

Business Representations without Legal Person

Akaki CHARGEISHVILI*

Abstract

The present article describes the gaps and imperfections existing in the current Tax legislation of Georgia which hinder the development of business and creates obstacles for the establishment and function of business representations. Development of the business depends on various factors, and one of them is legal environment. For this very reason, by providing the concrete example, according to the legislative norms the collisions and norms are analyzed which discourage the creation and operation of the business representation that are relevant and essential for Georgia. The case study represented in the article is based upon the factual situation and provides us with the relevant picture regarding the various problematic factors that a business can face. These factors are created due to the legislative mazes which on the one hand, suggest at some point, very easy steps and approaches and on the other hand, are full of controversies. The legislative regulations are essential for business representations and should not be ignored in order to avoid any violation of the law. Legal system has always been very strict in respect to any type of violation and according to the legal doctrine, if a person is ignorant of the relevant law it does not imply that he shall be free from the responsibility.

Keywords: business representations, law, legislation, legislative regulation, legal status, labor agreement, resident

Introduction

Various papers have been written regarding the development and improvement of Georgia, as a democratic state. Similarly, great number of interesting viewpoints has been expressed and published. Many scientists and lawyers provide us with their positive visions in order to suggest the ways of achieving the positive outcomes of this development.

For the development and building of the country it is vital and essential to develop the liberal economic institutions that are based on competitive, secured and free market principles. It is also important to encourage every business start-up and initiative with the legal regulations that serve for the development of business activities in Georgia. The ability to foresee the possible development and strategic plan for the achievement of the desired goal is essential for every person who has any specific interest in economic relations. Laws should be read in a simple way and should not provide anyone the ability of double interpretation in order to avoid the vague understanding and possibility of misinterpretation. Besides, the interested people will not have any obstacles created by the law and due to the artificial hindrances they will not lose the interest towards the economic relations. Every participant of economic relations, either a local company or a foreign investor, is always very careful towards the development of a new direction and /or while entering a new market. In terms of such an interest, relations are mainly being created with

brokers, insurance agents, dealers, tax agents, barristers, patent agents, auditors and so on.

In Georgian reality we meet the representations of worldwide leader companies, which, according to their legal nature and business interests are being represented by various legal forms in the Georgian market. Namely, the company 'Mercedes' is represented by the 'AKA', Ltd; the company 'Ford and Range-Rover' is represented by 'GT Motors', Ltd; such companies as 'Elit Electronics', 'Techno Boom', 'Mega technics', 'OK', 'Array Tomorrow' and others as a whole, represent and unite the products of such brands as Nokia, Samsung, Bosch, Kercher, Sony, Toshiba, Asus, Hewlett Packard, etc.

Main Part

The article, in order to make understandable for interested people, aims at presenting the circle of the specific individuals in our country which make the initiation of economic relationships possible. There exists specific kind of door-key principle, which creates the first impressions for the foreign person. According to this principle the businessman finds all proposals and general environment quite attractive and thus he is convinced to launch the business. Business representations are one of the main institutions, where economic relations are closely linked and as a result one can initiate the business. There are various forms of business representations, accordingly, this article aims at discussion of those business representations, which may

*Akaki Chargeishvili is a Ph.D. candidate at Georgian American University and invited professor at the Faculty of Social Sciences, International Black Sea University, Tbilisi, Georgia.
E-mail: achargeishvili@ibsu.edu.ge

exist without creation of any legal entity. It is also important to cover the tax system and legislative environment regarding those business representations.

Here is the case, which serves as an example to represent the legal status of these business representations, in order to evaluate the existing legislative gaps and discuss the introduction of the useful alternations for the further effective business activities. American based company "Newfarmacy" (Jobson Medical Information LLC) is the leader in producing of medical preparations; company is interested in implementation of the high quality standards, introduction of the innovations and providing the highly effective production to the customers. The company makes specific kind of production available which should be provided by the medical institutions, where it has to be checked; thus the Newfarmacy is interested to be informed about the medical institutions, in terms of the building and its infrastructure, to be sure with the modern standards of the medical equipment and installations, the qualification of the medical personnel, their readiness of the implementation of the innovations regarding the treatment and new technologies; the state of the financial basket of the patients, in terms of the buying the preparations; how effective is the provision of the payment for the treatment by the insurance companies, etc. the all above described information is necessary for the Newfarmacy, in order to define the strategy of the development of its own business regarding our country. Newfarmacy might achieve that kind of goal by the existence of its representation(s) in Georgia, which will permanently implement and defend the interests of the head office.

