

Client Alert

New legislative developments in Azerbaijan on banking, telecommunications and licensing

April 2017

During the past several weeks the Azerbaijani Parliament has adopted a number of laws, introducing amendments to the Law On Banks, the Civil Code, the Civil Procedure Code, the Administrative Procedure Code, the Law On Telecommunications and the Law On Licenses and Permits.

We summarize the major aspects of above-mentioned amendments below.

Law “On Introducing Amendments to the Law ‘On Banks’

The amending law, which is dated April 7, 2017 (effective as of April 16, 2017), introduces significant changes to the cornerstone of banking legislation in the country, completely rewriting sections of the Law on Banks dealing with the appointment of temporary administration and the financial rehabilitation of troubled banks. The amendments come at the time when liquidations in bankruptcy of several small and mid-sized Azerbaijani banks are currently underway, in relation to one of which (Bank Standard) the newly established regulator, the Financial Markets Supervisory Authority (the “**Regulator**” or “**FIMSA**”) attempted, unsuccessfully, to introduce a financial rehabilitation program.

Disposition of an Insolvent Bank

A new section is introduced to the Law on Banks, entitled “Disposition of an Insolvent Bank”, which deals with various matters related to the appointment of a temporary administrator by FIMSA for an initial period of nine months, which could be extended for a further three months. This section sets forth in detail events that would warrant the appointment of a temporary administrator by FIMSA, the principles under which the temporary administrator would manage the insolvent bank and the powers of the administrator, as well as the possible outcomes for troubled banks. These include the following:

- merger of an insolvent bank into a healthy bank;
- transfer of assets and liabilities of an insolvent bank (fully or partially) to an acquiring bank;
- establishment of a bridge bank, the transfer of healthy assets and liabilities of an insolvent bank (fully or partially) to the bridge bank, and the sale of the bridge bank to investors;
- sale of an insolvent bank to investors;
- liquidation of an insolvent bank.

Voluntary debt restructuring of bank obligations

Another important novelty is a previously unavailable framework that would allow banks to force a voluntary debt restructuring of the bank's obligations vis-à-vis its creditors, except for claims of depositors that are eligible for deposit insurance.

According to the amendments, the process of voluntary debt restructuring begins with a resolution of the Supervisory Board of the bank if the bank is unable to comply, or there is a risk of the inability on the part of the bank to comply, with the demands of its creditors due to the absence or lack of funds or the impossibility to use funds for other reasons. FIMSA will then have up to 20 calendar days to review the resolution of the Supervisory Board and to enter into a written agreement with the bank.

The bank then would prepare a draft restructuring plan to be submitted to FIMSA for its approval, after which the bank would file an application with a court asking for approval of the commencement of the voluntary restructuring of the bank's obligations. The bank would be required to publish notices in the local and international press about the court decision, as well as inform its creditors of the obligations which are subject to restructuring.

From the effective date of the court decision on the voluntary restructuring of the bank's obligations, the bank would be entitled:

- to suspend the performance of sale and purchase agreements, exchange and gift agreements, or any other agreements providing for the disposal of any assets of the bank, and to suspend the conclusion of agreements creating any risks for the bank, including, loan, credit and guarantee agreements or agreements providing any kind of financing;
- to suspend, in full or in part, the performance of the obligations that are subject to restructuring.

The above-mentioned restrictions would apply for 180 calendar days, a term that could be extended for up to 90 calendar days upon application of the bank, as acknowledged by FIMSA.

The bank would be able to introduce changes to the draft restructuring plan in the course of the voluntary debt restructuring of the bank's obligations, in which case such amendments must be submitted to the Regulator for approval 30 calendar days prior to the creditors' meeting. Once approved by the Regulator, the final draft of the restructuring plan would be presented for creditors' approval during a creditors' meeting. The restructuring plan would be approved by creditors holding at least two-thirds of the total bank obligations which are subject to restructuring, and will be binding for all creditors, claims of which have been included into the restructuring plan. Once approved by the creditors, the restructuring plan would be presented to the court for final approval.

ADIF as a bank liquidator

The amendments seem to codify the established practice of appointing the Azerbaijan Deposit Insurance Fund ("ADIF") as the liquidator and the bankruptcy liquidator of local banks. Amendments also envisage that the Regulator will oversee the activities of the liquidator of a bank.

Potential personal liability of bank administrators

Finally, in addition to other sweeping powers that a liquidator of a bank would have, the amendments introduce the authority to investigate the circumstances that lead to the bank's liquidation and to inform the relevant authorities of the results of its investigation, including the names of any potential suspects, as well as to apply to courts on behalf of the bank, presumably, for the purposes seeking compensation for damages suffered by the bank. The language of this provision is rather broad and could be interpreted to include bank administrators (members of the management and supervisory boards of the bank, heads of its branches, etc.) and possibly even shareholders of the bank.

Amendments to the Civil Procedure Code

A number of amendments have been made to the Civil Procedure Code in order to enable implementation of the amendments to the Law On Banks, including a requirement that a court vacate any preliminary injunctions adopted in relation to a bank or its assets that are subject to restructuring and providing that court proceedings in relation to the restructuring of the bank's obligations be conducted in accordance with special proceedings described in a new Chapter 40-5 (*Proceedings in relation to cases on the voluntary restructuring of a bank's obligations*).

Amendments to the Administrative Procedure Code

A number of amendments have also been made to the Administrative Procedure Code and a new Chapter XIX (*Proceedings in relation to claims against the financial markets supervisory authority and in relation to applications by the financial markets supervisory authority*), detailing how such cases are to be heard.

Amendments to the Civil Code

Several amendments have been made to provisions of the Civil Code dealing with the assignment of claims and the performance of obligations by third parties, which basically mirror similar provisions made to the Law on Banks.

Amendments to the Law on Telecommunications

Amendments to the Law on Telecommunications, dated March 10, 2017 (effective as of March 19, 2017), have added the activity on keeping records of providers and operators offering internet telecommunications services to the types of state regulated activities and have imposed obligations on such providers and operators to be registered with the Ministry of Transportation, Communications and High Technologies (the “**MTCHT**”) within 15 days from the date of the provision of the relevant services and to inform the MTCHT within 10 days of the date of any changes to the information registered with the MTCHT. Such operators and providers are also required to respond to inquiries of the MTCHT and provide the necessary information within three business days, and in case of urgency such inquiries must be addressed immediately or within 24 hours. A grace period of two months is granted to operators and providers which are already operating in Republic of the Azerbaijan to be registered with the MTCHT.

The Azerbaijani Parliament passed in the first reading a Draft amendment to the Law on Telecommunications which provide that certification in the area of telecommunications is no longer conducted by the MTCHT and the State Committee for Standardization, Metrology and Patents. Instead, the relevant organizations granted the right to conduct such certification are entitled to issue the required certificates.

Amendments to the Law on Licenses and Permits

New amendments to the Law on Licenses and Permits, dated March 10, 2017 (effective as of March 19, 2017), provide that the owner of a license must conclude an agreement with the state body issuing such license in the form and manner prescribed by the latter within 30 days from the date of the issuance of the relevant license. Otherwise, the mere issuance of a license will not create any legal rights and a relevant note shall be made in the register maintained by the license issuing authority.

The existing licensable activity related to “Cellular (mobile) communications services (with reference to the name of the technological standard)” was transferred from an activity requiring a general license to an activity related to cases of national security requiring a license, which shall be granted for a 10 year term.

Law stated as of April 19, 2017.

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