



# ნოდია, ურუმაშვილი და პარტნიორები NODIA, URUMASHVILI & PARTNERS

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## **1. COVID-19 - amendments to the Resolution № 322 of the Government of Georgia of May 23, 2020 on the Approval of Isolation and Quarantine Rules**

Pursuant to amended rules of entry in Georgia and applicable isolation / quarantine procedures, effective from October 8, 2021: -

- **For international air movement:** any person arriving from a foreign country (regardless of citizenship), provided that such person submits at the border a document certifying the full course (two doses, and in case of Johnson&Johnson vaccination – single dose) of any type of covid vaccine, and a foreign nationals who have been infected with COVID for the period of last 100 days (tested positive by a PCR test) and recovered, provided that a person submits at the border a document certifying vaccination (with a single dose of any vaccine having emergency use authorization granted by WHO regardless of the sequence of infection and vaccination; where not less than 14 days have elapsed after the vaccination), shall not be subject to restrictions set forth in the Resolution of the Government;
- **For international land and maritime movement:** foreign nationals who have been infected with COVID for the period of last 100 days (tested positive by a PCR test) and recovered, such persons shall submit at the border a document certifying vaccination with a single dose of any vaccine (having emergency use authorization granted by WHO regardless of the sequence of infection and vaccination; where not less than 14 days have elapsed after the vaccination), and a negative result of PCR test in the last 72 hours before the visit to Georgia, shall not be subject to restrictions provided by the Resolution of the Government;

### **Exceptions associated with sports activities:**

- From October 19, the restriction (on organizing sports events without spectators) no longer applies to matches of the Georgian Premier Leagues (in football - "National League 1", in rugby - "Big 10") and international matches (football / rugby) planned in Georgia, on which the citizens will

be admitted in accordance with the recommendations approved by the Ministry of Health, and at the same time, those wishing to attend these matches must submit the document, certifying full vaccination at least 14 days prior to the relevant match or a laboratory-confirmed certificate on confirmed COVID-infection within the last 6 months, or a PCR test made 72 hours prior to the match or a negative result of rapid antigen test made 24 hours prior to the match;

- Moreover, from October 6, 2021, it shall be permissible to operate gyms and swimming pools only for guests of the hotel and similar accommodation facilities.

### **Hotels, food facilities:**

- From October 6, 2021, it shall be permissible to operate restaurants, bars, cafes in hotels and accommodations rendering similar services from 05:00 until 23:00, and from 23:00 until 05:00 only room service becomes applicable. The operation of food facilities, restaurants, bars, cafes shall be allowed in the form of hosting guests both in the open and closed space, from 05:00 until 23:00, and the delivery service (the so-called 'delivery' service) and product take away (the so-called 'Take Away' and 'Drive') – without the limitation of the operation hours. When hosting guests, the recommendations of the Ministry of Health shall be complied with.

## **2. The draft law on significant changes in the Constitution of Georgia is adopted with the first hearing**

The draft law was initiated in the Parliament of Georgia in June 2021. According to the explanatory note to the draft law, the purpose of the bill is to reflect in the Constitution of Georgia an agreement reached between political parties on April 19 through a mediation by the President of the European Council

According to the draft law:

- For the Parliamentary Elections of Georgia prior to 2024 and in 2024, the electoral threshold is reduced to 2%;

- The minimum number of parliamentary fraction members in the elected Parliament is defined by 4 members;
- In the next two convocations, Parliament elects the Prosecutor General by a three-fifths majority of its full members.

It should be noted that on September 7, 2021, the amendments are adopted with the first hearing.

### ***3. The draft law on amendments to the Civil Code of Georgia on co-ownership rights was adopted with the first hearing***

In June 2021 a draft law was initiated before the Parliament of Georgia, envisaging fundamental changes to the Civil Code on co-ownership rights. According to the explanatory note of the draft law, the changes are aimed at altering existing co-ownership rigid norms by introducing relatively flexible preconditions for division in kind, creating additional tools for the co-ownership rights cancellation and in doing so increasing the role of the court.

