Company Law in Georgia

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A. Introduction

Georgia is passing through a difficult process of transition from a command to a market economy. A period that is overshadowed by deep economic crisis conditioned by the disappearance of traditional markets and civil war leading to the current loss of control of important territories of Abkhazia and so called South Ossetia. After more than ten years since regaining independence in 1991 Georgia is gradually entering a phase of modest recovery and stabilisation. But despite good progress in lawmaking, business in Georgia still suffers from difficult investment conditions, as important institutional reforms still lie ahead due to political and budgetary constraints.

Legal reforms in company law were initiated in Georgia with the adoption of a Law on Fundamentals of Entrepreneurial Activities in 1991, which did away with restrictions of socialist law to business and set basic principles for entrepreneurs to organise business activities on their own. This law has had little meaning in practice but carried high importance as a starting point for the development of a market economy. It was replaced in 1994 by the Law on Entrepreneurs that since then underwent a number of changes but still retains its original character as being a short codification of the general rules necessary for market relations for entrepreneurs. This fairly short law consists of roughly seventy provisions and provides a comprehensive set of rules governing the activities of companies and entrepreneurs and endeavours to keep the application of the law as easy as possible. Additionally, fundamental provisions of corporate law are included in the Civil Code.

Today the body of Georgian company law could be described as a remarkably well-developed field of legislation. It is encouraging to see that in response to the events that conditioned the break-up of the former Soviet Union and its legal system, policy makers in Georgia tried to align with modern western legal standards as much as possible and did not waste time and precious resources focussing on largely preserving traditional regulatory models as some other CIS countries did. This ambition had an especially strong impact on the development of civil law and specifically corporate law, which is to a wide extent influenced by continental European – particularly German – legal theory. Many parallels in this respect are evident that could make it a useful undertaking to review its provisions in the light of a European-German legal background, which allows to share experience and to minimise costs of interpretation of law by court decisions and legal theory.

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Now that almost ten years have passed since the adoption of the law, the approximation of Georgian with European legislation is entering a new phase. A draft National Programme on Harmonisation of Legislation has been elaborated by the Georgian government that is awaiting its enactment, there is reason for us to provide a brief analytical overview of the law comparing it with European and international company law standards. It must be understood that the aspects that are dealt with should in no way be taken as exhaustive but as a selection that is suggested to foster policy debate in the framework of the anticipated implementation of the National Programme.

In doing so reference to the EU's company law directives will be made where they are useful to attain short and mid term approximation targets. In this respect it must be kept in mind that company law is only to a certain extend harmonised in the EU. The overwhelming part of it is still a matter that lies within the exclusive competence of the Member States.

Apart from this reference points for comparison with international standards used in the text are primarily the General Principles of Company Law for Transition Economies that have been published in 1999 by a working group organised by the Organisation for Economic Cooperation and Development (OECD), including company law experts from France, Germany, Russia, and the United States, which are intended both to guide drafters of company law in transition economies, and to set forth options for drafters to consider. The first section deals with general aspects of company law. In the second section particular organisational forms of companies that are available under Georgian legislation are discussed.

B. General Provisions

The Georgian Law on Entrepreneurs obviously endeavours to regulate for a minimum that is essential at an earlier stage of economic development, thus keeping the law easy to comprehend and to apply. The law unifies rules that in Germany are spread over various legal acts like the Commercial Code, the Law on Limited Liability Companies and the Law on Joint Stock Companies. The latter two laws in Germany were originally also included in the Commercial Code, but the ambition to leave all regulation in one code was given up in the course of developing economic relations. The rules of the Georgian Law on Entrepreneurs are evidently drafted close to the German provisions. However, the rules of German law are more detailed due to the needs of a more sophisticated economic and legal environment, and also due to the fact that Georgian law did away with some unpractical legacies of German law.

The structure of the law comprises a general part with unified rules for all organisational forms, related to foundation, liability, registration, corporate governance and representation, etc., and a special part that provides in its various sections rules on those organisational forms that could be found in one way or another in all European jurisdictions, such as individual enterprise (sole proprietor), general partnership, joint partnership, limited liability company, joint stock company, and co-operative.

According to Article 1, the Law on Entrepreneurs applies to all entrepreneurial activity that is lawful, not non-recurring, aims at profit making and which is independent and organised. Excluded are those areas that belong to free professions, i.e. the business activities of scientists, physicians, artists, architects, consultants (among them tax advisors), auditors, which are those professions that in many European countries historically developed under less state control and that are characterised by higher education and personal contribution of labour of the owners. Those who conduct a forestry or agricultural business may use business forms of the LoE if they decide to register at the public register and must do so if they employ more than five employees that are not family members. Art. 2, Par. 2 LoE requires for the application of the law with respect to individual entrepreneurs a permanently established business organisation, an orderly cash register and an accounting system. From this might follow that smallest entrepreneurs – the LoE gives reference to small entrepreneurs in its part on accounting – that do not have available such organisational structures might be exempted from the application of the law and particularly would be exempted from the duty to comply with the proceedings at the company register. This view might be supported by a look on the German Commercial Code, which as a rule extends only to entrepreneurs of a certain size. However, the practical consequences of that restriction might not be that farreaching as they are under the German Commercial Code. Unlike the German Commercial Code, the Law on Entrepreneurs does not set stricter standards for the conclusion of contracts among entrepreneurs that base on customs of traders that aim at saving time and money with simplified procedures that often are stricter than the rules of the Civil Code. This is why in Georgia there is no danger that the application of the LoE to smallest entrepreneurs could bring injustice to people, who usually do not have deeper judicial knowledge.

Therefore, at the time being it might be reasonable to assume that all individual entrepreneurs, apart from those who are explicitly exempted, fall under the scope of the LoE. This interpretation would have the benefit of establishing more legal certainty, as the distinction between small, smallest and large entrepreneurs would not have to be made.

However, it might be useful to develop the law in a mid-term perspective by establishing stricter rules on liability, conclusion of contracts, etc. for entrepreneurs who being professionals are usually more educated in dealing with the law than the average people are. These rules could set stricter standards that aim at streamlining business relations and that do not aim at protecting and bringing justice to those who are not educated in business practices, but that facilitate fast and easy dealing and consequently reduce transaction costs.

