

## **Intermediate Information Based on the Evidences Obtained during the Compliance Audit of Tbilisi City Municipality Property Management and Disposal, as of May 17, 2017**

In Accordance with the annual audit plan of 2017, approved on 30<sup>th</sup> of December, 2016, the State Audit Office of Georgia (SAOG) is conducting a compliance audit of management and disposal of the property in the possession of Tbilisi City Municipality. The planned audit scope covers 2015 and 2016 years. The audit is still in the process and after passing appropriate procedures a draft of the report will be prepared. In response to great public interest, we present the intermediate information regarding two questions studied within the framework of the given audit.

### **Issue 1**

In the audit process, it was revealed that according to the decree of the Government of Tbilisi City Municipality of March 30, 2016 and by the decree of Tbilisi City Assembly of April 15, 2016, Tbilisi City Hall transmitted two land plots in the adjacent territory of Delisi Street, between Nutsubidze and Intensification road with the total area of 6 708 m<sup>2</sup> to “BSR - CDG Development” Ltd in exchange of a land with the area of 2 302 m<sup>2</sup>. The lands to be exchanged were assessed by the *LEPL “Levan Samkharauli National Forensics Bureau”*, according to which the price of the land owned by the Ltd (with the area of 2 302 m<sup>2</sup>) was 2 615 100 GEL, as of March 11, 2016. Whereas the lands transmitted by the Municipality were priced at 2 980 200 GEL. Tbilisi City Municipality was compensated for the difference between the prices (365 500 GEL) by “BSR - CDG Development” Ltd.

Audit team is studying several issues regarding the process of “BSR - CDG Development” Ltd loss assessment and its compensation:

- ✓ “BSR - CDG Development” Ltd possibly incurred the loss by the road construction in 2012, while Tbilisi City Hall assessed the loss and compensated it in 2016. The company demanded compensation from 2012. Tbilisi City Hall could not present any documentary evidence of how much money was demanded by the company and why the agreement could not be reached. However, if we consider that in the period of causing the loss by the road construction<sup>1</sup>, “BSR - CDG Development” Ltd sold two pieces of land under its ownership, situated adjacent to the land with the area of 2 302 m<sup>2</sup>, for the price of 223 GEL for 1 m<sup>2</sup>, the Ltd would have a loss equal to

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<sup>1</sup> The road passed the land of the Ltd in December 2012 and the adjacent lands were sold by the Ltd on 10<sup>th</sup> of January, 2013.

approximately 513 346 GEL<sup>2</sup> since Ltd lost 2 302 m<sup>2</sup> of land. Therefore, this would have been the money which the company demanded.

**The process of negotiation and compensation was managed by Tbilisi City Hall in the way that the company received the compensation for the loss 4 years later and the amount of the compensation was much higher. In particular, Tbilisi City Hall transmitted 2 615 100 GEL worth of lands to the company.**

- ✓ There does not exist a documentary proof which would indicate that for February 29, 2016 “BSR - CDG Development” Ltd was informed that Tbilisi City Hall would consider the question of loss compensation by transmitting the lands. Appropriate evidence could not be presented by Tbilisi City Hall. On 29<sup>th</sup> of February, 2016 “BSR - CDG Development” Ltd sold 100% of its share to “Royal Development” Ltd (45% share of “Royal Development” Ltd was held by Lev Nanikashvili, 40% by Otar Partskhaladze, 15% by Manuakh Nanikashvili) – for 232 000 USD (approximately 580 000 GEL<sup>3</sup>). “BSR - CDG Development” Ltd was the owner of a property – 2 302 m<sup>2</sup> of land in Mziuri adjacent territory and demanded compensation for the loss caused by the construction of the new road. On the 29<sup>th</sup> of June, 2016 100% share of “BSR - CDG Development” Ltd was sold to Otar Partskhaladze by “Royal Development” Ltd for **235 000 USD**. By this time, as a result of the compensation, the company was already the owner of two pieces of land in Delisi Street adjacent territory. According to *LEPL “Levan Samkharauli National Forensics Bureau”* conclusion, market price of these lands was equal to **2 980 200 GEL**. Accordingly, if we rely on this information, for February 29, 2016, owners of “BSR - CDG Development” Ltd agreed to sell the company under their ownership, including the 2 302 m<sup>2</sup> of land in Mziuri adjacent territory, for 232 000 USD (Approximately 580 000 GEL).

