

Legislation - On International Arbitration Law of the Azerbaijan Republic on International Arbitration

SECTION 1. General Provisions

Article 1. Area of Application

1. This Law shall apply to international commercial arbitration, provided that interstate agreements, to which the Azerbaijan Republic is a party, are complied with. 2. The provisions of this Law (except for Articles 8,9, 35 and 36) shall apply solely when the place of arbitration is in the Azerbaijan Republic. 3. An arbitration shall be deemed international in the following cases: * if enterprises of the parties to an arbitration are located in separate countries at the moment when the arbitration agreement (hereinafter referred to as an "arbitration agreement") is concluded; * if one of the following places is outside the territory of the State where the parties' enterprises are located: a) the place of arbitration (if such a place is determined under or in accordance with the arbitration agreement); b) any place where the main part of obligations arising out of trade relationships is to be performed, or a place that is closely connected with the object of dispute; * if the parties have indisputably agreed that the subject of the arbitration agreement is connected with more than one state. 4. For the purposes of Article 3 hereof: * where a party has more than one enterprise, an enterprise shall imply such enterprise of the party that is more closely related to the arbitration agreement; * where a party does not have an enterprise, account shall be taken of the party's permanent place of residence. 5. This Law shall not affect the legal force of the laws of the Azerbaijan Republic which does not allow consideration of certain disputes under an arbitration or provide for the procedure, other than the procedure hereunder, pursuant to which certain disputes may be considered in an arbitration.

Article 2. Main Concepts

The main concepts used in this Law shall have the following meanings: a) "arbitration" - any arbitration whether or not it is conducted by the permanent arbitration office. b) "arbitration court" - an arbitrator or a board of arbitrators; c) If any provision of this Law (except for Article 28) provides for a possibility for the parties to adopt a decision, the parties may charge any organization (administration) or a third person with the adoption of such decision; d) If this Law contains any reference to any agreement, or possibility of agreement, between the parties, or any reference in any other form to the agreement of the parties, such agreement shall take into consideration any arbitration procedures provided hereunder; e) Any reference made by any of the provisions of this Law (except for Articles 25(a) and 32(2)) to a claim shall also apply to a counter-claim. Any reference to an objection shall also apply to an objection related to such counter claim.

Article 3. Receipt of Written Information

1. Unless otherwise agreed between the parties: a) any written information shall be deemed served where such information is personally delivered to the addressee, or is mailed to the address of his enterprise or residence. Where such delivery is not possible, written information shall be deemed served if it is sent, by a registered letter, to the latest known address of the enterprise or the addressee's place of residence or postal address, or is sent (provided that registration is effected) by other methods

applicable to the delivery of such information. b) information shall be deemed received on the day that such delivery is effected. 2. The provisions of this Article shall not apply to information (notifications) provided in the process of court proceedings.

Article 4. Waiver of the Right to Objections

If any party is aware of the failure to comply with any provision of this Law, from which the parties may deviate, or any requirement of the arbitration agreement, and if, nevertheless, the party does not express his/its objection and continues his/its participation in the process of arbitration, as well as where there is a term established for the submission of objections, the party's right to object during such term shall be deemed waived.

Article 5. Limits of State Interference

Except for cases envisaged under this Law, no court interference shall be allowed with respect to the matters regulated under this Law.

Article 6. Court Performing Relevant Control and Assistance Functions with Respect to the Arbitration

Functions of the court provided under Articles 11.3, 11.4, 13.3, 14.1, 16.3, 27, 34.2 and 34.3 shall be performed by the Azerbaijan Republic's Economic Court.

SECTION 2. Arbitration Agreement

Article 7. The Concept and Form of an Arbitration Agreement

1. "Arbitration Agreement" - an agreement between parties on the submission, to arbitration, of a part or the whole of disputes that may arise between the parties in respect of any concrete legal relationship, whether such agreement is of legal or other nature. An arbitration agreement may be concluded via an arbitration clause in a contract or as a separate agreement. 2. An arbitration agreement shall be concluded in a written form. An agreement shall be deemed concluded in writing if it is reflected in a document signed by the parties, or is signed by a letter, electronic communication, teletype, telegraph etc., to which the opposite party does not object. A reference, in a contract, to an arbitration clause shall be deemed an arbitration agreement, provided that the contract is concluded in writing and such reference makes that clause a part of the contract.

