

Annex: BICA Indicators and Assessment

1. ASSESSMENT CATEGORIES FOR THE PUBLIC SECTOR

1.1. PROHIBITING BRIBERY OF PUBLIC OFFICIALS

1.1.1. Laws Prohibiting Bribery of Public Officials

Georgia has numerous legal provisions on the integrity of public officials and civil servants. These are set out in the Law on Conflict of Interest and Corruption in Public Service and the government decree On Establishing General Rules of Ethics and Conduct within Public Institutions.¹

Public Officials are required to perform their duties in an impartial and honest manner and must refrain from using official authority for personal gains. Public officials are prohibited from accepting gifts or services that could influence the exercise of their duties and are required to inform their superior of any such offers. They are required to prevent any cases of conflict of interest and to declare such instances should they ever occur.²

According to the above-mentioned law, a public official is required to file a formal notice if any of his/her relatives serve at the same institution. Public Officials cannot, in their official capacity, enter commercial deals with their family members or close relatives, the institution of their employment and commercial entities or political parties. In such instances when a public official holds shares in a commercial enterprise, he or she is required to hand them over to another person for temporary management for the duration of the given public service. Furthermore, the law establishes a ceiling value of gifts that a civil servant is allowed to receive in a single year and a maximum allowed value of a single gift. A similar restriction is in place for the family members of public officials. Public officials are not allowed to perform any parallel paid work or engage in business. A public official's close relative cannot be appointed to a position directly subordinated to this official, unless the appointment is made through an open contest.³

Bribery, abuse of authority, and excessive application of power, influence peddling and forgery conducted by a public official is considered a criminal offence under the Criminal Code of Georgia.⁴

The bribery and corruption of public officials, including those of foreign countries is also punishable by law under the Criminal Code. The law stipulates that domestic or foreign public officials who use their official standing in order to achieve financial and otherwise gain through

¹ The Law on Civil Service, 27 October, 2015.

² The Law on Conflict of Interest and Corruption in Public Service, 11 November, 1997, articles 3, 11.

³ Ibid. articles 6, 13.

⁴ Criminal Code of Georgia, 13 August, 1999, articles 338, 339.

taking, demanding, or receiving a bribe constitutes a criminal offense and is punishable by the law.⁵

1.1.2. Enforcement of Laws Prohibiting Bribery of Public Officials

Georgia's anti-corruption and anti-bribery legislation is for the most part in line with the international standards, conventions and arbitration mechanisms.⁶ However, the enforcement of such laws by the responsible agencies in the country is less effective, mainly due to an incoherent policy.

As a result of concerted effort by Georgia's government in recent years to eradicate corruption in the public sector, bribery within public institutions is considerably low in Georgia. Nevertheless, nepotism and favoritism among public officials remain a significant issue. In a 2020 survey, only 1% of the respondents reported that they or their family members had been asked to pay a bribe for a public service. However, in the same survey, 63% said that it is common for public officials to abuse their position for a variety of purposes, such as securing employment for their family members, protecting their private business or mispending public funds. Furthermore, 47% of the respondents believe that corruption cases involving high ranking public officials is unlikely to be investigated by the law enforcement authorities.⁷ High-level corruption remains to be a significant challenge for the country and despite low level of corruption and bribery in the public sector, the overall enforcement of integrity mechanism is weak as is the investigation of high-level corruption cases.⁸⁹

Although Georgia's government has made a commitment to actively combat corruption, including high-level corruption and bribery as part of the Association Agreement as well as the Association Agenda for 2017-2020 between the country and the European Union, the issue of high-level corruption remains to be a serious concern.¹⁰

The responsibility for combating corruption and the enforcement of anti-corruption and anti-bribery laws is dispersed among several government institutions. As a result, there is no clear assignment of mandate and areas of operation among these agencies. Government's failure to establish an independent agency to deal with cases of corruption and misconduct within the government remains a significant problem for Georgia.¹¹

⁵ Ibid. articles 338, 339.

⁶ OECD Anti-Corruption Network (ACN), Anti-Corruption Reforms in Georgia - Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, 15 September 2016, pp 92-96, <http://bit.ly/30krxRv>

⁷ TI Georgia, *Corruption in Georgia: Results of Public Opinion Survey*, 10 June 2020, <https://transparency.ge/en/post/corruption-georgia-results-public-opinion-survey>

⁸ European Parliament, *European Parliament resolution of 14 November 2018 on the implementation of the EU Association Agreement with Georgia*, pp 6-7, 14 November 2018, https://www.europarl.europa.eu/doceo/document/TA-8-2018-0457_EN.html

⁹ OECD Anti-Corruption Network (ACN), Anti-Corruption Reforms in Georgia - Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, 15 September 2016, pp 16-21, <http://bit.ly/30krxRv>

¹⁰ Transparency International Georgia, *Small Steps towards Big Goals: Georgia's Anti-Corruption Policy in the Context of EU Association Process*, June 2019, p. 3, https://www.transparency.ge/sites/default/files/association_goals_corruption_eng.pdf

¹¹ Ibid., p 10.

There are three major agencies that are in charge of overseeing identification and investigation of corruption:

- the Anti-corruption Agency of the State Security Service (SSS);
- the Chief Prosecutor's Office's Investigative Unit (the Division of Criminal Prosecution of Corruption Crimes);
- the Investigative Service of the Ministry of Finance.¹²

The SSS has been a subject of criticism by several domestic and international organizations over the last few years. One of the major issues of concern was the establishment of an anti-corruption agency within the State Security Service as well as the concentration of both investigation and prosecution powers within the State Prosecutor's Office, which can potentially cause imbalance and undermine the impartiality of the investigation process.¹³

Between 2018 and 2019, the two major anti-corruption units from the SSS and the Chief Prosecutor's Office conducted investigations of corruption cases within various public institutions. Most of these investigations were launched against local government officials. In 2018 alone, the SSS detained eight individuals from local municipal governments across the country. Among these officials were the former Governor of Samegrelo and Upper Svaneti region, the Mayor of Zugdidi and a representative of the Municipal City Hall in Mtskheta.¹⁴ The same year, the Chief Prosecutor's Office's Anti-Corruption Unit investigated and prosecuted more than 300 acting and former public officials/civil servants of which many were prosecuted on the grounds of bribery and abuse of official powers.¹⁵

Agency	Number of Arrests/Prosecutions	Criminal Investigation and Prosecution	Type of Crime	Years
Chief Prosecutor of Georgia	~74	Articles: 332, 333, 338 of the Criminal Code of Georgia	Abuse of Official Powers Exceeding Official Powers Bribe Taking	2018-2019
State Security Service	28	Not specified	Abuse of Official Powers Bribe Taking	2018

¹² Institute for Development of Freedom of Information (IDFI), *The Georgian National Anti-corruption System is Ineffective against High Level Corruption*, October, 2018, https://idfi.ge/en/fight_against_elit_corruption_is_still_a_challenge_in_georgia

¹³ The Human Rights Education and Monitoring Center (EMC), *Analysis of Investigative System*, 2018, p 7, <https://emc.org.ge/en/products/sagamodziebo-sistemis-analizi>

¹⁴ State Security Service of Georgia, *The Report of the State Security Service of Georgia*, December 2018, p 13, <https://sbg.gov.ge/uploads/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98/SSSG%20Report%202018.pdf>

¹⁵ Prosecutor General of Georgia, *Prosecutor General of Georgia 2019 Activity Report*, 5 May 2020, pp. 3-33, http://www.parliament.ge/ge/ajax/downloadFile/136661/1-6475_prokuratura_angarishi

			Bribe Giving	
Ministry of Finance ¹⁶	141	Articles: 332, 338	Abuse of Official Powers Bribe Taking	2017-2019

In 2018, the Anti-Corruption Agency of the SSS, launched 71 cases involving such crimes as bribe giving and receiving, neglect of official duty, forgery by an official, and other related crimes, resulting in charges against, and imprisonment of, 133 individuals, including many public officials.¹⁷

Legal Persons

The Criminal Code ensures the independence of corporate liability by not requiring the conviction of a natural person as a precondition for imposing liability and allowing investigation and trial of a legal person independently from the offender in separate proceedings. The Criminal Code stipulates that a legal person shall also be liable in an instance when a criminal offence is committed on behalf of the legal person in question, regardless of whether the perpetrator is identified or not. Furthermore, releasing the perpetrator from the criminal liability does not ensure releasing the legal person from criminal liability.¹⁸

The negative aspect of the existing legislation is that there are no explicit stipulations concerning the exemption from liability of companies and legal persons that have sufficient internal controls and compliance mechanisms in place. A recommendation by the OECD ACN to include an exemption from liability for companies and legal persons with such internal controls and compliance mechanisms has not been fulfilled by the Georgian Government.¹⁹

Foreign Bribery

Combating foreign bribery has not been actively enforced, nor has there been a concerted effort by the government agencies to train and equip relevant government employees and investigative personnel with the necessary skills to identify and investigate foreign corruption activities.

In recent years the Anti-corruption Unit of the Office of the Chief Prosecutor has worked to develop guidelines for the investigation and prosecution of foreign bribery and corruption. The guidelines for combating foreign bribery were incorporated in the Prosecution Service of Georgia’s strategy

¹⁶ The Ministry of Finance of Georgia, The Investigative Service of of the Ministry of Finance, *2019 Annual Report*, p 37, <http://is.ge/portals/0/2019year.pdf>

¹⁷ State Security Service of Georgia, *The Report of the State Security Service of Georgia*, December 2018, pp 13-14, <https://ssg.gov.ge/uploads/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98/SSSG%20Report%202018.pdf>

¹⁸ Criminal Code of Georgia, article 107.

¹⁹ OECD Anti-Corruption Network (ACN), *Anti-Corruption Reforms in Georgia - Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan*, 15 September 2016, pp 117-118, <http://bit.ly/30krxRv>,

and the National Anti-corruption Strategy documents. As of March 2019, the document is pending review and approval by the officials in charge of the Prosecution Service.²⁰

When it comes to the Government's approach to the statute of limitations on corruption and bribery offences, the standard period is 15 years, unless the crime in question pertains to a particularly severe crime. For example, if the maximum sanction involves 10 years of imprisonment, the statute of limitations may be up to 25 years. The calculation of the statute of limitation begins from the day when the crime is committed up until the day when charges are brought against the individual. Consequently, the statute of limitations is applied for each particular crime.

As to the suspension of the statute of limitations, it may be suspended either when the offender has absconded, or can be temporarily suspended in the case when the alleged offender is protected by immunity. Lastly, the statute of limitations is suspended in the event when the prosecution may not be launched against the offender except the offence for which he/she was extradited to Georgia.²¹

As far as the sanctions for passive bribery are concerned, it is believed that the legal sanctions are excessively harsh and provide very little flexibility for more suitable punishment, or facilitation of payments in comparison to the minimum legal sentence of up to six years in prison. On the other hand, the government has often applied plea bargaining as a mechanism to lessen or reduce corruption related sentences. One positive aspect of plea bargaining is that it could potentially facilitate more "insider cooperation" and coming forward of individuals within concerned government agencies while investigating high level corruption cases.²²

1.1.3. Capacities to Enforce Laws Prohibiting Bribery of Public Officials

The independence of agencies responsible for the investigation and enforcement of anti-corruption activities is significantly weak, as a result of the undue influence of the ruling party over these institutions.

A number of recommendations were made to Georgia's government to set up an independent investigatory agency for corruption and bribery cases, however, there has not been any progress made in this regard.²³

As far as the financial and professional resources of these agencies are concerned, both major government agencies responsible for the investigation of corruption and bribery, (the Chief Prosecutor's Office and the State Security Office) have sufficient means and capacity to carry out anti-corruption activities. These agencies have, for the most part, been successful at combating

²⁰ OECD Anti-Corruption Network (ACN), Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia, 2019, pp. 75, 120, 121, 123, March 2019, <http://bit.ly/2NnA0hw>

²¹ OECD Anti-Corruption Network (ACN), Anti-Corruption Reforms in Georgia - Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, 15 September 2016, p, 100, <http://bit.ly/30krxRv>,

²² OECD Anti-Corruption Network (ACN), Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia, 2019, pp. 92-94, March 2019, <http://bit.ly/2NnA0hw>

²³ OECD Anti-Corruption Network (ACN), Anti-Corruption Reforms in Georgia - Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, 15 September 2016, pp 92-96, <http://bit.ly/30krxRv>,

petty corruption within public institutions but have shown reluctance to investigate high-level corruption.²⁴

As of 2019, the General Prosecutor's Office employed 860 individuals and has been assigned GEL 37 million in budget funding, whereas the State Security Service employed 3,850 individuals and had been allocated GEL 136 million in annual funding. The funding of both agencies has not been reduced in recent years. In fact, there has been a gradual increase in the funding. For instance, in 2019, the General Prosecutor's Office's budget increased by GEL 1 million and State Security Service's funding -- by GEL 12 million, while no major changes in the structure and composition of these agencies took place.²⁵

To this day, Georgia has not taken significant steps toward combating complex corruption by implementing a series of anti-corruption reforms which include, the establishing an independent Anti-Corruption Agency, free in its mandate and separated from the SSS. Facilitation of an independent judiciary with a solid "track record" of investigations concerning high-level corruption cases.²⁶ Furthermore, Corruption Perception Index 2019 points to a number of serious issues related to corruption in Georgia. There are clear signs of state capture and the concentration of power in private hands, coupled with under influence over key government institutions remain to be significant challenges for the country's political integrity.²⁷ Furthermore, the appointment of individuals who have links to the ruling party leader Bidzina Ivanishvili as chiefs of law enforcement agencies has become a noticeable trend in recent years. Shalva Tadumadze, former attorney of the Ivanishvili family, was recently appointed as General Prosecutor. Likewise, Vakhtang Gomelauri formerly serving as Ivanishvili's personal chief of security, was heading the SSS from 2015 and was later appointed as the Minister of Internal Affairs in 2019. He was succeeded by Grigol Liluashvili in the SSS, who as well previously held a number of high-level positions in companies connected to Ivanishvili.²⁸

There has been some progress in terms of the independence of the corruption investigation unit within the General Prosecutor's Office. In 2018, the Anti-corruption Unit became an independent "structural unit" within the General Prosecutor's Office, directly accountable to the General Prosecutor and the First Deputy General Prosecutor.²⁹

Nevertheless, serious concerns have been raised by several local civil society and international organizations regarding the fact that the State Security Service has been very secretive about its activities and has disclosed very little information on activities concerning detection, prevention

²⁴ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 p, 10, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

²⁵ TI Georgia, *Small Steps towards Big Goals: Georgia's Anti-Corruption Policy in the Context of EU Association Process*, June 2019, https://www.transparency.ge/sites/default/files/association_goals_corruption_eng.pdf

²⁶ European Parliament, *European Parliament resolution of 14 November 2018 on the implementation of the EU Association Agreement with Georgia*, pp 6-7, 14 November 2018, https://www.europarl.europa.eu/doceo/document/TA-8-2018-0457_EN.html

²⁷ TI Georgia, *Corruption Perception Index (CPI) 2019*, 23 January 2020, <https://www.transparency.org/en/news/cpi-2019-eastern-europe-central-asia>

²⁸ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 pp. 82-83, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

²⁹ OECD Anti-Corruption Network (ACN), *Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia*, 2019, pp. 129-132, March 2019, <http://bit.ly/2NnA0hw>

and investigation of corruption cases. In fact, the agency has ranked lowest in terms of access to public information.³⁰

The Chief Prosecutor's office is only slightly more transparent than the SSS but, according to the Institute for Development of Freedom of Information (IDFI), still ranks fairly low in terms of openness and access to information.³¹ The Anti-Corruption Council (ACC) is a cross-sectoral body comprised of representatives from government agencies, international organizations, civil society organizations and the business sector. The ACC is primarily a policy coordination body responsible for drafting the National Anti-Corruption Strategy and Action Plan and monitoring their implementation. However, the ACC's mandate and resources are insufficient for its functioning as an effective anti-corruption agency.^{32 33}

Interagency and International Cooperation on issues of Anti-Corruption

As for the interagency cooperation in the area of anti-corruption, there is a special interagency cooperation council which consists of the representatives from the Chief Prosecutor's Office, Ministry of Justice, Ministry of Finance, State Security Service, Ministry of Internal Affairs and Financial Monitoring Service. The interagency cooperation council serves as a mechanism for cooperation and exchange of information related to detection and investigation of corruption as well as coordination of joint activities.³⁴

Additionally, the Anti-Corruption Unit within the Chief Prosecutor's Office is cooperating with anti-corruption units of a number of relevant government agencies including Anti-Corruption Agency of the State Security Service, Financial Investigation Service of the Ministry of Finance, Civil Service Bureau, National Audit Service, Intelligence and Technical Units of the State Security Service and Revenue Service among many others.³⁵

The 2019-2020 National Anti-Corruption Action Plan document (spearheaded by the Ministry of Justice and elaborated with the input from several international and local civil society organizations) underlines the importance of interagency cooperation between the major anti-corruption agencies such as the Chief Prosecutor's Office, State Security Service, Ministry of Finance and other relevant bodies. The document lists a number of interagency efforts to facilitate prevention and detection of corruption cases. One such activity listed in the Action Plan is the

³⁰ IDFI, *The Georgian National Anti-Corruption System is Ineffective against High Level Corruption*, 12 October 2018, https://idfi.ge/en/fight_against_elit_corruption_is_still_a_challenge_in_georgia

³¹ IDFI, *Independent Anti-Corruption Agency – Georgia and International Standards*, June 2017, pp. 7-12, https://idfi.ge/public/upload/IDFI_Photos_2017/anticorruption/Independent%20Anti-Corruption%20Body%20-%20IDFI%20-%20Policy%20Doc%20-%20ENG.pdf

³² OECD Anti-Corruption Network (ACN), *Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia*, 2019, pp. 24-25, March 2019, <http://bit.ly/2NnA0hw>

³³ IDFI, *Independent Anti-Corruption Agency – Georgia and International Standards*, June 2017, p. 12, https://idfi.ge/public/upload/IDFI_Photos_2017/anticorruption/Independent%20Anti-Corruption%20Body%20-%20IDFI%20-%20Policy%20Doc%20-%20ENG.pdf

³⁴ State Security Service of Georgia, *The Report of the State Security Service of Georgia*, December 2018, p. 22, <https://ssg.gov.ge/uploads/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98/SSSG%20Report%202018.pdf>

³⁵ OECD Anti-Corruption Network (ACN), *Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia*, 2019, pp. 109, 119, March 2019, <http://bit.ly/2NnA0hw>

elaboration of recommendations on the application of joint anti-corruption measures and plea bargaining standards in the coming years.³⁶

International Cooperation

Georgia's Law on International Cooperation in Criminal Matters which came into force in 2010 entails establishment multilateral and bilateral international cooperation on criminal issues.³⁷ Over the last few years Georgian law enforcement agencies have participated in the joint investigation teams with foreign countries and held remote (video, audio) conferences as well as trained over 160 prosecutors and investigators in the area of international judicial cooperation. Although, there have only been a handful of foreign cooperation requests for assistance in corruption cases, Georgian authorities seem to have a well-functioning system in place to provide and receive assistance when necessary.³⁸ The State Security Service has been working closely with a number of international institutions such as the Interpol, NATO, Council of Europe and Georgia's strategic partners, the United States and the European Union. In 2018 the State Security Service signed a memorandum of understanding with the European Union Agency for Law Enforcement Cooperation, whose purpose is to improve communication and cooperation between the two agencies.³⁹

1.2. PROHIBITING COMMERCIAL BRIBERY

1.2.1. Laws Prohibiting Commercial Bribery

Georgia has an extensive set of regulations against commercial bribery. Commercial bribery is addressed in a number of international and domestic legal frameworks including the United Nations Convention against Corruption.⁴⁰ Domestically, one of the major legal provisions regulating commercial bribery is articles 220 and 221 of the Criminal Code of Georgia.

The Criminal Code defines commercial bribery in Article 220, as the abuse of managerial powers within a commercial enterprise, with the purpose to acquire benefit or advantage for oneself, or to the advantage of another person, subsequently resulting in substantial damage to the entity. This act is punishable by law by a fine or community work (labor) for up to two years, or depending on the severity of the crime, the punishment may entail up to three years of imprisonment.⁴¹

According to article 221 of the Criminal Code, transfer of money, other property, or illegally rendered services to the individual exercising special authority or holding a managerial position in an enterprise or any type of organization is considered commercial bribery. A person in a

³⁶ Ministry of Justice of Georgia, *National Anti-Corruption Action Plan 2019-2020*, <https://justice.gov.ge/Ministry/Index/174> <http://justice.gov.ge/Ministry/Index/174>

³⁷ Law of Georgia on International Cooperation in Criminal Matters, 21 July, 2010, articles 2, 3, 5.

