

# The Downstream Sector in Azerbaijan: The Legal Environment

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# Azerbaijan Investment Policy

- Very open to foreign investment 1992 to date
- Excellent track record for legal stability and enforcement of contracts, as well as ease of establishing a business\* (\*5th of 190 countries in the World Bank Doing Business 2017 rankings/overall ranking: 65)
- Ranked 68th of 180 in the 2017 Index of Economic Freedom
- Recent trends include:
  - investment incentives, particularly for industrial parks and special economic zones, including chemical industrial parks
  - streamlining the procedures for issuing licenses and permits
  - emphasis on diversification of the economy and the development of comparative advantages in Azerbaijan

# Foreign Investment Promotion

- Bilateral Investment Treaties
- Minsk Treaty
- Double Taxation Treaties
- Special Economic Zones / Industrial Parks
- Azerbaijan Investment Company (AIC)

# 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

# Foreign Investors and Dispute Resolution

## Arbitration

- Law on International Arbitration dated 18 November 1999
- 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, dated 21 April 1961
- Agreement On the Mutual Execution of Decisions of Arbitration, Commercial and Economic Courts in the Territory of States being Members of the Commonwealth [of Independent States], dated 6 March 1998
- Energy Charter Treaty, dated 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

# Industrial Parks/Special Economic Zones

- 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
- Presidential Decree No. 1255 of 3 June 2015, On the Establishment of Garadagh Industrial Park
- Presidential Decree No, 2336 of 14 September 2016 “On the establishment of the Pirallahi Industrial Park”
- Presidential Decree of 17 March 2016 on the Baku International Sea Trade Port Special Economic Zone

# Industrial Parks - Benefits

For a period of 7 years following registration as a resident of a technological park, legal entities and entrepreneurs benefit from:

- no income tax on any income (other than income from employment) generated from activities in the technological park (Article 102.1.21, Tax Code)
- no profits tax on any income generated from activities in the technology park (Article 106.1.13, Tax Code)
- no import VAT upon importation of machinery, technological equipment and plants for the construction of production facilities within such parks or for research and development work (Article 164.1.16, Tax Code)
- no property tax in respect of property located in the technology park (Article 199.7, Tax Code)
- no land tax in respect of on land in the technology park (Article 207.2, Tax Code).



# Presidential Decree On Additional Measures Concerning the Promotion of Foreign Investment, 18 January 2016

Investment Promotion Certificates (IPCs), are to be issued by the Ministry of the Economy as a basis for granting special tax and customs benefits:

- in certain industrial sectors
- based on a certain minimum amount of investment
- according to the region
- A list of the relevant industrial sectors and minimum investment amounts by sector and region was approved by Presidential Decree No. 878, dated 20 April 2016

# Investment Promotion Certificates - Advantages

Based on amendments to the Tax Code and the Law On Customs Tariffs, the tax and customs benefits include the following:

- 50% exemption for 7 years from income (profits) tax
- Exemption for 7 years from VAT on hardware, technological equipment and structures imported by persons who have received an IPC
- Exemption for 7 years from assets tax and land tax for persons who have received an IPC
- Exemption for 7 years from customs duties on hardware, technological equipment and structures imported by persons involved in investment activities
- With the exception of the partial (50%) exemption from income (profit) taxes, these benefits parallel the exemptions granted to industrial parks

# 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:

- 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)

# Public Procurement Rules

- Regulated by the Law on Public Procurement”, dated 27 December 2001
- Applies to procurement of goods (works and services) by state enterprises and legal entities where the State holds at least 30% of the charter capital using state funds (i.e. loans and grants obtained by the State or backed by a state guarantee)
- Public procurement using state funds shall be conducted via one of the approved procurement methods – open tender, two-stage tender, tender with limited participation and closed tender, request for proposals, request for quotations, and procurement from a single source
  - procurement from a single source applies in certain specific cases and would require approval of the State Procurement Agency
  - **new requirement** (Amendment of 19 January 2016): preferential correction of 20% for proposals involving local goods, works and services
- SOCAR is authorized by its Charter to use its internal Procurement Rules where no State funds are used for the procurement

# Procurement of Imported Goods (Works, Services)

Under Presidential Decree, dated 15 September 2016, “On Additional Measures on Increasing the Efficiency of Executive Authorities and Organizations Funded from the State Budget:

- Executive authorities and organizations funded from the State Budget shall phase out the procurement of imported goods (works and services) **by 1 January 2018**
  - Exceptions:
    - imported goods (works, services) using funds from foreign lenders and guaranteed by the State, foreign grants, procurement for defense and national security, drugs and medical supplies;
    - under contacts concluded before 15 September 2016, executive authorities and organizations funded from the State Budget will be required to obtain the consent of the Ministry of Economy
    - where necessary for executive authorities and organizations funded from the State Budget to procure imported goods (works and services) the consent of the Ministry of Economy is required, which is to be granted in consultation with the President
- A Presidential Decree of 28 December 2016 introduced new consent requirements for internal and external borrowings by state enterprises

