

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Establishing a Partnership Fund in the Form of a Stock Society is Unacceptable

The draft law of Georgia on Partnership Fund was submitted to the Parliament of Georgia on February 25, 2011. The draft has been co-authored and initiated by the government of Georgia. The Committee on Sector Economy and Economic Policy and the Committee on Finance and Budget have already adopted the draft with the first hearing. The Agrarian Issues Committee is scheduled to consider the legal initiative with the first hearing tomorrow, at 10:00 am, 1 hour before the plenary session.

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The legal initiative of the government of Georgia envisages establishing a partnership fund in the form of a stock society. The stock society will be funded from the following resources: funds obtained from privatization, dividends of companies under the state ownership (including selling of shares or bonds), etc. The fund will operate as a non-profit company established to discharge the following public legal authority: creation of jobs, attraction of investments, providing support for completion of suspended projects and transferring ownership of implemented projects from the public sector to the private sector, i.e. privatization. The partnership fund will mostly focus on funding and implementing projects proposed by private sector. It is noteworthy that according to the draft the project will be considered even if its value equals GEL 5 million in agricultural sphere or GEL 30 million in non-agricultural sphere.

The draft leaves a number of questions unanswered, e.g. who the funders or shareholders of the fund would be. Although it also contains a number of flaws and inaccuracies, this time the Georgian Young Lawyers' Association would like to highlight substantial problems that should be addressed; otherwise, continuation of discussion would be pointless.

First and foremost, GYLA is categorically against the law that would allow establishing a partnership fund in the form of a stock society. The noted legal form of organization is convenient when the government wants to dodge accountability and transparency.

It is not by chance that paragraph 3 of Article 3 of the draft stipulates that “the State Budget shall not serve as a source of funding for the Fund”, whereas it is authorized to use funds obtained from privatization, dividends of companies under the state ownership (including selling of shares or bonds), etc. Apparently, author of the draft, government of Georgia intends to set up a stock society that would not be subject to the FOI provisions of the General Administrative Code, so that it would be impossible to receive information from the Fund. The argument is further substantiated by special norms on transparency and accountability of the Fund laid out by the draft.

GYLA calls on the initiator of the draft, the government of Georgia and the reviewer of the draft, the parliament of Georgia to consider the organization and legal form of the partnership fund, not to allow establishment of the Fund in the form of a stock society or in any other form envisaged by the Law of Georgia on Entrepreneurs and to establish the fund only within the field of the public law and at least as a legal entity

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of public law, in order to ensure its public accountability and making of decisions in compliance with the rules of administrative proceedings.

The draft dryly indicates that “financing projects shall be based only on competitive selection process”. At the same time, it fails to establish procedures for selection, whereas procedures for state procurement and privatization and rather detailed in order to prevent corruptive decisions as much as possible. Therefore, we consider that strict procedures for project selection and decision-making shall be elaborated for the partnership fund; furthermore, effective mechanism for bring grievances against the Fund’s decisions shall also be ensured.

The Georgian Young Lawyers’ Association calls on the parliament of Georgia and the government of Georgia to establish the partnership fund at least in the form of a legal entity of public law, as well as to develop strict procedures for project selection. GYLA calls on the civil society and media representatives to actively get involved in the process of draft review in order to ensure timely prevention of closing public access to information and other negative outcomes.