

# ARBITRATION

## Azerbaijan



# Arbitration

Consulting editors

**Craig Tevendale, Vanessa Naish, Elizabeth Kantor**

*Herbert Smith Freehills LLP*

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Quick reference guide enabling side-by-side comparison of local insights, including into applicable laws, conventions and treaties, and prominent local arbitral institutions; arbitration agreements; constitution, jurisdiction and competence of arbitral tribunals; arbitral proceedings; interim measures and sanctioning powers; awards; proceedings subsequent to issuance of award; influence of local legal traditions on arbitrators; professional or ethical rules; third-party funding; regulation of activities.

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## Contributors

### Azerbaijan



**Ummi Jalilova**  
ujalilova@gratanet.com  
*GRATA International*



**Royal Ibrahimli**  
ribrahimov@gratanet.com  
*GRATA International*



**Fatima Eyyub**  
feyyub@gratanet.com  
*GRATA International*



## LAWS AND INSTITUTIONS

### Multilateral conventions relating to arbitration

Is your jurisdiction a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Azerbaijan is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention was ratified by the Parliament on 9 November 1999. No declarations or notifications were made under any of the articles of the Convention. In addition to the New York Convention, Azerbaijan is a party to the European Convention on International Commercial Arbitration .

*Law stated - 26 April 2022*

### Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Azerbaijan has entered into bilateral investment treaties with 52 countries .

*Law stated - 26 April 2022*

### Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary domestic sources of law are the Law on International Arbitration and the Civil Procedure Code .

*Law stated - 26 April 2022*

### Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The Law on International Arbitration is based on the UNCITRAL Model Law. The requirements applicable to the arbitral award, its form and content are the same in both the local law and the Model Law.

*Law stated - 26 April 2022*

### Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The law leaves the choice of procedural norms to the parties. If the parties fail to choose the law, the arbitration

institution is free to conduct the hearings pursuant to the rules it deems suitable.

*Law stated - 26 April 2022*

## **Substantive law**

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

According to the Law on Private International Law, parties are free to choose the applicable law to their agreements. The following exceptions apply:

- foreign legal norms that contradict the Constitution and acts of the Republic of Azerbaijan adopted by referendum shall not be applied in the Republic of Azerbaijan; and
- irrespective of the law to be applied, the mandatory norms of the law of the Republic of Azerbaijan governing the relevant relations are applied.

Regardless of the law chosen by the parties as the governing law to their agreements and disputes, if a foreign court or an arbitration institution renders a decision based on the norms of a foreign law that contradicts imperative norms of Azerbaijani laws, this may serve as a legal ground for refusal to recognise the decision in Azerbaijan.

According to the Law on International Arbitration (*lex arbitri*), any indication to the law or the legislative system of any state shall, unless it has an express other intention, be interpreted as an instruction referring not to the collision norms but to the substantive law of that state. This means the governing law of the contract (*lex contractus*) is the substantive law that applies to the merits of the parties' dispute. In the absence of a governing law clause in the agreement, the arbitral tribunal shall apply the law in accordance with collision norms that it deems appropriate (conflict of laws rules).

If the arbitrator refers to Azerbaijani conflict of laws rules, then, in the absence of governing law clause, the below laws are applied depending on the type of contract (article 25, International Private Law):

- sale purchase contract – seller's laws;
- donation contract – donor's laws;
- property lease contract – landlord's or tenant's laws;
- gratuitous contract – laws of the provider of the gratuitous use;
- loan agreement – lender's laws;
- contract for works – contractor's laws;
- assignment contract – assignee's laws;
- commission contract – agent's laws;
- custody contract – custodian's laws;
- contract for carriage – carrier's laws;
- insurance contract – insurer's laws;
- pledge agreement – pledger's laws;
- suretyship contract – surety's laws; and
- guarantee – guarantor's laws.

Notwithstanding the above, in the absence of a governing law clause:

- for real estate contracts, the law of the country where the property is located shall apply;
- for agreements on joint activities and construction contracts, the law of the country where such activities are carried out, or where the results provided for by the agreement arise, shall apply; and
- for contracts concluded at an auction, tender or exchange, the law of the country where the auction, tender or exchange is located shall apply.

For contracts not listed above, if the parties have not made a decision on the applicable law, the law of the country to which the contract is most closely connected shall apply.

In addition to the applicable law, the law of the country where the performance is carried out must also be taken into account in relation to the methods and procedures of the performance of a contract, as well as to the measures taken in connection with the failure to perform in due course.

*Law stated - 26 April 2022*

## Arbitral institutions

What are the most prominent arbitral institutions situated in your jurisdiction?

There are two arbitral institutions in Azerbaijan.

The Azerbaijan International Commercial Arbitration Court (AICAC) was established on 11 November 2003 and was the only arbitration institution functioning in Azerbaijan until 2017. In accordance with the AICAC's Charter, the AICAC is an independent and permanently functioning arbitral institution (third-party tribunal). To the best of our knowledge, very few cases have been administered by the AICAC. Its fees are calculated on the basis of the amount in dispute.

