

# Azerbaijan

## Law on Mortgage

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## **Chapter I. General**

### **Article 1. Definitions**

The “Mortgage” is the way of securing fulfilment of obligation. Should the debtor fail to fulfil obligation secured with the mortgage (pledge), the creditor - mortgagee, in compliance with this Law, will have priority right on other creditors, for reimbursement from the cost of mortgaged property.

The “Mortgagor” — physical persons and legal entities of the Azerbaijan Republic and foreign countries, as debtors under primary debt, or as third parties providing mortgage, owning mortgaged property (rights) based on the ownership right or entire economic management.

The “Mortgagee” — physical persons and legal entities of the Azerbaijan Republic and foreign countries accepting mortgage in order to fulfil duly obligation of debtor.

“Hypothecation” — mortgage of company, construction object, building, structures related to land site or other real estate together with specific land site or with the right of use of this site, or direct mortgage of land site.

“Secured loan” — pecuniary obligations secured by the mortgage.

“Pledge” — pledge (pawning) of movable property given to the mortgagee to be owned and used as specified by legislation.

“Depository” — authorised bank, which receives proceeds from the sale of mortgaged property and distributes them among the mortgagees.

### **Article 2. Legislation on Mortgage**

Relations in connection with mortgage are governed by this Law, Civil Code of the Azerbaijan Republic and other normative-legal acts.

### **Article 3. Scope for Mortgage Application**

1. Mortgage may cover actual demands resulting from loan agreements, including bank credit agreements, purchase sale agreements, lease of property, freightage, etc.
2. Mortgage arises from secured obligation.
3. Insecurity of loan agreement shall not result in insecurity of obligation secured with the mortgage.
4. Insecurity of obligation covered by mortgage will result in insecurity of loan agreement.
5. Mortgage might be provided for fulfilment of obligations, which could arise later, provided that the parties agreed about the extent of security.

### **Article 4. Subject of Mortgage**

1. Subject of mortgage, according to legislation, may be state property, private or municipal property and also self-financed property.

In this Law the following is regarded as property:

- movable and immovable property, including property in circulation (material stock, raw materials, assets, semi-finished products, etc.);
- proprietary rights (right of ownership and use including leasehold interest, other proprietary rights resulting from obligations), including debts of the mortgagee to the mortgagor.

The lessee, if not specified otherwise in the lease agreement, may put in pledge its leasehold right without agreement with the lessor.

In compliance with the Law or agreement, mortgage may also apply to property, which could be later purchased by the mortgagor.

In compliance with agreement mortgaged property might be left with the mortgagor (registered mortgage) or it might be given to ownership (use) to the mortgagee (pledge).

2. When property being in self-financed form is put in pledge, consent of the owner, or duly authorised body is needed.
3. In cases specified by legislation, the property or proprietary rights which cannot be alienated separately, cannot be put in pledge separately as well.
4. The property put in pledge might be specified in kind (in this case a mortgage becomes specific mortgage) or in general form (generalised mortgage).
5. Generalised mortgage is that covering all property and rights, which an enterprise enjoys as the enterprise in operation.
6. Object of mortgage may be replaced with consent of the mortgagee.
7. Object of mortgage might be both on the territory of the Azerbaijan Republic and outside it.
8. In accordance with legislation of the Azerbaijan Republic, the property which may not be alienated and claimed upon, demands of personal nature, those, which cannot be pledged in accordance with legislation, shall not form an object of mortgage.

#### **Article 5. Specific Features of Property Mortgaging**

1. Right for mortgage of the property applies to property itself and to any its increment, if not specified otherwise in the law or agreement.
2. Right for mortgage of proceeds and increment which can be separated from the property is applicable only in cases specified in legislation or agreement.

#### **Article 6. Mortgage of Joint (collective) Property**

1. Joint (collective) property might be mortgaged only by consent of all owners.
2. Putting in pledge by the owner of its share in joint property does not require consent of the other owners.
3. The owner of apartment and any residential home (or one their part) may put them in pledge by consent of all persons of age living together with him.

## **Article 7. Pledge**

1. Proceeds and other material benefits received by the mortgagee as a result of use of mortgage, in cases envisaged by agreement, are used for payment of mortgage costs, interest on loans or the loan itself under the obligation secured with mortgage.
2. If there is real danger of loss of the object of mortgage not through the mortgagee' fault, shortage or damage, the mortgagee is authorised to demand replacement of the object of mortgage. Should the mortgagor refuse to fulfil this requirement, the mortgagee shall have the right, as specified in Article 29 of this Law, to incur a penalty against the object of mortgage before due date for fulfilment of obligation.
3. Obligations of the mortgagee with respect to the mortgage:
  - 3.1 to ensure safety of the object of mortgage;
  - 3.2 to notify the mortgagor immediately, or at least within 5 days, about the risk of loss, or damage of the object of mortgage;
  - 3.3 to return the object of mortgage immediately on fulfilment by the mortgagor or by the third party of obligation secured with mortgage.
4. If the mortgagee fails to prove that he is not guilty in loss, shortage or damage to the object of mortgage or that those are the result of force majeure circumstances, the mortgagee, as specified in legislation, will bear obligation to the extent of lost (deficient) value of the object of mortgage, and if this object is damaged - to the extent of decreased - as a result of damage - value of the object of mortgage.
5. During the term when the mortgagee holds the mortgage as a pledge, it might become registered mortgage, as specified in paragraph 8 of Article 11.

## **Article 8. Insurance of Mortgaged Property**

1. In accordance with agreement on mortgage, the mortgagee may be liable to insure the object of mortgage for the benefit and at the expense of the mortgagor.
2. On the mortgagor' consent and at his expense, pawn office may insure the property pledged by it.
3. In accordance with the Law or agreement on mortgage, the mortgagor may have to insure, at his own expense and at full cost, mortgaged property in case of actions of governmental bodies or acceptance of acts terminating economic activity of the mortgagor, or those hindering or unfavourably influencing it, and also in case of its liquidation or declaring its bankruptcy.
4. Where insurance accident takes place, the mortgagee will have priority right for reimbursement of his claims from the sum of insurance indemnity.

