

- The unauthorized use of trademarks, names of companies or other branding, as well as copying the shape, packaging, or appearance of the goods of another legal entity;
- The unauthorized receipt, use, or divulgence of confidential information, including trade secrets;
- The unauthorized receipt, use, or divulgence of confidential research and development, production, or trade information (including commercial secrets), without the consent of the owner;
- Price-fixing and other acts designed to limit competition;
- Mergers of companies, designed to limit competition; and
- The restriction of consumers' rights by sole distributors of a product, by virtue of their market position.

15 SPECIFIC INDUSTRIES

15.1 Oil and Gas

15.1.1 Introduction

Subsoil resources such as oil and gas are the sole and exclusive property of the Azerbaijani state. Rights to engage in subsoil activity may be granted to Azerbaijani citizens and legal entities, as well as to foreign individuals and legal entities.

The main legislation regulating subsoil use in Azerbaijan is the *Law on Subsoil Resources* (the *Subsoil Law*).¹⁶ The *Subsoil Law* governs the exploration, use, protection, safety, and supervision over the use of subsoil reserves, located both within Azerbaijan and on the Azerbaijani sector of the continental shelf of the Caspian Sea. The *Subsoil Law*, therefore, implicitly endorses the sectoral division of the Caspian Sea, although disputes among the littoral states over the methods of the Caspian's division have not yet been resolved.

¹⁶ *Law No. 439-IQ of the Republic of Azerbaijan on Subsoil Reserves*, dated February 13, 1998.

15.1.2 Oil and Gas Legislation

In the absence of any specific oil and gas legislation in effect, the main legislative acts regulating the oil and gas industry in Azerbaijan remain the *Subsoil Law* and the *Law on Energy* (the *Energy Law*).¹⁷ A draft *Law on Oil and Gas* has been under review by working groups within the Government and the industry; this process, however, appears to have slowed considerably.

Azerbaijan is a signatory to the Energy Charter Treaty.

15.1.3 Licenses

Under the *Energy Law*, no person or legal entity may engage in oil or gas exploration and production without a special permit (apparently, an activity license) and an energy contract. Under the *Subsoil Law*, however, such rights are granted solely by the license without any reference to the contract. Licenses are awarded by tender, auction, or in exceptional cases, negotiation. Tenders may be open or closed, and licenses are available to foreign investors in the areas of exploration, production, or both.

Whereas a license for exploration may be issued for a term of up to five years, a license for production is issued for a period of up to 25 years. A combined license for exploration and production is issued for a period of up to 30 years. The effective terms of each of the exploration, production, and combined licenses may be extended, subject to the subsoil user's compliance with the terms of the license. Such extension may be granted for a term agreed between the subsoil user and the licensor. An existing license holder acquires a preemptive right upon obtaining the extension.

The *Subsoil Law* outlines the following requirements to be fulfilled by the subsoil user in order to obtain a license and operate thereafter:

- To win a tender or auction or, in exceptional cases, to directly negotiate the terms of a license;
- To secure the preliminary consent of the owner of the land situated above the subsoil structure;
- To obtain a license;

¹⁷ *Law No. 541-IQ of the Republic of Azerbaijan on Energy*, dated November 24, 1998.

- In the case of a production license, to submit technical plans for state expert evaluation and agree on the production lot size with the relevant agencies;
- To obtain the right to use the parcel of land situated above the subsoil structure;
- To obtain a permit for construction work to be performed in connection with the subsoil use;
- To register any subsoil use operations with the state registrar; and
- In the case of exploration, to obtain an expert evaluation by the relevant state authority, which is necessary with respect to conditions for availability of minerals, reserves of minerals, and information on subsoil structures suitable for underground construction not related to commercial recovery (production).

A license and the rights contained therein may not be assigned to third parties except as provided by Azerbaijani legislation. Succession of subsoil use rights or a change of the subsoil user's name will entail reissuance of a license.

Scientific research and all types of geological activity, environmental monitoring, and other similar activities do not need a license.

A license may be terminated in the following circumstances:

- Expiration of the term of the license;
- Withdrawal of the subsoil user from the project; or
- Revocation of the license by the licensor under certain conditions, including the liquidation of the subsoil user.

15.1.4 Contracts

The *Energy Law* provides that production rights to a specified lot (block) are granted on the basis of an “energy contract.” Energy contracts are signed between an authorized state body and a supplier, which has obtained a special permit.

