

ნოდია, ურუმაშვილი და პარტნიორები NODIA, URUMASHVILI & PARTNERS

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1. *Rules for registration of Virtual Asset Service Providers (VASPs)*

Under the Order No. 94/04 issued by the President of the National Bank of Georgia on June 13, 2023, the registration, cancellation of registration, and regulation of virtual asset service providers in the National Bank of Georgia were defined. These requirements are applicable to persons who are obligated to register with the National Bank under current legislation or intend to engage in virtual asset service provision in the future. It is important to note that this rule does not apply to financial sector representatives authorized to provide virtual asset services under relevant legislation.

According to the order, only legal entities (limited liability companies or joint-stock companies) established and registered in accordance with Georgian legislation have the eligibility to be registered as virtual asset service providers by the National Bank and offer virtual asset services in Georgia.

It is noteworthy that virtual asset service providers are prohibited from establishing business relationships with unlicensed/unregistered virtual asset service providers or financial institutions, both within Georgia and in foreign countries. They are also prohibited from engaging in transactions involving virtual assets that provide anonymity-enhanced or privacy-enhanced features, as well as employing technological methods or mechanisms that hinder the identification and traceability of transaction information and the involved parties based on distributed ledger technology (DLT).

The rule includes additional restrictions, such as the prohibition of lending virtual assets to individuals and providing virtual asset services through agents. While the virtual asset service provider has the right to receive commissions, interest, or benefits from users for the services provided with the virtual asset that it services, they are prohibited from receiving such compensation from anyone other than the user when managing a portfolio of convertible virtual assets.

The order provides detailed guidelines for the registration of virtual asset service providers, including suitability criteria for administrators and substantial shareholders/beneficial owners. To ensure stability and systematic risk prevention, a business plan must be submitted for registration, including a budget forecast for the next three years, demonstrating the interested party's ability to implement appropriate systems and possess the necessary resources and procedures for virtual asset service provision. A schematic description of the implementation of the virtual asset service, referring to the list of virtual assets, must also be involved. In order to facilitate anti-money laundering and counter-terrorist financing efforts, virtual asset service providers must develop an internal compliance monitoring system, including an organizational risk assessment document. The National Bank may request additional information or documentation necessary for making a registration decision and set a deadline for submission. If submitted documentation fails to meet the requirements outlined in the rule, the National Bank will provide a 30-calendar day period to rectify the deficiencies or clarify the submitted data.

The rule specifies grounds for refusing the registration of an interested person as a virtual asset service provider, which include the presence of false information, non-compliance with legislative requirements, failure to address identified deficiencies within the specified time, and justifiable suspicion that the administrator or provider poses a threat to efficient, safe, and prudent management, business continuity, stability, or credibility of the financial sector.

The National Bank is required to render a registration decision within 60 calendar days of receiving the relevant registration information/documentation, as defined by the rule and its Annex No. 5. The National Bank may extend the registration decision deadline by 60 calendar days, if justified. The order also outlines the National Bank's authority to revoke the registration of a virtual asset service provider, either based on the provider's application or by force of law.

Lastly, the National Bank exercises control over the shareholding of virtual asset service providers. Any natural or legal person who intends to acquire or increase a substantial shareholding directly or indirectly, resulting in a capital or voting rights share of 20%, 30%, or 50%, or making the provider its subsidiary, must notify the National Bank of their intentions. The requirement also applies to individuals or entities intending to dispose of or decrease their substantial shareholding, resulting in a capital or voting rights share falling below 20%, 30%, or 50%, or if the virtual asset service provider would no longer be their subsidiary.

According to the transitional provisions, within one year from the moment of registration but no later than July 1, 2024, the interested person must extend the requirements set forth in Chapters III and IV of the Georgian Law "On Facilitating Prevention of Money Laundering and Financing of Terrorism" to clients with whom they had established a business relationship prior to registration. Individuals or entities engaged in virtual asset service provision prior to the implementation of this rule must comply with the requirements specified in Article 8, Paragraph 3 within three months after registration.

This order, with the exception of Paragraph 10 of Article 7, will take effect on July 1, 2023. Paragraph 10 of Article 7 of the rule, approved by this order, will come into effect on January 1, 2024.

2. Amendments to Law of Georgia on Facilitating Prevention of Money Laundering and Financing of Terrorism.

The amendments introduced on May 16, 2023 addressed several important aspects. One of these pertains to the obligation of the accountable person to conduct periodic assessments and record the risks of money laundering and terrorism financing associated with their activities. For group companies or organizations, this assessment extends to the risks existing at the group level as well. These assessments are based on various risk factors, such as the client and beneficial owner, the

nature of their business, the jurisdiction of operation, the product or service offered, the means of delivery, and other relevant factors. Furthermore, the accountable person is required to implement effective measures to manage and mitigate the identified risks related to money laundering and terrorism financing.