## **Chapter II. Occurrence of Mortgage and its Registration**

### **Article 9. Occurrence of Types of Mortgage**

1. The mortgage may be only registered or pledged.
2. Registered mortgage arises:
  - 2.1 on conclusion of agreement on mortgage between the mortgagor and the mortgagee; and
  - 2.2 on registration of the mortgage.
3. Pledge arises in the following cases:
  - 3.1 on conclusion of agreement on mortgage between the mortgagor and the mortgagee; and
  - 3.2 on transfer of mortgaged property to the ownership (use) in accordance with Article 7 of this Law.
4. The enterprise may be put in mortgage only by its owner, or by a person having full economic rights, on consent of the owner or authorised body of the owner.
5. Mortgage comes into effect:
  - 5.1 for registered mortgage - at the moment of registration;
  - 5.2 for pledge - at the moment of transfer of mortgaged property to ownership, or moment of signing agreement on mortgage by the mortgagor or person acting on his behalf, whichever is the last.

#### **Article 10. Agreement on Mortgage**

1. Agreement on mortgage is not a separate act and is concluded with the purpose of fulfilment of obligations under the main agreement.
2. Agreement on mortgage shall be made in writing and easy to understand.
3. Terms and conditions of mortgage may be specified in agreement under which commitment secured with mortgage arises.
4. Agreement on mortgage should specify names and addresses of the parties, name (inventory) of pledged property, its cost and location, essence of the claim secured with mortgage, its value, term of fulfilment, place and date of signing of the agreement and all other terms to be agreed between the parties.

Value of mortgaged property is estimated on agreement between the parties, and should one of the parties so desire - by the estimator.

5. Agreement on mortgage of immovable property should include rights of the mortgagor for property which is a subject of mortgage (hypothecation) and state body registering these rights.
6. Agreement on mortgage concluded outside the Azerbaijan Republic, if not specified otherwise in legislation of the Azerbaijan Republic, shall not be regarded illegal only because it does not comply with the required format.
7. Rights and obligations of the parties under the agreement on mortgage are defined by legislation of the country of establishment, residence or major activity of the party - mortgagor, if not agreed otherwise between the parties.

#### **Article 11. State Registration of Mortgage**

1. Mortgage should pass state registration.
2. Violation of rules of state registration makes the mortgage illegal.
3. Mortgage becomes valid from the moment of state registration.
4. State registration of pledge is not required except cases specified in paragraph 5 of Article 7.
5. State registration is accomplished by relevant executive power body (hereinafter - registering body).
6. To make state registration of the mortgage, mortgagor should submit application for registration of agreement on mortgage to registering body within 30 days from the date of signing.
7. Application for registration should specify the following:
  - 7.1 name of the mortgagor under secured loan, and if he is not debtor - name of the debtor, the mortgagee and the administrator of mortgage (if any);
  - 7.2 specific or general definition of secured loan;
  - 7.3 maximum sum of secured loan;
  - 7.4 specific or general definition of pledged property;
  - 7.5 signatures of the mortgagor and the administrator of mortgage (if there was such appointment);
  - 7.6 date of agreement on mortgage.
8. On transfer of the mortgage into registered pledge, alongside with data required in accordance with provisions of paragraph 7 of this Article, in application for registration the following should be specified:
  - 8.1 transfer of mortgage into registered pledge;
  - 8.2 date of transfer of the latter to the ownership - on transfer of mortgaged property to the ownership, after the date of conclusion of agreement on mortgage.
9. Whenever there are several mortgagors under one secured loan, each mortgagor applies for registration separately.

## **Article 12. Re-registration of Mortgage**

1. Mortgage may not be enforced upon until re-registration of mortgage has been done, as specified in paragraph 2 of this Article.
2. Application for re-registration shall be submitted by the mortgagee if not specified otherwise in this Law. Application should specify subject of mortgage, name of mortgagor, date of initial registration and other relevant information and also reasons for re-registration.
3. In cases of re-registration of the mortgage, besides required information the following data should be provided:
  - 3.1 on revisions made in the agreement on mortgage - date of agreement, dates of revisions, signatures of the mortgagor and mortgagee, or persons acting on their behalf;
  - 3.2 where administrator of mortgage is appointed in future or on its final appointment - name of the administrator of mortgage, signatures of the mortgagee and the administrator of mortgage, or persons acting on their behalf;

- 3.3 when secured loan is transferred to another person - name and signatures of the mortgagee assigning secured loan, new mortgagee or persons acting on their behalf;
- 3.4 when right of ownership for pledged property passes to another person - name of the person acquiring right of ownership and signature of the mortgagee or person acting on his behalf;
- 3.5 when notification on enforcement is submitted - date of such notification:
  - where notification on enforcement is related to mortgage - information required for registration of such mortgage;
  - when decision is taken on alienation of existing enterprise - relevant application; and
  - signature of the mortgagee or person acting on his behalf.
- 3.6 on appointment of new director of the enterprise - name of director of the enterprise and signature of the mortgagee or person acting on his behalf;
- 3.7 on final appointment of director of the enterprise - name of director of the enterprise, signatures of the mortgagee and director of the enterprise, or persons acting on their behalf;
- 3.8 whenever law court makes decree as specified in paragraph 4 of Article 33 - contents of decree, name and signature of the person having applied to law court for such decree to be made, or name and signature of person acting on his behalf;
- 3.9 on termination of term of registered mortgage, or annulment of registration - signature of the mortgagee or person acting on his behalf;
- 3.10 on annulment of registration of notification on alienation - date of submission of notification, signature of the mortgagee or person acting on his behalf;
- 3.11 on annulment of provisional decree of the law court - contents of provisional decree, signature of the person having submitted such application, or person acting on his behalf;
4. Whenever there are several mortgagors under one secured loan, each mortgagor applies for re-registration separately.

### **Article 13. Rules of State Registration of Mortgage**

1. After acceptance of application for registration or re-registration and copies thereof registering body shall:
  - 1.1 indicate day and date of submission in the application for registration or re-registration and copies thereof, attach its seal;
  - 1.2 include application for registration or re-registration addressed to the mortgagor into the Register, return copy of application to the applicant.
2. Registering body may refuse in registration of application for registration or re-registration due to the following reasons:
  - 2.1 when application for registration or re-registration does not comply with provisions of paragraph 7 of Article 11, or Article 12;
  - 2.2 on failure to pay state registration fee.
3. On refusal of registering body to accept application for registration or re-registration due to one of the reasons given in paragraph 2 of Article 13 of this Law, the person having submitted application for registration or re-registration must be immediately notified about such reasons

for refusal; said person should submit new application for registration or re-registration within 30 days.

