

October 2021

Report #8



Bidzina Ivanishvili's Connections with the Chinese Companies

Pandora's Box Opened

ABOUT CIVIC IDEA

Civic Initiative for Democratic and Euro-Atlantic Choice – Civic IDEA is a non-governmental organization based in Georgia, covering global issues.

The mandate of the organization serves the realization of Democratic and Euro-Atlantic choice, institutionalizing it and bringing to every citizen.

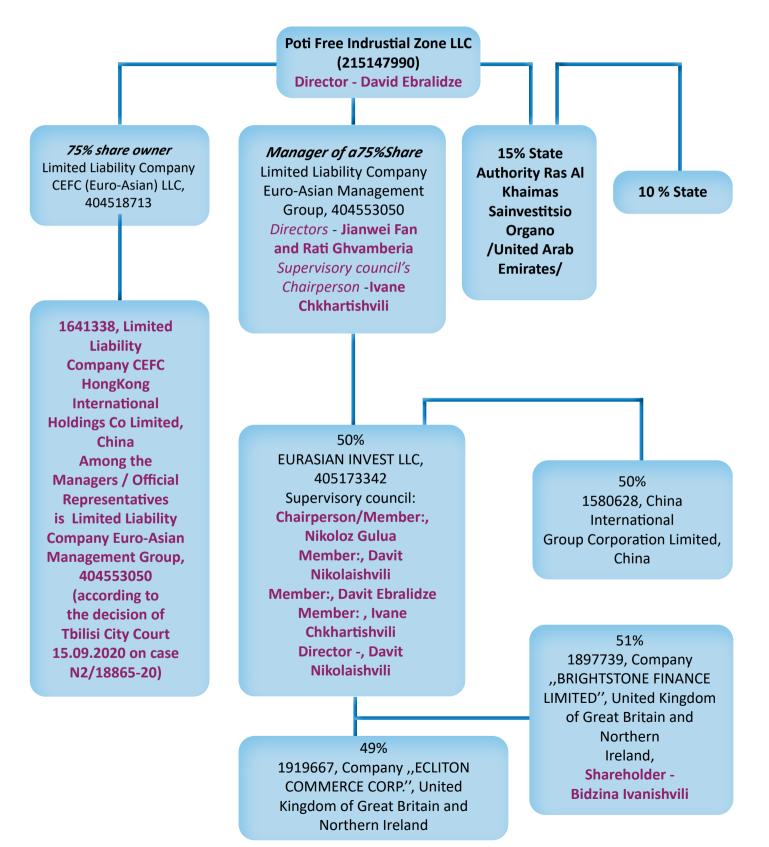
Democratic and Euro-Atlantic choise means the formation of free and fair state based on equality, where citizens equipped with the rule of law feel safe and secure.

Civic IDEA has been actively monitoring China's growing influence in Georgia. This month, the latter has published the report "Who is in charge of the post-cold war world? Chinese influence operations in Academia, Media & CSOs: The case of Georgia", which evaluates the CCP's influence operations in Academia, Media and CSOs. Civic IDEA case study Georgia, however, the report is written with a comparative perspective of similar practices in other countries. Today, China's activities in Georgia do not pose a direct, visible and immediate threat, but the ignorance of respectable and authoritative organizations, security services of our partner countries, numerous EU studies, recommendations and decisions by the Georgian government is another clear example of the disruption of foreign policy incentives and a vague vision concerning Georgia's long-term success and the development.

Table of Contents

Companies reviewed as part of the study
ntroduction 5
What does CEFC China Energy stand for? 6
CEFC in Georgia: Poti FIZ becomes the property of CEFC
Privatization terms and important clauses of the investment agreement 7
Eurasian Management Group Ltd. as an owner of Poti FIZ shares
Amendments to the Poti FIZ Share Purchase Agreement between the
CEFC and the State in September 2020
Court decisions from September 2020
Conclusion

Companies reviewed as part of the study



Introduction

In 2018-2020, "Civic IDEA" intensively published research concerning the shady links of Georgian political/business elite representatives with the notorious Chinese companies. Among them was a study named "Chkhartishvili Leads in China's "Closed Business Championship". According to our research and analysis of the materials found, the interests of CEFC China Energy, a company that has been exposed in many criminal cases in different countries of the world, were pursued by former Prime Minister Bidzina Ivanishvili and Vice Prime Minister of Eduard Shevardnadze's government and Minister of Economy, Ivane Chkhartishvili.