ARBME Dispute Resolution (ARBME) started rendering its services in 2017 in Baku, Azerbaijan. The ARBME provides mediation, arbitration, dispute system design, early neutral evaluation, corporate conflict coaching and corporate dispute resolution facilitation services. The ARBME uses UNCITRAL Arbitration Rules. According to website of the ARBME, it renders free consulting services concerning drafting of arbitration clauses and agreements.

*Law stated - 26 April 2022*

## ARBITRATION AGREEMENT

### Arbitrability

Are there any types of disputes that are not arbitrable?

The following types of disputes fall under the exclusive jurisdiction of Azerbaijani courts and, therefore, are not arbitrable:

- cases concerning claims about the right to real estate, as well as the lease or pledge of this property, if the property that is the subject of a dispute in these cases is located on the territory of the Republic of Azerbaijan;
- cases concerning claims for the recognition of the validity and invalidity of a legal entity, and cases on the dissolution or annulment of decisions of a legal entity, if the legal entity has a legal address (place of residence) in the territory of the Republic of Azerbaijan;
- cases concerning claims for recognition of the validity of rights to a patent, a trademark and other rights, if applications for their registration were filed in the Republic of Azerbaijan;
- if the decision on compulsory enforcement measures adopted during the judicial review is put forward or implemented in the Republic of Azerbaijan;

- cases concerning claims against carriers arising from contracts for the carriage of goods; and
- divorce cases between citizens of the Republic of Azerbaijan and foreigners or stateless persons, if both spouses have a place of residence in the Republic of Azerbaijan.

*Law stated - 26 April 2022*

## Requirements

### What formal and other requirements exist for an arbitration agreement?

An arbitration agreement must be in written form. It can be either a separate document or an arbitration clause in the contract. Parties may include in the arbitration agreement their decision to submit to arbitration all disputes that may arise between them in future or just part of them.

An agreement shall be deemed concluded in writing if it is reflected in a document signed by the parties, or is in the form of a letter, an electronic communication, a teletype, a telegraph, etc, to which the opposite party does not object, and is signed. A reference in a contract to an arbitration clause shall be deemed an arbitration agreement, provided that the contract is concluded in writing and the reference makes that clause a part of the contract.

*Law stated - 26 April 2022*

## Enforceability

### In what circumstances is an arbitration agreement no longer enforceable?

Termination of the arbitration agreement and other legal grounds may render an arbitration agreement unenforceable.

*Law stated - 26 April 2022*

## Separability

### Are there any provisions on the separability of arbitration agreements from the main agreement?

In accordance with the Law on International Arbitration, an arbitral tribunal may take a decision on its own competence and on the validity of the arbitration agreement. When doing so, an arbitration clause that is an integral part of a contract must be reviewed as an agreement that does not depend on other conditions of the contract. If the court decides that the contract is invalid, that decision should not render an arbitration clause ipso jure invalid.

*Law stated - 26 April 2022*

## Third parties – bound by arbitration agreement

### In which instances can third parties or non-signatories be bound by an arbitration agreement?

As a rule, only signatories are bound by an arbitration agreement, however non-signatories may also be bound by the agreement in certain cases (eg, assignees and successors).

*Law stated - 26 April 2022*

### **Third parties – participation**

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The legislation of the Republic of Azerbaijan does not specifically regulate matters related to joinder or consolidation of third parties in arbitral proceedings. Article 42 of the Azerbaijan International Commercial Arbitration Court's Charter states that third parties may be involved in the proceedings only with the consent of the parties to the dispute. In addition to this consent, third parties should also provide their consent. Consent must be provided in writing.

*Law stated - 26 April 2022*

### **Groups of companies**

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The group of companies doctrine is not recognised in Azerbaijan. Non-signatory parent or subsidiary companies of a signatory company will not be bound by the arbitration agreement.

*Law stated - 26 April 2022*

### **Multiparty arbitration agreements**

What are the requirements for a valid multiparty arbitration agreement?

Azerbaijani laws neither prohibit the possibility of a multiparty arbitration agreement nor provide special requirements for a multiparty arbitration agreement to be valid.

*Law stated - 26 April 2022*

### **Consolidation**

Can an arbitral tribunal in your jurisdiction consolidate separate arbitral proceedings? In which circumstances?

Azerbaijani laws neither prohibit consolidation of separate arbitral proceedings nor provide special requirements for such consolidation.

*Law stated - 26 April 2022*

## **CONSTITUTION OF ARBITRAL TRIBUNAL**

### **Eligibility of arbitrators**

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

There are no statutory restrictions on who may act as an arbitrator. However, according to the Law on Courts and Judges, active judges are prohibited from carrying out any activities except for scientific, pedagogical and creative activities.

The parties can determine the procedure of the arbitrators' appointment. Azerbaijan does not have a list of arbitrators. There are two arbitral institutions in Azerbaijan: the Azerbaijan International Commercial Arbitration Court (AICAC) and ARBME Dispute Resolution (ARBME). The parties to the dispute can choose the arbitrators from the lists of arbitrators published on the websites of these arbitral institutions and involve the chosen arbitrators in the arbitral proceedings by contacting the relevant arbitral institution.

