

COURTS RESOLVE ON INTERNATIONAL JURISDICTION, OPTION TO LITIGATE, FOREIGN ELEMENT, AND SUCCESS FEE

Azerbaijani civil procedure has long been recognizing international jurisdiction of Azerbaijani courts. Additionally, substantive civil law recognizes the concept of a foreign element entitling a matter to be addressed under a non-Azerbaijani law. Resolution No. 15/2023, dated 14 December 2023, *On Practices of Applying Law in Commercial Disputes with Foreign Element*, of the Plenum of the Supreme Court of the Republic of Azerbaijan resolves on these and related matters.

Upon resolving on international jurisdiction in a commercial dispute, a link between a foreign party to a dispute and Azerbaijan is reviewed by assessing if any of the following exists or occurs in Azerbaijan: (i) a place of residence, domicile, or place of abode of any of joint plaintiffs and/or joint defendants, (ii) a location of a governing body, branch or representative office of a corporate party to the dispute, (iii) the defendant's property, (iv) an event or another circumstance giving rise to a claim for damages, (v) the discharge of an obligation in whole or in part, and (vi) bases for a claim from unjust enrichment.

According to the resolution, the existence of an arbitration clause (agreement) is not a ground not to consider the case in a court. Thus, if one of the parties files a claim with the court despite the existence of an arbitration clause, the court must review the possibility of considering the case. If there is no objection from the opposing party prior to the commencement of consideration of the case on the merits, the court has the right to consider the case.

The resolution categorizes foreign elements into:

- a subject (participant) of legal relations: where legal and natural persons of different states or an international organization act as participants of relations; and
- an object of legal relations: where the object of relations involving citizens of Azerbaijan is located abroad.

If any is present, a court's jurisdiction is international.

In resolving on a governing law applicable to a matter involving a foreign element, consideration is given in the same order to:

- an agreement between, or a clear expression of will of, the parties; and
- bilateral and multilateral international treaties, which Azerbaijan is a party to, domestic legal acts of Azerbaijan, and rules established by the Law, *On International Private Law*.

A court applies domestic law in the following cases where the content of a foreign law cannot be determined: (i) the measures taken to determine the content of the foreign law fail; (ii) such measures are costly; and (iii) neither party to a dispute can provide a proof of the rules they refer to in their claims and defenses.



Documents from outside Azerbaijan for use in Azerbaijan must be legalized or apostilled. Where bilateral or multilateral legal aid treaties apply, documents are accepted where certified in the manner set out in such treaties. The resolution exemplifies the point by referring to the 2002 Chisinau Convention, *On Legal Aid and Legal Relations in Civil, Family, and Criminal Cases*, providing that a form and term of a power of attorney are determined by the rules in the state where the instrument is issued.

The Plenum of the Constitutional Court of the Republic of Azerbaijan in its resolution of 18 December 2023, *On Integral Interpretation of Sub-Sections 6.2, 390.1, and 390.5 of Civil Code of Republic of Azerbaijan, Paragraph III of Section 19 of Law of Republic of Azerbaijan, On Advocates and Advocate Practice, Section 61 of Constitution of Republic of Azerbaijan, and Sub-Sections 16.1 and 560.2 of Civil Code of Republic of Azerbaijan*, resolves on legality of success fees of lawyers admitted to the bar, *i.e.*, advocates.

The Court acknowledges permissibility of success fee arrangements, *i.e.*, stipulations in agreements for legal assistance regarding the determination of remuneration for achieving a specified result. That said, such stipulations can be scrutinized for whether they amount to hardship leading to their invalidity on the count of undue influence.

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

Republic of Azerbaijan

For Further Information:

67, Neftcilar Avenue

Baku, AZ1095

ContactUs@Bureau28a.com

Republic of Azerbaijan

www.bureau28a.com

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