

Questionnaire on Beneficial Ownership Information

Contact Information

Please provide contact details for potential follow-up questions. Contact details will be treated confidentially.

Country: Republic of Azerbaijan

1. Definition of beneficial ownership and mechanisms for obtaining beneficial ownership information.

1.1 *Please provide the definition of “beneficial ownership” in your country for. (a) legal persons; and (b) legal arrangements, including the relevant legislation (if applicable). Please describe criteria and thresholds that are applied to determine beneficial ownership, including any criteria for exercising control without legal ownership (e.g. voting rights, right to appoint or remove board of directors).*

According to Article 1.1.19 of the Law of the Republic of Azerbaijan “On the prevention of the legalization of criminally obtained property and the financing of terrorism” (hereinafter – AML/CFT Law) beneficial owner — natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted and/or a contract is being issued. It also includes those natural person(s) who exercise ultimate effective control over a legal person or a foreign legal arrangement.

Procedure for identification of the beneficial owner is provided for in Article 4 of the AML/CFT Law. According to Article 4 identification of the beneficial owner of the legal person (excluding public legal entities and legal persons whose controlling ownership interest (shares) wholly belongs to state) shall be carried out in the following order and the identity shall be verified:

- identification of the natural person(s) who ultimately have a controlling ownership interest (if the distribution of ownership interests in the legal person does not preclude the existence of controlling ownership interest) in a legal person;
- to the extent that there is a doubt as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, identification of the natural person(s) exercising control of the legal person through other means;

- if it is not possible to identify the natural person(s) exercising control over a legal person through ownership interest or other means, identification of relevant natural person(s) that hold the position of senior managing official.

Identification of the beneficial owner of a foreign legal arrangement shall be carried out in the following order and the identity shall be verified:

- the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership) in the structure of the trust shall be identified;
- for other types of foreign legal arrangements, the persons in equivalent or similar positions shall be identified.

Broader explanation of the above-mentioned can be found in the following laws:

- 1) Law of the Republic of Azerbaijan “On the Prevention of the Legalization of Criminally Obtained Property and the Financing of Terrorism” (Article 1.1.19.)
- 2) Law of the Republic of Azerbaijan “On Securities Market” (Article 1.0.3)
- 3) Law of the Republic of Azerbaijan “On investment funds” (Article 1.1.18)
- 4) Law of the Republic of Azerbaijan “On insurance activity” (Article 13)
- 5) Law of the Republic of Azerbaijan “On Banks” (Article 42)

The following extract of definitions of the Law “On the Prevention of the Legalization of Criminally Obtained Property and the Financing of Terrorism” provided for the better understanding of the mechanisms used for obtaining beneficial ownership information:

- a) obliged persons** - financial institutions and designated non-financial bodies and professions that are obliged to implement the measures stipulated under this Law for the purposes of prevention the legalization of criminally obtained property and the financing of terrorism; **b) financial institutions** - credit institutions, local and foreign insurers, reinsurers and insurance intermediaries engaged in life insurance, investment companies, investment funds and managers of these funds, representatives of foreign investment funds, registrar and depository, national postal operator, pawnshops, persons providing financial lease services, virtual assets service providers, persons licensed to engage in currency exchange activity; **c) designated non-financial bodies and professionals** — real estate agents, lawyers, notaries, persons providing legal, accountancy and tax consultancy services as well as branches representatives of such foreign legal persons operating in the Republic of Azerbaijan; **d) foreign legal arrangements** - a trust or similar arrangement that is not a legal person established in accordance with the legislation of foreign state (territory) in force, to place the property by the settlor of the foreign legal arrangement that is a natural or a legal person, under the control of the trustee for the benefit of a beneficiary or class of beneficiaries or for specified purposes with or without the condition of being under control of protector. The settlor, trustee, protector, beneficiary or class of beneficiaries mean the persons that carry relevant rights and duties arising from the document of incorporation of the foreign legal arrangement;

According to the Article 4 (Customer due diligence) of the above-mentioned Law - within the framework of Customer due diligence (CDD) measures, obliged persons shall be required to identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner based on information and documents obtained from reliable, independent sources and databases.