In order to receive legal personality and to have available all civil rights and the power to incur all civil obligations necessary for carrying out its activities, it is mandatory that individual entrepreneurs and companies undergo registration procedures at publicly acces-

sible local company registers, which are led by courts of first instance. These procedures require provision of information on the business, which must be kept in a file at the register, and which is to be updated afterwards if things change. It must contain for all companies their name, legal form, address, field of occupation, and information on begin and end of financial year and information on partners, and individual entrepreneurs (profession, place of residence, power of attorney). Additionally, joint partnerships must provide information on the amount of shares that partners own and limited liability companies must indicate the amount of charter capital, personal information on directors and if appropriate members of supervisory council. Moreover, it is necessary to file a copy of the charter itself, evaluation documents of immaterial contributions as well as documents on appointment of directors and/or members of supervisory council if appropriate. The information contained therein is additionally to be published in an official journal (Sakanonmdeblo Matsne). Procedures are fast and not particularly costly. The fees range from 20 Lari for registration of a single entrepreneur to 360 Lari for that of a joint stock company. Courts are obliged to register companies within seven days and if registration is not executed in due time, companies are treated as being registered after expiration of this period.

Obviously, Georgian law requires publication of many pieces of information on entrepreneurs and their business, which lies at the heart of the rules of the EU's directives on company legislation. However, the minimum standards that first of all have been introduced by the company law directives of the EU are still broader and might be worth to be considered in the context of further approximation of Georgian with European legislation. In particular, the First Council Directive 68/151/EEC of March 1968, which aims at the "co-ordination of safeguards for the protection of the interests of members and others", the latter being mainly creditors and other business partners, requires Member States to provide for a system of publicity for all companies with which they must ensure disclosure of the company's charter, directors of the company, and paid up capital, balance sheet and profit and loss account, winding-up and appointment of liquidators.

Thus, although being to a large extent compatible concerning the details to be published, Georgian law in order to become fully approximated with the rules of the First Directive would need to require as well publication of the balance sheet and the profit and loss account. However, it is doubtful, whether it is useful to require the mandatory publication of a company's financial statements publicly already at this stage, because due to problematic law enforcement situation their disclosure might expose founders and shareholders to criminal practices. But, already relevant in this context is the requirement to publish if the company is in the process of winding up, any declaration of nullity of the company made by the courts, the appointment of liquidators, particulars concerning them, and their respective powers and the termination of the liquidation of the company.

All this information must be published and stored in a file kept at the company register and the special official journal. In order to safeguard the implementation of proceedings, the

First Directive additionally requires appropriate penalties in case of a failure to disclose the balance sheet and profit and loss account or omissions from commercial documents.

Moreover, according to the First Directive a third kind of disclosure is important that is addressed by the Law on Entrepreneurs in its Art. 19. The business letters and order forms of companies shall quote the respective company register together with the number that the company has in the register as well as the legal form, and the location of the seat. When there is made mention of capital, reference to the subscribed and paid up capital must be made as well. In contrast to the rules of the directive it is not necessary to indicate the fact that a company is being wound up.

Georgian law is fully compliant with the First Directive concerning the requirements related to validation of documents in the purpose of protecting third persons. Like the First Directive the Law on Entrepreneurs according to Art. 7, Par. 3 rules that documents and particulars may be relied on by the company as against third parties after they have been published, even if the information therin is untrue, unless the company proves that the third parties had knowledge thereof. Transactions with third parties will not be affected by limitations on the authority of the organs of the company where those limitations are contained in the constitutional documents of the company. Thus, before registration all partners are liable for obligations that have been entered into in the name of the company, Art. 2, Par. 5 LoE.

In the EU more minimum standards on disclosure proceedings are provided by the Second Council Directive 77/91/EEC of December 1976 which regulates apart from issues related to capital alteration and maintenance – that will be discussed in this text later on in the part on JSCs – also the aspect of information to be provided specifically on public limited liability companies, as it is applicable exclusively to those organisational forms that are similar to the joint stock companies of Georgian law. In addition to the earlier on mentioned general rules on provision of information to the public, this directive requires joint stock companies to provide at least a minimum amount of information which must appear in either the charter or the instrument of incorporation or a separate document published in accordance with the procedure laid down in the laws of each Member State.

Apart from the civil partnership, where a contract regulates legal relations among the partners, according to Georgian law charters are the sole documents that define the structure of a company, the internal patterns and rules of governance, the rights of shareholders and other fundamental matters. The Georgian company law provides minimum standards for contents of charters of funds and associations in Art. 32 Civil Code but does not do so concerning other business companies. The Georgian law requires to provide some respective information at the register, such as the registered office, identity of the natural or legal persons by whom or in whose name the statutes or the instrument of incorporation, or where the company was not formed at the same time, the drafts of these documents, have been signed, but does not require that this information to be provided

necessarily in the charter. In order to avoid legal uncertainty and for reasons of simplicity and clarity it might be useful to provide rules that require charters in any case to have provisions on:

– Company's full and abbreviated name (indication of legal form);
– The company's location;
– Charter capital and the type and number of shares that may be issued;
– The rights of shareholders for each type of preferred shares in the case of creation of preferred shares;
– The procedure for holding shareholder meetings;
– The number of members of the company's board of directors.

Also the Second Directive provides mandatory requirements for charters of companies, which shall always give at least the following information:

– Type and name of the company;
– Objects of the company;
– When the company has no authorised capital, the amount of subscribed capital;
– When the company has an authorised capital, the amount thereof and also the amount of the capital subscribed at the time the company is incorporated or is authorised to commence business, and at the time of any change in the authorised capital;
– In so far as they are not legally determined, the rules governing the number of and the procedure for appointing members of the bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among those bodies;
– the duration of the company, except where this is indefinite.

Additionally, the charter or another document that is published in the companies' register according to the requirements of the First Directive must contain:

– Nominal value of the shares subscribed and, at least once a year, the number thereof;
– Number of shares subscribed without stating the nominal value, where such shares may be issued under national law;
– Special conditions – if any – limiting the transfer of shares;
– Where there are several classes of shares, the information under above three bullet points for each class and the rights attaching to the shares of each class;
– Whether the shares are registered or bearer, where national law provides for both types, and any provisions relating to the conversion of such shares unless the procedure is laid down by law;
– Amount of the subscribed capital paid up at the time the company is incorporated or is authorised to commence business;
– Nominal value of the shares or, where there is not nominal value, the number of shares issued for a consideration other than in cash, together with the nature of the consideration and the name of the person providing this consideration;
– Total amount, or at least an estimate, of all the costs payable by the company or

chargeable to it by reason of its formation and, where appropriate, before the company is authorised to commence business;
– Any special advantage granted, at the time the company is formed or up to the time it receives authorisation to commence business, to anyone who has taken part in the formation of the company or in transactions leading to the grant of such authorisation.