# Licenses and Permits

Law on Licenses and Permits, dated 15 March 2016 (in force from 1 June 2016), Presidential Decree of 21 April 2016, On the Application of the Law on Licenses and Permits

- The Ministry of the Economy is now responsible for the issuance, suspension, reinstatement and cancellation of licenses in Azerbaijan (other than for national security related activities) through ASAN centers and an Electronic License and Permit Portal
- Licenses shall be issued within 10 days of application and shall have an indefinite duration; permits are to be issued within seven days
  - State duties have been reduced by 50%
  - The lists are exhaustive: only 32 activities require a license and only 87 require a permit

# Licensable Activities in the Petroleum Sector

- Utilization and neutralization of toxic industrial waste
- Storage and disposal of radioactive and ionized radiation waste
- Sale of oil and gas products
- Transportation of hazardous cargo by transport facilities
- Installation and exploitation of liquid and natural gas plants
- Drilling and mining work
- Installation, set-up and repair of energy units, equipment and facilities
- Production, installation and repair of lifting facilities, metallurgical equipment, boilers, vessels, operating under pressure
- Diagnostics and other maintenance inspection of equipment and technical facilities exploited in the potentially hazardous facilities
- Engineering-survey works/design/building and assembly work concerning buildings and structures requiring special permissions

# Activities in the Petroleum Sector Requiring Special Permits

Law On Licenses and Permits of 15 March 2016 (in force from 01.06.2016),  
Presidential Decree of 21 April 2016 “On the Application of the Law On Licenses and Permits”:

- Activities requiring permits reduced to 84, including:
  - Permit for activities with a dangerous physical impact and emission of harmful substances into the atmosphere
  - Extraction of mineral resources from the subsoil , obtaining a “mining allocation” status for the purpose of construction and operation of underground facilities not related to mineral extraction
  - Granting the status of geological allocation to the areas of the subsoil allocated for the purpose of geological study permit for natural gas production and the processing of natural gas;
  - Permit for transportation of gas
  - Permit for gas distribution



# Activities in the Petroleum Sector Requiring Special Permits (continued)

- Permit for the development of underground gas storage facilities, construction and its operation
- Construction permit
- Permit for the operation of construction objects
- Permit for the use of an industrial gas plant
- Permit for oil and gas field exploration
- Permit for the development and production of oil and gas fields
- Permit for the processing of oil and oil products
- Permit for the transportation of oil and oil products via pipelines

# Certification/Standardization

- Law on Technical Safety, No 733-IQ, dated 2 November 1999 (certification of technical construction facilities, and machinery at potentially dangerous facilities for conformity to the technical safety requirements)
- Decree of the President approving Rules on the recognition and implementation of international (regional) and interstate standards, norms, rules and recommendations in the territory of the Republic of Azerbaijan, № 26, dated 22 November 1998
- Generally, standardization and certification is regulated by the State Committee on Standardization, Metrology and Patents (Regulations of the State Committee on Standardization, Metrology and Patents, approved by Presidential Decree No. 155, dated 31 August 2009)

# Labor Regulation

- Labor Code (dated 1 February 1999)
- Resolution of the Cabinet of Ministers, No 3, dated 9 January 2003, on the Approval of Rules, Conditions, and the Amount of Payments to an Employee Whose Health Was Affected as a Result of a Production Accident or Occupational Disease
- Resolution of the Cabinet of Ministers, No. 7, dated 14 January 2002, on approving the List of Workplaces Where the Probability of Contracting Professional Diseases by Employees is Very High and an Instruction
- Resolution of the Cabinet of Ministers, No 97, dated 23 May 2001, on the Attestation of Employees in the Republic of Azerbaijan
- Resolution of the Cabinet of Ministers No 38, dated 6 March 2000, on the Rules for the Attestation of Work Places
- Resolution of the Cabinet of Ministers No. 27, dated 28 February 2000 on the Approval of the Rules for the Investigation and Registration of Accidents Occurring in the Production Process

# Environmental Regulation

- Law on the Protection of the Environment”, № 678-IQ, dated 8 June 1999 (Regulation of environmental safety through EIAs, special permissions, environmental audits, compulsory insurance, “polluter pays” principle for damage)
- Law on Ecological Safety, No 677-IQ, dated 8 June 1999 (Regulation of ecologically dangerous activities/issuance of ecological passports)
- Law on the Protection of Atmospheric Air, No 109-IIQ, dated 27 March 2001 (Regulation of emissions of harmful substances through special permits, hygienic and ecological norms, certificates of conformity)
- Law on Industrial and Utility Waste, № 514-IQ, dated 30 June 1998- (regulates the utilization, storage, transportation and registration of industrial waste)
- Law on the Water Supply and Sewage Waters, № 723-IQ, dated 30 December 1999

# Thank you

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