



Deutsch-Aserbaidschanische
Auslandshandelskammer
Alman-Azərbaycan
Xarici Ticarət Palatası

AHK Aserbaidschan ♦ Winter Park Plaza, 7. Stock ♦ Rasul Rza Str. 75 ♦ AZ 1014 Baku ♦ Aserbaidschan

German-Azerbaijani Chamber of Commerce

Human Resources and Vocational Education & Training Working Group

Position Paper

01 October 2020



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Position Paper prepared by the Human Resources and Vocational Education & Training Working Group of the German-Azerbaijani Chamber of Commerce dated 01 October 2020

The German-Azerbaijani Chamber of Commerce (AHK Azerbaijan) is a part of the global network of German Chambers of Commerce (AHKs) operating in 92 countries at 140 locations. As the official representation of the German economy in Azerbaijan, the Chamber provides information services and supports companies in their market and business research since 2012. With more than 140 member companies today, the AHK Azerbaijan is the most powerful European economic association in Azerbaijan. While actively representing the interests of its members, the AHK Azerbaijan also offers a wide range of business and legal services to companies.

The Human Resources and Vocational Education & Training Working Group of AHK Azerbaijan was created in September 2018. Key objective of the Working Group is to identify the position and difficulties of the member companies concerning human resources and vocational education, notify the government and administrative structures about them, raise awareness among the members on key issues and exchange views and experiences.

Companies taking part in the development of the position paper:

"BHM Law Firm" LLC

"AccessBank" CJSC

"Norm" OJSC



Introduction

Having qualified personnel is one of the key factors in any successful business. This factor is always at the top of the agenda as a strategic goal in all organisations with long-term business prospects. Qualified personnel are still important amid the backdrop of the coronavirus pandemic and its negative impact on the global and Azerbaijani economy. It is our priority to ensure the youth to start their work to build a lifelong career.

This position paper highlights some challenges faced by the member companies of AHK Azerbaijan in practical training (apprenticeship) during vocational education. It describes recommendations to deal with these challenges and proposals to make relevant amendments to the existing legislation of the Republic of Azerbaijan.

Analysed issues

1. Apprenticeship Agreement on Vocational Education

According to the Presidential Decree No. 1897 dated 16 March 2016 "*On Approval of "Major Directions of the Road Map for the National Economy and Main Economic Sectors" (hereinafter "Strategic Roadmap") and Issues Arising Out of It*", economic development strategy on 11 sectors (8 main sectors and 3 secondary sectors) of Azerbaijani economy and Action Plan were approved. In this respect, relevant assignments were made and "*Strategic Road Map for the Development of Vocational Education and Training in the Republic of Azerbaijan*" was developed. The Roadmap was prepared based on the principles of flexibility and integration taking into account the global trends in vocational education and training. It aims to develop such a vocational education system that raises qualified human resources in line with education programmes created to meet the demands of labour market in the country. One of the goals set out in the Strategic Roadmap is to discuss the conclusion of "tripartite apprenticeship agreements" between partner companies (employers) and vocational education schools and their students, defining the interests and obligations of all three parties. As a part of the measures stipulated by the Strategic Roadmap, Law of the Republic of Azerbaijan "On Vocational Education" was adopted on 24 April 2018.

According to the Law of the Republic of Azerbaijan "On Vocational Education" (hereinafter "Law"), employers shall pay fees for work and services performed on the speciality by the learners involved in practical training and apprenticeship under apprenticeship agreement. This "fee" shall not be less than minimum monthly wage (Article 11.6.) Learners working under apprenticeship agreement shall not be registered in the list of employees of an enterprise (Article 11.7.)

According to paragraph 1.5 of "Model Form of Apprenticeship Contract" (hereinafter "Apprenticeship Contract") approved by Decree No. 413 dated 16 September 2019 of the Azerbaijan Cabinet of Ministers, labour relations between Learner and Employer during apprenticeship period shall be governed by Azerbaijan Labour Code and Article 11 of Azerbaijan Law "On Vocational Education". Learner and Employer sign a fixed-term labour contract without establishing a probation period. If Learner fully works monthly working hours,



Employer shall pay fee for the works and services the Learner performs on his specialty. The amount of this “fee” shall not be less than the minimum monthly wage.