Regarding the preclusion of persons acting as arbitrators on the basis of citizenship, gender, religion, etc, agreed between the parties, the Law on International Arbitration prohibits this preclusion on the basis of citizenship, unless it has been agreed otherwise by the parties. The Law further states that if the arbitrator is appointed by the court, the court may take into account all the necessary requirements for the candidacy of an arbitrator in accordance with the agreement reached by the parties, including:

- the requirements for the independence and impartiality of the arbitrator; and
- in the case of the appointment of a sole arbitrator or third arbitrator, the desire of the parties regarding the appointment of an arbitrator not belonging to the nationality of the parties.

It is unlikely that a clause appointing an arbitrator based on gender, religion, etc, in the agreement between the parties would be deemed invalid. The Civil Code defines the grounds for when an agreement or part of an agreement can be declared invalid and provisions establishing requirements for gender, religion, etc, are not included in this list.

*Law stated - 26 April 2022*

## Background of arbitrators

Who regularly sit as arbitrators in your jurisdiction?

At present, there are only two arbitration institutions in Azerbaijan with a total of six arbitrators. Based on the information published on the websites of these institutions, it appears that two of these arbitrators are practising lawyers. There is no publicly available information regarding the professional activities of the other four arbitrators.

It is difficult to draw any conclusions about the trend of establishing a gender balance in arbitration in Azerbaijan at present. According to the information available, five of the six arbitrators are male.

*Law stated - 26 April 2022*

## Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The parties are free to agree on a procedure for appointing the arbitrators. If the parties fail to agree on the appointment procedure, the following applies.

- In an arbitration with three arbitrators, each party appoints one arbitrator, and those two arbitrators appoint the third arbitrator. If a party fails to appoint an arbitrator within 30 days of receiving a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the parties

can ask the Supreme Court to appoint the third arbitrator.

- In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, the parties can ask the Supreme Court to appoint the arbitrator.

*Law stated - 26 April 2022*

### **Challenge and replacement of arbitrators**

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

Arbitrators can be removed in a challenge procedure agreed by the parties. Failing agreement, a party that intends to challenge an arbitrator must do so within 15 days of becoming aware of the constitution of the arbitral tribunal, or becoming aware of the circumstances that give rise to justifiable doubts as to the impartiality or independence of the arbitrator, or if the arbitrator does not possess the qualifications agreed to by the parties.

A written statement of the reasons for the challenge must be sent to the arbitral tribunal. Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the tribunal will decide on the challenge.

In addition, an arbitrator's mandate is terminated if he or she:

- is unable to perform his or her functions, or for other reasons fails to act for a long period of time;
- withdraws from office; or
- the parties agree on his or her termination as arbitrator.

If there is a dispute concerning any of these grounds, a party can request the Supreme Court to decide on termination of the mandate. This decision is final and cannot be appealed.

We have not witnessed a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration in Azerbaijan.

*Law stated - 26 April 2022*

### **Relationship between parties and arbitrators**

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

The relationship between arbitrators and parties is governed by an agreement between the arbitration institution and the parties.

The Law on International Arbitration gives the parties the right to determine the number of arbitrators, the procedure for their appointment and the specific individuals who will be involved as arbitrators based upon their discretion.

As per the Law on International Arbitration, an arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality and independence at the time of appointment and throughout the arbitral proceedings. If the Supreme Court appoints an arbitrator, it must have regard to any important requirements regarding the arbitrator in the agreement between the parties, including requirements related to impartiality and independence.

An arbitrator can be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess the qualifications agreed on by the parties.

Fee structures are not specifically regulated by the Law on International Arbitration. However, in accordance with the Regulation on arbitral costs and fees of the AICAC (the AICAC Regulation on costs) a payment of US\$300 (registration fee) must be made in advance for the commencement of arbitral proceedings, which is not refundable.

Arbitration fees are determined in accordance with the Regulation on costs, and are determined according to the amount of the dispute (the minimum amount is US\$1,000 for disputes up to US\$20,000 and the maximum is US \$32,200 plus 0.05 per cent of the dispute amount for disputes above US\$10,000,001).

Cost allocation is not specifically regulated under the Law on International Arbitration. However, in accordance with the AICAC Regulation on costs, if there is no agreement between the parties, the unsuccessful party will be required to pay the arbitration fees (article 6.1).

*Law stated - 26 April 2022*

### **Duties of arbitrators**

What are arbitrators' duties of disclosure regarding impartiality and independence throughout the arbitral proceedings?

As per the Law on International Arbitration, an arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality and independence at the time of appointment and throughout the arbitral proceedings. An arbitrator can be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence.

*Law stated - 26 April 2022*

### **Immunity of arbitrators from liability**

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

The legislation does not specifically regulate the liability of arbitrators.

