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# *PwC Georgia Tax & Law Brief*

1 November 2017

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## **Draft Amendments to the Law of Georgia on Accounting, Reporting and Auditing**

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### *Status of Public Interest Entity*

- The Parliament of Georgia has passed the draft law on the second hearing. According to the draft amendments, the status of Public Interest Entity will be granted by an Accounting, Reporting and Auditing Oversight Service instead of the Government of Georgia, based on the criteria determined by the latter.

*Source: The Parliament of Georgia, 16 October 2017*

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## **Draft Amendments to the Law on the National Bank of Georgia**

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### *Financial Sector Representative*

The draft amendments to the Law on the National Bank of Georgia have been submitted to the Parliament of Georgia, according to which:

- The term Financial Sector Representative (FSR) will not cover qualified credit institution, founder of a non-state pension scheme, insurance brokerage company and money transfer provider. Therefore, the National Bank of Georgia (NBG) will not regulate or supervise these persons.
- According to the amendments, the concept of qualified credit institution will not exist anymore. Further, a person, which intends to carry out money transfer service, shall be an agent of payment service provider or shall be registered as a payment service provider.
- The drafts of legal acts related to financial sector (except for those that are essential for stability of financial sector or those that enter into force upon adoption) shall be first published for discussion, before finalizing the draft versions.
- The draft law defines new term – “Banking Group” indicating the group of legal entities, which covers financial institutions and/or other legal entities involved in banking activities, including commercial bank and its head office(s), subsidiaries, associated and joint ventures of commercial bank and its head office(s) within the country as well as abroad. The NBG will be entitled to supervise commercial

### *Mandatory publishing of draft legal acts*

### *Banking Group*

banks as well as other legal entities within the Banking Group.

***Registration/licensing  
financial sector  
representative***

- Except for the grounds provided in the current law, the NBG will also be authorized to refuse a person to be registered/obtain a license of a Financial Sector Representative if:

- It breached the law or participated in unhealthy, threatening entrepreneurial practice in any form;
- There is insufficient transparency in a group, ownership, governing structure of interested legal entity.

***Electronic signature***

- The Financial Sector Representatives, which are subject to NBG supervision (not only commercial banks) will have right to prepare the security policy of using electronic signature while providing services and submit it to the NBG for approval. Such electronic signature shall have same legal force as personal signatures on a material document.

***Currency exchange  
offices***

- The authorities of the NBG is increasing in terms of regulating currency exchange offices and scope of NBG supervision will no longer be limited only to Anti-Money Laundering (AML) regulations. The NBG will be entitled to adopt consumer protection regulations applicable to currency exchange offices, determine rules for informing consumers and for cancellation of currency exchange transactions.

***Restrictions on raising  
monetary funds***

- An entrepreneur shall not raise returnable monetary funds (including loans) and/or advertise such activity without registration as a Micro Finance Organization at the NBG or obtaining license for non-banking depository or banking activities.
- The NBG will be entitled to publish on its website the list of the persons who are not financial sector representatives and still may:

***List***

- Raise funds and/or issue loans;
- Publicly express the intention of attracting funds from a wide circle of persons and/or advertise such activities;
- Failed to provide the NBG with the requested information;
- Failed to follow NBG written requests and/or instructions.

***Right to request  
information***

- The draft amendments specify NBG's authority to request and receive information from financial sector representatives regarding sources of their capital, ownership structure, and direct or beneficial owner of significant share (including origin of property and/or monetary funds).

***Failure to adhere to the  
AML regulations***

- The NBG will be entitled to prohibit or restrict right of financial sector representatives to conduct certain types of transactions, distribute profit, issue dividends, increase labor remuneration, bonuses and other similar payments if financial sector representative fails to adhere to AML regulations.

**Rule of liquidation**

- NBG will have right to adopt legal acts and regulate liquidation of microfinance organizations, commercial banks and payment service providers.

**Credit Bureau**

- The draft law introduces and defines “Credit Bureau”, according to which it is an entrepreneur, which collects, keeps, records, processes, and discloses person’s credit information. The NBG will determine rules of providing Credit Bureau with credit information and recording such information in its database.

*Source: The Parliament of Georgia, 16 October 2017*

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## **Draft Amendments to the Law of Georgia on Microfinance Organizations**

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The draft amendments have been submitted to the Parliament of Georgia, according to which:

**Permitted MFO activities**

- Microfinance Organizations (MFOs) will be entitled to conduct functions of the agent of payment service provider and lease the real estate for the purposes of MFO activities.

**Additional NBG requirements**

- According to the amendments, the NBG will be entitled to determine additional requirements/restrictions for MFO activities by its written instructions.

**Maximum amount of a micro credit**

- The maximum total amount of a micro credit issued by an MFO to a single borrower shall not exceed GEL 100 000.
- MFO shall have at least 1 000 000 paid-in capital in order to be registered at the NBG. The paid-in capital shall be filled only through monetary form.

**MFO Capital**

- MFOs active before these amendments, shall increase paid-in capital in the following sequence:
  - At least 500 000 GEL until 1 January 2018;
  - At least 1 000 000 GEL until 1 January 2019.
- MFO shall not reduce paid-in capital during its activities. MFO capital increase may only be made through monetary form.
- The NBG is entitled to regulate the amount and formation of whole MFO capital by its legal act.

**Audited financial statements**

- MFO will be obliged to publish a financial statement on its own website annually until 15 May following each reporting year. Financial statements shall be prepared on the basis of the International Financial Reporting Standards (IFRS) and shall be audited in accordance with the International Standards of Auditing (ISA).

*Source: The Parliament of Georgia, 16 October 2017*

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## **Draft Amendments to the Law of Georgia on Registration Fees**

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### **Registration fees**

- According to the amendments, there will be fees for registration of the following persons:
  - MFO – 50 000 GEL;
  - Payment Service Provider – 5 000 GEL;
  - Payment System Operator – 10 000 GEL;
  - Currency Exchange Office- 10 000 GEL.

*Source: The Parliament of Georgia, 16 October 2017*

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## **Decision of the Constitutional Court of Georgia**

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### **Bona fide acquirer**

- The dispute concerned constitutionality of the provision of the Civil Code of Georgia, which protects *bona fide* acquirer of real estate and sets forth the following “in view of the interests of an acquirer, a transferor shall be deemed to be the owner if he/she is so registered in the Public Registry, except when the acquirer knew that the transferor was not the owner.”
- The Constitutional Court of Georgia satisfied the constitutional claim partially. The Court differentiated two following cases:
  - When an acquirer is aware about an inaccuracy of Public Registry entry regarding the owner;
  - When an acquirer knows that, a complaint has been filed against the entry of Public Registry.
- The Constitutional Court deemed that a person shall be treated as a *bona fide* acquirer neither in the first case, which was directly stipulated under the disputed provision, nor in the second case. The Constitutional Court recognized the sentence – “a transferor shall be deemed to be the owner if he/she is so registered in the Public Register” unconstitutionally in case when a complaint has been filed against the entry of Public Registry and an acquirer is aware of that fact.

*Source: The Constitutional Court of Georgia, case # 3/4550, 17 October 2017*

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## **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact us at PwC Georgia

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