Public disclosure standards must be distinguished from disclosure standards for shareholders that aim at protecting shareholders by enabling them to receive appropriate information on the conduct of the business they own. In this regard a law should require a company to provide to shareholders, at least once a year, a balance sheet, a statement of profits and losses, and a written report on the company's activities. Moreover, it is useful that shareholders are entitled to receive a list of company's other shareholders, their addresses, and shareholdings. According to the Law on Entrepreneurs shareholders of joint stock companies have the right to receive information and explanations during the shareholders' meeting related to topics listed on the agenda only, unless this would contradict vital interests of the company. If a request has been submitted to the company 10 days prior to the shareholders' meeting it has to be answered before or at the meeting, Art. 53, Par. 3, No. 1. The Georgian law rightful limits disclosure both to avoid expense to the company and to prevent disclosure of sensitive business information that competitors might want to know. It denies access to information that is of a vital meaning for the company, however this seems rather restrictive, as it would deny the justified interests of shareholders to important information. In order to give due account to the interest of the company to avoid abuse of information rights and the interest of the shareholders to receive an as full as possible picture on the business situation of the company, the law could provide for access rights that would be subject to a threshold percentage, such as 5 or 10 % of a company's shares, and or subject to a pledge of confidentiality by the shareholder. In any event, good protection is already provided with the rule of Art. 53, par. 3 and with a right of all company's directors or members of a supervisory council to inspect a company's accounts and other relevant information. The general duty of directors and members of the supervisory council to act in good faith and in the company's interests provides here adequate protection against this information being used in an abusive manner.

Another important aspect for protection of third persons against consequences of legal mistakes that occurred during the foundation procedure is the availability of a precise catalogue of reasons that would lead to nullification. According to Art. 5 Par. 8 of the Law on Entrepreneurs any mistake that is violating the registration procedures could lead to nullification if it is not wiped out within a period of three months since registration. Severe mistakes that violate essential interests of particular persons or the society as well as essential mistakes of the charter and the fact of liquidation due to bankruptcy proceedings can lead to immediate nullification. Georgian law in parallel to the requirements of the directive requires in every case a court decision for nullification of companies. However, accepting every procedural mistake to be a suit-

able reason for nullification might lead to legal uncertainty as minor mistakes could pose the threat of nullification of business executed by the company and refer business partners often to legal actions against the partners themselves, which frequently is more difficult to implement. As a result business partners would have to carry the burden for mistakes made by the partners of the nullified company. In order to avoid this obviously unjust result, annulment procedures might be brought in line with the provisions of the First Company Law Directive, which contains restrictions on the reasons for the annulment of companies and requirements on the disclosure of information that are both necessary for the protection of creditors and other business partners. German law in these cases operates with the assumption of a "mistaken company" (*fehlerhafte Gesellschaft*) that is treated as being unmistakenly constituted, whereby this assumption is restricted by requirements of good faith and public order. The First Directive requires that where a question of nullity arises under the Law on a Member State, nullity must be ordered by a decision of a court and may be ordered only on the grounds set in its Art. 11, which are:

– No instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with;
– The objects of the company are unlawful or contrary to public order;
– The instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;
– Failure to comply with the provisions of the national law concerning the minimum amount of capital to be paid up;
– Incapacity of all the founder members;
– Contrary to the national law governing the company, the number of founder members is less than two.

The Law on Entrepreneurs specifies "good faith" as a general standard of conduct for management, Art. 9.7. and Art. 56 No. 4 provides "eagerness and good faith" as specific standards of management in joint stock companies. The management is liable towards the company, and persons seeking for compensation have to redress against the company. A lawsuit for partners and shareholders against management is not available. It might be useful to consider introducing such action against management, but only for shareholders having a certain percentage of shares to avoid nuisance suits that aim at forcing directors to settle the suit for a sum of money which is significant, but less than the expense of defending themselves in the court.

From Art. 24, Par. 1 of the Civil Code follows that the property of a company and that of its shareholders are clearly separated, so that shareholders in general are not responsible for liabilities of the company. This principle of limited liability is a fundamental of modern company law that makes it possible for companies to raise capital from a large number of investors who neither control the company's activities nor have detailed

knowledge about the company's activities. But limited liability should not exonerate shareholders from liability for their own actions and particularly for this reason it is useful to protect minority shareholders against the abuse of influence of large scale shareholders. According to Art. 53, Par. 4 LoE a dominant shareholder in a JSC who alone or together with other shareholders is in a position to influence decision making at the shareholders meeting is liable for damages that occur as a consequence of purposeful action against the interests of the company, which would oblige him to pay compensation. This provision is a sufficiently narrow exemption to the principle of limited liability, however it might be preferable to stipulate that a controlling shareholder should be liable to creditors only in the case of serious fault on his part or if the company becomes insolvent, as it might be difficult to bring evidence for purposeful action. Moreover, an appropriately narrow liability for dominating companies is provided in Art. 17, Par. 4 LoE, where it is regulated that dominating companies that have more than 75 % of shares of another company are liable for purposeful damages that occur to the dependent company.

In its Art. 13 the Georgian Law on Entrepreneurs deals with auditing and accounting, which requires large companies to comply with International Accounting Standards (IAS). For small companies that do not have more than 10 staff members and where the company's profits do not amount to more than 40.000 GEL more simplified rules are applicable. Accounting procedures have to be executed correctly, completely, clearly and have to be based on the system of double entry bookkeeping. Relevant documents must be kept for a minimum of 10 years. Further details are regulated in a law On Regulation of Bookkeeping and Accounting of 1999.

The EU endeavours to unify accounting requirements with its Fourth Directive 78/660/EEC, which since its adoption has been supplemented by one regulation and six further directives. In practice, the directives leads to complex alternatives in order to take into account the differing cultures of company accounting in the various Member States. Therefore, it contains 41 options available to the Member States for implementation and 35 further options for concerned companies, thus the harmonisation effects are limited. Currently two bodies work towards minimising these differences, which are the International Accounting Standards Committee and the International Organisation of Securities Commissions. As Georgia already pledges for International Accounting Standards, the particularities of the accounting directives might be subject to approximation at a later stage of legislative approximation in the EU.

Another important aspect of accounting is addressed by the Eighth Company Law Directive of 1984 on education of auditors. This directive provides minimum standards for education of auditors, which basically consists of the requirement for examining persons to have an admission for university, a theoretical and practical education with a degree on the level of a university degree or in case of transition to such a system – for many years must have executed a professional activity in the field of financing and bookkeeping and must have accomplished a certain examination. Names and addresses of auditors have to be made available to the public. The Law of Georgia on Auditing Activity

of 1997 insofar requires auditors to have a state authorisation, which will be granted if the applicant has passed higher legal or economic education or a school specialised on law or economics.