Besides, obliged persons shall implement the following additional CDD measures when the customer is a legal person or a foreign legal arrangement - take reasonable measures to identify the beneficial owner of the legal person and foreign legal arrangement and take reasonable measures to verify the identity based on the information and documents obtained from reliable, independent sources and databases.

Also, identification of the beneficial owner of the legal person (excluding public legal entities and legal persons whose controlling ownership interest (shares) wholly belongs to state) shall be carried out in the following order and the identity shall be verified:

- a) identify the natural person(s) who ultimately have a controlling ownership interest (if the distribution of ownership interests in the legal person does not preclude the existence of controlling ownership interest) in a legal person;
- b) to the extent that there is a doubt as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, identify the natural person(s) exercising control of the legal person through other means;
- c) if it is not possible to identify the natural person(s) exercising control over a legal person through ownership interest or other means, identify the relevant natural person(s) that hold the position of senior managing official.

Moreover, according to the Annex 2 — “ Corporate governance rules and standards of the legal entities with controlling block of shares under state ownership” approved by the decision number 257 of the Cabinet of Ministers of the Republic of Azerbaijan, dated June 4, 2019 -Disclosure of annual financial statements shall provide comprehensive understanding of the activities of joint-stock company. The Supervisory Board (Board of Directors) shall make appropriate decisions on full, proper and timely publication of the data about the activities of the joint-stock company, including financial statements.

In addition, the Coordinating Council under the Cabinet of Ministers, composed of representatives of the private and public sectors, conducts AML/CFT risk assessments in the country and monitors the implementation of beneficial ownership provisions. The risk assessment methodology was developed following the relevant World Bank risk assessment model.

2. Access to basic information on legal persons

2.1 Please describe the process for obtaining basic information on legal persons created or registered in your country, including the role of the company registry.

The State Tax Service (STS) maintains a register of commercial legal entities, public legal entities, representative offices or branches of foreign commercial legal entities registered in the territory of the Republic of Azerbaijan. The register of non-commercial legal entities is maintained by the Ministry of Justice, being a registration authority. STS conducts tax registration of non-commercial legal entities.

Access to the following basic information on the state registration of commercial legal entities and their inclusion in the state register is publicly available digitally at the Internet information resources of the State Tax Service:

- Name of commercial legal entity;
- Taxpayer identification number;
- Name of tax registration authority;
- Organizational-legal form;
- & Legal address;
- Authorized capital;
- & Fiscal year;
- Authorised (legal) representative;
- State registration date;
- & Date of the last extract from the register.

Information on founders (participants) of commercial legal persons and their shares in the authorised capital is classified as a commercial secret (Law on Commercial Secrets Art.4.1.2) and it is available to the investigative authorities. Therefore, information on the founders (participants) of commercial legal entities and their shares in the authorised capital is not publicly accessible (Law on the State Registration and State Registry of Legal Persons, Art. 18.1).

With the exception of information about the founders (participants) of commercial legal entities and their shares in the authorized capital, every person has the right to review records in the state register, enquire the extract from the state register and copies of documents submitted for registration. STS (being a competent authority for registration of commercial legal entities, public legal entities, representative offices or branches of foreign commercial legal entities) will provide the information on state registration or refusal of state registration of such legal entity by the demand of any interested person.

STS submits information (name of commercial legal entity, TIN, name of tax registration authority, organizational-legal form, legal address, authorized capital, fiscal year, authorized (legal) representative, state registration date, date of the last extract from the register) on daily registered commercial entities to the "Taxes" newspaper on a monthly basis, and relevant information is published.

2.2 Please list the categories of basic information on legal persons that is obtained and recorded by the company registry (or other relevant registries), e.g. name of entity, date Of incorporation, tax ID number, etc.

According to the legislation, the following are included in the state register data of legal entities: name of entity, legal address, organizational-legal form, fiscal year, taxpayer identification number (for commercial institutions and public legal entities), information about the founder, authorized (legal) representative of the entity, amount of authorized capital, shares of capital of each founder, board of directors (supervisory board) if available, etc.

2.J 1s the company registry available publicly & online in your country? YES / NO

If YES, please provide links to the company registry and any other relevant registries of legal persons, or provide details about how the public can access them.

Yes, the state register data of legal entities (name of commercial legal entity, TIN, organizational-legal form, legal address, authorized capital, financial year, authorized (legal) representative, date of state registration) is publicly available.

