
LEGISLATIVE NEWS

The Law of Georgia on Registration Fees

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The adoption of the Law of Georgia on Registration Fees was conditioned by the necessity to remove deficiencies in Georgian legislation. Namely, the amount and the procedure of fees for various activities or services rendered by state authorities were established by such sub-legal acts as: presidential ordinances or ministerial orders. For instance, fees related to the registration of entrepreneurial and non-entrepreneurial (non-commercial) legal persons was regulated by Resolution No. 196 (11 April 1995) of the Cabinet of Ministers of the Republic of Georgia on the introduction of Registration Fees for the Registration of Enterprises and Social Associations of Citizens. Equally there was a presidential Ordinance No. 321 (14 May 1996) on the Registration Fees for Fire and Gas Arms. Motor Vehicles were registered again according to the Presidential Enactment No. 139 (19 May 1996) on the Registration of Motor Vehicles, of the Manufacture, Issuance and Inventory of Registration Plates, Driving Licences and Technical Passports. Separate authorities regulated almost every type of registration, whereas Article 94 of the Georgian Constitution states, that the introduction of taxes and fees, the determination of their amount and the payment procedure should be established only by a law.

The contradiction of the Georgian Constitution was apparent and cast doubt on the validity of each of the actions (registration, collection of fees) performed on the grounds of the above acts. With a view to remove this inadequacy, on 10 April 2002 Parliament adopted the Law of Georgia on Registration Fees, which was initially prepared and suggested by the Ministry of Justice of Georgia and then elaborated by the Ministry of Finance. The Law establishes the types and rates of fees related to registration and the procedures and terms of their payment.

Article 2 of the law provides the definition of a registration fee, in accordance to which “a registration fee is a mandatory payment to the Budget of Georgia effected by natural and legal persons in an amount and according to the procedure envisaged by this law for granting them the right to perform the activity or/and to use a product or goods under this law, as well as for services rendered to them by the state authorities”.

The procedure for the payment of a registration fee is given in Article 3 of the law. In the same article it is stated that it is inadmissible to charge a person with the responsibility to pay a registration fee not envisaged by this law. Article 7 includes an exhaustive list of the types of registration fees and their rates and at the same time specifies the authorities

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responsible for such registration. Article 4 provides the grounds for a refusal to register, while Article 8 establishes exemptions from registration fees. Hence the law clarifies many issues in this field and enables natural and legal persons to elude the payment of illegally established fees.

Through the adoption of the Law on Registration Fees the government not only hopes to remove the disparities with the constitution, but also considers that it will promote the accumulation of relevant funds to the state budget.

Changes and Amendments to the Law of Georgia On the Activities of Commercial Banks

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The changes and amendments of 4 July 2002 to the Law of Georgia of 24 March 1996 On the Activities of Commercial Banks aims at setting stricter authorisation requirements of commercial banks. In particular, the law provides for suitability criteria (established by the Law and the National Bank) of administrators and qualifying shareholders as one of the preconditions for the authorisation of a bank. Thus, under the new version of the law the criteria that were set forth for directors in the previous version of the law now apply to other administrators of a bank as well as qualifying shareholders. Pursuant to the definitions of the law, apart from a member of the board of directors the term "administrator" includes a member of the supervisory board and the revision commission, as well as any person who is authorised to assume obligations on behalf of the bank either independently or together with one or more persons. As regards the definition of a "qualifying shareholder" the amendment adds a definition in accordance with which the "qualifying holding" means five or more percent of the declared or paid up charter capital.

It is apparent that the law has considerably expanded the range of people falling within the scope of the suitability criteria and, along with the persons participating in the day-to-day management of the bank, included those who exert material influence on the way a bank is run and on whose activities the successful operation of the bank is largely dependent.

The introduction of suitability criteria, and in general, the placement of bank activities within the framework of strict regulation and supervision is conditioned by the particular role of the banking sector for economic performance, as well as by its specific nature, when at the stake is the consumer's money and failure of a bank may lead to substantial losses for its customers. The latter may undermine the confidence of the population in the banking sector, while credibility is the major precondition for success in this field. The main objective of the suitability criteria is to serve as a catalyst or filter to prevent unquali-

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fied and dishonest people from taking over the management of a bank or those who will not secure its efficient and profitable operation.

According to the amendments, the suitability criteria for administrators (except for members of the supervisory board) will be set forth by the National Bank of Georgia, while criteria for members of the supervisory board and qualifying shareholders are listed in the law itself.

