

## BGI Law Brief

December 2023

### New Law on Securitization

On 15 December 2023, the Parliament adopted the Law on Securitization, which is a novelty for Georgian legislation aiming at developing local capital markets by introducing new class of debt securities and creating opportunities for new participants to access the local market. Securitization implies a process, where the initiator (person willing to receive financing) transfers to the securitization special purpose entity (issuer) its credit position (any future income that is foreseeable and arising from the contract, with the right of claim against third parties, at predetermined schedule), in return to which the initiator receives funds from the issuer. Based on the credit position received from the initiator, the issuer issues securitization instruments (securities, other financial instrument, units of securitization funds, shares of the securitization company, debt obligations), which can be offered to the investors. The issuers may be established in the form of a securitization fund or a securitization company, which shall be subject to supervision by the NBG. The law envisages adoption of various additional legal acts for the implementation of the new framework.

The law shall enter into force on 1 April 2024.

### New Law on Supervision of Financial Conglomerates

On 29 November 2023, the Parliament adopted the Law on Supplementary Supervision of Regulated Companies in Financial Conglomerates. The law has been adopted within the scope of fulfilment of harmonization obligations under the EU-Georgia Association Agreement and aims at harmonizing local legislation with the EU Directive 2002/87/EC on the Supplementary Supervision of Credit Institutions, Insurance Undertakings, and Investment Firms in a Financial Conglomerate.

The new law introduces the definition of a financial conglomerate, which is a group/subgroup of the regulated companies (i.e., commercial banks/insurance organizations/reinsurance organizations/brokerage companies/asset management companies) meeting special preconditions outlined under the new law. According to the law, the State Insurance Supervision Service, as

well as the NBG are granted supplementary supervisory authority over the members of the financial conglomerate and shall have access to any information required to carry out the supervision. In the event of violation of the requirements under this law, the supervisory bodies may introduce sanctions.

The law entered into force on 19 December 2023.

### New Law on Holding of the Dematerialized Securities

On 16 November 2023, the Parliament adopted the Law on Holding of the Dematerialized Securities, which is a novelty to Georgian legislation. The law is applicable to the dematerialized securities held in Georgia, covering any types of securities regulated by the Georgian legislation. Dematerialized securities are defined as securities that exist solely as a book-entry and are generic by legal nature. The respective amendment to the Civil Code establishes that the statute of limitation for the claims with respect to the dematerialized securities is 30 years from the date of fulfillment of the relevant obligations. The turnover of the dematerialized securities is conducted by their crediting or debiting on the respective account holders' securities accounts. Apart from the provisions covering the turnover of the dematerialized securities, the law covers, *inter alia*, the issues related to liquidation of the bookkeeper (i.e., financial institution (including the central depository), which, based on the legislation of Georgia, is authorized to open, and maintain securities account for the clients). According to the law, certain issues shall be regulated by the legislation of the country where the respective securities account is opened (e.g., the requirements related to the validity of the disposal of dematerialized securities kept with the bookkeeper).

The law shall enter into force on 1 March 2024. In the meantime, the NBG shall adopt respective implementing regulations.

### New Regulation of Securities Issued by the Entrepreneurs

On 16 November 2023, the Parliament adopted amendments to the Law on Entrepreneurs, which is a part of the regulatory updates resulting from the

adoption of the above Law on Holding of the Dematerialized Securities. According to the amendments, entrepreneurial entities are authorized to issue debt securities, regulated by the Law on Securities Market. The terms for the issuance of debt securities shall be attached to their prospectus or the equivalent document on the basis of which the debt securities are issued. By purchasing debt securities, the purchaser agrees to the terms of issuance of debt securities. Debt securities may also provide for other rights, including the right of conversion into shares.

According to the corresponding amendment to the Law on Securities, the issuers of public securities are obliged to conclude agreements with the central depository, open corresponding accounts in the system of the central depository and transfer security registries to the central depository by 1 June 2024.

These amendments shall take effect on 1 March 2024.

### **The Funded Pension Law Amended**

On 1 November 2023, the Parliament adopted amendments to the Law on Funded Pension. The amendments aim at enabling the Pension Agency to manage and administer the funded pension scheme more effectively and duly secure the best interests of the participants. Among various other changes, the amendments introduce the concept of the Chief Risk Manager (the “CRM”), who shall assess the investment and non-investment risks, as well as the aggregated risks and shall issue relevant recommendations to the Pension Agency. The CRM shall be accountable to the Supervisory Board and the Investment Board of the Pension Agency.

