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**GOOD GOVERNANCE IN GEORGIA (G3)
PROGRAM**

Legal Entities of Public Law and Civil Service Consultancy Assessment Report and Recommendations

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DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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I would also like to thank the many people who took time out of their busy work schedules to meet with me and share their views.

Abbreviations

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| AH | Agency Head of LEPL |
| ALB | Arm's Length Body |
| CS | Civil Service |
| CSB | Civil Service Bureau |
| DH | Deputy Agency Head of LEPL |
| IMF | International Monetary Fund |
| MOE | Ministry of Education |
| MOJ | Ministry of Justice |
| NDPB | Non-Department Public Bodies |
| OECD | Organization for Economic Co-operation and Development |
| SC | Senior Consultant |

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Summary

The deliverables of this consultancy are to provide:

- 1) Background note on the ***civil service employment status of organizations similar to LEPLs*** based on best practices, driven by civil service reform considerations in Georgia and thus with explicit attention to implications for civil service reform in Georgia.
- 2) A draft/initial governance framework, taking into consideration policy distinctions made in the Civil Service Reform Concept and consistent with Georgian legislation on LEPLs.

- 3) **Recommendation(s) of criteria for grouping LEPLs from the point of view of civil service employment status** for national organizations for positions equivalent to the concept grade 1-4 central government positions, with indicative conclusions for LEPLs at sub-national levels.
- 4) Draft **guideline for a Functional Assessment of LEPLs** which contains well-defined operational criteria and procedures for the functional assessment of all organizations with LEPL status. This guideline will serve the purpose for the Government to complete the assessment on an ongoing basis.
- 5) Develop and recommend **requirements for an LEPL annual service plan** that must be consistent with the current government strategic plan and must include a statement of goals, specific objectives and performance measures.

The consultancy is included in the Work Plan of the Good Governance in Georgia (G3) Program and builds on previously completed initiatives in providing support to civil service reform.

The review is limited to those LEPLs that report to a line minister and/or directly to the Prime Minister and, as such, are subject to accountability principles. A critical distinguisher of LEPLs that report to line ministers is that they, for the most part, extract their mandate from the ministry parent’s legislation. Some LEPLs, like the patent office, have secondary legislation that further defines their role on the behalf of government.

Legislation and Charter(s) Specific to this Review:

1. Creation of LEPLs – Law of Georgia on a Legal Entity of Public Law
2. Staffing – Law of Georgia on Civil Service
3. Employment provisions – Labor Code of Georgia
4. Civil Service Bureau Charter

There are approximately 45,578 employees in the 182 LEPLs that report to line ministries in the Government of Georgia in addition to the employees contained within the 2,081 school LEPLs with 74,097 staff, in 15 professional education institutions with 427 staff and the 20 higher education LEPLs with 22,311 staff. This represents a total number of 142,414 LEPL employees as compared to the 5,866 employees in central government civil service.

This report presents a public administration public policy perspective with a major focus, from a research and options perspective, on the status of LEPL employees in similar organizations in other countries with recommended options for staff in Georgian LEPLs.

PROPOSED RECOMMENDATIONS AND TIMEFRAMES FOR IMPLEMENTATION

The recommendations and the rationale justifying each recommendation are set out in the chart below:

| RECOMMENDATION | PRIORITY TIMEFRAME | RATIONALE |
|---|--------------------------------------|---|
| Governance Framework | | |
| 1. Create a governance working group made up of agency heads and deputy heads with the | <u>Design</u> Immediate 1 year | <ul style="list-style-type: none"> • There are many interrelated component parts to a governance framework including strategic, operational, financial, legislative, cross LEPL policy and stakeholder |

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| <p>mandate to develop an LEPL framework:</p> <p>a) With a common platform for LEPLs to evaluate and improve their own governance practices.</p> <p>b) With consideration where it would be appropriate to have a governing board.</p> <p>c) Once the framework is established, provide training to all LEPLs on its application and scope.</p> | <p><u>Implementation</u></p> <p>Medium 2-3 years</p> | <p>communications (internally and externally) and a clear delineation between political and bureaucratic responsibilities.</p> <ul style="list-style-type: none"> This working group could meet and deliberate while the new Law on Civil Service is being prepared and provide input into the Law if appropriate. |
| <p>2. Any refinements to the Law on LEPLs needs to include additional accountability requirements at the local/or city level.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> The accountability provisions appear to be far more flexible at the local level than at the national level. |
| <p>3. Create a resourcing unit within the CSB with the purpose of providing cross LEPL (horizontal) policies and guidelines to ensure a sound governance framework with ongoing advice, information and support.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> Conforms to the CSB mandate of analyzing the state of affairs in the public service and presenting recommendations for changes in the legislature. |
| <p>4. For ease of administration and accountability consider bringing all schools under one LEPL.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> The schools would continue their same regional reporting relationships. |
| <p>LEPL Staff – Civil Service Employment and Human Resources Staffing</p> | | |
| <p>5. Integrate LEPL staff equivalent to grades 1-4 in the civil service (all other staff to remain under the Labor Code only). This option will require a staggered implementation to</p> | <p>Planning Immediate 1 year</p> <p>Staggered</p> | <p>1. Will require the civil service job classification pay and grade system to be applied to all LEPL staff with the exception of staff in schools, professional education institutions and higher education institutions.</p> <p>2. Will result in recruitment and pay equity amongst all professional staff within the greater</p> |

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| <p>extend the new central government pay and grade system to LEPLs.</p> <p>Advantages:</p> <ul style="list-style-type: none"> ▪ Provides a system whereby the professional service is able to compete, be laterally transferred and/or seconded within the larger definition of the civil service enhancing career opportunities and career development. ▪ The added career mobility feature and civil service status via the merit system could result in fewer after elections. ▪ Is more closely aligned with the approach taken by EU countries. ▪ Allows for greater control and cost containment related to pay and terms and conditions of employment for LEPL staff. <p>Disadvantages:</p> <ul style="list-style-type: none"> ▪ Will require an increase in CSB HR specialized staff to provide the necessary advice and support to the extended pay and grade system application. | <p>implementation 2-3 years</p> | <p>public service of Georgia.</p> <p>3. Will require a phased-in approach until the classification pay and grade system has been extended to LEPLs.</p> <p>4. Will require a procedure ensuring strict adherence to the recruitment merit principle with no political interference in the appointment process to retain the integrity of the civil service recruitment processes.</p> <p>5. Will require the definition of a professional civil servant to be altered within the G3 concept. It currently stipulates: "...This category of servant begins his/her career in the civil service from a lower position and moves higher in accordance with his/her professional knowledge, experience and performance evaluation results." Individuals with the capacity to be a director or a deputy director of an LEPL may not have started their career in government and worked up to the level of director.</p> <p>6. May require educators and hospital workers to be bundled if the notion that they are essential services is embraced.</p> |
| <p>6. Specify terms and conditions of core civil servants as defined in the Concept and/or in legislation.</p> <p>a) Upgrade the terms and conditions of employment to exceed those available under the Labor Code.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ The way in which civil servants fall under the Labor Code is confusing. For example if the same benefits under the Labor Code are greater or better than the benefit(s) they receive under Civil Service Status then the civil servant is entitled to those. ▪ Upgrading the terms and conditions of employment for civil servants will make the Government more of an employer of choice and will increase its recruitment pool. |
| <p>7. Define the merit principle as part of</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ The concept of merit has been the foundation of hiring as in most European and |

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| <p>the revisions to the Law of Georgia on Civil Service.</p> <p>a) With the merit principle in place it will be easier to rationalize transfers, secondments and lateral transfers for career enrichment and to meet civil service recruitment needs.</p> <p>b) Commence the preparation of staffing policies while the new legislation is being prepared and circulate them as pending regulations pursuant to the new act.</p> | <p>as the new legislation is prepared</p> | <p>Commonwealth countries for more than 100 years.</p> <ul style="list-style-type: none"> ▪ It is one of the most important factors in ensuring a strong, neutral workforce. ▪ It is most often enshrined in legislation similar to the Law of Georgia on Civil Service with an employee appeal process if violations are suspected within the recruitment process. ▪ Consider wording similar to: the matters to be considered in determining merit must, having regard to the nature of the duties to be performed, include the applicant's education, skills, knowledge, experience, past work performance and years of continuous service in the public service. |
| <p>8. Better define and strengthen the working relationship between line ministries and the CSB.</p> <p>a) Develop a formal numbered and dated advisory bulletin from the CSB to deputy ministers (or ministers) of a ministry advising them of HR policy developments and encourage the ministry to build a body of HR policy knowledge for HR policy manuals.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ In many jurisdictions, the role of a CSB is constituted by legislature to regulate the employment and working conditions of civil servants, oversee hiring and promotions and promote the values of the civil service. ▪ In order for the CSB to carry out its role, there needs to be a clear understanding that the CSB is responsible for HR policy and the line ministries are responsible for implementing it and, where necessary, with the assistance of the CSB. |
| <p>9. Better define, strengthen and formalize the working relationship between line ministries and the LEPLs reporting to their minister by defining the relationship in legislation.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ Some LEPLs have HR assistance from line ministries and some do not – it is a very uneven playing field. ▪ This may require a shift in HR resources more to the line ministry to provide equitable advice and support to LEPLs. |
| <p>Functional Assessment of LEPLs</p> | | |

