law the concept of "use," which is most commonly encountered where state land is granted for a particular purpose (e.g., for construction purposes). The Civil Code provisions for the rental of property also apply to lease agreements, unless the law stipulates otherwise.

## Parties to lease agreements

Since foreign nationals/companies may not own land under Azerbaijani law, they also may not be lessors of land. The State, municipalities and Azerbaijani persons (individuals and legal entities –including legal entities with foreign participation) can act as lessors as well as lessees of land.

Foreign nationals/companies can, however, be owners and lessors of immovable property other than land, such as apartments.

## Notarization and registration of leases

The Civil Code requires that a lease agreement involving immovable property must be notarized. However, notarization is not required for an agreement to lease land from the state or a municipality.

The Law "On the State Register of Immovable Property" requires that any lease of immovable property for a term exceeding 11 months must be registered. The state does not guarantee the protection and immunity of land rights, which have not been registered.

## Title documents

Normally, the availability of the following documents confirms the right of a lessor to grant a lease of land or other immovable property:

1. An extract issued by the Registry Service (or other documents issued by the predecessors of the Registry Service). The extract should confirm the right of use, lease or ownership (as the case may be) of the leased property. Recent changes to legislation allow notaries to check the existence of such document in a real time regime.
2. A technical passport which contains information about the technical parameters of the immovable property.
3. A document confirming that the property is not encumbered. This document can be obtained from the Registry Service or requested to be checked at the notary office before the notarization of the relevant agreement.

The foregoing documents would also routinely be requested for inspection by a notary engaged to notarize a lease agreement.

## Contents of lease agreements

The law requires that a land lease agreement contain at least a description of the land (including its size, designation, boundaries and use), the term of the lease, a statement of condition, the rent and payment terms, conditions of use and terms relating to the exploitation, protection and improvement of the land. The agreement should also contain the names and legal addresses of the parties and provisions on renewal (or amendment), early termination, force majeure, consequences of breach and dispute settlement.

The law also binds the parties to the lease agreement to requirements that may not be mentioned in the lease. For example, a lessee is not responsible for normal wear and tear on a leased property used for its contractually designated purposes. Also, the ordinary costs of maintaining and cleaning leased property are not recoverable from the lessor.

Moreover, the leased property must be suitable for the uses outlined in the lease agreement, and the lessor must continue to maintain the property in that condition throughout the entire term of the lease. The lessor is also responsible for ensuring that the property has the characteristics specified in the lease agreement. It is an implied term of a lease agreement of residential property that it is safe, with no evident danger to life or health of the lessee.

A lease agreement, which is not in conformity with the mandatory requirements of the law can be qualified void.

## Subleases and assignment of leases

Under the Civil Code, the lessee of premises cannot sublet such property without the consent of the lessor. The Civil Code suggests that consent to sublet to a third party may be withheld on objective grounds relating to the identity of the third party. In any case, it is advisable to include in a lease agreement a provision obliging the lessor not to "unreasonably withhold" consent to sublet. Alternatively, the lease can be negotiated to include the specific conditions for subletting.

In general, the Civil Code suggests that the assignment of leases of land or other immovable property is only possible with the consent of the owner or lessor of such land.

## Termination of lease agreements

According to the Civil Code, a fixed-term lease agreement terminates upon the expiration of its term. But under certain conditions a fixed-term lease agreement can be terminated prior to the expiration of its term. For example, a lessee can terminate a lease agreement with immediate effect if the property substantially deteriorates and the lessor fails to remedy such breach. A lessor can terminate with immediate effect if the lessee fails to pay rent or a substantial portion thereof for two consecutive months or if the lessee uses the property in such a way which substantially violates the rights of the lessor.

The Law on Leases appears to allow a lease agreement to be terminated in accordance with the agreement of the parties concerned. However, given the content of Article 2.5 of the Law on Normative and Legal Acts (2010), the conflicting provisions of the Civil Code should take precedence over the Law on Leases in the event of any conflict between the two legal acts.

## How Dentons can help

Dentons has acted for both lessors and lessees and has assisted many companies, international finance institutions and diplomatic missions in all aspects relating to leasing, including:

- Drafting, negotiating and reviewing leases.
- Reviewing title documents and performing title searches.
- Advising on real property law, construction permits and taxation issues.
- Providing model lease agreements.
- Successfully defending owners, lessors or lessees in the courts.

Chapter 15

# Employment

## Introduction

The Labor Code (1999) (as amended) is the principal legal act regulating employment relations in Azerbaijan. The Code prescribes minimum rights and obligations which must be observed in employment relationships.

## Employment Relations

Entry into employment contracts, amendments to employment contracts and information on the termination of employment contracts become effective upon registration with the electronic database maintained by the Ministry of Labor and Social Protection of the Population.

The state authority should issue to the employer an electronic confirmation of the registration of the employment contract (amendments, termination) within one business day following the submission of the relevant notification.

The employer may be subject to administrative liability and, subject to certain conditions, criminal liability, for engaging individuals for any work without an effective employment contract.

## Fixed-term contracts

An individual employment contract may be concluded for either an indefinite period or a fixed period of up to five years. If the term of the fixed-term contract lasts continuously for more than five years, it will be deemed to be an indefinite term contract. However, generally, if the employment functions to be fulfilled are permanent in nature, an employment contract must be concluded for an indefinite period. Temporary work, on the other hand, would justify the conclusion of a fixed-term contract. The Labor Code lists various instances where a fixed-term employment contract is permitted.

## Content of employment contracts

Although the parties to an individual employment contract may determine its structure and content, certain mandatory provisions must be included. These include terms and conditions relating to an employee's position, employment functions (i.e., job description) and the duration of employment.

The Labor Code provides a model form of employment contract. Although originally intended to be mandatory, later drafts of the Labor Code were amended to permit freedom of contract.

## Hiring a new employee

The Labor Code requires an employer to collect and keep at the workplace certain documents which evidence the existence of employment relationships. Such documents include the employee's labor book, copies of the employee's identification documents, certificates evidencing his/her education and training and medical certificates in special cases. The employer, in practice, usually issues an internal order on hiring new staff. Contracts must be recorded in a special book or computer record.

With the exception of certain specifically exempted categories, an employee entering into an individual employment contract must produce a labor book. As the document confirming length of service of the employee for specific purposes, the labor book should contain information on the date of the commencement of employment, the employee's position, and the grounds for and date of employment termination. The employer also signs an entry in the labor book on the termination of employment.

## Probationary periods

An individual may be employed subject to a probationary or trial period. The probationary period cannot exceed three months and, for certain protected categories of employees (those aged under 18, persons hired by competition, pregnant women and women with children under three years of age, as well as men raising children under age of three alone, persons hired in accordance with their profession (specialization) for the first time in the year of graduation from an educational organization for the profession, persons elected for paid elected positions, persons with whom the labor contract was concluded for up to two months), it cannot be applied at all. Either party may terminate the employment contract during the probationary period by giving three days' notice but, if the termination is to be carried out at the initiative of the employer, the contract must specify the grounds on which it may be terminated during the probationary period.

## Compensation

Employees must be paid in Azerbaijani Manats. Normally, salaries must be paid by way of a non-cash settlement.

Under the Labor Code, salaries should, as a rule, be paid in two installments per month. However, where salaries are calculated on an annual basis, payment is permitted once a month.

At the employee`s consent, an employer may pay up to 20% of the employee's wages in goods produced by the company or in other consumer products, with the exception of alcoholic beverages, energy drinks to employees under the age of 18, as well as tobacco goods, narcotic drugs and psychotropic agents and other items the civil turnover of which is not allowed (excluded from civil turnover).

## Working Hours

Under a normal work regime, an employee must not work more than eight hours per day or more than 40 hours per week.

Depending on the category of the job, the age of the employee, working conditions, etc. the legislation also provides for a reduced working week for certain groups of employees:

- Those up to the age of 16: not more than 24 hours per week.
- Those between the ages of 16 and 18, as well as category I and II invalids, pregnant employees and female employees having a child under the age of 18 months, and the sole parent of a child under three years old: not more than 36 hours per week.

As a rule, a five-day working week is the norm. At companies where a five-day working week is not convenient for production purposes, a six-day working week may be applied. In a six-day working week, the normal working day should not exceed seven hours where the working week is 40 hours. Working hours on the eve of holidays are reduced by one hour in both five-day and six-day regimes.

Part-time work may be agreed between the employer and the employee; however, the employee will be entitled to the full protection of Azerbaijani labor laws.

Work may, if desired, be based on a regime of the cumulative recording of working time. This method is usually adopted when work is carried out far from the place of residence of the employee and the possibility to return home every day is impractical. The recording unit under the regime of cumulative recording of working time can be any calendar unit (e.g., one month, three months, etc.) but it may not be longer than one year. The duration of daily work during such regime may not exceed 12 hours. The number of working hours during the recording unit should not exceed the number of normal working hours prescribed by the authorities for the same period.

Overtime is permissible only in exceptional circumstances, for very limited periods and subject to strict compliance with, and additional compensation prescribed by, the Labor Code.

Statutory references to "overtime" do not include work during weekends or on holidays, as these are provided for separately. Overtime may not be required of certain categories of employees, e.g., those who work in extremely hazardous work conditions.

## Vacation and holidays

An employee is entitled to four different types of leave: employment-related leave/vacation (basic and supplementary), social leave (which includes maternity leave), study leave and unpaid leave. While the duration of basic employment-related leave is 21 calendar days, certain positions (e.g., specialists, managerial staff) are entitled to 30 calendar days. Depending on work conditions, experience and other prescribed factors, an employee may be entitled to one or more supplementary vacations.

An employee may, in general, take leave only after having worked for the employer for at least six months but certain categories of employees, e.g., employees under 18, are not subject to this restriction. At least one period of leave in each year should be for not less than two calendar weeks.

During the second and subsequent years, leave is given at a time agreed in accordance with the order of priority approved by the local trade union, if any, or in its absence, by the employer after discussion with the employee. In order not to upset the normal production and working process, a schedule of priority in giving leave may be drawn up for the year by the end of January.

An employee may be required to work on a holiday only in prescribed exceptional circumstances.

## Safety at work

An employee has the right to work under safe and healthy work conditions. The safety rules applicable to workplaces are aimed at improving employment conditions and preventing industrial accidents, injuries and occupational hazards at the workplace. For example, an employer must ensure that buildings, equipment and facilities are safe and that sanitary and hygienic requirements are observed at the workplace. Each enterprise must have fire extinguishers and fire safety guidelines

which, among other things, allocate smoking areas, describe evacuation rules and set forth duties regarding inspection of premises at the end of the workday. There are also detailed safety rules in respect of the use of computers and other equipment emitting electromagnetic rays.

## Employment termination

An employment contract may be terminated on the following general grounds:

- Termination by one of the parties to an employment relationship.
- Expiration of an employment contract's fixed term.
- Change of employment conditions.
- Change of owner (applies to certain senior managerial personnel only).
- Circumstances beyond the control of the parties.
- Other additional grounds stipulated in an employment contract.

Termination of an employment contract must be justified on one of the grounds available for employment termination under the Labor Code. The Labor Code prohibits reference to more than one ground or reference to grounds other than those specified in the Labor Code.

The Labor Code also provides six specific grounds under which an employer may terminate an employment contract:

- Employer's liquidation or closure.
- Staff reduction or downsizing.
- Decision of a special commission of the employer that the employee is unqualified or incompetent for the position.
- Employee's failure to fulfill employment obligations.
- Failure to pass the probationary period.
- Reaching pensionable age (applies to employees of enterprises financed from the state budget).

The termination of an employment relationship must be appropriately documented.

## Redundancies

Certain types of employees (e.g., mothers with children under the age of three) cannot be made redundant and certain other categories (e.g., war veterans) can be terminated only if certain strict conditions apply.

