



LEGAL NEWSLETTER

September-November
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 recent developments in the field of Civil Law, Enforcement, Bankruptcy, Construction, etc. 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 Banking and Finance, Privatization, Tax law, Enforcement 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 September-November 2011:

- *New form of privatization of the state owned property has been introduced*
- *President of the National Bank of Georgia approved instructions on carrying out operations concerning cash and other valuables by commercial banks*
- *Entirely new piece of legislation was adopted on compatriots residing abroad and Georgian Diaspora*
- *Major legislative amendments affected rules regulating finance lease*
- *Number of International treaties were ratified by the Parliament of Georgia*
- *Electronic procedure for issuing the construction permit has been established*
- *Law of Georgia on Enforcement proceedings introduced new rule regarding the tax claims*

Banking & Financing

The Order No.7/01 of the President of the National Bank of Georgia (“NBG”) on approving instructions on carrying out operations concerning cash and other valuables by commercial banks dated January 29, 2010 foresaw extensive amendments in October. Namely, the President of NBG issued new Order No.89/04 dated October 25, 2011. The novelty introduced through the above amendments mostly concerns the data and information on the client and the bank to be envisaged in the payment documentation for the purposes of fighting against terrorism and money laundering.

On October 26, 2011 amendments were introduced to number of bylaws on receiving, sorting, processing of information and delivering it to Financial Monitoring Service of Georgia (“FMS”) approved by the Head of the FMS. The adoption of the above amendments were required for launching of new system of submitting information to FMS on transactions subjected to special monitoring and control and concerned every financial institution: commercial Banks, micro financial organizations, non-banking depository institutions – credit unions, registrars of securities, brokering companies, insurance companies and non-state pension funds, currency exchange points and simply entities carrying out money transfers.

As a result of the above amendments, new guidelines were established for financial institutions on providing information on suspicious transactions. Notably, the novelty introduced merely changes the manner of furnishing FMS with information and does not broaden the scope of the transactions itself which are subjected to additional scrutiny from the side of FMS. However, one thing that is worth noting in the new regulations is that financial institutions shall now be liable to inform the FMS if they have a reasonable doubt to suspect that the identification information is not true and accurate. As for the new method of submission of information to the FMS, all financial institutions operating in Georgia shall now fill out respective applications through FMS web portal and submit the respective information in electronic form. Most importantly, all financial institutions mentioned above had to undergo the registration with the FMS anew until December 1, 2011, save for currency exchange points new registration of which can be carried out until January 2012.

Privatization

Another very important novelty introduced to Georgian legislation in October 2011 was number of amendments and supplements to the Law of Georgia on State Property and the Law of Georgia on Entrepreneurs introducing new form of privatization of State owned property. As a result of the above amendments, namely the law of Georgia No.5063-IIs

dated October 11, 2011 the sale of portions or shares or certificates representing shares, directly or through intermediaries, by way of a private placement or public offering on a recognized stock exchange of a foreign country or otherwise in compliance with the practice then established on international capital markets, was added as one of the options of privatization of the State owned property. Most importantly, these amendments enables State owned enterprises or companies where the State has certain shareholding interest to raise capital by means of listing their shares, notes or other securities on foreign stock exchange. Consequently, this novelty can be considered as important step forward to bringing Georgian economy to the next level.

Following enactment of the above law, corresponding amendments were made to the implementing legislation. Namely, the Minister of Economy and Sustainable Development of Georgia adopted new rules on privatization of portions or shares or certificates representing shares through the sale, directly or through intermediaries, by way of a private placement or public offering on a recognized stock exchange of a foreign country or otherwise in compliance with the practice then established on international capital markets. The rules were adopted through the Ordinance No.1-1/2459 dated November 24, 2011 and mainly set forth the particular procedure applicable to the above option of privatization. The Minister of Economy and Sustainable Development of Georgia further altered the rules on defining particular forms of privatization of portions and shares owned by the State and their transfer from Enterprise Management Agency to third parties with the right to manage. Precisely, private and public placement on stock exchange was determined as one of the forms of privatization of State owned shares through the Order No.1-1/2458 dated November 24, 2011.

