

# Azerbaijan

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## Special Economic Zones in Azerbaijan

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As the Azerbaijani economy steadily continues its growth, the new Special Economic Zones Law of April 14 2009 came into effect from June 6 2009. Its overall goal is designated as the “acceleration of the development of business and economy in the Republic of Azerbaijan, introducing new competitive manufacturing and service areas on the basis of special legal regime and modern technology”.

The law is in itself the first attempt to set rules for establishment and operation of special economic zones (SEZ), which explains the general nature of this legal act. It is expected that secondary, more detailed legislation will be adopted regulating various specific issues pertaining to the SEZ. However, it is worth noting certain important provisions, benefits and concessions granted by the law.

The law contains provisions stating that the state of Azerbaijan guarantees the safety of investment made, and profit and revenues earned, through the arrangement of appropriate conditions for doing business and repatriation of funds from the SEZ. It is not clear how and in what manner businesses will benefit from this general guarantee and it is expected that enacting legislation will be more specific on the issue.

The Ministry of Economic Development (MED) is vested with the authority to prepare and present the proposal for establishment of a particular SEZ for approval by the President of the Republic of Azerbaijan. The MED shall prepare the special regulations for each of the SEZ, which shall specify the location, lay-out and period of operation of a particular SEZ, businesses to be developed in that SEZ, relations with the relevant state bodies and

municipalities, and other important and relevant issues.

The MED shall also be liable to ensure the proper management and development of the SEZ. For these purposes the law envisages establishment of local administration – defined by the law as the “local office of the MED” or the “SEZ administration” – and appointment of an operator in the SEZ.

The SEZ operator is defined as an entity “liable for management and development of the SEZ and having substantial experience in this area”. The SEZ operator is appointed by the MED as a result of tender (rules yet to be elaborated) and will provide its services on the basis of a management contract between the MED and the SEZ operator.

Any person (except for entities fully owned by the state) wishing to do business within the SEZ will be required to register with the SEZ administration and enter into an agreement of intent with the SEZ operator. The registration requirements and documents as well as the *pro forma* agreement of intent are anticipated to be further elaborated by secondary legislation.

As is expected, persons registered to do business within the SEZ will enjoy certain tax benefits. The law declares that simplified customs clearance procedures (yet to be introduced) will apply within the SEZ. Import and export of goods to and from the SEZ shall be exempt from customs duties except for the goods that are subject to excise duties. The law envisages the establishment of bond areas and operation of customs brokers in the SEZ. Any goods imported may be stored within the SEZ for an unlimited period of time.

SEZ residents shall be subject to simplified tax of 0.5% payable from gross sales and non-sales revenues. No other taxes are payable within the SEZ except for payroll taxes payable by, or in respect of, employees of SEZ residents. It is stated in the law that the special, i.e. simpler, tax reporting procedure will be elaborated and introduced within the SEZ.

If the SEZ resident does not start its business within a year from the date of execution of the agreement of intent, the SEZ registration and agreement of intent will be regarded invalid. As a result, the tax benefits and concessions granted by the law will be repealed and the former SEZ resident will be required to pay the relevant customs duties as prescribed by the general Azerbaijani legislation, i.e. no exemption provided by the SEZ law shall apply.

The law contains a stability provision granting SEZ residents the right to enjoy the benefits and concessions granted to a particular SEZ in accordance with the agreement of intent during that SEZ’s whole period of operation. The operation of the SEZ may be terminated by presidential decree due to circumstances affecting state interests, national security and defence.

Obviously, there are a lot of things to be done towards establishment and operation of the first SEZ in Azerbaijan. It is notable though that the new law reflects the commitment of the Azerbaijani government to boost development of a non-oil sector in the country, which is one of the leading producers of hydrocarbons in the Caspian region. Witnessing such an attitude, one may expect that SEZ will become very soon a viable economic model of development in modern Azerbaijan.

