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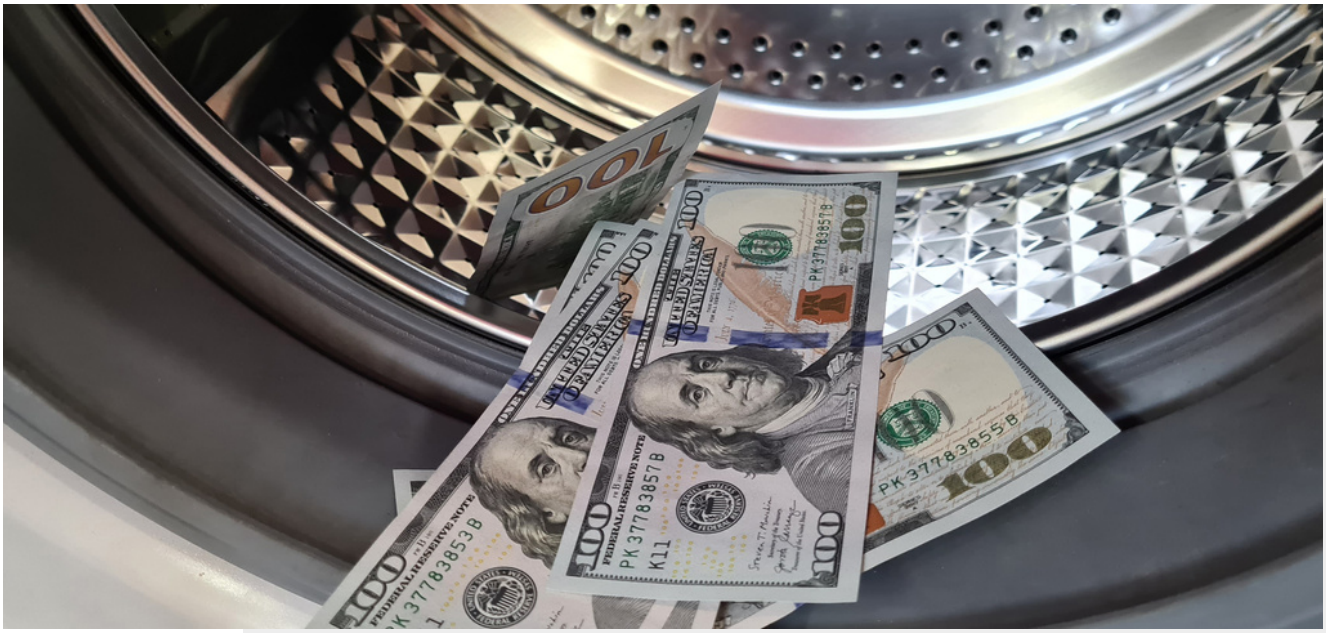
NEW LEGISLATION TO OVERHAUL AML AND CFT REGIME



Law No. 781-VIQ, *On Combating Legalization of Criminally Obtained Property and Financing Terrorism*, dated 30 December 2022, is promulgated on 31 January 2023. Except for the obligation to report electronic transfer of funds exceeding the threshold to be determined by the Financial Monitoring Service, the new Anti-Money Laundering (AML) and Countering Financing of Terrorism (CFT) Law takes effect as of 1 February 2023. The new Law replaces Law No. 767-IIIQ of 10 February 2009, *On Combating Legalization of Criminally Obtained Funds and Other Property and Financing Terrorism.*

Consistent with the International Standards on Combating Money Laundering and Financing of Terrorism and Proliferation, Law No. 782-VIQ, *On Targeted Financial Sanctions,* has come into effect. As the new AML and CFT Law, the Targeted Financial Sanctions (TFS) Law is dated 30 December 2022 and promulgated on 31 January with effect 1 February 2023.

To give further effect to the new AML and CFT legislation, amendments are made to the Codes of Civil and Criminal Procedure. The Code of Civil Procedure no longer includes the procedure for a filing to freeze assets used to finance terrorism, which is now a part of the TFS Law. The Code of Criminal Procedure now includes procedures for inclusion in the country's list of individuals and institutions subject to sanctions under the framework of combating terrorism and financing terrorism.

As a part of the overhaul, technical and substantive revisions have been made to the Criminal and Housing Codes, Code of Administrative Violations and Laws of Currency Regulation, State Registration and State Register of Entities, Banks, Insuring, Investment Funds, Securities Market, and Cashless Settlements.

The new AML and CFT Law lists the following as financial institutions:

- credit institutions
- local and foreign insurers, reinsurers and insurance intermediaries offering life insurance
- investment companies
- investment funds, their managers
- representations of foreign investment funds
- central depository
- national operator of postal service
- pawnbrokers
- persons offering financial leasing
- virtual asset service providers
- persons licensed for money and currency changing

The following are the listed non-financial institutions (businesses) and professions:

- real estate agents
- advocates
- notaries
- independent professionals providing legal, accounting, and tax advisory services, branch and representative offices of foreign entity professionals

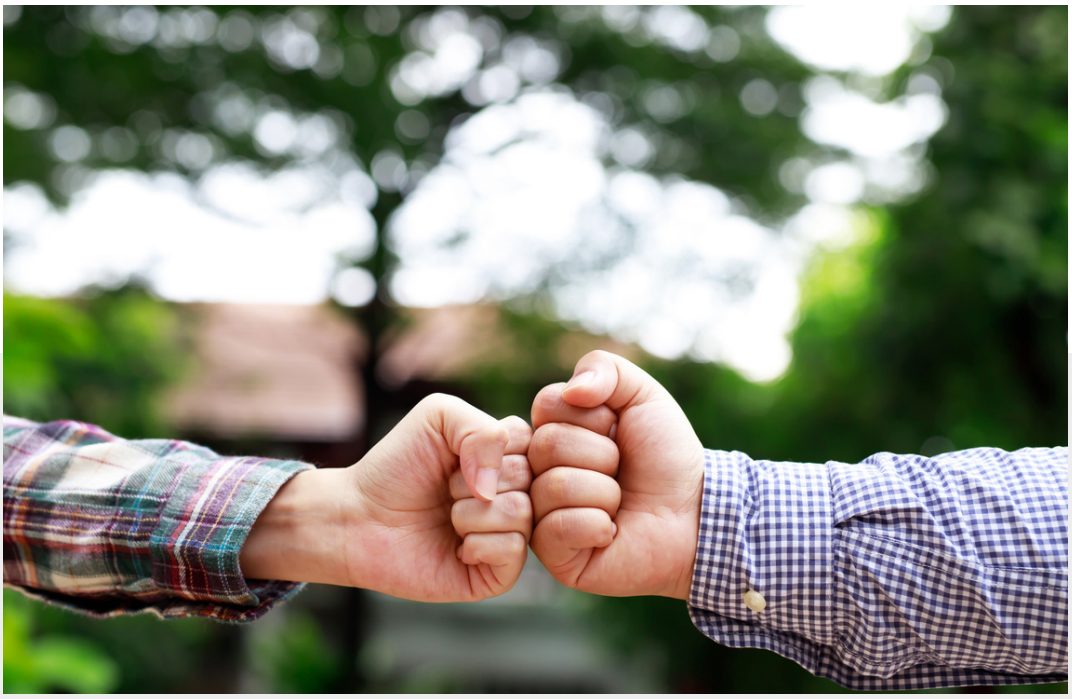
Both the financial institutions and non-financial businesses and professions are the responsible (reporting) persons under the new AML and CFT Law.