Article 8. An arbitration Agreement and Submission of a Claim on the Substance of the Dispute

1. A court to which a claim has been brought on the matter related to the subject of an arbitration agreement shall, not later than the moment of submission of initial claim on the substance of the dispute by any of the parties, send the parties to arbitration, if there is a relevant request from the parties, if the arbitration agreement is not invalid, or if there are no inexecutable cases. 2. Nevertheless, where a claim provided under Paragraph 1 of this Article is submitted, an arbitration procedure may be started or continued, and an arbitration decision be adopted, until the question of the court relevance of the claim is settled.

Article 9. An Arbitration Agreement and Court Enforcement Measures

The parties' appeal to the court to guarantee enforcement measures, as well as the decision of the court to take relevant measures, before or during an arbitration process shall not be in contradiction with an arbitration agreement.

SECTION 3. An Arbitration Court

Article 10. Number of Arbitrators

1. The parties may determine the number of arbitrators at their own discretion. 2. If parties do not establish the number of arbitrators, three arbitrators shall be appointed.

Article 11. Appointment of Arbitrators

1. Unless there is an agreement between parties, no person may be deprived of the right to participate as an arbitrator in relationship with his citizenship. 2. Subject to the provisions of Paragraphs 4 and 5 of this Article, parties may, at their discretion, establish the procedure for the appointment of arbitrators upon mutual agreement. 3. If there is no agreement about such appointment: a) where there are to be 3 arbitrators - each party shall appoint one arbitrator, and two arbitrators so appointed shall appoint a third arbitrator. If the party that has received a request on the appointment of an arbitrator does not appoint an arbitrator within 30 days, or if the two arbitrators appointed by the parties do not come into agreement about the appointment of a third arbitrator within 30 days of their appointment, then the arbitrators shall, upon the request of any of the parties, be appointed by the court indicated in Article 6; b) where there is to be one arbitrator - if parties do not reach an agreement on the appointment of an arbitrator, then the arbitrator shall, upon the request of any of the parties, be appointed by the court indicated in Article 6. 4. With respect to the appointment procedure previously agreed between the parties - if, a) one of the parties does not follow the procedure; or b) the parties or two arbitrators do not reach an agreement with respect to or under such procedure; or c) any third party (including an organization or administration) does not fulfill any function that is vested in him/it with respect to or under such procedure, then any of the parties may request the court indicated under Article 6 to take necessary measures, unless otherwise provided for under the arbitration agreement. 5. Any decision taken by the court indicated under Article 6 with respect to matters stated in Paragraphs 3 and 4 above shall be final and may not be complained on. In the process of the appointment of an arbitrator, a court may take account of all necessary requirements agreed between the parties in respect of the nomination of an arbitrator, including independence and impartiality of an arbitrator, as well as may take into consideration the desire of the parties to appoint an arbitrator (when appoint a sole or a third arbitrator) whose citizenship is different from that of the parties.

Article 12. Grounds for Objection

1. Any person, when being requested to participate as an arbitrator, shall submit information to the parties on the cases that may arise reasonable doubts about such person's independence and impartiality. If an arbitrator has not previously informed the parties in this respect, then he shall immediately present such information from the moment of his appointment as an arbitrator and in the course of the arbitration process. 2. An objection may be aroused against an arbitrator only when there is a reasonable doubt about his independence and impartiality, or if he does not have the qualification required by the agreement of the parties. A party may raise objections against an arbitrator, who has been elected by such party or in whose election such party has participated, only due to reasons that became aware to such party after the appointment of such arbitrator.

Article 13. Objection Procedure

1. Parties may agree upon procedures for objection to an arbitrator at their own discretion, provided that the provisions of Paragraph 3 of this Article is complied with.

2. Where there is no such agreement between the parties, the party intending to object to an arbitrator shall submit, in writing, the reasons for his/its objections within 15 days of the moment that such party becomes aware of the organization of the arbitration court or of any of the cases indicated under Article 12.2 hereof. If an arbitrator to whom an objection is made rejects such objection, or of the other party does not agree to such an objection, then the matter on the rejection shall be resolved by the arbitration court.