Under the *Energy Law*, there are five types of energy contracts:

- Exploration Contracts;
- Production and Extraction Contracts;

- Contracts on Basic Energy Transportation;
- Contracts on Energy Distribution; and
- Contracts on Subsoil Warehouses.

The Law sets different terms for each of these contracts.

All major oil and gas projects to date have been undertaken on the basis of PSAs. While the regulations of the recently established Industry and Energy Ministry suggest that control of oil and gas matters is generally vested in this Ministry, the State Oil Company of the Azerbaijan Republic (“SOCAR”) continues to play an important role with respect to such matters.

Once a contract with a subsoil user is signed, the contract is then submitted to the National Assembly, which adopts a law on approval of the contract. This procedure is outlined in the *Foreign Investment Law*, which underpins the regulatory framework for PSAs.

15.2 Power

15.2.1 Legislation

The main legislative acts regulating the power sector are the *Law on the Use of Energy Resources* (the *Energy Resources Law*), dated May 30, 1996; the *Law on Electrical Energy* (the *Electricity Law*), dated June 13, 1998; and the *Law on Electricity and Heat Power Stations* (the “*Power Station Law*”), dated December 28, 1999. To satisfy the public’s need for electricity and gas, the President adopted the *State Program on Development of Fuel-Energetic Complex of Azerbaijan (2005-2015)*. To address the growing global concerns over air-polluting emissions, in 2004, the President approved the State Program *On the Use of Alternative and Renewable Energy Sources in Republic of Azerbaijan*.

Legislation on the Azerbaijan power sector has not yet been fully implemented. Many provisions of these laws merely outline the intentions of the state with respect to restructuring the power sector of Azerbaijan, and do not reflect its present real condition.

Under the *Electricity Law*, the energy system of the Republic of Azerbaijan should consist of:

- The State Electrical Enterprise,¹⁸ which operates transmission lines of more than 110 kV; dispatching centers; and energy production enterprises. The State Electrical Enterprise purchases energy produced by independent energy producers for its further transportation through its transmission network, and conducts interstate energy exchanges;
- Energy suppliers, which purchase electricity from the State Electrical Enterprise or other independent energy producers and sell it to consumers; and
- Independent energy producers, which are economically and organizationally independent legal entities and are not part of the common state electrical energy system. These producers generate energy and supply it to consumers directly through their own distribution networks or via the State Electrical Enterprise or energy suppliers. These entities may also export their power.

Within the framework of the “Memorandum of Understanding on a Strategic Partnership between the EU and the Republic of Azerbaijan in the field of Energy” signed on November 7, 2006, the European Union provides support to Azerbaijan in various levels aimed at the gradual convergence of European Union and Azerbaijan’s energy legislation and at the integration of their respective energy markets.

15.2.2 Elimination of the State Monopoly in the Power Sector

The state has undertaken steps to unbundle Azerenerji and to eliminate the state monopoly in the power sector, to create the above-described structure of the Azerbaijani power system. Pursuant to presidential orders, Azerenerji was instructed to transfer its distribution networks to private companies.

Until recently, the distribution networks of Azerbaijan (except those of the Naxcivan Autonomous Republic) were operated by private companies under long-term management contracts. Recently, all of these contracts have been terminated; the distribution networks are currently managed by state-owned companies.

The Azerbaijani power sector is a vertically integrated, publicly owned monopoly. Except for several small private hydro-power stations, the state currently owns all

¹⁸ Currently, the functions of a State Electrical Enterprise are performed by the state-owned JSC Azerenerji.

generating facilities and transmission lines of more than 110 kV through Azerenerji. Regional networks perform distribution and retail functions. In an effort to eliminate subsidies of electricity prices, the Government intended to permit independent power producers (IPPs) to build and operate new power stations in Azerbaijan and had negotiations with some major private players of international power market. The *Power Station Law* grants favorable conditions for the power projects of “national importance,” including the state “guarantees” for the construction of foreign-owned independent power stations. Currently, building and reconstructing power stations is financed from the state budget while multinational banks, such as World Bank and Asian Development Bank, also partly finance the power sector restructuring.