*Law stated - 26 April 2022*

## **JURISDICTION AND COMPETENCE OF ARBITRAL TRIBUNAL**

### **Court proceedings contrary to arbitration agreements**

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Under the Law on International Arbitration, a court before which an action is brought in a matter in respect of which the parties have made an arbitration agreement will, at the request of one of the parties, refer the parties to arbitration, unless it finds that the agreement is null and void, inoperative or incapable of being performed.

When an action in the court has been brought, arbitral proceedings can still be commenced or continued and an award can be made, while the jurisdiction issue is pending before the court.

Regarding the limitation period for challenging the arbitration's jurisdiction, a party challenging the jurisdiction must do

so before the submission of the statement of defence. A party is not precluded from raising a challenge by the fact that it has appointed or participated in the appointment of an arbitrator. If a tribunal rules as a preliminary question that it has jurisdiction, a party can request a ruling from the Supreme Court on this matter within 30 days of receiving notice of the ruling. There is no appeal from the Supreme Court's ruling. While a request is pending, the arbitral tribunal can continue the proceedings and issue an award. If an award is issued in breach of a valid jurisdiction clause, a party has the right to apply to the Supreme Court to set aside the award.

*Law stated - 26 April 2022*

### **Jurisdiction of arbitral tribunal**

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated, and what time limits exist for jurisdictional objections?

An arbitral tribunal can rule on its own jurisdiction. A party challenging the jurisdiction must do so within 15 days of the date it becomes aware of the grounds for objection; however, this must be before the submission of the statement of defence. A party is not precluded from raising a challenge by the fact that it has appointed or participated in the appointment of an arbitrator. If a tribunal rules as a preliminary question that it has jurisdiction, a party can request a ruling from the Supreme Court on this matter within 30 days of receiving notice of the ruling. There is no appeal from the Supreme Court's ruling.

While a request is pending, the arbitral tribunal can continue the proceedings and issue an award. If an award is issued in breach of a valid jurisdiction clause, a party has the right to apply to the Supreme Court to set aside the award.

If any party is aware that there has been a failure to comply with any provision of the law (from which the parties may deviate) or with any requirement of the arbitration agreement, and that party does not express its objection and continues its participation in the arbitration process, provided there is a term established for the submission of objections, the party's right to object shall be deemed waived.

*Law stated - 26 April 2022*

## **ARBITRAL PROCEEDINGS**

### **Place and language of arbitration, and choice of law**

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings? How is the substantive law of the dispute determined?

In the event the parties do not come to an agreement on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal, taking into account its affordability for the parties and the nature of the case.

According to the Law on International Arbitration, the arbitral tribunal may, if there is no other agreement between the parties, hold its session in any place convenient for the hearing of witnesses, experts and parties or for the examination of goods or commodities, or other property or documents, as well as for holding consultations between the members of the arbitral tribunal.

In the absence of an agreement of the parties on the language of the arbitration, the arbitral tribunal shall determine the language or languages to be used during the arbitration.

*Law stated - 26 April 2022*

## Commencement of arbitration

### How are arbitral proceedings initiated?

The arbitral proceedings concerning a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent, unless an alternative plan has been agreed by the parties. The parties can agree on the procedure to be followed by the arbitral tribunal. If no agreement exists between the parties, the arbitral tribunal may, subject to the provisions of the Law on International Arbitration, conduct the arbitration in such a manner as it considers appropriate. The arbitral tribunal is vested with the power to determine the admissibility, relevance, materiality and weight of any evidence.

The claimant shall state the facts supporting its claim, the points at issue and the relief or remedy sought within the time agreed by the parties or determined by the arbitral tribunal. The respondent, in turn, shall state its defence in respect of the matters raised by the claimant, unless the parties have agreed otherwise as to the necessary prerequisites of such statements. Moreover, the parties are free to submit together with their statements all documents that they consider relevant, as well as refer to the documents or evidence that will be submitted later. The above-mentioned statements, documents or other information provided to the arbitral tribunal by the party shall be communicated to the other party accordingly. The same rule also applies to the expert report or evidentiary document on which the arbitral tribunal may rely during its decision-making process.

Both a party (with approval of the arbitral tribunal) and the arbitral tribunal may request support from the Supreme Court in taking evidence.

*Law stated - 26 April 2022*

## Hearing

### Is a hearing required and what rules apply?

On condition of compliance with any other agreement of the parties, the arbitral tribunal shall decide whether to conduct oral proceedings or other oral discussions to present evidence or to conduct an investigation only on the basis of documents and other materials. However, except for the case when the parties agreed not to conduct oral proceedings, the arbitral tribunal must conduct oral proceedings at the proper stage of the investigation if one of the parties requests it.

A sufficiently timely notice should be sent to the parties about any oral proceedings or court hearings organised by the arbitral tribunal for the purpose of reviewing goods, other property or documents.

*Law stated - 26 April 2022*

## Evidence

### By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

The parties can submit, with their statements, all documents they consider to be relevant, or refer to documents or other evidence they intend to submit.