Finance Lease

Major legislative news of October 2011 was enactment of entirely new rules regulating finance lease (leasing) under the Civil Code of Georgia. Prior to adoption of new law No.5119-IIS on October 13, 2011, finance lease was regulated by several poor and rather general provisions of the Civil Code of Georgia. This resulted in the necessity to regulate the finance lease related activities under different legal acts. However, as a result of the amendment introduced in October 2011, finance lease related regulations under the Civil Code of Georgia were substantially altered. Among others, the following novelties can be outlined in finance lease regulation: the new rules under the Civil Code of

Georgia obliges the lessor to assign to lessee all of its rights to claim performance of contractual obligations vis-à-vis the owner of the assets to be leased, the owner and the lessor are precluded from entering into the deal prejudicing interests of the lessee without prior consent of the latter. Most importantly, the terms referred to above are mandatory under the law and cannot be opted out even under the agreement of the parties. The law further determines passing of the risk to the lessee, conformity of the leased assets, termination of the finance lease and other material terms of the finance lease agreement. Notably, the Law of Georgia on Promotion of Leasing adopted on May 7, 2002 which initially served as supplementary means of regulation of leasing in Georgia was entirely abolished.

The new law took effect from October 28, 2011 and shall apply retroactively, in terms that it shall only govern those lease agreements which are concluded following enactment of the new law.

Georgian Diaspora

Entirely new piece of legislation was adopted on November 24, 2011 on compatriots residing abroad and Georgian Diaspora organizations. The announced purpose of the law is to define state policy with regard to Georgian compatriots residing abroad and determine legal status of compatriots and Georgian Diaspora organizations operating abroad. According to the new law, any matured person currently residing abroad having Georgian citizenship or having Georgian origin and/or whose language is considered to be of Georgian-Caucasian language family, shall be entitled to request status of Georgian compatriot. Notwithstanding this, law also includes certain exceptions where the President of Georgia is entitled to grant this status to the person who although does not meet the above criteria, but granting this status is within the state interests of Georgia. The rights and benefits attached to the status of Georgian compatriot can be summarized as follows; a person having the above status is entitled to participate in sport competitions in the name of Georgia and be member of Georgian national sport teams, cross Georgian border and reside in Georgia for not more than 30 days without obtaining Georgian visa, pay reduced fee while applying for Georgian citizenship and obtain studying grants issued by Georgian Government to Georgian citizens for receiving secondary and high education in Georgia. In addition, status of Georgian compatriot will be verified from special identification cards certifying the fact that the card holder enjoys the status of Georgian compatriot.

Subsequent amendments were introduced to the Law of Georgia on Legal Status of Aliens, where Georgian compatriot card was defined to be a document certifying the fact that it's holder legally resides in Georgia during consecutive 30 calendar days.

The law shall take effect from March 1, 2012

Immovable Property

In our Newsletter September-January 2010/2011 Issue we discussed the amendments introduced to the Civil Code of Georgia on March 3, 2010. Namely, the novelty concerned acquisition of the immovable property and set out mandatory non-cash settlement procedure. According to this new rule, if immovable property is acquired through sale-purchase agreement the purchase price shall be paid by means of wire transfer through commercial banks, unless the purchase price is paid in installments. As the new rule takes effect from January 1, 2012 we would hereby like to remind our readers of this new procedure.

On October 11, 2011 the Parliament of Georgia issued new law No.5095-IIS introducing amendments to the Law of Georgia on Partnership of Apartment Owners. Amendments mainly concerned the right of each individual owner to develop its property without approval of the rest of the members of partnership. Namely, according to new law, individual owner may carry out certain activities (repair, reconstruction, etc.) aimed at developing the property without consent of the partnership as long as the area of the property is not increased or entirely new facility is not created as a result of such activities.