4. An application for registration or re-registration is considered registered at the moment when seal of registering body is put onto it.
5. Interested persons may appeal to the law court against refusal in registration or illegal registration of the mortgage.
6. Registering body, its officials or employees are responsible for damage incurred as a result of violation of registration rules in accordance with legislation.

#### **Article 14. Use of the Register**

1. Registering body keeps and maintains the Register of mortgage registration.
2. When establishing database on mortgage, registering body shall provide storage and access to information.
3. Anybody, having paid fee as specified by legislation, might be acquainted with information in the Register book and get copies thereof.

#### **Article 15. State Duty for Mortgage Registration**

Rates of state duties for registration and re-registration are established by legislation.

### **Chapter III. Relationship between the Mortgagor and the Mortgagee**

#### **Article 16. Rights and Obligations of the Mortgagor and the Mortgagee**

1. In agreement concluded between the mortgagor and the mortgagee additional rights and obligations may be provided for, alongside with those envisaged by this Law.
2. The mortgagor has the following rights:
  - 2.1 to own property which has been mortgaged due to its purpose and use it;
  - 2.2 to let on lease mortgaged property or alienate it with transfer of secured loan to different person;
  - 2.3 to alienate mortgaged property separately from the pledge, on condition that provisions of Articles 19 and 20 are observed;
  - 2.4 to appeal to law court with demand to terminate the mortgage, if the mortgagee does not own and use the mortgage, or obligation which is secured with mortgage has been fulfilled ahead of time;
  - 2.5 after submission of notification about enforcement to suggest that the mortgagee sells pledged property within 30 days (according to paragraph 1 of Article 30) or within 60 days (according to paragraph 10 of Article 40).

All the above rights except the right envisaged in this paragraph are terminated after notification about enforcement has been submitted.

3. The mortgagee has the following rights:

- 3.1 to carry out audit of existence and status of the subject of mortgage;
  - 3.2 to demand from the mortgagor to take relevant measures on protection of the subject of mortgage;
  - 3.3 to demand from any person to stop acting so that the subject of mortgage could be lost or damaged;
  - 3.4 on loss of the subject of mortgage and failure to restore it by the mortgagor, or failure to replace it - with consent of the mortgagee - with equal amount of similar property, to demand that obligation secured with the mortgage is fulfilled ahead of time;
  - 3.5 if the mortgagor fails to fulfil obligations under paragraph 4 of this Article, recourse should be taken against the mortgaged property before commencement of the term for fulfilment of obligation secured with the mortgage.
4. The mortgagor has the following responsibilities:
    - 4.1 to provide safety of mortgaged property and to take all due measures to keep it in an adequate state, and also to avoid actions which could result in termination of right of mortgage or its restriction;
    - 4.2 in case of alienation of the property in accordance with sub-paragraph 2.2 of this Article to inform the mortgagee without delay;
    - 4.3 not to assign pledged right to third parties;
    - 4.4 to inform the mortgagee about changes in mortgaged property, about violations made by third parties and claims of third parties against this right.
  5. The mortgagor and the mortgagee may come to an agreement concerning the sum of debt covered by the mortgage, about increase in mortgaged property or transformation of pledge into the mortgage of the enterprise or land site (hypothecation). These changes are regarded as initiation of a new mortgage.
  6. Both the mortgagee and the mortgagor have the right to undertake the audit of mortgaged property.

#### **Article 17. The Administrator of Mortgage**

1. At any time the mortgagee may appoint administrator of registered mortgage and to dismiss him.
2. Both the mortgagee himself or third party may be the administrator of mortgage. If several mortgagees are mortgage holders, then appointment of the administrator of mortgage and termination of his activity shall be valid when done by all mortgage holders or on their behalf.
3. Immediately after registration the administrator of mortgage:
  - 3.1 acquires the right to dispose of all rights of mortgage holder arising from the mortgage;
  - 3.2 during the term of activity of the administrator of mortgage the mortgagee has no right of said disposal;
  - 3.3 irrespective of responsibility of the mortgagee, the administrator of mortgage will be accountable to the third parties for fulfilment of all his obligations arising from the mortgage.
4. After transition of secured loan to another party, in accordance with this article all his rights and obligations of the administrator of mortgage remain in force and the administrator of mortgage

will act on behalf of the new mortgagee provided that the administrator is not dismissed or replaced by said new mortgagee.

#### **Article 18. Transfer of Claims under the Secured Loan to Another Person**

1. Transfer by the mortgagee of claims under the secured loan pertains also to a mortgage against this loan. Agreement envisaging alienation of the loan is regarded as transfer of the loan into mortgage, except cases specified in Articles 19 and 20 of this Law.
2. Claims under the loan secured with mortgage, when being transferred to another person, will relate to this mortgage only when:
  - 2.1 a person transferring claims under the loan to another person, gives pledged property to be owned by a new mortgagee, or person appointed by a new mortgagee; or
  - 2.2 a person transferring claims under the loan to another person, gives consent on behalf of a new mortgagee to preserve pledged property.
3. On transfer of claims under the secured loan to another person, all rights of the mortgagee under the agreement on mortgage will be also valid for this person, if not specified otherwise in the Law or agreement of mortgage, and no other procedure has been agreed upon between the parties under transfer.
4. On transfer of claims under the secured loan and mortgage to another person, new mortgagee together with the former mortgagee acquires right for this mortgage equal to a sum of secured loan being transferred, and all other rights under the agreement on mortgage.
5. Transfer of claims under the secured loan to another person is carried out in accordance with legislation.

#### **Article 19. Legal Permit to Alienate Mortgaged Property**

The mortgagor has the right to alienate right of ownership free from pledge. Provided that this pertains to sale of commodities within the limits of commercial activity (except pledging cases).

#### **Article 20. Permit under the Agreement to Conclude Agreements on Mortgaged Property**

1. Besides permit granted under Article 19 of this Law, the mortgagee, based on agreement may give permit to the mortgagor for alienation of right of ownership free from pledge, except pledging cases.
2. In accordance with paragraph 1 of this Article, when granting permit in any agreement, mortgaged property might be defined in general or specified, and said permit might be granted on terms agreed upon between the mortgagor and the mortgagee.
3. In accordance with paragraph 1 of this Article, said permit may be included directly into agreement on mortgage, whereas a person concluding agreement is considered as acquiring mortgaged property free from pledge, without any further need to get permit.

