

## Law of the Azerbaijan Republic

## About Mortgage

## Article 1. Definition of mortgage

Mortgage is the means securing fulfilment of the obligation. Whenever the debtor fails to fulfil secured obligation the creditor-mortgagee shall have preferential right comparing to other creditors for compensation at the expense of mortgaged property except cases envisage by legislation.

## Article 2. Legislation concerning mortgage

Relationships connected with mortgage are governed by the present Law, Law of the Azerbaijan Republic "About property", Land Code and Civil Code of the Azerbaijan Republic and also other legislative acts accepted in respect with these laws. If international agreements of the Azerbaijan Republic do not specify mortgage regulations other than those envisaged by the Laws of the Azerbaijan Republic then international regulation shall apply.

## Article 3. Mortgager

Physical persons and legal entities of the Azerbaijan Republic and foreign countries possessing mortgageable object based on the proprietary right or right of full economic activity are recognised as the mortgagers.

For mortgage of the property secured for full economic activity the owner's consent is necessary.

The person having proprietary right might mortgage said property.

## Article 4. Mortgagee (creditor)

Physical persons and legal entities of the Azerbaijan Republic and foreign countries that in order to ensure implementation of the debtor's obligations, based on provisions of the present Law, accept as mortgage the debtor's property belonging to him or secured for implementation full economic activity are recognised as mortgagees.

## Article 5. The object of mortgage

Any articles, securities, material values, land sites constituting property and proprietary rights that may be alienated by the mortgagers except cases envisaged by the legislation of the Azerbaijan Republic due to requirements of state and public safety and other reasons might constitute the object of mortgage.

Demands of personal character and also legally prohibited demands cannot be the object of mortgage.

The object of mortgage can be replaced at the mortgagee's consent.

## Article 6. Prerequisites for mortgage

Mortgage cases arise as a result of agreement or law.

As per agreement the mortgage case arises as a result of agreement concluded at the moment of mortgaging, on mutual consent between the mortgager or third person and mortgagee. As per the law the mortgage case arises if the law itself contains provisions specifying obligations and kinds of property liable to mortgage and respective terms.

#### Article 7. Sphere of mortgage application

Mortgages might secure actual demands, in particular, those resulting from the mortgage agreements, such as bank credits, agreements on purchase-sale, rent of property, cargo transportation and other agreements.

Mortgages may be established also with respect to future demands. In such case the parties agree as per amounts of guarantee securing said demands.

#### Article 8. Specificities of mortgage on property

Mortgage right for property includes both the property itself and any increment thereof if not specified otherwise by the law or agreement.

Mortgaging right pertains to results and increments of the property separable from said property only in cases envisaged by the law or agreement.

#### Article 9. Mortgage of the collective property

The property belonging to the collective might be mortgaged only at consent of all owners. The owner shall have the right to mortgaged his share within the collective property without consent of other owners.

The owner of the apartment might decide to let it on lease independently.

#### Article 10. Mortgage and insurance

The law or agreement might demand from the mortgagee to insure mortgaged property given to him.

Pawnshop must immediately insure the mortgaged property at the expense of mortgager in accordance with estimation mutually agreed by the parties. The law or agreement might demand from the mortgager to insure the property against actions of state bodies, acceptance of acts terminating its economic activity or preventing or negatively influencing it and also against recognition of its insolvency. Whenever insurance case arises mortgagee will have the right of preferential fulfilment of its requirements from the sum of insurance compensation.

#### Article 11. Mortgage agreement, its content and form

Mortgage agreement is not independent document and is concluded with the objective of ensuring fulfilment of obligations of the principal agreement. Mortgage agreement should specify names and addresses of the parties, mortgaged property, its cost and location, essence of demand secured by the mortgage, its amount, terms of fulfilment and all other conditions to be mutually agreed between the parties. Mortgage agreement must be prepared in a written form. Mortgage agreement concerning guarantees of obligations arising from the principal agreement certified with notary ☐ legally or on mutual agreement between the parties should be also certified with the same notary office.

Requirement of mortgage might be included into agreement that involves obligations secured by the mortgage. Such agreement should be made in conformity with the form established for mortgage agreement.