³⁸ OECD Anti-Corruption Network (ACN), *Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia, 2019*, pp. 111-112, March 2019, <http://bit.ly/2NnA0hw>

³⁹ State Security Service of Georgia, *The Report of the State Security Service of Georgia*, December 2018, pp, 17, 19, 23,

<https://ssg.gov.ge/uploads/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98/SSSG%20Report%202018.pdf>

⁴⁰ The United Nations, *The United Nations Convention against Corruption*, New York, 2004, article 21, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

⁴¹ Criminal Code of Georgia, article 220.

managerial position within an enterprise or an organization, who uses his/her official position in favor of briber's interests, shall be subject to fine, or imprisonment for up to three years. Such an individual will be prohibited from holding an official position, or pursuing any type of business/professional activity for the period of up to three years. By the same token, the same criminal act committed by a group is subject to punishment by fine, or imprisonment for up to six months, or restriction to hold a position or lean any type of entrepreneurial activity for up to three years.⁴²

As regards illegal receiving of bribe in the form of money, securities, or property by a person holding a managerial or any other type of authority in an enterprise, or an organization who uses his/her status in favor of briber's interests, is punishable by fine or prison sentence between two to four years. The person may also be subject to deprivation of the right to hold a position or pursue particular entrepreneurial activity for a period of three years in some instances.⁴³

Georgian legislation does not contain provisions allowing deductibility of bribes for tax purposes.

Number of registered cases on the basis of (articles 220-221)	Number of cases solved	Statistics of solved cases by Percentage	Year
26	3	12%	2020
48	9	19%	2019
54	6	14%	2018
35	20	57%	2017

⁴² Ibid., article 221.

⁴³ Ibid., article 221.

Data obtained from the National Statistics Office of Georgia⁴⁴

1.2.2. Enforcement of Laws Prohibiting Commercial Bribery

The enforcement of laws involving commercial bribery is mainly carried out by anti-corruption units from two state institutions: the State Security Service and the Chief Prosecutor's Office.

During 2018 the SSS detained a number of public officials who have been accused of bribery (including commercial bribery) and abuse of official powers.⁴⁵

As regards sanctions on commercial bribery and statute of limitations on corruption offences, the same mechanisms are applied as in cases of corruption and bribery of public officials. (see section 2.1.2).

1.2.3. Capacities to Enforce Laws Prohibiting Commercial Bribery

As is the case with public sector corruption, the two major government agencies involved in the investigation and enforcement of commercial bribery are the Chief Prosecutor's Office and the State Security Service. Regardless of their independence, both of these agencies are largely influenced by the ruling party, when both of these agencies show reluctance to investigate elite-level corruption in the country. As mentioned earlier, these are two major agencies responsible for the oversight of the enforcement of commercial bribery related to public officials.

Both of these agencies have sufficient human resources and investigative authority powers including the authority to carry out secret surveillance if necessary.⁴⁶⁴⁷

Nevertheless, both these institutions demonstrate significant problem with independence formally as well as informally from the outside political influence.⁴⁸ It has been a well-known fact that the appointment to key government positions, including the Chief Prosecutor and the Head of State Security Service is politically influenced decisions and these officials have close ties to the leaders of the ruling party Georgian Dream⁴⁹⁵⁰

⁴⁴ National Statistics Office of Georgia, <https://www.geostat.ge/en/modules/categories/679/unified-report-on-criminal-justice-statistics>

⁴⁵ State Security Service of Georgia, *The Report of the State Security Service of Georgia*, December 2018, pp, 13-14 <https://sbg.gov.ge/uploads/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98/SSSG%20Report%202018.pdfppp>

⁴⁶ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 pp. 79-80, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

⁴⁷ Ibid.

⁴⁸ OECD Anti-Corruption Network (ACN), *Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia*, 2019, pp. 58-59, March 2019, <http://bit.ly/2NnA0h>

⁴⁹ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 pp. 82-83, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

⁵⁰ Ibid.

Not only such political appointment trend shows clear signs of favoritism, but it directly discredits the independence of these agencies.⁵¹

As mentioned earlier, the government anti-corruption enforcement agencies' selective approach toward high-level commercial bribery has been mentioned and criticized in a number of recent reports by local and international organizations. Several of these reports point to a problem of public officials' involvement in alleged corruption and racketeering cases.⁵²

A clear demonstration of such politically motivated decisions of Georgian law enforcement agencies was demonstrated in recent politically motivated pressure on business and media representatives who expressed criticism toward the ruling party. In 2019 the founder of TBC Bank Mamuka Khazaradze became a target of alleged threats and intimidation from the Minister of Interior, as well as the representatives from the National Bank of Georgia and a number of high-level politicians who pressured Khazaradze to meet a number of demands threatening to ruin his reputation in case he refused to do so.⁵³ Similarly, in 2019 political pressure and threats were made against two owners of two critical media outlets, TV stations, Mtavari Arkhi and TV Pirveli. In the case of the former, General Director Nika Gvaramia became a target of orchestrated attacks from the General Prosecutor's Office who put forward charges against him in the light of Gvaramia's announcement of his intention to establish a new TV company amidst his and his TV station's harsh criticism of the ruling party and its leadership.⁵⁴ The same year, the Ministry of Finance seized bank accounts and began forceful collection of overdue taxes from TV Pirveli and several other independent TV stations.⁵⁵ In 2020, Avtandil Tsereteli, the father of the TV Pirveli owner Vakhtang Tsereteli, became a subject of physical threats as a result of his son's TV station's editorial policy and was frequently called to the General Prosecutor's Office for interrogation as one of the defendants in the TBC Bank case.⁵⁶

The Law on International Cooperation in Criminal Matters provides detailed mechanism and procedures for international cooperation with relevant anti-corruption agencies, as well as cooperation with joint investigation teams. Over the last few years, Georgian anti-corruption authorities have cooperated with a number of foreign government agencies on corruption related investigations, including those related to commercial bribery.⁵⁷

⁵¹ Ibid.

⁵² USAID, *Georgia 2018 Human Rights Report*, p 29, <https://www.state.gov/wp-content/uploads/2019/03/GEORGIA-2018-HUMAN-RIGHTS-REPORT.pdf>

⁵³ Open Society Georgia Foundation, *Mamuka Khazaradze's statement intensifies suspicions about signs of state capture in Georgia*, 5 March, 2019, <https://osgf.ge/en/mamuka-khazaradzes-statement-intensifies-suspicions-about-signs-of-state-capture-in-georgia/>

⁵⁴ Open Society Georgia Foundation, *Statement of NGOs on the Charges Made Against former Director-General of Rustavi 2, Nika Gvaramia*, 9 August, 2019, <https://osgf.ge/en/statement-of-ngos-on-the-charges-made-against-former-director-general-of-rustavi-2-nika-gvaramia/>.

⁵⁵ Democracy and Freedom Watch, *Georgia's opposition TV channels' accounts seized amid growing concerns of government pressure*, 26 December, 2019, <https://dfwatch.net/georgias-opposition-tv-channels-accounts-seized-amid-growing-concerns-of-government-pressure-54001>

⁵⁶ JAM News, *TV Pirveli founder claims ruling party is threatening his father because of the channel's discourse*, 22 October, 2020, <https://jam-news.net/georgia-television-pirveli-threat/>.

⁵⁷ OECD Anti-Corruption Network (ACN), *Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia*, 2019, pp. 110-112, March 2019, <http://bit.ly/2NnA0h>

1.3. PROHIBITING LAUNDERING OF PROCEEDS OF CRIME

1.3.1. Laws prohibiting laundering of Proceeds of Crime

Georgia's legal provisions against money laundering are generally consistent with the core tenets of the United Nations Convention against Corruption.

Legalization of illegal income (money laundering) is defined by article 194 of the Criminal Code of Georgia as a means to an attempt to legalize illicit income and undocumented property in the form of acquisition, possession, conversion, or transfer in order to conceal its illegal origin. Accordingly, assistance of another person or a group in an attempt to evade liability or conceal information regarding the origin of illicit property is punishable by a fine or sentence of three to six years in prison. The same act conducted jointly, repeatedly, by an organized group, or committed by means of leveraging one's official position, is subject to imprisonment from nine to 12 years.⁵⁸ As to the same crime conducted by a legal person, punitive measures include liquidation, a fine, or deprivation of the right to continue its operation.⁵⁹

Additionally, (purchase, possession, or sale) or any other type of dealings in connection with the property acquired by illicit means is punishable by fine, community service (including correctional labor), or imprisonment for up to two years. The same crime committed by a group, recurrently and multiple times is subject to two to five years of imprisonment. A prison sentence of four to seven years is to be applied to the same crimes committed by an organized group or by using one's official authority.⁶⁰

A new law on Facilitating the Suppression of Money Laundering and Terrorism entered into force in 2019, in order to establish effective legal and compliance mechanisms for the prevention, detection, and effective combat against money laundering, terrorism financing and proliferation of weapons of mass destruction. The law provides necessary procedural measures related to the prevention and fight against money laundering.⁶¹

Combat against money laundering is also described in the United Nations Convention against Corruption. Mainly in articles 14 and 23 of the document. The article 14 addresses measures against money laundering while, article 23 provides a detailed classification of criminal activities pertaining to the money laundering.

1.3.2. Enforcement of Laws Prohibiting Laundering of Proceeds of Crime

When it comes to fighting against the laundering of illicit proceeds of crime, two major agencies are involved in detection, investigation and prosecution of such crimes. The Financial Monitoring Service of Georgia (FMSG), is a government agency whose main objective is to prevent legalization of illicit income and to monitor suspicious financial transactions. As for the Chief Prosecutor's Office, in the past several years, the agency has been actively investigating and prosecuting money laundering and related crimes.

⁵⁸ Criminal Code of Georgia, article 194.

⁵⁹ Ibid.

⁶⁰ Ibid., 194.¹

⁶¹ Law of Georgia on Facilitating the Suppression of Money Laundering and Terrorism Financing, 30 October, 2019.

The Chief Prosecutor's Office's special unit for Criminal Prosecution Division for Legalization of Illegal Income carried out numerous investigations in 2018 -2019 and as a result about 40 individuals were investigated and some of them were convicted of the crime. Additionally, during the same period, close to GEL 91 million in assets associated with illicit income were seized or confiscated, as well as property in the form of numerous vehicles and real estate.⁶²⁶³

Agency	Number of Arrests/Prosecutions, Investigations	Criminal Investigation and Prosecution	Type of Crime	Year
Chief Prosecutor of Georgia	~39	Article: 194	Laundering of illicit proceeds of crime	2018-2019
Financial ⁶⁴⁶⁵ Monitoring Service of Georgia	2120*	Not specified by the agency	Laundering of illicit proceeds of crime for terrorism and suspicious transactions above GEL 30,000	2018-2019

**Note: This represents an aggregate number for all case inquiries received as a result of suspicious financial transactions exceeding GEL 30,000.*

According to Georgia's Law on Facilitating the Prevention of Illicit Income Legalization, all financial institutions (including commercial banks, currency exchange bureaus, microfinance organizations, brokerage companies, etc.), as well as insurance companies and private pension offering institutions, leasing companies and other financial and non-financial service providing companies are required to report suspicious financial transactions exceeding the amount of GEL 30,000 to the relevant law enforcement agencies.⁶⁶

The above-mentioned law tasks Financial Monitoring Service of Georgia to collect, investigate and report information concerning suspicious financial transactions and illicit legalization of crime to other law enforcement agencies. During 2018, FMSG received several thousand reports from multiple financial and non-financial entities with regard to suspicious transactions, out of which 837 were identified as suspicious and 14 were linked to terrorism financing.⁶⁷

⁶² Prosecutor General of Georgia, *Prosecutor General of Georgia 2018 Activity Report*, May, 2019, p 37, [http://www.parliament.ge/ge/ajax/downloadFile/117914/1-9440 %E1%83%9E%E1%83%A0%E1%83%9D%E1%83%99%E1%83%A3%E1%83%A0%E1%83%90%E1%83%A2%E1%83%A3%E1%83%A0%E1%83%90](http://www.parliament.ge/ge/ajax/downloadFile/117914/1-9440%E1%83%9E%E1%83%A0%E1%83%9D%E1%83%99%E1%83%A3%E1%83%A0%E1%83%90%E1%83%A2%E1%83%A3%E1%83%A0%E1%83%90)

⁶³ Ibid., pp. 29-33.

⁶⁴ Financial Monitoring Service of Georgia, *Annual Report 2018*, 2018 , p 5, https://www.fms.gov.ge/Uploads/files/Draft_Annual_Report_2018_GEO_25.04.19.pdf

⁶⁵ Financial Monitoring Service of Georgia, *Annual Report 2019*, 2019, p 5, https://www.fms.gov.ge/Uploads/files/GEO_Annual_Report_2019_29.05.20.pdf

⁶⁶ Law of Georgia on Facilitating the Prevention of Illicit Income Legalization, 16 June, 2003, article 6.

⁶⁷ Financial Monitoring Service of Georgia, *Annual Report 2018*, 2018.

In 2014, the Georgian Government adopted its first National Strategy for Combating Money Laundering and Terrorism Financing in accordance with the FATF regulations, which addresses some of the key aspects provided in the FATF document, one of which is the implementation of preventive measures for combating illicit laundering of proceeds of crime.⁶⁸

In 2013-2015, Georgia implemented a number of legal and institutional changes in order to strengthen its anti-money laundering capacities.

- In 2013, Civil Procedure was amended to further enhance civil confiscation mechanism of illicit and undocumented property;
- In 2015, the Law of Georgia on Organizing Lotteries, Gambling and Other Commercial Games was amended to prohibit individuals convicted of economic and other similar crimes from performing entrepreneurial and managerial duties in the gaming industry;
- In 2015, a number of measures were taken by the Chief Prosecutor's Office and Financial Monitoring Service of Georgia in order to ensure timely and unrestricted freezing of suspicious, or illegal assets.

Georgia has taken a number of steps to adopt new legal requirements (as part of its National Action Plan for prevention of money laundering and countering terrorism) which involves targeted financial sanctions. Consequently, the enforcement of these requirements facilitated more targeted sanctions on financial institutions that failed to meet the customer due diligence requirements, which are laid out in section D of the FATF Recommendations document.⁶⁹

Despite a noteworthy progress made in terms of the enforcement of anti-money laundering laws, a number of shortcomings remain with regard to implementation of effective, proportionate and dissuasive sanctions for financial and non-financial institutions. The government remains unsuccessful in imposing effective sanctions for casinos, precious metals and stones, as well as against accountants and notaries. Furthermore, the onsite monitoring of the so called Designated Non-Financial Businesses and Professions (DNFBs) remains significantly weak and there are practically no sanctions in place against these entities.⁷⁰

On the plus side, as a result of targeted capacity building initiative to combat corporate crimes and money laundering, specialized training and guidance on corporate liability was provided for Georgian law enforcement agencies involved in anti-money laundering activities. At the same time, in recent years, the law enforcement bodies have achieved significant progress in terms of addressing the liability of legal persons and have partially become compliant with the OECD Istanbul Anti-Corruption Action Plan Recommendations.⁷¹

⁶⁸ Government of Georgia *Resolution on Approving the Strategy and Action Plan for Combating Money Laundering and Terrorism Financing*, March 2018,

https://www.fms.gov.ge/Uploads/files/Without_track_changes_AML_CFT_Strategy_and_Action_Plan.pdf

⁶⁹ Council of Europe, *Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), 4th Round Mutual Evaluation of Georgia*, December 2015, p 16, <https://rm.coe.int/4th-round-mutual-evaluation-of-georgia-4th-follow-up-report-submitted-/1680793358>

⁷⁰ *Ibid.*, pp 58-60.

⁷¹ Council of Europe, *Economic Crime and Cooperation Division, Action against Economic Crime Cooperation Highlights*, 2018, pp, 16-17, <https://rm.coe.int/eccd-highlight-2018/1680946158>

There is, however, no clear statutory provision for releasing corporations that have adequate internal controls from liability and a large number of prosecutors exercise discretion to determine whether such mechanisms apply within private sector entities.⁷²

As for the statute of limitations for offences related to laundering of illicit crimes, the standard statute of limitations apply provided in the article 71 of Georgia's Criminal Code.⁷³ The statute of limitations is determined by the severity of particular criminal offence.

Georgia has specific standards toward corruption offences, the standard statute of limitation period for corruption related offences is 15 years, unless particularly severe crime has taken place, when the maximum punishment includes 10 years or more imprisonment. In that case, the limitation period may be 25 years.⁷⁴

The applicable sanctions for corporate liability are: liquidation, deprivation of the right to pursue an activity and a minimum fine of approximately EUR 44,000 as well as deprivation of property. However, there is no maximum limit for the fine for a legal entity implied in a corporate crime. Georgia's legislation does not explicitly release legal persons from liability in case the entity has sufficient internal controls and compliance mechanism. However, the government takes into consideration the existence of the above-mentioned mechanism during the arbitration in favor of a legal entity in question. Some of the main factors considered during the sanctioning of legal persons are the nature and graveness of the crime, the amount of imposed damages, previous criminal history, the level of internal control and compliance, as well as the degree of cooperation during the investigation.⁷⁵

The Criminal Code of Georgia contains a number of sanctions and punitive actions for individuals and legal persons accused of money laundering and illicit income. A legal person is a subject to punishment by liquidation or deprivation of the right to further continue commercial activity. Depending on the severity of an offense, there may be a fine or community service up to 200 hours or corrective labor for the duration of one year, or in some cases imprisonment for up to two years. If the same crime has been committed premeditatedly by a group of individuals, repeatedly and multiple times, the punishment may include a fine or imprisonment from two to five years. Lastly, if the offence is committed by an organized group, repetitively and by means of using official position the punishment of imprisonment from four to seven years is applied.⁷⁶

1.3.3. Capacities to Enforce Laws Prohibiting Laundering of Proceeds of Crime

The funding of law enforcement agencies dealing with money laundering crimes has seen continued increase over the past few years. The Financial Monitoring Service's annual budget has increased by 25%.⁷⁷ In addition, the staff from these agencies responsible for the enforcement

⁷² OECD Anti-Corruption Network (ACN), Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia, 2019, p, 98 March 2019, <http://bit.ly/2NnA0h>

⁷³ Criminal Code of Georgia, article 71.

⁷⁴ OECD Anti-Corruption Network (ACN), Anti-Corruption Reforms in Georgia - Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, 15 September 2016, p, 100 <http://bit.ly/30krxRv>

⁷⁵ Ibid., p 97.

⁷⁶ Criminal Code of Georgia, article 194.

⁷⁷ The Ministry of Finance of Georgia, *Annual State Budget of Georgia*, <https://mof.ge/5187>

and investigation of money laundering crimes receive regular training.⁷⁸ On the other hand, the institutional independence of these bodies is not sufficiently ensured.

While law enforcement agencies by their mandate are free to operate independently when investigating crimes related to laundering of illicit crimes, they are less immune to outside political influence when dealing with high-level corruption and money laundering cases. Moreover, the successful operation of anti-money laundering institutions is affected by frequent changes of public officials of these institutions, which further impedes their effectiveness.⁷⁹

As mentioned in the previous sections, in practice law enforcement agencies are not independent when it comes to politically motivated investigations, including investigation of crimes related to money laundering. One such example is, the recent investigation of an alleged money laundering case related to TBC bank, when the founder and former Chair of the Board Mamuka Khazaradze and his Deputy Badri Japaridze were formally charged by the General Prosecutor of Georgia for alleged money laundering crime. The latter is a clear demonstration of law enforcement agencies being used as a political tool to intimidate businesses and individuals who criticize the ruling party and its leadership.⁸⁰

As to the capacity building of professionals involved in the investigation and prosecution of money laundering crimes, a number of targeted training and educational programs were provided with the assistance from the European Union in recent years. These specialized training programmes envisioned further development of the criminal justice system and effective investigation and prosecution of money laundering crimes and recovery of illicit assets.⁸¹ The European Council's Partnership for Good Governance project contributed to the development of capacities of law enforcement agencies in order to improve their performance in areas such as detecting, investigating, prosecuting, and adjudicating money laundering crimes as well as developing a more effective mechanism for seizure of proceeds of crime.⁸² Additional training programs were put in place for the supervisors of financial institutions and other non-financial entities to help them better understand and detect risks associated with money laundering.⁸³

In 2013, the Georgian Government established an Interagency Council, whose purpose was to develop and coordinate the implementation of the Strategy and Action Plan for Combating Money Laundering and Terrorism Financing. The Council brings together several government agencies and government officials from the Ministry of Finance, the Revenue Service, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Economy and Sustainable Development, the Ministry of Defense, General Prosecutor's Office, the Insurance State Supervision Service, the Public Registry, and the Parliament of Georgia. Aside

⁷⁸ Council of Europe, Economic Crime and Cooperation Division, *Action against Economic Crime Cooperation Highlights 2018*, p 19, <https://rm.coe.int/eccd-highlight-2018/1680946158>

⁷⁹ Council of Europe, *Partnership for Good Governance Final Narrative Report*, 2015-2018, p 4, <https://pjp-eu.coe.int/en/web/eap-pcf/home?desktop=true>

⁸⁰ Civil.Ge, Khazaradze, *Japaridze Officially Charged in TBC Bank Case*, 24 July, 2019, <https://civil.ge/archives/314588>.