There is a "search" section for the state register data of commercial entities by entity name and by entity TIN on the website of the State Tax Service. Furthermore, the State Tax Service provides information on daily registered commercial entities (name of commercial entity, registration number (TIN), organizational and legal form, legal address, authorized capital, fiscal year, legal representative, date of state registration) is submitted to "Taxes" newspaper and the information is published.

3. Access to beneficial ownership information of/eyal/ persons

3.2 Please describe any other sources (mechanisms) through which competent authorities/agencies can access beneficial ownership information in your country. In each case, please describe how beneficial ownership information on companies and other legal entities is made available to authorities and/or the public (if applicable).

Examples may include through private-public partnerships (e.g. involving financial

institutions, notaries and/or corporate service providers), though stock exchange or security exchange commission, or disclosure obligations for participation in public procurement processes, etc.

Although beneficial ownership information is not required during the registration of legal persons, in practice, information on beneficial owners, as well as the nominal owners of legal entities, is obtained by STS during the various activities within its mandate. At the same time, in accordance with Article 42.4 of the Tax Code during tax control and in the case of international requests, the legal persons are required to provide information to the tax authority on their demand.

Furthermore, BO information might also be obtained from the obliged entities in a timely manner in the framework of AML/CFT Law (Art.14.2)/ Supervisory authorities are empowered to have access to such information (AML/CFT Law Art.6.5). LEA may request and collect BO data from any company during the course of the investigation. In case BO data are not submitted voluntarily, court order may be requested.

3.3 Are foreign legal persons, foreign (express) trusts or foreign legal arrangements allowed to operate in/own assets/ and/or register in your country? YES I NO

If YES,

- how is basic information on these arrangements recorded (if at all)?*
 - how is beneficial ownership information on these arrangements recorded (if at all)?*
- Please provide details of the relevant legislation and practices.*

According to the legislation, legal entities with foreign investment are state registered and included into the state register. Foreign legal entities can also operate in Azerbaijan by establishing a representative offices or branches. State registration of representative offices or branches of foreign legal entities is the same as registration of legal entities.

State registration of trusts and other legal arrangements is not stipulated in the legislation (trusts or other legal arrangements are not recognized by local legislation).

Foreign citizens or persons without citizenship, as well as foreign legal entities, can act as founders of legal entities with foreign investment. When the founder of foreign-invested legal entities is a foreign legal entity, the documents confirming the registration of the foreign legal entity must be legalized and translated in accordance with the legislation.

4. Access to basic *information* and *beneficial* ownership *information of* (express) trusts and other similar/legal arrangements

4.1 Does your country recognize (express) trusts or other similar legal arrangements? YES I NO

- If YES, please provide a broad overview of your country's system and mechanisms for obtaining beneficial ownership information on (express) trusts and other similar legal arrangements created or registered in your country.*
- If NO, please skip to question 5*

Azerbaijan does not recognize (express) trusts or other similar legal arrangements.

5. Sanctions

According to Article 405 of the Code of Administrative Offenses of the Republic of Azerbaijan, officials shall be fined in the amount of 1.000-2.000 manats, legal entities in the amount of 2.500-3.000 manats for failure to apply to the relevant executive authority within the period and in the manner prescribed by the Law of the Republic of Azerbaijan "On State Registration and State Register of Legal Entities" for registration of changes in the

constituent documents of legal entities as well as branches or representative offices of foreign legal entities in the Republic of Azerbaijan, and for the registration of subsequent changes in facts recorded in respect of these bodies.

According to Article 598.3 of the Code of Administrative Offenses of the Republic of Azerbaijan, officials shall be fined in the amount 1.500-2.500 manats, legal entities in the amount of 15.000-20.000 manats for non-compliance by monitoring participants and other persons participating in monitoring with the requirements for identification, verification and documentation of information of the client, his representative or beneficial owner.

6. International Cooperation, asset recovery and challenges

International Cooperation:

Azerbaijan is committed to several international conventions and treaties dealing directly or indirectly with the recovery of criminally obtained assets. Also, Azerbaijan is a part of the key regional and international initiatives designed for monitoring the application of the global standards on transparency in monetary and financial policies, as well as good governance and human rights. In this context, have to be indicated participation in MONEYVAL, OECD, and GRECO's monitoring process. As a signatory to the United Nations Convention against Corruption Azerbaijan closely engaged with the UNODC activities regarding Convention's implementation, inter alia expressing its commitment to the outcomes of the adopted Political Declaration at the first-ever UN General Assembly Special Session (UNGASS).