In this regard, it should be noted that:

a) Azerbaijan Labour Code (hereinafter “Labour Code”) does not define the term “*list of employees*”.¹

b) According to Article 3 of the Labour Code, Employee is an individual who signs a separate labour contract with Employer and works at the relevant workplace for pay.

c) Performance of work and services in the course of apprenticeship between Learner and Employer during vocational education is not defined among the cases that allow conclude a labour agreement for a definite term under Article 47 of the same Code. Article 52 of the same Code doesn't define *apprenticeship in the course of vocational education* among the cases that do not require a probation period.

d) According to Article 2 and 49 of the Labour Code, labour relations arise after registering labour contract notification entered into the Electronic Information System by strengthened electronic signature and sending information about it to the employer electronically and labour contract thereafter takes effect. According to Decree No.183 dated 6 June 2014 of the Azerbaijan Cabinet of Ministers on the approval of “*Rules for (i) Form of Labour Contract Notification, (ii) Procedure for entering it into an electronic information system, (iii) Form of Notification to be Sent to Employer and Azerbaijan Ministry of Taxes and (iv) Procedure for Obtaining Notification on Labour Contract Registration in Real-time Mode*”, when entering the “Labour Contract Notification on Conclusion of Labour Contract” into the electronic information system, information on “whether the employee is recorded in list of employees” is not defined and not specified in the notification.

e) According to paragraph 11.5 of the Law, apprenticeship agreement with learners under fifteen shall be concluded with the consent of their parents or other legitimate representatives. According to paragraph 1.5 of “Model Form of Apprenticeship Contract” approved by Decree No.413 dated 16 September 2019 of the Azerbaijan Cabinet of Ministers, labour relations between Learner and Employer during apprenticeship period shall be governed by Azerbaijan Labour Code and Article 11 of the Law “On Vocational Education” and Learner and Employer sign a fixed-term labour contract without establishing a probation period for an apprenticeship. According to Article 249 of the Labour Code, **it is not allowed to recruit individuals under 15** and this restriction applies to the registration on e-gov.az portal.

¹ Law of the Republic of Azerbaijan “On Vocational Education”, Scientific-practical and Methodical Journal “Vocational Education and Human Capital” Vol. 1, №1 2018



Proposal:

As the Labour Code and the Law do not define the term “*list of employees*”, the expression “*not included in the list of employees*” used in the Law is not clear and requires additional explanation. This expression creates confusion when using it to formalise and register labour relations on e-gov.az. In this sense, the contradiction between Article 11.5 of the Law and Article 249 of the Labour Code needs to be taken into account.

Given the above and based on the German experience discussed herein, we suggest the relations between Learner and Employer to be governed by a tripartite *apprenticeship agreement* without concluding an additional labour contract. To this end, we propose to make changes to “Model Form of Apprenticeship Contract” (including paragraphs 1.5, 3.2.7, 3.3.2, 3.3.3, 3.3.5 and 3.3.6) approved by Decree No. 413 dated 16 September 2019 of the Azerbaijan Cabinet of Ministers (See Annex 1).

Considering the school-based and work-based components of the vocational education system and their financing features and given the fact that training and experience are not theoretical and methodological activities, but practical and referring to the definitions of “*apprenticeship*”, “*practical training*” (an integral part of vocational education) and “*apprenticeship agreement*” in the Law (Article 1), we propose to distinguish contracts that are signed for practical training and apprenticeship and to revise Article 11 of the Law to avoid confusion when applying the Law in future (See: Annex1).

The same substantive changes and other amendments that fully cover the mutual rights and obligations of Learner and Employer needs to be made to the “Model Form of Apprenticeship Contract” (See: Annex 1) approved by Decree No. 413 dated 16 September 2019 of the Azerbaijan Cabinet of Ministers.