#### **Article 21. Rights and Protection**

1. The mortgagee may declare rights arising from the mortgage, provided that this mortgage arises in accordance with Article 9 of this Law and is not terminated in accordance with Article 35.
2. The mortgagee may declare rights arising from secured loan, provided that this mortgage arises in accordance with Article 9 of this Law and is not terminated in accordance with Article 35.
3. With any proceedings, the mortgagee, when declaring his rights with respect to mortgage:
  - 3.1 must prove occurrence of mortgage;
  - 3.2 the mortgagor or other party shall prove that mortgage has been terminated, or measures of protection may be applied as required by law.
4. The mortgagor declaring right for mortgaged property and any other party, whenever there are objections against the law or its insecurity, or on insistent requests for termination of mortgage, may apply to law court asking to confirm occurrence of mortgage, its insecurity or termination.

## **Article 22. Measures on Protection of Mortgaged Property**

1. The mortgagee acquires the right of ownership after submission of notification on enforcement in accordance with provisions of this Law.
2. If it is not possible to own mortgaged property or on objection of the third party being the owner of mortgaged property, the mortgagee may take measures against use of the subject of mortgage by the mortgagor or by the third party, or alienation of said subject of mortgage.
3. Where notification on enforcement relates to the property mortgaged under different commitment rather than to the money debt of the borrower of mortgagor, the mortgagee might notify the borrower of the mortgagor about claim against mortgaged property. After such notification:
  - 3.1 the mortgagor cannot change agreement without consent of the mortgagee;
  - 3.2 the mortgagor cannot take relevant measures to use his rights under the agreement without the mortgagee' consent;
  - 3.3 the mortgagee may use the rights of the mortgagor under the agreement, provided that at the same time he implements respective rights of the mortgagor under this agreement.
4. When notification on enforcement is submitted, the mortgagee may take required measures on protection, storage and insurance of mortgaged property and also increase of its selling price, or decrease of selling costs, including measures on improvement of mortgaged property, or letting it on lease to third party on reasonable commercial terms.
5. As an optional measure for protection of the mortgaged property, the mortgagee may apply to law court.

Law court may carry out investigation of such cases only after the mortgagee has registered notification on enforcement.
6. If the rights of the mortgagee are violated as a result of decisions taken by governmental or municipal bodies, he may apply to the law court, in accordance with legislation, to request that said decision/act should be recognised as illegal. If such decision/act is recognised illegal, damage incurred to the mortgagee by such decision/act shall be reimbursed in full by the body having taken said decision.
7. When right of ownership of the mortgagor with regard to the property being a subject of mortgage (hypothecation) has been suspended in an order and according to legislation, as a

result of its requisition or nationalisation, acquisition (purchase) for the needs of the state or city council with payment of its value, and the mortgagor is given another property or adequate reimbursement, mortgage (hypothecation) shall pertain to the property given instead of the former one, or respectively - the mortgagee acquires preferential right to be reimbursed from a sum to be paid to the mortgagor.

8. The mortgagee whose interests cannot be protected in full by rights envisaged in paragraph 7 of this Article may demand that obligation secured with mortgage (hypothecation) is realised ahead of time, and instead of purchased property - take recourse against the property given to him.
9. On state confiscation of property being a subject of mortgage (hypothecation) from the mortgagor due to crime or other violation of law, the mortgage (hypothecation) is suspended. In this case the mortgagor may demand that obligation secured with mortgage (hypothecation) is realised ahead of time.
10. In case of vindication of property from the mortgagor which is a subject of mortgage (hypothecation) as specified in legislation, as another person acts as the owner of property, the mortgage (hypothecation) of this property is suspended. In such case, after decision of the law court comes into force, the mortgagee may demand that obligation secured with mortgage (hypothecation) is realised ahead of time.
11. Where there is a possibility (danger) of confiscation of property being a subject of mortgage (hypothecation), due to reasons specified in paragraphs 9 and 10 of this Article the mortgagee may require realisation of the mortgagor's commitment before said mortgage (hypothecation) is suspended.

### **Article 23. Re-pledging of Pledged Property**

It is permitted to re-pledge (re-hypothecate) already pledged property if not specified otherwise by the Law or former agreements on mortgage.

### **Article 24. Rights of the Previous Mortgagee**

1. If the subject of mortgage is the property pledged as a security under other commitment, rights of the former mortgagee remain in force.
2. Demands of subsequent mortgagee are covered from the value of the subject of mortgage after the previous mortgagee has been reimbursed in full.
3. The mortgagor must inform each subsequent mortgagee about all existing pledges of said property, and also about the nature and sum of commitments secured with these pledges.

The mortgagor is obliged to reimburse losses incurred by the mortgagee as a result of failure to fulfil said obligations.

4. Priority right for satisfaction of all commitments under the mortgage may be changed at any time, based on written agreement between the mortgagees or between the mortgagor and all mortgagees.

## **Article 25. Subject of Mortgage with Partial Fulfilment of Commitment**

If the mortgagor fulfils only part of commitment secured with mortgage, mortgage remains in full until commitment is not fulfilled in full, if not specified otherwise in the agreement on mortgage.

## **Article 26. Satisfaction of Requests at the Expense of Mortgage Formed by Various Property**

Where the subject of mortgage is various property or various rights, claims of the mortgagee, at his discretion, may be satisfied at the expense of all property, or at the expense of any part of the property (rights). In the latter case the mortgagee retains his right to satisfy his claims at the expense of remaining part of property (rights) forming the subject of mortgage.