⁸¹ Council of Europe, Economic Crime and Cooperation Division, *Action against Economic Crime Cooperation Highlights 2018*, p 19, <https://rm.coe.int/eccd-highlight-2018/1680946158>

⁸² Council of Europe, *Partnership for Good Governance Final Narrative Report*, 2015-2018, p 6, <https://pjp-eu.coe.int/en/web/eap-pcf/home?desktop=true>

⁸³ *Ibid.*, p 7.

from government agencies, the Council may invite representatives of non-profit legal entities, experts and representatives of international organizations.⁸⁴

In 2019, with the technical assistance from the Council of Europe in 2019, Georgia's Government Interagency Council approved the Money laundering and Terrorism Financing Nation Risk Assessment (NRA) and adopted the Action Plan aimed at combating money laundering and terrorism financing in Georgia. The NRA was prepared in line with FATF recommendations and standards. The purpose of the document is to help the relevant government agencies and industry representatives consolidate the necessary resources to mitigate the risks associated with money laundering and terrorism financing.⁸⁵ The NRA assessment incorporates money laundering and terrorism financing on national as well as sector-levels, including the banking sector, legal persons, services and delivery channels, non-banking financial services, and other type of non-financial services.⁸⁶

Presently there are a number of mechanisms in place for interagency cooperation and exchange of information between the investigative agencies. Since 2013, several joint investigative anti-money laundering combat teams have been established. The Financial Monitoring Service (FMS) is allowed direct access to the databases of various law enforcement agencies where they can obtain information regarding investigation of ongoing money laundering crimes.⁸⁷

In addition to the above-listed interagency frameworks, a permanent analytical platform was put in place in 2018 in order to enhance cooperation between the FMS, other investigative bodies and various public and private entities. The goal of the platform is to serve as a means to collect information, improve compliance control and develop effective indicators for identification of suspicious transactions.⁸⁸

As for international cooperation in the area of combat against money laundering, the Georgian law enforcement authorities are signatories to a number of anti-money laundering mechanisms including Eurojust, Europol and Egmod Group. In recent years, the number of legal assistance to combat money laundering and finance of terrorism between Georgia and foreign governments has significantly increased. In 2019, Georgia contributed to the successful unveiling of a global cybercrime network GozNym, a multi-million fraud scheme and the leader of the network was indicted by Georgia's General Prosecutor's Office.⁸⁹

Georgia has signed more than 30 bilateral agreements in the areas related to money laundering crime and dispensed police attaches to 16 countries. Furthermore, Georgia has signed a cooperation agreement with Europol in 2017 which aims to help speed up the information exchange with the EU member states. Between 2014 and 2018, FMS has actively received and sought out information from international partners related to money laundering crimes.⁹⁰

⁸⁴ Financial Monitoring Service of Georgia, *Government of Georgia Resolution N352*, 2013, [https://www.fms.gov.ge/Uploads/files/Without Track Changes Sabchos Debuleba.pdf](https://www.fms.gov.ge/Uploads/files/Without_Track_Changes_Sabchos_Debuleba.pdf)

⁸⁵ Financial Monitoring Service of Georgia, *Money Laundering and Terrorism Financing Risk Assessment of Georgia and Action Plan was adopted*, October, 2019. <https://www.fms.gov.ge/eng/news/121>

⁸⁶ Government of Georgia, *Money Laundering and Terrorism Financing Risk Assessment of Georgia*, 2019, pp, 20-21, https://www.fms.gov.ge/Uploads/files/NRA_Georgia_Geo.pdf

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid., pp 21-24.

⁹⁰ Ibid.

1.4. PROHIBITING COLLUSION

1.4.1. Laws Prohibiting Collusion

Anti-collusion measures are governed by the Law of Georgia on Competition. The law provides a number of clauses that address unlawful restriction of trade and competition, abuse of privileged position by an entity, or multiple entities. Articles 6 and 7 of the law addresses specific provisions which prohibit direct or indirect fixing of purchase or selling prices and trading conditions, as well as limiting production and investment. The same article stipulates that it is illegal to place trading parties at a disadvantage, conclude tenders and public procurement in order to obtain material gain or advantage, which significantly serves legal interests of the purchasing organization. The list of violations also includes “abuse of dominant position” (sharing and limiting markets) by one or more undertakings in the process of trade and commercial activity.⁹¹

1.4.2. Enforcement of Laws Prohibiting Collusion

The Competition Agency of Georgia is the institution in charge of enforcement of laws prohibiting collusion. The agency is equipped with powers to investigate complaints related to collusion, or in some instances can initiate an inquiry, carry out an on-site investigation on the basis of court agreement. The agency is also authorized to impose administrative fines against entities who fail to cooperate during the information request from the agency or investigation process. The agency is entitled to request a court to temporarily suspend certain activities of an entity until the agency resolves the complaint, or violation of articles 6 and 7 of the Competition Law.⁹² As to the statute of limitations the period for any disputes related to the violation of the above-mentioned law is three years.

One of the sanctions applied for the violation of articles 6 and 7 of the law, include fine (not to exceed between 5 - 10 percent of the annual turnover for the preceding financial year) against legal persons and individuals connected to the entity in question.⁹³

A number of mitigation incentives are also provided by the Competition Law. The same law provides a number of provisions on leniency programs that can be utilized during occasions when the entity cooperates with the agency and discloses relevant information regarding a violation and cooperates with the agency during an investigation. The procedure concerning the application of the leniency program and releasing the legal person/entity from liability is determined by the Competition Agency.⁹⁴

The Competition Agency carries out a number of investigations related to commodity service markets, based on its own initiatives, or court decisions.⁹⁵

⁹¹ Law of Georgia on Competition, May, 2012, Articles 6, 7.

⁹² Ibid., Articles 18, 25.

⁹³ Ibid., Article 33.

⁹⁴ Ibid., Article 33.¹

⁹⁵ Competition Agency of Georgia, *Annual Report 2018, 2019* pp. 6-15,
<https://admin.competition.ge/uploads/1af727dc8b5c4e728bfaac93397ecc51.pdf>

The Competition Agency carries out monitoring and investigation in areas such as the abuse of dominant position, anti-competitive agreements, distortion of competition by state authorities, merger control and unfair competition. Some of the issues investigated by the agency were related to pharmaceutical mergers, market price fixing by large oil companies, public procurement practices by local municipalities and state authorities, etc.

Among several investigated cases concerning abuse of dominant position, only one investigation has found five large oil companies in violation of the article 6 and fined them with GEL 3 million. As to the distortion of competition by state authorities, a number of state agencies/institutions were found to be in violation of the competitive environment and in some instances the agency has issued a number of mandatory recommendations, or ordered these agencies to reverse their decisions regarding unlawful procurements.⁹⁶ There have been a number of concerns raised with regard to Georgia's pharmaceutical market that contains risks of "diminishing competition and abuse of position" which was caused by a merger of a number of large pharmaceutical and medical companies.⁹⁷ Despite the fact that the Competition Agency has carried out a number of studies and investigation of pharmaceutical mergers, the agency has not found a single case of merger acquisition that was incompatible with the competition legislation.⁹⁸

1.4.3. Capacities to Enforce Laws Prohibiting Collusion

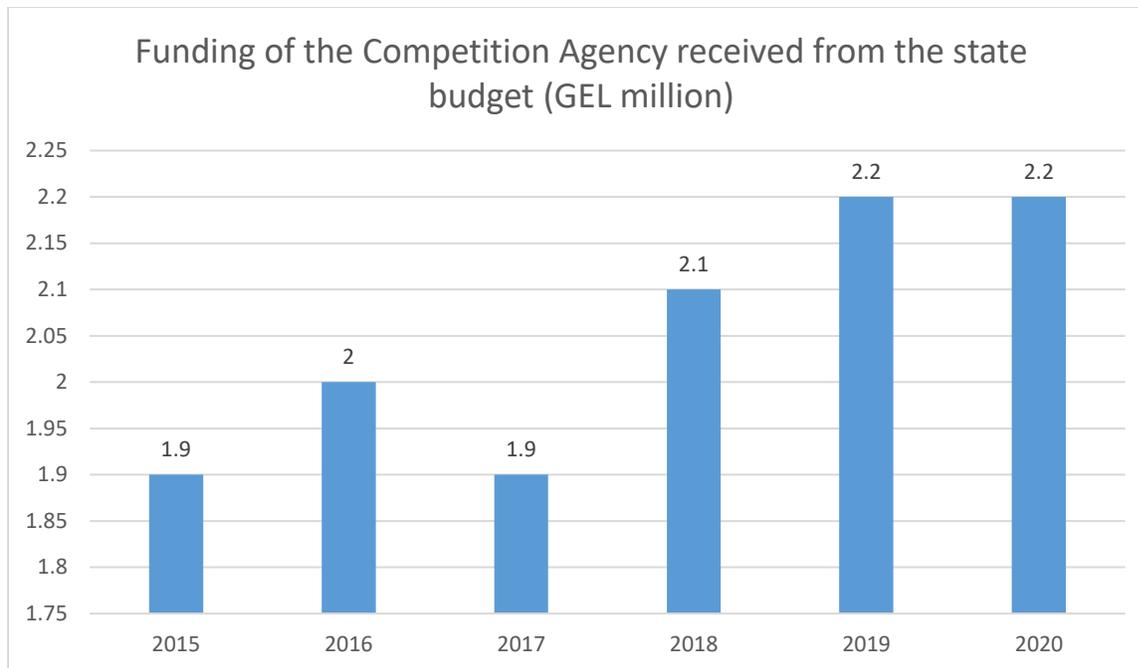
The Competition Agency was awarded GEL 2.2 million in 2019 from the state budget. The agency has employed 43 people since its establishment in 2014. The agency has experienced a graduate increase in funding from 2015 through 2020.⁹⁹

⁹⁶ Competition Agency of Georgia, <https://competition.ge/decisions/abuse-of-dominant-position/by-prohibition>

⁹⁷ TI Georgia, *Pharmaceutical Market in Georgia*, December 2016, pp. 4, 7.
https://transparency.ge/sites/default/files/pharmaceutical_market_in_georgia.pdf

⁹⁸ Competition Agency of Georgia, <https://competition.ge/decisions/concentration-control>

⁹⁹ TI Georgia, *Work of the Competition Agency of Georgia in 2014-2019: Competencies and Case Studies*, April, 2020, <https://transparency.ge/ge/blog/konkurenciis-saagentos-sakmianoba-2014-2019-clebshi-uplebamosilebebi-da-ganxiluli-sakmeebi>



Between the years 2014-2019 the Competition Agency carried out 25 studies of market goods and services 14 out of which revealed certain violations.

The Competition Agency is provided with full independence in terms of its decisions and activities. Its powers and authority is dictated by Article 18 of the Law of Georgia on Competition. The agency's decisions, instructions and legal acts compels other government institutions including various authorities of the Autonomous Republics and local self-government bodies and other economic agents. The government of Georgia approves the agency's statute and structure, as for the approval of funding it is defined by legislation. The agency submits annual performance reports as well as the analysis of the competition environment in Georgian commodity and service markets to the Prime Minister and the government.¹⁰⁰

Georgia continued to carry out the provisions of the DCFTA with regard to competition, with a focus on capacity building of the Competition Agency as well as cooperation between the agency and the sector regulators. Since the adoption of the competition legislation in 2014, the Competition Agency has been making efforts toward its implementation in practice. The agency's new focus in recent years has been directed toward addressing antitrust provisions in line with the EU legislation, state aid provisions including rules on procedures for granting state aid, as well as provisions related to institutional independence and investigative and decision-making powers. Despite the Competition Agency's efforts, the existing legislative framework prevents the agency from investigating cases connected to government companies breaching competition rules, thus significantly limiting its reach. In addition to legal limitations, the agency is also struggling in terms of human resources in order to effectively study breaches in the competition law. As a result, the agency is mostly engaged in responding to requests.¹⁰¹

¹⁰⁰ Ibid.

¹⁰¹ Bertelsmann Stiftung, BTI 2020, Georgia Country Report, p 21, https://www.bti-project.org/content/en/downloads/reports/country_report_2020_GEO.pdf

Throughout its existence the Competition Agency has, on a number of occasions, drawn strong public interest. One such example was a study carried out by the agency in 2018, when then Prime Minister Mamuka Bakhtadze, instructed the agency to provide an analysis for increased prices of bread. To this day the agency has not been able to come up with a reasonable explanation as to why the price for bread has increased so much and whether the bread product providers have violated any law with this regard.¹⁰²

There have been concerns over a noticeably unequal competition environment and risks involving potential creation of oligopolies in a number of sectors.¹⁰³ The high-profile case of Philip Morris Tobacco Company brought the Competition Agency into spotlight and raised serious concerns regarding its independence in 2018. In the latter case, there was mounting publicly available evidence pointing to secret deals between Georgian tobacco industry representatives and several government agencies and public officials affiliated with the ruling party, who abused their influence in order to promote the interests of Georgian tobacco companies on the market. The alleged collusion scheme entailed a number of lawsuits against Phillip Morris and British American Tobacco resulting in the court fine of GEL 363 for both companies to compensate the above-mentioned government backed Georgian tobacco companies. The court did not take into consideration the opinion of the Competition Agency, which did not find Phillip Morris and British Tobacco to be in violation of the law. Moreover, the agency's assessment with regard to this dispute was initially available on its website, however it was later arbitrarily removed and was no longer publicly available.¹⁰⁴

In 2018, the Competition Agency signed a Memorandum of Understanding (MoU) with a number of regulatory agencies and financial institutions of Georgia, in order to more effectively enforce the competition law. MoUs were signed with the Service for Accounting and Reporting, and Auditing Supervision (SARAS), National Bank of Georgia and Business Ombudsman of Georgia. As for international cooperation, the Competition Agency is a member of International Cooperation Network, an international organization focusing on competition law enforcement issues. In addition, the agency actively cooperates with foreign competition authorities and international organizations through joint conferences, discussion meetings and information exchange activities.¹⁰⁵

The Competition Agency has worked on capacity building through financial and technical support from the European Union. The three year project aimed at strengthening the legal, economic and technical capacity of the Competition Agency as well as, intended to improve cooperation between the agency and other sector regulators.¹⁰⁶

1.5. WHISTLEBLOWING

¹⁰² TI Georgia, *Work of the Competition Agency of Georgia in 2014-2019: Competencies and Case Studies*, April, 2020, <https://transparency.ge/ge/blog/konkurenciis-saagentos-sakmianoba-2014-2019-clebshi-uplebamosilebebi-da-ganxiluli-sakmeebi>

¹⁰³ Ibid.

¹⁰⁴ TI Georgia, *Smoke of Corruption: The Grand Scheme to Allocate the Tobacco Market*, October 2018, <https://www.transparency.ge/en/blog/smoke-corruption-grand-scheme-allocate-tobacco-market>

¹⁰⁵ Competition Agency of Georgia, *Annual Report 2018, 2019* <https://admin.competition.ge/uploads/1af727dc8b5c4e728bfaac93397ecc51.pdf>

¹⁰⁶ Competition Agency of Georgia, <https://competition.ge/about-us/projects>

1.5.1. Whistleblower Laws

Georgia was one of the first countries in the region to introduce whistleblower legislation in 2009. The legislation has undergone a number of amendments (in 2015) since then, nevertheless it is somewhat vague and its practical application has been ineffective due to significant gaps in some of the key provisions.¹⁰⁷

The legislation provides a number of channels for disclosure for whistleblowers. Disclosure can be made anonymously. Channels include divisions within each public institution responsible for investigation of whistleblower's applications, as well as an investigator, prosecutor and the Public Defender.¹⁰⁸

The standard procedure for the review and consideration of a whistleblower application by a respective review body is one month after its submittal. In case if the submitted whistleblower application is considered to qualify as an administrative, civil or criminal offense, the reviewing body shall redirect the case to the relevant body.¹⁰⁹

In recent years the definition of a whistleblower was extended to include not only current or former public officials, but any individual who may witness a corruption related offence. Additionally, a whistleblower is now allowed to directly inform civil society organization or a media outlet about his/her case, immediately after the case has been filed within the respective state body, as opposed to previously mandated 60 day waiting period. The Civil Service Bureau has developed an online reporting portal through which any person can anonymously report corruption related case.¹¹⁰

As regards protection of whistleblowers, the law ensures protection of whistleblowers from intimidation, harassment, coercion, humiliation, violence, discrimination and persecution, including exertion moral or material damage to a whistleblower and his/her family members. The law also prevents initiation of administrative and civil proceedings, as well as, criminal prosecution against a whistleblower.¹¹¹ Generally, whistleblowers enjoy protection from legal prosecution regardless of the trueness of information provided, excluding several circumstances, some of which could be related to the fact that a whistleblower was aware of the fallaciousness of information provided and still disclosed a case, or when a whistleblower acted in his/her or other individual's personal interest when disclosing a corruption related case.¹¹²

There remain significant gaps in the whistleblower protection legislation which have not been resolved in the last five years.

- There is no special legislation to address the issues concerning whistleblowing in the following government entities: State Security Service, the Ministry of Defense and the Ministry of Internal Affairs;

¹⁰⁷ TI Georgia, *Whistleblower Protection: International Practices and Recommendations for Georgia*, July 2015, https://www.transparency.ge/sites/default/files/post_attachments/whistleblower_protection_and_georgia_-_policy_brief_july_2015.pdf

¹⁰⁸ Law on Conflict of Interest and Corruption in Public Service, articles 20(1), 20(2), 20(3).

¹⁰⁹ Ibid., articles 20(1), 20(2), 20(3).

¹¹⁰ OECD Anti-Corruption Network (ACN), *Anti-Corruption Reforms in Georgia - Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan*, 15 September 2016, p, 37 <http://bit.ly/30krxRv>

¹¹¹ Law on Conflict of Interest and Corruption in Public Service, article, 20(4).

¹¹² Ibid., article 20(5).

- The existing legislation does not provide for compensation for damages incurred by a whistleblower;
- The whistleblower must be allowed to report his/her case directly to the media and civil society (at least in cases of imminent or large-scale damage);
- To this day, State agencies are not required to establish clear internal mechanisms of whistleblowing.

There also needs to be a stand-alone law adopted with regard to the mechanism of whistleblowing, which will effectively and consistently address whistleblowing issues, including increased accountability requirements for the body responsible for the effective functioning of the whistleblowing mechanism.¹¹³

1.5.2. Enforcement of Whistleblower Laws

To this day, the practical application of the whistleblower mechanism remains a significant problem. Furthermore, law enforcement agencies (who are exempt from the general provisions of the whistleblower legislation), State Security Service and the Ministries of Internal Affairs and Defense, have not yet developed specific legal mechanism for the protection of disclosures and whistleblowers, which leaves the employees of these institutions susceptible to persecution and harassment, especially when dealing with high-profile corruption cases.¹¹⁴

There is no unified standard approach to identify whistleblower statements in the public sector as a result of which most public agencies are reluctant or incapable of perceiving whistleblowing statements. Additionally, there are neither any basic standards for internal procedures and rules for whistleblowing, nor are the public agencies required to introduce them.¹¹⁵

Furthermore, there is no responsible public agency that is tasked with collecting and publishing whistleblowing statistics and their responses, including the monitoring of the investigation process of these statements.¹¹⁶

The government agencies responsible for anti-corruption activities do not produce statistics on whistleblowers. In fact, the Ministry of Justice does not publicly disclose information regarding whistleblowing cases. Similarly, the State Security Service, General Prosecutor of Georgia, as well as the Ministries of Defense and Internal Affairs do not maintain recording of whistleblowing statistics.¹¹⁷

It is also noteworthy that, the utilization of official government web portal for whistleblower disclosures mkhileba.gov.ge has been decreasing every year. For example, in 2017, 111 applications were submitted, while in 2019 that number dropped to 24. Further study of this issue

¹¹³ TI Georgia, *The dysfunctional whistleblowing mechanism in the Georgian public service*, 25 June, 2020, https://www.transparency.ge/en/blog/dysfunctional-whistleblowing-mechanism-georgian-public-service/?custom_searched_keyword=whistleblower

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

suggests that the majority of government agencies are least capable of adequately responding to these whistleblower cases.¹¹⁸

During the past five years none of the 173 applications of whistleblowers were reviewed under the consideration of whistleblower protection legislation. Although a number of measures were taken to address most of these disclosures, only five cases were forwarded to the law enforcement agencies for further investigation.¹¹⁹

1.6. ACCOUNTING, AUDITING AND DISCLOSURE

1.6.1. Accounting and auditing standards

The law on Accounting, Reporting and Audit was introduced in June, 2016. It establishes the legal provisions for accounting and auditing, in accordance with international legal standards. The law provides procedures for companies and businesses regarding preparation and submission of financial and management statements. These standards cover numerous international legal frameworks such as International Financial Reporting Standards (IFRS), IFRS for small and medium sized entities (SMEs), as well as the European Union directives aimed to regulate the process of reporting and auditing of entities.¹²⁰

The law requires entities to maintain accounts according to specific procedures. Entities are required to carry out accounting through an accountant or a similar type of service provided by a qualified individual/legal person. Entities are required to keep record of accounting activities and establish adequate internal control mechanisms for this process. The law allows entities to define their own accounting policy, establish a mechanism and procedures for the preparation and manufacturing of accounting activities, design financial statement forms and determine procedures for preparing and submitting financial statements to the relevant government agency according to the standards established by Georgian legislation.¹²¹

Entities are required to ensure the accuracy of accounting documents and present evidence of accounting activity by means of providing corresponding paperwork reflecting such an activity, as well as the evidence of its legality and arithmetic accuracy. Accounting documents, both electronic and hard copies, are required to be kept in books for six years after the completion of a specific accounting period.¹²²

Entities are required to prepare financial statements in adherence with the above-mentioned law at least once a year. Financial statements should include information about financial position and performance, cash and capital flow, among other activities. Entities are required to provide this information in compliance with the IFRS.¹²³

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Law of Georgia on Accounting, Reporting and Audit, June 8, 2016, articles 1, 3.

