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**Executive summary**

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\* CAC/COSP/IRG/2021/1.



## II. Executive summary

### Azerbaijan

#### 1. Introduction: overview of the legal and institutional framework of Azerbaijan in the context of implementation of the United Nations Convention against Corruption

Azerbaijan signed the United Nations Convention against Corruption on 27 February 2004 and ratified it on 1 November 2005.

Azerbaijan is a unitary republic with three separate branches of power: the executive branch (the President and the Government), the legislative branch (the Milli Majlis, or Parliament) and the judiciary branch. Pursuant to article 151 of the Constitution, duly ratified treaties have primacy over domestic law and may be applied directly. The legal system is based on civil law.

The implementation by Azerbaijan of chapters III and IV of the Convention was reviewed in the second year of the first cycle and the executive summary of that review was issued on 28 September 2012 (CAC/COSP/IRG/I/2/1/Add.7). In addition, as Azerbaijan is a member of the Group of States against Corruption of the Council of Europe and a participating country of the Anti-Corruption Network of the Organization for Economic Cooperation and Development, its anti-corruption framework has been reviewed in multiple rounds of evaluations by those two entities. Similarly, its anti-money-laundering and combating the financing of terrorism framework has been assessed by the Committee of Experts on the Evaluation of Anti-Money-Laundering Measures and the Financing of Terrorism of the Council of Europe.

The legislative framework to prevent corruption and recover assets of Azerbaijan includes, notably, the Combating Corruption Act, the Law on Rules of Ethical Conduct of Civil Servants, the Public Procurement Act, as amended, the Criminal Procedure Code, the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism Act (Anti-Money-Laundering/Combating the Financing of Terrorism Act) and the Legal Assistance in Criminal Matters Act.

The key institutions of Azerbaijan that are involved in corruption prevention and asset recovery include the Commission on Combating Corruption, the Anti-Corruption Directorate with the Prosecutor General, the State Examination Centre, the Prosecutor General's Office and the Financial Monitoring Service.

#### 2. Chapter II: preventive measures

##### 2.1. Observations on the implementation of the articles under review

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

Since 2004, Azerbaijan has developed, maintained and implemented several coordinated anti-corruption strategies and action plans, which were adopted by presidential decrees and set out specific measures to be implemented, designated the public bodies responsible for their implementation and established clear timelines.

The most recent action plans (the national action plans for the promotion of open Government for the periods 2012–2015 and 2016–2018) were adopted as part of the membership of Azerbaijan in the Open Government Partnership initiative. A new national action plan for the period 2020–2022 was under development at the time of the country visit.

Under chapter 10 of the Constitutional Law on Normative Legal Acts, all proposed draft legislation must undergo an anti-corruption evaluation before being considered and signed by the President. In addition, the Commission on Combating Corruption

is mandated to continuously monitor existing legislation for its adequacy to prevent corruption, and to make relevant proposals. The Anti-Corruption Directorate reviews administrative measures and may use the powers granted under the Prosecution Office Act to recommend that private and public bodies take the steps necessary to ensure compliance.

The Commission on Combating Corruption was established under the Combating Corruption Act as a specialized preventive body. It leads the development of national action plans, monitors institutional anti-corruption plans, monitors their implementation and organizes public surveys and public awareness campaigns, among other activities.

The Commission on Combating Corruption comprises 15 independent members who are supported by a permanent secretariat. The President, Parliament and the Constitutional Court each appoint five members. Both the Chair and the Head of the Commission secretariat are appointed by the Commission, while other secretariat staff are hired and may be dismissed by the Chair of the Commission. In addition to the Head, there are four staff in the secretariat.

Furthermore, many public bodies have appointed ethics commissioners and established ethics committees and internal control systems, such as inspectorates, to prevent, detect, investigate and take action on acts of corruption.