The new AML and CFT Law defines high risk areas (conflict zones) as jurisdictions and areas lacking an adequate AML/CFT system assessed by reputable AML and CFT sources, supporting armed separatism, extremism, mercenarism, and terrorism, not requiring upon financial transacting disclosure of identification information or documents, and subject to sanctions and similar measures imposed by international organizations.

Resolution No. 64, dated 20 February 2023, of the Cabinet of Ministers provides for the restrictions and special measures that can be implemented by the Financial Monitoring Service and responsible persons, such as special KYC reviews, denying license, and restricting business and financial transactions, in relation to high-risk zones.

On 28 February, the President of the Republic approved the National AML and CFT Action Plan for the years 2023-25.

PPP LAW



Law No. 691-VIQ of the Republic of Azerbaijan, *On Public Private Partnership,* of 9 December 2022 came into effect as of 27 December 2022. The Law broadens regulation of the partnership by establishing a framework for all public-private projects. With the new Law coming into effect, the earlier regulation, most notably:

- Law, *On Implementation of Investment Projects Related to Construction and Infrastructure Facilities under Special Financing*, of 2016 introducing the build-operate-transfer (BOT) model, and
- Presidential Decree providing for the terms of implementing projects under the BOT model, requirements for investors, specifics and terms of agreements made, and approving the rules to determine the value of goods and services generated from the investments ceases to have effect.

A private-public partnership (PPP) is a joint activity of private and public partners based on an agreement on the provision, developing and managing the infrastructure, of public services. A public partner is a public authority and other agencies as well as a municipality and municipal enterprises. A private partner is any individuals and entities.

Where required by international undertakings or considerations of public safety of the Republic, participation in competitive procedures of listed foreign applicants or applicants from listed foreign jurisdictions, their ability to make offers as a part of a private initiative, or direct negotiations, can be restricted. PPP agreements with foreign counterparties, including persons they control, or involving foreign and international financiers can be governed by foreign law.

The Law introduces the competent authority, the Ministry of Economy. The Ministry determines the forms and methods of the Republic's participation in each PPP project. The authority also prepares for the approval of the Cabinet of Ministers annual lists of PPP projects that the Republic considers developing under the PPP model.

A PPP project is announced by the competent authority. Interested parties make their offers in response to the announcement in accordance with the set of competitive selection documents. Applicants may form joint ventures among themselves for the purposes of bidding.

Project offers are assessed based on the following criteria:

- amounts payable by a public partner to a private partner and how they are shared during a project's lifetime;
- state support and guarantees;
- term of the project where its implementation period is a part of an offer;
- forecast of results of work and compensation for damages related to failures to perform contractual obligations;
- technical, esthetic-functional, and innovative features of a project offer; and
- risk management measures offered by an applicant.

A PPP project is made for 49 years at most with particular project timelines determined by the competent authority. The authority also resolves on a participation in a project company of a public partner – such participation cannot exceed 49 percent of the equity of the company.

A private partner may benefit from guarantees specified in the competitive procedure documents, such as: (a) uninterrupted supply of goods, material, raw materials, and equipment for implementation of a PPP project; (b) secured minimal revenues of the project; (c) guaranteed offtake of the project's output; (d) subsidies and loans and invested funds; (e) guaranteed level of regulated prices; (f) exclusive rights to supply goods, works, and services in Azerbaijan or a part of it; and (g) cost recovery and compensation for lost profits.

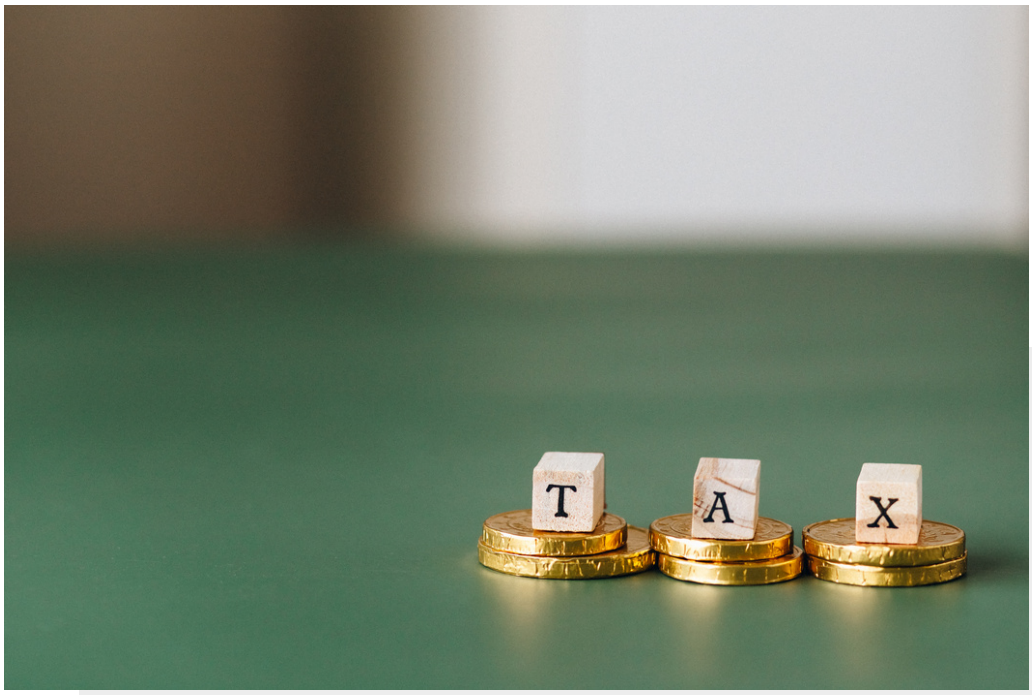
A private partner would be compensated for an increase of costs and decline of revenues under a PPP agreement resulting from amendments to Azerbaijani legal and regulatory acts made after the PPP agreement. The amount of compensation can be specified in the PPP agreement.

To obtain financing, a private partner may provide security to project creditors. Encumbering a public partner's share of the project company can be made subject to observing undertakings of the Republic under international agreements. Where so specified in direct agreements with creditors, the competent authority has a preemptive right upon acquiring an encumbered asset.