The amendments also introduced changes to the provisions regarding strengthened preventive measures and simplified preventive measures. In the case of strengthened preventive measures, the accountable person is obligated to undertake additional legal processes concerning clients who are categorized as having an increased risk level, in accordance with the identified risks. However, the accountable person is not limited to using only these additional legal processes and may also employ other effective measures at their discretion to manage the identified risks.

As far as simplified preventive measures concern, the accountable person is authorized to implement specific measures as provided for by the law for clients classified as having a lower risk level, in accordance with the identified risks. During this process, it is crucial for the accountable person to gather sufficient information to determine the appropriateness of assigning the client to a lower risk level. It is not permissible for an accountable person to apply simplified preventive measures when there are indications of increased risk characteristics associated with money laundering or terrorism financing.

3. The Law of Georgia "On Public Procurement" coming into effect from January 1, 2025

The Law of Georgia "On Public Procurement" and its accompanying legislative package, adopted by the Parliament of Georgia on February 9 of this year, have been published on the website of the Legislative Herald of Georgia. The law will render the Law of Georgia "On State Procurement" invalid from January 1, 2025. The purpose of the new law

is to establish a predictable environment for business entities to participate in public procurement procedures, enhance the rational and effective use of state budget funds, foster a competitive environment, and modernize the public procurement system in line with Euro-regulations, directives, and other international requirements.

The law consists of 100 articles and introduces several notable innovations. One significant change is the introduction of new public procurement procedures and tools that aim to support constructive and result-oriented activities in both the public and private sectors. Alongside existing mechanisms, public procurement can now be conducted through **restricted procedures, competitive dialogue, negotiation procedures with prior publication, and innovative partnerships**. Except for the negotiation procedure without prior publication, all public procurement procedures are carried out through an electronic system. Information on the negotiation procedure without prior publication must also be published in the electronic system. The procuring organization has the discretion to choose the type of procurement.

Importantly, the use of the best price-quality ratio criteria will be mandatory for procurement using competitive dialogue and innovative partnership. Under the terms of competitive dialogue, the procuring organization engages in a dialogue with selected economic operators to determine the best means of meeting their needs. The dialogue continues until the organization identifies a suitable solution, allowing for comprehensive discussions on all aspects related to public procurement.

The innovative partnership procedure is a two-stage process. The procuring organization must specify the need for innovative goods, work, or services (including research and development) in the procurement conditions, which cannot be fulfilled by goods, work, or services available on the Georgian or international market. The procurement conditions should also outline the minimum requirements that all proposals must

meet. In the case of innovative partnership, the best price-quality ratio criteria must be utilized. The procuring organization can establish an innovation partnership with one or multiple partners who independently conduct research and development activities.

Equal treatment, transparency, and predictability are fundamental principles underlying all public procurement procedures. The law introduces new instruments such as **framework agreements and dynamic procurement systems**. A framework agreement is an agreement between one or more procuring organizations and one or more economic operators, determining the terms of procurement contracts to be concluded within the framework of the agreement, including the expected price and, if necessary, the quantity of the procurement object. The validity period of a framework agreement generally cannot exceed 4 years, unless duly justified by the subject matter. Other provisions regarding the use of framework agreements are defined by law.

The dynamic procurement system is implemented exclusively through electronic means and is used to procure widely available market goods or services that meet the procuring organization's requirements. It is not employed for individually defined procurement objects. The procuring organization has the authority to categorize the procurement object based on specific characteristics, which must be justified. These characteristics may include the maximum allowable volume of the procurement agreement or the geographic area within which the agreement will be concluded.

The Law of Georgia "On Public Procurement" also introduces a new regulation for the preparation of public procurements (Chapter VII) to prevent deficiencies in procurement processes. The procuring organization must conduct public procurement in accordance with a predetermined annual plan, the development, approval, and submission of which are established by the order of the agency chairman. The plan requires the mandatory inclusion of market research for procuring organizations. Additionally, the

procuring organization is obligated to conduct initial **market research** for the development of the annual plan.

Article 50 of the law defines the selection criteria for economic operators based on their professional activity, economic and financial condition, and technical and professional compliance. The purpose of these criteria is to assess whether an economic operator possesses the necessary legal, financial, technical, and professional capabilities to fulfill a procurement contract. Any requirements specified in the procurement conditions must be directly related to the procurement object and proportionate to it.