Azerbaijan and its authorities are active participants in the Group of States against Corruption of the Council of Europe, the Istanbul Action Plan of the Anti-Corruption Network of the Organization for Economic Cooperation and Development, the International Association of Anti-Corruption Authorities, the Global Organization of Parliamentarians against Corruption and the International Anti-Corruption Academy, among others.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

The Civil Service Act, relevant presidential decrees and other laws and regulations establish a comprehensive system for the recruitment, hiring, retention, pay, promotion and retirement of civil servants.

The State Examination Centre conducts recruitment examinations for candidates for the civil service and regular training activities on ethics for civil servants, in cooperation with the Commission on Combating Corruption and the Anti-Corruption Directorate. Vacant positions are advertised online and filled through competitive examinations. Certain positions may be filled by promotion as well. Appeals against recruitment decisions may be lodged with appellation councils in public bodies. Candidates with prior unspent criminal convictions may not be recruited. Civil service positions with higher risks of corruption are identified in cooperation with the Commission, and the rotation of persons occupying such positions may be periodically applied to prevent corruption.

The Constitution sets the qualification and disqualification criteria for candidates for elected offices. In general, presidential, parliamentary and local municipal candidates must not have prior criminal conviction for serious crimes, as defined in article 15, paragraphs 4 and 5, of the Criminal Code, and must not be serving any sentence (arts. 85 and 100 of the Constitution and art. 13 of the Election Code, respectively).

The Election Code, the Political Parties Act and relevant instructions promulgated by the Central Elections Commission regulate electoral funding. Candidates, and political parties and blocks of political parties that nominate candidates, must establish election funds and keep accurate records of all contributions and expenditure. The Election Code sets the maximum size of election funds (e.g., in arts. 156 and 191), restrictions on the types of donations and donors (art. 90, para. 2) and how donations may be made (art. 93). Contributions and expenditure must be reported to the Commission according to the prescribed timeline and by means of the prescribed form. There is a mechanism in the Commission to audit those reports and

subsequently make them public (art. 97). However, election funds are established prior to specific elections and, therefore, all record-keeping, reporting and auditing requirements concerning those funds apply during election campaigns only (art. 91).

Azerbaijan has adopted dedicated legislation, such as the Law on Rules of Ethical Conduct of Civil Servants, and codes of ethics to promote integrity, honesty and responsibility among public officials and to prevent conflicts of interest. Among other activities, ethics committees and ethics commissioners in public bodies may provide guidance to employees on ethical conduct rules and receive complaints from citizens.

The Constitution contains provisions that prevent candidates holding certain public positions to stand in elections (arts. 56 and 85). Specific types of conflicts of interest are offences under the Combating Corruption Act (art. 9, para. 3). General restrictions on secondary activities, the employment of relatives and the acceptance of gifts and other benefits are contained in the Combating Corruption Act (arts. 7–9) and codes of ethics applicable to various categories of public officials, such as civil servants and parliamentarians. Civil servants are to disclose conflicts of interest upon entering the civil service and whenever a conflict arises (art. 15 of the Law on Rules of Ethical Conduct of Civil Servants).

Azerbaijan has also developed draft legislation on the prevention of conflicts of interest among public officials that would impose more specific restrictions on secondary activities and gifts and clarify procedures to prevent, disclose and manage potential and actual conflicts of interest.

Article 11, paragraphs 1 and 2, of the Combating Corruption Act provides for the procedure to report “corruption offences” by any person, including public officials, as well as protections to reporting persons and their close relatives. Public bodies are required to appoint officials or establish special units responsible for receiving and investigating reports of corruption. These units are bound to investigate all allegations brought to their attention. As a result of their internal investigation, they recommend one of three outcomes: (a) taking disciplinary action; (b) referring the matter for criminal investigation; or (c) dismissal. No specific procedure to provide protection to reporting persons is provided. Furthermore, no information was provided on measures to implement and raise awareness of those provisions among public officials.

Contraventions of the Law on Rules of Ethical Conduct of Civil Servants by civil servants lead to disciplinary liability. Other codes of conduct have their own enforcement mechanisms. However, no information on the enforcement of those rules was provided.

