
Overview of Draft Laws Elaborated by the Department of Legal Drafting of the Ministry of Justice of Georgia in the first Half of 2005

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In the first half of 2005 the Department of Legal Drafting of the Ministry of Justice of Georgia elaborated the following draft laws and blocks of legislative amendments:

1. A group of legislative amendments that includes the following draft laws: on the Registration of Title to Immovable Things, on Amendments to the Law of Georgia on the Declaration of Non-Agricultural Lands under the Ownership of Natural and Private Law Legal Persons as Private Property, on the Amendments to the Law of Georgia on the Management and Disposal of State-Owned Non-Agricultural Lands, on an Amendment to the Law of Georgia on the Value of Development of Substitute Land Parcels and Damages in the Case of Allocation of Agricultural Lands for Non-Agricultural Purposes, an Addition to the Tax Code of Georgia, on an Amendment to the Law of Georgia on Enforcement Proceedings.

The Government of Georgia was assigned the task of developing a draft Law of Georgia on the Registration of Title to Immovable Things pursuant to the Law of Georgia on the State Registry.

The process of reformation of the system of State Registration was commenced through the adoption of the Law of Georgia on State Register. The main types of State Register have been transferred to the Ministry of Justice of Georgia, which operates the State Registry through a relevant structural subdivision, territorial body and legal person of public law – the National Agency for State Registry, falling within the framework of the field of administration.

Pursuant to Article 15 I (a) of the Law of Georgia on the State Registry, the Government of Georgia was tasked with developing and submitting a draft Law of Georgia on the Registration of Title to Immovable Things. Furthermore, one of the most important parts of the State Registry is the Public Register, the general rules of which are regulated by the provisions of the Code of Civil Procedure of Georgia. Pursuant to Article 311 II of the Civil Code of Georgia the procedure of organisation of a register shall be defined by a separate law. However, no such law had existed until now. Titles to immovable things were registered according to the Law of Georgia on Land Registration, but this law does not regulate many legal issues related to the Public Register. Based on the aforementioned policy, the Ministry of Justice developed a draft Law of Georgia on the Registration of Title to Immovable Things with the participation of Georgian and foreign specialists, interested institutions and non-governmental organisations, including the German As-

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sociation for Technical Assistance (GTZ), the Association for the Protection of Land Owners' Rights), and the Georgia Centre for the Coordination of Projects for the Development of Agriculture, and to be implemented through the financial assistance of the World Bank. The draft Law comprehensively regulates the procedures and organisation of Public Register.

The draft Law reflected provisions of the Constitutional Agreement made between the Georgian State and the Georgian Apostolic Autonomous Orthodox Church, and the act of the authorised body on the transfer of an immovable thing into the possession of the Georgian Apostolic Autonomous Orthodox Church from State Ownership was declared as an instrument for the certification of title.

An important innovation of the draft Law are the counter corruption mechanisms embodied therein. In particular, the time frames for registration proceedings and provision of information are considerably reduced; while each of the procedures is regulated in a most detailed manner for the purpose of prevention of corruption dealings. The draft Law provides for the reduction of time frames for the submission of registration documents for registration in the Public Register. Namely, if according to the current legislation, Article 8 of the Law on Land Registration, all agreements or instruments must be submitted within a period of 30 days following their drawing up, under the draft Law this period is reduced to 5 days following the receipt (issuance) or endorsement of an agreement or any other instrument; while after the expiration of a 3 month period following this 5 day period, no registration shall be effected on the grounds of the submitted instruments. The draft Law provides for specific time-frames for various registration proceedings, namely that the registration service shall carry out the initial registration of a title within a period of ten working days, registration of mortgage within a period of three working days, and subsequent registration within a period of five working days.

The draft Law was revised according to the comments and proposals of interested agencies and has now been submitted to the Georgian Parliament.

2. A group of legislative amendments including the draft Laws of Georgia on Amendments and Additions to the Law of Georgia on the National Archive Fund, on Amendments to the Law of Georgia on the Import and Export of Cultural Treasures, on the Types of Fee-Based Services Rendered by the Department for the Management of State Archives and Record Keeping and the Amount of Fees.