¹²¹ Ibid, article 4.

¹²² Ibid, article 4.

¹²³ Ibid, article 5.

Public Interest Entities (PIEs) are required to release all financial statements through their own website, or by means of print publication. Entities are obligated to provide an interim financial statement to a special regulatory body.¹²⁴

Entities (except non-commercial legal entities) are required to submit financial statements, management reports, payment reports to the state, and an audit report no later than October 1 of the year following the reporting period to the SARAS.¹²⁵ As for non-entrepreneurial and non-commercial entities, legal persons are exempt from conducting audits of their financial statements.¹²⁶ The SARAS is charged with the task of publishing financial statements of entities as well consolidated statements of groups through a specially designated website.¹²⁷

Conducting internal and external audit is required by the Law on Accounting, Reporting and Auditing. All audits conducted in Georgia should be in compliance with the international Standards of Auditing (ISA). Audit firms are required to operate according to the international standards. Before conducting audit services, an audit firm should undergo quality control and adhere to the requirements defined by the above-mentioned law, in order to have the authority to carry out audits of financial activity of entities.¹²⁸

PIEs and other enterprises are required to undergo audit for each reporting period. The SARAS may establish additional requirements for audit of PIEs depending on the scope and activities of such entities, which may be subject to additional monitoring and control. Auditors and audit firms conducting audit are required to maintain auditing documents in electronic or material form, for six years after the completion of the each reporting activity and reporting period.¹²⁹

Other responsibilities of SARAS include enforcement of mandatory international standards and determining financial reporting standards for enterprises and non-commercial legal entities. Additionally, SARAS is in charge of defining the procedures for auditing, reporting and submitting of financial statements, granting the status of a PIE to an entity, determining procedures for the monitoring of quality control systems, revising and fixing identified violations and appeal reports related to the monitoring of quality control systems, carrying out monitoring of the quality control system for auditors and audit firms, and imposing liability for violations of the law.¹³⁰

The powers of the head of the Service are defined by the law and the statute of the agency. The Service includes a special board whose role is to conduct reviews and make appropriate decisions with regard to the issues related to accounting, reporting and auditing.¹³¹

The Law on Accounting, Reporting and Audit defines punitive sanctions and liabilities of entities who are found violating the law. These measures include financial fines for entities who fail to comply with the procedures for accounting and financial reporting or evade financial audit. These fines may range from GEL 500 to GEL 10,000 depending on the scope of an enterprise or an entity. In some instances, the Service may use a written warning instead of a fine in response to

¹²⁴ Ibid, article 9.

¹²⁵ Ibid, article 9.

¹²⁶ Ibid, article 6.

¹²⁷ Ibid, article 6.

¹²⁸ Ibid, article 14.

¹²⁹ Ibid, article 15.

¹³⁰ Ibid, article 20.

¹³¹ Ibid, article 21.

an offence committed by an entity. In some cases, the service has the discretion to review a particular entity using its risk management system. The service can make a ruling with regard to imposing a sanction on an entity based on consolidated information including its risk management system and the information provided by the Revenue Service.¹³²

1.6.2. Enforcement of Accounting and Auditing Standards

The enforcement of accounting and auditing regulatory framework in Georgia is mainly carried out by the SARAS. The Law of Georgia on Accounting, Reporting and Audit authorizes SARAS to implement regulatory as well as punitive measures vis-a-vis the entities and enterprises who violate the accounting and financial reporting standards.

SARAS is authorized to impose the following sanctions on auditors, audit firms, or organizations: a written warning; a public warning through the registry; a monetary fine; annulment of the registration of the firm or an individual auditor; prohibiting an audit firm or an auditor from performing audits for up to three years; prohibiting the management body of an entity (PIE) from performing its duties temporarily for up to three years. Additionally, sanctions applied under this law shall be proportional to the severity of the violation and a potential risk it may contain. As to the proceedings for an administrative offence defined within the scope of the above-mentioned law, shall be carried out the legal procedures established by the Administrative Offences Code of Georgia.¹³³

As far as the enforcement of accounting and financial reporting legislation is concerned, the SARAS serves as the main agency in charge of detection, monitoring and enforcement of the Law. In 2018, SARAS issued 109 warnings to entities in a written form for their failure to present accounting and financial information, while 68 entities were fined after the first written warning to the enterprises which failed to provide accounting and financial reports. In the same year, 27 entities were fined repeatedly for failing to provide this information.¹³⁴

In 2018, the Service developed and approved Financial Reporting Standards for non-profit (non-commercial) legal entities in order to fulfill the obligation under the Law on Accounting, Reporting and Audit. A framework of reporting standards was developed to facilitate the preparation of financial statements for non-profit organizations which are allowed to engage in entrepreneurial activity).¹³⁵

1.6.3. Professional Service Providers

Georgia's Law on Entrepreneurs regulates issues related to professional service providers as well as their rights and responsibilities. The law requires that all entrepreneurs and non-entrepreneurial (non-commercial) legal entities undergo registration within the public registry of Georgia. All business and service provider entities are to be registered within the Ministry of Justice's National Agency of Public Registry. Entities registered within Public Registry automatically receive tax registration as well. The information regarding registered entities as well

¹³² Ibid, article 21.

¹³³ Ibid., articles 32, 33.

¹³⁴ SARAS, *2018 Annual Report*, p 14, https://saras.gov.ge/Content/files/SARAS_AR_2018.pdf

¹³⁵ SARAS, *2018 Annual Report*, p 21, https://saras.gov.ge/Content/files/SARAS_AR_2018.pdf

as any changes and abolishment is shared by the registration authority with the Ministry of Finance and its Revenue Service for further monitoring and oversight.¹³⁶

The licensing requirements and standards for professional auditors and audit associations is governed by the Law on Accounting, Reporting and Audit. Professional organizations of accountants and auditors are required to be established in accordance with this law and normative acts adopted based on it. Professional organizations of accountants and auditors are required to have an internal policy and procedures in place that meet the standards for professional certification and requirements of the International Ethics Standards Board for Accountants (IESBA Code).¹³⁷

1.6.4. Beneficial Ownership

Despite the numerous attempts of international organizations and civil society organizations at encouraging Georgia's government to introduce mandatory disclosure of beneficial ownership among legal persons as well as create publicly available central register of beneficial ownership information, Georgia's government has not taken any action in this regard. The above-mentioned recommendations included introduction of an effective liability mechanism for legal persons who fail/refrain from disclosing or falsely disclosing information.¹³⁸¹³⁹ In certain instances companies are required to disclose the beneficial owners, but this obligation is not universally applied and the information is not public.

Issues related to beneficial ownership are regulated by the Law of Georgia on Facilitating the Suppression of Money Laundering and Terrorism Financing. Article 13 defines a beneficial owner as a natural person in ultimate ownership or in control of a customer and/or natural person on whose behalf business transactions are carried out. A person is considered a beneficial owner when he/she owns (directly or indirectly) 25 percent or more of voting shares or who exercises ultimate control over a particular legal entity. Indirect ownership is defined as possession of 25 percent or more of voting shares in an enterprise by another enterprise, which is controlled by a natural person, or several enterprises, which in turn are controlled by the same natural person or persons.¹⁴⁰

Trustees are required to obtain information regarding the beneficiaries and settlors of the trust that is under their management and make this information available to tax and law enforcement authorities. Trustees are also required to report any suspicious activity. As to the nominees, shareholders and fronting directors, this information should be disclosed including the names of beneficial owners behind the nominee.¹⁴¹

¹³⁶ Law of Georgia on Entrepreneurs, October 28, 1994, article 4.

¹³⁷ Law of Georgia on Accounting, Reporting and Audit, articles 10, 11.

¹³⁸ OECD Anti-Corruption Network (ACN), Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia, 2019, pp, 106-113, March 2019, <http://bit.ly/2NnA0h>

¹³⁹ TI Georgia, *Georgia's Stalling Anti-Corruption Reforms: Unfulfilled Recommendations of the Istanbul Action Plan*, 16 August, 2019, https://transparency.ge/en/blog/georgias-stalling-anti-corruption-reforms-unfulfilled-recommendations-istanbul-action-plan/?custom_searched_keyword=beneficial+ownership+

¹⁴⁰ Law of Georgia on Facilitating the Suppression of Money Laundering and Terrorism Financing, 30 October, 2019, article 13.

¹⁴¹ Ibid., articles 13, 20, 25.

The entities are required to carry out enhanced due diligence measures with regard to high-risk customers. These measures include: requesting additional information concerning the assets and business dealings of a customer, or a beneficial owner and frequently updating information on the beneficial owner.¹⁴² Entities are prohibited from establishing an anonymous account or an account in fictitious name.¹⁴³

1.7. PROHIBITING UNDUE INFLUENCE

1.7.1. Laws on Political Contributions

The issue of political contributions is regulated by several laws: the Organic Law of Georgia on Political Unions of Citizens, the Election Code, Law of Georgia on the State Audit Office, General Administrative Code, Administrative Offenses Code, as well as the order of the Auditor General.¹⁴⁴

There are a number public funding channels available for political parties, provided by the Organic Law of Georgia on Political Unions of Citizens:

- Direct funding from the state budget; reimbursement of campaign expenditures by the state;
- Public funding based on gender quota;
- Distribution of funds for political parties through the Electoral Systems Development, Reform and Training Center;
- State funding for targeted TV advertising during the election period;
- Funding to support political party representatives in the district and precinct election commissions during elections.

The annual public funding for political parties is calculated based on a specially designed formula which determines the amount for each political party based on which, in addition to the basic public funding amounting to GEL 300,000, additional funding is provided according to the seats obtained in the Parliament as well as the votes received in the elections. Furthermore, if a political party or electoral bloc received 6% or more of the votes running independently in the last parliamentary or local government elections, the basic funding doubles to GEL 600,000.¹⁴⁵

The Election Code of Georgia prohibits the use of administrative resources throughout the election campaign in support of or against any political party, political candidate, or electoral subject.¹⁴⁶ Article 48 of the Election Code provides a list of administrative resources that are not allowed to be used by political parties and candidates during the election period:

- premises occupied by state and local government entities, including other government bodies funded by the state budget;

¹⁴² Ibid., article 18.

¹⁴³ Ibid., article 12.

¹⁴⁴ TI Georgia *Georgia's Political Finance in 2019: Revenues and Expenditures of Political Parties and Financial Oversight*, July, 2020, p. 9. <https://www.transparency.ge/en/post/georgias-political-finance-2019-revenues-and-expenditures-political-parties-and-financial>

¹⁴⁵ Ibid.

¹⁴⁶ Election Code of Georgia, 27 December, 2011, article 48.

- means of communications, information services, and other type of equipment allocated for the state authorities and local self-government bodies, as well as other entities funded by the state budget;¹⁴⁷
- means of state transportation;
- a candidate participating in canvassing, who holds an office within public service, is prohibited from using his/her official status during the canvassing and electoral campaign in an attempt to support or discredit any political party or candidate. These actions include: a) coercing organization subordinate to support a particular election candidate; b) collect signatures and conduct canvassing related activities during business trips funded by the state budget; c) involve in canvassing activities during business hours, or when performing official duties.¹⁴⁸

It is also prohibited to carry out projects that have not been included in the state budget at least 60 days before the Election Day. Furthermore, throughout the above-mentioned electoral period it is prohibited to increase the amount of welfare benefits.¹⁴⁹

It is prohibited to support from the state budget the production of video or audio materials as well as other types of promotional materials, including websites during the canvassing period.¹⁵⁰

In addition to public funding, political parties and candidates are allowed to receive funds by means of private contributions which include membership fees and donations from legal or natural persons. The maximum amount. The Organic Law of Georgia on Political on Political Associations of Citizens defines donations as follows:¹⁵¹

- funds donated to a political party by a natural or legal person;
- material, or in-kind contributions (including, a preferential loan, or service) received by a party free of charge, or in a discounted way from a natural or legal person;

The law imposes limits with regard to donations from natural and legal persons. The maximum amount of donation received by a political party from a natural person should not exceed GEL 60,000 throughout one year, while donations from a single legal entity should not exceed GEL 120,000. Contributions made to a political party or a candidate may not be anonymous and are considered illegal according to the law.¹⁵² An individual is required to indicate his/her full name and provide a personal identification number when making a donation, otherwise the donation will be rendered illegal. Anonymous donations shall be immediately transferred to the state budget by an official in charge of a party's financial documentation.¹⁵³

2.7.2. Enforcement and Public Disclosure of Political Contributions

The State Audit Office (SAO) is the major institution tasked with the monitoring of financial activities of political parties in Georgia. According to the law, the SAO is responsible for the examination of financial activities of membership based legal entities including political parties

¹⁴⁷ Restrictions provided for by paragraph 1(c) of this article shall not apply to the use of service vehicles by public political officials that are protected by the Special State Security Service as defined in this Law.

¹⁴⁸ Election Code of Georgia, article 49.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ The Organic Law of Georgia on Political on Political Associations of Citizens, 31 October, 1997, article 27.

¹⁵² Ibid., articles 26, 27.

¹⁵³ Ibid., article 26.

and unions.¹⁵⁴ The SAO is responsible for publishing financial disclosure statements of political parties to all interested individuals as well as making this information available through the website within five days of receiving these statements. Furthermore, the SAO is authorized to determine the auditing standards for party financing, annual financial disclosure statements and the protocol of the transparency of information regarding the finances and donations of parties.¹⁵⁵

The SAO has the authority to carry out monitoring of political party and its financial activities utilizing the following mechanisms:

- develop various forms for financial disclosure and auditing of political parties;
- monitor and examine financial statements and accounts of campaign funds;
- carry out an annual audit of political parties;
- apply to courts in case of reasonable doubt with regard to unlawful financial activity of a political party, as well as conduct an unscheduled financial audit of a party in question;
- request information regarding party financing from administrative entities and commercial banks;
- address violations of and if necessary apply legal sanctions to a political party.¹⁵⁶

Political parties are required to submit to the SAO financial statements of the previous year, along with the report from an auditor (except in the case when a party's annual turnover does not exceed GEL 10,000). by February of each year. These statements should contain the party's annual income including detailed information concerning membership fees, names and information of individuals who have made donations, balance of funds on bank accounts, ownership of a property, funds provided by the state and income received through publications and other party activities. Political parties are required to present separately financial disclosure statements showing the income and expenditure of funds utilized during the election period.¹⁵⁷ Furthermore, all parties participating in the election are required to submit a financial report to the SAO every three weeks after the election date has been announced.¹⁵⁸

The information containing financial expenditures and financing of political parties and candidates is publicly available through the website of SAO as well as is included in the SAO's annual and special election reports. Additionally, the Central Electoral Commission publishes information regarding state funding of political parties and candidates. Aside from the above-mentioned public agencies, reports on political party expenditures and financing are regularly published by a number of Georgian CSOs who work in this area.

There are a number of mechanisms and standards for the reporting of financial, in-kind and other types of contributions for political parties. According to the law, this information should be publicly available. The State Audit Office is responsible for ensuring public access to such information.¹⁵⁹ Parties are required to submit the information regarding donations and membership fees to the State Audit Office within 5 days after these contributions were made.¹⁶⁰

¹⁵⁴ Law of Georgia on State Audit Office, 22 June, 2012, article 17.

¹⁵⁵ Organic Law of Georgia on Political on Political Associations of Citizens, articles 32, 32(2).

¹⁵⁶ Ibid., article 34 (1).

¹⁵⁷ Ibid., article 32.

¹⁵⁸ Ibid., article 32 (1).

¹⁵⁹ Ibid., article 26.

¹⁶⁰ Ibid., article 27 (1).

Parties are required to submit to the SAO financial disclosure statements for the previous year alongside an audit report. The disclosure statements should include information regarding the annual income of the party (membership fees, donations, and contributions), identities of individuals and companies who made these contributions, as well as the income received from the state and other type of party activities.¹⁶¹

The SAO investigates financial disclosures of political parties and candidates during the electoral period and identifies numerous violations, which are then sent to the courts. In 2019 the SAO identified 14 cases of administrative violations, half of which were connected to 2018 Presidential elections. Most of these violations were related to issues such as: deficiencies of political candidate annual declarations, prohibited and undeclared donations, failure to present election declaration by a political party, cash contributions, failure to submit (triweekly) financial statements and violations related to audit and auditing procedures of a political party.¹⁶²

Despite being legally prohibited, the misuse of administrative resources including institutional and financial continues to be a problem in Georgia. This issue is particularly exacerbated during the electoral period, when the ruling party frequently mobilizes employees of budgetary organizations for pre-election meetings as well as coerces civil servants to vote in favor of the ruling party candidate.¹⁶³

It has to be stressed that the SAO has been largely ineffective in its effort to investigate the instances of suspicious donations, which can partly be explained by the existing gaps in the legislation. Third party donation is prohibited by the Georgian legislation, however there is convincing evidence that such donations occur when individuals and commercial entities affiliated with the ruling party Chairman Bidzina Ivanishvili donate to the party in such a manner.¹⁶⁴

The SAO struggles with insufficient human resources to effectively carry out the monitoring of campaign finance and is mostly limited to reviewing reported contributions. The SAO is only authorized to impose sanctions for violation of campaign and request information regarding the origins of funds and property donation through a court decision.¹⁶⁵ Furthermore, the law

¹⁶¹ Ibid., article 32.

¹⁶² State Audit Office, *2019 Annual Report*, Tbilisi, 2020, pp 70 -71,

<https://sao.ge/Uploads/2020/6/%E1%83%A1%E1%83%90%E1%83%AE%E1%83%94%E1%83%9A%E1%83%9B%E1%83%AC%E1%83%98%E1%83%A4%E1%83%9D%20%E1%83%90%E1%83%A3%E1%83%93%E1%83%98%E1%83%A2%E1%83%98%E1%83%A1%20%E1%83%A1%E1%83%90%E1%83%9B%E1%83%A1%E1%83%90%E1%83%AE%E1%83%A3%E1%83%A0%E1%83%98%E1%83%A1%202019%20%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A1%20%E1%83%A1%E1%83%90%E1%83%A5%E1%83%9B%E1%83%98%E1%83%90%E1%83%9C%E1%83%9D%E1%83%91%E1%83%98%E1%83%A1%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98.pdf>

¹⁶³ TI Georgia, *Misuse of Administrative Resources during Georgia's 2020 Parliamentary Elections (Interim Report)*, 26 October, 2020, <https://transparency.ge/en/post/misuse-administrative-resources-during-georgias-2020-parliamentary-elections-interim-report>

¹⁶⁴ TI Georgia, *Georgia's Political Finance in 2019: Revenues and Expenditures of Political Parties and Financial Oversight*, 9 July, 2020, pp 19-22, <https://transparency.ge/en/post/georgias-political-finance-2019-revenues-and-expenditures-political-parties-and-financial>

¹⁶⁵ OSCE ODIHR, *Georgia Presidential Election 2018 - Election Observation Mission Final Report*, 28 February 2019, p. 14, <https://www.osce.org/odihr/elections/georgia/412724?download=true>

enforcement agencies are also weak at responding to violations related to suspicious campaign finance and party funding cases as a result of undue and informal influence exerted on them.¹⁶⁶

Detecting corruption and illegal donation schemes is quite challenging, however Transparency International Georgia tried to reveal substantial information concerning the donors of political parties and their commercial interests, including public procurement contracts awarded to the companies of these donors. The ruling party and a number of opposition parties largely rely on a few key donors, which raises serious concerns.¹⁶⁷

2.7.3. Laws on Lobbying

Georgia's law on Lobbying Activities was adopted in e 1998 and has undergone some minor revisions since then. The law defines procedures for registration of lobbyists as well as other matters related to lobbying.¹⁶⁸

Among other provisions, the law dictates that public servants are required to declare their business and corporate interests soon after their appointment/election. As for the permission to register as a lobbyist, it is only allowed for Georgian citizens, with the exemptions provided in articles 6, 8 and 13.¹⁶⁹

The definition of lobbying assignments is regulated by article 7 of the law which stipulates that lobbying activity can be carried out by a legal entity registered in Georgia or a group of no less than 50 individuals.¹⁷⁰ The lobbyist entity or a group of individuals is only allowed to pursue lobbying activity concerning one legislative proposal (and related normative acts). The lobbyist assignment should include the following mandatory information: a) subject of the contract, indicating the proposed legislative change intended by the trustee; b) remuneration for the activities carried out by the lobbyist, including the amount, type and payment method.¹⁷¹

The suspension of lobbying activity is performed by the relevant government agency, or public official who has initially granted the permission to a lobbying entity. The information regarding the suspension or termination of a legal status to an entity is provided to the representative of this lobbying entity as well as the head of the relevant government agency, the executive branch, or the presidential administration.¹⁷²

The lobbying entities are entitled to: attend public discussions of particular legislative initiatives, participate in public discussions, request an audience with representatives of the legislative and request relevant information with regard to a particular legislative proposal from a relevant government agency.¹⁷³

¹⁶⁶ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 p 8, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

¹⁶⁷ Ibid.

