

BGI Law Brief

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Georgia Implements EU Bank Recovery and Resolution Directive (BRDD)

A package of legislative amendments has been passed to implement the EU Bank Recovery and Resolution Directive (BRRD) in Georgia. Under the new framework, the National Bank of Georgia (“NBG”) has been granted broad intervention authorities, including the power to put a commercial bank into a “resolution regime” which involves restructuring of a failing bank through a set of resolution tools, including *inter alia* the power to sell or merge the business with another bank, to set up a bridge bank and to write off the debt of a failing bank or convert it to equity (bail in). The purpose of the resolution regime is to ensure the continuity of the critical functions of a bank, the preservation of the financial stability, the protection of taxpayers’ money as well as the protection of the covered deposits and the funds and assets of the consumers.

Resolution measures may be applied by NBG without a consent of the creditors of a failing bank. Similar to BRRD, under the resolution regime, no creditor should be worse off than it would have been had the bank been wound up. The law also stipulates that public intervention can only be sought in the event the capital required to rescue a failing bank cannot be raised by private means. To support the resolution process, the law provides for setting up of the resolution fund which will be financed with the contributions from the existing banks.

NBG will be authorized to exercise the resolution related functions in respect of banks starting from January 1, 2021.

Georgia Adopts Derivatives Law

The Parliament of Georgia passed the Law on Financial Collateral, Netting and Derivatives on December 20, 2019. The bill, which became effective as of January 15, 2020, is based on the ISDA Model Netting Act. The law has created a legal framework for the derivative transactions providing for the finality and enforceability of such transactions, netting and close-out netting arrangements and the financial collateral.

Minimum Capital Requirements for Brokerage Companies Amended

On December 30, 2019 the NBG has issued a decree with the effect of reducing minimum capital requirements in respect of brokerage companies in Georgia provided that they do not offer full-scale brokerage services. According to the amendments, brokerage companies which only offer limited brokerage services to their clients, such as investment advisory, research and non-guaranteed securities placements, can qualify for a brokerage license with the minimum capital of GEL 150,000, while full scale brokerage activities which are considered riskier (including receiving and transmitting of client orders, management of investment portfolios, guaranteed securities placements, forex trading etc.) will continue to be subject to the minimum capital requirement of GEL 500,000.

Other Regulations in Financial Sector

On January 13, 2020 the President of the NBG also adopted Order № 7/04 effectively amending the Rules on Capital Requirements in Banking Sector. According to these changes, public stocks may be included in tier one capital only if such

instruments were financed by an “experienced investor” and the nominal value of such instrument per investor does not exceed GEL 100,000.

Health Ministry Determines Standards for Work-Related Risk Assessment

On January 30, 2020 the Minister of Internally Displaced Persons, Labor, Health and Social Affairs adopted the Order №01-15/N on the Rules for Assessment of Risks in a Workspace, which went into force with immediate effect. The Order sets out basic standards and procedures for the identification of the risks and the implementation of the preventive measures in a work environment. According to these procedures, employers must identify the threats, implement control measures and identify the persons responsible for the same, monitor and document the results.

New Rules for Obtaining the Status of a Pharmaceutical Enterprise

A pharmaceutical enterprise is a legal entity producing and supplying pharmaceutical products in Georgia. The status of a pharmaceutical enterprise is granted by the Government of Georgia and results in the exemptions from certain tax obligations. As of December 20, 2019, legal entities seeking to obtain such status must address LEPL Revenue Services of Georgia (RS) and provide the registration details, a short summary of their activities and the pharmaceutical production license issued by the relevant authority in Georgia.

The application will be reviewed by the RS and if approved, will be provided to the Ministry of Finances for the purposes of submitting it to the Government. The RS shall also be responsible for maintaining the electronic registry of Pharmaceutical Enterprises.

Free Industrial Zones Subject to New Regulations

On January 14, 2020 the Government adopted the Decree №25 setting out new rules on establishment, functioning and maintenance of free industrial zones. The Decree sets out the amount, terms as well as types of guarantees which may be used for the establishment of free industrial zones in Georgia. Furthermore, the Decree sets out requirements mandatory for the obtaining and maintaining the status of free industrial zones, as well as the terms for storing goods and exercising customs control in such zones. Failure to meet the above requirements will result in deduction of funds from the guarantee amount. The Decree is effective as of January 15, 2020 and is applicable to cases commencing from September 1, 2019.

Product Safety to Be Monitored by Market Supervision Agency

On December 27, 2019 the Ministry of Economics and Sustainable Development founded a new agency, the Market Supervision Agency responsible for the monitoring of the safety of products placed on the market, which began operations as of January 1, 2020. The Market Supervision Agency will monitor industrial and construction products as well as consumer goods. Monitoring activities of the Agency include documental or technical analysis, such as inspection of advance import notices, inspection of products in case of a reasonable doubt, etc.

Safety of Toys Subject to Monitoring

On January 20, 2020 the Government adopted the Decree №47 on Approval of Technical Regulations on Safety of Toys. As a result, all toys placed on the market must comply with the requirements of the Decree. Compliance with the requirements of law

will be monitored by the Market supervision Agency as of January 20, 2020.

Furthermore, as of January 1, 2021, product importers must notify customs authorities regarding import of toys in advance. Imported products may be stopped and inspected by the customs and referred to the Market Supervision Agency for further inspection.

New Rules for Non-Organized Food and Fodder Production

On January 9, 2020 the Government adopted Decree №14 on the Rules for Non-Organized Production of Foodstuffs and Animal Fodder. The Decree applies to the persons who own certain amount of poultry, beehives, cattle and produce foods as well as animal fodder in their own households. These persons must register at the National Food Agency and organize, maintain and sell household animals, food and fodder in accordance with the instructions of the National Food Agency and relevant Georgian laws. The Decree has been adopted under the Food Products/Animal Fodder Safety, Veterinary and Plant Protection Code and enters into force as of January 10, 2020.

Government Adopts Additional Regulations on Waste Management

On December 30, 2019 the Government adopted Decree №661 on Additional Rules for Waste Management under the Waste Management Code of Georgia. The Decree applies to individuals and legal persons producing waste as a result of their business activities. Persons who exceed limits of dangerous or inert waste under the Decree must adopt a Waste Management Plan and appoint an Environmental Protection Officer.

The Decree also sets out an obligation to record the waste. Compliance with the requirements of the Decree will be

monitored by the Ministry of Environmental Protection and Agriculture of Georgia. The Decree is effective from January 1, 2020 and shall remain valid until January 1, 2025.

New Entity to Supervise Agricultural Land Use

On December 26, 2019 the Ministry of Environmental Protection and Agriculture of Georgia adopted Order №2-1258 establishing the National Agency for Sustainable Land Management and Land Use Monitoring, which came into existence as of January 1, 2020.

The main functions of the Agency include accounting of land plots on state balance, the monitoring of the usage of lands, the recordation of the resources of the agricultural lands and the creating a publicly accessible database of the same.

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