An additional important task of company law is to specify all available types of reorgani-sation, and specify the procedure of completing them. At present Georgian rules on mergers, divisions and transformations are rather sketchy compared with the EU rules although they provide for certain minimum standards requiring in most cases shareholders' approval for these actions. In order to take a decision on transformation into a Joint Stock Company, Limited Liability Company or a Cooperative during a merger shareholders' approval by simple majority is required to validate the transaction. All other cases require decision making by unanimity. According to Art. 14, Par. 6 divisions do not require approval of shareholders, which might be dangerous in view of the significance that the influence of those measures on the shape of the investment can have. With respect to JSCs according to Art. 54, Par. 6. c) the shareholders meeting takes a decision on mergers, divisions and transformations. Thereby, protection of minority shareholders is available via Art. 53^1, which allows those shareholders that did not support the approval of a merger, division or transformation at the shareholders' meeting to receive redemption of their shares.

Redemption and appraisal rights are also available for shareholders who in general do not approve of reorganisations and major transactions and changes in the company's charter that limit their rights Art. 53^1, Par. 1. In all these cases companies must acquire own shares at market value, Art. 53 LoE. Although the law employs the concept of market value, it might be reasonable to specify how to implement this principle as the capital market is still insufficiently functioning in Georgia.

In the EU the Third Council Directive 78/855/EEC of 1979 concerning mergers of public limited liability companies introduced a common procedure for company mergers, whereby the assets and liabilities of the acquired company are transferred to the acquiring company without winding-up procedures. Shareholders in the acquired company must receive shares in the acquiring company in line with an exchange ratio defined by an independent expert. Creditors' protection is ensured by their right to appropriate guarantees when the financial state of the merging companies justifies it. It must be emphasised that the mergers reflected in this directive are those of assets (including liabilities) only and not of share capital. Accordingly, the directive is not applicable if one company takes over another company by means of an offer to purchase shares. Share take-overs are intended to be dealt with in a proposed thirteenth directive.

The directive requires the management of all companies involved to draw up jointly a plan for the merger, specifying the information and main characteristics of the companies involved in the merger process. The plan must be published in accordance with the procedure laid down in Art. 3 of the First Directive. The administration or management bodies of the companies involved shall draw up a detailed written re-

port explaining the draft terms of merger and setting out the legal and economic grounds for them, in particular the share exchange ratio, describing also special valuation difficulties arisen. This directive provides for the draft merger terms to be examined by an independent expert, who must then draw up an own report commenting on how the share exchange ratio has been determined and whether the methods used have been adequate. Rules on the appointment of the expert are also provided, ensuring that they are in fact independent of the companies involved (see Art. 19, Par. 3 LoE).

All plans and reports must be available to the shareholders at least one month prior to the general meeting, which is to determine whether or not the merger will go ahead. The national laws have also to provide rules on civil liability and restrictions on nullity. The requirements are less strict when the acquiring company already holds at least 90 percent of the share capital of the acquired company.

A similar picture exists with regard to divisions. The Sixth Council Directive 82/891/EEC of 1982 concerning the division of public limited liability companies covers the division of existing public limited liability companies into entities through acquisition and by establishment of new companies. The Member Countries are not obliged to introduce this form of reconstruction, but if it is permitted by national legislation than the process must be in conformity with this directive. Key elements of the directive can be summarised as follows:

– The administrative or management bodies of the companies involved shall draw up draft terms of division;
– Draft terms of division must be published in the manner prescribed by Art. 3 of the First Directive (see above) at least one month before the date of the general meeting of shareholders;
– Division of the company shall require at least the approval of a general meeting of each company involved in the division;
– Administration or management of each company involved in the division shall draw up a detailed written report explaining the draft terms of the division and setting out legal and economic grounds for them;
– Participation and expertise by independent expert(s) is required;
– The directive grants special attention to the protection of shareholders (in particular, the minority shareholders), holders of securities, creditors and employees of the companies involved in the division throughout this process;
– The directive lists the consequences that have to follow the division of the company (e.g. the company being divided ceases to exist, shareholders of the company being divided become shareholders of one or more recipient companies etc.);
– Matters related to the civil liability and nullity issues, etc.

All in all the EU merger and division rules are stricter and provide a broader protection of shareholders and could be seen as a short term target for approximation in Georgia in order to strengthen the capital markets and to raise trust of investors in Georgian companies.

C. Civil-Law Partnership

Similar to German legislation Georgian company legislation has its roots in the Civil Code. The basic legal form of companies is the Civil Law Partnership (CLP) regulated by Artt. 930 et sec of GCC, which could not only serve to attain economic or entrepreneurial objectives, but any kind of joint purposes. With a contract on the establishment of a Civil Law Partnership each partner commits himself to support the attainment of a common selected objective and carries a duty to do so, Art. 934 GCC. The CLP is not a legal entity but an association of persons that is constituted by a contract and that serves to attain economic or other objectives. In contrast, the simple legal communities like joint ownership, community of part owners and partial legal relations are no partnerships.

According to Art. 934 GCC all partners are authorised to represent the partnership jointly and according to Art. 933 GCC it is prohibited to transfer the individual share to a third person without the consent of other partners. The consent may only be refused if there are acceptable reasons for not doing so. This is somewhat similar to German legislation where a transfer of shares to third persons is not permitted, unless otherwise is explicitly regulated by the constituting contract. This default rule of "chaining of partners" is typical for collective ownership (*Gesamthand*) of traditional German law. In contrast, according to Roman law, which is mostly the source of German civil law in its other parts, the prohibition of an individual transfer of the share required an explicit agreement in the association contract. The Georgian law somewhat stands between both approaches. Jurisdiction will have to make a decision whether to raise strict limitations of the consent of the partners or to do otherwise. It raises concern that apparently the partners are not free to decide the question either in or outside the association agreement on their own. According to Art. 937 GCC partners carry joint liability for the company's depths against third parties. Among themselves they are liable according to size of shares unless otherwise is stipulated by the association agreement.

In Georgia the Civil Law Partnership is the appropriate form to do business for most of the free professions (see above). It must be kept in mind that the development in German legislation since adoption of the Georgian law made further progress. A law On Partnerships of Free Professions has been adopted in 1998 in order to remove deficiencies of law that had historical reasons. It provides members of free profession with opportunity to limit the amount of liability among the partners subject to availability of an insurance. According to jurisdiction meanwhile in Germany also physicians and lawyers are allowed to found limited liability companies.