International Treaties

Number of international treaties was ratified throughout the months of November and October by the Parliament of Georgia. Namely, on October 13, 2011 the Parliament of Georgia approved the Financial Protocol between the Government of France and the Government of Georgia of 7th of October of 2011. Another very important treaty on Avoidance of Double Taxation of Income, Capital Gains and Prevention of Tax Evasion with India was ratified on October 25, 2011. And lastly, Agreement on Financial Cooperation between the Government of Georgia and the Government of Germany was likewise ratified on November 11, 2011.

In addition, President of Georgia issued the Ordinance #731 dated November 16, 2011, approving the Bilateral Agreement between the Government of Georgia and the Government of Russia regarding basic principles of customs administration and trade monitoring mechanisms, signed between the parties on November 9, 2011.

Licenses and Permits

Important novelty introduced to the Law of Georgia on Licenses and Permits on October 11, 2011 refers to the issuance of the construction permit (covering all three stages) electronically. Although, the amendments are

already effective, this novelty has not been implemented in practice yet. However, respective measures are processed by the permit issuing authority in order to enable permit issuing procedure electronically.

Amendments have also affected the Law of Georgia on Technical Risk Control as well, introduced on October 11 of 2011. Namely, new Article 232 was adopted regulating the issue with regard to the buildings/constructions located in the respective zones (defined by the Decree of the municipality, Government of Tbilisi) that are abandoned/non-functioning, not being used for the commercial purposes, for residence or other public purpose. From now on, owners of such buildings are obliged to obtain the building permit within 6 months from the registration of the ownership title over such property and/or termination of the functioning of the building/construction. The same refers to the person, who purchases the land on which such building/construction is located or if the person demolishes the building/construction himself. Above stated limitation/obligation is registered in the National Agency of Public Registry.

Most importantly, if the person fails to obtain the respective permit in above indicated 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) per square metre, defined by the respective normative act of the self-governing authority. In case and if after the composition of the examination act and within expiration of the 6 months, the party does not obtain the permit or pay the imposed fine, the respective authority issues the Decree on forced realization of the property. Such decree shall be enforceable under the Law of Georgia on Enforcement Procedures.

Tax

In October 2011, the Parliament of Georgia adopted law #5120 carrying out amendments to the Tax Code of Georgia. Among others, amendments refer to the following:

Free warehouse enterprise definition and related provisions have been removed and provisions on a Special Trading Company (STC) were added in the Tax Code of Georgia. Amendments define the rules for obtaining such status and

lists operations that are permitted or prohibited for the said company, as well as penalties for violation of the STC.

Furthermore, the permitted duration for the storage of goods in the warehouse, placed under the special customs regime, has been defined at 5 days. As for the export of goods, the term of the storage is defined at 120 days.

Minister of Finance of Georgia, approved the amendments to the Instructions on administration of taxes and on the rules of current control procedures, writing off inventory items, enforcement of tax arrears collection and handling tax violation cases in October of 2011. By virtue of the amendments, restaurants were entitled to deduct expenses without presenting supporting documentation. However, this authority refers only to 20% of their total revenue. Furthermore, in case of transferring of fuel, lubricants and other auxiliary goods intended for the supply on board for international air and international marine travels, the tax payer is obliged to complete new form, the template of which is attached to the respective Instructions indicated above. And lastly, the novelty entitles the tax authorities to perform stock taking of inventory items of a taxpayer on a selective basis, without the court order.

Enforcement

Very important amendments were introduced to the Law of Georgia on Enforcement proceedings on November 11, 2011. As a result of the new rule, if the basis of tax claims (and not the registration of tax mortgage/pledge) predates the collateral registered in favor of the commercial banks registered in Georgia, microfinance organizations, insurance organizations or any other financial institutions, the tax claims should be satisfied prior to satisfaction of the claims of those financial institutions, even if collateral of the above stated institutions was recorded as a first ranking security. In case enforcement of the decision on realization of the property encumbered with the tax pledge/mortgage is carried out, all property rights registered after originating of the tax claim shall be invalidated and the title over the property shall be transferred to the new buyer clean from any encumber.

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