Under the Constitution, the judiciary of Azerbaijan is independent, and judges may not be replaced during their tenure. In addition, the Judges and Courts Act, the Judicial-Legal Council Act and the Rules of Selection of Non-Judicial Candidates to Vacant Judicial Posts establish the main legal framework for the recruitment, appointment, conduct and discipline of judges.

The Judicial-Legal Council is an independent organ of the judiciary responsible for, inter alia, the development of a code of ethics for judges and the initiation and conduct of disciplinary proceedings against judges. There is a dedicated Code of Ethics for Judges. Violations of the Code must be taken into account in the evaluation of the work of judges and trigger disciplinary proceedings, which may result in punishment, including suspension. Specialized training courses on ethics and anti-corruption practices are offered through the Ministry of Justice and the Academy of Justice.

The Constitution establishes the Prosecution Service of Azerbaijan, led by the Prosecutor General. The duties and responsibilities of the Service are set out in the Constitution, the Prosecution Office Act, the Prosecution Office (Service) Act and the Criminal Procedure Code.

The Prosecutor General is appointed by the President with consent of Parliament, while his or her deputies are appointed by the Prosecutor General with agreement of

the President. Recruitment procedures and conditions of service for other staff of the Prosecution Service are provided in the Prosecution Office Act and in ordinances of the Prosecutor General. A dedicated code of conduct and disciplinary measures for breaches of the code are available. Training on ethics and anti-corruption issues is compulsory for newly recruited and existing staff of the Prosecution Service.

*Public procurement and management of public finances (art. 9)*

Public procurement in Azerbaijan is decentralized and regulated mainly by the Public Procurement Act and relevant regulations issued by the Ministry of Economy. The State Service for Anti-Monopoly Policy and Consumer Protection of the Ministry of Economy oversees the compliance of procuring entities with the Public Procurement Act and related regulations.

Under article 17 of the Public Procurement Act, open tendering is to be used for contracts valued at or above 50,000 manats (approximately 30,000 United States dollars). Procuring methods other than open tenders and conditions for their use are provided in articles 18 to 21 of the Act.

Invitations to tender must be published in the media, websites of procuring entities and on a centralized web portal. The Public Procurement Act determines the content of the invitations (art. 26).

The Public Procurement Act requires staff responsible for public procurement to avoid conflicts of interest (art. 13). A code of conduct for procurement officials further clarifies circumstances that may give rise to conflicts of interest, ways to disclose and manage such conflicts and disciplinary consequences in case of violations. Procurement officials are also bound by the relevant prohibitions of the Combating Corruption Act and any other applicable codes of conduct described above.

Articles 6 and 7 of the Public Procurement Act provide for the possibility of disqualifying bidders, including when bidders have been convicted of a crime in connection with their professional activities or the misrepresentation of qualifications for the procurement contract in the five years preceding the start of the procurement procedure, or when they have been prohibited from engaging in relevant professional activities. However, the enforcement mechanism is not clear and no single database with information on all disqualified bidders exists. In addition, it is not clear whether bidders with a history of engaging in acts of corruption would be disqualified under the aforementioned grounds.

The Chamber of Accounts conducts external audits of all procurements.

The appeal mechanism against procurement decisions is provided in articles 55 to 60 of the Public Procurement Act. Depending on timing and other defined circumstances, unsuccessful bidders may challenge procurement decisions by filing an appeal with the head of the procuring entity first, and subsequently, as deemed necessary, an administrative complaint with the State Service for Anti-Monopoly Policy and Consumer Protection or the courts. The filing of an appeal has suspensive effect (art. 59 of the Act).

At the time of the country visit, a new legislation to further increase the transparency of procurement processes and strengthen the legislative basis for electronic procurements was under development.

The procedure and requirements to develop and adopt State and local budgets and general rules for the adoption and management of extrabudgetary funds are provided in the Budget System Act and decisions and instructions of the Cabinet of Ministers.