Legislative Description

While the legislature is obscure and does not give the direct possibility for the right choice, Newfarmacy has hired a Georgian citizen, as the permanent representative; made specific agreements regarding the salary and started its business activity in Georgia though this representative, including the sending of the test production. Newfarmacy has concluded the labour contract. Is it correct to carry out that kind of activity within such format?

1) It should be remarked, that there is no special status for the business representations provided by the Georgian legislature. As the exception, Georgian law on Entrepreneurs (authors) included article 11 and 12, in particular institutions, such as trade representative, dependent trader, agent, trade broker, which, unfortunately, have been abolished since 2008 by the legislator. As a result, these issues are being unregulated and the vacuum is created. On this ground the vacuum was created and these issues remained without regulation. Thus, there is total chaos in terms of the business representations in the current Georgian law on

Entrepreneurs (Retrieved from Georgian Legislative Messenger), (L. Chanturia, 2002). The Civil Code of Georgia (Civil Code of Georgia, 1997) provides the institute of representative according to the contract. In this case the legal relationship between the representative and guarantor is being carried out in the following way: party, in this case the guarantor, should conclude the assignment contract with another party, in this case – trustee and according to this contract, charge the trustee; for the completion of the instruction, guarantor should also give the written warrant, including relevant authorities. Of course, it will be a paid contract, but it is not possible to conclude that very contract in this particular case, while the natural person is not registered as the Entrepreneur in the Register of Entrepreneurs and the contract of assignment in the following case is related to the gaining of profit, which cannot be accomplished, without establishment of the legal form provided by the Georgian law on Entrepreneurs (authors).

2) The decision made by Newfarmacy – concluding the labour contract with the natural person, means that this relationship should be regulated by the Georgian organic law, Labor Code of Georgia (Labor Code of Georgia, 2006). Unfortunately, current Labor Code does not comply with the requirements for the complete satisfaction of the interests of the company - Newfarmacy to which the USA jurisdiction is applicable and the natural person who is employed according to the Georgian jurisdiction.

3) In view of the fact, that the relationship exists with the subjects to the different jurisdictions, on the one hand USA and on the other hand subjects to the Georgian jurisdiction, it is important to mention that Georgian Law on Private International law, should propose, for its part, the certain regulations in terms of these relationships. The field which is regulated by this law is the international private relationships; unfortunately, there is also no regulations provided, regarding the discussed issue.

4) Nevertheless there is the legislative vacuum and gaps, the most important regulative character has the Georgian Tax Code (Georgian Tax Code 2012), while the issue of the company having capability to be the subject of agreement should be solved either according to the law on Entrepreneurs or the Civil Code or other norms of material legislature (Chanturia, 1997, p.25). The Tax Code provides the definition of the representations, in terms of the tax payment, the article 29 of which, the "permanent establishment" is directly linked to the legal relationship of the Newfarmacy and its representative. In this case, the regulation of the problem in terms of the tax issues, does not provide the definition of the status for the capability to enter into the contract related to the Civil turnover, itself (V. Khmaladze, I. Shavishvili, D. Khatiashvili, 2007, p.7).

According to the aforesaid definition it is evident that some vagueness is being created and it makes very hard to answer the question. Truly, making any decision is extremely hard in terms of legislative gaps and vacuums existing for several years without any attempt of further regulation. This vagueness, combination of the problematic gaps, is the reason, which makes investors to lose the interest in the realization of their activities in the economic sector of our country.

In conclusion, considering, the permanent character of economic and investment interests, the recommendation suggested in the article below will be motivating for those who will be interested in this issue.

Recommendation and Conclusion

Due to the limited format of the present paper it is not possible to go through all details regarding the legal status of the company that has a capability to be the subject of the representation institute (as a natural person). According to the above-said, from the practical view-point it is very important to regulate taxation issues and their administration.

For the objectives of the practical tax administration, regarding the case described above, it is important to apply the regulations of the Georgian Tax Code, article 29, covering the “permanent establishment” (Tax code of Georgia, 2012), which means the following: 1) foreign company should decide about opening the representations (without enterprise) in Georgia. 2) selection of the natural person as a representative, 3) adoption of the regulations for the representations in Georgia. 4) registration of the permanent establishment in the relevant office of the Revenue Service of Georgia (without registration in the Register of Entrepreneurs; 5) to become a taxpayer and receive the taxpayer’s identification code/number. 6) conclusion of the labour contract with the head of representation (natural person) and define his/her authorities (Tax code of Georgia, 2012).

Registration of permanent establishment in Georgia for a foreign company or non-resident natural person provides also the basis for the company to have bank account in the local bank. It will enable the foreign company to implement not only monetary but cash operations. Such kind of representative of a permanent company will pay income taxes as well as other taxes, provided by the Georgian legislation.

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