

## GRATA INTERNATIONAL (AZERBAIJAN)



In keeping with GRATA's practice of informing clients regarding important legal developments that might influence their business, we draw your attention to the important recent changes in Azerbaijani legislation.

A draft law containing amendments to the Law «On Road Transportation» providing for certain provisions in the regulation of taxi operations, as well as draft laws «On Public Procurement» and «On Payment Services and Payment Systems» are currently under consideration of the Parliament of the Republic of Azerbaijan. If the amendments to the Law «On Road Transportation» are adopted, these amendments will enter into force on 1 October 2023. The new Law «On Public Procurement» will enter into force after 6 months from the date of official publication, and the new Law "On Payment Services and Payment Systems" will enter into force in 3 months from the date of its official publication after its adoption by the Parliament of the Republic of Azerbaijan.

**Changes will be made to the Law «On Road Transportation» in the field of taxi regulation, and control over the issuance of licenses will be tightened.**

In particular, the following definitions were provided by the document:

1. **taximeter** - a special measuring device or software with fiscal memory, designed for a passenger car-taxi, providing accounting for the distance traveled and the duration of downtime of a passenger car-taxi, calculating the fare and informing the passenger about it;
2. **taxi ordering service** - a paid service using telecommunication means, related to receiving an order from a person wishing to order a passenger car-taxi and transferring it to a person carrying out this transportation;
3. **taxi order operator** - a legal entity or individual entrepreneur providing services for ordering taxis to persons carrying out passenger transportation by passenger cars-taxis;
4. **permit** - permission issued to legal entities or individual entrepreneurs to carry out activities in the field of passenger or cargo transportation;
5. **permit card** - a card with an attachment to the permit, issued for vehicles owned, leased or used by legal entities or individual entrepreneurs.

In order to regulate the activities of taxi, legal entities and individual entrepreneurs willing to provide passenger transportation services will be required to obtain the following documents:

1. a permit for passenger carriage by taxi;
2. permission to provide the service of a taxi order operator.

Carrying out the activities of a taxi order operator without permission or on the basis of permission belonging to other persons is prohibited.

**Once this law gets into force, Law 245-IIQ of 27 December 2001 «On Public Procurement» shall become invalid.** The main directions of regulation in the draft law will be related to the organization of the procurement process, depriving suppliers of the possibility of abuse, as well as supervision of procurement by state bodies.

According to the pending amendments:

**An advance guarantee** - is a guarantee issued by the winning supplier to the procuring entity in the form of a guarantee, insurance coverage, letter of credit, deposits and other financial assets for liabilities in the event that the advance is not used for its intended purpose, if performance of the procurement contract is not commenced or if the procurement contract is not performed.

**A framework agreement** is an agreement concluded between a procuring entity and two or more suppliers who meet the requirements defining the conditions of purchase of the subject matter of the procurement concerned during a budget period that is periodic or recurrent, and whose volume and total value cannot be fully determined in advance.

**Procuring entities** will be state bodies, extra-budgetary state funds, public legal entities established on behalf of the state, legal entities in which the state has a controlling interest, and other state institutions and organizations (offices) acquiring the subject matter of the procurement.

The draft law defines "unreliable suppliers" and plans to create a state register of unreliable suppliers, information about which will be entered into the register by the executive authority supervising them.

In this case, the period of the supplier's presence in the register of unreliable suppliers may not exceed 3 (three) years, during this period this supplier is not allowed to participate in procurement.

The new Law will define the stages of procurement, in which 13 stages will be defined. Procurement will consist of the following stages:

1. preparation of a procurement plan and determination of the estimated cost;
2. the formation of a procurement committee;
3. in the case of a prequalification procedure, preparation of a set of documents on the eligibility of suppliers, and publication of the announcement (sending of the invitation);
4. preparing a set of terms and conditions;
5. publication of call for proposals (sending invitation);
6. receipt and opening of proposals;
7. evaluation of proposals;
8. preparation and approval of the final record of the results of the procurement to be submitted to the control authority;
9. when a framework agreement is applied, conclusion of a framework agreement;
10. issuance of notice of acceptance of proposal and submission of procurement contract to supplier for signature;
11. signing the procurement contract by the supplier, submission of performance bond and/or advance payment to the procuring entity as required by the Law;
12. signing of the procurement contract by the procuring entity and entry into force of the procurement contract;
13. the preparation of the procurement report.

The procuring entity may engage independent experts and specialists to assist in organizing the procurement.

The law will define the application and types of procurement methods, among which shall be: open tender, two-staged tender, closed tender, request for quotations and single-source procurement. Thus, according to the requirements of article 44.4 of the Law, if an estimated value of the purchase is AZN 100,000 or more the procurement process shall be carried out with the use of methods of open tender or two-staged tender. Prior to this, the estimated value of the purchase for an open tender had to be at least AZN 50,000.

When the estimated value of the purchase is less than AZN 100,000, the procurement process may be carried out by a request for quotations method.

