

# New Customs Code and Extended Application of the Criminal Code



Despite being in office only for several months, Azerbaijani Parliamentarians have been quite productive during the 2011 Spring Session. As such many existing laws were amended and new laws adopted. In this alert we will summarise two important legal updates of the past session – the new Customs Code of the Republic of Azerbaijan and amendments to the Criminal Code of the Republic of Azerbaijan.

## **I. Milli Majlis passed the New Customs Code after the third reading in the end of June**

### **Background**

The Customs Code currently in force was adopted in 1997, and was extensively amended since then (27 times). In 2005 the work started on a new Customs Code, with the support of the European Union and UNDP Azerbaijan. The new Customs Code was finally passed in June and is currently pending the signature of the President.

### **Overview**

The new Customs Code incorporates several best practices and generally complies with the norms and standards of the World Trade Organisation (WTO) and the European Union Customs Code. The adoption of the new Customs Code is a part of the continuing process of modernisation of customs infrastructure, and of efforts to improve efficiency of customs clearance, and, thereby streamline the import-export operations, as well as to accelerate the process of Azerbaijan becoming a member of the WTO.

The main improvements include:

*“Azerbaijan’s new Customs Code incorporates many best practices and generally complies with the norms and standards of The World Trade Organisation (WTO) and the European Union Customs Code.”*

■ **Concept of *Authorised Economic Operator* has been introduced** –

The Authorised Economic Operator is defined as a legal entity that has been authorised under the Customs Code to use simplified forms and methods of customs controls for the purposes of delivering goods in a safe and secure manner and facilitating the foreign trade. This concept is consistent with the norms and standards of the WTO, in that it also allows the activities of an Authorised Economic Operator authorised by other countries whose status may be recognised by virtue of a relevant multilateral treaty.

■ **Risk Assessment and Risk Management** in customs' context

consists of data collection, creation and updating of the database, assessment and identification of risks, determination of the likelihood of their occurrence by regularly monitoring relevant processes and their results, as well as evaluating the degree of damage that such risk may cause to the economic, social and other interests of the country, and, finally, taking measures developed by the customs authorities in order to prevent such damage. After the new Customs Code is effective, the customs authorities shall assess the risks related to certain types of goods, vehicles, documents and persons to determine what kind of customs controls shall be exercised.

■ **Post-Clearance Audit** allows the customs authorities to audit goods

that were previously cleared in order to verify the accuracy of information provided in customs declarations, to check compliance with limitations on alienating certain goods / vehicles, as well as with other conditions and / or requirements. The Post-clearance Audit can be *general* and *special*. The Special Post-clearance Audit is conducted in the event the evidence of non-compliance with the prescribed customs provision has been revealed during the General Post-clearance Audit. In relation to the customs brokers, owners of customs warehouses or temporary storage warehouses and customs transporters, Special Post-clearance Audit can be carried out in the event of non-compliance with the required booking procedures or violation of conditions attached to the conduct of certain types of activities.

■ **Creation of *Customs Controlled Areas***, such as customs border

checkpoints, customs terminals, customs laboratories, customs posts.



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- Introducing the implementation of the **Customs Information Technology Systems** that would be used to allow submission of all documents, including custom declarations required under the new Customs Code electronically. Customs authorities shall also create the customs data resource that would include information and documents submitted by the declarants, and that resource shall be open to public (except for certain types of information).

### **Structure of the New Customs Code**

As the Customs Code currently in force, the new Customs Code consists of two parts – general and special.

The General Part sets out the general framework of the customs systems in Azerbaijan, authorities of customs organs and social protection of customs officials, as well as the implementation of information technologies systems and e-customs.

Provisions set out in the Special Part, among others, are related to customs procedures applicable to certain customs regimes, risk assessment and risk management provisions, currency control, customs declaration, and customs audit.

### **Azerbaijani Customs Legislation in General**

Although the new Customs Code will be the cornerstone of the Azerbaijani Customs Legislation at large, its reform is not sufficient to single-handedly transform the current system. Apart from implementing rules and regulations, and administrative instructions, that will have to be promulgated in accordance with the new Customs Code, there are a number of other laws, codes and legal acts that supplement the new Customs Code (e.g. Criminal Code, the Code of Administrative Violations, the Tax Code, the Law On Electronic Signature and Electronic Document, the Law on Customs Tariffs, etc.).

Therefore, a lot of work will have to be done to harmonise the new customs legislation.

## II. Application of the Criminal Code to crimes committed outside of Azerbaijan has been extended

The latest amendments to the Criminal Code of Azerbaijan extend its application to the corruption related crimes committed outside of Azerbaijan – the so called universal jurisdiction.

Namely, the newly added article states that Azerbaijani nationals and stateless persons permanently residing in Azerbaijan who commit a corruption related crime outside the territory of Azerbaijan are subject to criminal liability in Azerbaijan, if they were not subject to criminal liability in a foreign country, presumably, where the said crimes were committed.

Further, foreigners and stateless persons who commit a corruption related crime outside Azerbaijani territory with the participation of Azerbaijani nationals, who are the officials of international organizations, members of international parliamentary assemblies, officials and judges of international courts, where such a crime was not prosecuted in that foreign country, may be subject to criminal liability on the basis of the Azerbaijani Criminal Code.

Finally, the latest amendments also expanded the definition of an official for the purposes of corruption related crimes to include:

- authorities, including those (i) elected or appointed to public offices in accordance with the Constitution and laws of the Republic of Azerbaijan; (ii) representing state or local self-governing bodies on the basis of special powers; (iii) certain ranks of military officers; (iv) civil servants (including persons working in a special type of civil service); (v) members of a municipality and municipal employees;
- candidates for elected positions in state bodies registered in the manner prescribed by law;
- managers and employees of state and municipal enterprises, institutions and organisations, as well as other commercial and non-profit organisations;
- persons granted special organisational, managerial, as well as administrative functions in state and municipal enterprises, institutions and organisations, as well as other commercial and non-profit organisations;

*“The latest amendments to the Criminal Code of Azerbaijan extend its application to the crimes related to corruption that were committed outside of Azerbaijan.”*

- individual entrepreneurs;
- officials of foreign states, elected members of state bodies of foreign countries, officials and other employees of international organisations, members of international parliamentary assemblies; and
- judges and other officials of international courts, foreign or local arbiters, foreign or local jurors.

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