

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 1**  
**Legal and Regulatory Framework**

**AZERBAIJAN**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Azerbaijan 2015**

PHASE 1: LEGAL AND REGULATORY FRAMEWORK

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(reflecting the legal and regulatory framework  
as at August 2015)

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## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. The standards have also been incorporated into the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).





## Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Azerbaijan. The international standard which is set out in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information (EOI) partners.

2. Azerbaijan is an independent republic, with a territory of approximately 86 600 square kilometres and a population of around 9.593 million, strategically located on the legendary silk route in the Caucasus region, at the crossroads of Europe and Asia. Azerbaijan shares its borders with Armenia, Georgia, Russian Federation (Russia), Iran and Turkey, and faces the Caspian Sea in the east. Baku is the capital and the largest city of Azerbaijan and the Caucasus region. Formerly part of the Soviet Union, the Republic of Azerbaijan became a separate State on 18 October, 1991.

3. Relevant entities that can be formed in Azerbaijan include: open and closed joint stock companies, limited liability companies, general partnerships, limited partnerships, co-operatives, funds and public associations. The Azerbaijani authorities have detailed and updated ownership information for all types of entities through registration, reporting and record keeping requirements. Enforcement measures to ensure availability of identity and ownership information are generally in place for all types of entities.

4. Nominee holdings of shares exist in Azerbaijan. Prior to 15 July 2015, joint stock companies (JSCs) were permitted to issue bearer shares. Nominees are allowed to hold shares in JSCs on behalf of actual owners. Actual ownership information on nominee holdings is available in Azerbaijan. However, there are no sufficient mechanisms or regulations to ensure that actual ownership information on bearer shares that could have been issued by JSCs prior to 15 July 2015, is available in Azerbaijan. Azerbaijan should take necessary measures to ensure that ownership information on bearer shares that could have been issued prior to 15 July 2015 is available.

5. While Azerbaijani laws do not recognise the concept of trusts, there are no restrictions on an Azerbaijani resident acting as a trustee or administering a foreign trust. The legal risks involved in administering a foreign trust in Azerbaijan, or owning assets in the name of a trustee in Azerbaijan, render the possibility of the existence of foreign trusts in Azerbaijan unlikely. Even if they exist, the combination of obligations imposed by tax and AML legislation and general fiduciary obligations of Azerbaijani residents in performing their duties as trustees indirectly ensure the availability of identity information on settlors, trustees and beneficiaries in respect of foreign trusts in Azerbaijan.

6. All relevant entities are required under the Azerbaijan's accounting law to keep detailed accounting records in line with the standard. Requirements under the accounting law are further supplemented by obligations imposed by the Tax Code. But there are no explicit obligations either in the Tax Code or in the accounting law that require the entities and individuals to maintain underlying documentation. A general legal requirement to keep accounting records for five years is in place for all relevant entities pursuant to tax obligations and accounting law. However, there are inconsistent provisions in the Tax Code that may enable entities and individual entrepreneurs not to maintain accounting information for more than 3 years. Azerbaijan should introduce express obligations in its relevant laws to ensure all relevant entities in Azerbaijan maintain underlying documentation. Similarly, it should also ensure clarity and consistency in the provisions of the Tax Code to maintain accounting records for a period of at least 5 years.

7. The availability of banking information to the international standard is ensured in Azerbaijan through a combination of banking, tax and AML legislation. Anonymous accounts are explicitly prohibited.

8. The competent authority responsible to collect information and reply to an EOI request is the Ministry of Taxes, which is in possession of most of the identity and ownership information relevant to EOI purposes, which information is readily accessible to the competent authority.

9. Azerbaijan's competent authority has access powers to obtain and provide information held by persons within its territorial jurisdiction. However, there are certain obstacles and deficiencies in Azerbaijan's legal framework which could impede access to full information, as required by the international standard. The tax authorities have powers to take tax control measures to obtain information but they cannot take any enforcement measures against taxpayers to seek information that relates to periods of more than 3 calendar years. Azerbaijan should ensure that the competent authority has adequate access powers for EOI purposes including compulsory powers unhindered by the 3 year limitation and is able to access client information from banks in all situations.

10. The Tax Code deems that all information received from taxpayers is a “commercial (tax) secret”. The exception for EOI purposes enables the tax authorities to share this information with authorities of other jurisdictions in accordance with the terms of international agreements. Azerbaijan is legally not obliged under the international agreements to share information that is considered as a commercial secret. At the same time, Azerbaijan has a specific legislation “Law on Commercial Secret” which defines the term “commercial secret” and deals with commercial secret information. The scope of this definition is in line with the international standard. However, this definition is in conflict with those of the Tax Code and the Law on Accounting. Therefore, there is ambiguity in the scope of different laws that define the term “commercial secret”. This may affect the access powers of the competent authority in obtaining information in line with the international standard on EOI. Azerbaijan should clarify its laws to ensure that the scope of the term “commercial secret” is in line with the international standard on EOI.

11. The scope of professional secrecy attached to advocates and notaries is in line with the international standard of exchange of information. Azerbaijan’s Tax Code provides notification rights to the persons concerned with information provided by the banks. There are no exceptions to this prior notification by the banks even in cases where the information request is of very urgent nature or the notification may undermine the chance of success of the investigation. As a result, the rights and safeguards that apply to persons in Azerbaijan are not fully compatible with effective exchange of information. Notification rules in Azerbaijan should permit exceptions from prior notification.

12. Azerbaijan’s network of EOI mechanisms covers 101 jurisdictions through 48 bilateral DTCs, 1 TIEA and the amended Convention on Mutual Administrative Assistance in Tax Matters. Azerbaijan ratified the Protocol amending the Convention on 30 January 2015, which will enter into force on 1 September, 2015. Three of the DTCs are yet to enter into force. Twelve of Azerbaijan’s EOI relationships do not contain sufficient provisions to enable Azerbaijan to exchange all relevant information. Azerbaijan’s network of exchange agreements covers all but one of its main trading partners. Each of Azerbaijan’s EOI agreements contains confidentiality provisions that meet the international standard and its domestic legislation also contains appropriate confidentiality provisions and enforcement measures. Azerbaijan’s EOI agreements protect rights and safeguards in accordance with the standard.

13. Azerbaijan’s domestic legislation has ambiguity in the scope of different laws in defining the term “commercial secret” that may limit the possibility of effective exchange of all kinds of information. Although Azerbaijan has long-standing practice of exchanging information with its treaty partners, the access powers of Azerbaijan’s authorities could be limited

in certain situations, which could possibly limit the effective exchange of information. It is therefore recommended that Azerbaijan addresses these issues in its domestic laws to give full effect to all its EOI arrangements and to bring all its EOI relationships in line with the standard.

14. Various recommendations have been made in this report where elements of Azerbaijan's legal and regulatory framework on EOI have been found to be in need of improvement. Azerbaijan's progress in these areas, as well as its actual practice in exchange information with its EOI partners, will be considered in its Phase 2 review which is scheduled to be launched in the last quarter of 2015.

## Introduction

### Information and methodology used for the peer review of Azerbaijan

15. The assessment of the legal and regulatory framework of Azerbaijan was based on the international standards for transparency and exchange of information as described in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes, and was prepared using the Global Forum’s Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and EOI mechanisms in force or effect as at 14 August 2015, Azerbaijan’s responses to the Phase 1 questionnaire and supplementary questions, other materials supplied by Azerbaijan, and information supplied by partner jurisdictions.

16. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchange of information. This review assesses Azerbaijan’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of findings against those elements is set out at the end of this report.

17. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Ms. Melisande Kaaij from the Ministry of Finance, the Netherlands; Mr Tom Queree from the Treasury and Resources Department, Jersey; and Mr P S Sivasankaran from the Global Forum Secretariat.

## Overview of Azerbaijan

18. Azerbaijan is an independent republic, with a territory of approximately 86 600 square kilometres<sup>1</sup> and a population of around 9.593<sup>2</sup> million, strategically located on the legendary silk route in the Caucasus region, at the crossroads of Europe and Asia. Azerbaijan shares its borders with Armenia, Georgia, Russia, Iran and Turkey, and faces the Caspian Sea in the east. Baku is the capital and the largest city of Azerbaijan as well as the Caucasus region. Formerly part of the Soviet Union, the Republic of Azerbaijan became a separate State on 18 October 1991.<sup>3</sup>

19. Azerbaijan is a secular country populated by multi-ethnic and multi-religious societies. Azerbaijani is the official language. Administratively Azerbaijan is divided into 66 regions, 14 urban districts and 1 autonomous republic (Nakhchivan).

20. Post 2000, Azerbaijan has seen one of the fastest economic growth rates in the world, mainly driven by rapid export growth, due to a high international demand for oil, despite being briefly affected by the 2008-09 global crisis. Over the last 10 years, the economy has tripled.<sup>4</sup> The currency in use is the Azerbaijan manat (AZN).<sup>5</sup>

21. In recent years, Azerbaijan has implemented significant economic reforms to boost growth and to encourage entrepreneurship. In 2013, Azerbaijan's gross domestic product was USD 73.56 billion. The industrial sector is the largest sector, contributing to 63.4% of GDP, followed by the service sector (30.2%). A major contributor to the industrial production is oil and natural gas extraction, which accounts for more than 90% of Azerbaijan's export earnings. In 2014, the economy showed signs of slowing down, owing to declining oil production and rapidly falling oil prices.<sup>6</sup> The unemployment rate in 2013 was 2.5%. With an income per capita at USD 5 148.5 and GDP per capita at USD 7 912 in 2013, Azerbaijan ranks as an upper middle-income country.<sup>7</sup>

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1. [www.stat.gov.az/map/indexen.php](http://www.stat.gov.az/map/indexen.php).

2. Population size at the end of the year 2014. Source: State statistical committee of Republic of Azerbaijan: Population of Azerbaijan – Statistical bulletin 2015.

3. Source: 2014 Statistical yearbook of Azerbaijan.

4. <http://news.az/articles>.

5. As at 10 August 2015: USD 1 = AZN 1.0494 (source: The Central bank of Azerbaijan website <http://en.cbar.az/other/azn-rates>).

6. World Bank group Azerbaijan Partnership Program Snapshot – October 2014.

7. Sources: IMF World Economic Outlook 2013 and World Bank, <http://data.world-bank.org/country/Azerbaijan>.

22. The exports turnover in 2013 was USD 23.97 billion and import turnover for the same period was USD 10.71 billion. The top five products exported by Azerbaijan are crude petroleum (88%), refined petroleum (4.3%), petroleum gas (1.1%), raw sugar (0.77%), and other fruits (0.45%). It mainly imports cars, planes, helicopters and/or spacecrafts, jewellery etc. The top 5 export destinations of Azerbaijan are Italy (29%), France (6.9%), India (6.7%), Israel (6.0%), and Indonesia (5.9%). The top 5 import origins of Azerbaijan are Turkey (17%), Russia (14%), Germany (7.4%), People’s Republic of China (hereinafter “China”) (6.8%), and the United States (5.6%).<sup>8</sup>

23. The number of small enterprises in 2013 was 14 461 and the number of foreign and joint ventures was 1 140. The State budget revenue in 2013 was USD 24.85 billion. Foreign investments in 2013 were USD 10.54 billion. Of this, USD 2.65 billion went to financial credits and USD 4.94 billion to the oil industry. The private sector share in GDP is almost 85%, and accounts for over 74% of total employment in the country.

24. Azerbaijan joined the Global Forum on Transparency and Exchange of Information for Tax Purposes as the 119<sup>th</sup> member in 2013. Azerbaijan has also been a member of the Council of Europe since 2001. Among other international organisations of which Azerbaijan is a member are the United Nations, the World Bank, the Organisation for Security and Cooperation in Europe, the Asian Development Bank, the International Monetary Fund, the Organisation of Islamic Conference and the Organisation of the Black Sea Economic Cooperation.

### ***Governance and legal system***

25. The legal system of Azerbaijan is broadly based on civil law principles. The Constitution of Azerbaijan, adopted on 12 November 1995, provides for a unitary, democratic, presidential republic and a separation of powers between the legislative, the executive and the judicial authorities. The Head of State is the President, elected directly by the people by a majority of two-thirds of the votes for a term of 5 years. The President of Azerbaijan exercises executive power and heads the Government. The Prime Minister, the Deputy Prime Ministers and other Cabinet Ministers are appointed by the President with the approval of the legislature.

26. The legislative authority of Azerbaijan is exercised by the National Assembly (Milli Mejlis), an unicameral body, based on a multi-party system and comprising 125 deputies. The judicial power of the State is exercised by a three-tier system of courts. The Constitutional Court has jurisdiction over matters related to the constitutionality of laws, government and National

8. Sources: <http://atlas.media.mit.edu/profile/country/aze/>.

Assembly resolutions, presidential decrees, and international treaties. The Supreme Court is the highest appellate court that hears all final appeals on lower court decisions. Below the Supreme Court are the Court of Appeals, the Economic Courts and the Courts of First Instance.

27. Being a unitary republic, Azerbaijan's legal system is based on national legislation enacted by the National Assembly. The Constitution possesses the highest legal power and is the foundation of the legislative system of Azerbaijan (Constitution, Art. 147). The hierarchy of normative-legal acts is: Constitution of Azerbaijan; acts adopted by referendum; laws; decrees; resolutions of the Cabinet of Ministers; and normative acts of Central Executive bodies. International agreements, of which Azerbaijan is a party, are an integral part of the legislative system of Azerbaijan (Constitution, Art. 148). International agreements take precedence over domestic legislative acts unless they contradict the Constitution and Acts adopted by referendum (Constitution, Art. 151). Acts that involve issues related to the adoption of and changes to the Constitution and change of State borders of Azerbaijan are decided through referendum.

### ***Tax system***

28. Article 73 of the Constitution states that every person is responsible for paying taxes and other state dues imposed by law. The Tax Code of the Republic of Azerbaijan (Tax Code) establishes and regulates the tax system of Azerbaijan. If any international treaty to which Azerbaijan is a party provides for regulations that differ from those contained in the Tax Code and related legislative acts on taxes, the provisions of international agreements will prevail (Tax Code, Art. 2.5).

29. Tax is defined as a compulsory, individual and non-refundable payment made to the State or a local budget in the form of collection of monetary means from taxpayers (Tax Code, Art. 11). A taxpayer is any physical or legal person, permanent establishment, branch or other section of a non-resident who or which is liable to pay tax under the Tax Code (Art. 13.2.1). The taxes levied in Azerbaijan are classified into State taxes, taxes of the Autonomous Republic and local (municipal) taxes (Tax Code, Article 4). There are separate tax regimes for the existing 20 Production Sharing Agreements (PSAs) between the Government of Azerbaijan and a consortium of major international oil companies, for the two Host Government Agreements (HGAs) namely the Main Export Pipeline (Baku-Tbilisi-Ceyhan) HGA and the South Caucasus Pipeline (Shah Deniz Gas) and for special economic areas. The Tax Code supersedes all other legislation except legislation on oil and gas, production sharing and main pipeline agreements as well as similar agreements and laws approved by the legislation before or after the Tax Code entered into force, if there is any contradiction (Tax Code, Article 2). The legislation on oil and gas and production agreements grants special tax concessions to



parties associated with the commercial activities covered by this legislation and these agreements. However, all other rules including compliance with the Tax Code for administrative and control purposes are equally applicable to the entities and individual entrepreneurs covered by the special arrangements. These rules similarly apply to entities set up in the special economic areas.

30. The State taxes are those taxes that are stipulated by the Tax Code of Azerbaijan and imposed at a national level. They are: profit tax on legal entities, income tax on natural persons, excise tax, property tax (levied on legal persons), road fund tax, land tax (levied on legal persons), mineral royalty tax, value added tax and simplified tax. The taxes of Autonomous Republic are those taxes that are stipulated by the laws of Nakhichevan Autonomous Republic in accordance with the Tax Code of Azerbaijan and imposed in the region. Local (municipal) taxes are those taxes stipulated by the Tax Code of Azerbaijan and relevant legislation of the municipalities and imposed within municipal limits. The local taxes are land use tax levied on natural persons, property tax levied on natural persons, mineral royalty tax on construction materials of local importance and profit tax of enterprises and organisations that are the property of municipalities.

31. The tax year in Azerbaijan is the calendar year (i.e. from 1 January to 31 December). The tax return is to be filed no later than 31 March following the calendar year. Natural persons are defined as citizens of Azerbaijan, foreigners and persons without citizenship (Tax Code, Art. 13.2.3). Natural persons who are present in the territory of Azerbaijan for more than 182 days during the calendar year are residents for the purpose of the Tax Code (Art. 13.2.5.1). Even if the stay of individuals in Azerbaijan does not exceed 182 days, they are deemed as residents if their permanent place of residence, place of vital interests or normal residence is Azerbaijan. Further, all Azerbaijani citizens are deemed as tax residents of Azerbaijan.

32. Resident individuals and legal entities are taxable on their worldwide income. The non-resident individuals are subject to a personal income tax on income received from Azerbaijani sources. The tax rate for both resident and non-resident individuals (not engaged in entrepreneurial activity) is progressive, beginning at 14% for monthly taxable incomes up to AZN 2 500<sup>9</sup> (EUR 2 115) and AZN 4 200 (EUR 3 553) plus 25% (for amounts exceeding AZN 2 500 (EUR 2 115)) for higher monthly taxable incomes. All individuals engaged in entrepreneurial activity are taxed at a rate of 20% of their taxable income. A non-resident individual engaged in any activity in Azerbaijan through a permanent establishment should pay personal income tax on the

9. As at 11 September 2015: EUR 1 = AZN 1.1821 (source: The Central bank of Azerbaijan website <http://en.cbar.az/other/azn-rates>).

income connected with the permanent establishment. Income from employment (salary and pensions) is taxed on a gross basis.

33. Withholding tax is applied on income from employment and non-entrepreneurial activities such as interest income, dividends, income from the lease of property, royalties, capital gains etc. Several types of income are exempt from taxation, for example agricultural income, gifts or inheritance from family members, alimony, capital gains on movable tangible assets (except precious stones, metals, fine work arts and antiques), income from crafts production, lottery prizes, compensation receipts, and there is a standard deduction for war heroes, their families, military officials etc.

34. Legal persons are those enterprises and entities established with the status of legal person in accordance with the legislation of Azerbaijan or legislation of a foreign State (Tax Code, Art. 13.2.2). Legal persons established in accordance with the legislation of Azerbaijan and involved in entrepreneurial activities, or with a place of management in the territory of Azerbaijan, are residents for the tax purposes (Tax Code, Art. 13.2.5.3). Commercial and non-commercial legal entities in Azerbaijan are structures defined by the Civil Code. A non-resident legal person is one that is not a resident of Azerbaijan. Profit tax of 20% is paid by resident and non-resident enterprises (Tax Code, Art. 103.1). Income from capital gains, interest, dividends, rent, royalties, etc. are taxable as normal business income at the general profit tax rate. Non-resident enterprises are taxed on their income from sources in Azerbaijan. Azerbaijani-source income is income derived by a non-resident enterprise operating in Azerbaijan from an entrepreneurial activity through a permanent establishment (Tax Code, Art. 13.2.16 and 104).

35. Source based taxation (withholding tax) in Azerbaijan is applied on passive income and certain income of the non-residents. Dividends paid by resident enterprises are subject to a withholding tax of 10%. Similarly, the withholding tax for interest income is 10%, and 14% for rent payments on movable and immovable property and for royalty payments. Interest, insurance and reinsurance payments, telecommunication and transport payments, income from services and wages, rent and royalty income received by non-residents from an Azerbaijani source, but not attributable to a permanent establishment of the non-resident located in Azerbaijan, are taxed at the source of payment on a gross basis at rates prescribed in Art. 125 of the Tax Code. However, if concessional rates are provided for any of the income categories in Azerbaijan's international agreements on double taxation to which Azerbaijan is a party, the tax amounts overcharged by way of withholding tax will be refunded.

36. Social insurance contributions are paid by Azerbaijani nationals and foreign individuals. Employers contribute at a rate of 22% of the employee's salary and 3% is deducted from the employee's gross salary. Out of the

revenues from State taxes collected in 2013,<sup>10</sup> profit tax contributes 35.6%, VAT 25.9% and personal income tax 12.9%.

37. Mineral royalty tax is imposed on individuals and legal entities extracting mineral resources in Azerbaijan and on the Caspian shelf (metallic minerals-3%, gas-20% and oil-26%). A land tax is imposed on owners and users of land plots, the tax rate varying depending on the use and location of the land. Excise tax is levied on the production or import of excisable goods. Tobacco products, alcoholic beverages and petroleum products are subject to excise tax at fixed rates. Import of passenger cars, leisure and sport yachts are subject to excise tax at varying rates depending on the size of their engines. The export of excise goods is exempt from excise tax.

38. Road tax is paid by non-resident entities and individuals entering Azerbaijan, as well as by the owners and users of vehicles in Azerbaijan. Road tax on foreign vehicles entering the territory of Azerbaijan is collected by the customs authorities at different rates depending on the type, engine capacity, length of stay of vehicles within Azerbaijan and the distance driven.

39. Property tax is imposed on buildings which are the personal property of resident or non-resident individuals in Azerbaijan. The property tax rate for buildings owned by individuals varies from AZN 0.1 (EUR 0.085) to AZN 0.4 (EUR 0.34) depending on their location in Azerbaijan. Water and air transport engines are taxed at the rate of AZN 0.02 per cm<sup>3</sup>. Commercial legal entities are taxed at 0.1% of the value of the fixed assets.

40. All persons involved in commercial activities and foreign entities importing goods and services into Azerbaijan are subject to Value Added Tax (VAT). The standard rate of VAT is 18%. VAT is levied on the taxable turnover (and giving credit to input VAT) arising from the supply of goods and services, including imports, unless they are zero-rated or exempt.

41. A simplified tax system is available to small taxpayers. Individuals and legal entities engaged in entrepreneurial activities but not registered for VAT purposes whose volume of taxable transactions during any month of consecutive 12 month period is 120 000 AZN (EUR 101 514) or less. In general, the rate of simplified tax is 4% for Baku and 2% for other regions. The rate for taxpayers engaged in transportation of passengers and cargo between Azerbaijan and other countries is 6%, and 4% for the operator of sports betting games. Registration of VAT for legal entities and individual entrepreneurs with an income of more than AZN 120 000 (EUR 101 514) is mandatory.

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10. [www.taxes.gov.az/modul.php?name=statistika&lang=\\_eng](http://www.taxes.gov.az/modul.php?name=statistika&lang=_eng).

### *Overview of commercial laws and the financial sector*

42. The Civil Code of Azerbaijan (CC) governs the types and legal status of persons, protects their rights and lawful interests and regulates contractual and other obligatory relationships (CC, Art. 2). A legal entity<sup>11</sup> is subject to State registration with the relevant executive authority (CC, Art. 48). A legal entity can be established by one or more founders, legal or natural. Legal persons engaging in entrepreneurial activity<sup>12</sup> can take the form of: a general partnership, a limited partnership, a limited or additional liability company and a joint stock company (CC, Art. 64).<sup>13</sup> A non-commercial entity may be established in the form of a public association, a fund, a union of legal entities and in other forms stipulated by law (CC, Art. 43.6). It may engage in entrepreneurial activities only if such activity supports the primary purpose of the existence of the non-commercial entity.