If partners do not stipulate otherwise joint representation applies to the conduct of business, Art. 934, Par. 1 GCC. The partners are free concerning the regulation of contributions, however, it is not possible to increase the contribution of a partner against his will if he has not agreed with such proceeding in advance. Moreover, there is a duty of care that requires partner to do everything that is feasible to support attaining the purpose of the partnership

and not do anything that would contradict to it, Art. 935, Par. 2 GCC. A partner is entitled to receive a share of profit according to his share if the partners did not stipulate otherwise.

Withdrawal of partnership according to Art. 938 GCC is possible at any time and leads to liquidation of partnership if nothing else is stipulated by the contract. After dissolution of the partnership it enters liquidation procedures, which is finalised after apportionment.

D. General Partnership

In contrast to in this respect outdated German law, where the partners of a General Partnership (*Offene Handelsgesellschaft*) themselves are legal subjects who carry rights and duties, according to Georgian Law on Entrepreneurs the General Partnership itself is a legal entity. In addition to the liability of the partnership as a legal entity a joint liability of the partners is available for liabilities of the partnership, Art. 20. In similar to German law it consists of two or more partners that carry out entrepreneurial activities jointly under a single firm name. From Art. 21, Par. 4 LoE follows that the liability of the partners does only occur if the creditor without success pursued his claims against the partnership as a legal entity. This provision seeks to avoid a doubling of lawsuits and allows creditors to receive a title against the partner if they have already one against the partnership.

Power of attorney to represent the partnership in business relations is regulated according to Art. 23 LoE. According to this provision all partners individually have power of attorney for those business actions that they administer when there is a necessity to take respective action and if other partners do not object. This indicates that as a general rule the power of attorney does not lie with the single partner, which is in contrast to the principles of the provisions of German law on which the Georgian law generally is based and could make decision making more complicated. According to German law partners may take decisions individually when those fall into their usual individual field of occupation and other partners do not object. If there is doubt, the action must not be executed by one of the partners but requires a decision of all partners. If one partner exceeds his power of attorney the transaction is valid, but the other partners may claim compensation for losses among themselves. According to Art. 22 all those decisions that exceed the ordinary business of the partnership have to be carried out by the meeting of partners. Those who do not have power of attorney due to their position as partners may receive authorisation by a decision of the partners.

Decisions of partners have to be taken in unanimity if the charter does not provide otherwise, Art. 22, Par. 4 LoE. Majority decision making is not allowed when it would be discriminatory or violates essential interests of concerned partners. In contrast to Georgian legislation at the partners meeting every partner has one vote, whereas according to German law in case of ambiguity the majority is calculated according to shares in capital. However, it is necessary that if the association agreement allows a majority decision-making, it

should be obvious for the partners from the very outset which parts of the agreement might become subject to amendments by such kind of decision making (principle of certainty).

According to Art. 25 LoE, profits and losses are calculated according to a balance. In German law this is specified in more detail where mention is made that this is done according to a comparison of the opening balance with the final balance. The shares in profit are added to the shares of each partner. As a general rule every partner receives a share of 4 % of his share in capital from early profit. The remaining profit is distributed according to "heads", which however is a provision that could be regulated otherwise by the partners. Each partner may withdraw amounts from his share up to the amount of his profit share. The partnership may resist insofar as the minimum threshold of 4 % is exceeded. If the available amount is not sufficient for payment of 4 % each, the respective lower amount must be taken as a basis.

Partners are personally liable with all their property for debts of the company. The extent of their liability is determined along the lines of the charter. Among each other they carry solidary liability. A restitution claim of a partner in the first place must be addressed to the partnership and only if he cannot achieve complete reimbursement he is entitled to claim restitution from other partners. A liability for torts of the partners that carry out obligations of the partnership is not regulated by the Georgian law, neither it is in Germany. In Germany general opinion is that such a liability exists which is based on an analogy to the provisions on associations. Art. 38 GCC of the Georgian Civil Code could offer such a solution as well.

According to Art. 21 LoE each partner may protect himself against claims against the company with personal remedies and also those that are available for the partnership. Further remedies are constituted by the same provision according to which the partner has the right to deny payment when the opportunity for setting off of debts exists in favour of the partner or the partnership. According to Art. 21 LoE each partner may provide protection against claims of creditors that base on own or company's reasons.

The internal relationship between partnership and partners is not a joint obligation. The restitution claim of the partner against the partnership comes from the Civil Code's provisions of management without mandate, as he has made expenses in behalf or in favour of the partnership. This does not apply if a partner concluded a contract as a third person with the partnership, e.g. a credit contract. In this case the partner must try to receive restitution from the partnership, but the other partners are subsidiarily liable according to Art. 20 LoE. The general duty of care obliges him however to consider his own quota of loss at the claim.

Reasons for dissolution of the partnership are expiration of time, opening of insolvency proceedings and court decision and decision of partners. In case of a lack of a provision that does stipulate otherwise, reasons for exit of a partner are death, opening of insolvency proceedings, cancellation of a partner by a private creditor, and reasons that are stipulated

in the charter. After its dissolution a partnership is not finished but enters liquidation procedures. Liquidators are the partners, whose respective tasks are regulated by Art. 14 LoE. The property of the company is to be turned into money and final distribution is to be done after a final balance according to the shares of capital of the partners, when liquidation the company is terminated.

The entry of a new partner requires amendment of the charter. The shares are accruing to him and all other partners, whereby single transfers of assets are not necessary. The opposite applies to the exit of a partner, which could be the consequence of a cancellation of the charter or opening of insolvency proceedings concerning this partner, Art. 31, Par. 1 LoE. In these cases the remaining partners are obliged to dispense him from all debts and obligations of the partnership and to pay what he would receive in case of liquidation of the company, Art. 31, Par. 2 LoE. A share could be transferred from the old to the new partner as a single legal act, if the contract charter allows such or all partners give their consent, whereby the new partner receives the legal position of the old partner, Art. 30 LoE. Partners can be excluded by court decision if they violate an important obligation towards the company with purpose or gross negligence and the other partners are requiring to do so, Art. 31.2 LoE.

When a partnership continued after the death of one partner the heirs receive a compensation claim according to Art. 33 LoE. Such a claim may be excluded by the charter. In this case the value of the share is transferred to the remaining partners.