At termination of a PPP agreement, an infrastructure built by a private partner remains its property or is alienated to a public partner. The public partner has a preemptive right or an obligation to purchase the infrastructure. If the infrastructure belongs to the public partner, it can be alienated to the private partner and, should that partner already manage it, it will have a preemptive right to purchase it.

State-owned land can be provided to a private partner under a lease or use right as well as contributed into a project company. Municipal and private land required for a PPP project can be acquired or leased by the Republic.

UPDATED LIST OF TAX OFFSHORES



As of 2023, the Azerbaijani Tax Code defines jurisdictions with preferential taxation as:

- those with the tax rate at 75 percent and lower (as opposed to at least twice lower previously) of the rate applicable under the Code;
- those not exchanging with the Republic information according to the relevant standards under international agreements; and/or
- those with law protecting confidentiality of information of companies enabled to preserve secrecy of their financial data or beneficiary of property or income (profits).

On 18 March 2023, the President of the Republic issued Decree No. 2070 updating the list of jurisdictions with preferential taxation. The Decree amends the original list approved by Presidential Decree No. 1505 of 11 July 2017.

Earlier, in 2019, the list was amended by Presidential Decree No. 724 of 11 June. The 2023 Decree list is the broadest of all three, listing 47 jurisdictions, most retained from the original or amended lists and others either reinstated from the original list or newly added.

The following are the original, amended, and most recently updated lists indicating the changes across the three Decrees (turquoise color bold typeface indicates removal while red bold typeface indicates inclusion, jurisdictions in regular typeface indicate no updates):

	Original List of July 2017	Amended List of June 2019	Current, March 2023, List
1	Andorra	Andorra	Andorra
2	Anguilla	Anguilla	Anguilla
3	Antigua and Barbuda	Antigua and Barbuda	Antigua and Barbuda
4	Aruba	Aruba	Aruba
5	Bahamas	Bahamas	Bahamas

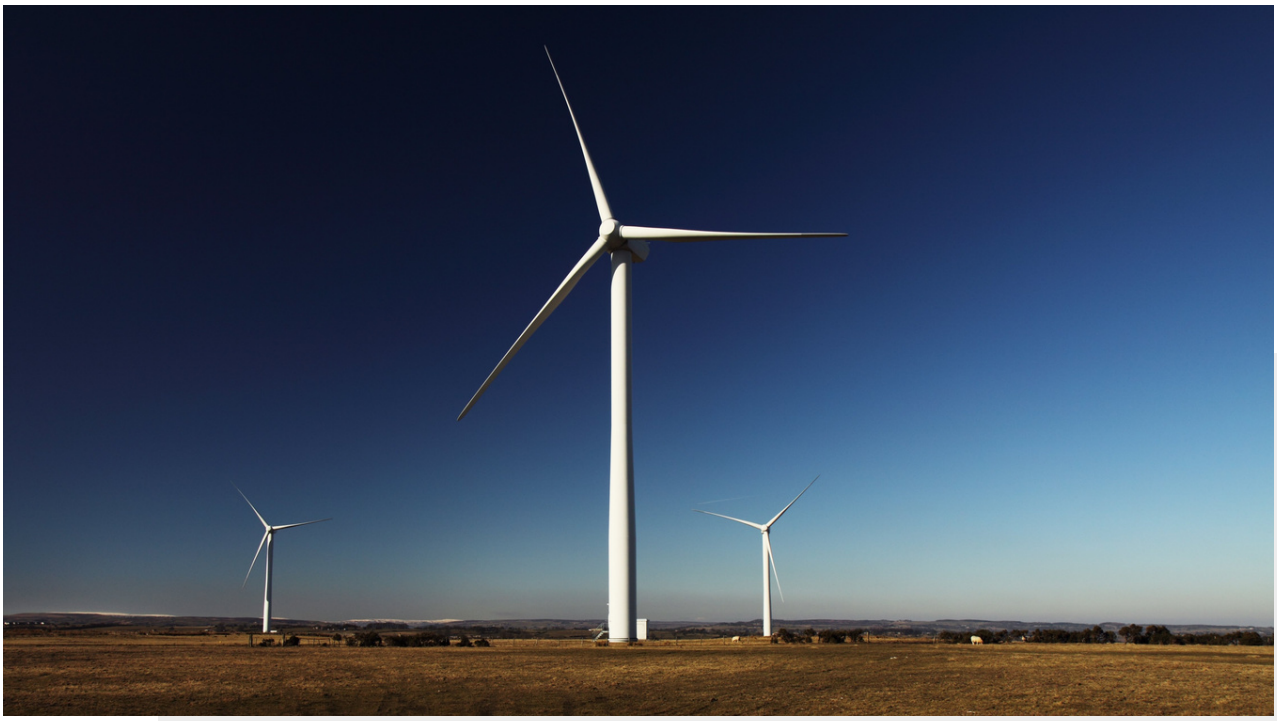
6	Bahrain	-	Bahrain
7	Barbados	Barbados	Barbados
8	Belize	Belize	Belize
9	Bermuda	Bermuda	Bermuda
10	British Virgin Islands	British Virgin Islands	British Virgin Islands
11	-	-	Brunei Darussalam
12	-	Cape Verde	Cape Verde
13	Cayman Islands	Cayman Islands	Cayman Islands
14	Cook Islands	Cook Islands	Cook Islands
15	Costa Rica	_	_
16	Dominica	Dominica	Dominica
17	-	Fiji	Fiji
18	Gibraltar	Gibraltar	Gibraltar
19	Grenada	Grenada	Grenada
20	Guernsey	-	Guernsey
21	Hong Kong (China)	Hong Kong (PRC)	Hong Kong (PRC)

22	Isle of Man	-	Isle of Man
23	Jersey	Jersey	Jersey
24	-	-	Labuan (Malaysia)
25	Liberia	Liberia	Liberia
26	Lichtenstein	Lichtenstein	Lichtenstein
27	Macao (China)	-	Macao (PRC)
28	Maldives	Maldives	Maldives
29	Marshall Islands	Marshall Islands	Marshall Islands
30	-	-	Mauritius
31	Monaco	Monaco	Monaco
32	Montserrat	Montserrat	Montserrat
33	Nauru	_	Nauru
34	Netherlands Antilles	-	-
35	Niue	Niue	Niue
36	Palau	Palau	Palau
37	Panama	Panama	Panama

38	Saint Kitts and Nevis	Saint Kitts and Nevis	Saint Kitts and Nevis
39	Saint Lucia	Saint Lucia	Saint Lucia
40	Saint Vincent and the Grenadines	Saint Vincent and the Grenadines	Saint Vincent and the Grenadines
41	Samoa	Samoa	Samoa
42	Seychelles	-	Seychelles
43	-	Taiwan (PRC)	Taiwan (PRC)
44	-	Thailand	Thailand
45	-	Trinidad and Tobago	Trinidad and Tobago
46	Turks and Caicos Islands	Turks and Caicos Islands	Turks and Caicos Islands
47	Vanuatu	Vanuatu	Vanuatu
48	-	-	Union of the Comoros
49	US Virgin Islands	US Virgin Islands	US Virgin Islands

Direct and indirect payments by residents of the Republic, including resident individuals not tax-registered here, and permanent establishments in the Republic of non-residents to persons incorporated in the listed jurisdictions, including their branch and representative offices in third jurisdictions, as well as to bank accounts in the listed jurisdictions are regarded sourced from Azerbaijan and taxed accordingly.