Article 44.4 of the Law provides that regardless of the estimated value, the following methods of procurement may be used only with the consent of the control authority:

1. closed tender method;
2. single source procurement method;
3. open tender or request for quotation methods that result in a framework agreement.

The draft law provides for the introduction of new provisions governing requests for quotations. According to the Law, depending on the estimated value, the method of request for quotation is conducted among the following suppliers and only their proposals are evaluated:

1. if an estimated value of the purchase is up to AZN 30,000 - suppliers that are subject to micro and small businesses;

2. if an estimated value of the purchase is from AZN 30.000 to AZN 100.000 - suppliers that are subject to micro, small and medium-sized enterprises.

In the following cases, a procuring entity may use single-source procurement in accordance with Article 44.4 of the Law:

1. When only the particular supplier can deliver the purchase subject, or if a particular supplier has special rights to the purchase subject and there is no replacement or alternative to the purchase subject;
2. when there is an urgent demand by the procuring entity for the purchase subject:
  - 2.1. if the circumstances arising by the urgent demand that cannot be foreseen, or where those circumstances are not the result of deliberate expectations on the part of the procuring entity;
  - 2.2. in case of preventing injury to life or health in the event of natural disasters, technogenic accidents, epidemics and other cases of extreme urgency.
3. If the procuring entity, after purchasing the purchase subject from a supplier, has concluded that the purchase subject should be purchased from that supplier on the basis of standardization considerations or the need for conformity with an existing purchase subject, and where the planned procurement is a technological or proprietary continuation of a previous purchase subject;
4. When the purchase subject is an intelligence and counter-intelligence asset.

The Procurement Commission shall, within 10 working days, assess and apply to the supervisory body for consent, justifying the choice of the supplier.

The consent of the supervisory authority shall be the basis for the award of the procurement contract. However, if the procurement contract is not concluded within 30 working days of obtaining the consent, the consent will get invalid.

**A draft Law “On Payment Services and Payment Systems”, which defines the legal, organisational and economic framework for the regulation and control of payment systems and services, is under consideration. With the adoption of this Law, authority in this area will be delegated to the Central Bank of the Republic of Azerbaijan.**

This draft law defines the following terms. Thus, according to the law:

1. **e-money** is a means of payment issued to a user of a payment service in accordance with his or her order, stored electronically, allowing payment transactions and accepted for payment by both the issuer of e-money and third parties.
2. **e-money organization** - a legal person who, on the basis of a licence obtained in accordance with the procedure prescribed by this Law, issues electronic money and performs payment transactions related to electronic money and has the right to provide other payment services, if this is provided for in its licence.
3. **Operator** - a person who organizes the activities of a payment system and determines the rules of that system in accordance with this Act.
4. **Payment agent** - is a legal or natural person, who provides payment services on behalf of a bank, payment organization or electronic money organization on the basis of an agreement concluded with them, or a natural person, who carries out entrepreneurial activities without creating a legal person.
5. **Payment instrument** - any individualized instrument and (or) a set of procedures, agreed with the provider of the payment service and used by the user of the payment service for the transfer of the payment order.
6. **Payment service** - a service provided by the payment service provider.
7. **Provider of payment services** - persons who provide payment services to the user of payment services in accordance with this Act.
8. **Payment system** - a system of money transfers, in which three or more participants participate, with formalized and standardized common mechanisms and rules for processing of payment transactions, clearing and (or) settlements;
9. **Payment organization** - a legal entity, which provides other payment services in aggregate or separately, except for issuing electronic money and performing payment transactions with electronic money on the basis of a licence in accordance with the Law.

Under the draft law, the term of payment services will include:

1. Conducting internal and/or external cash transactions on a payment account;
2. The transfer of credit, direct debit, performing payment transactions with a payment card or other similar payment instruments;
3. Issuing payment instruments and/or acquiring payment transactions;
4. Money transfer;
5. issuance of e-money and performance of payment transactions using electronic money;
6. Intermediary services for payment transactions;
7. account information service.

Payment service providers will be:

1. The Central Bank of the Republic of Azerbaijan;
2. banks and local branches of foreign banks;
3. non-bank credit organizations operating in accordance with the Law of the Republic of Azerbaijan "On non-bank credit organizations";
4. National postal service operator;
5. Payment organizations;
6. Electronic money organizations.

The draft law establishes a list of organizations that are empowered to issue e-money: includes banks and local branches of foreign banks, the national postal operator, and e-money organizations.

It shall be mentioned that a payment organization, e-money organization and operator (other than the Central Bank) may only engage in payment services and payment systems activities after obtaining a license under this Law. An organization applying for a license shall apply to the Central Bank stating the type of payment services for the activity for which a license is required.

Regulation of the activity of payment service providers and operators in the Republic of Azerbaijan, as well as control of their activity, is carried out by the Central Bank.

Persons providing payment services prior to the coming into force of this Law shall obtain a license and be registered within 6 (six) months from the coming into force of this Law, as well as ensure compliance of their activities with the requirements of this Law.

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