In any event, an employee whose job is redundant must be given notice, depending on the employee's experience with the specific employer, from two calendar weeks to nine calendar weeks (or be paid in lieu of notice from 0.5 monthly salaries to two monthly salaries, at the employee's option) and severance from one month's salary to two months' salary, depending on the employee's experience with the specific employer.

Any termination of employment needs to be carefully, lawfully and sensitively handled. Failure to do so can lead to expensive and disruptive litigation. An employer who has breached the employment rights of an employee is liable to compensate the employee for the damage done or loss caused. An employee who has a grievance may file a case in the district court.

"Damage" can extend to what is known as "moral" damage – defamation of character, insult (verbally or by action), humiliation of the employee, etc. The Labor Code, 1999, does not impose any limit on the amount of moral damage which may be claimed by the employee – this is at the discretion of the court hearing the case as long as the quantum of moral damage has been pleaded by the employee in his or her claim.

## Oil industry

A large number of PSAs have been entered into by the various oil consortia with the Government of Azerbaijan, and most of these have been passed into law. Consequently, they are important in determining the law applicable to employment contracts of employees engaged in the oil industry. The PSAs,[31] in summary, state that the employer is free to implement practices that are customary in international petroleum operations and – in the experience and judgment of the employer – are best able to promote an efficient and motivated workforce. These practices relate to:

- Recruitment;
- Dismissal;
- Performance review;
- Incentives.

This appears to give great scope to the employer (though what is customary in international petroleum operations is rather vague) but it makes no reference to common and important provisions contained in most contracts, e.g., leave entitlement, maternity benefits, etc. It can be concluded, therefore, that an employer falling under the umbrella of a PSA is reasonably free (within the confines of what is customary in international petroleum operations) to set such policies as it sees fit in respect of the matters listed above, but that other matters will fall under the consideration of the general labor law of Azerbaijan in the normal way. However, since the labor rights of employees are not specifically *prescribed in PSAs,* attention needs to be paid to ensuring compliance with the basic provisions of the Labor Code when setting up the employer's policies.

31. E.g., the *Agreement On the Joint Development and Production Sharing for the Azeri and Chirag Fields and the Deep Water Portion of the Gunashli Field in the Azerbaijan Sector of the Caspian Sea*, dated 20 September 1994. Cf. Art. 6.7(c) which states that "All Azerbaijani citizens hired by Contractor, the Operating Company and any Sub-contractors shall be hired pursuant to a written employment contract which shall specify the hours of work required of the employee, the compensation and benefits to be paid or furnished by the employer and all other terms of employment. Such employees may be located wherever Contractor, the Operating Company or the Sub-contractors deem appropriate in connection with the Petroleum Operations in accordance with such written employment contracts entered into with them. Contractor, the Operating Company and the Sub-contractors shall be free to implement recruitment, dismissal, performance review and incentive compensation programmes and practices (both with respect to foreign expatriate employees and Azerbaijani citizens) that are customary in international Petroleum operations and in Contractor's and Sub-contractor's experience and judgment are best able to promote an efficient and motivated workforce."

## Social insurance, obligatory medical insurance and taxation

Employees are taxed through a withholding mechanism. The employer is required to withhold income tax, the employee's social security and obligatory medical insurance contributions from the employee's salary and to pay over the withheld amounts to the appropriate authorities.

Unless there has been an arithmetical error or the employee consents to this, excess payments made to an employee as a result of failure to enforce the law (e.g., failure to withhold taxes) cannot be recovered by the employer by deduction from later payments.

Taxable income will generally include all bonuses, non-arms' length transactions and benefits-in-kind other than those of a social nature. There are, however, certain exceptions.

In general, the base for calculating income taxes is the same for calculating social security contributions, but there are some important differences. For instance, sick leave allowances are subject to tax but are not subject to social security contributions.

An employee is exempted from income tax on allowances paid in accordance with the Labor Code for dismissal due to the liquidation of the enterprise, as well as amounts paid to the heirs of the deceased in connection with the death of such employee.[32]

For more information on taxation, obligatory medical insurance and social security of employees, as well as the fixed term benefits that are currently in force, please see Chapter 7 Taxation and social security.

## Unemployment insurance

Employees are subject to unemployment insurance which should be deducted monthly by employer from the employee's salary in the amount of 0.5%. The employer is also required to pay 0.5% of unemployment insurance which is paid to the Social Protection Fund (SPF).

Employees may benefit from such unemployment insurance if their employment is terminated on the ground of redundancy or liquidation of an enterprise.

## Employment of foreigners

With the exception of certain categories of foreign employees (including, for example, permanent residents of Azerbaijan, individual entrepreneurs, heads and deputy heads of branches or representative offices of foreign legal entities operating in Azerbaijan and the heads and deputy heads of legal entities established in Azerbaijan where at least one of the shareholders is a foreign individual or a foreign legal entity), a foreign national may not work in Azerbaijan without a work permit.

## Employee or contractor?

In many countries, employees are given a special status, governed by special laws aimed to protect them and provide them with benefits that are considered socially desirable (e.g., maternity leave, sick leave, paid vacations, job security, etc.). In this respect, Azerbaijan is no different.

Individuals providing services other than as employees (referred to here as "independent contractors"), do not receive the protection offered to employees other than through the normal contractual relationship (i.e., the contract may, in general, be terminated in accordance with its provisions without other statutory obligations being imposed.)

32. Tax Code, Article 102.1.4

Employment contracts are governed by the Labor Code (as amended). Contractor arrangements are governed by the Civil Code (as amended), the provisions of which apply to what are generally known as civil law agreements. The latter might include the provision of one-off services such as translating or interpreting.

Employers worldwide have sometimes sought to avoid the often-onerous consequences of entering into employment relationships by redefining the relationship as one for the provision of services. Whether such redefinition is successful in avoiding the potential burdens imposed by an employer-employee relationship is very often a question of fact and intention, which sometimes must be proved to the satisfaction of the court.

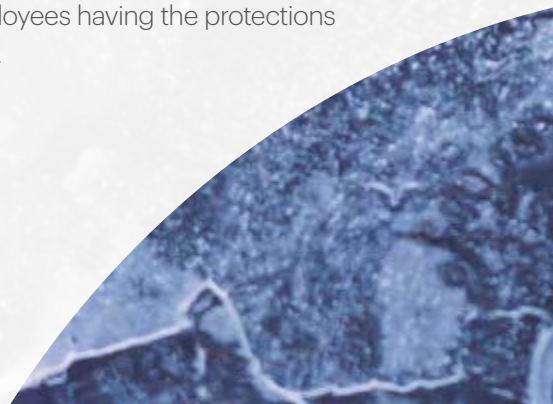
Significant amendments have been made to the Labor Code, effective from 8 May 2021, which appear to be aimed at limiting the practice of hiring individuals as independent contractors based on civil law agreements (as opposed to employees based on employment contracts), by prohibiting the documentation of "labor relations" in a civil law contract.

The term "labor relations" includes relations that are based on the personal performance of a paid job function by an employee in the workplace where he/she was hired (appointed), elected or, reinstated, in accordance with obligations provided in labor legislation, collective agreements and contracts, by mutual agreement with the employer, and relations based on the observance of internal disciplinary rules, the provision by the employer of working conditions, guarantees and labor protection of the employee, as well as the principles of the Labor Code.

In essence, the existence of any of the following circumstances constitutes labor relations, which may no longer be documented by a civil law agreement and which would require entering into a written employment contract governed by the Labor Code:

- The content and the form of the contract concluded between the parties matches the respective requirements for the contents and the form of a standard employment contract (as described in the Labor Code).
- if a work record book is provided for the purposes of documenting and recording the relations;
- The relationship arises in connection with admission (appointment) to the relevant profession or position, including an election or appointment (on a paid basis), as well as holding a position on a competitive basis, employment on the basis of a quota, or being restored to the position by a court decision.
- The relationship is established in connection with the performance of work (services) related to the main area of activity of the employer.
- The relationship is established in connection with the performance of work (services) on the basis of a substitution or temporary replacement.
- The extension (renewal) of a contract for temporary work (service) is carried out automatically upon continuation of relations, unless any party terminates the contract upon expiry of the term (i.e., similar to the rules of the Labor Code on the termination of a fixed-term employment contract).
- The fee payable under the contract for the work (service) consists of a monthly salary, additions and bonus.
- Where the contract regulates issues specified in the articles of the Labor Code on the obligations of the employee, guarantees to employees upon termination of the employment contract, leave, retention of the employee's place of work and average salary, disciplinary liability for violation of labor and executive discipline.

In view of the potentially broad interpretation of the provisions listed above, additional risks now exist for businesses using or relying on civil law agreements for their hiring needs. These risks include liability and penalties for failure to enter into employment contracts and claims by respective individuals working currently as contractors seeking to be recognized as employees having the protections of the Labor Code.



## Specialists working in the liberated territories

Recent amendments were made to the Labor Code in connection with benefits and privileges applied to operations in the territories of the Republic of Azerbaijan liberated from occupation (liberated territories).

Benefits and privileges to the category of employees who are qualified as *"a specialist working in the liberated territories"*:

- Five calendar days of additional vacation.
- Salary increases (by a coefficient) within the category of wages applicable under special circumstances which must not be less than coefficients determined by the relevant executive authority.

Individuals qualify as liberated territory specialists if they have the following:

- A state document evidencing profession, secondary and/or higher education.
- 24 months of work experience for the last 60 months.
- An employment agreement for working in the liberated territories.

Eligibility conditions (applied together):

i. The employer of the liberated territory specialist has a tax registration in the liberated territories.

ii. The designated workplace is located in the liberated territories.

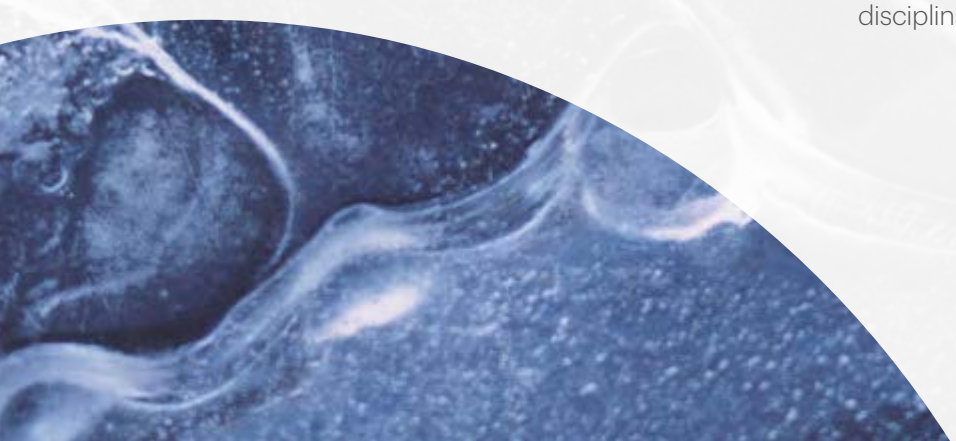
iii. The liberated territory specialist lives (have a settlement) in the liberated territories.

The above-mentioned benefits and privileges are effective for the period from 1 January 2023 through 1 January 2028.

## How Dentons can help

Dentons is the acknowledged leader in Azerbaijan in the provision of employment services. Dentons has assisted companies in all aspects relating to employment matters, including:

- Providing advice regarding prospective staff – choosing the right people is important to any organization but special factors in Azerbaijan mean that careful selection, especially for positions of trust, is critical.
- Carrying out employment audits – to ensure that contracts, internal procedures, records and regulations conform to the law, Dentons can carry out employment audits.
- Drafting employment and contractor agreements. Dentons does not normally recommend the use of the model employment contract provided in the Labor Code, other than in very rare instances. Dentons is able to draft employment contracts in accordance with Azerbaijani law, but which give much greater protection to the employer than those provided for in the model.
- Providing a model agreement that is specifically designed to assist the employer in understanding employment legislation in Azerbaijan.
- Defending employers in the courts in unfair dismissal cases.
- Assisting with obtaining work permits and employee workbooks.
- Operating payrolls, file tax and social security reports.
- Undertaking income tax and social security reviews to ensure the correct amounts are being paid and the right documentation available.
- Planning redundancy strategies.
- Drafting grievance procedures, staff manuals and disciplinary rules.