The Ministry of Finance prepares a draft State budget for the following year and a summary of budget indicators for the following three years and, after approval by the Cabinet of Ministers and the President, submits them to Parliament. Quarterly and annual financial statements on the execution of the State budget are submitted to Parliament and the Chamber of Accounts. Those statements are also published in the media.

The heads of public entities funded by the State budget may be administratively or criminally liable for failure to keep proper financial records and the misuse of funds in the entities that they lead (art. 21 of the Budget System Act). Furthermore, internal control and risk management measures in public bodies are provided for in relevant instruments issued by the Ministry of Finance.

The State Financial Control Service within the Ministry of Finance monitors the effective and appropriate use of the funds allocated from the State budget, including through periodic inspections of public bodies. External audits of the State budget and extrabudgetary funds are conducted by the Chamber of Accounts, in accordance with the Chamber of Accounts Act.

The manner of preservation and categories of records related to public finances to be preserved are defined in relevant rules established by the Cabinet of Ministers and decisions of the Board of the National Archive Department. Violation of rules on the preservation of accounting records entail administrative sanctions, pursuant to article 462 of the Code of Administrative Offences. The falsification, illegal production, destruction and fraudulent use of official documents, including records related to public finances, are criminal offences under articles 320 and 326 of the Criminal Code.

*Public reporting; participation of society (arts. 10 and 13)*

Every person in Azerbaijan has a right of access to information held by public bodies through the mechanisms provided, for the most part, in the Access to Information Act and the Access to Information on the Environment Act.

There is no single policymaking body or function to ensure access to information in Azerbaijan. Instead, the Access to Information Act requires all information holders (i.e., public authorities, local authorities, other entities that perform public functions and natural monopolies) to proactively disclose certain categories of information (chapter IV) and establish appropriate internal procedures to enable citizens to have access to information (chapter II). However, at the time of the country visit, the level of compliance of information holders with the latter requirement was low.

Time frames for responding to information requests and grounds for refusing such requests are established in articles 21 and 24 of the Access to Information Act. Appeals against refusals to execute may be lodged, and the improper execution of information requests may be challenged in court or through a complaint to the Human Rights Commissioner (Ombudsman) (art. 21 of the Act).

Azerbaijan is taking steps to improve access to decision-making authorities by simplifying administrative procedures and introducing electronic government services. Notable examples are the establishment of service and assessment network (ASAN) centres, which serve as one-stop shops for a range of public services, and related projects (an ASAN radio station and the extensive use of social networks) aimed at raising public awareness of services offered at those centres.

The Anti-Corruption Directorate presents information annually on causes of and conditions conducive to corruption offences, and the preventive activities that it carries out.

The Public Participation Act outlines specific procedures and timelines for public participation in legislative processes and allows for independent public councils to monitor the activities of government agencies. At present, only the Ministry of Labour and Social Protection of the Population and the Ministry of Education have created public councils.

The Anti-Corruption Directorate and the Commission on Combating Corruption are accessible to citizens for reporting acts of corruption, including anonymously.

*Private sector (art. 12)*

Azerbaijan has taken measures to prevent corruption in the private sector. The Centre for Analysis of Economic Reforms and Communication, an advisory body on economic reforms established by presidential decree in 2016, comprises a standing working group on corruption and transparency. Members of the working group represent both the public and private sectors.

The Azerbaijan Corporate Governance Standards were adopted in 2011, and a number of training events have been organized to raise awareness and promote the wider adoption of the Standards among private sector entities. The Standards are not legally binding and are voluntary, except for companies that receive investments from the State-owned Azerbaijan Investment Company.

The State Registration and State Registry of Legal Entities Act set out the procedure and requirements for establishing legal entities in Azerbaijan and related responsibilities of the Ministry of Taxes. While the Registry of Legal Entities is publicly accessible, information on nominal and beneficial ownership and the management of legal entities is not.