FRAMEWORK FOR POWER MARKET



Law No. 858-VIQ, dated 11 April 2023, *On Power Industry [Electro-Energetics]*, is promulgated on 19 May 2023 taking effect as of 2024.

The Law will be implemented in three steps:

- initially, from the date of entry into force of the Law, 1 January 2024, through 30 June 2025, inter alia, management of electricity generation and transmission will be separated;
- in the second stage, from 1 July 2025 through 30 June 2028, the market operator (a separate legal entity under the transmission system operator) will be formed, management of electricity distribution and electricity supply separated, and purchasing of electricity from all generators (excluding those selling electricity to guaranteed purchasers under the existing Law, *On Use of Renewable Energy Sources* upon Electricity Generation) implemented, among others; and

- finally, starting 1 July 2028, the conditions the Law lists for a fully regulated market in the power industry, such as functioning of an independent market operator, will have been established.

As of the final stage date, the wholesale and retail electricity markets will have been established. The wholesale market will consist of: (i) the bilateral agreements market, (ii) centralized market, (iii) balancing market, and (iv) ancillary services market.

The Law introduces more than 40 concepts, such as an active electricity generator, balancing, regulator, market operator, electricity supplier, retail and wholesale markets, subjects of power industry and electricity markets, transmission and distribution system operators, renewable energy sources, and closed distribution network operator.

The Law proclaims the following key principles of the State policy in the power industry: (i) uniformity, reliability and safety of the electric power system, (ii) efficiency and transparency of management and regulation in the electric power sector, and (iii) creation of equal and non-discriminatory possibility to use the services of subjects of the power industry as well as of power network

Consistently with the three-step introduction of the electricity market, enactment of the listed provisions of the Law is delayed until 1 July 2025 and 1 July 2028, respectively. As such, the

electricity distribution and market operator's service tariffs, independence of electricity generator and transmission system operator, operation of the closed distribution network, introduction of free consumers (having a choice to procure electricity from any supplier) and non-free consumers (those satisfying their needs only from listed suppliers), and sale and purchase of electricity on the electricity market take effect as of 1 July 2025.

Further, the provisions of the Law (i) enabling the regulator to start permitting power industry subjects, establishing pricing and tariffs, and monitoring the market, (ii) enabling power generators to participate in the power market, (iii) enabling transmission system operator to commission functioning balancing and ancillary services markets, (iv) ensuring independence of grid operators and electricity suppliers, and (v) enabling functioning of the market operator take effect as of 1 July 2028.

The Law establishes conditions for the transition of the power industry, which nowadays is wholly owned by the State, based on the market principles. As such, it is opening up opportunities for investors in the industry.

Further, the Law establishes a framework to increase the number of players in the power market. Currently, the subjects of the market

are the wholly state-owned generator and transmitter, Azarenerji JSC, and distributor, Azarisiq JSC, and electricity consumers. The subjects of the fully functioning electricity market will be the electricity generators, transmission system operator, distribution system operator, closed distribution network operator, market operator, supplier (wholesale and retail), and consumers (active and ordinary, free and non-free).

Generators of electricity from renewable energy sources have priority to access electricity transmission and distribution. Active consumers, i.e., entities and individuals generating up to and including 150 kW of electricity from renewable energy sources, may sell the excess electricity and participate in the balancing under the terms of the existing Law, *On Use of Renewable Energy Sources upon Electricity Generation*.

Activity of the centralized market of electricity will be organized by the market operator. The regulator, on the other hand, will be an institution that carries out the State regulation and control of generation, storage, transmission, distribution, and supply of electricity; its status will be determined by a separate law.

As of 1 January 2024, the existing Law, *On Electro-Energetics*, No. 459-IQ of 3 April 1998, will cease to have effect

DRAFT BILL OF AMENDMENTS TO LAW ON MEDICINES

Law No. 208-IIIQ of the Republic of Azerbaijan, *On Medicines*, of 22 December 2006, regulates handling and circulation of medicines. The Law covers registration, expert examination, and certification, licensing of production, wholesale, and retail sale, export and import, advertisement, as well as compensating damage from the use, of medicines.

Per the Law, the following are subject to the State registration: (i) brand-name (original) medicines; (ii) generics; (iii) new combinations of medicines; (iv) medicines under expired State registrations; and (v) substances used in the manufacture of medicines. The following medicines are not

subject to registration: (i) exhibition samples; (ii) prepared in pharmacies based on prescriptions; (iii) imported for use in emergencies; (iv) intended for research, preclinical studies, and clinical trials; (v) imported as samples as well as substances used in manufacture; (vi) imported by individuals for personal use in appropriate quantities; (vii) recommended for use by the World Health Organization; (viii) intended to treat rare diseases; and (ix) prescribed by participating States for use by their athletes and personnel in sport competitions.

The most recent draft bill of amendments to the Law passed the first reading at the parliament, Milli Maclis, on 23 June. The amendments modernize the Law by, for instance, aligning with the tax laws the requirement for drugstores to be operated by businesses.

Concepts, such as a simplified examination of medicines, tracking and tracing system of medicines, prescription of medicine, clinical protocol, and Good Manufacturing Practice (GMP), are introduced. Further, the amendments provide for the following new key definitions and procedures:

- a definition of the State registration of a medicine: a system of measures encompassing entering into the State register based on an expert examination, including the simplified examination, of medicines and medicinal substances as well as medical devices of higher, high, and/or medium risk ranking and authorizing their local mass manufacturing, importation, and use;

- a definition of the State register of medicines: an information system consisting of data of medicines, medicinal substances, and medical devices registered according to the Law;
- a definition of a medical device: instrument, device, accessory, software, tangible and other means, as well as special devices for cleaning of such instrument, device, and accessory, that do not have a pharmacological, immunological, or metabolic effect on the human body, but can help the function of the agents that so do;
- the process of recognition of a foreign (international) registration of medicines: entering into the State register, based on a simplified examination, of medicines manufactured, State-registered and authorized for sale in at least one country from the list of approved countries, or authorized for use by foreign (international) organizations, as well as manufactured in other countries and authorized for sale in at least two countries from the list;
- a permitting authority – the authority responsible for registering medicines and permitting their importation;
- a permit to import a medicine – there would be a separate permit issued by the permitting authority;

- a process for issuing pursuant to clinical protocols of a prescription for the use of a medicine, a medical document in an electronic form; an unregistered medicine listed in a prescription can be imported in the quantities listed in the prescription only after the authority has approved the prescription (the process is introduced to prevent a distribution of unregistered medicines requiring such registration by, for instance, an importation by individuals in quantities exceeding their needs);
- a provision of instructions for the use of a medicine: where the instructions in the Azerbaijani are missing from or not accompanying the packaging of the medicine, drugstores must provide to their customers the instructions in the Azerbaijani language provided by the holder of the registration certificate; and
- a regulation of dietary supplements: changes are made regarding the details to be indicated on the product leaflet next to the information of the supplement.

