

# World Universities Comparative Law Project

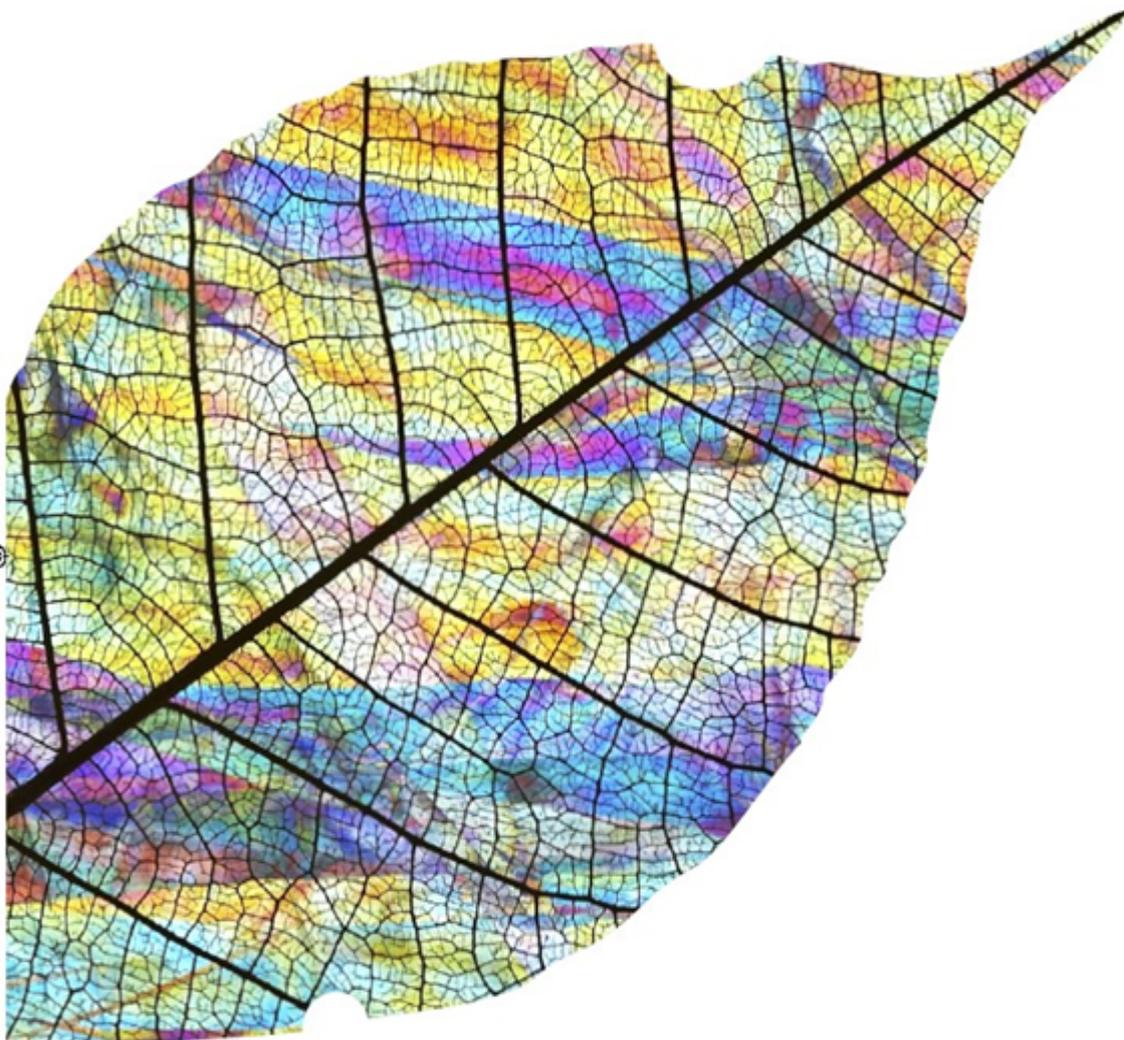
## Legal rating of Azerbaijan

carried out by students at Baku State University

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**A production of the Allen & Overy Global Law Intelligence Unit**

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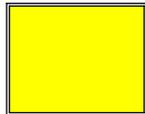
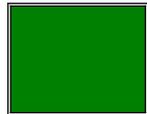


April, 2017

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**2017**



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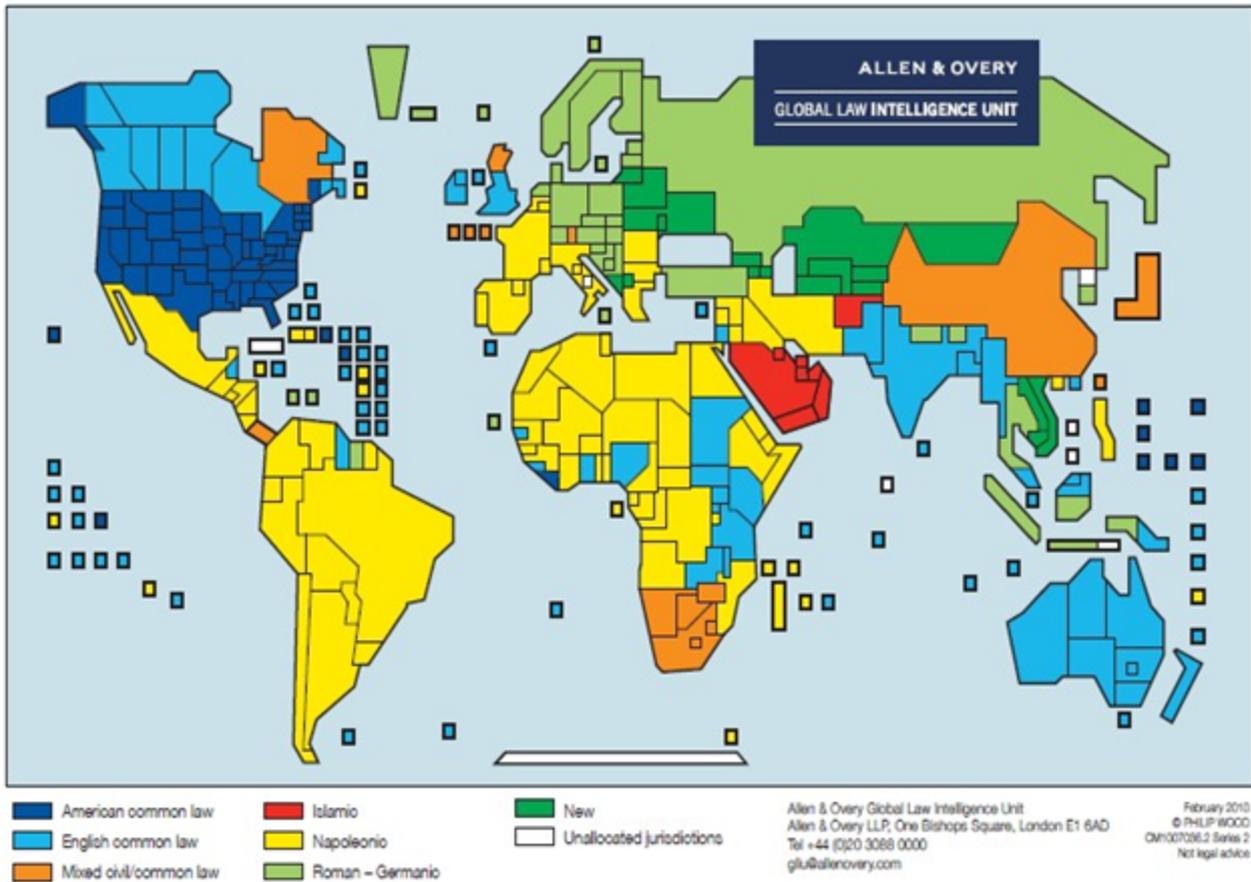
The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Azerbaijan was carried out by students at the University of Baku.

