



# ნოდია, ურუმაშვილი და პარტნიორები NODIA, URUMASHVILI & PARTNERS

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## *Changes in the legislation governing banking and finance sector*

### **1. Amendments to the Law of Georgia "On the National Bank of Georgia"**

The purpose of the September amendments to the Organic Law of Georgia "On The National Bank of Georgia" and its associated laws was to reflect the legislative initiatives required for letting Georgia be a member of the Single Euro Payments Area (SEPA). Legislative definitions of a virtual asset, service, service provider are now incorporated in the Organic Law. These amendments come into force from January 1, 2023.

According to the Law, a virtual asset constitutes a digital representation of value that is interchangeable and is not unique, exemplifies a subject of transfer in a digital form or trade and is used for the purpose of making investments and/or payments. A virtual asset does not include digital representation of monetary funds, securities and other financial instruments. Hereby, a convertible virtual asset is defined as a virtual asset which has an equivalent cost in national or foreign currency, in another virtual asset and/or financial instrument at the market for which it may be exchanged.

Considering the above changes, it becomes necessary to also define a virtual asset service. According to the Law, virtual asset service implies exchange of a convertible virtual asset (including, through a self-service kiosk) for national or foreign currency, another virtual asset or financial instrument, transfer and/or storage/administration of a convertible virtual asset or an instrument required for its use, that allows for controlling the virtual asset, managing a portfolio made of convertible virtual assets (except collective portfolio management) and/or administering a trading platform of convertible virtual assets and/or issuing such virtual asset as a loan and/or initial offer and/or service related to the initial offer. It is also clarified that a virtual asset service provider is a person providing a virtual asset service in favor of another person. On the basis of this Law and other legislative acts, activities of the virtual asset service provider from January 1, 2023 will be supervised by the National Bank. Powers of supervision are established in the Organic Law. In particular:

- Supervision envisages registration and cancellation of registration of a virtual asset service provider, establishment of eligibility criteria of virtual asset service provider administrators, inspection and regulation for the purpose of facilitating of prevention of money laundering and the financing of terrorism, identification of supporting information during the virtual asset transfer, giving written instructions, imposition of additional requirements, restrictions and sanctions;

- A virtual asset service provider shall be obliged to undergo registration at the National Bank and meet the requirements established by the National Bank. The rules of registration, cancellation of registration and regulation of a virtual asset service provider at the National Bank shall be established by a normative act of the National Bank;

- A virtual asset service provider is prohibited to carry out any activities other than virtual asset service, assisting activities necessary for provision of this service and exchange of the own virtual asset;

- The National Bank is authorized to impose a sanction (including, a monetary penalty) on a virtual asset service provider and the provider administrator for violation of the Law and legal acts of the National Bank. The amount of the monetary penalty shall be paid to the state budget of Georgia.

Considering these amendments, it is clarified that a virtual asset does not constitute a legal means of payment and is prohibited from using it for this purpose, except for the cases provided by a legal act of the National Bank of Georgia enabling carrying out virtual asset service. This prohibition comes into force from January 1, 2023.

The September amendments gave additional powers to the National Bank Council to appoint Members of the Dispute Resolution Commission in the field of payment system and payment services within the National Bank, including, appointment of the chairman of such commission and defining issues related to the activities of this commission. This power becomes effective from August 1, 2023.

Amendments made to the Organic Law also addressed the supervisory powers of the National Bank in accordance with the Law of Georgia on Facilitating The Prevention Of Money Laundering And The Financing Of Terrorism. In particular, Supervisory Board's interference guidance were created that also defined the types of sanctions in case of violation, such as

suspension of the right of signature from the subject's administrator, imposition of monetary penalty and dismissal. It also has a right to impose a sanction on the subject under its supervision in accordance with the Law of Georgia on Facilitating The Prevention Of Money Laundering And The Financing Of Terrorism in case of failure to submit or incomplete submission of the requested information according to the established rules. Information about sanctions imposed by the National Bank will be published on the official webpage of the National Bank in the manner established by the National Bank.

