

**AZERBAIJAN**

## Azerbaijan legislation guide



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There have been many important legal developments in Azerbaijan since its independence in 1991. These include enactment of a modern Civil Code, establishment of centralised property and mortgage registries, adoption of international financial reporting standards, the streamlining of activities requiring licences and permits, and the introduction of a single window system for company registration, immigration and work permit formalities.

The opening of the Baku-Tbilisi-Ceyhan oil pipeline in 2006, followed by the South Caucasus Pipeline shortly afterwards, enabled Azerbaijan to achieve some of the highest rates of growth in the world in recent years: 2005 (26%), 2006 (35%), 2007 (25%), 2008 (15%) and 2009 (9.3%).

In the Doing Business 2010 report, published by the World Bank and IFC, Azerbaijan maintained an impressive 38th place ranking (out of 183 countries) in an independent evaluation of the ease of doing business in the country. It was reported that particular progress had been made with respect to a centralised credit registry, facilitating access to credit and cross-border trade, as well as simplification of the payment of taxes and significant improvements in the regulation of employment.

While it has not been entirely immune to the consequences of the international financial crisis since late 2008, Azerbaijan continues to attract significant foreign investment in virtually every sector. Major infrastructure, construction and real estate projects continue to go forward without delay, and capital markets activity is set to resume after a lengthy pause.

### Corporate actions

The recent improvements in company registration, together with other initiatives to reduce administrative formalities, have facilitated mergers and acquisitions in Azerbaijan. The first major requirement for completing a merger or acquisition is attending to the internal corporate formalities of the local company to be acquired. By law, the acquisition of a share interest in a limited liability company (LLC), or shares in a closed joint stock company (JSC), is subject to a right of first refusal on the part of any remaining shareholders to acquire the share interest being transferred. It is important that the seller circulate a notice of sale and obtain waivers from all such shareholders in order to avoid subsequent problems. Further conditions concerning the sale of shares may be defined in the charter of the LLC or JSC.

### Administrative formalities

Another common requirement for acquisitions in Azerbaijan is the procurement of the consent of the State Service on Antimonopoly

Policy and the Protection of Consumers Rights under the Ministry of Economic Development. In general, such consent is required prior to the acquisition of more than 20% of the voting shares of any company (or the acquisition of more than 10% of the balance sheet value of the main production and non-material assets, if the acquisition is by the purchase of assets). This is where the aggregate balance sheet value of the assets of the acquirer and the target exceeds 75,000 multiples

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of the minimum monthly salary (AZN85, or US\$106), or the share of the acquirer or the target company in the local market exceeds 35%, or the seller is controlled by the seller. Failure to obtain such consent prior to an acquisition could result in a fine and/or the invalidation of the transaction.

Further requirements apply within certain sectors. For example, the acquisition of specific thresholds of shares in a local bank (10%, 20%, 33%, 50% and more than 50%) requires in each instance the permission of the Central Bank of Azerbaijan. In addition, the acquisition of more than 20% of the shares of a local insurance company requires the consent of the Ministry of Finance.

### Registration

Completion of any acquisition involving the purchase of shares or share interest normally requires the adoption of charter amendments and the registration of the transfer and/or the amendments with the company registrar, the Ministry of Taxes. In the case of a joint stock company, the re-registration of the acquired shares in the name of the new holder is also required. A new policy that was introduced recently by the Ministry of Taxes has been to require evidence of the settlement of any tax obligations of the seller in connection with the transaction before registration of the transfer may take place. Because this procedure effectively shifts the risk of non-payment of taxes from the seller to the purchaser, the purchase and sale documents must now address this issue.

The above information is only a brief outline of some of the principal formalities to be addressed prior to the acquisition of an interest in a local entity in Azerbaijan. Because the laws and practices may change over time and additional requirements may apply to specific transactions, it is important to obtain up to date advice prior to proceeding with any transaction.

## Financial & Corporate

### RECOMMENDED FIRMS

#### Tier 1

Baker & McKenzie

MGB Law Offices

Omni Law Firm

#### Tier 2

Salans

#### Tier 3

BM International

Interjurservice

### Baker & McKenzie

While 2009 remained a quiet year as a result of the financial crisis, this international outfit stays strong in tier one. This is owing to its global network and far-reaching expertise spanning multiple practice areas, particularly in oil and gas, the country's two dominant sectors. Peers observe the firm's consistent growth even during down times, with the team now at 14 fee-earners and three partners. Managing partner Daniel Matthews is described by one client as "experienced, service-oriented, easily accessible and communicative". In addition to oil and gas work, partner Aykhan Asadov focuses on taxation, while senior associate Natik Mamedov concentrates on M&A, real estate and telecommunications. Mamedov is further involved in several project developments for international hotel brands.

Despite a lack of more structured legislation for Islamic transactions, Matthews and Mamedov demonstrated competency in the field by advising the Islamic Corporation for The Development of the Private Sector (ICD) on its equity financing of Park Bulvar Shopping Mall in Baku. The deal used *syariah*-compliant *musharakah* (joint venture) and *murabahah* (fiduciary sale of property) agreements and concerned various Azerbaijani law issues.