43. The legal and organisational basis of the State registration and State register of the legal persons is governed by the Law of the Republic of Azerbaijan on State Registration and State Register of Legal Persons (State Registration Law). All the commercial legal entities, as well as representations or affiliates of foreign legal entities, shall undergo State registration before commencing their commercial activity.

44. A co-operative is a voluntary union of individuals and legal entities created on the basis of membership with the purpose of satisfying the material and other needs of the participants through the consolidation of the participants' material contribution. Profit of the co-operative will be distributed to its members in proportion to their share interest as well as their personal contributions or labour to the activities of the co-operative.

45. Azerbaijani laws do not envisage the creation of any type of trusts. However, there are no restrictions in Azerbaijani legislation that could prevent an Azerbaijani resident from functioning as a trustee of a foreign trust. At the same time, as the Civil Code does not recognise the legal relationship between a settlor and a trustee; the trustee enjoys all ownership rights of trust assets in Azerbaijan and is individually liable.

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11. A legal entity is defined as a specially established organisation, which has completed State registration provided by law, owns its property, bears liability for its obligations, has the right to acquire and exercise property and personal non-property rights on its own behalf and acts as a plaintiff or defendant in court (CC, Art 43).
  12. Entrepreneurial activity is defined as a person's activity conducted independently and for the main purpose of obtaining profit from the use of property, the sale of goods, and the performance of works or provision of services (CC, Art. 13).
  13. Sole proprietors can engage in entrepreneurial activity. They exercise their rights and liabilities in business relations as natural persons and are not considered as legal person (CC, Art. 28).

46. The financial sector comprises banking, insurance, securities market and non-banking credit institutions. Banks dominate the financial sector market in Azerbaijan, holding about 95% of total financial sector assets. The non-banking sector is mainly catered by the local lending institutions. The leasing industry of Azerbaijan is very small and focuses on financing the purchase of equipment. Insurance services, venture capital and private equity are at a nascent stage. Capital markets are dominated by government securities and corporate bonds but the sector itself is very small.

47. The Central Bank of Azerbaijan is created by the “Law on the Central Bank of Azerbaijan Republic”. The Central Bank licences and regulates the work of the banks and exercises control over the banking operations under the authority provided to it by Law of the Republic of Azerbaijan on Banks. As of August 2015, the banking system consisted of 43 banks, including 20 banks with foreign capital. Around 100 non-bank credit organisations operate in Azerbaijan. The only state owned bank, the International Bank of Azerbaijan, is the largest bank in Azerbaijan with more than 40% of the market share of banking business.<sup>14</sup> Commercial banks can only carry out activities in accordance with:

- the Constitution of Azerbaijan;
- the Law on Banks;
- the Law on the Central Bank of Azerbaijan Republic;
- the Law on non-bank credit organisations;
- the Law on credit unions;
- the Civil Code; and
- other normative-legal acts.

48. The activities of banks include cash and settlement operations, receiving interest-bearing and interest-free deposits, extending consumer loans, mortgage loans and other credits etc. The total assets held by banks in Azerbaijan are about USD 29.07 billion as at 1 June 2015<sup>15</sup> (USD 22.14 billion as at 1 June 2014). The Ministry of Communications and High Technologies (the national postal operator) renders financial services based on the special permit (licence) granted by the Central Bank.

49. The Civil Code of Azerbaijan allows establishing legal entities as investment companies, funds and leasing companies. However, in order to operate in the financial market, entities need to obtain a special permit in the form of a bank licence from the Central Bank (Law on Banks, Art. 3.1).

14. [www2.ibar.az/news/?news=2254&lang=en](http://www2.ibar.az/news/?news=2254&lang=en).

15. [http://en.cbar.az/assets/3815/BULLETTEN-05-2015\\_ENG\\_OK\\_1\\_.pdf](http://en.cbar.az/assets/3815/BULLETTEN-05-2015_ENG_OK_1_.pdf).

50. As of 2012, Azerbaijan’s insurance market comprised 29<sup>16</sup> insurance companies and one reinsurer. The law that governs the insurance sector in Azerbaijan is the “Law of the Republic of Azerbaijan on Insurance activity”. The insurance system consists of the participants of the insurance market (insurers, re-insurers, insurance agents, actuaries, independent auditors, independent experts and legal entities rendering services in the field of insurance) and the insurance control institutions (insurance regulatory powers exercised by the Ministry of Finance). Other participants of the insurance market include the insured, policy holders and beneficiaries.

51. The Baku Stock Exchange (BSE) is the only stock exchange in Azerbaijan. It is a closed joint stock company, licensed by the State Committee on Securities to operate in the securities market. The trading and clearing operations on primary and secondary markets of public securities are carried out solely by BSE. As of 2015, the other professional market participants of Azerbaijan’s securities market are 12 brokerage companies, 13 dealers, 3 security managers, 1 clearing house, 2 registrars and 2 depositories. All professional market participants require a special permit (licence) from the State Committee for Securities to operate. First equity transactions at BSE were recorded in 2001. The corporate bonds market was started in 2004. The number of joint stock companies registered in the stock market was 651. In 2009, the government and corporate sectors comprised 89.4% and 10.6% of the overall turnover of Azerbaijan’s securities market.

## Recent developments

52. Azerbaijan ratified the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters on 30 January 2015, which entered into force on 1 September, 2015. Azerbaijan enacted the Law of the Republic of Azerbaijan on Securities Market (the Law No. 1284-IVQ dated 15 May 2015), which entered into force on 14 July, 2015. This law provides the rules for the issue of shares, State registration and public offering of securities, the depository system and circulation of securities, the organisation, management and liquidation of the licensed participants in the securities market, as well as the State regulation and supervision over the securities market in Azerbaijan.

53. Azerbaijan also introduced rules and limits for facilitating automatic reporting of information about financial operations carried out by physical and legal entities of foreign States in the Republic of Azerbaijan to the competent authorities of these States, which was approved under decree No. 211, dated 3 June 2015, of the Cabinet of Ministers of the Republic of Azerbaijan.

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16. Source: [www.reuters.com/article/2014/05/27/research-and-markets-idUSnBw275869a+100+BSW20140527](http://www.reuters.com/article/2014/05/27/research-and-markets-idUSnBw275869a+100+BSW20140527), accessed on 2 February 2015.

## Compliance with the Standards

### A. Availability of information

#### Overview

54. Effective EOI requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority<sup>17</sup> may not be able to obtain and provide it when requested. This section of the report describes and assesses Azerbaijan's legal and regulatory framework for availability of information.

55. Relevant entities that can be formed in Azerbaijan include: limited liability companies, joint stock companies, co-operatives, general partnerships, limited partnerships, funds and public associations. Ownership information in respect of these entities is available either with the public authorities or service providers or with the entity itself.

56. Adopting a single window registration principle, Azerbaijan requires all legal entities in Azerbaijan to register with the tax authorities, which in turn transmits information to other authorities. All regulations relating

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17. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange.



to companies are governed by the provisions of the Civil Code. There is no specific law to govern companies and consequently there is no regulator in particular to regulate and monitor the activities of these entities. The State Committee on Securities (SCS) regulates the activities of open JSCs accessing the public through the stock exchange for raising capital. All other commercial entities, which include partnerships and other legal entities, are also governed by the Civil Code.

57. A legal entity is established through the preparation of its charter and upon registration. The charter of a legal entity shall specify the name of the legal entity, its address, the procedure for the management of its activities, and the procedure for its liquidation. In addition, the charter of a non-commercial entity should specify the scope and purposes of its activities. The charters of all entities established in Azerbaijan are available to the tax authorities as they are submitted as part of the registration process. The tax authorities need to be informed of any change to the charter within 40 days of the date of change.

58. Updated ownership information on all entities is available with the tax authorities. Ownership information of JSCs that have more than 20 shares is available with the register holders. Ownership information is directly available from JSCs that have 20 or fewer shares, or alternatively with register holders. The new securities market legislation (which entered into force on 14 July 2015) requires that all shareholder registers held and managed by JSCs, or entrusted with register holders, must be handed over to the central depository on or before 15 September 2015. The legal requirements for entities to register with the State are provided by the Civil Code of Azerbaijan (Articles 43 to 54 and 54 to 113, CC). Foreign companies with sufficient nexus to Azerbaijan have to register with the tax authorities when establishing a branch or representation in Azerbaijan and provide updated ownership information.

59. The Law of the Republic of Azerbaijan on Securities market (new securities market legislation), introduced new obligations for JSCs and register holders to hand over shareholder registers maintained by them to the central depository on or before 15 September 2015. Further, all the depositories holding certificated investment securities have to hand over those securities to the central depository. These changes will have direct impact on the way ownership information is held within Azerbaijan. With the changes effected in the given timelines, all ownership information relating to JSCs will be available with the central depository in Azerbaijan.

60. Nominees are not AML obligated institutions and need not obtain a special license from the SCS to provide services in Azerbaijan. Nominees have no specific obligation under the Civil Code to maintain information on the person for whom they hold shares. However, the new securities market



legislation has imposed obligations on nominees to maintain and report the actual ownership information to SCS or the central depository within 5 working days, failing which administrative penalties or criminal sanctions would be imposed on the nominee holders for not maintaining or disclosing actual ownership information.

61. Prior to 15 July 2015, under Article 997-2 and Article 1078-6 of the Civil Code, bearer shares could have been issued by JSCs. A new Law on Securities Market was enacted by Azerbaijan on 14 July 2015. This new securities market legislation prohibits the issue of bearer shares by open JSCs, which raise capital investment from public through public offer of shares. The relevant provisions in the Civil Code that dealt with bearer shares were repealed by a presidential decree on 15 July 2015. The new Law on Securities Market will ensure that ownership information of all shareholders of JSCs in Azerbaijan will be available with the central depository. Further, the Azerbaijani authorities believe that no bearer shares exist in Azerbaijan in reality. However, for the reasons specified in the paragraphs 107 to 116 of this report, the assessment team is of the view that bearer shares issued by JSCs under the Civil Code prior to 15 July 2015 could exist, and while there are some provisions under the AML law and the Tax Code that may allow the identity of holders of bearer shares to be identified, these are not sufficient to identify holders of bearer shares in all cases.

62. While there are some provisions under the AML law and the Tax Code that may allow the identity of holders of bearer shares to be established these legal requirements and mechanisms are not sufficient to immobilise or abolish any bearer shares that could have been in circulation prior to 15 July 2015 to ensure that ownership information on bearer shares is available in all cases.

63. General partnerships and limited partnerships formed in Azerbaijan must register with the tax authorities. The tax authorities have full ownership information for all forms of partnerships, through registration and/or reporting requirements. The obligation to maintain and provide updated ownership information of foreign partnerships that have income, deductions or credits for tax purposes in Azerbaijan, or carrying on business in Azerbaijan, is similar to that of domestic partnerships and therefore required information as per the international standard is available.

64. While Azerbaijani laws do not recognise the concept of trusts, there are no restrictions on an Azerbaijani resident acting as a trustee or administering a foreign trust. The legal risks involved in administering a foreign trust in Azerbaijan or owning assets in the name of the foreign trustee, render the possibility of the existence of foreign trusts in Azerbaijan unlikely. Even if they exist, obligations imposed by tax and AML legislation, and the general fiduciary obligations of Azerbaijani residents to perform the duties of trustees

indirectly ensure that ownership information in respect of foreign trusts is maintained in Azerbaijan. However, an in-depth assessment of the existence and effectiveness of the availability of trust ownership information pertaining to settlors, trustees and beneficiaries of foreign trusts will be considered as part of the Phase 2 review.

65. The Azerbaijani Civil Code does not provide for the creation of foundations. Nonetheless, other types of legal structures can be created under the Civil Code for non-profitable activities. Public associations, funds and unions of legal entities are non-commercial legal entities created under the Civil Code and permitted to engage in non-profitable activities in Azerbaijan. All non-commercial entities are registered with the Ministry of Justice of Azerbaijan and the submission of information about the members of these entities is a requirement for obtaining a registration with the public authority. The Ministry of Justice regularly provides information about the registration of non-commercial entities to the Ministry of Taxes.

66. All relevant entities are required under Azerbaijan's accounting law to keep accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared. Requirements under the accounting law are further supplemented by obligations imposed by the Tax Code. But there are no explicit obligations either in the Tax Code or the Law on Accounting that require entities and individuals to maintain underlying documentation. A general legal requirement to keep accounting records for five years is in place for all relevant entities pursuant to tax obligations and accounting law. However, there are other inconsistent provisions in the Tax Code that may enable the entities and individual entrepreneurs not to maintain accounting information for more than 3 years.

67. Availability of banking information to the international standard is ensured in Azerbaijani through a combination of banking, tax and AML legislation. Anonymous accounts are explicitly prohibited.

### **A.1. Ownership and identity information**

68. The Ministry of Taxes of Azerbaijan is the sole authority for the registration of all commercial entities that wish to operate in Azerbaijan. There are comprehensive filing requirements for both newly formed legal persons as well as for any changes to identity information for existing legal persons. All such information filed concerning the identity of legal persons is publicly available. There are filing requirements to provide ownership information for all commercial entities at the time of registration, but ownership changes are not recorded in the public register in all cases.

69. All information recorded in the state register of legal entities will be maintained by the registering authority for the full period during which the entities are active and for 75 years after their termination.<sup>18</sup>

### *Companies (ToR<sup>19</sup> A.1.1)*

70. The Civil Code establishes and regulates entrepreneurial activities in Azerbaijan. A legal entity<sup>20</sup> has civil rights and bears civil liability from the moment of state registration (Art. 44, CC). A legal entity is established through its incorporation and the preparation of its charter<sup>21</sup> (Art. 45, CC). Amendments to a charter become legally effective with respect to third parties from the moment of their State registration. Therefore, the founders of a legal entity are compelled to register the creation of entities and amendments made to the registration documents.

71. Pursuant to Article 64 of the Civil Code (CC), a company can be established under two legal forms:

- a. **Limited or additional liability company (LLC).** An LLC is a company established by one or more persons, either individuals and/or a legal entity. The capital of a LLC is divided into equal shares. The liabilities of LLCs are borne by the participants to the extent of the value of their contributions to the capital. However, the founders of the LLC bear joint responsibility associated with the establishment of the LLC and up to its State registration. Participation interest in LLCs can be freely transferable to other participants but to third

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18. According to Article 8.6 of the Guidelines for implementation, use and protection of the State register of the legal entities approved under Decision No.70 of 13 April 2005 of the Cabinet of Ministers of Azerbaijan, in case where a legal entity is terminated, the book is stored for 75 years after the termination.
  19. Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information.
  20. Article 43 of the Civil Code: A legal entity is a specially established organisation, which has completed State registration as provided by the law, owns its property, bears liability for its obligations to the extent of its property, has the right to acquire and exercise property and personal non-property rights on its own behalf, is liable for its obligations, and acts as a plaintiff or defendant in court. A legal entity has its own balance sheet.
  21. Article 47 of the Civil Code: The charter of a legal entity, approved by its founder(s), is the foundation document of the legal entity. It should specify the name of the legal entity, its address, the procedure for the management of its activities, and procedure for its liquidation. The charter of a non-commercial legal entity shall specify the scope and purposes of its activities.

parties only if provided in the charter of the LLC. The number of registered LLCs (as on 31 December 2014) in Azerbaijan is 6006.

- b. **Joint stock company (JSC).** A JSC is a company the capital of which is divided into a quantifiable number of shares. A JSC can issue shares. The shareholders are liable for the obligations and bear the risk of loss of a JSC to the extent of the value of the shares held by them. A JSC may be established by one person (natural or legal). The charter of a JSC carries additional information on the categories of the shares to be issued, their nominal value and quantity, total share capital, rights of shareholders, etc. (Art. 102, CC).

72. The Civil Code permits the creation of two types of JSCs: closed and open. The shares of closed JSCs are distributed only among its founders or other predetermined persons. The closed JSC cannot hold a public subscription of shares. The shareholders of a closed JSC have a pre-emptive right to acquire shares sold by other shareholders of the company. If shareholders refuse to purchase, the company can purchase the shares. If the company also refuses, the shares can be sold to third parties. The number of registered closed JSCs (as on 31 December 2014) in Azerbaijan is 217.

73. An open JSC can issue its shares to the public without any limitation. The shareholders of open JSCs can transfer their shares without the consent of other shareholders. Public placement of shares is possible only for open JSCs and is done through stock exchanges. Placement of investment securities by Azerbaijan legal entities outside the territory of Azerbaijan can be done upon the approval by the SCS. The number of registered open JSCs (as 3 December 2014) in Azerbaijan is 1519.

### *Information held by the authorities*

74. All types of companies must undergo State registration to obtain the status of a legal entity and protection of the State's laws. The representations or branches of foreign entities are also required to undergo State registration and are included into the State registry. All commercial entities including representations or affiliations of foreign entities can conduct their activities only after the State registration (State Registration Law, Article 4).

75. The Tax Code of Azerbaijan, enacted in 2000, required all taxpayers to register separately with the tax authorities to obtain a Taxpayer Identification number (Art. 34.6). In 2008, to facilitate entrepreneurial activities in Azerbaijan, the Government introduced the one-stop-shop principle and appointed the Ministry of Taxes of Azerbaijan as the single State registration authority for commercial legal entities and representations and branches of the foreign commercial legal entities under the State Registration Law. The registration process for commercial entities takes two working days. All taxpayers (individual

entrepreneurs) are required to register with the tax authorities (Art. 34.1, Tax Code). The registration requirements under the Tax Code are similar to those of the State Registration Law. The Ministry of Justice is the registration authority for non-commercial legal entities and the process is governed by the State Registration Law. For a commercial legal entity to register, the application is signed by all founders of an entity, or their appointed trustee on the basis of a power of attorney approved by a notary.

76. The details provided in the application form comprehensively captures identity information of companies, Azerbaijani or foreign. Companies should disclose:

- the name;
- legal address in Azerbaijan;
- actual address of carrying business;
- contact phone numbers in Azerbaijan;
- email address;
- the holding company's Taxpayer Identification Number;
- the amount of share capital;
- main activities;
- identity details of the founder(s) of the legal entity.

Ownership information of resident companies is captured as stipulated by the State Registration Law. If the founder(s) is a natural person, their surname, first name, middle name, place of residence, number and date of identification document need to be provided. If the founder(s) is a legal entity, its name, location and registration number need to be provided in the application (State Registration Law, Art. 5.3)

77. In addition to the basic identity documents, the entity is required to submit the charter (foundation document) signed by all founders, a notary approved copy of the State registration document of the founder and the charter (if founder is a legal entity) or the copy of the identification document (if the founder is a natural person) and a document verifying the legal address of the company (State Registration Law, Art. 5.4). If a legal representative is acting on behalf of a founder, a copy of the identity of the representative should also be submitted with the application.

78. The charter (foundation document) of an LLC should contain its name, address, the procedure for management and liquidation, the amount of charter capital of the company, the size of the share of each participant and the composition of the contribution of each participant of the LLC (Art. 89,

CC). A JSC's charter should contain its name, address, the procedure for management and liquidation, the amount of charter capital of the company, the categories of the shares to be issued and their nominal value, the quantity of shares to be issued and legal rights of the shareholders (Art. 102, CC). The charter of a JSC does not contain information on the founders or subsequent shareholders, unlike that of an LLC. The charter of a non-commercial legal entity shall specify the scope and purposes of its activities.

79. The tax authorities maintain the State register of legal entities, which is kept in hard copy as well as in electronic form. The State register carries information on the organisation, registration and liquidation of resident legal entities and on representations or branches of foreign entities as well as information on changes to charter documents and all the documents submitted for registration. After registration, all legal entities receive a State registration certificate. The certificate of the commercial legal entities contains the taxpayer identification number, which is the universal identification code for legal entities and representations or branches of foreign entities. All non-profit legal entities receive a registration number from the Ministry of Justice, which is the sole registration authority designated under the State Registration Law.

80. The documents submitted by entities at the time of registration with the tax authorities are stored at the Government archive. These documents will be retained during the time the entities are in existence. According to Art. 8.6 of the "Guidelines for implementation, use and protection of the State Register of the Legal entities" approved under decision No.70 of 13 April 2005 of the Cabinet of Ministers of Azerbaijan, if the entities are struck off from the register upon liquidation, the register will be retained for 75 years after the last termination.

81. All information included in the state register, except for information about the founders of commercial legal entities and their share in the charter capital, is published in the official state newspaper (Art. 18.2, State Registration Law). Unpublished information on founders is provided, upon request, to the courts, state agencies, anti-money laundering authorities etc. (Art. 15.9, State Registration Law).

82. Companies have to file their tax returns by 31 March every year to the tax authorities in accordance with the Tax Code (Art. 149, Tax Code). If a company was not involved in any entrepreneurial activity within the reporting period, or did not implement any taxable operations, it shall submit a note to the tax authority instead of a tax return. The tax return does not require any additional identity and ownership information to be filed by legal entities.

83. Article 9 of the State Registration Law requires that each change to the charter documentation as well as each change to the registered facts shall be subject to registration. It is necessary to report such changes to the tax authorities within 40 days from the date of change, supported by documents verifying the change. After verification, the tax authorities will register such changes within 5 days.

84. In general, all companies provide detailed identity information to the State registration authority and therefore any change in the identity information will be registered with the registration authority within 40 days. In the case of LLCs, their charter contains ownership information by recording the information about each participant and his share in the LLC. If there is a change in the participants' information, the LLC charter should be amended accordingly. Since the charter information is part of the registration information, the registration authority shall be informed and the change should be recorded in the State register within 40 days. Therefore, with a delay with a maximum of 40 days, the updated identity and ownership information for LLCs in Azerbaijan is available with the tax authorities.

85. In the case of JSCs, their charter documents and the initial registration documents reflect complete identity information of the JSCs and ownership information of all founders of the JSCs. The State Registration Law (Art. 9) requires JSCs to register changes in information provided in the registration application and charter of JSCs. The State Registration Law does not explicitly require a change in ownership information to be reported to the tax authorities. Unlike LLCs, wherein changes to the ownership are recorded in their charters, JSCs need not change their charters to record the changes in their ownership. Therefore, when there is a change in the ownership information (as result of the issue of new shares by a JSC or as result of the transfer of shares of the founders to third parties), the law does not require the JSCs to report to the tax authorities as the change in ownership does not affect the charter information as well as the information provided for registration. In such cases, updated ownership information is not available with the State registration authority (the tax authorities).

#### *Information held by companies and service providers*

86. JSCs must maintain a register of shareholders (CC, Art. 106-2). They should ensure registration of shareholders within 30 days of the State registration of the company. A JSC may maintain the register itself if the number of nominal shares is 20 or fewer. In other cases, a JSC should entrust a register holder, which is a professional participant of the security market, to hold its register. The new securities market legislation requires that shareholder registers held and managed by JSCs, or entrusted with register holders, must be handed over to the central depository on or before 15 September 2015.



The securities of JSCs are transferred and held in the central depository in an uncertificated form. Every shareholder should have a depot account (account with the central depository) in which his shares in a JSC are recorded.