In addition to the above, the clause on "Protection of Confidential Information by Currency Exchange Booths" was added to the Law and also, similar normative content was defined for a loan issuer institution. In particular:

- Information may be provided only to the Tax Authority based on Court decisions envisaged by the Administrative Procedure Code of Georgia and the Agreement between the Government of the United States of America and the Government of Georgia to Improve International Tax Compliance and to Implement FATCA.
- Information on customers (information about any transaction, performed operations) may be provided only to the parties of the respective transaction and their authorized representatives, the National Bank, the dispute resolution commission under the National Bank, in cases defined by the Georgian legislation – to the Financial Monitoring Service of Georgia, in case of inspection envisaged by the Law of Georgia "On Protection of Personal Data" – to the Personal Data Protection Service.
- Any information on customers will be provided to other persons only on the basis of the respective court decision or a preliminary written consent of the customer/borrower.
- Judiciary and investigation bodies and tax authorities are prohibited, before obtaining a respective court resolution, to transfer information to another body, including mass media, as well as publicly use such information, save for the exceptions established by law.

## ***2. Amendments to the Law of Georgia Law of Georgia on "Facilitating The Prevention Of Money Laundering And The Financing Of Terrorism"***

Within the scope of initiatives related to the concept of virtual assets, services and provider's activities, amendments were made to the Law of Georgia "On Facilitating the Prevention of Money Laundering and the Financing of Terrorism", according to which a virtual asset service provider is considered to become an accountable person and the obligations arising out of the Law apply to it thoroughly. Based on these amendments, from January 1, 2023, within the framework of preventive measures, an accountable person shall examine a transaction prepared, concluded and/or performed within the scope of business relations, to establish to what extent it corresponds to the information known to it on the client, the client's commercial or professional activities and the client's risk level and in case of need – origin of the client's property, monetary funds and a convertible virtual asset, as well as shall ensure update of identification data and other information (documents) obtained through performance of preventive measures with respective periodicity.

It was defined, that transfer of a convertible virtual asset is a transaction performed to ensure availability of a convertible virtual asset to the recipient by the initiator or on his/her assignment/by his/her consent, through digital means. When transferring a convertible virtual asset, the initiator and the recipient may be the same person or the same virtual asset service provider may provide convertible virtual asset services to the initiator and the recipient. The virtual asset service provider shall ensure that transfer and/or receipt of a convertible virtual asset is accompanied by supporting information established by the Supervisory Authority.

Virtual asset service becomes obliged to shape out whether there is a ground for submission of reporting envisaged by the first paragraph of Article 25 of this Law, if transfer of a convertible virtual asset does not fully include identification data of the initiator/recipient of transfer of the convertible virtual asset in the manner defined by the Supervisory Authority.

With the amendments, a new ground was added to the obligation of implementation of preventive measures. It is necessary to implement a preventive measure:

a. If "a one-time transaction is made, the amount of which or total amount of related transactions exceeds 15 000 GEL or equivalent of 15 000 GEL in a foreign currency, and in case of making a one-time transaction related to a convertible virtual asset service – 1 000 USD, 1 000 EUR or 3 000 GEL".

For the purposes of this Law, wording in connection with transfer of a convertible virtual asset or trade with securities was added to correspondent relations. Also, an obligation of taking reasonable measures for establishing the origin of the person's property, monetary funds and a convertible virtual asset was added to the obligations of accountable person.

The amendments will become effective from January 1, 2023 and within 1 year after registration by the National Bank of Georgia but not later than July 1, 2024, a virtual asset service provider shall ensure an application of requirements envisaged by Chapters III and IV of the Law of Georgia "On Facilitating the Prevention of Money Laundering and the Financing of Terrorism" on the clients with whom it had established business relations prior to its registration.

### ***3. Amendments made to the Law of Georgia "On Micro-Finance Organizations"***

On May 13, 2020, amendments were made to the Law of Georgia "On Micro-Finance Organizations". With the amendments dated September 9, 2022 the concept of the administrator of a micro-finance organization has been altered. According to the definition, an administrator of a microfinance organization is a member and/or other persons of the Supervisory Board, Directorate who directly or indirectly have powers and responsibility to plan, manage and/or control activities of the micro-finance organization. The list of respective positions is approved by the Supervisory Board of the micro-finance organization. With the same amendments, the scope of activities of the micro-finance organization was expanded, namely, micro-finance organizations will be eligible to carry out payment initiation services and/or services of access to the account information in accordance with the Law of Georgia "On Payment System and Payment Services" in case of meeting the respective requirements, in the manner established by a legal act of the National Bank of Georgia. Also, from January 1, 2023, they will be

able to carry out virtual asset service in favor of another person in accordance with the Organic Law of Georgia "On the National Bank of Georgia", in particular, exchange of a convertible virtual asset (including, through a self-service kiosk) for national or foreign currency, another virtual asset or financial instrument, transfer and/or storage of a convertible virtual asset or an instrument required for its use, which allows for controlling the virtual asset and assisting service necessary for provision of this service.