## **Chapter IV. Enforcement against a Mortgage and its Termination**

### **Article 27. Occurrence of the Right for Satisfaction of Obligation at the Expense of Mortgaged Property**

1. Right for satisfaction of claims of the mortgagee at the expense of mortgaged property is realised without legal proceedings.
2. Right of the mortgagee for immediate enforcement against the subject of mortgage arises in the following cases:
  - 2.1 when the mortgagor fails to fulfil obligation secured with property in due time;
  - 2.2 on violation of provisions of paragraph 2, Article 7 and paragraph 4, Article 16 of this Law.
3. The mortgagee retains the right for immediate enforcement against the subject of mortgage until:
  - he agrees that there is no need in immediate repayment of this loan; or
  - secured loan has been paid in full or has been reimbursed in some other way.
4. The reasons where right of the mortgagee for immediate enforcement against the subject of mortgage arises are the following:
  - delay with repayment of major loan, or some its part;
  - violation of schedule for payment of interest on loan specified in main agreement;
  - failure to fulfil specific terms of payment specified in main agreement which give the right to the mortgagee to demand enforcement against the subject of mortgage.

### **Article 28. Claims of the Mortgagee Satisfied at the Expense of Mortgaged Property**

The mortgagee may satisfy his claims at the expense of mortgaged property in full, as defined to the moment of enforcement, including costs of storage and disposal of mortgaged property if not specified otherwise in the Law or in agreement.

## **Article 29. Procedure of Enforcement**

1. The mortgagee may begin procedure of enforcement against the mortgaged property having sent notification to the mortgagor, including data as specified in paragraph 6 of this Article.
2. After submission of notification to the mortgagor, the mortgagee will have the following rights:
  - 2.1 to become the owner of the property on condition of subsequent disposal of the property as specified in Article 30 of this Law and in paragraph 1, Article 22 or Article 40;
  - 2.2 to become the owner of mortgaged property in cases envisaged by agreement on mortgage.
3. Procedure of enforcement against the mortgaged property may not continue in the following cases:
  - 3.1 on failure to submit repeated application to registering body within 7 days after the notification has been sent to the mortgagor;
  - 3.2 if, according to existing legislation, notification about enforcement is regarded as invalid by the law court;
  - 3.3 if the mortgage is not recognised as a mortgage against which recourse must be immediately taken in accordance with paragraph 3 of Article 27 of this Law.
4. In case of failure to submit notification to the registering body about enforcement in an order envisaged by this Law, the mortgagee will be responsible to the mortgagor, to any other mortgagee and other party having the right for mortgaged property, for resulting damage to any of them.
5. The mortgagee may, at any time, to apply to registering body with request to annul registration of notification about enforcement.
6. Notification about enforcement must be in writing and specify the following:
  - 6.1 reference to Register on mortgage and date of registration, and regarding the mortgage - in accordance with paragraph 8 of Article 11 of this Law, data required for registration of said mortgage, name of mortgage being enforced;
  - 6.2 information about the loan to be repaid;
  - 6.3 record about immediate performance of mortgage;
  - 6.4 the mortgagee - when taking decision on disposal of pledged enterprise as that in operation, in accordance with paragraph 2, Article 40 of this Law - should mention such decision and give the name of person - appointed as a director of the enterprise;
  - 6.5 if notification is submitted by the mortgagee or on his behalf, or where paragraph 3 of Article 40 of this Law is applied, it must be signed by the appointed director or on his behalf.

## **Article 30. Disposal of Mortgaged Property**

1. The mortgagee has the right to dispose of mortgaged property and to repay secured loan at the expense of proceeds from sale not less than 30 days after submission of notification about enforcement to the mortgagor.
2. The mortgagee should act as follows:

- 2.1 to try to sell mortgaged property at fair prices;
  - 2.2 to notify the buyer about disposal of property by him as by the mortgagee; in cases specified in the first paragraph of Article 31 proceeds from the sale will be given directly to the depository.
3. The mortgagee may sell mortgaged property:
    - 3.1 based on agreement in the open market; or
    - 3.2 at the auction.

To settle any issues in this respect, the mortgagee may appoint a person to act on his behalf.

4. Enforcement against the mortgaged property of the mortgagor being in a state of bankruptcy and disposal of this property shall be done in accordance with Article 47 of the Law of the Azerbaijan Republic “On insolvency and bankruptcy”.
5. Relevant executive power bodies dealing with registration of ownership rights for immovable property, land sites, transportation means and other property or proprietary rights, not later than within 30 days after the application of the new owner, shall issue new documents on his name.
6. New owner of the property must submit the following documents to relevant executive power bodies which are dealing with registration of ownership rights:
  - 6.1 new owner who became the mortgagee - copy of notification about enforcement registered with the registering body;
  - 6.2 new owner who bought pledged property at the auction - statement from organisation having organised the auction, with information about the property (mentioning that it the subject of mortgage) and the mortgagee;
  - 6.3 new owner who bought the property based on agreement, in the open market - statement from the mortgagee or director of the enterprise, or - according to paragraph 5, Article 47 of the Law of the Azerbaijan Republic “On insolvency and bankruptcy” - statement from the administrator of property, specifying that this property is the subject of mortgage, and also information about the mortgagee;
  - 6.4 Mortgagee of the property belonging to the mortgagor being in a state of bankruptcy - agreement made between the administrator of property and the mortgagee (secured creditor) - according to paragraph 6, Article 47 of the Law of the Azerbaijan Republic “On insolvency and bankruptcy”.

### **Article 31. Depository**

1. Depository is appointed in the following cases:
  - 1.1 on repeated transfer of the property or proprietary right to the mortgage;
  - 1.2 when proceeds from the sale of property, in accordance with Article 28 of this Law, exceed sum of major loan, estimated interest and other costs of the mortgagee.
2. In all cases, except those envisaged in paragraph 1 of this Article, depository is not appointed and proceeds from the sale of property under enforcement are transferred directly to the mortgagee.
3. Bank, whose liquidity does not raise doubts with neither mortgagee, nor mortgagor may become depository.

Decision about selection of depository is made as a joint minutes of the mortgagee and the mortgagor.

When there are several mortgagees, they take joint decision about depository to be recommended to the mortgagor.

