

The Legal Environment for Investment in Azerbaijan

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Azerbaijan Investment Policy

- Very open to foreign investment 1992 to date
- A stable legal regime is in place
- Recent trends include the implementation of industrial parks and special economic zones
- Focus is on diversifying the economy away from oil and gas exploration and production, while exploiting the competitive advantages inherent in the Azerbaijani economy
- 2014 “The Year of Industry” ; 2015 “The Year of Agriculture”
- Benefits also continue to exist for investors and contractors in the oil & gas sector

Foreign Investment Promotion

- Bilateral Investment Treaty between Belgium/Luxembourg and Azerbaijan on the reciprocal promotion and protection of investments – 18 May 2004 (in force since 27 May 2009)
- Convention between Belgium and Azerbaijan on avoidance of double taxation and protection against tax evasion with respect to taxes on income and capital - 18 May 2004 (in force since 12 August 2004)
- Special Economic Zones / Industrial Parks
- PSAs (Production Sharing Agreements)
- Azerbaijan Investment Company (AIC)
- Azerbaijan Export and Investment Promotion Foundation (AzPromo)

Law on the Protection of Foreign Investments (1992)

- **Guarantees Granted to Foreign Investors**

- National Treatment
- Repatriation of Profits
- Compensation in case of nationalization or expropriation
- Legislative stability:
 - A limited protection against adverse changes in legislation; the legal provisions in force at the time of the making of an investment will remain in force for 10 years
- Recourse to International Arbitration :
 - Possible for disputes of foreign investors or enterprises with foreign investment with Azerbaijani state agencies, enterprises, public bodies or other legal entities
 - Therefore, the right to international arbitration is guaranteed even for disputes between companies registered in Azerbaijan if one of the companies is a subsidiary or joint venture of a foreign investor

Foreign Investors and Dispute Resolution

- **Arbitration**

- Law on International Arbitration (2000)
- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, of 29 December 1958 (New York Convention)
- Convention on the Settlement of Investment Disputes Between States and Nationals of Other States - International Centre for Settlement Of Investment Disputes of 18 March 1965 (ICSID or Washington Convention)
- European Convention on International Commercial Arbitration of 21 April 1961
- Energy Charter Treaty of 17 December 1994

Applicable Law

- Contracting parties may agree to apply foreign law, so long as there exists a “foreign element” in their relations
 - In practice, “foreign element” = where one of the parties is a foreign legal entity or physical person
- In certain circumstances, the laws of Azerbaijan must apply notwithstanding the choice of law in the contract where :
 - The choice of law contradicts the Constitution of the Republic of Azerbaijan or acts adopted by referendum, or
 - Where imperative norms of Azerbaijani law supersede foreign norms

Azerbaijan/Oil & Gas Legal Framework

The oil & gas sector has been open to foreign companies since independence

- Overall an excellent track record for respecting the stability and sanctity of contracts
 - Avoiding disputes, distractions, costly delays

Main Features:

- Product Sharing Agreements (e.g., ACG, Shah Deniz): commercial contracts approved and adopted with the force of law by the Parliament
- No Oil & Gas Law/no Law on PSAs
- No licensing of subsoil use for exploration & production
- Law on the Use of Energy Resources (1996), Law on the Subsoil (1998), Law on Energy (1998)

Azerbaijan/Main Features of PSAs

PSA Terms:

- PSA parties: SOCAR and foreign and/or local oil & gas companies/contractors
- Contractors granted exclusive rights to their designated contract areas
- Tax, customs, social, labor, dispute resolution aspects are defined solely in the PSAs
- Because PSAs are enacted into law by the parliament, there is a legally stable framework for exploration and production activities
- Foreign sub-contractors (FSCs) also benefit from PSA terms

Foreign Sub-Contractors

- PSA benefits to Foreign Sub-Contractors:
 - exemption with credit (zero percent rate) from VAT
 - free import and re-export from Azerbaijan of all equipment, materials, machinery and tools, vehicles, spare parts, goods and supplies (excluding foodstuffs, alcohol and tobacco products)
 - exemption from state social insurance contributions applicable to foreign employees
 - minimal tax filing requirements
 - exemption from any taxes other than withholding tax at the agreed PSA rate
- Income tax is payable only by tax resident foreign employees of Foreign Sub-Contractors
 - the concept of “residency” is different from non-PSA related tax legislation

Special Economic Zones - Benefits

- **Customs**

- Simplified customs regime
- Indefinite exemption from import duties upon import into and export from zone (unless imported into the customs territory of Azerbaijan)
 - Exception: excised goods
- Possibility of duty free temporary import for finishing, repair, display for goods produced with within the zone
- No time limits for re-export from SEZ

- **Tax**

- A simplified tax regime applies
- Profits Tax assessed on basis of 0.5% of gross turnover, payable quarterly

Industrial Parks

- Presidential Decree No. 548 of 21 December 2011 On the Establishment of the Sumgait Chemical Industrial Park
- Presidential Decree of 28 December 2011 On the Establishment of the Balakhani Industrial Park in Baku
- Presidential Decree No. 236 of 5 November 2012 On the Establishment of a High Technology Park
- Presidential Decree No. 1077 of 26 February 2015 On the Establishment of the Mingachevir Industrial Park
- Advantages
 - Exemption from import VAT for technical equipment for 7 years
 - Exemption from property tax for 7 years
 - Exemption from a land tax for 7 years
 - Exemption from income tax for 7 years
- Not yet known whether the Oil & Gas and Petrochemical Processing Complex (OGPC) will have a similar tax and customs regime established

Establishing a Presence in Azerbaijan

- Registration is regulated by the Civil Code and the Law on the State Registration of Legal Entities of 12 December 2003
- Most foreign investors opt for:
 - Branches/Representation Offices
 - Limited Liability Companies/Closed Joint Stock Companies
- The Limited Liability Company offers the most flexibility and has fewer requirements than a Joint Stock Company (e.g., governance structure, publication of annual results)
- Certain activities require a license and may require the establishment of a legal entity

Company Registration

- Since 1 January 2008, legal entities, branches and representation offices have been registered by the Ministry of Taxes
- One Stop Shop System - the Ministry of Taxes also handles registrations with :
 - the State Statistics Committee
 - the local tax authorities and State Social Protection Fund
 - The National Employment Center
- The complete registration process normally takes 3 to 5 days (as opposed to 4 to 8 weeks under the procedure prior to 2008)
- For Azerbaijani founders, it is possible to register a company online

Azerbaijan – Challenges

- Contradictions or gaps in the legislation
- Interpretation of laws
- An often difficult bureaucracy
- The customs administration
- The judicial system
- Corruption

Thank you

The logo for Dentons, featuring the word "DENTONS" in white, uppercase letters inside a purple arrow-shaped box pointing to the right.

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