The member of the Faculty of Law at the University of Baku who assisted the students was Aygun Zeynalova, Adjunct Lecturer at Baku State University, Faculty of Law.

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

## Families of law



## Foreword

From its independence in 1918, Azerbaijan started to create the legislation framework which especially was updated during last years. In order to harmonize domestic law to European Union's standards, several projects have been implemented within governmental and non-governmental authorities.

This project has been completed by students of Baku State University. The European Law Masters Program started at BSU since September 2011. It helps to teach and prepare experts not only for practicing in Azerbaijan, but also for serving as legal experts in European Law in other countries of the region. The program was established in 2010 with the objective of training legal experts in the field of European Union Law. During 2010-2012 the program was offered only in English but since 2013 it is also available in the German language. The program is a double-degree program run jointly with University of Wurzburg, Germany with support of DAAD.

It was a great experience for young graduates to effect legal research on several aspects of domestic law, especially for those who wish to practice financial and corporate law.

### **Aygun Zeynalova**

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# Description of the legal rating method

## Introduction

This paper assesses aspects of the law in Azerbaijan with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

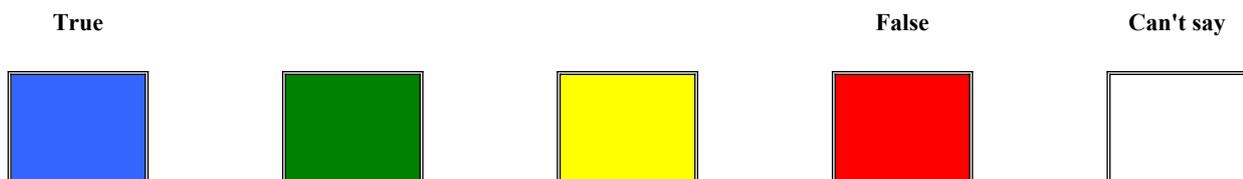
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at the University of Baku. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of the University of Baku, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

## Methodology

The survey uses colour - coding as follows:



**Blue** generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

**Red** generally means that there is intense legal intervention, usually in the form of a prohibition.

**Green** and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Azerbaijan. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

## Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

## Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

## Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

## Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit ratings or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

# Banking and finance

## Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, i.e. on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

## Insolvency set-off

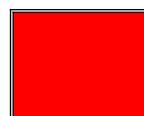
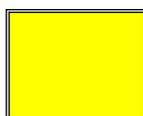
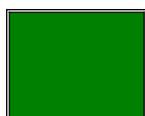
**Generally** If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

**Q1** In Azerbaijan, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True



False



Can't say



## Comment

In accordance with the Law on Insolvency and Bankruptcy of the Republic of Azerbaijan, claims of creditors may be satisfied either by way of withdrawal of debt sums due to debtor and sale of assets constituting property of debtor and distribution of returns from such sale of debts among the creditors, or by way of direct transfer of assets constituting property of debtor to creditors as coverage of their claims.

Distribution of assets which constitutes the property of debtor should be done. All costs and expenditures on the process of bankruptcy are paid firstly. Then claims of employees of debtor are to be paid with regards to body injuries or death which occurred during working hours. In the third place shall be paid claims of employees of insolvent debtor with regards to pensions, allowances, privileges and wages. Taxes to state and local budgets, deductions to obligatory state social insurance, claims of unsecured creditors, claims of owners of the enterprise-debtor are paid at the last term.

## Security interests

**Generally** Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

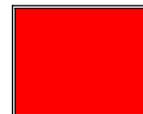
The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

**Q2** In **Azerbaijan** the law offers a security interest which is highly protective of the secured creditor.

True



False



Can't say



### Comment

The most widespread methods of providing a protection of creditor's interest (monetary or other) in Azerbaijani legislation according to Civil Code of the Republic of Azerbaijan are pledge and mortgage (hypothec). Pledge and hypothecation right shall consist of restriction of property rights.

Pledge and hypothecation shall arise on the basis of agreement. Article 269.7 of Civil Code of Azerbaijan determines that in respect of obligation guaranteed by pledge and mortgage, creditor (pledgee and mortgagee) shall, in case of non-execution by debtor of that obligation, have the right to receive satisfaction from value of pledged or hypothecated property senior to other creditors of person (pledgor or mortgagor) owning that property. Pledgee (mortgagee) shall have the right to receive the satisfaction from insurance payment for loss or damage to pledged or hypothecated property regardless of the fact in whose favour insurance is made, if only the loss or damage has not occurred by the fault of pledgee or mortgagee.