87. The new securities market legislation is administered by the SCS. Under this new legislation, the SCS is the relevant executive authority exercising the State regulation and supervision over the securities market. With effect from 14 July 2015, the central depository is the sole agency in Azerbaijan responsible for maintaining the shareholders register and record keeping of the ownership information of all JSCs in Azerbaijan. It is also the national depository centre governing the depository system in Azerbaijan. It is a non-profit commercial entity founded by the SCS and is based in Azerbaijan. All investment securities, which are held by depositories in the form of physical certificates will be transferred to the central depository and converted into uncertificated securities. With the introduction of the new securities market legislation, some amendments were made in the Civil Code to give effect to these changes. Article 106-2.2 of the Civil Code requires that registers of shareholders of JSCs shall be maintained by the central depository.

88. Under the existing legal arrangement, to establish the ownership of the shareholders of registered securities, and to fulfil its duties towards its shareholders as per its charter, companies shall maintain the share register and update shareholder information. The shareholder of a JSC shall inform the register holder of changes to be made to the information relating to him in the register within 10 days (Art. 106-1.6.2, CC). The new shareholders shall inform the register holder in writing to claim the transfer of the ownership of the security (Art. 993, CC). With the new securities regulatory system brought in by the enactment of the new securities market legislation, there is neither a legal requirement for a shareholder to inform the JSC nor a requirement for a JSC to inform the register holder of the changes in ownership. All securities will be converted from documented (certificated) to uncertificated form. With this, the transfer of ownership can only be effected by informing the central depository to record the changes in ownership. The transfer will be effected by changing the record of ownership from the seller's depot account to the buyer's. The list of documents and information to be recorded in the register of securities owners maintained by the central depository under the new securities legislation are listed below:

- For owners that are legal entities: full name, address and legal entity identification number (State registration number);
- For owners that are natural persons: name, father's name, last name, address and individual identification number (identification document of citizens);



- The central depository will regularly update the information on legal entities based on the information received from the State register when the State registration number is changed or when the number of the identification document is changed, and on natural persons based on the information provided by them.
- Under the enhanced disclosure obligations for publicly listed companies, JSCs that have issued shares to the public through the stock exchange are mandated to disclose ownership information of their shareholders holding more than 10% of the charter capital (SCS regulations and Art. 1078-47.1.4, CC).

89. The Civil Code does not specifically prescribe LLCs to keep a register of shareholders/participants. Updated information on the owners of an LLC is nonetheless available with the LLCs as such information is part of the charter of the LLCs and the law requires LLCs to report any ownership change to the tax authorities.

#### *Requirements under AML legislation*

90. Under the Law of the Republic of Azerbaijan on the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism (AML Law), credit institutions hold some information on companies, though not necessarily the updated ownership information of their clients. The financial monitoring agency for AML purposes in Azerbaijan is the Financial Monitoring Service, which operates under the Central Bank of Azerbaijan. Although the State Committee on Securities is a supervisory authority under the AML Law, it only has supervisory powers over brokers and fund managers. Register holders and depositaries are not monitoring entities under the AML Law and are therefore not required to conduct customer due diligence exercises nor verify records of the shareholders in accordance with AML obligations.

91. Auditors, notaries, lawyers and other persons providing audit or legal services who carry out transactions for their customers are covered by the AML Law only with respect to select activities, including the managing of customer funds, securities or other property, the creation, the operation or management of legal persons, the buying and selling of legal persons, and the organisation of contributions for the creation and the operation or management of legal persons. Auditors, notaries, lawyers and other persons providing audit or legal services will act as monitoring entities only if they provide these services. However, there are no restrictions in Azerbaijani legislation stating that these services can only be undertaken by auditors, notaries, lawyers etc. in Azerbaijan. Therefore, to the extent that companies engage such professionals for the aforesaid services, they will be subjected to customer due diligence

under the AML Law, and thereby the ownership information of those companies may be maintained or made available in Azerbaijan.

92. Banks and other credit institutions are one of the monitoring entities under the AML Law (Art. 4). The Central Bank is the supervisory authority for banks and is empowered under the AML Law to supervise the compliance of banks with the requirements of the AML Law. Violations of the requirements of this law by the monitoring entities operating under a licence may lead to revocation of this licence or to administrative penalties imposed by the Central Bank.

93. The AML Law (Article 9.2) prescribes that monitoring entities shall identify their customers and beneficial owners before opening bank accounts or carrying out occasional transactions above AZN 15 000 (EUR 12 689), or when a transaction is suspicious and doubts arise regarding the veracity or adequacy of previously obtained client identification data. A beneficial owner is defined in the AML Law in line with the FATF requirements. Identification is carried out on the basis of a notarised copy of the charter and the State registration certificate of legal entities (Art. 9.4). Monitoring entities are also required to verify the identity information of their customers and beneficial owners using reliable and independent sources (Art 9.8, AML Law) such as comparing information from the State register, information from mass-media, the internet, or official publications, and to compare the latest information with the previously received information. Since most JSCs will establish a relationship with one or more of the monitoring entities in Azerbaijan in the course of their business activities, it is likely that ownership information of JSCs is also available with the monitoring entities to comply with the obligations under the AML Law.

94. To sum up, updated identity and ownership information in respect of all companies is available in Azerbaijan, either at the entity level or with service providers and/or with public authorities. There are additional obligations under the AML Law for monitoring entities to maintain identity and ownership information.

### *Foreign companies*

95. According to the Tax Code, a foreign company is a resident of Azerbaijan for tax purposes if it is involved in entrepreneurial activities with its place of management in Azerbaijan (Art. 13.2.5.3 of the Tax Code). Foreign companies are required to file tax returns and are subject to profit tax on their worldwide income. Non-resident companies are subject to tax on net income from Azeri sources attributable to their permanent establishment located in Azerbaijan (Art. 104 of the Tax Code). If a non-resident company does not have a permanent establishment in Azerbaijan, it is subject to withholding

tax at a lower rate on a gross basis on certain passive income, such as royalties, interest, dividends, insurance payments etc., earned by it in Azerbaijan (Art. 125 of the Tax Code). A permanent establishment is a fixed place in Azerbaijan where a foreign company conducts its entrepreneurial activity for a period not less than 90 days in a year. This place includes a subdivision, office, branch or agency, construction sites etc. (Art. 19 of the Tax Code).

96. Any entity that operates in Azerbaijan needs to register with the designated State registration authority (tax authority). This requirement is equally applicable to foreign companies operating in Azerbaijan. Consequently, the permanent establishments of foreign companies are required to register with the tax authorities before they commence their operations in Azerbaijan. The State Registration Law requires permanent establishments to register as representations<sup>22</sup> or branches of foreign legal entities. Representations and branches are not legal entities and act on the basis of regulations approved by the legal entities. However, for the purposes of registration, the representations and branches of foreign entities have a separate identity in Azerbaijan and taxpayer identification numbers are allotted to them. Foreign companies that are treated as residents of Azerbaijan for tax purposes (by virtue of having their place of management located in Azerbaijan) are also registered as foreign companies that have representations in Azerbaijan.

97. Representations and branches of non-resident foreign companies are registered as separate structures different from that of their foreign principals. The information required to be submitted by representations or branches of non-resident foreign companies for State registration are: the foreign company's name, location, registration number and date of registration, extracts from the company's shareholder register (filed with the public authorities of residence State of those foreign companies), power of attorney's identification details, and a notarised copy of the decision of the foreign legal entity to establish the representation or branch and the appointment of the head of such representation or branch (Art. 6, State Registration Law). According to Article 9 of the State Registration Law, the tax authorities will be notified of a change in the registration documents, and of changes to registered facts, within 40 days from the date of change. This update of documents and facts sufficiently covers the requirement for maintaining updated identity and ownership information of foreign companies that have sufficient nexus in Azerbaijan.

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22. Art. 53 of the Civil Code defines representative offices and branches as subdivisions of the legal entities located somewhere other than the legal entities' locations, which represent the interests of the legal entities and protect their interests.

98. The tax returns that the representations or branches of foreign companies need to submit to the tax authorities do not require the disclosure of ownership information. Under the AML Law, general due diligence measures are conducted by banks and other credit institutions (monitoring entities, Article 4 – AML Law) on their customers before opening bank accounts or before carrying out occasional transactions above AZN 15 000 (EUR 12 689), or when a transaction is suspicious and doubts arise regarding the veracity or adequacy of previously obtained client identification data. The verification includes ascertaining the identity information of legal entities and persons conducting transactions on behalf of those entities. Enhanced due diligence measures are also performed by the monitoring entities for higher risk categories of customers, which include non-resident customers, legal persons or arrangements such as trusts that are personal asset holding vehicles and companies that have nominee shareholders or bearer shares (Art. 9.13). Foreign companies do not require the services of professional company service providers in Azerbaijan. If auditors, notaries or lawyers in Azerbaijan perform services relating to the operation and management of foreign companies, they are covered under the AML Law as “other persons involved in monitoring” (Article 5, AML Law). In such cases, they conduct customer due diligence measures for customers as the monitoring entities do. General audit, notary and legal advisory services are not covered under the AML regulations.

99. The enhanced due diligence measures performed by the monitoring entities include verification of accounts and business relationships, learning the names of the shareholders and their shares (where the customer is a legal person), and obtaining from reliable sources more precise information about the customers and beneficial owner(s) and comparing this information. If the monitoring entity is unable to identify the shareholder(s), it shall not open the account, commence business relations or perform transactions; it will also inform the Financial Monitoring Service about the entity (Art. 9.15). These additional due diligence requirements are applied to existing customers on the basis of materiality and risk (Art. 9.16). Since all foreign companies that are customers of banks in Azerbaijan are subjected to AML regulations, and it is required that identification of all shareholders of foreign companies is to be obtained by banks, ownership information to a larger extent should be available in Azerbaijan. However, the provision to apply enhanced due diligence measures was introduced in the AML Law that only came into force in 2010.<sup>23</sup> In respect of bank accounts that existed before 2010, banks will take

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23. The Law of the Republic of Azerbaijan # 973-IIIQ, “on amendments to individual legislative acts of the Republic of Azerbaijan to enhance the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism” (adopted by the Parliament of the Republic of Azerbaijan March

additional measures to identify the shareholders of foreign companies only under certain circumstances based on materiality and risk.

100. The “Limits and Rules for provision of information about financial operations carried out by physical and legal entities of foreign States in the Republic of Azerbaijan to the competent authorities of these States”, which was approved under decree No. 211, dated 3 June 2015, of the Cabinet of Ministers of the Republic of Azerbaijan is a specific regulation for facilitating the automatic exchange of financial information of foreign residents, which include foreign companies that have a financial account with reportable financial institutions in Azerbaijan. The due diligence mechanisms adopted under this regulation are similar to those followed for AML purposes. As explained above, ownership information could be available with these financial institutions under certain circumstances.

101. To sum up, the identity and ownership information of all foreign companies that have sufficient nexus in Azerbaijan is sufficiently available with the tax authorities as required by the Standard and is updated with a delay of up to 40 days. Banks and other credit institutions are mandated under the AML Law to maintain ownership information of all foreign companies among their customers.

### *Nominees*

102. The Civil Code of Azerbaijan and the new securities market legislation regulate the status and functions of nominees in holding shares on behalf of the actual owners. The shareholders of JSCs are permitted to use the services of nominal shareholders. A nominal shareholder of securities, on the instructions of the actual owner, registers his identity information in the list of holders of securities but does not possess ownership rights of the shares (Art. 992-1.5, CC). The new securities market legislation requires the nominal holder to disclose the identity information of the actual owner of the shares to the central depository in Azerbaijan within five days of notice.

103. The nominal holder is an external depositor or an external investment company, which exercises securities-related rights on the instruction of the actual owner. The nominal holder and the securities owner enter into a written agreement to establish a commercial relationship between them. Alternatively, the securities owner may execute a power of attorney rights on the nominal holder. The depot account will be in the name of the nominal holder but he should have all necessary information on the identification of the actual owner. The nominal holder should submit the information about

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5, 2010) has introduced a new article to the AML/CFT relating to unusual transaction.

the actual owner within five working days from the date of receipt of notice either from the SCS or from the central depository. In the securities register the central depository will record the full name, address and State identification number similar to the requirements for an actual owner of securities. Since the basic identification document is the State registration number (for legal entities) or identification document of citizens, only an Azerbaijani citizen or an Azerbaijani entity could provide the services of a nominal holder in Azerbaijan. Further, if a nominal holder fails to maintain actual ownership information or to provide such information to the central depository or the SCS, he is liable for such violation and will be subject to administrative penalties as prescribed under the Code of Administrative Violations as well as to criminal liability under the Criminal Code of Azerbaijan.

### *Requirements under AML legislation*

104. Nominal holders of securities are not obligated entities under AML legislation. In the absence of any obligation under the AML Law, neither the SCS nor any other supervisory authority supervises the activities of nominal shareholders. Professional brokers of the securities market and those who are engaged in the professional management of securities are the monitoring entities under the AML Law. They are required to conduct due diligence measures on their customers. The verification includes ascertaining the identity information of their customers and beneficial owners using reliable, independent sources. Brokers and professional managers should also determine whether the customer is acting on behalf of another person, and should then verify the identity of that person. To the extent that nominees enter into a business relationship with brokers and professional managers on behalf of actual owners, the beneficial ownership information might be made available under the AML obligation in Azerbaijan. In addition to general due diligence measures, enhanced due diligence measures, as detailed in paragraph 99, are performed by monitoring entities for higher risk categories of customers, which include companies that have nominee shareholders or shares in bearer form (Art. 9.13, AML Law).

105. Considering the above facts, the conclusion is that with the introduction of the new securities market legislation, a legal requirement for nominal holders to maintain the identity of persons on whose behalf shares are held by them is available in Azerbaijan.

### *Conclusion*

106. The tax authorities have full and updated identity information of all companies pursuant to registration and reporting requirements. Presently, ownership information of Azerbaijani JSCs may be available with the

companies and partly with the register holders. However, such information should be available with the central depository with effect from 15 September 2015 in accordance with the requirements under the new securities market legislation. Foreign companies with sufficient nexus to Azerbaijan, while being required to register with the tax authorities, are not required to maintain nor provide information on the owners to the authorities. Ownership information may be available with banks under certain circumstances, pursuant to the AML Law and the new financial accounts reporting regulation. However, it is recommended that Azerbaijan ensure that ownership information of foreign companies with sufficient nexus in Azerbaijan is available under all circumstances.

### *Bearer shares (ToR A.1.2)*

107. Between 1998 and 2003, Azerbaijan had a specific law on securities, which governed the creation and possession of bearer shares. This law was repealed in 2003<sup>24</sup> and the provisions in that law were included in the Civil Code. The Civil Code permits the creation and possession of bearer securities<sup>25</sup> along with registered securities.<sup>26</sup> Chapter 54 (Articles 987 to 1078-47) of the Civil Code deals with the creation and management of securities in different forms. Article 987 of the Civil Code states that a security should be a document certifying a pre-determined right to a person to whom the debtor issuing that security is obliged to perform. A security can be issued in three forms: registered, bearer, or an order security (Articles 989-991, CC). These forms of security can be issued for different purposes, which are specified in Article 997 of the Civil Code.

108. Bonds and stocks are termed as investment securities (Article 997.2, CC) whereas orders, checks and promissory notes are termed as payment securities (Article 997.3, CC). Similarly, commodity papers, and futures and options are termed as title and subsidiary securities respectively. Up until 15 July 2015, under Article 997 of the Civil Code, a bearer form of investment security could have been issued by a JSC in the same manner it issued registered investment securities. This meant that a bond could be a bearer or a registered bond, in the same way a stock could be a bearer or a registered

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24. Law of the Republic of Azerbaijan on securities was repealed by the Law 566-IIQD dated 23 December 2003.
  25. Article 990 of the Civil Code – Bearer Securities: A security shall be considered to be a bearer security where according to it a debtor undertakes upon himself performance of an obligation in respect of any person presenting that bearer security.
  26. Article 989.1 of the Civil Code – A security issued in the name of a person shall be considered a registered security.



stock. A stock was defined in Article 1077 of the Civil Code as a security (share) certifying membership in a JSC, as well as certifying the right of an owner (stockholder) to receive a part of income of a JSC in the form of a dividend, right to participate in the management of activities etc.

109. Up until 15 July 2015, open JSCs willing to issue shares through public offer by accessing the securities market could have issued investment securities in three forms: registered, bearer, and dematerialised shares (Article 1078-6, Civil Code). The State Committee of Securities, the securities market regulator of Azerbaijan, governed and regulated the issue of shares, trading of securities, licensing and monitoring professional market participants etc. Open JSCs needed to register with SCS for public issuing of shares and were therefore subject to the arising regulatory requirements. However, several provisions in the Civil Code under the sub-chapter 13 (Capital Securities) dealt with the manner and procedures on the operation of bearer shares in the securities market.

110. Prior to 15 July 2015, under Article 997-2 and Article 1078-6 of the Civil Code, bearer shares could have been issued by JSCs. Banks and State companies have always been prohibited from issuing bearer shares. The amendments made to the Civil Code (Article 997-2) on 15 July 2015 mean that bonds and stocks can only be issued in registered form. Additionally, the other relevant provisions of the Civil Code (Articles 1078-6 to 1078-47) that dealt with regulating the securities market (which allowed for the possibility of the issue and circulation of bearer shares) were repealed on 15 July 2015 through a Presidential Decree (No. 1285, dated 15 July 2015). Similarly, Azerbaijan enacted the “Law on Securities market”, which entered into force on 14 July 2015. This Law stipulates that open JSCs that issue shares to the public can issue only normal registered shares in the dematerialised form (Art. 23.1, Law on Securities Market). With effect from 15 September 2015, all securities traded on the stock exchange should be dematerialised and held by the central depository by setting up depot accounts for shareholders. The transitional provisions (Art. 91, Law on Securities Market) provide that transactions in the exiting securities issued before the effective date of the present Law can be concluded only after those securities are converted into dematerialised (electronic) securities in the central depository.

111. The Azerbaijani authorities state that, in reality, no bearer shares existed in Azerbaijan in the past and no JSCs issued bearer shares. Accordingly, in order to remove any legal uncertainties regarding bearer shares that may exist in their domestic legislation, the relevant provisions that dealt with securities (including bearer form) have been amended or repealed and the new Law on Securities Market has been enacted. In effect, the Azerbaijani authorities are of the view that the issue on bearer shares have been dealt with in totality.

112. The various legal changes that have recently been brought into force fully ensure that bearer shares cannot be issued by JSCs with effect from



15 July 2015. But these changes do not sufficiently ensure that the ownership information on any potentially existing bearer shares is available in Azerbaijan. There are no provisions in Azerbaijani legislation that require the conversion or immobilisation of any existing bearer shares (issued before 15 July 2015) except in cases where a bearer share holder transfers his share through the stock exchange or market intermediaries. There are however some other mechanisms in place which may ensure that bearer shares holders are identified. It is possible that a company while issuing bearer shares may have recorded their owners. For instance, a JSC is deemed to be established only if the foundation meeting is held with full quorum of all founders (or their representatives) to agree on the distribution of shares among founders and to approve the company charter. Therefore, ownership information gathered at the time of the issuing of the bearer shares may be available with companies, if such information is retained. However, there is no direct obligation under the Civil Code to maintain ownership information of bearer shares.

113. While the Tax Code does not require the ownership information of bearer shares to be kept by JSCs, or for it to be disclosed to the tax authorities, there are indirect obligations under the Tax Code that require JSCs to gather such information and provide it to the tax authorities, and that also oblige owners of bearer shares to disclose their identity. Article 122 of the Tax Code requires all Azerbaijan's resident enterprises to withhold tax at the source of payment when dividends are paid to their shareholders (legal entities and individuals; resident or non-resident). Article 150.3.3 of the Tax Code stipulates that all resident enterprises that pay dividends to their shareholders should file a declaration to the tax authorities in the form prescribed by the Ministry of Taxes, by the 20<sup>th</sup> day of the successive month. The Azerbaijani authorities state that the dividend withholding declaration form requires the resident enterprises to disclose information on the dividend withheld, with identity information (name and state identity number) of the shareholders to whom the dividends have been distributed.

114. The Tax Code also requires that any income by way of capital gains from the sale of assets (including shares) and income from dividends are treated as taxable income in the hands of individuals and legal entities (Article 96 (for natural persons) and 104 (for legal entities)). Therefore, it is the responsibility of those earning income from dividends to report to the tax authorities and pay taxes accordingly. The tax authorities have the right to audit any taxpayer and can gather additional information, which further obliges the taxpayers to maintain all relevant information about the ownership of shares, as stipulated by the Tax Code. Failing to disclose taxable income entails liability on the taxpayer, which may attract penalties, from administrative fines to criminal sanctions.

115. Following FATF's recommendations in 2008, Azerbaijan enacted the AML Law in 2010 wherein certain obligations are imposed on monitoring

entities for identifying owners of bearer shares. Under the AML Law, enhanced due diligence measures, as detailed in the paragraph 98 and 99, are performed by banks and other monitoring entities for higher risk categories of customers, which include companies that have shares in bearer form (Art. 9.13, AML Law). The 4<sup>th</sup> round of evaluation report of MONEYVAL on Azerbaijan dated 10 December 2014 took note of the changes introduced by Azerbaijan in the AML Law to deal with the bearer share issue and recommended that the Azerbaijani authorities assess the potential risk of the use of bearer shares for criminal activities.

116. Despite express obligations under AML Law, there may be limitations to the availability of ownership information on any potentially existing bearer shares, due to the fact that the provisions to apply enhanced due diligence measures were introduced in the AML Law that came into force in 2010, but the legal basis for the creation of bearer shares has existed since 1998. For the existing customers having business relationship before 2010, monitoring entities will take additional measures to identify the actual shareholders under certain circumstances based on materiality and risk.

117. Although the obligations under AML Law require banks and other monitoring entities to ascertain ownership information on bearer shares, the bearer share holders are not themselves required under the substantive laws that govern their activities (Civil Code) to disclose such information to the company or any service providers or to the authorities, except in limited circumstances explained under this section. Companies have no legal right to obtain beneficial owner information from bearer share holders. Therefore, the requisite information may not be provided by these companies to the monitoring entities under AML obligations.

118. Despite the assertion of the Azerbaijani authorities that, in practice, bearer shares do not exist in Azerbaijan, the legal validity of any bearer shares that could have been issued before 15 July 2015, and the lack of adequate mechanisms to identify those holding bearer shares, renders the possibility of the existence of bearer shares with no information on the owners. It is recommended, therefore, that Azerbaijan should ensure that ownership information on bearer shares is available by bringing in place sufficient mechanisms that allows owners of any bearer shares in existence before July 2015 to be identified.

### *Partnerships (ToR A.1.3)*

119. Two types of partnerships<sup>27</sup> exist in Azerbaijan: general partnerships and limited partnerships. Partnerships are legal persons<sup>28</sup> recognised by the Tax Code as taxable entities and are liable to pay legal profit tax at a rate of 20% on their net income. The income distributed by the partnerships (subject to a withholding tax of 10% on dividends) is tax exempt in the hands of the partners. Partnerships can own properties. Only individual entrepreneurs and (or) commercial organisations can become partners in general partnerships and general partners in limited partnerships. Natural persons and legal entities may be limited partners in limited partnerships.