15.2.3 Licenses

Under the *Energy Law*, a foreign investor wishing to enter the power market must obtain a permit to do so and, thereafter, conclude a contract with the authorized state agencies to conduct the contemplated energy-related activities. However, only state-owned or state-controlled entities may engage in extracting, tolling, and producing oil, gas, oil products, and wastes of oil products.¹⁹

As a general rule, special permissions to carry out activity in the power sector are granted, and the contractors determined, on a competitive basis. The *Electricity Law* requires that individuals and legal entities obtain special permission for conducting activities in the generation, transportation, and distribution of electricity if not otherwise determined by law. The law provides that in certain cases permission may be issued without a tender by decision of the Ministry of Industry and Energy.

The *Electricity Law* also provides that high-tension installations cannot be constructed and put into operation without prior special permission unless otherwise provided by law.

All power projects and production, technological processes, services, facilities, and devices connected with or related to the use of energy resources and their production, transmission, and consumption, are subject to mandatory certification, i.e., confirmation of compliance with ecological, sanitary, fire, construction, and health and safety standards. Additionally, major projects as defined in the *Energy Resources Law* require a feasibility study by the state commission created for such purposes.

¹⁹ Presidential Decree No. 310 dated March 28, 2000, on *Improvement Measures on Issuing Special Permits (Licenses) to Certain Entrepreneurship Activities*.

15.2.4 Consumption and Distribution

Current Azerbaijani law provides that consumers have the right to choose any energy supplier regardless of its location. Energy is supplied under agreements between consumers and energy suppliers. Agreements on the sale and purchase, transportation, and exchange of electricity and heat must comply with the Rules on the Use of Electricity.²⁰ Energy consumption is subject to mandatory metering.

The procedure for disconnecting consumers from the network (or termination of power supply) is regulated by the Rules on the Use of Electricity, as well as by agreements with consumers. The suspension of a power supply or the disconnection of some consumers is prohibited. The list of such consumers is determined by an authorized state agency.

Under the *Energy Resources Law*, independent power generation facilities are granted the right to use the state-owned energy supply system in order to transport electricity. Distribution network enterprises are obligated to grant such access by tariff and under conditions established by law on a non-discriminatory basis. These enterprises, however, have the right to refuse to connect a consumer to the network in exceptional circumstances.

In order to transport and distribute electricity and heat to consumers within a certain area, it is necessary to conclude an agreement with the local executive authorities in addition to obtaining permission. Such an agreement specifies the particular area within which the distributor has the right to operate. The termination of operations stipulated in the agreement (without the consent of the state authorities) is prohibited.

15.2.5 Anti-Monopoly Regulation

Entities and facilities in the unified energy system engaged in power production, transportation, distribution and supply are considered to be natural monopolies, and their activities regulated by the state. Measures the state may take to regulate the activity of natural monopolies are not exhaustive.

²⁰ The Rules on Use of Electricity, approved by Decision No. 18 dated February 2, 2005.

The methods of regulating the activities of natural monopolies include setting prices and tariffs, determining which customers the natural monopolies must serve or are required to provide with minimum power supplies, reviewing investments made by natural monopolies, and issuing permits for effectuating certain types of transactions. The particular methods are determined and taken by the state with respect to each of the natural monopolies individually.

The following tariffs for electricity and heat are subject to state regulation:

- Tariffs for the purchase of electricity/heat by producers;
- Electricity/heat wholesale tariffs;
- Retail electricity/heat tariffs; and
- Import-export electricity tariffs.

The *Electricity Law* requires that tariffs cover all costs connected with the generation, transportation, and distribution of power and ensure the profitability of power enterprises and the development of the energy sector. Major chemical and aluminum producers and steel smelters enjoy discounts when they consume electricity more than certain threshold.

Tariffs are calculated by the power enterprises, set by the Tariff (Pricing) Council, and approved by the relevant state authorities.

15.3 Telecommunications

Telecommunications is an area of great potential growth in Azerbaijan. The *Law on Telecommunications*²¹ (the *Telecom Law*) is the main legislative act regulating the industry. Additionally, the *Law on Postal Service* was enacted on June 29, 2004.²²

Telecommunications services must be licensed. The Ministry of Communications and Information Technologies (the “Ministry of Communications”) is the agency authorized to issue express courier service and telecommunications service licenses.

²¹ *Law No. 927-IIQ of the Republic of Azerbaijan on Telecommunications*, dated 16 June 2004.

²² *Law No. 714-IIQ of the Republic of Azerbaijan on Postal Service*, dated 29 June 2004.

Generally, foreign legal entities and individuals must obtain a license to provide express courier services or telecommunication services on an equal footing with Azerbaijani nationals. Licenses are issued for a period of five years. However, this requirement may be waived on the basis of certain international agreements.