¹⁶⁸ Law of Georgia on Lobbying Activities, 30 September, 1998, article 1.

¹⁶⁹ Ibid., articles 3, 4.

¹⁷⁰ Ibid., article 8.

¹⁷¹ Ibid., article 7.

¹⁷² Ibid., article 8.

¹⁷³ Ibid., articles 10, 11, 12.

The lobbyist entity/organization is required to submit monthly financial and activity reports. The entity is also required to submit similar reports 10 days after the termination of its legal status. The reports must be accompanied by official copies of documents demonstrating the authenticity of information provided in these documents. The report must be submitted to the government organization that registered the lobbying entity and should be kept in the official records of the relevant entities for the period of two years.¹⁷⁴

Information regarding lobbying activities is public and every citizen has the right to access documents and reports submitted by lobbyists to a respective government agency (executive branch, the President of Georgia, or local government).¹⁷⁵

According to article 13 of the Law on Conflict of Interest and Corruption in Public Service, a public official, or civil servant who has left his/her public service is not prohibited from working in a public institution or an enterprise for which was under this individual's systemic supervision or has had any influence on decision making process within such institutions for the period of the past three years. The same individual is prohibited from receiving income or financial gain from such institution/enterprise for up to three years from leaving civil service.¹⁷⁶

The recent assessment of the “revolving door” policy revealed that this regulation is not being implemented in practice, partially due to the absence of mechanisms of enforcement and gaps in the existing legislation. Furthermore, the wording concerning “systemic official supervision during the past three years” is vague and is unclear whether the latter implies continuous supervision for the past three years or supervision for any length of time during these three years.¹⁷⁷

2.7.4. Enforcement and Public Disclosure on Lobbying

Georgia does not have a specifically designated government agency, or oversight body that manages lobbyists and their activities, which includes guidance, monitoring and investigation of lobbying malpractice. There is also no public register of lobbyists.

Transparency International Georgia requested information regarding registered lobbyists and lobbyist organizations from Parliament and local municipal governments of Tbilisi, Kutaisi and Batumi. Based on the information provided by these entities, there are a total of just 10 lobbying entities, or individuals authorized by the government of Georgia between 2015 and 2020, all of which have been registered within Parliament.¹⁷⁸ It has to be outlined that, in previous years

¹⁷⁴ Ibid., article 13.

¹⁷⁵ Ibid., article 14.

¹⁷⁶ Law of Georgia on Conflict of Interest and Corruption in Public Service, article 13.

¹⁷⁷ TI Georgia, “*Revolving door*” problem in Georgia: shortcomings of legislation and enforcement, 15 July, 2019, <https://transparency.ge/en/blog/revolving-door-problem-georgia-shortcomings-legislation-and-enforcement>

¹⁷⁸ Information obtained from Parliament of Georgia and other relevant government agencies through the Freedom of Information act, October 2020.

between 2013 and 2015 there were a total of 27 lobbyists registered in the country.¹⁷⁹ It is unclear as to why the number of registering lobbyists has declined over the years.

As to the disclosure of relevant activity information including clients, employment and other lobbying objectives, the Law of Georgia on Lobbying obliges officially registered lobbyists to submit monthly financial and activity reports to the relevant government body.¹⁸⁰ The Parliament of Georgia has a roster of registered lobbyists operating in Georgia which is available on its website.¹⁸¹ However, the small number of individuals on the list suggests that not all lobbying may be taking place in compliance with the established legal procedure.

2.7.5. Laws on Other Conflicts of Interest

Georgia has numerous legal provisions concerning the integrity of civil servants and public officials. These provisions are set out in the Law on Conflict of Interest and Corruption in Public Service, the Civil Service Law, and the government decree on Establishing Rules of Ethics and Conduct in Public Institutions. Although the country has a robust legal framework addressing the integrity of public officials, there are significant legal gaps regarding the provisions on post-employment restrictions.¹⁸²

According to the law, public officials are required to carry out their duties in an impartial and honest manner and are prohibited from using their authority for personal gain. Public officials are not allowed to accept gifts or receive services that could have an impact on performance of their duties and are required to inform their immediate supervisors of any such offers. Public officials and civil servants must refrain from any instances of conflict of interest and are obligated to declare instances of conflict of interest. They are required to declare their family connections within the same public institution. Public officials are prohibited from entering commercial deals with their close relatives and family members, the institution which they are affiliated with, business entities or political parties. Public officials are required to hand over the management of a commercial enterprise to another individual for the duration of their public service. The law also defines an annual ceiling value of gifts that a civil servant is allowed to accept legally. Similar restrictions are applied with regard to gifts for the family members of civil servants and public officials. Furthermore, public officials are not allowed to perform any parallel paid service or engage in business activity while performing their duties. Similarly, a public official's close relative cannot be employed under the direct supervision of the given public official in the same institution, unless the selection is made through an open merit based process.¹⁸³

Civil servants holding senior positions are required to file annual asset declarations. The Civil Service Bureau reviews these declarations and is authorized to impose fines for inaccuracies, or in the case of discovering evidence of a crime the Bureau is required to forward such cases to

¹⁷⁹ TI Georgia, *Georgian Anti-corruption Legislation: Implementation in Practice*, p 24, https://transparency.ge/sites/default/files/post_attachments/georgian_anti-corruption_legislation_implementation_report_eng.pdf

¹⁸⁰ Law of Georgia on Lobbying Activities, article 13.

¹⁸¹ Parliament of Georgia, Registry of Lobbyists, <http://www.parliament.ge/ge/saparlamnto-saqmianoba/komisiebi-da-sabchoebi-9/ppcotg/dainteresebul-pirta-da-lobistta-reestri/lobistta-reestri?fbclid=IwAR0xp-7DI7WkFtwMbbji45yNI7Ej69KDhVmzWy4BDSL2Des0uNTfvmDxUao>

¹⁸² NIS, 2020, pp 67-69.

¹⁸³ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 p 73, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

the law enforcement agencies. As a noteworthy drawback, a recent legislative amendment makes it legal for public officials not to disclose their business connections with companies which have not conducted any transactions over the past six years or more.¹⁸⁴

As to the issue of bribery, the Georgian Criminal Code makes it a criminal offense and public officials who are involved in bribery are in direct violation of the law.¹⁸⁵

Georgia's legislation has weak post-employment restrictions. Despite provisions in the law that prohibit civil servants and public officials to join commercial enterprises whose activities they oversaw while performing their official duties for the previous three years, it lacks definitions of the specific terms, which in turn makes the enforcement of these provisions very difficult. Additionally, there are gaps concerning gifts (particularly those related gifts received from family members), which can potentially lead to abuse of official authority by public officials.¹⁸⁶

As regards the pre-employment restrictions for public officials, the Georgian legislation does not contain any regulations for their enforcement.

1.7.6. Enforcement and Public Disclosure of other Conflicts of Interest

Georgian legislation contains important provisions intended to protect civil servants from undue political interference while carrying out their duties, however, in practice, these provisions are not sufficient to safeguard them.¹⁸⁷

Senior civil servants are required to file asset declarations annually. The Civil Service Bureau (CSB) is responsible for review and monitoring of asset declarations and is authorized to impose fines for violations and inaccuracies found in these declarations. The CSB's random electronic system selects several hundred asset declarations of public officials for monitoring..¹⁸⁸

The CSB is responsible for forwarding cases of criminal violations to the law enforcement agencies. The CSB is also responsible for publishing asset declarations of public officials through an open government portal.¹⁸⁹ In 2019 the CSB reviewed 607 asset declarations where more than 54% of these declarations were found to contain various errors and inaccuracies as a result of which, the CSB imposed fines and warnings. Only one asset declaration was forwarded to the General Prosecutor's Office for further investigation.¹⁹⁰ The recent analysis of asset declaration revealed that the monitoring mechanism only partially satisfies its functions. The monitoring mechanism is mostly focused on verifying the technical accuracy of asset declarations, rather

¹⁸⁴ Ibid., pp 67-68.

¹⁸⁵ Criminal Code of Georgia, articles 338, 339.

¹⁸⁶ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 p 73, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

¹⁸⁷ Ibid., p 67.

¹⁸⁸ TI Georgia, *The Georgian Asset Declaration System is in Need of an Update*, 29 September, 2020, <https://transparency.ge/en/blog/georgian-asset-declaration-system-need-update>

¹⁸⁹ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 pp 68-69, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>
Ibid., pp 67-68

¹⁹⁰ Civil Service Bureau, *Civil Service Bureau Activity Report 2019*, p 32, <http://www.csb.gov.ge/media/2764/%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A3%E1%83%A0%E1%83%98-%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98-2019.pdf>

than aiming to reveal instances of corruption, violations related to post-employment restrictions (the so called “revolving door policy”) and conflict of interest.¹⁹¹

Unfortunately, the CSB does not implement the monitoring of the post-employment activities of former public officials. The CSB was forthcoming in pointing out the flaws in the existing legal framework concerning the vague provisions with regard to specific categories of “revolving door” cases and the absence of enforcement of post-employment monitoring, since there is no specific agency responsible for the supervision of the enforcement.¹⁹²

1.8. PUBLIC PROCUREMENT

1.8.1. Operating Environment

The Public Procurement system in Georgia is generally operating transparently. The government contracts are concluded through a specifically designated website where all required forms and documents are uploaded.¹⁹³

There are robust provisions on transparency of public procurement in the Georgian legislation. The State Procurement Agency (SPA) is responsible for putting together and maintaining a unified database containing public procurement records as well as monitoring the procurement process. The procuring entities are required to submit procurement reports to the SPA which according to the law, must be publicly available. All public procurement is carried out electronically, where all procurement related documents must be publicly available through an online portal.¹⁹⁴ Although there is no requirement to include anti-corruption clauses in procurement contracts, the Law on Public Procurement does contain provisions addressing the prevention of conflict of interest in the procurement process.¹⁹⁵

In order to ensure the accountability and transparency in the procurement process, the SPA has a specially designated Dispute Resolution Council. The Council’s board receives and reviews complaints related to the procurement process.¹⁹⁶

Although Georgia has a transparent electronic public procurement system in place and an effective adjudication mechanism for procurement related complaints, it continues to lack some important anti-corruption provisions. For example, companies and individuals convicted for corruption-related offences are not prohibited from participating in the public procurement process.

¹⁹¹ TI Georgia, *The Georgian Asset Declaration System is in Need of an Update*, 29 September, 2020, <https://transparency.ge/en/blog/georgian-asset-declaration-system-need-update>

¹⁹² TI Georgia, *“Revolving door” problem in Georgia: shortcomings of legislation and enforcement*, 15 July, 2019, <https://transparency.ge/en/blog/revolving-door-problem-georgia-shortcomings-legislation-and-enforcement>

¹⁹³ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 p 70, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

¹⁹⁴ Ibid., pp 70-76.

¹⁹⁵ Ibid., p 73.

¹⁹⁶ Ibid., p 72.

Procurement is carried out by individual public entities under technical support and supervision from the SPA. The latter is responsible for the coordination and monitoring of procurement processes. The role of the agency is to carry out monitoring of public procurement which includes reception and review of reports from procuring entities and provision of recommendations to the government on how to further improve the procurement process.¹⁹⁷ In addition to the SPA, the State Audit Office (SAO), has the authority to verify the procurement contract documentation through an audit of the procuring entity. At the request of SAO, the procuring agency is required to submit any document related to the public procurement.¹⁹⁸

The threshold above which competitive bidding is required is defined by the Decree introduced by the head of the SPA in 2013. The decree defines a maximum threshold of GEL 5,000 (with the exception of Georgia's diplomatic missions GEL 50,000 and the Ministry of Interior GEL 20,000), that allows conclusion of simplified public procurement without a special permission, and/or competitive bidding. Public procurement contracts exceeding GEL 5,000 require competitive bidding.¹⁹⁹ Furthermore, the Law obligates the procuring agency to request safeguards and guarantees from the contract supplier entity, if the value of the contract exceeds GEL 200,000.²⁰⁰

The problem of the non-competitive procurement remains unaddressed by Georgia's government. This problem has also been stressed by the OECD ACN and a number of civil society and watchdog organizations in Georgia. The current law contains exceptions, which allow for conclusion of contracts outside the electronic platform or by means of non-competitive, direct procurement. As a result of the above-mentioned exemptions the number of direct contracts holds a significant portion in the annual public procurement.²⁰¹

1.8.2. Integrity of Contracting Authorities

The State Procurement Agency is a public institution, therefore its employees are considered civil servants and the standard anti-corruption and conflict of interest measures apply. These anti-corruption provisions are covered in the Law on Conflict of Interest and Corruption in Public Service²⁰² as well as the Law on Public Service.²⁰³ Aside from the existing legislative framework, the SPA has its own internal code of conduct which regulates ethical norms of the employees.²⁰⁴

The SPA's Learning Center regularly conducts training on State Procurement for the employees of various public agencies, local government municipalities and Legal Entities of Public Law (LEPL) who participate in the public procurement process. The SPA's Learning Center also

¹⁹⁷ Ibid., p 77.

¹⁹⁸ The Law of Georgia on State Procurement, 20 April, 2005, article 22(1).

¹⁹⁹ The State Procurement Agency, *Decree of the Chairman of the State Procurement Agency, Decree No 13*, article 2, 17 August, 2015.

http://www.procurement.gov.ge/getattachment/ELibrary/LegalActs/gamartivebuli_Sesyidvis_Catarebis_wesi.pdf.aspx?fbclid=IwAR2vt6uuk7YHYnzHPy5nvMgEY8wULgFf-MTt3niTDiAmDsajkN0t4AvGK3o

²⁰⁰ The Law of Georgia on State Procurement, article 34.

²⁰¹ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 p 77, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

²⁰² Law of Georgia on Conflict of Interest and Corruption in Public Service, articles 3, 5, 7, 8, 9, 13.

²⁰³ Law of Georgia on Public Service, 27 October, 2015, articles 12, 14, 17.

²⁰⁴ The State Procurement Agency, *Decree of the Chairman of the State Procurement Agency, Decree No 5*, 24 August, 2014, <http://procurement.gov.ge/ELibrary/LegalActs.aspx>

cooperates with a number of international and domestic organizations working in the field of human capital development. These donors and partners assist the SPA with training and seminars.²⁰⁵

As mentioned earlier, government officials and senior civil service members are required to submit annual asset declarations. The law also contains provisions with regard to the verification of these asset declarations by the CSB. Consequently, these reports are reviewed by the Civil Service Bureau annually. Asset declarations of public officials are publicly available through the government portal declaration.ge.²⁰⁶ As mentioned in chapter 1.7.6 the CSB is mostly focused on verifying the technical accuracy of asset declarations, rather than making an effort toward detecting potential conflict of interest cases in the declarations of public officials.²⁰⁷

Transparency International Georgia's analysis of the past several years revealed that the whistleblowing mechanism in the country is largely nonfunctional. Furthermore, the whistleblowing mechanism is not functioning in half of the government institutions and there is no actual statistical data on the reporting of whistleblower cases. The country's law enforcement agencies have not developed specific legislation addressing whistleblowing and protection of whistleblowers, which in turn makes civil servants working in the law enforcement especially vulnerable and susceptible to possible reprisal for whistleblowing.²⁰⁸

The legal responsibility and sanctions for contracting authorities and its employees are addressed in the Law on Conflict of Interest and Corruption in Public Service. The main anti-corruption provisions with regard to legal and disciplinary sanctions are contained in the former law. The Law on Conflict of Interest and Corruption in Public Service defines corruption within public service as an act that contains signs of misconduct for which the law provides disciplinary, administrative or criminal liability.²⁰⁹ Article 20 of the same law provides a number of sanctioning mechanisms for the violation of integrity of contracting authority as a public institution as well as its employees who, (according to the law) are considered civil servants. Deliberate or negligent violation of the Law by a civil servant may be subject to disciplinary liability, unless this is not categorized as a criminal activity or administrative offense. In a circumstance when a civil servant violates the requirement of the above-mentioned law, in addition to dismissal, he or she may be subject to compulsory dismissal from civil service.²¹⁰ Article 8 of the Public Procurement Law includes provisions regarding conflict of interest for the representatives of contracting authorities, which include such activities as review, selection and evaluation of public tenders.²¹¹ Furthermore, the article 195(1) stipulates that prior agreement or any other type of deal between the parties

²⁰⁵ The State Procurement Agency, *2019 Annual Activity Report*, Tbilisi, 2020, pp 45-46, accessed on 20 November, 2020,

http://www.procurement.gov.ge/getattachment/ELibrary/AnalyticalStudiesReports/Angarishi_2019_GEO.pdf.aspx

²⁰⁶ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 pp 42, 43, 68, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

²⁰⁷ Transparency International Georgia, *The Georgian Asset Declaration System is in Need of an Update*, 29 September, 2020

²⁰⁸ TI Georgia, *The Dysfunctional whistleblowing mechanism in the Georgian public service*, 25 June, 2020, <https://transparency.ge/en/blog/dysfunctional-whistleblowing-mechanism-georgian-public-service>

²⁰⁹ The Law on Conflict of Interest and Corruption in Public Service, article 3 (2).

²¹⁰ The Law on Conflict of Interest and Corruption in Public Service, article 20 (5) (6).

²¹¹ The State Procurement Agency, *Decree of the Chairman of the State Procurement Agency, Decree No 306*, 23 April, 2014, <http://procurement.gov.ge/ELibrary/LegalActs.aspx>

involved in the public procurement process, in order to gain advantage or profit is punishable by a fine, house arrest for the term of 6 months to two years, or imprisonment for up to two years.²¹²

As regards the remuneration of procurement authorities, the employees of the State Procurement Agency as the rest of civil servants receive an average salary of GEL 1,300. The remuneration rate has not changed significantly in recent years.²¹³

1.8.3. External Safeguards

The State Procurement Agency is the body authorized to protect and comply with the requirements of the state procurement legislation. The SPA is an independent legal entity under public law. The agency is directly accountable toward the government of Georgia and its chairman is appointed by the Prime Minister. The SPA's annual activity reports as well as reports containing information on procurement statistics and procurement misconduct by contracting companies are available at the agency's website²¹⁴. Additionally, the agency is required to prepare an annual performance report and submit it to the Government of Georgia by May 15 of each year.²¹⁵

The Dispute Resolution Council (DRC) was established in 2017 under the umbrella of the SPA whose role is to ensure fair resolution of public procurement disputes.²¹⁶ In 2019 DRC received 1,245 complaints within its review board, out of which 705 complaints were resolved in favor of business entities.²¹⁷

²¹² Criminal Code of Georgia, article 195(1).