E. Joint Partnership

The Joint Partnership provided by Art. 34 LoE despite being a legal entity is similar to the *Kommanditgesellschaft* of German law. It is constituted by an agreement to do business of a full partner who carries liability towards third persons like a partner of a general partnership in full and with his private property and one or more limited partners, who are liable for obligations of the company to the amount of his/their contribution as soon as they have contributed for his/their part. The full partner has power of attorney, whereas limited partners as a rule are excluded from the company's management and have no power of attorney. However, limited partners have the right to object internally with regard to business transactions that exceed usual business affairs, Art. 37 LoE. In these cases a decision of the partner's meeting is necessary. It might be considered to introduce a rule that safeguards the supply of the limited partner with respective information on relevant business that enables him to use his right. The provisions on power of attorney are flexible and the charter may stipulate for the right of a limited partner to have power of attorney as well. If the power of attorney of a limited partner exceeds what are usual business affairs he is liable according to the rules on liability of a director of a limited liability company.

According to German legislation the provisions on company management are flexible provisions, where the partners may stipulate otherwise. They may receive power of attorney by declaration of will and the full partner may become excluded by the contract constituting the partnership, which is a charter under Georgian law. In this respect the respective German provisions are more flexible than those of the Georgian law. This contract may provide for power of attorney of the limited partners and the limited partners could even be made main partners, because despite a lack in power of attorney by membership they could be granted power of attorney by declaration of will. Thus, the full partner could even be excluded by the contract.

The share of a full partner can only be transferred if such is regulated by the charter or the other partners give their consent, whereas the share of a limited partner can be transferred even without the consent of other partners, if nothing else is foreseen by the charter, Art. 43.

A limited partner who did not yet provide his contribution is liable to the creditors of the joint partnership to the amount of his contribution directly and personally, Art. 3, Par. 4 LoE. In this case German law requires an unlimited liability. The limited partner has the same objections against claims of creditors like a full partner. If the liability is constituted before the joint partnership has been registered the limited partner is liable according to Art. 3 LoE to the amount of his anticipated contribution, unlike in Germany where the limited partner would have to carry liability to the full amount by this time. If he made his contribution only partly, personal liability continues to be in place up to the amount of the remaining part of the contribution. If a contribution is restituted to a limited partner, mentioned liability of the full partner will be reinforced.

Those who enter an existing company are liable for those obligations that have been constituted before their entry but after registration of the company. Liability of the partner does not cease after he has left the company. Receipt of credit balance upon withdrawal must be seen as a restitution of contribution that leads to a revival of his personal liability, whereas a transfer of a contribution to a third person must not be seen as a return of contribution. In contrast to German law, the Georgian law does not allow that a limited liability company could form a full partner of a joint partnership.

F. Joint Stock Company

According to Art. 51, Par. 1 LoE a joint stock company *(Aktiengesellschaft)* is a company that is a legal entity having a charter capital divided in shares of same value. The law provides for registered shares, which are transferred by agreement and endorsement. These shares should be issued in the name of the owner and be registered at registers that are kept at the issuing joint stock companies. In case of not freely transferable registered shares the company has to give its consent to the transfer of the stocks. LoE does not allow for bearer shares according to Art. 51, Par. 2, which avoids certain risks for investors. All shares could be issued as privileged or common and freely or not freely transferable shares.

According to Art. 56 LoE the directors are in charge of managing and representing the company in business relations. As a general rule their power of attorney is determined according to an internal regulation of the supervisory council. If there is no such regulation, the general rules on power of attorney apply. The directors rule the company jointly, however, certain directors may receive exclusive power of attorney in certain business areas. The Georgian law does not provide for a time limit for appointment of directors. According to German legislation members of the board are appointed by the supervisory board for a term of not more than five years.

The activities of the directors are monitored by a supervisory council, which has at least three but not more than 21 members. The supervisory council is a collegial organ, which decides by formal decision, however in most companies a general director has a decisive influence on the conduct of the company. The supervisory council is mandatory for joint stock companies and optional for limited liability companies. Two thirds of its members are to be elected by the general meeting of shareholders and one third must be elected by the employees according to procedures that are to be determined by the general meeting of the shareholders. Assigning competence to the shareholders to establish a procedure for the appointment of representatives of employees probably lead to the consequence that representation of employees practically nowadays is not existing. In order to improve it might be reasonable to transfer competence of procedures to elect representatives of employees to trade unions or work-collective.

According to German legislation only companies of a certain size are entitled to send representatives of employees to the supervisory board. The Workers Participation Act of 1976 stipulates that the amount of eligible representatives depends on the size of the company and the field of industry that is concerned. Although the supervisory council as a rule consists of equal members of shareholders and employees, the side of the shareowners has a slightly more powerful position, which is guaranteed by the so-called double voting right of the chairman of the supervisory board, who is exclusively elected by the shareowners.

In the area of charcoal and steel the Montan Workers Participation Act of 1951 and for dominating companies in an association of companies the Montan Workers Participation Act of 1956 (1988) are applicable. In these cases the supervisory board consists of representatives of the employees and the shareholders at the same amount. In JSCs with an amount of employees between 500-2000 employees the elections are carried out according to the Shop Constitution Act of 1952 which is not any longer applicable in its other parts. Here the employees have available one third of the members of the supervisory board.

Competencies of the directors may not become assigned to the supervisory council, which is similar to German law where the supervisory board can only decide upon questions of the management if the directors ask them to do so. The tasks of the supervisory council in particular are:

– Control of directors;
– Receipt of information on business activities;
– Control of bookkeeping;
– Control of auditing;
– Appointment and dismissal of directors.

A number of significant business decisions require prior consent of the supervisory council, among them being acquisition or sale of more than 50% of the company's assets, acquisition of real estate or similar rights, lease of production or stoppage of production, establishment of yearly budget and planning balance, planning of profits and losses as well as establishment of investment plan and obligations following therefrom, credits over the certain limits, changes in business activities, assignment and dismissal of persons having power of attorney and redemption of shares.

The introduction of cumulative voting procedures for the election of the council that increase the opportunities of minority shareholders to send their watchdogs in the supervisory board against the will of a controlling majority depends on a decision to be made in the charter. It is doubtful whether this could work in practice, as the introduction of such proceedings would depend on a decision of a shareholders' majority, which is unlikely to be interested in a reduction of their rights to appoint the members of the board and the appointment of the directors and influence on the company's business respectively. Therefore, it might be advisable to rule for mandatory cumulative voting by law.

