

**LAW OF GEORGIA**  
**ON COMMERCIAL BANK ACTIVITIES**

**Chapter I – General Provisions**

**Article 1 – Definition of terms**

For the purposes of this Law, the terms have the following meanings:

- a) administrator – a member of the supervisory board, or directorate (board of directors) of a commercial bank, as well as a person authorised to enter into commitments singly or together with one or more persons on behalf of the bank;
- b) bank branch – a bank subdivision where all or part of banking activities are carried out;
- c) persons connected to a bank – bank administrators, shareholders, and their relatives who represent first and second legal heirs under the Civil Code of Georgia, or persons related to them by business interests;
- d) beneficial owner – a person receiving financial or other benefits under the law or an agreement, and who has no obligation to transfer these benefits to another person; and if a beneficial owner is an entity established to achieve best objectives, or if an owner is a legal person that has no person who owns a significant interest, a beneficial owner is a member of the management body;
- e) developed countries – countries on the list of developed countries compiled by the National Bank of Georgia;
- f) group of jointly acting partners (shareholders) – a group of closely related partners, (shareholders) or partners (shareholders) connected to each other by commercial interests in addition to the bank interests;
- g) commercial bank – a legal person licensed by the National Bank of Georgia ('the National Bank') that accepts deposits and uses them to conduct banking activities on its behalf under the legislation of Georgia;
- h) credit – any commitment to disburse monetary funds in consideration of their repayment, value, security and definite terms;
- i) (deleted);
- j) banking licence – a permit issued by the National Bank to carry out banking activities;
- j<sup>1</sup>) (deleted);
- j<sup>2</sup>) (deleted);
- k) banking activities – types of activities determined by Article 20 of this Law;
- k<sup>1</sup>) operational day – a certain period of a banking day defined by a commercial bank, after which all orders received by the bank from its customers shall be considered to be received on the following banking day;
- k<sup>2</sup>) banking day – a calendar day when transfer transactions are performed through the National Bank payment system;
- l) blank credit – a credit granted without collateral;
- m) debt instrument – a negotiable instrument of any debt and any other instrument equivalent to it; also any negotiable document enabling one to acquire another debt instrument by subscription or exchange; a negotiable debt instrument may be in certificate or book entry form;



- n) trust – a fiduciary function;
- o) foreign trust bank – a bank of a developed country that is assigned a rating at a certain level or higher by a competent international rating organisation; the National Bank compiles a list of competent international rating organisations and defines the rating levels for each rating organisation;
- p) factoring – a trade commission transaction which is adjusted to crediting of a customer's working capital, that includes collection of a customer's accounts receivables, crediting and guarantees for credit and foreign exchange risks;
- q) fiduciary transaction – trust transactions performed by a bank or a trust company on its behalf but by order and for the account of a customer (usually to manage investments); the customer shall be liable for all risks, while the bank shall receive commission charges;
- r) financial institutions – entities defined under the Law of Georgia on Securities Market;
- s) forfeiting – crediting exports in foreign trade agreements by acquiring non-negotiable commercial bills of exchange or other debt liabilities by the supplier; a bank of an importing country shall be the guarantor bank during such transactions;
- t) (deleted);
- u) subsidiary (subsidiary organisation) – a legal person or an organisational establishment without a legal status controlled by a parent company (head organisation); or a legal person with 50 per cent or more of the shares (voting stock, shares) owned by the parent company;
- u<sup>1</sup>) parent company (head organisation) – a legal person with one or more subsidiaries (subsidiary organisations);
- v) regulatory capital – a type of capital created for conducting banking activities, for reserving against expected or unexpected financial loss/damages and protecting from different risks;
- w) share capital – a commercial bank's shareholder capital determined as the difference between total assets and total liabilities of the bank;
- x) authorised capital – a capital agreed upon by the company shareholders and provided for by the charter;
- y) paid-in capital – the actually paid-in portion of the authorised capital;
- z) insolvent bank – a bank with total liabilities (regardless their terms) and the sum of conditional liabilities exceeding total assets, regardless their maturity;
- z<sub>1</sub>) control – authority to administer financial and economic policy of the company (organisation) in order to receive economic benefit from such activity;
- z<sub>2</sub>) controlling person – a person who exercises control;
- z<sub>3</sub>) affiliate – a subsidiary and/or a company under control of a legal person, as well as its controlling persons, and their subsidiaries and companies under their control;
- z<sub>4</sub>) person – a natural or a legal person, as well as an organisational establishment under the legislation of Georgia which is not a legal person;
- z<sub>5</sub>) significant share – more than 10 per cent of the authorised or paid-in capital of a person or jointly acting partners (shareholders) and/or of the voting shares, also the possibility to make a significant influence on the commercial bank by a person or jointly acting partners (shareholders), irrespective of the amount in equity capital and/or voting rights;
- z<sub>5</sub><sup>1</sup>) significant influence – the right to participate in the decisions relating to the financial and operational policy of the enterprise which is not a control of this policy or a joint control;



z<sup>6</sup>) indirect participation (ownership) – shares in the capital of a legal person held through a third person.

z<sup>7</sup>) financial recovery plan – a plan developed by a commercial bank which among other elements includes the measures that have to be taken for the recovery of the financial situation when significant financial difficulties arise;

z<sup>8</sup>) resolution plan – a plan developed by the National Bank for a commercial bank which among other elements includes the issues related to the use of the resolution instruments and implementation of the resolution powers against the commercial bank in the framework of the mode of resolution;

z<sup>9</sup>) recapitalisation – the increase of the supervisory capital of the commercial bank;

z<sup>10</sup>) writing off the shares and/or other instruments of the supervisory capital and/or liabilities of the commercial bank – the revocation or the decrease of the value of the shares and/or other instruments of the supervisory capital and/or liabilities of the commercial bank.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 1617 of 4 July 2002 – LHG I, No 23, 24.7.2002, Art. 108*

*Law of Georgia No 1938 of 28 December 2002 – LHG I, No 3, 17.1.2003, Art. 19*

*Law of Georgia No 4519 of 27 March 2007- LHG I, No 9, 31.3.2007, Art. 84*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 1924 of 3 November 2009 – LHG I, No 35, 19.11.2009, Art. 234*

*Law of Georgia No 5002 of 1 July 2011 – website, 15.7.2011*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

*Law of Georgia No 5682 of 20 December 2019 – website, 31.12.2019*

## **Article 2 – Scope of the Law**

1. A commercial bank may be established as a joint stock company. Commercial banking activities shall be regulated by this Law, the Organic Law of Georgia on the National Bank of Georgia, the Law of Georgia on Entrepreneurs, and other normative acts.

2. No one shall have the right to solicit deposits and use them for granting credit on its behalf without a licence issued by the National Bank.

3. No one shall have the right to use the term ‘bank’, or other word-combination with this term without a banking licence issued under this Law, unless used as determined or recognised by law or an international agreement, or when the context in which the term ‘bank’ is used shows that no banking activity is carried out under this Law and the Law on the National Bank of Georgia.

4. (Deleted – 1.7.2011, No 5002).

4<sup>1</sup>. (Deleted – 1.7.2011, No 5002).



4<sup>2</sup>. (Deleted – 1.7.2011, No 5002).

4<sup>3</sup>. (Deleted – 1.7.2011, No 5002).

5. Provisions of this Law shall apply in case of conflict between this Law and other laws with respect to relations with commercial banks.

*Law of Georgia No 1636 of 13 October 1998 – LHG I, No 2, 26.10.1998, Art. 27*

*Law of Georgia No 1742 of 24 December 1998 – LHG I, No 7, 31.12.1998, Art. 60*

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 4519 of 27 March 2007- LHG I, No 9, 31.3.2007, Art. 84*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 5002 of 1 July 2011 – website, 15.7.2011*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

## **Chapter II – Licensing**

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

### **Article 3 – Banking licence applications**

1. Banking licence applications shall be submitted to the National Bank in writing by a person authorised by a supervisory board of banking licence seekers or by shareholders.

