



LEGAL NEWSLETTER

June-August
2011

The objective of BLC Legal Newsletter is to keep you fully informed of major legislative developments in Georgia.

In the last issue, we had outlined major features in the field of e-government, available digitalized services, banking law, new Georgian brand for service delivery and other novelties. There are other important legislative enactments waiting in the wings so Keep watching this space for updates on developments in Georgian legislation.

In the foregoing issue of the BLC Legal Newsletter we bring you a write-up on the recent developments in the field of Civil Law, Enforcement, Bankruptcy, Construction and other novelties. Suggestions and comments are welcome.

Hoping to have added some value to your reading on legal framework in Georgia.

Sincerely,

BLC Team

Legal amendments effected throughout June-August 2011:

- *Amendments have been carried out with regard to registration and operation of the non-commercial legal entities.*
- *National Bureau of Enforcement (NBE) has combined new functions.*
- *Rules of conducting the e-auction have been modified.*
- *Several provisions have been added to the Law of Georgia on Entrepreneurs, clarifying issues on reorganization and liquidation of the Company and respective legal consequences thereof.*
- *Procedural amendments were introduced requiring registration of certain decisions of the NBE in the National Agency of Public Registry.*
- *Exhaustive list of the countries considered to be in the area of the suspicion zone has been defined.*
- *New citizenship-related e-services have been adopted.*

Civil Code

On July 5th, 2011 amendments were introduced to the Civil Code of Georgia, governing the matters relating to the registration and operation of non-commercial legal entities in Georgia. As a result of the amendments, religious communities can now acquire status of a “legal person of public law” (LPPL), whereas previously such organization had to carry out their activity in Georgia under the legal status of “non-commercial (non-for-profit) organization”. According to the amendments, National Agency of Public Registry is authorized to register as legal person of public law those religious movements which have historical connection to Georgia or religious movements which are recognized as religion under the laws of the Member States of European Councils. However, the law does not prohibit registration of religious organizations as non-commercial legal entities as it was practiced previously. Moreover, according to the new law, Law of Georgia on Legal Entities of Public Law does not apply to such religious communities and their registration procedure, which is further regulated under the Civil Code of Georgia. Accordingly, regardless whether the religious community is registered as the legal person of public law or as non-commercial legal entity same registration procedure shall apply and the activity shall be governed by the same provisions of the Civil Code of Georgia.

Enforcement

Significant amendments have been introduced to the Law on Enforcement Proceedings of Georgia, under Order #221 of the Minister of Justice of Georgia adopted on September 30, 2008, Order #144 of the Minister of Justice of Georgia adopted on July 30, 2010 and Order #21 of the Minister of Justice of Georgia on “Forms, Procedures and Rules on Conducting Involuntary Auction adopted on January 31, 2011”.

According to the amendments, the rule of conducting an E-auction by National Bureau of Enforcement of the Ministry of Justice of Georgia (NBE) was changed. Namely, in case the property is not realized at the initial auction, the first repeated auction will be announced. The bidding will start from 25% of the property realization price. If the property is not sold at the first repeated auction, the National Bureau of Enforcement will announce the second repeated auction. The starting price at the second repeated auction is 0 GEL. If the property is not sold at the second repeated auction, the enforcement proceeding shall be terminated and the property shall be released from the seizure attached thereto in favor of the creditor conducting the involuntary realization. The law prohibits applying to the NBE for the involuntary realization of the property based on the request originating from the same subject matter as it was conducted previously. Thus, the enforcement paper invalidates after the second auction in the above stated case and the property shall be returned to the debtor. Previously,

only one repeated auction had been conducted for the realization of the property by NBE before the amendments took effect. In case the property was not realized, the creditor was allowed to acquire ownership over the property directly. Pursuant to the amendments, the delivery of the property in kind will hereinafter be allowed only in case it is delivered to the state ownership, if the enforcement proceeding will be conducted in favor of the state and local self-government bodies and the National Bank of Georgia. Furthermore, NBE was granted new functions. According to the amendments, from 1st July of 2011 any interested individual (an owner, a co-owner, a debtor or a creditor) having the court decision and the enforcement paper are allowed to apply the Valuation Agency of the NBE in order to evaluate the property. Above mentioned order #144 of the Minister of Justice of Georgia, provides for the respective fees, which will be charged by the NBE for defining the market price of the respective movable and immovable property.

Furthermore, NBE will also combine its functions with the following responsibilities: bankruptcy/rehabilitation trustee, also the auction-related services in connection with the insolvency proceedings.

And lastly, the NBE was granted the authority to issue legal acts electronically (through automatic means of management), including the acts with regard to appointing the involuntary auction, originating the right over the property and revoking the outcome of the auction. The decision can be published on the official website of the NBE or other official website, defined by the Ministry of Justice. The excerpts of the legal acts issued in above stated manner, shall have the same legal effect as the acts issued through electronic means and shall not require certification of the authenticity of the document.

