



Georgia

Deloitte Legal

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Georgian Legal News

Refer to the Law

National Bank of Georgia granted resolution powers to rescue struggling commercial banks on 20 December 2019

Amendments to the Organic Law "On the National Bank" were introduced to help the regulator swiftly identify commercial banks facing financial difficulties and preemptively resolve any problems in line with a bank's preliminary plan, and should this fail, using the National Bank's preliminary plan (resolution plan) or other resolution powers (resolution). These resolution powers are aimed at safeguarding the stability of the financial sector, especially in cases where the failure of a problematic commercial bank could have damaging consequences for the entire banking system, and therefore require the use of an alternate measure – resolution by the National Bank.

The new amendments change the definition of the term 'interim bank', which is established by the Georgian Finance Ministry. The new definition allows for the shares and assets of a commercial bank under resolution to be transferred to a third party.

According to the publication, the National Bank can open a resolution fund to effectively execute the resolution process. This fund can draw on temporary state financing by providing loans or guarantees to commercial banks under resolution or interim banks.

Resolution of the Government of Georgia "On the Conditions for Establishing a Free Zone, Amount of Due Guarantee, Rules of Operation of a Free Zone, Storage of Goods and Custom Control Execution"

The new Resolution of the Government of Georgia redefines the conditions for establishing a free zone and the guarantee amount to be provided. According to the new rules, the guarantee amount a free zone organizer must provide depends on the organizational plan: each square meter of the free zone area will require EUR 2, up to a maximum of EUR 500,000. It is noteworthy that under the previous rules, the guarantee amount was EUR 5 Euros per square meter, with a maximum of EUR 2 million.

Order N240/04 of the President of the National Bank of Georgia of 18 December 2019

An Order of the President of the National Bank has designated 25 countries as high-risk jurisdictions, pursuant to the Law "On Preventing Money Laundering and Terrorism Financing". The law defines the money laundering and terrorism financing prevention systems in these 25 countries as severely deficient. Responsible parties (financial institutions, persons conducting non-financial activities and public institutions) are requested to conduct advanced preventive measures for clients with assets in these jurisdictions, including collecting data on the property and activities of the client/beneficiary owner, seeking information to determine the nature of business relations and other measures.

Judiciary Practice

The Supreme Court of Georgia discussed the derivative suit initiation procedure for partners in corporate disputes in decision №as-687-658-2016 of 6 November 2018.

According to the court, when submitting a derivative lawsuit, the plaintiff (partner of a company) acts as a representative of the company. According to the Article 46.5 of the Law "On Entrepreneurs", if a limited liability company fails to invoke the right to claim against a third party, a partner is entitled to submit a lawsuit in name of the company and on behalf thereof. The partner shall be deemed as a proper plaintiff if the company fails to initiate a lawsuit against a third party within 90 days of the request of such a partner, or fails to prove that initiating the claim contradicts the interests of the company.

It is established in civil doctrine that if a shareholder/partner addresses the general meeting with a request to litigate and is rejected, this might deprive the shareholder/partner of the right to initiate a lawsuit. For this reason, addressing the general meeting shall not be considered as a precondition for the permissibility of a lawsuit if the partner could presume beforehand that it would be rejected, as this would make it impossible for partners in the minority to protect the interests of the company by filing a derivative suit with the court.

The court ruled that the partners in the minority shall not be obliged to pursue the formal preconditions imposed by the Law "On Entrepreneurs" to initiate a derivative suit against directors or other partners of a company in order to protect the interests of the company.

Contacts

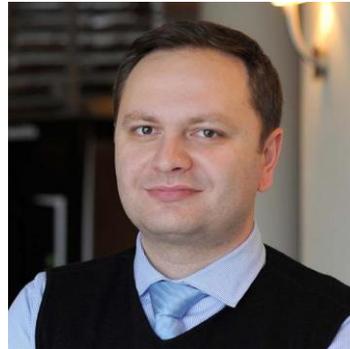
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