2. To the banking licence written applications shall be attached the following documents and information:

a) original constituent documents, or their notarially certified or apostille certified, and/or legalised copies;

b) a statement of a commercial bank on its authorised capital and its paid-in portion; also information about the ownership and origin of the authorised and regulatory capital of the commercial bank. A branch of a foreign bank shall submit information regarding the amount of resources allocated to it by its parent bank;

c) capital inflow report on the determination of the minimum amount of the capital for commercial banks in accordance with the order of the president of the National Bank.

d) information on appropriateness of the banking licence seeker's administrators with compliance criteria as defined by this Law;

e) a statement of paying licence fee in accordance with the Law of Georgia on Licence and Permit Fees;

f) the conformity declaration under Article 8<sup>1</sup> of this Law on direct ownership and beneficial ownership of significant shares;

g) information on the structure of the banking licence seeker structure/group structure in accordance with paragraph 3 of this article;

h) information on the supervisory board and the directorate of the banking licence seeker in accordance with paragraph 4 of this article;



- i) documentation approved by the supervisory board of the banking licence seeker in accordance with paragraph 5 of this article;
- j) the business plan of the banking licence seeker in accordance with paragraph 6 of this article;
- k) in the case of licensing a foreign bank or a subsidiary bank – additional information in accordance with paragraph 7 of this article;
- l) documentation evidencing the right of use or ownership of the real property where a commercial bank or its branch shall be located in the future;
- m) additional information reasonably required by the National Bank in each individual case;

3. A structure of the banking licence seekers/commercial bank owners/group shall be transparent and shall not pose a threat to the effective supervision by the National Bank, also to the stability of the commercial bank and/or financial sector. The information about the structure of the ownership shall include data about the ownership on every level, direct shareholders, intermediate owners and significant share beneficial owners. In particular, the mentioned information shall include:

a) in the case of a natural person:

a.a) a copy of an identity document; in the case of a foreign citizen – a duly certified copy of an identity document (when the legislation of a respective country provides for a possibility of certifying an identity document);

a.b) information about the citizenship or residence;

a.c) detailed CV;

a.d) information about the shares and other business interests in the commercial banks operating now or those which have operated in the past on the territory of Georgia;

a.e) a certificate on previous conviction;

a.f) data about the financial condition, income and its origin;

a.g) income tax return;

b) in the case of a legal person:

b.a) registration documentation;

b.b) recently audited financial statement (for the last quarter);

b.g) a certificate on previous conviction.

4. The information about the supervisory board of the banking licence seeker, auditing committee and directorate shall include:

a) information about the education, qualification and experience of the relevant persons;

b) a certificate on previous conviction;

c) information about the solvency or insolvency if the legislation of the relevant country provides for the possibility of issuing such information;

d) information about the financial liability to the commercial banks (including due loans);

e) information about the relationship with a shareholder or a potential administrator;

f) information about the financial liability to the state (including tax liabilities/due loans and/or restructured tax liabilities/due loans).



5. The documentation approved by the supervisory board of the banking licence seeker shall include:

- a) corporate governance regulations;
- b) organisational charts and the description of the management work;
- c) a framework for credit, market, operational and other relevant risks;
- d) an internal assessment model of capital adequacy;
- e) calculation of the capital adequacy in accordance with the requirements of the National Bank, based on the budget represented in the business plan;
- f) accounting policy.

6. The business plan of the banking licence seeker shall comply with the planned activities of the mentioned legal person and shall include at least the following information:

- a) business strategy;
- b) information on the potential influence of the macroeconomic situation of the country on the business strategy of a commercial bank;
- c) the description of the targeted market and the assessment of own competitiveness;
- d) budget plan and prognosis of the financial indicators;
- e) the minimum of the initial information technologies to be introduced at the first stage and an their introduction plan in the following operational period.

7. In the case of licensing foreign bank branch or a subsidiary bank an additional information shall include:

- a) the financial statement of the parent bank for the last 3 years and profit-loss statement;
- b) the decision of the supervisory board of the parent bank on submission of the banking licence application to the National Bank;
- c) the confirmation of the parent bank on establishing a branch/subsidiary bank in Georgia.

8. The structure of the banking licence seeker group, ownership structure, management structure and operational activity/environment shall ensure the possibility of the effective implementation of individual and consolidated supervision and shall not pose a threat to the stability of a bank and/or financial sector and its healthy operation.

9. Licensed commercial bank, its shareholders, intermediate owners and the beneficial owners of the significant share are responsible, if necessary, to submit updated information to the National Bank.

10. Commercial bank is responsible to agree any changes in the founding structure with the National Bank in accordance with the rule established by the National Bank.

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

#### **Article 4 – Decision on licensing**

- 1. The decision of issuing a banking licence is solely made by the National Bank.
- 2. A banking licence is valid for an indefinite period. Transfer to another person is prohibited.
- 3. In order to make a decision on issuing banking licence the National Bank shall scrutinise if the submitted documents comply with the requirements established by the legislation of Georgia and evaluates the adequacy of the business plan of the banking



licence seeker and the possibility of its implementation, its potential position in the banking sector and the possibility of its sustainable operation.

4. During the period of reviewing the documentation and information for receiving banking licence the National Bank has the right to require any other information in its scope of authority, which is necessary in an individual case for making a reasonable decision.

5. Not later than three months after an application for a banking licence is submitted, the National Bank shall make a well-reasoned decision, notice of which shall be provided to the applicant in writing. The National Bank is authorised to hold relevant consultation with the banking licence seeker before receiving the application on banking licence.

6. If the documentation and information submitted by the interested legal person does not comply with the requirements established by the legislation of Georgia or the National Bank, the National Bank sets a deadline to eliminate the flaw, during which the period provided for by paragraph 5 of this article is stopped. If a time limit for elimination of the flaw is exceeded this is the basis for refusal to issue a banking license for the interested legal entity.

7. The National Bank shall be entitled to issue banking licences in accordance with the interests of financial stability or banking sector without the presentation of the documents and information provided for in Article 3 of this Law and, if necessary, determine the date and time limit for the presentation of the documentation and information. The National Bank shall be entitled to set restrictions for a commercial bank for a certain or indefinite period of time on certain types of banking transactions.

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

## **Article 5 – Compliance criteria for holders of significant shares and administrators of commercial banks**

1. A person may not be a holder of significant shares of a commercial bank if he/she has criminal records for a serious or particularly serious crime, or for financing terrorism, and/or legalising illicit income, or for other economic crimes.

2. A person may be a commercial bank administrator if he/she:

a) has not been recognised as a beneficial of support by the court or unless otherwise determined under court decision;

b) has no criminal records for a serious or particularly serious crime, or for financing terrorism, and/or legalising illicit income, or other economic crimes;

c) has appropriate education and/or experience;

d) is not an administrator of another commercial bank at the same time, except when holding the position of an administrator in a bank under control of this bank, or in a bank that controls this commercial bank;

3. The National Bank shall be authorised to issue a normative act to define additional compliance criteria for holders of significant shares and administrators of a commercial bank.

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

## **Article 6 – Special conditions for simplification of licensing procedures**

1. Granting a banking licence to a foreign bank branch or subsidiary company may be carried out in a simplified manner if a banking licence seeker is an exclusively reliable bank, in particular, if it has a high level of popularity, good reputation, high credit rating, long-term experience in financial sector, sustainable financial indicators and high level of transparency.

2. In order to facilitate the credibility of entering of the foreign trust bank into the Georgian market, the National Bank shall individually define the list of documents and information that the branch or subsidiary of the foreign bank provided for in paragraph 1 of this article shall submit to obtain a banking licence.

3. The National Bank shall be authorised to determine the simplified procedures for the licencing of the interim bank.



## **Article 7 – Revocation of banking licences**

A banking licence may be revoked only by the decision of the National Bank:

- a) upon the request of a commercial bank on revocation of a banking licence;
- b) due to violation of Article 21 of this Law;
- c) if a licence is issued on the basis of false statements or other inaccuracies in the application for a banking licence;
- d) if a commercial bank has not used the licence within six months after its effective date;
- e) if there was a significant deviation from the business plan and business strategy submitted by the commercial bank to obtain banking licenses without prior agreement with the National Bank;
- f) if a commercial bank has been merged with, acquired by, or separated from other bank;
- g) if a commercial bank no longer has a minimum cash amount of equity capital or regulatory capital determined by the National Bank; or a bank is no longer reliable for creditors due to failure to fulfil its obligations towards them; or a bank is no longer able to ensure security of assets entrusted to it;
- h) if shareholders of a commercial bank decide to liquidate the bank or the bank ceases to exist as a legal person;
- i) if a commercial banks has a weak risk management model, a commercial bank follows or has followed a harmful or unsound banking practice for its financial condition, which may significantly damage its depositors or pose a threat on a stable and effective functioning of a bank system;
- j) if a commercial bank has or expects significant financial difficulties which may be expressed by a weak profitability indicator and disruption of the supervisory coefficient or otherwise;
- k) if a commercial bank is insolvent or faces insolvency;
- k<sup>1</sup>) if for the purpose of the further functioning of a commercial bank there is a need for a temporary state financing determined by the Law of Georgia on the National Bank of Georgia or the need for the last instance debt provided for by Article 33(3) of the same Law;
- k<sup>2</sup>) if the supervisory measures provided for by Article 30 of this Law and/or the early interventional measures determined by Article 30<sup>1</sup> of the same Law have been used ineffectively;
- l) the complexity and/or non-transparency of a commercial bank group structure, which interrupts the effective supervision;
- m) a change of the structure of the owner of the commercial bank which poses a threat on financial stability and healthy operation of the commercial bank and/or a financial sector;
- n) court decision on the revocation of the banking right of a commercial bank;
- o) the incompliance of an administrator, a significant shareholder or beneficial owner with the appropriateness criterion/criteria provided for by law;
- o<sup>1</sup>) if the resolution mode of a commercial bank has finished ineffectively;
- p) revocation of a banking licence of a foreign bank branch and/or subsidiary bank parent institution in the country of its residence. In the case if the National Bank believes that the foreign bank does not meet the requirement of the foreign bank branch and the resolution mode is not established or shall not be established within the reasonable time or the start of the





insolvency or bankruptcy proceedings is not enough to ensure the financial stability in Georgia, or the equal protection of the interests of the creditors of the foreign bank branches in the resolution mode in the country of residence or in the insolvency or bankruptcy proceedings in Georgia shall not be ensured;

q) other cases defined by the legislation of Georgia.

