



# ნოდია, ურუმაშვილი და პარტნიორები NODIA, URUMASHVILI & PARTNERS

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## 1. Introduction of amendments to the Law of Georgia on Personal Data Protection

Amendments to the Law of Georgia on Personal Data Protection of December 30, 2021 mainly relate to cancellation of the State Inspector's Service that has resulted in the need to revise the law and determine the competent authority to assume personal data protection. In doing so, the changes on successor body to the State Inspector's Service also affected the Law on Microfinance Institutions, the Law on Securities and the Law on the Activities of Commercial Banks.

The assignment of the personal data protection to the new agency required the imprint of its organizational and structural arrangements, definition of rights-obligations and operational principles in the law, on the basis of which Chapter V<sup>1</sup> was added. According to the aforementioned amendments:

- The Head of the Personal Data Protection Service may be elected a citizen of Georgia with no criminal record, having higher legal education and at least 5 years of experience in the field of judiciary, law enforcement or human rights protection, as well as high professional and moral reputation;
  - A selection competition for the position of the Head of the Personal Data Protection Service shall be announced and a competition committee shall be established by order of the Prime Minister of Georgia;
  - Through a selection competition for the position of the Head of the Personal Data Protection Service a minimum of 2 and a maximum of 5 candidates will be identified and presented to the Prime Minister, while 2 best candidates will be presented to the Parliament for final selection;
  - The Law guarantees inviolability of the Head of the Personal Data Protection Service, meaning that prosecution, arrest or detention, search of his/her residence or workplace, vehicle or person can be carried out only based on the prior consent of the Parliament of Georgia, except for the cases of being caught in *flagrante delicto*.
- Position of the Head of the Personal Data Protection Service is declared to be incompatible with membership in state and representative bodies of a municipality, any position within civil service and public service and other remunerative activities, except for scientific, pedagogical and creative activity. The Head of the Personal Data Protection Service shall not be engaged in entrepreneurial activity, directly exercising the duties of a permanent manager of a business entity, a member of a supervisory, control, revision or consultative body, be a member of any political party or participate in political activities. Also, the Head of the Personal Data Protection Service is prohibited from participating in meetings and manifestations supporting or opposing the political unions of citizens;
  - It should be noted that the Personal Data Protection Service is independent in the exercise of its powers and is not subordinated to any authority or official. Any influence or unlawful interference with the Head of the Personal Data Protection Service and in duties of an employee of the Personal Data Protection Service is prohibited and punishable by law;
  - The Amendments establish the principles of legal and social protection of employees of the Personal Data Protection Service, as well as the rules for selection, appointment and authority of employees of the structural subdivision;
  - Once a year, no later than March 31, the Head of the Personal Data Protection Service shall submit a report to the Parliament of Georgia on the data protection standards in Georgia, as well as covert investigation controlling measures carried out in the Electronic Communications Identification Data Central Bank.

In addition to the aforementioned structural changes, Chapter V<sup>2</sup> was added to the law, which defines the authority of the Personal Data Protection Service in the field of data protection and control of covert investigative activities. The main scope of activities of the Service is:

- a) Advising on data protection issues;

- b) Examining applications related to data protection;
- c) Checking (inspecting) the legality of data processing;
- d) Providing information to the public on the state of data protection standards in Georgia, as well as its related important developments and raising their awareness.

The same chapter regulates the procedure for examining a data subject's application and the inspection procedure. The inspection may be carried out at its own initiative or on the basis of the application of the person concerned within the following framework:

- a) determination of the existence of a legal basis for the protection of the principles of data processing and data processing;
- b) verification of compliance of organizational and technical measures and procedures implemented to protect data security with the requirements established by the legislation of Georgia;
- c) verification of compliance with the requirements laid down in this law in relation to the file system directory, file system directory register and data output logging;
- d) verification of the lawfulness of the transfer of data to another state and to an international organization;
- e) verification of compliance with the rules and requirements established by this law, the Law of Georgia on Personal Data Protection and other regulations.