For example, through amendments:

- A new Article 963<sup>1</sup> shall be added to the Code, providing that in case of unfeasibility to divide the co-ownership in kind on pro rata basis between the owners, if it is possible to divide the shares in kind without division of shares and the proportion of such shares is not disrupted with more than 20 percent as a result of such division, the court shall have the right to cancel common right by way of division in kind, provided that the owner, whose share has increased, agrees to fully compensate other co-owners loss.
- In case of inequality of shares in the co-ownership, the owner of larger share will enjoy the pre-emptive on the remaining share, and in case of equality of shares - the pre-emptive right will be given to the respondent, and if there are several respondents, the ranking will be determined by the court;
- In case of immovable property, preference will be given to the value of the property after its division and only then to its function;
- The court will be entitled to postpone cancellation of co-ownership under specific

circumstances for a period of not more than 3 years;

- When dividing an immovable property in kind, it becomes inadmissible the value of the divided co-ownership shares to be less than the corresponding share of proceeds from the sale of the whole property at the market price;
- Costs incurred during division in kind will be distributed among the share-owners pro rata their shares;
- In case of division of the common object into two equal parts, as well as in case of separation of the equal share from the shares of other owners, the initiator of the division in kind will be obliged to submit the relevant division plan, whereas the other party is granted a right to choose its preferred pieces from the object to be divided.

It should be noted that on September 7, 2021, the amendments were adopted with the first hearing.

### ***4. The new Law on Entrepreneurs was adopted with the third hearing***

On August 2 of this year, the Parliament approved a new Law on Entrepreneurs with the first hearing, that will enter into force on January 1, 2022.

It should be noted that the changes envisage increased minority shareholder protection and protection of creditors. For example, in case of a joint stock company, the minimum share capital is set at GEL 100,000. The law further establishes requirements for an employment contract between a director and a company. In addition, the law grants increased rights to the court in process of resolving deadlocks between shareholders. Namely, mechanisms for withdrawal and expulsion of shareholders from the company are regulated in detail, as well as, in case of failure to dismiss or appoint the director that hinder company's normal activities, it becomes possible for shareholders and creditors to request court to appoint a new director or dismiss the current one.

It should be noted that the law establishes a transition period, entrepreneurs must adapt their registered data and corporate documents to the requirements of the law within a two

year period. At the same time, until November 1 of the current year, the Ministry of Justice will develop a standard form of company's charter, that shall apply in case an entrepreneur fails to submit its own charter and it will be an integral part of the incorporation deed of the entity.

### **5. New Rule on Appraisal of Investments in Certain Sectors**

Ordinance №36 of the Georgian National Energy and Water Supply Regulatory Commission defined the rules for appraisal of investments in the electricity, natural gas and water supply sectors. With the enactment of this rule, №27 Ordinance of the Georgian Energy and Water Supply Regulatory Commission as of November 22, 2019, "On Approval of the Investment Appraisal Rule" is declared invalid.

The investment appraisal rule for each of the above sectors is attached as appendix to the Ordinance of the Commission. All three documents define the detailed technical framework in accordance with sector-specific modifications and include the procedures for submitting the investment plan, as well as mechanisms for making amendments and the project implementation control process. It should be noted that despite the technical differences, the general rule for evaluation of investment projects is largely identical and is based on the criteria of appropriateness, reasonableness, necessity, and effectiveness. Burden of proof on compliance with the general principles and standards is shifted to the applicant.

### **6. Amendments to the Law of Georgia on Commodities Exchange and Exchange Trade**

According to the amendments made on August 2, 2021, from January 1, 2021, it becomes restricted to concede the right to participate in stock exchange trade without sale or transfer of a certificate (title) on the share of the invested capital and transfer of the right to manage the stock exchange, unless otherwise provided for by this Law. This change is caused by terminological differences, as in the new Law on Entrepreneurs

the term "authorized capital" has been replaced by the concept- "invested capital".