Along with pledge and hypothecation, chapter 24 of Civil Code of the Republic of Azerbaijan provides other methods of the Obligations Performance Assurance, such as forfeit, withholding, warranty, guarantee, deposit and any other means provided by agreement.

## Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

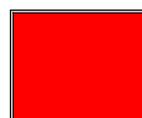
All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

**Q3** Azerbaijan has a universal trust for all assets.

True



False



Can't say



### Comment

The legal system of Azerbaijan on the first years of independency was mostly similar to the legal system of Soviet Union, and nowadays it has many similarities to the legal system of Russian Federation. The Civil Code of the Republic of Azerbaijan refused the trust concepts as it is in Anglo-American legal system and highlighted the concept of trust management, which have some common elements of the trust system.

The main difference between them is in distribution of ownership rights. In trust concept the grantor loses his ownership rights on the trust, neither the trustee has ownership rights. It can be said that the trust is an independent owner, inextricably linked to its grantor and beneficiaries. Civil Code of the Republic of Azerbaijan states that: "Owner shall be entitled to transfer their property into trusteeship of another person (trust management). Such transfer of property shall not entail transfer of ownership rights to the recipient of property under trust management, who shall be obliged to manage such property in the interests of the owner or relevant third party". According to this article, the ownership rights in all matters remains for owner of the property.

Accordingly, in Azerbaijani legislation the trustee could have the right to possess, use or dispose of the property, but not all three elements at the same time, because all together they form an ownership right.

The Civil Code of the Republic of Azerbaijan also contains the order agreement, where the person who undertakes to execute the order (the authorized) undertakes to fulfil deals, work and other services ordered by the other person (the authorizer), without guaranteeing achievement of concrete result. Under the Trust Agreement trustee receive broad powers to property management. At the same time, in order agreement, even if the order is reduced to the disposition of the property, an attorney strictly fulfils the will of the principal.

## Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

## Corporations

### Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, e.g. shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

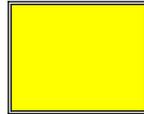
### Director liability for deepening insolvency

**Generally** If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

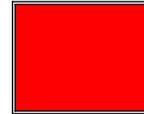
There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

**Q4** In **Azerbaijan** the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True



False



Can't say



**Comment**

The civil legislation of Azerbaijan sets different reasons for liquidation of legal entity, one of which is liquidation due to bankruptcy. In that case, when the legal entity is insolvent (unable to satisfy the claims of creditors), such legal entity shall be declared bankrupt by judicial decision. The Law on Bankruptcy of the Republic of Azerbaijan does not determine any rule that directors must file for insolvency when the company is insolvent.

In case of insolvency, the petition of creditor (creditors) or debtor to the court shall be deemed to be a basis for bankruptcy proceedings to begin after an appropriate judicial decision. The fact of insolvency shall be confirmed either by debtor himself or the court or creditors. Once a legal entity is bankrupt proved by such a judicial decision, only thereafter arises the responsibility of legal entity (founders, participants) to inform the State registration authority about a resolution to liquidate a legal entity. Such authority shall make entries in the state register of legal entities that the legal entity is in process of liquidation.

However, in accordance with the Law on Bankruptcy of the Republic of Azerbaijan, the issues when the solvent debtor (debtors) begins the procedures of false bankruptcy or intentionally brings himself to bankruptcy can cause to calling to account of persons being responsible for the abovementioned actions in accordance with the legislation.

**Financial assistance to buy own shares**

**Generally** Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

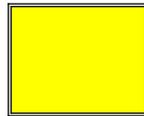
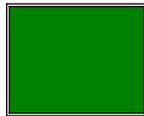
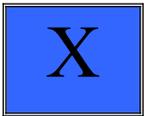
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

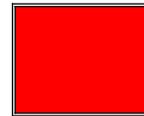
A contravening transaction is usually a criminal offence and void.

**Q5** Azerbaijan permits a company to grant financial assistance for the purchase of its own shares.

True



False



Can't say



### Comment

Our legislation does not prohibit this action absolutely. According to Civil Code of the Republic of Azerbaijan in the event of sale to third person of share in common shared ownership right, the remaining owners of shared ownership shall have pre-emptive right of purchase of share on sale at sale price and other equal conditions. Seller of share shall give written notice on his intent to sell his share to third person by indicating price and other conditions of share to the remaining owners of shared ownership. Seller may sell his share to any person after a certain time in the event the remaining owners of shared ownership refuse from purchase of share of immovable property sold in right of ownership.

### Public takeover regime

**Generally** A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

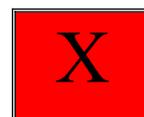
The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

**Q6** Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in **Azerbaijan** is open and has few restrictions.

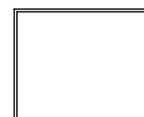
True



False



Can't say



### Comment

The public takeover regime is regulated by the Law on public Procurement of the Azerbaijan Republic. The main restrictions according to law is connected to the tenders of the procurement Agency.

The law determines the rules of tender offer, and stipulates which individual and legal entities could take part in the tender offer.

It states that except as provided in regulations governing public procurements, all resident and non-resident legal or natural persons or legal entities, irrespective of the unity of the state, can participate as a bidder in

the public procurement procedures in the Republic of Azerbaijan. These articles bring to the conclusion that there are not specific restrictions to foreign direct investments and participation.

According to law, prices in tender proposals of individuals and legal entities are made in AZN (Azerbaijani manat). Tender proposals of foreign legal entities and individuals must be mentioned in convertible currency, according to the exchange rate set by the Central Bank by the last day of submission of tender proposals.

## Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

## Commercial contracts

### Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

### Exclusion of contract formation

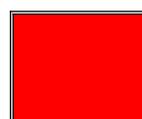
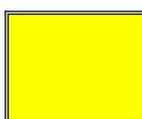
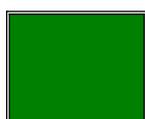
**Generally** Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

**Q7** In Azerbaijan, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True



False



Can't say



### Comment

In Azerbaijan, parties are not bound to heads of terms if they expressly state that the terms are “subject to contract” or some such clear phrase (expression of will, concept of pre-contractual relationship under Civil Code).