Chapter 16

# Currency regulation

## Introduction

Currency operations are regulated mainly by the Central Bank of Azerbaijan and the State Customs Committee of Azerbaijan. Separate rules are specified for residents (generally, legal entities registered in Azerbaijan and Azerbaijani citizens) and non-residents (generally, legal entities registered outside Azerbaijan, and their branches and representative offices in Azerbaijan).

## Remittances

Residents and non-residents may, on the provision of evidence of an import or inward remittance, remit outside of Azerbaijan whatever funds have been previously brought into or remitted to the country. The repatriation of income earned by non-residents from investment activity is allowed after providing a certificate of payment of "relevant taxes and duties" or providing the relevant tax exemption documents. Similarly, the payment of dividends to shareholders is generally permitted. The banking system is responsible for ensuring compliance with these rules, and investors should be mindful of obtaining and keeping certificates from their banks concerning inward remittances.

A special regime applies to the remittance of funds that were previously brought into Azerbaijan in cash form or transferred from overseas to a local bank account, including those transferred from overseas via a payment system without opening a bank account. This regime requires the submission of the relevant documents (e.g., an original customs declaration, a document evidencing the transfer of funds from overseas to a local bank account or a bank document confirming the transfer of finds via a payment system without opening a bank account).

Non-resident individuals may repatriate salaries, dividends and interest after providing evidence for the payment of taxes in respect of such income/payments. In the case of dividends or interest, such evidence will normally take form of an order by such individual to the bank making the remittance to pay the appropriate withholding taxes to the tax authorities. In case of salaries, an employment agreement showing salary payment terms must be presented to the bank.

Resident and non-resident individuals may make transfers freely from their Azerbaijani accounts to overseas bank accounts of up to US$1,000 per banking day, but not exceeding US$10,000 per calendar month, by indicating the purpose of the transfer. Resident individuals may make transfers to their bank account or to the bank accounts of their immediate family members living or temporarily residing abroad, provided that the transfers do not exceed US$10,000 per calendar month.

Both resident and non-resident individuals may also transfer foreign currency in an amount of up to US$1,000 overseas per banking day, but not exceeding US$10,000 per month, without opening bank accounts via local licensed banks.

## Customs control of cross-border movements of cash

The following customs rules apply to foreign currency brought into/taken out of Azerbaijan in cash form:

| Cross-border transfers in cash | Documents and conditions of transfer |
|---|---|
| Bringing in foreign currency and securities denominated in foreign currency regardless of their nominal amount. | No restriction, subject to complying with the relevant customs formalities. |
| Taking out cash foreign currency, as well as securities denominated in foreign currency not exceeding the equivalent of US$10,000. | Verbal declaration to customs authorities. |
| Taking out foreign currency exceeding the equivalent of US$10,000, but less than the equivalent of US$50,000. | Presenting documents confirming that funds have been previously brought into Azerbaijan in cash form and completion of a written customs declaration. |
| Taking out the securities denominated in foreign currency exceeding the equivalent of US$10,000. | Presenting documents confirming that the securities have been previously brought into Azerbaijan and the completion of a written customs declaration. |
| Taking out foreign currency exceeding the equivalent of US$50,000. | Prohibited. |

## Foreign currency bank accounts

Basically, all banking or cash transactions made within Azerbaijan must be in Azerbaijani manats; but, subject to legal entities and entrepreneurs obtaining a "duplicate certificate" from the tax and social insurance authorities, there is no restriction on maintaining foreign currency accounts in Azerbaijan. However, such accounts may generally be used only to receive foreign currency from overseas.

An Azerbaijani entity may generally open bank accounts in banks located abroad, though new rules are expected for entities that are subject to regulation in financial markets (e.g., entities engaged in licensable activities in the securities market, credit organizations, professional participants in the insurance market, investment funds and investment funds managers). All Azerbaijani taxpayers must obtain a "duplicate certificate" and submit a reporting form for the opening of accounts in non-resident banks for business purposes. Failure to do so could result in a financial sanction of 100% of the amount deposited into the account.

## Finance of trade and investments

Advance payments are made subject to the presentation of supporting documents for a particular transaction (i.e., a contract, invoice, order, etc.). Only the importer/purchaser of goods, works and services may make a payment to the seller, unless the import agreement was concluded in favor of a third person, in which case the importer/purchaser of goods, works and services and/or the person that is a party to the import agreement would pay for the imported goods, works or services. The person making the payment must present to the bank a customs declaration (a document confirming the provision of imported services) no later than two years from the date of the advance payment. The goods, works or services for which an advance payment was made must be imported into Azerbaijan, performed or provided within the specified periods. If this has not taken place, there was a failure to return the funds paid in advance from abroad and (i) the residual value of the non-imported goods (non-imported services) or (ii) the residual non-refunded amount exceeds the equivalent of US$10,000, the bank must submit all documents concerning to the prepayment transactions to the Central Bank within five (5) working days. A violation of this requirement could result in administrative liability (i) for the officers of the importer/purchaser of 10–20% of the amount that was directly the object of the administrative offense; or (ii) the importing/purchasing legal entity: 20–30% of the amount that was directly the object of the administrative offense.

## Repatriation of foreign currency earnings

Resident enterprises and organizations are required to repatriate their foreign currency earnings into accounts with resident banks.

In the Alat Free Economic zone currency issues are regulated by the Law on the Alat Free Economic Zone.

Chapter 17

# Licensing and permits

Before lawfully engaging in business in Azerbaijan, physical persons and legal entities engaging in certain activities must satisfy the applicable administrative requirements, including the obtaining of licenses or authorizations/permits.

The licensing regime in Azerbaijan is regulated by several legal acts, the most significant of which are the following:

- Law "On Licenses and Permits," No 176-VQ, dated 15 March 2016, which is in force from 1 June 2016.
- Decree of the Cabinet of Ministers No. 174, dated 7 November 2002, "On Additional Conditions for Granting Special Permissions (Licenses) for Certain Types of Activities" (with further amendments, the latest of which were introduced 15 January 2016).
- Decree of the President No. 713, dated 21 December 2015, "On Certain Actions in the Area of Licensing".
- Decree of the Cabinet of Ministers No. 347, dated 16 September 2016 approving Rules on the Maintenance of a Single Register for Licenses and Permits.

In an effort to improve the investment climate, the Government of Azerbaijan has implemented a number of positive actions, among the most important of which was the Law on Licenses and Permits, which has reduced the number of licensable activities to 24 (plus five activities related to national security).

The Law on Licenses and Permits sets out criteria for types of activities requiring licenses and permits (except within the financial markets) and a list of licenses and permits that is exhaustive. While different ministries or state agencies are involved in the licensing sector, the Ministry of the Economy and ASAN provide general control and administration over licensing procedures, including the preparation of the main regulatory directions and draft legislation, the supervision of implementation by other government agencies and the maintenance of a unified register.

According to the Law on Licenses and Permits, the issuance of licenses and permits, duplicates of such licenses and permits and amendments thereto, and the re-issuance, suspension, resumption and cancellation of licenses and permits is made through the Electronic Licenses and Permits Portal. Licenses are to be issued within 10 days from the date of application, and permits will be issued within seven days. The Law on Licenses and Permits sets out a procedure for the notification of the applicant by the relevant authority within five days of the need to eliminate defects in the application and attached documents, as well as the right of the applicant to eliminate such defects within 10 days.

The Law is applicable to all legal entities, including branches and representative offices of foreign legal entities, and to private entrepreneurs (except in financial markets), as well as to the authorities granting license and permits.

The Law on Licenses and Permits also provides for an Electronic Licenses and Permits Portal, as well as to a Single Register for Licenses and Permits. It contains a list of information which shall be included on the portal and in the register. Licenses and permits are to be issued for limited and unlimited periods of time depending on requirements of relevant legislation.

The specific procedure for the issuance of licenses is set out in the 2002 Decree of the Cabinet of Ministers No. 174, which defines the list of documents required to obtain a license, depending on the type of licensable activity.

Licenses are divided into general and special licenses. A general license is a license granting the right to be engaged in a licensable activity for each of the listed subgroups of licensable activities without a special license. A special license is a license granting the right to be engaged in one or more subgroups of licensable activities. The license holder alone is entitled to use the license granted, which cannot be transferred to another person.

The Law on Licenses and Permits has three annexes: 1) a list of activities which require a license (other than cases related to national security); 2) a list of activities related to cases of national security which require a license; and 3) a list of permits to be issued for entrepreneurial activity.

We have provided below the list of licensable activities reflected in the Law on Licenses and Permits:

### List of activities which require a license (other than cases related to national security)

1. Toxic industrial waste:
   - 1.1 Utilization
   - 1.2 Neutralization
2. Private medical activities
3. Pharmaceutical activities:
   - 3.1 Production of drugs
   - 3.2 Gross sale of drugs
   - 3.3 Retail sale of drugs
4. Precursors:
   - 4.1 Production
   - 4.2 Import
   - 4.3 Export
   - 4.4 Transit transportation
5. Educational activities:
   - 5.1 Pre-school education organizations, except for state pre-school education organizations
   - 5.2 General educational organizations (including lyceums and gymnasiums), except for state general education organizations
   - 5.3 Vocation educational organizations, except for state vocational education institutions
   - 5.4 Mid-vocational educational organizations, except for mid- vocational educational organizations
   - 5.5 Higher education institutions, except for state higher education institutions
   - 5.6 Additional educational organizations, except for state additional educational organizations
   - 5.7 Mid-vocational religious education institutions
   - 5.8 High school religious education
6. Telecommunication and Postal Service:
   - 6.1 Telephone (wire)
   - 6.2 Radio-trunk and wireless
   - 6.3 IP-telephony (internet-telephony)
   - 6.4 Arranging of internal telecommunication channels
   - 6.5 Arranging of international telecommunication channels
   - 6.6 Transfer of information (data)
   - 6.7 Express postal service
7. Storage of radioactive and ionized radiation waste
8. Transportation of hazardous cargo by transport facilities
9. Liquid and natural gas plants:
   - 9.1 Installation
   - 9.2 Exploitation
10. Mining-extractive works, mining and well excavation works
11. Installation and repair of elevators
12. Exploitation of side-shows
13. Installation and repair of lifting facilities, metallurgical equipment, boilers, vessels, operating under pressure
14. Diagnostics and other maintenance inspection of equipment and technical facilities exploited in the potentially hazardous facilities

**15.** Fire protection activity:

- **15.1** Fire protection on the basis of an agreement with entities and settlements
- **15.2** Production and purchase of fire extinguishing equipment, conducting of tests
- **15.3** Installation of fire protection systems and facilities, technical service and repair
- **15.4** Repair and servicing of fire protection equipment, primary firefighting equipment, quality of restoration of firefighting equipment

**16.** Engineering-survey works concerning buildings and structures which require construction permit

**17.** Construction-assembly works concerning buildings and structures which require construction permit

**18.** Designing of buildings and structures which require construction license subject to applicability of information execution

**19.** Private veterinary service activity

**20.** Veterinary medications:

- **20.1** Production
- **20.2** Sale

**21.** Plant protection means and agrochemical substances:

- **21.1** production
- **21.2** import

**22.** Establishment of private hunting plants

**23.** Procurement of wild raw plant drugs for production

**24.** Preparation of different types of stamps and seals

## List of activities related to cases of national security which require a license.

**1.** Private security activity

**2.** Activity in the sphere of designing and producing information protection means

**3.** Establishment of biometric technologies and provision of services to such technologies

**4.** Formation of personal data information resources and establishment of information systems and provision of services for such systems and resources

- **4.1** Cellular (mobile) communication services (with reference to the name of technological standard)

**5.** Television and radio broadcasting activity:

- **5.1** Television broadcasting to the entire Republic
- **5.2** Television broadcasting to Baku city
- **5.3** Regional television broadcasting
- **5.4** Radio broadcasting to the entire Republic
- **5.5** Radio broadcasting to Baku city
- **5.6** Regional radio broadcasting
- **5.7** Additional information broadcasting
- **5.8** Cable network broadcasting with up to 5,000 subscribers
- **5.9** Cable network broadcasting with more than 5,000 subscribers
- **5.10** Satellite broadcasting
- **5.11** Activity on ensuring the satellite broadcasting of foreign radio and television channels by means of encoding devices

The Law "On the State Duty," dated 4 December 2001, specifies the appropriate state duty for each category of activity granted by relevant license or permit.