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| <p>10. Adopt the public service value model as part of the governance and accountability framework as defined in this report or one similar and enshrine it in government policy.</p> <p>a) Link this to recommendation 1 and have the <i>governance working group</i> integrate the process into the accountability framework.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ There is a need by LEPLs to know how to accurately identify and measure outcomes with this or a similar type of model. ▪ Measure the extent to which there is awareness of such models and provide training prior to implementation. ▪ The same model will provide consistent evaluation criteria across LEPLs. |
| <p>LEPL Annual Service Plan</p> | | |
| <p>11. Adopt the service plan approach outlined in this report or one similar as part of the governance and accountability framework and enshrine it in government policy. Link this to recommendation 1 and have the <i>governance working group</i> integrate the process into the accountability framework.</p> | <p>Immediate 1 year</p> | |
| <p>Other Recommendations</p> | | |
| <p>12. Conduct a consultancy that defines and recommends the inclusion criteria for creating and/or eliminating LEPLs.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ Many jurisdictions have defined and legislated rigorous criteria that have to be met before the equivalent of an LEPL can be implemented. Future consultancy should consider developing legislated criteria guidelines for the creation of LEPLs. ▪ The criteria can be used to review current LEPLs to see if there is justification to maintain or wind down. |
| | | |

1. INTRODUCTION

This report is based on the entirety of discussions held from July 14-August 9, 2014 with various project team members of the USAID Good Governance in Georgia (G3) Program and selected government and NGO individuals chosen by the G3 Chief of Party and or Head of the Civil Service Bureau.

It is a summary review from a public administration public policy perspective. The time constraints of a 21-day consultancy prohibit the review from being an in-depth analysis.

Legal Entities of Public Law (LEPLs) are hybrid entities somewhere between a government body and a private enterprise. They are wholly owned by the state but operate at an arm's length from governments. Their mandate is usually extracted from ministry legislation and, for the most part, they perform their functions on behalf of the ministry.

The term “agency” is shorthand for the variety of organizations that are outside of the core government. They are legal entities established by the government as instruments of public policy. Many agencies operate in an environment where they pursue multiple and sometimes conflicting operational goals such as financial self-sufficiency and fulfilling certain public policy objectives.

They operate in many sectors including transportation, agriculture and culture. They have more autonomy to manage than most other government entities which means that they can operate in a more commercial manner if needed. In most countries a board of directors oversees the management of the equivalent of the LEPL and holds the management responsible for the LEPL’s performance. Most governments retain power and influence over the equivalent of LEPLs in areas such as appointments, remuneration for agency heads and deputy heads, and approval of plans and budgets.

This review is limited to those LEPLs that report to a line minister and/or directly to the Prime Minister and, as such, are subject to taxpayer accountability principles. A critical distinguisher of LEPLs that report to line ministers is that they, for

the most part, extract their mandate from the parent ministry's legislation. Some LEPLs, like the patent office, have secondary legislation further defining their role on the behalf of government.

At the end of the day, they are public sector organizations and should be subject to the government accountability principle. LEPLs are public whether funded directly by the parliament, a central ministry or a government department or through a sponsored commercial entity that enables the LEPL to generate its own revenue. Therefore, LEPLs are accountable to the sponsor line ministry for performance and the use of their resources. Each LEPL is accountable to parliament through the minister responsible for the department.¹

This review has been conducted from a public administration perspective as opposed to a legal analysis of the adequacy of the current laws. Another consultancy will provide recommendations on suggested legal changes.

The country comparators for this review are Germany, the UK and OECD member states.

The SIGMA report identifies two relevant issues with regard to LEPLs:²

1. Is it really necessary to establish independent bodies? Responding to this question is not within the purview of this consultancy other than to say:
 - i. The individuals employed within the LEPLs would be employed within the government if the program were being offered by the respective ministry.
 - ii. This fact has some bearing on the criteria for LEPL staff to be included within the public service and viewed as professional public servants.

The first is beyond the scope of this review. The second issue focuses on the status of staff within the LEPLs.

In retrospect it could be argued that there is more rationale to define the criteria for becoming a LEPL before classifying staff within the LEPLs as either civil servants or non-civil servants. Below are suggested ways of establishing the criteria for a LEPL:

- a. Measuring the need against the high-level criteria first:
 - a. Does the LEPL perform a technical function?
 - b. Do its activities require political impartiality?
 - c. Does the LEPL need to act independently to establish facts or similar criteria tailored to the needs of Georgia?

An LEPL passes the above test then it would be subject to more stringent second test requirements. This same filtering process could be used to assess the viability of current LEPLs.

2. CONSULTANCY OBJECTIVES

- I. Background note on the *civil service employment status of organizations similar to LEPLs* based on best practices, driven by civil service reform considerations in Georgia and thus with explicit attention to implications for civil service reform in Georgia.

¹ *Corporate Governance in Central Government Departments* – Cabinet Office – UK – Code of Good Practice, 2011.

² *Comments on the Civil Service Reform Concept*, SIGMA, Georgia, March 21, 2014.

- II. A draft/initial governance framework taking into consideration policy distinctions made in the Civil Service Reform Concept and consistent with Georgian legislation on LEPLs.
- III. Written **recommendation(s) of criteria for grouping LEPLs from the point of view of civil service employment status** for national organizations for positions equivalent to the concept grade 1-4 central government positions with indicative conclusions for LEPLs at sub-national levels.
- IV. Draft guideline for **a Functional Assessment of LEPLs** which contains well-defined operational criteria and procedures for the functional assessment of all organizations with LEPL status. This guideline will serve the purpose for the Government to complete the assessment on an ongoing basis.
- V. Develop and recommend **requirements for an LEPL annual service plan** that must be consistent with the current government strategic plan and must include a statement of goals, specific objectives and performance measures.
- VI. A (Power Point) presentation given to Government of Georgia representatives with supporting material on functional as governance structure and the functional assessment guidelines.
- VII. Brief mission report for USAID that outlines the purpose, scope, contents and outputs of the consultancy along with a list of persons interviewed (three pages in length).

3. METHODOLOGY

Key principles adopted to guide the report review and recommendation process:

1. Developing commitment and buy-in by the relevant stakeholders at all levels of interviews throughout the assessment process.
2. Building on what is known and what has previously been attempted.
3. Identifying what works well and using this to inform and improve what is not working well.

The review is citizen centric which means that it is focused on unlocking public value for the taxpayer as the ultimate public service recipient and the primary shareholder.