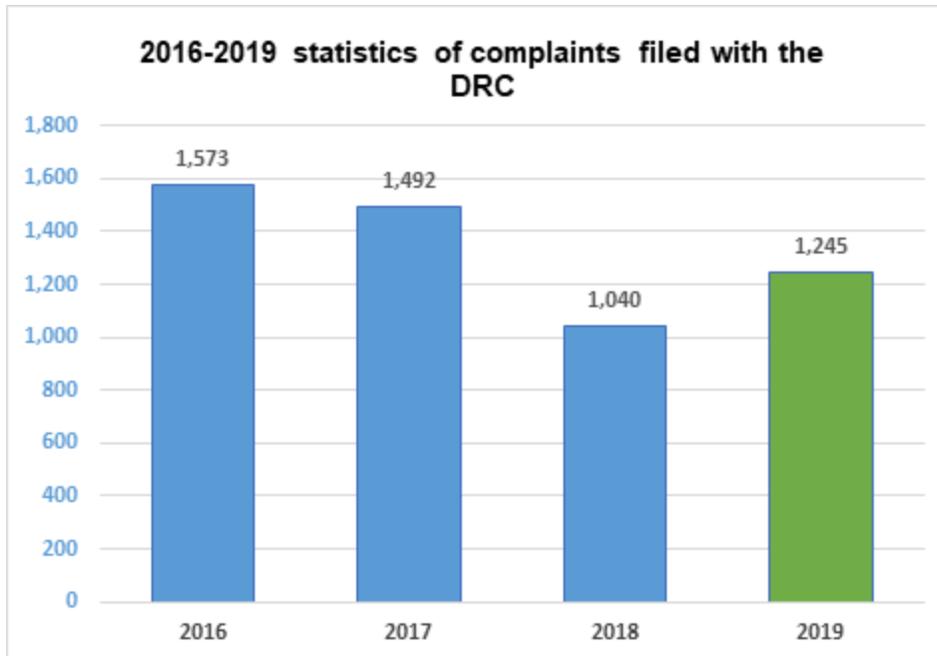
²¹³ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 pp 38-39, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

²¹⁴ The State Procurement Agency of Georgia website, *Analytical Surveys*, <http://www.procurement.gov.ge/ELibrary/AnalyticalStudiesReports.aspx>

²¹⁵ The Law of Georgia on State Procurement, article 4.

²¹⁶ OECD Anti-Corruption Network (ACN), *Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia, 2019*, pp, 104-105, March 2019, <http://bit.ly/2NnA0h>

²¹⁷ State Procurement Agency, *2019 Annual Performance Report*, p 29, [http://www.procurement.gov.ge/News/news-\(143\).aspx](http://www.procurement.gov.ge/News/news-(143).aspx)



Data obtained from 2019 SPA annual report

As regards a procedural process for the appeals, procurement related decisions can be appealed to Georgian courts, or within the DRC. The OECD ACN positively assessed the introduction of an effective appeals mechanism for the procurement disputes, however, an outstanding problem remains with regard to inability to appeal to the DRC with a request to stop a tender. Furthermore, a recommendation has been issued by the OECD to separate the DRC from the State Procurement Agency and transfer it under the umbrella of the Competition Agency in order to ensure its independence and non-partiality. As a result, the SPA put together a draft law on institutional reorganization of DRC (as part of the commitment toward the EU Association Agreement under article 143).²¹⁸ The DRC has been functioning since 2018 and is an independent entity whose role is to resolve public procurement disputes in a fair and efficient manner. The DRC is independent in its mandate and is not under the subordination of any agency or public official. The board is comprised of three members from the SPA and three members of relevant civil society organizations, as well as members of academia, a representative from the Business Ombudsman of Georgia and the Chamber of Commerce.²¹⁹

Aside from the SPA, the State Audit Office (SAO) serves as an inspection body to study the effectiveness of the electronic public procurement system, identify deficiencies within the existing system and provide relevant recommendations for its improvement. The SAO also monitors the

²¹⁸ OECD Anti-Corruption Network (ACN), Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia, 2019, pp, 103-105, March 2019, <http://bit.ly/2NnA0h>

²¹⁹ The State Procurement Agency, *Decree of the Chairman of the State Procurement Agency, Decree No 1, articles 2, 5, 8 February, 2018*, <http://procurement.gov.ge/ELibrary/LegalActs.aspx>

public procurement activities of government institutions and performs the role of an external monitoring body for the public procurement.²²⁰

Having said that, the SAO as many other public agencies in Georgia, has been subject to external political pressure. In 2017 Lasha Tordia, the Auditor General of Georgia was physically assaulted by Otar Partskhaladze, a former Chief Prosecutor. The assault was related to an alleged corruption case which the SAO was investigating at the time. According to Mr. Tordia the case under the investigation involved suspicious transfer of land plots in 2016 and Partskhaladze's involvement in this transaction.²²¹ Aside from Mr. Partskhaladze previously holding an official position within Georgian government, he is also affiliated in close connection with the leader of the ruling Party Georgian Dream Bidzhina Ivanishvili.

Although public procurement information is publicly available there are a number of problems related to the more detailed information such as the general statistics or aggregate procurement data which in turn will allow civil society organizations to easily obtain, monitor and evaluate the performance of procuring entities as well as measure the transparency and accuracy of the procurement process. To this day, Georgia's public procurement database is unavailable in a machine-readable format, which points to the lack of political will on the side of the government and the State Procurement Agency.²²²

Despite having one of the most advanced public procurement system in the region, the risk of corruption related to public procurements in Georgia remains to be high as a result of non-transparent system of using subcontractors, allowing persons convicted of corruption fraud to participate in public procurements, simplified procurements and the so called with rigged specifications tenders which provide more opportunity for corruption scheme in the procurement process.²²³ The investigation of potential corruption cases in the public procurement is not carried out consistently and effectively. In addition, there are multiple irregularities connected with campaign financing process as well as the suspicious pattern of successful public procurement history among the ruling party's donors.²²⁴ For example, companies connected to these donors received approximately GEL 47 million from public tenders in 2020 (as of October 1) and in return these donors contributed GEL 1.3 million to the ruling party around the same period. Furthermore, companies belonging to natural persons who have donated to the ruling party have a history of concluding simplified public procurement contracts. Some of these companies are directly or indirectly connected to individuals and have contributed approximately GEL 2.2 million to the

²²⁰ State Audit Office, *Audit Reports*,

<https://sao.ge/ka/%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%94%E1%83%91%E1%83%98?isAudit=true>

²²¹ IDFI, *Joint Statement of NGOs regarding Assault of Lasha Tordia, Auditor General of Georgia*, 13 May, 2017, https://idfi.ge/en/ngos_statement_on_attack_to_general_auditor_lasha_tordia

²²² TI Georgia, *Access to Public Procurement Information in Georgia Remains a Problem*, 18 September, 2020, https://transparency.ge/en/blog/access-public-procurement-database-georgia-remains-problem/?custom_searched_keyword=procurement

²²³ TI Georgia, *Corruption and Anti-Corruption Policy in Georgia: 2016-2020*, 21 October, 2020, <https://transparency.ge/en/post/corruption-and-anti-corruption-policy-georgia-2016-2020>

²²⁴ TI Georgia, *Statement on the occasion of International Anti-Corruption Day*, 9 December, 2020, <https://transparency.ge/en/post/statement-occasion-international-anti-corruption-day>

ruling party. In return, these companies received around GEL 3.8 million from simplified public procurement contracts in 2020.²²⁵

The issue of simplified procurement became even more noticeable during the COVID-19 pandemic state of emergency period (from 21 March – 22 May, 2020). During this period 11,317 contracts worth a total of GEL 127.2 million were concluded through simplified procurement. Nearly half of these contracts amounted to GEL 57 million were concluded on an urgent basis. Although the law does not prohibit the use of such procurement mechanism, the frequency of such procurements coupled with the alleged affiliation of the selected suppliers with the ruling party cause significant concern. For example, during the past several years, companies affiliated with the Georgian Dream and Salome Zurbashvili's political donors received contracts amounting to at least GEL 45 million through direct procurement during the state of emergency, which consists of 35 percent of the total amount of procurements during this period.²²⁶

1.8.4. Regulations for the Private Sector

The Law on Procurement requires the State Procurement Agency to maintain a register of qualified suppliers participating in public procurement. This list is also referred to as the “white list.” The white list is compiled and maintained by the SPA and is publicly available through its official website. Qualified suppliers registered in the white list enjoy the use of a more simplified procedure when participating in public tender.²²⁷ The supplier must meet the following requirements in order to be registered in the white list: a) a company has not been put on the black list for the duration of at least one year; b) a company has not received a warning of eligibility to be put on the so called “black list,” as a result of an administrative proceeding, for the duration of at least one year; c) a company is not on the registered debtors list; d) a company has not been a subject to proceedings of restructuring, liquidation or insolvency; e) the company has to have a solid and clean record of fulfilling public procurement assignments and a written support letter from at least two contracting agencies; f) neither of the individuals holding a leadership position within the company has not been previously prosecuted for economic or corruption related crime; g) a company should have a turnover of at least GEL 1,000,000 for over the course of last three years, as well as (by the time of request to be registered in the white list) a turnover for the past year should not be less than GEL 200,000. Additionally, all listed public procurement contracts should be delivered and obtain status of completion by the time of the request; h) a company does not owe any debt toward the state budget of Georgia; i) a company's record has been updated in the entrepreneurs and non-entrepreneurial (non-commercial) legal entity register.²²⁸

²²⁵ TI Georgia, *Funding of the 2020 Parliamentary Election Campaign (Interim Report)*, 30 October, 2020, <https://transparency.ge/en/post/funding-2020-parliamentary-election-campaign-interim-report>

²²⁶ TI Georgia, *Public procurement during the state of emergency: Basic data analysis and corruption risks*, 22 July, 2020, <https://transparency.ge/en/post/public-procurement-during-state-emergency-basic-data-analysis-and-corruption-risks>

²²⁷ The Law of Georgia on State Procurement, article 3.

²²⁸ The State Procurement Agency, *Decree of the Chairman of the State Procurement Agency, Decree No 2, article 3*, 26 February, 2016, <http://procurement.gov.ge/ELibrary/LegalActs.aspx>

Subsequently, the Law on Procurement contains provisions with regard to restrictions for dishonest suppliers which is often referred to as the “black list.” The SPA maintains a roster of blacklisted companies which is available through its official website. The list contains information about bidders and suppliers who have been accused of dishonest conduct and violation of the procurement law. According to the law, these entities are prohibited from participating in public procurement for the duration of one year.²²⁹

The conditions under which a supplier is subject to blacklisting are as follows: a) in case of an electronic and consolidated tenders, or competition, a supplier is disqualified as a result of committing an unscrupulous act; b) a company is disqualified if after concluding the contract, it became evident that the supplier, committed fraud or behaved in a dishonest manner in order to obtain the right to enter into a contract; c) the supplier failed to fulfill or inadequately fulfilled the terms of the contract.²³⁰

Georgian legislation does not contain provisions which requires companies to commit to strict anti-corruption policies and provide proof that they have not engaged in illegal conduct before they are allowed to participate in tenders. Conversely, the existing legislation also does not regulate permission for companies to participate in tender only if their ownership structure is clear and publicly available, including information related to its beneficial and ultimate ownership of a company.

1.9. TAXES AND CUSTOMS

1.9.1 Operating Environment

According to the Georgian Law, the Revenues Service and its structural units are designated as the national tax and customs authority. The Revenue Service (RS) is a legal entity under public law under the supervision of the Ministry of Finance. The RS exercises its authority across the entire territory of Georgia with offices in several locations within Georgia.²³¹ The Tax Code requires all persons (citizens and residents) to pay national and local taxes. The local self-government municipal authorities may introduce only the local taxes stipulated in the tax legislation. Taxes are national and local. The major tax categories are: a) income tax; profit tax; value added tax (VAT); d) excise tax; 3) import duty; f) property tax.²³²

Local self-government authorities are authorized to introduce a local tax, as a flat rate tax applicable across the jurisdiction of the self-governing unit. The local tax shall be mandatory for industries and businesses operating on the territory of the respective municipal unit.²³³

There are a number of provisions in the tax code of Georgia addressing tax exemption. These provisions are largely in line with international (and the EU) standards and contain rigorous

²²⁹ The Law of Georgia on State Procurement, article 3.

²³⁰ The State Procurement Agency, *Decree of the Chairman of the State Procurement Agency, Decree No 19, article 3*, 29 October, 2015, <http://procurement.gov.ge/ELibrary/LegalActs.aspx>

²³¹ Tax Code of Georgia, 17 September, 2010, article 48.

²³² *Ibid.*, articles 5, 6.

²³³ *Ibid.*, article 7.

exemptions for income tax and VAT, as well as specific individuals and non-commercial entities.²³⁴

The RS has multiple service centers across the country, including the capital, Tbilisi, where individuals and commercial entities can receive the necessary assistance. The RS website contains an extensive list of instructions (video, audio and written), for various purposes such as filing of tax documents for income, property and commercial activity. The RS website also contains educational information regarding tax payers' rights and responsibilities. As to filing of tax documentation, the RS offers an online automated platform where certain type of tax forms can be submitted.²³⁵ The existing tax reporting mechanism offers individuals and commercial entities, submission of tax return forms personally, via the registered mail, or electronically.²³⁶

RS publishes annual reports containing information and statistics, regarding taxes, custom fees collected, and tax return activity. The RS also reports on reforms and infrastructural projects in customs and tax authority.²³⁷

The RS, in cooperation with foreign governments of partner EU countries, carried out a number of positive reforms recently. Digital Customs was introduced in 2019 in order to digitize customs and circumvent bureaucratic processes, the program will enable its users to exchange data electronically and introduce electronic document submission process. The idea of Digital Customs is to create a comfortable environment for businesses and strengthen risk-based customs control mechanism.²³⁸

The RS continues to work on the improvement of legislation and harmonizing it with international standards. In this respect, a new Customs Code has entered into force in 2019 which is fully in line with the EU standards and provides a significantly improved environment for customs regulation.²³⁹

In the framework of the Deep and Comprehensive Trade Agreement (one of the major components of the EU-Georgia Association Agreement), Georgia has begun working on the introduction of the New Computerized Transit System (NCTS).²⁴⁰

Even though Georgia has taken a number of steps in the direction of tax amnesty and tax breaks, the government has not been very transparent in terms of assessing and communicating its tax policies with the public. This in turn has raised suspicions that some of these initiatives could be politically motivated. The government and the Ministry of Finance in particular has not explained

²³⁴ Ibid., articles, 60, 82, 86, 99, 167, 168, 206.

²³⁵ Revenue Service of Georgia, <https://www.rs.ge/Contact-en?cat=1&tab=1>

²³⁶ Tax Code of Georgia, article 67.

²³⁷ Revenue Service of Georgia, *2019 Annual Report*, pp 16, 21, 36, 37, 38, 39, 40, 41, 42, 43, https://www.rs.ge/RsGe.Module/GetDoc/Get_File?doc_id=10792

²³⁸ Revenue Service of Georgia, *2019 Annual Report*, p 20, https://www.rs.ge/RsGe.Module/GetDoc/Get_File?doc_id=10792

²³⁹ Ibid., p 24

²⁴⁰ Ibid., p 31

its effort to write off over GEL 2 billion in tax liabilities from nearly 100,000 tax payers in 2016, which interestingly coincided with an election year.²⁴¹

1.9.2 Integrity of Tax Administration Authorities

The RS is a Legal Entity under Public Law, therefore it is subject to the same anti-corruption policy as outlined in the Law on Conflict of Interest and Corruption in Public Service. Specifically those concerning the adherence to conflict of interest, integrity and transparency principles.²⁴² Additionally, the RS and its employees are subject to measures of liability provided by the Labor Code of Georgia as well as the Law of Georgia on the Revenue Service.²⁴³

In 2014, the RS introduced its own, internal code of conduct which encompasses major anti-corruption and integrity provisions reflected in the above-listed laws. The code contains provisions concerning protection of state and commercial tax and customs secrets, confidentiality, conflict of interest, bribery and others.²⁴⁴ As regards disciplinary sanctions for the employees of tax and customs authority, there are a number of provisions listed in the RS's Code of Conduct document which address various types of employee misconduct and appropriate disciplinary sanctions are in place in order to mitigate them.²⁴⁵

Georgian tax and customs authority, the RS has several sanctions in place, financial, material (such as seizure of property), administrative, and criminal. These sanctions vary depending on the severity of a crime or tax/custom misconduct. In 2019 the RS has issued more than 28,000 tax and customs as well administrative sanctions as a result of which the tax and customs authority obtained monetary fines amounting to GEL 23, 416,403. The Tax Monitoring Department within the RS carried out inspection of close to 5,000 entities, as a result of which numerous violations were revealed. The RS issued administrative sanctions as well as forwarded cases to the law enforcement agencies for further criminal investigation. The total of GEL 662.31 million was obtained as a result of tax audit and monitoring efforts.²⁴⁶

As far as the whistleblowing mechanism is concerned, Georgia's legal framework on whistleblowing is applied for the employees of the tax and customs authority stipulated in the Law on Conflict of Interest and Corruption in Public Service. (see section 2.5.1. for whistleblower

²⁴¹ TI Georgia, *Unwarranted GEL 2 billion write-off planned as part of tax amnesty*, 23 May, 2016, <https://www.transparency.ge/en/blog/unwarranted-gel-2-billion-write-planned-part-tax-amnesty>

²⁴² Law of Georgia on Conflict of Interest and Corruption in Public Service

²⁴³ Revenue Service of Georgia, *Internal Regulations of the Legal Entity of Public Law Revenue Service*, 18 July, 1014, article 1, <https://matsne.gov.ge/ka/document/view/2426434?publication=16>

²⁴⁴ Revenue Service of Georgia, *Internal Regulations of the Legal Entity of Public Law Revenue Service*, 23 August, 2018, articles 3,4, <https://matsne.gov.ge/ka/document/view/4349014?publication=0>

²⁴⁵ *Ibid.*, article 17.

²⁴⁶ Revenue Service of Georgia, *2019 Annual Report*, pp 44-50, https://www.rs.ge/RsGe.Module/GetDoc/Get_File?doc_id=10792pp

mechanism).²⁴⁷ However, as mentioned in previous chapters the existing whistleblowing mechanism is weak and remains largely unimplemented in practice.²⁴⁸

The employees of the RS are considered civil servants, therefore the same provision with regard to remuneration of civil servants is applied as stipulated in the Georgian legislation.²⁴⁹ According to statistical data obtained from the State Budget of Georgia, an average salary during 2020 for the employees of the Ministry of Finance and its structural units, including the Revenue Service amounted to GEL 740.²⁵⁰

As mentioned in previous sections, the enforcement of conflict of interests norms within Georgian public institutions is generally weak, which likely affects the tax authorities as well.²⁵¹

1.9.3 External Safeguards

According to the Georgia's Tax Code, the Revenue Service of Georgia assigns a special taxpayer identification number to an individual taxpayer as well as commercial entities. The tax and customs identification number is unique and is universally used for all commercial transactions of companies.²⁵²

The Revenue Service is an independent public agency under the umbrella of the Ministry of Finance. The service has its own organizational structure and monitoring departments who

function independently.²⁵³ The results of financial, audit and customs monitoring are reported through annual reports of the organization, where a detailed statistical information is provided with regard to investigative activities and sanctions imposed on commercial entities.²⁵⁴

The Business Ombudsman of Georgia is an independent agency whose head is appointed by the Prime Minister of Georgia. The main role of The Business Ombudsman is to protect the rights and legitimate interests of individuals involved in entrepreneurial activities, reveal the facts of business misconduct, as well as facilitate the protection of interests of commercial entities and individuals whose rights have been violated. The information regarding reporting of business misconduct and corruption related activities received from commercial entities, or individuals is confidential. The Business Ombudsman offers various channels for the reporting of commercial

²⁴⁷ Law on Conflict of Interest and Corruption in Public Service, article 20 (1).

²⁴⁸ TI Georgia, *The dysfunctional whistleblowing mechanism in the Georgian public service*, 25 June, 2020, <https://transparency.ge/en/blog/dysfunctional-whistleblowing-mechanism-georgian-public-service>

²⁴⁹ The Law of Georgia on Public Service, article 57.

²⁵⁰ The Ministry of Finance of Georgia, 2020 State Budget of Georgia, <https://www.mof.ge/5261>

²⁵¹ OECD Anti-Corruption Network (ACN), *Anti-Corruption Reforms in Georgia - Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan*, 15 September 2016, p 8, <http://bit.ly/30krxRv>

²⁵² Tax Code of Georgia, articles, 8, 51, 66.

²⁵³ Revenue Service of Georgia, the *Order no. 303 of the Minister of Finance on Approval of the Statute of the Revenue Service, a Legal Entity under Public Law*, 3 May, 2011, articles 2,3, 4, <https://www.rs.ge/AboutUs?cat=4&tab=1>

²⁵⁴ Revenue Service of Georgia, *2019 Annual Report*, pp 44-50, https://www.rs.ge/RsGe.Module/GetDoc/Get_File?doc_id=10792pp

corruption and misconduct such as direct communication with tax payers, meetings with various business associations, statements from taxpayers, phone and electronic communication.²⁵⁵

Regrettably, Georgian business companies cannot fully rely on the impartial arbitration of their disputes in courts as Georgian judiciary is not entirely independent and is often used as a political tool in high-profile cases.²⁵⁶ There is a commonly shared perception within the legal professional community that corrupt deals are concluded in courts. The problems of Georgian judiciary have also been addressed by several business associations as well as some big investors, who often point out that their concerns are not addressed in a partial manner. Such allegations were made in the previously mentioned case related to Phillip Morris tobacco company.²⁵⁷

Assessment Categories for the Public Sector	
Indicator	Score
1.1 PROHIBITING BRIBERY OF PUBLIC OFFICIALS	58
1.1.1. Laws Prohibiting Bribery of Public Officials	100
1.1.2. Enforcement of Laws Prohibiting Bribery of Public Officials	50
1.1.3. Capacities to Enforce Laws Prohibiting Bribery of Public Officials	25
1.2 PROHIBITING COMMERCIAL BRIBERY	66
1.2.1. Laws Prohibiting Commercial Bribery	100
1.2.2. Enforcement of Laws Prohibiting Commercial Bribery	50
1.2.3. Capacities to Enforce Laws Prohibiting Commercial Bribery	50
1.3 PROHIBITING LAUNDERING OF PROCEEDS OF CRIME	66
1.3.1. Laws prohibiting laundering of Proceeds of Crime	100

²⁵⁵ Business Ombudsman of Georgia, <https://businessombudsman.ge/en/about-us/activities>

²⁵⁶ Council of Europe, *Georgia should continue strengthening the independence and impartiality of judges*, 1 December, 2016, <https://www.coe.int/en/web/commissioner/-/georgia-should-continue-strengthening-the-independence-and-impartiality-of-judges>.