All statements, documents or other information supplied to the arbitral tribunal by one party must also be sent to the other party. This also applies to any expert evidence or documents on which the arbitral tribunal may rely when making its decision. The arbitral tribunal is vested with the power to determine the admissibility, relevance, materiality and

weight of any evidence.

The arbitral tribunal may also involve experts for the examination of goods, other property or documents. Hence, according to the Law on International Arbitration, if there is no other agreement between the parties, the arbitral tribunal may:

- appoint one or a few experts for the purpose of reporting to it on specific issues determined by it; or
- require parties to provide any information on the case and the documents, goods and other property related to the case to the expert and to create conditions for their study by the expert.

Moreover, if there is no other agreement between the parties, and if one of the parties asks or the arbitral tribunal deems it necessary, the expert may participate in the hearing after submitting his or her written or oral opinion. In this case, the parties are given the opportunity to ask the expert questions and present witnesses to him or her to testify on controversial issues.

A tendency to apply IBA rules on the taking of evidence in international arbitration is not observed in Azerbaijan. However, the parties are free to agree on the applicability of respective rules to their arbitral proceedings.

*Law stated - 26 April 2022*

## **Court involvement**

In what instances can the arbitral tribunal request assistance from a court, and in what instances may courts intervene?

The arbitral tribunal, or any party with the approval of the arbitral tribunal, can request assistance from the Supreme Court when taking evidence. The Court can execute this request within its competence and according to the rules on taking evidence.

*Law stated - 26 April 2022*

## **Confidentiality**

Is confidentiality ensured?

Confidentiality matters are not specifically regulated by the Law on International Arbitration. However, the parties are free to agree on the procedure to be followed by an arbitral tribunal in conducting the proceedings, and consequently can agree for the proceedings to be confidential.

In addition, domestic arbitration institutions have their internal regulations (rules) in which their confidentiality obligations are determined. According to the rules of the Azerbaijan International Commercial Arbitration Court, tribunal arbitrators (judges), secretarial staff and speakers are obliged to keep confidential all information received for the purposes of the proceedings.

*Law stated - 26 April 2022*

## **INTERIM MEASURES AND SANCTIONING POWERS**

**Interim measures by the courts**

## What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

It is possible for a party to request from the court, before or during arbitral proceedings, an interim measure of protection and for the court to grant it. In practice, however, this provision of the legislation does not work well, since courts prefer not to interfere in arbitration proceedings.

*Law stated - 26 April 2022*

## Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Although the Law on International Arbitration does not explicitly provide for emergency arbitrators, the Law allows the parties to agree on the right of the arbitration institution to grant interim measures prior to composition of the tribunal.

*Law stated - 26 April 2022*

## Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

The Law on International Arbitration does not specify the types of interim measures that the arbitral tribunal may order. More generally, the following interim measures are available under Azerbaijani laws:

- seizure of property of the respondent or other persons;
- prohibiting the respondent from the performance of certain actions;
- prohibiting other persons from the performance of certain actions related to the subject matter of the dispute;
- suspending the sale of property in case of submission of a claim petition on withdrawal of arrest over the property;
- suspension of recovery upon an execution deed, whose legality is being disputed by a debtor in court; and
- suspension of recovery upon execution or any other deed on non-contested withholding, whose legality is being disputed by a claimant in the court.

The Law on International Arbitration does not provide for any rule on security for costs.

*Law stated - 26 April 2022*

## Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

The Law on International Arbitration does not provide for special rules allowing arbitral tribunals to order sanctions against parties or their counsel who attempt to undermine the arbitration proceedings using such tactics.

The rules of Azerbaijan's two domestic arbitration institutions do not contain any provisions in this regard.

*Law stated - 26 April 2022*

## AWARDS

### Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

According to the Law on International Arbitration, an arbitral award must be in writing and signed by an arbitrator (if the dispute has been heard by a sole arbitrator) or by a majority of arbitrators. If signed by a majority of arbitrators, the reasons for the absence of the other arbitrators' signatures need to be stated in the award.

*Law stated - 26 April 2022*

### Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The legislation does not specifically determine the legal consequences of dissenting opinions. According to the Law on International Arbitration, an arbitral award is deemed enforceable when it is made in writing and signed by the majority of arbitrators who adopted it.

*Law stated - 26 April 2022*

### Form and content requirements

What form and content requirements exist for an award?

The Law on International Arbitration requires arbitral awards to be made in writing and to be signed by an arbitrator (if the dispute has been heard by a sole arbitrator) or by a majority of arbitrators. If signed by a majority of arbitrators, the reasons for the absence of the other arbitrators' signatures need to be stated in the award.

The arbitral award shall also include a justification, except for the cases when the parties have agreed not to provide a justification or in cases where a decision is made in accordance with the conditions agreed by the parties as part of the consent award between them.

*Law stated - 26 April 2022*

### Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

Neither the legislation nor the two arbitral institutions operating in Azerbaijan determine a time limit within which an arbitral award must be adopted after the proceedings are initiated.