Figure 1
Assessment Phases

| Phase | Activities During the 21-day Consultancy |
|--------------|--|
| 1. Desk work | <ul style="list-style-type: none"> • Gathering background information pertaining to the organization and management of similar entities in the OECD, UK, Germany and Canada. • Review of relevant literature on the governance of these entities in other jurisdictions including the OECD and the IMF. • Reviewing different approaches to classifying legal entities in the abovementioned countries. |

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| 2. Field work | <ul style="list-style-type: none"> • A series of interviews with directors and deputy directors of LEPLs. • Discussions with academic and legal staff in Georgia (see Appendix 1). |
| 3. Presentation of preliminary findings and report writing | <ul style="list-style-type: none"> • Incorporate feedback from stakeholders and write up draft report for further review by USAID. • Presentation of findings and recommendations to key staff of the State Chancellery and the Civil Service Bureau. |
| 4. Linking governance to recommendations for conducting a functional review and establishing service plans | <ul style="list-style-type: none"> • Creation of an LEPL accountability and governance framework. • Creation of an LEPL functional review framework. • Creation of an annual LEPL service plan outline. |

4. CONCEPTUAL FRAMEWORK FOR THE CONSULTANCY

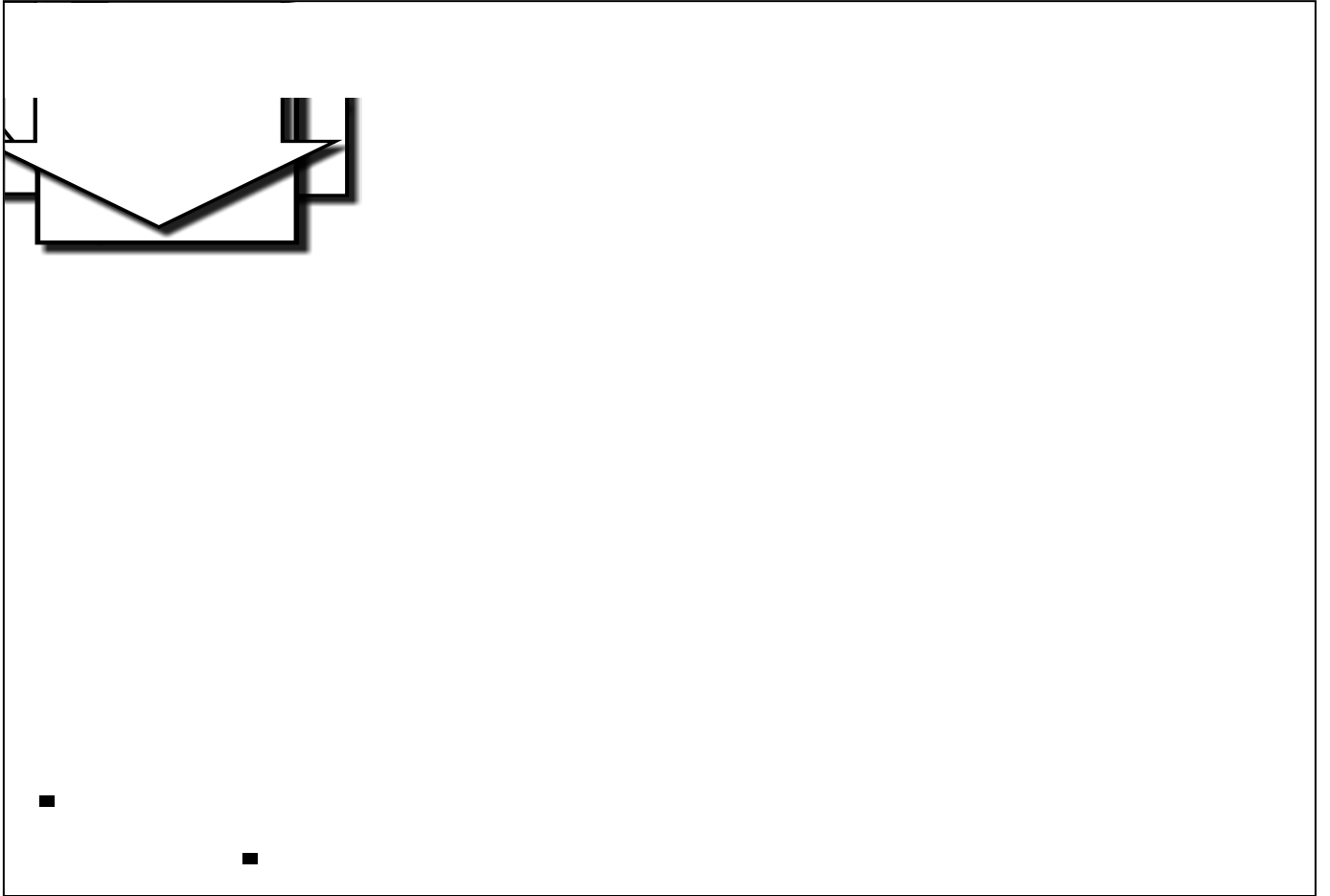
In some countries the public sector includes a large number of entities that have been separately established by government agencies to undertake new activities or activities previously performed by the core government. One reason for the establishment of separate entities may have been an expectation that greater efficiency would be achieved through a separate structure. Thus, while the governing bodies of such public sector entities require sufficient freedom to manage operations in a vigorous and enterprising manner, they need to exercise that freedom within a framework of effective governance and accountability.³

Figure 2's conceptual framework highlights the relationship between impact, the quality of the impact, LEPL outputs and stakeholder satisfaction. It also includes reference to the supporting components of classifying LEPL staff and a background note on the similar employment status of staff in similar situations in other countries.

It provides a stepped hierarchical approach to developing an LEPL within a framework of effective governance and accountability and assesses the issues, with options, of employment status for staff in LEPLs.

Figure 2
LEPL Conceptual Governance Framework Development Cycle

³ *Governance in the Public Sector: A Governing Body Perspective*, International Federation of Accountants, 2001.



5. CIVIL SERVICE EMPLOYMENT STATUS OF ORGANIZATIONS SIMILAR TO LEPLs

Table 3
LEPL Civil Servant Employment Status

Background:

There are approximately 45,578 employees in the 182 LEPLs that report to line ministries in the Government of Georgia in addition to the employees contained within the 2,081 school LEPLs with 74,097 staff, in 15 professional education institutions with 427 staff and the 20 higher education LEPLs with 22,311 staff for a total number of 142,414 LEPL employees as compared to 5,866 staff in the central government civil service.

Legislation and Charter(s) Specific to this Review:

- A. Creation of LEPLs – Law of Georgia on a Legal Entity of Public Law
- B. Staffing – Law of Georgia on Civil Service
- C. Employment provisions – Labor Code of Georgia
- D. Civil Service Bureau Charter

The Civil Service Bureau (CSB) is the body responsible for facilitating the development of a uniform state policy on public service and coordinating the relevant activities. The CSB is also responsible for coordinating the management of human resources in the public agencies, collecting the asset declarations of public officials, analyzing the state of affairs in the public service and presenting relevant recommendations to the legislature⁴ so that it carries out its mandate and objectives effectively.⁵

The authority for the creation of the LEPLs is contained in the Law of Georgia on a Legal Entity of Public Law which defines an LEPL as: "... an organization separated from the organs of state administration, set up under a respective law, edict of the President of Georgia or a law-based administrative instrument of a state administration agency which, independently of the state control, engages in the political, state, social, educational, cultural and other public activities..." There are separate provisions within the law for the City of Tbilisi to set up legal entities of public law pursuant to the Law of Georgia on the Capital of Georgia – Tbilisi. The law is very clear in its direction relative to property, authority, management and representation, state control and the activities subject to authorization.

Two categories of LEPLs are outlined in the Concept. Firstly, there are the LEPLs that will fall within the scope of application of the law (exceptions are religious organizations and political parties, for example) and LEPLs to which the status of civil servant will partly apply. **The criterion used for the classification of LEPLs should be how the public-law authority (decision-making power) is allocated inside the organization. LEPLs where the power to exercise public-law administrative tasks are allocated vertically should be fully covered under the scope of the Law on Civil Service.** Further, in LEPLs where administrative tasks are horizontally allocated to managers, only these persons should be considered as civil servants and fall within the scope of this Law.

It is the understanding of the SC that the above wording is meant to be interpreted that an individual is included in the core civil service if the individual is employed in an LEPL and exercises management decision-making. Otherwise, the employment status is defined by the Labor Code for those individuals in positions below that of decision-maker. Similarly, the individual is included in the civil service if mandated to make decisions horizontally on behalf of the LEPL.

It should be noted that the core civil service employees above, in addition to having a civil servant status, are also

⁴ National Integrity System, Georgia NIS Report, 2011.

covered by the provisions of the Labor Code if the employment provisions do not meet the standard in the Labor Code. In other words, any employment benefits that are specified for civil servants in the Labor Code and are better than those in the civil service – the provisions the Labor Code applies for those benefits.

It should also be noted that none of the OECD countries, the UK, Germany or select non-OECD Central and Eastern European countries include the equivalent of employees under category 1 above (director and deputy director) within their core civil service.

