

**PROCEDURES FOR AND ASSISTANCE WITH  
COMPANY INCORPORATION**

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## **PROCEDURES FOR AND ASSISTANCE WITH COMPANY INCORPORATION**

### **General**

In Azerbaijan (the Republic of), commercial (business) corporate forms are business partnerships and companies as well as a cooperative.

This material addresses establishment (incorporation) of the most common type of a commercial entity, a limited liability company (LLC) with a single non-Azerbaijani corporate founder. As the procedures and documentation are similar, it also covers registration of a representative and branch offices of a foreign company (under the Azerbaijani corporate law, a representative office may not engage in commercial operations). For the comparison between full (LLC or subsidiary) and limited (branch) presences, please refer to Schedule 1 below.

### **Procedures and Documents**

The process of establishing involves: (i) a decision/resolution to establish/register (and attending to incidental matters, such as an approval of the articles/regulations) and (ii) filing with the corporate registrar. The filing can be done electronically (for only local founders) and in paper.

As a part of our quoted registration service, we will provide you with the following required sample documents as well as work with you to finalize them:

- (i) a resolution of an authorized governing body to establish the LLC/branch (you will need to review the sample for consistency with the rules applicable in the founder's/company's jurisdiction)
- (ii) a power of attorney for our employees authorizing us to represent the foreign founder/company upon establishment/registration and filing
- (iii) charter of the LLC/regulations of the branch

We will provide the samples in the English and, upon finalization, will file the documents/their translations in the Azerbaijani (such translation is a part of our quoted scope provided that the final documents are based on our samples).

Additionally, the following documents need to be provided by you (from outside Azerbaijan):

- (iv) a certificate of incorporation of the founder/company
- (v) if available, an extract from the state (trade) register issued to foreign founder/company
- (vi) by-laws (articles of association or an equivalent document) of the foreign founder/company

Documents from outside Azerbaijan need to be apostilled (if the foreign country, where the documents come from, issues apostille) or as is the case with Germany, legalized. Documents from countries with a legal assistance treaty with Azerbaijan

(typically, limited to neighboring countries) need not be apostilled or legalized (and notarized copies typically suffice).

We will also prepare and address the following:

- (vii) for the branch, a power of attorney to the head of the office
- (viii) a notarized power of attorney from the appointed chief executive officer of the LLC/head of the branch to a person filing the application to sign and file the application (alternatively, the officer/head must sign and personally file the application)
- (ix) an application to the registrar to register the LLC/branch
- (x) obtain receipt confirming payment of the state registration duty (AZN15 for the LLC and AZN300 for the branch)
- (xi) order and obtain corporate seal (stamp) for the LLC/branch (if the design is specific to the foreign company, you will need to provide us with it)
- (xii) obtain *Asan* (easy) e-signature certificate for the LLC/branch (unless the CEO/head of branch accompanies us, such requires a special form power of attorney for us, which we will provide you with) – the credentials are required to access communication with the registrar, including receipt of the registered documents

## **Timeline**

Time to register the LLC/branch will mostly depend on how prompt you are in providing us with the documents; such takes one month on average. Assuming that the documents are in order, the registration, itself, takes two business days, with the process through step (xii) taking one business day in addition.

We file the package upon our review and will be re-filing it (if the package is rejected for any reason other than your instruction to proceed notwithstanding any deficiencies in the package/application that we advised you of) within the fixed fee until we register the LLC/branch (and as long as documents are current). If, however, we need to pursue registration through an appeal in a court, such would be outside our fixed fee.

## **Scope and Fees**

Our fixed fee to address the matters above is USD2,500. Basic clarifications related to the matters are also a part of our fixed fee scope.

Our fixed fee scope does not include any matters that require specific advice or attendance to. For instance, the following matters are not included: (i) attending negotiations with proposed partners; (ii) advice on employment, tax, licensing, real estate, work permits, and other matters not directly related to the scope; or (iii) any filings (such as those for a license or permit) other than that listed above. Where we

believe that obtaining specific advice or attendance to a specific matter is required, we will so inform you.

The fee does not include opening of the permanent bank account for the LLC/branch.

Similarly, the value added tax (VAT) registration (unless you instruct us to obtain such registration before we file the package for the registration with the registrar) is charged for separately.

We will not handle depositing of the charter capital (authorized and paid in capital) whether in-kind or in cash of the LLC – such deposit can be made in three months following the incorporation (which the sample charter will provide for along with providing for the deposit to be made in cash).

Our fixed fee does not include the VAT, which for a service within Azerbaijan applies at 18 per cent and, for exports, at 0 per cent. Similarly, the fee does not include disbursements, such as translations.

The cost of translations is not included in the fixed fee (other than the samples that we provide you with in bilingual versions). We charge our standard rate, USD0.04 per word of the Azerbaijani translation (USD14 per page), for a translation from the English (Russian) into the Azerbaijani. If you obtain Azerbaijani translations independently, we will review the translation to ascertain it would be acceptable to the registrar, within the fixed fee; any detailed review of and revising the translation, if we determine such is necessary, is not included into our fixed fee.