The general meeting regulated by Art. 54 is the body where the shareholders execute their administrative rights. Rights of the shareholders to take part in the administration of the company are the right to participate in the general meeting, the voting right on certain decisions relevant for the company, the right to receive information and the rights to contest decisions of the general meeting. According to the LoE the general meeting exclusively takes decisions on:
– Amendments to the charter;
– Merger, division and transformation;
– Cancellation of the pre-emptive rights of shareholders to acquire the company's shares;
– To take decision on use of profits;
– To elect their representatives to the supervisory council;
– To approve report of members of supervisory council;
– To take decision on payment of members of supervisory council;
– To take decision on legal actions against members of the supervisory council or directors;
– To approve extraordinary business actions that exceed value of 50 % of charter capital.

These competencies are in line with what is regulated by most jurisdictions. However, certain aspects still deserve attention as fundamentals for the influence of shareholders and those are required by most legal systems to be decided exclusively by the shareholders and might be additionally considered for adoption as mandatory rules by:
– Approval of issuance of bonds;

– Conclusion of a transaction involving a conflict of interest;
– Decision of the payment of annual dividends;
– Approval of a company's acquisition of its own shares;
– Election of members of the company's board of directors and early termination of their powers.

This is even more important as a comprehensive class of major transactions that require shareholder approval is often better to protect minority shareholders by involving them in decision making rather than providing them only with appraisal and redemption rights that do not perfectly function in an environment with a non-functioning capital market. Thus, solid competencies for shareholders' meeting could safeguard the individual redemption rights that are conferred under the LoE.

Procedures for decision making of shareholders have to comply with general accepted standards for voting, which follows from the duty of care and loyalty of the management. It might be useful to further specify in the law or through court practice, whereby the latter has the disadvantage of being more time consuming and costly. In particular it might be useful to introduce a means for shareholders to vote by mail rather than in person, through proxy votes, or by written ballots. In principle management should be barred from soliciting or proxy voting. In transition economies a mechanism for providing reasonable assurance that votes will be counted honestly (independent tabulation commission) is important. Useful as well is a means for shareholders to demand a list of names, addresses and shareholdings of the company's other shareholders, including as much information as is available to the company about beneficial owners of shares who hold their shares indirectly through nominal holders. Moreover, a procedure for shareholders to include proposals and director nominations on the ballot for an annual meeting and to demand the convening of an extraordinary meeting might be useful as well.

In order to protect shareholder authority and the interests of minority shareholders, the Georgian law gives shareholders the power to act on their own initiative. According to Art. 53 shareholders that own at least 5% of voting shares may ask for a special examination of certain business transactions or the annual balance sheet, if they assume irregularities.

In order to further strengthen the protection of interests of minority shareholders it is advisable to stipulate for special rules for approval of transactions with conflict of interest. Although the duty to act diligently and eagerly provides a certain degree of protection, due to importance of the matter it might be useful to further safeguard abuses by simply requiring prior approval of a transaction involving a conflict of interest by non-interested directors or supervisory board members. In any case the law should ban two types of transactions for which there is no business justification and a high risk of abuse: payments (kickbacks) by a third person to an insider in connection with a transaction between the company and the third person, and loans by the company to an insider without documentation or without payment of a reasonable rate of interest.

With 15.000 GEL for a joint stock company a non-trivial minimum of charter capital is required that might be adequate for current economic conditions, however, the law could be improved with a rule that if the company's net assets fall below this minimum level, the company must raise additional capital or liquidate in order to protect creditors and raise the ability of companies to receive credits.

The already earlier on discussed Second Council Directive contains in addition to the earlier discussed disclosure standards, important provisions concerning the maintenance and alteration of the capital of Public Limited Liability Companies, such as non distribution of dividends without profit, non acquisition of company's own shares, interdiction of financial assistance, which all aim mainly at the protection of creditors and provisions concerning increase and reduction of the capital, which aim to avoid an alteration of the shareholders' position in a company without previous agreement.

According to the directive the minimum subscribed capital of a public limited company must exceed 25.000 EUR and subscribed capital may be formed only of assets capable of economic assessment and that an undertaking to perform work or supply of services may not form a part of these assets. An independent expert must evaluate capital subscribed in kind, which must be published in accordance with the requirements of the First Directive. According to Art. 3 of the Georgian Law on Entrepreneurs the charter capital may be contributed in cash or kind. An independent appraisal is required for in kind contributions of limited liability companies. For joint stock companies Art. 59 LoE requires an independent appraisal only for an increase in capital and it is somewhat doubtful whether this also applies to the initial contribution at foundation. In any case in kind contributions should be subject to independent appraisal of value with the exception of small amounts. Moreover, it might be useful to stipulate that non-saleable assets should not be eligible for inclusion in charter capital. The LoE requires contribution of half of charter capital immediately after signature of charter and the remaining parts one month from then on.

Moreover, the Second Directive requires that if a company within a certain period acquires any asset belonging to a person or company or firm referred to in Art. 3 of not less than one-tenth of the subscribed capital, the acquisition shall be examined and details of it published in the manner of Art. 10 and it shall be submitted for the approval of the general meeting (see Art. 11 LoE).

The most important property right of the shareholders is the right to obtain dividends, which enables them to receive these according to membership and to claim payment when the decision on the distribution of the profits has been made. The claim to dividend is equivalent with the right of the shareholder on the participation at the general meeting, which decides upon the distribution of the profits. When the decision has been made the shareholder has a respective claim against the company.

In the continental tradition, dividends are understood as a means for companies to distribute some of their accumulated profits to shareholders. In the Anglo-Saxon

common law tradition, dividends can also be used to distribute funds that are no longer needed in the business to the shareholders and to change the company's capital structure. The LoE leaves this question unanswered. A balanced approach might be useful. A default rule could be to allow only distribution of past, accumulated as well as current profits as dividends. Companies should be allowed to further restrict dividend distribution in their charter so that they could become more creditor friendly.

It might be useful to introduce a rule on whether the authorisation to pay dividends lies with the board or with the shareholders. The power to declare dividends in some countries is assigned exclusively to the board of directors. The shareholders in such countries do not have to approve dividends declared by the board and they cannot require the company to declare dividends. In other countries, the shareholders must approve dividends at an annual meeting, though the board of directors may have the power to approve and pay interim dividends, either out of the previous years' profits or as an "advance payment" against the next approved dividend in transition countries. In this respect there may be a concern about the motives of the board in choosing to declare a dividend, or not to do so. In this situation, a rule permitting the shareholders to determine the amount of annual dividends, taking into account certain restrictions of the company to pay dividends, could be appropriate despite the risk that the shareholders will approve larger dividends that the company can afford to pay.