The amendments addressed information confidentiality as well. It is noteworthy that information may be provided only to the Tax Authority based on court decisions envisaged by the Administrative Procedure Code of Georgia and the Agreement between the Government of the United States of America and the Government of Georgia to Improve International Tax Compliance and to Implement FATCA. Also, from August 1, 2023, information on the borrower at the micro-finance organization (information about any transaction, performed operations, liabilities or outstanding balance) may be provided only to the parties of the respective transaction and their authorized representatives, the National Bank of Georgia, the dispute resolution commission within the National Bank of Georgia pursuant to the Organic Law of Georgia "On the National Bank of Georgia", in cases defined by the Georgian legislation – to the Financial Monitoring Service of Georgia, in case of inspection envisaged by the Law of Georgia "On Protection of Personal Data" – to the Personal Data Protection Service.

Any information on the borrower may be provided to other persons only on the basis of the respective court decision or a preliminary written consent of the borrower. The micro-finance organization is obliged to keep the information confidential.

### ***4. Amendments to the Law of Georgia "On Activities of Commercial Banks"***

The amendments to the Law of Georgia "On Activities of Commercial Banks" on September 9, 2022, addressed eligibility criteria of the shareholder, holding a significant share of the commercial bank and administrator of the commercial bank. It was defined that legal eligibility criteria apply only to the administrator of the commercial bank. The eligibility criteria of the shareholder, holding a significant share of

the commercial bank, falls beyond the scope of Article 5. The criteria to be met by the administrator of the commercial bank is as follows:

- A) good reputation, reliability and a good faith attitude to job, that among others implies that administrator shall not be a person who has been convicted of a heavy or aggravated crime, terrorism financing or/ and illicit income legalization or the other economic crime;
- B) knowledge, skills and experience necessary for carrying out bank activities;
- C) independence of judgment which implies an ability to make a decision on the basis of an independent and objective judgment, evaluate decisions made by other members of the managing bodies and avoid a conflict of interest;
- D) sufficient time for proper performance of obligations;
- E) the number of simultaneously held positions – the administrator shall not be an administrator of another commercial bank, micro-finance organization and/or a non-bank deposit institution – credit union - registered in Georgia, except the case when the above entities are subject to control of the commercial bank where he/she holds a position of administrator or represent entities controlling the commercial bank where he/she holds a position of administrator. The Bank's administrator shall not be a member of the supervisory board and/or the Directorate in more than 5 enterprises. At the same time, 1 executive position is compatible with 2 non-executive position or 5 non-executive positions are allowed. For the purposes of this sub-paragraph, positions held at non-entrepreneurial (non-commercial) organizations are not taken into consideration. For the purposes of the same sub-paragraph, the following shall be considered as 1 position:
  - E.A) positions held within one group. For the purposes of this sub-paragraph, group implies a commercial bank, its head and subsidiary enterprise/enterprises;
  - E.B) positions in the enterprise/enterprises whose significant share is held by the bank.

The decision on eligibility of the administrator is made by the National Bank, guided by proportionality principle which implies evaluation of eligibility criteria based on the bank size, internal organizational structure, risk profile and complexity. Proportionality principle is not used when evaluating the criteria of good reputation, reliability and a good faith attitude to

job. Degree of evaluation intensity, evaluation procedure and content of information/documents to be submitted are defined according to proportionality principle. According to the Law, evaluation is performed individually, as well as jointly of the Bank's Directorate and the Supervisory Board.