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Article 8 – Publication and effect of the decision on revocation of banking licences**

1. The decision on revocation of a banking licence shall be published by the Legislative Herald of Georgia and on the official website of the National Bank. The decision shall be effective from the date of its publication on the official website of the National Bank, or from any other date determined by the decision.

2. After revocation of the banking licence, a commercial bank may not conduct any activities granted under this licence and the bank must be liquidated in accordance with the procedure established by Article 37<sup>12</sup> of this Law.

3. After the banking licence is revoked, the commercial bank must, within the shortest period of time, discharge all liabilities related to its activities. During termination of its activities until all liabilities are discharged, a commercial bank shall follow the provisions of this Law as a licensed bank.

4. Only the National Bank shall make decisions on insolvency and bankruptcy of a commercial bank.

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

*Law of Georgia No 5682 of 20 December 2019 – website, 31.12.2019*

## **Chapter II<sup>1</sup> – Acquisition of Significant Shares of Commercial Banks**

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

## **Article 8<sup>1</sup> – Declaration of conformity**

1. A person or jointly acting group of partners/shareholders ('the declarant'), who intend to acquire a share in a commercial bank so that their own or his/her/its beneficial owner's (owners) participation exceeds 10, 25 or 50 per cent in the bank capital, shall be obliged to submit a conformity declaration and information on significant share and beneficial owner provided for by Article 3 of this Law to the National Bank ('the Declaration').

1<sup>1</sup>. In order to make decision on the significant share the National Bank shall scrutinise the compliance of the submitted documentation and information with the requirements by the legislation of Georgia, take into account the reputation and the financial situation of the declarant, the potential influence of the change of the commercial bank ownership structure/group structure after acquiring significant share on the effective supervision and the transparency of the ownership structure/group structure, also in relation with the mentioned transactions, the risks of money laundering and the financing of terrorism.

2. The declarant shall indicate the following in the declaration:

a) his/her/its identification data;

b) information that he/she has no criminal records for a serious or particularly serious crime; of financing terrorism, and/or of legalising illicit income or other economic offences;



- c) identification data of the beneficial owner (owners) under paragraph 1 of this article, or a statement that, based on the information available to him/her, no beneficial owner (owners) shall exist as a result of this operation;
- d) information that a beneficial owner under paragraph 1 of this article, has no criminal records for a serious or particularly serious crime; of financing terrorism, and/or of legalising illicit income, or other economic offences;
- e) the amount of his/her/its own shares if the acquisition is completed;
- e<sup>1</sup>) the information on the origin of the amount needed to acquire significant share;
- f) based on information available to him/her/it, the amount of shares owned by the beneficial owner whose share exceeds 10, 25 or 50 per cent, if the acquisition is completed;
- g) a declaration of the beneficial owner (if submitted) to certify that the information in the declaration is accurate.

2<sup>1</sup>. If possible, the declarant shall attach the declaration (declarations) of the beneficial owner (owners) under paragraph 1 of this article to his/her/its own declaration.

3. If, based on information available to the declarant, the beneficial owner under paragraph 1 of this article does not exist, the declarant shall indicate such in the declaration, and shall not fill in the beneficial owner's section of the declaration.

4. If the National Bank considers that an additional information is needed to make a decision, it is authorised within the scope of its competence to require any information, including the information provided for by Article 3 of this Law (including confidential information).

5. A direct or an indirect owner of a commercial bank who intends to sell directly or indirectly the amount of shares so that his or the beneficial owner's share falls under 10, 25 or 50 per cent, he/she is obliged to give a prior notice to the National Bank. The notice should include all the detailed information about the mentioned transaction.

6. A commercial bank is obliged to immediately inform the National Bank on any change of the appropriateness criteria of the owner of the significant share.

7. The National Bank is authorised to establish the simplified procedure for the purchase of the significant share of the commercial bank in the resolution mode.

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 5528 of 20 December 2011 – website, 28.12.2011*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5228 of 30 October 2019 – website, 30.10.2019*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Article 8<sup>2</sup> – Review of declarations**

1. The National Bank shall review the declaration within one month after it is submitted and shall give consent or a substantiated refusal to the declarant to acquire the share.

2. If the National Bank considers the information submitted on the beneficial owner to be insufficient or inaccurate, it shall be



entitled to verify or clarify that information directly with the beneficial owner. In this case, the deadline for response shall be extended to three months, and the declarant must be notified of it.

3. The National Bank's failure to respond within one month after a declaration is submitted shall automatically be considered as consent to acquire the share.

4. An agreement to acquire a significant share shall be void if the declarant fails to submit a declaration to the National Bank, or if the declarant received a substantiated refusal of the National Bank, but still acquired a significant share of a commercial bank.

5. While discussing the issue of giving consent on acquiring a significant share the National Bank is guided by paragraphs 1 and 2 of this article and Article 4 of this Law and other principles provided for by the legislation of Georgia.

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29.*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

### **Article 8<sup>3</sup> – Information to be submitted to the National Bank**

1. On the basis of available information, a commercial bank shall provide the National Bank, together with annual reports, with information on the direct owner and the beneficial owner of more than 10 per cent of bank shares and shall indicate whether it confirms the accuracy of the information provided.

2. A beneficial owner, who directly or indirectly holds more than 10 per cent of a commercial bank shares, shall be obliged to submit to the National Bank in April of every year a declaration as of December of the previous year.

3. If a direct owner and a beneficial owner of significant shares of a commercial bank fail to submit the required information to the National Bank, they shall be held liable for the failure under the legislation of Georgia.

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

### **Article 8<sup>4</sup> – Requirement for the submission of the declaration by the owner of the significant share and the supervisory measures**

1. In case of reasonable doubt, the National Bank may require that a commercial bank submit a declaration on the direct and beneficial owners of its significant shares.

2. If the owner of the significant share shall not submit declaration in the case provided for by paragraph 1 of this article, or the National Bank believes that the owner of the significant share does not meet the compliance criteria any more the National Bank is authorised to:

a) suspend the voting rights of such person for a certain period, and require him/her/it to reduce his/her/its shares to 10 per cent within 60 days;

b) suspend the voting right of such person for unlimited period.



3. The person shall have the right to appeal the decision of the National Bank on refusal to acquire shares in a commercial bank, suspension of the voting right and/or requirement to reduce his/her shares to 10 per cent to a court.

4. If there is a court decision suspending voting rights, the person shall have the right to exercise his/her voting rights proportionate to only 10 per cent of the shares.

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Chapter III – Ownership and Administration**

### **Article 9 – Requirements towards commercial bank capital and reserves**

1. The National Bank shall periodically determine the minimum amount of reserves, paid-in capital and regulatory capital of a commercial bank, and regulations for their formation. A commercial bank may not pay in (form) the equity capital in a nonmonetary form.

2. A commercial bank may not reduce its equity capital by redeeming shares, or reduce its regulatory capital by using reserves without the prior written consent of the National Bank, and without an appropriate amendment regarding a change in the equity capital defined in its charter.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

### **Article 10 – Restriction of ownership rights, assets, ownership structure and group structure of commercial banks**

1. A commercial bank may:

a) in accordance with paragraph 1<sup>1</sup> of this article, without the permission of the National Bank, directly or indirectly own a maximum of 20 per cent shares in the equity capital of a legal person unless the bank's share exceeds 15 per cent of its equity capital;

b) (deleted);

c) in accordance with paragraph 1<sup>1</sup>, establish and/or acquire subsidiaries that are engaged in other businesses in which its share exceeds 20 per cent under written permit of the National Bank; the permit shall specify the type of business each subsidiary may conduct; in this case, activities of subsidiaries shall be restricted to the businesses specified in the permit; without a written permit of the National Bank this share shall not exceed 15 per cent of the equity capital;

d) receive a share from a subsidiary to repay the amount of credit granted. A commercial bank shall notify the National Bank



about it and shall inform about the activities of the subsidiary. If the activity of the subsidiary is not the one provided for by paragraph 1<sup>1</sup> of this article, the commercial bank shall take measures to sell the share within 6 months. After receiving a consent form from the National Bank, a commercial bank has the right to sell the share in no later than 1 year. In a special case, the National Bank may extend this time, which shall not exceed 2 years, despite the number of extensions. If its shares provide the commercial bank with the control and management right over the subsidiary, in the period from acquiring to alienation no new additional activity shall be allowed without the prior consent of the National Bank;

e) establish or acquire a subsidiary – a brokerage company which is engaged only in brokerage activity as determined by the Law of Georgia on Securities Market; the commercial bank may hold an unlimited amount of shares in the brokerage company unless the shares exceed 15 per cent of the bank's equity capital without permission of the National Bank.

