

大成 DENTONS

Manufacturing in Georgia



Foreword

Dear Readers,

The Dentons Europe offices cover a legendary territory for manufacturing and industrial projects, including Spain and France to the west, Russia, Kazakhstan and Uzbekistan to the east, Germany, Poland, Hungary and other Central European countries in the middle and from Italy to Turkey to the south. This territory offers a vast population with strong purchasing power and excellent infrastructure, combined with vast workforce resources and industrial expertise.

Dentons Europe has been at the forefront of the first industrial projects going east after the fall of the Berlin wall, actively advising on greenfield and brownfield projects as well as on acquisitions and joint ventures when Central European countries—Romania, Czech Republic, Slovakia and Poland—joined the European Union. We are now actively witnessing Asian investors' interest for manufacturing in Europe.

The legal environment in the countries we cover has greatly evolved. It is a strong advantage to have been present in some of the emerging economies of Eastern Europe, Caucasus and Central Asia for the past 20 to 30 years, as the legacy legal systems in these countries can still be felt, in particular with regard to land acquisition and environmental norms. Today many jurisdictions, including in Western Europe, offer state aid and tax incentives to attract the best manufacturing projects.

We are well placed to help you choose your entry doors to the European Union and to Eurasia.

We hope the Manufacturing Guide you have selected will be of interest. It aims to give you a general overview of key checkpoints for this jurisdiction. Do not hesitate to contact me or the authors of this guide for any further information.



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Georgia and the European Union



Georgia has free trade agreements with the EU, CIS and the European Free Trade Association.

The DCFTA (signed and ratified in 2014) boosted access for Georgian goods to the EU market and increased consumer safety in Georgia. The Agreement also facilitates, and will potentially increase, the inflow of European direct investments to Georgia thanks to an open, stable and predictable policy-making environment.

A person wearing a high-visibility safety vest is looking at a large grid chart on a wall in a warehouse. The chart has a grid pattern and some handwritten numbers. The scene is dimly lit, with a strong greenish tint. The person is in the foreground, slightly out of focus, while the chart is in the background.

Preparing to manufacture: greenfield and brownfield projects



A. Corporate Vehicles

Share deals & Asset deals

A person may become a shareholder of the company by acquiring shares in the company. Share transfer must be registered at the Entrepreneurial Registry or in case of a share transfer of a JSC, at the independent registrar or internal share registry. It is highly recommended to review the articles of association of the company for any restrictions or procedures applicable to the share transfer (such as the right of first refusal). According to the Law of Georgia on Entrepreneurs, shareholders in a limited liability company have a right of first refusal unless otherwise regulated by the articles of association.

The change of ownership of shares does not affect the relationship with third parties or reduce the burden of the obligations.

In relation to asset deals, parties may agree on which assets or liabilities are included in the deal. Therefore, the purchaser will only face the burdens and contingencies associated with that specific activity or assets.

It is highly recommended to review the articles of association of the company in order to establish what type of corporate approvals are required for the asset sale.

B. Real Estate, Construction and Insurance

A due diligence report in relation to the title of the land plot, encumbrances and zoning status shall be prepared before acquisition of the land plot. It is also recommended to review the historic ownership of the land plot and whether all past liabilities have been duly satisfied.

The buyer shall also review the lease agreements applicable to the land plot, in particular the term of the lease and any limitation clauses.

C. Administrative law – dealing with authorities – including anti-bribery laws

There is no general requirement to obtain a manufacturing license in Georgia. Pursuant to the Law of Georgia on Licenses and Permit, a license requirement applies to the manufacturing of certain goods only.

Conducting activities that are likely to have a significant effect on the environment, human life and/or health are subject to mandatory environmental impact assessment (EIA) and can be carried out only after obtaining an Environmental Decision (ED). Depending on the type of activity, the manufacturer may first undergo the screening procedure, which shall determine whether EIA and, consequently, the Environmental Decision (which consists of various steps itself) are required.

The general framework and timelines of dealing with administrative authorities are set out by Georgia's administrative legislation. Offering and accepting bribes, abuse of influence by a public official is a criminal offence under Georgian criminal law and may result in imprisonment. In addition, there are other laws that envisage provisions aiming at preventing the corruption of public officials and conflict of interests. Georgia's government has adopted the National Anticorruption Strategy of Georgia and the 2017-2018 Action Plan for the implementation of the National Anticorruption Strategy.

Companies may participate in public procurement tenders for the provision of goods or services to administrative authorities. The state procurement in Georgia mainly takes place via electronic means. The rules and procedures for the procurement process are established by the Law on State Procurement of Georgia and are monitored by the State Procurement Agency. Companies that operate in bad faith face the risk of being black listed by the Agency.

D. Employment

An employment agreement can be concluded for a fixed or indefinite term. However, a short-term (i.e. less than one year) employment contract may be used only in exceptional cases such as, for example, seasonal work, temporary increase in the workload, etc. Notwithstanding the term fixed in the contract, if an employment agreement is concluded or continues (through extensions) for a period of more than 30 months, the employment will be deemed concluded for an indefinite period.

An employment contract must be in writing if a term of employment is or continues for more than three months. In principle, an employment contract cannot be less beneficial for an employee than the provisions of the Georgian employment law.

An employer is entitled to apply a probation period based on a written agreement executed between the parties (employer and employee). Such period may



not exceed six months. An employer may terminate the labor contract at any time during the probationary period, with or without cause.

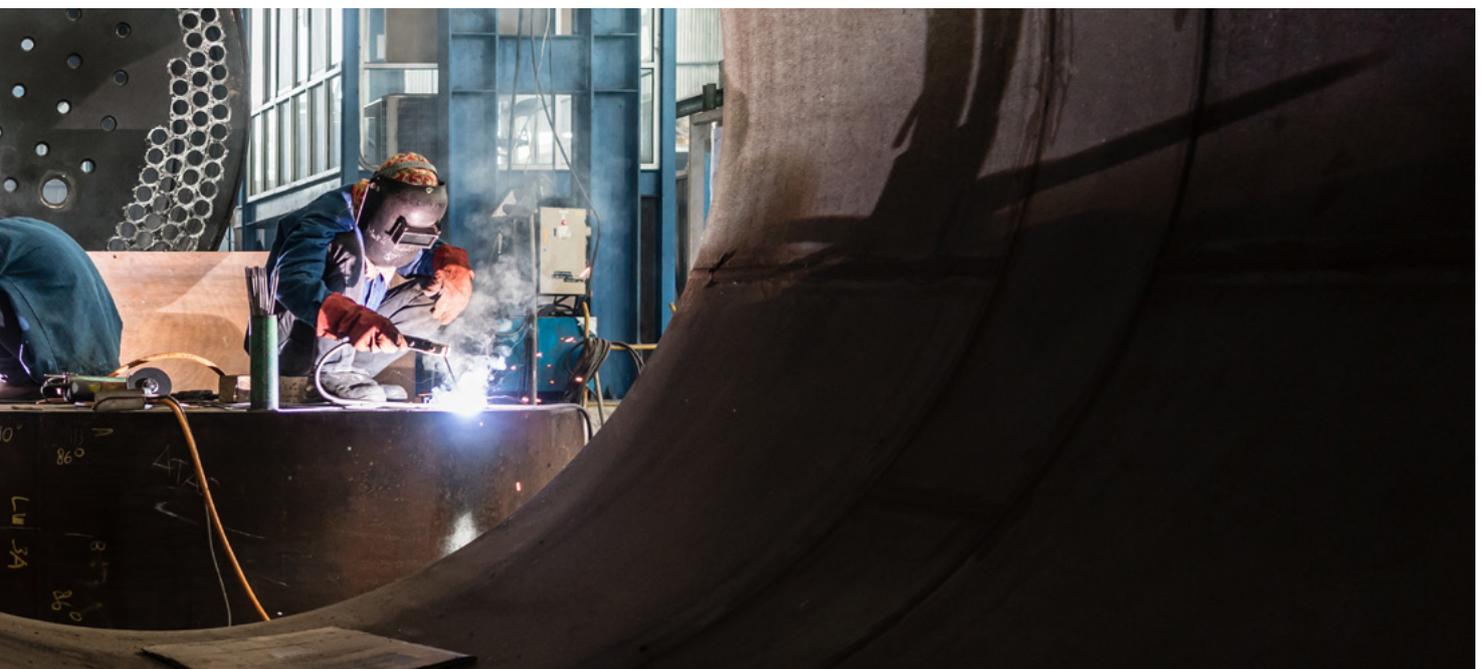
An employee is entitled to annual paid leave of at least 24 working days and unpaid leave of at least 15 calendar days. An employee may request leave after 11 months from the commencement of employment, unless otherwise agreed between the parties.