Therefore, the objective of the audit is why could not Tbilisi City Hall have appropriate communication with the company about the compensation and why it became necessary to compensate the loss by much higher amount, namely by 2 615 100 GEL worth of lands.

According to National Agency of Public Registry data, from 2007 “BSR - CDG Development” Ltd possessed 19 297 m<sup>2</sup> of land in Tbilisi, in Mziuri adjacent territory<sup>4</sup>. In December 2012 the company divided the land into 3 cadastral units:

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<sup>2</sup> 2 302 m<sup>2</sup> \* 223 GEL = 513 346 GEL

<sup>3</sup> 1 USD = 2.5 GEL

<sup>4</sup> C.C 01.14.14.005.117

- ✓ Land I - 2 246 m<sup>2</sup>; <sup>5</sup>
- ✓ Land II – 2 302 m<sup>2</sup>; <sup>6</sup>
- ✓ Land III - 14 749 m<sup>2</sup>; <sup>7</sup>

Picture 1: Lands in the possession of “BSR - CDG Development” Ltd in 2012 (before the division – C.C 01.14.14.005.117)



In 2012 Tbilisi City Hall constructed a new road, connecting Tamarashvili Street and Varaziskhevi, to Hospital N 9 (Avalishvili Street). Approximately **97 meter long section of this road**<sup>8</sup> passed through the land owned by “BSR - CDG Development” Ltd<sup>9</sup>. In particular, it occupied approximately 74%<sup>10</sup> of the Land II with the area 2 302 m<sup>2</sup>.

<sup>5</sup> C.C 01.14.14.005.171

<sup>6</sup> C.C 01.14.14.005.172

<sup>7</sup> C.C 01.14.14.005.173

<sup>8</sup> According to online maps and surveyor of the National Agency of Public Registry.

<sup>9</sup> Owners for 2012 according to National Agency of Public Registry data: 50% - Construction and Development Group JSC; 50% - “Gibor BSR Europe B-V” Ltd.

<sup>10</sup> According to online maps and surveyor of National Agency of Public Registry: area of the occupied land is approximately 1697 m<sup>2</sup>/2302 m<sup>2</sup> \*100% = 74%, free area of land is approximately 605 m<sup>2</sup>.

Picture 2: Land II – 2 302 m<sup>2</sup> - that consists of a piece of road and other spare piece of land (605 m<sup>2</sup>)



On 10<sup>th</sup> of January, 2013<sup>11</sup>, “BSR - CDG Development” Ltd from 3 land plots located close to “Mziuri”, sold 2 land plots. These lands plots are: Land I – 2 246 m<sup>2</sup> and Land III – 14 749 m<sup>2</sup>. Land II – 2 302 m<sup>2</sup> stayed in the ownership of the Ltd.

The Land I and Land III (total area 16 995 m<sup>2</sup>), based on the Purchase Agreement approved by the Notary were sold for **2 300 00 USD**. So, **1 m<sup>2</sup> for 135 USD**, considering the exchange rate for this date, 135 USD amounted to **about 223 GEL**<sup>12</sup>.

**On 4<sup>th</sup> of December, 2014**, “BSR - CDG Development” Ltd sent a letter to the Mayor of Tbilisi, requesting compensation from Tbilisi City Hall for the loss caused by new road construction either by paying money or by transmitting an alternative land plot. According to the letter, the company had been requesting the compensation for the loss since 2012. However, Tbilisi City Hall did not fulfill the request

<sup>11</sup> National Agency of Public Registry - Date of Verification of Purchase Agreement approved by the Notary.

<sup>12</sup> 135 USD \* 1.649 = 222.6 GEL. The exchange rate is defined in the purchase agreement.

for compensation in money due to lack of financial resources and offered alternative piece of land. Ltd and Tbilisi City Hall could not reach an agreement on the compensation as the offered piece of land was not acceptable for the company.