1<sup>1</sup>. A commercial bank is prohibited to hold share directly or indirectly in the capital of a legal entity which is not a financial institution or whose activity is not related with banking activities or social projects of a commercial bank. This restriction does not apply to securities intended to carry out dealing operations in accordance with the procedure established by the National Bank.

1<sup>2</sup>. In the case of investing in a foreign country outside Georgia, a commercial bank shall justify that the legislation of the relevant country does not restrict the possibility of an effective supervision by the National Bank, including the exchange of information between the supervisory bodies.

2. The total cost of shares referred to in paragraph 1(a) and (c-e) of this article may not exceed 50 per cent of the equity capital of commercial bank. The National Bank shall be entitled to release the commercial bank from complying with the requirements of this paragraph for a period not exceeding one year.

2<sup>1</sup>. For a guidance while making investment decisions by a commercial bank, the National Bank is entitled to define criteria by a normative act.

3. A commercial bank shall be obliged to have complete information about the identity of each beneficial owner of the bank who directly or indirectly owns more than 10 per cent of shares (indicating the amount of shares); to provide the National Bank with that information, as well as with information of any significant changes regarding a beneficial owner, and to publish this information in the bank's annual reports. The National Bank shall define the method of providing and publishing this information on the basis of International Financial Reporting Standards and best international practices.

4. The obligation under paragraph 3 of this article shall not apply to beneficial owners of a commercial bank who cannot be identified by the bank because the nominal ownership in their favour is held by a clearing organisations located and exercising their authority in developed countries, or by international depositaries.

5. For the purposes of this Law, the requirements that apply to the partners (shareholders) of a commercial bank shall also apply to beneficial owners who directly or indirectly hold shares in the commercial bank.

6. The National Bank is entitled to request changing, simplifying or separating ownership structure and/or group structure from a commercial bank if the difficulty of the ownership structure/group structure interrupts carrying out the effective supervision and/or poses a threat or may pose a threat on the stability of a commercial bank and/or financial sector and its healthy operation.

*Law of Georgia No 1751 of 24 December 1998 – LHG I, No 1(8), 14.1.1999, Art. 4*

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 1617 of 4 July 2002 – LHG I, No 23, 24.7.2002, Art. 108*

*Law of Georgia No 1938 of 28 December 2002 – LHG I, No 3, 17.1.2003, Art. 19*

*Law of Georgia No 2787 of 17 March 2006 – LHG I, No 8, 24.3.2006, Art. 59*

*Law of Georgia No 4519 of 27 March 2007 – LHG I, No 9, 31.3.2007, Art. 84*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 2830 of 23 March 2010 – LHG I, No 19, 13.4.2010, Art. 104*



*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.03.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.01.2018*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

**Article 10<sup>1</sup> – Requirements for commercial bank subsidiaries that conduct activities outside Georgia under the legislation of Georgia for accountable persons provided for by the Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism**

1. To conduct activities outside Georgia under the legislation of Georgia for accountable persons provided for by the Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism, a commercial bank shall submit to the National Bank within 14 days after establishing or acquiring a subsidiary the commercial bank's decision that, upon commencing operations, the subsidiary has developed a program to combat money laundering and the financing of terrorism for fulfilling the recommendations on combating money laundering and the financing of terrorism, and of the Financial Action Task Force ('the FATF').

2. If fulfilment of the FATF recommendations by a subsidiary is not provided for in the laws and subordinate normative acts of a foreign country of the subsidiary's residence, or if this country fails to combat money laundering and the financing of terrorism and the FATF recommendations are not followed, or followed insufficiently, then:

a) a commercial bank shall undertake a written obligation that it shall ensure the implementation of measures for combating money laundering and the financing of terrorism by its subsidiary under the requirements established in Georgia towards commercial banks and the FATF recommendations;

b) a commercial bank shall ensure that the National Bank is informed if its subsidiary cannot carry out measures under the legislation of Georgia for combating money laundering and the financing of terrorism because these measures are prohibited or restricted by the legislation of a foreign country of a subsidiary's residence.

*Law of Georgia No 2830 of 23 March 2010 – LHG I, No 19, 13.4.2010, Art. 104*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 5228 of 30 October 2019 – website, 30.10.2019*

**Article 11 – Merger, acquisition or separation of commercial banks**

Commercial banks may be merged, acquired or separated only upon a written consent of the National Bank. No merger, acquisition or separation of commercial banks that fails to comply with provisions of Article 10 of this Law shall be implemented.

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

**Article 12 – Charter of commercial banks**



1. A commercial bank has its charter which complies with the legislation of Georgia. The National Bank shall be immediately informed in writing if any amendments are made to the charter.
2. A commercial bank shall be administered according to its by-laws to determine the following under its charter:
  - a) organisational and administration structure of banks and their administrative and operational subdivisions, their constituent units and functions, administrative positions and accountability;
  - b) duties of each department director, and of each division under his/her subordination and control;
  - c) audit committee functions;
  - d) authority of administrators and other employees of a bank to conduct bank transactions on behalf of and for the account of the bank.
3. A commercial bank shall submit to the National Bank its charter, by-laws and lists of officials that have the bank's representative authority. The lists shall include the specimen signatures of the officials. The scope of their authority shall be indicated in the lists.

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

### **Article 13 – Management bodies of commercial banks**

Commercial bank management bodies shall be formed and operate under the Law of Georgia on Entrepreneurs. The highest management body of a commercial bank is a General Meeting of Shareholders which acts in compliance with the legislation of Georgia and the company Charter. The Meeting shall appoint the supervisory board. The National Bank shall be informed of the date and agenda of the General Meeting for its possible participation in the Meeting, within the time frame determined for shareholders under the legislation of Georgia.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

### **Article 14 – Supervisory Board**

1. A Supervisory Board shall supervise commercial bank activities. The Board shall consist of at least 3 and a maximum of 21 members. The National Bank is entitled to define procedure for establishing the Supervisory Board of a commercial bank with a legal act.

1<sup>1</sup>. A member of the Supervisory Board of a commercial bank shall not perform executive functions.

2. The General Meeting of Shareholders shall appoint each member of the Board for a term of four years. Their re-appointment shall be unlimited.



3. The General Meeting of Shareholders shall determine remuneration for Board members. No type of incentives shall be offered to Board members from a commercial bank expenses.

4. A person may not be appointed as a Supervisory Board member and must be withdrawn from the Board by decision of the General Meeting of Shareholders if this person:

a) is a member of a supervisory board or a board of directors in more than seven companies registered in Georgia;

b) is an administrator of another commercial bank registered in Georgia, except when holding a position of an administrator in a bank under control of this bank, or in a bank that controls this commercial bank;

c) is not authorised to be in a Supervisory Board under the law;

d) is declared bankrupt.

5. In addition to the requirements under the Law of Georgia on Entrepreneurs, the following may be performed only with the consent of the Supervisory Board:

a) to start a new or terminate an existing banking activity;

b) to define and approve internal policy and procedures for administering credit, investments, currency, assets and liabilities; for evaluating and classifying assets, and creating adequate reserves against their possible loss;

c) to define and approve minimum and maximum interest rates to be applied by the bank to credit resources and deposits;

d) to redeem shares issued by a commercial bank in cases defined under law.

6. Supervisory Board members must administer commercial bank activities with good faith, care for the bank as a faithful and sensible person cares in similar conditions; they must act out of interest in the bank's stability. If they fail to fulfil these duties they shall be jointly and severally liable to the bank for damages caused. The Supervisory Board members must prove that they acted in good faith and in the interests of the bank. The bank's rejection or compromise to pay regressive compensation shall be void if the compensation is necessary to satisfy bank creditors. This rule shall not apply if the person liable to pay compensation is solvent or makes an agreement with its creditors to avoid bankruptcy and/or terminate banking activities. If the compensation is necessary to satisfy bank creditors, the bank administrators shall continue to be liable even when they act to execute shareholders' decisions.

7. The decision by each Supervisory Board member must comply with commercial bank interests. The members must act reasonably and independently. They must ensure that qualified directors are appointed and retained, a commercial bank business strategy is defined, and the banking policy is developed in writing.