Efforts are ongoing to improve the framework for licensing and permissions for private sector entities by, inter alia, reducing the number of activities that require licensing, introducing simplified and transparent procedures to obtain licences and the temporary suspension of inspections of licensed entities.

Azerbaijan has also introduced several provisions in the Civil Code that require limited liability companies and open joint-stock companies to establish audit committees with internal control and audit responsibilities (arts. 91.4 and 107–12).

Article 15, paragraph 3, of the Law on Rules of Ethical Conduct of Civil Servants prohibits former civil servants from working for private sector entities, or their departments, the activities of which he or she previously supervised.

Accounting and auditing standards and systems are prescribed in and related controls are carried out pursuant to the Accounting Act and the Auditing Act. Depending on their size and type, all legal entities must apply either the International Financial Reporting Standards or the National Accounting Standards for Commercial Organizations.

The aforementioned accounting standards establish relevant requirements that prevent commercial organizations from engaging in accounting practices listed under article 12, paragraph 3, of the Convention. Sanctions for incomplete or misrepresentation of information in financial reports and accounting documents, as well as violations of relevant rules on the maintenance of accounting records, are established in article 362 of the Code of Administrative Offences. Falsifying official documents, using falsified official documents and destroying official documents are criminal offences (arts. 308, 320 and 326 of the Criminal Code). Accounting records are considered official documents.

Chapter X of the Tax Code contains the exhaustive list of tax-deductible expenses. Expenses that constitute bribes are not listed.

*Measures to prevent money-laundering (art. 14)*

The anti-money-laundering regulatory and supervisory regime of Azerbaijan consists principally of the Anti-Money-Laundering/Combating the Financing of Terrorism Act and a number of by-laws, regulations, relevant presidential decrees and advisories issued by the Financial Monitoring Service and other supervisory authorities.

In line with article 6 of the Anti-Money-Laundering/Combating the Financing of Terrorism Act and Presidential Decree No. 66 dated 23 February 2009, supervisory authorities for financial institutions are the Financial Market Supervisory Authority, the Ministry of Finance, the State Committee for Securities and the Ministry of Transport, Communications and High Technologies, whereas those for designated

non-financial businesses and professions include the Ministry of Finance, the Ministry of Justice, the Financial Market Supervisory Authority, the Bar Association and the Chamber of Auditors.

The Financial Monitoring Service is responsible for receiving and analysing suspicious transaction reports submitted by reporting entities, including cash transactions, and for submitting information on suspected money-laundering to the Prosecutor General's Office (section 3.1.14 of charter of the Financial Monitoring Service).

Article 20 of the Anti-Money-Laundering/Combating the Financing of Terrorism Act provides a legal basis for administrative, regulatory and law enforcement agencies involved in combating money-laundering to cooperate with their foreign counterparts.

Under the same Act, all financial institutions and designated non-financial businesses and professions are required to, inter alia, identify and verify customers and their beneficial owners (customer due diligence) (art. 1.10.12), conduct ongoing due diligence measures in relation to high-risk customers, accounts and transactions (art. 9), keep related records (art. 10) and submit suspicious transaction reports to the Financial Monitoring Service (art. 7). However, in terms of implementation, challenges in identifying foreign beneficial owners have been encountered (see the information on article 52 in section 3.2 below). In case of non-compliance with the requirements of the Act, sanctions are provided in its article 6 that are to be implemented by the Financial Market Supervisory Authority. However, the implementation of on-site visits and the sanction regime has not been effectively carried out with regard to designated non-financial businesses and professions.

Azerbaijan has established a cross-border declaration system for incoming and outgoing cash and negotiable instruments for amounts equal to or greater than 10,000 United States dollars, by virtue of a regulation on bringing foreign currency into and taking foreign currency out of Azerbaijan by residents and non-residents of 3 March 2016. Failure to declare and false declarations are subject to sanctions for the smuggling of goods and other items set out in article 206 of the Criminal Code. However, the threshold for triggering sanctions, as set forth in the Criminal Code, is lower than the threshold determined in the aforementioned regulation, which has led to inconsistencies in the implementation of the sanctioning regime.

