

Azerbaijan

Chamber of commerce:

Azerbaijan Chamber of Commerce and Industry
31/33 Istiglaiyat Street
370001 Baku
Azerbaijan
Tel: +994 12 928 912
Fax: +994 12 971 997
Email: expo@chamber.baku.az

Elchin Mammadov Ledingham Chalmers Baku

The development of a market economy in Azerbaijan has required the legal system to keep pace, and in recent years the government has passed a number of new laws and regulations to achieve this. As the economy has grown, new businesses have emerged and there has been merger activity in several business sectors, especially the banking sector. Although the legal regulation of mergers in Azerbaijan is not as sophisticated as in more developed legal systems, there is a strong feeling that merger activity should be carefully monitored and regulated. This would avoid the creation of uncontrollable monopolist entities that might distort competition, and is considered a driving force of the Azeri emerging market.

A number of laws and regulations regulate the merger of different types of entities in different sectors of the economy. As a natural result of the country's intensive development (which has occurred almost from scratch), there are many inconsistencies between the different legal provisions regulating merger activity.

For convenience I have divided the whole process into several stages, and describe the merger of two companies whereby their shareholders receive shares in a third company to which the assets and liabilities of the two companies are transferred.

Corporate issues

While one provision of the Civil Code of the Republic of Azerbaijan (the Civil Code) provides that a decision to merge can be taken by those entitled to do so by virtue of the charter of the company, other provisions of the Civil Code refer this exclusive decision to the shareholders. Given the importance of such a decision, it would always be prudent to seek the shareholders' decision in a general meeting. The majority required depends on the corporate structure. In the case of a limited liability company the decision must be achieved unanimously, whereas in the case of a joint-stock company a two-thirds majority is required.

The merging companies are required to prepare a deed of transfer to ensure the proper legal succession of all of their rights and liabilities from the merging companies to the new company. The deed of transfer must be submitted to the Ministry of Justice, along with the charter of the new company (see Registration requirements, below).

There may be additional requirements depending on the corporate structure, assets or industry sector of the merging companies. For example, if a merging company holds shares in another limited liability company, its shares may only be transferred to the merger company with the consent of the shareholders of that limited liability company.

Another example occurs in the case of credit unions, which have to prepare a merger plan for approval by their shareholders and an independent auditor. This plan must contain information as to the existing state of the merging companies and what results are expected as a result of the merger. The new (merged) company has to apply for a new banking licence from the National Bank of the Republic of Azerbaijan (the National Bank).

In all cases, merging companies are required to formally inform their creditors of a proposed merger. In a merger the creditors are entitled to accelerate the discharge of any liabilities owed to them in kind by the merging companies, and can also require cash compensation for liabilities owed to them by the merging companies. The Civil Code also provides the creditors with the right to release the merging company from debts owed to such creditors, which can be useful if the creditor(s) and the merging companies are affiliate entities.

As for public information on mergers, there might also be additional industry-specific requirements. For example, merging insurance companies must publish notice of the proposed merger in the Azeri media at least twice within an interval of no less than a week. Any insured person who does not expressly object to the transfer of an insurance policy to a merger company is deemed to have agreed to the transfer.

Regulatory issues

Merging companies might also be required to seek approval from the regulatory authorities having jurisdiction over the specific industry in which the companies operate. For example, merging banks have to obtain National Bank consent. Similar rules apply in respect of a merger of insurance companies, where State Insurance Authority consent must be sought.

Anti-monopoly issues

In some cases, merging companies might have to obtain consent to merge from the Ministry of Economic Development (the MED), which is the government agency responsible for

the regulation of competition and supervision of monopolies. Such cases include:

- if, as a result of merger, the new (merged) entity will possess a share of more than 35% of the relevant market; or
- if, as a result of merger, the new (merged) entity will possess assets of Am412.5 million (\$83,927) of total value.

In either of these cases the merging companies have to submit to the MED the application for merger approval, supported by the documents required for state registration (that is, the constituent documents, shareholders' decision on the merger and so on) and information relating to the level of sales of the merging companies in the relevant market.