8. A commercial bank Supervisory Board or its members may not delegate their rights to others without the consent of the General Meeting of Shareholders.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

## **Article 15 – Board of Directors**

1. Commercial bank directors shall administer and represent the company. They are responsible for managing banking activities and performing its functions. The Board of Directors consists of at least 3 directors to be appointed by the Supervisory Board for a maximum of four years. Their re-appointment shall be unlimited.

2. A person may not be appointed as a member of commercial bank Board of Directors or must be dismissed from the Board Directors membership by decision of the Supervisory Board if this person:





- a) fails to meet the compliance criteria for a bank director;
- b) (deleted);
- c) is not entitled by law to be in the Board of Directors;
- d) is declared bankrupt;
- e) (deleted);
- f) is a spouse, child or close relative of the bank Board of Directors member.

3. In certain cases, a commercial bank Board of Directors shall have the right to delegate his/her authority to others, partially or completely, on the basis of a prior written consent of the bank Supervisory Board.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

## **Article 16 – Audit committee**

1. By decision of the Supervisory Board, the members of the Supervisory Board form an audit committee. The majority of the audit committee shall consist of the independent members of the Supervisory Board.
  2. A member of the Supervisory Board shall be considered to be independent if he/she is not influenced by a commercial bank or other external factors which may impede in making objective and independent decisions while carrying out their activities.
  3. The National Bank is entitled to establish additional criteria for determining the independent member of the Supervisory Board of a commercial bank.
2. The audit committee shall periodically submit reports on its activities to the Supervisory Board.
  3. The basic function of the audit committee is to facilitate the operation of internal audit and external auditors of the bank.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 5002 of 1 July 2011 – website, 15.7.2011*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

## **Article 17 – Bank secrecy**

1. No one shall have the right to give anyone access to confidential information, to disclose or disseminate this information, or to use it for personal purposes. Confidential information may be communicated only to the National Bank within its authority.
2. Information on any agreement (including in the case of an attempt to conclude an agreement), payment operation, account, transaction conducted from this account and account balance may be granted to a party to a respective agreement, in the case of payment operation – to the person carrying out a payment and/or receiving person, a respective account holder and their representatives, and in the cases provided for by the legislation of Georgia – to the Financial Monitoring Service of Georgia, and to persons that are authorised to execute the enforcement subordinate acts defined under the Law of Georgia on Enforcement Proceedings during the course of their enforcement; during the inspection provided for by the Law of Georgia on the State Inspector Service – to the State Inspector Service; to a tax authority, based on a judicial decision under the Code of Administrative



Procedure of Georgia, and the Agreement between the Government of the United States of America and the Government of Georgia to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act (FATCA); also, to the Legal Entity under Public Law called Deposits Insurance Agency, in the cases provided for by the Law of Georgia on Deposits Insurance System. This information may also be issued on the basis of the relevant court decision.

3. A tax authority may transfer the information provided for in paragraph 2 of this article without delivery of the judgement by court to a competent body of the United States of America defined under the Agreement between the Government of the United States of America and the Government of Georgia to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act (FATCA).

4. The restriction provided for by paragraph 2 of this article does not apply to the exchange of information inside the commercial bank group and between commercial banks for the purposes set out in the legislation of Georgia on the prevention of money laundering and the financing of terrorism.

*Law of Georgia No 163 of 21 March 1996 – newspaper 'The Republic of Georgia', 3.4.1996*

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 2474 of 20 June 2003 – LHG I, No 20, 11.7.2003, Art. 140*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 213 of 15 July 2008 – LHG I, No 17, 28.7.2008, Art. 129*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 5528 of 20 December 2011 – website, 28.12.2011*

*Law of Georgia No 2948 of 12 December 2014 – website, 24.12.2014*

*Law of Georgia No 4459 of 28 October 2015 – website, 11.11.2015*

*Law of Georgia No 853 of 17 May 2017 – website, 2.6.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 3294 of 21 July 2018 – website, 9.8.2018*

*Law of Georgia No 4246 of 27 December 2018 – website, 29.12.2018*

*Law of Georgia No 4593 of 8 May 2019 – website, 8.5.2019*

*Law of Georgia No 5228 of 30 October 2019 – website, 30.10.2019*

## **Article 17<sup>1</sup> – Right to verify information**

1. The bank shall be entitled to obtain personal information of a person from the Legal Entity under Public Law called Public Service Development Agency based on a written consent of the person in accordance with the Law of Georgian on Personal Data Protection.

2. The bank is obliged to prevent disclosure of information obtained from the Public Service Development Agency to a third person, except as provided for by law.

*Law of Georgia No 5978 of 21 March 2008 – LHG I, No 9, 4.4.2008, Art. 65*

*Law of Georgia No 6317 of 25 May 2012 – website, 19.6.2012*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*



## **Article 18 – Branches of commercial banks**

Branches, representative offices and other similar subdivisions of a commercial bank shall be established by decision of the Supervisory Board under the terms and conditions defined by the National Bank.

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

## **Chapter IV – Operational Requirements**

### **Article 19 – General principles of banking activities**

1. A commercial bank shall be managed and its operational activities shall be performed according to administrative and accounting procedures, conditions and restrictions attached to the banking licence that are substantiated by the legislation of Georgia, as well as under the resolutions, procedures and guidelines of the National Bank. The National Bank procedures, standards and guidelines applying to more than one commercial bank shall be subject to mandatory publication and shall become effective from the date of publication or the date indicated in the procedures, standards and guidelines. If the National Bank has not determined procedures for a certain banking activity, a commercial bank shall act according to international banking standards and practices.
2. A commercial bank shall maintain an appropriate level of capital and liquid resources, and shall diversify its assets considering the risk of loss, as required by the National Bank.
3. The relationship for banking services between a bank and its customers shall be regulated by agreement. If the time frames under a money transfer agreement are violated, the bank shall be obliged to pay the customer not less than 0.5 per cent of the delayed amount for each overdue banking day.
4. A commercial bank shall be entitled to develop a security policy for using electronic signatures in providing certain banking services and shall submit the policy to the National Bank for approval. On the basis of the security policy approved by the National Bank for using electronic signatures in providing certain banking services, an electronic signature used when providing certain banking services by a commercial bank shall have equal legal affect as personal signatures on a hardcopy document. An electronic document certified by this electronic signature may be used in all cases where the legislation of Georgia requests the material document.
5. It is not mandatory to submit the electronic signature security policy provided for in paragraph 4 of this article to the National Bank only in the case if a commercial bank while carrying out banking services uses a signature carried out via an electronic ID issued by the administrative body authorised by the legislation of Georgia or a signature a certificate of which is issued in accordance with the requirements of the Law of Georgia on Electronic Document and Electronic Trust Service.
6. Paragraphs 4 and 5 of this article do not restrict the right of commercial bank to use electronic signature in accordance with paragraph 8 of Article 3 of the Law of Georgia on Electronic Document and Electronic Trust Services while performing banking service. In this case, the National Bank shall be entitled to require a commercial bank in accordance with this paragraph to agree the electronic signature security policy with the National Bank. If the National Bank after assessing electronic signature security policy submitted by a commercial bank refuses to agree with the electronic signature security policy in accordance with this paragraph, a commercial bank is obliged to stop using such electronic signature.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*



*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 5002 of 1 July 2011 – website, 15.7.2011*

*Law of Georgia No 6019 of 10 April 2012 – website, 30.4.2012*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

## **Article 19<sup>1</sup> – Financial recovery plan**

1. The commercial bank shall develop and submit to the National Bank the financial recovery plan approved by the supervisory board of this commercial bank. Among other elements, the financial recovery plan shall include idiosyncratic, systematic and combined stress scenarios to reduce the risks related to the liquidity and/or insolvency of the commercial bank and the measures that have to be taken and implemented for the recovery of the financial health.
2. The National Bank shall discuss and evaluate the financial recovery plan. The National Bank is entitled to request the commercial bank to make amendment to the financial recovery plan to remedy significant defects which may pose a threat on the implementation of the plan.
3. The commercial bank shall review the financial recovery plan annually and if appropriate, update it. The financial recovery plan shall be updated if the activity, structure, risk positions of the commercial bank or admissions which have been used during the development of the financial recovery plan have changed significantly. The National Bank is entitled to require the commercial bank any time to review the financial recovery plan and update it.
4. Every commercial bank and enterprise included in the in the banking group shall be obliged to cooperate with the National Bank in the process of the development of the financial recovery plan. This cooperation shall also include the submission of any information required by the National Bank.
5. The National Bank shall be authorised to establish additional requirements and rules related to the financial recovery plan provided for by this article by a legislative act. Taking into account their size, system and risk profile, the National Bank shall also be authorised to determine relevant criteria for those commercial banks which may be offered simplified/different requirements.
6. The financial recovery plan does not prevent the National Bank from acting differently from this plan.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Article 20 – Banking activities**

1. Commercial banks may only be engaged in:
  - a) soliciting interest-bearing and interest-free deposits (call deposits, term deposits and others) and other refundable means of payment;
  - b) grant loans including consumer loans, mortgage loans, unsecured and other credits; factoring operations with or without right of recourse; financing commercial deals, issuing guarantees, letters of credit and acceptances, including forfeitures;
  - c) enter into a derivative contract, sales, with its own and customers means, of monetary instruments (including cheques, bills of exchange and depositary certificates), securities, currency and interest rate instruments, debt documents, foreign currency, precious metals and gems;
  - d) performing monetary and non-monetary payment transactions and cash-collection services;



e) issuing means of payment and organising their circulation (including payment cards, cheques and bank bills);

e<sup>1</sup>) providing interest-free banking services;

f) rendering intermediary services in financial markets;

g) performing fiduciary (trust) transactions, soliciting and placing funds by order of customers;

h) storing and registering valuables, including securities;

i) providing credit reference services;

i<sup>1</sup>) central depositary activities under the Law of Georgia on Securities Markets;

i<sup>2</sup>) leasing property;

i<sup>3</sup>) providing payment services, operating payment system, performing the functions of a paying agent;

i<sup>4</sup>) leasing property;

j) providing services related to all of the above activities.