In contrast to the provisions of the LoE according to the Second Directive no distribution to shareholders may be made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution, would become lower than the amount of the subscribed capital plus those reserves which may not be distributed under the law and statutes. Any distribution made in contrary must be returned by shareholders. The directive provides for the definition of a serious loss of the subscribed capital, in which event a general meeting must be called to consider whether the company should be wound up or any other measure taken to improve the situation. The directive as well provides for pre-emptive rights of shareholders when a company proposes to allot new shares.

Another substantial issue regarding the capital maintenance which is not addressed by the LoE is the establishment of balance among the distributions to shareholders and company profits and assets. In contrast to Georgian law according to the provisions of the directive if there is no profit or company assets are lower than the amount of subscribed capital and reserves, the payment of dividends must not occur. If this condition is not observed, the payments would be made on account of company's subscribed capital and reserves that induces their reduction and negatively affects the solvency of company to creditors, because these assets are served as the security for their loans.

One of the important issues concerning the interest of shareholders of public limited companies that is ruled by the directive and that could be included into the LoE is the

alteration of subscribed capital. Increase or reduction of subscribed capital affects the interests of shareholders, because it leads to the dispersion or concentration of properties among them and weakens or strengthens their positions in the management of company. In order to preserve control over the company in case of subscribed capital increase, the existing shareholders are provided with a pre-emptive right to buy the shares in proportion to the capital represented by their shares. As for the case of subscribed capital reduction, there is raised a question of the capability of the company to pay for the liabilities and so it is necessary to provide creditors with the sufficient security for their claims for performing the subscribed capital reduction.

The second company law directive provides for the limits of the right of company to acquire its own shares. The idea is that the managers might be interested to lower the price of shares, including by bad management in order to purchase them and consequently establish control over the company. The authorisation of general meeting on acquisition of shares by company, 10 percentage limit on it and also the requirement to dispose these shares within not more that three years are intended to defend the shareholders from artificial depreciation of their shares and also unwanted redistribution of positions within the company. In this respect Georgian law provides for appraisal and redemption rights if a decision is made by the general meeting, e.g. on increase of capital, that violates interests of shareholder that do not vote in favour of the decision.

In a transition economy, options to acquire shares may have limited use and be subject to abuses. It may be better not to allow the issuance of convertible securities and options to acquire shares in transition economies, which is allowed in Georgia (see Art. 59 (4), but also Art. 52 (5)).

Other aspects of the Second Directive that are not covered by Georgian law are that in the case of a serious loss of the subscribed capital, a general meeting of the shareholders must be called within the period laid down by the laws of the Member States to consider whether the company should be wound up or any other measures taken. An increase of charter capital (issuing shares or increase of nominal value of existing shares) above level of net assets should be prohibited and the nominal value of shares should be specified in company's charter.

All in all, the rules on JSCs provide for a level of modern standards, although still the introduction of many European standards could raise the level of transparency and security of business dealings and thus contribute to making the Georgian economy more efficient.

G. Limited Liability Company

The limited liability company is a stock company, which as well is a legal entity and consequently independent from its members, whereby only the company is liable to the creditors only with its property. The limited liability company is adjusted to a smaller and more permanent circle of partners. The shares of the limited liability company can be inherited and

transferred but the transfer requires authentication by a notary public, Art. 45 LoE. The share is not a security. For these reasons the LLC cannot be admitted to the stock exchange. The transfer of the share can be made dependent from the consent of the partners.

The foundation of the LLC is accomplished following conclusion of the charter and the contribution of a part of the charter capital, the appointment of the management, the application and registration with the public register. The minimum contribution of shareholders in total must be at least GEL 2.000. The contributions to the charter capital as a rule are made in cash. Contributions in kind are admissible, but only those things that have a concrete property value and that could get to the free disposal of the LLC. If a contribution is designated as a contribution in cash which in reality is a contribution in kind, the company is authorised to request the contribution once more. This carries particular importance, when the company gets insolvent because the unrightful contribution in kind can only be claimed for restitution in the framework of the insolvency quota, whereas the contribution in kind still has to be contributed.

Necessary bodies of the LLC are the directors and the meeting of shareholders. The management must not necessarily consist of shareholders. The directors represent the company and their power of attorney is unrestricted and cannot become subject to limitations. In internal relations, however, they are restricted by limitations that follow from the association agreement and the decisions of the shareholders. Consequently, the limitations of the power of attorney are similar to those that exist in the General Partnership. The shareholders can give instructions to the management. In contrast to the rules related to JSCs the strict separation of ownership and control as it is regulated in the law on joint stock companies does not exist in the limited liability company. However, according to Art. 48 LoE a supervisory council could be established in the limited liability company, for which the rules on the supervisory council of the JSC would apply. The establishment of such a council is mandatory in those LLC where the share of the state exceeds 50 % of charter capital and at the same time exceeds an amount of charter capital of 30.000 GEL and an annual turnover of 100.000 GEL.

An LLC can be founded by one person. If the single shareholder at the same time is the director then the prohibition of self dealing applies. He could be freed from this prohibition by the association agreement. In this respect the Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989 on Single-Member Private Limited-Liability Companies sets specific standards that exceed the respective rules of the LoE. Where a company becomes a single-member company that fact together with the identity of the sole member must either be recorded in the file or entered in the register within the meaning of Art. 3 or be entered in a register kept by the company and accessible to the public. The sole member shall exercise the powers of the general meeting of the company. Such decisions taken by the sole member in the field referred in the directive shall be recorded in minutes or drawn up in writing. Contracts between the sole member and his company as represented by him shall be recorded in minutes or drawn up in writing as well. The directive also applies where Member States allow single-member companies in the case of public limited companies. In this respect the Georgian law does so, but does not stipulate for further procedural specifics.

H. Conclusion

In summary, the Georgian Law on Entrepreneurs is a modern regulation being in tradition of continental European law with close relations to German law. It could be seen as a half-way-house to a law that is fully in compliance with European legislation. About 10 years after its adoption it might be that time has come to further approximate the laws with the EU's rules on company legislation, particularly to strengthen the interests of minority shareholders, creditors and other business partners in order to decrease transaction costs and after all to increase efficiency of the Georgian economy. In further developing the law one has to keep in mind that the law is not yet surrounded by fully fledged court practice or analytical research, which is vital to fully unfold the regulatory power of the law and, moreover, that administrative practices do suffer from severe budgetary constraints. Therefore, all proposals addressed in this text are not merely addressed to the lawmaker, but to those who have to find a proper interpretation of the law in practice, which often goes beyond the mere wording of the text of the law. Thereby it must be kept in mind that the experience of international legislative practice, particularly that of the EU, should be made in every case subject to thorough review of the local conditions on the Georgian market to best take advantage of modern legal experience and to find rules that are in harmony with the overall legal system.