### *General partnerships and limited partnerships*

120. A general partnership is established by the general partners in accordance with the charter of the partnership and is engaged in entrepreneurial activities on behalf of the partners. The partners, either legal entities or individuals, bear unlimited liability of the general partnership to the extent of their property ownership. The firm name of a general partnership shall contain the names of one or more or even all of the partners. The charter of a general partnership contains the basic information applicable to all entities as specified in Article 47.2 of the Civil Code.<sup>29</sup> In addition, the charter contains limits on the amount and composition of the statutory capital of the partnership; on the amount and procedure for the change of the share of each participant in the statutory capital; the contributions and liabilities of the participants etc. A person may be a partner in only one general partnership. Each partner has one vote in the partnership unless stated otherwise in the charter. The partners can transfer their shares or part thereof to another partner or a third party, with the consent of other partners.

121. A limited partnership is established similarly, but besides the general partners who conduct business activities on behalf of the partnership and bear unlimited liability, it should have at least one partner with limited liability to the extent of his contribution and who does not take part in the business activities of the partnership. A person may be a general partner in one limited

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27. Article 64.1 of the Civil Code – business partnerships and company associations are commercial organisations with charter (statutory) capitals divided into shares of the founders (participants).
28. Article 13.2.2 of the Tax Code – Legal person is defined as enterprises and entities established with the status of legal person in accordance with the legislation of Azerbaijani Republic or legislation of a foreign State.
29. The charter of a legal entity shall specify the name of the legal entity, its address, the procedure for the management of its activities, and the procedure for its liquidation.

partnership only. All other regulations for a limited partnership are similar to that for a general partnership. A charter of a limited partnership contains the basic information applicable to all entities as specified in Article 47.2 of the Civil Code. In addition, the charter contains the amount and composition of the statutory capital of the partnership; the amount of and procedure for the change of the share of each general partner in the statutory capital; the contributions and liabilities of the partners etc. Partners in a limited partnership have the first right to buy shares from another partner. If none of them exercises the right, the shares can be transferred to a third party.

122. Information on the identity and owners of general partnerships and limited partnerships is maintained by the tax authorities as mandated by the State Registration Law. General partnerships and limited partnerships must register with the State authorities before starting their business operations. For commercial legal entities to register, the application is signed by all partners of the entity or their appointed trustee on the basis of a power of attorney approved by a notary.

123. The details provided in the application form for the registration of a partnership captures the identity information of the partnership and that of the partners, Azerbaijani or foreign. Partnerships should disclose their name, legal address in Azerbaijan, actual business address, contact phone numbers in Azerbaijan, email address, the amount of statutory capital, main activities, the identity details of the head of the partnership etc. Ownership information of resident partnerships is captured as stipulated by the State Registration Law. If the founder(s) is a natural person, his (their) surname, first name, middle name, place of residence, number and date of the identification document need to be provided. If the founder(s) is a legal entity, its (their) name, location and registration number need to be provided in the application. (State Registration Law, Art. 5.3)

124. In addition to the basic identification documents, partnerships are required to submit the charter (foundation document) signed by all partners, a notary approved copy of the State registration document of the partners, the charter if partner is a legal entity or a copy of the identification document if the partner is a natural person and a document verifying the legal address of the partnership (State Registration Law, Art. 5.4). If a legal representative is acting on behalf of a founding partner, a copy of the identification document of the representative should be submitted with the application.

125. Ownership information on the partners of domestic partnerships is updated in the State register on the basis of Article 9 of the State Registration Law. The tax authorities should be notified of any changes to the charter documents and information provided for registration within 40 days from the date of such changes (State Registration Law, Art 9.1). Without the changes recorded in the State register, the ownership changes do not have any legal

effect and do not receive legal protection. The charter of a partnership contains details of all partners in the partnership, the share of capital and profit of each partner etc. Therefore, in case of an ownership change in a partnership, such change is recorded in the charter and should be reported to the State authorities as per the legal requirement under the State Registration Law.

### *Tax law*

126. Any partnership (including foreign partnerships) carrying out commercial activities in Azerbaijan must register with the tax authorities. All partnerships generating income from commercial activities must file tax returns with the Ministry of Taxes. Resident partnerships must pay taxes on their worldwide income. Non-resident partnerships must pay taxes on their income from Azerbaijani sources. Foreign partnerships can operate in Azerbaijan by establishing branches and representative offices. The Tax Code does not prescribe a separate registration for tax purposes. A taxpayer identification number is provided by the tax authorities under the State Registration Law. No additional documentation requirements relating to ownership information are needed when filing a tax return.

### *Foreign partnerships*

127. In the case of foreign partnerships that have income, deductions, or credits for tax purposes in Azerbaijan, or those carry on business in Azerbaijan, the information to be submitted to the tax authorities for registration is similar to the information submitted by foreign companies, as detailed above. The identity information of foreign partners in a foreign partnership or Azerbaijani-resident partners in a foreign partnership operating in Azerbaijan will be made available in all cases, as part of the documents required to register the foreign partnerships. The State Registration Law requires that identity and ownership information of foreign partnerships is available in Azerbaijan. According to Article 9 of the State Registration Law, a change in the registration documents as well as a change of registered facts shall be updated to the tax authorities within 40 days from the date of change. This update of documents and facts sufficiently covers the requirement for maintaining updated identity and ownership information of foreign partnerships that have income, deductions or credits for tax purposes or carries on business in Azerbaijan.

128. Auditors, notaries, lawyers and other persons providing audit or legal services will act as monitoring entities only if they provide select services listed by AML Law. Therefore, to the extent that foreign partnerships engage auditors, lawyers, notaries etc. for those specified services, they will be subjected to customer due diligence under the AML Law and thereby the ownership information of those foreign partnerships may be maintained

or made available in Azerbaijan. However, there are no restrictions in Azerbaijani legislation that these services can only be undertaken by auditors, notaries, lawyers etc. in Azerbaijan. General audit, notary and legal advisory services are not covered under the AML regulations.

129. Under the AML Law, general due diligence measures are conducted by banks and other monitoring entities on their customers before opening bank accounts or before carrying out occasional transactions above AZN 15 000 (EUR 12 689), or when a transaction is suspicious and doubts arise regarding the veracity or adequacy of previously obtained client identification data. Further, enhanced due diligence measures are performed by the monitoring entities for higher risk categories of customers, which include all non-resident customers (Art. 9.13, AML Law).

130. The enhanced due diligence measures required to be performed by monitoring entities on all non-resident customers include verification of accounts and business relationships, learning the names of the shareholders (and their shareholdings if the customer is a legal person), and obtaining from reliable sources more precise information about the customers and beneficial owner(s) and comparing this information to the information provided by the customers. If the monitoring entity is unable to identify the beneficial owner, it shall not open an account, commence business relations or perform transactions, and shall notify the Financial Monitoring Service (Art. 9.15, AML Law). These additional due diligence requirements are applied to existing customers on the basis of materiality and risk (Art. 9.16, AML Law). Since all foreign partnerships that are customers of banks in Azerbaijan are subject to AML regulations and identification of all partners of foreign partnerships is obtained by banks, the ownership information under AML Law may be available in Azerbaijan in most cases. However, enhanced due diligence measures were introduced in the AML Law that only came into force in 2010. In respect of bank accounts that existed before 2010, banks will take additional measures to identify the beneficial owners of foreign partnerships only under certain circumstances based on materiality and risk. The ownership information on foreign partnerships that have no relationship with monitoring entities is also not maintained in Azerbaijan for the AML purposes.

131. To sum up, the updated identity and ownership information of all foreign partnerships that operate in Azerbaijan is sufficiently available with the tax authorities as required by the standard and is updated with a maximum delay of 40 days.

### *Co-operatives*

132. A co-operative is a voluntary union of individuals and legal entities on the basis of membership with the purpose of satisfying the material and other needs of the participants through the consolidation of the participants' material contributions. Members of a co-operative can be individuals and (or) legal entities. There are two types of members: primary members and associated members. Primary members pay the membership contribution, the mandatory and additional share payment as specified in the charter of co-operative, participate in its activities and have voting rights. Associated members make membership and mandatory share payments; have no right of participation in the activities of the co-operative and have no voting rights. A co-operative can be formed in any sector to conduct commercial activities.

133. The charter of a co-operative contains information about the contributions of its members, their shares, the management of the co-operative, etc. Co-operatives maintain a membership book, which is updated whenever new members are added to the co-operative. The content of the records in the membership book is established under the co-operative charter. The first right of refusal lies with the existing members of a co-operative if a member wishes to transfer his share to others.

134. A co-operative needs to register itself before it commences commercial activities in Azerbaijan. The application for registration is filed with the tax authorities with the information as stipulated in the State Registration Law. The information submitted to the tax authorities includes the name, the address, information about its members and the charter of the co-operative. In addition, co-operatives also maintain the membership book and keep updated information. Co-operatives should file an annual tax return on their income and pay tax on their profits.

135. To sum up, sufficient identity and ownership information of co-operatives is available in Azerbaijan.

### *Trusts (ToR A.1.4)*

136. The Civil Code of Azerbaijan does not recognise the concept of a trust and Azerbaijan is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition.<sup>30</sup> Nonetheless, nothing in the Civil Code prohibits a resident of Azerbaijan to act as a trustee, protector or administrator of a trust formed under a foreign law. Rules established by Civil Law apply to relationships with foreign natural persons, stateless persons and foreign legal entities (Art. 9.2, CC).

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30. [www.hcch.net/index\\_en.php?act=conventions.text&cid=59](http://www.hcch.net/index_en.php?act=conventions.text&cid=59).



137. The State Registration Law recognises foreign legal entities<sup>31</sup> but does not recognise foreign legal arrangements. The fact that the foreign legal arrangements are not recognised by the State law creates a legal risk for the persons involved in a trust. If a foreign trust owns an asset in Azerbaijan, the trustee is registered as the owner of the asset. Foreign trusts have no legal protection in Azerbaijan against Azerbaijani trustees in case of a dispute. This creates an inherent insecurity for a foreign trust being administered in Azerbaijan or owning any property in Azerbaijan. For example, if an Azerbaijani trustee who owns a property on behalf of a foreign trust dies, his legal heirs will get automatic succession of the ownership of the property as per the Azerbaijani Civil Code. Similarly, there could be potential actions by the creditors of the Azerbaijani trustees on the trust's assets in Azerbaijan. As a consequence, foreign trusts are unlikely to have trustees resident in Azerbaijan or be administered from Azerbaijan.

138. If a foreign trust possesses assets generating income in Azerbaijan and has some income generated from these assets in Azerbaijan, since the assets are legally considered as the assets of the Azerbaijani trustee, he will register with the State registration authority (tax authorities) as an individual entrepreneur. If he is already a registered taxpayer in his individual capacity, he is not required to register separately for the income of the foreign trust. In any case, there is no legal requirement for the trustee to disclose identity information of the trust or its ownership information i.e. the identity of the settlors, protectors and beneficiaries of the foreign trust.

139. The Tax Code of Azerbaijan does not explicitly require trustees to identify income generated from a trust's assets separately or to disclose the trust arrangement including identity and ownership information, because there are no special privileges for trust income under the Tax Code. Normally, the Azerbaijani resident acting as trustee of a foreign trust will include the foreign trust's taxable income under the Azerbaijani Tax Code to his total taxable income and pay any resulting tax liability. He may treat the tax paid as expenses for the trust and may be reimbursed by the foreign trust. In such cases, no information relating to the foreign trust is furnished to the State registration authorities or tax authorities. However, under the general provisions of the tax law the trustee would have an obligation to keep records and accounts demonstrating the source of all income and assets. This would require him to have available all information relevant to the trust he is administering, which would include the trust deed and information on the settlors and beneficiaries of the foreign trust, which would need to be produced during a tax audit. Failure to keep such records would result in additional tax liability and is an offence which may be subject to a civil penalty and criminal

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31. Legal entity established outside of the Azerbaijan Republic (State registration law, Art. 2.0.2).



prosecution (Article 213, Code of Criminal Offences). He should also maintain the trust information as a part of his general obligation under the trust law under which the foreign trust was created or under any applicable common law obligations.

140. Under AML Law, a trustee is not a monitoring entity and therefore neither supervised by the supervisory authorities nor controlled by the Financial Monitoring Agency. Any individual may choose to act as a trustee of a foreign trust but may not conduct due diligence on the foreign trusts. The trustee services are not an exclusive activity of professional service providers in Azerbaijan and therefore the trustees are not subjected to AML obligations. However, AML Law covers foreign trusts if they establish a business relationship with financial institutions. Article 9.2 of the AML Law requires that monitoring entities (banks, other credit institutions, brokers and professional managers) conduct regular due diligence measures to identify their customers and the beneficial owners associated with their customers. In addition, enhanced due diligence measures are adopted by these monitoring entities for higher risk categories of customers, which includes arrangements such as trusts that are personal asset holding vehicles. Under AML obligations, the Azerbaijani trustee must disclose the trust information to the monitoring authorities if he establishes business relationship with them on behalf of the foreign trust.

141. For those foreign trusts whose trustee is an Azerbaijani resident but have no assets or commercial activities in Azerbaijan, there are no legal obligations in Azerbaijan that require the trust or trustee to register with the tax authorities, or to file tax returns. However, according to the Tax Code, all Azerbaijani residents should pay tax on their worldwide income. If a foreign trust has income from non-Azerbaijani sources, the trustee in Azerbaijan must treat this trust income as his personal income and pay tax on it. While there are no explicit obligations under the Tax Code to ensure that an Azerbaijani resident acting as a trustee of a foreign trust maintains the information about the settlors, beneficiaries and other trustees, the combination of AML, general documentation requirements under the Tax Code and general obligations on a trustee to maintain and disclose information may ensure that relevant information is available in Azerbaijan. In addition, there is a very low possibility of a trust being misused as an investment vehicle in Azerbaijan due to legal and material risks involved.

### *Conclusion*

142. While Azerbaijani legislation does not recognise trusts, nothing prevents a trust created under the law of a foreign jurisdiction from being administered by a resident of Azerbaijan. In the case of an Azerbaijani resident trustee of a foreign trust, to the extent that the trustee engages with AML obligated entities, the ownership information would be collected

by these entities. However, since the requirements under AML Law were introduced in 2010 and existing customers are only subjected to enhanced Customer Due Diligence (CDD) measures on basis of materiality and risk, and moreover, the trustees need not engage with AML obligated entities in Azerbaijan, the ownership information on trusts may not always be available with the authorities or service providers. At the same time, there is a general obligation on Azerbaijani residents acting as trustees of foreign trusts to maintain the identity and ownership information of foreign trusts. Lastly, legal and material risks involved in administering a foreign trust in Azerbaijan by an Azerbaijani resident acting as a trustee renders the possibility of existence of such foreign trusts very unlikely. To sum up, considering the inherent legal uncertainty for foreign trusts choosing to be administered in Azerbaijan and the combination of legal requirements explained above, there are no material gaps in the availability of identity and ownership information of trusts in Azerbaijan. However, it is recommended that Azerbaijan takes reasonable measures to ensure availability of settlor, trustee and beneficiary information relating to foreign trusts where those trusts are either administered in Azerbaijan or in respect of which a trustee is a resident of Azerbaijan.

### ***Foundations (ToR A.1.5)***

143. Azerbaijani Civil Code does not provide for the creation of foundations.

### ***Other entities***

144. Other legal entities that could be created in Azerbaijan are: public associations, funds<sup>32</sup> and unions of legal entities. All these legal entities can only be created for non-commercial purposes and are permitted only to engage in non-profitable activities in Azerbaijan. Properties contributed by founders (participants) are the properties of these non-commercial entities. Commercial activities are authorised only to support the realisation of the goals of the entities. The profits earned as a result of commercial activities cannot be distributed to the founders, members, donors, or to the managers. Upon liquidation, the property shall be used for the purpose of the entity's charter or, wherever this is not possible, will be transferred to the State's budget.

145. A non-commercial entity, wishing to obtain the status of a legal entity, as well as representations or branches of foreign non-profit legal entities should register with the relevant executive authority under the State Registration Law. The Ministry of Justice is the executive authority for registering non-profit

32. Article 115-1 – A fund is a non-membership organisation established by individuals and/or legal entities based on their voluntary contributions.

entities. The registration is completed within 40 days. The information provided by non-profit entities for registration cover the identity and ownership of these entities and is similar to that of the requirements of commercial entities.

***Enforcement provisions to ensure availability of information***  
*(ToR A.1.6)*

146. Under the Terms of Reference, Azerbaijan should have in place effective enforcement provisions to ensure availability of ownership and identity information. Under Azerbaijani laws, there are penalties to sanction non-compliance in all cases where there are legal obligations. Identity and ownership information of all legal entities are provided to the authorities at the time of registration and subsequently when any change thereto occurs. Entities obtain legal status only after registration with the tax authorities (Art. 4.1, State Registration Law). If the application for registration (or for updating registered data) does not include any required information the tax authorities would ascertain the deficiency in the application and will give the entity an additional 20 days to eliminate the deficiency (Art. 8.2, State Registration Law). After the end of the 20-day period, if the requisite information is not furnished or still found to be deficient, the tax authorities will reject the application within 10 days and inform the applicant. Any changes to the charter document of an entity and information provided with the application for registration takes legal effect from the moment it is registered with the tax authorities. Any breaches of the requirements of the State Registration Law will invite liabilities under the Azerbaijani penal legislation: the Code of Administrative Violations (CAV). For instance, submission of false information by legal entities during the process of State registration or during the registration of changes to the entities' information is subject to a penalty of AZN 700 (EUR 592) on physical persons and AZN 4 000 (EUR 3 384) on legal persons (Art. 200-1, CAV).

147. Failure to apply to the relevant executive authority within the time-frame and in the manner prescribed by the State Registration Law for the registration of legal entities and branches and representative offices of foreign legal entities in Azerbaijan and for the notification of changes in the information provided for at the time of registration is subject to a penalty of AZN 1 000 (EUR 846) to AZN 2 000 (EUR 1 692), imposed on officials of the entity, and of AZN 2 500 (EUR 2 115) to AZN 3 000 (EUR 2 538), imposed on the legal entity itself (Art. 200-3, CAV). JSCs must themselves keep a register of shareholders (for number of shares fewer than 20), or through an independent register holder. The CAV imposes administrative liability on companies and register holders of the securities market for not maintaining a register of shareholders. Register holders of the securities market are subject to penalties for not maintaining proper records of

shareholders. A penalty<sup>33</sup> of AZN 700-800 (EUR 592-677) can be imposed on officials and AZN 5 000-6 000 (EUR 4 230-5 076) on legal entities for violation of the rules for keeping the register. If the standards for record keeping are violated by JSCs, a penalty<sup>34</sup> on officials of AZN 300-400 (EUR 254-338) and on legal persons of AZN 1 500-2 000 (EUR 1 269-1 692) can be imposed. A penalty of AZN 40 (EUR 34) may be imposed on taxpayers, who fail to submit their tax report or application mentioned in Article 16.2 of the Tax Code without valid reason within the specific period.

148. Under the new securities market legislation, any person responsible for informing the authorities of any change in the information on the securities register or record keeping information held by the central depository should do so within the timeframe prescribed by the legislation<sup>35</sup> or the Civil Code or any other normative-legal act requiring such person to do so. If there is any breach, the person will be held liable and administrative penalties under CAV and criminal liabilities under the Criminal Code could be imposed.

149. Under the AML Law, monitoring entities must conduct proper due diligence measures to ascertain the ownership of the entities. The monitoring entities shall discontinue their relationship with the customers and report to the Financial Monitoring Agency if sufficient information as required by AML obligations is not provided by their customers. In the event the Central Bank detects that a bank has not met its AML obligations, it may impose enforcement measures, which include imposing fines and penalties on the bank and bank administrators, as per the CAV or revoking the bank license (Art. 49, LoB). However, violation of the AML regulations carries no criminal sanctions. Under Article 348-3 of the CAV, sanctions can be levied on monitoring entities and others involved in monitoring by imposing a penalty of AZN 800-1 500 (EUR 677-1 269) to erring officials and AZN 15 000 (EUR 12 689) to legal entities.

150. To sum up, enforcement measures are generally in place for all entities that are required to keep identity and ownership information in Azerbaijan. The effectiveness of the enforcement provisions is an issue of practice and will be considered as part of the Phase 2 review of Azerbaijan.

33. Article 208.0.4 of the Code of the Azerbaijani Republic on administrative violations.

34. Article 209 of the Code of the Azerbaijani Republic on administrative violations.

35. Article 90 of the law of the Republic of Azerbaijan on Securities Market.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Prior to 15 July 2015, JSCs potentially could have issued bearer shares, but there is no sufficient mechanism in place to ensure that the ownership information of holders of bearer shares is maintained and available.	Azerbaijan should take necessary measures to ensure that ownership information on potentially existing bearer shares, issued before 15 July 2015, is maintained and available.

**A.2. Accounting records**

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

151. The Terms of Reference set out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. They provide that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: (i) correctly explain all transactions; (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. Accounting records need to be kept for a minimum of five years.

152. In Azerbaijan, the legal provisions requiring relevant entities and arrangements to keep accounting records are found in the specific accounting legislation as well as in tax legislation. A specific category of taxpayers such as small entrepreneurs is exempted from maintaining detailed accounting records and registers.<sup>36</sup>

36. Article 16.1.8 of the Tax Code provides that taxpayers engaged in certain types of business activities (for eg. sale of securities, lottery, passenger and cargo transportation, hotels etc.) are exempted from maintaining cash registers.

## *General requirements (ToR A.2.1)*

### *Specific accounting legislation*

153. General accounting obligations of all legal entities and natural persons in Azerbaijan including foreign entities conducting business in Azerbaijan are stipulated by the Law of the Azerbaijan Republic on Accounting.<sup>37</sup> The law requires that all the Public Interest Entities (PIE) in Azerbaijan prepare their financial statements solely on the basis of the International Financial Reporting Standards (IFRS).<sup>38</sup> Public interest entities (Art.2.1.9 of the Accounting law) are credit institutions, insurance companies, investment funds, non-State (private) social funds, legal entities with securities traded on the stock exchange,<sup>39</sup> and commercial organisations that on the date to which the financial statements are prepared, exceed two of the thresholds<sup>40</sup> (for annual revenue, average number of employees during the financial year and total balance sheet) in an amount determined by the relevant executive authority.

154. The National Accounting Standards (which are broadly based on IFRS) are developed and approved by the Ministry of Finance, which is the relevant executive authority for accounting in Azerbaijan. All commercial entities (non-PIEs) must prepare their financial statements in accordance with the National Accounting Standards. Optionally, these commercial entities may prepare their financial statements in accordance with the IFRS. Non-governmental organisations (NGOs) should prepare their financial statements in conformity with the National Accounting Standards for NGOs (based on International Public Sector Accounting Standards). Simplified Accounting

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37. Law was enacted in 2004 – According to Art. 1.1 of the Law on Accounting, the mentioned law regulates the organisation and treatment of accounting, including rules on preparation and submission of financial statements by legal entities and individual entrepreneurs, regardless of their legal and ownership forms that carry out the activity in Azerbaijan.
38. International Financial Reporting Standards are the accounting standards, financial reporting standards and the interpretations of the Standing Interpretations committee elaborated, adopted or approved by the International Accounting Standards Board (IASB), an independent accounting standard-setter based in London, United Kingdom.
39. Starting from 1 January 2008 Open JSCs having their shares circulated at the stock exchange shall keep accounting in accordance with IFRS.
40. The Cabinet of Ministers' Decree dated June 20, 2005, implementing the new Accounting Law, sets out the following thresholds: annual income of AZN 30 million (EUR 25.4 million), average number of employees amounting to 1200, and total balance sheet of AZN 100 million (EUR 85 million).

