



GRATA
INTERNATIONAL

COMMERCIAL CONTRACTS

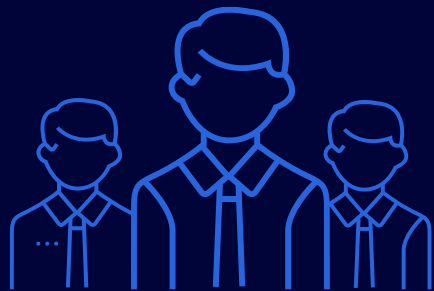
2021

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Choice of Law and Forum Clauses in International Commercial Contracts



Choice of foreign law clause

➤ Existence of foreign element:

The following is understood under the “foreign element”:

- either one of the parties is a non-Azerbaijani entity; or**
- there is a connection between the transaction and chosen foreign law (e.g. works/services are performed/rendered outside Azerbaijan).**

Under International Private Law (applicable to transactions with foreign element), local counterparties (including government) are able to contract under a foreign law. Provisions of the foreign law will not be applicable in Azerbaijan if they contradict the Constitution of Republic of Azerbaijan or the acts adopted on referendum (art. 4, International Private Law).

Exceptions/Restrictions

Take into account that the choice of Law will not be applied to the cases when the subject of the contract related to: (Art.20-23 of the PIL)

- (i) Property and other property rights related to movable and immovable property;
- (ii) Creation and termination of property rights;
- (iii) Property right to vehicles and movable property on the road;
- (iv) Personal non-property rights (intellectual property)

Absence of governing law clause



- In absence of governing law, below laws are applied depending on a particular type of contracts (Art. 25, International Private Law):
 - Sale purchase contract – seller’s laws
 - Loan agreement – lender’s laws
 - Contract for works – contractor’s laws
 - Insurance contract – insurer’s laws
 - Suretyship contract – surety’s laws
 - Pledge agreement – pledger’s laws
 - Guarantee – guarantor’s laws

Dispute resolution clause (Arbitration)

In accordance with the International Arbitration Law, arbitral awards of international arbitration courts/Commercial Arbitral Centres are recognized and enforced by Supreme Court.

Azerbaijan is a party to the New York Convention of 1958 on Recognition of Foreign Arbitral Awards.

Supreme Court of Azerbaijan may refuse to recognize and enforce of award of an Arbitral Tribunal under certain circumstances.

Laws Relevant to an International Arbitration



Exclusive jurisdiction (Arbitration)

If the subject matter of the dispute falls under the exclusive jurisdiction of the Azerbaijani courts, which covers any disputes below, the Supreme Court is able to refuse recognition of a foreign arbitral award:

- the immovable property located in the Republic of Azerbaijan;
- the liquidation of Azerbaijani legal entities and validity of decisions of Azerbaijani legal entities;
- the patents, trademarks and other registered rights, provided that such patents, trademarks and rights were registered in the Republic of Azerbaijan; and
- measures of enforcement in relation to a matter, provided that the decision on the measures was announced or enforced in the Republic of Azerbaijan;
- cases related to claims against cargo shippers, deriving from contracts on transportation services.

Dispute resolution clause (Foreign Courts of foreign states)

As per Article 462 of the Civil Procedure Code, judgments of foreign national courts may be recognized and enforced in the Republic of Azerbaijan, in the event that

- the judgments do not contradict laws and rule of law of the Republic of Azerbaijan and
- the recognition is mutually ensured.

According to the decision of the Constitutional Court dated 15 April 2019 (published on 24 April 2019, 20 July 2017), the recognition is mutually ensured when

- either there is a bilateral agreement between Azerbaijan and a foreign state; or
- both of the states are parties to a multilateral agreement on assistance in legal matters.

Should there be no international treaty, recognition and enforcement is still achievable on the basis of reciprocity , as per Article 458 of the Civil Procedure Code.

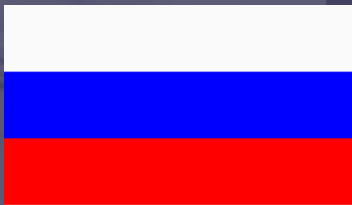
International treaties regulating the recognition and enforcement of decisions of foreign courts

Most of the multilateral agreements on the discussed matter have been signed by Azerbaijan within the framework of CIS.

Those are:

- Chisinau Convention (2002; ratified: 2004) (within CIS);
- Kiev Agreement (20.03.2002; Ratified 10.12.2002) (CIS);
- Moscow Agreement (06.03.1998; Ratified: 04.12.1998) (CIS);
- Minsk Convention (22.01.1993, Azerbaijan joined: 01.09.1995, entered into force: 11.06.1996) (CIS).

In addition, Azerbaijan has concluded bilateral agreements on legal assistance with countries such as:



In accordance with these agreements, Azerbaijan undertakes to recognize and execute the decisions of the courts of these states.



Arbitration vs. national courts

As a matter of law, absence of a formal agreement between Azerbaijan and a foreign country is not considered as a ground for the local court to refuse the recognition and enforcement of a foreign national court's judgment in Azerbaijan.

There is however a risk of refusal for recognition and enforcement of judgments of a foreign national court in Azerbaijan as a result of absence of an agreement between the states about recognition and reciprocity.

With entities of foreign countries where there are no bilateral/multilateral agreements, it is recommended to choose an international arbitration institution as the venue of dispute resolution (rather than national courts).

Mediation

In case parties to a transaction/ agreement decide to have future disputes heard and resolved by local courts in Azerbaijan, they may have to go through mediation for filing a lawsuit.

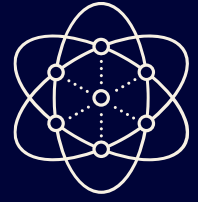
According to the article 28.1 of the Law "on Mediation", parties should attend the initial mediation session before commencing a case on economic disputes, as well as disputes arising out of family and labor relations. However, this fact apply to that agreement where the place of jurisdiction was selected Azerbaijan. If this is a **enforcement of award** of an Arbitral Tribunal, there no need to attend the mediation session.

It should be noted, that this Law will be in force as of 1 July 2021.

Hence, as of 1 July 2021, the contractual parties (if they chose Azerbaijani jurisdiction) should apply to the mediation session before going to the court. Otherwise, their application to the court will be rejected.



EXPERIENCE



- Wrong/non-convenient choice of forum for dispute resolution;
- Wrong/non-convenient choice of jurisdiction for the enforcement of the decision.

NOTICES

It is worth to note that, when preparing of an agreement, especially clauses on periods, terms and durations, parties should take into account that a decision/judgment/arbitral award will be enforceable within 3 years of the date of issuance.

We always recommend to ensure availability of the agreement and supporting documents in hardcopy format. Even though the law does give equal legal effect to the digital documents and hardcopies, in practice, we still sometimes encounter difficulties when using digital documents as proofs.



**IMPORTANT
NOTICE**



KEY CONTACTS

Azerbaijan, Baku



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Gumru Eyvazova**



**Partner-
Umami Jalilova**



The background features a light gray grid of small dots on the left side, partially obscured by large, white, diagonal geometric shapes that create a sense of depth and movement. The overall aesthetic is clean and modern.

THANK YOU!

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QUESTIONS?