The findings presented in the reports published by us over the years are fully corroborated by the Pandora documents published by the International Consortium of Investigative Journalists in late September 2021, portraying the links between the former Prime Minister of Georgia and Brightstone Finance Limited registered in the Virgin Islands.

This report is a continuation of the studies published by us in 2018-2020. We will tell you how the judicial and the executive branches of government handed over one of the most important strategic assets of Georgia - the Poti Free Industrial Zone, to the bankrupt Chinese company CEFC China Energy. The report will also evaluate how Poti FIZ was brought under the total control of Bidzina Ivanishvili and Ivane Chkhartishvili after the bankruptcy of the Chinese CEFC. The court decision, which can not withstand any criticism, serves the sole purpose of retaining complete control of the former prime minister on Poti FIZ and preventing the return of property to the state.

Let us first remind you of some critical passages from our previous research that will help you see the complete picture of this corruption story.

5

What does CEFC China Energy¹ stand for?

CEFC China Energy was a <u>state-owned Chinese company</u>. From open and accessible sources on the Internet, we learn that in 2014-2016, the latter was one of the fastest-growing Chinese companies with assets valued at \$ 41 billion. Along with the dizzying short-term success, criminal scandals, sanctions, and <u>finally a placement in a list of bankrupt companies regulated by the Supreme Court of China were soon added to CEFC's portfolio</u>.

On November 21, 2017, New York Times (NYT) published an article, about the arrest of one of the leaders of the CEFC, Patrick Ho, in New York and the ongoing court case on charges of creating a criminal network and corruption. We would like to remind you that the same year (2017), based on the decision of the Government of Georgia, agreements were signed for transferring the 75% of shares of the Poti Free Industrial Zone to CEFC.

According to NYT, the purpose of Patrick Ho's visit to New York was to bribe African high-ranking officials in favor of a Chinese private company, which the charges brought by the prosecutor later confirmed. According to the U.S. prosecutors, CEFC China Energy was trying to obtain the rights on oil assets in Chad and Uganda. At this point, Mr. Ho is in custody and charged with violating international money laundering acts and corrupt practices of foreigners.

In addition to Patrick Ho, the company's founder and CEO, Mr. Ye Jianming, who was in Georgia and negotiated with the government along with Ivane Chkhartishvili, according to the NYT, is of interest to the investigation and is likely to be in custody as well.

On March 27, 2018, Bloomberg reported that all the assets of the "problematic Chinese conglomerate" had been blocked, its chairman has been held accountable, and the company itself is awaiting transfer to state control. Finally, on April 24, 2020, the news about the CEFC official bankruptcy case was published, according to which both CEFC itself and its subsidiaries were declared bankrupt by a Shanghai court.

CEFC in Georgia:

Poti FIZ becomes the property of CEFC

On September 13, 2017, the Government of Georgia issued <u>a decree</u>

No 1930, on the privatization of the 75% stake of the state-owned

Poti Free Industrial Zone Ltd. According to the act the agreement on
the share purchase should be signed between the LEPL - National

State Property Agency and CEFC (Euro-Asian) Ltd.

On December 29, 2017, the state transferred 75% of the Poti FIZ to the CEFC branch in Georgia - CEFC Ltd. (Euro-Asian), leaving 10% of the shares in state ownership and 15% in the ownership of the old owner, Ras Al Khaimah.