Chapter II1 of the Law which defines purchase of a significant share of the commercial bank was updated. Article 81, instead of eligibility declaration, governs the obligation of giving a notice and submitting information to a person or a group of jointly acting partners (shareholders) who intends/intend to directly or indirectly purchase a share in the commercial bank to the extent that his/her direct/indirect participation in the capital of this commercial bank exceeds 10, 20, 30 or 50 percent and/or acquires/acquire a significant influence or control over the commercial bank, regardless of the share in the capital and/or voting shares. This person shall be obliged to submit information/documentation on purchase of a significant share established by a legal act of the National Bank to the National Bank personally, through a representative or through the bank. In case of jointly acting partners (shareholders), for establishing purchase/change of a significant share, total amount of shares owned by a group of partners (shareholders) shall be considered. For deciding on purchase of significant share, the National Bank shall study compliance of the submitted information /documents with the requirements established by the Georgian legislation and shall consider the following eligibility criteria:

- a) reputation of the applicant, which includes his/her reliability and adequate competence;
- b) compliance of the person selected as the Bank's administrator by the applicant (in case of existence of such power) with the requirements defined by this Law and the legal act of the National Bank on eligibility criteria of administrators;
- c) financial stability of the applicant;
- d) Bank's compliance with the prudential supervisory requirements after purchase of share by the applicant;
- e) Absence of risks of money laundering and terrorism financing related to the applicant/transaction.

It should be mentioned that prior to deciding on eligibility of a significant share owner, a person may not exercise voting rights and other powers related to ownership of a significant share.



The obligation to submit information/documents to the National Bank is imposed both on the direct and indirect purchaser of the significant share. By consent of the National Bank, it is allowed to submit information/documents by the beneficiary owner on behalf of the intermediary owner. In the process of evaluation, the National Bank shall be authorized to request any other information/documents (including, confidential). It is noteworthy that the National Bank is authorized to establish simplified procedures of purchase of significant share of the commercial bank in the resolution mode.

It should be mentioned that the Law evaluates the applicant's eligibility in two directions. Formal eligibility is checked within 5 days after submitting the documents and if complete information/documents defined by the Georgian legislation is not submitted, the National Bank shall establish a deficiency for the applicant and shall give him/her not more than 15 working days for elimination of the deficiency. In case of expiry of the period established for elimination of the deficiency, the National Bank shall refuse the applicant to purchase significant share. The National Bank shall review the submitted information/documents within 60 working days after confirming receipt of complete information/documents. In case of need, the National Bank shall be authorized to extend the period of deciding on purchase of significant share up to 90 days, and the applicant shall be notified thereof prior to expiry of the period set by this paragraph. Requesting additional information/documents from the National Bank is allowed not later than the 50th working day after giving a written confirmation on receipt of information/documents. In this case, the period of review shall be suspended until submission of additional information/documents, by not more than 20 business days or not more than 30 business days, if the applicant is a non-resident person, and the applicant shall be notified thereof. In case of purchase of share despite failure to submit respective information/documents to the National Bank or the substantiated refusal of the National Bank, the National Bank shall be authorized to suspend the voting right for the respective person and/or request reduction of its share to 10%/cancellation of significant influence/control, as well as request the commercial bank to cancel the results of using voting right and/or other powers acquired as a result of purchase of share by the person.

Beyond that, from August 1, 2023, no person is granted a right to give access to confidential information to anybody, to disclose or disseminate such information or use it for personal purposes. Confidential information may be provided only to the National Bank and the dispute resolution commission under the National Bank envisaged by the Organic Law of Georgia "On the National Bank of Georgia" within their competence.

In addition, from January 1, 2023, providing virtual asset service in favor of another person in accordance with the Organic Law of Georgia "On the National Bank of Georgia", namely, exchange of a convertible virtual asset (including, through a self-service kiosk) for national or foreign currency, another virtual asset or financial instrument, transfer and/or storage of a convertible virtual asset or an instrument required for its use, which allows for controlling the virtual asset and assisting activities necessary for provision of this service shall be considered to be allowed under banking activities. A wording was added to the part of maintaining business relations with clients according to which a commercial bank shall be obliged to open an account defined by the first paragraph of Article 202 of the Law of Georgia "On Payment System and Payment Service" to the client, if performance of this obligation does not entail violation of the law on antimoney-laundering legislation.

