

## BGI Law Brief

April 2023

### Amendment to State Procurement Rules

On 23 March 2023, the Parliament adopted amendments to the Law on State Procurement. Under the amendments, the simplified procurement thresholds have been increased from GEL 5,000 to GEL 10,000 for goods and service contracts and from GEL 5,000 to GEL 20,000 for works contracts. If the value of goods, services and works is below these thresholds, they can be purchased through a simplified procurement procedure instead of an electronic tender.

Further, pursuant to the amendment to the Order N2 of the Chairman of the State Procurement Agency on the Approval of the Procedure and Conditions for the Maintenance of a White List, a supplier can be included in the White List – an official register of qualified suppliers maintained by the Public Procurement Agency, only if the supplier furnishes the proof of due performance of at least two state procurement contracts awarded to the supplier by different public entities during the past three years, each with a value of no less than GEL 10,000 - in case of procurement of goods or services, and no less than GEL 20,000 - in case of works contracts.

The new thresholds came into force on 19 April 2023.

### Amendments to the Tax Code

On 5 April 2023, the Parliament adopted amendments to the Tax Code. The amendments include, *inter alia*, the following changes:

- a. The tax/dispute resolution authority or the National Bureau of Enforcement shall have the right to publicly release the document sent by the tax authority in an electronic form, if the taxpayer (other than an individual) fails to read the document within 30 days after it has been uploaded to the taxpayer's authorized user page. Such document shall be published on the website of the relevant releasing

authority and is deemed delivered to the taxpayer on the 20th day of its public release. As for individuals, the existing regulation remains effective, which envisages the options of material delivery, as well as the electronic delivery, prior to public release of the document.

- b. If a small business status entity applies for a cancellation of its status to the tax authority prior to the end of a calendar year, the status shall be considered canceled from the first day of the following month instead of beginning of the following calendar year.
- c. Declarations on income tax in respect of the revenues received from a sale of property/assets within the scope of non-entrepreneurial activities must be filed by individuals no later than the 15-th day of the following month.
- d. The importers may claim excise tax and import tax rebate paid on light vehicles and motorcycles (including mopeds) if they export these goods within 180 calendar days after their placement into free circulation (instead of 90 calendar days as was stipulated in the previous edition of the Tax Code).
- e. A new type of offense has been introduced whereby a failure by an employer to submit the information about hired persons to the Register of Hired Persons – the register maintained by the Revenue Service (the “RS”), shall result in fines in the amount of GEL 200 per hired person.

The amendments listed in “c” above shall become effective from 1 January 2024, while other amendments listed above are in force as of 18 April 2023.

### Amendments to the Customs Code

On 5 April 2023, the Parliament adopted amendments to the Customs Code. The amendments include, *inter alia*, the following changes:

- The customs/dispute resolution authority shall have the right to publicly release the document sent by customs authority in an electronic form if the taxpayer (other than an individual) fails to read the document within 30 days after it is uploaded to the taxpayer's authorized user page. Such document shall be published on the website of the relevant authority and be deemed delivered to the taxpayer on the 20th day of its public release.
- The provision stipulating that the amendment could not be made to the declaration of temporary storage/ registered declaration of customs with respect to the goods that had not been originally declared has been repealed.
- The fines for reduction of the amount of import tax by way of indicating incorrect data in the customs declaration and the accompanying documents submitted by an individual for the import shipment of goods with a value of up to GEL 3,000 have been increased. Such action shall result in a fine in the amount of 100% of the import tax reduced in the customs declaration (as opposed to 40% under the previous regulation). In case of a repeated violation, such individual shall be charged a fine in the amount of 200% of the import tax reduced in the customs declaration (as opposed to 100% under the existing regulation).

The above-mentioned amendments to the Customs Code are effective from 18 April 2023.

### Changes in the Regulation of Tobacco Products

On 19 April 2023, the Minister of Finance (the “**MoF**”) introduced amendments to the Order N 996 of the MoF on Tax Administration dated 31 December 2010. Under the amendment, cigarillos *i.e.* narrow cigars with the HS code 2402 10 000 02 became subject to the regulations applicable to tobacco products. The manufacturers/importers planning to produce/import these goods before 1 June 2023 are required to submit to the RS the information regarding the product title and recommended retail selling price of the goods prior to their production/import. For the purposes of determining the retail sale price of the goods for the period from 1 June 2023 to 1 January 2024, the manufacturers/importers are required to submit the required information no later than 5 May 2023.

