

## **ANNEX B: Memorandum of Understanding on EITI Implementation in Azerbaijan**

This Memorandum of Understanding ("Memorandum") is entered into in Baku Between<sup>1</sup> The Committee on the Extractive Industries Transparency Initiative ("EITI") (the "EITI Committee") established by the Ordinance of the Cabinet of Ministers of the Republic of Azerbaijan of November 13, 2003, to ensure that the government meets the commitment it made upon joining the EIT1 at the International Conference in London on June 17, 2003,

The local and foreign companies operating in the extractive industries (oil and gas extraction) of the Republic of Azerbaijan (see the attached list - Appendix #1) (together the "Companies Group"), and

The non-governmental organizations (NGOs) comprising the Coalition for Increasing Transparency in the Extractive Industries of the Republic of Azerbaijan (see the attached list-Appendix #2) (together the "NGOs Group"),

Each individual signatory being a "Party" and together the "Parties". The Parties to this Memorandum

- a) Welcoming the steps taken by the government of the Republic of Azerbaijan to increase transparency in extractive industries, including the country's joining the International Transparency Initiative and taking the challenge to become a pilot EITI country,
- b) Greatly valuing and agreeing with the government's request that local and foreign companies operating in the oil and gas production industry of the Republic of Azerbaijan submit their payment reports under EITI guidelines as long as written waiver of each company's PSA contractual confidentiality clause is in effect, and
- c) Recognizing the role of Azerbaijan's NGOs and civil society in the implementation of EITI

have agreed on the following issues with the aim of realizing and implementing the EITI application mechanism in Azerbaijan.

1. The EITI Committee, vested with the powers to prepare a consolidated national report on receipts of state authorities and revenues of state companies and other state owned entities of the Republic of Azerbaijan in connection with extraction of mineral resources in Azerbaijan, and the local and foreign companies operating in the oil and gas production industry of the Republic of Azerbaijan shall produce

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<sup>1</sup> This is a reproduction of the original Memorandum of Understanding.

a report twice a year (annual report on March 15 and semi-annual report on August 15) using the relevant reporting templates recommended at the International Conference on EITI. Future changes to the reporting forms and terms of their submission under mutual agreement of the Parties are not excluded. Each of the Parties has a right of suggesting such changes and other Parties of MOU will discuss such change proposals.

2. The reports containing the data on the payments/allocations 1) received by the government of the Republic of Azerbaijan from foreign and local oil and gas production companies; 2) made by the foreign companies engaged in extractive industries to the government of the Republic of Azerbaijan; 3) made by local companies engaged in extractive industries to the government of the Republic of Azerbaijan, shall be prepared in the format of the templates attached to this Memorandum (**Appendix #3**).
3. An internationally recognized audit company operating in the Republic of Azerbaijan shall be assigned to review and collate the reports submitted by the government and the foreign and local companies as well as to draft findings on these reports.
4. The Parties to the Memorandum shall establish a Selection Group for the purpose of selecting an audit company through a competitive bidding process. The EITI Committee, the Companies Group and the NGOs Group shall each assign two representatives to the Selection Group. Each representative shall hold one vote. All decisions shall be made in accordance with the Terms of Reference and the criteria for the selection of an audit company (**Appendix 4**) and the Rules of Procedure of the Selection Group (**Appendix 5**).
5. The following sequence shall be adopted for the purpose of filling out, submitting, analyzing, collating, and publishing the reports:
  - a) The audit company that is to conduct the collation shall be determined by the Selection Group, and an agreement on the provision of the appropriate services (based on the scope of work set out in Appendix 4) shall be concluded between the audit company and the EITI Committee. The terms and conditions of such agreement shall be approved by the Selection Group.

A copy of this agreement will be provided to the other Parties to this Memorandum.
  - b) The EITI Committee shall send a letter of instruction regarding the provision of reporting forms to the foreign and local companies operating in extractive industries. The letter shall instruct the foreign and local companies to deliver completed reports directly to the audit company by the specified reporting date.
  - c) The EITI report by the EITI Committee and the foreign and local companies' reports shall be submitted directly to the audit company by the reporting date (March 15 and August 15).

- d) Copies of the reports of the foreign and local companies received by the audit company shall be sent by the audit company to the EITI Committee but only after the EITI report by the EITI Committee has been submitted by the EITI Committee to the audit company.
  - e) The audit company shall, in accordance with the audit company's contract described in 5(a) above, analyze and collate the reports of the EITI Committee and of the foreign and local companies.
  - f) The audit company's findings (Independent Accountant's Report) will be submitted to all the Parties to this Memorandum within 30 days after the deadline for submission of all reports to the auditor, given that any inconsistencies have been either resolved or agreed to be insignificant. This Independent Accountant's Report may not be issued until such time all inconsistencies have been resolved. All such inconsistencies and the manner in which they were resolved will be reflected in the Independent Accountant's Report.
  - g) The Parties to this Memorandum shall develop, agree and publish a joint press release regarding the EITI Committee's report and the Independent Accountant's Report.
  - h) The audit company and the EITI Committee shall keep the individual reports submitted by the foreign and local companies strictly confidential and shall not disclose or divulge these in whole or part to the other Parties to this Memorandum, any third parties or to the public.
6. The mechanism for reimbursement of the audit company's service fees shall be discussed and agreed by the Selection Group and shall form part of the contract with the audit company.
  7. The Parties shall not exclude the possibility of delays, deficiencies, and technical shortcomings at the initial stage of report submission and shall accept the necessity for their elimination with goodwill and in the spirit of cooperation with the audit company.
  8. The Parties agree that the initial reports will cover the year 2003 and the first six months of the year 2004. Taking into consideration that these reports are to be submitted for the first time, the deadline for submitting such initial reports shall be agreed upon specifically among the Parties within 30 days of the date of signing this Memorandum.
  9. The Parties shall hold an additional conference if all the Parties agree there is a need for special discussions following the publication of the first reports. The Parties will re-discuss working on the mechanism of the public disclosure of the individual or aggregated reports after submission of the reports covering 2003 and first six months of the year 2004.
  10. This Memorandum shall be effective upon the date that all Parties have signed it. Any Party may withdraw from this Memorandum upon prior written notice to all the Parties specifying the date of withdrawal. The provisions of articles 11 and 12 of this Memorandum shall continue to apply to any withdrawn Party.

11. The Parties agree to treat all material received in relation to this Memorandum as strictly confidential until such time as all Parties agree upon its disclosure or release.
12. This Memorandum of Understanding is a statement of intention only and does not create any rights, obligations, or contractual commitments for any Party.

**This Memorandum is signed on November 24 2004 in Baku in one original Azerbaijani and one original English language document and both versions shall have equal force and effect.**

The State Oil Fund of the Republic of Azerbaijan shall be depository for the original Memorandum on behalf of the EITI Committee, the Parties to the Memorandum shall be given certified copies of the Memorandum. The reporting forms, the documents of the Selection Group and other documents concerning implementation of MOU shall be deposited and archived in premises of the State Oil Fund.

Signed by the Government representative, the civil society representative, foreign Extractive industry companies, and local industry companies.