### **7. Amendments to the Law of Georgia on Microfinance Organizations**

According to the amendments made on August 2, 2021, from January 1, 2022, a microfinance organization is authorized to carry out activities related to the holding of shares or stocks of legal entities, the total amount of which should not exceed 15% of the invested capital of the latter, while the previous version stipulated that microfinance organizations could only hold shares of the authorized capital of legal entities, if it is less than 15% of the authorized capital of the microfinance organization.

### **8. Amendments to the Law of Georgia on commercial Bank Activities**

From January 1, 2022, to comply with the new Law on Entrepreneurs the Law on Commercial Banks envisages the following terminological changes:

- The term "stated capital" is replaced by the term "authorized capital", which is a capital agreed upon by the company shareholders and provided for by the charter.
- Moreover, the characteristics of the invested capital are determined, namely, it must be equal to the sum of the nominal values of the placed shares of the entrepreneurial entity, and if the entity also has shares with no nominal value, the invested capital must exceed the sum of the nominal values of the placed shares. If the entrepreneurial entity (except the joint stock company) has only shares with no nominal value, the invested capital can be determined in any amount.

These terminology and other changes also affected other articles referencing authorized capital or required reference to the relevant articles of the Law on Entrepreneurs.

## **9. Amendments to the Law of Georgia on Investment Funds**

From 2022 the rules on the joint investment fund or the deed of incorporation of the investment company constitute incorporation document of investment funds. Pursuant to the amendments of August 2, 2021 the Law of Georgia “On Entrepreneurs” is not applicable to the joint investment fund, while an investment company does not become subject to Article 57 of the Law of Georgia “On Entrepreneurs” defining joint liability prerequisites.

According to this amendment, the rules establishing keeping the register of shares provided by the Law of Georgia “On Entrepreneurs” do not apply to the investment company with legal form of joint stock company, and Limited Liability Company and investment company with legal form of limited partnership shall not be subject to paragraphs 2-6 of Article 12 of the Law on Investment Funds referring to specific rules for keeping of register of the owners of investment fund unit. It should be noted that the effect of Article 53 of the Law of Georgia on Entrepreneurs, which regulates the freedom of entrepreneurial decision, does not apply to the investment fund asset management company.

## **10. Amendments to the Law of Georgia on Securities Market**

To comply with the new Law on Entrepreneurs, amendments are made to the Law “On Securities Market” on August 8, 2021, setting forth that the audit committee of the accountable enterprise should meet the requirements of Article 57 of the Law of Georgia on Entrepreneurs referring to joint liability. This requirement will take effect from January 1, 2022.

It should be noted that a new rule is added to the law regarding "mandatory tender offer", according to which if a person or a group of persons acting on the basis of an agreement (buyer) acquires securities, as a result of which gains control over more than half of the total number of votes of the accountable enterprise, it, no later than 45 days after the occurrence of this event, becomes obliged to make a tender offer in

accordance with the law for the redemption of all remaining securities or, within the same period, to bring the votes under its control below half of the total votes of the accountable enterprise. This requirement does not apply, if:

- more than half of the total number of votes of the accountable enterprise is in the hands of the buyer through a tender offer made in accordance with this law, according to which it offered to other securities holders to redeem all the remaining securities;
- the buyer holds these securities for the benefit of another person / persons, including for the purpose of issuing international depository receipt. In this case, obligation to implement mandatory tender offer rests with the buyer, who directly or indirectly controls more than half of the total number of votes of an accountable enterprise.

The offered redemption price is set by the auditor or brokerage company by taking into consideration the requirements of the law. Costs of the auditor or brokerage company are reimbursed by the buyer. It should also be noted that the buyer is not allowed to use more than half of the total number of votes of the accountable enterprise under his control at the general meeting until the completion of the specified tender offer. The change will take effect from January 1, 2022.