The law also specifies the criteria for identifying the best proposal by the procuring organization, which can be based on factors such as low cost, best price-quality ratio, or economic efficiency, including life cycle cost. In certain cases determined by the Government of Georgia, the procuring organization must also consider characteristics necessary for sustainable development in the procurement terms.

Starting from 2029, **certification of public procurement specialists** will become mandatory. The certificate will be issued by the agency based on certification. Furthermore, from 2027, a central procurement body will be established by the act of the Government of Georgia, with state control carried out by the Government itself. The procuring organization is required to define the authorized structural unit/person responsible for public procurement activities within its structure/staff list. A code of ethics is being developed and will be approved by the order of the agency chairman.

The law's implementation dates vary. The main provisions of the law will come into effect on January 1, 2025, while separate issues are set to be implemented in 2027 and 2029.

4. The New Law on Personal Data Protection

On June 14, 2023, the Parliament of Georgia passed the "On Personal Data Protection" law in its

third reading. This law, which was originally initiated in 2019, will take effect on March 1, 2024. The legislation incorporates thoroughly modernized approaches to data processing that align closely with international standards.

The law encompasses several notable advancements. Firstly, it establishes a broader framework for processing **special categories of data**, which can now be disclosed in cases of significant public interest, similar to ordinary data. Moreover, the previous restriction on disclosing special data without the consent of the subject has been lifted.

Additionally, the law demonstrates a significant commitment to transparency regarding access to **judicial acts**. It takes into consideration the Constitutional Court's invalidation of certain norms from May 1, 2020, and specifies that special category data may be processed in accordance with the "On General Courts" Organic Law of Georgia. This processing occurs when the data is obtained as a result of an open court session and is intended for issuance or publication as public information. The new legislation also establishes provisions for the accessibility of archival documentation.

It is important to highlight that the law explicitly prohibits the processing of personal data for **advertising purposes and the sending of direct marketing messages** without the consent of the data subject. If a request is made by the data subject to cease processing their data, the responsible party must halt the processing within a maximum of 7 working days upon receipt of the request. Furthermore, the person responsible for processing or the authorized individual is required to maintain a record of the time and the data subject's consent to data processing, as well as the withdrawal of consent, throughout the duration of direct marketing and for 1 year following the termination of direct marketing activities.

Significant provisions were added to the law regarding the processing of **data pertaining to minors**. The law also defines the scope of data

processing under **audio and video monitoring conditions**. According to the law, video monitoring is permissible for crime prevention, detection, public safety, personal safety, property protection, minor protection (including protection from harmful effects), confidential information protection, examination/testing purposes, as well as other public and/or legitimate purposes. Video monitoring may be employed if it is an adequate and proportionate means to achieve the purpose of data processing in the respective field of interest. Video monitoring of an employee's workspace or working process is allowed only in exceptional cases, where other means are insufficient to accomplish the specified goals or would require disproportionate efforts. Additionally, warning signs indicating the presence of video monitoring must include appropriate wording, easily discernible images related to video monitoring, and the name of the person responsible for processing along with their contact information. As for audio monitoring, it is permitted in the following cases:

- a) With the consent of the data subject;
- b) To create a protocol record;
- c) To protect the legitimate interests of the person responsible for processing, provided appropriate and specific measures are established to protect the rights and interests of the data subject.
- d) In other cases directly specified by the legislation of Georgia.

Advance notification is required for audio monitoring.

An interesting development is the introduction of the position of **personal data protection officer**. Any public institution (excluding religious and political organizations), insurance companies, commercial banks, microfinance organizations, credit bureaus, electronic communication companies, airlines, airports, medical facilities serving at least 10,000 data subjects annually, and organizations processing a large volume of data or conducting systematic and large-scale monitoring

of data subjects' behavior) is obligated to appoint a personal data protection officer, who may also have additional responsibilities.

The law establishes requirements for the **registration of information related to data processing and the obligation to notify the Personal Data Protection Service**. The responsible party must record any incidents, the resulting outcomes, and the measures taken, and report them in writing or electronically to the personal data protection service within 72 hours of discovering the incident, unless it is unlikely to cause significant damage or pose a substantial threat to fundamental human rights and freedoms.

Data subjects' rights have been expanded under the law. For instance, the data subject has the right to request the cessation of data processing (including profiling), deletion, or destruction of their data. The responsible party must comply with such requests within 10 working days (unless otherwise specified by Georgian legislation), or provide a justification for refusing the request and explain the appeal procedure. In cases where the data subject's information is publicly available, they also have the right to request the responsible party to limit data availability, delete copies of the data, or remove any internet links to the data. The law also outlines cases where restrictions on the data subject's rights may be imposed.