Under the *Telecom Law*, the state has exclusive ownership of all radio frequencies. It provides that the allocation and use of radio frequencies are subject to state regulation. The State Radio Frequencies Commission is authorized to issue radio frequency use permits to telecommunications businesses. This Commission also prescribes the rules and procedures for obtaining such permits and for operating at various frequencies.

The *Telecom Law* also recognizes the right of foreign individuals and legal entities to own and operate networks and devices in Azerbaijan. Such devices must be jointly certified by the Ministry of Communications and the Azerbaijan State Standards Agency and their subordinate bodies, as well as accredited test laboratories.

The *Telecom Law* requires equal treatment for all telecommunication operators, providers, users, and subscribers. Specifically, the law provides that all telecommunication operators and providers, without regard to their ownership structure, operate on an equal footing.

The *Telecom Law* introduces the concept of telephone numbering resources, and establishes certain rules in their allocation to telecommunication providers and operators. Specifically, it provides that the Ministry of Communications make such allocation on the basis of a contract with a telecommunication operator.

Foreign capital inflow into the telecommunications industry has evolved primarily in the form of joint ventures with the entities subordinate to the Ministry of Communications, which acts as both the ultimate partner and supervising authority. Such joint ventures are engaged in the production of telecommunications equipment and the operation of telecommunications facilities. However, under Presidential Instructive Order “On the Privatization of Certain Enterprises and Facilities of the Ministry of Communications of the Republic of Azerbaijan,” dated March 29, 2001, the Government announced its intention to privatize the state-owned share of joint ventures in which the Ministry of Communications and its subordinate enterprises and institutions have participated. In implementation of the said order, the state share in two major GSM operators has been privatized.

Five cellular communication providers operate in Azerbaijan, the first of which started its activity in 1994. Three of them provide GSM services. A number of cable TV providers and independent TV and radio channels operate in Azerbaijan.

The existing telephone network is being upgraded significantly. The provision of internet services and communication has been developing at a rapid pace and at affordable tariffs.

15.4 Construction

15.4.1 Legislation

Pursuant to Presidential Decree “On Measures to Eliminate Monopoly and Privatize the Construction Sector,” dated December 2, 1997, the state monopoly in the construction sector has been eliminated, and private persons may now engage in construction activities.

The main laws regulating construction are the *Law on the Basics of City Construction* dated June 11, 1999, and the *Civil Code*. Other legislation regulating construction includes: legislative acts of a general nature such as property, land, safety, environmental protection, fire and sanitary regulations; construction rules, norms and standards; and legislative acts regulating specific sectors where structures or facilities are constructed. The construction rules and standards of the USSR (GOST and SNIP) are still effective in Azerbaijan.

Pursuant to Presidential Decree “On Implementation of the Law ‘On the Basics of City Construction,’” dated August 30, 1999, the Cabinet of Ministers is obligated to adopt a number of regulations (including construction rules and standards), which are still pending.

15.4.2 Foreign Contractors

Foreigners and foreign legal entities may engage in construction works in Azerbaijan only in conjunction with Azerbaijani nationals or legal entities.

15.4.3 State Involvement

State involvement in the construction sector is extensive. Construction, reconstruction, and design (as well as issues relating to the location of a construction project) require a feasibility study by the state. A number of state authorities, such as the fire, the environmental protection, and the sanitary agencies, must issue their positive opinion on any proposed construction. Municipalities or local state executive authorities may issue decisions on the allocation of land for such construction, depending on the status of the land. Any construction, reconstruction, or alteration requires a state permit and the approval of construction documents by the relevant state authorities. The Ministry of Emergencies, the State Committee of Construction and Architecture, and local executive authorities within their competence grant such permits and approvals.

Additionally, (i) the preparation of construction project documents in connection with the construction of certain class buildings and structures requires a license from the State Committee of Construction and Architecture, and (ii) the construction and engineering of certain class buildings and structures require a license from the Ministry of Emergencies.

Apart from the usual permits, construction works in certain areas (such as cultural and historical reserves) require additional authorization by the state authorities.

Construction is deemed to be completed and can be utilized only after a state inspection has been performed and a certificate issued confirming that all construction, safety, fire, sanitary, hygienic, and other mandatory norms have been met.

Failure to observe construction regulations may create problems with registering ownership rights to the construction. The *Law on the Basics of City Construction* also provides for civil, financial, administrative, and criminal liability for violations of construction legislation.