Asset recovery:

In 2020, the Prosecutor General's Office (PGO) underwent a structural reorganization, which resulted in the formation of a new department specializing in asset recovery - the Department for Coordination of Special Confiscation Issues was formed to deliver significant assistance to the State in facing challenges of asset tracing/recovery.

Main functions of the Department are as follows:

- to coordinate the activities of the structural divisions of PGO to compensate for material damage caused by a crime and to ensure special confiscation;
- to assist in the detection and tracing of assets,
- to control the movement of property subject to special confiscation, ensure the transfer of funds provided by law to improve the material and technical base of the prosecutor's office, social protection and material support of the prosecutor's office,
- to take the necessary measures to carry out the restoration of property, collect information from information-communication network, international and foreign sources, as well as from open sources that have access to databases of state bodies in order to track property in criminal cases;
- if necessary, to file an application for conducting search operations, keep a record of material evidence that is the object of special confiscation, to compensate for material damage caused by the commission of a crime during the period of criminal prosecution,
- to ensure special confiscation that can be applied, to provide the investigating authorities with practical assistance in justification of the arrest of property or property rights and the adoption of other measures, etc.

Additionally, for the development of work on the return of assets and the application of progressive motivational models, in accordance with the amendments to the Law on Prosecutor's Office Act - 5 (five) percent of confiscated property, 5 (five) percent of terminated cases for the voluntarily recovered asset, including 23 (twenty-three) percent of fines for administrative offenses sent by the prosecutor to the court, are subject to transfer to the treasury of the prosecutor's office.

Besides, the European Union launched a Twinning Project to support "The reform of the Criminal Asset Recovery and Management System in Azerbaijan", which involves the

Lithuanian Special Investigation Service and the Prosecutor's Office as our counterparts for exchanging best practices.

The Overall Objective(s) of the project is to support the Prosecutor General's Office (PGO) of the Republic of Azerbaijan to improve the efficiency of criminal justice, as well as governance and the rule of law through modernization of the asset recovery and management system in line with EU and international best practices. Specific objective is to strengthen the institutional and operational capacity of the (DCSCI) to ensure that it fully fulfills its mandate in the area of criminal property detection, tracking and recovery as well as asset management.

To add to it, the DCSCI has made an excellent start at integrating into the international asset recovery community. DCSCI has already joined a number of ARIN network meetings and capacity building events. Thus, since May 2021, Azerbaijan was admitted as an observative member of the Camden Asset Recovery Inter-agency Network (CARIN) and Asset Recovery Inter-Agency Network West and Central Asia (ARIN-WCA).

The draft law on extended confiscation and legal provisions for freezing, seizing, and confiscating of criminal assets through non-conviction-based civil confiscation, including parallel financial investigation has been sent to the appropriate public authorities for consideration and adoption.

7. Good Practices for Beneficial Ownership Transparency

The collaboration between public/private sectors such as regional Branches of the American Chamber of Commerce in Azerbaijan (AMCHAM), World Bank, European Bank on Reconstruction and Development (EBRD), etc. - targeted the development of business integrity can be considered as the positive action.

Moreover, Entrepreneurship Forums regularly held by the Small and Medium Business Development Agency (SMBDA) of the Republic of Azerbaijan with the participation of representatives of relevant government agencies, business associations, and public unions are considered as supportive and educational measures to the State in this direction.

Azerbaijan has also prioritized measures against legal persons. After the new amendments to the Criminal Procedure Code, law enforcement agencies received the authority to investigate cases against legal entities without affecting their individuals.

8. Follow-up to the Resolution of the General Assembly against corruption

With regards to the implementation of paragraph 16 of the Political Declaration have to mark the adoption on April 4th, 2022, of the National Action Plan for 2022-2026 on strengthening the fight against corruption, containing a proposal regarding the development and implementation of beneficial ownership issues. To add to it, approved this year "National Action Plan for 2023-2025 on combating money laundering and terrorist financing" is foreseen a special para on the improvement of beneficial owner identification mechanisms.