Lastly, it is worth mentioning that the new law dedicates significant attention to administrative offenses and the corresponding administrative liability provisions. It specifies increased fines for each offense committed.

5. Amendments to the Law of Georgia "On Labor Migration"

Starting from September 1, 2023, amendments to the "Labor Migration Law" will come into effect, aiming to establish a comprehensive legal framework for migration regulation and effective management of labor emigration and immigration.

These amendments are accompanied by changes to the Georgian Labor Code and laws related to Labor Inspection, the Legal Status of Aliens and Stateless Persons, and Facilitating Employment.

The amended law introduces the term "intermediary company," which refers to a legal entity, individual entrepreneur, or branch of a foreign enterprise, or a non-entrepreneurial (non-commercial) legal entity (representative office, permanent establishment) engaged in employment arrangements and/or assistance in employment arrangements outside of Georgia for Georgian citizens or foreigners with permanent residence permits in Georgia. Intermediary companies will be required to obtain certification and register in the register of economic activities. The law also establishes grounds and procedures for revoking the activity certificate of intermediary companies and prohibiting activities related to labor arrangements outside of Georgia.

The changes impact the existing relationship between labor immigrants and local employers. Starting from September 1 of this year, local employers must register labor immigrants from the occupied territories of Georgia with the Ministry of Labor, Health, and Social Protection. This registration is a prerequisite for issuing a D1 immigration visa and work residence permit.

The amendments define requirements for the contract between labor immigrants and local employers. Additionally, local employers are obligated to provide the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health, and Social Affairs of Georgia with information about the labor immigrants they employ by September 1, 2023.

In the field of labor migration, considering the current demand and supply situation in Georgia's labor market, the Government of Georgia will have the authority to limit the attraction of foreign labor force for professions or specialties that do not require highly skilled labor, or where the supply of local workforce in the labor market exceeds or will exceed the current or future demand. Conversely,

the government will also be able to encourage the attraction of foreign labor force for professions or specialties that require highly skilled labor or where the supply of local labor force in the labor market cannot meet or will not meet the current or future demand.

The package of changes also outlines measures of responsibility. Violations of the requirements established by law will be monitored by the Public Law Legal Entity - Labor Inspection Service under the state control of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health, and Social Affairs of Georgia. The Labor Inspection Service will be authorized to impose administrative responsibility and fines on violators for the violation of norms.

6. Amendments to the "Patent Law" of Georgia

The amendments to the "Patent Law" of Georgia have been implemented to fulfill the necessary obligations for the entry into force of the agreement between the Government of Georgia and the European Patent Organization on the validation of European patents, signed on October 31, 2019. The changes also aim to align the Georgian Patent Law with the European Patent Convention, legislation of EU countries, and international agreements on Patent Law.

The amendments provide clearer definitions for several terms in the Patent Law, including "inventor," "patent," "certificate," "patent attorney," "Budapest Agreement," "biological material," and "depository." Furthermore, the article concerning classified inventions has been brought into compliance with the Law of Georgia "On State Secrets." It specifies that depending on the country's defense capability, the patent application and patent for classified inventions will be published by Sakpatenti (Georgian Patent Office) only after the authorized body responsible for national defense decides to disclose the invention.

Criteria for the patentability of an invention have been set, emphasizing that a patent is granted to an invention in any technical field that meets the criteria of novelty, level of invention, and industrial applicability. The amendments also identify the objects for which a patent is not granted, including utility models related to strains of microorganisms, plant and animal cell cultures, objects of biotechnology and genetic engineering, and substances obtained by chemical means, including pharmaceutical substances.

A notable addition is the introduction of a new chapter (IV1) on patent attorneys, which will take effect on January 1, 2025. According to this chapter, applicants or patent owners must be represented in Sakpatenti by a representative and/or a patent attorney of Georgia, if available. Applicants or patent owners without a permanent place of residence or registered legal address in Georgia are required to appoint a patent attorney as their representative in Sakpatenti. The chapter also defines the procedure for the registration of patent attorneys in Sakpatenti and clarifies the qualifications required for these individuals.

The amendments also address the conditions and procedures for validating European patents in Georgia. Except for specific exceptions, the amendments to the Patent Law came into effect immediately after their publication, starting from June 1, 2023.

As a result of the amendments to the Patent Law of Georgia, several terminological changes have been implemented in related laws. These changes include:

- In the Civil Code of Georgia, the term "patent" has been replaced with the term "certificate."
- In the Civil Procedure Code of Georgia, concerning utility models, the term "patent" has been replaced with the term "certificate." Additionally, the term "utility model protected by a patent" has been

replaced with the term "registered utility model."