²⁵⁷ TI Georgia, *Corruption Risks in Georgian Judiciary*, 5 July 2018, <https://www.transparency.ge/en/post/corruption-risks-georgian-judiciary>

1.3.2. Enforcement of Laws Prohibiting Laundering of Proceeds of Crime	50
1.3.3. Capacities to Enforce Laws Prohibiting Laundering of Proceeds of Crime	50
1.4. PROHIBITING COLLUSION	66
1.4.1. Laws Prohibiting Collusion	100
1.4.2. Enforcement of Laws Prohibiting Collusion	50
1.4.3. Capacities to Enforce Laws Prohibiting Collusion	50
1.5. WHISTLEBLOWING	50
1.5.1. Whistleblower Laws	75
1.5.2. Enforcement of Whistleblower Laws	25
1.6. ACCOUNTING, AUDITING AND DISCLOSURE	81
1.6.1. Accounting and auditing standards	100
1.6.2. Enforcement of Accounting and Auditing Standards	100
1.6.3. Professional Service Providers	100
1.6.4. Beneficial Ownership	25
1.7. PROHIBITING UNDUE INFLUENCE	58
1.7.1. Laws on Political Contributions	100
1.7.2. Enforcement and Public Disclosure of Political Contributions	50
1.7.3. Laws on Lobbying	75
1.7.4. Enforcement and Public Disclosure on Lobbying	25
1.7.5. Laws on Other Conflicts of Interest	50

1.7.6. Enforcement and Public Disclosure of other Conflicts of Interest	50
1.8. PUBLIC PROCUREMENT	50
1.8.1. Operating Environment	50
1.8.2. Integrity of Contracting Authorities	50
1.8.3. External Safeguards	50
1.8.4. Regulations for the Private Sector	50
1.9. TAXES AND CUSTOMS	58
1.9.1 Operating Environment	75
1.9.2 Integrity of Tax Administration Authorities	50
1.9.3 External Safeguards	50

2. ASSESSMENT CATEGORIES FOR PRIVATE SECTOR ASSESSMENT

2.1. INTEGRITY MANAGEMENT

2.1.1. Provision of Policies

The establishment of universal integrity standards for the Georgian private sector has been a long standing issue. Since 2016, the OECD ACN has been issuing recommendations for Georgia to develop a set of anti-corruption and integrity principles for private companies operating in the country. Although, certain steps have been taken in this direction, since 2016 ranging from holding discussions with business organizations to seminars and trainings provided by several government agencies involved in the enforcement of the country's anti-corruption policy.²⁵⁸ Aside from OECD's recommendations, the Anti-Corruption Council of Georgia has committed to adopt business integrity guidelines for the private sector entities, nevertheless no progress has been achieved in this regard as well as no guidelines for ethical standards for the private sector representatives has been adopted.²⁵⁹

The anti-corruption strategy framework of Georgia envisioned prevention of corruption in the country's private sector with a major focus on facilitation of transparency of the financial sector and accountability of commercial entities. In the 2015-2016 policy documents, prevention of corruption in the private sector put emphasis on supporting integrity, transparency and competition in the private sector as well as the establishment of transparency principles of corporate management and business integrity. The thematic groups involved in the development of the above-mentioned strategy involved representatives from several government agencies such as the Competition Agency, Business Ombudsman, the National Bank of Georgia as well as representatives from the private sector and business associations (Georgian Business Association, AMCHAM the Chamber of Commerce in Georgia).²⁶⁰

Since 2016, a number of activities have been carried out by the Business Ombudsman of Georgia and the Anti-Corruption Council Secretariat aimed at raising awareness on business integrity and engaging private sector and international organization representatives in 2018.²⁶¹

The Georgian National Anti-Corruption Strategy developed in July of 2019, outlines the establishment of integrity and anti-corruption principles within the private sector as one of its major goals for the coming years. The document lists the following objectives in order to achieve the above-mentioned goal: promotion of integrity, transparency and fair competition in the private

²⁵⁸ Anti-Corruption Network (ACN), Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia, 2019, p 107, March 2019, <http://bit.ly/2NnA0h>

²⁵⁹ Ibid., p 112.

²⁶⁰ OECD Anti-Corruption Network for Eastern Europe and Central Asia, *Business Integrity in Eastern Europe and Central Asia*, 2016, pp 74-75, <http://www.oecd.org/corruption/acn/Business-Integrity-in-Eastern-Europe-and-Central-Asia-ENG.pdf>

²⁶¹ Anti-Corruption Network (ACN), Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia, 2019, p 113, March 2019, <http://bit.ly/2NnA0h>

sector, establishment of transparent principles of corporate governance, reduction of corruption risks through good faith practice, which in turn will facilitate the improvement of the investment environment and economic development.²⁶²

Although there has been a number of steps taken by the government of Georgia to facilitate the establishment of anti-corruption and integrity policies for the private sector, no tangible progress has been achieved thus far.

Out of 20 large business companies studied in the framework of this report, only seven²⁶³ have a well-established anti-corruption and business ethics norms in place, according to their websites. Another four²⁶⁴ vaguely address internal anti-corruption policies. The rest of the companies whose internal anti-corruption policies are not publicly available are most likely not enforcing them in practice.

The integrity norms for the private sector are largely addressed in article 9 of the Law of Georgia on Entrepreneurs. This law regulates oversight of business entities and corporate governance. Companies are required to hold general meetings of partners at least once yearly. Major company decisions such as changes in the company's charter, establishment of a new branch, restructuring, selection of auditors and insolvency of an enterprise must be discussed at resolved at the general meeting. The company partners have the right to receive copies of annual reports and audit them if necessary. Partners also have the right to check company's financial and accounting documentation and request from other partners to fulfill their obligations before the company.²⁶⁵

Holders of at least five percent of shares in a joint stock company are entitled to request the audit of an enterprise if they suspect any wrongdoing. Additionally, shareholders have the right to request from the enterprise management copies of existing as well as agreements in progress.²⁶⁶

There is a requirement to set up a supervisory board for banks and joint stock companies. The members of a supervisory board are elected by the general meeting of partners. A supervisory board is required to monitor the activities of directors as well as is entitled to have access to company's financial documents, reports, and information on assets. In turn, directors are required to submit reports to the supervisory board.²⁶⁷

²⁶² The Ministry of Justice of Georgia, Anti-Corruption Council, *Georgian National Anti-Corruption Strategy*, July 2019, pp 32-33, <https://justice.gov.ge/Ministry/Index/174>

²⁶³ TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

²⁶⁴ TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

²⁶⁵ Law of Georgia on Entrepreneurs, 28 October, 1994, article 9.

²⁶⁶ *Ibid.*, article 9.

²⁶⁷ *Ibid.*, article 9.

2.1.2. Implementation of Practices

Other than the existing legal framework for corporate governance, it is difficult to assess the effectiveness of business companies in practice. Georgia is not very successful in terms of having an efficient corporate governance culture.²⁶⁸ In fact, Georgia ranks 73rd out of the total score of 141 in terms of Corporate Governance, in the Global Competitiveness Report 2019.²⁶⁹

Out of 20 large Georgian companies studied, less than half implement programs that address business risks and human resources policies. Since the majority of companies do not publish this information on their website, it is difficult to evaluate the effectiveness of the enforcement of these measures in the Georgian private sector at large, however there is a reasonable doubt that since many companies do not have the appropriate measures in place, they are most likely not enforcing them in practice.

Georgia ranked 66th among 140 countries in the Global Competitiveness Report 2017-2018 in terms of the observation of the norms of ethics by business entities operating in the country.²⁷⁰

As the 2020 National Integrity System Assessment Report stressed out, the overall quality of corporate governance culture among Georgian business entities is poor, however some companies are taking measures to improve their corporate culture in an effort to make it more accountable.²⁷¹

In recent years there have been a number of cases when business entities allegedly committed violations when making large monetary donations to the ruling party. For example, in 2018, in the run up to the Presidential election, the representatives of two private medical clinics donated a total of over GEL 100,000 to the ruling party backed presidential candidate Salome Zurbishvili. These individuals were allegedly tasked by the administrations to make these donations. This in turn raised serious concerns with regard to third party donation, which is prohibited by the law.²⁷²

2.1.3. Whistleblowing

There is no consolidated data with regard to whistleblowing mechanisms within the private sector, however only a handful of large companies operating in Georgia, have a written policy in place, where whistleblowing is encouraged and safety from retaliation and employee confidentiality is guaranteed.²⁷³ It is difficult to assess whether the internal whistleblowing mechanism is enforced among Georgian private companies, however the lack of such information among the majority of

²⁶⁸ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 p 166, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

²⁶⁹ World Economic Forum, the *Global Competitiveness Report 2019*, p 235, http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

²⁷⁰ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 p 167, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

²⁷¹ *Ibid.*, p 166.

²⁷² *Ibid.*, 167.

²⁷³ TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

Georgian companies points to the fact that the majority of Georgian business entities do not enforce it in practice.

Out of twenty companies, only five have a written internal whistleblowing policy published and available on their websites.

2.1.4. Business Partner Management

As mentioned in the previous chapter, corporate culture is not very well developed in Georgia. Most companies do not publish their internal corporate management documents publicly. However, a number of companies were identified, who follow regular practice of reporting their corporate activities.²⁷⁴ Out of 20 large companies studied for the purposes of this report, only seven have, according to their websites, well established business partner management policies in place and similar practical frameworks to enforce them. This once again points to the lack of well developed business partner management framework within Georgia's private sector.

2.2. AUDITING AND ASSURANCE

2.2.1. Internal Control and Monitoring Structures

Accounting and audit of the private sector is governed by the Law on Accounting, Reporting and Auditing and the executive agency in charge is the Service for Accounting, Reporting and Auditing Supervision (SARAS). This fairly new legislation was introduced in 2016 and its main purpose is to harmonize accounting, audit and reporting activities of the private sector in accordance to the EU standards. The law provides a framework and guidelines for preparation and submission of financial, accounting and corporate reporting.²⁷⁵ As the agency in charge of the execution of these regulations, SARAS is tasked with developing of a common policy, rules and standards for auditing, quality control, receive financial statements from private companies, and publishing audit reports provided by private companies through its website.²⁷⁶

Reporting of accounting and auditing is also stipulated in the Law of Georgia on Entrepreneurs. According to the law, accounting and auditing is mandatory for those enterprises whose securities are eligible to be traded on a securities market, or enterprises that are licensed by the Financial Supervision Agency of Georgia, or an enterprise counting more than 100 partners. According to the law, a company's supervisory board is required to hire an independent auditor who will carry out the audit of a given company.²⁷⁷

²⁷⁴ TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

²⁷⁵ Law on Accounting, Reporting and Auditing, 8 June, 2016, articles 1, 2, 3, 4, 5, 6, 7, 8.

²⁷⁶ SARAS, *Minister of Finance of Georgia Decree no. 223, on approving the Regulation of the Service for Accounting, Reporting and Auditing Supervision (SARAS)*, article 2, Tbilisi, 14 September, 2016, https://www.saras.gov.ge/Content/files/11-09-2018/SARAS_Regulation_ENG_2018.11.01.pdf

²⁷⁷ Law of Georgia on Entrepreneurs, article 13.

Although all business entities are required to conduct and submit their annual audit reports, only four²⁷⁸ out of 20 large companies assessed in the framework of this report, have their annual audit reports available on their website. Two companies who provide their annual audit reports contain outdated information from previous years and do not show recent audit performance. Since a majority of Georgian companies apparently do not publish their audit reports online, it is difficult to assess to what extent they are compliant with the established audit and financial reporting requirements. However, there is substantial information provided by SARAS in their annual reports, with regard to the performance of Georgian companies in terms of financial reporting and compliance.²⁷⁹

According to SARAS the data obtained in recent years, clearly indicates the progress made in various areas of private sector accounting and financial reporting. The oversight mechanism has also improved since the adoption of the new law in 2016. As a result, the reporting mechanism for the private sector as well as the number of reports by companies has been steadily increasing.²⁸⁰

2.2.2. External Audit

Accounting, audit and financial reporting is required for all four categories of commercial entities (very small, small, medium and large).²⁸¹ Conducting audits is mandatory for all commercial companies. Auditors should not demonstrate any type of conflict of interest with a company whose audit is to be conducted. According to the law, an auditor and a company conducting audit must be independent and impartial.²⁸²

As mentioned in the previous section, only a handful of large companies publish their annual audit reports. While the majority of Georgian companies do not publish their annual audit and financial reports on their websites, however this information is available through a reporting portal, which an online tool operated by SARAS where companies can submit their financial and audit reports.²⁸³ In addition, SARAS publishes annual statistics related to the number of companies (including company type break down), who submit their audit and financial reports to the agency. According to SARAS 2019 annual report more than 26,000 companies have submitted their annual audit and financial reports in 2018 to the agency, which amounts to 96 percent of the total existing number of companies operating in the country.²⁸⁴ Consequently, there is a 12 percent rise in the number of audits performed by audit companies in 2018 compared to 2016 when the accounting and audit legislation was first introduced. This trend points to a rise in the number of companies who seek audit services as well as growing accountability of Georgian private sector.

²⁷⁸TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

²⁷⁹ SARAS, Annual Reports, <https://saras.gov.ge/ka/Home/YearlyReports>

²⁸⁰ SARAS, 2019 Annual Report, 2019, p 27, https://www.saras.gov.ge/Content/files/SARAS_AR_2019.pdf

²⁸¹ Price Waterhouse Cooper, *Doing Business and Investing in Georgia 2019 Edition*, 2019, p 28, https://www.pwc.com/ge/en/assets/pdf/Doingbusiness_2019_Final.pdf

²⁸² Law on Accounting, Reporting and Auditing, articles 2, 16.

²⁸³ Reporting Portal, <https://reportal.ge/Home.aspx>

²⁸⁴ SARAS, 2019 Annual Report, 2019, p 14, https://www.saras.gov.ge/Content/files/SARAS_AR_2019.pdf

In a negative development, financial reporting of companies is not very consistent and informative. The World Bank points to poor enforcement of financial reporting and the quality of information submitted to the oversight agencies.²⁸⁵

2.2.3. Independent Assurance

Georgian Law on Accounting, Reporting and Auditing stipulates that the audit of private companies must be conducted in accordance with International Standards on Auditing (ISA), which is adopted by the International Council on Auditing and Assurance Services (IAASB). These standards which issues a guidebook on international standard assurances.²⁸⁶

In 2019, SARAS introduced the International Standard on Quality Control adopted and issued by IAASB as well as updated versions of International Standards on Auditing, Review and Assurance and Related Services.²⁸⁷ Commercial entities and audit companies are required to adhere to these guidelines when performing their financial and audit activities. Furthermore, SARAS utilizes International Standard on Assurance Engagements 3000 (ISAE), whose purpose is to establish basic guiding principles and important procedures for professional accountants.²⁸⁸ Adherence to ISAE 300 is mandatory for all auditors who are certified to perform external audit of commercial entities.

2.3. TRANSPARENCY AND DISCLOSURE

2.3.1. Disclosure of Anti-Corruption Programs

It has to be outlined that corporate governance in Georgia is still fairly inefficient. This problem is further confirmed by Georgia being on the 80th place in the 2019 Global Competitiveness Report in terms of effective conflict of interest regulations for the private sector.²⁸⁹

It is difficult to assess the corporate governance of business companies as the disclosure of their anti-corruption programs is weak or practically non-existent. Only four²⁹⁰ out of 20 large companies have some type of anti-corruption disclosure mechanisms. With the exception of a handful of companies (mostly commercial banks such as the Bank of Georgia and TBC Bank), this mechanism is not sufficiently enforced in the private sector.

²⁸⁵ The World Bank, *Report on the Observance of Standards and Codes on Accounting and Auditing*, March, 2015, p 26, <https://openknowledge.worldbank.org/bitstream/handle/10986/22971/Georgia000Repo00Auditing00A0A0ROSCO.pdf?sequence=1&isAllowed=y>

²⁸⁶ Law on Accounting, Reporting and Auditing, article 14.

²⁸⁷ SARAS, *2019 Annual Report, 2019*, p16, https://www.saras.gov.ge/Content/files/SARAS_AR_2019.pdf

²⁸⁸ SARAS, International Standard on Assurance Engagements 300 (ISAE), p 107, https://saras.gov.ge/Content/files/isa/MASS_3000_REVISED.pdf

²⁸⁹ World Economic Forum, *The Global Competitiveness Report 2019*, p 235, http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

²⁹⁰ TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

During 2017-2018 the Anti-Corruption Council prepared integrity guidelines for business sector representatives.²⁹¹ The Council had planned to assess the effectiveness of introducing these guidelines at the end of 2018, however no assessment report has been published by the Council to this day.

As far as the training of private sector employees is concerned, except for large commercial enterprises, most companies do not provide public information on this activity.

There is no tangible data with regard to whistleblowing mechanism within the private sector, however a number of large corporations and companies operating in Georgia, have a written code of conduct in place, where whistleblowing is encouraged and safety from retaliation and employee confidentiality is guaranteed.²⁹²

There is no sufficient information with regard to whistleblowing practice within business entities and as mentioned in the earlier section however, several large-scale corporations have elaborate whistleblowing policies in place.

As for political contributions to political parties, none of the large companies studied in the framework of this report publish information with regard to political contributions and the only mechanism to monitor this activity is through the State Audit Office (SAO) online portal and similar political donation monitoring portals such as the one operated by TI Georgia.²⁹³

2.3.2. Disclosure on Organizational Structures

Only seven out of 20 large companies assessed for the purposes of this report have written and publicly available mechanisms describing their organizational structure.²⁹⁴

In a negative development, the European Bank for Reconstruction and Development (EBRD) points to a problem of poor culture of reporting on corporate governance, and that these reports (however extensive) do not reflect companies' actual practices.²⁹⁵

The EBRD describes a handful of large companies who have posted their articles of association on their websites. According to the same report, most large-scale companies studied by EBRD disclosed the names of their directors and provided latest information on their shares, capital and major stakeholders.²⁹⁶

In order to have a more transparent and accountable corporate governance practice, it is important for a country to have a strong and well established securities market in place. Georgian

²⁹¹ Ministry of Justice of Georgia, Anti-Corruption Council, *2017-2018 Interim Evaluation Report*, 2017, <https://justice.gov.ge/Ministry/Index/288>

²⁹² TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

²⁹³ State Audit Office, *Monitoring of Political Funding*, <https://monitoring.sao.ge/en>

²⁹⁴ TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

²⁹⁵ EBRD, *Corporate Governance in Transition Economies Georgia Country Report*, December 2017, p 11, <https://2017.tr-ebd.com/downloads/>

²⁹⁶ Ibid.

securities market is still significantly underdeveloped and consists of a small stock exchange, a central securities depository, three independent registrars and a few broker companies. The securities sector is largely supervised by the National Bank of Georgia.²⁹⁷ It is important to have a well-established stock exchange as a strong component of the capital market infrastructure. It can facilitate the mobilization of financial resources for sustainable economic growth as well as development and promotion of good governance within the business sector. Compared to many other countries, the Georgian securities market is still largely underdeveloped. The local securities market has significantly limited market liquidity and trading volumes. It is associated with a high degree of fragmentation, unreliability and lack of transparency in execution of trades, which is particularly evident in terms of the local equities market, where the majority of all trades are carried out “over the counter.” The Capital Market Infrastructure is comprised of two stock exchanges: the Georgian Stock Exchange and the Tbilisi Stock Exchange. Georgia is in need of developing a local capital market as well as a comprehensive capital markets plan. Furthermore, the relatively high cost of equity financing prevents investors from investing in securities which are often perceived as high-risk investment options.²⁹⁸

2.3.3. Disclosure on Country-by-Country Operations

Most Georgian companies, including those that were assessed for the purposes of this report do not pursue business in foreign countries, therefore this indicator is less relevant in the case of Georgian business companies.