### ***5. Amendments to the Law of Georgia "On Securities Market"***

Order of the Chairman of the Georgian National Competition Agency on approval of the rule and procedure of study of the case according to the Law "On Protection of Consumer Rights"

According to the Law "On Securities Market", from January 1, 2023, brokerage companies shall not carry out activities which are not envisaged by Article 23 of this Law. An exception is participation in the activities related to governmental securities and payment initiation services and/or services of access to the account information pursuant to the requirements of the Law of Georgia "On Payment System and Payment Services", in the manner established by a legal act of the National Bank of Georgia. Also, it is permitted to provide virtual asset service in favor of another person in accordance with the Organic

Law of Georgia "On the National Bank of Georgia", namely, exchange of a convertible virtual asset (including, through a self-service kiosk) for national or foreign currency, another virtual asset or financial instrument, transfer and/or storage of a convertible virtual asset or an instrument required for its use, which allows for controlling the virtual asset and the assisting activities necessary for provision of the main activities.

#### ***6. Order of the Chairman of the Georgian National Competition Agency on approval of the rule and procedure of study of the case according to the Law "On Protection of Consumer Rights"***

Order of the Chairman of the Georgian National Competition Agency No. 45 was published on September 29, 2022 that governs rules and procedures to study the case arising out of the Law "On Protection of Consumer Rights" which became effective from October 1, 2022. According to this Order, the applicant has a right to submit a respective application on possible violation of the consumer's right in the form established by Annex 1 of this Procedure to the Agency. The application shall be considered to be submitted to the Agency from the moment of its registration and the respective term defined by legislation shall start on the working day following the registration day. The term of application to the Agency regarding violation of requirement(s) of the Law shall be not more than 2 years after violation.

Study of the case is divided into several stages: 1. Within 3 working days after receipt of the application, the Agency shall check formal compliance of the application; 2. Within 10 working days after submission of the application filled in accordance with the form, the Agency will review of appropriateness of the commencement of a case study and within 10 working days after submission of the application filled in according to the form, will make a decision on commencement of study of the case. It is noteworthy that the Agency launches a study procedure provided that as a result of action(s) of a specific trader's activities possible violation affects a group of consumers or their interest is or could be damaged. Interest of the group of consumers implies a common interest of a wide range of consumers. In this case, the Agency

considers the number of potential consumers which may be affected by the disputable action. Within 3 working days after deciding on commencement of a study of the case, the Agency provides respective information to the trader, explains its rights and obligations and gives at least 5 business days for submission of the position regarding a possible violation of the consumer's right, as well as, informs the applicant(s) on commencement of study of the case, within 3 business days and explains its rights and obligations.

The Agency studies the case within 1 month after deciding on commencement of study of the case. Study of the case, considering its significance and complexity, may be extended by no more than 3 months, and the applicant and the trader shall be notified thereof.

The rule and procedure of study of the case envisage the rights and obligations of each party. It should be mentioned that the Agency is authorized to request a document and/or information required for the study of the case from a natural person and/or a legal entity, including information containing tax, banking, commercial, professional sector and/or personal data, as well as, during study of the case, in case of need, make a decision on conducting an expertise, if it is impossible to make a substantiated decision on the case without an expert conclusion. If the fact of violation of the customer's right is established, the trader shall be obliged to fully indemnify the expert expenses.

Explanations may be obtained from a party/interested person both in writing and verbally or using electronic means of communication. The persons invited by the Agency for explanations are obliged to give explanations to the Agency. Explanations may be obtained both individually, and by joint participation of the parties.

Similarly to the competition law enforcement, a trader shall be authorized, until finalization of study of the case, to offer the Agency and undertake conditional obligations for elimination of possible violation of law. The Agency shall review the conditional obligations offered by the trader for the purpose of elimination of possible violation and if it considers that taking the obligations eliminates a risk of possible violation

of the law, Agency agrees to the offered conditional obligations and finalizes study of the case without evaluation of the fact of possible violation of the law. However, in this case too, the Agency shall be authorized to relaunch the study of the case and term of it shall not exceed 1 month, if:

A) a trader does not perform or improperly performs conditional obligations undertaken by it within the term defined by the written agreement with the Agency;

B) conditional obligations are based on wrong, inaccurate, or misleading information provided by a trader.