3. When, in the process of the implementation of any of the procedures agreed between the parties or provided under Paragraph 2 of this Article, a request on the objection is not satisfied, the party requesting such objection may, within 30 days of the receipt of the decision on the rejection of such request, appeal the court indicated in Article 6 with the request to adopt a decision on such objection; such decision shall be final and may not be complained upon. The arbitration court, including the arbitrator to whom an objection has been made, may continue the arbitration process and adopt an arbitration decision until the above request is considered and a relevant decision adopted.

Article 14. Failure or Impossibility to Act

1. Where an arbitrator is not capable of performing his functions or does not function for a long period for some other reasons and without any substantial ground, or if an arbitrator relinquishes his post or the parties has agreed to such relinquishment, the mandate of such arbitrator shall be terminated (canceled). Where there is disagreement on any of the above reasons, any of the parties may request the court indicated in Article 6 to adopt a decision on the termination of the mandate; such decision shall be final and may not be complained upon. 2. If an arbitrator relinquishes his post, or if the parties agree that his mandate be terminated, pursuant to this Article or Article 13.2, such case shall be deemed as confirmation of reasons indicated in Article 12.2.

Article 15. Appointment of new Arbitrator

Where the mandate of an arbitrator is terminated under Articles 13 or 14, or due to the arbitrator's relinquishment of his post for some other reason, or on the basis of the parties' agreement, or on the basis of other cases, a new arbitrator shall be appointed under the procedure applied to the previous arbitrator.

SECTION 4. Authority of an Arbitration Court

Article 16. Right of an Arbitration Court to Adopt a Decision on its Own Competence

1. An arbitration court may adopt a decision on its own competence, as well as on any objection with respect to the existence of validity of an arbitration agreement. For this purpose the arbitration condition which is an integral of a contract shall be interpreted as an agreement that does not depend on other conditions of the contract. The decision adopted by an arbitration court on invalidity of a contract shall not cause invalidity of the "Ipso Jure" arbitration clause. 2. An application that an arbitration court does not have competence shall be submitted before the objection to the claim is made. The fact a party has appointed an arbitrator, or that has participated in the process of appointment shall not deprive such party of the right to submit such application. A declaration that an

arbitration court exceeds its authority shall be submitted as soon as any case (matter) in which the arbitration court exceeds its authority becomes evident. Any delayed declaration in such cases shall be accepted by an arbitration court if only there has been a good reason for such delay. 3. An arbitration court may adopt a decision on the declaration indicated in Paragraph 2 above either as a decision on the matter of priority or as a decision on the substance of the dispute. If the court adopts a decision, as a matter of priority, that it has competence, any of the parties may, within 30 days after the receipt of the notification of such decision, request the court indicated in Article 6 to adopt a decision on the relevant matter. Such a decision may not be complained upon. The arbitration court may continue the arbitration process and adopt a relevant decision until the relevant matter is resolved.

Article 17. Authority of an Arbitration Court with Respect to Enforcement Measures

Unless there is another agreement between the parties, an arbitration court may, upon the request of any of the parties, issue instructions to carry out enforcement measures should the arbitration court deems such measures necessary. An arbitration court may require any of the parties to guarantee such measures.

SECTION 5. Arbitration Proceedings

Article 18. Equal Treatment of Parties

Parties shall be treated equally and each party shall be given a possibility to express his/its position.

Article 19. Establishment of Arbitration Procedure

1. Subject to the Provisions of this Law, parties may, at their own discretion, agree upon the procedure of an arbitration proceeding. 2. Where there is no such agreement, an arbitration court may, subject to the provisions of this Law, carry out a proceeding in the manner that it deems appropriate. Authorities granted to an arbitration court shall include the authority to determine the possibility, relevance, substance and importance of any evidence.

Article 20. Place of Arbitration

1. Parties may, at their own discretion, agree upon the place of arbitration. Where there is no such agreement, the place of arbitration may be determined by the arbitration court with account taken of the convenience for the parties and essence of the case. 2. Notwithstanding the provisions of Paragraph 1 of this Article, an arbitration court may (unless agreed between the parties) conduct its session at any place which is deemed convenient from the point of view of hearing witnesses, experts or the parties, inspecting goods, property or documents, as well as conducting consultations among the court members.