## Financial and corporate

### Recommended firms

#### Tier 1

Baker & McKenzie  
MGB Law Offices  
Omni Law Firm

#### Tier 2

BM Law  
Salans

#### Tier 3

Michael Wilson & Partners

Despite business in Azerbaijan taking a soft blow as a result of the global economic crisis, the pace of project financings refused to slow down and remained steady as the country continued to develop. Examples of major projects keeping the legal market on its toes include a highway construction project, the development and financing of a cement factory, a waste-to-energy plant project, and the establishment of a methanol plant. Traditionally an oil and gas-based economy, the financial turmoil elsewhere could not completely dampen the rate of growth in Azerbaijan, which saw an increase of 16% over the previous year.

Real-estate development is booming, infrastructure projects are alive and well, and foreign oil companies are still investing into the oil sector. "There is work in the market even though it's not so sexy," says one commentator. "Corporate work keeps flowing in and all the top firms are busy."

Pure finance and capital markets have borne the brunt of the weak global climate, with many observers noting that finance transactions have tapered off. "There is less foreign lending as we see European banks turn away," remarks one lawyer. Debt deals have dried up, with most banks reducing or closing their exposure to Azerbaijani borrowers and issuers. Needing fresh capital, some borrowers are beginning to look to international financial institutions such as EBRD (the European Bank for Reconstruction and Development) and IFC (the International Finance Corporation). "The IFIs [international financial institutions] are coming back into fashion," says one lawyer.

State corporate clients like Socar (State Oil Company of Azerbaijan Republic) continue to borrow in international loan markets and are keeping firms such as Baker & McKenzie and Omni Law Firm active. The M&A front has kept active with several key domestic and cross-border acquisitions.

Locally, Azertel's purchase of a major stake in Azercell and Baltika's buyout of local brewery Baku Castel was a talking point, while

VTB's acquisition of a local bank and the Weir Group's purchase of Standard Oilfield Services characterised the inbound flow of mandates.

### Baker & McKenzie

"It's difficult to compete with a global brand," laments one rival, who adds: "But they are a very good firm with excellent lawyers and legal staff." Peers and clients laud Baker & McKenzie for its first-quality practice that not only engages in local transactions, but also frequently participates in cross-border matters with global elements. As such, its counterparts tend to be foreign firms rather than local outfits.

"Their team is very professional and they represent high-level quality," says a client. Another raves that the firm has "a client-focused approach to providing creative solutions to complex problems, consistent work of the highest quality, and an excellent team of efficient and diligent lawyers who are always available to help you." The client adds: "They always identify key issues and understand our needs."

The firm is part of one of the widest-reaching networks globally and has the added value of being able to tap into resources in almost any corner of the world. This allows it to provide US law opinions and international advice for outbound clients, a unique feature in the Azerbaijani legal sphere.

Head partner Daniel Matthews is recognised by competitors as one of its leading practitioners. "He has done a very good job of selling the brand locally and has many key clients," says one peer. The firm's clients also have as high praise for Aykhan Asadov: "He has an impressive depth of experience, is very hard-working and talented," says one client. "He has the ability to resolve any problem, understands difficult mechanisms of structures we want and can co-ordinate all the international aspects of the transaction."

The team remains solid and is slowly expanding. This year it recruited a new associate to bolster its offering to seven fee-earners in total. "Abbas Guliyev is extremely talented, hard-working and, honestly, the type of lawyer anyone would want to hire," says a client of the associate.

Engaged in all areas of the market, the firm has starred in many of the major deals that represent Azerbaijan's activity. It is a finance-focused firm and counts the government, government-owned entities, international banks and top corporates as core clients. Demonstrating the firm's outward reach and cross-border skills, the team advised Socar (State Oil Company of Azerbaijan Republic) on its supply of gas to Georgia and on the

development of a holding structure for gas sales.

In another high-end deal that took four years to complete due to the complexity of overcoming regulatory and political hurdles, the firm acted for Azertel telecoms on its acquisition of a 35.7% interest in Azercell, Azerbaijan's largest GSM operator. Garadagh Cement sought the firm for advice on the modernisation, expansion and financing of an exiting cement plant valued at €330 million (\$463 million). This was the country's largest industrial project.

A final plaudit from a satisfied customer: "Service was very prompt and they did an excellent job on all relevant items. They had worked on previous transactions for the company and knew our client very well."