Rules for subjects of small entrepreneurship are special rules prescribed for small entrepreneurs<sup>41</sup> for preparing their financial statements.

155. Persons who do not prepare and submit accounting financial statements and consolidated financial statements, or do not maintain their books and records in accordance with the accounting legislation, are liable to be punished under Azerbaijani laws (Art. 16, Law on Accounting). Penalties can be levied under the CAV for violations of the accounting legislation. Violation by those persons required by the law for the execution, filing and publication of the statutory financial reports and other statements entail the imposition of a penalty on official persons<sup>42</sup> of AZN 300-400 (EUR 254-338) and on legal entities of AZN 1 500-2 000 (EUR 1 269-1 692) (Art. 247-1, CAV).

156. The Tax Code does not obligate legal entities or individual entrepreneurs to maintain information based on the IFRS or the National Accounting Standards. Non-maintenance of accounting information based on one of these two standards is therefore not an offence under the Tax Code. The rules for furnishing final financial statements are provided in the Tax Code and are different from the general financial results. The provisions in the Tax Code are focused on calculating the tax base and tax due.

157. The IFRS require all relevant entities to keep accounting records to the standard. All PIEs mandated to follow the IFRS based accounting system are open JSCs owing to the nature of their activities. These companies regulated by IFRS should maintain accounting records that:

- accurately explain business transactions (cash flow statement);
- disclose the financial position of the company at any point of time with reasonable accuracy (income and expenditure statement);
- disclose the details of assets held by the company; and
- allow to prepare financial statements at any time (balance sheet, profit and loss accounts)

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41. Small entrepreneurs are those whose annual income is up to AZN 120 000 (EUR 101 514) and who employ up to 25 persons. The Ministry of Finance notified Simplified Accounting Rules under the Accounting Law for small entrepreneurs vide its Order No.I-06 dated 13 January 2009.

42. Art. 16 – Code of Administrative Violations – The officials mean persons who carry out duties of a representative of the State power, persons working full-time or part-time at economic-administering positions at State authorities, institutions of local governing, Armed Forces of the Azerbaijan Republic, at other bodies of troops established in accordance with the legislation of the Azerbaijan Republic, at State and non-State organisations, establishments and enterprises, or persons who perform similar duties in view of special authority, also natural persons who perform such duties dealing with business undertakings without establishing a legal person.



158. The National Accounting Standards (NAS) as approved by the Ministry of Finance are based on the IFRS and cover all subjects regulated by the IFRS. The requirements of maintaining reliable accounting records as mandated by the IFRS are reflected in the NAS. To sum up, under the Accounting Law, all entities in Azerbaijan are required to keep reliable accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared.

### *Tax law*

159. Under the Tax Code, the taxpayer is responsible for keeping records of all income (costs) and articles of taxation (Art. 16.1.3, Tax Code); for submitting tax reports to the tax authorities in accordance with laid-down procedures, and when an audit is required, he must co-operate with the auditor (Art. 16.1.4, Tax Code). He should also submit the necessary information and documents, and in the case of accounting information being maintained in an electronic format, such information when requested (Art. 16.1.6, Tax Code). The taxpayer is also responsible for the safekeeping of accounting books and other documents necessary for tax collection and payment, as well as documents that confirm income obtained (for legal persons, also costs incurred) and paid (withheld) taxes (Art. 16.1.7, Tax Code). The taxpayers shall maintain a cash register for recording cash settlements in general (Art. 16.1.8, Tax Code) but there is an exemption from maintaining cash registers for cash transactions in over 30 entrepreneurial activities including the sale of securities, lotteries, gambling, banking activities, attorney, notaries and other legal services. The tax agent<sup>43</sup> is responsible for submitting to the tax authorities information necessary to control and verify the tax calculation and the withholding and payment of tax.

160. A taxpayer's obligation needs to be given effect by the specific requirements in the Tax Code and in accordance with the procedure established in the law. Article 71 of the Tax Code prescribes the accounting documentation requirements of a taxpayer. It states that any person shall be obliged to document any operation that:

- Entails a tax obligation for that person;
- Entails an obligation to withhold tax for that person; or
- Entails an obligation for that person to submit information.

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43. Art. 17.1, Tax Code – Tax agent is a person who in accordance with this Code is authorised to calculate taxes, withhold them from the taxpayer and make the payment to the budget.



161. Taxpayers shall be obliged to maintain records indicated in Article 71.1 of the Tax Code in accordance with an established procedure. Article 130 of the Tax Code prescribes the procedure for recording income and expenditure. With a view to clearly reflecting taxable income (or profit), the taxpayer is obliged to maintain accurate and timely records of income and expenditure on the basis of documented data. Taxpayers shall assign income and expenditure to relevant reporting periods in which they were received or incurred. The Tax Code recognises both cash based and accrual based accounting. The method of accounting chosen by a taxpayer shall be consistently followed and takes into account all requirements concerning the manner of recording expenditures and receipts. The taxpayer is obliged to ensure that all operations connected to his activity are recorded in such a manner that their beginning, course and end can be discerned.

162. The Tax Code prescribes a set of accounting requirements including the methods to be adopted by taxpayers for recording transactions and maintaining accounts. The requirements also prescribe the manner in which income and expenses are recognised in cash and accrual based accounting. But the Tax Code does not recognise the Accounting Law. Neither has it any reference to the IFRS nor the NAS. The standalone accounting requirements in the Tax Code may not fulfil the requirements set out in A-2 of the Terms of Reference, but the combination of requirements of the Accounting Law and the Tax Code appears to ensure reliable accounting records are maintained in Azerbaijan.

163. In the case of a violation of the legal obligations by the non-maintenance of cash registers, non-issue of receipts or other accountable forms, the taxpayer is subjected to financial sanctions of AZN 400 (EUR 338) for the first time during the calendar year, AZN 800 (EUR 677) for the second time during the calendar year and AZN 1 200 (EUR 1 015) for third time or more during the calendar year. This penalty is limited to the purposes of the non-maintenance of cash registers. In a broad sense, there are no administrative penalties under the CAV or the Tax Code for failing to maintain accounting records except for the above mentioned violation. Similarly, the Criminal Code does not impose any criminal sanctions against taxpayers for breaching the accounting rules. Non-maintenance of accounting records may be subjected to adverse inference during tax audits and additional tax liabilities may be imposed by auditors by disallowing unproven expenses. In addition, administrative sanctions can be imposed on taxpayers that fail to submit accounting records in a timely manner to the tax authorities (discussed in B.1 below). This indirectly extends the penalty for non-maintenance of accounting records. Therefore, while explicit penal provisions in the Accounting Law, the CAV and the Criminal Code are absent, the Tax Code does provide for indirect checks and penalties to ensure that proper and reliable accounting records are maintained in Azerbaijan that meet the accounting requirements in line with the standard.

### *Underlying documentation (ToR A.2.2)*

164. In the Tax Code, an entity registered as a VAT payer and conducting a taxable operation shall be obliged to issue an electronic invoice to the person receiving goods, work or services (Art. 176, Tax Code). The electronic invoice shall contain basic information about the buyer and seller, their identification numbers, a description of the goods, the amount and VAT payable, invoice number etc. Similarly, electronic invoices are issued by taxpayers supplying excisable goods. Apart from issuing electronic VAT and excise invoices, taxpayers in Azerbaijan are not required to maintain any other underlying documents supporting entries in the accounting records. The Tax Code (Art. 71) specifies that the taxpayer document every operation and does not require the taxpayer to retain underlying supporting documents. However, the tax authority has the right to examine all financial documents, accounting books, reports, estimates, cash securities, and other assets on hand, returns, declarations and other documents relating to the calculation and payment of taxes with respect to all legal and physical persons (Art. 23.1.2, Tax Code). Thus, during tax audits, the tax authority may verify the original source documents with regard to the genuineness of the transactions for ascertaining the actual total income and tax liability. If the tax authority finds that a taxpayer has not maintained or submitted underlying documentation for verification, the authority can conduct an on-site inspection at the taxpayer's commercial premises to obtain documents or information and retain them, if necessary. To this extent, there is an indirect obligation on the taxpayers to maintain all supporting documents.

165. The Accounting Law does not specifically obligate taxpayers to maintain underlying documents. The obligation under the Accounting Law is that entities shall prepare their financial statements in conformity with the IFRS or the NAS. There is an indirect reference to the underlying documentation in the Law on Accounting (Article 15), which states that the contents of the source documents, accounting registers and other documents related to accounting are a commercial secret. Article 16 of the Accounting Law provides that the persons guilty of breaching legislative provisions relating to the preparation, submission and publishing of financial statements, and the maintenance of accounting documents, shall bear responsibility in the established manner. The NAS does not require entities to maintain underlying documentation although there are indirect requirements under book keeping rules.

166. To conclude, the combination of accounting and tax requirements under Azerbaijan's laws indirectly require all necessary underlying documentation to be available. But the absence of explicit legal requirements to maintain this documentation may allow entities and individuals not to maintain such documents. Therefore, it is recommended that Azerbaijan introduces express obligations in its relevant laws, in order to ensure all

underlying documentation is maintained by all relevant entities and individuals in Azerbaijan in line with the standard.

***Minimum 5-year retention standard (ToR A.2.3)***

167. The Accounting Law relies on the IFRS or the NAS to oblige all entities to keep reliable accounting records. According to the IFRS or the NAS, accounting records should be retained during the period that substantive laws (say, the Tax Code) require entities to maintain the records, or as long as the records are required for verification by the relevant executive authorities. Since the Tax Code prescribes accounting records to be retained for 5 years, the Accounting Law also subscribes to 5 years for retention. Persons violating the provisions of the Accounting Law by not maintaining books and records will be subjected to sanctions (Art. 16, Accounting Law). However, no specific sanctions are provided in the CAV or the Accounting Law for not maintaining the accounting records for a minimum time period of 5 years.

168. Under Article 71.4 of the Tax Code, taxpayers must keep accounting documents in electronic and (or) paper format for at least 5 years in a readable form. However, no person can be called to account for violation of the tax legislation, and no tax liabilities may arise, if a period of 3 years had passed from the date of the tax violation (Art. 56, Tax Code). The tax authorities can assess and reassess taxes, levy penalties and financial sanctions on taxpayers within this 3 year period from the termination of taxable accounting period. The interpretation of Article 56 of the Tax Code with regard to the maintenance of accounting records is that the taxpayer does not violate the Tax Code if he does not maintain accounting records in respect of a period beyond 3 years. Further, the tax authorities cannot take any measures or issue notices to the taxpayer calling for information that relates to the period of more than 3 years ago. Therefore, in effect, while, on the one hand, the Tax Code imposes an obligation on the taxpayers to maintain accounting records for a period of 5 years, there are other provisions in the Tax Code that may be used if the taxpayers do not maintain accounting records for a period of more than 3 years. For example, if a taxpayer did not maintain accounting records for a particular accounting year more than 3 years ago and the tax authorities require the accounting record to be submitted by the taxpayer for that particular accounting period, the taxpayer may maintain that he has not kept the records for that year and since 3 years have lapsed from the date of the tax violation, he cannot be held liable by the tax authorities under the Tax Code. However, the Azerbaijani authorities state that where a preliminary investigation of a criminal case against a taxpayer is underway on account of violation of the tax law (regarding tax evasion), the taxpayer concerned can be brought into liability within 7 years, and therefore the 3 year limitation does not apply for criminal tax investigations.

169. In general, financial sanctions are applied to the taxpayers for failure to maintain accounting records for a period of 5 years. Article 57.3 of the Tax Code stipulates that an administrative penalty of AZN 100 (EUR 85) will be imposed on taxpayers for failing to submit accounting records within the timeframe specified by the tax authorities, or for not meeting the obligation to maintain accounting records for a period of 5 years. As discussed in the previous paragraph, as the taxpayer cannot be held accountable for any violation if 3 years has passed from the date of violation, it is difficult to comprehend how an administrative penalty under Article 57.3 of the Tax Code will be imposed by the tax authorities in respect of periods beyond 3 years. No criminal sanctions are attached to this provision in case of non-compliance.

170. Therefore the conclusion is that the inconsistent legal provisions in the Tax Code do not sufficiently ensure that the accounting records are maintained for a minimum period of 5 years. Since it is a matter of the implementation of legal provisions, this issue will be further examined in the Phase 2 review.

### ***Conclusion***

171. The IFRS (for PIEs) or the NAS (for other entities), which are binding under Azerbaijan's Accounting Law, require all relevant entities to keep accounting records that correctly explain all transactions, enable the financial position of the entity to be determined, allow financial statements to be prepared, and would include the maintenance of underlying documentation. The Tax Code also requires maintenance of proper accounting records for all commercial entities and individual entrepreneurs.

172. There are no clear and explicit obligations on legal entities and individuals under the Tax Code or the Accounting Law to compel the maintenance of underlying documentations. The indirect obligations under accounting and tax laws require the taxpayer to maintain necessary underlying documentation to an extent. However, the absence of explicit legal requirements may create uncertainties regarding the availability of source documents. Therefore, it is recommended that Azerbaijan take the necessary legal measures to ensure that all underlying documentation be maintained by all relevant entities and individuals in Azerbaijan, in line with the standard.

173. While the Tax Code requires taxpayers to maintain accounting records for a minimum period of 5 years, there are inconsistent provisions in the Tax Code that do not impose sufficient obligations on taxpayers to maintain accounting records for more than 3 years. Therefore it is recommended that Azerbaijan should clarify its Tax Code to ensure that full and reliable accounting information, and underlying documentation, are available for a minimum period of 5 years.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
While Azerbaijan's accounting and tax laws indirectly require the keeping of underlying documentation, lack of explicit obligations in Azerbaijan's legislation may provide the opportunity for some entities not to maintain underlying documentation	Azerbaijan should introduce express obligations in its relevant laws that require all relevant entities to maintain underlying documentation.
The Tax Code has inconsistent provisions that do not impose sufficient obligations on taxpayers to maintain accounting records for a period of more than 3 years	Azerbaijan should ensure clarity and consistency in the provisions in the Tax Code to maintain accounting records for a period of at least 5 years

### A.3. Banking information

Banking information should be available for all account-holders.

174. Access to banking information is of interest to the tax administration when the bank has accurate and reliable information about its customers' identity and the nature and amount of their financial transactions.

175. Banks and non-banking financial institutions can operate in Azerbaijan after State registration as an open JSC is completed (Civil Code and State Registration Law). Carrying on the business of commercial banking is a regulated activity in Azerbaijan, for which a banking licence<sup>44</sup> has to be granted by the Central Bank of Azerbaijan under the Law of the Azerbaijani Republic on Banks (LoB),<sup>45</sup> as well as other legal-normative laws. The information to

44. Article 1 – Law on Banks – Bank license – special permit issued in accordance with procedures established under this Law, providing exclusive rights for implementation of activities, related to attraction of deposits from natural persons or legal entities or other reimbursable funds, award of credits on its behalf at own expense, as well as provision of payment, cash-desk and wire transfer operations by client request.

45. Article 3.1 of the law of the Republic of Azerbaijan on Banks.

be submitted by banks to obtain a licence to operate in Azerbaijan is provided for in the Decree of the President of the Republic of Azerbaijan on “improvement of regulations for granting special permits (license) for some types of activities”. As of August 2015, there were 43 banks operating in Azerbaijan.

176. Under AML Law, banks are one of the monitoring entities obligated to conduct customer due diligence measures to properly identify their account holders and any beneficial owners. Their activities are supervised by the Central Bank of Azerbaijan, which is the designated supervisory authority for exercising control over banks. If the Central Bank’s supervision reveals non-compliance by the banks in their responsibility in identifying their customers, as prescribed by AML Law, the imposition of an administrative penalty or other measures shall be taken by the Central Bank. In the event the Central Bank detects that a bank has violated prudential norms and requirements or violates the requirements of AML Law, the Central Bank may impose enforcement measures, which include imposing fines and penalties to the bank and bank administrators, as per the CAV<sup>46</sup> or revoking the bank license (Art. 49, LoB).

177. Article 348-3 of the CAV penalises monitoring entities and others involved in monitoring by imposing a penalty of AZN 800-1 500 (EUR 677-1 269) to erring officials and AZN 15 000 (EUR 12 689) to legal entities:

- for failure to comply with the requirements of identification and verification of the client, his representative or beneficiary, and documenting information;
- for failure to fulfill the obligations associated with the storage of identification documents and documents relating to money or other assets; or
- for late or incomplete performance by the monitoring entities and other entities of written instructions made by the supervisory authorities or the financial monitoring authority in accordance with the law and in appropriate cases.

178. Article 35 of the Tax Code provides that legal entities (including representations and affiliates of foreign non-commercial legal entities) shall submit an application to open a bank account with the tax authorities along with the application for State registration or any time after registration. Other taxpayers shall file an application with the tax authorities for opening a bank

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46. Article 223-6.1 Failure to execute instructions of the Central Bank of the Azerbaijan Republic to banks to take corrective measures shall entail imposition of penalty on officials: AZN 1500-2000, legal persons: AZN 10000-15000 (EUR 8460-12,689).

account upon obtaining a certificate of registration. The tax authorities issue a duplicate certificate to taxpayers. Banks will open accounts for all entities only upon submission of the certificate issued by the tax authorities. Banks will retain one part of the document and send the other part to the tax authorities, which in turn captures all the information about the bank account. If the tax authorities do not receive the notification from banks on the opening of a bank account within 10 days of issue of the duplicate certificate, the issued certificate will be considered invalid. This legal requirement ensures that the identity information of bank account holders is made available with the tax authorities. Any violation of this obligation by banks shall attract an administrative penalty of AZN 400 (EUR 338) for each account (Art. 60.1.1, Tax Code).

179. All persons engaged in entrepreneurial activity are obliged to notify the tax authorities of the opening of foreign bank accounts. For the opening of accounts with non-resident banking institutions and other non-resident credit institutions for business purposes without obtaining the duplicate certificate from the tax authorities, a penalty of 100% of the funds deposited into the account thereof is imposed.

### ***Record-keeping requirements (ToR A.3.1)***

180. Banks must know the identity of the client. Commercial banks shall take appropriate measures in identifying the customer, beneficial owner and the authorised representative, as well as for verifying the identity information already received (Art. 42.1, LoB). The additional due diligence measures to fulfil the requirements of AML Law is to be performed by the banks (Art. 42.2, LoB). No anonymous accounts, including anonymous savings accounts and anonymous certificates of deposit, can be opened (Art. 42.1, LoB). Article 9.1 of the AML Law also prevents banks and other credit institutions from keeping anonymous accounts, accounts in fictitious names, or anonymous deposit accounts, and from the issue of anonymous deposit certificates. All anonymous accounts or accounts in fictitious names, which had been opened before the entry into force of the AML Law, have been shut down. The Azerbaijani authorities confirmed that no such accounts currently exist. Besides, to prevent financial institutions from opening anonymous accounts and accounts in fictitious names, the Azerbaijani legislation stipulates liability. Any violation would result in imposition of penalty of AZN 800-1 500 (EUR 677-1 269) to erring officials and of AZN 8 000-15 000 (EUR 6 770-12 689) to legal entities (Art. 348-3, CAV). Documentation that identifies the client and verifies payment and transfer operations shall be retained by the bank for a minimum period of 5 years upon termination of relations with clients and completion of payments (transfers).



181. Article 10 of the AML Law establishes a clear obligation on all financial institutions to keep account transactions, customer correspondence, and to retain documents supporting customer identification. In accordance with Article 9 of the AML Law, financial institutions shall maintain CDD documents on the customer, beneficial owner or authorised representative for a period of at least 5 years after the account is closed, or after the termination of the relationship with the customer. Similarly, financial institutions shall retain documents on the transactions with funds or other property conducted by the customer (account files, business correspondence and other relevant documents) at least for 5 years following the completion of the transaction.

182. The Banking and AML laws in Azerbaijan ensure that full and reliable banking information of all account holders in Azerbaijan is available for a minimum period of 5 years.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place</b>



## B. Access to information

### Overview

183. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Azerbaijan’s legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards would be compatible with effective EOI.

184. The competent authority responsible to collect information and reply to an exchange of information (EOI) request is the Ministry of Taxes, which is in possession of most of the identity and ownership information relevant to EOI purposes, and it is readily accessible to the competent authority.

185. The Tax Code empowers the competent authority to obtain information directly from taxpayers and/or to perform an audit in respect of any person within its territorial jurisdiction. However, there are certain obstacles and deficiencies in Azerbaijan’s legal framework which could impede the access of information as required by the international standard. The tax authorities have powers under the Tax Code to take tax control measures to obtain information from “taxpayers” only. The tax authorities cannot employ their access powers to obtain information from exempted entities and non-taxable persons. However, a specialised department under the Ministry of Taxes has authority under the “Law on Operational Investigative Activities” to obtain information from non-taxpayers and provide it to the competent authority of Azerbaijan under an administrative arrangement.

186. Although there is an obligation on taxpayers to maintain information for a period of 5 years, the Tax Code absolves the liability of the taxpayers for the violation of tax legislation under the Tax Code if a period of 3 years has passed from the date of the tax violation. This provision could restrict the

access of information from taxpayers to a maximum of only 3 years. Such limitations in the access of information are not in line with the standard.

187. The Tax Code (section 30) deems all tax information held with the tax authorities to be a “commercial (tax) secret”. The Law on Accounting protects the contents of source documents, accounting registers and other documents included in accounting information as commercial secrets. All the tax agreements for EOI have provisions that do not obligate the requested State to exchange information that constitutes a commercial or trade secret. Since all of Azerbaijan’s agreements with other jurisdictions do not specifically define the term “commercial secret”, it is left to the domestic laws to determine what a “commercial secret” is. Azerbaijan’s “Law on Commercial Secret” defines the term commercial secret and its scope is in line with the international standard. However, this definition is in conflict with those of the Tax Code and Law on Accounting. As a result, it is unclear how the different definitions under these laws could affect the ability of the Azerbaijani authorities in accessing and exchanging identity, ownership, and accounting information.

188. Under the Law on Banking, the information received by banks from their clients, account information, and details of banking transactions are maintained as secret. Limited access to banking information is provided to the tax authorities under the Tax Code, but it does not include client identification information. Since Law on Banks does not define what kind of banking information is protected under the term “client information”, there are uncertainties in accessing full banking information in some cases. Therefore, it is recommended that Azerbaijan ensures that its competent authority has access powers in respect of client information held by banks.

189. The tax authorities can use compulsory powers to obtain information, but these powers are limited to the access of documents and information pertaining to periods of not more than 3 calendar years ago. On-site inspections, at which the tax authorities can extract information, can take place at business premises but the tax authorities cannot conduct on-site inspections in premises other than those used for business activities. This restricts the compulsory access powers of the tax authorities.