Proving its worldwide connections advantageous, the Baku team worked alongside its London and Moscow offices for Rosemount Global Trade Finance Fund on a syndicated trade-related loan facility to the International Bank of Azerbaijan (IBA)-Moscow. The deal marked the IBA-Moscow's return to the credit markets following the Lehman collapse.

In addition, the team featured for Garadagh Cement in its US\$149 million loan from the European Bank for Reconstruction and Development (EBRD) to construct a cement kiln in Baku. This was EBRD's largest non-oil sector financing.

### MGB Law Offices

This local firm churns out a significant deal flow from its strong relationships with a large number of clients. This includes foreign banks and companies as well as financial institutions such as the European Bank for Reconstruction and Development (EBRD) and the International Finance Corporation (IFC).

Demonstrating its international outlook and ambition to rival top competitors, MGB formed a network with Magisters, a Ukrainian law firm that listed the outfit as part of their *best friends* alliance in 2009.

In addition to a strong project finance and oil and gas focus, the team has seen a recent influx of litigation matters arising in the tax, employment and trade sectors. Peers hold high regard for the firm's two directors, Ismail Askerov and Elchin Mammadov.

One client lauds the firm's service as "very prompt and efficient" and additionally mentions litigation associate Anar Janmammadov as an "efficient litigator". Another client says, "They are very available and have the capacity to mobilise a strong team. The firm's advice is good." Describing Askerov, one financial client adds, "He is a good lawyer and a nice person."

One of a handful of cross-border transactions saw Mammadov represent a prominent UK bank on a US\$100 million syndicated credit facility to the International Bank of Azerbaijan (IBA). Additionally, Mammadov acted for a consortium of western banks on a dual-currency term loan facility to the IBA.

### Omni Law Firm

Well-known for its close ties with regulators and government authorities, the firm receives praise by clients and peers for being well-established and globally focused. "Partner Roman Alloyarov is excellent when it comes to prioritising contract matters and adjusting clients' needs to the local legal climate," says one client.

Other notable practitioners from the firm include Jeyhun Bayramov, who brings a depth of knowledge with his experience in the Ministry of Taxes, and Ismail Zargarli, renowned in such areas as labour and real estate.

The team worked for a number of state-owned businesses in the last year and starred frequently in significant cross-border deals. Additionally, the outfit broadens its expertise to cover contentious, tax, oil and gas matters.

Demonstrating active participation on government transactions, the attorneys acted for the Ministry of Finance on its US\$270 million Export Credit Agency-backed loan to fund an infrastructure development. The firm also advised the State Oil Company of Azerbaijan Republic (Socar) on three bilateral loans from Deutsche

Bank, Natixis and BNP Paribas, totalling US\$210 million.

Showing efforts outside the oil sector, the firm represented sponsor Azerbaijan Methanol Company (Azmecco) on a US\$300 million methanol construction project. Funding for this development also came from the European Bank for Reconstruction and Development (EBRD) and other international financial institutions.

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“They have a good mix of local and international expertise and can identify problems early on,” comments one financial client, who adds praise for managing partner James Hogan. “He has a long experience in the region. He is accessible, approachable and gives valued advice.”

While Hogan spends time in both the Baku and Paris offices, the local branch is well-staffed with lawyers who provide counsel on a number of areas, including but not limited to M&A, finance, real estate, restructuring, infrastructure and tax. Of particular note is associate Vagif Ahmadov, who is complimented for his competence in local law and fluency in English, as well as counsel Kamal Mamedazade, who is described as “a key lawyer” by one market observer.

One financing highlight saw Hogan lead a team that advised Landesbank Berlin on two export credit loans worth US\$72.7 million and US\$10 million for the purchase of a turnkey wind park from German exporter Mitaki Project.

Illustrating their capacity to take on complicated transactions, Hogan and Ahmadov represented CIT Group, one of the world’s largest aircraft leasing companies, on the extension of an aircraft lease and the subsequent purchase of a Boeing 757 by Silk Way Airlines. The deal required the team to work with the state’s new civil aviation authority under a regulatory vacuum.

On the M&A front, the firm is acting for Wood Group on its acquisition of a renowned electrical services and logistics company in Azerbaijan.

### BM International

BM International maintains a reputable practice in areas such as project finance, banking, telecommunications and energy. In addition to forming close relationships with well-known international firms, namely Freshfields Bruckhaus Deringer, Baker Botts and Denton Wilde Sapte, the firm works actively for many financial institutions such as Credit Suisse, HSBC and BNP Paribas.

Taking pride in its solid dispute resolution practice that consists of three litigators, the group has acted on a number of issues related to taxation, insurance, and labour and employment.

Exhibiting strengths on the project finance side, Farhad Mirzayev and Delara Israfilova led the team in representing BNP Paribas, Bank Hapoalim, Bank Leumi Le-Israel and The Israel Export Insurance Corporation (Ashra) as lenders on a US\$270 million motorway reconstruction project.

The firm further demonstrated its varied expertise on a TMT deal, which saw the team advise Turk Telekom on an equity investment in a local telecommunications company. Practitioners Jamal Baghirov and Vadim Shneyer are recommended as well.