The law requires the MED to respond in writing no later than 15 days after receiving the documents.

Registration requirements

Unless one of the original companies is to survive, the merger is considered to be effective from the time that the new (merged) entity is registered with the state. A complete set of documents must be submitted, including the constituent documents of the new entity, shareholders' resolutions of the merging companies, and the deed of transfer containing a full list of the rights and obligations transferred to the new entity.

A natural way to grow

In recent years most mergers in Azerbaijan have been in the banking sector. As a result of measures undertaken by the National Bank to increase minimum capital requirements, banks have been forced to consider mergers. One of the most prominent mergers (in 2002) involved Promtechbank and Mbank, which resulted in the creation of a new bank – Unibank – with a charter capital of \$5 million.

Although merger activity is still in its infancy in Azerbaijan, it seems certain that developing Azeri companies will see this as a natural way to grow their business.

Corporate and commercial

Recommended firms

Tier 1

Baker & McKenzie

Baker Botts

Ledingham Chalmers

OMNI Consultants

Salans

Baker & McKenzie

Described by one client as “a firm with broad experience and expertise,” Baker & McKenzie is one of Azerbaijan’s leading law firms. Another client comments that the firm is “responsive” with a “good knowledge of local law” but that also “understands the needs of foreign clients.” The team of four lawyers, described as the “local experts on banking law,” is headed by the highly respected Daniel Matthews. His colleague

Natik Mamedov is praised by one client for providing “detailed and clear advice on the local financial legal market in Azerbaijan, and a useful commercial perspective on the different layers of local law.” The firm recently consolidated this team by hiring Aykhan Asadov, a former general counsel of Azpetrol, who is also recommended by the market.

Over the past year Baker & McKenzie has been involved in a slew of project finance and banking deals. It acted as legal counsel to the European Bank of Reconstruction & Development (EBRD) on a \$170 million financing deal for an upstream development of the Shah Deniz (SCP) and the South Caucasus Pipeline. Baker & McKenzie also advised the EBRD on a syndicated loan facility to Raiffeisen Leasing. In another notable transaction, the firm represented General Construction in a transaction worth \$19 million to finance the development of the IBA Plaza in Baku. Other finance deals saw the firm represent ISR Holdings on a \$60 million financing transaction for the purchase of five Caspian oil tankers, and advise the Overseas Private Investment Corporation on a secured financing to Baku Oil Tools that closed in May 2005.

The firm is also active on the corporate side. It provides advice to the majority shareholder of Azericell (the largest mobile phone operator in Azerbaijan) on the privatization of the state-owned shares in the company, a deal that is expected to close in July 2005. Another notable deal saw Baker & McKenzie act for the Azeri Ministry of Economic Development on the privatization of two businesses in the civil aviation sector. And lastly, the firm advised Garagdagh Cement, a subsidiary of one of the world’s largest cement companies, Holcim, on the structuring of its Azeri holdings, and on compliance with local legislation.

Leading lawyers

Aykhan Asadov

Natik Mamadov

Daniel Matthew

Key contact partner

Daniel Matthews

Baker Botts

Baker Botts, headed in Baku by the well-regarded Mark Rowley, continues to be one of the leading law firms in Azerbaijan, particularly in respect of advice on investments in the Caspian-Caucasus region. Euromoney’s *Petroleum Economist* for the second year running ranked Baker Botts as having the best knowledge of energy law and transactions in the CIS.

No surprise, then, that the bulk of the firms’ work is in the project finance sector. The firm provided legal counsel to two major pipeline projects that represented an important milestone in Azerbaijan and the Caspian region. On the first of these it served as main external legal counsel to the Baku-Tbilisi-Ceyhan (BTC) crude oil pipeline project, running from Baku to Turkey and valued at \$4.3 billion. The 1,100 mile pipeline

came into service on May 25 2005 amid considerable media interest. And on the second, Baker Botts is the main legal counsel on the \$3.2 billion Shah Deniz natural gas pipeline from Azerbaijan to eastern Turkey, which is still under construction. In another project finance deal, the firm is advising the Caspian Energy Group on drafting and negotiating a production sharing agreement with the State Oil Company of the Azerbaijan Republic (Socar) for the development of the Kurovdag onshore oil field.