A contract shall mean an agreement between two or several parties on the establishment, modification or termination of the civil rights and obligations. Civil Code of the Republic of Azerbaijan determines freedom

of contract, private persons and legal entities shall be free to enter into contracts and determines the content thereof. Unless otherwise is stipulated under legislation, the deal made with violation of requirements to the form established under legislation or mutual consents of parties, shall be deemed invalid. Agreements shall be concluded in oral or written (simple or notarized) form. Nobody can be forced to conclude a contract.

Under a preliminary contract the parties shall be obliged in future to enter into an agreement on property transfer, works or services performance (main agreement), under the terms envisaged by a preliminary contract. The preliminary contract shall be made in a form set forth for the main agreement. The preliminary contract must contain the terms, allowing to determine the subject and other material features of the main agreement.

## Termination clauses

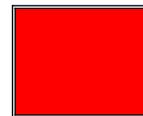
**Generally** Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

**Q8** In **Azerbaijan**, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True



False



Can't say



### Comment

The Azerbaijani Civil Code states that “Amendment and dissolution of the contract shall be possible upon the parties agreement, if nothing otherwise is stipulated in this Code or in the contract”. The contract can be amended or dissolved, under the request of one of the parties, in the event of material violation of the contract by the other party or if there is significant change of circumstances, which the parties accounted for in the course of entering into contract. The change of circumstances and the material violation of the contract shall be deemed significant, if they have changed to such an extent, that if the parties had been able to reasonably predict them, they would have not entered into the contract or the contract would have been made under significantly different terms. If a material violation by one of the parties of the contract served as the ground for its change or dissolution, the other party shall be entitled to claim damages, caused by the change or dissolution of the contract.

At the same time, there are provided some special termination clauses in loan agreement. The Code provides basic way of termination of loan agreement, by return of borrowed money amount. Civil Code states that if the property condition of borrower becomes worse significantly, and this causes a danger for return of loan, creditor may require its immediate return. This right is also valid if creditor’s property condition becomes worse before conclusion of agreement and for creditor it is valid only when it becomes known to creditor upon conclusion of loan agreement”.

Borrower and creditor are having the right to terminate the agreement respectively, but ways of termination of the contract are not immediate: the termination could come into effect providing term of termination notification which must be observed from one till 6 months.

According to the Civil Code of the Republic of Azerbaijan, there are several conditions of termination, regarding the contracts of buying and selling of goods. The buyer could refuse the contract if seller refuses to transmit the sold article to buyer, or if there is defect in the sold article. The Civil Code does not clarify which of these conditions could be ground for the immediate determination of the contract.

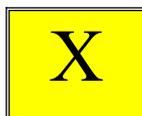
Considering mentioned above points it could be stated that in Azerbaijan, a termination clause providing termination of the contract immediately on certain events is usually upheld, basing on the law or contract. It could be also mentioned that termination clauses in loan contract are less trivial than in sale of goods contract, and respectively, the rules on the notification before termination are stricter in first than in second.

### Exclusion clauses

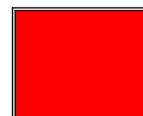
**Generally** Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

**Q9** In Azerbaijan, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True



False



Can't say



### Comment

The Civil Code of the Republic of Azerbaijan in some cases establishes exclusion of liability of debtor for non-performance of contractual obligations. The debtor shall not be liable for the violation of the obligation, if he proves that the violation was caused by the circumstances beyond his control and that he was not able to take into account thereof at the time of entering the agreement or wait until he can exclude or eliminate the said circumstance and the consequences thereof. If the debtor knows or is supposed to know of the obstacle, then he is obliged to notify the creditor immediately of the said obstacle and of its influence over the ability to perform. If the creditor did not receive the immediate notification, then the debtor shall be liable for the damages caused thereto in connection with the failure to receive the timely notification.

The law may limit the right for complete compensation of losses under certain obligations and under obligations relating to certain types of activity (limited liability). An arrangement on the limitation of the debtor's liability under an attached or other agreement, in which the creditor is a private person acting as a consumer, shall have no value, if the extent of liability for the said obligation or the said violation, is not established by Civil Code, or the agreement was made prior to the appearance of the circumstances, resulting in the liability for the non-performance or improper performance of the obligation.

## Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

## Litigation

### Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

### Governing law clauses

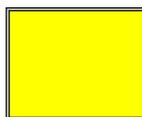
**Generally** Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

**Q10** The **Azerbaijani** courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Azerbaijani public policy and mandatory statutes.

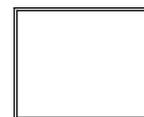
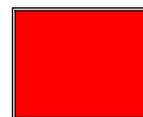
True



False



Can't say



### Comment

The Law of the Republic of Azerbaijan on Private International Law determines the law to be applied in civil legal relations with foreign element. The applicable law should be clearly expressed by the agreement of the parties and should come from terms of the agreement and circumstances of the case as a whole.

The main point should be noted in this respect is that the foreign law which is contrary to the Constitution of Azerbaijan and acts adopted by referendum does not apply in the Republic of Azerbaijan in accordance with Article 4 of Law on Private International Law. The provisions of this Law shall apply in civil law deals concluded by the state, if it is not in connection with performance of its sovereign functions.

In cases not related to the issues mentioned above, the Law provides the right of choosing the applicable law by the agreement in accordance with the Article 24 of Law on Private International Law. The determination of rights and obligations of the parties, the interpretation of contract, execution, non-execution, termination, the results of failure to properly execute and invalidity, as well as the assignment of contractual requirement and transfer of the debt shall be governed by the law chosen by the parties.

The contracting parties can choose the law both to contract as a whole and for its individual parts. The applicable law can be chosen by parties at any time including the time after the signing the contract. The parties to contract may at any time agree to change the applicable law as well. Choosing the law by the contract, which resulted in failure to apply the imperative norms of the State, is deemed to be invalid.

