

Azerbaijan

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Local bank ownership

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The economy of independent Azerbaijan is one the youngest and fastest-growing in the world. Without any doubt, Azerbaijani banking takes the lead in the development of the Azerbaijani non-oil economy. In a process of constant growth, Azerbaijani banks offer customers a wide range of services, financing various projects, from small private ventures to large nationwide projects. Realising the need to increase the lending power of credit institutions, the Azerbaijani government and the National Bank support inward investment in the banking sector.

Following the adoption of the new Law on Banks, Azerbaijani banking has become attractive for foreign investments. Large financial institutions such as the European Bank for Reconstruction and Development, International Finance Corporation, DEG, KfW, *Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden* and the Black Sea Trade and Development Bank have made direct investments into the Azerbaijani banking sector, acquiring significant shareholding in existing local banks.

Generally, foreign investors have two options in acquiring significant participation in local banks - directly or indirectly (through an SPV). Practice shows that large financial institutions prefer direct investment.

National Bank consent

Under the Banking Law, "significant participation" is defined as ownership, whether direct or indirect, of 10% or more of share capital. Consent from the National Bank must always be obtained before the acquisition of significant participation. Likewise, this consent is required whenever any existing shareholder reaches or exceeds the threshold

of 25%, 33% and 50% of share capital. To obtain the consent, a target bank must submit certain supporting documents, relating to the financial conditions of the foreign investor and the civil probity of its managers.

Consent is normally given in an express form within 90 days of the date of acceptance of the documents by the National Bank. The National Bank will specify a period in the consent for the completion of the acquisition of significant shareholding. If the potential purchaser fails to complete the acquisition within the specified period, the National Bank may require the purchaser to annul the purchase of shares acquired after the expiry of that period.

In the absence of any response, the consent of the National Bank for the purchase of significant shares or a share passing the relevant threshold is deemed to have been obtained. Under this circumstance, the purchase of shares will take place in the manner and within the time specified in the new share prospectus of the target bank.

The Banking Law provides an exhaustive list of reasons why the National Bank may refuse to grant consent. For example, the application may be rejected if it is found that:

(a) The financial condition of a foreign investor is not sound.

(b) Foreign investors or executive officers of a foreign investor are not "individuals with required qualities". The Banking Law defines "individuals with required qualities" as individuals that have not been convicted of a crime, are considered honest and trustworthy due to their public status, and/or whose professional qualities, skills and business interests allow them to own a significant shareholding in a bank.

(c) As a result of sale of a particular share, the target bank will become a subsidiary of a foreign non-bank entity.

(d) The banking regulatory authority in the home country of a foreign bank refuses to issue its consent for the ownership of 50% or more shares in the target bank.

The National Bank may also refuse its consent if, as a result of the envisaged investment, the share of foreign capital in Azerbaijani banking would exceed the limit established by the National Bank. However, no such limit has been established. As a result, foreign investment in Azerbaijani banking is not restricted.

In addition, the Banking Law gives the National Bank authority to specify a list of unwelcome jurisdictions. Potential investors from these jurisdictions may be refused ownership of shares in Azerbaijani banks. However, the National Bank has not introduced such a list at the time of writing.

Anti-monopoly clearance

In accordance with the Law on Anti-Monopoly Activity, anti-monopoly clearance is required for the purchase of more than 20% of share capital or of voting shares in a bank. Such clearance or consent is issued by the Anti-Monopoly Department of the Ministry of Economic Development.

Unlike the Banking Law, the Anti-Monopoly Law does not specify a list of documents required for application for anti-monopoly consent. Nor does the Anti-Monopoly Law specify the grounds for refusal of such consent. The Anti-Monopoly Law provides that a decision of the Anti-Monopoly Department must be issued within 15 days of the application.

Based on recent experience, we are not aware of any rejection by the Anti-Monopoly Department of any application for the purchase of a significant share in an Azerbaijani bank.

Cancellation or share repurchase

The following events and circumstances related to a major foreign shareholder may entail cancellation of a banking licence of a local bank, or instigate the mandatory sale of shares of a major foreign shareholder by the National Bank:

(a) Facts show that a legal entity with significant shareholding endangers the stable and prudent governance of the bank.

(b) The managers of a legal entity with significant shareholding are not “individuals with required qualities”.

(c) Cancellation has occurred in its home country of the banking licence of a foreign bank holding shares in an Azerbaijani bank.

(d) The supervisory banking authority in the country of the foreign bank refuses to cooperate with the National Bank of Azerbaijan on the exercise of supervisory functions over the foreign investor.

With its booming economy Azerbaijan and especially its banking sector remain attractive for financial investment. The Azerbaijani government and the National Bank continue their efforts in attracting foreign banking capital into the country. Within the next few years an increase in competition among foreign financial institutions buying their way into the Azerbaijani financial market is expected.