Mortgage agreement concluded outside the Azerbaijan Republic may not be recognised as invalid due to its inconformity if all requirements of the legislation of the Azerbaijan Republic have been fulfilled.

Form of mortgage agreements for mortgage of buildings,

structures, enterprises, land sites and other objects on the territory of the Azerbaijan Republic and also railroad transport means, civil air, sea and river vessels and other transport means registered in the Azerbaijan Republic, independent on the place of conclusion of such agreement, is determined by the legislation of the Azerbaijan Republic. If not specified otherwise between the parties, rights and obligations of the parties under the mortgage agreement are determined by the legislation of the country wherein mortgager□ party has been established, resides or carries out its activity.

Article 12. Consequences of non-observance of the form of mortgage agreement

Non-observance of the form of mortgage agreement results in invalidity of the agreement, with consequences envisaged by legislation of the Azerbaijan Republic.

Article 13. State registration of mortgage

Mortgage of the enterprise as a whole or other property liable to state registration shall be registered by the body authorised for such registration if not specified otherwise in the present Law.

If mortgage of the property is subject to state registration then mortgage agreement is considered to be concluded from the moment of its registration. Mortgage of railroad transport means, civil air, sea and river vessels must be registered in Registers kept by state bodies wherein said transport means have been registered.

Article 14. Information about registration of mortgage

At requests of the mortgager and mortgagee and other interested parties the body carrying out registration of mortgage is obliged to give to mortgager and mortgagee legislation certificates and also extracts from register.

Article 15. State duty for registration of mortgage

For registration of mortgage, issue of registration certificate and also extracts from registers state duty is withdrawn in an amount determined by legislation of the Azerbaijan Republic. The applicant must present the documents confirming payment of state duty. Otherwise the application will not be considered.

Article 16. Registration of implementation of obligation secured by mortgage

The mortgager, at request of the mortgagee must give him the documents confirming complete or partial fulfilment of obligations for subsequent registration. On receiving the documents confirming complete or partial fulfilment of obligations secured by mortgage the body implementing registration of mortgage must immediately introduce respective information into the Register.

Article 17. Appeals against actions related to registration of mortgage

Interested parties shall have the right to appeal to law courts at the place of location of registration body against refusal in registration or illegal registration of mortgage.

Article 18. Responsibility of the body carrying out registration

The body authorised to register mortgage is responsible for losses borne as a result of violation of registration rules by its employees.

Article 19. Books of mortgage records to be kept by the mortgagors

Mortgagors ☐ legal entities and physical persons registered as business persons should keep books of mortgage records, to register information as per the type and object of mortgage and also limits of security covering obligations within 10 days after mortgaging, to acquaint all interested parties with said book of mortgage records.

The mortgager will be responsible for timely and accurate records introduced into the books of mortgage records.

The mortgager shall have to reimburse in full amount losses borne by suffered parties as a result of untimely records introduced into the books of mortgage records, their incompleteness or inaccuracy and also refusal in presentation of said books for acquaintance.

Article 20. Right of disposal of mortgaged property

If not specified otherwise by legislation or by mortgage agreement the mortgager reserves the right of disposal of mortgage property.

Transfer of right for mortgage property is possible only with transfer of main debt secured by mortgage to the new mortgager.

Article 21. Remortgage of mortgaged property

Repeated mortgages of already mortgaged property are permitted if not specified otherwise by legislation and preceding mortgage agreements.

Article 22. Rights of former mortgagee

Whenever mortgaged property that already secures other obligation becomes the object of mortgage, mortgage legislation of the former mortgagee remains valid. Demands of next mortgagee shall be reimbursed from the cost of the object of mortgage after all demands of the former mortgagee are satisfied.

The mortgager must notify each subsequent mortgagee about all existing mortgagors of said property, and also about the character and amount of obligations secured by these mortgages.

The mortgager shall have to reimburse the losses borne by the mortgagee as a result of non-fulfilment of said obligations.

Article 23. Demands of mortgagee reimbursed at the expense of mortgaged property

If not specified otherwise by the mortgage agreement, the mortgagee might reimburse its demands in full amount including percents, losses caused by delay in implementation, expenses in connection with implementation of mortgage guarantees, expenditures in connection with maintenance of mortgaged property at the expense of mortgaged property; in special cases envisaged by the law or agreement penalty shall be paid.

