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## LEGAL TRENDS

### Draft Laws Elaborated by the Ministry of Justice

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#### 1. Changes and Amendments to the Law on a Legal Person of Public Law

The draft was prepared in accordance with Presidential Ordinance No.112 of 7 February 2003. It regulates the establishment, activity, registration and accounting of public law legal entities, as well as state control over such entities. It also provides for compatibility between the Law on a Legal Person of Public Law and the Civil Code.

The draft-law formulates the concept of a juridical person of public law in a new fashion, defines the establishment of a legal person of public law, lists the types and forms of public law legal entities, as well as all areas of social life in which public law legal entities can be established. Moreover, the draft contains a clause according to which public law legal entities are established only based on the law.

The draft law distinguishes two forms of public law legal entities: corporation – a legal person of public law based on the membership of persons, and an institution established based on the property of a certain state and/or local self-government (local government) and that does not have members. Consequently, it defines different procedures and conditions for their establishment, registration, activity and state control over them.

Under the draft, the rights of a juridical person of public law originate and terminate upon registration. This happens by entry of appropriate data into the state register. Along with the registration of foundations, creative unions and political associations, the Ministry of Justice will also register a legal person of public law.

The draft gives a list of mandatory information that must be submitted for the registration of a corporation. Those established in the form of an institution shall be registered on approval of their charter in the state register of normative acts.

The draft law lists the information for the state register. Changes made to a charter shall also be entered in the register. The period for registration is ten days. Unless a decision is made within this period, the registration shall be deemed as completed.

Pursuant to the draft law the registration is cancelled if a legal person of public law essentially moves to the entrepreneurial activity, carries out an activity that falls within the compe-

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tence of state and local self-government (government) bodies or there are other grounds as provided for by the law. The cancellation of registration shall lead to liquidation.

The draft clarifies matters with regard to the status of the employees of juridical person of public law (institution) and defines the procedure for recruitment. The draft stipulates the right to carry out entrepreneurial activity to achieve a certain goal. However, as stated, if a legal person of public law essentially moves into entrepreneurial activity the controlling body concerned may raise the issue of liquidation.

In addition, the draft-law defines the functions of a legal person of public law and control over its work. According to Article 3 of the Law of Georgia on Legal Person of Public Law, a juridical person of public law shall have special authority (competence). It shall be entitled to carry out an activity as envisaged by law, Presidential ordinance and its own charter. However if it concludes a transaction outside its scope, such transaction will be cancelled.

A legal person of public law shall be subject to control by a state or local self-government body defined by law or presidential ordinance. Control means supervision over legitimacy, reasonability, efficiency of the activity rendered and financial activity. The controlling body has the right to require materials and information to carry out control. Such a body is entitled to suspend or repeal unreasonable decisions.

One of the novelties of the draft law is the right of local self-government and government bodies to establish public law legal entities by in cases directly provided for by international treaty or law.

## **2. Draft Law on Changes and Amendments to the Law on Auditing Activity**

This draft seeks to improve the legislative framework regulating auditing activity and its organizational arrangement. There will now be mandatory essential elements to an auditor's report. Draft provides the definitions of a false audit, how to deal with companies that have majority state ownership, and grounds to refuse to carry out audit.

The notion of an audit is more precise and there are now mandatory elements to an audit. The draft introduces the concept of a false audit. This is an audit conducted without a proper auditing procedure or where it contradicts to the documentation submitted to the auditor. It will be up to a court to decide whether an audit is true or false.

An audit is now mandatory for certain enterprises. Business will be subject to an annual audit to ascertain accuracy, completeness and compliance of financial (bookkeeping) records and accounts, with existing legislation and international auditing standards. Such audits are mandatory for limited liability companies and joint stock companies if their

annual turnover is over GEL 25, 000 or companies that are more than 50% state owned. The audit contract is subject to open competition. The auditing company is obliged to insure liability against a violation of the contract.