Article 21. The Start of an Arbitration Process

Unless otherwise agreed between the parties, an arbitration process on a concrete dispute shall start from the moment that the defendant receives a notification that the dispute has been turned to arbitration.

Article 22. Language

1. Parties may, at their own discretion, agree on the language of the arbitration process. Where there is no such agreement, the arbitration court may determine the language to be used in the arbitration court or process. Unless otherwise provided by a relevant

agreement or a relevant court decision, such agreement shall apply to any written request of the parties, to court hearings, to any arbitration decision or other arbitration court documents. 2. An arbitration court may require that any documentary evidence be submitted together with its translation into the language or languages agreed on by the parties or established by the arbitration court.

Article 23. Claim and Objection to Claim

1. The claimant shall submit a declaration on the elements (cases) substantiating the claim, matters to be resolved and content of his/its claim, and the defendant shall declare his/its objection on the claim, within the term agreed on between the parties or established by an arbitration court, provided that there is no other terms agreed between the parties on necessary requisites (details) of such declarations. Parties may, together with their declarations, submit all documents that are supposed to have relevance to the matter, or refer to the documents or evidence that they intend to submit further. 2. Unless otherwise agreed between the parties, any of the parties may, in the process of an arbitration, make amendments or additions to his/its claims or objections, unless the arbitration court deems such amendment or addition inexpedient, taking account of the delay.

Article 24. Oral Consideration or Written Examination

1. Subject to any other agreement between the parties, an arbitration court shall adopt a decision whether to conduct oral examination and discussion, or to proceed only on the basis of documents and other materials, for the purposes of submitting evidence. However, an arbitration court shall, upon the request of any of the parties, conduct an oral examination at the necessary stage of the arbitration process (except for the case where the parties have agreed not to conduct an oral examination). 2. Parties shall, during a reasonable period, be notified about any oral examination or court session organized by the arbitration court for the purpose of inspecting goods, other property and documents. 3. All of the requests, documents and other information submitted by one of the parties to the arbitration court shall be submitted to the other party. All expert opinions and other documents of evidence nature, on which the arbitration court may base its decision, shall also be submitted to the parties.

Article 25. Failure to Submit Documents and Appear at the Arbitration Process

Unless otherwise agreed between the parties, if without any good reason a) the claimant does not submit his/its claim under Article 23.1 - an arbitration court shall terminate the arbitration process; b) the defendant does not submit his/its objections to the claim under Article 23.1 - the arbitration court shall not accept such a case as confirmation of the claim and proceed with the process; c) any of the parties does not appear at the hearing or submit documented evidence - the arbitration court may proceed with the process and adopt a decision based on the evidence submitted.

Article 26. Expert Appointed by an Arbitration Court

1. Unless otherwise agreed between the parties, the arbitration court may: a) appoint one or several experts so as they report to the arbitration court on concrete matters determined by such arbitration court; b) require that the parties submit any information, as well as goods and documents having relevance to the matter to the expert and create conditions for the experts to investigate such information, goods and

documents. 2. Unless otherwise agreed by the parties, an expert may, after he has submitted his oral or written opinion, participate at the process of hearing, should any of the parties request it or the court deems it necessary. In this case, the parties shall be given a possibility to put questions to the expert and they may introduce witnesses so as they give evidence (testimony) on disputable matters.

Article 27. Court Assistance in Attaining Evidence

An arbitration court or a party upon the agreement of the arbitration court may request the court indicated in Article 6 hereof for assistance in attaining evidence. The court may satisfy such request pursuant to the procedure for attaining evidence.

SECTION 6. Adoption of an Arbitration Decision and Termination of a Proceeding

Article 28. Norms Applied on the Substance of a Dispute

1. An arbitration court shall resolve the dispute according to such legal norms that may be chosen by the parties as norms applicable to the substance of the dispute. Any indication to the law or the legislation system of any state shall, unless it express other intention, be interpreted as an instruction referring not to the collision norms, but to the material (economic ?) law of that state. 2. If parties have no indication, the arbitration court shall apply the law in accordance with collision norms that it deems applicable. 3. An arbitration court shall adopt a decision on "ex aequo et bono" or "peace mediation" if it is given such authority by the parties. 4. In all cases, an arbitration court shall adopt a decision pursuant to contract conditions and taking account of trade customs applicable to relevant transactions.