**Date of award**

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The time limits for the actions below are calculated from the date of the award:

1. if there is no other agreement on the terms between the parties, within 30 days of the date of the award:
  1. one of the parties may, by notifying the other party, ask the arbitral tribunal to correct the writing errors and account errors made in the award, and correct the defects related to the printing or other similar errors made in the award; and
  2. on the basis of the relevant agreement reached between the parties, any party may, by notifying the other party, ask the arbitral tribunal to explain the relevant part or any specific clause of the award;
2. the arbitral tribunal may, on its own initiative, eliminate any defects specified in point (1) within 30 days of the date of the award; and
3. an application to set aside an arbitral award must be made within three months of the date on which the applicant received the award.

Law stated - 26 April 2022

**Types of awards**

What types of awards are possible and what types of relief may the arbitral tribunal grant?

Azerbaijani legislation does not provide for several types of awards. Only final awards reflecting the decision of the arbitral tribunal on all aspects of the claim falling within the scope of the tribunal's jurisdiction are adopted.

Law stated - 26 April 2022

**Termination of proceedings**

By what other means than an award can proceedings be terminated?

The arbitral proceedings shall be terminated by the final arbitral award of the arbitral tribunal or by an order of the arbitral tribunal in the following cases:

- the claimant withdraws his or her claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his or her part in obtaining a final settlement of the dispute;
- the parties agree on the termination of the proceedings; or
- the arbitral tribunal finds that the continuation of the proceedings has, for any other reason, become unnecessary or impossible.

Law stated - 26 April 2022

**Cost allocation and recovery**

## How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Cost allocation is not specifically regulated under the Law on International Arbitration. However, in accordance with the Azerbaijan International Commercial Arbitration Court's Regulation on costs (the AICAC Regulation on costs), if there is no agreement between the parties, the unsuccessful party will be required to pay the arbitration fees (article 6.1, AICAC Regulation on costs).

*Law stated - 26 April 2022*

## Interest

### May interest be awarded for principal claims and for costs, and at what rate?

The awarding of interest is not regulated by the Law on International Arbitration. The question of awarding interest is considered by the arbitral tribunal in accordance with the legislation chosen by the parties for the resolution of disputes. If Azerbaijani legislation is chosen by the parties for the resolution of disputes, according to the Civil Code, an interest rate is applied, which is calculated by adding 2 per cent to the interest rate determined by the Central Bank of the Republic of Azerbaijan for each year. For 2022, the interest rate is 7.75 per cent.

*Law stated - 26 April 2022*

## PROCEEDINGS SUBSEQUENT TO ISSUANCE OF AWARD

### Interpretation and correction of awards

#### Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

The arbitral tribunal has the power to correct an award on its own initiative within 30 days of the date of the award.

In addition, if there is no other agreement on the terms between the parties, within 30 days of the date of the award:

- one of the parties may, by notifying the other party, ask the arbitral tribunal to correct the writing errors and account errors made in the award, as well as to correct the defects related to the printing or other similar errors made in the award; and
- on the basis of the relevant agreement reached between the parties, any party may, by notifying the other party about it, ask the arbitral tribunal to explain the relevant part or any specific clause of the award.

If the arbitral tribunal considers such a request as reasonable, it must correct or explain the award within 30 days of the date of receipt of the request.

*Law stated - 26 April 2022*

## Challenge of awards

### How and on what grounds can awards be challenged and set aside?

A right of appeal is not provided in the Law on International Arbitration and, therefore, an arbitral award cannot be appealed in the local courts of Azerbaijan. Under the Law on International Arbitration, an arbitral award can be set aside

by the Supreme Court. This is the only recourse against an arbitral award.

An application to set aside an arbitral award must be made within three months of the date on which the applicant received the award.

An arbitral award can only be set aside by the Supreme Court if the applicant provides proof that:

- a party to the arbitration agreement was under some incapacity, or the agreement is not valid under the law to which the parties have subjected it (or, failing any choice of law, under Azerbaijan law);
- the applicant was not given proper notice of the appointment of an arbitrator or the arbitral proceedings, or was otherwise unable to present his or her case;
- the award deals with a dispute not contemplated by or not falling within the terms of the arbitration, or contains decisions on matters beyond the scope of the arbitration (provided that, if decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award relating to decisions not submitted to arbitration can be set aside); or
- the composition of the arbitral tribunal or the arbitral procedure did not accord with the parties' agreement, unless the agreement was in conflict with a provision of the Law on International Arbitration from which the parties cannot derogate (or, failing such agreement, was not in accordance with the Law).

An award can also be set aside if the court finds that:

- the subject matter of the dispute is not capable of settlement by arbitration under Azerbaijan law; or
- the award violates the Constitution of Azerbaijan or Azerbaijan's sovereignty or its main legislative principles.

*Law stated - 26 April 2022*

## Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

An arbitral award can only be set aside by the Supreme Court. Legislation does not specifically regulate the length of challenge proceedings, but Supreme Court cases should be decided within three months. In practice, the three-month guideline is used to determine challenge proceedings. No expedited proceedings on challenging arbitral awards are available.