The obligation to include in wire transfers information on the originator is provided in article 9.2.1 of the Anti-Money-Laundering/Combating the Financing of Terrorism Act and section 9.8 of the Regulation on Non-Cash Transactions and Money Transfers. Incoming transfers with insufficient or incomplete information are to be refused by financial institutions, according to article 9.15 of the Act, and reported to the Financial Monitoring Service. However, financial institutions are not required to maintain information on the originator throughout the payment chain.

The anti-money-laundering/combating the financing of terrorism framework of Azerbaijan was assessed by the Committee of Experts on the Evaluation of Anti-Money-Laundering Measures and the Financing of Terrorism in 2014, and the identified gaps are being addressed, as shown in four follow-up reports. The Financial Monitoring Service is a member of the Egmont Group of Financial Intelligence Units and has signed a number of memorandums of understanding with foreign counterparts.

## **2.2. Successes and good practices**

- The establishment of ASAN centres and related awareness-raising initiatives has had a positive impact on reducing corruption in the public sector (art. 10 (b)).



### 2.3. Challenges in implementation

It is recommended that Azerbaijan:

- Continue to develop and maintain effective and coordinated anti-corruption policies that fully reflect and promote the principles laid out in article 5, paragraph 1, of the Convention.
- Ensure that more systematic and regular public awareness campaigns about corruption prevention are conducted (art. 6, para. 1, and art. 13, para. 1).
- Ensure that sufficient human and material resources are provided to the Commission on Combating Corruption to increase its corruption-prevention capacity (art. 6, para. 2).
- Consider adopting effective and comprehensive rules on transparency in the funding of candidates and political parties outside election campaigns (art. 7, para. 3).
- Endeavour to adopt the bill on the prevention of conflicts of interest among public officials, including judges and prosecutors, that would provide for, inter alia, an obligation and a detailed procedure for public officials to disclose interests and manage potential and actual conflicts of interest in line with the requirements of the Convention (art. 7, para. 4, art. 8, para. 5, and art. 11).
- Consider ensuring that the mechanisms available for enforcing ethics rules are applied more effectively (art. 8, para. 6).
- Consider strengthening the overall whistle-blowing framework by, inter alia: (a) expanding the scope of acts that may be reported; (b) fully implementing article 11 of the Combating Corruption Act in all public bodies; and (c) ensuring that wider and systematic measures are taken to raise awareness among public officials of the mechanisms available to report acts of corruption (art. 8, para. 4).
- Adopt a new comprehensive legislation on public procurement to improve transparency by introducing, inter alia: (a) a clear and standardized procedure to debar bidders; and (b) electronic procurement systems (art. 9, para. 1).
- Establish a dedicated public function or body with appropriate powers to ensure more comprehensive, effective and consistent implementation of the Access to Information Act by information holders, including by developing uniform policies and procedures and conducting awareness-raising activities among public officials and society at large on the requirements of the Act (art. 10 (a)).
- Increase transparency among legal entities by making public information on nominal and beneficial ownership and the management of corporate entities (art. 12, para. 2 (c)).
- Continue to promote public participation and transparency in decision-making processes, including by increasing the number of public councils in government agencies (art. 13, para. 1).
- Continue efforts aimed at increasing the ability to identify beneficial ownership, while increasing transparency of the related database; and strengthen the supervisory regime for designated non-financial businesses and professions (art. 14).
- Consider fully implementing article 14, paragraph 3 (b), of the Convention.

### 2.4. Technical assistance needs identified to improve implementation of the Convention

- Capacity-building in data-gathering, research and analysis to develop well-informed preventive policies (art. 5, para. 1).

- Sharing of international best practices with regard to the organization of work of internal control bodies, such as inspectorates (art. 6).
- Capacity-building in formulating and providing training to representatives of civil society to respect their obligations as designated non-financial businesses and professions under the anti-money-laundering/combating the financing of terrorism regime (art. 14).