It is noteworthy, that the Personal Data Protection Service is authorized to request any document and/or information from any institution, natural person and/or legal entity, including government, tax, bank, commercial, professional secret and/or data containing information, as well as materials and/or documentation and/or information relating to operational search and crime investigation, which constitute state secrets and are necessary for carrying out the inspection, to the extent set out in the law, as well as to enter any institution or organization for inspection and get acquainted with any documents and information, including those containing state, tax, banking, commercial, professional secrets and/or data, as well as materials reflecting operative-search activity and

investigation of crimes and/or information referred to state secrets, regardless of its content and form of storage.

The amendments also set out a list of measures that the Personal Data Protection Service is entitled to apply when revealing a breach, in particular:

- a. request rectification of the data processing breach and data processing in a specified form and within a specified time limit;
- b. request temporary or permanent cessation of data processing if the measures and procedures carried out by the data processor or the authorized person do not comply with the requirements of Georgian legislation;
- c. request the cessation of data processing, blocking, erasure, destruction or depersonalization of data if it considers that the data processing is carried out in violation of Georgian legislation;
- d. request the termination of data transfer to another country or an international company if data transfer is in violation of Georgian law;
- e. issue written advice and recommendations to a data processor and/or an authorized person in case of a minor breach of the rules related to data processing;
- f. impose administrative liability on the offender.

If a data processor and / or an authorized person fail to comply with the requirements of the Personal Data Protection Service, the Personal Data Protection Service may apply to a court, a law enforcement agency and/or relevant supervisory (regulatory) state authority as defined by Georgian law. If the Personal Data Protection Service finds an administrative offence, it shall be authorized to draw up a protocol on administrative offence and, respectively, impose an administrative liability to a data processor and/or authorized person under the Law of Georgia on Personal Data Protection and the Code of Administrative Offences. If the Personal Data Protection Service considers that in the process of its activity there are signs of a criminal offence, it is obliged to report this to the

corresponding agency in accordance with the rules established by the law.

Enforcement of the decision of the Personal Data Protection Service in the area of data protection is mandatory and may only be appealed to a court in accordance with the law.

The amendments have also identified the controlling mechanisms of the Operational-Technical Agency of Georgia in conducting covert investigative actions - covert overhearing and recording of telephone conversations/communication. An employee of the Agency is obliged to cooperate with the Personal Data Protection Service - to provide the Personal Data Protection Service with necessary information and documents, as well as to give explanations on certain issues identified during the control (inspection).

Finally, it should be noted that there have been no fundamental changes in terms of administrative liability for breach of this law.

## **2. Statements of the National Bank of Georgia regarding retaliatory financial sanctions against Russian aggression in Ukraine**

Georgia joins the financial restrictions imposed by international resolutions against Russia. It has been declared that various Russian channels spread misinformation that the National Bank of Georgia was allegedly sidestepping the sanctions imposed in the financial sector, which was "a lie and part of the war that is now being waged in Ukraine".

The statement of support for Ukraine was followed by the response of the National Bank of Georgia on 3 March, according to which the National Bank instructed commercial banks in Georgia to comply with the sanctions imposed by the US, UK, EU and other countries on the Russian financial system.

It is true that these instructions have not been made public by the National Bank, but as a result of a request for information the following references were shared, which were provided unchanged to commercial banks, and a detailed list of sanctions imposed by the financial sector (in English):

- Sanctions established by the treasury of the USA:

[https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions;](https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions)  
[https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions.](https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions)

- Sanctions established by the EU:  
[https://eur-lex.europa.eu/eli/dec/2014/145\(1\)/;](https://eur-lex.europa.eu/eli/dec/2014/145(1)/)  
[https://eur-lex.europa.eu/oj/direct-access.html.](https://eur-lex.europa.eu/oj/direct-access.html)
- Sanctions established by the United Kingdom:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1060262/Russia.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1060262/Russia.pdf)

The sanctions apply to both individuals and legal entities and restrict access to the financial sector. At the same time, financial licenses and access to international payment systems are revoked.

VTB Bank Georgia JSC operating in Georgia has also been put under the sanction. To that end an agreement was reached between VTB Bank Georgia JSC and Basisbank JSC on the transfer of deposits and loans of individuals at VTB Bank Georgia JSC to Basisbank JSC. It should be noted that as a result of consultations an agreement was reached between VTB Bank Georgia JSC and Liberty Bank JSC on the transfer of a certain portion of the deposits and loans of legal entities from VTB Bank Georgia JSC to Liberty Bank JSC. Clients of VTB Bank Georgia JSC are provided with detailed information on an individual basis. The aforementioned agreement between VTB Bank Georgia JSC and Liberty Bank JSC implies the transfer of small and medium business deposits and loans. The process of transferring clients is in progress since March 3, the small and medium business depositors and borrowers of VTB Bank Georgia JSC will be served by Liberty Bank JSC through its own branches.

