

## NEW YEAR, NEW REGULATIONS – SHAPING ENERGY MARKET

Starting from 20 December 2019, the Georgian Parliament adopted several laws in relation to energy field, some of them prompted by the DCFTA. The changes focus on improving transparency with regard to gas and electricity prices charged to industrial end-users, as well as oblige the State to progressively develop renewable energy and substitute old resources. Amongst those adopted recently, the new Law on Energy and Water Supply is likely to have the most impact on the market. The latter regulates, among other issues, activities of physical and legal persons in the field of electricity system management, electricity market, generation, transmission, distribution, import, export and consumption of the electricity (power). It sets the rules of conduct for the energy market players. Despite all these changes, harmonization of Georgian legislation with the relevant EU Directives and Regulations is still underway. For instance, the Georgian Parliament published the Bill on Energy Efficiency that focuses on increasing safety of electricity supply and becoming self-sufficient through energy conscious policies.

The wave of legislative changes in the energy sector is rather overwhelming, but it does not mean that the process will stop anytime soon. Meanwhile, it is yet to be seen whether such swift and impactful changes are any better for the market than gradual approximation of Georgian regulations to those of the EU.

## NEW LAW OF GEORGIA ON DERIVATIVES

As flagged in the September issue of our Legal Newsletter, the Bill on Financial Pledge, Netting and Derivatives was submitted to the Parliament of Georgia. It successfully passed the parliamentary hearings and was published on 20 December 2019. The law introduces definitions of derivative instruments, qualified financial contracts, financial pledge, etc. and essentially facilitates trading with qualified financial instruments. Most notably, it reinforced the enforceability of close-out netting even in insolvency scenario, which was a major defect of Georgian financial regulations prior to adoption of this law. Furthermore, the new law sets that qualified financial contracts may include derivatives and financial pledge. Derivative is defined as a qualified financial contract, the value and cash flow of which depends on underlying assets or underlying indicator, payment of which shall be made by real delivery or in cash, including netting/final netting. The law also regulates subject of financial pledge and differentiates between two types of financial pledge (possessory financial pledge and collateralized financial pledge). Moreover, the National Bank of Georgia is granted the authority to define additional types of qualified financial contracts and extend the list of underlying assets or underlying indicators.

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## IMPORTANT RULINGS OF THE CONSTITUTIONAL COURT

The Constitutional Court of Georgia recently delivered several important decisions concerning application of certain provisions of the Law of Georgia on Enforcement Proceedings. Namely, according to the most recent ruling of 17 December 2019, the provision authorizing the enforcement bureau to issue ownership certificate to a successful bidder in a public auction on the shares of TV or radio broadcasters was declared unconstitutional. In particular, voluntary transfer of shares in a broadcasting company was and still is subject to approval by the Georgian National Communications Commission (GNCC), while their sale for the enforcement of decision or award was completely out of GNCC's supervision. This also made it possible for offshore entities to acquire such shares triggering revocation of the broadcasting license. The court emphasized the importance of existing supervision and public awareness on the beneficiaries of broadcasting license holders, which cannot be superseded by creditors' interests.

As part of another case published on 14 November 2019, the Constitutional Court was asked to review the constitutionality of Article 75(5) of the Law of Georgia on Enforcement Proceedings and its compliance with the due process rights. Under this Article, unless an asset was sold at the auction (including first and two repeated auctions) for the purposes of enforcement of a court judgment or arbitral award, the attachment would be lifted and no enforcement remedies were available to the same creditor against the same property for enforcement of the same claim. The court concluded that this rule was not proportionate with the legitimate aim pursued and pointed out several possible alternative approaches for achieving the same goal (judicial economy). The court established that disputed article breached the right to due process.

## ANOTHER CRUSADE AGAINST GAMBLING BUSINESS

BLC has been closely following continuous amendments to the gambling regulations. On 13 November 2019, another package of legislative amendments was introduced to the Parliament of Georgia aiming at social welfare of citizens. Proposed amendments increase the age limit to 25 for citizens of Georgia for participating in games of chance organized electronically. Most importantly, the bill proposes creation of a list of addicted individuals and its management to be conducted by the Revenue Service of Georgia. The rationale behind such regulation is self-evident. The bill pictures adding of personal data of an individual to such list upon request of a family member through judicial procedure. Such list is proposed to operate essentially as a black-list – individuals listed therein will not be allowed to access gambling facilities or even create an account at online gambling platforms. Lastly, the bill aims to implement FATF recommendations of Council of Europe establishing mandatory AML check for obtaining gambling license in Georgia.

