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Regulatory requirements of entering into the Azerbaijan insurance market

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The insurance market of Azerbaijan is currently represented by 27 insurance companies, one re-insurance company, 174 insurance agents and seven insurance brokers providing a wide range of insurance services. The local regulator has been regularly increasing the statutory minimum requirements for share capital of insurance companies (currently, Am2 million (approx. \$2.5 million)) which leaves some of them unlicensed by the regulator due to a failure to comply with the minimum share capital requirements.

Until recently there have been no well known international players acting in the local insurance market and the presence of foreign investors in the local insurance market was limited to such institutions as European Bank for Reconstruction and Development holding 25% of the shareholding interest in MBASK, one of the leading insurance companies in Azerbaijan. However, a major international insurance company has recently expressed an interest to acquire one of the top-rated insurance companies in Azerbaijan.

To date the Insurance Law has been exposed to three stages in its development in Azerbaijan. The first Insurance Law came out in 1993. Later, in 1999 the Milli Majlis (Azerbaijan parliament) adopted a new Law on Insurance which remained effective for eight years until 2007. The current Law on Insurance Activity has been effective since March 16 2008.

The new law introduced restrictions to the organisational form of insurance companies. As opposed to the previous law, the current law mandates insurance companies to establish only in form of open joint-stock compa-

nies which originally intended to develop a local securities market in Azerbaijan.

To operate as an insurance company a corporation is required to obtain a licence from an insurance regulatory authority. Currently the Ministry of Finance of the Republic of Azerbaijan (the Ministry of Finance) performs the role of the insurance regulatory authority and maintains a publicly accessible register of insurance companies, insurance agents and brokers registered in Azerbaijan as well as a number of foreign insurance and re-insurance companies and brokers.

Restrictions on foreign participation

The Ministry of Finance is vested with the power to establish a threshold for foreign participation in local insurance companies. While the previous law restricted foreign participation in Azerbaijani insurance companies not to exceed 49% of the share capital of the local insurance company, the new law does not specifically establish such a threshold. Nor has the Ministry of Finance released any threshold so far.

While foreign individuals and local subsidiaries of foreign corporations are prohibited to act as founders or acquire shareholdings in local insurance companies, foreign insurance companies can acquire a shareholding in Azerbaijani insurance companies subject to certain restrictions.

To qualify to be founders or shareholders in local insurance companies, foreign insurance companies must meet certain legal requirements as follows:

- to be in a good financial standing and comply with solvency requirements set out in regulations of the home-country jurisdiction of a foreign insurance corporation;
- to maintain a certificate of compliance with the laws in the home country issued by an insurance regulatory authority of the home-country of a foreign insurance corporation;

- continued provision during the past five years of insurance and/or reinsurance operation in the home country of a foreign insurance corporation; and
- to hold an appropriate ranking conferred by the international rating organisations which are recognised by the Ministry of Finance .

Foreign insurance corporations failing to meet the aforesaid requirements or any other foreign corporation (except international financial institutions) do not qualify to act as founders or shareholders in Azerbaijani insurance companies. One of the restrictions to foreign participation in the local insurance market is that the law prohibits foreign insurance companies to establish branches in Azerbaijan.

Regulatory consents and approvals

Acquisition of a significant shareholding or a significant control over the insurance company is subject to a prior consent of the Ministry of Finance. The law defines a significant shareholding as a direct or indirect ownership of 20% or more of the issued shares in a share capital of the insurance company.

A person is deemed to indirectly own a significant shareholding in an insurance company provided such person significantly controls the owner of a significant shareholding in that company. A significant control means holding of 50% or more shares in a share capital of an insurance company, or ability by virtue of an agreement to exercise a significant influence on decision making in an insurance company.

In addition to consents and filings with the Ministry of Finance the insurance company must comply with the required filing requirements under the antimonopoly rules and regulations. According to the 1993 Law on Antimonopoly Activities, acquisition by one business entity (or amalgamation of business entities or group of entities controlling the assets of each other) of more than 20% of voting shares in the share capital of the other

business entity requires the consent of the Antimonopoly State Service of the Ministry of Economic Development of the Republic of Azerbaijan.

Principally, Azerbaijani antimonopoly legislation stipulates a mandatory notification system, with three alternative tests for the filing threshold:

(i) if the aggregate value of the parties' assets (it is not clear whether this is measured only on the territory of Azerbaijan or worldwide) exceeds 75,000 times the minimum established salary in the country;

(ii) if one of the parties to transaction has a dominating position exceeding 35% of the relevant market; and

(iii) if the entity acquiring the shares would control the economic activity of the target entity.

