



ნოდია, ურუმაშვილი და პარტნიორები NODIA, URUMASHVILI & PARTNERS

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1. COVID 19 - Economic Restrictions

By the Ordinance 322 of May 23, 2020 of the Government of Georgia following restrictions on economic activities are into force:

- All types of mass sports, cultural and entertainment events are prohibited except for events related to museum activities and rehearsals conducted in the closed spaces and the sport, cultural events and amusement parks conducted in the open space organized and held according to the Decree of the Minister of Health, Labour and Social Affairs of Georgia;
- Providing gambling services and prize-winning games are permitted only in electronic form;
- Activities of hotels and similar accommodation facilities are permitted only:
 - a) for the purpose of providing quarantine areas;
 - b) on the basis of the positive opinion with regard to the compliance with the recommendations of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia as a result of inspection carried out by the Labour Conditions Inspection Department;
- Sports and recreational procedures/activities are permitted only on the basis of the positive opinion with regard to the compliance with the recommendations issued by the competent body.
- All economic activities are generally performed taking into account the specificity of a facility, keeping at least two meters of social distance and using face masks, in accordance with the Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia on the Approval of Recommendations to Prevent the Spread of the Novel Coronavirus (COVID-19) at Workplaces.

Please note that the Labour Conditions Inspection Department may suspend activity of economic entity in case a critical non-compliance of Recommendations of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia is claimed.

2. New Law on Investment Funds

On July 14, 2020 the Parliament of Georgia issued a new Law on Investment Funds that aims to create basic principles on founding and managing investment funds and asset management companies, as well as construing rules under which investments may be operated. It is designed to deepen and provide effective growth of financial sector in Georgia, to create alternative sources for financing in corporate sector, to meet obligations under the European Union- Georgia Association Agreement and to facilitate the deployment of the capital market in Georgia. In doing so, it is envisaged to approximate the Georgian legal *acquis* with the Directive 2009/65/EC on Undertakings for the Collective Investment in Transferable Securities (UCITS) and the principles laid down by the International Organization of Securities Commissions (IOSCO). It is also worth mentioning, that National Bank of Georgia is the associate member of IOSCO since 2018 while the permanent membership is planned in the nearest future which shall enable the National Bank of Georgia to join a the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU) signed by IOSCO Members.

The following persons are subject to the law:

1. Investment funds having its registered seat in Georgia;
2. Asset management companies of investment funds having its registered seat in Georgia;
3. Asset management companies having its registered seat in Georgia regardless of the seat of the investment fund it manages;
4. Foreign-based investment funds, that offers the sale of units in Georgia, as well as its asset management companies;
5. All other persons (specialized depositories, auditors, etc.), that pursue activities associated with investments, management, conservation and administration of investment fund's assets under this law.

According to the law, a person may be qualified as the investment fund according to the conditions set out below:

- Does not have an ordinary trading/economic aim;
- Unites investor capital for the purpose of generating profit;
- Persons involved in the collective undertaking scheme do not enjoy controlling rights and discretion thereof.

The law does not exclude other types of entities or schemes to be regarded as an investment fund, if it falls under the definition of an investment fund in accordance with the law or customary trading.

The law does not apply to entities of public law that manage social security or pension system funds, holding companies, pension schemes under the Law of Georgia on “On Funded Pension” and Law of Georgia On The Provision Of Non-State Pensions And Non-State Pensions Insurance,” international financial institutions and entities, activities of which are not subject to regulation under the law or that are subject to special regulation.

If the fund has its seat in Georgia, it is obligatory to obtain the authorization and registration regardless whether the fund’s investors are residents of Georgia or the fund portfolio consists of assets located in Georgia. Nevertheless, a foreign investment fund may only be subject to the Georgian legislation if it offers its units for sale in Georgia. While public offer implies that investment fund’s units are offered to 20 or more retail investors or to predetermined number of persons, the private offer is the one that is not deemed as a public offer. Foreign investment fund that offers its units publicly in Georgia shall seek for recognition from the supervising authority. In case of the private offering the foreign investment fund shall give a notice in advance to the supervising authority.

The law of Georgia distinguishes two types of investment funds according to its investor categories: authorized investment funds (publicly offering units based on the authorization granted by supervising authority) and registered pension funds (that are only capable of private offering based on the registration with supervising authority).

Beyond that, the law also sets forth investment fund activity categories, legal forms of investment companies, principles governing activities of asset management companies and special depositaries, unit offering and investment fund transparency requirements. Additionally, it standardizes

reorganization, M&A and liquidation procedures, investment fund regulatory and supervisory policies.

