

# EUROPEAN BANKING GUIDE FOR NONPROFITS

## *HOW TO OPEN AND MANAGE AN ORGANIZATIONAL BANK ACCOUNT*



European Center for  
Not-for-Profit Law



**PILnet**



**AZERBAIJAN**

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European Center for  
Not-for-Profit Law

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# 1. OPENING AN ORGANISATIONAL BANK ACCOUNT

## a. What are the requirements to open an organisational bank account?

### i. Do organisations have to be physically present in the country to open a bank account? I.e., can they operate in country X but have a bank account in country Y? Is the presence of a statutory representative required or can the presence be fulfilled through an authorization?

In general, as there is no such legal form as a Civil Society Organization in Azerbaijan, for the purposes of this questionnaire, we will provide our response based on a legal form known in Azerbaijan as the Non-Governmental Organizations (NGOs).

As a general rule, foreign legal entities (including an NGO) may not open a bank account in Azerbaijan without first establishing a representative or branch office in Azerbaijan. Therefore, it seems that an NGO will not be able to open a bank account in Azerbaijan, while operating in another country, unless a local representative or branch office has been established. (For the purposes of this questionnaire, a local representative or branch office of a foreign legal entity will be referred to as the “non-resident entity”.)

We understand that by statutory representative to be an officer of a legal entity authorized by law or constituent documents of such legal entity to act on behalf of such entity. Yes, the presence of a statutory representative of a non-resident entity is required, as opposed to a resident entity, and even though there is no prohibition on this role being fulfilled through an authorization, in practice local banks do not normally accept this.

### ii. Are there specific requirements for CSOs to open accounts by law or asked in practice by the banks (e.g, years of operations, annual turnover, to have director or member of governing body to be national of the country)

As a matter of law, documents that NGOs are required to submit are described in our response to question 1(a)(iv) below and do not generally contain requirements such as years of operations or

annual turnover. (Please note that branches and representative offices of foreign NGOs operating in Azerbaijan must have a local national as a deputy head of the office.)

As a matter of practice, and having contacted several local banks, we understand that local banks do not usually require any specific document or information for an NGO to open bank accounts other than the documents specified in our response to question 1(a)(iv) below.

Certain banks may require other specific documents or information for opening bank accounts for NGOs.

### **iii. Who is authorized/required to open a bank account? Can this be done online, or that person needs to be present in the country?**

A statutory representative of a legal entity authorized by law or by the constituting documents of such legal entity to act on behalf of such entity would be authorized to open a bank account and sign relevant paperwork.

In general, under Resolution of the Management Board of the Central Bank of the Republic of Azerbaijan “On Approval of the Rule for Opening, Maintaining and Closing Bank Accounts” No. 04/2, dated 4 February 2022 (“[Rules No. 04/2](#)”), a bank account by resident entities may be opened remotely, which means opening a bank account through the information system operated by the bank or its mobile application without the simultaneous physical presence of the customer and the bank employee. However, Rule No 04/2 does not permit non-resident entities to open bank accounts remotely.

The requirement of presence may not be fulfilled by signing the paperwork at an embassy or notary, as a remote procedure has a specific meaning (described above).

### **iv. What is the process of setting up a bank account? E.g., how long it takes, is there a practice to have an interview in the bank?**

A non-resident legal entity must submit to the bank a bank account opening application, along with the following (not exhaustive) list of the documents that are listed Rules No. 04/2:

- a. for the non-resident entities:<sup>1</sup>
  1. a notarized copy of an up-to-date extract from the state registry of the legal entities;
  2. a notarized copy of regulations (by-laws);

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<sup>1</sup> Annex 2 to Rules No. 04/2, item 19

3. an original duplicate certificate issued by the relevant tax authority (usually sent directly to the bank electronically);
4. a notarized, legalized (apostilled) copy of a power of attorney issued by the statutory representative of the foreign legal entity granting the right to the statutory representative of the non-resident legal entity to represent the said entity;
5. a copy of the ID of the statutory representative;
6. notarized, legalized (apostilled) copies of constitutional documents (document verifying the identity of the beneficial owner(s)) of the foreign legal entity along with their notarized translation into Azerbaijani language;
7. Common Reporting Standard and foreign PEP forms;
8. other FACTA related forms; and
9. a completed and notarized original signature and stamp specimen sheet.

