



LEGAL NEWSLETTER

June-August 2013

Dear reader,

The objective of this newsletter is to inform you on recent major developments of Georgian legislation with regards to the employment relations and ownership title over agricultural land.

In this last issue we shall briefly outline main changes introduced in the respective laws and elaborate on their impact in practice. Suggestions and comments are welcome.

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

Sincerely,

BLC Team

Legal amendments:

- ***Amendment to the Labor Code of Georgia (June, 2013);***
- ***Amendment to the Law of Georgia on the Ownership of Agricultural Lands (June, 2013);***

Labor Code

The Labor Code of Georgia (LCG) is generally well-known for its “freedom of contracts” approach, thus providing a broad room for interpretation and soft hiring-firing policies. New amendments to LCG adopted in June, 2013 and entered into force on July 4, 2013 tend to be more employee oriented introducing certain principles and provisions for the purposes of protecting the latter’s interests.

Now the Code specifically requires conclusion of employment contract (EC) in writing unless it is made for a period shorter than 3 months.

LCG introduced the so called “garden leave” clause that can be included in EC and obliges the employee not to use the knowledge and qualification acquired while working for the benefit of the employer’s competitor, subject to being compensated as prescribed by law.

LCG recognizes restrictions on fixed terms for which EC can be concluded. A standard duration of EC should exceed one year. Code allows concluding EC for less than a year under specific circumstances exhaustively listed in respective article. This and other restrictions related to fixed term contracts do not apply to the “start-up entities” qualified as such if registered for the period less than 48 months, provided that the additional provisions set forth by the government (if any) are met. In any event, the ECs concluded by “start-ups” should still be made for the period not less than three months.

Amendments impose certain restrictions on termination of ECs. Article 37 now provides for the exhaustive list of grounds for termination. Employee may not be dismissed without cause, however employer is given an opportunity to extend this list by “other objective reasons that justify the dismissal”. Following this novelty, the employer is obligated to “justify” termination of EC to its employee in writing within 7 days from serving notification on termination. In absence of

such justifiable explanation, the employer bears the burden of proof in courts. In the events of statutory termination, the amount of severance pay varies, based on the applied manner, time interval between the notification on termination and termination itself, as well as the grounds of termination and can either amount to one month or two months’ salary. Notably, it is now a statutory obligation of the employer to reimburse terminated employee for the days of unused paid leave.

Applicable to the large employers terminating EC with more than 100 employees, Code provides for the obligation of the employer to notify the Ministry of Health, Labor and Social Security (the “Ministry”), however an approval of any kind is not necessary.

In contrast to previously enforced provisions, amendments set limit for weekly working hours, above which any work performed is regarded as overtime and should be compensated on an hourly basis. Standard duration of work is fixed at 40 hours per week. Most notable that reimbursement of overtime work should exceed the proportional part of hourly regular salary.

One of the distinctive features of amendments is that it allows going for a strike based on an individual labor dispute, along with the collective one, effectively meaning that a single employee is entitled to go on strike. However LG also entails certain prestrike procedures to be observed by the employees in order for a strike to be deemed legitimate. Most notably, in the event of a collective labor dispute, employees are not entitled to commence actual strike until the 21 days period expires from the appointment of a relevant dispute mediator by the Ministry.

LCG provides for a freedom of forming unions not only for workers, but also for employers. Collective labor agreement can be concluded between multiple employers (employers’ union) on one side and multiple workers’ union on the other. There is

no obligation of an employer to conclude collective agreement, however it is nevertheless obliged to enter into good faith negotiations, aimed at concluding one.

LCG sets paid leave period at 24 working days and unpaid leave period at 15 working days (at least). Moreover, it introduced the requirement of giving additional 10 days paid leave to the employees working on hazardous, heavy and dangerous works. It also increased the amount of consecutive sick leave days that can be allowed to the employee (before the absence of the employee can be deemed as temporary disability and, therefore, serve as a basis for EC suspension), from 30 days to 40 calendar days.

Agricultural Lands' Ownership

Amendments made to the Law of Georgia on the Ownership of Agricultural Lands in June 2013 and effective since July 17, 2013 restrict foreigners, including foreign individuals, foreign legal entities and Georgian companies with foreign partners from owning agricultural lands in Georgia. Paragraph 1¹ of Article 4 of the Law listing aforementioned persons amongst those being able to own agricultural land in Georgia, has been suspended until December 31, 2014. Within the same period the government should elaborate new state policy for effective use and protection of agricultural lands.

Amendments do not apply to the agricultural lands owned by foreign individuals, foreign companies or Georgian companies who purchased land plots before adoption of this new amendment. Thus its effect restrains only those endeavoring to purchase agricultural land after July, 2013.

Currently registrations and re-registrations affected to the shares of entities holding agricultural lands in Georgia are complicated due to the requirement of the Georgian shareholding given above. Thus, foreigners and Georgian entities with foreign shareholders shall encounter problems in selling not only the title to the lands but their respective shares.

Also notably, individuals/entities, whether Georgian or foreign, wishing to change the status of land plots from agricultural to non-agricultural encounter certain practical constraints (effective August 2013). Since the status change was a standard procedure carried out by the land owner before selling the land plot to the foreigner and provided that it is problematic for the state entity to track down subsequent owner of the land plot after changing the status, such status alterations were practically suspended, without amending any applicable law.

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