The fee quotes for submitting appeals on challenging arbitral awards to the Supreme Court are not specifically determined by the legislation.

The state fee on appeals made to the court is paid by the applicant. Then, on the basis of the relevant court decision, the respondent may be required to pay the amount of the state fee to the applicant.

Also, as per the legislation in force, there are categories of persons exempted from paying the state fee on submitting appeals to the court. If the applicant is exempted from paying the state fee in the prescribed manner, the state fee calculated in accordance with the secured part of the claim shall be deducted from the respondent and transferred to the state budget.

*Law stated - 26 April 2022*

## Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

Domestic arbitration is not regulated by Azerbaijani legislation and is not practised.

Regarding the recognition and enforcement of foreign arbitral awards, Azerbaijan is a party to the following international treaties related to recognition and enforcement of foreign arbitral awards:

- the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) (with no reservation);
- the European Convention on International Commercial Arbitration 1961 (with no reservation); and
- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (with no reservation).

The Arbitration Law and Civil Procedure Code replicate provisions in the New York Convention.

An arbitral award (irrespective of the country where it was made) is recognised as binding and, on written application, will be enforced in accordance with the Law on International Arbitration. The Supreme Court reviews applications on the enforcement and recognition of arbitral awards. For recognition and enforcement of foreign arbitral awards, the party seeking enforcement must supply the duly authenticated original award or a duly certified copy of it. If an arbitration agreement is not in Azerbaijani, a certified translation must be provided.

The Supreme Court can refuse to enforce a foreign arbitral award on proof of the following grounds.

- One of the parties to the arbitration agreement did not have legal capacity or the agreement was invalid under the law governing it, or the law where it was made.
- The party against whom the award was made was not duly notified about the appointment of the arbitrator or the arbitration process, or was not able to present its case.
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration. If decisions on matters submitted to arbitration can be separated from those not submitted, the part of the award that relates to submitted matters will be recognised and enforced.
- The composition of the arbitral tribunal or the arbitral procedure did not accord with the arbitration agreement or, where there was no agreement, the law of the country where the arbitration was held.
- The award is not final and binding on the parties or has been cancelled or suspended by a court under the laws of the country where the award was adopted.

The Supreme Court can also refuse to enforce an award if:

- the subject matter of the dispute cannot be arbitrated under Azerbaijani law; or
- the recognition or enforcement of the arbitral award contradicts the main principles of Azerbaijani law or its sovereignty.

The legislation does not specifically regulate the length of enforcement proceedings, but Supreme Court cases should be determined within three months. In practice, the three-month guideline is used to determine enforcement

proceedings. No expedited proceedings are available.

As Azerbaijan is a party to the New York Convention, achieving recognition of a foreign arbitral award is not difficult provided that no grounds for refusal stipulated in the Law on International Arbitration and the Civil Procedural Code exist.

*Law stated - 26 April 2022*

### **Time limits for enforcement of arbitral awards**

Is there a limitation period for the enforcement of arbitral awards?

According to the Law on Enforcement, enforcement documents issued on the basis of international arbitration awards and foreign state courts must be directed to enforcement within three years.

*Law stated - 26 April 2022*

### **Enforcement of foreign awards**

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The Supreme Court can refuse to enforce a foreign arbitral award if the award has been cancelled or suspended by a court under the laws of the country where it was adopted.

*Law stated - 26 April 2022*

### **Enforcement of orders by emergency arbitrators**

Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?

Although the Law on International Arbitration does not explicitly provide for emergency arbitrators, it allows the parties to agree on the right of the arbitration institution to grant interim measures prior to the composition of the tribunal.

*Law stated - 26 April 2022*

### **Cost of enforcement**

What costs are incurred in enforcing awards?

The fee quotes for submitting applications on recognition and enforcement of arbitral awards to the Supreme Court are not specifically determined by the legislation.

Costs related to the translation and notarisation of documents and attorney order fees may occur.

Also, according to the Law on Enforcement, in the event that the enforcement document is not executed by the debtor within the time prescribed for voluntary execution without any excuse, the bailiff issues a decision on payment by the debtor of an execution fee at the rate of 7 per cent of the amount of money that must be withheld from the debtor. If a non-material claim is not executed, an execution fee of 11 Azerbaijani manats must be paid by an individual and 55 Azerbaijani manats by a legal entity.

*Law stated - 26 April 2022*

## OTHER

### Influence of legal traditions on arbitrators

What dominant features of your judicial system might exert an influence on an arbitrator from your jurisdiction?

Domestic arbitration is not practised.

*Law stated - 26 April 2022*

### Professional or ethical rules

Are specific professional or ethical rules applicable to counsel and arbitrators in international arbitration in your jurisdiction? Does best practice in your jurisdiction reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

There is no specific code of conduct applicable to counsels and arbitrators in international arbitration in Azerbaijan. Domestic arbitration institutions have their internal regulations (codes of conduct) determining ethical rules for arbitrators.