The situation was already far different in EU member countries by 2000: “In the majority of EU countries, most public employees have the status of civil servants. This means that they are governed by a civil service law, which is a public law, and not by the general labor laws...The scope of the civil services in EU Member States has remained, in general, unchanged since World War II, with the exceptions of Italy and Denmark, which reduced such scope in 1993 and 1969, respectively, and Sweden, which enlarged the scope in mid 1970s.”⁶

Research Findings:

The public sector comprises a range of employment regimes. Unfortunately, there is no standard definition of a civil servant or civil service between countries. Arrangements vary between countries although the civil service generally constitutes a distinct body of staff within the public sector. (In other words, there are often numerous groups of public employees in addition to civil servants.)

OECD Countries⁷

- a. The OECD represents a broad mixture of countries from a geopolitical and socio-economic perspective. Country membership includes: Austria, Belgium, Brazil, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, New Zealand, the Netherlands, Norway, Poland, Portugal, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States.
- b. Nearly all OECD countries have legislation that provides civil servant status for some employees. The exceptions are the Czech Republic, New Zealand and Switzerland. (All public sector staff is covered by the general labor law in the Czech Republic and New Zealand)
- c. Figure 4 below identifies the groups of public sector employees with and without civil service status in OECD member states. **No members include the equivalent of crown agencies and/or arm’s length bodies in the central government administration or civil service that function similarly to LEPLs and report through a government ministry with the exception of healthcare employees, education employees and the police.**
- d. Of the OECD and non-OECD countries, only Latvia, Norway and the UK do not include healthcare, education and police employees under their civil service legislation and/or separate legislation. Offering similar but distinct status suggests that they have separate legislation for each group or no legislative provisions guiding their terms and conditions of employment for employees in organizations similar to LEPLs.
- e. Of select non-OECD Central and Eastern European countries including Albania, Bulgaria, Estonia, the FYROM, Latvia, Lithuania, Romania and Slovenia, only the FYROM and Slovenia have separate legislation offering similar but distinct status.
- f. Figure 4 also shows that the majority of remaining countries include healthcare, education and police employees covered by the same legislation as the civilian central government.

Many of the member states have emerging economies similar to Georgia and have or are in the process dealing with

⁶ Francesco Cardona, Scope of the Civil Service, Seminar at the European, SIGMA, 2000.

⁷ *The Scope of the Civil Service in OECD and Select CEE Countries*, World Bank.

similar public policy issues.

OECD State: Germany

Under federal law, four different statuses exist in German public administration: civil servants, judges, soldiers and public employees covered by collective agreements. For the purpose of this study, differences between civil servants and public employees are of the main relevance. Germany's federal system limits the role of the central administration to functional areas that concern the federal state as a whole (i.e., government, armed forces, central revenue, border police, water ways) and strengthens the policy-making, law-enforcing and educational/cultural role of the territorial states (*Bundeslander*). In consequence, federal employees account for only about 11% (2011) of the total public service personnel (*Lander* - 50%, municipalities - 29%, public social security system - 10%):

1. Public bodies and structures fulfilling federal administrative functions are considered to be independent legal entities; i.e., federal agencies, foundations or financial institutions (Federal Bank) are defined as 'indirect CPA.'⁸
2. In contrast, public employees are employed on the basis of a contract under private law. General labor law applies to them as to all employees in Germany. Specific working conditions, however, are set out in collective agreements negotiated between the public employers (Federation/Lander/local authorities) and the responsible trade and labor unions.⁹

OECD State: UK

- a. In the UK, agencies are termed as "arm's length bodies (ARBs)" or "non-departmental public bodies." The 2010 UK HM Treasury Review¹⁰ set out a clear plan of action introducing tough new requirements governing the foundation, activities, transparency and management of ALBs.¹¹
- b. Non-departmental public bodies (NDPB) are bodies that have a role in the process of national government **but are neither government departments nor parts of a department...** There are three kinds of non-departmental public bodies: executive bodies, advisory bodies and tribunals.¹²
- c. NDPBs are not included in the civil service but, rather, they employ their own staff and are allocated their own budgets.

EU Member States:

- a. In Eastern Europe as of 2000, three main criteria have been combined to draw the boundaries of the civil services: a) holding state powers, b) qualifications needed and c) separation between politics and administration. These criteria define which positions are civil service positions and distinguish them from non-civil service positions (politically).
- b. In Eastern Europe, it is now a widely accepted that every government needs a permanent civil service in order to implement its policies. The civil service has to be permanent in order to promote and keep the institutional knowledge and professionalism needed to carry out complex policies and law enforcement in modern societies. As the main component of the civil service is personnel, defining the size of the civil service becomes the

⁸ Germany: *Working Conditions in Central Public Administration*

⁹ Otto Schily, *The Public Service in Germany*

¹⁰ Gary Hoffman, *Corporate Performance – Measurement & Reporting*, April 2001.

¹¹ "The British Government: Government Departments" in *The British Government: A Brief Overview*, Britannia,

¹² Information courtesy of the British Information Services.

primary challenge. An important challenge is thus to decide on the scope of the civil service needed to execute government policies, exercise public authority and manage public funds without promoting an expensive public administration.¹³

Figure 4 below shows education employees in OECD countries, for the most part, as having either separate civil service legislation or being covered by the same legislation as core government employees. The only country exceptions to this rule are: Finland, Latvia, Norway, Romania, Turkey and the UK.

Summary:

The equivalent LEPL directors and deputies are not covered by the same legislation as civilian central government staff in any of the OECD countries, Germany and/or the UK.

The model that Georgia chooses will depend on the amount of flexibility the government wants to give the respective minister over the hiring and firing of LEPL staff.

Figure 4. EMPLOYMENT STATUS IN OECD MEMBER COUNTRIES

| Country | Healthcare Employees | Education Employees | Police | Sub-national Government (excluding education, healthcare and police) | |
|-------------|-------------------------------------|-------------------------------------|-------------------------------------|--|--|
| | | | | Covered by same legislation as civilian central government? | Separate civil service legislation offering similar but distinct status? |
| Australia | | | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Austria | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Belgium | | | | <input checked="" type="checkbox"/> | |
| Canada | | | | | <input checked="" type="checkbox"/> |
| Denmark | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Finland | | | <input checked="" type="checkbox"/> | | |
| France | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Germany | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Greece | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Hungary | | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Iceland | | | | | <input checked="" type="checkbox"/> |
| Ireland | | | | | <input checked="" type="checkbox"/> |
| Italy | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |
| Japan | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |
| Korea | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |
| Luxembourg | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Mexico | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | <input checked="" type="checkbox"/> |
| Netherlands | | | | <input checked="" type="checkbox"/> | |
| Norway | | | | | |
| Poland | | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Portugal | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Spain | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Sweden | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Turkey | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | | |
| UK | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | | |

| | | | | | |
|---|--|--|-------------------------------------|-------------------------------------|-------------------------------------|
| USA | | | | | <input checked="" type="checkbox"/> |
| Select Non-OECD Central and Eastern European Countries | | | | | |
| Albania | | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Bulgaria | | | | <input checked="" type="checkbox"/> | |
| Estonia | | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| FYROM | | | | | <input checked="" type="checkbox"/> |
| Latvia | | | <input checked="" type="checkbox"/> | | |
| Lithuania | | | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Romania | | | <input checked="" type="checkbox"/> | | |

6. CRITERIA FOR GROUPING LEPLs FROM THE POINT OF VIEW OF CIVIL SERVICE EMPLOYMENT STATUS

“We could define the core responsibilities of the state as those able to be translated into functions that nobody but the state has sufficient legitimacy to carry out in democratic societies.”

SIGMA, 2000

Background:

Based on the review of how similar positions would be categorized in OECD countries, the EU, Germany and the UK, the following should be taken into consideration when defining criteria for grouping LEPLs:

- Georgia’s core civil servants do not have well-defined terms and conditions of employment in any legislative statute or charter.
- Civil servants with benefits less than those identified in the Labor Code are entitled to those found in the Labor Code.
- Employment benefits for a core civil servant need to be better defined and enriched beyond those provided under the Labour Code to position the central government as an employer of choice.
- LEPL employees currently come under the recruitment and selection guidelines of the Law of Georgia on Civil Service.
- Comparator countries like Germany and all of the other OECD states do not include the equivalent of LEPL staff within their core civil service.
- Many EU countries do include employees equivalent to LEPL staff within the core definition of a civil servant.
- The City of Tbilisi has three LEPLs and they are subject to the same provisions of the Law of Georgia on a Legal Entity of Public Law.