2. Exercising rights with respect to securities transactions under paragraph 1 of this article shall be regulated by the Law of Georgia on Securities Markets.

3. Before providing a banking service under paragraph 1(e<sup>1</sup>) of this article, a commercial bank is obliged to submit the description of the respective bank product to the National Bank for approval.

4. In accordance with paragraph 1(i<sup>2</sup>) of this article leasing property by a commercial bank is allowed only for the purpose of the management of property to fulfil an existing liability against a commercial bank and/or provided that the property will be used only for banking activities, related activities or the social projects of a commercial bank during the entire lease period.

5. In addition to the cases provided for by paragraph 4 of this article, a commercial bank shall be prohibited to buy or possess property for the purpose of letting it on lease.

6. The National Bank of Georgia shall be authorised to define additional/different criteria for the activity provided for in paragraph 1(i<sup>2</sup>) and (i<sup>4</sup>) and by paragraph 4 of this article.

*Law of Georgia No 1751 of 24 December 1998 – LHG I, No 1(8), 14.1.1999, Art. 4*

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 5002 of 1 July 2011 – website, 15.7.2011*

*Law of Georgia No 6019 of 10 April 2012 – website, 30.4.2012*

*Law of Georgia No 6306 of 25 May 2012 – website, 12.6.2012*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5682 of 20 December 2019 – website, 31.12.2019*

## **Article 21 – Economic limits, standards and individual requirements**

1. Commercial banks are obliged to observe the following economic limits determined by the National Bank:



- a) a minimum amount of equity and regulatory capital;
- b) a ratio between various capital accounts of a bank and its classified assets under the procedures of the National Bank;
- c) a marginal ratio between solicited deposits of the bank and its regulatory capital;
- d) a ratio between the total sum of credits and other liabilities issued by a bank to one borrower (an insider or outsider) and the regulatory capital of the bank;
- e) a ratio between the total sum of credits and other liabilities issued by a bank to all insiders (persons connected to the bank and to each other) and the regulatory capital of the bank;
- f) (deleted).

2. Commercial banks are obliged to observe the following economic standards determined by the National Bank:

- a) a ratio of the minimum total sum of liquid funds or certain types of such funds to the value of assets (including acquired guarantees and pledges) or a change in their values. The ratio may be set generally for assets or liabilities (including off-balance sheet liabilities) or for specific types. Banks have the right to place appropriate funds with the National Bank of Georgia to comply with liquidity requirements;
- b) a standard for a maximum total sum of credits and investments or of special types;
- c) classification of assets and off-balance sheet liabilities, and formation and use of reserves against probable losses; also terms and conditions under which accounts receivable based on assets will not be entered into revenue except when received in cash;
- d) standards for prohibitions, restrictions and conditions in relation to:
  - d.a) types and forms of credits granted and funds invested;
  - d.b) conformity of maturity periods and interests based on assets and liabilities (off-balance sheet and other liabilities);
  - d.c) open positions in foreign currencies, precious metals and gems formed as a result of exceeding set limits.

3. Based on the risk-based supervision principles, the National Bank is authorised to set for each commercial bank individual indices and requirements for economic limits and standards.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

*Law of Georgia No 5682 of 20 December 2019 – website, 31.12.2019*

## **Article 21<sup>1</sup> – Business relations with the customers**

1. A commercial bank shall open an account according to the Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism and the Agreement between the Government of the United States of America and the Government



of Georgia to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act (FATCA).

2. In business relations with its service consumer and when verifying a transaction carried out by the consumer, a commercial bank must be aware of the identity and activity of its service consumer, and the level of risk of the activity with regard to money laundering and the financing of terrorism. A commercial bank shall, based on the requirements established under the Agreement between the Government of the United States of America and the Government of Georgia to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act (FATCA), also define tax residency of the client and obtain the information on the appropriate status of the person.

3. Commercial banks operating in Georgia shall have the right to decide and require other additional information.

4. Commercial banks operating in Georgia shall have the right to refuse without any justification to open an account or provide service.

5. A commercial bank may refuse to open an account for a person, or close his/her existing account if the person refuses to provide the commercial bank with the information based on the requirements established under the Agreement between the Government of the United States of America and the Government of Georgia to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act (FATCA).

*Law of Georgia No 4519 of 27 March 2007 – LHG I, No 9, 31.3.2007, Art. 84*

*Law of Georgia No 4459 of 28 October 2015 – website, 11.11.2015*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5228 of 30 October 2019 – website, 30.10.2019*

## **Article 22 – Prohibited agreements and methods of working**

1. Commercial banks may not perform any activities or make any transactions that will put them, alone or together with other persons, in a dominating position on monetary, financial or credit markets; also any manipulation giving an undeserved advantage to the bank or third persons, or creating the possibility or risk of limiting competition for banking activities, of fixing interest rates and commission fees. Under the legislation of Georgia, a competition policy in banking activities shall be implemented by the National Bank which defines allowable parameters, evaluation criteria and measures of influence for banking activities in this field.

2. Commercial banks may not conclude any agreement with their customers that will require acquisition or use of a non-banking service of this bank or any of its affiliates in exchange for granting a loan or providing any banking service, unless the customer is given an opportunity to receive this non-banking service from other providers.

3. A controlling person/administrator of a commercial bank is prohibited to carry out an action as a result of which the information received from a commercial bank will put him independently or together with other persons in a dominant position, and/or will result the competition restriction in the non-banking sector.

4. A controlling person and an administrator of a commercial bank are obliged to avoid conflict of interests, and to prevent putting their own interests over those of a commercial bank or abusing of official powers. A controlling person/administrator of a commercial bank who has access to a non-public information which may have a significant influence on the value of certain investment, is prohibited to use this information independently or with other persons.

5. In order to meet the requirements of this article, a commercial bank is obliged to ensure the implementation and monitoring of adequate policies, procedures and technical systems related with the management of non-public information. This should ensure the limitation of the improper outflow of information to the parties related to the commercial banks, its controlling persons and administrators.

6. In the case of non-fulfillment or improper fulfillment of the requirements of this article, the National Bank shall be entitled to apply supervisory measures and/or sanctions (monetary fine) provided for by Article 30 of this Law.

7. In order to meet the requirements of this article, the National Bank shall with a relevant legal act determine procedures regarding prohibited transactions and working methods with them, as well as the relevant supervisory measures and/or sanctions



(monetary fine) for shareholders of a commercial bank, controlling persons and administrators.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 5002 of 1 July 2011 – website, 15.7.2011*

*Law of Georgia No 6150 of 8 May 2012 – website, 25.5.2012*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Article 23 – Registration of transactions and liabilities**

1. Commercial banks are obliged to keep all documents related to each of their transactions for the time frames determined by the National Bank, in particular:

- a) requests and all contractual documents related to transactions (including agreements on credits, guarantees and pledges);
- b) those financial records and other documented certificates of the bank partners (including borrowers and guarantors) that form the basis for the bank to approve a transaction;
- c) a signed record of the bank's decision to approve a transaction;
- d) other documents as provided for by the National Bank standards.

2. Commercial banks shall be obliged to store information on their customers and any transactions on their accounts in an electronic form for not less than 15 years.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 2830 of 23 March 2010 – LHG I, No 19, 13.4.2010, Art. 104*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

## **Article 24 – (Deleted)**

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*





## **Article 25 – Transactions with interested persons**

Commercial banks may not grant any banking product or render any banking service within their banking activities under preferential conditions to any administrator, controlling person, affiliate or connected persons despite the type of loan, interest rate, maturity period, collateral, value or any other conditions.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

## **Chapter IV<sup>1</sup> – (Deleted)**

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 4519 of 27 March 2007 – LHG I, No 9, 31.3.2007, Art. 84*

## **Article 25<sup>1</sup> – (Deleted)**

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 4220 of 29 December 2006 – LHG I, No 2, 4.1.2007, Art. 27*

*Law of Georgia No 4519 of 27 March 2007 – LHG I, No 9, 31.3.2007, Art. 84*

## **Chapter V – Reports, Audit, Accounting and Inspection**

### **Article 26 – Reports and financial statements**

1. Banks and their subsidiaries shall regularly prepare reports, records and annual financial statements that precisely include their operations and financial conditions under International Accounting Standards. In addition, banks and their subsidiaries shall follow an appropriate form of regulations, level of details and accounting standards determined by the National Bank.