Financial and corporate

Recommended firms	
Tier 1	
Baker & McKenzie	MGB Law Offices
Tier 2	
OMNI Consultants	Salans
Tier 3	
BM Law	Michael Wilson & Partners

With the drive for quality in the wake of international credit problems, many multinational companies who had previously turned to local counsel for minor legal matters are increasingly turning to international law firms who have professional-liability insurance. But despite this tendency, a number of strong local practices remain - the prevalence of the energy industry in Azerbaijan means that local counsel, who can draw on historical links with local authorities, still enjoy a place in the market. In fact, the confidence of local lawyers is reflected in the rebranding of MGB Law Offices, which had until September 2007 been part of the Scottish law firm McGrigors.

Though the region is known for being plentiful in oil and gas, the government has started certain initiatives to channel investments into non-oil sectors and steer the country's economic growth away from reliance on the energy sector. For example, the state-

owned Azerbaijan Investment Company (AIC) is investing in a number of non-oil projects such as its recent purchase of an equity stake in a local dairy manufacturing business.

Baker & McKenzie

Baker & McKenzie retains its tier one position for another year. The firm's recent mandates include advising a large foreign institution on a framework deposit agreement with the international Bank of Azerbaijan and subsequent deposits valued at \$110 million.

Partner Daniel Matthews is noted by the market for his high visibility, exemplified by the number of significant deals he has worked on. These include representing International NV and ICICI Bank in a syndicated \$50 million loan to a Russian subsidiary of the International Bank of Azerbaijan; a deal which required the firm to advise on Azerbaijani, English and Russian law. Along with Abbas Guliyev and Michael Foundethakis, Matthews also advised the lead arrangers on a syndicated loan to the private financial institution Bank Standard.

Clients noted the lawyers at the firm were helpful, possessed good knowledge, had strong legal backgrounds and tended to react quickly to their needs. Underscoring the firm's strengths was the role its lawyers played in advising on a complex deal for the International Finance Corporation. In this deal, the firm assisted in structuring a complex security package in the financing of a grocery store chain.

Leading lawyers

Natik Mamedov
Daniel Matthews

MGB Law Offices

Formerly known as McGrigors in Azerbaijan, MGB Law Office now operates independently from the UK branch, but retains a close association with the firm. Benjamin Paine's departure to Chadbourne & Parke in Kazakhstan leaves Ismail Askerov and Elchin Mammadov as the key partners at the firm.

Despite a slightly reduced capacity, peers still perceive the firm to be one of the top firms in the country, its strength being its longstanding presence in the market. One commentator describes Askerov and Mammadov as “very good and capable lawyers”, while another says of Mammadov: “He is a nice person, quite meticulous and attentive to detail, and a reasonable person to work with.”

Askerov led the MGB team that advised Macquarie Bank on the restructuring of the national airline's aircraft leasing arrangements.

Leading lawyers

Ismail Askerov
Elchin Mammadov

OMNI Consultants

OMNI Consultants had a steady and healthy flow of deals this year, particularly in bank financing. The firm maintains its strong position in the rankings with Roman Alloyarov as managing partner. One client praised Alloyarov as “absolutely excellent”.

One of the firm's highlight deals this past year was when it acted for the State Oil Company of Azerbaijan (Socar) in connection with a \$600 million corporate loan to an Azerbaijani company. This is believed to have been the first unsecured loan facility to a local corporate outside the banking sector and was one of the largest in the country. The firm also acted for Azenergy in a \$472 million facility to finance the construction of the Janub power plant.

In the capital markets OMNI acted as local counsel to an international investment bank in an offering of Eurobonds by a local issuer, one of the country's first outbound capital markets transactions. Other deals include the firm's representation of sponsors in a \$200 million project to construct a methanol plant and also in the acquisition and construction of an aluminium smelter.

Leading lawyers

Roman Alloyarov
Jeyhun Bayramov
Ismail Zargarli

Salans

The Salans team is experiencing steady expansion, and has stated its intention to grow to up to 15 lawyers by the end of 2009. James Hogan is the managing partner at the firm and a prominent name in the market.

Clients also praise Vagif Ahmadov, an associate of the firm. “He is very professional and has experience in other international law firms. He was educated outside of Azerbaijan and I've found him qualified to work on our corporate matters.”

In the energy sector, the firm advised the Asco Group in its acquisition of oil-and-gas logistics company CSM Caspian Holdings.

The firm, which has strong project finance capabilities, is set to benefit from the Azerbaijani government's plans to increase its financing of infrastructure projects. For example, Salans is advising a client on a large European construction and engineering project, comprising the design, construction and operation of a waste-to-energy conversion facility. Hogan and Ahmadov have also

recently represented Azerbaijan Investment Company in relation to an equity investment in a local manufacturing plant.

Leading lawyers

James Hogan

Other notable firms

Michael Wilson & Partners' Baku office, managed by Michael Dark, has had a steady year and is seeing an increasing volume of cross-border work. The firm counts local and international banks, including Morgan Stanley, as clients. At **BM Law**, partner Farhad Mirzayev is described by a peer as a "a smart guy who knows the law locally". Formed in 1993, **InterJurService** is recommended by clients and peers. It covers most aspects of corporate and financial law include banking, capital markets and M&A.