In straight banking work, the firm continues to represent the European Bank of Reconstruction and Development (EBRD), this year working on a \$5 million syndicated loan facility to Unibank and a \$1 million equity investment in MBask Insurance Company. Other deals saw the firm represent EBRD on a \$2 million loan to Azerdemiryolbank, a \$1 million loan to Respublika bank, and \$1 million loan to the Azeri-licensed Bank of Baku. Baker Botts is also representing the World Bank in preparation for the privatization of the utilities sector in Azerbaijan, which involves drafting new legislation for the introduction of a utilities regulatory agency, and developing a licensing regime.

The list of impressive clients advised by the firm includes, in addition to those mentioned above, the Azerbaijan Gas Supply Company Limited (AGSC), British Petroleum, J Ray McDermott, LUKoil Overseas, Exxon, Shell, Conoco and KPMG, as well as a number of smaller entities.

Leading lawyers

Bakhtiyar Mammadov
Mark Rowley

Key contact partner

Mark Rowley

Ledingham Chalmers

Formally established in 1995, the Scottish firm of Ledingham Chalmers is one of the largest foreign law firms in Baku and has extensive international expertise. Among the team of 7 lawyers, Benjamin Paine is picked out as having a “good reputation” among market participants. Others singled out for praise by the market are Elchin Mammadov and Ismail Askerov. Askerov is described as a “good person to work with on deals”.

Ledingham Chalmers boasts an excellent list of clients, which includes Ramco Energy and HVB Bank. In one of Azerbaijan’s largest ever project finance deals, the firm was involved in the \$4.3 billion Baku-Tbilisi-Ceyhan (BTC) crude oil pipeline, running from Baku to Turkey, which came into operation in May 2005.

Leading lawyers

Ismail Askerov
Elchin Mammadov
Benjamin Paine

Key contact

Ismail Askerov

OMNI Consultants

According to one commentator, OMNI Consultants is “an upcoming firm with ambitious and smart guys” that is “reasonably successful at what it does”. The firm has a team of nine lawyers. Partners Jeyhun Bayramov and Roman Alloyarov are advising the Ministry of Economic Development on the sale of state shares in the largest mobile operator in Azerbaijan – Azercell – in the largest privatization in Azerbaijan to date. In another deal, the firm acted as a special counsel to MBask Insurance Company in an acquisition by the European Bank of Reconstruction and Development (EBRD) valued at \$900,000.

OMNI Consultants is also working on the EBRD’s purchase of 20% of Unibank, representing Unibank. Other deals saw the firm advising the foreign investors in the \$2.2 million acquisition of McDonald’s business in Azerbaijan, which closed in July 2004. Other clients of firm include Western Union, Saipem and Saipem’s subsidiary, BOS Shelf.

Key contact partners

Roman Alloyarov
Jeyhun Bayramov

Salans

Salans has a well-established operation in Baku, one client stating that it “uses Salans for corporate and commercial transactions [because of] its excellent knowledge of Azeri law.” The highly respected Alum Bati – who is the honorary legal adviser to the British Ambassador in Azerbaijan – heads the practice, and brings with him a wealth of legal knowledge, particularly in tax matters. One contemporary describes him as “a solid tax lawyer that understands the laws of Azerbaijan.” The firm’s team was boosted with the hire of “rising star” Vagif Ahmadov from Baker & McKenzie.

At the time of writing, the firm was advising the State Oil Company of Azerbaijan (Socar) and the US Trade and Development Agency on the restructuring of Socar. Other deals saw the firm advising CIT on an aircraft lease, and providing legal counsel on a major investment in the chemicals industry valued at \$10 million.

The firm attracts some extremely desirable clients, including the European Bank for Reconstruction & Development, Koch Bank, ENI, British Petroleum, Coca-Cola, Japan Tobacco International and EngenderHealth.

Leading lawyer

Alum Bati

Key contact partner

Alum Bati