Figure 5
Recommended Options for Classifying LEPL Staff

LEPL Staff to Include within Civil Service Definition

| CRITERIA | YES | NO |
|--|---|---|
| OPTION 1 LEPL Staff Equivalent to Grades 1-4 in the Civil Service | <ul style="list-style-type: none"> ▪ LEPL staff equivalent to grades 1-4 | <ul style="list-style-type: none"> ▪ Staff other than LEPL equivalent to grades 1-4 covered under the Labor Code ▪ School staff, professional education staff in institutions and higher education institutions staff |

Implications:

- A. Will require the civil service job classification pay and grade system to be applied to all LEPLs in the equivalent of grades 1-4 staff with the exception of staff in schools, professional education institutions and higher education institutions.
- B. Will result in recruitment and pay equity amongst all professional staff within the greater public service of Georgia.
- C. Will require a phased-in approach until the classification pay and grade system has been extended to LEPLs.
- D. Will require a procedure ensuring strict adherence to the recruitment **merit principle** with no political interference in the appointment process to retain the integrity of civil service recruitment processes.
- E. Will require the definition of a **professional civil servant** to be altered within the Civil Service Reform Concept. It currently stipulates: “...This category of servant begins his/her career in the civil service from a lower position and moves higher in accordance with his/her professional knowledge, experience and performance evaluation results.” Individuals with the capacity to be a director or a deputy director of an LEPL may not have started their career in government and worked up to the position of director.
- F. May require educators and hospital workers to be bundled with their own legislation if the notion that they are essential services is embraced.

Advantages:

- A. Provides a system whereby the professional service is able to compete, be laterally transferred and/or seconded within the larger definition of the civil service thus enhancing career opportunities and professional career development.
- B. With the added career mobility feature, civil service status and recruitment via a defined merit system, this could result in less turnover after elections.
- C. Is more closely aligned with the approach taken by EU countries.
- D. Allows for greater control and cost containment related to pay and terms and conditions of employment for LEPL staff.

Disadvantages:

- Will require an increase in CSB HR specialized staff to provide the necessary advice and support to the extended pay and grade system application.

| | | |
|-------------------------------------|--|--|
| OPTION 2 All staff | <ul style="list-style-type: none"> ▪ LEPL heads and deputy heads ▪ All other staff | <ul style="list-style-type: none"> ▪ School staff, professional education staff in institutions and higher education institutions staff |
|-------------------------------------|--|--|

Implications:

- A. Will require an increase in central staff to develop and maintain staffing standards, pay and grade guidelines,

and general terms and conditions of employment of LEPL staff.

- B. Will require a procedure ensuring strict adherence to the recruitment **merit principle** with no political interference in the appointment process to retain the integrity of civil service recruitment processes.
- C. Will require the definition of a **professional civil servant** to be altered within the G3 concept. It currently stipulates: "...This category of servant begins his/her career in the civil service from a lower position and moves higher in accordance with his/her professional knowledge, experience and performance evaluation results." Individuals with the capacity to be a director or deputy director of an LEPL may not have started their career in government and worked up to the level of director.

Advantages:

- A. It is more consistent with the approach taken in the EU.
- B. The agency heads (AHs) and deputy heads (DHs) are currently covered by the Law of Georgia on Civil Service.
- C. Allows for greater control and cost containment related to pay and terms and conditions of employment for LEPL staff.
- D. Will allow for lateral staff transfers to another position with the same salary range midpoint between LEPLs and LEPLs in central government.
- E. Under this option all non-management decision-making professional staff such as engineers, doctors and lawyers would be included in the civil service (they usually perform an advisory function).

Disadvantages:

- Is not consistent with comparator countries.
- Increases the size of the core civil service by very large numbers.
- If civil service employment benefits increase beyond what is offered in the Labor Code, it would increase costs.

| | | |
|---|------------|------------|
| OPTION 3 No Agency Staff | ▪ No staff | ▪ No staff |
|---|------------|------------|

Implications:

- A. The agency, as its own employer, can establish its own human resources and administrative regimes (staffing, classification, compensation, collective bargaining, etc.).

Advantages:

- A. Greater political and administrative freedom to influence employment, pay and grade, and classification of individual staff members.
- B. Allows for greater freedom in the appointment and dismissal of directors and deputy directors.
- C. Allows for greater freedom in dismissing and/or changing staff.

Disadvantages:

- A. Could result in uneven staffing between agencies (depending on whether or not the agency collected revenue).
- B. Costly to duplicate central HR services in an agency.
- C. Would most likely require some form of legislation and/or central regulations to keep job classification, pay and terms and conditions of employment costs under control with a relative defined administrative relationship with the CSB.
- D. Difficult to contain staffing levels.

| | | |
|---|-------------------------------|---|
| OPTION 4 Agency Heads and Deputy Heads | ▪ LEPL heads and deputy heads | ▪ All other staff ▪ School staff, professional |
|---|-------------------------------|---|

| | | |
|---|---|---|
| Only | | education staff in institutions and higher education institutions staff |
| <p style="text-align: center;">Implications:</p> <p>A. This option only makes sense if greater political involvement is wanted and the AH and DH are viewed as political appointments rather than merit based.</p> <p>B. Once lateral transfer and secondment policies are fully developed, explained and circulated, the pool of professional civil servants is increased.</p> <p>C. Requires the definition of a professional civil servant to be altered within the Civil Service Reform concept. It currently stipulates: "...This category of servant begins his/her career in the civil service from a lower position and moves higher in accordance with his/her professional knowledge, experience and performance evaluation results." Individuals with the capacity to be a director or deputy director of an LEPL may not have started their career in government and worked up to the position of director.</p> <p>Advantages:</p> <p>A. Allows for greater freedom in the termination and dismissal of LEPL staff other than AHs and DHs.</p> <p>Disadvantages:</p> <p>A. Is inconsistent with the approach adopted by comparator countries.</p> | | |
| <p style="text-align: center;">OPTION 5</p> <p style="text-align: center;">LEPL Staff Only below the Agency Head and Deputy Head</p> | <ul style="list-style-type: none"> ▪ All staff other than the AH and DH | <ul style="list-style-type: none"> ▪ Agency heads and deputy heads ▪ School staff, professional education staff in institutions and higher education institutions staff |
| <p style="text-align: center;">Implications:</p> <p>A. It is an option similar to option 1 with the exception that the decision-making recognized for civil service status only applies to grades 1-4.</p> <p>B. Would require strengthening of the role of politicians in the appointment of AHs and DH without politicizing the civil service.</p> <p>C. Allows for greater political involvement in the choice of the AH and DH.</p> <p>Advantages:</p> <p>A. There appear to be very few, if any, advantages to this option unless greater political participation is the end state in the recruitment of AHs and DHs.</p> <p>Disadvantages:</p> <p>A. Reduces the pool of professional civil servants who would not want to give up civil service status for the long-term uncertainty of a political appointment.</p> <p>B. It is a questionable public service practice to have civil servants reporting to non-civil servants other than in an advisory capacity.</p> | | |
| <p style="text-align: center;">OPTION 6</p> <p style="text-align: center;">Embrace the Vertical/Horizontal Decision-Making Approach (Civil Service Reform Concept)</p> | <ul style="list-style-type: none"> ▪ Employees who exercise vertical and horizontal management decision-making | <ul style="list-style-type: none"> ▪ Employees without the vertical and horizontal decision-making ▪ School staff, professional education staff in institutions and higher education institutions |

| | | staff |
|---|--|-------|
| <p style="text-align: center;">Implications:</p> <ul style="list-style-type: none"> A. This option may appear confusing and difficult to administer. B. This approach would need to be defined in terms of classification. C. It is actually similar to option 1 with using the critical distinguishers of vertical and horizontal decision-making. D. Will require the civil service job classification pay and grade system to be applied to all management decision-making positions. <p>Advantages:</p> <ul style="list-style-type: none"> A. There a few if any advantages to this option. <p>Disadvantages:</p> <ul style="list-style-type: none"> A. Will create difficulty harmonizing central government pay and grade because the job evaluation factors will need to be defined differently to accommodate the lateral/horizontal approach. B. Will require more administrative staff in the central government to advice on and monitor this application. <ul style="list-style-type: none"> a. It will exclude professionals in LEPLs who do not have management decision-making but, rather, are considered as advisors (e.g., lawyers, engineers). | | |
| <p style="text-align: center;">There are Three LEPLs under the City of Tbilisi</p> <ul style="list-style-type: none"> A. Based on the consultant’s interview with one city LEPL, it was apparent that the City of Tbilisi’s LEPLs would benefit from a similar governance structure with an emphasis on accountability and establishment of operations that would require them to link with each other and report out. B. The City of Tbilisi should consider emulating the Government of Georgia’s classification system and/or develop its own adhering to the same recruitment and pay principles as the Government of Georgia. | | |

Recommended Course of Action:

Option 1

LEPL Staff Equivalent to Grades 1-4 in the Civil Service (all other staff fall under the Labor Code)

This option will require a staggered implementation steps to extend the new central government pay and grade system to LEPLs.