The mandatory minimum gross monthly salary in Georgia is very low – GEL 20 (approx. US\$8). Starting from 2019, a mandatory accumulative pension plan comes into effect, imposing a financial burden for the pension contributions not only to the employees required to be enrolled in the plan, but to the employers as well. Generally the accumulative pension plan will work with 2%+2%+2% scheme, which means an employee enrolled in the plan will be required to pay (through his/her employer) 2% of his/her own gross monthly salary toward his/her individual pension saving account, while the

employer and the Government will be required to add another 2% each. Enrolment in the accumulative pension scheme is mandatory for every Georgian permanent resident employee, except for individuals who have reached the age of 40 prior to the enactment of the law.

An employee may not be dismissed without a valid ground. Termination of employment without a valid ground is in most cases challenged by the employee. The courts usually order the employer to reinstate the person in his/her previous job, pay salary arrears for the period between termination and reinstatement and/or compensate for damages incurred because of wrongful termination (if requested by the employee).

The statutory severance payment for redundant employees is not high. It can be between one to two months' salary, depending on the termination notice period. The parties may also contractually allow for a higher severance payment.



E. Tax and State Aids

Profit tax (Corporate Income Tax)	15 percent levied on distributed profit, which includes certain expenses.
Value Added Tax (VAT)	18 percent
Income Tax of Individuals	20 percent
Stamp duty	N/A
Withholding tax on dividends to be paid to foreign entities (subject to reductions/exemptions under international tax treaties ¹ and domestic regulations)	5 percent
Withholding tax on interests to be paid to foreign entities (subject to reductions/exemptions under international tax treaties and domestic regulations)	5 percent
Withholding tax on royalties to be paid to foreign entities (subject to reductions/exemptions under international tax treaties and domestic regulations)	5 percent

¹ As of today, Georgia has DTTs with 55 countries.

Main rules

Corporate income tax: Starting from 2017 Georgia adopted an Estonian corporate income tax model (model whereby only distribution of dividends and not profit is taxed). The profit tax rate is 15 percent.

Capital gain tax: According to the Estonian model of profit tax, capital gain of legal entities is treated as regular income and is included in the income of such legal entities, and it is subject to taxation once such legal entities distribute the profit to their shareholders. The applicable tax rate is 15 percent.

Value added tax: Value added tax is neutral for companies having commercial activities. Those companies collect tax on their own sales and deduct the tax they have paid on purchase of goods and services. The net VAT payable is the difference between collected VAT and deductible VAT. Exports are VAT-exempt. The value-added tax rate is 18 percent.

Customs regime: Goods imported into Georgia are subject to:

- Import tax: 0%, 5% or 12%
- VAT: 18%
- Excise (on certain goods): Tax rate depends on the goods.

Exemptions and beneficial tax regime: Local and foreign investors have equal access to the support instruments to be provided within the framework of various investment incentives schemes and exemptions, most notably:

Free Industrial Zones (FIZ):

- Georgia currently has four FIZs: Tbilisi FIZ, Poti FIZ and Kutaisi FIZs 1 and 2. FIZ Enterprises are exempt from most types of taxes.
- The delivery of goods and performance of services in free trade zones are excluded from VAT.
- FIZ enterprise must pay four percent of the income received from sale of goods to Georgian registered companies. The FIZ enterprise must also pay four percent of the market price of the goods purchased from Georgian registered companies.

Consider Free Tourism Zones: Free Tourism Zones are areas in Georgia, which has been assigned by the government. The purpose of creating these areas is to provide investors with opportunities to build and run hotels.

Elimination of double taxation: Georgia has DTTs with 55 countries.

Things to watch out for

Transfer pricing: Where the prices of transactions with related parties are not determined in accordance with the “arm’s length” principle, the distribution of profits arising from these will be considered disguised profit distributions.

Three traditional transfer pricing methods listed in the OECD Transfer Pricing Guidelines are also accepted by Georgian tax authorities and clearly defined as the transfer pricing methods to be used. Those methods inter alia include:

- The comparable uncontrolled price method
- The resale price method
- The cost-plus method



Compliance

Tax	Return submission period
Profit tax return	Monthly or annually
Income tax return	Annually ²
VAT return	Monthly
Property tax	Annually

Main rules

Tax registration: It is mandatory to register as a taxpayer before starting any economic activity in Georgia.

