

BGI Law Brief

November 2022

Auditors/Audit Firms Subject to Supervision

On 15 November 2022, the Head of Accounting, Reporting and Audit Supervision Service (the “Service”) adopted Order No. N-10 on the Determination of the Rule for Conducting Investigation of Auditors/Audit Firms, coming into force on 1 January 2023. This normative act establishes the rule and methodology of investigation of auditors and audit firms by the Service, the procedures of conducting such investigation as well as the rights and duties of the persons participating in the investigation. According to this rule, the Service may commence an investigation of the auditor/audit firm at its own initiative, based on a risk-based approach. Alternatively, an application/complaint of a stakeholder can serve as basis for the initiation of investigation. The initiative to conduct an investigation shall be based on a reasonable suspicion that a relevant legal requirement has been violated. Investigation may last up to 6 months and can be extended upon advance notice. The Service is authorized to make a final decision regarding the imposition of liability for the auditor/audit firm in accordance with the law. The decision can be appealed within 1 month to the Accounting, Reporting and Auditing Council and to the court.

National Bank Approves a Statute on Acquisition of Significant Shares of a Commercial Bank

On 31 October 2022 the President of the National Bank (“NBG”) issued Order No. 153/04 on Approval of the Statute on Acquisition of Significant Shares of a Commercial Bank. The Statute determines the contents of the fit and proper criteria for the owner/acquirer of a significant share (“Applicant”) in a commercial bank operating in Georgia and in a branch of a foreign bank. Further, it establishes additional issues to be considered when evaluating the acquisition of a significant share, the information

to be submitted to the NBG, in order for the latter to assess the Applicant’s suitability, the evaluation method and the simplified procedure for the acquisition of a significant share of the bank under resolution regime. This Statute sets certain reputational, financial and other requirements, which shall be maintained by the owner of a significant share throughout the entire period of ownership. It is based on the “Joint Guidelines of the European Banking Authority and the European Securities and Markets Authority on the Prudential Assessment of Acquisitions and Increases of Qualifying Holdings in the Financial Sector” (“Guidelines”) dated 20 December 2016. In case the Statute issued by the NBG does not regulate certain matters related to acquisition of significant shares, the banks shall apply the Guidelines, subject to agreement with the NBG. By 1 August 2023, all banks shall submit to the NBG the documents confirming their compliance with the requirements set by the above Statute.

National Bank Approves a Statute on Fit and Proper Criteria for Administrators of Commercial Banks

On 31 October 2022 the President of the NBG issued Order No.151/04 on Approval of the Statute on the Fit and Proper Criteria for Administrators of Commercial Banks. This Statute determines the criteria for administrators of commercial banks operating in Georgia and foreign bank branches, as well as the issues of submitting information on the fitness and propriety to the NBG. The key criteria determined by this Statute include good reputation, reliability and conscientious attitude to work; knowledge, skills and experience necessary for administering banking activities; independence of judgement; sufficient time to perform duties properly. The bank is required to submit to the NBG documents on the candidate within 14 days after it has chosen the administrator. The NBG has 30 days to decide on the candidate. Depending on the complexity of an issue, this term can further be extended by 30

days, which should be communicated to the bank in question. If the NBG does not respond within 30 days after submission of the respective documents, the administrator is deemed to be appointed. By 1 August 2023, all banks are required to submit to the NBG the documents confirming their compliance with the requirements set by the above Statute. In case of failure by the bank to comply with the said requirements, the NBG has the right to use the supervisory measures and/or sanctions (monetary fine) provided for by the legislation of Georgia against the bank and/or its administrators.

National Bank Approves the Licensing Rules for Commercial Banks

On 31 October 2022 the President of the NBG issued Order No. 152/04 on Approval of the Licensing Rules for Commercial Banks (“**Rules**”), revoking the existing regulation. The Rules apply to commercial banks, foreign trusted bank branches, foreign bank branches and subsidiary banks. A banking activity license is issued to a branch of a foreign bank (except a branch/subsidiary of a trusted foreign bank) and a subsidiary bank only if the bank itself is authorized to attract deposits in the country where its head office is located. As for the trusted foreign banks, the licensing of a branch/subsidiary of a foreign bank can be carried out in a simplified manner if the applicant is a particularly reliable bank, more precisely, if it has high recognizability, good reputation, high credit rating, many years of experience in the financial sector, sustainable financial indicators, and a high level of transparency. The Rules list the documents to be submitted to the NBG for the purposes of obtaining a license. The review period of the application is 6 months, which can be extended to a maximum of 12 months. Additionally, under the Rules, the NBG is authorized to issue a conditional license to a legal entity by temporarily simplifying the requirements regarding the minimum capital established by the legislation of Georgia for the licensing of a commercial bank. When issuing a conditional license, the NBG is authorized to define appropriate restrictions and/or individual/additional requirements, stages and

deadlines for their full satisfaction, in order to reduce risks.

Amendments to the Civil Code

On 2 November 2022, the Parliament adopted amendments to the Civil Code (Articles 70-70¹), concerning the issues of entrusting someone else with signing a transaction and execution of an agreement by a literate blind person. Under the amendment, a literate blind person may enter into a written agreement independently, or by way of entrusting the execution to another person, in which case the signature must be certified. A literate blind person may sign the agreement independently by using a mechanical signature, facsimile or other appropriate technical means established by the legislation of Georgia. When using a facsimile, an identity document of a signatory and a notarized document regarding the authenticity of the facsimile are also required. In case of execution of the agreement using Braille system per the agreement of the parties, such agreement must be attached to the agreement concluded using regular font. These amendments come into force on 1 May 2023.

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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