4. Depository may be appointed at any time after submission of notification about enforcement.
5. Neither the mortgagor nor the mortgagee may be depository.
6. In cases envisaged by this Law, the mortgagee transfers proceeds from disposal of the property to the depository account.  
Depository must keep received sum in full at special account.
7. Not later than 14 days after the appointment depository shall prepare a list with indication of the following:
  - 7.1 persons entitled to receive proceeds from the sale;
  - 7.2 sum due to each of them;
  - 7.3 priority list for satisfaction of claims.
8. To prepare the list mentioned in article 7 above, depository shall:
  - 8.1 check the Register of mortgage;
  - 8.2 forward relevant requests to the mortgagor, mortgagee or director of the enterprise;
  - 8.3 keep registering any claims directed thereto.
9. It is mandatory to supply the depository with information which is required for preparation of mentioned list within a due term.
10. Depository should present copies of the list to the mortgagee, director of the enterprise and the mortgagor indicated in the register of mortgage.
11. Any person having claims concerning the sum of proceeds from disposal of the property and having objections against the list prepared by depository, may notify depository as such within 21 days after this list has been issued. In this case depository must submit amended list to the persons specified in paragraph 7 of this Article, or notify them about his consent to introduce amendments into the list.

### **Article 32. Distribution of Proceeds from the Sale**

1. Proceeds transferred to the account of depository should be distributed within the 15 days after transfer, as follows:
  - 1.1 first, for payment of own bonuses and reimbursement of expenditures, within the limits specified in the depository agreement, however not higher than 0,5 percent of the distributed sum;
  - 1.2 second, for payment of commitments secured by the mortgage to the mortgagees, in accordance with their priority right for reimbursement of expenditures and this Law;
  - 1.3 third, balance to be returned to the mortgagor.
2. If the sum to be paid must be paid by the depository in a currency other than the currency available to him, he will have to purchase the currency on required sum.
3. Secured loan is repaid by the depository when proceeds from sale are paid to the mortgagee.

### **Article 33. Legal Measures on Enforcement against the Pledged Property**

1. Within 10 days after receipt of notification as specified by legislation, the mortgagor, another mortgagee of pledged property or any other party having the right for mortgaged property may apply to the law court with respect to validity of mortgage, its reliability and take recourse against it.

In this case the law court should, within 14 days, investigate an appeal about invalidity of notification on enforcement against mortgage.

2. Before decision of the law court is taken (except situation envisaged in paragraph 4 of this Article):
  - 2.1 the mortgagee, in accordance with Article 22 of this Law, may proceed with realisation of protective measures;
  - 2.2 the mortgagee, in accordance with Article 30 of this Law, may proceed with realisation of the mortgage;
  - 2.3 if decision has been taken, director of the enterprise may continue his obligations as that of director of operating enterprise and to realise the mortgage in accordance with Article 40.
3. Should the law court take decision about invalidity of notification on enforcement against mortgage, the mortgagee shall apply to registering body-requesting annulment of registration of notification.
4. If the law court, according to the first paragraph of this Article:
  - failed to make final decision within 60 days after the application for enforcement of mortgage; and
  - is convinced that there are good reasons proving that the subject of mortgage does not exist, mortgage is not reliable or there must be no enforcement, or the mortgage has been terminated;
  - before final decision is taken, the law court may state that pledged property can be disposed of in accordance with Articles 30 and 40.
5. Applicant to the law court must submit to registering body:
  - application with request to register him within 7 days after the statement of law court has been made;
  - application with request to annul his registration within 7 days after the statement has been made, if said statement terminates the mortgage.

The applicant will be responsible in accordance with legislation for damage made to any third party as a result of violation of specified procedure.

6. The mortgagor, any other mortgagee of pledged property or any other person having the right for pledged property, wherever they have claims to the mortgagee, administrator of mortgage, director of the enterprise or depository in connection with their failure to fulfil requirements of Articles 27-35 of this Law may apply to law court, requesting that the following decisions are taken:
  - 6.1 on unreliability of any step contradicting provisions of Articles 27-35 of this Law;
  - 6.2 on fulfilment of said requirements by the mortgagee, the administrator of mortgage, director of the enterprise or depository;

6.3 on any other matter recognised relevant by the law court.

#### **Article 34. Reimbursement of Damage**

The mortgagor, any other mortgagee or any other party having the right for pledged property have the right for claim to reimburse damage in the following cases:

- in case of any damage done as a result of appeal to law court with recourse, if the law court takes decision about invalidity of notification on enforcement against mortgage;
- in case of any damage as a result of failure of the mortgagee, the administrator of mortgage, director of the enterprise or depository to fulfil requirements of Articles 27-35 of this Law, or as a result of taking recourse against the mortgage without due right thereto.

#### **Article 35. Termination of Mortgage**

1. Mortgage shall be terminated in the following cases:

- 1.1 when the mortgagor and the mortgagee so agree;
- 1.2 on repayment of secured loan or termination of the subject of mortgage in some other form;
- 1.3 when pledged property ceases to exist;
- 1.4 where there is no chance to identify or separate pledged property as a result of its change or merge with other property or other right;
- 1.5 where pledged property becomes a part of another property or right, in such case mortgaged property might be alienated only jointly with such other property or right;
- 1.6 on transfer of pledged property to the property of the mortgagee;
- 1.7 on termination of the ownership right with respect to property given to pledge.

2. Mortgage is also terminated, when the mortgagor or another mortgagee of this property:

- place on deposit with bank servicing this mortgagee part of secured loan equal to 130 % of its maximum value in a currency of secured loan, on terms agreed with previous mortgagee;
- submit registered mortgage, in a sum deposited as specified in paragraph 2.1 of this Article, to the mortgagee whose mortgage is terminated to repay secured loan which had been previously secured with terminated mortgage.

3. On termination of the mortgage, the mortgagee shall:

- register termination of registered mortgage;
- return pledged property to the mortgagor, if not agreed otherwise between the mortgagor and the mortgagee.

### **Chapter V. Specific Nature of Mortgage (hypothecation) of Enterprises**

#### **Article 36. Hypothecation of Enterprises, Buildings, Construction Sites and Structures together with Land they are located on**

1. Hypothecation of enterprises, buildings, construction sites and structures is permitted under one and the same agreement only with hypothecation of land site where these facilities are located, or land site supporting relevant activities, or complete with hypothecation of the right of the mortgagor to rent this site.
2. When taking recourse against mortgage on such enterprise, building, construction site or structure person having acquired this property, as former owner of this immovable property, on same terms and to the same extent acquires the right for land site where said property is located.