b. for the resident legal entities:<sup>2</sup>

1. a notarized copy of an up-to-date extract from the state register of the legal entities;
2. a notarized copy of a charter;
3. an original duplicate certificate of the resident legal entity issued by the tax authority (usually sent directly to the bank electronically);
4. a copy of the ID of the statutory representative;
5. Common Reporting Standard and foreign PEP forms;
6. other FACTA related forms; and
7. a completed and notarised original signature and stamp specimen sheet, etc.

Generally, if all documents are in order, opening of bank accounts takes about 3 to 5 business days.

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<sup>2</sup> Annex 2 to Rules No 04/2, item 1



## 2. BANKING ACTIVITIES

### a. What customer due diligence requirements are in place and what is their impact on civil society organisations' banking activities?

The customer due diligence requirements are set forth in the bank's internal rules that ensure the application of the "Know Your Customer" principle when opening, maintaining, and closing bank accounts. Such internal rules are based on the Law of the Republic of Azerbaijan "On the Combatting of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism" No. 767-IIIQ, dated 10 February 2009 (the "[AML Law](#)"), the requirements of Rules No. 04/2, any other legal acts and the bank's risk management system.

Such internal rules contain, among others:

1. procedures for identification and verification of customers and ultimate beneficial owners;
2. procedures for making decisions on whether or not to establish business relations with customers;
3. determining the risk level of the customers and categorizing them accordingly;
4. continuous monitoring procedures of the customers' bank accounts and transactions according to the risk category; and/or
5. risk management in the fight against legalization of criminally obtained funds or other property and the financing of terrorism.

Based on the AML Law, any resident or non-resident NGO that receives, collects, gives or transfers funds as part of its activities, being designated a role of a monitoring participant as defined in the AML Law, is required to take steps to identify and verify their counterparty and their beneficial owners in the cases indicated in the AML Law, must obtain information from the counterparty about the purpose and nature of the counterparty's relationship with them, etc.

**b. Which internal principles or official (central bank) “suspicious transaction” monitoring criteria are in place affecting the civil society organisations? Is it publicly available?**

The Specific Indicators’ List<sup>3</sup> for the identification of suspicious transactions set forth a large number of the criteria, which are classified into two categories (i) AML / FT criteria, and (ii) criteria applicable to the specific sectors and types of activities. The Specific Indicators’ List is publicly available.

The following are the criteria specifically related to NGOs:

- transferring a large amount of funds from abroad, including by a foreign individual/legal entity to the account of an NGO;
- making payments from, among other sources, NGOs, that promote radicalism, extremism, and violence;
- any resident and non-resident NGO that receives, collects, gives or transfers the funds as part of its activity, where:
  - o use of funds of NGO does not correspond to its intended (stated) purpose;
  - o NGO collects informal and unregistered donations;
  - o funds are credited into the account of an NGO with a purpose that does not correspond to its goals;
  - o funds transferred to the account of an NGO are continuously cashed;
  - o NGO is carrying out financial transactions through another account that is not its official bank account;
  - o NGO implements the transaction(s) in which its official activity and the activities of other participants of the transaction are not compatible and where mutual relations are not observed; and
  - o a person suspected of participating in the terrorist activities or associated with such activities acts as a donor and/or offers a grant.

