

BGI Law Brief

February 2023

New Law on Public Procurement

On 9 February 2023, the Parliament adopted the new Law on Public Procurement (“**Law**”), which shall replace the existing Law on State Procurement in 2025. The Law will enter into force gradually, becoming fully effective by 2029. The stated purpose of the Law is approximating Georgian legislation with the European Union directives. The Law creates a single legal framework for the award of public procurement contracts by contracting authorities, introducing a number of significant changes.

The main novelties of the Law include a mandatory certification requirement for the specialists of public procurement and the reorganization of the existing procurement authority. According to the Law, the existing Agency of State Procurement will be replaced by its legal successor – the Agency of Public Procurement, which will take over the supervision of public procurements.

The following types of public procurement procedures are envisaged to be introduced once the Law becomes effective:

- a) open procedure;
- b) limited procedure;
- c) competitive dialogue;
- d) innovative partnership;
- e) contest;
- f) negotiation procedure with preliminary publication;
- g) negotiation procedure without prior publication;
- h) public procurement procedures for procurement of services in social and other specific fields.

Depending on the circumstances, the contracting authorities will be able to use various procurement tools and techniques in the procurement procedures, including the following techniques and tools:

- a) framework agreement;
- b) dynamic purchasing system;
- c) electronic reverse auction;
- d) electronic catalog.

The new techniques for aggregated procurements and sector specific rules on defense and security procurement have also been introduced.

Economic operators included in the so-called “White-List”, an official registry maintained by the Agency of Public Procurement, shall be entitled to simplified procedures.

Most importantly, the Law envisages the promotion of sustainable development and the achievement of sustainability outcomes by including social, economic, and environmental aspects in public procurement procedures.

Amendment to the Law on Electronic Documents and Electronic Trust Services

On 9 February 2023, the Parliament adopted an amendment to the Law on Electronic Documents and Electronic Trust Services. Under the amendment, use of qualified electronic signatures and seals on electronic documents submitted to Georgian authorities will no longer be mandatory for non-resident individuals and legal entities of private law, who will be authorized to use the non-qualified signatures/seals on electronic documents.

Instruction on Granting and Issuing Pension and Pension Assets

On 17 February 2023, the Director of the LEPL Pension Agency issued the Order N003 on Approval of the Instruction on Granting and Issuing Pension and Pension Assets. This Instruction is issued in accordance with the Law on Funded Pension and defines the rules and procedures for calculating, granting, issuing, and recalculating pension for the participants of the funded pension scheme, as well as receiving pension assets by the successors of the deceased participants.

Extension of a Visa-Free Regime for the Ukrainian Citizens

On 24 February, the Government amended the Resolution N255 on Approval of the List of Countries Whose Citizens May Enter Georgia Without a Visa, allowing Ukrainian citizens to lawfully remain in Georgia for the duration of 2 years without a visa.

Constitutional Court Rules on the Law on Broadcasting

On 22 February 2023, the Constitutional Court issued a decision N1/1/1537 declaring the normative content of Paragraphs 4 and 5 of Article 71 of the Law on Broadcasting unconstitutional. The contested provisions envisaged sanctions for broadcasters for a live broadcasting of content unsuitable for minors under the circumstances where despite all reasonable precautions taken, the broadcaster did not foresee and could not have foreseen the possibility of such material being broadcast.

Constitutional Court Invalidates the Procedural Rule on Dismissing a Civil Action due to Non-Compliance with Formal Requirements

On 3 February 2023, the Constitutional Court issued a decision N2/1/1481 (*Gia Foladishvili vs. Parliament*). The Constitutional Court declared unconstitutional Article 186.1.h. of the Civil Procedure Code (“CPC”), which establishes that a court shall dismiss a civil action within 5 days from its submission, if the action does not conform to the formal requirements under Article 178 of the CPC (including if there are no grounds for exempting a plaintiff from the payment of state fees or for postponing or reducing such fees).

According to the Constitutional Court, the existing regulation blanketly establishes the non-compliance with Article 178 of the CPC as a basis for the dismissal of an action, including, *inter alia*, the action which can be further specified/corrected without submission of a new action. The Constitutional Court held that, on the one hand, dismissal of an action, which can be specified, affects the ability of a court to resolve the case in a timely and efficient manner, because instead of simply requesting a plaintiff to specify the action (cure the defect), the court is required

to prepare a substantiated decision on the dismissal of the action, and on the other hand, it affects the ability of the plaintiff to protect his/her rights (in particular, instead of specifying the action, the plaintiff has to apply to the court with a new action, which requires additional time and effort).

The Constitutional Court found that the existing regulation complicates the legal proceedings, because the courts have to issue a substantiated decision on dismissal of the civil action in case of any, even trivial, curable inaccuracy.

Due to the above, the Constitutional Court declared the cited provision unconstitutional as of 1 July 2023. This should give the Parliament sufficient time to enact the respective amendment to the CPC.

This Law Brief is for general information purposes only. It does not constitute and is not intended to be relied upon as legal advice. BGI shall not be responsible for any loss in the event this update is relied upon without seeking our professional advice first.

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