These changes will come into effect in stages: while the rules for recognition of foreign (international) registrations of medicines and new requirements for accompanying information on dietary supplements will take effect from 1 November this year and new rules for issuing medical prescriptions will come into force from 1 January 2024, the rest of the amendments will come into effect upon an expected prior promulgation.

The draft bill is expected to pass at the parliament two more readings before being approved into law.

PROCEDURE FOR GRANTING MINING RIGHTS UPDATED

On 18 July 2023, amendments to Presidential Decree No. 975, dated 23 October 2023, were promulgated. The amendments approve the *Rules for Holding Competitive Bidding (Auctions and Tenders) to Grant Mining Rights,* replacing *the Regulations of Terms and Conditions of Holding Tenders and Bidding to Grant Mining Rights*.

Unlike the Regulations, where competitive auctions were jointly organized by the Ministry of Ecology and Natural Resources and Ministry of Emergencies, the Rules assign this responsibility to the State Agency for Use of Mineral Resources under the former. The Rules streamline regulation of competitive bidding by approving the procedures to apply for, document results of, and to hold, a bidding.

Rights to mine minerals are granted based on competitive bidding except where they are granted pursuant to direct negotiations. Mining rights for non-metallic (non-ore) mineral deposits are granted at auctions and mining rights for ore mineral deposits are granted through a tender. Auctions are open while tenders can be open and closed.

Competitive bidding is organized by the State Agency for Use of Mineral Resources under the Ministry of Ecology and Natural Resources. The Rules do not affect the cases when mining rights are granted pursuant to direct negotiations, which continue to be governed by the Cabinet Resolution No. 216 of 10 May 2019.

Entities and individuals of the Republic of Azerbaijan as well as of foreign states, regardless of types of ownership and legal form, may participate in an open tender and auction.

Only individuals and entities invited for this purpose may participate in a closed tender. A closed tender is held upon any of the following cases: (i) geological information about subsoil being granted is confidential; (ii) granting subsoil for extraction of radioactive raw materials; and (iii) participation in the tender of defense enterprises.

To prepare for bidding, the Agency considers an annual forecast of the needs of the country's economy and industry in building materials. The forecast is submitted to the Agency by the Ministry of Emergencies before 15 September of the current year.

Having analyzed the data of confirmed mineral deposits maintained by the State Geological Information Fund, the Agency by 15 December completes a list of mining rights to be put up for bidding during the next calendar year.

The Agency announces a competitive bidding at least 30 business days in advance of the bidding. No public announcement is made upon a closed tender. In closed tenders, documents are sent to participants ten business days before the date of the tender.

The amount of payment for participation in the bidding and the starting price of a subject of the competition are determined by the Ministry of Ecology and Natural Resources under the rules agreed with the Ministry of Economy.

The Agency annually submits to the auction commission (see below) a list of subsoil plots to be put up for bidding, including consents obtained in advance of landowners and relevant state bodies (institutions) on the allocation of land where mineral deposits are located.

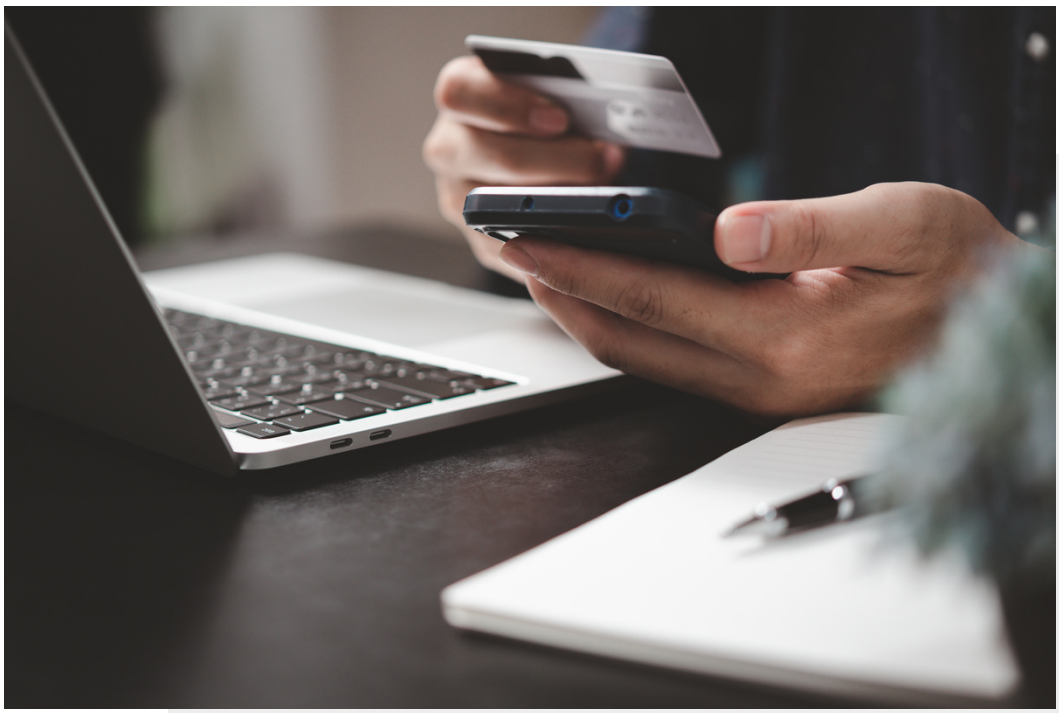
The Agency forms a commission for each competitive bidding process. Upon completion of the procedures, the commission is dissolved.

The commission is competent if at least two thirds of its members are present in a sitting. Decisions at a meeting of the commission are taken by an open vote based on a simple majority of participating members; upon a tie vote, the vote of the commission chairman is tiebreaking. The commission members have no right to abstain.

Based on the results of competitive bidding documented by a protocol, in accordance with the Law, *On Licenses and Permits,* a subsoil plot granted is assigned the status (permit) of a 'mining allotment' for use by the winning bidder.