2. Voluntary Internship/Apprenticeship Programmes

Learner serves an internship/apprenticeship in the course of the educational process (including higher education and vocational education) under a tripartite contract signed by an education institution, learner and employer and internship is governed by relevant laws. Furthermore, enterprises may involve students in voluntary internship/apprenticeship programmes that are not a part of the educational process (for example, during holidays).

Neither the Laws “On Education” and “On Vocational Education”, nor other legislative acts regulate (i) involvement of learners (in particular, final-year students) in voluntary internship programme by enterprises, (ii) voluntary participation of learners in self-development and training programmes (without the mediation of education institution) in their free time (and the period not included in the academic year) and (iii) status, rights and obligations of learners in those voluntary internship programmes.

Moreover, employers also involve graduates in internship programmes to increase their theoretical and practical knowledge without obliging them to execute any labour function.



Unfortunately, the current legislation does not define any special status with respect to such individuals and does not regulate such relations in a sufficiently broad manner.

Given the fact that the target of the enterprises which involve the young people in the internship programme is to create new opportunities for them, increase their theoretical and practical knowledge and adapt them to real workplace regardless of the type of relations and that these enterprises use their resources to involve the young people in an internship programme, it is necessary to make concessions to the enterprises to stimulate relevant programmes in the country.

Proposal:

We propose to add provisions on *"the possibility of involvement of students in voluntary internship/apprenticeship programmes which are not a part of the educational process (not included in academic year/process) by signing a bilateral civil law agreement with them"* to the relevant legislative acts of Azerbaijan, including the Laws "On Education and "On Vocational Education".

Furthermore, relevant legislation needs to govern (i) involvement of graduates (without putting an obligation on the enterprises to sign a labour contract in future) in voluntary internship programmes on a contractual basis and (ii) status of interns and their mutual rights and obligations with enterprises under these programmes.

We propose to establish concrete mechanisms for payment of social fees, taxes and other regulatory charges associated with the said voluntary internship programmes and to grant a discount with respect to these payments.

Views of a German expert on the German experience

In Germany, compulsory internship programmes and voluntary internship programmes differ from each other. Compulsory internship as a part of the general educational process shall apply to all individuals who study at school or university or participate in any training programme. This programme doesn't entitle interns to a wage, leave and certificate of employer.

Individuals who serve voluntary internship are paid minimum wage. They are also entitled to take a leave and to get a certificate. It is not obligatory to employ the interns in future.

There are some exceptions in the laws for non-paid voluntary internship programmes: internships abroad, internship programmes for underage students, programmes lasting less than a month, professional training or social service programmes, etc.

In Germany, the concept of an "apprenticeship with the master/mentor" exists rather than a short-term practical training within the dual vocational education system. Within this concept, students study in vocational education and from 2 to 3.5 years, depending on the specialty, with employers (companies).



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Additional notes

To increase the effectiveness of vocational education, it is important to formalise (educational orientation) the 12-year education system. Orientation of education in high school may expand the range of choices for the students who choose vocational education or determine the criteria on the skills of those students.

Furthermore, it is possible to benefit from the experience of foreign countries to increase interest in vocational education and to ensure that students who leave the school after compulsory education are directed to vocational education. For example, the legislation may be added provisions that stipulate replacement of internship contract with labour contract if certain criteria are met.



1. Changes proposed to Article 11 of the Law "On Vocational Education"

"Article 11. Practical training, apprenticeship and apprenticeship agreement"

"11.1. In order to learn the practical part of the vocational education and training programme, the learners shall be provided with practical training and apprenticeship in the learning and practice facilities owned by vocational educational institutions, also at employers, private companies and organisations.

11.2. Master specialists appointed by the employer as apprenticeship supervisors shall be paid remuneration for the hours of apprenticeship by the vocational education institution in addition to the salary paid to these specialists by the employer.

11.3. *Learners, who receive the practical training and apprenticeship in those companies or organisations, upon the employers' proposal, shall sign a bilateral apprenticeship agreement with participation of the education institutions and the employer.*

11.4. On the proposal of employer, learners involved in practical training and apprenticeship in those enterprises and organisations shall conclude a tripartite internship contract with the participation of education institution.