In principle, any transaction pertaining to a local company in which the share-acquiring party involved is located outside Azerbaijan would be subject to the mandatory notification system under the Azerbaijani antimonopoly control regime. Thus, at present, the aforementioned Antimonopoly State Service as the antimonopoly regulatory body is likely to seek to apply the Azerbaijani notification requirements in the event of the direct acquisition of shares in an Azerbaijani company by a foreign company.

With the financial crisis having an indirect impact on the Azerbaijani insurance market, it still remains attractive to foreign investors. Thus, with its fast growing economy, within next years the increase of foreign investments in the local insurance market is expected.

Financial and corporate

Recommended firms
Tier 1
Baker & McKenzie MGB Law Offices Omni Law Firm
Tier 2
Salans
Tier 3
BM International Interjurservice

Although banking and finance activities have trailed off as a result of the worldwide recession, the Azerbaijani economy still has much to celebrate. For one, the country has recently been promoted to investment grade by international rating agency Fitch Ratings. The nation marked a 9.3% GDP growth in 2009

and is one of the most crucial energy producers in the Caspian region. "Azerbaijan is not immune to the financial crisis," says one lawyer. "But it came out much better than other places."

In the last two years, the government has cut back on spending, injected liquidity into the banking sector and more recently, tried to devalue the local currency to prevent the Azerbaijani market from falling into a deeper crisis experienced by neighbouring European countries. "The market is not heavily exposed, and because the size of the economy is quite small, the central bank kept banks alive," explains one partner. "Banks aren't growing assets as fast as a couple of years ago. We don't see massive development in the banking sector, but we don't have banks that failed miserably."

A virtual suspension of capital markets initiatives that began in the latter half of 2008 continued through 2009 as eurobond issuances and IPOs from large Baku industries all remained stagnant.

Despite the gloom, however, lawyers say they have noticed a slow but sure comeback in 2010. "We've seen a mad rush of financial institutions that are hoping to resume and pick up where financial markets left off in 2008," says one partner. "There's a huge interest in investment products to the State Oil Fund, some in very innovative ways."

Foreign investors are still motivated by Azerbaijan's growth, particularly in oil services, retail distribution and real estate. A number of global hotel chains have announced projects that would bolster the state's tourism industry. One partner makes the comparison: "It's like Dubai but on a far more modest scale." Meanwhile, local investors have increasingly stepped up to the plate, tapping into the economy through investments in the commercial market.

Fairly volatile prices of oil and gas in the first half of 2010 have mobilised the market and ensured a stable state budget. While the two natural resources are understandably the dominant sectors of the market, the government has emphatically pushed for exploration in other areas. "The oil reserves of Baku are not going to be there forever," says one lawyer. "It's very important for Azerbaijan to diversify the economy."

As a result of this ambition, investments into wind power and methanol plants, as well as hotels and resorts have all taken off, with funding largely from local developers and the state. Spectators see public-private partnerships (PPPs) as a possible growth area, but agree there first needs to be a structured legislation in place to fuel a classic PPP.

In an attempt to boost investment outside of the oil and gas domains and to give the

country a more competitive edge during down times, the government created a Special Economic Zones Law that took effect in June 2009. The law stipulates tax and customs benefits for businesses operating in designated regions, but no zone has been established to date. "It's still a work in progress," says a partner. "I suspect the government will have to tweak the law somewhat to make it more attractive to foreign investors."

Baker & McKenzie

"We're pleased to work with them each time because of their professional manner, and their international brand deserves much attention," says a peer. "They have support from their other offices. They have access all around the world." One client adds: "They have been here for quite long in Azerbaijan. We have specific needs and they try to be in our shoes." Considered by most firms in the region to be a main competitor, Baker & McKenzie remains in the top tier despite 2009 being a quiet year on all fronts.

It comes as no surprise that financing in the oil and gas sectors, the nation's two most prominent areas of investment, remains an integral part of the firm's practice. But that original focus has also branched out to include a broader scope, with partner Aykhan Asadov leading the taxation of oil and gas practice, and senior associate Natic Mamedov strengthening the M&A, real estate and telecommunications areas.

"Natic is professional and cooperative on issues," says one client. "He meets the deadlines and advises us not just as a lawyer. He understands clients." Mamedov's recent endeavours include representing several global hotel chains on recent project developments.

One competitor notes: "They have a stable firm. They have never had any loss and can keep their personnel." This rings true as the team has steadily grown to 14 fee-earners and three partners in the last year. Of particular mention is managing partner Daniel Matthews, whom one client describes as having "very good service, long and in-depth experience, good communication and easy access."

Together with Mamedov, the two advised the Islamic Corporation for The Development of the Private Sector (ICD) on its equity financing of Park Bulvar Shopping Mall in Baku. The deal utilised *shariah*-compliant *musharakah* (joint venture) and *murabahah* (fiduciary sale of property) agreements at a time when legislation for Islamic-type transactions was and still is in its infancy.