The statement of the National Bank of Georgia of March 9 concluded that commercial banks and card processing systems operating in Georgia

should not cooperate with the payment systems company Mir. The NBG informs that the payment systems company Mir cooperates with the de facto republic of Abkhazia, which, according to the bank, may violate the law on the occupied territories. However, it also mentions that the assessment of the issue of cooperation of the Georgian company with the payment systems company Mir is beyond the scope of the competence of the National Bank.

Another statement regarding the payment systems company Mir was made on March 19, which was related to media reports about the use of this system by a shopping mall located in Batumi. The National Bank once again confirmed that the payment system MIR is not serviced by any commercial bank or payment service provider registered in Georgia. Hence, payment services provided by a company not registered in Georgia to a Georgian organization constitutes a violation of the Law of Georgia on Payment System and Payment Services, and qualifies as an illegal entrepreneurial activity and such facts are reported to the relevant investigative authorities.

In addition to the above, the National Bank responded in a statement on 16 March 2022 to misinformation about transactions being banned from European countries to Georgia. Namely, "both overseas and Georgian banks evaluate the acceptability of devoting resources to determining the compliance of specific transactions with the current sanctions. Commercial banks use this assessment and their policies and procedures to make decisions about specific transactions".

### **3. *New era of the Georgian Law on Entrepreneurs***

On January 1<sup>st</sup> 2022, a new Law of Georgia on Entrepreneurs entered into force, which significantly changed a number of institutions provided for by the previous law. In addition, on January 1<sup>st</sup> an Order of the Minister of Justice of Georgia came into force, which approved: a) a joint liability company; b) a commandite company; c) a limited liability company; d) a joint stock company; e) standard cooperative charter, i.e. charters that are automatically considered

part of the foundational agreement of an enterprise if the founders of the enterprise have not drafted and adopted individual charter. Additionally, we inform you that discussions and clarifications on the Law on Entrepreneurs can be seen every second Tuesday at 09:40 am on Business Morning TV within the framework of cooperation of the law firm Nodia, Urumashvili and Partners and Business Media Georgia (BMG) in the context of the legal headlines on TV Pirveli.

### **4. *The GMP (Good Manufacturing Practice) is to become mandatory on goods imported to the Georgian market***

Amendments to the Law of Georgia On Medicines and Pharmaceutical Activities stipulate that in order to import pharmaceutical products into the Georgian market, it is mandatory to present a certificate confirming the manufacturing of a pharmaceutical product under good manufacturing practice (GMP).

The stages and conditions of fulfillment of this obligation shall be determined by the Government of Georgia. And, if, according to the periodicity established by the Government, the importer of the pharmaceutical product fails to comply with the obligation to submit the said document, the pharmaceutical product will not meet the registration requirements and will not enter the Georgian market.

It should be noted that the purpose of this changes is to put importers and manufacturers of pharmaceutical products on an equal conditions, as before the change only manufacturers had the obligation to possess and submit this certificate.

### **5. *Constitutional Court ruling on the requirement to wear a face mask in public places***

The Constitutional Court examined a constitutional claim that challenged the government's power to impose liability for violating the rule of wearing a medical mask



while staying/ moving in open public places before the Code of Administrative Offences is amended accordingly (from 3 November 2020 to 19 February 2021).

The Constitutional Court clarified that the Government of Georgia, by amending the regulation that established the wearing of masks in open public places, had extended the range of punishable acts (applying only to the wearing of masks in closed public places) provided for in Article 42<sup>11</sup> of the Administrative Offences Code and introduced new sanctioned acts. The Constitutional Court referred to the first sentence of Article 31(9) of the Georgian Constitution and clarified that the Georgian government does not have the right to enact a law establishing liability. Thus, the impugned settlement was incompatible with the constitutional requirement of a statutory definition of legal liability and should have been declared unconstitutional.