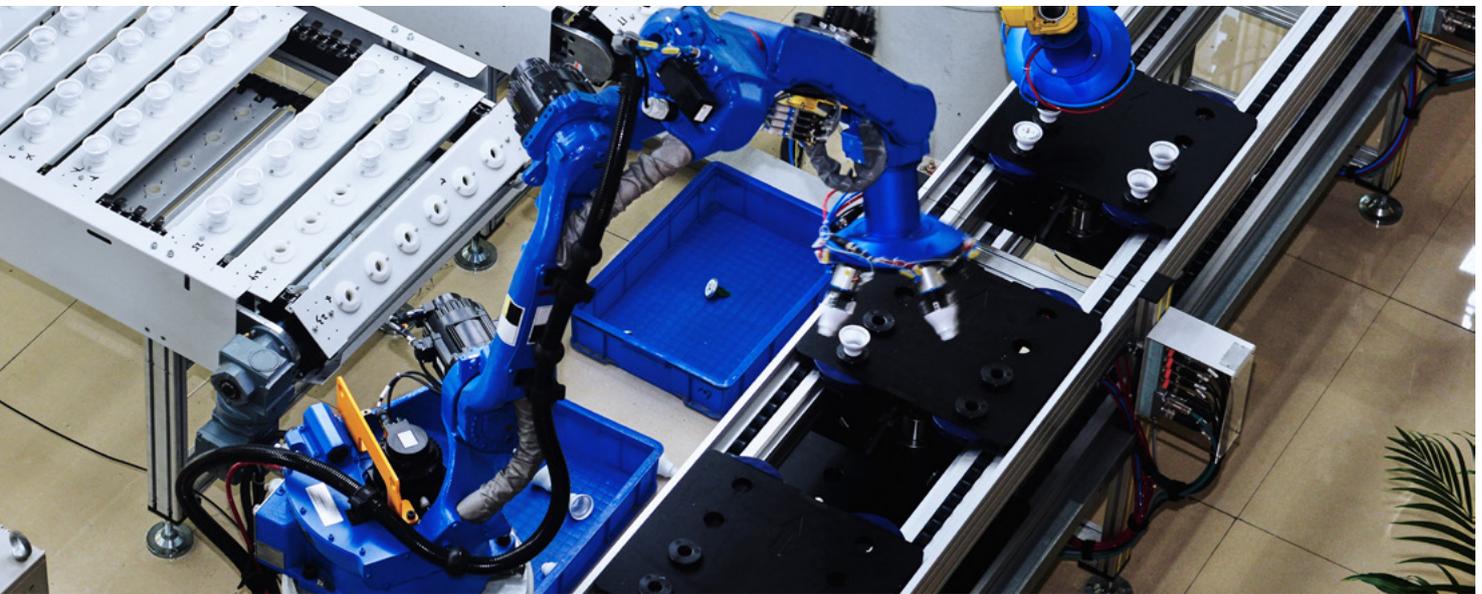
Different ways of buying business have different tax consequences:

If you acquire an existing business, you may do so by buying (i) shares, or (ii) assets. Each has different tax effects that require careful consideration.

Tax Rulings: Tax authorities in Georgia issue advance tax rulings, which are mandatory. The tax authorities have three months in which to issue the advance tax ruling.

Tax year: The default tax year is the calendar year. However, the taxpayer may choose a different tax year compatible with its business.

2 Unless withheld from salary on a monthly basis without the need for a tax return.



State Aid

The Law of Georgia on Competition provides general rules on granting the state aid. According to law, it is prohibited to provide state aid to an undertaking or a specific type of activity in any form that hinders or endangers competition.

Generally, state aid requires the consent of the Competition Agency. State aid that does not require such consent is permissible if:

- a. State aid is granted to individual consumers as a social allowance, provided that the aid does not lead to discrimination against the producer of the relevant goods/services;
- b. State aid is intended to eliminate the consequences of natural disasters and force-majeure events;
- c. State aid is intended to carry out environmental protection activities;
- d. State aid is intended to exercise the rights or fulfil the obligations stipulated under the relevant legislative act of Georgia or an international agreement to which Georgia is a party;
- e. State aid is granted in an insignificant amount in the form of individual state aid. The insignificant amount of individual state aid shall be determined by an ordinance of the Government of Georgia;
- f. State aid is intended to implement an important state project, and if the Government of Georgia has made a decision in this respect.

If the granted state aid significantly distorts competition in the relevant market and/or there is a violation of the Georgian legislation on competition with respect to the procedure for granting state aid, the person who has suffered damages as a result of such distortion or violation may appeal to court.

F. Protecting your intellectual property and complying with data privacy obligations

Intellectual Property

Recognized types of Intellectuals Property (IP):

Georgia is a party to all main international agreements relating to IP and recognizes the following rights:

- Copyrights and neighbouring rights
- Designs
- Patents
- Trademarks
- Geographical indications and appellation of origins
- Trade secrets and know-how
- Domain names

Levels of protection: registration to protect inventions, designs and trademarks is possible on the following levels:

- National (through National intellectual Property Center of Georgia - Sakpatenti)
- International (through World Intellectual Property organization)

Terms of protection of IP rights:

- 10 years for trademarks (with the right to extend the registration indefinitely by consecutive periods of 10 years)
- 20 years for patents
- 70 years from the death of the author in relation to copyright
- Five years for designs (with the right to extend the registration by consecutive five-year terms up to 25 years)

Recommendations / things to watch out for preserving priority of your IP rights in Georgia:

The first application of an invention, a design or a trademark to the IP register in another country can give rise to relevant rights in Georgia. Your first application must comply with the rules in relevant international agreements. If you notify Sakpatenti within the specified period after the first application, you will have a priority right to register them in Georgia. For inventions, the period is 12 months, for designs and trademarks it is six months.

You can combat counterfeiting in Georgia: the owners of IP can register their IP at the Registry of IPR of the Revenue Service of Georgia and hence prevent the import or movement of counterfeit products at the Customs of Georgia.



Data Privacy

The Data Protection Law of Georgia is in force starting from 2012.

Personal data cannot be processed without the explicit consent of the so-called “data subject”, except for any of the following:

- Data processing is provided for by law;
- Data processing is necessary for a data controller to perform his/her/its statutory duties;
- Data processing is necessary to protect vital interests of a data subject;
- Data processing is necessary to protect the legitimate interests of a data controller or a third person, except when there is a prevalent interest to protect the rights and freedoms of the data subject;
- According to the law, data is publicly available or a data subject has made it publicly available;
- Data processing is necessary to protect a significant public interest under the law;
- Data processing is necessary to deal with the application of a data subject (to provide services to him/her).

The transfer of personal data abroad from Georgia is not permitted without the explicit consent of the data subject. However, personal data may be transferred without obtaining such consent if (cumulatively) the said data could be processed as per one of the exceptions listed in the first paragraph above, and:

- Either the country to which data shall be transferred is deemed by the Georgian Personal Data Protection Inspector to be one of the countries providing sufficient protection, or
- The data controllers obtain permission from the Georgian Personal Data Protection Inspector.



Operating





A. Connecting to utilities

Water, electricity and natural gas utilities are mainly run by private companies and supervised by Georgian National Energy and Water Supply Regulatory Commission (GNERC).

A company shall register as a subscriber and apply to the respective distribution licensee to connect to the supply networks. The contracts between the customer and the licensee are subject to private law.

The rules for distribution and consumption of water, electricity and natural gas, as well as for the connection of new customers to the supply networks and relevant fees, are established by GNERC.

B. Health and Safety

The Georgian government adopted resolution N41 on Building Safety Rules Technical Regulation on January 28, 2016. The aim of the resolution is to set forth minimum conditions for the public health, safety and general welfare by providing access to facilities, sanitation, proper lighting and ventilation, fire safety standard and firefighter-rescuers and emergency rescuers' safety standards.

Under Georgian legislation, employers are obliged to provide employees with a working environment that is safe for the life and health of the employees. Georgian labor safety regulations provide a list of hard, harmful and hazardous jobs, including the cases and the procedure for employees' mandatory periodic medical check-ups at the employer's expense. Building activities are listed as one of such hard, harmful and hazardous jobs; therefore, it is subject to special regulations. Such activities require separate registration at the registry of economic activities.