Citizenship

Public Service Hall offers comfortable way to solve citizenship and migration issues, by issuing respective decisions online. In order to receive an online information on granting or termination of Georgian Citizenship, leaving/restoration of Georgian citizenship, right on emigration, temporary and permanent residence permit, determination and/or verification of Georgian citizenship, registration of single and multi VISA applications – Information Card is issued to the applicant, indicating specific code, enabling them to track decisions of the Civil Registry or the President on the web-page of the Public Service Hall at www.house.gov.ge. The decision published on the above stated web-site acquires legal force from the moment when it is actually published on the web.

Construction

Decree #23.06.942 of Tbilisi Government adopted on 24 August, 2011 defined the amount of fine for non-completion of the construction process within the timeline defined by the building permit, on the territory outlined in the Annex of the Decree. The fine amounts to GEL1 calculated per each square meter of the building on each delayed day at the time of composing the examination report.

Furthermore, important novelty refers to the Law of Georgia on Technical risk control. Namely: new article was introduced to the law relating to responsibility deriving from non-completing construction process within the permit-stated time limit, in the zone defined by the respective self-governing unit (municipality, Tbilisi government). In case the construction process is not completed within respective time-limit, state supervision authority (SSA) issues notification to the party in breach to cure the defect within the reasonable time. After expiration of the granted period, the SSA conducts examination and composes the examination act. If the defect is not cured, the fine shall be incurred in the amount of GEL 0,1-GEL 1 (depending on the zone), defined by the respective normative act of the self-governing unit. The person in breach is obliged to notify the SSA in writing about the event of curing the defect of the construction process.

Most importantly, in those cases when the fine (pursuant to the paragraph 4 of the Article 14) was imposed for the breach of the obligations under the above stated law before the amendment came into effect and which is not remunerated yet, new 3 month term was granted for curing the defect, releasing the person from paying the amount of fine imposed.

Law on Entrepreneurs

By virtue of the amendments carried out to the Law of Georgia on Entrepreneurs on June 24, 2011, certain issues have been clarified and regulated in more comprehensive manner. For instance the law exhaustively regulates reorganization of the company (transformation, merger, division) and respective consequences pertaining thereto in the separate article, whereas previously the regulation was ambiguous and was combined in the same article with liquidation. Furthermore, the basis for revocation of the decision of the Public Registry on registration of the entity and its consequences were regulated separately as well. The previous addition of the law provided these bases in several articles, making it difficult to follow.

Amendments also impose the requirement on the interested party, referring to the Public registry for registering respective entrepreneurial entity, to present document demonstrating the consent of the person with managerial/representative authority. Furthermore, if the documents do not indicate the term of the authority of such

person, than s/he shall be considered to be appointed for the indefinite period of time.

For simplifying and accelerating communication with the Public Registry, respective person registered in the above mentioned state authority, among other information is authorized to register its phone number and e-mail address as well, which shall be designated for communication purposes with this person, as a result of which serving electronic notification on such address shall be considered officially delivered.

Securing the interests of the creditors, the novelty also authorizes to register the preliminary ownership right over the shares of the Company, similarly as it is carried out with regard to the immovable property.

Amendments have also affected the liquidation procedure of the entities. Namely, after the commencement of the liquidation process is registered in the Public Registry, the aforementioned authority issues electronic notification to the Revenues Service of the Ministry of Finance, which informs Public Registry about risks pertaining to the tax liabilities of the Company and respective tax inspection (if necessary) within 10 days after receiving such notification; Tax inspection shall be conducted within 90 days after commencement of the liquidation process. The stated term may be prolonged no longer than for 2 months. If the Tax authority fails to provide the Public Registry with respective information in 10 days, it shall be deemed that the Company does not have any tax liabilities.

Insolvency

New chapter was introduced to the Law of Georgia on Insolvency Proceedings under the Law of Georgia No.4948-RS, adopted on June 24, 2011, related to the registration of the decisions pertaining to the insolvency proceedings. Precisely, the decisions referring to commencement/termination of the insolvency/rehabilitation/bankruptcy proceedings, appointing the bankruptcy/rehabilitation trustee, termination of the bankruptcy/rehabilitation proceedings and revocation of the registration of legal entity on this basis - have to be registered with the Public Registry. The above stated decisions have legal force only after such decision is registered with the above indicated authority.

According to the amendments, functions of the bankruptcy trustee have been transferred to the NBE. The amount of remuneration for the services rendered by the NBE is defined by the Minister of Justice. Whereas previously, the trustee was independent person appointed by the parties, party of the Georgian Bar Association or the auditor of the Professional Organization.

Furthermore, the procedure on defining the realization price of the property to be sold on the auction was

changed. First auction price was set at 50% of the market value of the property (whereas previously first bid constituted the market value of the property). The second auction price of the property to be sold constitutes 25% of the initial price defined at the first auction.

Illicit Income

Amendments were carried out to the Law of Georgia on Facilitating the Prevention of Illicit Income Legalization on July 01, 2011, pursuant to which the identification of the non-cooperative or watch zone as well as suspicious financial institution was granted to the National Bank of Georgia (NBG), whereas previously such power was vested with the Government of Georgia. Following the above stated amendment, the Order #65/04 of the President of the National Bank of Georgia was adopted on August 24, 2011 defining suspicious zones and enlisting 42 countries for consideration of the Financial Monitoring Agency (FMA).

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