2. Bank reports, records and financial statements shall reflect operations and the financial condition of its subsidiaries on a consolidated basis.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

### **Article 27 – External audit**

1. Each commercial bank and its subsidiary shall be obliged to invite external auditors and conduct an external audit inspection every year as determined by the National Bank.

2. Upon completion of an external audit, each commercial bank shall be obliged to provide the National Bank with a complete inspection report and publish the financial accounting and external audit opinion as defined under the procedures of the National



Bank.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

## **Article 28 – Branches of foreign banks**

Articles 26, 27 and 29 of this Law shall apply to branches of foreign banks and their subsidiaries that operate in Georgia under licences issued by the National Bank. Under the law, financial and accounting documentation of a bank branch may be submitted as simplified financial statements, which implies that an audit committee of the foreign bank or other respective body may be considered to be the audit committee for the bank branch.

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

## **Article 29 – Reporting and inspections**

1. Commercial banks shall prepare reports and submit them to the National Bank. The reports shall include organisational-administrative and operational activities (of commercial banks and their subsidiaries), their liquidity, solvency and profitability in order to evaluate the financial condition of commercial banks and their subsidiaries jointly and individually. For the purposes of legislation on the prevention of money laundering and the financing of terrorism, a commercial bank shall submit relevant reports to the National Bank. The form, degree and terms for submitting reports shall be determined by the legal acts of the National Bank.

2. A commercial bank and its subsidiary shall be subject to inspection to be performed by inspectors of the National Bank, or auditors appointed by the National Bank. If a branch or a subsidiary of a foreign bank is inspected, the employees of financial or regulatory bodies of respective foreign countries may be the auditors.

3. When inspecting commercial banks and their subsidiaries, the National Bank and its auditors shall have the right to:

a) check accounts, funds, account books, documents and other necessary records of a commercial bank and its subsidiary;

b) require administrators and employees of a commercial bank and its affiliates to provide information regarding the bank's shareholders, controlling persons and administrators, and any information on banking operations and transactions. If these requirements are not complied with or fully complied with, or if a commercial bank/administrator fails to submit the information within the time limit determined by the legislation of Georgia or the National Bank supervisory measures and/or sanctions (monetary fine) under Article 30 of this Law shall apply.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*



*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5228 of 30 October 2019 – website, 30.10.2019*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Chapter VI – Supervisory Measures of the National Banks and Sanctions (Monetary Fine), Early Intervention**

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

### **Article 30 – Supervisory measures of the National Bank and sanctions (monetary fine)**

1. The National Bank shall be authorised to impose one or more supervisory measures and/or sanctions (monetary fine) provided for by this article on the commercial bank, administrator of the commercial bank or a controlling person if one or more of the following reasons exist:

a) the commercial bank, the administrator of the commercial bank or the controlling person violates:

a.a) one of the provisions of this Law or any standard, instruction, provision, rule, regulation, requirement, direction of the National Bank;

a.b) any of the conditions or limitations which is attached to the licence of the banking activity or to the corresponding provision of the National Bank;

a.c) reporting time limits (submission of wrong reports and other incorrect information);

a.d) the requirements of the Law of Georgia on Facilitating the Prevention of Money Laundering and Terrorism Financing;

a.e) the requirements of the Law of Georgia on Payment Systems and Payment Services;

a.f) the requirements of the Law of Georgia on Competition;

a.g) the requirements established by the legislation of Georgia and/or the National Bank that has interrupted the implementation of the supervisory process of the National bank;

b) the commercial bank has been or is involved in the unhealthy or hazardous banking practices;

c) the risks have been revealed during the process of supervisory revision and evaluation (including the framework of the general programme of the risk evaluation).

2. If one of the reasons provided for by paragraph 1 of this article have been revealed, the National Bank shall have right to, consistently or inconsistently, following the principle of proportionality, use one or more of the following supervisory measures:

a) send a written warning notice to the commercial bank, the administrator of the commercial bank and/or the controlling person;

b) require from the commercial bank to raise additional capital;

c) require from the commercial bank to review and improve domestic policy and procedures, financial recovery plan, control system and strategies;

d) determine special measures, suspend or restrict the certain types of the operations of a commercial bank, or issue an instruction (direction) requiring that a commercial bank ensures the compatibility with the requirements of the legislation of Georgia and the healthy banking practices and take necessary measures to eliminate the reasons determined in the paragraph 1 of this article. The



National Bank shall have right to require the respective plan from the commercial bank;

- e) require from the commercial bank to use specific approach related to the reservation of assets or for the purpose of the adequacy of capital;
- f) suspend the right of signature of one or more administrators of the commercial bank and of the Supervisory Board of the commercial bank and in the case of the member of the Supervisory Board – require from the general meeting of shareholders to temporarily remove from office or dismiss the administrator(s);
- g) suspend or restrict a commercial bank from increasing assets, distributing profits, paying dividends and bonuses, increasing salaries and soliciting deposits;
- h) suspend the right of vote of the controlling person and/or the owner of the significant share of the commercial bank in the case of non-submission of the financial or other information to the National bank or in the case of the violation of the legislation, including the non-compliance with the compliance criteria determined in article 5 of this Law or if, according to the evaluation of the National Bank, the controlling person or the owner of the significant share uses his/her powers to the detriment of the Bank's interests. The time limits and terms for cancellation or limitation provided for by this sub-paragraph shall be established by the National Bank based on the circumstances;
- i) demand the controlling person of the commercial bank to remove or limit control in the case of non-submission of the financial or other information to the National Bank or in the case of other type of violation. This removal or limitation shall be accompanied by the terms and time limits which shall be considered to be appropriate by the National Bank based on the circumstances;
- j) suspend or limit some types of the activities and operations of the commercial bank, including the demand of the alienation of separate activities or business areas if those expose excessive risks and/or pose a threat on healthy functioning of the commercial bank;
- k) demand the commercial bank to respectively react on the risks related to its activities, products and/or systems;
- l) demand the commercial bank to decrease variable payment to the extent that is necessary to meet the established coefficient of the adequacy of capital and to fulfil other standards;
- m) suspend and/or prevent the commercial bank from distributing capital and/or interest to its shareholders and/or owners of the additional initial capital;
- n) establish additional requirements for the commercial bank related to the supervisory reporting;
- o) establish individual liquidity requirements for the commercial bank, including limitations on the different maturity of the assets and liabilities;
- p) establish additional disclosure requirements for the commercial bank;
- q) revoke the banking licence of a commercial bank.

3. In the case of the existence of one or more of the grounds of paragraph 1 of this article and/or the weakening of the financial situation of the commercial bank which may also be represented by the deterioration of the capital and liquidity situation, the growth of the leverage, inactive loans or the concentration of risk position, the National Bank shall, with or without applying supervisory measures provided for by paragraph 2 of this article, be authorised, with the observance of the principle of proportionality, to use one or more of the following measures:

- a) demand the commercial bank to apply one or more measures provided for by the financial recovery plan;
- b) demand the commercial bank to evaluate the assets and liabilities by an independent appraiser agreed with the National Bank;
- c) demand the commercial bank to make changes to its business strategy or organisational structure;
- d) demand the commercial bank to develop and implement an action plan which by the decision of the commercial bank may include the issue of negotiating loan obligations and/or undertaking obligations related to the elimination of the problems of the commercial bank by the owner of the significant share;



e) request any information from the commercial bank and/or receive any information onsite from the commercial bank which is necessary to update the resolution plan;

f) demand the Supervisory Board and the directorate of the commercial bank to invite an extraordinary general meeting to discuss the reasons determined in paragraph 1 of this article and take necessary measures for their elimination. In the case of non-fulfilment of the request of the invitation of the extraordinary general meeting of the shareholders the National Bank shall be authorised to invite the extraordinary general meeting with the agenda set by itself and demand the discussion of the reasons determined in paragraph 1 of this article and take measures for their elimination.

4. With the observance of the principle of proportionality the National Bank shall, with or without application of the supervisory measures for the cases provided for by sub-paragraphs (a) and/or (b) of this article, have right to impose sanctions (monetary fine) in accordance with the procedure and the amount established by the National Bank that shall not exceed the supervisory capital of the commercial bank.

