

TO: ENGURHESI LTD

DATE: JUNE 6, 2019

A. PURPOSE OF THIS OPINION

This letter (the "Opinion") has been prepared in order to identify the enforceability of certain guarantee documents issued by a number Iranian banks supporting the participation of the bidders in tenders announced by Engurhesi Ltd and financed by the European Bank for Reconstruction and Development ("EBRD").

B. SCOPE OF THE OPINION

In preparing this Opinion, we have examined the following documents:

1. Letter Of Engurhesi Ltd dated 15/07/2019 # 01/111 to Ministry of Justice of Georgia;
2. Letter of Ministry of Justice of Georgia dated 20 May, 2019 # 7439 to Engurhesi Ltd.;
3. Letter of Acceptance made by Engurihesi Ltd dated 16 November, 2018 to General Mechanic Co;
4. Email correspondence from Lars Jamten dated November 15, 2018;
5. Tender Guarantee issued by Sina Bank dated 2018/10/23 # 000075;
6. Email letters between Malkhaz Tskvitishvili and Lars Jamten;
7. Procurement Policies and Rules dated November 1, 2017 of European Bank for Reconstruction and Development;
8. Bank Guarantee #98572044144 dated 27.04.2019 issued by Bank Pasargad;
9. Letter of Engurhesi Ltd dated 08/05/2019 #01/141 to National Bank of Georgia;
10. Letter of National Bank of Georgia dated 16/05/2019 #2-14/2014 to Engurhesi Ltd;
11. Print out of the following sites:

a. <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=6812>

b. <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=3110>

each print out having been performed approximately at 12:30 PM on May30, 2019.

12. Standard Tender Documents Procurement of Works User Guide, dated May 2018 of European Bank for Reconstruction and Development.

We have also conducted such other investigations of laws and regulations and fact as we have deemed necessary for the purposes of this Opinion.

C. PREPARATION OF THE OPINION

In carrying out the legal review and in preparing this Opinion, we employed the following procedures and assumed:

- (a) that any information, document, certificate, record from any person or regulatory authority and other instrument provided to us is accurate and correct in all respects;
- (b) the genuineness of all signatures on the any documents which we have reviewed;
- (c) that the signatory persons on the documents has been duly authorized to executed them;
- (d) additional key information contained in this Opinion was derived from interviews with certain key individuals of reputable banking institutes in Georgia. We have generally relied on truthfulness of all statements made by all individuals that were interviewed;
- (e) that all documents reviewed were in Georgian and English; therefore any quotations from documents in this Opinion represent our translation of the relevant documentary provisions;
- (f) that most of the documents reviewed by us being photocopies, we have relied on the authenticity and accuracy of such copies; and
- (g) We have also conducted such other investigations of law and fact as we have deemed necessary for the purpose of this opinion.

D. Discussion

Having reviewed the documents above we would like to draw your attention to the following:

- (1) both financial institutions, issuing guarantee letters listed in section B above, namely Sina Bank and Bank Pasargad are under the sanctions of United States of America s confirmed by respective web print-outs from OFAC search engine available on the sites noted above;

- (2) To the best of our understanding, as a result of the sanctions noted above, both financial institutions have been disconnected from SWIFT international money transfer settlement system and as such, are unable to perform international wire transfers into Georgia. To the best of our knowledge, no alternative settlement system is available to local banks for the purposes of effecting the international wire transfers.
- (3) Uniform Rules for Demand Guarantee, ICC Publication No.758 indicate that unless otherwise provided in the guarantee, its governing law shall be that of the location of the guarantor's branch or office that issued the guarantee. Further unless otherwise provided in the guarantee, any dispute between the guarantor and the beneficiary relating to the guarantee shall be settled exclusively by the competent court of the country of the location of the guarantor's branch or office that issued the guarantee. Same position would be true under the general norms of conflict of laws, including those applicable in Georgia.
- (4) Since none of the guarantees presented have been confirmed by any local commercial bank, according to the Uniform Rules for Demand Guarantees and other applicable legislation, in case Engurhesi Ltd intends to collect on the guarantees, it must deliver the demand to the relevant bank in Iran and request the payment of the respective amount to its accounts in Georgia (as it would be unconceivable for an entity to collect the amount of the guarantee in cash and then physically carry the same across the border).
- (5) On August 11 of 2018 the Ministry of Foreign Affairs of Georgia distributed a letter to all governmental agencies of Georgia including the National Bank of Georgia advising for special caution in commercial and business relations with Iranian companies, as the latter may become the subject of primary and / or secondary sanctions for Georgian entities.

E. Conclusion

Based on the foregoing, the following conclusions would be applicable to the question posted in section A of this Opinion:

- (1) As a matter of local and international law, the issue of enforceability of the guarantees is subject to the laws of Iran. As such, the laws of Georgia would have no bearing on the enforceability of the guarantees presented.
- (2) The practical aspects of enforceability of the guarantees for Engurhesi turns on ability of Engurhesi to collect on the guarantees in the event the triggering event thereunder occurs. With that, we are not aware of any meaningful way for Engurhesi to collect

the amounts if a claim is advanced under the guarantees. Even if such technical means were to exist, it remains unclear at best if local banks would allow crediting the funds to the account of Engurhesi where the source of funds and originating entity is located in Iran and has been sanctioned as per above.

- (3) On the face of it we believe that, while each case should be evaluated on merits taking into account all circumstances surrounding particular fact pattern, there appears to be no meaningful legal recourse that can be initiated in Georgia that would allow Engurhesi to enforce the guarantees through Georgian courts. Similarly, given that the guarantees are not confirmed by any local commercial bank operating in Georgia, Engurhesi will be in no position to enforce by judicial means the guarantee against or through a local commercial bank.

This Opinion is confined to matters of the law of Georgia at the date hereof and no opinion is expressed as to the laws of any other jurisdiction.

Sincerely


BGI Legal