## List of permits to be issued for entrepreneurial activity

According to the Law on Licenses and Permits, a "permit" is an official document (permit, approval, certification, certificate, accreditation) granted by the authority responsible for issuing the permit for the purpose of the fulfillment of the relevant entrepreneurial activities or certain actions in connection with the implementation of entrepreneurial activities. The list of permits includes 86 types of commercial activities.

Azerbaijani legislation in the field of licensing had evolved dramatically since independence. Presidential Decree No 509, dated 26 October 2011, emphasized the notion of the purposes of licensing, which served as a means of liberalizing the licensing legislation. These purposes can be divided into two categories: those aimed at the protection of state interests and those aimed at the protection of the personal rights and interests of individuals and legal entities.

Presidential Decree No. 509 also ordered the establishment of a web portal that would collect data provided by the central and local executive bodies with respect to the name of the permit, the legal basis, the list of required documents, the issuing body, etc. The web portal www.icazeler.gov.az was created and officially launched on 15 March 2012.

## How Dentons can help

Dentons has advised many companies and financial institutions on the legal requirements for licensed activities and has assisted in the procurement and renewal of the relevant licenses and permits necessary for our clients' activities in many sectors of the economy.

Chapter 18

# Intellectual property

## Introduction

Along with most of the newly independent states, the infringement of intellectual property rights is not uncommon in Azerbaijan. Nevertheless, Azerbaijan has acceded to a number of conventions designed to protect intellectual property rights, and the successful enforcement of rights is often possible.

## Legislation

The basic laws regulating intellectual property in Azerbaijan are:

- On Copyright and Related Rights, 1996
- On Patents, 1997
- On Trademarks and Geographical Indicators, 1998
- On the Legal Protection of the Layout of Integrated Circuits, 2002
- On Protection of Expressions of Folklore, 2003
- On the Legal Protection of Compilations, 2004
- On Ensuring Intellectual Property Rights and Combatting Piracy, 2012

Azerbaijan has ratified a number of important international conventions in this area, including:

- The Berne Convention for the Protection of Literary and Artistic Works, 1886.
- The Paris Convention for the Protection of Industrial Property, 1883 (the Paris Convention, which, inter alia, provides priority for a local registration).
- The Madrid Agreement Concerning the International Registration of Marks, 1892 (which essentially allows an international registration to extend to all countries that are parties to the Agreement).
- The Protocol to the Madrid Agreement Concerning the International Registration of Marks, 1989 (which contains basically the same provisions as the Madrid Agreement itself, but with some important differences, e.g., under the Protocol one can ask for international registration based on only the application of a trademark, rather than the registration).
- The Patent Cooperation Treaty, 1970 (which makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing a single "international" patent application.).
- The Eurasian Patent Convention, 1995 (which allows the filing of a single patent application in the Russian language with an automatic extension to member states.).
- A number of classification-related treaties – the Locarno Agreement Establishing an International Classification for Industrial Designs, 1968; the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957; the Strasbourg Convention on the International Classification of Patents, 1971; and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, 1977.

Azerbaijan has the status of observer in respect of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights signed in Marrakech on 15 April 1994, which establishes minimum standards for the protection of various objects of intellectual property rights. Azerbaijan signed five protocols on the completion of bilateral negotiations within the WTO accession process.

## Registration of intellectual property rights

Before independence in 1991, there was a centralized system of registration of intellectual property rights based in Moscow. Subsequently, however, Azerbaijan established its own registration center. The IP Agency of the Republic of Azerbaijan is responsible for registering intellectual property rights.

Disputes related to intellectual property rights are considered by the Appeal Council of the IP Agency. Decisions of the Appeal Council can be challenged in Azerbaijani courts.

## Enforcement mechanisms

The Law "On Ensuring Intellectual Property Rights and Combatting Piracy" (2012) is designed to complement existing laws with a mandate to achieve better protection objectives. This controversial piece of legislation spurred debate over its lack of clarity. Initially intended for copyright protection, its scope was extended shortly before adoption. Though the law was expected to offer more effective measures of legal protection, it has introduced a number of far-reaching judicial and other mechanisms for addressing the infringement of intellectual property rights.

For instance, it elaborated on the temporary judicial measures that are available. The law makes it possible to require – through a court action – the person who allowed an infringement of intellectual property rights to provide information on the directly or indirectly infringing third party and that the respondent provide information on the distribution channels for the infringing goods. It also makes possible a judicial award of damages from the person that allowed the infringement, even where such person was not aware of the unlawfulness of such actions with regard to the use of the intellectual property object, or where there were insufficient grounds for such person to know. The law has also introduced a number of non-judicial protection mechanisms, such as the use of unique digital codes to enable identification and the use of ISBN, ISMN, ISSN, ISAN and ISRC to be assigned to objects of copyright and related rights.

## Registration of trademarks – some pitfalls

A major problem with the registration of trademarks is the absence of a complete and up-to-date public trademark search engine, which makes the efficient search of trademarks challenging. This sometimes results in multiple applications for the same or a similar trademark in the name of different trademark claimants, with the natural consequences of rejection of the application, leading to the waste of resources for the application process. It appears that, as searches have to be performed manually, the relevant state authority has temporarily halted official searches of trademarks. Searches are still often performed on an unofficial basis.

State duties for certain actions, such as filing an opposition with regard to trademarks and geographical indicators, trademark renewal, and other actions, are regulated by the Law "On State Duties" (2001). The respective fees for the filing of an application for trademark registration are determined by the relevant state authority.

As a general rule, foreign legal entities must file a trademark application through a recognized patent attorney. However, the registration of a mark with the relevant state authority does not necessarily mean that the mark will be protected during the validity period. There are a number of circumstances where a registration may be cancelled or annulled. One such instance is the non-use of the mark in Azerbaijan for five consecutive years. Where there is a license agreement for the use of a mark by a person in Azerbaijan, the agreement must be registered with the relevant state authority. Otherwise, if a registered mark has not been used for five years by the owner or a registered licensee, the registration of the mark in Azerbaijan can be cancelled.

## Well-known marks

By reference to Article 6bis of the Paris Convention, protection is accorded to marks which have been recognized as well-known by the competent authority of the country of registration or use. Azerbaijani recognition as a well-known mark will prevent the use of the mark in respect of any types of goods and services where such use causes damage to the holder. When recognizing a mark as well-known, the relevant state authority will take into account a number of factors. These include, for example, the extent to which the goods and services are known in Azerbaijan, in connection with which the trademark is used, the distribution channels of such goods/services, the distinctiveness of the trademark, including those obtained through use, the territory within which trademark is used, the length and scope of use, etc.[33] To date there appear to be no marks that have been formally recognized as well-known.

33. Law on Trademarks and Geographical Indicators 1998, Article 7

## Known marks

The concept of use-based protection is slowly expanding. Successive legislative changes have expanded the grounds based on which a trademark application can be refused, by introducing the notion of marks that have previously acquired distinctiveness among consumers and manufacturers through use (known marks).

## Parallel imports

Though the Law on Trademarks and Geographical Indicators provides for the national exhaustion of trademark holders' exclusive rights, the theoretical and practical debate on the issue of parallel imports remains far from settled. However, as the prevention of parallel imports becomes important for businesses – and with gradual improvements in enforcement legislation – the issue may soon become clearer.

## Customs register

Azerbaijani law allows for the possibility to record an object of intellectual property, such as a registered trademark right, with a register maintained by the customs authorities.

## Legal protection of registered marks

The following measures for legal protection are available to owners of registered marks:

- Applying to the Ministry of the Economy, which is charged with enforcing legislation on the protection of trademark rights in the context of unfair competition, including the unauthorized use of trademarks.
- Obtaining an injunction and claiming infringement: termination of the use of an infringing trademark; compensation for damage caused by the illegal use of a mark or compensation for damage caused by counterfeit goods (from AZN 1,000 to AZN 50,000); confiscation or destruction of the goods infringing a trademark (as well as materials and equipment used in the production of counterfeit goods).
- Requesting the arrest of goods imported into Azerbaijan bearing an infringing mark (except for transit goods and goods acquired abroad from sale by owner or upon the owner's consent). These goods can be impounded for 10 business days (with the possibility of extension) based on a court order.
- Applying to the customs authorities, upon reasonable grounds, to seize goods bearing a mark infringing the owner's or the licensee's rights and obtaining information about the sender and quantity of goods.
- Recording registered trademarks with the Customs Committee Register of Intellectual Property for the purpose of preventing the importation of illegal goods.

## Legal protection of copyrights

When considering the infringement of copyrights and related rights, along with the general means of defending a right, the court may also apply one of the following: (a) withhold the income obtained by the infringer as a result of the infringement, in lieu of compensation for damages, (b) decide on compensation in the amount from AZN 110 to AZN 55,000, in lieu of the payment of damages or the withholding of income.

## How Dentons can help

Dentons is a leader in Azerbaijan in helping companies protect their intellectual property rights. We have assisted companies in all aspects, including:

- Enforcement – Dentons has successfully assisted companies in persuading infringers to cease their infringing acts both before and after application to government agencies.
- Defending trademarks in the courts and before the state authorities – Dentons has successfully prosecuted cases against infringers.
- Advising on, and giving legal opinions on, whether a particular slogan or name will contravene the law or the intellectual property rights of others.
- Advising on measures to protect against parallel imports.
- Organizing official raids by the state authorities on markets trading in suspected counterfeit goods.

Chapter 19

# Language: The use of Azerbaijani

## Introduction

Since independence, the use of the Azerbaijani language has become common. Inevitably, this has given rise to issues concerning the use of foreign languages (in particular, Russian) and the Cyrillic alphabet. Laws have been in place from an early date regarding the state language, but since the late 1990s pressure has been growing to enforce the universal use of Azerbaijani written in the Latin script. On 30 September 2002, the government adopted a law which determined the legal status of Azerbaijani language as the *state language* in Azerbaijan. The Law provides for the establishment of mandatory state language norms with which legal entities, individuals and officials must comply[34]. Such norms are approved by the Cabinet of Ministers (in coordination with the State Language Commission of Azerbaijan) and are updated at least once every five years. This chapter examines some of the issues involved.

## State language

The Constitution states that the state language of Azerbaijan is "Azerbaijani."[35]

It appears that, in certain situations, the use of the Azerbaijani is obligatory. These include the following:

- Court and notary proceedings.[36]
- Replies by state authorities to proposals, applications and complaints of Azerbaijani citizens.[37]
- Clerical work at enterprises, institutions and organizations.
- Letterhead, seals, stamps and nameplates of enterprises, institutions, organizations, etc.
- Accounting ledgers.
- Labels and instructions for use on all goods sold on the domestic market.

In registration proceedings, the State Tax Service under the Ministry of the Economy is now regularly requiring corporate names, regardless of the language of expression, to be transliterated into Azerbaijani.