Privatization terms and important clauses of the investment agreement

The government determined the main conditions of privatization, which were fulfilled by the CEFC in exchange for receiving shares in Poti FIZ:

- ✓ Payment of the privatization amount (GEL 24,589,000) within
 30 days after signing the contract;
- ✓ Investment of at least 150 000 000 (one hundred and fifty million) USD for the development of Poti Free Industrial Zone through the affiliated person (s) or third party (s) specified in the contract according to the following schedule:
 - Investment of not less than 50 000 000 (fifty million) USD by December 26, 2020²;
 - The remaining amount of the investment is until December 26, 2028³.

¹ For more details, please see Civic IDEA's January 12, 2020 Survey- "Chkhartishvili Leads in China's "Closed Business Championship": at https://bit.ly/3iHenZk

² According to the agreement, the investment was to be made within 3 (three) years after the issuance of a written confirmation from the LEPL- State Agency of State Property within the system of the Ministry of Economy and Sustainable Development of Georgia on the obligation to pay the privatization amount; Therefore, this obligation had to be fulfilled by December 26, 2020, since, according to the documents in the public register, on December 26, 2017, the National Agency of State Property (seller) sent a written confirmation to CEFC Ltd. (Euro-Asian) (buyer) concerning the payment of the amount (GEL 24,589,000) for privatization.

³ According to the agreement, the second part of the investment was to be made within 11 (eleven) years (by December 28, 2028) from the issuance of a written confirmation by the LEPL- National Agency of State Property within the system of the Ministry of Economy and Sustainable Development of Georgia.

Under the terms of the privatization, it was also stipulated that in addition the CFC (Euro-Asian) Ltd. was obliged to submit a bank guarantee of USD 6,000,000 (six million) (within 10 days of confirmation of payment of the privatization amount) to ensure the payment of the fine imposed in the case of the non-compliance with the privatization conditions.⁴

<u>Important provisions</u> of the share purchase agreement:

- Prior to fulfilling the privatization conditions, the CEFC has only conditional ownership of the Poti FIZ, meaning that if the conditions are not fully met, its ownership will be revoked in the register. However, if CEFC fulfills the needs, it will receive an unconditional tenure for the term (99 years).
- ✓ If the obligations are fully fulfilled, CEFC Ltd. (Euro-Asian) will be able to manage Poti FIZ unconditionally until 2109, which means it will no longer have any responsibility to the state to make any investment.⁵
- With the prior consent of the state, CEFC can mortgage the shares. When it has unconditional ownership of the shares, it will no longer need the state's permission, which means that without state control, CEFC can be easily replaced by any other company that will seize Poti shares.
- Like a mortgage, CEFC is authorized to sell shares with the prior consent of the state, and after the transfer to unconditional ownership, will have that authority without the prior permission of the state.

As a result of the analysis of the agreement, Poti FIZ charter, and Georgian legislation, it becomes clear that after the transfer of Poti FIZ shares to unconditional ownership, CEFC will be able to alienate and mortgage the lands on the Poti FIZ territory.⁶

Privatization terms	Terms of fulfillment of the obligation stipulated by the contract	Current status of the obligation to be performed
Payment of the privatization amount (GEL 24,589,000)	30 days after signing the contract	Executed ⁷
Investment of at least 50 000 000 (fifty million) USD for the development of Poti Free Industrial Zone	26.12.2020	In accordance with the amendments of September 18, 2020, the date of fulfillment of the obligation has been moved to December 26, 2024
Investment of at least 100 000 000 (one hundred million) USD for the development of Poti Free Industrial Zone	26.12.2028	In accordance with the amendments of September 18, 2020, the date of fulfillment of the obligation has been set December 12, 2028
This obligation was added to the contract on September 18, 2020, in accordance with the amendments to the contract, the buyer was instructed to transfer 3,000,000 (three million) USD to Poti FIZ	18.12.2020	In order to receive information regarding the fulfillment of the obligations by CEFC Ltd. (Euro-Asian), the Civic IDEA appealed to the National Agency for State Property, but the agency refused to disclose such information due to the confidentiality of the contract.
An additional \$ 6,000,000 (six million) bank guarantee was to be submitted to CEFC (Eurasian) Ltd. to secure the payment of the fine imposed in the event of non-compliance with the privatization conditions.	05.01.2020	According to the December 22, 2019 amendments to the agreement, the buyer submitted an unconditional and irrevocable guarantee issued by JSC "Bank of Georgia", although the new version of the agreement does not show the amount of the bank guarantee.