### **Article 37. Hypothecation of the Enterprise as a Proprietary Complex**

1. Hypothecation of the enterprise as a proprietary complex is allowed on permit of the owner of the enterprise or the body authorised by the enterprise. If such requirement on hypothecation of the enterprise is violated, concluded agreement is regarded as unreliable.
2. In case if the enterprise in general as a proprietary complex becomes the subject for hypothecation, pledged property shall include all tangible and intangible assets of this enterprise, including buildings, construction sites, structures, equipment, accessories, raw materials, claims, patent rights and other exclusive rights.
3. Composition of the property of the enterprise given to hypothecation and estimate of its value are made based on complete inventory. Act of inventory, accounting schedule related to composition and value of the enterprise are regarded obligatory enclosures to agreement of hypothecation. When estimating value of the enterprise revisions might be made accounting for competition at the market. Revisions are documented in the act signed by the mortgagor and the mortgagee.

### **Article 38. Commitments which can be secured by Hypothecation of the Enterprise**

Commitment in a sum equal at least half of the enterprise assets may be secured by hypothecation.

Commitment which is to be fulfilled within at least six months after the agreement on hypothecation has been concluded might be secured with the hypothecation of the enterprise. If said agreement envisages shorter period for fulfilment of commitment secured with the hypothecation of the enterprise, the mortgagee, after six months after conclusion of the agreement acquires the right to take recourse against the subject of hypothecation under the non-fulfilled commitment.

### **Article 39. Rights of the Mortgagor for the Mortgaged Enterprise**

1. The mortgagor has the right to give on lease, sell, exchange, to lend the property of the enterprise or dispose thereof in some other form and change the composition of property of the enterprise under hypothecation, provided that - as specified in the agreement on hypothecation - total sum of assets of the enterprise is not underestimated and other terms of the agreement are not violated.
2. If the mortgagor of the enterprise fails to protect mortgaged property or uses it inefficiently resulting in lesser value of the enterprise, the mortgagee - in accordance with legislation - has the right to demand through the law court fulfilment of commitment ahead of time or establishment of supervision over the activity of the mortgagor.

3. According to agreement about hypothecation (mortgage) the mortgagee, within the context of control:
  - 3.1 may request from the mortgagor to submit accounting documents and other reports on a regular basis, to agree issues in connection with conclusion of agreements about the property of the enterprise in due time;
  - 3.2 may apply to the owner of the property of the enterprise or body authorised by this owner and demand that labour contract with the head of the enterprise is annulled;
  - 3.3 may apply to the law with plea of nullity regarding agreements concluded by the mortgagor;
  - 3.4 may - in the way of control over the activity of the mortgagor and in accordance with agreement -realise other rights.

#### **Article 40. Administration of Mortgage of the Enterprise**

1. In accordance with Articles 22, 30 and 40 of this Law, claim might be brought against the mortgaged enterprise.
2. The mortgagee having submitted notification about enforcement against mortgage, with requirements of this Article and article 29 being observed, may decide to dispose of the enterprise as that in operation.
3. If decision has been taken to dispose of the enterprise as that in operation:
  - 3.1 the mortgagee must appoint director of the enterprise who will have rights and obligations listed in this Article;
  - 3.2 on submission of notification on enforcement against mortgage, authorities of persons who - according to law or statute of the enterprise - are entitled to manage the enterprise and to realise agreements on pledged property;
  - 3.3 such authorities are immediately assigned to the director of the enterprise.
4. Appointment of director is regarded valid if:
  - 4.1 this director possesses relevant qualifications;
  - 4.2 he is not fulfilling obligations of the mortgagee or administrator of property;
  - 4.3 notification about such appointment has been submitted to the body registering mortgage of the enterprise within 7 days after notification about enforcement against mortgage has been submitted.
5. According to paragraph 3.2 of this Article, persons whose authority has been suspended, must supply director of the enterprise with all information required for management and implementation of his functions, and give him every support.

Director of the enterprise may assign certain authorities to members of Board of directors.
6. According to paragraph 3.2 of this Article, persons whose authority has been suspended, even after they knew about suspension of their authority, before director of the enterprise is appointed remain responsible for damage incurred to the mortgagor and any third parties as a result of their activities.
7. Director of the enterprise must do the following:

- 7.1 according to paragraph 3.3 of this Article implement authorities assigned to him and resulting obligations;
  - 7.2 provide operation of the enterprise;  
if there is reason to believe that the enterprise being in operation will not be 7.3 sold,  
notify the mortgagee within the shortest time as such;
  - 7.4 sell the enterprise as that in operation at a maximum price;
  - 7.5 the buyer should be informed that director of the enterprise transfers the right of ownership for mortgaged property as director of the enterprise and proceeds from the sale should be paid directly to the mortgagee or depository.
8. Appointment of director of the enterprise is suspended in the following cases:
    - 8.1 if the enterprise has been sold;
    - 8.2 in cases of suspension of management of the enterprise according to paragraph 13 of this Article;
    - 8.3 on resignation of director of the enterprise;
    - 8.4 on dismissal of director of the enterprise by the mortgagee;
    - 8.5 on dismissal of director of the enterprise by decision of the law court;
    - 8.6 at death of director of the enterprise.
  9. The mortgagee must submit to registering body an application requesting that appointment of director of the enterprise should be suspended, or about appointment of new director, according to Article 12, within 7 days after such suspension or appointment.
  10. According to provisions of paragraph 1, Article 29 of this Law, director of the enterprise, within not less than 60 days after notification about enforcement against mortgage has been submitted, acquires right for disposal of the enterprise with the purpose or repayment of secured loan at the expense of proceeds from sale.
  11. Observing requirements of paragraphs 7.4 and 7.5 of this Article, director of the enterprise may sell the enterprise as that in operation, based on agreement and at his convenience, in the open market or at the auction. To settle any issues when disposing of the property director of the enterprise may appoint a person to act on his behalf.
  12. Should director of the enterprise find out that some part of pledged property might be sold separately, not hindering the sale of the enterprise as that in operation, he may come to agreement with the mortgagee about sale of property as specified in Article 30.
  13. According to paragraph 2 of this Article decision taken about sale of the enterprise as that in operation may be annulled in the following cases:
    - 13.1 if it has been found that pledged enterprise may not be sold as that in operation;
    - 13.2 if it has been found that sale of pledged property of the enterprise complies with interests of other creditors of the mortgagor;
    - 13.3 on decision of the law court, in accordance with Article 33 of this Law.
- According to Article 13, after decision has been annulled mortgage may be repaid in accordance with Articles 22 and 30 of this Law.