### 3. Chapter V: asset recovery

#### 3.1. Observations on the implementation of the articles under review

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

The Legal Assistance Act, which was under revision at the time of the country visit, constitutes the general framework for providing and requesting legal assistance, including with asset recovery. Relevant provisions of the Anti-Money-Laundering/Combating the Financing of Terrorism Act allow for international cooperation with regard to proceeds of crime, including their recovery. The Prosecutor General's Office is the central authority responsible for receiving and ensuring the implementation of requests for mutual legal assistance.

Article 20 of the Anti-Money-Laundering/Combating the Financing of Terrorism Act allows law enforcement authorities and the Financial Monitoring Service to cooperate and share information with foreign counterparts, including spontaneously. Furthermore, the Ministry of Internal Affairs has signed bilateral agreements on legal assistance and information-sharing with a number of its foreign counterparts, such as in Georgia and Ukraine.

Azerbaijan is a member of the Global Focal Point Network on Asset Recovery of the International Criminal Police Organization and the Stolen Asset Recovery Initiative, and it is in the process of joining the Camden Asset Recovery Inter-Agency Network.

*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

Under article 9 of the Anti-Money-Laundering/Combating the Financing of Terrorism Act, financial institutions and designated non-financial businesses and professions are required to apply customer due diligence measures to existing and occasional business relationships (art. 9.4). The Act also requires the identification of the beneficial owners of customers (art. 9.2), ongoing due diligence and the record-keeping of data obtained through the application of customer due diligence (art. 9.12), as well as enhanced due diligence measures in relation to high-risk customers, business relationships and transactions (art. 9.13). High-risk customers include politically exposed persons, their family members and close associates (i.e., politically exposed persons as defined in art. 1.0.14 of the Act). However, the definition of politically exposed persons is limited to foreign politically exposed persons.

The Financial Monitoring Service has issued a number of guidance notes for reporting entities, including on indicators for suspicious transactions and customer behaviours. It has also provided several training activities on how to implement measures contained in the Anti-Money-Laundering/Combating the Financing of Terrorism Act.

Azerbaijan has not established a mechanism to enable its financial institutions to apply enhanced due diligence measures at the request of another jurisdiction.

Bank licensing conditions set forth in the Banks Act prevent the establishment of shell banks and prohibits correspondent banking relationships with them (item 7.13 of the Regulation on the Establishment of Internal Control Systems). Moreover, under provision 8.1.7 of Regulations on the Opening, Maintaining and Closing of Bank Accounts of the Central Bank, foreign banks are required to attest that they have no business relations with shell banks.

Article 5 of the Combating Corruption Act provides for an asset declaration system for specified categories of public officials. The Procedures for Submission of Financial Information by Public Officials of 24 June 2005 detail submission modalities and determine the receiving and reviewing authorities. Article 9 of the Procedures considers information contained in declarations private in nature and confidential. Violations of the Procedures result in criminal, administrative and disciplinary actions (art. 10). However, the operationalization of the system is pending the adoption of the relevant implementing regulation. The sharing of financial disclosure information with the competent authorities of other States is not possible.

There are no requirements for public officials to report interest in or signature or other authority over a financial account in a foreign country.

The Financial Monitoring Service (financial intelligence unit) is an independent public body funded from the State budget and entrusted with supervision and coordination activities to prevent money-laundering. It is mandated to receive, analyse and disseminate suspicious transaction reports (art. 11 of the Anti-Money-Laundering/Combating the Financing of Terrorism Act) and has freezing powers (art. 19).

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

Under article 5, read in conjunction with article 43.3, of the Civil Code, foreign States are recognized as legal persons and hence allowed to initiate a civil action in Azerbaijani courts. Furthermore, according to article 12, paragraph 2, article 87, paragraph 3, and article 179 of the Criminal Procedure Code and article 21 of the Civil Code, legal persons may claim compensation in criminal proceedings by filing a civil claim as an aggrieved party. However, in practice, those provisions have never been tested in relation to foreign States.