Further testament to the firm's international capabilities and strengths drawing from its worldwide network, the Baku team worked

alongside its London and Moscow offices to act as Azerbaijani counsel to Rosemount Global Trade Finance Fund. The US hedge fund was one of the mandated lead arrangers for a syndicated trade-related loan facility to the International Bank of Azerbaijan (IBA)-Moscow, and the deal marked the IBA-Moscow's return to the credit markets after the onset of the financial crisis in 2008.

In another transaction, the firm advised Garadagh Cement, a leading cement producer in Azerbaijan, in its €120 million loan from the European Bank for Reconstruction and Development (EBRD) to build a cement kiln in Baku. This was the EBRD's biggest loan outside of the oil sector in the Azerbaijani economy, indicating the market's path towards diversification.

Leading lawyers

Aykhon Asadov
Natik Mamedov
Daniel Matthews

MGB Law Offices

A local player with an international outlook, MGB Law Offices remains in first tier owing to the firm's steady workflow from a large client base in the midst of the economic turmoil. The brand is known for its representation of western banks and companies as well as its reputable relationship with a number of financial institutions such as the European Bank for Reconstruction and Development (EBRD) and the International Finance Corporation (IFC).

In an effort to broaden connections overseas and boost its capacity to compete with international rivals, the brand formed a network with Magisters, a Ukrainian law firm that listed MGB Law Offices as part of its *best friends* alliance in 2009.

While project finance, and oil and gas transactions continue to be the firm's forte, the team has increasingly engaged in litigation matters of late, with lawyers seeing more disputes in tax, employment and trade.

Some peers have taken note of the firm's loss of several associates over the last few years, but still regard very highly its two directors, Ismail Askerov and Elchin Mammadov, who both head the eight-lawyer team.

Clients additionally recognise the group's professionalism. "MGB lawyers always provide very prompt and efficient assistance with any issue directed to them," says one customer, who also lauds litigation associate Anar Janmammadov. "I have attended several court hearings with him and had opportunities to evaluate his advocacy skills and see him in action. Anar is a very efficient litigator."

The positive feedback continues. "Elchin knows his work quite well," says a financial client. "He has good communication skills and persuades people easily. He's a good person with a good personality."

Demonstrating the firm's consistent involvement in cross-border transactions, the team advised a prominent UK bank on a \$100 million syndicated credit facility to the International Bank of Azerbaijan (IBA). In a separate finance deal, Mammadov advised a consortium of foreign banks on a dual-currency term loan facility to the IBA. Both loans were considered to be of high monetary value in the local banking sector.

The firm is acting for an international insurance company on its acquisition of a local insurance provider in Azerbaijan. Once complete, this deal would mark the entrance of a well-known insurance company into the Azerbaijani market.

Leading lawyers

Ismail Askerov
Elchin Mammadov

Omni Law Firm

"I think Omni is the best in the local market when it comes to tailoring the realities of the local legal system with the needs of the client and the transaction," says one client, who also commends partner Roman Alloyarov for fitting that very description. "They are very much client-focused and are excellent at prioritising matters. Recently, we were also positively surprised by the depth and quality of tax advisory services provided to us."

One peer observes: "Omni has good connections with regulators and local clients which serve them well." A domestic client agrees: "They have a good grasp on local law, are well-established, and therefore have good interface and relationships with relevant government departments and the court system."

Omni retains a spot in tier one as it continues an active role in banking, finance and commercial work. Partaking in high-profile deals that frequently allows it to interact with magic circle and top US firms, the team has negotiated a string of mandates coming from state-owned companies in the past year. A typical favourite for government transactions, this local practice's three partners and six associates have also kept busy with contentious, labour, real estate, tax, oil and gas matters.

Partners Ismail Zargarli and Jeyhun Bayramov each received their fair share of plaudits as legal professionals. "Ismail Zargarli provided strong and sound advice during meetings with government auditors," says one client. "His insight in the complicated web of

legal framework for real-estate transactions stands out."

The client also praises Bayramov: "He is a premier expert on tax matters and his background with the Ministry of Taxes is a big plus." Another client adds: "Jeyhun Bayramov is a very personable and good communicator, fully knowledgeable on all aspects of Azeri tax law."

In a deal that exhibits their strong working relationship with the state, the attorneys acted for the Ministry of Finance in its \$270 million Export Credit Agency-backed loan for the financing of an infrastructure development. The firm also advised Socar (State Oil Company of Azerbaijan Republic) in three bilateral loans totaling \$210 million from Deutsche Bank, Natixis and BNP Paribas. This transaction illustrates an existing appetite for Azerbaijani sovereign and quasi-sovereign debt.