Note: *It is suggested that consideration should be given to bundling all K-12 schools into one LEPL and develop separate terms and conditions of employment for them through secondary legislation and/or keep them under the Labor Code. It is further suggested that consideration be given to bundling the 15 professional education institutions into one LEPL and the 20 higher education institutions into a separate single LEPL because they are a different labor markets and may have separate employment needs from core civil servants.*

City of Tbilisi – Three LEPLs

- Recommendation is that the City of Tbilisi’s Government consider a similar governance structure with an emphasis on accountability and establishment of operations that would require a closer reporting relationship to a city manager or a similar senior position that reports to the City Council.
- Recommendation is that the City of Tbilisi consider developing a city staff classification and pay system similar to that of the classification system of the Government of Georgia and/or develop its own system adhering to the same recruitment and pay principles as the Government of Georgia.

7. PROPOSAL FOR ESTABLISHING A GOVERNANCE FRAMEWORK FOR LEPLS

“Good governance is not an end in itself. The reason governance is important is that good governance helps an organization achieve its objectives. On the other hand, poor governance can bring about the decline or even demise of an organization.”¹⁴

The *Principles of Good Governance in the Public Sector*¹⁵ were developed by the Independent Commission on Good Governance in Public Services established by the UK Office for Public Management (OPM*) and the Chartered Institute of Public Finance and Accountancy (CIPFA). The principles form a universal standard of good governance.

The standard of good governance comprises six core principles exhibited in Figure 6 which give the LEPL a standard for monitoring the minimum operational requirements that should be in-place. These principles implement **operational actions** under the governance model in the public sector resulting in systems that strike the right balance between capacity for innovation, cost optimization and risk control. They are summarized in the following four actions:

1. The role of the responsible minister has been clarified relative to the agency head and deputy head.
2. An annual reporting process is in-place (service plan).
3. A performance monitoring process (functional assessment/review) has been established.
4. Financial accountability requirements have been documented and are being adhered to, a risk management system is in-place to keep the minister informed of any pending issues and policy has been developed to deal with conflicts of interest.

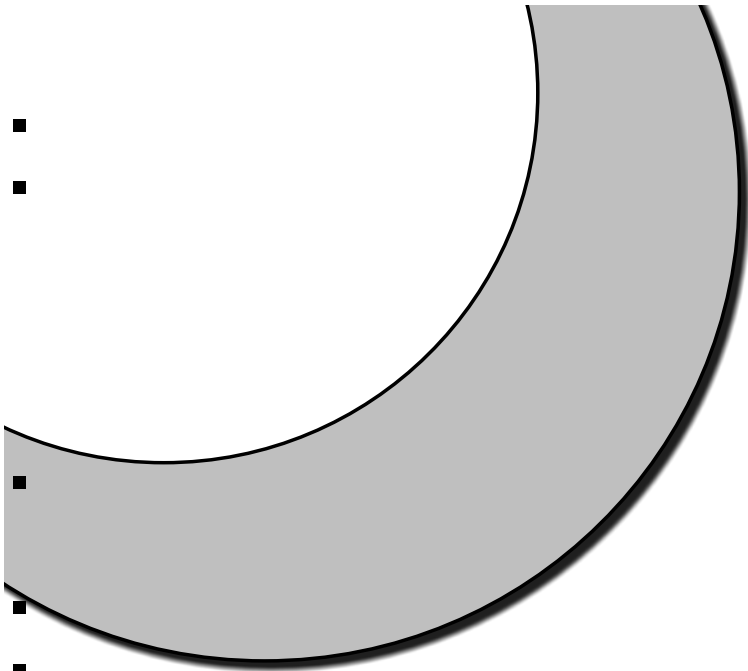
The principles of good governance are a framework for monitoring the operations of LEPLs. The principles, the supporting activities and the suggested actions are given in Figure 6 below.

Implementing the governance framework requires government endorsement, ministerial commitment and central agency support.

¹⁴ *Public Sector Governance—Australia*, CCH, Sydney, 2004, pp. 10–101.

¹⁵ *The Good Governance Standard for Public Services*, Independent Commission for Good Governance in Public Services, Office for Public Management Ltd., UK.

Figure 6
Principles/Standards of Good Governance



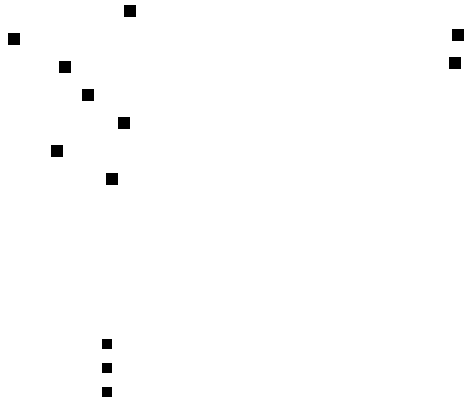
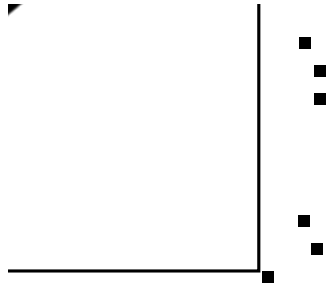
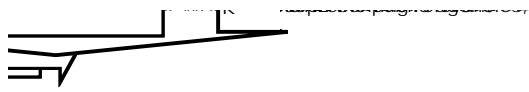
The Law of Georgia on Legal Entities of Public Law does not differentiate between ministries accountable LEPLs and the more independent LEPLs that function similar to state-owned enterprises nor does it appear to differentiate between city accountabilities and state accountabilities. Articles 6, 9, 10(2), 11(1) and 12(d1) of the Law could be interpreted as supportive of an LEPL governance and accountability framework.

Figure 7 provides a conceptual overview of the governance structure components.

- **SECTION A** of the governance model with the components of accountability, performance, strategy and control with their action components all identified.
- **SECTION B** follows with:
 - Component 1 “accountability” linking it to the parliament, minister and citizens.
 - Component 4 “controls” linking it to legislation, charters and codes of conduct.
- **SECTION C**
 - Component 2 “performance” linking it to internal/external reporting and vision/mission, performance management framework, plans, policies, procedures, organization structure, risk management, functional review framework and the annual service plan.

The statutory role of the Civil Service Bureau is also outlined and suggests the implementation of an LEPL resource office or unit within the CSB structure or the Ministry of Finance to provide governance policies and ongoing advice, information and support to LEPLs to promote good governance, transparency, accountability and strategic alignment along with developing best practice guidelines and providing advice on mandate directives and service plans. ***This is the horizontal support to the vertical ministry/LEPLs.***

Figure 7
Georgian LEPL Governance and Accountability Model



-
-
-
-
-

8. GUIDELINES FOR A FUNCTIONAL ASSESSMENT OF LEPLs

The purpose of a functional assessment is to measure progress in the implementation of the LEPL goals and assess the impact of the outcomes in the delivery of services to the population. It is helpful to conduct functional assessments or reviews to support strategic reform and decentralization of government services to improve service delivery.

To attach value to a performance assessment, the assessment must provide meaningful information as a management tool. Performance measurement-related strategies describe LEPL accomplishments in terms of outcomes. The report does not assess individual LEPLs but, rather, provides the framework for a phased-in approach to ongoing evaluations based on outcomes.

This approach to a functional assessment relies heavily on outcomes or outcome mapping to determine end results. It works backwards by first identifying the outcomes and how they will be evaluated and monitored to determine progress towards public policy objectives of the respective LEPLs. Choosing the right set of outcomes is a key determinant in the success of using any public service value methodology. ***Regardless of what happens within an LEPL during any given year, the outcomes are always there to be used as a guide.***

Chart 8 identifies two perspectives. Under section A of this is “**what we are striving for.**” It is a subjective determination of the impact of the LEPL meeting its public policy outcome objectives in providing **citizen-centered outcomes** based on the evaluation that results from section B. It provides a ranking from an “emerging” impact to “best” possible impact. Section B provides a template for measuring the outcomes. It is divided into three major activities and then further broken down by tasks.