Article 24. Right for fulfilment of obligations at the expense

of mortgaged property

Whenever the mortgager fails to fulfil obligation secured by the mortgage within specified term, the mortgagee acquires the right for fulfilment of its obligations at the expense of cost of mortgaged property if not specified otherwise by the law or by the mortgage agreement.

Article 25. Object of mortgage in case of partial fulfilment of obligations

Whenever the debtor fulfils its obligation secured by the mortgage partially the mortgage will remain in an initial amount until the obligations are fulfilled completely if not specified otherwise by the law or by the mortgage agreement.

Article 26. Fulfilment of the mortgagee's demand from the object of mortgage consisting of several items (rights)

Whenever the object of mortgage consists of several items or rights the mortgagee, at his own choice, might be compensated at the expense of all this property or at the expense of any item (right), with the possibility to get compensation at the expense of other items (rights) constituting the object of mortgage.

Article 27. Fulfilment of the mortgagee's demand by the third party

If the mortgagee's demand is being fulfilled by the third party, then, according to regulations of legislation, together with the right of demand he obtains the right for mortgage securing the former one.

Article 28. Claim for mortgaged property

Appeal with claim for mortgaged property might be done at decision of the law court, court of arbitration if not specified otherwise by the law.

In cases envisaged by the legislation mortgaged property is claimed for indisputably, based on the notary's written resolution.

Article 29. Sale of mortgaged property under claim

Sale of mortgaged property that was claimed for shall be done in accordance with civil legislation of the Azerbaijan Republic if not specified otherwise by the legislation concerning mortgage or mortgaged agreement.

List of property of citizens that cannot be claimed is specified in the Civil Legal Code of the Azerbaijan Republic.

Article 30. Fulfilment of the mortgagee's demand from the sum obtained from sale of the object of mortgage

Demands of the mortgagee secured by the mortgage shall be reimbursed from the sum obtained as a result of sale of said object of mortgage, remaining sum goes to the mortgager. In case when the sum obtained as a result of sale of the object of mortgage is not adequate for complete fulfilment of the mortgagee's demands the mortgagee shall have the right, if not specified otherwise by the legislation or by the mortgage agreement, to obtain remaining sum from other property of the debtor that could be claimed for in accordance with legislation, without any privileges based on the right of mortgage.

Article 31. Cessation of claim for mortgaged property

The mortgager has the right, at any time before the sale of mortgaged property, to terminate appeal with claim for mortgaged property having fulfilled the obligation secured by the mortgage.

If secured obligation envisages implementation in parts (steps), the mortgager shall have the right to terminate appeal with claim for mortgaged property by means of implementation of the overdue part of obligation.

Agreements restricting rights of the mortgager under the present Article are not valid.

Article 32. Validity of the mortgage on transfer of the mortgage object to the parties

The mortgage remains valid if the proprietary right or right for full economic activity related to the mortgaged object, or right constituting the object of mortgage is transferred to the third person.

Article 33. Validity of the mortgage on concession of demand or transfer of debt

In cases when in accordance with legislation the mortgagee transfers the right of demand secured by mortgage, or the mortgager transfers the debt resulted from the obligation secured by the mortgage to the third party the mortgage remains valid.

Article 34. Termination of the right for mortgage

Right for mortgage is terminated in the following cases:

- 1) on cessation of the obligation secured by mortgage;
- 2) on ruin of the mortgaged property;
- 3) on expiration of term of validity of the right constituting the object of mortgage;
- 4) on transfer of rights for object of mortgage to the mortgagee;
- 5) in all other cases envisaged by the legislation.

Article 35. Storage of mortgaged property

In accordance with legislation of the Azerbaijan Republic and mortgage agreement the mortgaged property might be given to the mortgagee for storing or left with the mortgager. Mortgaged securities might be stored at the notary or bank deposit account.

Article 36. The object of mortgage and placement of mortgaged property with the mortgager

The enterprises, buildings, structures, transport means and other property specified in Article 5 of the present Law might constitute the object of mortgage with placement of mortgaged property with the mortgager.

Separable results and increments might constitute the object of mortgage specified in paragraph 1 of the present Article if they have not become the object of rights of the third person from the moment of separation.

