

## Tax Legislation Updates

In February 2021, no significant changes were made to the Georgian tax legislation.

## Other Legal Updates

### New Bill on the Law on Entrepreneurs

After almost eight years of preparation, the new bill on the law on entrepreneurs has been registered in the Parliament of Georgia for consideration.

The drafting of the bill was conditioned by many factors. The existing Law on Entrepreneurs does not regulate many aspects of entrepreneurial relations, which creates significant barriers for the development of entrepreneurship, resolution of internal matters of the companies and protection of investors and third parties. All this is due to the fact that the existing law recognizes the principle of freedom of the parties to resolve corporate legal relations, and thus the development of business relations is largely entrusted by law to the companies' bylaws. The result of a lack of legislative regulations is the low standards of corporate governance in the country in terms of protection of partners' property rights, accountability, financial rights and corporate practice, which often propels lengthy and costly litigations.

In order to solve the existing problems, the new law proposes to regulate all theoretical and practical shortcomings as much as possible, accordingly, the draft law took into account the research of academic personnel, existing case law, as well as international experience, largely through the transplantation of the rules reflected in the EU corporate directives.

There can be mentioned the following novelties, proposed by the bill:

- The bill separates corporate-law legislative rules as imperative and default rules and establishes that unless the law explicitly indicates that the shareholders may agree otherwise, in case of corporations (Joint Stock Companies) all legal rules are imperative. In

the case of other business organizations, unless the regulation concerns the interests of third parties, all legal rules are default and may be varied by agreement.

- It is going to be separated from each other articles of incorporation/organization and bylaws/operating agreements. Articles of incorporation/organization will be standardized forms approved by the minister of Justice of Georgia and will include basic information, while corporate bylaws/operating agreements shall serve the purpose of company "constitution" and will be individualized documents.
- The rules governing business organization name in case of sole proprietorship are going to be changed and the bill anticipates that like other business entities, sole proprietor may also conduct business under an assumed name.
- The draft law establishes the minimum requirements of a business letter and the rules for submitting a notification.
- The contribution to the capital of the corporation (joint stock company) and the cooperative cannot be the provision of services or performance of work.
- The bill distinguishes from each other the types of capital. Subscribed capital is the amount agreed upon by the founding partners and indicated in the bylaws/operating agreement. The existence of subscribed capital other than to a joint stock company is not mandatory for other forms of business entities. By its nature, the subscribed capital is the equivalent of "Charter Capital".
- The rule of holding a general meeting of partners/shareholders provides for the possibility of convening a meeting only once and determines that the decision will be considered adopted regardless of the number of partners present at the meeting.
- One of the key shortcomings in the existing law on entrepreneurs is the so-called deadlock case related to the appointment of a director. In a business entity, where there is an equal number of votes between the partners, in the event that no agreement is reached on the appointment of the director, the court has no jurisdiction to intervene and appoint the

director of company. This shortcoming will be eliminated after the adoption of the bill, as it provides for the appointment of a manager by the court on the basis of a partner's application.

- An important novelty of the draft law is the introduction by the law of such corporate-law institutions as the so-called "business judgment rule" and the "appropriation of business opportunities".
- The draft law regulates the issues relating to reorganizing of the business association (transformation, merger, division) and transferring of the registration of an entrepreneur registered in a foreign country to Georgia. The draft law regulates the process of merging and dividing entities, including identifying the different types of mergers and divisions.
- The novelty is the possibility of dissolution of the entrepreneurial entity by the court on the basis of a partner's lawsuit.
- The business name of a general partnership, whose member will be legal entity with limited liability (a limited liability company, a joint-stock company/corporation, a cooperative) shall include appropriate indication: "Limited Liability General Partnership" or "Limited Liability Cooperative".
- The novelty concerns the powers of persons to manage and represent the limited partnership, in particular the limited partner may be given the authority to manage the limited partnership by the decision of the general partners by the articles of organization, while the representation authority may only be given to them by proxy, as a contractual representation, by the decision of the general partners.
- In order to facilitate the fundraising in a limited liability company, it is permissible to divide the shares into classes like in a joint stock company. Limited liability company will be allowed to issue shares with both nominal and non-nominal values. The LLC will also be entitled to have subscribed capital, the amount of which should not be less than the nominal value of the total shares.
- An important novelty in the rules concerning LLC will be distribution of dividends, which will be allowed both in the presence of profit in the company, as well as in the absence of profit, if the company will have net assets or if the net assets of the company exceed the subscribed capital.
- The new bill regulates issues related to the withdrawal and expulsion of a partner from the company, which is one of the most problematic in Georgian legal research and court practice.

- It is important that the bill prescribes a minimum capital requirement for the establishment of a joint stock company, in particular, the minimum subscribed capital of a joint stock company may be equivalent to EUR 25,000 in national currency. At the same time, the regulation of the law will apply to the existing joint stock companies, in particular, the existing joint stock companies will have two years from the entry into force of the law in order to comply with the minimum capital requirement.
- The draft law envisages a maximum term of five years for filling the subscribed capital of a joint stock company. The reduction of the contribution period may be anticipated by bylaws, but the increase of the period will not be allowed. Violation of the subscription deadline will result in negative consequences for the shareholder, such as accrual of interest on the non-payment, as well as deprivation of the share and loss of partially paid contribution.
- In addition to the obligation to create and maintain capital, the shareholder of a joint stock company will be obliged to provide certain types of information to the company.
- The right of a shareholder to receive a dividend proportional to the amount of his shares in the subscribed capital may be limited in certain cases.

The new law on entrepreneurs is expected to come into force on November 1, 2021, if adopted by the parliament of Georgia.

### The Code on Enforcement

In order to reform the law on enforcement, the Parliament of Georgia has initiated a draft Code on Enforcement, which aims to replace outdated and defective law of Georgia on Enforcement Proceedings.

The following can be mentioned among the novelties:

- Establishment of the Chamber of Bailiffs - the institution of a private bailiff and the bailiff of the National Bureau of Enforcement will be abolished, accordingly all bailiffs who enter the Chamber of Bailiffs will conduct enforcement proceedings within the territory of their action. The distribution of cases among the bailiffs will be done through the electronic system, however, after the enactment of the law, at some stage it is planned that the bailiffs will be permitted to receive writs of the creditors on the basis of the contract.
- The main function of the National Bureau of Enforcement will be to provide disciplinary,

economic and legal oversight of the activities of bailiffs. The National Bureau of Enforcement will provide the auction services for bailiffs, as well as it will perform the functions of a property trustee and/or bankruptcy trustee during insolvency proceedings.

- The draft law creates the position of inspector, who will be an employee of the National Bureau of Enforcement and will have the power to enforce only certain categories of cases.
- The bill changes the competence of the National Bureau of Enforcement within the framework of simplified case proceedings, in particular the Bureau will be authorized to register a civil transaction and issue a monetary debt repayment order only in respect of claims arising from registered contracts.
- The rules for suspending the execution of a court decision are also changing - the execution of a decision made by a court can be suspended only by a court, on the motion of the National Bureau of Enforcement or the Prosecutor's Office.

- A new function is added to the National Bureau of Enforcement - fulfillment of obligations by deposit. The bureau will have the right to deposit the items, while the notary will still have the authority to deposit the money and securities.

In order to properly prepare for the relevant changes, it is planned that the bill, if adopted, will come into force on October 1, 2021.

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