There are also now grounds to refuse to conduct an audit. Auditing companies can refuse to conduct an audit if a company refuses to present necessary information or if during the auditing they uncover circumstances that may substantially influence the accuracy of the financial (bookkeeping) records and accounts and in other cases prescribed by law.

There are also procedures to issue a certificate to an auditing company, to suspend a company and to cancel a license to audit. Finally, the draft lays down the minimum charter capital of an audit firm and procedures that prohibit the unfair advertisement of their qualities, services and prices.

### **3. Draft Laws on Cooperation between Georgia and the International Criminal Court; on Changes and Amendments to Criminal Procedure Code; on Changes to the Criminal Code and the Law on Imprisonment; and on Changes to the Law on Enforcement Proceedings**

These draft-laws concern Georgia's ratification of the Rome Statute of the International Criminal Court. The International Criminal Court is a permanent international tribunal that exercises jurisdiction over individuals accused of crimes such as genocide, crimes against humanity, war crimes and crimes of aggression. Any state that ratifies the Rome Statute accepts the jurisdiction of the International Criminal Court on its territory.

The International Criminal Court does not substitute domestic law nor is it a court of appeal. Rather it complements national jurisdictions when a state concerned is unable or unwilling to prosecute. In order to establish the basis for the cooperation with the International Criminal Court a new law has been proposed. This law regulates particular issues of cooperation, specifies the authority of the Ministry of Justice that deals with cooperation and procedures needed to comply with requests from the International Criminal Court. A special department for cooperation with the International Criminal Court will be set up within the Ministry.

The draft lays down procedures and conditions for cooperation. This includes contents and forms of request, how to deal with a request from the International Criminal Court, rules of consultation, rules to reimburse costs, issues of execution of requests from the International Criminal Court and other states on the same case, and rules of appeal against actions taken in respect of meeting a request. The draft regulates the transfer of a person suspected of a crime falling within the jurisdiction of International Criminal Court to the International Criminal Court, specifies the form and contents of the request to be submitted to arrest the person, the rules of arrest and transfer, and the rights of the person to be transferred.

Cooperation may cover the execution of legal proceedings laid down by Georgian legislation, which will support investigation and prosecution of crimes falling within the jurisdiction of the International Criminal Court. This may include the identification and whereabouts of persons; taking evidence, including testimony under oath, the production of evidence, including expert opinion and reports. It may also involve questioning any person under investigation or who has been prosecuted, the temporary transfer of arrested persons, search and seizure, exhumation, provision of records and documents, protection of victims and witnesses and the preservation of evidence, identification of proceeds, property and assets, seizure of instrumentalities of crimes, assurances to witnesses or experts to appear before the court and the execution of other legal proceedings that are not prohibited by Georgian legislation.

There are also procedures to ensure the enforcement of the International Criminal Court sentences in Georgia. The sentence of the International Criminal Court will be enforced in Georgia if the person found guilty is a national and/or permanently resides and/or owns property in Georgia. Sentence of imprisonment adopted by the International Criminal Court shall be enforced in the territory of Georgia as soon as the authority competent for cooperation gives its consent. The International Criminal Court has the right to send its representative to Georgia at any time to check enforcement conditions, meet and interview the sentenced person. It is only in the power of the International Criminal Court to reduce a sentence.

To ratify the Rome Statute changes to the Criminal Procedure Code were prepared. The proposed changes distinguish between surrender i.e. delivering a person by the state to the International Criminal Court and extradition i.e. a delivery by the state to the other one. In addition, the changes provide for provisions to exercise these legal proceedings.

The proposed changes and amendments to the Criminal Code specify the corpus delicti of genocide (Article 407), crime against humanity (Article 409), ecocide (Article 409), intentional violation of International Humanitarian Law norms in a period of armed conflict (Article 411), other violations of International Humanitarian Law norms (Article 413), falling within the jurisdiction of the International Criminal Court. The changes to the laws on Imprisonment and Enforcement Proceedings specify the procedure and conditions to enforce sentences adopted by the International Criminal Court in Georgia.