190. In general, a domestic tax interest is required to access information from taxpayers and banks under the Azerbaijani Tax Code. However, the Tax Code and the banking legislation were amended in 2012 and in 2014 respectively to include provisions which enable the tax authorities to obtain and provide information from taxpayers and banks required for EOI purposes irrespective of a domestic tax interest. In addition, the Constitution of Azerbaijan and the Tax Code provide that ratified international agreements prevail over conflicting domestic laws (hereinafter referred to as the “treaty prevails rule”). The Azerbaijani authorities confirmed that Azerbaijan will

exchange information with other jurisdictions under the respective EOI agreements in all cases, which include cases which have no domestic tax interest for Azerbaijan. Further, such exchanges are not restricted to EOI agreements that contain a paragraph similar to Article 26(4) of the OECD Model Tax Convention. Therefore, Azerbaijan’s legal framework fulfils the requirement under the international standard on access powers in the absence of domestic tax interest.

191. The scope of professional secrecy attached to advocates and notaries is in line with the international standard of EOI. Azerbaijan’s Tax Code provides a notification right to the persons concerned with the information provided by the banks. There are no exceptions to this prior notification provided for in the Tax Code or the Law on Banking. Although the persons concerned have a right to appeal administratively and/or in courts, the banking information will be sent to the tax authorities within 15 days of their notice to banks. However, the rights and safeguards that apply to persons in Azerbaijan are not fully compatible with effective EOI.

## **B.1. Competent authority’s ability to obtain and provide information**

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

192. The competent authority of Azerbaijan is the Ministry of Finance and Ministry of Taxes. Since the tax administration is the responsibility of the Ministry of Taxes, the EOI function is carried out by the Ministry of Taxes. According to the internal procedures of the Ministry of Taxes, the Deputy Minister responsible for international relations performs the functions of the competent authority under the international agreements. While the Tax Code does not provide direct access powers to the competent authority, the State tax authorities, being administratively sub-ordinate to the Deputy Minister of the Ministry of Taxes, can obtain information for EOI purposes as per administrative directions.

### ***Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)***

193. The tax authorities are the sole authority for the State registration of commercial legal entities and individual entrepreneurs. The ownership and identity information of all these entities and individuals, to the extent it is submitted to the tax authorities, is directly accessible by the competent authority, in electronic and paper formats. Updated ownership information

of non-commercial entities (funds, public associations etc.) are held by the Ministry of Justice. This information is regularly transmitted to the tax authorities (see section A.1.1 above). In addition, the tax authorities can obtain documents and other necessary information from other governmental bodies, pursuant to Article 26 of the Tax Code. Customs authorities provide information on a regular basis. The tax authorities also maintain a database of information on bank accounts opened and closed in Azerbaijan by entrepreneurs and enterprises as well as by foreign enterprises.<sup>47</sup>

194. According to the Tax Code (Art. 16.1), taxpayers are responsible for filing tax returns with the tax authorities, and for submitting the necessary information and documents as required by procedures established by the Tax Code. Regarding accounting information maintained in electronic format, taxpayers should also provide direct or remote access to the data on their electronic media. Article 23 of the Tax Code establishes the rights of the tax authorities to access information for tax purposes, specifically, the rights to examine all financial documents, accounting books, reports, estimates, cash, securities and other assets on hand, returns, declarations, and other documents relating to the calculation and payment of taxes.

195. The State authorities can examine the relevant documents and access information by conducting off-site (desktop) and on-site tax inspections in accordance with procedures established under the Tax Code. However, the tax authorities can apply these access powers only on “taxpayers”.<sup>48</sup> Third parties can be accessed by the tax authorities, but only in connection with a taxpayer in whose case an on-site tax inspection is being conducted, and in order to verify the information on the activities of the taxpayer, if the documents from the third parties are required.<sup>49</sup> If a request for information is received that pertains to information held by a non-taxpayer, the tax authorities would not be able to utilise access powers under the Tax Code to obtain information. Since a non-taxpayer who has no commercial activities for the year or who

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47. Art. 35 of the Tax Code – banks should send one part of the duplicate certificate issued by the tax authority for opening a bank account within 10 days of the issue of such duplicate certificate after opening the bank account. As a consequence, the basic information about the bank account of the taxpayers will be available with the tax authorities. .
48. Tax Code – Article 13.2.4 defines a taxpayer as any person who shall pay taxes from subjects of taxation determined in accordance with the Tax Code.
49. Art. 36.3 of the Tax Code – If during the performance of tax inspection, the tax authorities have documented evidences in the necessity of receiving the information on the taxpayer which is connected with *third* persons and is relevant to the inspection, the tax authorities may require such persons to provide documents related with inspected taxpayer’s activity. For such actions the motivated decision of tax authority is necessary.

does not have taxable income needs to submit a simple declaration under the Tax Code, there may not be enough information in the possession of the tax authorities. Moreover, there are certain categories of persons who are exempted from profit tax or income tax in Azerbaijan and who are not considered “taxpayers” unless they are liable to another tax under the Tax Code.

196. When a request for information pertains to information held by a non-taxpayer, a specialised department (“Department for the Preliminary Investigation of Tax Crimes”) under the Ministry of Taxes may use their law enforcement powers provided for in the Law of the Republic of Azerbaijan No. 728-IQ dated 28 October 1999 on “Operational Investigative Activities” to obtain and provide such information. In accordance with the Decree of the President of the Republic of Azerbaijan No. 507 dated 19 June 2001, the Ministry of Taxes is determined as one of the authorised bodies to interrogate any person in Azerbaijan and make inquiries, including by entering and inspecting buildings, etc. There is no restriction to use these powers for EOI purposes. This department has broad competences and works in close co-operation with other law enforcement agencies, such as the police, prosecutors, border control etc. to obtain information. The competent authority seeks assistance from this department whenever a request pertaining to non-taxpayers is received from EOI treaty partners. The Azerbaijani authorities state that they have been able to obtain information within Azerbaijan without any limitations.

197. As detailed in paragraph 168, taxpayers are not held accountable for any violations of the Tax Code and no tax liabilities arise if a period of 3 years had passed from the date of the tax violation (Art. 56, Tax Code). In accordance with Article 36 of the Tax Code, on-site inspections can be conducted for accessing information for EOI purposes but they shall cover the period of no more than 3 calendar years in taxpayer activities (Art. 36.3, Tax Code). This means that the information sought by a requesting jurisdiction beyond 3 calendar years from the date of request cannot be obtained by using enforcement access powers of the tax authorities if a taxpayer refuses to provide any information that is older than 3 calendar years.

198. The Law on Banks (LoB) provides access to the tax authorities to obtain information from banks (Art. 41, LoB). The access of banking information to tax authorities is extended for the EOI purposes through the amendment of Tax Code and Law on Banks in June 2014. But the extent of information that should be provided by the banks seems to be more limited than the requirements of the standard. Article 76 of the Tax Code empowers the tax authorities to only receive information on bank accounts and operations of the persons served by the banks, which raises the question of whether the competent authority is able to access client information. Access to banking information is not restricted to “taxpayers”.

199. The Civil Code requires banks to maintain confidentiality of bank accounts, operations and residues on the account, as well as client information, including name, address and management of the account. When required, banks can provide this information to the clients or their representatives, the Central Bank, external auditors, insurance supervisory authorities and to the AML authorities under a valid court order. To the tax authorities, however, banks are only required to submit information on bank accounts and transaction details of legal entities or private entrepreneurs. The information to be disclosed to the tax authorities does not cover information about the client. Although the LoB does not define what kind of banking information is protected under the term “client information” it could include identity documents, account opening documentation, signature cards, etc. If Article 41 of the LoB is read with the purpose of Article 76 of the Tax Code (which determines the tax liability of the taxpayer in circumstances where the taxpayer has not maintained records; or not filed income tax returns; or failed to provide access of information to tax authorities), it leads to the interpretation that the extent of banking information available to the tax authorities is limited to bank balances and transactional information. These restrictions for domestic purposes were not relaxed for the purpose of EOI in the amendments made to the Tax Code and the banking legislation in 2014.

200. At the same time, Article 151 of the Azerbaijani Constitution provides for a treaty prevails rule whenever there is a disagreement between any of the normative-legal acts of Azerbaijan (except the Constitution of Azerbaijan and acts accepted by way of referendum) and international agreements. A similar treaty prevails rule is provided in the Tax Code (Article 2.5). According to this rule, the provisions of international agreements ratified by Azerbaijan will be applied if those provisions differ from the provisions of the Tax Code. The treaty prevails rule is applicable only when there is a contradiction between the treaty provisions and domestic legislation. The EOI instruments require the competent authorities to exchange information for tax purposes. It is uncertain whether Azerbaijan’s agreements that have explicit provisions for exchange of banking information akin to Article 26(5) of the OECD Model Tax Convention would provide powers to gather client information which is excluded for the domestic powers. Generally, where there is a conflict between a specific provision in a statute and a general provision, the specific provision will prevail. Thus, the above domestic restrictions on client information may apply even if banking information is requested under a treaty containing Article 26(5) of the OECD Model Tax Convention, irrespective of Azerbaijan’s international treaty prevails rule. The extent of banking information available in Azerbaijan will be further examined during the Phase 2 review.

201. Therefore, it is recommended that Azerbaijan provide sufficient access powers to the tax authorities to access all kinds of information, including client information, held by banks as per the international standard.

***Use of information gathering measures absent domestic tax interest (ToR B.I.3)***

202. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if the first-mentioned party has an interest in the requested information for its own tax purposes. In Azerbaijan, the tax authorities derive their access powers to obtain information by conducting inspections, which may be off-site (desktop based) or on-site (planned or without prior notice). These inspections are executed by the tax authorities for the purposes of complete and timely collection of taxes (Art. 32.1, Tax Code).

203. Article 37 of the Tax Code (off-site inspections) stipulates that the action shall be carried out on the basis of documents and information received from a known source that affects the calculation and payment of taxes, and documents on taxpayer activity. The off-site inspection is a routine procedure of checking the tax returns and other reportable information submitted by taxpayers. The tax authorities can seek additional documents, information and explanations from the taxpayers but this exercise is restricted to the reassessment of the tax liability of the taxpayers on the basis of information from other sources. The Azerbaijani authorities state that the tax authorities cannot conduct off-site inspections to obtain information from taxpayers for EOI purposes. The Azerbaijani authorities confirmed that whenever any information is required to be obtained from taxpayers concerned for EOI purposes, the tax authorities conduct on-site inspections as empowered under Article 38 of the Tax Code.

204. In an on-site inspection, although a domestic tax interest is required, the tax authorities can access information for the purposes of responding to an EOI request made under an international treaty as a result of an amendment<sup>50</sup> to the Tax Code in 2006 to facilitate EOI with partner jurisdictions. Access to banking information is not restricted by the domestic tax interest requirement. Article 76.1 of the Tax Code primarily applies to circumstances where the taxpayer has not maintained records or not filed income tax returns, or failed to provide access to information to the tax authorities. This

50. Article 42.4 of the Tax Code: “for the purposes of tax control, as well as for the purpose of responding to the request for information received under the international treaties to which the Republic of Azerbaijan is a party, relevant documents to their certified copies must be submitted by the taxpayer to the tax authorities within 20 days upon the request from the tax authorities”.



Article was amended in 2012 to include the phrase “and if requested by the relevant authorities of other States on the basis of information exchange provisions of international agreements on taxation concluded by the Azerbaijani Republic with other States” to provide access for EOI purposes. Article 41.2 of the LoB was also amended to lift bank secrecy, thereby enabling banks to submit information on their clients’ bank accounts and financial transactions to the tax authorities in accordance with the procedures stipulated in the Tax Code. The use of access powers by tax authorities of Azerbaijan in the absence of a domestic tax interest will be further examined in the Phase 2 review of Azerbaijan.

205. Even if there are any restrictions in the Tax Code for accessing information, the treaty prevails rule in Azerbaijan’s Constitution and the Tax Code is applied when there is a contradiction between the treaty provisions and domestic legislation. The Azerbaijani authorities confirm that Azerbaijan will exchange information with other jurisdictions under the respective EOI agreements in all cases, which includes cases in which Azerbaijan does not have any domestic tax interest. Of all Azerbaijan’s EOI agreements, 86 contain provisions obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest (see section C.1.4 below). There are 15 EOI agreements that do not contain provision to exchange information without a domestic tax interest. However, Azerbaijan’s position is that EOI exchanges are not restricted to those EOI agreements that contain a paragraph similar to Article 26(4) of the OECD Model Tax Convention.

206. To sum up, Azerbaijan’s legal framework fulfils the requirement under the international standard on access powers in the absence of domestic tax interest. In addition, the primacy of international agreements over domestic legislation (which includes the Tax Code) and the fact that EOI agreements have an overriding effect on the provisions of the Tax Code provides sufficient comfort that the treaty prevails rule will give the tax authorities enough powers to access information in the absence of a domestic tax interest. However, the application of domestic powers to access information for EOI purposes will be further examined in the course of Azerbaijan’s Phase 2 review.

### ***Compulsory powers (ToR B.1.4)***

207. Jurisdictions should have in place effective enforcement provisions to compel the production of information. In Azerbaijan, the tax authorities exercise their compulsory powers by conducting on-site inspections. When the information is requested by tax authorities for the purpose of responding to an EOI request, it shall be submitted by the taxpayers within a 20 day period from the date of notice (Art. 42.4, Tax Code). If there is a failure in providing the documents within the stipulated time, or if the information provided is



not authentic or distorted, an unplanned on-site inspection can be conducted by the tax authorities.

208. Although on-site inspections are primarily for domestic tax purposes, enquiries can be conducted for obtaining information for EOI purposes. However, on-site inspections can only be conducted in commercial premises. Documents that are kept in the residential premises of taxpayers cannot be accessed by the tax authorities. Consequently, on-site inspections cannot be conducted on non-commercial entities. Further, on-site inspections can be conducted only once a year per entity (Art. 38.2, Tax Code). The Tax Code does not provide for any other ways to compulsorily access information for EOI purposes in cases where an on-site inspection of a taxpayer has already been conducted in that year.

209. Administrative penalties are levied under the Tax Code in certain circumstances. A penalty of AZN 40 (EUR 34) is levied on taxpayers who do not submit a tax report in a timely manner. The penalty is imposed by the head and deputy head of the tax authority. If a taxpayer delays the submission of documents (including electronic documents), violating provisions in Article 23.1.2 of the Tax Code, or submits them in a deliberately distorted way, and thereby without a good reason delay the submission of accounting documents or information as stipulated in Article 71.4 of the Code, the tax authority can levy a penalty of AZN 100 (EUR 85). In relation to banking information, no penalty is imposed on banks if the requisite information is not provided by them.

210. To sum up, it is recommended that Azerbaijan should ensure that the compulsory measures are adequate and cover all cases.

### ***Secrecy provisions (ToR B.1.5)***

211. Jurisdictions should not decline on the basis of secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an EOI mechanism.

212. Any taxpayer information gathered by the tax authorities in the course of performing their official duties is treated as a commercial (tax) secret. The tax authorities are obliged not to disclose this confidential information (Art. 30, Tax Code) except in cases stipulated by the Tax Code. The exceptions to this rule include sharing information to relevant government authorities of other States in accordance with international agreements to which Azerbaijan is a party. At the same time, all international tax agreements to which Azerbaijan is a party contain provisions that restrict the exchange of information under certain circumstances. Accordingly, the agreements do not impose an obligation on Azerbaijan to supply information that would disclose any trade, business, industrial, commercial or professional secret or trade process or information, the disclosure of which would be contrary to public

policy. Since the agreements do not define commercial secret, the definition or the meaning has to be construed from the domestic legislation of both States.

213. In Azerbaijan’s Tax Code, taxpayer information collected by the tax authorities is categorised as a “commercial (tax) secret”. At the same time, Azerbaijan has a specific law which deals with commercial secret information. The “Law on Commercial Secret” defines the term commercial secret and its scope is in line with the international standard. However, this definition is in conflict with definitions in the Tax Code and the Law on Accounting. As a result, it is unclear how the different definitions under these laws could affect the ability of the Azerbaijani authorities in accessing and exchanging identity, ownership, and accounting information.

214. The Azerbaijani authorities maintain that the term commercial (tax) secret in the Tax Code refers to the confidentiality with respect to taxpayer information. The exceptions to this general provision are provided to give full access to taxpayer information wherever necessitated by the Tax Code. The exceptions also include information to be exchanged with other tax authorities under EOI arrangements. With Article 30.6.4 of the Tax Code, which allows for exchange of information with other States in accordance with the relevant international agreements, Azerbaijan considers it to be enough and undisputable basis for the exchange of such information. When there is a need to apply the commercial secrecy provision, the competent authority refers to the commercial secrecy law, which defines the true definition of what comprises a commercial secret. This definition and the approach of the competent authority are in line with the international standard.

215. The Azerbaijani authorities further state that the term “commercial (tax) secret” under the Tax Code needs to be differentiated from the term commercial secret as mentioned in the Law on Commercial Secret. While the argument of Azerbaijani authorities is acceptable, as there is a specific law in Azerbaijan that deals with commercial secret and is applicable to all purposes and in all cases, there is an ambiguity in having different definitions with varying scope in different laws, which may lead to some taxpayers disputing the action taken by the tax authorities before courts or administrative appellate bodies. However, in Azerbaijan’s view, the tax authorities have unhindered access powers to obtain and exchange taxpayer information for EOI purposes without any limitations. Furthermore, Azerbaijan has not encountered any disputes in its courts or appellate bodies in relation to its access powers. To avoid any potential disputes in future, it is recommended that Azerbaijan clarify the position in its domestic law in this respect so that any doubts are removed.

216. Similar provisions on commercial secrecy exist in the Law on Accounting (Art. 15). The confidentiality provision states that the contents of source documents, accounting registers and other documents are a commercial

secret. The Law on Accounting governs the accounting records requirement of all entities in Azerbaijan. The Azerbaijani authorities maintain that the tax auditors in Azerbaijan can access all accounting information pursuant to notice under Article 42.4 of the Tax Code and by conducting an on-site inspection. Further, in practice, the Azerbaijani authorities have not encountered any dispute regarding disclosure of commercial secret and exchange of such information. Despite this, the categorisation of all accounting information as commercial secret may conflict with the definition provided in the Law on Commercial Secret. This would lead to an uncertainty in the application of the provisions of these laws and could potentially impede the power of the tax authorities to obtain accounting information from taxpayers and other persons if disputed.

217. Article 41 of the Law on Banks stipulates that banks are required to submit information only on bank accounts and transaction details of legal entities or private entrepreneurs. The information to be disclosed to the tax authorities does not cover information about the client. Although the Law on Banks does not define what kind of banking information is protected under the term “client information” it could include identity documents, account opening documentation, etc. As a result, there are uncertainties in accessing certain kinds of information held by banks, although the tax authority in Azerbaijan maintains it has not encountered any such issues in accessing client information.

218. The Law of the Republic of Azerbaijan on Advocates and Advocates’ activity establishes legal professional privilege attaching to advocates. The scope of the law is restricted to rendering legal assistance to natural and legal persons in Azerbaijan. Article 17 of this law states that information received by an advocate, rendering consultations and issuance of certificates (notaries) in connection with carrying out of professional activity represents an advocate’s secrecy. The violation of a professional secret by an advocate may result in the sanctions foreseen under the law. While the term “professional activity” is not defined by the Advocates Law, the rights and duties of an advocate under this law is restricted to rendering legal assistance in a trial or pre-trial.

219. The scope of professional secrecy attached to advocates is in line with the international standard of exchange of information. The standard establishes that the contracting parties to an EOI agreement are not required to exchange confidential communications between a client and an attorney, solicitor or other admitted legal representative, produced for the purposes of seeking or providing legal advice, or produced for the purposes of use in existing or contemplated legal proceedings. The scope of professional secret established in the Law on the Advocates is limited to “confidential

communications” between a client and an advocate and therefore, is in line with the standard.

*Conclusion:*

220. Azerbaijan’s competent authority has some limitations in its access powers to obtain and provide information held by persons within its territorial jurisdiction. There are certain obstacles and deficiencies in Azerbaijan’s legal framework which may impede the access of full information, as required by the international standard. Similarly, the compulsory access powers are limited to 3 years. There is ambiguity in the scope of different laws in defining the term “commercial secret”. This may affect the access powers of the competent authority of Azerbaijan. Azerbaijan should ensure that adequate access powers to obtain information in line with the international standard are vested with the competent authority.

**Determination and factors underlying recommendations**

<b>Determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
There is ambiguity in the scope of different laws in defining the term “Commercial Secret”. This may affect the access powers of the competent authority in obtaining information in line with the international standard on EOI.	Azerbaijan should clarify its laws to ensure that the scope of the term “commercial secret” is in line with the international standard on EOI.
Uncertainties in accessing certain types of client information from banks and in accessing information using compulsory powers for periods beyond 3 calendar years may restrict the access to information in certain cases.	Azerbaijan should ensure that the competent authority has adequate access powers including compulsory powers unhindered by the 3 years limitation and is able to access client information from banks in all situations for EOI purposes, to bring them in line with the standard.

## B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

### *Not unduly prevent or delay exchange of information (ToR B.2.1)*

221. Rights and safeguards should not unduly prevent or delay effective EOI. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

222. Rights and safeguards are mainly established under the tax legislation of Azerbaijan. When any information is sought from persons, the Tax Code empowers the tax authorities to obtain information directly from taxpayers. The tax authorities can issue notices to the taxpayers without any legal requirement to approach courts/tribunals to seek information from the taxpayers.

223. In the case of banking information, Azerbaijan's Tax Code does not require the tax authorities to inform the person concerned of the existence of an exchange of information request. The Tax Code (Art. 76.2) obligates banks and other financial institutions to notify the account holder about the information to be provided to the tax authorities. Upon receipt of notice from the tax authorities, the credit institutions or banks shall send the information sought by the tax authorities to the account holder within 5 days and then provide it to the tax authorities in 15 days. There is no exception to this provision for prior notification in the Tax Code or in the Law on Banks. The procedure to communicate with the client or the extent of disclosure of information by banks is not specified.

224. Upon receipt of the information from the banks, the person concerned can exercise his/her legal right to appeal administratively and/or in courts in accordance with the Tax Code (Art. 62). Any taxpayer or affected person has the right to object to the actions of the tax authorities. He can appeal before the supervising tax authority or the courts within 3 months from the date of violation of his rights. However, this appeal process has no effect in delaying or restricting the information by the banks to the tax authorities. The information will be sent to the tax authorities within 15 days irrespective of an appeal pending before the courts or administrative authorities. Azerbaijan confirmed that no taxpayer has ever appealed against the action of the tax authorities obtaining banking information or against banks that provided to the tax authorities.

225. The Law on Banks stipulates that information on bank accounts and bank operations of any legal entity or individual taxpayer serviced by a bank, shall be submitted to the tax authorities only in cases and in accordance with the Tax Code (Art. 41, LoB). The Azerbaijani authorities have confirmed that Azerbaijani legislation does not provide any exception to the banks' notification requirements.

226. Thus, the Phase 1 determination is that this essential element is in place but certain aspects of the legal implementation of the element need improvement. Azerbaijan should introduce legal changes in the Tax Code to provide exceptions to prior notification (e.g. in cases in which the information request is of a very urgent nature, or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

#### **Determination and factors underlying recommendations**

<b>Determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
There are no exceptions to prior notification of the person concerned for accessing bank account information.	Notification rules in Azerbaijan should permit exceptions from prior notification, an e.g. in case in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation.