The benefits of using such a model:

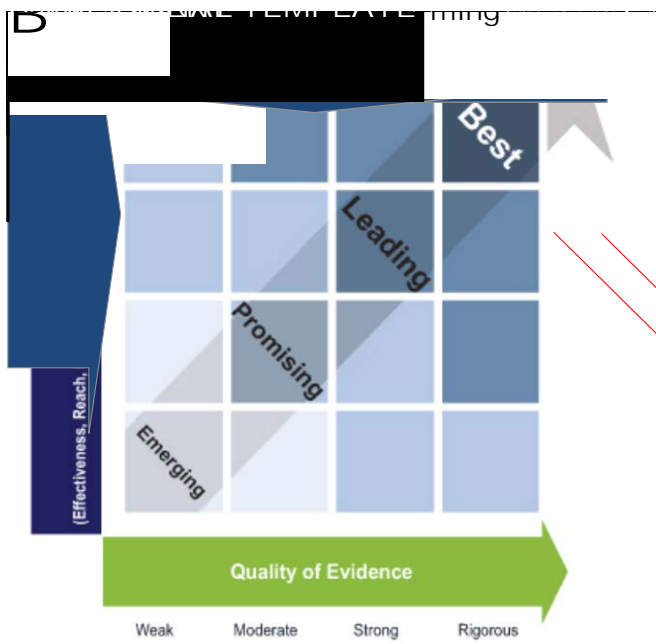
- Identifies program successes.
- Identifies areas for LEPL improvement where improvement and increased efficiency are needed.

Metrics:

- When selecting metrics they must be specific, measurable, attainable, relevant and timely (SMART). The data can be either qualitative and/or quantitative or both. The qualitative data is descriptive and the quantitative is numerical or statistical. It uses a logic model approach to clarify activities as shown in Figure 9 below:

Figure 9
Sample Logic Model

Figure 10
Functional Review Assessment Framework



Section B
Public Service Value Building Blocks¹⁶

| Activity | Description | Tasks |
|----------|----------------------------|--|
| 1 | Building Blocks | <ol style="list-style-type: none"> 1. Preparing a well-defined LEPL mission. 2. Identifying the core LEPL functions. 3. Identifying the outcome stakeholders. 4. Identify and articulating stakeholder expectations. |
| 2 | Developing Outcomes | <ol style="list-style-type: none"> 1. Fully expressing the end results the LEPL aims to deliver to key internal and external stakeholders. |
| 3 | Developing Metrics | <ol style="list-style-type: none"> 1. Raw Metrics: How will the LEPL know that it has been successful in achieving the outcomes? 2. Filtered Metrics: Which metrics can be used to drive the results the LEPL wants and will they be practical to measure? <p>Note: A metric is a quantifiable measurement that can be used to track and assess the performance relative to outcomes of an LEPL relative to its stated goals.</p> |

¹⁶ Martin Cole and Greg Parston, *Unlocking Public Value*, Accenture LLP, 2006.

9. LEPL Annual Service Plan

The **Georgian LEPL Governance and Accountability Model** in Figure 7 suggests each ministry responsible for the respective LEPLs establish a framework that requires the roles and responsibilities of the minister and LEPL heads and deputy heads be outlined. Ideally, the model establishes an accountability oversight infrastructure in the ministry responsible that is consistent with accountability requirements and establishes an accountability infrastructure in the LEPL to fulfil accountability requirements.

Some governments go as far as providing each LEPL equivalent with a **letter of shareholder (citizen) expectations**. This is a public statement of a government’s mandate and policy direction to the equivalent LEPL. It is reviewed and approved annually by the cabinet or the parliament and, in the case of Georgia; it would be done before the service plan is finalized. The letter of shareholder (citizen) expectations lays out the key actions required and the high-level performance expectations of the equivalent of an LEPL on behalf of the government. The letter is signed by the minister and the LEPL head.

Once the letter has been signed, the requirement to **prepare the annual service plan** based on the expectations outlined in the letter is the next step. Once the LEPL has prepared the service plan, it is submitted to the minister responsible for review and approval. The service plan is tabled with the respective legislator or parliament on an annual basis along with the budget. It is subject to review by a parliamentary select standing committee and, where one exists, the auditor general or equivalent.

Annually, an organization such as the recommended LEPL resource office or unit of the Civil Service Bureau would issue the service plan’s instructions along with any budgetary instructions and/or cross LEPL policies for implementation.

This links to the LEPL governance and accountability model and the LEPL functional assessment by presenting an outline for a suggested annual LEPL service plan. In some jurisdictions, it is a three-year plan that is updated annually based on the results of the LEPL functional assessment. Some jurisdictions build the requirements into the budget legislation.

Suggested LEPL Service Plan Outline

| Suggested LEPL Service Plan Content | |
|--|--|
| <i>The Service Plan should be a stand-alone document</i> | |
| 1. | Message from LEPL Head to Minister Responsible (including Accountability Statement) |
| 2. | Table of Contents |
| 3. | Overview of the LEPL Organization |
| 4. | Corporate Governance – How the LEPL is Governed |
| 5. | Strategic Context |
| 6. | Goals, Strategies, Performance Measures and Targets |

| | |
|-----------|--|
| 7. | Benchmarks and Performance Management Systems |
| 8. | Summary Financial Outlook |

10. Outcomes of Meetings Conducted over the Course of the Consultancy

This consultant met with the heads or deputy heads of eight LEPLs, one NGO, two professors (four meetings) and the CSB director and staff (two meetings).

The meetings with the CSB, NGO and professors were to gain knowledge on the structure and functioning of the LEPLs. The meetings with the LEPLs were to gain information on their budgeting process, classification and pay approaches, recruitment approach and hearing suggestions for improving the LEPL governance structure. The meetings with the LEPL heads and deputy heads were particularly enjoyable. The talent at the executive level is very apparent.

The general impression formed by the SC from the meetings is that more accountability needs to be clearly articulated both legislatively and from a due diligence perspective both vertically and horizontally. The LEPLs would benefit from clearer accountability legislation and policy and regulatory support in the areas of staffing, compensation and pay, and transparency.

In the area of job classification, the practices varied significantly by and between LEPLs. The allocation of pay was varied with no clear policy on the levels of pay linked with grade and pay levels established with LEPLs.

Specific Observations Include:

Staffing

- Lack of clarity by some LEPL heads and deputy heads as to whether or not they were included in the core public service.
- A high level of support for more LEPL staff inclusion in the definition of a core civil servant.
- A better articulation of the employment benefits of being included in the civil service.
- A more coordinated and better defined employee job classification pay system across LEPLs.
- The spillover of civil servants covered by the Labor Code-defined benefits highlights the need for better articulation of the employment benefits of being a civil servant and also suggests that there should be some enrichment of those benefits beyond what is provided in the Labor Code to encourage civil service employment.
- Most LEPL heads either directly or indirectly report to the minister or through the deputy minister to the minister.
- There are some LEPLs that report directly to the Prime Minister. In some jurisdictions, it is a requirement that crown agencies that report directly to the Prime Minister be civil servants.

Governance

- No LEPL had a formal board of directors. Some had external ad hoc advisory committees and some formed senior staff advisory committees.

Budget

- The majority of LEPLs received some percentage of their operating budget from the ministry budget. Some LEPLs can fundraise to augment their budget while others cannot.
- Given the freedom to allocate bonuses within LEPLs, the lack of ability to generate revenue could end up creating a disparity in the bonuses provided to staff across LEPLs.
- In most cases, the head decided on staff bonuses either with or without staff input.
- As concerns bonuses, some LEPLs indicated that they were complying with the direction provided by the recent decree on bonuses while others felt they were unique and would have the basis for an exception to the guidelines suggesting a clearer definition of the standard that needs to be met to circumvent the guidelines.
- This suggests that there be a better definition of what revenue is retained within the LEPL and the government. There may be an argument for some sort of revenue sharing or equalization of bonus funds between LEPLs.

Procurement

- The issue of procurement surfaced many times during interviews with LEPL heads. There was a general consensus that the current system was not working in terms of providing quality bids. Under the current system, they are forced to accept the lowest bid which often reflects poor quality of services or goods.