**\*Herewith, we reiterate that this decision applies only for the period from 3 November 2020 to 19 February 2021 and does not apply to the subsequent period when the Administrative Offences Code has been amended.**

## ***6. Amendments to the Law of Georgia on Advertising***

Amendments to the Law of Georgia on Advertising, which entered into force on 1 March 2022, expanded the scope of the law and additionally regulated the protection of minors in advertising gambling, bookmaker's office, lottery game, bingo, gambling organizer, bookmaker's office organizer, lotto organizer and bingo organizer as well as production, placement and distribution of advertising.

The Law establishes that advertising of the above activities and the posting of signboards are permitted only in certain cases, in particular if:

- a) Said advertising is disseminated by placing it on a website, where the organisation of gambling and/or betting houses is permitted in a system-electronic form;

- b) the advertisement is disseminated at the venue of a sports event, sports competition and/or at the place of a sports organisation activity and the mentioned is condition for sponsoring their activities;
- c) said advertisement is visually played at an object where organization of gambling, betting, lotto and/or bingo is permitted;
- d) advertising is placed at an airport open to international traffic and/or at a border-crossing point.

It is also established that no more than one signboard containing information about gambling, betting shops, lottery game, and bingo, gambling organizer, bookmaker, bingo organizer and lotto organizer may be placed; also the signboard may not exceed 10 square metres.

## ***7. Amendments to the Law of Georgia on the Organisation of Lotteries, Gambling and Gainful games***

Amendments to the Law of Georgia on Lotteries, Gambling and Gambling as of 22 December 2021 specify creation of a list of persons addicted to gambling. The list should include data on a person based on an order of a judge or application of a person himself/herself and a list of prohibited persons, including persons employed in a budgetary organization under the Budget Code of Georgia, persons employed in the regulatory body provided for by the Law of Georgia on National Regulatory Bodies, persons employed in the National Bank of Georgia, family members registered in the unified database of socially vulnerable families. Prohibited persons, like addicted persons, are prohibited from participating in gambling and / or winning games (other than incentive lotteries), including in the case of system-electronic gambling. Only data about a citizen of Georgia shall be allowed to be included in the mentioned lists. In addition, data on the person shall be included in the list of addicted persons for a period of 5 years.

It is also established that an organizer of gaming is obliged not to allow Georgian citizen under 25 years old, foreign citizen under 18 years old/non-citizen, addicted persons and banned persons on the lists to play in the place of organization of gambling and/or winning games (except for the incentive lottery), including in the case of system-electronic form.

### ***8. Amendments to the Food/Feed Safety, Veterinary and Plant Protection Code***

Under the amendments to the Food/Feed Safety, Veterinary and Plant Protection Code, the veterinary activity (veterinarian, veterinary technician) becomes a regulated profession.

By 1 September 2023, the Government of Georgia shall define: a) the professional competencies of the veterinarian and veterinary technician and b) the rules and conditions for the state certification examination of the activities of the veterinarian and veterinary technician and their professional development.

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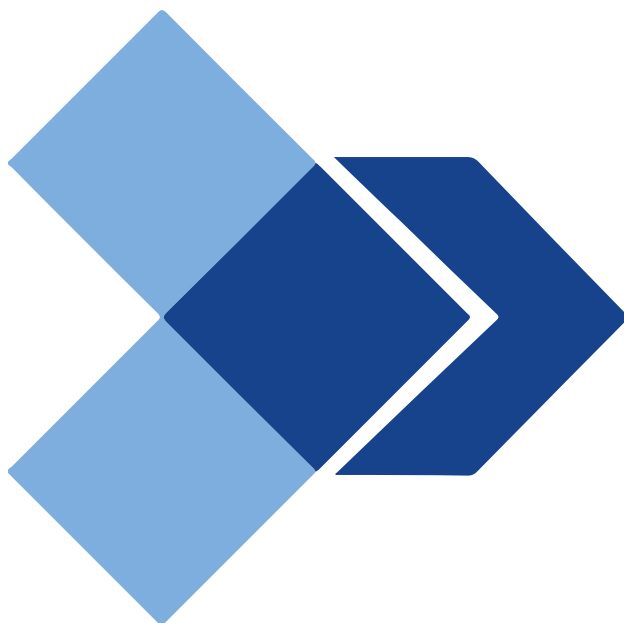
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