## Penalty for resisting the use of Azerbaijani

An administrative penalty in the amount of AZN 1,000–1,500 for individuals, AZN 2,500–4000 for officials and AZN 12,000–16,000 for legal entities may be imposed for the following:[38]

- Propaganda against the use of Azerbaijani.
- Resisting the use and development of Azerbaijani.
- Attempts to limit the sphere of use of Azerbaijani.
- Obstructing the use of the Latin alphabet for Azerbaijani.

Failure to provide information to consumers (which may include the absence of a translation into Azerbaijani) may result in a penalty of AZN 200.[39]

## Use of other languages

In accordance with the Constitution, Azerbaijan provides for the free use and development of the other languages spoken by the people of Azerbaijan. The Constitution also guarantees the equality of rights and liberties of each person irrespective of language and prohibits discrimination between people based on language. Similar provisions are contained in other legislative acts.

34. Law on the State Language, Article 13.1
35. Article 21, the Constitution of the Republic of Azerbaijan (the "Constitution") adopted by Constitutional Referendum on 12 November 1995
36. Article 11, the Civil Procedure Code adopted by the Law "On the Adoption, Entry into Force of the Civil Procedural Code of the Republic of Azerbaijan and Legal Regulation Regarding This Matter" dated 28 December 1999, and Article 13 of the Law "On the Notary" dated 26 November 1999
37. Article 7.5, the Law "On the Appeals of Citizens" dated 20 September 2015
38. Code of Administrative Offenses, Article 533
39. Code of Administrative Offenses, Article 453

The use of other languages, in addition to the state language of Azerbaijan, is allowed, for example, in the following cases:[40]

- Service enterprises (trade, healthcare, transportation, consumer services, intercity communication, etc.) that provide services to foreigners may use Azerbaijani and a foreign language.
- Written announcements, information, advertisements and other visual information must be in Azerbaijani and, where necessary, may also be accompanied by other appropriate international languages. However, the foreign language should follow the Azerbaijani text and should not occupy a larger area.
- Labels and other inscriptions on goods produced in Azerbaijan, as well as exported, must be in Azerbaijani, along with appropriate foreign languages.
- Labels, names of goods imported into Azerbaijan and instructions applicable to them, along with foreign languages must be accompanied by translation into Azerbaijani.

Despite the fact that provisions of the Law "On Public Television and Radio Broadcasting," dated 28 September 2004 have required for some time that all media outlets broadcast their programs and films in the state language, universal compliance with this requirement has occurred only since 1 January 2008.

Furthermore, the government introduced a new law "On the Media" dated 30 December 2021, which defines the requirements for information published and/or disseminated in the media. These requirements, among others, make it obligatory to use the state language and comply with the state language norms in the media.

A Presidential Order of 9 April 2013 approved a State Program on the Use of the Azerbaijani Language in Accordance with the Needs of the Times and the Development of Linguistics in the Context of Globalization. Some of the measures of the state program include the improvement of current laws regulating the use and application of the state language in educational and scientific institutions.

## How Dentons can help

Dentons has advised several major multinational corporations in respect of advertising, labeling, accounting and record-keeping with regard to the proper use of Azerbaijani.

40. Law on the State Language, Article 7

Chapter 20

# The legislative system

## Introduction

To be legally enforceable, legislation in Azerbaijan must be adopted in accordance with certain procedures and then published.[41] Legal acts can be adopted in the form of normative legal acts, non-normative legal acts or acts of a normative nature.[42]

Normative legal acts are official written documents with these characteristics:

- They were adopted on issues the regulation of which is within the competence of an authorized state body, as provided by the Constitution of the Republic of Azerbaijan, laws and decrees or acts passed by referendum.
- They contain a compulsory code of conduct.
- They are for general applicability and multiple use.[43]

Normative legal acts include *local normative legal acts*, the force of which is limited to one or more specific state bodies, and *technical normative legal acts*, which are approved in the manner established by the legislation of the Republic of Azerbaijan, such as technical bylaws, technical codes containing established practice, aviation rules, sanitary norms, fire safety rules, norms for the safe transportation of dangerous shipments, etc.[44]

There is a hierarchy of normative legal acts, which is as follows:

1. The Constitution.
2. Acts passed by referendum.
3. Laws.
4. Decrees of the President.
5. Resolutions of the Cabinet of Ministers.
6. Normative acts of central executive authorities.

In the event of a conflict between different types of normative legal acts, acts of higher stature prevail. A normative legal act adopted by a state body concerning a public relationship on which this relevant body has the *specific* authority to regulate has superior legal force over normative legal acts adopted by another state body of the same level.[45]

In the event of conflicts between the provisions of the Civil Code and the provisions of other codes and laws that contain civil law provisions, the provisions of the Civil Code prevail.[46] In relation to all other spheres of law, in the event that two legal acts of

41. Amendments to Article 149 of the Constitution of the Republic of Azerbaijan adopted by Constitutional Referendum, dated 18 March 2009
42. Article 1.0.4, Constitutional Law on Normative Legal Acts (№ 21-IVKQ), dated 21 December 2010 (the "Constitutional Law on Normative Legal Acts"), with legal force from 17 February 2011
43. Article 1.0.1, Constitutional Law on Normative Legal Acts
44. Articles 1.0.21 and 1.0.22, Constitutional Law on Normative Legal Acts
45. Article 10.2, Constitutional Law on Normative Legal Acts
46. Article 2.5, Constitutional Law on Normative Legal Acts

equal force contain conflicting provisions, then the *specific legal act* applies to the particular relations, provided that the relations are in the same field as the legal acts applied.[47] If there is a conflict between general and specific norms set out within the same normative legal act, the specific norms apply.[48] A new normative legal act has a higher legal force over a normative legal act adopted previously by the same state authority regarding the same issue.[49]

Legal acts that are adopted for the implementation of specific (one-time) organizational, supervisory or directive matters or considered for other one-time implementation are considered non-normative legal acts. They include the following:[50]

- Decisions of the Milli Majlis of the Republic of Azerbaijan.
- Orders of the President of the Republic of Azerbaijan.
- Orders of the Cabinet of Ministers of the Republic of Azerbaijan.
- Acts of bodies implementing civil registration.
- Other acts that fall under the definition of non-normative legal acts.

In addition, there are acts of a normative nature, which are also enforceable. These are decisions of the Constitutional Court; decisions, regulations and explanations of the Central Election Commission; decisions of financial market regulator;[51] decisions of local executive authorities and municipalities;

decisions of the Audiovisual Council of the Republic of Azerbaijan, and decisions of the Judicial Legal Council. Acts of a normative nature, with the exception of decisions of the Constitutional Court, must not contradict normative legal acts.

The Ministry of Justice is the state registration body entrusted with entering all normative legal acts, acts of normative character, decisions of the Milli Majlis, Orders of the President and the Cabinet of Ministers, as well as acts of the financial market regulator and municipalities, into the State Registry of Legal Acts of the Republic of Azerbaijan.[52] All normative legal acts must be officially published in the state language. The official publication of normative legal acts means bringing them to the attention of the general public by means of publishing their texts in official periodicals and by reporting them on public television and radio channels; however, the latter is not a substitute for their publication in official periodicals.[53]

47. Article 10.3, Constitutional Law on Normative Legal Acts
48. Article 10.4, Constitutional Law on Normative Legal Acts
49. Article 10.5. Constitutional Law on Normative Legal Acts
50. Article 3, Constitutional Law on Normative Legal Acts
51. Amendment to the Law on Normative Legal Acts, dated 30 September 2016 (effective since 20 October 2016)
52. Presidential Decree No. 463, dated 1 July 2011 on "Approval of the Rules on the Entry of Legal Acts into the State Registry of Legal Acts of the Republic of Azerbaijan.
53. Article 82.2, Constitutional Law on Normative Legal Acts

If a normative legal act is published in several official sources at various times, the date of the official publication of the legal act and its entry into force is determined according to the date of its first publication.[54] Normative legal acts must be published in a manner which indicates certain compulsory details: the type of act, the date and place of its adoption, its number and title and the person authorized to sign it.[55] Laws and decrees must be officially published within 72 hours of the moment of their signing by the President. Similarly, resolutions of the Cabinet of Ministers must be published within 72 hours from their adoption. Other normative legal acts, after being entered into the State Registry of Legal Acts, are published as a collection every three months.[56] In accordance with Article 149 of the Constitution, no one may be forced to abide by a regulation that was not published or held liable for failing to abide by such unpublished regulation.

Although the Constitutional Law on Normative Legal Acts is silent on which sources are to be considered as official periodicals, there is a Presidential Decree No. 384, dated 16 February 2011, on the "Application of the Constitutional Law on 'Normative Legal Acts'," which provides a list of periodicals where normative legal acts must be officially published as follows:

- The Constitution, Acts passed by Referendum, Constitutional Laws, as well as Presidential Decrees and Orders related to their application – in newspapers *Azerbaijan* and *Khalg*
- Laws and Presidential Decrees and Orders related to their application – in the newspaper *Azerbaijan*
- Other Presidential Decrees and Orders not considered above, as well as Resolutions of the Cabinet of Ministers – in the newspaper *Khalg*.

However, there is also a separate Resolution of the Cabinet of Ministers, No. 80, dated 11 April 2012, on "Approval of the Rule on the Official Publication of Acts of the Cabinet of Ministers," which provides slightly different periodicals where the acts of the Cabinet of Ministers must be officially published. They include the newspaper *Azerbaijan*, as well as the Collection of Legislation of the Republic of Azerbaijan. In addition, after the acts of the Cabinet of Ministers are officially published, they must also be published in the electronic version of the State Registry of Legal Acts available at http://www.huquqiaktlar.gov.az/.

Other legal acts are published as follows:

- Decisions of the Milli Majlis – in the newspaper *Azerbaijan* and the Bulletin of the Milli Majlis
- Normative legal acts of central executive authorities, acts of a normative nature of local executive authorities, the Central Bank of Azerbaijan and the National Television and Radio Council – in the Bulletin of Normative Acts of the Republic of Azerbaijan
- Acts of a normative nature of municipalities – in the Bulletin of Acts of Local Municipalities
- Decisions of the Constitutional Court – in the newspaper *Azerbaijan* and the Bulletin of the Constitutional Court
- Acts of the Central Election Commission – in the newspaper *Azerbaijan*

The date on which legislation comes into force depends upon the nature of the act. The following rules apply:

- Laws, presidential decrees and resolutions of the Cabinet of Ministers – from the date of publication, unless a later date is specified in such acts.

54. Article 82.6, Constitutional Law on Normative Legal Acts
55. Article 82.9, Constitutional Law on Normative Legal Acts
56. Articles 81 and 83, Constitutional Law on Normative Legal Acts

- Other normative legal acts – from the date of publication in electronic form in the State Registry of Legal Acts, unless a later date is specified in such acts.[57]

If there is not a different period stipulated in an intergovernmental agreement to which the Republic of Azerbaijan is a party, a normative legal act regulating foreign trade activity must state in its implementing act that it will enter into legal force at least 30 days from the date of its publication.[58]

In the event of uncertainties and differences, as well as obvious contradictions, in the practical application of a normative legal act, the legislative body which adopted such act, or the Constitutional Court, is to provide an official interpretation thereof. The law, however, is silent as to which body may officially interpret legal acts that are not normative legal acts (e.g., rules of the financial market regulator, etc.)

The legal regulation specified in the Constitutional Law on Normative Legal Acts is applied in the territory of the Republic of Azerbaijan. However, the Alat Free Economic Zone might present an exception. Article 5.4 of the Constitutional Law on Normative Legal Acts provides for the possibility of legal regulation different from that described therein if the Law on the Alat Free Economic Zone, dated 18 May 2018, so prescribes.

## How Dentons can help

Dentons can, and has, advised companies and provided legal opinions on the legal enforceability of provisions of Azerbaijani law and other legal acts, helping our clients navigate the maze of complex, sometimes contradictory provisions comprising the current state of the legislation of Azerbaijan.

