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The Constitution of Georgia

On 13 October 2017, the Parliament of Georgia passed amendments to the Constitution. In fact, the Parliament has effectively adopted the new Constitution of Georgia since the Constitution was amended in its entirety. The new Constitution is set to take effect after the Presidential elections in 2018. Immediately upon adoption of the Constitution, the ruling party (majority of the Parliament) has started work to amend the entire Constitution again (although not all provisions of the newly adopted Constitution are set to be amended through the new amendment bill).

The new bill on amending the Constitution features amendments to the election system of the Parliament and the President. Pursuant to the bill of 2 November 2017, the 5% electoral threshold for political parties shall be maintained for the Parliamentary elections.

In addition, according to the new bill, as of 2024 the President of Georgia will be elected indirectly by an Election Board consisting of 300 electors. The election of the President shall require 2/3 majority of the electors. Meanwhile, in 2018 the President will be elected through direct elections for a 6-year term.

According to the bill on amending the Constitution, establishing new state taxes as well as increasing tax rates will no longer be subject to the nationwide referendum, but will be passed by the Parliament through ordinary legislative process.

Bill on Accumulative Pension

The Ministry of Economy and Sustainable Development of Georgia has drafted a bill on Accumulative Pension, which has been approved by the Government of Georgia (the “Bill”). The Bill should be submitted to the Parliament in the nearest future. The intention of the Government is to start implementation of a new pension system in September 2018.

The Bill applies to employees, citizens of Georgia, foreign citizens (except for non-resident natural persons), foreign citizens permanently residing in Georgia and/or those having no citizenship but employed or self-employed and receiving income in Georgia.

Under the Bill, all employed persons up to 40 years of age shall be required to transfer 2% of their gross monthly salaries to the state pension fund, with another 2% to be paid by the employers and 2% by the state (for those employees whose gross annual salary does not exceed GEL 24,000). In case an employee’s annual salary is within the range of GEL 24,000 – GEL 60,000, the state will contribute only 1% to the pension fund of such employee. The state will make no contribution in case the employee’s annual salary exceeds GEL 60,000.

According to the Bill, all employees under the age of 40 shall be obligated to participate in the accumulative pension scheme, except for self-employed persons who have a choice to opt out of the pension system.

For the purposes of implementation of the Bill, the Pension Agency will be established, which will be responsible for implementation, management and administration of the accumulative pension scheme. The supervisory board of the Pension Agency will carry out supervision of the activities of the Pension Agency, except for investment activities – the latter will be supervised by the National Bank of Georgia.

Once the funds are accumulated in the pension budget, the funds will be used by the state for investments purposes. To that end, the investment board will be established within the Pension Agency. Investment of pension funds will be carried out within three different risk and possible income investment portfolios. In case the person does not choose one of the portfolios, the pension funds will be invested based on the following principles: (1) for participants under the age of 40, their assets will be invested in high risk portfolio; (2) for participants between the ages 40-50 – assets will be invested in medium risk portfolio; and (3) for participants over the age of 50 – assets will be invested in low risk portfolio.

Under the Bill, the pension will be given to the person only after reaching the pension age (with certain limited exceptions). Once a pension scheme participant reaches the pension age (currently, 65 for men and 60 for women), the participant will have a choice to receive the accumulated pension as a lump-sum or periodic (monthly) payments. In case of periodic payments, the payable amount will be calculated as follows: amount of pension assets available on the personal account of the participant divided by his/her life expectancy (to be based on the data provided by LEPL - National Statistics Office of Georgia). In case the participant of accumulative pension scheme passes away, his/her successors shall receive the assets available at the participant's personal account.

According to the Bill, the investment officers of the Pension Agency responsible for investment decisions, shall be liable for losses as a result of their investment decisions only if they breach their fiduciary duties.

Constitutional Court of Georgia

On 17 October 2017, the Constitutional Court of Georgia handed down a decision on case Nodar Dvali v Parliament of Georgia, whereby it clarified the statutory rule in respect of good faith (*bona fide*) purchasers. In particular, the Constitutional Court declared unconstitutional the normative content of Article 185 of the Civil Code of Georgia, according to which *"the seller shall be deemed to be the owner if he/she is so registered in the public registry" in case when complaint is filed against such entry and the purchaser has knowledge about this fact*. Therefore, if the purchaser knew about the ongoing dispute over the purchased asset, such purchaser shall not be considered to be in good faith and thus, shall not be entitled to the protection of the law.

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