### Leading lawyers

Aykhan Asadov  
Natik Mamedov  
Daniel Matthews

### MGB Law Offices

"They are the best local lawyers in Baku," declares one client. "They are very commercial and keep focused on the bigger picture." Winning similar praise from the market keeps MGB Law Offices buoyant in the first tier. The well-established domestic firm was formerly known as McGrigors and retains ties with the UK firm even though it now operates independently.

Under the steady leadership of leading lawyers Ismail Askerov and Elchin Mammadov, the practice maintains form as a dominant outfit in a tight market. Even competitors admire MGB's lawyers: "I have a lot of respect for them. They are very experienced in the market and it's a relief to see them on the other side of the table."

Much of MGB's work is focused on providing domestic Azerbaijani advice in major cross-border transactions. The long-standing experience of its lead partners guarantees in-depth understanding of local laws, the business environment and commercial interests of clients. These include local and foreign banks, oil and gas companies, and infrastructure companies.

"Both Ismail and Elchin are great and I would recommend both of them," says a client. "Ismail has very good business contacts in Baku, which is helpful." A rival has this to say about working with Askerov: "He is calm, thoughtful, talks about the issues of the law and he is not difficult to work with."

A favourite of the government and government institutions, the modestly-sized team has been busy this year on a steady stream of deals related to natural resources and projects.

The Azerbaijan government recently sought the firm's counsel in two important matters. In one, Mammadov and Askerov featured for the government in relation to the multi-million dollar construction of a waste processing plant.

In the other deal, the star duo acted for the government, a consortium of foreign lenders and a Korean construction company in the jurisdiction's first independent power project, valued at over \$750 million. Mammadov also led the team for another consortium of lenders on a significant financing of a major oil field in Azerbaijan.

"The lawyers at MGB were knowledgeable about the matter we asked them to assist us with," comments a client. "They were diligent and prompt in their work."

#### Leading lawyers

Ismail Askerov  
Elchin Mammadov

### Omni Law Firm

The "talented" Omni Law Firm was founded by several associates from rival Salans in 2002. The firm has maintained a prolific and determined presence in the market, and has been commended by competitors and clients alike. "I respect them a lot and they are very strong for technical issues and Azerbaijani law," says one rival.

Clients agree: "Of all the local firms in the market, Omni is the one that stands out," says one. "They interpret the law in a way that is acceptable to the counterparty and best protects the interests of clients whom we serve."

"I like that almost all of Omni's lawyers have trained overseas," says one financial client. The firm has remained very active despite the turmoil in the global economy. Another client notes that "the way they worked with us bred trust. I trusted the decisions and judgements they made and their approach".

With the oil and gas sector as well as the resources industry churning out work for firms, it's no surprise the team has seen an uptake in project finance transactions. Also increasing for the firm has been corporate work, with the firm working on private-equity investments for several funds. It is noteworthy that Omni is a preferred counsel for EBRD (the European Bank for Reconstruction and Development) and the IFC (the International Finance Corporation).

Managing partner Roman Alloyarov basks in the glow of praise from clients. One says: "He helped us quite a lot. He had a very good understanding of local law and technically he was perfect." Another gushes: "All the Omni

lawyers I've dealt with were of the highest quality and very professional." "Great guy" Ismail Zargarli wins respect from a competitor: "He is thoughtful and good at what he does."

On the M&A front Alloyarov and his team featured for VTB Bank in relation to its \$50 million acquisition of a local bank – the first time a foreign financial institution acquired a domestic bank. On the capital markets side, the team acted for Morgan Stanley as local counsel to Raiffeisen Zentralbank Österreich in relation to a \$50 million credit-linked notes programme for the domestic UniBank, the largest syndicated loan to a local bank in 2008.

A great example of the project financing work the firm excels in was its role advising Cnim in relation to a €350 million (\$487 million) design-build-operate project for a waste-to-energy plant, the jurisdiction's largest project by value in 2008.

In a financing deal, the team worked as international counsel for Socar (State Oil Company of Azerbaijan Republic) on a \$200 million secured loan provided by two French banks to repay some of the external debt of Socar subsidiary AzSD, using proceeds from the sale of gas and condensate from the Shah Deniz gas field. This was a very rare debt financing transaction involving a local borrower after Lehman Brothers' collapse in September 2008.

