

BGI Law Brief

November, December 2020 – January 2021

Parliamentary Elections of 2020

The first and second round of the parliamentary elections were held in Georgia on October 31 and November 21, 2020 (although the opposition unanimously boycotted the second round). According to the newly adopted amendments to the Electoral Law, 120 members of the 150-seat parliament were to be elected under the proportional system while the remaining 30 deputies - under the single mandate system. According to the official results of the elections announced by the Election Administration, the governing party of “Georgian Dream” won 90 seats in the parliament. However, all the major opposition parties refused to concede defeat due to the allegation of rigged elections. Thus, they boycotted the new parliament despite having crossed 1% threshold and refused to accept the parliamentary seats.

As a result, the new elected parliament is composed only of 90 members. Having this in mind, it is notable that some of the legislative acts including constitutional laws cannot be adopted without the support of at least 2/3 of the total number of MPs. Therefore, the new parliament may not be able to adopt certain legislative acts and fully exercise its powers. Further, the new parliament held a vote of confidence in the new government with the same composition as it was before the Parliament of the 10th convocation.

National Bank Adopts the Regulation on Recognition of a Person as a Sophisticated Investor

On December 16, 2020, the President of the National Bank adopted an order regarding the procedure of recognizing a person as a sophisticated investor. The order clarified certain aspects of the legal definition of a “sophisticated investor” set forth in the Securities Market Law which, in turn, is cross-referenced in various financial regulations which define rules for making certain financial products and private offerings available to sophisticated investors only.

In particular, the new order has expanded the list of sophisticated investors to include the following individuals: (a) a member of the governing body of a financial institution (including the directors), heads and deputy heads of the brokerage, trading and/or investment departments and other employees authorized to transact on behalf of a

financial institution; and (b) high net worth individuals whose confirmed assets exceed GEL 3 million or the annual income for the last 3 years has exceeded GEL 200,000.

As far as legal entities are concerned, the following entities will be considered to qualify as sophisticated investors: (a) financial institutions and international financial institutions; (b) legal entities with capital exceeding GEL 1,000,000 to be calculated in accordance with IFRS; (c) state authorities, autonomous republics and municipalities of Georgia and foreign countries, including bodies authorized to manage public debt and central banks; (d) a person acting on behalf of or in favor of a pension scheme.

While the abovementioned types of investors are considered sophisticated ‘automatically’, the additional regime for recognition of new types of sophisticated investors has also been introduced. The order vests upon the market intermediaries (including commercial banks, brokerage companies and asset management companies) the power to grant a person status of a sophisticated investor if certain requirements laid down in the order as to the number and value of transactions made by an investor, his work experience in a financial sector, and/or the portfolio of securities and financial instruments held are met. Persons who have already obtained a sophisticated investor status from a financial institution licensed in an approved foreign country, may present the relevant status proof from an eligible foreign financial institution to a local securities market intermediary to secure similar status in the jurisdiction.

The Securities Market Law, the Law on Investment Funds and other regulations governing financial services provide that only sophisticated investors are eligible for certain investment opportunities which would generally be unavailable to other classes of investors (e.g. retail clients). Clarification and expansion of the circle of sophisticated investors by allowing more investors to avail themselves of these benefits will facilitate the development of capital markets.

The order entered into force on December 17, 2020.

The National Bank Adopts Regulation on Liquidation of Investment Funds.

On November 11, 2020, the President of the National Bank adopted an order regarding the procedure of liquidation of investment funds.

The procedure applies upon revocation of the authorization or registration of an investment fund, whether authorized or registered by the National Bank of Georgia. The order does not cover mergers of investment funds.

The order entered into force as of November 12, 2020.

New Rules on Determination of Official Exchange GEL/USD Rate

As of February 1, 2021, the new rules on determination of official exchange rate of GEL against USD are scheduled to become effective. The GEL/USD official exchange rate will be calculated based on the spot FX transactions registered at the currency auction of the National Bank of Georgia and the Bmatch platform of the Bloomberg Electronic Trading System during the relevant calculation period. Bloomberg's new Bmatch platform is available to a wider circle of participants as both financial institutions and companies can trade in the system.

Amendments to the Law on Public Health

On December 29, 2020, the Parliament adopted amendments to the Law on Public Health extending the authority of the government to introduce the rules and measures of isolation and/or quarantine without the Parliament's review and/or consent until July 1, 2021.

In addition, on January 6, 2021, the bill of amendments to the Law on Public Health was submitted to the Parliament for an expedited hearing scheduled to take place in February. According to the bill, in the event of import of pharmaceutical products designated for preventive vaccination or treatment of infection caused by the novel coronavirus (SARS-CoV-2) in connection with pandemic/epidemic, and provided that such pharmaceutical products have authorization or prequalification from the WHO, or the stringent regulatory authorities (SRAs) recognized by the WHO, to allow their use (including the emergency use), the state shall be liable for possible damages caused as a result of use of such pharmaceutical products, except for the cases provided under the bill when medical staff,

importers and manufacturers may also be held liable.

Draft Regulation on Working Time Accounting

On September 29, 2020, the Parliament passed extensive amendments to the Labor Code which included the new obligation of the employers to record the working time of their employees in paper-based and/or electronic format. In furtherance of this amendment, which is in force from January 1, 2021, the working time accounting form to record the working time of the employees shall be approved by the Minister of Internally Displaced Persons from the Occupied Territories of Georgia, Labor, Health and Social Affairs ("Minister").

The draft order of the Minister, which has been made available to business community, if adopted in its current form, will define the rules on working time accounting and provide the working time accounting form to be used by the employers. As per this form, the employers shall record on monthly basis inter alia the following information: (a) notes on attendance or non-attendance at workplace during the reporting period; (b) total number of days and hours worked; (c) overtimes.

Working hours of an employee can be accounted for in the relevant form by the employer once, at the end of each month and/or periodically, throughout the month. During the shift work, the shift schedule approved by the employer must be attached to the working time accounting form.

The working time accounting form must be signed and kept by the employer for at least 1 year. In addition, the employer shall designate an officer, or create a structural unit, in charge of working time accounting matters.

Violation of working time accounting obligation will result in sanctions as provided for by the Labor Code.

Amendments to the Tax Code

On January 6, 2021, amendments were made to the Tax Code to exempt from the property tax certain properties declared by taxpayers in 2020 or 2021 and used for the following activities: (i) hotels and other hospitality businesses providing short-stay accommodation; (ii) restaurants and the mobile (fast) food services; (iii) the beverage services; (iv) travel agencies, tour operators, and booking and other ancillary activities.

In addition, the Minister of Finance and/or Head of the Revenue Service have been authorized to extend the deadline for payment of income tax due in November and December 2020 for the taxpayers who are involved in the hospitality business in Bakuriani, Gudauri, and Goderdzi ski resorts or in the borough of Mestia until no later than July 1, 2021. In this case, no interest shall accrue on the delayed income tax payments.

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