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CONSTITUTIONAL COURT OF GEORGIA LIMITS THE CONCEPT OF "GOOD FAITH BUYER"

In its recent decision of 17 October 2017, the Constitutional Court of Georgia rendered particular reading of Article 185 of the Civil Code of Georgia unconstitutional. The named article protects the interests of a good faith buyer and denotes that sales transaction shall be upheld even if seller was not a lawful owner of the property, provided that seller was registered as the owner at the Public Registry and buyer was not aware of seller's defect in title. The Court noted that the limited reading of Article 185 exempts from the concept of "good faith buyer" only the buyer who has a positive knowledge of seller's defect in title and leaves out the instances, where the buyer is informed that the title is disputed at the Public Registry or the courts. The Court established that Article 185 must be read broadly to capture the latter scenario as well. The decision of the Constitutional Court does not imply that the buyer is burdened to take additional steps or bear additional costs related to the due diligence of seller's title, rather the buyer should refrain from purchasing the immovable property when informed of the challenge of the title. Otherwise, buyer has to bear the risks associated with success of such challenge.

ISSUING LOANS IN USD MAY BECOME AN ADMINISTRATIVE OFFENCE

The regular readers of BLC Newsletter may recall that, effective from January 2017, loans below GEL 100 000 may no longer be issued in USD. As an effective enforcement mechanism, the Parliament of Georgia discusses amendments to the Administrative Offences Code of Georgia envisaging sanctions for violation of the above rule. Sanctions include administrative warning with a cure period of one month and a penalty in the amount of GEL 1000 in case of continuous or repeated breach. If the bill goes through, the compliance with the restriction and related sanctions will be administered by the Revenue Service of Georgia. Amendments do not concern financial institutions supervised by NBG.

MAJOR REFORM OF STATE PENSION SYSTEM UNDERWAY

On 31 October 2017, the Government of Georgia has introduced a draft law on Accumulative Pension to kick off public discussion.

For more information and advise please contact us:

4, Gudashvili Square
Tbilisi, 0114, Georgia
Tel.:(995 322) 92 24 91, 92 00 86
blc@blc.ge
blc.ge

Although not yet progressed to the Parliament, the draft law has already produced a lot of controversy. The law introduces allegedly modern approach of accumulating pension funds by contributions made by the employee, the employer and the state to replace the existing social pension package. In particular, according to the draft law, each month 2% of the gross salary will be transferred by the employee to the special pension fund, 2% shall be paid by the employer and 2% will be added up by the state from employee's personal income tax. The funds so accumulated will be managed and invested by the state agency to ensure reasonable returns on such investments. After retirement, people will thus have accumulated funds at their disposal to decently provide for themselves in their old age. The Government expects the reform to boost state economy, however it remains questionable whether the business sector, obliged to contribute their portion of the funds, will share such enthusiasm.

PPP REGULATION FINALLY IN PARLIAMENT

Long awaited bill on Public and Private Partnership (PPP) was finally lodged to the Parliament of Georgia on 28 September 2017. The bill aims to establish unified legislative and institutional framework for public and private partnership in Georgia. The document was elaborated in cooperation with various Ministries of Georgia, IMF, EBRD and international experts and is said to reflect the state-of-art approaches in PPP regulations. The draft law provides for the rules governing PPP process starting from evaluation and announcement of the project up until selection of the investor and monitoring the compliance with its PPP commitments. The bill further differentiates between concessions and non-concession PPPs and abolishes an outdated law of Georgia on Issuing Concessions to Foreign States and Companies. If adopted, the law shall enter into force on 31 March 2018. In the interim, the Government of Georgia has to establish a new institution supervising the PPP projects and also adopt relevant implementing legislation.

CONSTITUTIONAL AMENDMENTS ADOPTED

On 13 October 2017, the Parliament of Georgia adopted extensive amendments to the Constitution of Georgia. Among others, the amendments cover restriction of foreign ownership of agricultural lands, subject to carve-outs prescribed by the special organic law to be further adopted by the Parliament. Most importantly, Georgia shifts from semi-parliamentary to a wholly parliamentary system of government with a president elected by the Parliament, rather than by citizens directly. The amendments further enhance certain social rights and provide for the definition of marriage as a union between a woman and a man. The restated Constitution comes into effect after the next presidential elections in 2018.