



## BILL OF ARBITRATION

The second reading as of 19 December of the draft Law, *On Arbitration*, has been promulgated by the Milli Maclis, the parliament. This proposed legislation seeks to replace the 1999 Law No. 757-IQ, *On International Arbitration* based, in turn, on the *UNCITRAL Model Law on International Commercial Arbitration* (1985). The Bill incorporates the amendments adopted in 2006 to the Model Law.

The paramount objective of the Bill is to institute an arbitration system domestically to mitigate the caseload of courts. As such and unlike the previous Law on International Arbitration, the Bill includes both international and domestic (an arbitral tribunal with the venue of arbitration in Azerbaijan) arbitration. This proposed legislation outlines regulatory framework for arbitration, its procedural aspects and institutionalization, arbitration agreements, and the recognition and enforcement of foreign arbitration awards.

Commercial disputes, and disputes wherein parties can independently address the subject matter without affecting third-party rights, can be resolved through arbitration. The Bill includes a list of matters not subject to arbitration: (i) criminal and administrative offenses; (ii) arising from administrative and other public legal relations; (iii) matrimonial; (iv) related to legal status of individuals; (v) employment and labor; (vi) disputes out of environmental protection; (vii) inheritance; (viii) existence and registration of intellectual property rights; (ix) competition and consumer protection as well as consumer credits; (x) *in rem* rights in real estate located in the territory of Azerbaijan; (xi) insolvencies and bankruptcies; (xii) liquidation of an entity or annulment of its decisions (if the entity has a legal address in Azerbaijan); (xiii) disputes between individuals except where they are business subjects; (xiv) against carriers under agreements of carriage; and (xv) leases of real estate within the territory of Azerbaijan. Claims against carriers arising from carriage contracts as well as disputes regarding lease of real estate in Azerbaijan can be considered in domestic arbitration.

A permanent arbitration institution (domestic) is an accredited non-profit entity that has undergone the respective state registration. The Bill does not define a form among those of non-commercials in the Civil Code or otherwise the institution can take form of.

The institution is responsible for conducting arbitration proceedings, organizational support for arbitration, including the appointment, challenging, and termination of arbitrators, case management, fees, and other payments to cover cost of the arbitration, excluding matters related to the jurisdiction of the arbitral tribunal. The establishment of such institutions by the state, municipalities, state-owned enterprises, public legal entities (except as law may otherwise provide for), political parties, religious organizations, the Bar Association, Chamber of Notaries, and Council of Mediation of the Republic of Azerbaijan is prohibited.

The requirements for arbitrators in domestic arbitration proceedings are as follows:

- absence of any interest in the outcome of the case and independence from the parties to a dispute;
- age of not less than 25 years;
- any higher education; and
- work experience of no less than three years.

A sole arbitrator and, unless otherwise agreed by the parties, the presiding arbitrator of an arbitral tribunal, must have a higher legal education. Any additional requirements can be supplemented by the arbitration agreement or by the regulations of an arbitration organization. The Bill lists individuals ineligible to act as arbitrators, such as judges, those with a criminal record, and those dismissed from law enforcement, barred from advocacy, notarial work, or membership in the Mediation Council.

If parties have not agreed otherwise, an application to vacate an arbitral award must be submitted to any of the five Commercial Courts in Azerbaijan within three months of the date a party became aware of the award. In the event of vacation of the arbitral award, the agreement remains in force, and the parties may apply to the arbitration for a new hearing.

The Commercial Court may fully or partially vacate the award of the arbitral tribunal upon evidence of incapacity of a party at the time of the arbitration agreement, invalidity of the agreement, violation of procedural rights, resolution of a dispute not covered by the arbitration agreement, or inconsistency with the agreed tribunal composition. Additionally, the Court can make such a determination based on an impossibility of a dispute resolution through arbitration under law or the award's contradicting the Constitution of the Republic or its public order.

The Bill also governs recognition and enforcement of arbitral awards, both foreign and domestic. A foreign arbitral award is still recognized by the Supreme Court of the Republic of Azerbaijan. If a party fails to voluntarily comply with a domestic arbitral award within three months of the award's being issued, the party in whose favor the award was rendered may seek its judicial enforcement.

The Bill, when approved into law, will come into effect after corresponding amendments are made to the Code of Civil Procedure. It will not apply to consideration of cases on the recognition and enforcement of foreign arbitral awards under consideration by the Supreme Court before the day the Bill comes into force.

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\*Information does not, and is not intended to, constitute legal advice

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