57. Article 85, Constitutional Law on Normative Legal Acts
58. Article 85, Constitutional Law on Normative Legal Acts

Chapter 21

# Dispute resolution – the courts, arbitration and mediation

## Introduction

Few people enjoy having to resort to the courts to enforce their rights. In addition to the usual problems associated with this process (legal costs, time, difficulties in enforcement, etc.), the judiciary and the legal system in general have a reputation for variable standards, leading to unpredictable results. However, in some cases initiating legal proceedings to defend one's rights is unavoidable or important for various reasons, for instance, to avoid setting precedents (e.g., in employee dismissal cases) or damage to reputation (e.g., charges of causing environmental damage) or to recover debts.

It also should be noted that, during the past several years, certain reforms were introduced for the modernization of the judicial system. New courts have been established, including regional appellate courts. The method for selecting judges has been revised, through the introduction of requiring multi-phase exams for new judges and long-term training courses. Moreover, in accordance with a Presidential Decree dated 3 April 2019 certain actions have been taken in order to increase the number of judges [59].

Under the auspices of a World Bank project for the modernization of the judicial infrastructure and the use of up-to-date technologies by the courts, the work and structure of administrative body of courts also has improved, with the construction and renovation of court facilities.

In 2011, as part of a judicial reform, the Appeal Court of the Republic of Azerbaijan located in Baku was abolished and five appellate courts were established. They are located in Baku, Ganja, Sumgait, Shirvan and Sheki. Now the appellate courts have the following four Court Boards – the Civil Board, the Criminal Board, the Commercial Board and the Administrative Board, which operate further to territorial jurisdiction. Judicial reform has also entailed the decentralization of the Serious Crimes Court of the Republic of Azerbaijan by establishing regional Serious Crimes Courts in Baku, Ganja, Sheki, Lankaran and the Nakhchivan Autonomous Republic. This development has released judges from the district/city courts from their review of multiple administrative cases and has led to a further reduction in the time required to resolve a case.

Furthermore, in 2019 (effective from 1 January 2020), as a new phase of a judicial reform, seven Administrative-Economic Courts (constituted in 2011) were abolished and instead, six Commercial Courts and six Administrative Courts were established. They are located in Baku, Ganja, Sumgait, Shirvan, Sheki and the Nakhchivan Autonomous Republic.

A crucial reform in the judicial system started following the Order of the President of the Republic of Azerbaijan "On the Establishment of an 'Electronic Court' Information System in Azerbaijan," dated 13 February 2014, which was aimed at ensuring transparency in the justice system, increasing the effectiveness of the protection of human rights and freedoms and speeding up the process for the application of modern information technologies. Within the framework of the new Electronic Court Information System, it is possible to submit applications, complaints and other documents electronically (in commercial disputes statements of claim may be submitted only electronically via the Electronic Court Information System[60]); to lead proceedings in civil, commercial, administrative and criminal cases and to carry out exchanges of documents electronically; to receive notifications on court proceedings and relevant procedural deadlines through email, SMS and other electronic means; and to follow up on court proceedings, decisions issued and their enforcement and complaints or protests of the parties via a "private cabinet," essentially a restricted online web space. In this regard relevant amendments to the Civil Procedure Code were made obliging the submission of documents (statements of claim, applications, complaints and other documents), as well as the receipt of court summonses in cases related to commercial disputes only electronically via the Electronic Court Information System.[61]

59. The Decree of the President of the Republic of Azerbaijan "On Intensification of the Reforms in the Judicial-Legal System," dated 3 April 2019
60. The Law "On Amendments to the Civil Procedure Code of the Republic of Azerbaijan," dated 28 December 2018 and the Law "On Amendments to the Civil Procedure Code of the Republic of Azerbaijan" dated 9 July 2019
61. The Law "On Amendments to the Civil Procedure Code of the Republic of Azerbaijan" dated 28 December 2018 and the Law "On Amendments to the Civil Procedure Code of the Republic of Azerbaijan" dated 9 July 2019

Additionally, further to these amendments, court hearings on commercial disputes are now subject to continuous video and audio recording.[62]

During the past several years, various changes were made to the Law "On Courts and Judges" and the Law "On the Judicial Legal Council," which included an increase in the powers of the Judicial Legal Council, certain incentives for judges in recognition of efficiency in promoting justice (e.g., gifts, honorary diplomas or honorary badges)[63], some measures (professional as well as financial and social) for improving safeguards for judges. (For example, now the law prohibits judges' salaries from being decreased during their tenure[64]. In addition, certain age limits were established for judges of the Supreme Court (68 years) and other courts (66 years)[65]).

The recently implemented and expected judicial and legal reforms, as well as reforms implemented in the Bar Association of the Republic of Azerbaijan (an increase of the number of advocates, ban on non-advocates representing clients in the courts, etc.)[66] could improve the reputation of the courts, the transparency of court hearings, the effectiveness of justice and the access of physical persons and legal entities to qualified legal aid and to the courts for the protection of their rights, freedoms and interests.

## The Courts

The court system consists of the following:

**First instance courts:**

- District (City) Courts;
- Serious Crimes Courts;
- Serious Crimes Court of the Nakhchivan Autonomous Republic;
- Military Courts;
- Administrative Courts;
- Commercial Courts.

**Appellate instance courts:**

- Courts of Appeal;
- Supreme Court of the Nakhchivan Autonomous Republic.

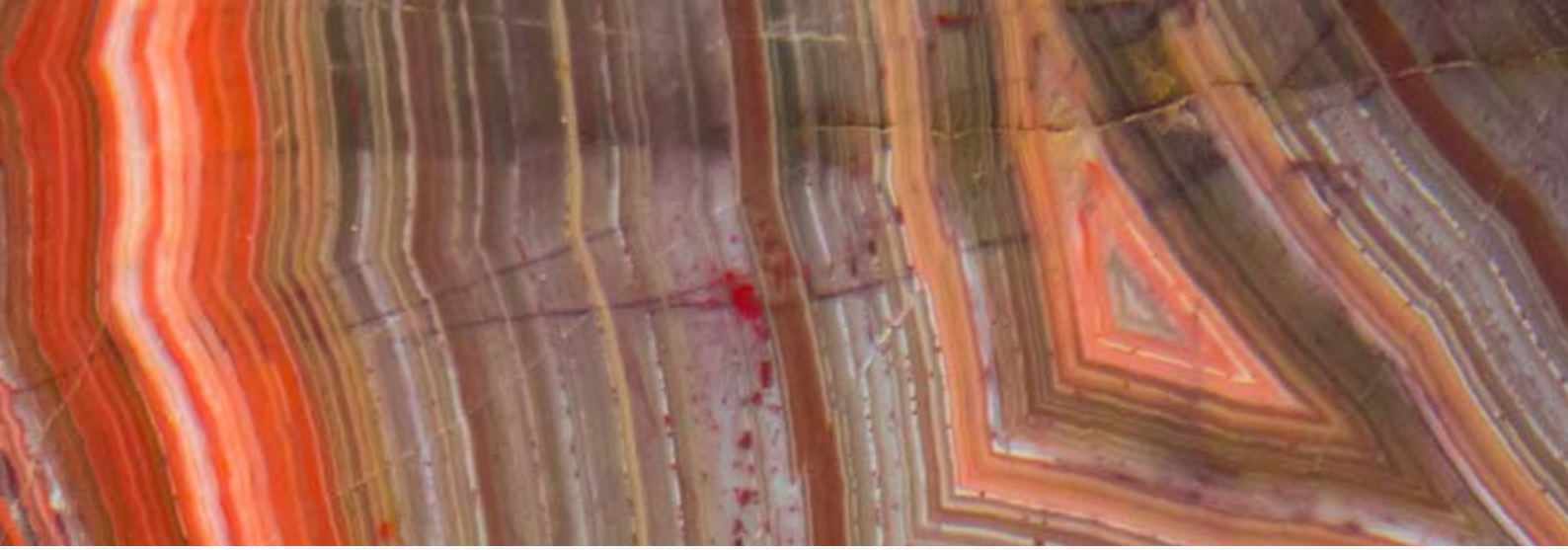
**Cassational instance court:**

- Supreme Court of the Republic of Azerbaijan.

**Proceedings on additional cassational review and newly revealed circumstances:**

- The Plenary Board of the Supreme Court of the Republic of Azerbaijan.

62. The Law "On Amendments to the Civil Procedure Code of the Republic of Azerbaijan," dated 30 September 2016 and the Law "On Amendments to the Civil Procedure Code of the Republic of Azerbaijan" dated 9 July 2019
63. Article 110, Law "On Courts and Judges", dated 10 June 1997
64. Article 106, Law "On Courts and Judges", dated 10 June 1997
65. Article 96, Law "On Courts and Judges", dated 10 June 1997
66. The Law "On Amendments to the Civil Procedure Code of the Republic of Azerbaijan," dated 31 October 2017



## The Constitutional Court

The Constitutional Court is the highest judicial body in the country, the basic objectives of which are ensuring the supremacy of the Constitution of the Republic of Azerbaijan and the protection of the individual's fundamental rights and freedoms.[67]

The Constitutional Court is an independent state body, and it does not depend in its organizational, financial or any other form of activity on any legislative, executive and other judicial bodies, local self-government bodies or on legal entities and physical persons.[68]

Decisions of the Constitutional Court are final and cannot be cancelled, changed or officially interpreted by any person or official.[69] It may consider the following matters, among others:[70]

- Contradictions between the laws of Azerbaijan, decrees and instructions of the President, resolutions of the Milli Majlis, resolutions and instructions of the Cabinet of Ministers, and the normative legal acts of central executive authorities to the Constitution.
- Contradictions between subordinate legislation and legislation of higher authority.
- Contradictions between judgments of the Supreme Court and the Constitution and the laws of Azerbaijan.
- Conradictions between interstate treaties of the Republic of Azerbaijan which have not yet come into force and the Constitution.
- Disputes relating to the respective authorities of the legislature, executive and judiciary.

Any person may apply to the Constitutional Court for the restoration of his/her rights and freedoms breached by acts of the legislature, executive bodies, municipalities or courts.[71]

In recent years, the Constitutional Court has played a tremendous role in establishing the case law of Azerbaijan, with its authority to issue decisions providing official interpretations of the Constitution and the Laws of the Republic of Azerbaijan further to Article 130 (VI) of the Constitution. The Constitutional Court issued more than 40 decisions in 2022 related to the interpretation of certain norms and articles of Laws and Codes, whereby the Constitutional Court creates new rules or norms which are binding throughout the entire territory of the Republic of Azerbaijan and may be considered as an additional source of law.

67. Articles 3 and 4, Law "On the Constitutional Court," dated 23 December 2003 (the "Law on the Constitutional Court")
68. Article 5.1, Law "On the Constitutional Court"
69. Article 63.4, Law "On the Constitutional Court"
70. Article 130, Constitution of the Republic of Azerbaijan, adopted by Constitutional Referendum on 12 November 1995
71. Article 130, Constitution

## Jurisdiction

*The District (City) Courts*, being courts of general jurisdiction, may hear civil and criminal cases, cases on administrative offenses as well as other matters not related to the entrepreneurial activity.

*The Administrative Courts* have jurisdiction to resolve administrative disputes, which include, for example:

- Claims brought by persons disputing the administrative acts of administrative bodies
- Claims related to the imposition of the obligation on the administrative body to issue an administrative act.
- Claims on the imposition of the obligation on the administrative body to take actions not related to the administrative acts.
- Claims on imposition of the obligation on the administrative body to refrain from certain actions.

*The Commercial Courts* have jurisdiction to resolve the disputes related to entrepreneurial activities (commercial disputes).

## Initiating proceedings

In general, an action may be commenced in the appropriate court for the district in which the defendant has his or her registered residential address or, if the defendant is a legal entity, the district in which such legal entity has its registered address.