For the purposes of this report, we have looked into annual reports of seven leading commercial enterprises and financial institutions operating in Georgia. Only four out seven of these enterprises disclose information concerning the following areas:

- statements of cash flows;
- statements of changes in equity;
- consolidated and separate statements of profit, loss, and other comprehensive income;
- international trade relationships of Georgian companies;
- operating income;
- return and profit;
- cost income;
- community projects;
- corporate social responsibility and capital expenditure.²⁹⁹

²⁹⁷ International Monetary Fund, *Georgia Financial Sector Assessment Program*, January, 2015, pp 6-7, <https://www.imf.org/external/pubs/ft/scr/2015/cr1510.pdf>

²⁹⁸ EBRD, *ETC SME Local Currency Programme TC Framework- Georgian Stock Exchange*, 11 September, 2018, <https://www.ebrd.com/cs/Satellite?c=Content&cid=1395276536949&pagename=EBRD%2FContent%2FContentLayout&rendermode=live%3Fsrch-pg>

²⁹⁹ TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

2.3.4. Additional Disclosure

Although Corporate Social Responsibility is not mandatory or legally imposed on companies, it is an important ethical principle that most well developed companies utilize in order to address social, economic and community problems in the country where they operate. Even though some well-established Georgian companies practice (CSR), the majority of companies are lagging behind in terms of adopting CSR as a regular practice.³⁰⁰ Only nine out of 20 large companies that were studied in the framework of this report have publicly reported about their Corporate Social Responsibility projects and only four of out nine companies published financial information in this regard. As to sponsorship of lobbying, none of the 20 companies have reported about their engagement in the lobbying activity.³⁰¹

As far as the human resources dedicated to sponsorship programs, according to the survey conducted in 2018, revealed that out of 100 major companies operating in Georgia only eight have reported to have a specially designated CSR manager within the enterprise.³⁰²

According to Caucasus Barometer Survey conducted in 2017, only 11 percent of respondents answered that CSR in Georgia is practiced regularly, which once again demonstrates that charitable activity by companies is a rare occurrence.³⁰³

2.4. STAKEHOLDER ENGAGEMENT

2.4.1 Stakeholder Relations

As regards reporting of lobbying activities, none of the 20 companies have this information available for the public.³⁰⁴

The existing accountability of commercial entities toward their stakeholders is weak and is in need of improvement in terms of harmonizing the legal and institutional framework with international best practice and the EU standards for accounting, in order to increase accountability of the private sector toward stakeholders, protect stakeholder and shareholder interests, investors and other interested third parties.³⁰⁵

³⁰⁰ The Financial, *Few Georgian Companies Follow CSR Principles, but Interest is Growing*, 28 February, 2018, <https://www.finchannel.com/csr/71752-few-georgian-companies-follow-csr-principles-but-interest-is-growing>

³⁰¹ TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

³⁰² The Financial, *Few Georgian Companies Follow CSR Principles, but Interest is Growing*, 28 February, 2018, <https://www.finchannel.com/csr/71752-few-georgian-companies-follow-csr-principles-but-interest-is-growing>

³⁰³ Caucasus Research Resources Center, *Caucasus Barometer Survey 2017*, <https://caucasusbarometer.org/en/kb2017ge/CHARCSR/>

³⁰⁴ TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

³⁰⁵ The World Bank, *Report on the Observance of Standards and Codes on Accounting and Auditing*, March, 2015, p 23, <https://openknowledge.worldbank.org/bitstream/handle/10986/22971/Georgia000Repo00Auditing00A0A0ROSCO.pdf?sequence=1&isAllowed=y>

Overall, there is little information available with regard to corporate governance of business enterprises in Georgia. However, what information is available, it leads to an assumption that corporate governance is insufficient. Additionally, there is insufficient information concerning internal regulations within companies and their integrity related issues.³⁰⁶

2.4.2 Business Driven Anti-Corruption Activities

Georgian private sector is not very active in terms of participation in the country's anti-corruption policy process. However, some effort in this regard has been made in recent years. As mentioned in previous sections, several representatives of Georgian business community and business associations were involved in the discussion and elaboration of Georgia's Anti-Corruption Strategy.³⁰⁷

Generally, the business sector too took little interest to assume leadership in this regard. Additionally, the business sector does not offer active cooperation to civil society to combat corruption and there are practically no examples of the private sector and civil society cooperation in this regard. As mentioned earlier, the Anti-Corruption Council (ACC) invited the representatives of the private sector to take part in the development of the National Anti-Corruption Strategy, but they showed little interest in this endeavor.³⁰⁸

In a positive development the ACC cooperated with the private sector on the inclusion of prevention of corruption provisions in the National Anti-Corruption Strategy and 2015-2016 Action Plan. The ACC held consultations with the representatives, however business associations that were involved in the action plan development working group were not very active in the process.³⁰⁹

2.4.3 Business Associations

Georgian business associations are not very active in terms supporting anti-corruption efforts and providing guidance for business companies in this regard. There are a number of business associations operating in Georgia, including industry specific ones.

The Association of Banks of Georgia in cooperation with the International Finance Corporation and the Georgian Stock Exchange developed the Corporate Governance Code which stipulates that the supervisory board of a company should ensure the establishment of reliable and effective

³⁰⁶ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 pp 165-166, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

³⁰⁷ OECD Anti-Corruption Network for Eastern Europe and Central Asia, *Business Integrity in Eastern Europe and Central Asia*, 2016, pp 74-75, <http://www.oecd.org/corruption/acn/Business-Integrity-in-Eastern-Europe-and-Central-Asia-ENG.pdf>

³⁰⁸ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 p 168, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

³⁰⁹ Anti-Corruption Network (ACN), *Istanbul Anti-corruption Action Plan Fourth Round of Monitoring Progress Update Report on Georgia*, 2019, p 87, March 2019, <http://bit.ly/2NnA0h>

internal control and risk management systems as well as provides a detailed set of provisions on conflict of interest and their disclosure in a public annual report.³¹⁰

None of the three major business associations operating in Georgia have publicly available anti-corruption policies or programs in place, which would point to their anti-corruption efforts.

According to the survey, the majority of business associations who work with small and medium size enterprises offer some type of training and consultation to their members, however given the frequency, this does not happen regularly and it does not provide a substantial source of awareness-raising for the business companies. Only a handful of business associations offer regularly updated information in the areas of corporate governance and DCFTA regulations.³¹¹

2.5. BOARD OF DIRECTORS

2.5.1. Oversight

As previously discussed, there are a number of laws regulating corporate governance and accountability of senior leadership in the private sector, the law of Georgia on Entrepreneurs, Law on Accounting, Reporting and Auditing and the Law on Securities Market. The financial institutions are further subject to adherence to several regulations issued by the National Bank of Georgia (NBG) which address accountability and conflict of interest of the board directors as well as the key executives.³¹²

Georgia assumed a 92th place in terms of efficiency of company supervisory boards, in the Global Competitiveness Report 2017-2018, which is a significantly low score and points at a problem of poor corporate governance in Georgia's private sector.

According to the EBRD assessment of large financial institutions in Georgia, seven out of ten companies provide some information regarding their board members and their qualifications. Most of these board members do not seem to possess very diverse skills, and only a few of them board members have expertise in the area of audit, accounting and risk management. There is also no requirement for companies to have independent directors on the board. There is no requirement for companies to have board committees in place. Audit committees in banks are assigned by the decision of the supervisory board. Most large companies have liability and conflict of interest regulations, however there is no specific provision in the existing legal framework regarding directors' duties of care and loyalty.³¹³

A Corporate Governance Code for Commercial that was forward by the NBG, recommends that audit committees should be comprised only of non-executive members and include at least one independent member of the supervisory board. Conversely, the Law on Entrepreneurs stipulates that the supervisory board must be in charge of overseeing the management, appointment, and

³¹⁰ OECD Anti-Corruption Network for Eastern Europe and Central Asia, *Business Integrity in Eastern Europe and Central Asia*, 2016, pp 114-115, <http://www.oecd.org/corruption/acn/Business-Integrity-in-Eastern-Europe-and-Central-Asia-ENG.pdf>

³¹¹ Georgian Farmers Association, *Needs Assessment of Business Supporting Organizations in Georgia*, 2019, p 10, <https://gfa.org.ge/wp-content/uploads/2019/05/FASSI-BSO-needs-assessment-ENG.pdf>

³¹² EBRD, *Corporate Governance in Transition Economies Georgia Country Report*, December 2017, p 5, <https://2017.tr-ebd.com/downloads/>

³¹³ Ibid.

dismissal of executive directors. The law³¹⁴ also contains provisions on the approval of the supervisory board for the purposes of the annual budget and economic policy implementation of the entity. However, there is no specific reference in the law with regard to the approval of the company's strategy or setting risk profile as the board's key functions.³¹⁵

2.5.2. Executive Remuneration

There is no legal requirement for business companies on remuneration policy, however several large business companies and corporations operating in Georgia do have remuneration committees incorporated within their organizational structure. The NBG Corporate Governance Code also recommends that banks establish remuneration committees as a means of compliance with internationally recognized corporate standards.³¹⁶

Out of twenty large companies studied for the purposes of this report, three companies provided names and figures regarding the annual remuneration of top executives. These reports also contain information in relation to board and senior executive remuneration benefits packages.³¹⁷

2.5.3. Conflicts of Interest

The Law on Entrepreneurs states that supervisory boards should be in charge of overseeing the management, selection and dismissal of executive directors. Additionally, the law requires that the supervisory board must be in charge of the approval of an organization's strategic guidance, which includes the approval or organization's budget. However, the law is not specific on the approval of a company's strategy or setting risk profile as its board's key function. For commercial banks the framework is clearer and requires the assignment of these tasks to the supervisory board. Additionally, board members who have clear conflict of interest are obligated to abstain from voting on the above-listed decisions. Banks are also subject to additional regulations on conflict of interest.³¹⁸

Recent amendments in the Securities Law provides more explicit guidelines on approval and disclosure requirements for related-party transactions. These transactions must be approved by the supervisory board or by general shareholders meetings and must be disclosed in the company financial statements. The Corporate Governance Code for commercial banks advises supervisory board members to abstain from decision-making on issues related to conflicts of interest or party transactions. The Law on Securities Market, stipulates that the board members and the majority shareholders should abstain from voting on issues concerning financial transactions where there is clear conflict of interest. As far as the enforcement of monitoring is concerned, over the past 10

³¹⁴ Law of Georgia on Entrepreneurs, articles 9, 65.

³¹⁵ EBRD, *Corporate Governance in Transition Economies Georgia Country Report*, December 2017, p 9, <https://2017.tr-ebd.com/downloads/>

³¹⁶ The National Bank of Georgia, *Corporate Governance for Commercial Banks*, 26 September, 2018, article 10, https://www.nbg.gov.ge/uploads/legalacts/fts/eng/215_04_eng.pdf

³¹⁷ TI Georgia's review of the websites of the country's top 20 companies (according to the Forbes Georgia magazine), December 2020.

³¹⁸ EBRD, *Corporate Governance in Transition Economies Georgia Country Report*, December 2017, p 10, <https://2017.tr-ebd.com/downloads/>

years only a few penalties have been imposed by courts or the regulatory agencies in instances of misuse of unauthorized or undisclosed related party transactions. The disclosure of party related transactions and financial statements by the majority of business enterprises remains to be poor. Non-disclosure and inappropriate accounting remain to be a problematic issue for Georgian companies. To this day the review of related party transactions by independent auditors remains non-mandatory.³¹⁹

As regards public availability of conflict of interest disclosure of Board of Directors and other senior representatives of large business companies no such practice exists in Georgia. Out of 20 large companies studied in the framework of this report, none had the above-mentioned information publicly disclosed in their annual reports, or their websites.

Assessment Categories for Private Sector Assessment	
Indicator	Score
2.1. INTEGRITY MANAGEMENT	25
2.1.1. Provision of Policies	25
2.1.2. Implementation of Practices	25
2.1.3. Whistleblowing	25
2.1.4. Business Partner Management	25
2.2. AUDITING AND ASSURANCE	83
2.2.1. Internal Control and Monitoring Structures	75
2.2.2. External Audit	75
2.2.3. Independent Assurance	100
2.3. TRANSPARENCY AND DISCLOSURE	25
2.3.1. Disclosure of Anti-Corruption Programs	25
2.3.2. Disclosure on Organizational Structures	25

³¹⁹ Ibid., pp 14-15.

2.3.3. Disclosure on Country-by-Country Operations	25
2.3.4. Additional Disclosure	25
2.4. STAKEHOLDER ENGAGEMENT	25
2.4.1 Stakeholder Relations	25
2.4.2 Business Driven Anti-Corruption Activities	25
2.4.3 Business Associations	25
2.5. BOARD OF DIRECTORS	41
2.5.1. Oversight	50
2.5.2. Executive Remuneration	25
2.5.3. Conflicts of Interest	50

3. ASSESSMENT CATEGORIES FOR CIVIL SOCIETY ASSESSMENT

3.1.1. Independent Media

The Georgian Constitution allows for free media and prohibits censorship of media outlets. The state as well as private individuals are forbidden from influencing information or the means of its dissemination through media.³²⁰ Censorship is prohibited and the media's editorial policy's independence is ensured by the Constitution.

In general, Georgia has robust legislative framework with regard to freedom of the media. The framework contains numerous provisions for the protection of media from undue interference and editorial freedom. The freedom of expression (including that of the media), is protected by the Constitution³²¹, the Law on Freedom of Speech and Expression³²² and the Law on Broadcasting.³²³

Broadcasting licenses and authorization for operation is issued by the Georgian National Communications Commission, which is an independent regulatory body and does not fall under the subordination of any state entity.³²⁴

The independence of Georgian media outlets is not sufficiently ensured in practice. There have been multiple instances of government authorities applying financial and political leverage in an attempt to exert pressure on independent TV stations. For example, the Public Broadcaster of Georgia elected Vasil Maglaperidze as the General Director several years ago. Prior to his appointment, Mr. Maglaperidze has held a number of key positions at TV stations and media outlets, owned by the family of Bidzina Ivanishvili, who is also a political leader of the ruling party Georgian Dream. Additionally, as a result of Maglaperidze's assuming a General Director's position numerous employees from his previous employment at Ivanishvili owned media companies, moved to the Public Broadcaster some of whom were even appointed to senior positions at the Public Broadcaster.³²⁵

Other cases related to suppression of independent and critical media took place in recent years. As mentioned in previous sections, the owners of two independent TV stations, TV Pirveli and Mtavari Arkhi were subject to criminal investigation and frequent summoning to the General

³²⁰ The Constitution of Georgia, 24 August 1995, article 17.

³²¹ Ibid., article 17.

³²² Law on Freedom of Speech and Expression, 24 June 2004, article 3.

³²³ Law on Broadcasting, adopted 12 December 2003, article 60.

³²⁴ Ibid., articles 1, 36, 43.

³²⁵ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 pp 139-140, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

Prosecutor's Office for interrogation.³²⁶³²⁷ Furthermore, several journalists were severely injured and attacked by the police special force during the June 20, 2019 protests in front of the Parliament. Many injured journalists claimed that rubber bullets were intentionally aimed at them by the police force who arrived at the protest in order to disperse the demonstrators.³²⁸

Similarly, the General Director of the Public Broadcaster's Adjara TV station was impeached which was allegedly another case of political interference in the activities of the media. Shortly after the new General Director's appointment numerous journalists were dismissed from Adjara TV. Many of Adjara TV journalists and civil society organizations interpreted the latter as an attempt of the authorities to change the TV stations editorial policy for their benefit.³²⁹

Polarization of media is another major trend that has been taking place in recent years. This can be explained by a polarized political system and different media outlets serving the agenda of particular political parties. Consequently, it is a frequent occurrence when changes in the position of political posts directly affect the editorial policies of media outlets.³³⁰

Although several reforms in the media sector have brought positive changes in terms of media ownership and transparency, the influence of media owners on the editorial content and policy is still quite common.³³¹

Adherence to ethical standards is another challenge for many Georgian media outlets. The media coverage is often characterized by manipulation and violation of established ethical standards. This is particularly noticeable during the election period. Despite multiple efforts by professional media associations, establishment of integrity principles among journalists remains to be a challenge. Hate speech and disinformation frequently occur during media coverage.³³²

There are several media outlets involved in exposing and investigating corruption cases, however such programs are very few in number due to insufficient resources and other hindering factors. Further impeding factors affecting the investigative journalism in Georgia are related to the lack of analytical materials on corruption and the passive coverage of high-profile corruption cases due to some TV stations' leniency toward the authorities.³³³

³²⁶ Open Society Georgia Foundation, *Statement of NGOs on the Charges Made Against former Director-General of Rustavi 2, Nika Gvaramia*, 9 August, 2019, <https://osgf.ge/en/statement-of-ngos-on-the-charges-made-against-former-director-general-of-rustavi-2-nika-gvaramia/>

³²⁷ JAM News, *TV Pirveli founder claims ruling party is threatening his father because of the channel's discourse*, 22 October, 2020, <https://jam-news.net/georgia-television-pirveli-threat/>

³²⁸ Radio Liberty, *There is no independent investigation into the case of the journalists injured on the night of June 20*, 26 July, 2019, <https://www.radiotavisupleba.ge/a/30077364.html>

³²⁹ TI Georgia, *Georgia National Integrity System Assessment 2019*, Transparency International Georgia, 26 June, 2020 pp 139-140, <https://www.transparency.ge/en/post/georgia-national-integrity-system-assessment-2020>

³³⁰ *Ibid.*, p 141.

³³¹ *Ibid.*, p 143.

³³² *Ibid.*, pp 146-147.

³³³ *Ibid.*, p 149.

3.1.2. Civil Society Engagement in Business Integrity

The cooperation between Georgian CSOs and the private sector has a poor track record. The private sector rarely engages civil society organizations in an effort to increase its accountability and other efforts ranging from Corporate Social Responsibility to corporate governance standard development.

There are a few area where CSOs and the private sector cooperate. One such area is the Anti-Corruption Council established under the Ministry of Justice, where CSOs and the representatives of the business industry are involved in the development of the Anti-Corruption Strategy and Action Plan.³³⁴ Aside from this, there are no examples of joint CSO initiatives.

3.1.3. Civil Society Monitoring of Business Integrity

Georgia has several strong and successful watchdog CSOs which continuously monitor business integrity and reveal corruption cases related to public procurement and large commercial contracts concluded between the government and the private sector.

Over the years, a number of prominent watchdog CSOs have exposed numerous high-profile corruption cases revealing involvement of high level government officials and private companies in corruption activities.

During the same period TI Georgia investigated suspicious political donations to the ruling party by a number of business companies who have been affiliated with political officials. Furthermore, many of those companies who have donated funds to the ruling party received public procurement contracts worth almost GEL 15,000,000. Conversely, during the State of Emergency in 2020 (due to the COVID 19 pandemic), several companies connected with donors of the ruling party as well as the President of Georgia, received contracts worth more than GEL 45,000,000 through direct procurement.³³⁵

Several prominent CSOs regularly organize³³⁶ around issues related to fight against corruption, which at times include activities such as joint statements, round table discussions, and campaigns in order to facilitate the implementation of anti-corruption reforms in the country which includes combatting high-level corruption and business bribery among other issues. Many of these CSOs are actively involved in the investigation of various forms of corruption, including public

³³⁴ Ibid., pp 75-76.

³³⁵ TI Georgia, *Corruption and Anti-Corruption Policy in Georgia: 2016-2020*, 21 October 2020, https://transparency.ge/en/post/corruption-and-anti-corruption-policy-georgia-2016-2020/?custom_searched_keyword=assessment+of+anti-corruption

³³⁶ IDFI, *Non-Governmental Organizations' call the Government of Georgia for Establishment of Independent Anti-Corruption Agency*, 8 July 2020, <https://idfi.ge/en/joint-statement-of-ngos-253>

procurement,³³⁷ the so called “revolving door,”³³⁸ and illegal business dealings between high-level public officials and private companies.³³⁹

Assessment Categories for Civil Society Assessment	
Indicator	Score
3.1. BROADER CHECKS AND BALANCES	50
3.1.1. Independent Media	50
3.1.2. Civil Society Engagement in Business Integrity	25
3.1.3. Civil Society Monitoring of Business Integrity	75

³³⁷ IDFI, *Transparent Public Procurement Rating – Assessing Public Procurement Legislation and the Enforcement Process in the Eurasian Region and Beyond*, 1 November, 2017, https://idfi.ge/en/tppr_in_eurasia_and_beyond

³³⁸ TI Georgia, “Revolving door” problem in Georgia: shortcomings of legislation and enforcement, 15 July, 2019, <https://transparency.ge/en/blog/revolving-door-problem-georgia-shortcomings-legislation-and-enforcement>

³³⁹ OECD Anti-Corruption Network for Eastern Europe and Central Asia, *Business Integrity in Eastern Europe and Central Asia*, 2016, pp 36-39, <http://www.oecd.org/corruption/acn/Business-Integrity-in-Eastern-Europe-and-Central-Asia-ENG.pdf>