C. Trade Unions

Under Georgian law, a trade union is a voluntary public association of persons (workers) connected with common production and professional interests, which is designed to protect and represent the employment, socio-economic and legal rights and interests of its members. It can be established within any company, institution, organization and other workplace.

Trade unions may be formed on different levels (e.g. occupational, regional, sectoral, firm level). Furthermore, trade unions may establish “primary trade union organizations” (i.e. trade union organization that unites trade union members at a firm level) within a company, institution, organization or other workplaces. The law requires trade unions to be registered in a Public Registry as non-commercial legal entities and to have their own charter and management bodies.

The most common role of a trade union is to act as the collective bargaining representative of the members in a particular workforce. Trade unions may initiate collective bargaining negotiations and conclude collective agreements with employers. Employers are bound by law to enter into collective

bargaining negotiations with the union in good faith, if initiated by the union, and in case of mutual agreement, enter into a collective agreement. In addition, trade unions have the right to (i) participate in the development of state policy on employment; (ii) protect the employment rights of its members, file claims in court, and undertake the legal representation of its members in court hearings; (iii) participate in the employment collective employment dispute resolution processes; (v) organize and facilitate industrial actions (strikes, demonstrations, etc.) in accordance with the law.

In Georgia, trade unions are more common in large companies, especially among blue collar workers.

D. Defending your intellectual property

In case of an intellectual property infringement, the intellectual property owner may initiate civil and criminal proceedings and request, inter alia, cease and desist of such infringement, compensation of damages, as well as a preliminary injunction.

In addition, the owners of IP can register their IP at the Registry of IPR of the Revenue Service of Georgia and hence prevent import or movement of counterfeit products at the Customs of Georgia.

E. Regulation compliance

Code of Georgia on Product Safety and Free Circulation provides market surveillance procedures and relevant sanctions in order to upgrade market surveillance system in line with best EU practice.

The Technical and Construction Supervision Agency of the Ministry of Economy and Sustainable Development of Georgia was established to conduct market surveillance on Industrial and Consumer products. The main area of the Agency's activities is to carry out state control and supervision of objects and to issue construction permits for entities of special significance (including radiation and nuclear facilities) throughout the country and to control the fulfilment of the permit conditions.

F. Competition law investigations

The Competition Agency of Georgia is a national competition authority, which regulates and enforces competition laws in Georgia. However, certain regulated entities in Georgia (e.g. banks, electronic communication service providers, electricity market operators, etc.) are subject to supervision and regulation by specific sector regulators.

Georgian legislation provides the Georgian Competition Agency with powers to investigate suspected anticompetitive behaviors. These powers enable the Competition Agency to request the target entity and/or other interested parties to supply information and/or documentation, provide oral and/or written explanations to the Competition Agency. If you fail to comply with the Competition Agency's request for information/documentation or intentionally submit misleading or incomplete information to the Competition Agency you may be subject to administrative fines. In addition, the Competition Agency may also conduct onsite inspections (dawn raids) with a court warrant, during



which they can search the business premises, copy or seize documents (including of confidential nature) and interview people.

In order to prevent any anticompetitive practices, an effective antitrust compliance program shall be in place. Companies under investigation are advised to seek support of their external legal advisers and/or in-house counsel immediately.

G. Tax investigations

There are two types of tax control:

1. Current control, and
2. Tax audit.

Current control includes inter alia time study, tax monitoring, controlling purchase, control over the observance of rules for using cash registers, inventory and visual inspection.

A tax audit may be a correspondence audit without visiting the taxpayer's place of business or a field audit consisting of an audit at the taxpayer's place of business.

A correspondence tax audit shall be conducted based on an order of the tax authority regarding the audit of specific matters defined by the order. During a correspondence tax audit, the tax authority may request accounting documents and/or taxation-related information.

A field tax audit shall be conducted based on an order of the tax authority. The taxpayer shall be sent a written or electronic notice of a field tax audit at least 10 working days prior to the commencement of the audit.

In certain cases, an urgent field tax audit shall be conducted without a written notice, with a court's permission.

The statute of limitation is three years.

H. Compliance monitoring – anti-bribery, anti-money laundering and whistle blowing rules in Georgia

Anti-corruption Rules

The latest two-year Anti-Corruption Strategy and its Action Plan was adopted on September 27, 2017 and is based on an evaluation of the results of the previous policy and takes into account multiple corruption studies and reports. The Strategy is a comprehensive policy document with clear goals and objectives. The Action Plan includes specific actions, a timetable for implementation, responsible bodies and a budget.

Georgia's anti-corruption legislation is largely contained within the Criminal Code (Articles 332-342), which criminalizes attempted corruption, active and passive bribery, embezzlement, bribing a foreign official and money laundering. Abuse of public office and passive bribery are punishable with imprisonment of up to 15 years and confiscation of property, while penalties for active bribery include a fine and/or a minimum prison sentence of two years. Georgian law does not make a clear exception for facilitation payments, so companies doing business in Georgia should assume these could be considered as bribery payments. Georgia has a good record of accomplishment in the prosecution of corruption crimes and money laundering, in using modern methods of confiscating criminal proceeds. Corporations, as well as natural persons, can be liable for bribery charges.

The Law of Georgia on the Conflict of Interests and Corruption in Public Service prohibits corruption among public servants and requires the disclosure of assets by public officials (the records are accessible online to ensure transparency). The law sets strict limits on the value of gifts and stipulates that all gifts worth more than five percent of the receiving official's annual salary, among other restrictions, must



be transferred to the Service Agency of the Ministry of Finance of Georgia. The law also prohibits public servants' involvement in private business. The legal framework also includes the Money Laundering Law and the Law of Georgia on the Conflict of Interests and Corruption in Public Institutions (Art. 20).

In the area of public procurement, Georgia has maintained one of the highest levels of transparency and openness of the public procurement in the world through the use of a full-cycle e-procurement platform. However, there are a number of exemptions and deficiencies in the procurement framework, which allow for contracts to be placed outside the electronic platform or through non-competitive processes.