Mortgage of the property given by the mortgager temporarily to the third person for ownership or use is considered the mortgage placed with the mortgager.

Article 37. Rights of the mortgagee in case of mortgage with the placement of mortgaged property with the mortgager

In case of the mortgage with placement of mortgaged property with the mortgager the mortgagee, if not specified otherwise by the mortgage agreement, shall have the right:

- 1) to check the documents and in kind existence, amount, state and condition of storing of the object of mortgage;
- 2) to demand from the mortgager to take measures necessary for safety of the object of mortgage;
- 3) to demand from any person to stop encroachment on the object of mortgage that could result in its loss or damage;
- 4) to demand to fulfil the obligation secured by mortgage ahead of time if the object of mortgage was lost not through the mortgagee's fault and the mortgager did not restore it or did not replace it, at the mortgagee's consent, with other property of equal value.

Article 38. Rights of the mortgager in case of mortgage with the placement of mortgaged property with the mortgager

In case of the mortgage with placement of mortgaged property with the mortgager, the mortgagee, if not specified otherwise by the legislation or agreement, shall have the right:

- 1) to own and to use the mortgaged property in accordance with its destination;
- 2) to alienate the mortgaged property with transfer of the debt on obligation secured by the mortgage to the buyer, or to give it on lease.

Article 39. Obligations and responsibility of the mortgager in case of mortgage of the property with the placement of mortgaged property with the mortgager

In case of the mortgage with placement of mortgaged property with the mortgager the mortgagee, if not specified otherwise by the mortgage agreement, must:

- 1) insure the mortgaged property at its full cost at his own expense;
- 2) take measures necessary for safety of mortgaged property;
- 3) accomplish capital and current repair of mortgaged property;
- 4) notify immediately the mortgagee about letting the mortgaged property on lease, transfer to the third person for use or disposal, about other cases of alienation of the mortgaged property.

Whenever the mortgager fails to fulfil the obligations envisaged by the paragraphs 1-3 of the present Article the mortgagee shall have the right to appeal with claim for mortgaged property before the expiration of term of fulfilment of secured obligation.

Article 40. Mortgage with transfer of mortgaged property to the mortgagee (pawning)

The mortgage takes place on transfer of mortgaged property to the mortgagee disposal based on the mortgage agreement.

At mutual agreement between the parties the object of mortgage might be left with the mortgager locked and sealed with the mortgagee's seal (solid pawning). Individual article might be left with the mortgager with placement of special signs confirming the fact of mortgage.

Article 41. Rights of the mortgagee in case of mortgage with transfer of mortgaged property to the mortgagee (pawning)

The mortgagee will have the right to use the mortgaged property in cases envisaged by the agreement. Profits and other proprietary benefits acquired by the mortgagee as a result of use of the object of mortgage shall be used for compensation of expenditures in connection with keeping the object of mortgage and also shall be taken as percents on debt or debt itself as per the secured obligation.

Whenever there is danger of loss, shortage or damage of the object of mortgage not through the mortgagee's fault the latter shall have the right to demand from the mortgager change of said object of mortgage. If the mortgager refuses to fulfil said demand the mortgagee shall have the right to appeal with claim for the object of mortgage before expiration for fulfilment of main obligation.

Article 42. Obligations of the mortgagee in case of mortgage with transfer of mortgaged property to the mortgagee (pawning)

In case of mortgage with transfer of mortgaged property (pawning) to the mortgagee the latter, if not specified otherwise by the agreement, shall have:

- 1) to insure the object of mortgage at its full cost at the expense and in the interests of the mortgager;
- 2) to take measures necessary for safety of mortgaged property;
- 3) to notify immediately the mortgager about danger of loss, shortage or damage of the object of mortgage;
- 4) to inform the mortgager on a regular basis about use of the object of mortgage if such use is permitted according to part I of Article 41 of the present Law;
- 5) to return immediately the object of mortgage on fulfilment of secured obligations by the mortgager or by the third party;
- 6) in cases envisaged by the agreement to make profits using the object of mortgage in the interests of the mortgager.

If the mortgagee keeps or uses the object of mortgage inadequately, the mortgager shall have the right to demand the termination of mortgage at any moment or to fulfil obligations secured by mortgage ahead of time.

