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Azerbaijan Adopts a New Law on Arbitration

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On 26 December 2023, Azerbaijan adopted a new [Law on Arbitration](#) (“the Law” or “the New Law”) that regulates both international and domestic arbitration. It is mostly based on the 2006 edition of the UNCITRAL Model Law on International Commercial Arbitration (“2006 UNCITRAL Model Law”) but contains certain important differences. This post discusses the most notable takeaways from the New Law.

Background

Prior to the adoption of the New Law, the arbitration law of Azerbaijan, called [the Law on International Arbitration](#) and adopted in 1999, was based on the 1985 edition of the UNCITRAL Model Law. However, many provisions of the law were practically inapplicable due to translation inaccuracies, lack of procedures, and non-conformity with the existing legislation. For instance, while the old law contained provisions on interim measures, appointment of arbitrators, and evidence collection, they were not applicable in practice because they were not procedurally regulated by the Code of Civil Procedure or other statutes. Consequently, the courts were unable to support such proceedings. In addition, no regulation existed for domestic arbitration.

The New Law addresses many flaws and contradictions that previously existed in the legislation. In addition to upgrading from the 1985 edition of the UNCITRAL Model Law (“1985 UNCITRAL Model Law”) to the 2006 edition, the New Law contains several provisions that are specific and different from the 2006 UNCITRAL Model Law, as described below.

Regulation of the Practice and Organization of Arbitration

The Law defines four types of arbitration and sets different regulations, requirements, or privileges for them: (i) international arbitration, as defined in the 1985 UNCITRAL Model Law; (ii) domestic arbitration, i.e., arbitration not classified as international arbitration; (iii) local arbitration, defined as arbitration seated in Azerbaijan; and (iv) foreign arbitration, defined as arbitration seated abroad. For example, an arbitration case with international parties or a contract performed in another country, if seated in Azerbaijan, would qualify both as international and local arbitration. On the other hand, a case would qualify as a domestic arbitration case if the parties were domestic, the contract is performed in the territory of Azerbaijan, and the subject matter of the contract is

located in Azerbaijan. Accordingly, except in the case of recognition and enforcement of foreign arbitral awards and certain support functions of the courts, the provisions below apply when arbitration is seated in Azerbaijan as is the case with the 2006 UNCITRAL Model Law.

Specific Privileges for Institutional Arbitration

Unlike the 2006 UNCITRAL Model Law (UNCITRAL Model Law, Arts. 13.3, 14.1), the Law *by default* does not allow the parties to appeal to a court in the event of an unsuccessful challenge against an arbitrator or a termination of the mandate of an arbitrator in case of *institutional arbitration*. Unless the arbitration rules of the arbitration institution provide otherwise, parties cannot apply to the courts to challenge arbitrators (Art. 22.4) or to terminate their mandate (Art. 23.2).

In addition, in institutional arbitration, parties cannot challenge the arbitral award on jurisdiction before the courts unless the arbitration rules of the institution provide otherwise (Art. 25.4).

Stricter Requirements for Domestic Arbitration Institutions and Arbitrators

The Law sets out stricter requirements for domestic arbitration than international arbitration.

Ad hoc arbitration is available exclusively for international arbitration (Art. 12.2). In the case of domestic arbitration, only institutional arbitration is permitted.

The Law imposes certain requirements on domestic arbitration institutions as to their accreditation, organizational structure, governance, and financial capacity (Arts. 11.2 and 11.5). These requirements do not apply to foreign or international arbitration institutions (Art. 11.8).

The Law also imposes certain requirements for arbitrators in domestic arbitration, including, *inter alia*, work experience, legal education (with regard to the sole and presiding arbitrators), and a clean criminal record (Arts. 14.1 and 14.2). However, these requirements are not applicable to international arbitration, even when it is seated in Azerbaijan.

The lack of extra requirements for international arbitration and international institutions appears to be intended to keep those intact as an effective avenue for foreign businesses and parties.

Courts and Provisional/Interim Measures

The Law establishes a clearer limit for national courts' review of arbitration agreements. It also regulates interim measures by arbitral tribunals and courts. The provisions below concerning the functions of the courts apply irrespective of the type of arbitration, while the provisions concerning the arbitration process apply if the seat of arbitration is in Azerbaijan.

Prima Facie Review of Arbitration Agreements by Courts

With regard to the enforcement of arbitration agreements before national courts, the Law provides for a *prima facie* review. Where the parties have an arbitration agreement, a court shall refer such a matter to arbitration unless it finds that the arbitration agreement is *manifestly* null and void, or incapable of being performed (Art. 17.1).

Interim Measures and Preliminary Orders

Unlike the 2006 UNCITRAL Model Law, the Law does not differentiate between interim measures and preliminary orders. Both are regulated in the same manner and are called interim provisional measures (Arts. 27-33).

Under the 2006 UNCITRAL Model Law, preliminary orders are adopted without notifying the other party (UNCITRAL Model Law, Art. 17B(2)) and expire after 20 days (UNCITRAL Model Law, Art. 17C(4)). They are not subject to enforcement by courts (UNCITRAL Model Law, Art. 17C(5)).