The suitability criteria for the members of the supervisory board and qualifying shareholders sets out certain requirements related to reputation and serve the purpose of assessing those persons from the point of view of their faithfulness and integrity. Namely, there should be no record of these persons of having been engaged in dishonest and unsound practices in relations with banks and non-banking institutions. An individual shall be prohibited from becoming a member of a supervisory board or a qualifying shareholder if: he/she participated in a transaction that caused material damage to a bank or non-banking deposit institution, caused its insolvency or bankruptcy, abused his rights when working at such establishments, was an administrator of a bank or non-banking deposit institution and the latter became insolvent given the activities of this individual, has not fulfilled the financial obligations due to a bank or non-banking deposit institution. Apart from the above, no person, who is “declared bankrupt or convicted of an economic crime or is subject to some other restrictions provided by the law”, may become a bank administrator or qualifying shareholder.

However, the law limits the scope of application of the reputation criteria by demanding the confirmation of the circumstances given through a court decision. Such a restriction seems to be unreasonable as the receipt of such information from a court may turn into a complicated and delayed procedure, while the supervisory authority may hold the relevant information. It is also disputable why the law limits the reputation criteria to the relations of an individual with the bank and non-banking deposit institutions and why such restrictions do not apply for example to the individuals who caused bankruptcy of an insurance undertaking or any other company. Hence while assessing the suitability of a person it is not sufficient that the authorising body be limited to the above criteria in order that the mentioned rules have a due effect. It would be expedient for the supervisor to take account of the following: an earlier refusal to issue an authorisation to pursue financial activity or the withdrawal of such an authorisation, sanctions applied by regulators against this individual during their service in the financial field, a refusal of admission to, or expulsion from, professional bodies or previous questionable business practices.¹

The suitability criteria for bank administrators (except for members of the supervisory board) are listed in the Regulations on the Suitability Criteria for Commercial Bank Administrators, approved by Order No. 234 of the President of the National Bank, dated 16

¹ Joint Paper of Basle Committee on Banking Supervision, International Organisation of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS) “Supervision of Financial Conglomerates”, 1999, 40.

September 2002. Under these regulations a bank administrator must meet two criteria. These are professional criteria and those related to reputation. The criteria related to reputation are essentially the same as those set forth for members of the supervisory board and qualifying shareholders. Hence the above comments apply here as well.

Along with reputation requirements bank administrators should meet professional requirements as well. This is natural as they are the executive persons who direct bank operations on a daily basis. A bank administrator should have relevant professional education and experience of work in the banking or financial field. The requirements vary according to position concerned.

Despite the shortcomings mentioned above the changes to the law on Activities of Commercial Banks are of a progressive nature and reflect the practice of developed countries. The introduction of suitability criteria will considerably limit the appearance of unqualified or unscrupulous persons in the top management of banks, as has been the reason for insolvency and bankruptcy of the banks in the recent past. This will strengthen the banking sector and enhance its credibility by the public.

Amendment to the Law of Georgia on the Notary

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One of the main conditions for the process of the transition to a free market economic system from a planned economy is, among others, a high degree of predictability and mutual trust between economic actors in the marketplace. In concert with other important factors this can be guaranteed by clear and unambiguous legal norms.

For efficient and unhindered business relations it is also important to have simple and reliable mechanisms to verify legal relationships and legal facts. In developed democracies such a function is fulfilled by the institution of the notary.

The functioning of a notary in Georgia, its legal basis and its main requirements is determined by the Law on the Notary. The aim of the notary, as that of any legal public institution, is the verification of legal facts and legal relationships within the legal framework provided by the state.

Section 21 of the Law on the Notary regulates the procedure for discharging a notary's duties and the procedures for the temporary suspension of professional service.

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Before this amendment came into force the law did not properly describe the issues surrounding the temporary suspension of notary. The previous version used the term "impeach" without defining the material difference between the terms "impeach" and "discharge". This apparent ambiguity was caused by ignoring the difference in the statute between the temporary suspension of a notary's activities and the permanent revocation of the legal right for providing this service to the public. The amendment rectifies this ambiguity and makes clear the intent of legislator pointing to the temporary nature of suspension, which is achieved by the use of term "suspension", replacing "impeach".

The amendment also provides instances for when a notary is to be relieved of his/her duties. These are in the case of death (subparagraph a); in the case of losing citizenship of Georgia (subparagraph g); in case of permanent residence abroad (subparagraph d); in case of undertaking notary duties by breaking existing legal rules and procedures regardless of when that happened (subparagraph t).

In addition, the amendment nullifies the ambiguous standard used for the suspension of a notary's duties, such as "committing a grave crime" (part 2, subparagraph a). The amendment clarifies several situations that allow for the suspension of a notary's duties, and by this reduces the chances for unreasonable interpretations of law that were possible in initial version of this act.

