

# Azerbaijan

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## Adoption of the Law on Mortgages

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On April 15 2005 the Law on Mortgages was adopted in Azerbaijan. Along with the Law on Pledges 1998 and the Civil Code, the Law on Mortgages is the third law in force in Azerbaijan governing mortgage-related matters.

### General

A mortgage is defined as the method of securing obligations arising out of service contracts, sales, loans and other civil law agreements. Unless stated otherwise in the mortgage contract, a mortgagee's claims that can be secured by mortgage include: (i) principal debt; (ii) interest; (iii) penalties and damages; and (iv) legal and other expenses related to the foreclosure of mortgaged property.

Immovable property (including unfinished buildings) and movable property, ownership over which is registered in official registers, can be subject to mortgages.

Unless otherwise provided in the law or senior mortgage contract, the mortgagor can create a junior mortgage over the same asset. Claims of subsequent mortgagors rank behind claims of the previous mortgagors.

Unless otherwise provided in the mortgage contract, the mortgagor can only dispose of the mortgaged property upon the mortgagee's written consent.

### Creation and registration

Contracts for mortgages over immovable property must be notarized, and become effective from the time of state registration. Contracts for mortgages over immovable property must be registered in the state register of immovable property, and contracts for mortgages over movable property must be registered in the official registers for movable property.

Registration of mortgages over immovable property is carried out in accordance with the Law on the State Register of Immovable Property. Pursuant to the provisions of this law, registration is made with the Service of the State Register of Immovable Property. The registration process includes recording information on the mortgaged property, the repayment period of the secured obligation, the mortgagee and the mortgagor.

A separate set of rules is provided for the registration of mortgages over movable property.

Additional registration is conducted in the event of: (i) a change of nature, amount or performance period of a principal obligation; (ii)

the transfer of a claim with respect to a principal obligation to another person; (iii) the substitution of a mortgaged property; or (iv) the disposal of a mortgaged property.

### Mortgage bond

The Mortgage Law further elaborates on the mortgage bond concept found in the Civil Code.

Mortgage bonds can be issued for as long as the mortgage contract is effective. Mortgage bonds confer the following rights on its holder: (i) a security interest in the mortgaged property; (ii) the right to demand performance of a principal obligation; and (iii) the right to foreclosure. Mortgage bonds are issued by the mortgagor and, if the mortgagor is a third party, by the debtor in respect of the principal obligation. The signature of a person issuing mortgage bond must be notarized, and the mortgage bond must be registered.

The government has not yet determined which authority will take care of the registration of mortgage bonds. The transfer of rights over mortgage bonds is carried out by endorsement, and by physical transfer of the mortgage bond to a transferee. Along with the transfer of rights under the mortgage bond, claims in respect of the principal obligation are assigned to a transferee.

### Foreclosure of mortgaged property and termination of mortgage

If a debtor fails to perform a principal obligation, the mortgaged property can be foreclosed to discharge a mortgagee's claims.

Mortgaged property can be foreclosed without application to the courts if: (i) out-of-court foreclosure is provided for in the contract; (ii) a mortgage bond is issued; (iii) a notarized agreement exists between the mortgagor and the mortgagee that is concluded after the occurrence of a foreclosure event; or (iv) a notarized agreement on out-of-court foreclosure exists between the mortgagee and the owners of the mortgaged property in joint-ownership. In all other cases, mortgaged property can only be foreclosed in the judicial order.

In order to commence foreclosure proceedings, the mortgagee must give written notice to the mortgagor and to all subsequent and joint mortgagees known to the mortgagee. The mortgaged property can only be sold from 30 days after this notice has been given. Upon mutual consent of the mortgagor and the mortgagee, the mortgaged property can be sold on the open market or at auction. Auctions must be held by a specialized organization at a commodity exchange.

The auction is deemed to be frustrated if: (i) there are less than two bidders; (ii) there are no participants; (iii) the winner of the auction refuses to sign the protocol on the results of the auction; or (iv) the winner of the auction failed to pay the purchase price in full on

time. Within 10 days of the announcement that the auction is frustrated, the mortgagee can buy the mortgaged property at the initial price on the basis of a contract with the mortgagor. In the absence of such an agreement the auction can be held two more times, with the gradual reduction of the initial price of the mortgaged property.

The law does not define *sale on the open market*, but it is understood to mean a sale to any third party on an arm's-length basis. The sale and purchase agreement for the sale of the mortgaged property on the open market shall be the basis for the termination of a mortgage. In case of a failure to sell the mortgaged property on the open market, the property can be put up for auction or the mortgagee can acquire it upon an agreement with the mortgagor.

Proceeds remaining from the disposal of the mortgaged property must be returned to the mortgagor after all the mortgagee's claims have been discharged.

Mortgages can be terminated: (i) upon agreement between the mortgagor and the mortgagee; (ii) upon the termination of principal obligations; (iii) upon the sale of the mortgaged property in the course of foreclosure; (iv) upon the destruction of the mortgaged property; or (v) in other cases provided for by law.

## Corporate and commercial

### Recommended firms

#### Tier 1

Baker & McKenzie  
McGrigors

#### Tier 2

OMNI Consultants  
Salans

#### Tier 3

BM Law  
Michael Wilson & Partners

### Baker & McKenzie

According to market opinion, Baker & McKenzie "deserves its place as a tier one firm". Managing partner Dan Matthews brings a wealth of experience, which means that "he knows Baku very well, and is connected." Matthews is supported by "strong negotiator" Natik Mamadov and rising star Gunduz Karimov.