Check the link:

<https://www.matsne.gov.ge/ka/document/view/4924135?publication=0>

3. Draft Law on Rehabilitation and Collective Satisfaction of Creditors

The draft law of Georgia on Rehabilitation and Collective Satisfaction of Creditors unwinds completely modernized insolvency proceedings in Georgia.

One of the amendments of the draft law concerns the priority of the tax claim. Tax authority may no longer be regarded as a secured creditor. The draft law enables preferential claims to be presented even before the admission of the insolvency case. Preferential satisfaction applies to: a) the remuneration and vacation costs of last 3 months, compensation payable due to industrial injury not exceeding 1000 GEL to each creditor; b) indirect taxes incurred under the Tax Code of Georgia for the last 3 years of the relevant tax period. Secured creditors are granted with preferential rights by virtue of the Civil Code of Georgia to obtain satisfaction from the amount recovered as a result of full or partial sale of the property.

The regulated agreement (voluntary arrangement) is a novelty introduced by the draft law. The rationale behind the regulated agreement is to negotiate an agreement between a creditor and a debtor prior to any insolvency proceeding, that shall be directed towards the rehabilitation and remediation of the debtor. According to the regulated agreement each creditor shall recover at least as much as it would have been granted in case of debtor’s bankruptcy. Negotiations shall be conducted under moratorium. Any enforcement procedures in this period is suspended.

The draft law explicitly sets out the timeframe for rehabilitation plan approval. Creditors shall approve the rehabilitation plan in six months after opening the rehabilitation proceedings, that may be prolonged only for 3 months. If the plan is not approved in this timeframe the court renders a decision on the opening of bankruptcy regime.

Insolvency practitioner is a new profession introduced by the draft law, who may be elected/appointed as a rehabilitation/ bankruptcy manager or regulated agreement supervisor. Authorization is granted by the National Enforcement Agency and the rules and regulations are determined by the Minister of Justice of Georgia. If a person has conducted insolvency practice for 5 years based on the acting law prior to new law entry in force, such persons may be regarded as insolvency practitioners for only one year from the entry into force date of the law.

Lasha Nodia, Managing Partner of “Nodia, Urumashvili and Partners” plays a key role as a field expert in the process of law drafting.

Check the link:

<https://www.matsne.gov.ge/ka/document/view/4792392?publication=0>

4. Anti-dumping Measures in Georgia

The Law of Georgia on Anti-dumping Measures adopted by the Parliament on July 13, 2020 construes main rules on application and operation of anti-dumping measures, as well as the research methodology and responsible authorities to be able to conduct market analysis and decide on preliminary/ special anti-dumping measures.

The law grants National Competition Agency with the authority to rule on the special anti-dumping measures on import only after a preliminary research. The anti-dumping measure may also be imposed by the Government of Georgia, if the authority responsible for the research decides that there is a dumping import in place, it harms the local market or there is a reasonable threat of harm. Herewith, the causal link shall also be supported.

Exceptions to the imposition of anti-dumping measures may be taken in case there is a threat of harm to certain sectors of the Georgian Economy or the interests of consumers and the State Need. The law also provides the procedure for appealing against a decision of the Government of Georgia on the introduction, non-use, revision or revocation of a preliminary / special anti-dumping measure / tariff - in particular, it establishes an exclusive court jurisdiction. The decision can be appealed at the Tbilisi City Court.

The special anti-dumping measure may only be imposed for no more than 5 years, this period can be extended for no more than 5 years. The law will come into force on January 1, 2021.

Check the link:

<https://www.matsne.gov.ge/ka/document/view/4923585?publication=0-->

5. Significant changes to the Law of Georgia on Electronic Communications

On July 17, 2020, significant amendments were made to the Law of Georgia on Electronic Communications. Changes provide special measures to enforce decisions of the Georgian National Communications Commission. More specifically, in case of violation of above-mentioned law by the authorized person/license holder and provided that preconditions are met, the Commission is authorized to appoint a special manager responsible for monitoring the enforcement of Commission's decision by the authorized person/ license holder.

Check the link:

<https://matsne.gov.ge/ka/document/view/4928604?publication=0>

6. Procedure for revision of contracts related to acquisition/ management / use of state property as a result of the State of Emergency

According to the amendments to the Law on State Property, a procedure for revision of contracts related to acquisition/management /use of state property has been established that introduces the rules for changing/cancelling obligations /exemption from fines due to the performance complication or impossibility as a result of the State of Emergency. Upon submission to the State Property Manager and its decision the Government of Georgia rules on the procedure applicability. The above-mentioned procedure also applies to the property disposed/acquired by virtue of the auction after December 31, 2012.

The deadline for submitting the application to the State Property Manager by the interested party is 6

months from the end of the State of Emergency (unless otherwise provided by law).

