

Legal Focus

Micro Finance Organizations

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Amendments to the Civil Code of Georgia

Recent Amendments to the Civil Code Prohibit Operation of Micro Finance Organizations under the Non-commercial Legal Form

New amendments to the Civil Code of Georgia introduced and effective since December 14, 2006 no longer contain provisions allowing Micro Finance Organizations (MFOs) to operate under the non-commercial legal form. Pursuant to Article 33 of the Code, the court of Georgia, based on the lawsuit filed by the relevant entity of the Ministry of Finance and/or other interested person, may prohibit

or suspend operation of the non-commercial legal entity if the latter has essentially switched to the entrepreneurial activity. This provision applies equally to all non-commercial legal entities, including MFOs.

Accordingly, absent other safeguards in the Georgian legislation, MFOs having a non-commercial legal status could face the possibility of deregistration by the court should an interested party initiate relevant legal proceedings.

The Law on Micro Finance Organizations

The Law on Micro Finance Organizations supersedes amendments to the Civil Code

Despite the changes in the Civil Code, provisions of the Law on MFOs allow operation under the non-commercial legal form until January 18, 2008. Since the Law on MFO is a special law for the purposes of regulating issues related to operation of mi-

cro finance institutions, its provisions take precedence over those contained in the Civil Code.

Therefore, until January 18 of 2008, MFOs can retain their organizational legal form. However, they must re-register prior to the aforementioned date as required by the Law.

Law on Micro Finance Organizations prevails over the Civil Code



Deadline for MFO Re-registration JANUARY 18 2008

Re-registration of MFOs

Micro Finance Organizations must re-register prior to January 18, 2008

Pursuant to the Law on Micro Finance Organizations, micro finance institutions must change their current organizational legal form prior to January 18, 2008. After this date, the Law no longer permits their operation under the non-commercial status. Only accepted legal forms for conducting micro finance activities are Limited Liability Company (LLC) and Joint Stock Company (JSC).

Further, the MFOs can start carrying out micro finance activities only after their registration with the National Bank of Georgia.

If the activities of the current non-commercial entities surpass those qualified as micro-finance activities (attraction of deposits), the only accepted forms of registration would be registration as a commercial bank, i.e. JSCs and non-banking depository entity (cooperative society) – credit union.

Special MFO Re-registration Requirements

There are special requirements for re-registration of Micro Finance Organizations

In addition to registration with the Tax Inspection of the Ministry of Finance of Georgia, MFOs must register with the National Bank of Georgia in order to conduct micro finance activities. Above general requirements related to the organizational forms, there are special requirements that MFOs must meet for being registered by the National Bank:

- ◆ Minimum amount of the charter capital of LLCs is 200 GEL; that of the JSCs is 15 000 GEL.

For registration of a company as an MFO, it should have 250 000 GEL of charter capital paid up in cash.

- ◆ JSCs are required to have a Supervisory Council, while LLCs are not.

MFOs, regardless of their organizational legal form, must have a Supervisory Council.

- ◆ There are no special compatibility criteria for directors of JSCs and LLCs.

Directors (members of directorate) must satisfy special Compatibility Criteria contained in the Law on MFOs.

Micro Finance Organizations may change their organizational legal form only through creating a new company. There are no legal ways for reorganization of non-commercial entities into the commercial companies.

Steps for Reorganization

- ◆ Registration of an LLC or a JSC at the Tax Inspection of the Ministry of Finance
- ◆ Registration at the National Bank of Georgia as an MFO
- ◆ Transfer of assets from current non-commercial entities to the new companies (this can be done both - prior and after registration of a company as an MFO).

Recent amendments to the Civil Code of Georgia created issues with regard to the transfer of assets from non-commercial legal entities to the commercial companies.

There are also different tax implications depending on the ways reorganization transactions are structured.

MFOs must Re-register as commercial entities

MFOs must register with National Bank of Georgia as an MFO



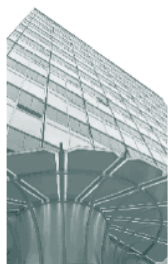
MFOs must transfer assets

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Our attorneys have extensive knowledge of the Georgian legislation and international law as well as understanding of business climate in Georgia.

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