It should be noted, that Tbilisi City Hall did not provide any documented correspondence between the “BSR - CDG Development” Ltd and City Hall in regard with compensation issues.

Tbilisi City Hall did not answer the letter sent by the Ltd on 4<sup>th</sup> of December, 2014. However, **on 12<sup>th</sup> of June, 2015** Tbilisi City Assembly<sup>13</sup> assigned 3 land plots<sup>14</sup> to the *LEPL “National Agency for State Property”* operating under the Ministry of Economy and Sustainable Development. The reason of this action was the following: LEPL should give these LANDs to the “BSR - CDG Development” Ltd as a compensation for loss. Based on the report of *LEPL “Levan Samkharauli National Forensics Bureau”*, issued on 1<sup>st</sup> of June, 2015, price of the above mentioned 3 Lands amounted to 3 200 00 GEL.

According to the official letter sent to the *LEPL “National Agency for State Property”*, the existing legislation restricts Tbilisi City Municipality from giving lands directly to the private companies. Therefore, the lands were given to the state in order to transmit to Ltd as a compensation.

As Tbilisi City Hall did not answer to the letter of the Ltd, there is no formal evidence that would prove the fact that “BSR - CDG Development” Ltd was informed about Tbilisi City Hall’s intention regarding to the compensation for loss via transmitting the above mentioned lands. In addition, there is no official approval from “BSR - CDG Development” Ltd to express acceptance for being assigned via these lands.

The decision about assigning lands to the Ltd should have been taken by *the Georgian Government*; however, the issue should have been initiated by *the Ministry of Economy and Sustainable Development*. The issue was not initiated. On 11<sup>th</sup> of January, 2016, *Mayor of Tbilisi* sent a letter to *the Ministry of Economy and Sustainable Development* requesting the lands back from the ministry. As a result of this request, these lands were assigned back to Tbilisi City Municipality on **3<sup>rd</sup> of February, 2016**.

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<sup>13</sup> N124 order of Tbilisi City Hall Assembly approved on 28<sup>th</sup> of April, 2015; 2015 N152 Order approved on 22<sup>th</sup> of May, 2015.

<sup>14</sup> 2 pieces of land in Tbilisi - located between Nutsubidze Street and Intensification Road, Land I – 1,193 m<sup>2</sup> (C.C. 01.14.15.01.314) and Land II - 5,515 m<sup>2</sup> (C.C. 01.14.15.001.316); Land III in Tbilisi – located close to the connecting road of Nutsubidze-Vashlijvari – 2,173 m<sup>2</sup> (01.10.11.001.168).

On 29<sup>th</sup> of February, 2016, the owner of 100% share of “BSR - CDG Development” Ltd changed and it became “**Royal Development**” Ltd<sup>15</sup> (The shareholders of “Royal Development” Ltd: 45% - Levan Nanikashvili; 40% - Otar Partshkaladze; 15% - Manuakh Nanikashvili).

On 29<sup>th</sup> of February, 2016, “BSR - CDG Development” Ltd once more addressed to the *LEPL “Property Management Agency”* operating under Tbilisi City Hall. Ltd requested 3 pieces of land as a compensation for loss on its Land II covering the area of 2 302 m<sup>2</sup>. In particular, the requested pieces of land were: 2 pieces of land in Tbilisi located between Nutsubidze Street and Intensification Road, **Land I – 1 193 m<sup>2</sup>** (C.C. 01.14.15.01.314) and **Land II – 5 515 m<sup>2</sup>** (C.C. 01.14.15.001.316); **Land III** in Tbilisi – located close to the connecting road of Nutsubidze-Vashlijvari – **2 173 m<sup>2</sup>** (01.10.11.001.168).

This letter was officially answered (N01-8/1820) on 22<sup>th</sup> of March, 2016, by the head of *LEPL “Property Management Agency”*. The narrative was the following: “this issue will be reviewed by the authorized bodies and based on their decision, the agency will follow the corresponding procedures.”