This group of legislative amendments is targeted at the transformation of the Department for the Management of State Archives and Record Keeping, a subordinated state agency operating within the framework of the Ministry of Justice of Georgia, into a legal person of public law with a view to the improvement of management of archives in Georgia and the development of the National Archive Fund. According to the block of legislative amendments, the Archive Department will be entitled to attract its own sources of financing. Namely, it is envisaged that it will introduce a fee for services rendered, a process that will be exhaustively regulated by law. This situation in itself will secure the diminution of the risk of corruption to the maximum possible extent, in so far as income obtained through rendering fee-

based services will secure an increase in the remuneration of the employees of the Archive Department while developing the material and technical capacity of the Department.

Another point of note concerning the draft Law is its introduction of the prohibition of the destruction of the National Archive Fund documents, a policy that will secure the protection of documents of the National Archive Fund to the maximum possible extent. The draft Law provides for the obligation of developing normative acts necessary for the smooth and efficient operation of the Archive Department. In the nearest future, the draft law will be sent out to interested agencies for their comments and input.

3. A group of legislative amendments including the draft laws of Georgia on Amendments and Additions to the Law of Georgia on Enforcement Proceedings, on an Amendment to the Law of Georgia on the Activities of Commercial Banks, on the Amendments to the Civil Code of Georgia, on Addition to the Law of Georgia on Civil Service.

The purpose of the introduction of a change to the Law of Georgia on Enforcement Proceedings is the improvement and enhancement of the system of enforcement of court decisions. Based on this, one of the main directions of the draft law on legislative changes is the transformation of the Enforcement Department into a legal person of public law, a change that will definitely promote the operation of the efficient operation of the enforcement system.

An enforcement duty has been substituted by a fee for enforcement services. The fees for rendered enforcement services and enforcement charges are explicitly differentiated from one another. The forms and procedure of payment of the fee are regulated exhaustively. In particular, one of the provisions of the current Law obliges a creditor to pay the duty, while another imposes the same obligation on the debtor. The draft Law offers a detailed list of enforcement charges and the procedure for their payment, while obliging the court bailiff to furnish the creditor with the documents certifying their payment.

Any action of a court bailiff (including the suspension or deferral of enforcement for a certain period) shall be effected only on the grounds of a writ.

The draft Law provides for changes under which the still-born provisions of the Law will start to operate, e.g. forced mortgage and sequestration. A novelty of the draft law is its provisions related to the enforcement of cases in which there are multiple creditors.

The draft Law on Amendments to the Law of Georgia on the Activities of Commercial Banks entitles a bailiff to obtain freely information concerning the existence of funds in bank accounts of the debtor. A bailiff is also entitled to demand the immediate provision of a debtor's statement of accounts from a financial institution.

The draft Law on Amendments to the Civil Code of Georgia aims at the harmonisation of the provisions of the Civil Code and the Law of Georgia on Enforcement Proceedings. The

draft Law proposes the removal of provisions, related to the sale of immovable things subject to a mortgage from the Civil Code.

The purpose of the introduction of the Addition to the Law of Civil Service is the determination of the legal status of court bailiffs and enforcement policemen, as a result of the transformation of the Enforcement Department of the Ministry of Justice of Georgia into a legal person of public law. It is necessary for the activities of court bailiffs and enforcement policemen to be subordinated to the requirement of the Law of Georgia on Civil Service.

Currently the Ministry of Justice of Georgia is working on the revision of the aforementioned draft Law. The reform aims at the removal of deficiencies of the current enforcement system of Georgia, and the approximation of the institutions of court bailiffs and enforcement proceeding with the European standards, a change that is vital for the improvement of the system of justice. The enforcement system is to enjoy a higher level of independence; while taking into account the interest and motivation of a bailiff with respect to his activities.

As much a duty constitutes the mandatory payment to the state budget for certain services rendered by state authorities, it should be substituted by an enforcement fee, which will then become the main source of financing of the legal person of public law, and will in turn guarantee the independence of the enforcement service. Furthermore, the substitution of the enforcement duty with an enforcement fee will free the debtor from a double burden – the obligation to pay the enforcement duty and to finance the enforcement charges. The court bailiff must be interested in the efficient accomplishment of enforcement proceedings; his income should be remunerated by the parties and shall be included in enforcement charges in terms of a fee, which should also promote an increase in the material interest of bailiffs. The enforcement fee must be reasonable and accurately determined by the law, thus it should be known to the parties in advance. The reform of the enforcement system shall enhance the prompt and efficient administration of justice in the country.