Further, the amendments specify that pension contribution shall be paid no later than 5 (five) days after the payment of the salary. Non-compliance with this obligation shall result in liability under the Administrative Offences Code.

The amendments broaden the scope of the law and establish that it shall be applicable to the citizens of Georgia, as well as the aliens and stateless persons with permanent residence permits in Georgia, regardless of their tax residency.

Furthermore, the amendments regulate the issue of receipt by the pension scheme participant of pension assets upon permanently leaving Georgia - the participants who no longer hold the Georgian citizenship or permanent residence permit in Georgia, have the right to request the payment of the corresponding value of the pension assets on their individual pension accounts in a single payment. Such

payments can only be made in Georgian national currency and are subject to taxation under the Georgian legislation.

The above amendments shall gradually enter into force from 3 January 2024 through 1 January 2025.

### **New Law on the National Spatial Data Infrastructure**

On 16 November 2023, the Parliament adopted the Law on the National Spatial Data Infrastructure (the “NSDI Law”). The purpose of the NSDI Law is to determine the technical, organizational, and legal foundations of creation, operation, and development of the national spatial data infrastructure, as well as the facilitation of its integration into the EU Infrastructure for Spatial Information (INSPIRE). The NSDI Law envisages the creation of the national geoportal, which shall be maintained and managed by the National Agency of Public Registry and shall store the unified spatial data kept by public institutions or, in certain cases, individuals and/or private legal entities. The national geoportal shall be budget-funded and serve the purpose of facilitated exchange of the spatial data at central, regional, and local levels. The respective web portal is currently under development and can be accessed at <http://nsdi.gov.ge>.

The NSDI Law shall enter into force on 1 July 2024.

### **Parliament Adopts the New Law on Appellations of Origin of Goods and Geographical Indications**

On 21 September 2023, the Parliament adopted the new Law on Appellations of Origin of Goods and Geographical Indications (“New Law”).

The purpose of the adoption of the New Law is the harmonization of the legislation with the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as well as its harmonization with the system of geographical indications in the European Union.

The New Law is more elaborate as opposed to the existing law, contains detailed specifications of goods, regulates the contents of the application for registration of appellation of origin or geographical indication to be submitted to the National Intellectual Property Center of Georgia (“Sakpatenti”), as well as the assessment of such applications.

Further, the New Law provides that the compliance of the registered appellations of origin or geographical

indication with the specification of the goods shall be controlled by the respective state authorities.

Notably, the New Law establishes, that the appellations of origin or geographical indications, the applications for the registration of which have been submitted to Sakpatenti or which have been registered by Sakpatenti prior to the adoption of the New Law, shall be brought in compliance with the requirements of the New Law by 1 January 2031, for which no fee shall be charged.

The New Law shall enter into force on 1 November 2024 and shall substitute the existing 1999 Law on Appellations of Origin of Goods and Geographical Indications.

### **Law on the Reduction of Food Loss and Its Waste**

On 4 October 2023, the Parliament adopted the Law on the Reduction of Food Loss and its Waste and Food Donation.

The law aims at preventing and reducing food losses and food waste at every stage of the food supply chain and promoting food donation, recovery, and redistribution.

The implementation of the said law shall be supervised by the Ministry of Environmental Protection and Agriculture, as well as the National Food Agency ("Agency").

The subjects carrying out food charity activities - charity organizations/food banks and the persons donating food shall be subject to authorization and shall be registered with the respective registry of authorized persons maintained by the Agency.

The law entered into force on 24 October 2023.

### **Increase of Certain Administrative Fines**

In November 2023, the Parliament introduced amendments to the Administrative Offences Code. The amendments introduce new, higher amounts of fines for various administrative offences (and their repeated commission), *inter alia*: (i) unlicensed use of subsoil; (ii) failure to comply with land protection requirements; (iii) illegal felling and/or damage of woody plants within the boundaries of protected areas; (iv) damage to the agricultural land of the state forest; (v) illegal, unreported and unregulated fishing; (vi) exceeding the acceptable norms of acoustic noise in a residential house, privately owned real estate or social/public institution during the day or night.

### **Constitutional Court Recognizes Foreign Remote Education**

On 10 November 2023, the Constitutional Court issued its decision on the constitutional claim N1528 (*Ekaterine Pipia V. the Parliament of Georgia and the Minister of Education and Science of Georgia*).

The claim N1528 contested the constitutionality of the norms under the Law on Education Quality Improvement and its subordinate act, which establish that foreign remote education shall not be recognized in Georgia, unless the remote method of education was caused by the pandemic. The constitutional court satisfied the claim and found the said provisions to be incompatible with the Article 27.1 of the Constitution, which establishes that "*everyone has the right to receive education and the right to choose the form of education they receive*".