The amendment also touches upon the requirement to delete a notary's name from the public registry in the case of his/her permanent discharge. This will enable everyone to find out whether a particular notary has or had a legal right to provide such a service. The initial version did have such a requirement, which allowed some providers to operate even after they had been suspended.

The amendment provides much needed clarifications and reduces the chances of misinterpretation.

Significant Normative Acts Adopted in the Second and Third Quarters of 2002
Laws of Georgia

10.04.2002	Law on Registration Fees	No.1356, SSM* No.9, Art. 43
10.04.2002	Law on Making Changes to the Law of Georgia on Parliamentary Factions	No.1364 SSM No.9, Art. 42
10.04.2002	Law on Making Changes to the Organic Law of Georgia on Impeachment	No.1358 SSM No.9, Art. 40
15.04.2002	Law on Making Changes and Amendments to the Election Code of Georgia	No.1380 SSM No.9, Art. 41
07.05.2002	Law on Promotion of Leasing Activities	No.1392 SSM No.13, Art. 49
07.05.2002	Law on Making Changes to the Law of Georgia on Enforcement Proceedings	No.1397 SSM No.13, Art. 54
07.05.2002	Law on Making Amendments to the Civil Procedure Code of Georgia	No.1395 SSM No.13, Art. 50
07.05.2002	Law on Making Amendments to the Law of Georgia on Customs Tariffs and Fees	No.1394 SSM No.13, Art. 53
07.05.2002	Law on Making Changes and Amendments to the Tax Code of Georgia	No.1393 SSM No.13, Art. 51
07.05.2002	Law on Making Changes and Amendments to the Law of Georgia on Safety of Dangerous Undertakings	No.1391 SSM No.13, Art. 52
07.05.2002	Law on Making Changes and Amendments to the Law of Georgia on Telecommunications and Post	No.1388 SSM No.12, Art. 47
14.05.2002	Law on Making Changes to the Law of Georgia on Compulsory Fire Insurance	No.1422 SSM No.15, Art. 60

* Sakartvelos Sakanonmdeblo Matsne (SSM) is the Georgian official law gazette.

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14.05.2002	Law on Making Changes to the Law of Georgia on Budgetary System and Budgetary Powers	No.1420 SSM No.16, Art. 66
14.05.2002	Law on Making Changes to the Organic Law of Georgia on Supreme Court of Georgia	No.1418 SSM No.17, Art. 71
14.05.2002	Law on Making a Change and an Amendment to the Law of Georgia on Customs Tariffs and Fees	No.1410 SSM No.15, Art. 59
14.05.2002	Law on Making Changes to the Law of Georgia on Privatisation of State Property	No.1409 SSM No.13, Art. 55
14.05.2002	Law on Making Changes and Amendment to the Law of Georgia on Trustees	No.1407 SSM No.15, Art. 57
14.05.2002	Law on Making Changes and Amendments to the Organic Law of Georgia on Prosecutor's Office	No.1405 SSM No.13, Art. 48
14.05.2002	Law on Making Changes to the Organic Law of Georgia on General Courts	No.1441 SSM No.17, Art. 70
15.05.2002	Law on Making Changes to the Law of Georgia on Committees of the Parliament of Georgia	No.1431 SSM No.11, Art. 45
18.05.2002	Law on Making Changes and Amendments to the Law of Georgia on Protection of Cultural Heritage	No.1462 SSM No.16, Art. 68
18.05.2002	Law on Making an Amendment to the Law of Georgia on Customs Tariffs and Fees	No.1460 SSM No.15, Art. 64
18.05.2002	Law on Making an Amendment to the Tax Code of Georgia	No.1458 SSM No.15, Art. 63
18.05.2002	Law on Making Changes to the Law of Georgia on Notary	No.1453 SSM No.15, Art. 58
18.05.2002	Law on Making Changes and Amendments to the Law of Georgia on Migrant's Inspection Fees	No.1451 SSM No.16, Art. 67