### Foreign jurisdiction clauses

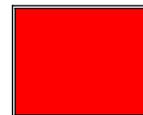
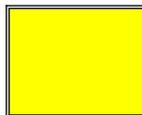
**Generally** Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

**Q11** The **Azerbaijani** courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True

False

Can't say



#### Comment

According to the Code of Civil Procedure of the Republic of Azerbaijan the courts of Azerbaijan shall have the exclusive jurisdiction for cases relating to property right over immovable property including claims in respect of lease or pledge of the property, where property being their subject matter is located on the territory of the Azerbaijan Republic; cases relating to recognition of validity or invalidity of legal entity and dissolution of legal entity or repeal of its decisions, where legal entity has legal address (place of location) in the Azerbaijan Republic; cases relating to claims in respect of recognition of validity of patents, marks or other rights, where registration or application for registration of these rights has been carried out in the Azerbaijan Republic; resolution relating to obligatory enforcement actions issued in the course of court review, where it has been raised or enforced in the Azerbaijan Republic; cases relating to claims against carriers arising out of carriage contracts; cases relating to dissolution of marriage of citizens of the Azerbaijan Republic with foreigners or stateless persons, where both spouses have place of residence in the Azerbaijan Republic.

Regardless of absence of jurisdiction of court of the Republic of Azerbaijan, parties may come to an agreement in respect of international jurisdiction of court of the Azerbaijan Republic. Such agreement shall be in written form. In the event one of the parties has place of residence, place of business or place of usual location in foreign country, parties may come to an agreement concerning international jurisdiction of foreign court.

Breach of rules of territorial jurisdiction is not permitted. Parties are entitled to change territorial jurisdiction of the dispute further to their agreement. Such an agreement may be made in the event of such agreement relying upon a certain court case on a dispute. However, these provisions shall not apply to cases of exclusive jurisdiction.

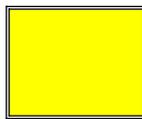
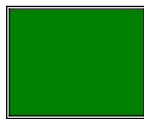
In the absence of agreement about the applicable law between the parties to contract, in a contract of sale of goods, one applies the law of the country of the seller's establishment, residence or place where it operates; in a loan contract – the lender's respectively.

## Arbitration recognition

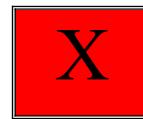
**Generally** Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

**Q12** In Azerbaijan, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Azerbaijani courts.

True



False



Can't say



### Comment

The Code of Civil Procedure of the Republic of Azerbaijan states that except as otherwise provided by the inter-governmental agreements, international agreements or agreement of parties, court shall hear cases with participation of foreigners, stateless persons and foreign legal entities. If the jurisdiction of the case is provided by the inter-governmental agreements, international agreements or agreement of parties in different way, the Court will not accept the case for consideration. According to the law, the dispute between sophisticated contracting parties could be solved in foreign arbitral tribunal if there is a foreign element. The Courts of the Azerbaijan Republic shall have international jurisdiction in respect of civil and economic disputes only where any of persons participating in the case is a foreign person having his place of residence, place of location or place of usual attendance in the Azerbaijan Republic.

Besides that, there is a general rule that claim shall be submitted to court at place of legal registration of respondent. The Court could apply that rule if the jurisdiction is not regulated by the contract.

The Code is also containing point about exclusive jurisdiction. According to it, there are special situations when the case must be resolved according to the Azerbaijani jurisdiction.

At the same time, the Law of international arbitration of the Republic of Azerbaijan states that: “A court to which a claim has been brought on the matter related to the subject of an arbitration agreement shall, not later than the moment of submission of initial claim on the substance of the dispute by any of the parties, send the parties to arbitration, if there is a relevant request from the parties, if the arbitration agreement is not invalid, or if there are no inexecutable cases”. The law does not describe which arbitration could be selected.

Generally speaking, the Court of the Azerbaijan Republic could not allow sophisticated parties to submit contract disputes to a foreign court, with exclusion of the Azerbaijani courts, but it could state that the case is not under its jurisdiction, and the situation with foreign arbitral tribunal is not clearly defined in the legislature.

## Class actions

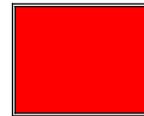
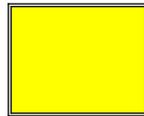
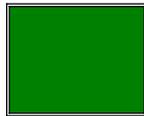
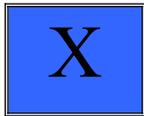
**Generally** In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

**Q13** In **Azerbaijan**, class actions where the class is bound if they do not opt out are generally not allowed.

True

False

Can't say



**Comment:**

According to the Code of Civil Procedure of the Republic of Azerbaijan claim may be brought jointly by several claimants or against several respondents. Each and every claimant or respondent shall participate in court individually and independently. Joint participants shall have the right to assign the conduct of a case to one of such participants. Where it is necessary to bring another respondent into proceeding, court shall have the right, prior to issue of a resolution and following consent of claimant, to bring such respondent into the proceeding.

**Other indicators**

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

**Real property**

**Ownership of land**

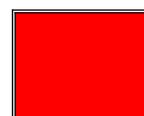
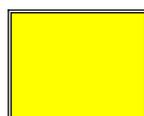
**Generally** In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

**Q14** In **Azerbaijan** nationals and local corporations are entitled to own land absolutely.

True

False

Can't say



**Comment**

According to the Land Code of the Republic of Azerbaijan citizens and legal entities of the Azerbaijan Republic can acquire land plots on the rights of ownership, use and lease. A land plot is provided to an

owner, user or lessee of the land in accordance with its designation and legal status established for this land plot.

The right of private individuals and legal entities to private land ownership is the right to own, use and dispose of lands while observing limitations and other conditions established by law and an agreement. There are some restrictions in the ownership of the land, depending on its designation and legal status. Rules and limitations established for each category of land plot shall apply to identical lands attributed to many categories. In the event of dispute with regard to the legal status of a land plot, preference shall be given to the land category possessing a stricter legal status. The rules for land use within categories shall be established by owners, users and lessees in accordance with documents on natural and economic division into regions, zones, territorial planning, use and land structure.

Categories of land are reflected in the decision of a relevant body of executive authority or municipality on the provision of land, documents on the state land cadastre, books of land registration and other documents indicated in the Land Code.

According to the points listed above it could be stated that nationals and local corporations are entitled to own land, but not absolutely. The possibility of the ownership to the land plot depends on its legal status and designation.

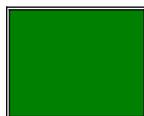
## Security of land title and land registers

**Generally** Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

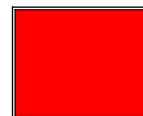
Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarized and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

**Q15** Most land in **Azerbaijan** is registered in a land register which records most major interests in land, e.g. ownership, mortgages and longer-term leases.