## C. Exchanging information

### Overview

227. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Azerbaijan, the legal authority to exchange information is derived from its EOI instruments and from domestic law. This section of the report examines whether Azerbaijan has a network of information exchange that would allow it to achieve effective exchange of information in practice.

228. Azerbaijan's network of EOI instruments covers 101 jurisdictions. It comprises 48 bilateral Double Taxation Conventions (DTCs), and one Tax Exchange Information Agreement (TIEA), of which 46 are in force. Azerbaijan is a party to the original Convention on Mutual Administrative Assistance in Tax Matters, which has been in force in Azerbaijan since 1 October 2004. It signed the Protocol amending the original Convention on 23 May 2014 and deposited its instrument of ratification on 29 May 2015. The Protocol will enter into force for Azerbaijan on 1 September 2015.

229. Azerbaijan's network of exchange agreements covers all its main trading partners (Italy, Germany, Indonesia, Russia, Israel, Turkey, France, United States, United Kingdom, Thailand, Spain, India, China, Czech Republic and Georgia) except Thailand. Azerbaijan's main EOI partners in last few years have been Russia, Belarus and Ukraine. There have been some EOI exchanges with the United Kingdom, Georgia, Germany, Lithuania, Turkey, Italy and the Netherlands. Comments were sought from Global Forum members in the course of the preparation of this report and in no case has Azerbaijan refused to enter into an EOI agreement. Though most of Azerbaijan's bilateral EOI relationships do not contain sufficient provisions to enable Azerbaijan to exchange all relevant information, by being a signatory to the Multilateral Convention, Azerbaijan still has EOI arrangements with 89 jurisdictions that are in line with the standard.

230. Azerbaijan's domestic legislation has ambiguity in the scope of different laws in defining the term commercial secret that may limit the

possibility of effective exchange of information. Although Azerbaijan has a long standing practice of exchanging information with its treaty partners, the access powers of Azerbaijan’s authorities could be limited in certain situations which could possibly limit the effective exchange of information. It is therefore recommended that Azerbaijan addresses these domestic law issues to give full effect to all its EOI arrangements and to bring all its EOI relationships in line with the standard.

231. All of Azerbaijan’s EOI agreements contain confidentiality provisions that meet the international standard and are backed by appropriate confidentiality provisions and enforcement measures in its domestic legislation. As already highlighted, the confidentiality provisions in Azerbaijan’s EOI instruments apply equally to all information received and sent, including background documents to requests, and any other documents reflecting such information, including communications within the tax authorities of Azerbaijan on EOI matters.

232. The tax authorities are generally barred from disclosing taxpayer information. In specific cases and to specific authorities, the tax authorities can provide the tax and taxpayer information under Article 30.6 of the Tax Code. Information can be shared with relevant government authorities of other jurisdictions in accordance with international agreements to which Azerbaijan is a party.

233. Azerbaijan’s EOI agreements protect rights and safeguards in accordance with the standard, by ensuring that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. The scope of attorney-client privilege as defined in domestic legislation is in line the international standard.

234. There appear to be no legal restrictions on the ability of Azerbaijan’s competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. The present report does not address this element, as this involves issues of practice that will be dealt with in the Phase 2 review.

## C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

235. Sovereign powers of Azerbaijan in international matters are restricted solely to the international agreements to which Azerbaijan is a party (Constitution, Art. 7). The President of Azerbaijan, as Head of State, is responsible for fulfilling obligations under these international agreements (Constitution,



Art. 8). The President is vested with the power to conclude inter-governmental treaties and agreements. He shall submit the interstate treaties, to the Milli Mejlis (the legislature) for ratification or denunciation (Constitution, Art. 109). The Milli Mejlis ratifies or denounces international treaties, agreements and conventions by an absolute majority of 63 votes (Constitution, Art. 95).

236. International agreements, to which Azerbaijan is party, are an inalienable part of the legislative system of the Azerbaijani Republic (Constitution, Art. 148). If any dispute or contradiction arises between international agreements and normative-legal acts of Azerbaijan (excluding the Constitution and acts passed through referendum), the provisions of international agreements are applied (Constitution, Art. 151). Provisions of international agreements prevail over the provisions of the Tax Code of Azerbaijan and other legislative acts established on taxes (Art. 2.5, Tax Code).

237. International agreements establishing rules other than those provided by national legislation are ratified by the Milli Mejlis (Article 8 of the Law on the Order for Conclusion, Execution and Denunciation of the International Agreements of Azerbaijani Republic). The Proposals for ratifications/ accession are made by the Cabinet of Ministers to the President (Art. 2.1 of the Rules for submitting Proposals for conclusion and Denunciation of the international Agreements of Azerbaijan Republic by Central Executive Authorities and State Owned Enterprises).

238. DTCs and TIEAs are negotiated by the representatives of the Ministry of Finance and the Ministry of Taxes. The competent authority for exchange of information purposes is the Ministry of Finance and the Ministry of Taxes. In some agreements, the competent authority for EOI is the Ministry of Finance.

239. Azerbaijan's network of EOI instruments covers 101 jurisdictions. It comprises 48 bilateral DTCs, of which 45 are in force, and one TIEA which is also in force. Azerbaijan's DTCs with Jordan, Kuwait and Spain are signed by the parties concerned but at the time of writing have not yet entered into force. Azerbaijan is also a party to the original Convention on Mutual Administrative Assistance in Tax Matters, which has been in force in Azerbaijan since 1 October 2004. It signed the Protocol amending the original Convention on 23 May 2014 and deposited its instrument of ratification<sup>51</sup> on 29 May 2015. The Protocol will enter into force on 1 September 2015. The Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention) provides for administrative co-operation between parties in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion in accordance with the standard.

51. The Protocol amending the original Convention signed by Azerbaijan on 23 May 2014 together with the two declarations made at the date of signing was adopted by the Parliament of Azerbaijan by the Law No. 1128-IVQ on 16 December 2014.

240. The DTCs with Switzerland and Austria do not meet the standard for several reasons. Firstly, only information that is “necessary for carrying out the provisions of the Convention” can be exchanged. Secondly, the agreements do not allow for the exchange of banking and financial information. In addition, the treaty with Switzerland imposes the pre-condition that the competent authorities can only exchange information that is at their disposal under their respective taxation laws in the normal course of administration. However, Azerbaijan, Austria and Switzerland are covered by the Multilateral Convention which will enable these jurisdictions to exchange information to the standard once it is in force for these jurisdictions (it is already in force in Austria and soon to be in Azerbaijan).

241. The jurisdictions with which Azerbaijan has only DTCs are Pakistan, Uzbekistan, Belarus, the United Arab Emirates, Tajikistan, Qatar, Bulgaria, Jordan, Kuwait, Iran, Serbia, Bosnia and Herzegovina, Montenegro, Former Yugoslav Republic of Macedonia (FYROM) and Viet Nam. With the exception of Bosnia and Herzegovina, Montenegro and Viet Nam, these DTCs do not have EOI provisions that adhere to the standard. Overall, 12 out of 101 EOI arrangements that Azerbaijan has with other jurisdictions do not meet the international standard.

### *Foreseeably relevant standard (ToR C.1.1)*

242. The international standard for EOI envisages information exchange upon request to the widest possible extent, but does not allow “fishing expeditions,” i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 26(1) of the Model Tax Convention and Article 1 of the OECD Model TIEA.

243. The competent authorities of the contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or for the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting States or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

244. EOI provisions of Azerbaijan’s DTCs are generally based on the revised versions of Article 26 of the OECD Model Tax Convention and UN Model Tax Convention. Out of 48 DTCs, 12 refer to the term “foreseeably relevant”. The TIEA with Argentina uses the term “essential”. The majority of Azerbaijan’s DTCs use the term “as is necessary”. The DTCs with Norway and Belgium use the term “relevant” in lieu of “as is foreseeably

relevant”. Azerbaijan stated that all the bilateral agreements<sup>52</sup> negotiated after 1 January 2012 meets the international standard. Of these, only the DTCs with Montenegro, Bosnia and Herzegovina, and Viet Nam have been signed and entered into force. Rest of the agreements negotiated after January 2012 are yet to be signed.

245. The Commentary to Article 26(1) of the Model Tax Convention recognises that the change in Article 26(1) in 2005 from “necessary” to “foreseeably relevant” was made to achieve consistency with the Model TIEA and was not intended to alter the effect of the provision. The commentary adds that the Contracting States may agree to an alternative formulation of the standard of “foreseeable relevance” that is consistent with the scope of the Article and is therefore understood to require effective EOI, for instance by replacing “foreseeably relevant” with “necessary”. The Azerbaijani authorities have confirmed that Azerbaijan interprets all these alternative formulations as equivalent to the term “foreseeably relevant” and may accept any formulation during the negotiations proposed by the counterpart.

246. The DTCs with Switzerland and Austria restrict the scope of the Article on EOI to the exchange of information that is “necessary for carrying out the provisions of the Convention” only. Further, the DTC with Switzerland imposes another pre-condition that the competent authorities can only exchange information that is at their disposal under their respective taxation laws in the normal course of administration. Accordingly, these DTCs do not meet the standard. Nonetheless, Azerbaijan, Austria and Switzerland are covered by the Multilateral Convention, which meets the international standard.

### ***In respect of all persons (ToR C.1.2)***

247. For exchange of information to be effective it is necessary that a jurisdiction’s obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard envisages that EOI mechanisms will provide for exchange of information in respect of all persons.

248. Article 26(1) of the Model Tax Convention specifies that “the exchange of information is not restricted by Article 1”, and thereby extends the personal scope of the Article on EOI beyond the persons who are residents of one or both of the Contracting States. Most of Azerbaijan’s DTCs and the TIEA with

52. Treaties with Montenegro, Israel, Slovakia, Ireland, Viet Nam, Sweden, Albania, Bosnia and Herzegovina, Portugal, Bangladesh, Malaysia and the Protocol amending the tax treaty with Kazakhstan.

Argentina specifically provide for the exchange of information in respect of all persons thereby expanding the scope of application of the EOI provisions beyond the residents of the contracting States. Eleven of Azerbaijan's DTCs do not contain such specific provision and therefore may limit the application of the agreements to residents of the contracting States.<sup>53</sup> However, Azerbaijan maintains that these DTCs (with the exception of DTCs with Austria and Switzerland) implicitly do provide for the exchange of information as is necessary (*or relevant*) for carrying out the provisions of the respective DTCs or of the domestic laws of the Contracting States. To the extent that domestic laws are applicable to residents and non-residents, information under these DTCs can also be exchanged in respect of all persons, including non-residents.

249. Under the DTCs with Austria and Switzerland, it is not possible to exchange information in respect of all persons, since the relevant DTCs only provide for the exchange of information for the purposes of carrying out the Convention. In the case of DTC with Russia, the Global Forum's peer review of Russia concluded that the treaty with Azerbaijan is not in line with the standard as Russia interprets the absence of an explicit extension to persons not covered in the Convention as limiting the scope only to persons who are residents of one or both Contracting States. This report maintains that stance. As such, the DTC with Russia is also not in line with the international standard. However, Azerbaijan, Switzerland, Austria and Russia are covered by the Multilateral Convention, which will enable these jurisdictions to exchange information to the standard once it is in force for these jurisdictions (it is already in force in Austria and soon to be in Azerbaijan).

### ***Obligation to exchange all types of information (ToR C.1.3)***

250. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The *OECD Model Tax Convention* and the *Model Tax Information Exchange Agreement*, which are authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

251. Only three of Azerbaijan's DTCs (with Viet Nam, Montenegro and Slovenia) include provisions akin to Article 26(5) of the OECD Model Tax Convention, which provides that a contracting party may not decline to supply information solely because the information is held by a bank, other

53. Turkey, United Kingdom, Uzbekistan, Georgia, Russia, Poland, Ukraine, Austria, Japan, Switzerland, and Viet Nam.

financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

252. The remainder of Azerbaijan's EOI agreements do not contain a provision akin to Article 26(5) of the OECD Model Tax Convention. Nonetheless, it is noted that the absence of this provision does not automatically create restrictions on the exchange of bank information in Azerbaijan. The commentary on Article 26(5) indicates that whilst paragraph 5 represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. In June 2014, Azerbaijan amended its Tax Code and Law on Banks to provide access to bank information for tax purposes (see Part B). With the removal of banking secrecy in its domestic law and enabling access of the tax authorities to banking information, Azerbaijan's view is that it can exchange banking and other financial information with all of its treaty partners regardless of whether the relevant agreements contain an explicit provision similar to Article 26(5) of the OECD Model Tax Convention.

253. At least two treaty partners (Austria and Switzerland) currently have restrictions in accessing bank information, which limits the effective EOI under these DTCs. However, Azerbaijan, Austria and Switzerland are covered by the Multilateral Convention, which meets the international standard. Azerbaijan has EOI arrangements with 15 jurisdictions that are not signatories to the Multilateral Convention. Of these, DTCs with 13 jurisdictions do not contain the explicit provision to exchange banking information. DTCs with two jurisdictions (Viet Nam and Montenegro) are in line with the standard in this respect. While Azerbaijan has confirmed that there are no restrictions on exchanging banking information without an express provision in the DTC, exchange of information will be subject to reciprocity and domestic limitations may exist in these partner jurisdictions. In such cases, it is not possible to exchange banking and financial information with those jurisdictions. Moreover, out of the 13 jurisdictions for which DTCs are not to the standard, 11<sup>54</sup> are either not members of the Global Forum or have not yet been reviewed by the Global Forum.

254. Notwithstanding the EOI agreements, as detailed in section B.1.5 of this report, Azerbaijan's laws define the scope of the term commercial secret differently and this results in ambiguity in the extent of applicability of the secrecy provisions. This inconsistency in defining commercial secrecy could possibly affect the access powers of the competent authority in obtaining information in line with the international standard. Uncertainties in accessing information for periods beyond 3 calendar years may restrict access to information in certain cases.

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54. all except Qatar and the United Arab Emirates.

255. Regarding banking information, general bank secrecy provisions are applied to all bank accounts and client information collected under the Law on Banks, but only selective access is provided to the tax authorities, access which does not include certain types of client identification information. Although the Law on Banks does not define the term client information, banking institutions could possibly refuse to provide certain types of client information, such as opening account contracts, signature cards etc. As a result, there are uncertainties in the access powers of tax authorities on certain types of client information held by banks. This limitation on access by the tax authorities is equally applicable for EOI purposes because of the specific reference to applicability of the international agreements on taxation in the relevant article of the Tax Code (Art. 76). Generally, where there is a conflict between a specific provision in a statute and a general provision, the specific provision will prevail. Thus, the above domestic restrictions will apply even if banking information is requested under a treaty containing Article 26(5) of the OECD Model Tax Convention and irrespective of Azerbaijan’s international treaty prevails rule.

256. As a result of uncertainties in the domestic laws with respect to access and exchange of information, Azerbaijan may not have EOI relationships in line with the international standard with its EOI partners. Therefore, it is recommended that Azerbaijan ensures that all types of requested information can be provided under its EOI agreements, and, if it encounters obstacles in the exchange of information with EOI partners on account of the absence of provisions akin to Article 26(5) of the Model Tax Convention, it should renegotiate relevant the DTCs to include provisions similar to Article 26(5) of the Model Tax Convention.

#### *Absence of domestic tax interest (ToR C.1.4)*

257. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if the first-mentioned party has an interest in the requested information for its own tax purposes. An inability to provide information on the result of a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. This obligation is set out in Article 26(4) of the OECD Model Tax Convention and Article 5(2) of the Model TIEA.

258. Of Azerbaijan’s 49 bilateral EOI arrangements:

- ten DTCs (with Jordan, Korea, Serbia, Croatia, Bosnia and Herzegovina, FYROM, Spain, Montenegro, Slovenia and Viet Nam) contain provisions similar to Article 26(4) of the OECD Model Tax Convention, which

oblige the contracting States to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested State does not have a domestic tax interest in the requested information.

- All other DTCs do not contain explicit provisions obliging the contracting States to use information-gathering measures to obtain and exchange requested information without regard to a domestic tax interest.
- The TIEA with Argentina does not contain provisions equivalent to Article 5(2) of the Model TIEA

259. The DTC with Switzerland provides for the competent authorities can only exchange information that is at their disposal under their respective taxation laws in the normal course of administration. Coupled with the absence of provisions similar to Article 26(4) of OECD Model Tax Convention and a restrictive access of the competent authorities to information for EOI purposes the DTC does not meet the international standard.

260. Azerbaijan and Switzerland are covered by the Multilateral Convention, which meets the international standard. Similarly, of the remaining 38 bilateral EOI arrangements that are inconsistent with the international standard, on account of the absence of a domestic tax interest clause, the alternative EOI mechanism, by way of the Multilateral Convention, is available with respect to 29 jurisdictions that are covered by the Convention.

261. Outside the network of Multilateral Convention, Azerbaijan has EOI agreements with 15 jurisdictions. EOI arrangements with 9 jurisdictions<sup>55</sup> do not contain the explicit provision to exchange information in the absence of a domestic tax interest. While Azerbaijan confirms that there are no restrictions in exchanging information without an express provision in the DTC, exchange of information will be subject to reciprocity and domestic limitations may exist in these partner jurisdictions. In such cases, it is not possible to exchange information with those jurisdictions. Moreover, 7 out of these 9 jurisdictions (all except Qatar and the United Arab Emirates) with which Azerbaijan has a DTC are either not members of the Global Forum or have not yet been reviewed by the Global Forum.

262. There are no restrictions in Azerbaijan's domestic legislation and with the existence of treaty prevails rule in the Constitution of Azerbaijan and the Tax Code, Azerbaijan's competent authority has sufficient powers to access information for EOI purposes in all cases. However, a few of its EOI agreements do not have explicit provisions for exchanging information

55. Pakistan, Uzbekistan, Belarus, United Arab Emirates, Tajikistan, Qatar, Bulgaria, Kuwait and Iran.



in the absence of a domestic tax interest. Therefore, it is recommended that Azerbaijan ensures exchange of information in the absence of a domestic tax interest, and if encountered with obstacles in exchange of information on account of the absence of provisions akin to Article 26(4) of the Model Tax Convention, it should renegotiate relevant DTCs to include provisions akin to Article 26(4).

***Absence of dual criminality principles (ToR C.I.5)***

263. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, EOI should not be constrained by the application of the dual criminality principle.

264. There is no dual criminality requirements in any of Azerbaijan’s DTCs or the TIEA.

***Exchange of information in both civil and criminal tax matters (ToR C.I.6)***

265. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”).

266. All of Azerbaijan’s DTCs and TIEA provide for exchange of information in both civil and criminal tax matters.

***Provide information in specific form requested (ToR C.I.7)***

267. In some cases, a contracting party may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such formats may include depositions of witnesses and authenticated copies of original records. Contracting parties should endeavour as far as possible to accommodate such requests. The requested party may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

268. There are no restrictions in the EOI provisions in Azerbaijan’s DTCs. The Tax Code does not empower the tax authorities to obtain a deposition of witnesses for the domestic purposes. The tax authorities are authorised



under the Criminal Code to take testimony of witnesses during an inquiry or investigation for certain criminal offences. However, such deposition of witnesses from individuals during an inquiry and investigation is considered confidential, and such statements can be sent to the requesting country under the Mutual Legal Assistance treaties between the two countries. Therefore, a deposition of witnesses cannot be provided by Azerbaijan under EOI agreements. There are no other restrictions in laws that would prevent Azerbaijan from providing information in a specific form though this aspect could be further examined during the Phase 2 review.

***In force (ToR C.1.8)***

269. Exchange of information cannot take place unless a jurisdiction has EOI arrangements in force. The international standard requires that jurisdictions must take all steps necessary to bring agreements that have been signed into force expeditiously.

270. The President is vested with the power to conclude inter-governmental treaties and agreements. He shall submit the interstate treaties, to the Milli Mejlis (the legislature) for ratification or denunciation (Constitution, Art. 109). The Milli Mejlis ratifies or denounces international treaties, agreements and conventions by an absolute majority of 63 votes (Constitution, Art. 95).

271. Of Azerbaijan's 48 DTCs, 45 are in force. The TIEA with Argentina is also in force. Of the 3 DTCs not yet brought into force (Jordan, Kuwait and Spain), Azerbaijan has completed all internal procedures to bring the agreement in force including ratification of all of these DTCs but awaits counter-parties to ratify the agreements. Azerbaijan has ratified the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which will enter into force on 1 September 2015. The time for ratification ranges from 1 month to 8-9 months depending on the work schedule and priorities on the agenda of the parliament.

***Be given effect through domestic law (ToR C.1.9)***

272. For EOI to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

273. The President of Azerbaijan, as Head of State, is responsible for fulfilling the obligations under the international agreements in force (Constitution, Art. 8). Since the treaty prevails rule exists in Azerbaijan's constitution and the Tax Code, Azerbaijan does not need to enact a specific legislation to implement EOI agreements.

274. To sum up, Azerbaijan’s laws are not compatible with the requirements of the international standard to exchange all types of information from all persons in Azerbaijan on account of general restrictions in access powers and of secrecy provisions discussed in C.1.2 and C.1.3 above. Azerbaijan should take necessary steps to ensure that it can exchange all types of information as per the standard with its treaty partners irrespective of the secrecy provisions in its domestic laws.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The issues identified under element B.1 may affect Azerbaijan’s ability to give effect to its EOI mechanism.	Azerbaijan should address the recommendations made under element B.1.

## C.2. Exchange of information mechanisms with all relevant partners

The jurisdictions’ network of information exchange mechanisms should cover all relevant partners.

275. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order properly to administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

276. Azerbaijan has concluded 49 bilateral EOI instruments (48 DTCs and 1 TIEA), of which 46 are in force. Azerbaijan is a party to the original Convention on Mutual Administrative Assistance in Tax Matters, which has been in force in Azerbaijan since 1 October 2004. On 23 May 2014 it also signed the 2010 Protocol amending the original Convention, which will enter into force on 1 September 2015. These bilateral and multilateral agreements create EOI relationships with 101 jurisdictions, including:

- all of its major trading partners<sup>56</sup> except Thailand;
- 86 Global Forum member jurisdictions;
- 33 of the OECD Member States; and
- all the G20 countries.

277. Azerbaijan has initialled 6 DTCs and is negotiating with 12 other jurisdictions. During the course of the assessment, no jurisdiction has advised that Azerbaijan has refused to enter into negotiations or the conclusion of an EOI agreement. It is recommended that Azerbaijan should continue to develop its EOI network with all relevant partners.

278. Despite that Azerbaijan has a vast treaty network with all relevant partners, the ability of Azerbaijan to exchange information with its treaty partners is partly restricted by uncertainties in access powers of the competent authority on account of ambiguity in secrecy provisions in different laws and some limitations in accessing certain client information from banks and accessing information beyond three calendar years, which are explained in B.1 and C.1 above. It is therefore recommended that Azerbaijan ensure that it gives full effect to the terms of its EOI agreements in order to allow for exchange of information to the standard.

#### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Azerbaijan should continue to develop its EOI network with all relevant partners.

56. Italy, Germany, Indonesia, Russia, Israel, Turkey, France, the USA, the UK, Spain, India, China, Czech Republic and Georgia.