This amendment is effective from 20 April 2023.

### Amendment to the List of Recognized Foreign Stock Exchanges

On 21 April 2023, the National Bank of Georgia (the “**NBG**”) amended the list of recognized foreign stock exchanges to include the following:

- Frankfurt Stock Exchange (Germany)  
<https://www.boerse-frankfurt.de>
- Börse Frankfurt Zertifikate AG (Germany)  
<https://www.boerse-frankfurt.de/>
- Bayerische Börse AG (Germany)  
<https://www.boerse-muenchen.de/>
- Börse Stuttgart Holding GmbH (Germany)  
<https://www.boerse-stuttgart.de/>
- Börse Berlin AG (Germany)  
<https://www.boerse-berlin.de/>
- Treasury Direct (USA)  
<https://www.treasurydirect.gov/>
- Intercontinental Exchange (USA)  
<https://www.theice.com/>
- Singapore Exchange (Singapore)  
<https://www.sgx.com/>

The securities listed on a recognized foreign stock exchange can be offered in Georgia in a public offering without a local prospectus approved by the NBG, provided that the NBG is notified in advance and the following is provided:

- a. the securities’ ISIN number;
- b. the evidence of listing of the securities on a recognized foreign stock exchange;
- c. the prospectus/offering/listing document related to the securities; and
- d. the Georgian translation of the general overview part of the prospectus/offering /listing document.

The amendment is effective from 24 April 2023 and applies to the legal relationships arising after 1 January 2023.

### Amendment to the Rules on Oil and Gas Operations

On 10 April 2023, the Head of the State Oil and Gas Agency (the “**Agency**”) amended the National Regulations on Performing Oil and Gas Operations dated 9 January 2002 to allow investors to acquire the right to use vacant subsoils containing oil and

gas resources and/or to exploit such gas and oil resources without tender or auction, if the subsoils are adjacent to their respective contract areas and further provided that:

- a. The borders of the natural reservoirs exploited by investors extend over the boundaries of their respective contract areas and include the corresponding part of the adjacent subsoils.
- b. It is impossible to carry out specific oil and gas operations without using the corresponding part of the adjacent subsoil.
- c. The right to use the corresponding part of the adjacent subsoil is necessary based on other fundamental geological considerations.

The application for the rights in respect of a vacant subsoil may be filed with the Agency by any interested investor having a licensed area adjacent to the vacant subsoil. However, in case of the commencement of the proceedings, and to the extent that there are other investors with adjacent contract areas in the vicinity, the Agency shall invite such other investors also to submit their competitive bids, including development plans and bonus proposals within the term determined by the Agency, which shall not be less than 45 days. The Agency shall issue its final decision within 60 days after the expiry of the term for the submission of the bids. After consideration of the bids, the Agency may either grant the right of use to a specific investor or reject all applications.

This amendment is effective from 10 April 2023.

### **The Constitutional Court Declares the Civil Procedure Code Provisions on Immediate Enforcement Unconstitutional**

On 11 April 2023, the Constitutional Court (the “**Court**”) issued its decision in respect of the constitutionality of Article 268.1<sup>1</sup> of the Civil Procedure Code (the “**CPC**”). Under this Article, the judgments made by the court of first instance on a dispute arising from a contract shall be immediately enforceable, if such immediate enforcement is expressly provided for in the contract. The procedural rules did not require the courts to request posting of the security from a party filing for the immediate enforcement, or to refuse immediate enforcement in cases where it is

impossible to calculate damages caused by immediate enforcement.

The Court highlighted the importance of striking a balance between the interests of the litigant parties and held that the appellate court must have opportunity to assess the effects of immediate enforcement and consider using provisional measures before a judgment of the court of first instance is enforced.

Additionally, the Court reviewed the constitutionality of the second sentence of Article 269 of the CPC, which allows the court to approve immediate enforcement without oral hearing.

The Court declared both of these provisions inconsistent with Article 31.1 of the Constitution, which establishes that every person has the right to apply to court to defend his rights.

The Court declared Article 269 ineffective from 11 April 2023, while Article 268.1<sup>1</sup> shall be void from 1 October 2023, to allow time for the legislator for replacement of the unconstitutional provisions with such immediate enforcement mechanisms which shall be more consistent with the Constitution.

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