

LEGAL NEWSLETTER

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- **Mgaloblishvili, Kipiani,
Dzidziguri (MKD) Law Firm**

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- **Amendments into the Law of Georgia on Electricity and Natural Gas**, dated June 15, 2004, provide for introducing opening by a special account for electricity companies by the Georgian Wholesale Electricity Market, which in its turn is divided into sub-accounts each hold by every single company. The purpose of introducing sub-accounts is to prevent interruption of activities of the Georgian Wholesale Electricity Market in case of opening bankruptcy and/or enforcement proceedings (including, arresting debtor's accounts) by any legitimate creditor against a debtor company-be it generation, distribution, or dispatch electricity company.

Suspension term, however, may not be less for 9 months and any longer than for 18 months, exact term to be determined in each case given the specific circumstances and pursuant to application of a debtor company. The Amendments also provide for additional rights to creditors, enjoying more than 50% of total claims against a debtor company.
- Following to the **Amendments into the Law of Georgia on Bankruptcy Proceedings**, dated June 15, 2004, electricity and natural gas companies are entitled to apply to court for suspending opening a bankruptcy proceedings (although, this right could be used only once).
- **The Law of Georgia on State Registry**, dated June 1, 2004, determined the state registry system and authority of relevant bodies. The following are categories of the registries under the said Law: (a) the civil registry; (b) the registry of non-entrepreneurial (non-commercial) legal entities of private law (further divided into the registry for unions and the registry for funds); (c) the registry of political organizations (parties); (d) the licensing and permitting registry (further divided into the separate registries for licenses and permits); (e) the registry of

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controlling bodies; (f) the registry of normative acts; and, (g) the public registry (further divided into the registry for immovable property and the registry for movable property). Any other state registry may be introduced only in cases directly determined by the law. The Law provides that a ministry, a territorial unit of a ministry, and, the National Agency of Public Registry shall be in charge of maintaining respective registry, and, therefore, determines scope of authority for each of those state bodies.

Secondary Legislation

- **Presidential Decree No 429**, dated May 19, 2004, has authorized signature of Memorandum of Understanding between the Government of Georgia and European Commission on respect of extending 2001 agriculture program for a second half of year 2004.
- **Letter No 527/05 of the President of National Bank of Georgia**, dated April 24, 2004, has re-emphasized that any documentation, even if prepared by international external audit companies, shall be presented to the National Bank of Georgia as translated into Georgian language. In addition, the said Letter provides that external audit report and audit financial statement in addition to information on 1% and more of shareholders in share capital of commercial banks shall also be subject to publication in printed media.
- **The Agreement between the Government of the United**

States of America and Government of Georgia for the Donation of Agricultural Commodities under the Food for Progress Act provides that the Government of the United States, acting through the Commodity Credit Corporation, agrees to provide to the Georgian side the agricultural commodities, as specified under the Agreement in recognition of: (i) an effort Georgia that *has made commitments to introduce or expand free enterprise elements* in their agricultural economies through changes in commodity prices, marketing, input availability, distribution, and private sector involvement, and, (ii) the extent to which Georgia *is committed to and is carrying out policies that promote economic freedom*; private, domestic production of commodities for domestic consumption; and the *creation and expansion of efficient domestic markets* for the purchase and sale of such commodities.

Secondary Legislation

Order No19 of the President of National Bank of Georgia, dated June 7, 2004, established new norms in regard to minimum reserve requirements which are as follows: 4 percent-for minimum reserves for attracted average sources in national currency; 13 percent-for minimum reserves for attracted average sources in foreign currency; 9 percent-for average reserve for attracted average sources in national currency; and, 0 percent-for average reserve for attracted average sources in foreign currency.

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Victor Kipiani, Partner

The PFI-Developing a Georgian Infrastructure

It is beyond any doubt, that a range of novelties have been introduced and being approbated in the developed economic systems over the last decades which, if introduced in our systems, would greatly contribute to a rapid development of Georgian economy. This time, we would like to focus a reader's attention on a phenomenon that is deemed very successful and popular among the leading European countries, especially in Great Britain - a country playing a key role in the financial life of Europe. This phenomenon emerged at the end of the 80s-beginning of the 90s and became known as the Private Finance Initiative. Such an approach attracts one's attention as it enables to divert the capital accumulated in the private sector for financing and management of large entities of the infrastructure being under the state management. Instead, the state authority lets the private sector have a certain monopoly over such entities or systems and enables them to exercise such monopoly for a certain period of time.

In reading this brief description a reader may feel a certain association with the widely applied privatization process, however, the Private Finance Initiative has the features making it different from a classical privatization model. The cornerstone of such difference lies in a concession agreement entered into between an investor and local authority providing for a particular outline of the Private Finance Initiative model for a specific entity and basic elements for its operation. As known, the Law on Procedure for Making Concessions to Foreign Countries and Companies, dated December 21, 1994, is applicable today in Georgia. It is not our intention at this time to discuss relevant details of this Law as, undoubtedly, it no longer meets the contemporary requirements.

Apart from the concessive nature, another considerable feature of the Private Finance Initiative is that it is acceptable for modernization of not only of large infrastructure facilities, but also the entire systems in terms of both

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technological and management aspects. Whereas, it is widely known, that privatization is equally applicable to large, medium and small-size businesses. It was the unique features of Private Finance Initiative that ensured its applicability to the spheres forming strong basis for future sustainable development of a particular community, among them power engineering, telecommunications, transport, water systems and etc. Large scales of the aforementioned spheres and complex legal schemes necessary for their modernization serve as the main reason for reflection of Private Finance Initiative based projects in the so-called BOT ("Building, Operation, Transfer") and BOO (Building, Operation, Ownership) agreements, preparation and further operation of which require not only excellent practical legal skills, but also good understanding of relevant topics and systems and thorough reflection thereof in concrete contractual provisions.

Along with the creation of legislative and contractual bases, the Private Finance Initiative is featured by the establishment of corporate entity by an investor or a group of investors directly for a particular project, which is known as the Special Project Vehicle in the international practice. To a certain extent, it may be considered as a feature that differs the Private Finance Initiative from privatization process. Naturally, an investor is in no way prevented from establishing the aforesaid corporate entity for implementation of a particular project. Though, undoubtedly, introduction of a notion of the Special Project Vehicle into Georgian legislation would be an additional clear message to transnational corporations seeking the ways to secure themselves, to a maximum extent, against accompanying legal risks for creditors in the country with transition economy. For this purpose, it is the Special Project Vehicle that creates favorable conditions whereas it plays the role of a main counteragent for the investor's representation in the project, while the creditors themselves lack legal capacity to raise a claim against the assets of the investor's head company.

A wide application of the Private Finance Initiative would be largely beneficial for Georgia under the terms of its extremely limited financial resources.

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Similar benefits, regardless of their long list, can be generally divided into tactical and strategic categories: 1) the tactical category implies the fine-tuning of a particular infrastructure project or system at the expense of attracted private capital and directing of released state funds to settle other, e.g. social problems; and 2) the strategic benefit, the very essence of which is outlined by the statement of political implication made by the authority of the country in transition before international business community, which statement will confirm the readiness of the country to transact transparent businesses based upon the open-door principles that is free and clear from any protectionism and clannish tricks. And consequently, it will again bring material dividends as it is expected to find its further reflection in further projects and new capital investments.

Mgaloblishvili, Kipiani, Dzidziguri (MKD) law firm was founded in November 1996. It operates as a general partnership and is recognized as well-established, respected leading law firm in Georgia with major national, regional and international clients.



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