Article 29. Adoption of Decisions by the Board of Arbitrators

Unless otherwise agreed between the parties, where there is more than one arbitrator, the arbitration court shall adopt any decision by majority of voice of the members of the court. However, if the chairing arbitrator has been given relevant authority by the parties and other all the members of the arbitration court, such arbitrator may solely resolve procedural matters.

Article 30. Peaceful Agreement

1. If, during an arbitration process, the parties resolve (the text read: eliminate/remove - JG) the dispute, the arbitration court shall terminate the process and adopt a decision on the removal of the dispute under agreed conditions, provided that there is a relevant request from the parties and that the court itself does not object to such removal. 2. An arbitration decision under agreed terms shall be adopted pursuant to the provisions of Article 31 and bear a note that it is an arbitration decision. Such an arbitration decision shall have the same force as any other arbitration decision and shall be executed as any arbitration procedure adopted on the substance of the dispute.

Article 31. Form and Content of an Arbitration Decision

1. An arbitration decision shall be adopted in writing and signed by the arbitrator or arbitrators. Where there are more than one arbitrator, such a decision shall be signed by the majority of the arbitration court members, and reasons for the absence of other signatures shall be indicated. 2. An arbitration decision shall indicate motives on which the decision is based, unless there is an agreement between the parties not to indicate the motives or a decision is adopted under conditions agreed between the parties pursuant to Article 30. 3. An arbitration decision shall indicate the date and place of

adoption of such decision. An arbitration decision shall be deemed adopted at the place indicated in the arbitration decision. 4. After an arbitration decision is adopted, each party shall be provided with a copy of such decision, such copy being signed in accordance with Paragraph 1 hereof.

Article 32. Termination of a Proceeding

1. An arbitration decision shall be terminated upon the final resolution of the arbitration court or upon the resolution adopted in accordance with Paragraph 2 of this Article. 2. An arbitration court shall decide to terminate an arbitration proceeding in the following cases: a) the claimant waives his/its claim (if the defendant does not object to the termination, and if the arbitration court does not recognize the defendant's legal interest in the indisputable removal of the dispute); b) the parties reach an agreement on the termination of the proceedings; c) the arbitration court deems, for some reason, impossible and unnecessary to continue the proceeding. 3. Except for cases indicated in Articles 33 and 34.3, the mandate of the arbitration court shall be terminated simultaneously with the termination of an arbitration proceeding.

Article 33. Interpretation of and Amendments to Decision; Adoption of Additional Decisions

1. Unless the parties have agreed otherwise on the term - within 30 days of the receipt of the decision: a) any of the parties may request the arbitration court to eliminate writing, printing and calculation errors, as well as other similar errors made in the decision, provided that the other orate is informed in respect thereof; b) any of the parties may, upon the relevant agreement between the parties, request the arbitration court to interpret a concrete part or clause of the decision, provided that the other orate is informed in respect thereof. Where the arbitration court deems such request well-grounded, it shall make the relevant correction, or provide relevant interpretation, within 30 days of the receipt of such request. Such interpretation shall be considered an integral part of an arbitration decision. 2. An arbitration court shall, on its own initiative, remove any error stated in Paragraph 1(a) of this Article within 30 days of the adoption of the decision, 3. Unless the parties have agreed otherwise, any of the parties may request the arbitration court to adopt an additional decision on matters which were raised in the course of the arbitration proceeding but are not reflected in the arbitration decision, provided that the other orate is informed in respect thereof. Where the arbitration court deems the request fair and well-substantiated, it shall adopt an additional decision within 60 days. 4. Where necessary, an arbitration court may extend the term for adopting an additional decision, making corrections to the decision or providing a relevant interpretation. 5. Provisions of Article 1 shall apply in relationship with making corrections in, and interpreting of, arbitration decisions, as well as adopting additional decisions.