In the event of disagreements regarding a subsoil plot put up for bidding, the Agency may engage independent experts and specialists as consultants. If the disputes related to the holding of the auction are not resolved between the parties, they are resolved in an administrative and/or judicial manner.

REGULATION OF DIGITAL PAYMENTS AND FOREIGN PAYMENT SYSTEMS



Law No. 987-VIQ, *On Payment Services and Payment Systems*, is passed on 14 July and promulgated on 9 August 2023. The Law determines principles of regulation and control of payment systems, payment services, payment institutions, electronic (digital) money institutions, and payment system operators.

The Law introduces regulation of digital money and payments. Before the Law, only Law, On Combating Legalization of Criminally Obtained Property and Financing Terrorism, (see the update above for February) referred briefly to e-money institutions. Additionally, the Law introduces regulation of foreign payment institutions, foreign e-money institutions, and foreign operators (of payment systems).

The following definitions apply (among others): –
a payment system is a money transfer system having at least three participants and operating based on documented standardized common rules for processing, clearing, and settlement of payment transactions;

- an operator organizes, and determines rules of, operations of a payment system;
- a payment service is any of:
- depositing cash into and disbursing it from a payment account;
- carrying out payment transactions by credit (wire) transfers, direct debit, payment cards, and other similar payment instruments;
- issuance of payment instruments and acquiring of payment transactions;
- money transfers;
- issuance of e-money and carrying out e-money payment transactions;
- acting between upon carrying out payment transactions; and
- account information service;
- a payment institution is an entity providing all or any of the payment services excluding issuance of e-money and carrying out e-money payment transactions;
- e-money is a payment instrument existing and available to a user of a payment service electronically in the amount of funds deposited (in a fiat currency) that facilitates payment transactions and is accepted as a tender by third parties and an issuer of the e-money;
- issuance (emission) of e-money is a handover by the issuer of e-money to the user of an e-money payment system;

- an e-money holder is a user of a payment service with the right to dispose of e-money;
- an e-money institution is an entity licensed to issue e-money and carry out e-money payment transactions as well as to provide other payment services;
- a foreign payment institution, foreign e-money institution, and foreign operator is registered as, and licensed under the Law through, a local branch to carry out licensed operations;
- a payment agent is an entity or sole proprietor providing payment services for a bank, payment institution, or e-money institution; and
- a settlement agent is an entity settling payment instructions in a payment system over accounts of participants of the system.

The Law lists providers of payment services, including the Central Bank, banks, non-bank credit institutions, the national operator of postal service, (other) payment institutions, and e-money institutions.

E-money is issued by: (i) local banks and foreign banks acting through branch offices here, (ii) the national operator of postal service, and (iii) e-money institutions; in other words, only locally authorized and issued e-money would be recognized in Azerbaijan. The currency and maximum issuance amount of an issued e-money as well as the upper extent of liabilities undertaken by a single e-money issuer are determined by the Central Bank. E-money is issued and handed over to the holder immediately in exchange for the funds (in fiat currency) received by the issuer.

Local entities and sole proprietors and foreign entities acting through their branch offices in Azerbaijan can purchase and receive refunds of e-money only by transfers from/to their payment accounts. Information of every payment account that an e-money institution opens must be shared with the State Tax Service. The accounts can be opened to local entities and sole proprietors and foreign entities acting through branch offices.

Requirements applicable per the Law to payment institutions, e-money institutions, and operators (of payment systems) apply to the same extent to foreign payment institutions, e-money institutions, and operators acting in Azerbaijan through branch offices. In other words, any foreign payment institutions, e-money institutions, and operators of payment systems wishing to include Azerbaijan into their operations must so operate through branch offices and be appropriately licensed. Upon licensing, the Central Bank may contact a regulator of a respective foreign jurisdiction in relation to an applicant.

Payment service providers in Azerbaijan may make agreements with foreign payment service providers and operators provided that the foreign provider/operator is appropriately licensed and controlled, including on the AML and CFT counts, in the jurisdiction of its incorporation. Such agreements must be reported locally to the Central Bank. Apparently, there is no room for foreign e-money institutions to operate in Azerbaijan through an agreement.

Based on the concluding provisions of the Law, it enters into force within three months of its promulgation, i.e., will be effective as of 9 November 2023. Existing providers of payment services have six months until 9 May 2024 to obtain a license, enter into an appropriate register, and otherwise ensure compliance with the Law.

NEW RULES FOR PUBLIC PROCUREMENT

Adopted on 14 July 2023, Law No. 988-VIQ, *On Public Procurement*, replaces the 2001 Law No. 245-IIQ of the same name and subject, which was based on the *1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services*. Replacement of the 1994 model law with the *UNCITRAL Model Law on Public Procurement (2011)* together with the country's internal considerations dictated the adoption of the new Law.

Public procurement is the process of acquiring goods, works or services initiated by the State bodies, State funds outside of the State budget, public entities, and entities controlled by the State. Unlike the old Law applying to entities controlled by at least 30 percent by the State, the new Law does not establish a threshold for such control.

The procurement methods are: (i) an open tender; (ii) two-stage tender; (iii) closed tender (is used for confidential or specific procurements and must involve at least three suppliers); (iv) sourcing quotations; and (v) procurement from a sole source (is used for procurement of unique goods or in urgent or confidential procurements). The method of procurement is determined by the relevant procurement organization depending on the requirements of the Law.

As such, a procurement of an estimated price equal and over AZN100,000 is possible through an open or two-stage tendering process.

Regardless of the estimated price, the following procurement methods may be used only with the approval of the State Service for Antimonopoly Control and Supervision of the Consumer Market under the Ministry of Economy:

- a closed tender;
- a sole-source method; and
- an open tender and sourcing quotations methods resulting in a framework agreement.

The Service considers applications to allow the use of these methods in 20 business days.

Regardless of the method of procurement, the process of public procurement involves the establishment of a temporary working group, known as a procurement commission, responsible for conducting the procedures for selecting a winner and concluding a procurement agreement.

The Law defines the stages of public procurement: (i) planning and pricing; (ii) formation of the commission; (iii) pre-selection of suppliers and preparation of documents; (iv) preparation of terms and conditions; (v) posting of announcement and invitations; (vi) receipt and opening of proposals; (vii) evaluation of proposals; (viii) documenting the results of evaluation; (ix) signing framework agreement; (x) notification of acceptance of the offer and delivery of procurement agreement to the supplier; (xi) signing the agreement, performance guarantees; (xii) entry into force of the agreement; and (xiii) reporting.

The requirement of the old Law to conduct public procurement exclusively through the Unified Portal at https://etender.gov.az/ is included in the new Law. To protect confidential information related to procurement, paper carriers may also be used.

The Law introduces a new concept: a framework agreement. This is an agreement between a procuring organization and two or more suppliers that defines the terms and conditions for a periodic (a budget year) or repeating procurement. Scope and value of supplies under a framework agreement are not defined at the time of making it.