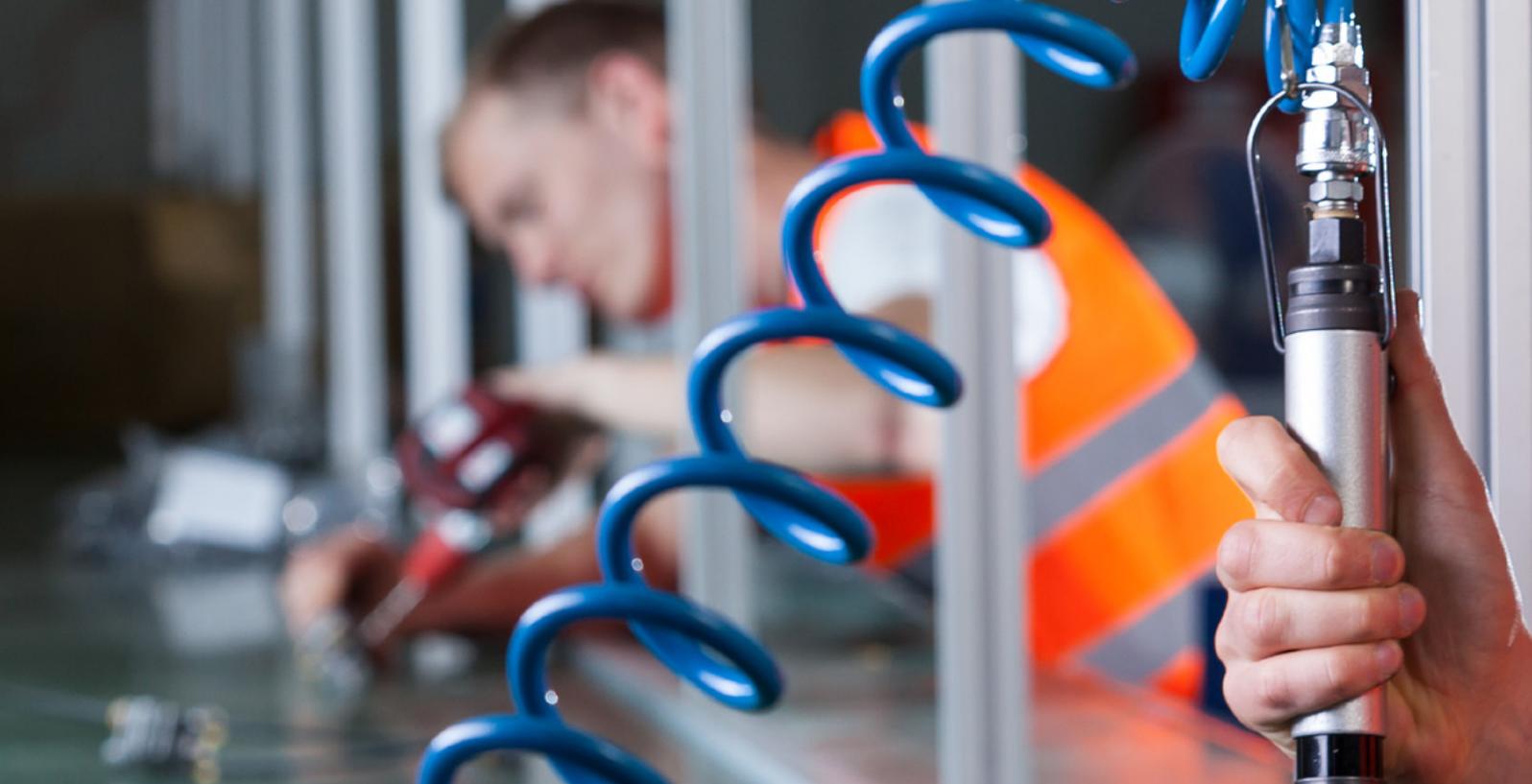
Georgia is not a signatory to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions but has ratified the Council of Europe Civil and Criminal Law Conventions on Corruption, and the country's legislation complies with the United Nations Convention against Corruption (UNCAC).

Anti-money Laundering Rules

Fighting and preventing transnational offences of money laundering and terrorism is one of the declared priorities of the Government of Georgia. The latest three-year Strategy for Combating Money Laundering and Terrorism Financing (AML/CFT Strategy) was adopted on March 18, 2014 and developed in accordance with the recommendations of the Financial Action Task Force (FATF) to further strengthen the existing AML/CFT framework in Georgia.

The legal system for the elimination of money laundering and terrorism financing has been in place in Georgia for more than 14 years. The Law of Georgia on Facilitating the Prevention of Illicit Income Legalization (AML/CFT Law) was adopted on June 6, 2003 and has been in force since January 1, 2004. The law represents major legal instruments for the prevention of money laundering and terrorism financing. It regulates issues of detection of ML/FT offences, and prevention thereof, as well as modalities of cooperation between Georgian and foreign competent authorities and international organizations.

The AML/CFT Law sets down the institutional framework in the field of preventing money laundering and terrorism financing. The law designates supervisory bodies in charge of monitoring the observance of relevant requirements by the monitoring entities, in particular: The National Bank is supervising commercial banks, currency exchange bureaus, qualified credit institutions, non-bank depository institutions, microfinance organizations, money remitters, brokerage companies and securities' registrars. Insurance State Supervision Service is supervising insurance companies and non-state pension scheme founders. Ministry of Finance is supervising entities organizing lotteries and other commercial games, and those engaged in activities related to precious metals, precious stones and products thereof, as well as antiquities, the Revenue Service, leasing companies, entities providing grants and charities. Ministry of Justice is supervising notaries and the National Agency of Public Registry. Self-regulatory organization and member of the International Federation of Accountants is supervising accountants and auditors. Georgian Bar Association is supervising lawyers.



The AML/CFT Law defines the objectives and responsibilities of Financial Monitoring Service (FMS), which acts as an independent body, and receives and analyses information from the monitoring entities, sends relevant information to investigative authorities, when there are reasonable grounds to believe that the transaction is suspicious and is being implemented for ML/FT purposes or committing other related criminal offences.

Furthermore, the Criminal Code criminalizes money laundering and terrorism financing and also provides for predicate offenses. In particular, all crimes punishable under the Criminal Code are considered as predicate offences for money laundering crime. Thus, all money laundering predicates provided for by the FATF recommendations are duly covered under Georgian law. The Criminal Code additionally provides for the mechanism of asset forfeiture, which is essential for combating money laundering and terrorism financing (Article 52). The Law of Georgia on Operational - Investigative Activities defines operational measures and procedure for the detection and prevention of crime, including money laundering and terrorism financing offences. The Civil Procedure Code (Chapter XLIV1) provides for civil forfeiture of illegal and undocumented property held by a convicted person, his/her family member, close relative or associate.

The Law of Georgia on International Cooperation in the Field of Criminal Law stipulates the procedure

of providing mutual legal assistance, extradition and enforcement of foreign judgments in criminal cases, including those related to money laundering and terrorism financing. The Law of Georgia on International Law Enforcement Cooperation regulates cooperation of Georgia's law enforcement agencies with corresponding institutions of other countries and appropriate international organizations through the exchange of operational-investigative information and personal data, implementation of operational-investigative activities and collaboration in other areas. This cooperation is aimed *inter alia* at the prevention, detection and elimination of money laundering and terrorism financing offences.

Under Georgian law, investigation of money laundering is the authority of the Chief Prosecutor's Office, while the Ministry of Internal Affairs investigates terrorism related crimes, including financing of terrorism. Specialized units of the Chief Prosecutor's Office and the Ministry of Internal Affairs conduct investigation of money laundering and terrorism financing.

Whistle-blowing Rules

Georgia was one of the first countries in the region to introduce legislation on whistle-blowing. Whistle-blowers' protection mechanisms were significantly improved by introducing amendments into the Law of Georgia on the Conflict of Interests and Corruption in Public Institutions (the Law) in April 2014. However, the same protection is not yet extended to the whistle-blowers working for private entities.