SECTION 7. Complaining on Arbitration decisions

Article 34. Submitting Petitions on the Cancellation of Arbitration Decisions

1. Complaints on arbitration may be lodged by way of submitting a petition in accordance with Paragraphs 2 and 3 of this Article. 2. An arbitration decision may be canceled by the court stated in Article 6 hereof in the following cases: a) if the party submitting the petition presents evidence proving i) that one of the parties to the

arbitration agreement stated under Article 7 did not have a capacity of functioning (was incompetent ?) to this or other extent, or that the arbitration agreement was invalid in accordance with the legislation to which the parties made such agreement subject or, in the absence of the reference to such legislation, with the legislation of the Azerbaijan Republic; or ii) that the party submitting the petition was not duly notified about the appointment of the arbitrator or the arbitration process, or that such party was not able to present his/its evidence due to some other reasons; or iii) that the decision has been adopted on a dispute that is not envisaged by the arbitration agreement does not pertain to its conditions; or that the decision covers the matters exceeding the clauses of the agreement (in this case, the parts of the arbitration decision that does not pertain to the subject of the arbitration agreement may be canceled); or iv) that the composition of the arbitration court or the arbitration procedures were not in compliance with the agreement signed between the parties (unless such agreement contradicts the provisions of this Law which are binding on the parties), or, where the parties have not concluded any such agreement, the composition of the arbitration court or the arbitration procedures were not in compliance with this Law; b) or if the court determines i) that the object of the dispute may not be subject of an arbitration process according to the legislation of the Azerbaijan Republic; or ii) if the arbitration decision contradicts the legislation of the Azerbaijan Republic. 3. Any petition on the cancellation of an arbitration decision shall be submitted not later than within 3 months after the party submitting the petition receives the arbitration decision. If the request has been made in accordance with Article 33, then the petition shall be submitted not later than within 3 months after the arbitration court adopts a decision in respect of such request.

Where there is a request that the court cancels an arbitration decision, such court may suspend the proceeding on the cancellation for the period as established by itself for the purpose of creating a possibility to the relevant arbitration court to resume the arbitration proceeding or to resort to other sources to remove (to the best of the belief of the arbitration court) the grounds for the cancellation of the arbitration decision.

SECTION 8. Recognition and Execution of Arbitration Decisions

Article 35. Recognition and Execution

1. Execution of an arbitration decision shall be necessary independent of which country it has been adopted in. Such decision shall be executed, with account taken of this Article and Article 36, when a petition is lodged with a competent court. 2. A party submitting a petition on an arbitration decision or on its execution shall submit a certified copy of the arbitration decision and its duly notarized copy as well as the original copy of the arbitration agreement stated in Article 7 and its duly notarized copy. If the arbitration decision or arbitration agreement is in a foreign language, the relevant party shall submit duly notarized translations of these documents into Azerbaijani.

Article 36. Grounds for Refusal of Recognition and Execution

1. Recognition or execution of arbitration decision may be refused, irrespective of in which country such decision has been adopted, in the following cases: a) if the party against which the decision has been adopted presents, to the court considering the application on the recognition and execution, evidence proving i) that one of the parties to the arbitration agreement stated under Article 7 did not have a capacity of functioning (was incompetent ?) to this or other extent, or that the arbitration agreement was invalid

in accordance with the legislation to which the parties made such agreement subject or, in the absence of the reference to such legislation, with the legislation of the state where the decision has been adopted; or ii) that the party against which the decision has been adopted was not duly notified about the appointment of the arbitrator or the arbitration process, or that such party was not able to present his/its evidence due to some other reasons; or iii) that the decision has been adopted on a dispute that is not envisaged by the arbitration agreement does not pertain to its conditions; or that the decision covers the matters exceeding the clauses of the agreement (the parts of the arbitration decision that pertain to the matters covered by the arbitration agreement may be separated from such decision and may be recognized or executed); or iv) that the composition of the arbitration court or the arbitration procedures were not in compliance with the arbitration agreement signed between the parties, or, where the parties have not concluded any such agreement, with the Law of the State where the arbitration was held; or v) the decision is not final for the parties or has been canceled or suspended by the court in accordance with the legislation of the State where such decision was adopted; b) or if the court determines i) that the object of the dispute may not be subject of an arbitration process according to the legislation of the relevant State; or ii) if the recognition or execution of the arbitration decision contradicts the legislation of the Azerbaijan Republic. 2. If a petition on the cancellation or suspension of an arbitration decision has been brought before a competent court, which is solicited to recognize and execute the arbitration decision, such court may, if deems necessary, delay the adoption of its decision and may, upon the request of the party petitioning the recognition and execution of the decision, bind the other party to duly execute the decision.

President of the Azerbaijan Republic