However, the statute does not take into account the exceptional reservations, according to which a different amount of votes is required to make a decision on certain issues. The agreement between the parties provides for the consent of the seller on some issues (Articles 5.5-5.14 of the agreement) only during the term of the agreement, although the agreement does not say what happens after the parties fulfill their obligations under the contract and following Article 4.1.5 of the agreement the buyer will become the unconditional owner of 75%. This means that the buyer can, without the consent of the seller: encumber a 75% share of Poti FIZ (5.5 units), alienate this share in total (5.6) and partially (5.7), alienate the property owned by Poti FIZ (5.9), mortgage this property (5.10), decide on reorganization (5.11) and liquidation (5.12) of Poti FIZ.

The alienation of most of the territory of Poti FIZ will not be hindered by the legislation of Georgia either, following the Resolution of the Government of Georgia of June 3, 2008, No 131 "On Approval of the Rules for Establishment, Arrangement and Operation of a Free Industrial Zone", Articles 16-17 and 17. (16.) In case of change of the owner of the FIZ land plot or part of it, if the status of the FIZ land plot or part of it is not revoked, the organizer is obliged to notify in written form the Ministry of Economy and Sustainable Development of Georgia and FIZ enterprises about the alienation of the land plot or its part thereof about its new owner. (17.) In case of change of the owner of the FIZ land plot or part of it, in case the FIZ status is not revoked, the organizer (or new owner) is required to submit to the Ministry of Economy and Sustainable Development notarized consent of the new owner for the FIZ land on the given land plot.

Other laws regulating FIZ, including the Law of Georgia on Free Industrial Zones and the Law of Georgia on State Property, do not provide a different regulation that would prevent the CEFC from disposing of the Poti FIZ property.

7 According to the contract, the basis for registering 75% of shares in the public register is "termination of the contract" or full payment of the privatization amount by the buyer and confirmation of this fact by the seller. Since CEFC Ltd was registered as the owner of 75% of the Poti Free Industrial Zone Ltd in the public register in 2019, this provides a basis for the assumption that the buyer paid the privatization amount.

t

⁴ See Article 6.2 of the Share Purchase Agreement between CEFC (Euro-Asian) Ltd. and the National Agency of State Property: https://drive.google.com/file/d/1glqVPnlSbb3c920IIMeyl7gzdU S8tkL/view?usp=sharing

⁵ According to the first paragraph of Article Ne72 of April 14, 2009 resolution of the Government of Georgia on the Poti Free Industrial Zone, the Poti Free Industrial Zone (from now on referred to as the Poti FIZ) has a term of operation of 99 years, starting from November 15, 2010 (See: Consolidated version https://www.matsne.gov.ge/ka/document/view/5068?publication=0 [Last checked 07.04.2021) The expiration of the term is the basis for its liquidation (See: https://www.rs.ge/LegalEntityCustomsControlArea?cat=2&tab=1) which means that the right of ownership of the share is revoked after the expiration of this term.

In addition, the contract does not specify the term of the contract; therefore, the contract is valid until the parties fully fulfill their obligations. As the subject of this agreement is the transfer of conditional ownership of Poti FIZ, once the seller completes the duties outlined in the privatization terms fully and in due time, the term of the agreement expires, and the buyer will be able to manage his share unconditionally for the remaining 81 years. However, it should be noted that following the third paragraph of Article 1 of the charter of Poti Industrial Zone Ltd., the company exists for an indefinite period.