Since the legislative changes, whistle-blowing can be made anonymously to a body in charge of the review of whistle-blower's applications, an investigator, a prosecutor and/or the Public Defender of Georgia; the body that received the report is obliged to keep the whistle-blower's identity confidential unless the whistle-blower provides written express permission for disclosure. Protection provided for the whistle-blower is monitored by the official (general) inspectorate of the public institution that reports to the head of appropriate public institution, and includes prohibition of intimidation, oppression, coercion, humiliation, moral or material damage, use of violence or threat of violence, discriminatory or any other illegal act with regard to the whistle-blowing incident against whistle-blower or his/her close relative. In addition, the whistle-blower may not be subject to administrative procedures, civil action, prosecution and retaliatory measures or be held responsible otherwise for the circumstances related to the facts of whistle-blowing.

If, in the course of criminal procedure, at any stage of proceedings connected to the act of disclosure, the life, health or property of a whistle-blower, his/her close relative or witness is prejudiced due to being involved in these proceedings, the whistle-blower, his/her close relative, witness or the body in charge of the review of whistle-blower's applications may apply to the Prosecutor's Office of Georgia to apply special protection actions provided for by the Criminal Procedure Code of Georgia.

Whistle-blowers enjoy protection guarantees irrespective of whether the information disclosed is true or false, except when:

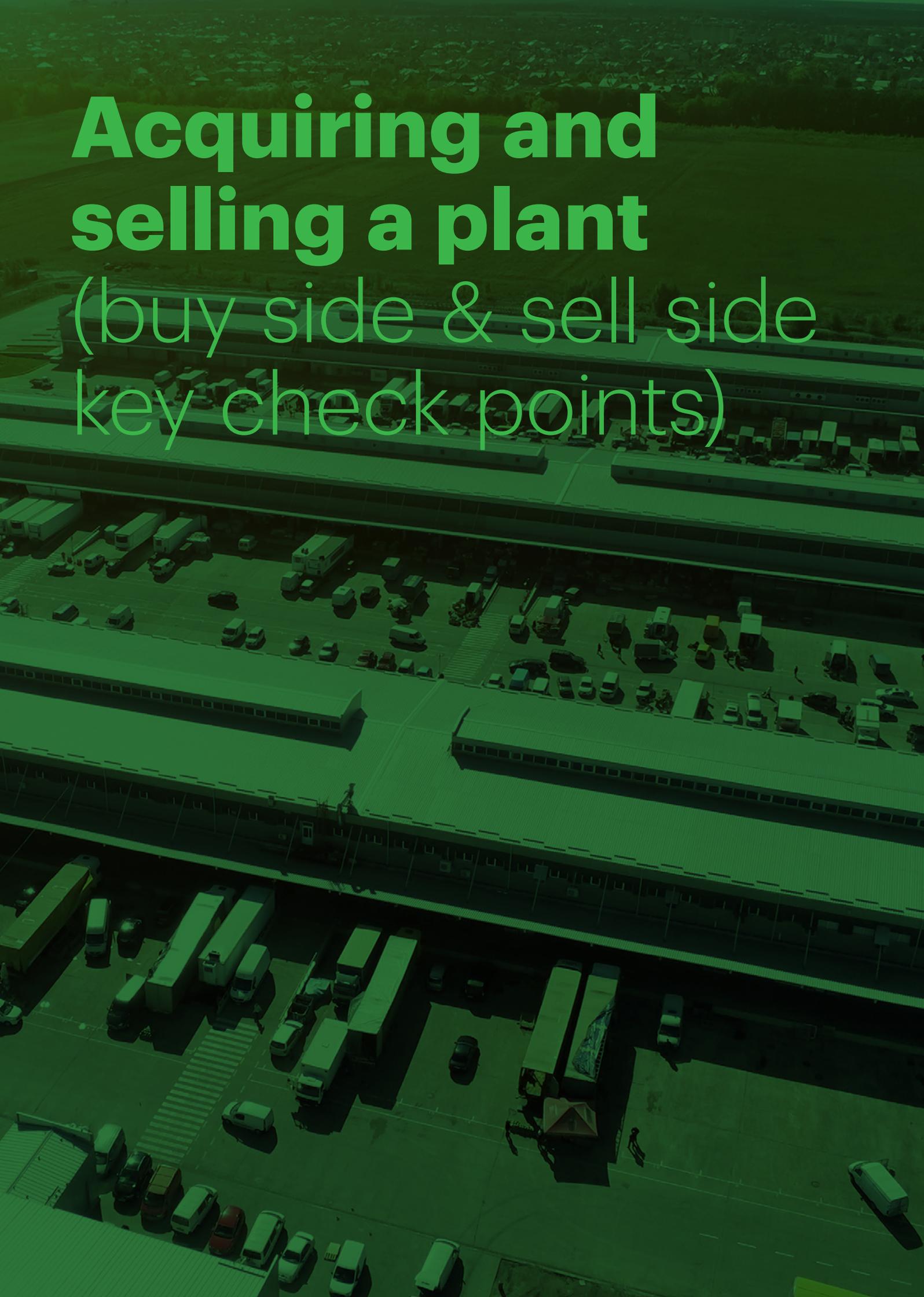
- a. The information is false and the whistle-blower was aware or should have been aware of this fact because he/she could verify the accuracy of the information disclosed, except when the whistle-blower took all possible measures to verify the information but was not able to ascertain its falseness;
- b. The whistle-blower acts for his/her own or another person's distinction, except when being granted with a special award determined by the legislation of Georgia;
- c. The whistle-blower is aware that the factual circumstances of the disclosure are publicly known or are known to the body in charge of the review of whistle-blower's applications.

A disclosed person shall be notified about a whistle-blower application and the evidence available against him/her. The disclosed person shall be granted an opportunity to respond to the disclosure.

Issues of disclosures within the system of the Ministry of Defence of Georgia, the Ministry of Internal Affairs of Georgia and the State Security Service of Georgia are regulated on the basis of special legislation.

Acquiring and selling a plant

(buy side & sell side
key check points)



A. Share deals & Asset deals

A person may become a shareholder of the company by acquiring shares in the company. In this case, the company maintains the same status without altering its composition of assets and liabilities. Share transfer must be registered at the Entrepreneurial Registry or in case of a share transfer of a JSC, at the independent registrar or internal share registry. It is highly recommended to review the articles of association of the company for any restrictions or procedures applicable to the share transfer (such as the right of first refusal). According to the Law of Georgia on Entrepreneurs, other shareholders of the company have a right of first refusal unless otherwise regulated by the articles of association.

The change of ownership of shares does not affect the relationship with third parties or reduce the burden of the obligations.

In relation to asset deals, parties may agree on which assets or liabilities are included in the deal. Therefore, purchaser will only face the burdens and contingencies associated with that specific activity or assets.

It is highly recommended to review the articles of association of the company in order to establish what type of corporate approvals are required for the asset sale.

B. Real Estate

A due diligence report in relation to the title of the land plot, encumbrances and zoning status shall be reviewed before acquisition of the land plot. It is also recommended to review the historic ownership of the land plot and whether all past liabilities have been duly satisfied.

The buyer shall also review the lease agreements applicable to the land plot, in particular the term of the lease and any limitation clauses.