The court before which proceedings are brought may also be determined by written agreement of the parties.[72] However, certain claims must be brought before specific courts: [73]

- Claims concerning the recognition of ownership of – or the repossession of – a building, structure or land must be brought before the relevant court where the building, structure or land is located.
- Claims of creditors of persons inheriting certain property filed prior to acceptance of the legacy by heirs must be brought in courts located at the place of the location of the inherited property or a main portion of it.
- Claims against common carriers arising out of agreements for the carriage of passengers or freight must be brought before the relevant court for the place of the location of the carrier.

In the courts of first instance, a civil case or a commercial dispute is considered by a single judge. Appeals are considered by a panel of three judges, with one of them acting as the presiding judge. Note, however, that cassational appeals may be considered by a panel of more than three judges.[74]

## Evidence

In practice the submission and consideration by the courts of evidence is, at best, a haphazard affair. In theory, each party must provide evidence to support its claims and objections, and the following may be accepted as evidence in civil proceedings if received in accordance with the law:[75]

- Written and material evidence;
- Expert opinions;
- On-site examinations;
- Audio and video recordings;
- Testimony of witnesses;
- Explanations of persons participating in the case.

72. Article 40, Civil Procedure Code.
73. Article 39, Civil Procedure Code.
74. Article 12, Civil Procedure Code
75. Article 76.2, Civil Procedure Code

## Costs

Court costs include a state duty for various matters, including filing an action with the court. Subject to certain exceptions, State duty is paid when:[76]

- Filing an application;
- Filing an application for joinder of third parties;
- Filing an application to determine legally significant facts;
- Filing an application for a court order;
- Lodging an appeal (to the appellate or cassational courts).

State duty is calculated based on the amount of the claim. In general, state duties vary from AZN 10 to approx. AZN 40 and may only be paid via electronic payment systems.[77] In addition, recent reforms in this area introduced new formula for calculation of the state duties, which resulted in substantial increase in the court fees and duties.

When lodging appeals and cassational complaints, the amount of state duty payable is up to 50% of the state duty established for the application to the court of first instance.[78]

## Enforcement

The enforcement of judgments and other orders is generally carried out by enforcement officers.[79]

As a general rule, in contested matters, the court must issue an execution writ before the enforcement may proceed.

Banks are required to enforce attachment orders issued by courts and other authorities (e.g., tax authorities, social protection fund). A bank has seven days within which to execute an execution order.

76. Article 108, Civil Procedure Code
77. Article 108.3, Civil Procedure Code
78. Article 8, the Law "On State Duty," dated 4 December 2001
79. Further to amendments made on 18 June 2010 to the Law "On Court Supervisors and Court Executors" the term "court supervisor and court executor" was replaced with "enforcement officer," and the name of the Law "On the Execution of Court Decisions" was amended to be the Law "On Enforcement" (the "Law on Enforcement").

Execution may be suspended in certain cases, where the debtor has a valid reason for being absent when the execution is to take place, or where a complaint has been filed in respect of the enforcement officer's actions.[80]

An execution order that cannot be wholly or partly satisfied, because, among other reasons, it was not possible to trace the debtor or his/her assets, must be returned to the court (or other body) that issued it.[81]

A legal successor (for example, a successor of a legal entity following a corporate reorganization) continues to be liable for the debts of the original debtor.[82]

Failure by a debtor to voluntarily execute an execution order in respect of a property claim may give rise to a penalty of 7% of the amount claimed. In respect of non-property claims (e.g., reinstatement at work), the penalty is AZN 11 for physical persons and AZN 55 for legal entities.[83]

## Arbitration

A dispute under the jurisdiction of a court of law may, by written consent of the parties, be referred to an arbitral tribunal.[84] However, the Azerbaijani courts have exclusive jurisdiction in certain matters which cannot, therefore, be arbitrated. These include, for example:[85]

- Actions concerning property rights over immovable property, including the lease or pledge of such property, if the property in question is located in Azerbaijan.
- Actions regarding the recognition of a patent, trademark or other right, if such right is registered, or application for registration has been filed, in Azerbaijan.
- Actions against carriers arising out of contracts for the carriage of goods.

80. Article 18, Law on Enforcement
81. Article 23, Law on Enforcement
82. Article 31, Law on Enforcement
83. Article 78, Law on Enforcement
84. Article 29, Civil Procedure Code
85. Article 444, Civil Procedure Code

In 1999 Azerbaijan acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Azerbaijan also passed a Law "On International Arbitration." Accession to the New York Convention has greatly increased the utility of overseas arbitrations, while the Law "On International Arbitration" provides for international commercial arbitrations with the place of arbitration in the Republic of Azerbaijan.[86] In certain instances it is impractical or inadvisable to arbitrate abroad (for example, for reasons of cost, language or law) and so the prospect of arbitration in the Republic of Azerbaijan would be a welcome alternative to the Azerbaijani courts. However, as no procedural mechanism has been established in Azerbaijan for the enforcement of a local arbitral award, arbitration proceedings inside Azerbaijan are fraught with difficulties.

Furthermore, though both the Law "On International Arbitration" and the New York Convention have been in force in Azerbaijan for several years, foreign arbitration is not necessarily effective, and attempts to enforce foreign arbitral awards have been largely untested.

There are two local arbitration bodies in existence "The Baku International Arbitration Court" under the aegis of the Azerbaijan Chamber of Commerce and Industry and "The International Commercial Arbitration Court of Azerbaijan" (though neither body has yet been tested in a significant way), but both local and foreign arbitrations suffer from their dependence on normal domestic enforcement procedures.

Because of the cost of international arbitrations and associated enforcement, international arbitration involving Azerbaijani parties is generally only recommended where the potential sums involved are great and where both parties have overseas assets that can be attached.

## Mediation

On 29 March 2019, the Milli Majlis passed a Law "On Mediation." According to the new law, mediation may be applied in civil cases, as well as in commercial, family and labor disputes, as well as disputes arising out of administrative law relations.[87] Moreover, from 1 July 2021 civil cases, family and labor disputes are required to be referred to an initial mediation session before the initiation of court proceedings.[88]

A person wishing to become a mediator must:[89]

- Hold a certificate of higher education.
- Be at least 25 years of age.
- Have a minimum three-year work experience.
- Hold a certificate of the mediator's primary training.

In addition to individual mediators, the law provides for the establishment of mediation organizations. One of the main requirements for registration of such organizations is the existence of employment agreements with at least two mediators.

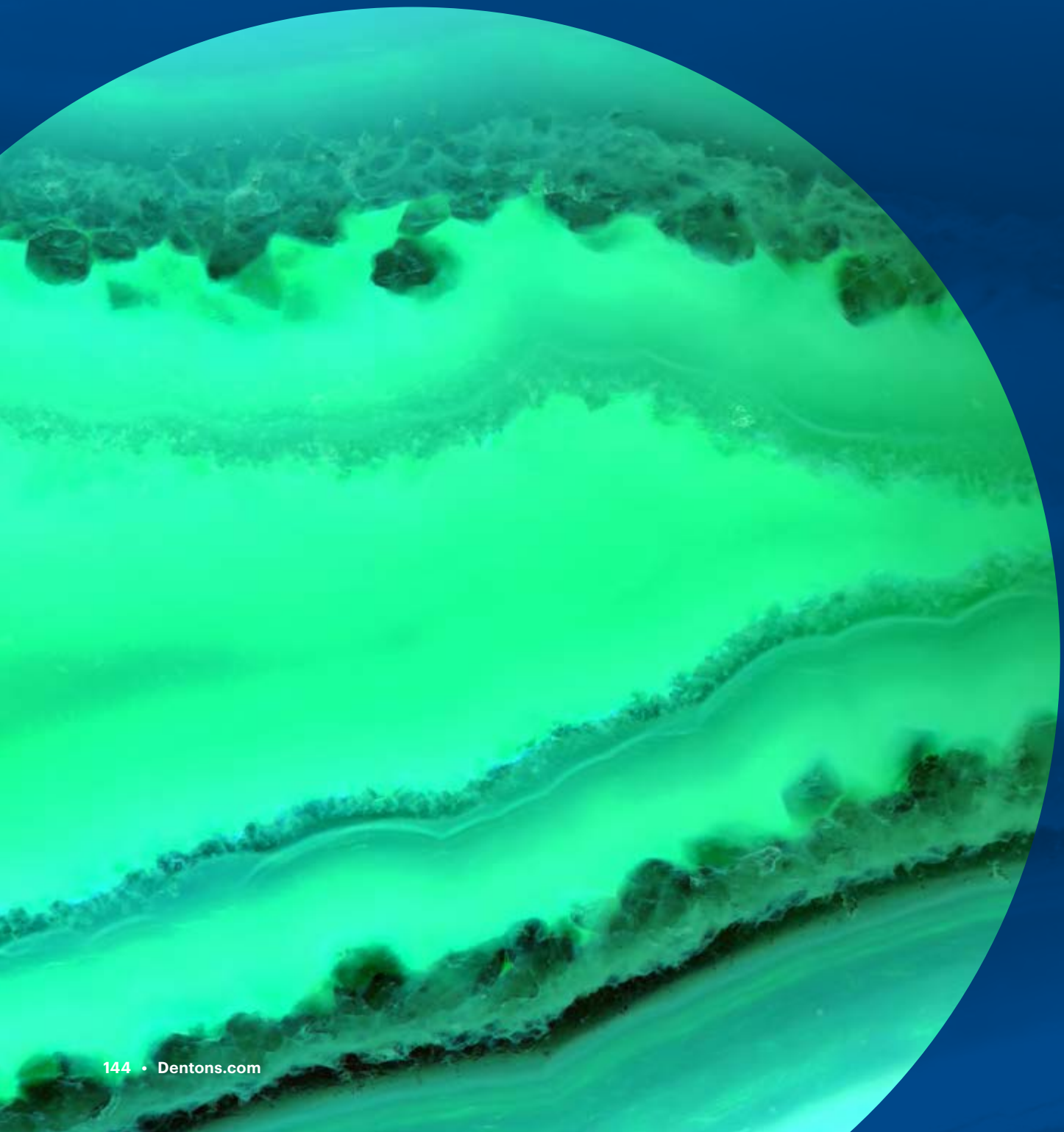
A newly established Mediation Council will be the supervising and regulatory body in the mediation sphere.

## How Dentons can help

Dentons is a recognized leader in Eastern Europe and in countries of the former Soviet Union in the practice of international arbitration, both in representing clients and acting as arbitrators or mediators. Also, as one of the few foreign firms with experience of litigation as well as arbitration in Azerbaijan (including commercial, contract, banking, tax, employment, real property, product liability, debt recovery and intellectual property matters), Dentons can prepare claims or defenses and represent clients in court and arbitration proceedings.

86. Article 1, the Law "On International Arbitration" dated 18 November 1999
87. Article 3.1, Law "On Mediation" dated 29 March 2019 ("Law on Mediation")
88. Articles 3.2 and 39, Law on Mediation
89. Article 10, Law on Mediation

# Contributing authors



**James E. Hogan**
Senior Partner,
Dentons' Baku office

Active in international practice since 1984, James has concentrated exclusively on corporate, commercial and natural resource matters relating to the CIS and Eastern Europe since 1988. He is particularly active in the structuring, negotiation and implementation of petroleum, mining and other natural resource projects in Azerbaijan, Kazakhstan, the Russian Federation, Ukraine and elsewhere in the CIS. His experience has included PSAs, service agreements, concessions, oil-field service and drilling contracts, licensing and pipeline and marine transportation issues, including the sale and transportation of LNG.

His experience also includes advising major international companies on investment strategies, the establishment of joint ventures and cooperation structures, banking and finance, project finance, infrastructure development, privatization, licensing and related tax, currency, customs, environmental, governance and other matters. He also frequently advises financial institutions, development banks and investment funds on investment and secured lending.