⁶ According to Annex N1 of the <u>agreement</u>, Poti FIZ owns 304.6 hectares of land. Article 7, paragraph 7, sub-paragraph "I" of the 2016 edition of the Poti Free Industrial Zone Ltd. Charter stipulates that the Shareholders' Meeting also makes decisions regarding the alienation of real estate. Pursuant to paragraphs 8 and 9 of the same article, the Shareholders' Meeting is decisive if it is attended by the partners with the majority of votes, and the assembly makes the decision by the majority of votes of the partners present.

Eurasian Management Group Ltd. as an owner of Poti FIZ shares

From June 22, 2018, Eurasian Management Group Ltd. has been appointed as the manager of 75% of Poti FIZ, the directors of which are Jianjun Zang, and Rati Ghvamberia, and the Chairman of the Supervisory Board - Ivane Chkhartishvili (for more information about the partners and managers of the mentioned companies, please see Annex N1).

It should also be noted that from January to September 2019, the current Prime Minister, Irakli Gharibashvili worked for the same company as an advisor to the company's supervisory board, where his salary for eight months amounted to 240,776.93 GEL.8

As you can see in the chart on the first page of our report, China International Group Corporation Limited owns 50% of Eurasian Management Group, while Eurasian Invest LLC owns the other 50%. The founding companies of the latter are the UK-based **BRIGHTSTONE FINANCE LIMITED (51%)** and the UK-based **ECLITON COMMERCE CORP. (49%)**.



8 See Irakli Gharibashvili's property declaration: https://bit.ly/3AnAFoK

These companies are registered under the laws of the British Virgin Islands; therefore, they are subject to a high standard of confidentiality, but after the publication of the Pandora documents, it became clear that the owner of **BRIGHTSTONE FINANCE LIMITED** is the former prime minister of Georgia Mr. Ivanishvili. Also, based on the **Georgian Entrepreneurial Register**, initially the director of Eurasian Invest was Giorgi Bachiashvili, the head of Bidzina Ivanishvili's Co-Investment Fund.

Naturally, an asset management agreement was signed between the companies, where we find many interesting provisions in making important decisions with the full privileges of the managing company, i.e., the company owned by Bidzina Ivanishvili. It is this agreement that stipulates that even in the event of a loss of shares by the CEFC, such as a sale, the manager company still retains the rights of the manager, if this is not possible, for example, when returning to state ownership, the manager must receive appropriate compensation, which is determined by the average amount of income earned over the remaining years. Given that CEFC is officially bankrupt and no longer exists, making it impossible to obtain any compensation from it, the Georgian court simply ignored this fact, discussing CEFC as an operating company and leaving Mr Ivanishvili's company as sole manager of Poti FIZ.

An analysis of these facts reveals that in 2017, Prime Minister Giorgi Kvirikashvili, following a government decree №1930, handed the Poti Free Industrial Zone to the Chinese state-owned company CEFC, even though it was impossible for him not to know that the company was actually owned by former Prime Minister Ivanishvili and Mr. Chkhartishvili. It is even more doubtful that Prime Minister Giorgi Gakharia did not know about this, who, in 2020, as you will see in the following chapters of our report, by decree №1347 of July 24, wrote off all unfulfilled obligations to them and handed the complete control over Poti FIZ.

Amendments to the Poti FIZ Share Purchase Agreement between the CEFC and the State in September 2020

On September 18, 2020, Rati Ghvamberia requested changes to the registered data of Poti Industrial Zone Ltd., which was accompanied by <u>amendments to the purchase agreement</u> between the National Agency of State Property and CEFC Ltd. (Euro-Asian). This change was based on the government Decree Nº1347 of July 24, 2020, which is not sought at all in the Legislative Herald and which, despite our numerous requests, the Prime Minister's Administration disregards in complete ignorance of the law.