#### Leading lawyers

Roman Alloyarov  
Ismail Zargarli

### BM Law

As one of the first private law firms to be established in the Baku market, BM Law remains a reliable choice for local law matters. "They are quite an active presence here," notes a rival. Farhad Mirzayev is praised by one client for his "deep understanding of all the key players involved".

Staffed by one of the largest fee-earning teams, the firm has maintained a 17-year presence in the country and developed its reputation among clients as a go-to firm for project financings. Leading international banks such as Credit Suisse, Barclays and HSBC retain the firm on Azerbaijani issues, while top corporates such as ExxonMobil, Türk Telekom, Boeing, Nestlé and Nokia-Siemens are counted as key clients.

The firm has been busy with projects in the oil and gas, telecoms and media, and project finance spaces. For example, a team is advising HSBC on the financing of a metal production field, while the firm was appointed legal counsel to a consortium of major

western oil companies in the Kazakhstan Caspian Transport System Project.

Additionally, the firm is acting for ABN Amro in the financing of an aircraft to be purchased by Azerbaijan's national airline, and on several major projects financed by the EBRD (the European Bank for Reconstruction and Development).

BNP Paribas sought the firm's counsel in its \$320 million financing role for a highway-motorway project to fortify the country's infrastructure.

#### Leading lawyers

Farhad Mirzayev

### Salans

Salans is celebrating its tenth anniversary in Baku this year and has brand recognition as one of only two international law firms with extensive global reaches. However market commentators note that Salans has been having a difficult time since managing partner Alum Bati left two years ago to start his own practice, Wicklow Corporate Services.

More salt was poured in the wound earlier this year when Salans partially lost talented Ophelia Abdullayeva to an in-house post. "It really was a blow to them as she was its strongest local lawyer," says one market commentator. However not all is lost, as Abdullayeva remains an external of-counsel to the team.

Despite these recent changes the firm remains strong under the guidance of current managing partner James Hogan, who divides his time between Salans' Paris and Baku offices. He is a stalwart in the market with excellent client and peer recognition. "James is technically very good," says one customer. "When I take him to the client, he is very credible. It's clear everyone knows who he is because when he says something, they listen to him and he is always able to give lots of solutions."

Specifically, clients trust the firm for M&A work in the petroleum, oil field services, banking and finance, and real-estate sectors. An example of this was Salans' work for Weir Group in its successful acquisition of Standard Oilfield Services in Baku. Another hallmark transaction for the team was acting for Baltika in its purchase of Baku Castel, the country's oldest and largest brewery. The latter deal was one of the biggest acquisitions outside of the oil and gas sector.

Advising Technikabank on its eurobond issue – the first by an Azerbaijani bank – was a feather in the firm's cap. Also, Hogan successfully headed a team that represented Cnim in drafting, negotiating and implementing a Fidic (International Federation of

Consulting Engineers) design-build-operate contract for the construction and operation of a €346 million (\$481 million) waste-to-energy incineration plant in Baku.

**Leading lawyers**

James Hogan

**Other notable firms**

Wicklow Corporate Services was formed two years ago by former Salans managing partner Alum Bati and Bakhtiyar Mammadov, a leading practitioner with Baker Botts' Baku office before it closed in 2005. The latter of the founding duo left Wicklow in December 2008 and the firm is currently under the sole command of Bati, an honorary legal adviser to the British ambassador.

One client has high praise for Bati: "He has a vast knowledge of domestic and international laws, is excellent at social networking, disciplined, knows the proper application of confidentiality and ethical rules, and always follows up on matters."

It has been a relatively quiet year with few deals trickling in after the collapse of the financial markets last September. Earlier highlights for Wicklow include acting for a prominent local client on the establishment of a \$500 million joint venture and representing Standard Oilfield Services on its \$21 million sale of a majority interest in an oil field services company. The "professional, dominant and cost-effective" firm counts Morgan Stanley and Christian Dior as key clients.

**Leading lawyers:**

Alum Bati