Article 43. Responsibility of the mortgagee in case of mortgage with transfer of mortgaged property to the mortgagee (pawning)

The mortgagee is responsible for loss shortage or damage of the object of mortgage if he fails to prove that said loss shortage or damage occurred not through his fault. In such cases the mortgagee is responsible for loss and shortage of the object of mortgage in the amount of cost of lost or lacking property, as per the damage of the object of mortgage. If the mortgagee will be responsible in the amount of sum of decrease of cost of mortgaged property. If the pawnshop or other businessman, subject of their activity being issue of credits on mortgage, is the mortgagee, then exemption from the responsibility might take place in case only if the mortgagee proves that loss, shortage or damage to the object of mortgage occurred due to force-majeure circumstances, or deliberately, or due to negligence of the mortgager.

Article 44. Mortgage of objects directly connected with land sites (mortgage on real estate)

Mortgage of enterprises, buildings, structures or other



objects directly connected with land sites, together with respective land site and right of its use is considered the mortgage on real estate.

Article 45. The form of agreement on mortgage on real estate.

Registration of mortgage agreement on real estate

Agreement on real estate mortgage should be certified with the notary and registered in the book of mortgage agreements.

Transfer of right of property or right of full economic activity with respect to the object of mortgage on real estate from the mortgager to another person must be registered in the same book on mortgaged agreements.

The body implementing registration of mortgage of the enterprise as a whole must notify about such registration the bodies carrying out land registration, including those of individual location.

Article 46. Mortgage of the enterprise

Mortgage of the enterprise covers all its property, including main production funds and turnover reserves and also other values registered in the independent balance of the enterprise if not specified otherwise by legislation or agreement. The enterprise-mortgager must present annual balance report at request of the mortgagee.

Whenever the obligations secured by the mortgage of the enterprise have not been fulfilled, the mortgagee shall have the right to take measures for improvement of financial situation at the enterprise envisaged in the mortgage agreement. In this case the mortgagee is authorised to appoint the representatives to management bodies of the enterprise, to restrict the rights of disposal of produced goods and other property of the enterprise. Should such measures prove to be fruitless, the mortgagee shall have the right to appeal with claim for the enterprise under mortgage.

Whenever the enterprise under the mortgage has been claimed for it shall be sold from the auction in an order specified by the legislation of the Azerbaijan Republic.

Article 47. Implementation of obligations secured by the mortgage ahead of time

The mortgager shall have the right to implement the obligation secured by the mortgage in full volume ahead of time if agreement on mortgage on real estate excludes possibility of further mortgage of the same object.

Article 48. Mortgage of the property that is in turnover and processing

The property being in turnover and processing (stock, raw materials, materials, semi-finished products, ready commodities etc.) might be mortgaged for fulfilment of any obligation.

In case of mortgage of commodities being in turnover and processing change of composition and natural kind of mortgaged property is permitted on condition that total cost of new property is not less than cost of mortgage specified in the mortgage agreement.

Decrease of cost of mortgaged property being in turnover and processing is permitted in proportion with implemented part of obligation secured by mortgage if not specified otherwise in the agreement.

In case of sale of mortgaged property that is in turnover and processing it ceases to be the object of mortgage from the moment of its transfer to ownership or under control of the buyer. On purchase of commodities envisaged in the mortgage agreement by the mortgager they become the object of mortgage.

Article 49. Agreement about mortgage of the property in turnover and processing

Agreement about mortgage of the property in turnover and processing should specify kind of mortgaged property, its other features, total cost of the object of mortgage, place of its location and also kinds of commodities which might replace the object of mortgage.

Article 50. Rights of the mortgager in case of mortgage of the property that is in turnover and processing

In case of mortgage the property being in turnover and processing the mortgager reserves the right to possess, dispose of the object of mortgage and proprietary right with observance of provisions of Article 48 of the present Law.

Article 51. Mortgage of rights

Rights of ownership and use, including rights of lessee, other rights resulting from obligations and other proprietary rights might constitute the object of mortgage. The right with specific validity term might be the object of mortgage only till the expiration of this term.

The lessee may mortgage the lessee's right without the lessor's consent if not specified otherwise by the leasing agreement.

In case of mortgage of the rights that have not been estimated financially the cost of the object of mortgage is determined by mutual agreement of the parties.