True



False



Can't say



### Comment

In Azerbaijan state registration of rights to land shall be carried out in an order established by legislation by means of the register of immovable property.

State registration of rights emerging with the acquisition of land plots owned by the state and municipality, as well as the rights acquired as a result of transactions pertaining to land plots and other immovable property is mandatory. The state does not guarantee protection and inviolability of rights to land plots which have not been registered.

The state registration of lease and use rights on real estate of more than eleven months is to be registered by the state. Each party can put in an application for state registration of lease or use rights on real estate. The lease (use) right on real estate shall be registered in the state register on the request of the relevant

executive authority having the competence to conclude the contract on lease (use) right on real state estate. The form of application shall be determined by the relevant executive authority.

In accordance with the civil legislation of the Republic of Azerbaijan agreement on mortgage of immovable property shall be registered in the state register of immovable property, whereas agreement on mortgage of movable property shall be registered in the official register of movable property subject to state registration.

### Land development restrictions

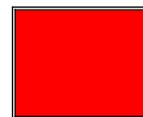
**Generally** Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

**Q16** In **Azerbaijan**, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True



False



Can't say



#### Comment

According to the Code on Lands and Code on Urban Planning and Construction, in order to carry out the construction, a person would be required to obtain an official permit from relevant state authority. However, the Code on Construction specifies the list of buildings which can be constructed without such permission. Generally, the construction requirements would be defined depending on types of lands (agricultural, industrial lands etc.)

### Other indicators

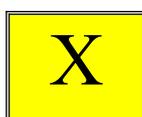
Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

### Employment law

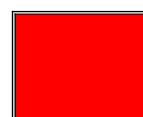
**Generally** The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

**Q17** In **Azerbaijan**, there are few controls on hiring and firing employees or on the terms of employment.

True



False



Can't say



**Comment:**

**HIRING:** In Azerbaijan in accordance with the Labour Code a person who has reached the age of fifteen may be a party to an employment contract. A person considered to be disabled as established by legislation may not sign an employment contract. Employees under age of 18 are given employment only after passing medical examinations and until they reach age of 18 they must be medically examined every year with expenses paid by the employer. An employment contract shall be executed in writing either without specified term (unlimited) or for a period up to 5 years (term).

An employment contract may also be executed for a trial period in order to examine an employee's professional qualifications and ability to perform. The probationary period shall not be more than 3 months. The probation period is not established at the conclusion of the employment contract with persons under 18 years of age; with persons took up the position on competition; with pregnant women and women with a child of age under three years, as well as men, independently raising a child under the age of three years; with persons recruited for the first time in the specialty (profession) at the end of the educational institution; the persons elected to the paid elective position; persons who have concluded an employment contract for up to two months; and in other cases determined by agreement of the parties.

**FIRING:** An employment contract in Azerbaijan may be terminated only on the grounds and in the manner prescribed by the Article 68 of Labour Code of the Republic of Azerbaijan.

Grounds for termination of an employment contract are as follows:

- a) the initiative of one of the parties;
- b) expiration of the employment contract;
- c) amendments to the terms and conditions of employment;
- d) cases related to a change in the ownership of an enterprise (employment contracts of the employer (manager) or his deputies, senior accountant and other division managers who are fulfilling direct managerial functions may be terminated or in the manner prescribed in Article 56 of Labour Code the terms of their employment contracts can be changed).
- e) cases not depending on the will of the parties;
- f) cases established by the parties in the employment contract.

An employee may terminate an employment contract by notifying the employer in writing one calendar month in advance. An employee who has submitted notice of termination of his employment contract shall be entitled to rescind this notice or submit a new application to the employer to cancel this notice within the term of notice. In this case the termination shall not be allowed and the employment contract shall not be terminated, provided that the employer has not submitted written notice to the employee concerning another employee's involvement in said position (profession).

An employment contract may be terminated at the employer's initiative in the following cases: a) the enterprise is liquidated; b) there is a personnel cutback at the enterprise; c) a competent body decides that the employee does not have the professional skills for the job he holds; d) the employee does not fulfil his job description or fails to perform his duties as defined by the employment contract and job description; e) the employee failed to acquit himself well during trial period; f) when an employee of state-funded enterprise reaches the limit of working age.

An individual employment contract shall be terminated independent of the will or wishes of the parties in the following cases:

- a) the employee is called for military or alternative service; b) the person who held the job previously is reinstated by a legally valid court ruling; c) the employee cannot perform his job for more than six months because of full and permanent disability unless the law sets a longer period; d) a court

sentences the employee to prison or corrective Labour at the place where he shall serve his sentence, or other punishment precluding his presence on the job (except in cases of conditional conviction and deferred punishment); e) the employee's incompetence is confirmed by a court decision that has taken legal effect; f) the employee dies g) when employee, previously worked in the enterprise, wants to use the right to return to his workplace after reserving his mandatory military service.

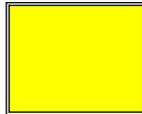
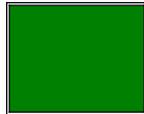
The employer shall be prohibited from terminating the employment contracts of the following individuals

- pregnant women and women with children under age three;
- employees whose only income source is the enterprise where they work and who are bringing up children under school age alone;
- employees temporarily disabled;
- individuals because they are members of trade unions or other political parties;
- employment contracts for individuals on vacation or on a business trip or engaged in collective bargaining may not be terminated on the basis of the grounds for termination of an Employment Contract at the Employer's Initiative.

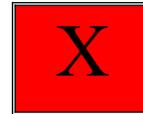
## Environmental restrictions

**Q18** In Azerbaijan the rules governing the environment and liability for clean-up are very light and relaxed.

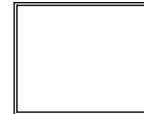
True



False



Can't say



### Comment

The protection of lands consists of a system of legal, organizational, economic and other measures implemented with the aim of their rational use, prevention of unfounded withdrawal of the most valuable lands from the turnover of agricultural and forest economy, protection from hazardous natural and man-made impacts, and restoration and increase of fertility of lands and the forest fund. Protection of land envisages protection of the nature with due consideration of zonal and regional peculiarities on the basis of a comprehensive approach to them as complex natural (environmental) systems. It also envisages saving of natural resources and preservation of lands, restriction of a hazardous impact on the vegetation and animal world, geological formations and other components of the environment.