The amendment contains transitional provision, that sets specific timeframe on the basis of the Decrees of the President of Georgia N1 of March 21, 2020 and N2 of April 21 On the Declaration of the State of Emergency on the Whole Territory of Georgia. Six months period is set for the submission of application from the entry in force of this law. The law was published on the official website of the Legislative Herald on 20.07.2020.

Check the link:

<https://matsne.gov.ge/ka/document/view/4922078?publication=0>

7. Fundamental Changes to the Law of Georgia on Entrepreneurs in making

On August 13, 2020, the draft Law on entrepreneurs was published on the legislative herald of Georgia. It is noteworthy that the first hearing of the bill has not taken place so far.

The draft law contains detailed regulation on conflicts of interest, expulsion/departure of a partner, reorganization, separation and liquidation of the company. With the amendments the level of protection of the minority shareholders along with the third parties/creditors is being increased. The draft law also sets forth the corporate transparency criteria (both, during and after the establishment of the company).

Significant changes are envisaged to the joint stock company rules. The draft law categorizes the capital types. New concept of “chartered capital” is introduced - amount agreed upon by the founding partners and indicated in the agreement of incorporation. Chartered capital is only obligatory for a company established under a legal form of a joint stock company. By the time of registration of the joint stock company chartered capital shall consist of at least GEL 100,000.

The law is scheduled to come into force from January 1, 2021. The entities established before the enactment of the new law will have a 2-year transitional period to bring their incorporation documents (charter and other documents) in line with the requirements of the law.

Vakhtang Gamtsemlidze, Partner and Giorgi Kekenadze, Associate of Nodia, Urumashvili &

Partners were actively involved in the legislative process together with the Business Association of Georgia.

8. Amendments to the Labor Code of Georgia

On April 27, 2020, a draft law on amendments to the Labor Code of Georgia was submitted to the Parliament of Georgia. The main purpose of the draft law is to abide with obligations under the EU-Georgia Association Agreement and to approximate Georgian labor legislation with regulations of International Labor Organization. The draft law has been adopted with the second hearing.

According to the draft:

- The concept of discrimination and its prohibition scope is expanding. The bill legislates the redistribution of the burden of proof previously established by the Court practice;
- The form and provisions of the employment agreement is subject to additional regulation. The agreement must contain the detailed termination clause and be signed in writing if the employment relation continues for more than a month;
- The Labor Code defines new concepts: part-time work, standardized working hours, internships. The employer is not allowed to hire an intern with the intent to avoid concluding an employment contract or to replace another employee;
- The minimum amount of overtime pay is established. The minimum rate of overtime work reimbursement is established at 125 percent of the standard hourly wage. Parties may still agree on granting extra proportional resting time to a worker to compensate overtime work.
- The draft law provides extra social guarantees. Employer promotes to and in some cases is obliged to ensure the raising of qualification of the worker at its cost. Additionally, in some cases such studies and trainings are considered as working time and shall be remunerated. Upon the

request of employee, employer shall be obliged to provide preliminary (pre-employment) and periodic free medical examinations to a night worker at employer's expense. A pregnant woman shall also be given additional time for medical examination, if such medical examination is to be carried out during working hours.

- The amendments will address the issue of termination of the contract. The employer is obliged to set forth the reason for firing the employee in the notice of termination. The employee becomes directly entitled to re-apply to the court.
- State supervision over the implementation of Georgian labor legislation is provided by a public legal entity – the Labor Inspection.

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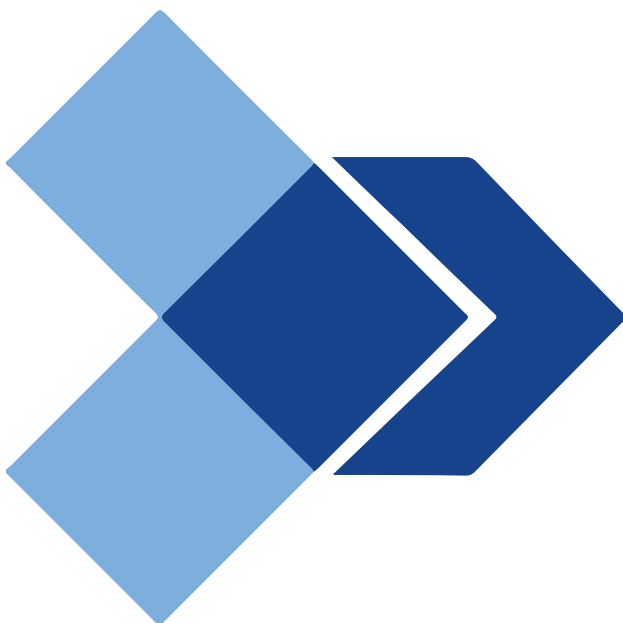
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