Municipal LEPLs

- The lack of accountability seems quite pronounced at the city level. There appears to be a greater freedom to act at the city level with an unclear accountability relationship between the LEPLs and the city which suggests a better defined and strengthened relationship between the LEPL and the city.
- There needs to be greater direction given on the allocation of bonuses particularly at the LEPL head level. There seems to be the freedom by the head to determine his/her level of bonus which runs contrary to all notions of accountability.

Note: All LEPLs interviewed expressed an appreciation for the need for clarity in terms of accountability but expressed the desire to retain the flexibility in their ability to act on behalf of the LEPL unfettered.

11. PROPOSED RECOMMENDATIONS AND TIMEFRAMES FOR IMPLEMENTATION

The recommendations and the rationale justifying each recommendation are set out in the chart below:

| RECOMMENDATION | PRIORITY TIMEFRAME | RATIONALE |
|--------------------------------|-----------------------|------------------|
| Governance Framework | | |
| 13. Create a <i>governance</i> | Design | • There are many |

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| <p>working group made up of agency heads and deputy heads with the mandate to develop an LEPL framework:</p> <p>d) With a common platform for LEPLs to evaluate and improve their own governance practices.</p> <p>e) With consideration where it would be appropriate to have a governing board.</p> <p>f) Once the framework is established, provide training to all LEPLs on its application and scope.</p> | <p>Immediate 1 year</p> <p>Implementation Medium 2-3 years</p> | <p>interrelated component parts to a governance framework including strategic, operational, financial, legislative, cross LEPL policy and stakeholder communications (internally and externally) and a clear delineation between political and bureaucratic responsibilities.</p> <ul style="list-style-type: none"> This working group could meet and deliberate while the new Law on Civil Service is being prepared and provide input into the Law, if appropriate. |
| <p>14. Any refinements to the Law on LEPLs needs to include additional accountability requirements at the local/or city level.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> The accountability provisions appear to be far more flexible at the local level than at the national level. |
| <p>15. Create a resourcing unit within the CSB with the purpose of providing cross LEPL (horizontal) policies and guidelines to ensure a sound governance framework with ongoing advice, information and support.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> Conforms with the CSB mandate of analyzing the state of affairs in the public service and presenting recommendations for changes in the legislature. |
| <p>16. For ease of administration and accountability consider bringing all schools under one LEPL.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> The schools would continue their same regional reporting relationships. |
| <p>LEPL Staff – Civil Service Employment and Human Resources Staffing</p> | | |
| <p>17. Integrate LEPL staff equivalent to grades 1-4 in the civil service (all other staff to remain under the Labor Code only).</p> <p>This option will require a staggered implementation to extend the new central government pay and grade system to LEPLs.</p> | <p>Planning Immediate 1 year</p> <p>Staggered</p> | <p>11. Will require the civil service job classification pay and grade system to be applied to all LEPL staff with the exception of staff in schools, professional education institutions and higher education institutions.</p> <p>12. Will result in recruitment and pay equity amongst all profession staff</p> |

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| <p>Advantages:</p> <ul style="list-style-type: none"> ▪ Provides a system whereby the professional service is able to complete, be latterly transferred and/or seconded within the larger definition of the civil service enhancing career opportunities and career development. ▪ With the added career mobility feature and civil service status and recruitment via the merit system could result in less turnover after elections. ▪ Is more closely aligned with the approach taken by EU countries. ▪ Allows for greater control and cost containment related to pay and terms and conditions of employment for LEPL staff. <p>Disadvantages:</p> <ul style="list-style-type: none"> ▪ Will require an increase in CSB HR specialized staff to provide the necessary advice and support to the extended pay and grade system application. | <p>implementation 2-3 years</p> | <p>within the greater public service of Georgia.</p> <p>13. Will require a phased-in approach until the classification pay and grade system has been extended to LEPLs.</p> <p>14. Will require a procedure ensuring strict adherence to the recruitment merit principle with no political interference in the appointment process to retain the integrity of civil service recruitment processes.</p> <p>15. Will require the definition of a professional civil servant to be altered within the G3 concept. It currently stipulates: "...This category of servant begins his/her career in the civil service from a lower position and moves higher in accordance with his/her professional knowledge, experience and performance evaluation results." Individuals with the capacity to be a director or deputy director of an LEPL may not have started their career in government and worked up to the level of director.</p> <p>16. May require educators and hospital worker to be bundled with their own decrees if the notion that they are essential services is embraced.</p> |
| <p>18. Specify terms and conditions of core civil servants as defined in the Concept and/or in legislation.</p> <p>b) Upgrade the terms and conditions of employment to exceed those available under the Labor Code.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ It is confusing now the way Civil Servants fall under the labor code, for specific benefits, if the same benefits under the Labor Code are greater or better than the benefit(s) they receive under Civil Service Status. ▪ Upgrading the terms and conditions of employment for civil servants will make the |

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| | | Government more of an employer of choice and will increase its recruitment pool. |
| <p>19. Define the merit principle as part of the revisions to the Law of Georgia on Civil Service.</p> <p>c) With the merit principle in place it will be easier to rationalize transfers, secondments and lateral transfers for career enrichment and to meet civil service recruitment needs.</p> <p>d) Commence the preparation of staffing policies while the new legislation is being prepared and circulate them as pending regulations pursuant to the new act.</p> | <p>Immediate 1 year as the new legislation is prepared</p> | <ul style="list-style-type: none"> ▪ The concept of merit has been the foundation of hiring as in most European and Commonwealth countries for more than 100 years. ▪ It is one of the most important factors in ensuring a strong, neutral workforce. ▪ It is most often enshrined in legislation similar to the Georgian Law on Civil Service with an employee appeal process if violations are suspected within the recruitment process. ▪ Consider wording similar to: the matters to be considered in determining merit must, having regard to the nature of the duties to be performed, include the applicant's education, skills, knowledge, experience, past work performance and years of continuous service in the public service. |
| <p>20. Better define and strengthen the working relationship between line ministries and the CSB.</p> <p>b) Develop a formal numbered and dated advisory bulletin from the CSB to deputy ministers (or ministers) of a ministry advising them of HR policy developments and encourage the ministry to build a body of HR policy knowledge for HR policy manuals.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ In many jurisdictions the role of a CSB is constituted by legislature to regulate the employment and working conditions of civil servants, oversee hiring and promotions and promote the values of the public service. ▪ In order for the CSB to carry out its role there needs to be a clear understanding that the CSB is responsible for HR policy and the line ministries are responsible for implementing it and, where necessary, with the assistance of the CSB. |

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| <p>21. Better define, strengthen and formalize the working relationship between line ministries and the LEPLs reporting to their minister by defining the relationship in legislation.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ Some LEPLs have HR assistance from line ministries and some do not – it is a very uneven playing field. ▪ This may require a shift in HR resources more to the line ministry to provide equitable advice and support to LEPLs. |
| Functional Assessment of LEPLs | | |
| <p>22. Adopt the public service value model as part of the governance and accountability framework as defined in this report or one similar and enshrine it in government policy.</p> <p>b) Link this to recommendation 1 and have the <i>governance working group</i> integrate the process into the accountability framework.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ There is a need by the LEPLs to know how to accurately identify and measure outcomes with this or a similar type of model. ▪ Measure the extent to which there is awareness of such models and provide training prior to implementation. ▪ The same model will provide consistent evaluation criteria across LEPLs. |
| LEPL Annual Service Plan | | |
| <p>23. Adopt the service plan approach outlined in this report or one similar as part of the governance and accountability framework and enshrine it in government policy.</p> <p>Link this to recommendation 1 and have the <i>governance working group</i> integrate the process into the accountability framework.</p> | <p>Immediate 1 year</p> | |
| Other Recommendations | | |
| <p>24. Conduct a consultancy that defines and recommends the inclusion criteria for creating and/or eliminating LEPLs.</p> | <p>Immediate 1 year</p> | <ul style="list-style-type: none"> ▪ Many jurisdictions have defined and legislated rigorous criteria that has to be met before the equivalent of an LEPL can be implemented. Future consultancy should consider |

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| | | <p>developing legislated criteria guidelines for the creation of LEPLs.</p> <ul style="list-style-type: none">▪ The criteria can be used to review current LEPLs to see if there is justification to maintain or change their status. |
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