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<sup>3</sup> Order of the Chairman of the Board of Directors of the Financial Monitoring Service of the Republic of Azerbaijan “On approval of the Criteria for Discovery of the Circumstances Giving Suspicion or Sufficient Grounds for such Suspicion of Criminally Obtained Funds or Other Property or Financing of Terrorism (Specific Indicators)” (the “Specific Indicators’ List”) No. 1934008, dated 11 December 2019. Available at: [http://fiu.az/uploads/content/docs/special\\_indicators/Indikatorlar\\_MMX\\_2019\\_FC.pdf](http://fiu.az/uploads/content/docs/special_indicators/Indikatorlar_MMX_2019_FC.pdf)

**c. Do the banks in the country of operations have any restrictions/limitations to bank transactions and transfers to certain jurisdictions (such as high-risk ones).**

Yes, there is a restriction on bank operations with a bank account in banks registered in countries (territories) designated by the Financial Monitoring Service of the Republic of Azerbaijan (the “Financial Monitoring Service”) as high risk countries (territories) likely participating in the legalization of illegal proceeds or other illegal property, financing terrorism, supporting transnational crimes, as well as armed separatism, extremism and mercenaries, or the illegal circulation of narcotic drugs or psychotropic substances, published by the Financial Monitoring Service from time to time at [www.fiu.az](http://www.fiu.az).

**i. If yes, is the list of jurisdictions publicly available?**

Yes, the list of the non-cooperative jurisdictions is publicly available. For more details, please see our response to question 2(c) above.

**ii. What would be the procedures the bank would follow in this case for their CSO clients?**

Regardless of the type of the clients and their legal entity forms, as a rule, in case of recognition of any unusual, suspicious transactions, or transactions without an obvious economic or legal purpose, the bank takes measures in accordance with the AML Law. As such, the execution of the said transaction may be stopped, the assets of the bank account holder may be frozen, or the bank account may be closed.



### 3. OBLIGATIONS AND REPORTING REQUIREMENTS

#### a. Are banks required to provide CSO clients' financial information to CSO regulatory authorities or public officials? If yes, under what circumstances must banks do so, and what types of information must they provide?

Yes. Beside any applicable requirements, banks are required to provide to the financial monitoring authority information about transactions with money or other property, regardless of their size, or attempts to conduct such transactions that are specified in the AML Law. Based on Rules No. 04/2 and AML Law, banks must submit to the financial monitoring authority, as well as to the auditor, criminal prosecution authorities or supervisory authorities the analytical reports related to the recognition of any unusual, suspicious transactions, or transactions without an obvious economic or legal purpose.

Only in cases and in the manner provided by law, information about bank's clients' financial information can be provided by the bank to the credit bureaus, state bodies and their officials, such as:

- financial monitoring body and financial regulator (further to its request in order to prevent the legalization of criminally obtained funds or other property and the financing of terrorism);
- tax authorities (information on the customer's bank account and operations);
- courts and criminal prosecution authorities (information required for the purposes of the investigation);
- Deposit Insurance Fund (information about depositors in the event of an insurance event), etc.

#### b. What obligations do banks have to protect the privacy of clients' information?

As provided in the Civil Code of the Republic of Azerbaijan, approved by Law No 779-IQ, dated 28 December 1999 (the "[Civil Code](#)") and in the Law of the Republic of Azerbaijan "On Banks" No 590-IIQ, dated 16 January 2004 (the "[Banking Law](#)"), the bank has an obligation to guarantee the secrecy of the bank

account and bank deposit, account transactions and customer information. Information constituting the bank secrecy is provided only to the clients themselves and their representatives, as well as to external auditors, the financial monitoring body, and the financial regulator.

Information constituting the bank secrecy is provided to the state bodies and their officials only based on a legally binding decision of the court in connection with the investigation of a criminal case, seizure of the client's funds and property in the bank's custody, demand and their confiscation.

**c. Are there specific reporting obligations for banks to inform governments on civil society banking in certain circumstances?**

Please refer to our response to question 2(a) above.

**d. Are you aware of any change in regulation/practice due to the Russian sanctions?**

As of to date, although we are not aware of any changes made to the laws arising from the international sanctions imposed on Russia or reflecting in any way this situation, in practice, we had a chance to observe a cautious approach of the local banks towards opening a bank account to Russian citizens or legal entities. In fact, one of the banks that we have contacted, informed us that, while applications for opening a bank account to citizens of the Russian Federation are being considered, in the vast majority of cases these applications are rejected.



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