### C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

#### *Information received: disclosure, use, and safeguards (ToR C.3.1)*

279. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

#### *Double Tax Conventions*

280. All exchange of information articles in Azerbaijan's DTCs and the TIEA have confidentiality provisions modelled on Article 26(2) of the OECD Model Tax Convention and Article 8 of the Model TIEA, which must be respected by Azerbaijan as a party to these agreements.

#### *Azerbaijani domestic laws*

281. The confidentiality provisions of Azerbaijan's agreements are backed by confidentiality provisions in its domestic legislation. In general, it is the responsibility of the tax authorities to preserve the confidentiality of information concerning taxpayers, including tax and commercial confidentiality in accordance with the Tax Code and other legislation (Art. 24.0.8, Tax Code). Information on taxpayers is treated as a "commercial (tax) secret" and provisions on its disclosure and protection are laid down in Article 30 of the Tax Code. The Code provides that the tax authorities and their officials for the period of their work in tax office or even after they have left the service, or retired, shall maintain confidentiality of all information concerning taxpayers. Certain types of information, such as information disclosed with the consent of the taxpayer, tax arrears, tax violations etc. are not treated as confidential (Art. 30.2, Tax Code).

282. Confidential information can only be disclosed to a number of persons identified in Article 30.6 of the Tax Code, including government authorities of other countries in accordance with the international agreements of Azerbaijan (Art. 30.6.4, Tax Code). Other bodies entitled to receive information from the tax authorities in accordance with domestic legislation include financial

monitoring authorities (for AML/CT purposes), customs authorities, tax courts and criminal courts. However, Article 151 of the Azerbaijani Constitution provides for a treaty prevails rule whenever there is a disagreement between any of the normative-legal Acts of Azerbaijan and international agreements. A similar treaty prevails rule is provided in Article 2.5 of the Tax Code. The State tax authorities should preserve the confidentiality of information concerning taxpayers, including the tax and commercial confidentiality, in accordance with provisions of the Tax Code and other legislation (Art. 24.0.8, Tax Code) failing which the authorities concerned are liable for penalty and prosecution in accordance with the Code of Administrative Violations and the Code of Criminal Offences. Azerbaijan has confirmed that its tax authorities are bound by the confidentiality provisions in international agreements and cannot disclose any EOI information to persons other than the ones specified in the respective agreements and for non-tax purposes.

283. The Law of the Republic of Azerbaijan on Right to Obtain Information (ROI) ensures free, unrestricted and equal information access to all persons in Azerbaijan as prescribed by the Article 50 of the Constitution. (Art. 1, ROI). Any regulation provided under other domestic legislation that contradicts the Right to Information law shall not have any effect (Art. 5.2, ROI). However, the ROI does not apply to the limitations imposed by the international agreements to which Azerbaijan is a party.

284. Contracts on data security are signed by tax officials and other employees hired by the tax authorities. These contracts obligate the persons concerned to protect confidential taxpayer information. The breach of confidentiality is an administrative as well as a criminal breach of trust which is punishable in accordance with the legislation of Azerbaijan. Illegal use or distribution of data comprising a commercial (tax) secret, if the inflicted damage is insignificant, entails imposition of penalty of AZN 20-25 (on natural persons), AZN 40-45 (EUR 34-38) (on officials) and AZN 150-200 (EUR 127-170) (on legal persons) (CAV, Article 223). If the inflicted damage is significant, the offence will attract a penalty which amounts from AZN 500 to 1 000 (EUR 423-846) or corrective works for a term up to two years, or a restriction of freedom for the same term (Art. 202.2, Criminal Code).

### ***All other information exchanged (ToR C.3.2)***

285. The confidentiality provisions in Azerbaijan's EOI agreements do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all information received and sent, background documents to requests, and any other documents reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

### Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

#### C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

##### *Exceptions to requirement to provide information (ToR C.4.1)*

286. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, information can be declined where the requested information would disclose any trade, business, industrial, commercial or professional secret or trade process.

287. The limitation on information exchanged under Azerbaijan’s DTCs mirror those provided for in the international standard. There are deviations in the language used in two of Azerbaijan’s agreements with reference to this limitation. The TIEA with Argentina does not compel the requesting country to supply information which is not obtainable under its own legislation. A similar wording is used in the DTC with Switzerland. Since Azerbaijan’s domestic legislation and regulations sufficiently provides protection against disclosure of any trade, commercial or professional secret or trade process, these EOI arrangements can be said to have sufficient safeguards for taxpayers and third parties that confirms to the international standard.

288. It is noted that “professional secret” is not defined in the DTCs and the TIEA. The relevant domestic legislation would then be applicable. The Law on Advocates covers both lawyers and notaries in Azerbaijan. As discussed in B.1.5, the scope of professional secrecy is in line with the international standard. The term “commercial secret” is defined in the Law on Commercial Secret the scope of which is in line with the international standard. At the same time, any taxpayer information gathered by the tax authorities in the course of performing their duties is considered a “commercial (tax) secret”. Similarly, all accounting information and related accounting records maintained by an entity is treated a commercial secret. This creates ambiguity in the scope of the term “commercial secret” which may be, in some cases, interpreted wider than that intended by the international standard. Therefore, a recommendation has been included in element B.1 for Azerbaijan to remove this ambiguity.

**Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Ambiguity in the scope of different domestic laws in defining the term “commercial secret” may result, in some cases, in interpreting this term wider than that permitted by the international standard.	Azerbaijan should remove any ambiguities in its domestic laws to bring the scope of the term “commercial secret” in line with the international standard.

**C.5. Timeliness of responses to requests for information**

The jurisdiction should provide information under its network of agreements in a timely manner.

***Responses within 90 days (ToR C.5.1)***

289. In order for EOI to be effective, it needs to be provided in a time-frame which allows the tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

290. An order of the Ministry of Taxes, which regulates documents circulation stipulates that a response should be provided to a request for information made by the competent authority of a foreign State under an international treaty within 60 days of the receipt of the request. The maximum period for responding to such requests may be prolonged for 30 more days in extraordinary cases, i.e. 90 days.

291. With regard to the timeliness of responses to requests for information the assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

***Organisational process and resources (ToR C.5.2)***

292. Administration of EOI under Azerbaijan’s treaty network is the responsibility of Azerbaijan’s competent authority, in practice the Ministry of Taxes. In the TIEA with Argentina, the competent authority’s responsibility

is vested with the Ministry of Taxes. In the Multilateral Convention, the responsibility vests with Ministry of Taxes, the State Customs Committee, the Ministry of Labour, the Social Protection of Population, and the Ministry of Finance.

293. A review of Azerbaijan’s organisational process and resources will be conducted in the Phase 2 review.

***Absence of restrictive conditions on exchange of information***  
*(ToR C.5.3)*

294. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. With the exception of some restricted access to obtain information as highlighted in section B.2.1 of this report, there are no laws or regulatory practices in Azerbaijan that impose restrictive conditions on EOI. This aspect will be further examined in the Phase 2 review.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>



## Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1.)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Prior to 15 July 2015, JSCs potentially could have issued bearer shares, but there is no sufficient mechanism in place to ensure that the ownership information of holders of bearer shares is maintained and available.	Azerbaijan should take necessary measures to ensure that ownership information on potentially existing bearer shares, issued before 15 July 2015, is maintained and available.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2.)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	While Azerbaijan's accounting and tax laws indirectly require the keeping of underlying documentation, lack of explicit obligations in Azerbaijan's legislation may provide the opportunity for some entities not to maintain underlying documentation.	Azerbaijan should introduce express obligations in its relevant laws that require all relevant entities to maintain underlying documentation.
	The Tax Code has inconsistent provisions that do not impose sufficient obligations on taxpayers to maintain accounting records for a period of more than 3 years.	Azerbaijan should ensure clarity and consistency in the provisions in the Tax Code to maintain accounting records for a period of at least 5 years.
Banking information should be available for all account-holders. <i>(ToR A.3.)</i>		
<b>The element is in place.</b>		

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1.)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	There is ambiguity in the scope of different laws in defining the term “Commercial Secret”. This may affect the access powers of the competent authority in obtaining information in line with the international standard on EOI.	Azerbaijan should clarify its laws to ensure that the scope of the term “commercial secret” is in line with the international standard on EOI.
	Uncertainties in accessing certain types of client information from banks and in accessing information using compulsory powers for period beyond 3 calendar years may restrict the access to information in certain cases.	Azerbaijan should ensure that the competent authority has adequate access powers including compulsory powers unhindered by the 3 years limitation and is able to access client information from banks in all situations for EOI purposes, to bring them in line with the standard.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2.)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	There are no exceptions to prior notification of the person concerned for accessing bank account information.	Notification rules in Azerbaijan should permit exceptions from prior notification, an e.g. in case in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation.
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1.)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	The issues identified under element B.1 may affect Azerbaijan’s ability to give effect to its EOI mechanism.	Azerbaijan should address the recommendations made under element B.1.

The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2.)</i>		
<b>The element is in place.</b>		Azerbaijan should continue to develop its exchange of information network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3.)</i>		
<b>The element is in place.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4.)</i>		
<b>The element is in place.</b>	Ambiguity in the scope of different domestic laws in defining the term "commercial secret" may result, in some cases, in interpreting this term wider than that permitted by the international standard.	Azerbaijan should remove any ambiguities in its domestic laws to bring the scope of the term "commercial secret" in line with the international standard.
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5.)</i>		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		



## **Annex 1: Jurisdiction’s response to the review report<sup>57</sup>**

Azerbaijan highly appreciates the hard and productive work done by the assessment team in the process of evaluation of the legal and regulatory framework in Azerbaijan and considers this Report an extremely useful document indicating clearly the deficiencies which could potentially affect the exchange of information to the international standards. Although, all the deficiencies highlighted in the Report, as well as in the determinations and recommendations are minor and unintended ones, Azerbaijan recognizes their existence and that they may potentially impede the effective exchange of tax information with partner jurisdictions.

Azerbaijan would also like to express its deepest gratitude to the Peer Review Group for the objective assessment of Azerbaijan’s regulatory and legislative framework and for their adoption of this Report.

Azerbaijan is satisfied with the current text of the Report and accepts that it reflects correctly Azerbaijan’s regulatory and legislative framework relating to the exchange of tax information. The Review Process was carried out professionally and the dialogue with the Global Forum Secretariat was extremely helpful and productive. In this regard, Azerbaijan would like to express its gratitude to the assessors and Global Forum Secretariat for their professionalism demonstrated throughout the process.

Azerbaijan has always been strongly committed to the requirements of international standards for exchange of information for tax purposes and has continuously been improving its legislation to bring it to the compliance with the above-mentioned standards.

In order to remove all the deficiencies and bring its legislation to the complete compliance with current standard of transparency and exchange of information Azerbaijan will carefully consider the recommendations included in the Report to adapt the standards in a proper manner and will ensure that they are applied correctly.

To this end Azerbaijan is preparing for Phase 2 and the assessment of the effective implementation of the standards.

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57. This Annex presents the jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

## Annex 2: List of exchange of information mechanisms

On 23 May 2014, Azerbaijan signed the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters and ratified it on 30 January 2015. The Convention as amended (Multilateral Convention) will enter into force in Azerbaijan on 1 September 2015 shortly after the cut-off date for this table. The chart of signatures and ratification of the Multilateral Convention is available at [www.oecd.org/ctp/eoi/mutual](http://www.oecd.org/ctp/eoi/mutual).

The list of EOI agreements signed by Azerbaijan as at 14 August 2015, including bilateral and multilateral instruments is set out below:

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Albania	Multilateral Convention	01-03-2013	In force in Albania
2	Andorra	Multilateral Convention	05-11-2013	22/04/2013
3	Anguilla <sup>a</sup>	Multilateral Convention	Extended	In force in Anguilla
4	Argentina	Multilateral Convention	03-11-2011	In force in Argentina
		TIEA	17-12-2012	Not yet in force
5	Aruba <sup>b</sup>	Multilateral Convention	Extended	In force in Aruba
6	Australia	Multilateral Convention	03-11-2011	In force in Australia
7	Austria	DTC	04-07-2000	23-02-2001
		Multilateral Convention	29-5-2013	In force in Austria
8	Belarus	DTC	08-08-2001	29-04-2002
9	Belgium	DTC	18-05-2004	12-08-2006
		Multilateral Convention	04-04-2011	In force in Belgium
10	Belize	Multilateral Convention	29-05-2013	In force in Belize
11	Bermuda <sup>a</sup>	Multilateral Convention	Extended	In force in Bermuda
12	Bosnia and Herzegovina	DTC	18-10-2012	26-12-2013
13	Brazil	Multilateral Convention	03-11-2011	Not yet in force
14	Bulgaria	DTC	12-11-2007	25-11-2008

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
15	British Virgin Islands <sup>a</sup>	Multilateral Convention	Extended	In force in British Virgin Islands
16	Cameroon <sup>c</sup>	Multilateral Convention	25-06-2014	Not yet in force <sup>a</sup>
17	Canada	DTC	07-09-2004	23-01-2006
		Multilateral Convention	03-11-2011	In force in Canada
18	Cayman Islands <sup>a</sup>	Multilateral Convention	Extended	In force in Cayman Islands
19	Chile	Multilateral Convention	24-10-2013	Not yet in force
20	China (People's Republic of)	DTC	17-03-2005	17-08-2005
		Multilateral Convention	27-08-2013	Not yet in force
21	Colombia	Multilateral Convention	23-5-2012	In force in Columbia
22	Costa Rica	Multilateral Convention	01-03-2012	In force in Costa Rica
23	Croatia	DTC	12-03-2012	18-03-2013
		Multilateral Convention	11-10-2013	In force in Croatia
24	Curaçao <sup>b</sup>	Multilateral Convention	Extended	In force in Curaçao
25	Cyprus <sup>d</sup>	Multilateral Convention	10-07-2014	In force in Cyprus
26	Czech Republic	DTC	24-11-2005	16-06-2006
		Multilateral Convention	26-10-2012	In force in Czech Republic
27	Denmark	Multilateral Convention	27-5-2010	In force in Denmark
28	Estonia	DTC	30-10-2007	27-11-2008
		Multilateral Convention	29-05-2013	In force in Estonia
29	El Salvador	Multilateral Convention	01-06-2015	Not yet in force
30	Faroe Islands <sup>e</sup>	Multilateral Convention	Extended	In force in Faroe Islands
31	Finland	DTC	29-09-2005	29-11-2006
		Multilateral Convention	27-05-2010	In force in Finland
32	FYROM	DTC	19-04-2013	12-08-2013
33	France	DTC	20-12-2001	01-10-2005
		Multilateral Convention	27-05-2010	In force in France
34	Gabon	Multilateral Convention	03-07-2014	Not yet in force
35	Georgia	DTC	18-02-1997	01-12-1997
		Multilateral Convention	03-11-2010	In force in Georgia

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
36	Germany	DTC	25-08-2004	28-12-2005
		Multilateral Convention	03-11-2011	Not yet in force
37	Ghana	Multilateral Convention	10-07-2012	In force in Ghana
38	Gibraltar <sup>a</sup>	Multilateral Convention	Extended	In force in Gibraltar
39	Greece	DTC	16-02-2009	11-03-2010
		Multilateral Convention	21-02-2012	In force in Greece
40	Greenland <sup>e</sup>	Multilateral Convention	Extended	In force in Greenland
41	Guatemala	Multilateral Convention	05-12-2012	Not yet in force
42	Guernsey <sup>a</sup>	Multilateral Convention	17-04-2014	In force in Guernsey
43	Hungary	DTC	18-02-2008	15-12-2008
		Multilateral Convention	12-11-2013	In force in Hungary
44	Iceland	Multilateral Convention	27-5-2010	In force in Iceland
45	India	Multilateral Convention	26-01-2012	In force in India
46	Indonesia	Multilateral Convention	03-11-2011	In force in Indonesia
47	Ireland	Multilateral Convention	30-06-2011	In force in Ireland
48	Iran	DTC	10-03-2009	25-01-2010
49	Isle of Man <sup>a</sup>	Multilateral Convention	Extended	In force in Isle of Man
50	Italy	DTC	21-07-2004	28-04-2010
		Multilateral Convention	27-05-2010	In force in Italy
51	Japan	DTC	30-05-2005	11-04-2008
		Multilateral Convention	03-11-2011	In force in Japan
52	Jersey	Multilateral Convention	Extended	In force in Jersey
53	Jordan	DTC	05-05-2008	Not yet in force
54	Kazakhstan	DTC	16-09-1996	07-05-1997
		Multilateral Convention	23-12-2013	Not yet in force
55	Korea	DTC	19-05-2008	25-11-2008
		Multilateral Convention	27-05-2010	In force in Korea
56	Kuwait	DTC	10-02-2009	Not yet in force
57	Latvia	DTC	03-10-2005	19-04-2006
		Multilateral Convention	29-05-2013	In force in Latvia
58	Liechtenstein	Multilateral Convention	21-11-2013	Not yet in force
59	Lithuania	DTC	02-04-2004	13-11-2004
		Multilateral Convention	07-03-2013	In force in Lithuania



No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
60	Luxembourg	DTC	16-06-2006	02-07-2009
		Multilateral Convention	29-05-2013	In force in Luxembourg
61	Malta	Multilateral Convention	26-10-2012	In force in Malta
62	Mauritius	Multilateral Convention	23-06-2015	Not yet in force
63	Mexico	Multilateral Convention	27-05-2010	In force in Mexico
64	Moldova	DTC	27-11-1997	28-01-1999
		Multilateral Convention	27-01-2011	In force in Moldova
65	Monaco	Multilateral Convention	13-10-2014	Not yet in force
66	Montenegro	DTC	12-03-2013	04-11-2013
67	Montserrat <sup>a</sup>	Multilateral Convention	Extended	In force in Montserrat
68	Morocco	Multilateral Convention	21-05-2013	Not yet in force
69	Netherlands	DTC	22-09-2008	18-12-2009
		Multilateral Convention	27-05-2010	In force in Netherlands
70	New Zealand	Multilateral Convention	26-10-2012	In force in New Zealand
71	Nigeria <sup>f</sup>	Multilateral Convention	29-05-2013	Not yet in force <sup>b</sup>
72	Norway	DTC	24-04-1996	19-09-1996
		Multilateral Convention	27-05-2010	In force in Norway
73	Pakistan	DTC	10-04-1996	01-07-1997
74	Philippines	Multilateral Convention	26-09-2014	Not yet in force
75	Poland	DTC	26-08-1997	20-01-2005
		Multilateral Convention	9-7-2010	In force in Poland
76	Portugal	Multilateral Convention	27-5-2010	In force in Portugal
77	Qatar	DTC	28-08-2007	11-03-2008
78	Romania	DTC	29-10-2002	20-01-2004
		Multilateral Convention	15-10-2012	In force in Romania
79	Russia	DTC	03-07-1997	03-07-1998
		Multilateral Convention	3-11-2011	In force in Russia
80	San Marino	Multilateral Convention	21-11-2013	Not yet in force
81	Saudi Arabia	DTC	13-05-2014	01-05-2015
		Multilateral Convention	29-05-2013	Not yet in force
82	Serbia	DTC	13-05-2010	01-12-2010
83	Seychelles <sup>g</sup>	Multilateral Convention	24-02-2015	Not yet in force <sup>c</sup>

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
84	Singapore	Multilateral Convention	29-05-2013	Not yet in force
85	Sint Maarten <sup>b</sup>	Multilateral Convention	Extended	In force in Sint Maarten
86	Slovak Republic	Multilateral Convention	29-5-2013	In force in Slovak Republic
87	Slovenia	DTC	09-06-2011	10-09-2012
		Multilateral Convention	27-05-2010	In force in Slovenia
88	South Africa	Multilateral Convention	3-11-2011	In force in South Africa
89	Spain	DTC	23-04-2014	Not yet in force
		Multilateral Convention	11-03-2011	In force in Spain
90	Sweden	Multilateral Convention	27-10-2010	In force in Sweden
91	Switzerland	DTC	23-02-2006	13-07-2007
		Multilateral Convention	15-10-2013	Not yet in force
92	Tajikistan	DTC	13-08-2007	11-02-2008
93	Tunisia	Multilateral Convention	16-07-2012	In force in Tunisia
94	Turkey	DTC	09-02-1994	01-09-1997
		Multilateral Convention	03-11-2011	Not yet in force
95	Turks and Caicos Islands <sup>a</sup>	Multilateral Convention	Extended	In force in Turks and Caicos Islands
96	Ukraine	DTC	30-07-1999	03-07-2000
		Multilateral Convention	27-05-2010	In force in Ukraine
97	United Arab Emirates	DTC	20-11-2006	25-07-2007
98	United Kingdom	DTC	23-02-1994	29-09-1995
		Multilateral Convention	27-05-2010	In force in United Kingdom
99	United States	Multilateral Convention	27-05-2010	Not yet in force
100	Uzbekistan	DTC	27-05-1996	02-11-1996
101	Viet Nam	DTC	19-05-2014	11-11-2014

Notes: a. Extension by the United Kingdom.

b. Extension by the Netherlands.

c. Cameroon deposited its instrument of ratification on 30 June 2015, and the Multilateral Convention will enter into force on 1 October 2015.

d. Footnote by Turkey: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognized by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

e. Extension by Denmark.

f. Nigeria deposited its instrument of ratification on 29 May 2015, and the Multilateral Convention will enter into force on 1 September 2015.

g. The Seychelles deposited its instrument of ratification on 25 June 2015, and the Multilateral Convention will enter into force on 1 October 2015.

## **Annex 3: List of all laws, regulations and other relevant material**

### **Civil and commercial legislation**

Civil Code of the Republic of Azerbaijan (of 28 December, 1999, No. 779-IQ)

Law of the Republic of Azerbaijan on State registration and State registry of legal entities (of 12 December 2003; No. 560-IIQ)

Law of the Republic of Azerbaijan on Banks (of 16 January, 2004; No. 590-IIQ)

Law of the Republic of Azerbaijan on Insurance Activity (of 25 December, 2004; No. 519-IIIQ)

Law of the Republic of Azerbaijan on the Central Bank of the Republic of Azerbaijan (of 10 December, 2004; 802-IIQ)

### **Tax legislation**

Tax Code of the Republic of Azerbaijan (of 11 July, 2000; No. 905IQ)

### **Miscellaneous**

Law of the Republic of Azerbaijan on Accounting (of 29 June 2004; No. 716-IIQ)

Criminal Code of the Republic of Azerbaijan (of 30 December, 1999, No.787-IQ)

Code of the Republic of Azerbaijan on Administrative violations (of 11 July, 2000, No. 906-IG)

Constitution of Azerbaijan, 1995

Law of the Republic of Azerbaijan on combating legalisation of criminally obtained funds or other property and financing of terrorism (of 10 February, 2009; No. 767-IIIQ)

Law of the Republic of Azerbaijan on Advocates and Advocate's activity, 1999

Law of the Republic of Azerbaijan on Personal Information (of 11 may 2010; No.998-IIIQ)

Decree of the President of the Republic of Azerbaijan on improvement of regulations of granting special permissions (Licenses) for some types of Activities (Approved by the Decree No 782 of the President of the Republic of the Republic of Azerbaijan dated September 2, 2002)



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# Global Forum on Transparency and Exchange of Information for Tax Purposes

## PEER REVIEWS, PHASE 1: AZERBAIJAN

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. “Fishing expeditions” are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction’s legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

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