## **11. The draft law of Georgia on Ownership of Dematerialized Securities has been initiated**

The draft Law on Ownership of Dematerialized Securities and its package of amendments have been initiated before the Parliament of Georgia. The reason for initiation is associated with various forms of securities, in particular, with the specificities of owning and disposing tangible, registered and dematerialized securities. According to the explanatory note, the main goal of the draft law is to introduce a proper legal mechanism for holding securities, eliminate deficiencies and ensure legal clarity and transparency.

As dematerialized securities exist only in form of book-entry and ownership of them is confirmed by the abstract from the system operated by an intermediary - account producer (commercial bank or brokerage company), this form is highly dependable on modern technologies and allows to easily carry out number of transactions on securities daily. This becomes a prerequisite of rapid development of capital market and economic growth.

It should be noted that Georgian law outlines "non-materialized" securities, the definition of which is confusing and does not create legal clarity for investors. Namely, the Law of Georgia "On Securities Market" describes the non-materialized security as a security inapplicable in paper form, but existing in the form of a record in securities register or in records of nominee holders in the name of the registered owner or the nominee holder. This definition reflects characteristics of a registered security, that is issued in the central depository, and related transactions are carried out by way of crediting and debiting at securities accounts, and its finality does not depend on making entries in the register by registrars. It should also be noted that in the Civil Code of Georgia there is no reference to the concept of dematerialized securities at all.

Considering this gap, it should be noted that the adoption of the draft law will better guarantee the protection of investors' property rights, as well as provide legal clarity with regard to dematerialized securities. The legal framework related to the ownership of securities will be in line with international standards, that will also facilitate attraction of foreign investors and ultimately develop capital market in the country.

## **12. Amendments to the Code of Spatial Planning, Architectural and Construction Activities of Georgia, and the Product Safety and Free Movement Code**

According to the amendments, made on July 12, 2021:

- It is prohibited to operate building and structures unless their exploitation is

approved. This restriction does not apply to the facilities with the construction permit prior to January 1, 2022;

- Temporary rules and conditions for approval of exploitation of constructions carried out in violation of permit conditions within the administrative boundaries of Tbilisi Municipality have been established.
- At the same time, the rules have been introduced on exemption from fines / penalties within the administrative borders of Tbilisi for persons being liable for infringement(s) under the Code of Spatial Planning, Architectural and Construction Activities of Georgia and the Product Safety and Free Movement Code.
- Exemption from liability applies to the cases where, after infringement, no proceedings regarding infringement of construction activity have been initiated against such persons or although proceedings are initiated, but no decisions are made.

This regulation does not apply to non-payment of the amount set for the increase of the land lot development intensity coefficient (k-2).

Within the package of amendments, criminal liability is introduced for non-compliance with the decision to suspend construction if it is committed by a person under administrative liability.

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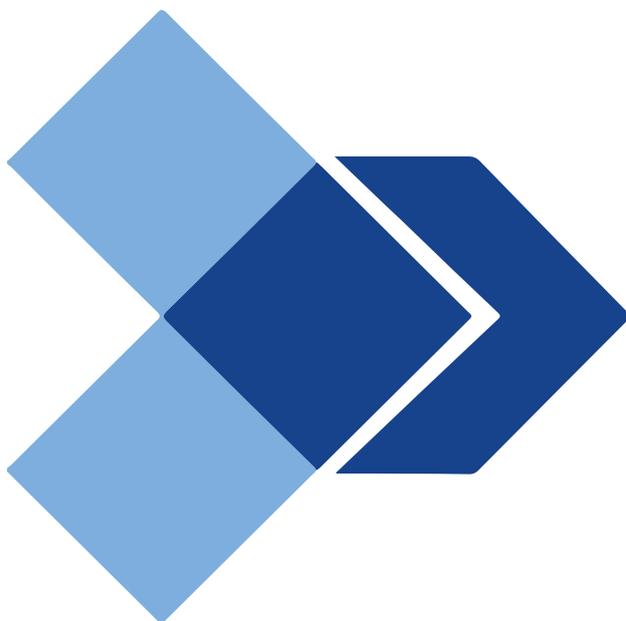
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