James graduated from the University of Michigan (AB with distinction, in Russian and East European Studies, 1979), the Pushkin Institute, Moscow (1980, 1981) and the University of Texas (JD, with honors, 1984). He was admitted to the District of Columbia bar in 1984, qualified to practice in France as a conseil juridique in 1991 and as an avocat with the Paris bar in 1992. He speaks English, French and Russian.

He is a member of the American Bar Association and the International Bar Association, as well as the Board of the International Tax & Investment Center (ITIC). Highly recommended for Azerbaijan by *Chambers Global, Chambers Asia-Pacific, Chambers Energy, The Legal 500, IFLR1000* and *Who's Who Legal – Energy*. James is also recognized by *The Legal 500* as one of the elite leading lawyers for seven consecutive years and included in *The Legal 500* Hall of Fame.

**Ulvia Zeynalova-Bockin**
Partner and Co-Managing Officer,
Dentons' Baku office

Ulvia graduated from Khazar University School of Law, Baku, cum laude, (LLB, 2006) and Georgetown University Law Center, USA (LLM, with a concentration in Securities and Financial Regulation, 2009). She is admitted to the New York Bar as of January 2010 and completed a short-term assignment in the Firm's New York office in October–November 2011. Her practice includes banking law, Islamic finance, real estate finance, mergers and acquisitions as well as corporate law and finance, with special capabilities in securities and financial regulation, including work with the Corporation Finance Division of the US Securities & Exchange Commission in Washington, D.C. and advising clients with business interests in CIS countries while working in the Firm's New York office.

Ulvia has provided legal support to local and international clientele in high-profile matters, including the first IPO to be listed on the Baku Stock Exchange, and advising major investment banks on the enforceability of ISDA Master Agreements, Global Master Repurchase Agreements and Global Master Securities Lending Agreements and participating in the privatization of the largest bank in Azerbaijan. Ulvia also successfully represented local and foreign banks in various derivatives and lending transactions, assisted in shareholding restructuring, conducted legal due diligence, drafted agreements and other transaction documents and assisted with regulatory approvals and other business concerns. She has been recognized as a Next Generation Lawyer by *The Legal 500 EMEA 2019, 2020 and 2021 and as a Leading Individual in the 2022 and 2023* rankings, and as a Recognized Practitioner in Azerbaijan by *Chambers and Partners Asia-Pacific* 2020, 2021 and 2022. She speaks Azerbaijani, Russian, English and Turkish.

**Kamil Valiyev**
Partner and Co-Managing Officer,
Dentons' Baku office

Kamil graduated from Baku State University, (LLB in Law, 2004) and Franklin Pierce School of Law, University of New Hampshire (LLM, in IP, Technology and Commerce Law, 2006). He is admitted to the New York Bar as of January 2016 and is also a practicing advocate, as a member of the Collegium of Advocates of the Republic of Azerbaijan (the Azerbaijan Bar Association).

He has extensive experience advising private and public organizations in local and cross-border M&As, corporate reorganizations and commercial transactions in various sectors, including energy and telecoms/IT. He focuses his practice in the area of energy law, corporate law, intellectual property law, project development and trade compliance. Kamil advises multinational companies on the establishment of joint ventures and strategic alliances with Azerbaijani private and state-owned companies. He also assists foreign and local clients on transactional IP and franchising issues as well as enforcement measures for the protection of intellectual property rights. He speaks Azerbaijan, English, and Russian.

He has been ranked as Leading Individual by *The Legal 500 EMEA* in 2023; as Band 3 Lawyer in General Business Law by *Chambers Asia-Pacific* and *Chambers Global* every year in 2022 and 2023; as the Highly Regarded lawyer in Project Development and M&A by *IFRL1000* 2022.

**Bakhtiyar Mammadov**
Of Counsel,
Dentons' Baku office

Bakhtiyar has wide experience advising international clients on Azerbaijani law issues, with a particular emphasis on the oil and gas sector. He has advised extensively on foreign investments, and the areas of his practice include diverse corporate, contractual, employment and property matters, covering almost all areas of business activity.

He has been particularly active in the negotiation and implementation of petroleum, mining and transportation projects in Azerbaijan. Bakhtiyar's experience has included PSAs, host government agreements, operating agreements, transshipment and transportation issues.

Bakhtiyar graduated from Baku State University (Bachelor's Degree, 1997), and holds a Master's Degree, from Khazar University (1999), and a Master's Degree from Baku State University (2000).

Bakhtiyar is recognized by *Who's Who Legal: Energy* 2020 and has been recommended since 2006. He has also been recommended in Corporate and M&A by *Best Lawyers* in Azerbaijan since 2009. He speaks Azerbaijan, English, and Russian.

**Rena Eminova**
Senior Associate,
Dentons' Baku office

Rena Eminova is Senior Associate in Dentons' Baku office. Her practice includes corporate, commercial, customs and employment law. Rena also has extensive experience in advising clients in anti-trust, competition, contract, and advertisement.

Rena also successfully represented local and foreign companies in various mergers and acquisitions, conducted legal due diligence, drafted agreements and other transaction documents and assisted with regulatory approvals and other business concerns.

**Sabina Orujova**
Associate,
Dentons' Baku office

Sabina graduated from the law faculty of Odlar Yurdu University, 2001. She has experience in corporate, environmental, employment, competition, IP and administrative law. Sabina speaks Azerbaijani, Russian and English.

**Kanan Madatli**
Associate,
Dentons' Baku office

Kanan has experience in corporate and M&A, commercial, contracts and employment law. He also has extensive experience in providing legal support to the clients on banking and finance, antitrust, and customs. Kanan graduated from the law faculty of Baku State University. He is fluent in Azerbaijani and English.

**Aytan Namazova**
Associate,
Dentons' Baku office

Aytan graduated from the law faculty of Baku State University, 2003. She has experience in corporate, employment, administrative and registration law. Aytan specializes in assisting clients with the employment/HR issues, establishment of branches and local subsidiaries, liquidation, the procurement of licenses and consents, registration with various state regulatory and tax authorities, and various other matters. She speaks Azerbaijani, Russian and English. Russian.

**Tofiga Jamalzade**
Paralegal,
Dentons' Baku office

Tofiga has experience in corporate law and banking & finance. She graduated from the law faculty Baku State University in 2022. She is a native speaker of Azerbaijani and fluent in English.

# Global presence

**80+**
countries

**160+**
locations

Locations in purple represent Dentons offices.
Locations in blue represent associate firms, offices, jurisdictions of practice from other Dentons' offices or special alliances as required by law or regulation.
Locations in green represent approved combinations that have not yet been formalized.
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大成 is Dentons' preferred law firm in China.

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Total number of lawyers

**7,490+**
All timekeepers

**12,500+**
Total number of people

**960+**
Chambers-rated lawyers

**100+**
Lexpert-rated lawyers

**80+**
languages spoken

# What the Press Says

**Dentons' team in Baku has a standout reputation in the energy sector; in a recent notable highlight, corporate and energy head James Hogan led advice to Petronas on the $2.25 billion sale of its interest in one of Azerbaijan's largest natural gas fields to Lukoil, BP, and SOCAR. It is also well placed to handle derivatives transactions for international financial institutions, including the restructuring of local debts on behalf of IFIs, as well as advising on Islamic finance. Hogan co-leads the group with banking, finance and capital markets head Ulvia Zeynalova-Bockin, as well as IP and litigation head Kamil Valiyev, who joined from MGB Law Offices in August 2021.**

*— The Legal 500 EMEA, 2023*

**The team members at Dentons are always knowledgeable, competent, and responsive. Their innovative and reliable suggestions have allowed us to overcome legal challenges and unlock new solutions.**

*— The Legal 500 EMEA, 2023*

**Ulvia Zeynalova-Bockin is a very competent, responsive and knowledgeable partner. She is always available to respond to our urgent and difficult queries. She goes beyond our formal engagement and makes sure that we understand and address all legal issues in our relationships with clients, including those related to tax and accounting domains.**

*— The Legal 500 EMEA, 2023*

**The team is working well with a mix of local and international expertise, and is reacting proactively and swiftly giving practical advice. They were key for our enterprise to achieve strategic legal goals in the region.**

*— The Legal 500 EMEA, 2023*

**James Hogan ensured that the actions were coordinated and provided valuable strategic counselling regarding the overall procedure.**

*— The Legal 500 EMEA, 2023*

**Dentons is among a few firms in Azerbaijan that possess necessary cross-border transactional experience. In addition, they are very experienced and knowledgeable when in it comes to local legislation. These two factors combined make their team one of the best in Azerbaijan.**

*— The Legal 500 EMEA, 2023*

**I worked with Kamil Valiyev, Ali Babayev and Rena Eminova. They all are very bright lawyers and are always accessible. During our discussions I was very impressed with their experience and their client-oriented approach.**

*— The Legal 500 EMEA, 2023*

**Dentons Azerbaijan ranked Tier 1 in both Financial and corporate and Project development: Energy in Azerbaijan.**

*— IFLR1000, 2023*

**The firm is a market leader in several financial and corporate areas in Azerbaijan, having acted on some of the most important matters in the country since its independence.**

*— IFLR1000, 2023*

**It has a strong banking team which has pioneered Islamic finance and debt restructuring in Azerbaijan. The team is also very strong in project finance work.**

*— IFLR1000, 2023*

**The firm is recognised in the capital markets space, where it has notably worked on the first Eurobond issue in the country.**

*— IFLR1000, 2023*

**In M&A and corporate work, the firm often works on the most impactful transactions on the market and has a wide sectoral cover.**

*— IFLR1000, 2023*

**The firm's project development team is well recognized for supporting significant undertakings in construction, infrastructure and energy.**

*— IFLR1000, 2023*

**The Dentons team was very good in terms of negotiations considering the multi-jurisdiction of this turnkey project involving colleagues from different countries, managing timely development of the technical appendices together with the network specialists.**

*— IFLR1000, 2023*

**Dentons Azerbaijan are very responsive, knowledgeable, helpful and the lawyers have good command of English in delivering their advice.**

*— IFLR1000, 2023*

**Dentons is a market-leading international law firm with a Baku office that holds a strong reputation for commercial and banking work. The firm leverages support from its global network of lawyers and coordinates mandates with teams spread across Europe and the Asia-Pacific region. The team regularly represents international clients from the banking and oil and gas sectors, and frequently advises on major infrastructure projects and energy developments. M&A, commercial agreements, and project finance are key areas of focus. Clients include the EBRD and Azerbaijan Gas Supply.**

*— Chambers Global & Chambers Asia-Pacific, 2023*

**The Dentons team have very profound understanding of business, which makes their advice practical. I also would like to highlight that the team are always accessible and ready to assist, which is very helpful during intense transactions.**

*— Chambers Global & Chambers Asia-Pacific, 2023*

**Prominent international law firm with a strong reputation for commercial and banking work. Leverages support from its global network of lawyers and coordinates mandates with teams spread across Europe and the Asia-Pacific region. The firm regularly represents international clients from the banking, aviation, and oil and gas sectors. Frequently advises on major infrastructure projects and energy developments. M&A, commercial agreements and project finance are key areas of focus.**

*— Chambers Global & Chambers Asia-Pacific, 2023*

**The firm demonstrated great responsiveness, punctuality and understanding of the client's needs.**

*— Chambers Global & Chambers Asia-Pacific, 2023*

**Interviewees describe Ulvia Zeynalova-Bockin as a 'strong' partner and a 'good specialist' for banking and finance work. She acts for international clients across a range of financing mandates and also handles regulatory work and securities and derivatives transactions.**

*— Chambers Global & Chambers Asia-Pacific, 2023*

## ABOUT DENTONS

Across over 80 countries, Dentons helps you grow, protect, operate and finance your organization by providing uniquely global and deeply local legal solutions. Polycentric, purpose-driven and committed to inclusion, diversity, equity and sustainability, we focus on what matters most to you.

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