The order envisages exhaustive grounds for termination of study of the cases, upon which the Agency makes one of the following decisions in writing:

A) on confirmation of violation of the right of group of consumers;

B) on refusal to confirm violation of the right of group of consumers;

C) on finalization of study of the case without evaluating the fact of violation in case of undertaking conditional obligations by a trader.

In case of revealing a violation, the Agency is authorized to impose penalties on the trader. The amount of this penalty shall not exceed 2% of the trader's annual turnover during the previous financial year. The trader shall be obliged to pay penalty within 1 month after imposition. Decision of the Agency may be appealed at the court within 30 calendar days upon being served to the Party pursuant to the Georgian legislation.

### ***7. Amendments made for the purpose to align with point 11 established for granting a candidate status to Georgia by the European Commission***

In order to align with the point 11 out of 12-point conditions established for granting a Candidate Status to Georgia by the European Commission, on October 18, 2022 the Parliament of Georgia adopted amendments to the Organic Law of Georgia "On Normative Acts", the Organic Law of Georgia "On Common Courts", the Law of Georgia "On Lawyers". According to the above-mentioned point 11, it is envisaged that Georgia adopts respective legislation that will ensure proactive consideration of the decisions of the European Court on Human Rights by Georgian courts.

As a result of the amendment made to the Organic Law of Georgia "On Normative Acts", the following wording was added: "When using the norms of the European Convention on Human Rights and Fundamental Freedoms and its additional protocols, definitions of the European Court on Human Rights shall be considered as official definitions of the norms of this Convention and its additional protocols and that person may directly rely on these definitions". This amendment was made on October 18, 2022.

In the Organic Law of Georgia "On Common Courts", an amendment was made in the evaluation criteria of judge's activities, specifically, while evaluating a judge, not only the quantitative component of decisions of the European Court on Human Rights, but also their relevance shall be considered. In addition, according to the amendment made to the Organic Law, it was determined that having a structural unit which will perform analysis of decisions of the European Court on Human Rights at the Supreme Court of Georgia and the Court of Appeals of Georgia becomes mandatory. The role of this unit will be to facilitate access to the case law of the European Court on Human Rights for judges, periodic analysis of the decisions of the European Court on Human Rights and spread of information and publishing activities.

A significant novelty is that a serving judge shall be obliged to dedicate at least 5 days in 3 years to professional development at school. The professional development program shall include the set of Human Rights Law (including, case law of the European Court on Human Rights) as a mandatory component.

According to the amendment made to the Law of Georgia "On Lawyers", the international law program envisaged for passing bar exam in any specialization, shall include the case law of the European Court on Human Rights. Inspection envisaged by the Law of Georgia "On Protection of Personal Data" – to the Personal Data Protection Service.

Any information on the borrower may be provided to other persons only on the basis of the respective court decision or a preliminary written consent of the borrower. The micro-finance organization is obliged to keep the information confidential.



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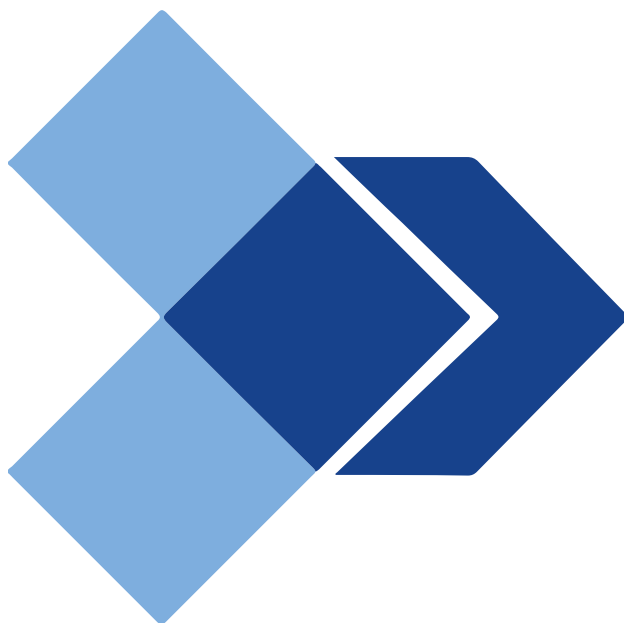
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