The Law does not cover the following: (i) supplies (of products, works or services) exclusively from government agencies and natural monopolies with regulated prices; (ii) obtaining loans; (iii) transactions with securities, currency exchange, and related services; (iv) procurement under public-private partnerships; (v) notarial services; (vi) investment and asset management services; (vii) procurement in relation to banknotes, foreign exchange reserve management, foreign exchange purchase and transportation, procurement in the exercise of control measures, including a bank resolution, over controlled subjects; (viii) centralized procurement of foodstuff financed out of the State budget; (ix) procurement of stationery for courts of first instance; (x) supplies in the Alat Free Economic Zone; (xi) procurement by an entity transferred into management by a lottery organizer and a gambling operator; (xii) small purchases up to AZN10,000 (AZN20,000 for some organizations); and (xiii) procurement for defense and security under defined criteria. Procurement using funds of international organizations is carried out according to the terms of an applicable instrument.

Suppliers may appeal actions, inactions, and decisions of both the procurement organization and the Service in an administrative manner. They also have the right to appeal to courts to protect their rights and legally secured interests.

The Law has been enacted and is awaiting entry into force starting 1 January 2024.

ENERGY INDUSTRY SEES NEW REGULATION

The Bill, *On Energetics*, passed on 24 October 2023 the third reading in the parliament. Once approved into law, it will replace the 1998 Law No. 541-IQ of the same name and subject. The Bill proposes a general framework for the energy industry (energetics), mechanisms for ensuring energy security, and creating a healthy competitive environment within the industry.

The energy and energy resources covered by the Bill are all energy output, including fuel, renewable energy, electricity, thermal, and other forms of energy. The following are the covered operations:

- exploration of energy resources;
- development and production of energy resources;
- refining of energy resources;

- production of energy;
- storage of energy;
- transportation (transmission) of energy;
- distribution of energy;
- import and export of energy;
- wholesale and/or retail sale of energy; and
- organization of functioning of natural gas and electricity markets.

The Bill will not apply to ground (road and rail), air, and water transportation of energy as well as to import, export, production, storage, and processing of nuclear materials. The operations are run by energy subjects, an entity or individual running any of the covered operations.

Energy operations that require a license and/or permit are carried out based on such licenses and/or permits. The following operations are carried out based on an agreement between the Government and a licensed energy subject: (i) exploration, development, and production of hydrocarbon reserves, (ii) transportation of oil and gas by export pipelines, (iii) transfer of power and gas distribution grids and gas storages into management, and (iv) others listed in laws governing operations in various sectors of energy industry.

In relation to energy agreements already made, the Bill has a specific carveout for production sharing, and agreements for transportation through export pipelines, of oil and gas, and to

relations under other agreements made under those agreements, all approved into laws of the Republic, – the Bill will apply to them only in the cases provided for in those agreements and not contradicting them.

An appointed regulator will oversee energy operations. Energy consumers will consist of household (individual consumers of electricity, heating, and natural gas) and non-household as well as free (those consuming electricity in excess of an established threshold, also, cf. Framework for Power Market) (see the update above for May) and non-free consumers. A free consumer may choose an energy supplier. A supplier for non-free consumers is determined by the Government.

Energy subjects and consumers may purchase goods, works, and services of a natural or state monopoly engaged in the energy operations on terms and conditions approved by regulatory acts at prices regulated by the Government. Prices for the supplies of natural monopolies are established in accordance with the Law, *On Natural Monopolies*. Subjects of the state monopoly or a manner of pricing their supplies are not defined.

Energy subjects shall keep an accounting report separately for each regulated and non-regulated price operations. Statements for each operation and for profit and loss should be prepared separately. Further, the subjects ensure an annual review of their financial reports by an independent auditor as well as a publication of the reports.

The energy balance is a system of accounting indicators for individual types of energy in order to ensure energy security and predict and fulfill an energy demand and supply. The balance is prepared by agency(ies) to be approved by the Government based on information collected from energy subjects as well as data of energy consumption.

The Government will adopt short-term (up to five-year), medium-term (five- to ten-year), and long-term (more than ten-year) state programs for sustainable development of the energy industry.

The Bill will enter into force from the date of its publication. Articles 15.3 (electricity supply of non-free consumers) and 15.4 (a right of free consumers to choose energy supplier) of the Bill come into force on 1 July 2025 and Articles 8 (the regulator), 10.2 (restricting an energy subject from procuring from state and natural monopolies) and the second sentence of Article 15.6 (information provided to consumers by energy suppliers) come into force on 1 July 2028.

DRAFT COMPETITION CODE UP FOR PUBLIC HEARING

The parliament has submitted for a public hearing the draft Competition Code that the president of the Republic earlier proposed. Along with the physical hearing held in the parliament's committee for economic policy, industry, and proprietorship in September, the bill is open for a public hearing through the parliament's website. The first draft of the Code proposed back in 2006 having passed two readings at the parliament was shelved for most of the time until a presumably reworked draft is introduced now.

The present bill consists of twelve chapters and 84 articles. As such, it will codify and replace the existing competition legislation including the Laws on Antimonopoly Activity, Unfair Competition, and Natural Monopolies, and a somewhat defunct Law on Anti-Dumping, Subsidies, and Safeguards.

It is reported the Code would be instrumental to Azerbaijan's accession to the World Trade Organization.

The bill proposes new concepts and definitions and redefines most concepts presently applicable.

A definition of a relevant market is introduced as that of a market, from where a customer outside geographic borders does not consider for economic, technical, or other practical considerations procuring a relevant commodity, and where commodities of the same specifications, price, and intended use or fungible are offered. The bill introduces the concepts of, among others, a low monopoly price, barriers to entry, and concentration of economic subjects.

The concepts that are being redefined are those of a dominant position in the market, incidents of abusing the position, unfair trade practices, natural monopolies, and the requirements for the state interventions on competitive grounds. The bill, *inter alia*, redefines the concepts of a qualifying market share, dumping, and cartel transactions.

It is especially important that the concept of a dominant position in a market is redefined. A dominant position exists where an economic subject's market share is 50 percent or more. An economic entity with a market share of less than 50 percent but more than 35 percent is considered to have a dominant position if it has the ability to influence the relevant market.

Further, two and more economic entities ..., whose activities are directly or indirectly joint ..., each of which has a market share of more than 10 percent, are considered to be in a joint dominant position:

- when the combined market share of two or three economic entities exceeds 50 percent; or
- when the combined market share of four or five economic entities exceeds 70 percent.

To identify and obtain evidence of horizontal agreements that restrict competition, the following are considered:

- a reduction in the number of business entities by 20 percent and more and withdrawal from a market;
- a change in a trade turnover by 20 percent and more;
- a price change by more than ten percent in 30 days; and
- price changes by more than ten percent in 30 days by parties to an agreement with a joint share in a market of 30 percent and more.