In what was considered a breakthrough project finance deal outside of the oil sector, the firm represented sponsor Azmeco (Azerbaijan Methanol Company) in a methanol construction project worth more than \$300 million. The European Bank for Reconstruction and Development (EBRD) and other international financial institutions contributed to the funding of this development.

On the M&A front, the lawyers represented Gaz de France in two production-sharing agreements over its acquisition of Azerbaijani oil fields. This deal marks a comeback in oil asset acquisition by a large energy company.

A client sums up the experience with Omni: "They offer a personal service which is courteous, professional and timely."

Leading lawyers

Roman Alloyarov
Jeyhun Bayramov
Ismail Zargarli

Salans

The 11 lawyers of this global firm's Baku branch have worked hard to turn around an office that until 2007 consisted of only a four-man team. Even in the thick of the crisis in 2009, the firm hired two new associates: Kamil Valiyev from the Bank of Azerbaijan and Ulvia Zeynalova from MGB Law Offices, showing its capacity for growth despite turbulent times.

Clients acknowledge the team's stellar service. "I have found them to be very professional and clear in their grasp of problems," says a long-time client. "Their approach is very practicable and concise. I have always found them to be prompt in reporting back with comments."

Salans offers a far-reaching list of services ranging from M&A, banking and finance to capital markets, restructurings and infrastructure projects. The firm additionally extends its expertise to real estate, employment, tax and production sharing agreements for oil and gas projects. It is a noteworthy achievement that the team has advised the Ministry of Finance on the only eurobond listing so far by an Azerbaijani bank, while Omni Law Firm represented the other side.

“They ensured our requirements were properly merged with the realities of the local legal environment,” says a client. “They were very efficient, very informative, and very attentive to our deadlines, our requirements, and our style of working. They had a high level of competence.”

Though managing partner James Hogan splits his time between the Baku and Paris offices, clients and peers have found his local support staff to be efficient and worthy of praise. Of deserving mention is Kamal Mamedzade, whom one rival believes to be “a key lawyer of the firm”.

A foreign client sings praise for associate Vagif Ahmadov: “He is committed to results. He has the ability to grasp complexities of local law issues as they pertain to our law requirements, and provides us with timely and concise advice.”

The client continues: “He is just a first-rate international lawyer, fluent in English but also completely fluent in the legal realities of how an American financial institution operates.”

The Baku office’s frequent appearance in high-profile deals came to light in a significant wind power project, where Hogan’s team advised Landesbank Berlin on two export credit loans made to finance the purchase of a turnkey wind park from German exporter Mitaki Project.

In a complex three-way transaction, Hogan and Ahmadov acted for CIT Group, one of the world’s largest aircraft leasing companies, in the extension of an aircraft lease and the ensuing purchase of a Boeing 757 by Silk Way Airlines. The deal was challenging considering Azerbaijan’s new state civil aviation authority was not yet in full operational mode and therefore required the firm to work in a regulatory vacuum.

Leading lawyers

Vagif Ahmadov
James Hogan
Kamal Mamedzade

BM International

Priding itself as one of the first private firms to be established immediately after the country’s claim to independence, BM International

offers an extensive range of expertise in areas inclusive of, but not limited to corporate, project finance, banking, telecommunications, intellectual property and energy.

The firm additionally boasts an impressive record of clients consisting of multinational corporations such as Société Générale, Credit Suisse, HSBC and BNP Paribas. One peer takes note of the brand’s widespread networking: “They are used as local counsel for a lot of New York and London firms.”

Confirming this statement, BM International works closely as an exclusive local correspondent firm for reputable international names including Freshfields Bruckhaus Deringer, Baker Botts and SNR Denton. Of mention is the office’s increasing activeness in dispute resolution, with three litigators on the nine fee-earner team. The attorneys have represented a number of financial institutions on taxation, insurance, and labour and employment issues, among others.

Though 2009 was a slow year for transactions, the firm was still able to churn out a consistent work flow. In a significant deal that highlighted a push for infrastructure development, Farhad Mirzayev and Delara Israfilova led the team in representing a consortium of lenders, namely BNP Paribas, Bank Hapoalim, Bank Leumi Le-Israel and The Israel Export Insurance Corporation (Ashra) in its \$270 million financing for the reconstruction of a motorway. Further reflecting its project finance capabilities, the group advised an international financial institution in providing funding to a cement producer in Azerbaijan.

In the TMT area, Turk Telekom instructed the firm on an equity investment in a local telecommunications company. The legal staff worked diligently with the Turkish operator in determining the legal risks involved with the purchase.

Leading lawyers

Jamal Baghirov
Delara Israfilova
Farhad Mirzayev
Vadim Shneyer