While providing the land plots owned by the state or a municipality for use and lease (sale) there could be introduced limitations and obligations on compliance with the requirements on nature protection, protection of the animal world on the land plot, preservation of the fertile layer of the soil, rare plants, natural, geological, cultural-historical monuments and archaeological sites. The land plot could be terminated in case of failure to prevent, during use, deterioration of quality and erosion of land, pollution of it with chemical and radioactive substances, swamping, repeated salinization, and breach of regulations while operating melioration and irrigation systems, pollution of the environment. Owners, users and lessees of land are having responsibilities to preserve the boundaries existing on the land plot, as well as natural monuments, geological images, geodetic pillar stations and signs, meteorology networks and measuring facilities, as well as melioration and irrigation systems.

The Code of the Administrative Violations of the Republic of Azerbaijan is providing penalties for each kind of violations of the environment. The penalties differs in each situation and depends on the legal status of perpetrator, and could vary from several hundreds AZN up to 40000 AZN.

According to mentioned above it could be stated that liability for environment violations are not light, and on the contrary have severe punishment for the offence.

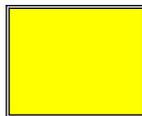
## Openness to foreign business

**Generally** These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

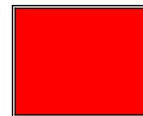
### Foreign direct investment

**Q19** In **Azerbaijan** foreigners may freely own and control local companies outside protected industries, such as media, banks and defense.

True



False



Can't say



### Comment

Foreigners and stateless persons intending to reside temporarily and engage in paid labour activity on the territory of the Republic of Azerbaijan should obtain a work permit in addition to the temporary residence permit. Work permit is an official document authorizing foreigners and stateless persons to engage in paid labour activity on the territory of the Republic of Azerbaijan. Issuance of a work permit is conducted within the framework of labour migration quota approved by the relevant executive authority. The quota is defined taking into account the situation of domestic labour market, demand for manpower, existence of vacancies which are not applied by the citizens of the Republic of Azerbaijan with professional skills and qualifications relevant for requirements of the job, ability of employment service bodies to meet requirements of employers for manpower at the cost of local labour resources, as well as necessity of attracting highly qualified foreign specialists.

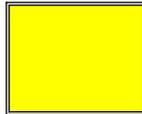
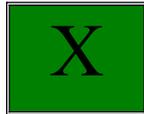
Enterprises with foreign investments might exercise any kinds of activity if they have not been prohibited by legislative acts of the Azerbaijan Republic. Some kinds of activity might be accomplished by the enterprises with foreign investments only after obtaining special permit (license).

Legislative acts of the Azerbaijan Republic might determine territories whereon the activity of the enterprise with foreign investments is restricted or prohibited from the point of view of defence and national security and protection of the environment and of population.

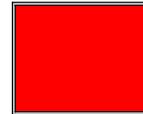
## Exchange controls

**Q20** In **Azerbaijan**, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True



False



Can't say



### Comment

Foreign exchange transactions are governed by the Law “on Currency Regulation”. The Central Bank of Azerbaijan (the “Central Bank”) administers the overall enforcement of currency regulation.

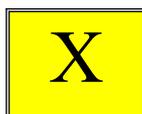
Residents and non-residents in the Republic of Azerbaijan may have foreign currency accounts in authorized banks. If not otherwise specified by the Central Bank of the Republic of Azerbaijan resident enterprises and organizations must transfer foreign currency they acquired to their accounts in authorized banks. The Central Bank of the Republic of Azerbaijan establishes the procedure of opening and use of these accounts.

No limits are set on current operations with currency to be carried out by resident legal entities. The information on the amount of funds, date, person and country, the source of money brought in, shall be presented by customs authorities to the Central Bank of the Republic of Azerbaijan, the financial monitoring authority and relevant executive authority within 7 (seven) days, provided that the amount of currency resources exceeding the equivalent of USD 50.000 (fifty thousand) is brought into the Republic of Azerbaijan by resident and non-resident individuals. Resident and non-resident individuals may remit from the Republic of Azerbaijan currency resources not exceeding the equivalent of USD 50000 (fifty thousand) previously brought into the Republic of Azerbaijan in cash on the basis of custom documents in evidence thereof. When transferring currency resources in the amount exceeding the equivalent of USD 50000 (fifty thousand) from the Republic of Azerbaijan, previously brought into the Republic of Azerbaijan in cash, resident individuals should submit a certificate, confirming delivery of such funds in cash by a relevant bank or other credit institution of the country wherefrom the currency was brought.

## Alien ownership of land

**Q21** In **Azerbaijan**, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True



False



Can't say



### Comment:

The land in Azerbaijan according to the Land Code of Azerbaijan Republic is given to the private ownership to citizens and legal entities of Azerbaijan Republic. Foreigners and stateless persons, foreign legal entities,

international associations and organizations, as well as foreign states can get plots of land in the Republic of Azerbaijan only on the basis of right of lease.

The ownership of the land passed to foreign legal and natural persons through inheritance, donation and mortgage may be alienated for a year in accordance with the legislation of the Azerbaijan Republic. In case when foreign legal entities and individuals have not alienated the right of ownership over the land in accordance with the legislation of Azerbaijan Republic, the relevant executive authority or municipality compulsory purchases the land, in the manner prescribed by the Land Code.

By the right to lease land plots are given to citizens and legal entities of Azerbaijan Republic, foreigners and stateless persons, foreign legal entities, international organizations and associations, as well as to foreign states.

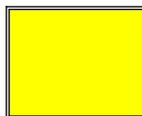
As the lessor of state-owned land stand out the relevant executive bodies, of city-owned land - the municipalities, of private property lands – the owners of those lands. The conditions, term and amount of lease are determined on the basis of agreement between the parties and enshrined therein in accordance with the legislation of Azerbaijan Republic.