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07.06.2002	Law on Making Changes to the Tax Code of Georgia	No.1504 SSM No.18, Art. 76
07.06.2002	Law on Making Changes to the Tax Code of Georgia	No.1500 SSM No.18, Art. 74
07.06.2002	Law on Making Changes to the Tax Code of Georgia	No.1498 SSM No.18, Art. 73
04.07.2002	Law on Making a Change to the Law of Georgia on Employment	No.1648 SSM No.23, Art. 120
04.07.2002	Law on Making Changes and Amendments to the Law of Georgia on the Promotion of Small Enterprises	No.1641 SSM No.23, Art. 119
04.07.2002	Law on Making an Amendment to the Tax Code of Georgia	No.1639 SSM No.23, Art. 121
04.07.2002	Law on Making Changes and Amendments to the Law of Georgia on Grapevine and wine	No.1635 SSM No.23, Art. 117
04.07.2002	Law on Making Changes and Amendments to the Law of Georgia on Imprisonment	No.1633 SSM No.23, Art. 116
04.07.2002	Law on Making a Change and Amendments to the Criminal Procedure Code of Georgia	No.1631 SSM No.23, Art. 115
04.07.2002	Law on Making a Change and Amendments to the Criminal Code of Georgia	No.1629 SSM No.23, Art. 114
04.07.2002	Law on Making Changes and Amendments to the Criminal Code of Georgia	No.1627 SSM No.23, Art. 113
04.07.2002	Law on Making Changes and Amendments to the Administrative Infringements Code of Georgia	No.1625 SSM No.23, Art. 112
04.07.2002	Law on Making Changes to the Law of Georgia on Trustees	No.1623 SSM No.23, Art. 111
04.07.2002	Law on Making Changes and Amendments to the Administrative Infringements Code of Georgia	No.1621 SSM No.23, Art. 110

04.07.2002	Law on Making Changes and Amendments to the Law of Georgia on the Activity of Commercial Banks	No.1617 SSM No.23, Art. 108
04.07.2002	Law on Making Amendments to the Law of Georgia on the State Budget of Georgia for 2002	No.1660 SSM No.25, Art. 122
04.07.2002	Law on Making an Amendment to the Customs Code of Georgia	No.1679 SSM No.27, Art. 126
04.07.2002	Law on Making an Amendment to the Law of Georgia on Customs Tariffs and Fees	No.1681 SSM No.27, Art. 127

Decisions of the Parliament of Georgia

27.09.2002	Decision of the Parliament of Georgia No.1673 on Ratification of an Agreement between the Governments of Georgia and Kingdom of Netherlands on Prevention of Double Taxation and Nonpayment of Income Taxes non Payment
27.09.2002	Decision of the Parliament of Georgia No.1674 on Ratification of an Amendment of Paragraph 1 of Article 20 of the Convention on Elimination of all Forms of Discrimination Against Women
27.09.2002	Decision of the Parliament of Georgia No.1675 on Joining an Optional Protocol to the Convention on Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
27.09.2002	Decision of the Parliament of Georgia No.1676 on Ratification of the Convention on Mutual Assistance in Consular Matters Between Member States of GUUAM
27.09.2002	Decision of the Parliament of Georgia No.1677 on Ratification of an Additional Protocol to the Convention on Human Rights and Biomedicine on Transplantation of Organs and Tissues of Human Origin

Ordinances of the President of Georgia

- 17.05.2002 Ordinance of the President of Georgia No.240 on Measures for Strengthening the Protection of Human Rights in Georgia
- 17.05.2002 Ordinance of the President of Georgia No.241 on Further Development and Improvement of the Legislative Activity
- 21.05.2002 Ordinance of the President of Georgia No.249 on Making Changes to the Ordinance of President of Georgia No.317 of 24 July 2000 on the Promotion of the Implementation of the Partnership and Cooperation Agreement made between Georgia and European Union
- 23.05.2002 Ordinance of the President of Georgia No.256 on Approval and Enactment of Grant Treaty "Social Protection Reform Project" and "Second Project of Social Investments Fund" Signed between Georgia and the International Development Association on 5 November 2001
- 26.05.2002 Ordinance of the President of Georgia No.280 on Approval of the Statute of the Ministry of Tax Revenues of Georgia
- 28.09.2002 Ordinance of the President of Georgia No.69 on First Range Measures for Reducing Shadow Economy in Labour, Healthcare and Social Protection System of Georgia and for Combating Corruption

Enactments of the President of Georgia

- 23.05.2002 Enactment of the President of Georgia No.648 on Signing the European Charter on Local Self-government
- 23.05.2002 Enactment of the President of Georgia No.649 on Signing the Treaty between Executive Power of Georgia and the Government of the Republic of Turkey on Grants in the Military field
- 28.05.2002 Enactment of the President of Georgia No.681 on Signing an Agreement between Georgia and the Kingdom of Netherlands on International Road Transport
- 10.09.2002 Enactment of the President of Georgia No.1187 on Signing a Treaty between the Governments of Georgia and United States of America on Cooperation in Defence Issues
- 10.09.2002 Enactment of the President of Georgia No.1188 on Signing an Agreement between the Ministry of Defence of Georgia and National Ministry of Defence of Romania on Cooperation in the field of Military Medicine