Article 52. Agreement about mortgage of rights

Alongside with provisions of Article 11 of the present Law agreement about mortgage of rights should specify the person's debtor with respect to the mortgager. The mortgager must notify its debtor about the fact of mortgage of rights related therewith.

Article 53. Obligations of the mortgager in case of mortgage of rights

If not specified otherwise by the agreement, in case of mortgage of rights the mortgager shall:

- 1) ensure validity of mortgaged right;
- 2) not transfer mortgaged right;
- 3) not make actions that might result in cessation or restriction of mortgaged right;
- 4) protect mortgage right from infringement by the third parties;
- 5) notify the mortgagee about any changes occurred in the mortgaged right, its violations made by third parties and about claims of third parties in connection with said right.

Article 54. Rights of the mortgagee in case of mortgage of rights

If not specified otherwise by the agreement, in case of mortgage of rights the mortgagee has the right:

- 1) before expiration of term of fulfilment of obligations to

apply to law court with claim for transfer of mortgaged right in his favour if the mortgager fails to fulfil the obligations envisaged in paragraph 4 of Article 53 of the present Law;

- 2) to joint as the third party business that is under claim in connection with the mortgaged right;
- 3) if the mortgager fails to fulfil the obligations envisaged in paragraph 4 of Article 53 of the present Law, to take measures necessary for protection of mortgaged right from infringement by the third parties.

Article 55. Consequences of fulfilment of the debtor's obligations before the mortgager

If the mortgager's debtor fulfils its obligations before the mortgager fulfils its obligations secured by the mortgage all gaining obtained by the mortgager become the object of mortgage; the mortgager must immediately notify the mortgagee about such fact. At request of the mortgagee, the mortgager, having received money as per the obligations from its debtor, shall have to transfer respective sums to the account of obligations secured by the mortgage if not specified otherwise by the mortgage agreement.

Article 56. Guarantee of rights of the parties during the mortgage term

Losses incurred to the mortgagee as a result of introduction of legislative act of the Azerbaijan Republic terminating mortgage right or right of the mortgager for mortgaged property will be reimbursed by the Azerbaijan Republic in full amount. Disputes concerning compensation of losses shall be settled by the law court.

Losses borne by the mortgagee as a result of termination of right of ownership for the mortgaged property or termination of validity of mortgaged rights as a result of decision of state power and administration body aimed to confiscation of mortgaged property or mortgaged rights, including confiscation of land site whereon mortgaged building, structures or plants are located, shall be reimbursed to the mortgagee in full amount by said state body at the expense of its own resources. Disputes concerning compensation of losses shall be settled by the law court.

Article 57. Invalidity of acts violating mortgage right

If state power body or local executive power body issues the act contradicting legislation and said act violates the rights of the mortgagee, after appeal of the mortgagee such act shall be recognised invalid by the law court and all losses incurred by the mortgagee as a result of issue of such act shall be reimbursed in full amount by the guilty body.

President of the Azerbaijan Republic

Heydar ALIEV

July, 1994

Baku, 15

No 852

Decree of Milli Mejlis of the Azerbaijan Republic

About coming into effect of the Law of the Azerbaijan Republic

□ About Mortgage□

Milli Mejlis of the Azerbaijan Republic decides:

1. To bring into effect the Law of the Azerbaijan Republic  
□ About mortgage□ from the date of its issue.
2. Until the legislative acts of the Azerbaijan Republic are brought into accord with the Law of the Azerbaijan Republic □ About mortgage□ provisions of existing legislative acts shall be applied which do not contradict to the present Law.
3. Permanent commissions of National Assembly of the Azerbaijan Republic on legal policy, economic policy must prepare and present for consideration by the National Assembly of the Azerbaijan Republic within 3 months proposals concerning introduction of changes and amendments into legislative acts of the Azerbaijan Republic.
4. The Cabinet of Ministers of the Azerbaijan Republic shall bring its decisions into accord with said Law, acceptance of legislative acts necessary for implementation of the Law, revision of normative acts of ministries, state committees and organisations of the Azerbaijan Republic.  
Chairman of Supreme Council of the Azerbaijan Republic  
R. Guliyev  
Baku, 15 July 1994  
No 853