C. Third party security on the plant

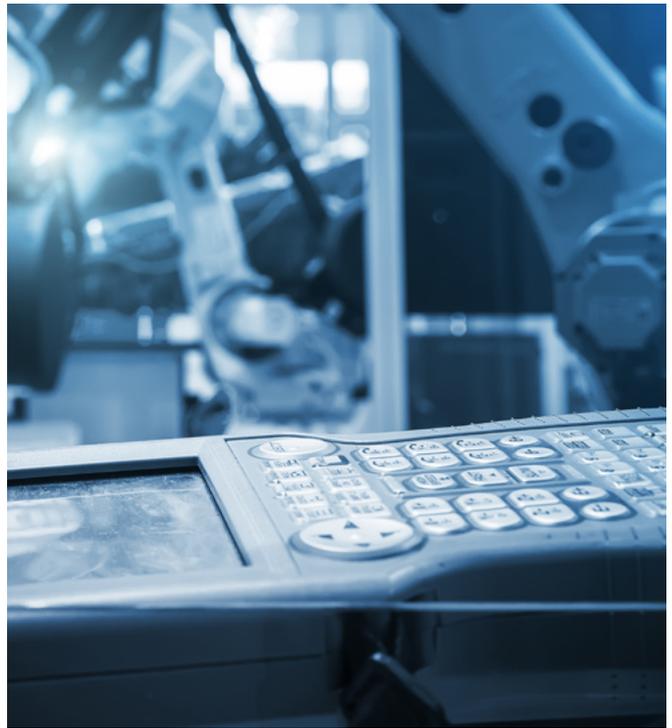
If the plant and/or its movable assets (e.g. machinery, equipment, vehicles, etc.) are mortgaged and/or pledged in favor of a third-party creditor (typically, a bank), it would be preferable for the seller to pay off the debt secured by such mortgage/pledge prior to the transfer of title to the plant and/or its movable assets.

Usually, however, the seller may first need to obtain funds from the sale of the plant and/or its movable assets in order to pay off debt and release property from mortgage/pledge. As a result, rather than releasing the property from mortgage/pledge prior to sale, it may be more practicable for such release to occur in parallel with or following the completion of sale.

In practice, it is customary to obtain a letter from the third-party creditor (a) indicating the total amount of debt outstanding, as well as the account number where settlement is to be made, and (b) confirming that once the indicated total amount of debt outstanding is paid off, the third-party creditor will grant its written consent to release the property from mortgage/pledge.

Once the seller pays off debt, the third-party creditor must issue a letter confirming (a) that the total amount of debt outstanding has been paid off by the seller and (b) that the third-party creditor grants its consent to release the encumbered property from mortgage/pledge.

Once the third-party creditor issues its letter of consent as described above, the letter must be submitted to (a) Legal Entity of Public Law (LEPL) National Agency of Public Registry of the Ministry of Justice of Georgia (the NAPR) in case of mortgage over real estate and pledge over movable property (except vehicles), and (b) LEPL Service Agency of the Ministry of Internal Affairs of Georgia (the SA) in case of pledge over vehicles.



The NAPR will make its decision to deregister:

- *Pledge* over movable property (except vehicles) on the same business day for the fee of GEL 30 (approx. US\$12); and
- *Mortgage* over real estate:
 - within four business days for the fee of GEL 50 (approx. US\$19);
 - within one business day for the fee of GEL 150 (approx. US\$56); and
 - on the same business day for the fee of GEL 200 (approx. US\$75).

Once the NAPR completes the pledge/mortgage deregistration proceedings as described above, it will issue simultaneously a new electronic extract which will serve as final evidence of the buyer's clean title to the property.

The SA will make its decision to deregister pledge over vehicles within two business days free of charge.

Once the SA completes the pledge deregistration proceedings as described above, it is recommended for the buyer to additionally obtain a certificate on the legal status of vehicles which will serve as final evidence of the buyer's clean title to the property.

D. Employment & Trade Unions

Laws of Georgia do not grant special powers to workers and/or workers' associations (including trade unions and workers council, if any) to participate in or otherwise impact, in any form, on asset/share acquisition or divestment deals. Also, as long as the employer remains the same entity and the acquisition/divestment deal does not entail redundancies and/or deterioration of working conditions, there is no legal requirement to pre-notify the workers' associations about an asset/share acquisition or divestment deal.

Requirement to pre-notify a trade union (if any) applies in cases when the employer is to be liquidated. Upon the liquidation, the employer ceases to exist and employment agreements are, therefore, terminated. Requirement to pre-notify the employer also apply to cases when the employer is to undergo a reorganization (through merger, division or transformation of legal form) or temporary suspension of activities, but only if such reorganization or suspension will entail redundancies or deterioration of working conditions.

E. Specifics for distressed assets

The laws of Georgia related to insolvency proceedings are generally considered to be imperfect and if disputable matters arise in the course of such proceedings, there may be limited practice of interpreting the legal norms.

In general, once the debtor enters into insolvency proceedings (whether voluntary or compulsory), the debtor is prohibited from executing any transaction and/or terminating any executed transaction without the consent of the custodian appointed by the court (i.e. LEPL National Bureau of Enforcement of the Ministry of Justice of Georgia (the NBE)), or in case of disagreement with the custodian – without the

consent of the court. However, in order to maintain the continuity of business, the debtor may incur new contractual obligations with the consent of the custodian, or in case of disagreement with the custodian – with the consent of the court.

If bankruptcy proceedings are initiated against the debtor, the bankruptcy manager (selected by the creditors or appointed by the court (i.e. the NBE)) will dispose of the property owned by the debtor upon entering into the insolvency proceedings, as well as the property acquired and/or produced (created) thereafter, both in Georgia and abroad, apart from the items and claims which are not subject to mandatory enforcement under the laws of Georgia (collectively the "assets in custody").

The plant and its movable assets owned by the insolvent debtor will also be included in the assets in custody as described above.

The NBE will sell the assets in custody (apart from items subject to financial lease), including the plant and its movable assets, by means of an auction.

The first auction aims to sell the assets in custody as a whole. The starting price is set at 50 percent of the market value of the assets in custody determined based on an expert conclusion.

If not sold at the first auction, the assets in custody may be sold as a whole or in parts at the second auction. If the creditors decide to sell the assets in custody in parts, they determine the starting price of each bid at their discretion. However, if the creditors fail to make the decision to sell the assets in custody in parts, the assets are sold as a whole and the starting price is set at 25 percent of the market value of the assets in custody determined based on an expert conclusion.

If not sold at the second auction, or if a certain part of the assets in custody remains unsold after the second auction, the NBE makes the decision to sell the assets in custody as a whole or in parts. The starting price is set at GEL 0.

The buyer acquiring the assets in custody of a company of private law as a whole may at its discretion register as the sole shareholder of such company. As a result of the transfer of title, the company is transferred to the buyer free of encumbrances and debts.

The winner of auction must pay the full purchase price within 10 days from the completion of auction. Otherwise, it will forfeit the amount of guarantee presented on the auction date.

F. Merger control

The main authority responsible for the implementation of merger control rules in Georgia is the Competition Agency of Georgia.