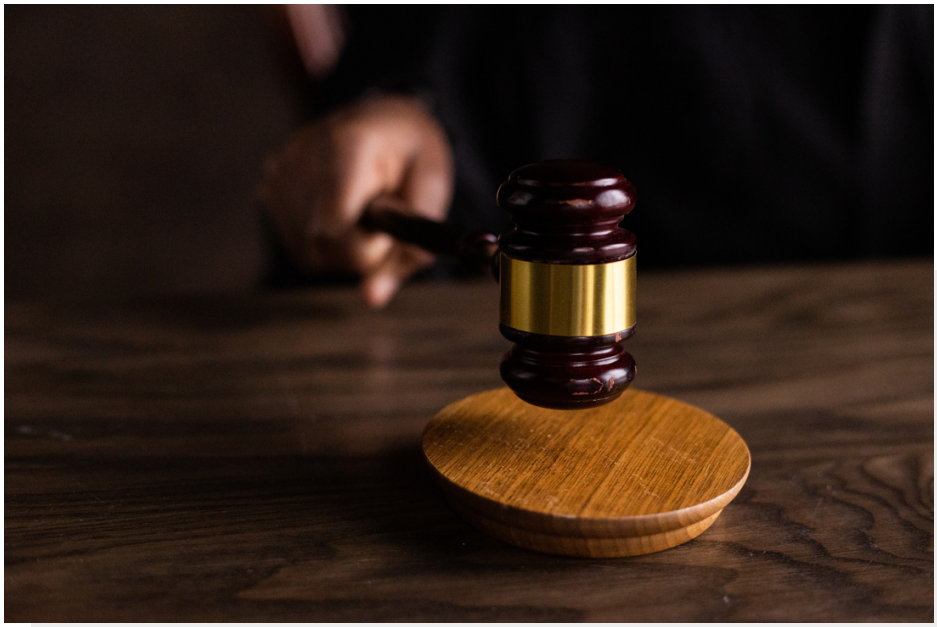
Forms of unfair competition are enhanced by the following:

- an aggressive behavior towards customers;
- misleading and deceiving customers; and
- an illegal acquisition, use or distribution of a trade secret.

The bill also contains provisions on the state control of compliance with the competition legislation, rules for considering cases of violation of it, liability for the violations.

The bill passed the second reading at the parliament in late October.

BILL OF ARBITRATION



The second reading as of 19 December of the draft Law, *On Arbitration*, has been promulgated by the Milli Maclis, the parliament. This proposed legislation seeks to replace the 1999 Law No. 757-IQ, *On International Arbitration* based, in turn, on the *UNCITRAL Model Law on International Commercial Arbitration* (1985). The Bill incorporates the amendments adopted in 2006 to the Model Law.

The paramount objective of the Bill is to institute an arbitration system domestically to mitigate the caseload of courts. As such and unlike the previous Law on International Arbitration, the Bill includes both international and domestic (an arbitral tribunal with the venue of arbitration in Azerbaijan) arbitration. This proposed legislation outlines regulatory framework for arbitration, its procedural aspects and institutionalization, arbitration agreements, and the recognition and enforcement of foreign arbitration awards.

Commercial disputes, and disputes wherein parties can independently address the subject matter without affecting third-party rights, can be resolved through arbitration. The Bill includes a list of matters not subject to arbitration: (i) criminal and administrative offenses; (ii) arising from administrative and other public legal relations; (iii) matrimonial; (iv) related to legal status of individuals; (v) employment and labor; (vi) disputes out of environmental protection; (vii) inheritance; (vii) existence and registration of intellectual property rights; (viii) competition and consumer protection as well as consumer credits; (ix) *in rem* rights in real estate located in the territory of Azerbaijan; (x) insolvencies and bankruptcies; (xi) liquidation of an entity or annulment of its decisions (if the entity has a legal address in Azerbaijan); (xii) disputes between individuals except where they are business subjects; (xiii) against carriers under agreements of carriage; and (xiv) leases of real estate within the territory of Azerbaijan. Claims against carriers arising from carriage contracts as well as disputes regarding lease of real estate in Azerbaijan can be considered in domestic arbitration.

A permanent arbitration institution (domestic) is an accredited non-profit entity that has undergone the respective state registration. The Bill does not define a form among those of non-commercials in the Civil Code or otherwise the institution can take form of.

The institution is responsible for conducting arbitration proceedings, organizational support for

arbitration, including the appointment, challenging, and termination of arbitrators, case management, fees, and other payments to cover cost of the arbitration, excluding matters related to the jurisdiction of the arbitral tribunal. The establishment of such institutions by the state, municipalities, state-owned enterprises, public legal entities (except as law may otherwise provide for), political parties, religious organizations, the Bar Association, Chamber of Notaries, and Council of Mediation of the Republic of Azerbaijan is prohibited.

The requirements for arbitrators in domestic arbitration proceedings are as follows:

- absence of any interest in the outcome of the case and independence from the parties to a dispute;
- age of not less than 25 years;
- any higher education; and
- work experience of no less than three years.

A sole arbitrator and, unless otherwise agreed by the parties, the presiding arbitrator of an arbitral tribunal, must have a higher legal education. Any additional requirements can be supplemented by the arbitration agreement or by the regulations of an arbitration organization. The Bill lists individuals ineligible to act as arbitrators, such as judges, those with a criminal record, and those dismissed from law enforcement, barred from advocacy, notarial work, or membership in the Mediation Council.

If parties have not agreed otherwise, an application to vacate an arbitral award must be submitted to any of the five Commercial Courts in Azerbaijan within three months of the date a party became aware of the award.

In the event of vacation of the arbitral award, the agreement remains in force, and the parties may apply to the arbitration for a new hearing.

The Commercial Court may fully or partially vacate the award of the arbitral tribunal upon evidence of incapacity of a party at the time of the arbitration agreement, invalidity of the agreement, violation of procedural rights, resolution of a dispute not covered by the arbitration agreement, or inconsistency with the agreed tribunal composition. Additionally, the Court can make such a determination based on an impossibility of a dispute resolution through arbitration under law or the award's contradicting the Constitution of the Republic or its public order.

The Bill also governs recognition and enforcement of arbitral awards, both foreign and domestic.A foreign arbitral award is still recognized by the Supreme Court of the Republic of Azerbaijan. If a party fails to voluntarily comply with a domestic arbitral award within three months of the award's being issued, the party in whose favor the award was rendered may seek its judicial enforcement.

The Bill, when approved into law, will come into effect after corresponding amendments are made to the Code of Civil Procedure. It will not apply to consideration of cases on the recognition and enforcement of foreign arbitral awards under consideration by the Supreme Court before the day the Bill comes into force.

*Information does not, and is not intended to, constitute legal advice