A number of key instructions have proven the firm's strength in the finance arena over the past year. Advising the mandated lead arranger on matters of Azeri and English law in a \$56 million syndicated loan to the Bank of Azerbaijan saw the firm win a role on the largest syndicated financing at the time. In another notable transaction, Baker & McKenzie advised the International Bank of Azerbaijan in connection with the \$45 million financing provided by Société Générale, supported by the export credit agencies Hermes and Coface.

Other deals saw the firm advise US equipment supplier Valmont Industries in connection with the sale of agricultural and irrigation equipment to three Azeri borrowers, and on the related secured financing by Wells Fargo Bank supported by US Eximbank. The firm is also active on the lender side, advising Parax banka on the \$27 million secured financing of the renova-

tion of two hotels, secured by the two hotels and an office tower complex in Baku.

### Leading lawyers

Natik Mamadov  
Daniel Matthews

### Key contact partner

Daniel Matthews

### McGrigors

The first foreign law firm to open an office in Baku under its previous name of Ledingham Chalmers, the practice continues to enjoy its reputation as "a strong player in the market." The close working relationship that the firm has forged with other firms in the region led to universal praise from competitors when questioned. One rival stated that McGrigors is his "favourite sort of firm" and he has "respect for them professionally and as people." In addition, "they have personal lawyers who stick to agreements in negotiation".

From among the individual stars, leading lawyer Benjamin Paine continues to win plaudits, and is noted as "very competent" by a market commentator. His colleague Elchin Mammadov is also rated as "a really good lawyer."

Over the past 12 months the firm has been particularly active in straight banking work, taking advantage of the upturn in this type of work in Azerbaijan in recent times. It advised DEG in relation to a secured credit line to Bank Republika, and guided the European Bank for Reconstruction and Development (the EBRD) through its provision of a secured credit line to Azerdemir-Yolbank. In a further transaction of note, the practice acted for Anglo-Asian Mining on its listing on London's Alternative Investment Market, which closed in July 2005.

The firm continues to show strength on the corporate side too, advising the EBRD on the acquisition of shares in Azerdemirool Bank and acting for DEG on the acquisition of shares in Bank Republika.

### Leading lawyers

Ismail Askerov  
Elchin Mammadov  
Benjamin Paine

### Key contact partner

Benjamin Paine

### OMNI Consultants

One market commentator believes that the ability of OMNI Consultants to work at the local level "could blow their competitors out of the water." Although the firm does not have the same level of resources as the other firms when it comes to competing for international work, a rival noted that they "are inherently smart enough" should they gain the capability to do so. Competitors spoke highly of OMNI, one stating that "they are a young firm, hungry, with a western attitude and very proactive."

Partner Roman Alloyarov continues to win plaudits, as does the "very professional" Ishmael Vargali, who was also noted as a rising star. Numbers grew this year following the return to the firm of Elnur Mammadov following his LL.M. studies in the US. Once admitted to the New York bar he will be the second lawyer in the office (after Alloyarov) to have this prestigious qualification.

OMNI assisted the State Oil Company of Azerbaijan, and its subsidiary AzACG, in a \$750 million borrowing, which was the largest transaction in Azerbaijan in 2005 and the first time an Azeri company has effected such a transaction in the interna-

tional loan market. OMNI also acted as special counsel for a number of lenders, including Black Sea Trade and Development Bank, the EBRD and KfW, in a series of external borrowings by the Micro Finance Bank of Azerbaijan.

The firm is also active on the corporate side, advising the State Property Committee on the sale of its shares in Azercell, the largest mobile operator in Azerbaijan. Once closed, this will be the largest privatization in Azerbaijan to date, being worth around \$200 million. In another notable deal the firm represented an OPIC-backed private equity fund, Bedminster Capital Management, in a first-ever private equity investment into a prominent Azeri company.

The firm boasts an impressive list of clients including Microsoft, McDonald's Azerbaijan, the State Oil Company of Azerbaijan and MicroFinance Bank.

#### **Leading lawyers**

Roman Alloyarov  
Jeyhun Bayramov  
Ishmael Vargali

#### **Key contact partner**

Roman Alloyarov

#### **Salans**

Formally established in Azerbaijan in 1999, French firm Salans has forged a tight grip on proceedings in and around Baku. The long-standing and "incredibly well-informed" Alum Bati - who is the honorary legal advisor to the British ambassador in Azerbaijan - heads the practice, bringing much expertise, particularly in matters regarding tax.

Over the past years Salans has amassed an impressive client list including the European Bank for Reconstruction and Development, Koch Bank, ENI, British Petroleum and Coca-Cola. Recent work of merit has seen the firm advising the State Oil Company of Azerbaijan and the US Trade and Development Agency on its subsequent restructuring.

#### **Leading lawyer**

Alum Bati

#### **Key contact partner**

Alum Bati

#### **Other notable firms**

Making its first appearance in the rankings this year, **Michael Wilson & Partners** is, according to one peer, "still establishing itself, but is one to watch and is going forward." Luring Alistair McKenzie from Cameron McKenna was certainly quite a coup, and it will be interesting to chart the firm's progress over the coming year.

Founded in 1993, **BM Law** was also noted as a potential up-and-comer, as it has developed a reputation for facilitating results in the Azeri ministries.