The decision of the Constitutional Court declares the above provisions ineffective as of 1 July 2024, thus allowing the respective authorities to bring the above legislation in compliance with the Constitution.

### **Amendment to the Capital Adequacy Requirements for Commercial Banks**

On 20 November 2023, the President of the National Bank (the "NBG") issued the Order N321/04 on the Amendment of the Order N100/004 on the Approval of the Regulation on Capital Adequacy Requirements for Commercial Banks dated 28 October 2013. Under the amendment, commercial banks are obliged to deduct a foreseeable dividend from the undistributed profit to be included in the Tier 1 Capital. This obligation does not apply to the foreseeable dividend, distribution of which does not reduce the Tier 1 Capital.

The volume of the foreseeable dividend subject to deduction from the undistributed profit to be included in the Tier 1 Capital shall be defined as the amount of dividend subject to distribution submitted for approval to the relevant division/body determined under the charter of the commercial bank. In the event that the volume of foreseeable dividend is defined as a range, the volume of the foreseeable dividend subject to deduction from the undistributed profit to be included in the Tier 1 Capital shall be the upper limit of the range.

The above amendment is in force as of 20 November 2023.



## **NBG Adopts the Rule on the Reporting of the Monitoring of AML and CFT Risks by the Commercial Banks**

On 10 November 2023, the President of the NBG adopted the Order N313/04 on the Approval of the Procedure for Filling Out and Submitting by Commercial Banks of the Reports on the Monitoring of the Risk of Money Laundering and Terrorism Financing (“**Order N313/04**”).

The Order N313/04 has substituted the existing Order N46/04 of the President of the NBG. In essence, the reporting obligations remain the same, but the Order N313/04 introduces, *inter alia*, the following new reporting forms, *e.g.*: (i) information about electronically identified/verified clients (form No. 3); (ii) information about clients identified through an agent/outsourcing service provider based on a third party (form No. 9); (iii) information on operations/transactions related to convertible virtual assets of clients (form No. 11); (iv) information about clients with a cash-intensive business profile (form No. 12); (v) information about respondent banks (form No. 13).

Further, the Order N313/04 also establishes the new threshold for the reporting of the credits written off, debt reliefs and debt assignments, which shall be subject to reporting if the respective funds per person in total and/or individually exceed GEL 50 000 (fifty thousand) throughout the reporting period – under the previous Order N46/04, the threshold was GEL 30 000 (thirty thousand).

The President of the NBG also adopted the similar normative act with respect to the microbanks (Order N312/04). These acts are effective as of 13 November 2023.

## **Parliament Adopts the Defense Code**

On 21 September 2023, the Parliament adopted the Defense Code (the “**Code**”), which shall serve as a unified codified legal act in the field of defense. The Code regulates issues related to mandatory conscription, as well as professional and voluntary military service in the state defense forces.

One of the novelties introduced by the code is that the conscripts shall retain their workplaces throughout the service notwithstanding the legal/organizational form of the relevant employing institution. Further, the conscripts shall retain the salary payments received in public service (institution), as well as other social security guarantees envisaged under the Law on Social Aid.

In addition, under the Code, the employers and educational institutions have the obligation not to hire or enroll a person who has reached the age of 17 (except for a person who is not subject to the military registration of conscripts) without a document confirming the conscript’s military registration or the removal of the conscript from the military registration. A citizen of Georgia, temporarily residing abroad, who is subject to the mandatory 4military service, is obliged to return to Georgia within a reasonable time upon receiving the relevant notification and to appear at the meeting of the draft commission.

There shall be 3 alternate options of national military service: (i) 6 months of service in a combat unit; (ii) 8 months of service in the security and supply unit; (iii) 11 months of service in a junior command position and predetermined specialty.

While the age of mandatory conscription remains unchanged (from 18 to 27 years), the code indicates, that all men up to 60 years of age, physically fit for the military service, as well as women specializing in military-registration, shall be enlisted in military reserves. Persons enlisted in the military reserves shall be conscripted (i) in the event of a martial law, state of emergency, emergency situation; or (ii) for the purposes of checking the readiness for mobilization and/or training of reservists.

Under the Code, the term of conscription of reservists for the purposes of checking the readiness for mobilization and/or training shall not exceed 15 days per calendar year.

The Code is mostly effective, however, certain parts, such as: provisions determining the new terms of the mandatory military service shall become effective on 1 January 2025.

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