There are no specific provisions recognizing foreign States parties as legitimate owners of property in confiscation proceedings before Azerbaijani courts.

Except for article 521 of the Criminal Procedure Code, under which courts are required to examine the enforcement of foreign judgments and final decisions according to national law and the international agreements to which Azerbaijan is a party, there are no measures that indicate how such decisions might be enforced. Furthermore, Azerbaijan has never received requests to enforce foreign confiscation orders and has never implemented articles 54 and 55 of the Convention.

Azerbaijan has no specific measures that would allow the confiscation of proceeds of foreign predicate offences through the adjudication of money-laundering offences.

Azerbaijan has considered but rejected the possibility of introducing non-conviction-based confiscation measures.

Azerbaijan may enforce foreign freezing or seizure orders on the basis of article 2.3.9 of the Legal Assistance Act. No additional measures allowing its authorities to preserve property for confiscation are available.

Information needed from requesting States in order to provide mutual legal assistance in criminal matters is mentioned in article 4 of the Legal Assistance Act.

Azerbaijan, wherever possible, would give the requesting State party an opportunity to present its reasons in favour of continuing the provisional measures under article 55 of the Convention.

Safeguards with regard to the bona fide rights of third parties and due process applied to the incoming enforcement order procedure are those applicable at the national level (article 99, paragraph 1, of the Criminal Code on special confiscation).

*Return and disposal of assets (art. 57)*

Azerbaijan has not adopted any measure to enable its competent authorities to return confiscated property when acting on a request made by another State party. Article 99, paragraph 1, of the Criminal Code allows for the confiscation of proceeds of crime in favour of the Government, excluding those parts that should be returned to the legal owner. However, that provision has never been implemented in relation to a request by another State party.

The issue of expenses related to the enforcement of foreign requests is not regulated by law. However, there are no impediments to deducting reasonable costs linked to the implementation of requests for mutual legal assistance.

Azerbaijan has concluded numerous bilateral agreements in the area of judicial cooperation in criminal matters.

### **3.2. Challenges in implementation**

It is recommended that Azerbaijan:

- Adopt the new mutual legal assistance bill, in accordance with the requirements under chapter V of the Convention (art. 51).
- Extend enhanced due diligence measures to politically exposed persons who are nationals of Azerbaijan, their family members and close associates (art. 52, para. 1).
- Notify, where appropriate, financial institutions within its jurisdiction of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny (art. 52, para. 2 (b)).
- Consider taking measures to implement effectively the financial disclosure system for appropriate public officials. Azerbaijan is also encouraged to share, when necessary, that information with other States parties and require a public official having an interest in or signature or other authority over a financial account in a foreign country to report it (art. 52, paras. 5 and 6).
- Ensure that foreign States are, in practice, granted *locus standi* in civil proceedings to establish title to or ownership of property acquired through the commission of offences established under the Convention (art. 53 (a)).
- Empower courts to order those who have committed offences established in accordance with the Convention to pay compensation or damages to a State party that has been harmed by such offences (art. 53 (b)).
- Permit other States parties to claim, in confiscation proceedings, ownership of property acquired through the commission of a Convention offence (art. 53 (c)).
- Permit its competent authorities to give effect to an order of confiscation issued by a court of another State party (art. 54, para. 1 (a), and art. 55, para. 1 (b)).
- Permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law (art. 54, para. 1 (b)).
- Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property (art. 54 (c)).
- Establish a mechanism allowing its competent authorities to obtain a domestic confiscation order pursuant to a foreign request and, if such an order is granted, give effect to it (art. 55, para. 1 (a)).
- Adopt legislative and other measures to enable its competent authorities to implement the provisions of article 57, paragraphs 1 to 3, of the Convention.

**3.3. Technical assistance needs identified to improve implementation of the Convention**

- Support in negotiating bilateral agreements on asset recovery, including agreements on repatriation of stolen assets (art. 59).
-