In addition, the Law on International Arbitration also provides for several requirements applicable to arbitrators, such as the requirements on the impartiality and independence of arbitrators.

Regarding the ethical rules that apply to counsels in international arbitration in Azerbaijan, neither the legislation in force nor the rules of domestic arbitration institutions determine any such rules.

*Law stated - 26 April 2022*

### Third-party funding

Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?

Third-party funding of arbitral claims is neither regulated nor subject to any regulatory restrictions in Azerbaijan.

*Law stated - 26 April 2022*

### Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Foreign arbitrators travelling to Azerbaijan from countries with which Azerbaijan has not established a visa-free regime shall obtain a visa appropriate to the purpose of arrival in advance. The standard processing time for visas is three days; however, in urgent cases, the applicant can receive his or her final e-visa in as little as three hours.

As arbitration institutions have their internal regulations (codes of conduct) determining the ethical rules for arbitrators, these regulations apply to foreign practitioners as well. In addition, the Law on International Arbitration also provides for several requirements applicable to arbitrators, such as the requirements on the impartiality and independence of arbitrators.

Regarding the tax-related obligations of foreign arbitrators in Azerbaijan, national tax legislation applies to foreign practitioners if they are recognised as residents for taxation purposes (ie, they have been physically present in

Azerbaijan for a period of more than 182 days cumulatively in a calendar year (article 13.2.5 of the Tax Code)).

*Law stated - 26 April 2022*

## UPDATE AND TRENDS

### Legislative reform and investment treaty arbitration

Are there any emerging trends or hot topics in arbitration in your country? Is the arbitration law of your jurisdiction currently the subject of legislative reform? Are the rules of the domestic arbitration institutions mentioned above currently being revised? Have any bilateral investment treaties recently been terminated? If so, which ones? Is there any intention to terminate any of these bilateral investment treaties? If so, which ones? What are the main recent decisions in the field of international investment arbitration to which your country was a party? Are there any pending investment arbitration cases in which the country you are reporting about is a party?

According to publicly available information, a draft law on changes to the Law on International Arbitration was prepared in 2021. The content of the draft law has not been made public as it is still being reviewed by government agencies.

Regarding the investment treaties, we are not aware of the termination of investment treaties within the past few years, and we are also not aware of the intentions of the government in relation to the investment treaties in force.

According to publicly available information posted on the website of the United Nations Conference on Trade and Development, there are currently three pending investment arbitration cases in which Azerbaijan is a party. These are:

- Bahari v Azerbaijan, initiated in 2019;
- Hasanov v Georgia, initiated in 2020; and
- Leshkasheli and Rosserlane v Azerbaijan, initiated in 2020.

*Law stated - 26 April 2022*

## Jurisdictions

	<b>Australia</b>	DLA Piper
	<b>Austria</b>	OBLIN Attorneys at Law
	<b>Azerbaijan</b>	GRATA International
	<b>Bulgaria</b>	Kambourov & Partners, Attorneys at Law
	<b>Canada</b>	Singleton Urquhart Reynolds Vogel LLP
	<b>China</b>	Jingtian & Gongcheng
	<b>Croatia</b>	Gugić, Kovačić & Krivić
	<b>Ecuador</b>	TADIR Dispute Resolution
	<b>France</b>	Aramis Law Firm
	<b>Germany</b>	rothorn legal
	<b>Ghana</b>	Kimathi & Partners Corporate Attorneys
	<b>Greece</b>	Lambadarios Law Firm
	<b>Hong Kong</b>	RPC
	<b>Hungary</b>	Bán, S.Szabó, Rausch & Partners
	<b>India</b>	Aarna Law
	<b>Indonesia</b>	Lubis Santosa & Maramis
	<b>Italy</b>	Legance - Avvocati Associati
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Liechtenstein</b>	Gasser Partner
	<b>Luxembourg</b>	Baker McKenzie
	<b>Macau</b>	JNV - Lawyers and Notaries
	<b>Mexico</b>	Ruiz-Silva Abogados S.C
	<b>New Zealand</b>	Arbitra International
	<b>Norway</b>	Arntzen de Besche Advokatfirma AS
	<b>Pakistan</b>	Axis Law Chambers

	<b>Russia</b>	Morgan, Lewis & Bockius LLP
	<b>Singapore</b>	Braddell Brothers LLP
	<b>Slovakia</b>	Barger Prekop sro
	<b>South Korea</b>	Kim & Chang
	<b>Spain</b>	King & Wood Mallesons
	<b>Sri Lanka</b>	FJ & G de Saram
	<b>Sweden</b>	Advokatfirman Delphi
	<b>Switzerland</b>	Bär & Karrer
	<b>Thailand</b>	Duensing Kippen
	<b>Turkey</b>	CETINKAYA
	<b>United Arab Emirates</b>	Afridi & Angell
	<b>United Kingdom</b>	Herbert Smith Freehills LLP
	<b>USA</b>	Draper & Draper LLC
	<b>Uzbekistan</b>	Putilin Dispute Management
	<b>Zambia</b>	Corpus Legal Practitioners