Unless otherwise agreed, we will invoice you for the fixed fee and any expected disbursements known then and expect the payment before we file the documents with the registrar.

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## SCHEDULE 1

### LIMITED (BRANCH) AND FULL (SUBSIDIARY) PRESENCE COMPARISON

#### DEFINITIONS

- Subsidiary** : a business entity established under the laws of the Republic of Azerbaijan by one or more foreign entities
- Branch** : a sub-division (not a separate entity) of a foreign entity registered in the Republic of Azerbaijan
- Entity** : a foreign entity (parent company) having a presence in the Republic of Azerbaijan through either a Branch or a Subsidiary

No.	Consideration	Favors Branch	Favors Subsidiary	Comments
1	Governance	√		Governance of a Branch does not involve governing body meetings to approve annual results or other matters of a Branch's operations
2	Local Compliance Requirements	√		If established as a joint stock company, a Subsidiary will face specific compliance requirements (publication of annual balance sheet, acquisition of "dependent" business, and others), which are not applicable to a Branch
3	Taxation	√		Taxation applicable to a Branch and a Subsidiary is equal in Azerbaijan, however, branch can facilitate flexibility of profits allocation and, if provided under an applicable double taxation avoidance treaty, full or partial exemption from the branch net profits tax
4	Currency Control	√		A Branch would be able to invoice customers (abroad and, presumably, Azerbaijan) in foreign currencies to its account outside Azerbaijan; a Subsidiary is required to accumulate foreign currency proceeds (from Azerbaijan and abroad) at its bank account(s) in Azerbaijan. Certain operations of a Subsidiary can be regarded transactions involving the movement of capital
5	Choice of Governing Law	√		A Branch can choose law other than that of Azerbaijan to govern its arrangements with Azerbaijani entities

No.	Consideration	Favors Branch	Favors Subsidiary	Comments
6	Dispute Resolution Forum Choice	√		A Branch (an Entity) would be considered to have better access to a foreign arbitration and other dispute resolution mechanisms with the decisions enforceable in Azerbaijan or other jurisdictions
7	Antimonopoly	√		Information on a Subsidiary's operations in the Azerbaijani market would be more accessible to the public than the information on the operations of a Branch
8	Expatriate Personnel Work Permits	√		Expatriate executive personnel of a Branch would normally not need the work permits required under Azerbaijani law, as opposed to the expatriate executive personnel of a Subsidiary (except where, as is the case here, a Subsidiary has at least one non-Azerbaijani participant)
9	Employment Law	√		Termination of executive staff at a Subsidiary would normally involve a decision of a Subsidiary's governing body and the termination of the relevant employment agreement; termination of the executive of a Branch can be achieved only by an Entity's decision withdrawing the power of attorney in the name of the Branch's executive officer
10	Annual Audit	√		Subsidiary's economic and financial activity is subject to an annual audit by an independent auditor
11	Confidentiality of Ownership		√	In Azerbaijan, information related to founders (participants) of a Subsidiary and their relevant shares is considered commercial secrecy. Provided that the jurisdiction of an Entity does not make the ownership of the Entity public information, the confidentiality of ownership of the Entity would be observed in Azerbaijan
12	Qualification for Licenses		√	A Branch should, as a matter of legal theory defining its status in a host state, be able to carry out in Azerbaijan same activities as an Entity is entitled to in its home jurisdiction; however, certain lines of business (such as, for instance, oil production) would be available to a Subsidiary only

No.	Consideration	Favors Branch	Favors Subsidiary	Comments
13	Immovable Asset Ownership		√	An Entity would be precluded from owning land in Azerbaijan through a Branch
14	Exit		√	The ownership of a Subsidiary can be alienated; alienation of a Branch, as a separate entity, is impossible
15	Division of Management		√	A Subsidiary allows for flexibility in terms of dividing management of it among various shareholders
16	Customs		√	Contributions to the charter capital of a Subsidiary can be made free of customs duties (for the period of ten years following enactment as of July 2022 of Law of Investing)
17	Insulation from Liability		√	A Branch does not insulate an Entity from the liability while a Subsidiary generally does
18	Corporate and Other Registrations		√	An Entity with a Branch would be restricted under Azerbaijani law from establishing another Branch at a different location in Azerbaijan without the corporate registration of the “second” Branch; no corporate registration of a Subsidiary’s branches in Azerbaijan is required. On the other hand, the Entity would be precluded from establishing a Subsidiary in Azerbaijan if the Entity has only one shareholder
19	Access to Local Capital Market		√	Previously, an Entity’s ability to raise capital in Azerbaijan was limited to financings maturing in 180 days and then only for the use within Azerbaijan
20	Secured Transactions		√	A Subsidiary would be considered as allowing more flexibility than a Branch in terms of securing obligations of it or its shareholders by, for instance, offering a pledge of shares in it. Creditors would have the ability to reserve certain options in relation to the ownership of a Subsidiary that are unavailable in the case of a Branch