## Application of the law

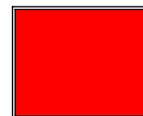
**Generally** These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

**Q22** In Azerbaijan, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True



False



Can't say



### Comment:

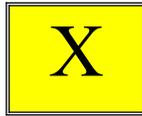
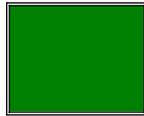
In accordance with the Code of Civil Procedure of the Republic of Azerbaijan all physical persons and legal entities shall, in accordance with procedure specified by law, be entitled to exercise the right to appeal to court for protection of their rights and freedoms, as well as for protection of guaranteed by law interests. Waiver of the right of appeal to court shall be null and void.

Foreigners and stateless persons, foreign legal entities and international organisations shall have a right to appeal to courts of the Republic of Azerbaijan for protection of their violated or disputed rights and interests protected by law. Foreign persons shall enjoy procedural rights and bear procedural obligations equal with procedural rights and obligations of citizens and legal entities of the Republic of Azerbaijan.

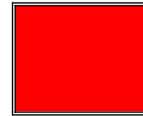
## Costs and delays of commercial litigation

**Q23** The costs and delays of commercial litigation in the higher courts in **Azerbaijan** are not considered materially greater than in other comparable countries.

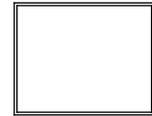
True



False



Can't say



### Comment

The costs and delays on commercial litigation is regulated by the Code of Civil Procedure of the Azerbaijan Republic, the Code on Administrative Violations of the Republic of Azerbaijan and the Law on State Duty. According to the Code of Civil Procedure the Court expenses shall be composed of a state duty and costs associated with hearing of case.

State duty shall be paid under the following circumstances: 1. upon filing of claim applications; 2. upon third party applications for joining the case on independent claims associated with subject matter of dispute; 3. upon filing of applications for establishment of facts of legal significance; 4. upon filing of appellate and cassational complaints, as well as of complaints from cancellation of proceeding, leaving claim without hearing, imposition of court fines.

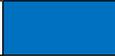
The Law on State Duty which specifies each case which requires the payment of state fees, as well as its size. The sizes of state fees vary from 1 to 2500 AZN. State duty for filing an appellate complaint and cassational complaint shall be equal to, respectively, 120% and 150% of a state duty payable in the event of application to court of first instance.

The Code determines the price of application and its size in each situation, and states that where it is difficult to establish price of claim at the moment of filing of the appropriate petition, amount of state duty shall be preliminarily established by judge with further recovery of balance of the duty in accordance with price of claim established by court in course of settlement of case and in case of increase of claimed amounts, balance of duty shall be paid as per increase of price of claim.

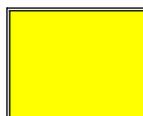
The Code on Administrative Violations is considering Article about expenditures of cases on administrative violations. It states that expenditures incurred during the cases on administrative violations consist of the amounts paid to witnesses, experts, specialists and translators and the amounts paid for storing, handling, transportation and analysis of material evidences.

## Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True



False



Can't say



## Profiles

The survey was carried out by the following students:

### Eyyub Fataliyev

Eyyub Fataliyev is a Master of Law of the Faculty of Human Rights at the Baku State University. He is interested in Human Rights, Corporate and Financial law; has written several Articles analyzing the systems of European Convention and Social Charter. During the study, Eyyub was involved in several legal projects, considering Civil law, Land law, International Law, Tax Law and Environment Law issues. Currently Eyyub is a legal assistant at PricewaterhouseCoopers LLC Azerbaijan. He can be reached at [Eyyub.fataliyev@outlook.com](mailto:Eyyub.fataliyev@outlook.com)

### Nisa Aliyeva

Nisa Aliyeva is a Double degree Master in European Law at Baku State University (Azerbaijan) and Jilius Maximilian University of Wurzburg (Germany). She is concerned with European Law, International Private Law, Labour Law and Migration Law. Nisa has taken part in various training programs and conferences concerning Human Rights, European Law and Migration issues. She has written working papers and Articles with the focus on Labour Migration in the European Union and compliance of Azerbaijani Migration legislation with European standards. Nisa wants to continue her academical education and dreams to get a degree of PhD in Law. Currently she is involved in Contract Law and works at the legal department in private company in Baku. Nisa can be contacted at [nisa.aliyeva@outlook.com](mailto:nisa.aliyeva@outlook.com)

### Nigar Namazli

Nigar Namazli has graduated from the law faculty of Baku State University and further got double L.L.M degree in European Law at Baku State University (Azerbaijan) and Jilius Maximilian University of Wurzburg (Germany). Nigar is interested in Civil law, European law and Corporate law. During the master study Nigar has searched for European Union legislation including EU Directives and ECJ cases. Future career Nigar wants to build in the field of Corporate law. Nigar can be reached at [nigarnamazli@hotmail.com](mailto:nigarnamazli@hotmail.com)

## Member of the Faculty of Law

Aygun Zeynalova has obtained her bachelor degree *with honours* from Faculty of Law of Baku State University. She is specialized in European and International law and got Master degree from University of Strasbourg (France). She had also an opportunity to deal with European law provisions in practice and worked at the Court of Justice of the European Union in Luxembourg. Despite the fact that Aygun was involved to several international projects of the European Court of Human Rights in Strasbourg, she returned to the home-country and started her career as an Associate lawyer at MGB Law Offices. She is also currently working as an Adjunct lecturer at Baku State University and teaching European law to LL.M students. Recently, Aygun attended the summer session of Hague Academy of International Law and had a great experience to meet practitioners and professors from fields of interests. Despite she is working in a private sector, Aygun is also involved to drafting domestic law provisions and has been selected as one of representative of the Republic of Azerbaijan for the Project of German GIZ of “Legal Approximation Towards European Standards in the South Caucasus” and attended 3 weeks courses at Hertie School of Governance in Berlin. Aygun is planning to get her Ph.D degree from one of the European universities. Aygun can be reached at: [aygunzeynalova@yahoo.fr](mailto:aygunzeynalova@yahoo.fr) / [aygun-zeynalova@mgb-law.com](mailto:aygun-zeynalova@mgb-law.com)

## **Allen & Overy Global Law Intelligence Unit**

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenoverly.com or Melissa Hunt, melissa.hunt@allenoverly.com.

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Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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