- In the Law of Georgia "On Border Measures Related to Intellectual Property," the term "special rights to patents" has been replaced with the term "special rights to inventions and utility models."

These changes reflect the harmonization of terminologies across different laws to align with the amendments made to the Patent Law of Georgia.

7. Amendments to the Code of spatial planning, architectural and construction activities of Georgia

As per the amendments made to the Code of Spatial Planning, Architectural and Construction Activities of Georgia, starting from January 1, 2024, applicants for construction permits will be required to submit a greening project as part of the application process. The greening project refers to a plan for arranging green spaces within the construction area. This includes consideration of various types of green plants, such as trees, bushes, and non-woody plants, as well as compensatory planting and adherence to the rules established by Georgian legislation.

Specifically, the conditions for land use in construction will be expanded to include the following requirements: 1) Information about the planned greening, which should describe the proposed greening project (excluding individual residential houses). 2) An expert's opinion on the description and quality assessment of the green plants on the land plot, along with a topographical plan that indicates the assigned numbers for the green plants according to the expert's opinion (except in functional zones where the minimum greening coefficient is not defined).

Additionally, within 10 days of receiving the construction permit, the permit holder must install an additional information board next to the existing one. This board should provide details

about the utilization of the area determined by the minimum greening coefficient on the construction site and highlight the main aspects and parameters of the greening project.

8. Amendments to the Civil Procedure Code of Georgia

The amendments to the Civil Procedure Code of Georgia, which were enacted on June 13, 2023, were influenced by the ratification of the "Convention on the Rights of Persons with Disabilities" and the "Optional Protocol to the Convention on the Rights of Persons with Disabilities" by the Parliament of Georgia. As a result, subparagraph "h" of the first part of Article 423 of the Code of Civil Procedure was revised, and the grounds for reopening proceedings due to newly discovered circumstances were changed.

Under the revised provision, a final and binding decision can be challenged by requesting the reopening of proceedings if there is a decision from the United Nations Human Rights Committee, the Committee on the Elimination of All Forms of Discrimination against Women, the Committee on the Rights of the Child, the Committee against Torture, the Committee on the Rights of Persons with Disabilities, or the Committee on the Elimination of Racial Discrimination. This decision must identify a violation of the Convention establishing the respective committee in relation to the case, and the decision to be reviewed must be based on this violation.

On April 13, 2023, an amendment to the Civil Code of Georgia was also enacted. This change was prompted by a decision of the Constitutional Court of Georgia in the case of "Ikhtios Ltd", Zaza Pataridze, Nikoloz Beriashvili, Shalva Oniani,

Vakhtang Kobeshavidze, and Manana Kharkheli against the Parliament of Georgia.

In its decision, the Constitutional Court of Georgia declared the first and second sentences of Part 11 of Article 268 of the Code of Civil Procedure as unconstitutional. These sentences provided for the immediate enforcement of a first-instance court's decision regarding disputes arising from a contract if such immediate enforcement was explicitly stipulated in the contract. The court also ruled that the requirements specified in the second and third parts of Article 268 did not apply to such cases.

Consequently, the first and second sentences of the aforementioned article will become void as of October 1, 2023.

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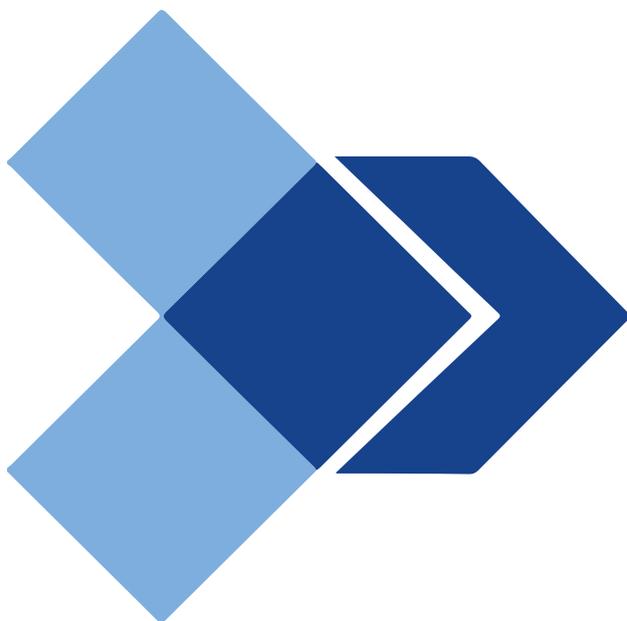
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