## **Chapter VI. Specific Nature of Mortgage (hypothecation) of Land Sites**

### **Article 41. Land Sites that may become Subject of Mortgage (hypothecation)**

1. According to agreement on hypothecation, land sites n ownership may be given to mortgage.
2. Hypothecation of land sites in collective ownership in residential areas, including those in towns, where in accordance with regulations on urban development it is prohibited to erect buildings and structures at specially protected territories and in zones, land sites intended for special use, belonging to state or municipal bodies, is not permitted. Other land sites - state and municipal property, except those which cannot be mortgaged according to land legislation, may be mortgaged based on agreement on hypothecation.

Hypothecation of agricultural land falling under this Law is permitted only for realisation of commitments directly related to agricultural activity.

### **Article 42. Indivisibility of Hypothecation of Land Site**

In accordance with land legislation hypothecation of part of land area is not permitted if this part cannot be used as a separate site, irrespective of its size and category.

### **Article 43. Hypothecation of Land Site where Buildings and Structures of the Mortgagor are Located**

1. If not specified otherwise in the agreement on hypothecation, on hypothecation of land site right for mortgage does not relate to existing buildings or constructed buildings, structures and premises.

If there is no provision in the agreement for mortgaging to the same mortgagee of building or constructed building, structures or premises located at the land site of the mortgagor, then in case of enforcement against mortgage for land site the mortgagor retains the right for these buildings, structures or premises and acquires the right (servitude) for restricted use of part of the site, in accordance with their purpose. Terms of use of this part of site are determined by agreement between the mortgagor and the mortgagee, and disputes are settled in the law court.

2. In accordance with paragraph 1 of Article 44 of this Law, the mortgagor has the right to dispose of his buildings, premises and structures located at the land site which do not fall under the right of mortgage, without agreement with the mortgagee.
3. If buildings or constructed buildings, structures or premises located at the mortgaged land site are mortgaged to the same mortgagee, rights of the mortgagor for these buildings, structures or premises, terms of transfer to third parties and consequences are defined by this Law.

### **Article 44. Construction at the Mortgaged Site**

1. The mortgagor has the right for construction of buildings, structures and premises at land site mortgaged based on agreement on hypothecation without agreement with the mortgagee. Right of mortgage does not apply to these buildings and structures, and if not specified otherwise in

the agreement on hypothecation the mortgagor may dispose of them according to paragraph 2 of Article 43.

2. If construction of buildings, structures and premises at mortgaged land site weakens guarantee given to the mortgagee, or may so result, the mortgagee has the right to demand to change agreement on hypothecation (also, where required, applying hypothecation to buildings, structures and premises).

#### **Article 45. Hypothecation of Land Site with Buildings, Structures and Premises belonging to the Third Party**

In case when land site with buildings, structures and premises belonging to another person rather than to the mortgagor is mortgaged, if the mortgagee when disposing of this land site takes recourse against it, then rights and obligations of the mortgagor with respect to this person transfer to the buyer of the site.

#### **Article 46. Estimate of Land Site with the Purpose of Hypothecation**

Land site which is going to be mortgaged (hypothecation) must not be underestimated.

#### **Article 47. Specific Features of Disposal of Mortgaged Land Site**

1. Legal entity or physical person which has acquired land site has the right to change its purpose only in cases envisaged by land legislation, in an established order.
2. Mortgaged land sites used for agriculture and governed by this Law are alienated from legal entities and physical persons who bought these sites observing restrictions specified by legislation.
3. When disposing of land site from agricultural land legal entities and physical persons whose main activity is agriculture, among them - persons owning adjacent land sites, other terms being equal, enjoy priority right when purchasing this site.

### **Chapter VII. Specific Nature of Mortgage (hypothecation) of Residential Homes and Apartments**

#### **Article 48. Application of Regulations on Mortgage (hypothecation) of Residential Homes and Apartments**

1. Provisions of this chapter apply to hypothecation of individual residential homes, blocks of apartments and individual apartments (one part of them) belonging to physical persons and legal entities.
2. Hypothecation of individual residential homes, blocks of apartments and individual apartments belonging to state or municipal bodies is not permitted.

3. Hotels, recreation homes, country houses with land plots, other structures and buildings which are not used for permanent residence may become subject of hypothecation on the usual lines. Regulations established for residential homes (apartments) do not apply to them.
4. Hypothecation of one part of residential home, apartment consisting of one or several rooms is carried out in accordance with paragraph 3, Article 6 of this Law.
5. The mortgagor under the hypothecation of residential home (apartment, one part thereof), when taking recourse against their mortgage must first get consent from the people, who moved or may move to mortgaged home, to vacate this home and notify the mortgagee as such.

#### **Article 49. Hypothecation of Apartments in Apartment Houses**

In case of hypothecation of apartment in block of apartments owned jointly by the mortgagor and other persons it is assumed that alongside with apartment, respective share of the mortgagor, being one of collective owners, is mortgaged.

#### **Article 50. Taking Recourse against Mortgage (hypothecation) of Residential Home or Apartment**

1. Enforcement against the mortgage (hypothecation) of residential home or apartment, or their sale, except cases envisaged in paragraph 2 of this Article, shall not be a basis for moving out the mortgagor and his immediate family by the person who bought this home (apartment).

New owner of residential home (apartment) and former owner conclude agreement on lease of this home (apartment). Should the parties fail to conclude agreement, one of them will have the right to apply to the law court requesting that such agreement is concluded and its terms are specified.

2. After the claim to mortgaged residential home or apartment and their sale, the mortgagor and members of his family living with him, at request of the owner of residential home (apartment) must vacate living premises within one month.

On the following condition:

- 2.1 that in accordance with agreement on hypothecation this residential home (apartment) has been mortgaged with the purpose of repayment of credit obtained for purchase of this residential home (apartment) or for construction;
- 2.2 all members of the family living together with the mortgagor, before agreement has been concluded undertook to vacate this residential home or apartment if there should be claim to it.

#### **Article 51. Hypothecation of Constructed Residential Home**

When credit is issued for construction of residential home (including moneys of future residents), agreement on hypothecation may provide for guarantee of obligations of the mortgagor in the form of incomplete construction and materials and equipment belonging thereto.