According to the changes, the contract's essential terms have been changed, namely the terms of the investment of USD 150,000,000. Following the original version of the agreement, if the acquisition of 50,000,000 USD was to be made by the end of 2020, this term was extended to 4 years⁹. Instead of 3 years from the "completion date", CEFC Ltd. (Euro-Asian) was ordered to implement it within seven years from the "completion date". And the remaining amount until December 12, 2028.

There is no doubt that this change is due to the violation of the essential terms of the <u>contract</u> by CEFC Ltd. (Euro-Asian), as the company was unable to invest \$ 50,000,000 million by 2020, which should have resulted in a fine (Article 7.3). 0.1% of the remaining amount for each overdue day.¹⁰

Changes were also made to the bank guarantee. As we saw above, under section 6.2 of the contract, the Buyer was required to provide a \$ 6,000,000 (Six Million) Guarantee within 10 days of the completion date. According to the new version, Article 6.2 no longer defines the amount of the second guarantee (the purpose of which is to secure the payment of the fine). Only the second bank guarantee issued by the Bank of Georgia in 2017 is mentioned, the real value of which is unknown to us.

Court decisions from September 2020

As of September 23, 2020, the company with the limited liability Eurasian Management Group has been added to the list of directors of the CEFC Ltd. (Eurasian).¹¹

On September 7, 2020, Eurasian Invest Ltd., which owns a 50% stake in the Eurasian Management Group (JSC 404553050) Limited Liability Company, filed a lawsuit against one of the directors of the Eurasian Management Group, Jianjun Zang, seeking the compensation for the damages.

Along with the lawsuit, the plaintiff requested that as a precautionary measure, all the powers of the directors mentioned in the charter of Eurasian Management Group Ltd. be transferred to Rati Ghvamberia before the execution of the court decision. The reasons for this named by the plaintiff were Jianjun Zang's refusal to perform his duties and the inability to communicate with him.

Tbilisi City Court Judge Zaal Maruashvili upheld the claim on the following grounds:

- Jianjun Zang's illegal and culpable actions cause damage to the enterprise. He avoids performing his duties, and according to the charter of the enterprise, both directors must make a joint decision.
- The judge in the legal reasoning of the judgment often emphasizes that according to the case-law of the Supreme Court, the burden of securing the claim is indeed on the plaintiff, although the fact doesn't need to be proved unequivocally. It is sufficient to establish a high degree of probability that the circumstances necessary to satisfy the application are in the face, although the judge in the judgment cannot substantiate from where, based on which circumstances a high degree of probability was created, or what kind of evidence did the plaintiff present?

⁹ See Article 4.1.2 of the Agreement

¹⁰ It is interesting to compare this particular case with the case of Poti Fiz's previous shareholder. On September 16, 2016, by the Government Decree N1901, the termination agreement was signed between the Government of Georgia, Ras Al Khaima Investment Authority Georgia, Rakia Free Industrial Zone Ltd and Ras Al Khaimi Investment Authority. Within the agreement of measures were taken to facilitate the activities of Khaima Investment Authority Georgia and Ras Al Khaima Investment Authority. The main reason of the agreement was to support the return of 85% of Poti FIZ and 98.26% of JSC Poti Airport to Government of Georgia. Obviously the Georgian government did not think of using a similar mechanism when it came to similar non-fulfillment of obligations and violation of investment conditions by CEFC Ltd. (Euro-Asian)

¹¹ See the authority granted by the decision of 15.09.2020 of the Tbilisi City Court (Case N2 / 18865-20).

Meanwhile, the indisputable fact is that the judge fails to substantiate the necessity of satisfying the claim and is led by contradictory arguments for the simple reason that it seems forbidden to focus on the main problem. The main problem is not that the Chinese director is evading his duties, but that the Chinese company to which the property was transferred by the government act simply no longer exists, and therefore the only right decision would be to return the property to the state.