Merger control applies to any “concentration” (as defined below) that meets turnover-based and/or asset-based threshold. Transactions (i.e. concentrations) that meet one of these thresholds must not be implemented before the Competition Agency has granted clearance. Violation of this prohibition results in all such transactions being void and unenforceable.

The following types of transactions are considered to be concentration: (i) two or more previously independent companies merge into one company; or (ii) a person/company who already controls at least one company acquires control over all or part of another company (or any part of its business) through the purchase of securities or assets, by agreement, or any other means; or (iii) the same person participates in the management boards of different companies.

The creation of a joint venture that performs, on a lasting basis, all the functions of an independent economic entity, is deemed to be a concentration.

A transaction that is considered to be concentration is subject to Georgian merger control, if one of the following thresholds are met: (i) the total annual turnover, in the territory of Georgia, of the companies involved exceeds GEL 20 million (approx. \$7.4 million) and the annual turnover of each at least two companies involved exceeds GEL 5 million (approx. \$1.9 million); or (ii) the total value of the assets located in the territory of Georgia exceeds GEL 10 million (approx. \$4.2 million) and the value of assets of each at least two companies involved exceeds GEL 4 million (approx. \$1.5 million). There are certain exemptions to the clearance requirement.

The above thresholds do not apply to mergers and acquisitions in regulated industries, such as, for example, banking, electronic communications, and electricity and gas sectors. Mergers and acquisitions in such regulated sectors are subject to sector-specific merger control regulations, where the control is implemented by relevant sector-regulators.

G. Tax risks

In general, gain realized from purchase and sale of the assets is subject to taxation in Georgia. Taxation of the transaction will depend on assets bought/sold, seller/buyer of such assets and on residence of such seller/buyer. Further, transfer pricing rules may be applicable to such asset transfer agreements.

The limitation period for a tax assessment of asset transfer agreements is three years (commencing from the year following the year in which such transaction was entered into).



H. Intellectual Property & Technology acquisition

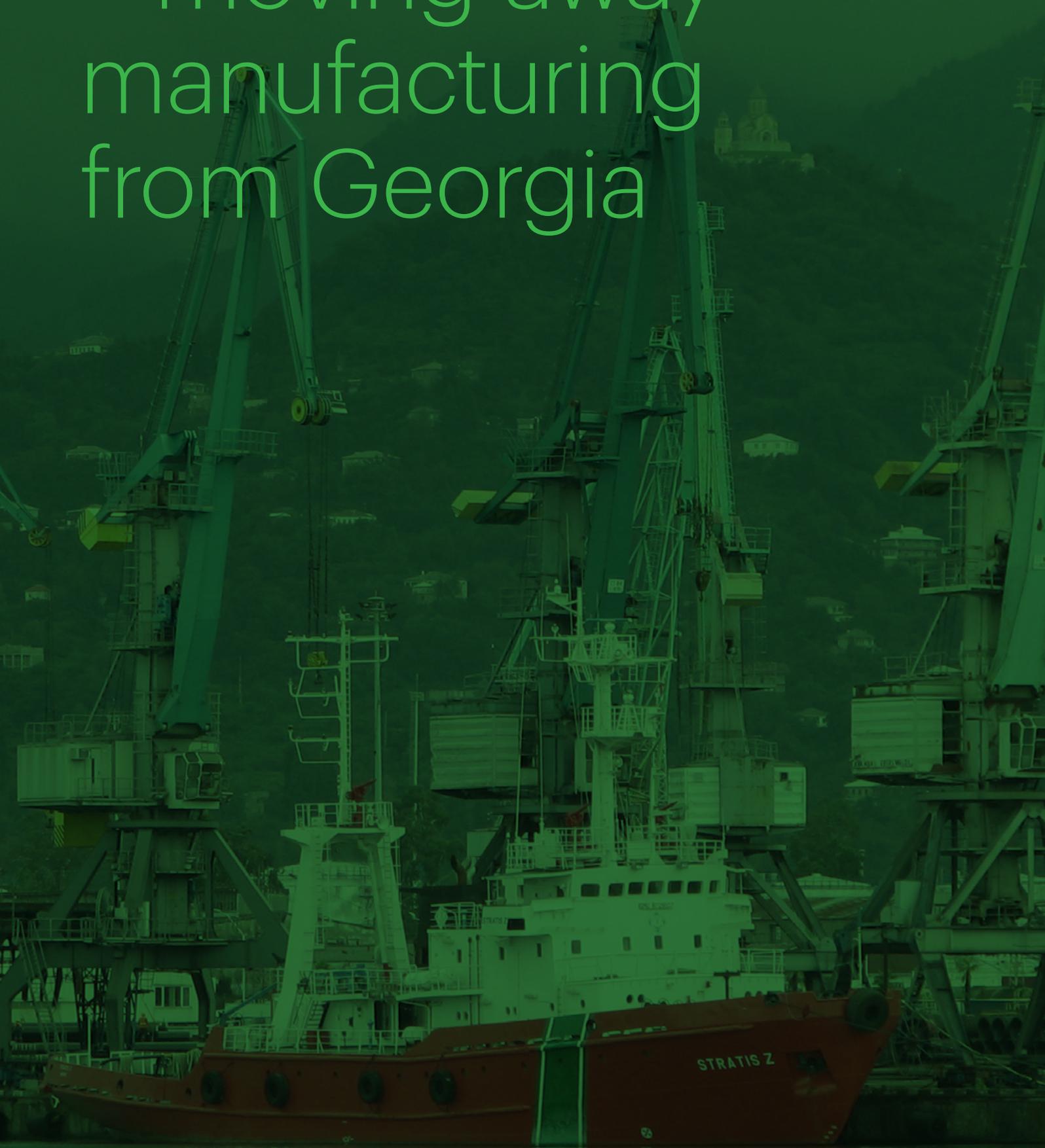
Protection terms and renewal periods should be confirmed for each IP to be transferred. Also, the new owners of the intellectual properties subject to registration shall be registered as the new owners at Sakpatenti – National Intellectual Property Center of Georgia.

The domain names should be transferred to the new entity.

As for unregistered intellectual property, the new owner must verify and confirm whether such intellectual property is being transferred with all of its elements and data. The return, deletion or destruction of such elements and/or data by the transferring company should also be ensured.

Closing down

– moving away
manufacturing
from Georgia





- The company shall go through the process of winding up when shutting down the company: The process broadly consists of the following stages:
 - Adoption of a shareholders' resolution approving the start of winding-up of the company. The company may also appoint a liquidator(s);
 - Proceed with the formalities of registering the resolution to wind up in the public registry (including informing creditors, tax examination, realization of the assets of the company);
 - Registration of the completion of the winding-up and the share of the profits between the shareholders.
- The company may not alienate, encumber or otherwise dispose of its assets during the process of winding-up to the detriment of creditors.
- Please note that the sums received after the realization of the company's assets shall be kept on the deposit account of the court or a notary.
- The deposited sum may be distributed amongst the shareholders only after the remuneration of creditors, in any case, no earlier than three months after the completion of the liquidation process.

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