

PwC Georgia Tax & Law Brief

15 November 2017

Draft law on Public Private Partnerships

The draft law on Public Private Partnerships was initiated in the Parliament of Georgia and is pending discussion on 1st hearing. The draft law provides for the following key regulations:

Forms of Public Private Partnership (“PPP”)

- The draft law provides for public private partnership on the basis of concession or non-concession agreements. Concession is the form of cooperation when the concessionaire directly or indirectly receives compensation (i) from end users or (ii) from public partner and end users, and at the same time bears considerable operational risks, including the risk of demand and/or supply. As for the non-concession public private partnerships, the draft law provides that in such cases the contractor shall be receiving compensation from the public partner in exchange for provided public service and/or public infrastructure. The draft law also provides for institutional public private partnerships, which shall be carried out through a joint venture created by the public and private partners.

PPP Unit

- The draft law provides for the establishment of a PPP Unit that will organize and coordinate the implementation of PPP projects throughout the relevant stages.

Identification of PPP projects

PPP projects can be identified by authorized bodies or PPP Unit. Unsolicited proposals are allowed in case of concessions and in the sectors to be determined by the Government's legal acts.

Approving the concept of PPP Project

- After identification of the PPP project, the concept shall be prepared and submitted to the Government of Georgia together with the reports of PPP Unit and the Ministry of Finance of Georgia.

Preparation of PPP Project

- In case the Government of Georgia approves the concept of PPP project, the relevant authorized body carries out the preparation works of the project, including financial, technical and economic research/analysis. Outcomes of such studies/analysis is to be submitted to the Government of Georgia for further consideration.

Selection of the private partner

- In case the Government of Georgia approves PPP project, the authorized body proceeds with the private partner selection process. In case of a concession, a private partner may be selected on the basis of public or closed selection process, however, the latter is allowed in cases provided by

the draft law. The draft law also provides for selection of a private partner through direct negotiations, which may be carried out subject to special rules that will be determined by the Government's legal act. The selection committee shall be set up to evaluate submitted applications. As for the non-concession PPPs a private partner shall be selected in accordance with the procedure established by the Law of Georgia on State Procurement.

PPP Agreement

- Evaluation results of participants and the negotiated terms of the PPP agreement is to be submitted to the Government of Georgia for its final consideration. PPP agreement shall be concluded with the winning bidder.

Small projects

- The draft law establishes a different regime for PPP projects, value of which does not exceed the value determined by the Government's legal acts. In case of small projects, the draft law provides for simplified procedures of elaboration and implementation of PPP projects.

Direct agreement and step-in rights

- The public partner, private partner and lenders (including any state agency, international financial institution, commercial bank) may conclude the direct agreement. In cases provided by the direct agreement and/or PPP agreement, the public partner and/or lender may be entitled to replace the private partner.

Guarantees from the public partner

- Subject to the restriction provided by the law, the public partner may give the private partner certain guarantees, including guarantees on customers, revenues, tariffs, cost of public services, land transfer, granting licenses and permits, granting an exclusive intellectual property rights, etc.

Dispute resolution mechanisms in PPP projects

- According to the draft law, the parties to the PPP agreement have the right to determine specific mechanism of dispute resolution, including national or international commercial arbitration.

Source: The Parliament of Georgia, 13 November 2017

The Parliament of Georgia ratified the Free Trade Agreement between Georgia and the People's Republic of China

Main aspects of the agreement

- The agreement concluded with Georgia and People's Republic of China provides for the terms of free trade of goods and services between the countries. The agreement provides for active cooperation in various areas, including removing the bureaucratic barriers to movement of goods and services between the countries. In addition, the agreement provides for abolishing of customs duties.

Source: The Parliament of Georgia, 02 November 2017

Draft amendments to the code of administrative violations of Georgia

***New type of
administrative
violation***

- Under Article 625 of the Civil Code of Georgia, the loan up to GEL 100 000 shall be issued to a natural person only in GEL. The draft amendment to the code of administrative violations of Georgia has been submitted to the Parliament of Georgia. Non-compliance with the rule is sanctioned first by warning and if not remedied within a month then with a fine in the amount of 1000 GEL.
- The amendment will not apply to the representatives of the financial sector, under the Organic Law of Georgia on National Bank of Georgia.

Source: The Parliament of Georgia, 13 November 2017

Draft amendment to the laws of Georgia on (i) electronic communications (ii) License and Permits and (iii) License and Permit fees

***Abolition of permits
and permit fees of
radiofrequency for
ancillary technology
and numbering
resources***

- According to the amendment package initiated in the Parliament of Georgia, permit for use of radiofrequency for ancillary technology and permit for numbering resources shall be abolished. The amendment does not apply to the radiofrequency spectrum used for the purposes of commercial (entrepreneurial) activities in the field of electronic communications.

***Granting the right to
use the
radiofrequency for
ancillary technology
and numbering
resources and fee for
use***

- In accordance with the draft law, the use of radiofrequency for ancillary technology and numbering resources shall only be subject to the fee for use (regulation fee). In both cases, the right to use shall be granted upon the decision of the Georgian National Communications Commission.

***Determining the
right to use period of
the radiofrequency
for ancillary
technology by the
authorized persons***

- According to the draft law, an authorized person, that requires the radiofrequency for non-commercial ancillary technology, has the right to determine the period of use, which shall not exceed 15 years.

Source: The Parliament of Georgia, 13 November 2017

Draft amendments to the law of Georgia on copyright and related rights

The term of validity of copyrights on the text-based musical work created under co-authorship

- The Parliament of Georgia has passed the draft law on the first hearing, which provides that the copyright on a text-based musical work created in co-authorship shall be valid during the lifetime of the last co-author and after 70 years of his/her death.

The term of validity of the performer's rights

- For the performance recorded in the form of a phonogram that is lawfully accessible to the public through a publication or public transfer, the validity term of performer's rights shall be prolonged for 70 years from the first publication or public transfer (whichever occurs first), instead of 50-year period as provided by the current version of the law.

Source: The Parliament of Georgia, 13 November 2017

Draft amendments to the law of Georgia on Insurance and on Securities Market

The legislative initiative on amendments to the Law of Georgia on Insurance and the Law on Securities Market is initiated in the Parliament of Georgia, according to which:

Establishment of Export Credit Agency

- The JSC "Partnership Fund" shall have the authority to establish the Export Credit Agency.
- Export Credit Agency shall carry out insurance (except personal insurance) and/or reinsurance services subject to the relevant license granted to it. The Agency will also be entitled to issue guarantees for export operations and surety (including the joint surety) based on the risks determined by the Government of Georgia.

Functions of the Export Credit Agency

- For the operations and trades abroad, the relevant insurance and guarantees may be granted to the Georgian or foreign nationals and/or creditors registered in Georgia and/or abroad for any kind of credits issued by them (including loan, guarantee, factoring, letter of credit and other credit risk financial instruments).

Source: The Parliament of Georgia, 13 November 2017

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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