One week later, on September 14, 2020, the Eurasian Management Group Ltd. applied to the City Court for claiming a sum of money from the defendant CEFC. However, on September 15, the lawsuit was settled, and they demanded the use of a security measure - "before the entry into force of the court decision," Eurasian Management Group Ltd "was given full authority", following the Government of Georgia Resolution No. 1930 of September 13, 2017, and the obligations under the Asset Management Agreement, to make any decision on behalf of CEFC Ltd. (Euro-Asian) without the written consent of the company.

- ✓ Defendant's property under the Asset Management Agreement, and / or
- ☑ Bank guarantee provided in favor of the LEPL National Agency of State Property under the "contract" by the Defendant, and / or
- ✓ The amount submitted for the bank guarantee in full or in part,
- ✓ Use the new unconditional and irrevocable bank guarantee for any term and for any purpose, and / or
- ✓ To submit any offer / application / motion / proposal regarding the fulfillment of the obligation stipulated by the "contract" and / or the ordinance, and / or
- Sign any document on behalf of CEFC Ltd. (Euro-Asian) with administrative authorities, any commercial bank and / or any other third party. "

The plaintiff also claimed other powers that are directly related to the administration and organization of the Poti Free Zone Ltd.

Judge Tamar Burjanadze granted the defendant's request without any legal or factual justification.

With this decision, the Eurasian Management Group Ltd., whose sole director is Rati Gvamberia, the chairman of the Supervisory Board is Vano Chkhartishvili, and the owner is Bidzina Ivanishvili, was given full control of the Poti Free Industrial Zone.

In conclusion, when the 100% shareholder of CEFC Ltd. (Euro-Asian), the company with the limited liability CEFC Hong Kong International Holding Company (1641338 / China /) has been officially announced insolvent in 2020, the court had transferred its powers to Bidzina Ivanishvili's and Vano Chkhartishvili's management company without any justification.

These court decisions were made against the background that the parent holding of CEFC Ltd. (Euro-Asian) - CEFC International Holding Ltd. was declared bankrupt in March 2020.

We wonder how either the court or the then Prime Minister Gakharia imagined the fulfillment of the obligations assumed by CEFC Ltd. (Euro-Asian)? The two branches of government - the executive branch and the judicial - have entirely disregarded the legal framework and handed over the Poti Free Industrial Zone to a company whose 100% shareholder is insolvent and unable to meet their existing obligations.

The decisions made by neither Judge Maruashvili nor Judge Burjanadze can withstand the criticism in this case, which raises reasonable doubts that they are based not on the law and their internal beliefs but on a political decision made by Prime Minister Gakharia, who conveyed the verdict of the Poti Free Industrial Zone before the court and simply handed it to Bidzina Ivanishvili.

Instead of terminating the contract with the bankrupt CEFC Ltd. (Euro-Asian) and returning its stake to the state, as was the case with "Rakia", the previous owner of 85% of Poti FIZ, the National Agency of State Property has extended the investment deadline (fulfillment of privatization conditions) for four years, thus causing significant damage to the object of strategic importance for the country.

For example, as we highlighted in our previous research, following the information spread by Portugal Press on April 13, 2018, despite practically completed negotiations the contract for the sale of a stake in the Portuguese oil and gas giant Partex, which was signed with CEFC and worth 500 million euros, was removed from the schedule. The Portuguese company's press release indicated that the termination of the agreement was caused by "recently known public circumstances", which "could not be fully explained by the Chinese side." Accordingly, they concluded that "there were no more conditions to continue the negotiations.¹²

All legal documents mentioned in the research can be found here: https://drive.google.com/drive/folders/10gBRM6gP10tUjCkrCNb2gcc3EI029kNx?usp=sharing

Background material analyzed in our previous research on the subject can be found here:

"Chkhartishvili Leads in China's "Closed Business Championship"; at https://bit.ly/3iHenZk







he views, opinions and statements expressed by the authors and those providing comments are theirs only and do not necessarily reflect the position of the Foundation. Therefore, neither supporting organization is responsible for the content of the information material.

Responsible for the report TINATIN KHIDASHELI, MARIAM USENASHVILI

https://civicidea.ge/en/about-us/



