

ACCOUNTING STANDARDS AND PROFESSIONAL ACCOUNTANTS

Law No 1140-VQD, dated 4 May 2018, effective 3 June 2018 introduces substantive amendments to the Law on Accounting of 2004.

The Law replaces the national accounting standards with the International Standards of Financial Reporting (IFRS), IFRS for SMEs (small and medium enterprises), and International Public Sector Accounting Standards (IPSAS). Each replacement takes effect from the publication by the Ministry of Finance of a standard in the Azerbaijani.

Similarly, the simplified accounting for subjects of small entrepreneurship is repealed. Subjects of micro and small entrepreneurship can now choose between the IFRS for SMEs and rules of accounting at micro and small enterprises approved by the Ministry of Finance.

With the exception of entities controlled by the Republic and entities whose securities are traded at a stock exchange, chief accountants in other entities of public importance, subjects of large entrepreneurship, budget institutions, and public entities that must publish their annual financial reports or consolidated reports must be professional accountants. The state register of persons who obtained the certificate of a professional accountant is maintained by the Ministry of Finance, which also accredits an organisation of professional accountants.

The amendments provide that tax reports do not replace the otherwise required financial reports.

USE OF RESTRICTED INFORMATION OBTAINED BY ADVOCATE

The essence of confidentiality in an attorney-client relationship is beyond dispute. Azerbaijani law clearly determines that an advocate (*i.e.*, a lawyer who represents clients in courts) must hold in strict confidence all information concerning his/her client obtained in the course of professional relationship and shall not disclose such information unless expressly authorised by the client. However, unlike the requirements for a duty of confidentiality related to the client, responsibilities of the advocate in relation to disclosures of information in relation to other parties obtained through the exercise of his/her authorities as an advocate, particularly, when such information is protected as confidential, the consequences of an alleged breach, and exceptions to the liability are more contentious.

The legislation empowers advocates with the special authorities to collect necessary evidence and information in order to ensure his/her efficient and qualified legal assistance. Article 15.2 of Law No 783-IQ “On Advocates and Activities of Advocates”, dated 28 December 1999 (the “**Law of Advocates**”), explains that

an advocate has a right to conduct an independent investigation, collect documents in order to perform his/her professional duties, request certificates and other documents related to legal assistance from the authorities, organisations, and enterprises, read and make copies of obtained documents, and make substantiated written requests to the state register of immovable property.

It is also clearly determined by the Law of Advocates that advocates, in the course of rendering their services, can use all means provided they are not restricted by law or contrary to an advocate's professional code of conduct. Certain information obtained by the advocates by means of an advocate's request is recognised restricted from public access. To be precise, Law No 224-IIQ "On Commercial Secrecy", dated 4 December 2001, classifies some of such restricted information available to the advocates upon their request as secret and confidential and provides for relevant penalties and measures of punishment for (unauthorised) disclosure thereof (it remains largely unsettled, however, whether all such information can qualify as commercial secrecy, *i.e.*, a subject-matter of this Law).

Further, pursuant to Article 34 of Law No 1024-IIQ "On Obtaining Information", dated 30 September 2005, (while the national security information is secret) business and commercial secrets, professional secrets (client-attorney privilege, notarial and medical secrecy), bank secrecy, prosecution and investigatory secrecy, information of private and family life of an individual is considered confidential.

For an advocate request to be valid, the requester must be a member of the Bar Association of the Republic of Azerbaijan and the request must be in writing, signed and stamped, and accompanied by an attorney warrant, a document allowing a lawyer to participate in court proceedings. The request must be duly reasoned, information provided in the request accurate and, if available, supplemented with copies of court decisions related to the proceedings and a document certifying payment of the state duty. The request shall be presented on an advocate bureau's or, in case acting independently, on an advocate's letterhead.

The Law of Advocates authorises advocates to request information from the state register of real estate (immovable property). Also, Law No 560-IIQ "On State Registration and State Register of Legal Entities", dated 12 December 2003, entitles advocates to obtain information from the register of legal entities, some of which is considered restricted (unlike jurisdictions where all information can be public). While Article 5.5 of Law No 713-IIQ "On State Register of Real Estate", dated 29 June 2004, provides that use of information contained in the state register of real estate in a manner that can cause harm to interests of a proprietor is penalised, the legislation does not provide for the penalties; further, criminal and administrative liability is imposed only in relation to disclosures of commercial secrecy (committed for a mercenary motive).

Although it is made clear by the legislation that advocates, acting in the interests of their clients, can collect evidence while ensuring confidentiality of information related to (obtained from) their clients, the lack of statutory regulation of information obtained in relation to third parties (rather than the clients) or clarity as to whether such information can be commercial secrecy is a challenge to a possibility to share such information with clients. The Law "On Commercial Secrecy", Article 9.2, provides that "information collected without use of illegal means, regardless of its contents' constituting a commercial secret of another person, is recognised lawfully obtained independently".

Based on the above, the use by an advocate of information lawfully obtained in the course of discharging his/her professional duties is not illegal. Disclosure of such information to the client should be covered by the lawful use assuming such disclosure is in the client's interests.

In the absence of instructions regarding terms of use of information obtained by an advocate pursuant to his/her advocate request, it is advisable to consider restricting a further use of the information by the client (unless such further use/disclosure is dictated by the client's interests). The question whether a lawyer has a duty to demand from his/her client a non-disclosure would be decided in each individual case.

**PLEASE CONTACT US FOR ANY QUESTIONS AND FURTHER
INFORMATION AT:**

BM Morrison Partners
Tel: (994 12) 497 19 14; 497 19 15
Fax: (994 12) 497 19 13
E-mail: info@bmlawaz.com

©2018 BM Morrison Partners. All rights reserved.

* Information in our updates does not constitute legal or other professional advice.