11.5. The form of apprenticeship agreement shall be determined by the relevant executive authority.

11.6. An apprenticeship agreement with learners under fifteen shall be concluded with the consent of their parents or other legitimate representatives.

11.7. Employers shall pay fees* remuneration for work and services executed by the learners involved in practical training and apprenticeship based on their specialties in the workplace, in the amount not less than the minimum wage.

11.8. In accordance with the apprenticeship agreement, the learners shall not be included in the list of employees of the enterprise." ²

Note* *In all cases, employer shall pay mandatory state social insurance fee and provide appropriate mandatory insurance. However, given the fact that the target of the enterprises which involve the young people in apprenticeship programme is to create new opportunities for them, increase their theoretical and practical knowledge and adapt them to real workplace regardless of the type of relations and that these enterprises use their resources to involve the young people to apprenticeship programme, it is necessary to make concessions to enterprises to stimulate relevant programmes in the country.*

As well, it is possible to prevent abuses by setting a maximum number of individuals to be involved in apprenticeship in the relevant enterprise at once. For example, the maximum number may be set against the number of employees of an enterprise (up to 3 interns in an enterprise with 0-50 employees, or 3 interns against every 50 employees).

² Law of the Republic of Azerbaijan "On Vocational Education", Scientific-practical and Methodical Journal "Vocational Education and Human Capital" Vol. 1, №1 2018



2. Changes proposed to the "Model Form of Apprenticeship Contract" approved by Decree No. 413 dated 16 September 2019 of the Azerbaijan Cabinet of Ministers

2.1. Paragraph 1.5 shall be revised as follows:

"1.5. Employer shall calculate and pay fee to learner for the work and services performed by him (daily, weekly, monthly) on his specialty during the internship period. This fee shall not be less than the minimum monthly wage.

*Work and services performed by learner on his specialty: _____.
(name of work/services)"*

2.2. Paragraphs 3.2.7, 3.3.2, 3.3.3, 3.3.5 and 3.3.6 shall be revised as follows:

"3.2.7. Under Article 11.6 of the Law of the Republic of Azerbaijan "On Vocational Education", employers shall pay monthly ~~wage~~-remuneration for work and services performed by learners involved in internship under internship contract on their specialty in an amount specified in ~~this labour~~ contract.

"3.3.2. Get additional ~~wage~~-remuneration if involved in the performance of works (services) in excess of the ~~work time~~ prescribed by this contract;"

Refuse to perform works (services) not included in ~~labour function~~-works (services) determined by ~~labour~~-this contract or require relevant ~~wage~~-remuneration if he performs such works (services);"

"3.3.5. require compensation of damages caused to his/her property and health when performing works (services);"

"3.3.6. Get ~~wage~~ remuneration specified in ~~labour contract~~-this contract for works and services performed on his specialty;"

2.3. Paragraph 3.3.10 shall be removed;

2.4. Paragraph 3.4.6 shall be revised as follows:

"3.4.6. adhere to the terms and conditions of ~~labour contract~~ this contract and work regime;"

Authors:



Deutsch-Aserbaidshanische
Auslandshandelskammer
Alman-Azərbaycan
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Gulnar Gurbanova, "BHM Law Firm" LLC, Partner

Nigar Huseynzade, "AccessBank" CJSC, HR Manager

Agil Allahverdiyev, "GRC" LLC, Partner

Dr. Magnus Müller, AHK Azerbaijan, Head of Vocational Training

Imprint

German-Azerbaijani Chamber of Commerce
Membership Services Department

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Winter Park Plaza, 7th floor | 75 Rasul Rza Str. | AZ 1014 Baku, Azerbaijan
Tel:+994 12 497 63 06/07 | Fax:+994 12 497 63 05 | Mob:+99451 225 86 36
E-Mail: mail@ahk-baku.de

Internet

www.ahk-baku.de
<https://facebook.com/AHKAzerbaijan/>
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