On 25<sup>th</sup> of March, 2016, “BSR - CDG Development” Ltd again addressed to the *LEPL “Property Management Agency”*. This time the company requested other pieces of land as a compensation for loss on its Land II covering the area of 2 302 m<sup>2</sup>. In particular, these pieces of lands are located in Tbilisi, close to Delisi Street: Land I – 1 193 m<sup>2</sup>,<sup>16</sup> Land II – 5 515 m<sup>2</sup>.<sup>17</sup>

According to the orders issued by the Government of Tbilisi City Municipality on 30<sup>th</sup> of March, 2016, and the Tbilisi City Assembly on 15<sup>th</sup> of April, 2016, **the request of the “BSR - CDG Development” Ltd was approved.**

## Issue N2

On 27<sup>th</sup> of July, 2016, **Otar Partskhaladze**, 100% share owner and director of “BSR - CDG Development” Ltd sent a letter to Tbilisi City Hall: “Our company holds assets (C.C. 01.14.15.001.316 and C.C. 01.14.15.001.314) where we plan to start building activities. In this regard, we are interested in the bordering piece of land (C.C. 01.14.15.001.315) that is owned by the municipality. **We would like to purchase via auction** the piece of land – located between Nutsubidze Street and Intensification Road, covering 3 557 m<sup>2</sup> – including with the existing building, where M. Nodia’s Cosmo physical observatory

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<sup>15</sup> Source: The registry of entrepreneurs and non-profit legal entities posted on the official web-site of LEPL “National Agency of Public Registry”.

<sup>16</sup> C.C. 01.14.15.001.314

<sup>17</sup> C.C. 01.14.15.001.316



of the Institute of Geophysics is located. Our company takes responsibility to build a separate building with area 200 m<sup>2</sup> on this piece of land (C.C. 01.14.15.001.315) in 2 years after winning the auction. The company will transfer all existing facilities needed for a proper functioning of the institute in the new building - where Cosmo physical observatory will be placed. This building will be transmitted to Tbilisi City Municipality for free in a month, after its exploitation is started”.

The properties transmitted to “BSR - CDG Development” Ltd and property purchased by the auction.



On 31<sup>st</sup> of August, 2016, Municipality announced the auction on the property requested by “BSR - CDG Development” Ltd. Specifically, auction was announced on the piece of land – area 3 557 m<sup>2</sup>, and existing building – area 625.6 m<sup>2</sup>, located on this land. The initial price was **961 000 GEL**. This property was evaluated by an audit company - Compoud Ltd. According to its report, the price of **1 m<sup>2</sup> including the building, amounted to 274 GEL**.

It should be noted, that price of 1 m<sup>2</sup> of neighboring piece of land amounted to **464 GEL** for 11<sup>th</sup> of March, 2016, based on the report of *LEPL “Levan Samkharauli National Forensics Bureau”*. Thus, if we consider 464 GEL as a price of 1 m<sup>2</sup> piece of land, the total price of 3 577 m<sup>2</sup> area (excluding the building) would be 1 650 400 GEL<sup>18</sup>.

The auction requested the following necessary conditions:

- ✓ **The piece of land must be united with the neighboring land;**
- ✓ In 2 years, after auction is conducted, there must be either built a separate building on 200 m<sup>2</sup> area, or 200 m<sup>2</sup> of the existing building must be reconstructed, and then transmitted to the municipality for free.

The auction was conducted in a noncompetitive environment and the only bidder was “BSR - CDG Development” Ltd<sup>19</sup>. The company purchased the property for **975 400 GEL**<sup>20</sup>.

There exists a risk, that a noncompetitive environment and winning of “BSR - CDG Development” Ltd was triggered by the auction condition, according to which, the piece of land should be united with the neighboring piece of land, while this particular property was in the ownership of “BSR - CDG Development” Ltd that got this land from Tbilisi City Hall.

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<sup>18</sup> 3557 m<sup>2</sup> \* 464 GEL = 1,650,448 GEL

<sup>19</sup> From 30<sup>th</sup> of June, 2016, 100% of the “BSR - CDG Development” Ltd is in the ownership of Otari Partskhaladze.

<sup>20</sup> Initial price + bid (961,000 GEL+14,400 GEL).