However, under the New Law, an arbitral tribunal must give advance notice to the parties about the interim provisional measures, except where such notice risks frustrating the purpose of the measure and where parties agree otherwise (Art. 27.3). Interim provisional measures, whether issued with or without notifying the other party, are subject to enforcement by courts (Art. 32).

Another legal document before the Parliament of the Republic of Azerbaijan is [the Bill on Amending the Civil Procedural Code](#), aimed to make the Code more consistent with the New Law.¹⁾ The Bill sets a procedure for courts to adopt their own interim measures in support of arbitration.

Specific Provisions

The New Law also introduces certain provisions concerning specific issues that are usually not regulated by the arbitration legislation in other countries. These provisions apply if the seat of arbitration is in Azerbaijan.

Liability of Arbitrators

Under the Law, arbitrators are immune from claims for damages incurred in the discharge of their functions, provided that they act in good faith (Art. 26.1). An arbitrator's refusal or failure to perform her or his functions does not create liability for the arbitrator unless proven to be unreasonable (Art. 26.2).

Legal Successors

The Law also states that unless otherwise agreed, a legal successor of a party becomes a party to

the arbitration agreement (Art. 39.1). The death of natural persons and reorganization and other changes in legal entities do not cause the termination of the arbitration agreement or require the arbitrators to be changed (Art. 39.2).

Law Applicable to the Arbitration Agreement

The Law specifically authorizes the arbitral tribunal to determine the law applicable to the arbitration agreement (including its validity, conclusion, termination, interpretation, transfer of rights and obligations), in case there is no such agreement between the parties (Art. 25.5). This issue has been **hotly debated** globally following the *Enka v. Chubb* and *Kabab-Ji SAL (Lebanon) v. Kout Food Group (Kuwait)* cases.

Expedited Arbitration and Content of the Notice of Arbitration

An unusual element of the Law concerns expedited arbitration. It states that if parties agree on expedited arbitration in an *ad hoc* proceeding but fail to specify the relevant rule, the UNCITRAL Expedited Arbitration Rules apply (Art. 12.4). In practice, this scenario is very unlikely to occur.

The Law also replicates [Articles 3 and 4 of the 2013 UNCITRAL Arbitration Rules](#) and requires certain content in the notice of arbitration and response thereto (Arts. 6 and 7), however, this provision does not apply if the parties agree otherwise, including by referring to other arbitration rules.

Arbitrability and Annulment/Enforcement Proceedings

Unlike the arbitration legislation of many other countries, the New Law also comprehensively defines arbitrability and public policy. It also regulates certain other aspects of annulment and enforcement proceedings.

Arbitrability

In general, the Law permits arbitration in commercial matters and other matters the parties can freely dispose of (Art. 13.1). It establishes a list of exemptions from arbitrability. In addition to the matters typically non-arbitrable in many other jurisdictions (such as criminal cases, administrative matters, *in rem* immovable property disputes, family disputes, and employment disputes), the exemptions include, *inter alia*, disputes on environmental protection, intellectual property rights, competition, bankruptcy, and certain corporate matters (Art. 13.2). The Law permits arbitration of claims against carriers arising out of contracts of carriage and disputes related to the lease of real estate located in the territory of the Republic of Azerbaijan only if the seat of arbitration is in Azerbaijan (Art. 13.2).

Annulment and Enforcement Proceedings

As a ground for annulment and refusal of recognition and enforcement, the Law refers to the non-compliance with the Constitution and public policy of the Republic of Azerbaijan. It also explicitly defines public policy as fundamental legal principles that by their nature are imperative, universal, and of special social importance, constituting the basis of the political, economic, and legal structure of the Republic of Azerbaijan. (See [here](#) for a discussion on the application of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards in Azerbaijan). While the Law stipulates a three-month period for applying to set aside arbitral awards in line with the 2006 UNCITRAL Model Law, this time limitation does not apply in case fraud, corruption, criminal activities, and false testimonies took place in arbitration (Art. 54.3).

With regard to the recognition and enforcement of arbitral awards, similar to the [Georgian legislation](#),²⁾ the Law states that if the award was made in Azerbaijan and a set-aside application was already unsuccessfully made, the grounds invoked during the set-aside proceedings *may not be invoked again* during the recognition and enforcement stage (Art. 57.3).

Conclusion

While there is no publicly available data about arbitration cases seated in Azerbaijan, there is ample room for the growth and development of arbitration practice in Azerbaijan compared to other regional counterparts.

While it is not the only precondition for the development of arbitration, the New Law addresses the decades-old deficiencies of the arbitration legislation in Azerbaijan and for the first time, regulates domestic arbitration. The New Law also includes many provisions that bring clarity and more sophisticated regulation into arbitration. It also introduces some restrictive and experimental provisions.


Interpretation and proper implementation of the Law in practice will have a significant impact on building an effective arbitration system and addressing at least some of the concerns of the practitioners. The impact of the New Law on the practice and its implementation remains to be seen.

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References

?1 Bill on Amending the Civil Procedural Code, dated 19 December 2023, Art. 157.

?2 Law of Georgia on Arbitration, 19 June 2009, Art. 45.1.

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