5. The amount of a financial penalty imposed under this article shall be paid into the State Budget.

6. The party, on which the supervisory measures and/or sanctions (monetary fine) are imposed, shall have right to appeal in the court within one month after the official review of the respective individual administrative act.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 2474 of 20 June 2003 – LHG I, No 20, 11.7.2003, Art. 140*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 6306 of 25 May 2012 – website, 12.6.2012*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5228 of 30 October 2019 – website, 30.10.2019*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **[Article 30<sup>1</sup> – Early intervention**

1. If, in the case of the existence of one or more reasons determined by Article 3(1) and/or (3), the supervisory measures are not effective, or the National Bank believes that such measures are not sufficient to achieve satisfactory result, the National Bank shall, with or without application of the supervisory measures provided for by Article 30(2) and/or (3), be authorised to appoint a temporary administrator in order to ensure the stable and effective functioning of commercial bank and financial sector and protect the interests of the depositaries or other creditors of the commercial bank. The temporary administrator shall meet criteria established by the legislation of Georgia, as well as no conflict of interests shall exist. The National Bank shall issue an individual administrative act on the appointment of the temporary administrator. This act along with other issues shall determine the duties and powers of the temporary administrator. The above individual administrative act shall enter into force from the date of its publication on the official website of the National Bank. The decision on the appointment of a temporary administrator shall also be published in the official gazette. A temporary administrator shall start performing his/her duties from the date referred to in the above decision.

2. The temporary administrator shall be authorised to work together with other administrators of the commercial bank or substitute them. If the temporary administrator carries out his/her duties together with the administrators of the commercial bank, the National Bank shall be authorised to determine the obligation of the consent of the temporary administrator for making certain decisions. The powers of the general meeting of the commercial bank shall not be transferred to the temporary administrator. By the decision of the National Bank, some of the decisions of the temporary administrator may require the prior consent of the National Bank. The obligation of the prior consent of the National Bank may be determined at the time of the



appointment of the temporary administrator, as well as at some stage of exercising his/her powers. The consent shall not be required in the cases provided for by the Law of Georgia on Payment Systems and Payment Services and the Law of Georgia on Financial Collateral Agreement, Mutual Offset and Derivatives. The National Bank shall be authorised to dismiss the temporary administrator at any time with any ground.

3. The temporary administrator shall be appointed for not more than 1 year. In the exceptional case, if, according to the assessment of the National Bank, the reason of the appointment of the temporary administrator is not eliminated, this term may be extended.

4. The National Bank shall be authorised to determine the powers of the temporary administrator and the procedure for his/her appointment.

5. The party, against which the early intervention measures are used, shall have right to appeal in the court within 1 month after the official review of the respective individual administrative act. **(Shall enter into force from 1 January 2021)]**

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

*Law of Georgia No 5682 of 20 December 2019 – website, 31.12.2019*

## **Article 30<sup>2</sup> – Principle of proportionality**

1. The decision of the National Bank made on the basis of Articles 30 and 30<sup>1</sup> of this Law shall be proportional to the grounds of the application of the supervisory measure, sanction (monetary fine) or early intervention measure. When making the decision on the application of the supervisory measure, sanction (monetary fine) or early intervention measure, the National Bank shall consider the following criteria:

a) the seriousness of the grounds determined by Articles 30 and 30<sup>1</sup>. For this purpose, the National Bank shall at least evaluate the financial status of the commercial bank, the level of the adequacy of the capital of the commercial bank against its risks, the scale, amount, interrelation, duration and frequency of the grounds determined by the same articles that affect the financial status of the commercial bank, the legality of the activities of commercial bank and/or the possible risk of the loss of the assets of commercial bank;

b) the readiness and the resources of the commercial bank to eliminate the grounds determined by Articles 30 and 30<sup>1</sup> of this Law. For this purpose, the National Bank shall at least evaluate the capability of the administrators of commercial bank to reveal and assess, monitor and manage the risks of commercial bank. It shall also evaluate, how effectively are eliminated the grounds determined by the same articles and to what extent the commercial bank, its administrators and controlling persons cooperate with the National Bank;

c) to what extent is there a threat to the stability and effective functioning of the financial sector. For this purpose, the National Bank shall evaluate and consider the systemacity and size of a commercial bank, as well as its interrelation with other representatives of the financial sector, the substitutability, field of activity and complexity of the functions of commercial bank.

2. This article shall not apply to the application of the supervisory measure, sanction (monetary fine) and early intervention measure in the cases when the legislation on facilitating the prevention of money laundering is applied.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Chapter VII – Resolution and Liquidation**

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Article 31 – (Deleted)**

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*



## Article 32 – Principles of resolution

The National Bank shall implement the resolution mode in accordance with the following principles of the resolution:

- a) the shareholders of the commercial bank shall experience first loss. The equal protection of interests shall be ensured;
- b) the creditors of commercial bank shall experience loss after shareholders in the reverse order of the observance of requirements for liquidation, except for the cases provided for by Article 37<sup>11</sup> of this Law.
- c) the equal protection of the interests of the creditors of the same order shall be ensured, except for the cases provided for by Article 37<sup>11</sup> of this Law.
- d) the shareholders and creditors of commercial bank shall not experience more loss by the final result of resolution than in the case of liquidation, taking into account the opportunity of compensation provided for by Article 37<sup>11</sup>(4) of this Law;
- e) the members of the supervisory board and directorate of commercial bank shall be dismissed, except for the cases when, taking into account the existing circumstances, the National Bank believes that it is necessary to keep on the position;
- f) the deposits determined by the Law of Georgia on Deposits Insurance System shall be protected;
- g) decision made while developing the resolution plan, decision on applying resolution mode to commercial bank, decisions made during the resolution mode of commercial bank, including decisions on applying resolution tools, shall be proportional in order to achieve resolution purposes determined by Article 55<sup>1</sup>(1) of the Organic Law of Georgia on the National Bank of Georgia.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## Article 33 – Resolution plan

1. The National Bank evaluates the possibility of the application of the effective resolution mode to each commercial bank. The National Bank shall, while determining the possibility of the effective resolution of commercial bank, evaluate the appropriateness of the application of resolution mode to commercial bank or the beginning of the process of the liquidation of commercial bank in the case of the existence of the grounds provided for by the legislation of Georgia.
2. The National Bank shall establish resolution plans for commercial banks in the case of the existence of the grounds established by the legislation of Georgia, when instead of liquidation it is appropriate to apply a resolution mode. The resolution plan shall include respective resolution tools and resolution powers which shall be used by a commercial bank during the resolution mode.
3. If the National Bank identifies substantial circumstances that hinder the implementation of the resolution of a commercial bank, the National Bank is authorised to demand the commercial bank to submit a plan for the elimination of these circumstances. If a plan submitted by a commercial bank shall not ensure the elimination of the above-mentioned circumstances, the National Bank shall give the commercial bank specific directions to achieve this goal and determine relevant time limit for their implementation. A commercial bank shall be obliged to apply all measures to fulfil the above-mentioned directions. The directions of the National Bank may include the following measures:
  - a) the limitation of the maximum individual general risk positions of a commercial bank;
  - b) the requirement of the additional information for the purposes of resolution;
  - c) the requirement of the alienation of specific assets;
  - d) the limitation or cancellation of the current and/or planned activity/product of a commercial bank;
  - e) the requirement of making changes in the operational activity, organisational structure and/or possession structure of a commercial bank/banking group which may also include the simplification of the possession structure and/or the establishment of



a parent company or subsidiary enterprise on the territory of Georgia for the purpose of ensuring continuity of the critical functions of a commercial bank/banking group in the process of resolution;

f) the requirement of protecting the relevant declared authorised capital for the purpose of issuing new assets or other property instruments during the resolution process;

g) the establishment and observance of the permitted liabilities and capital instruments provided for by Article 37<sup>10</sup>(16).

4. The National Bank shall review the resolution plan annually and if applicable, update it. The resolution plan shall be updated if the activity and/or organisational structure or financial status of a commercial bank has changed and it may have a significant influence on the content and/or implementation of the resolution plan.

5. Every commercial bank and banking group shall be obliged to cooperate with the National Bank and support it in the process of the development of resolution plan that also includes the submission of any requested information.

6. The National Bank shall be authorised to establish additional and/or simplified requirements and procedures related to resolution planning by a legal act. The National Bank shall also be authorised to determine the relevant criteria for commercial banks which, taking into account their size, system and risk profile, may be offered simplified/different requirements.

7. The resolution plan shall not prevent the National Bank from acting differently from this plan.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 5002 of 1 July 2011 – website, 15.7.2011*

*Law of Georgia No 6306 of 25 May 2012 – website, 12.6.2012*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Article 34 – Resolution conditions and decision on applying the resolution mode to a commercial bank**

1. The National Bank shall be authorised to make a decision on applying resolution mode to a commercial bank in the case of the existence of one or more grounds of the cancellation of banking licence provided for by Article 7 of this Law (except for the cases provided for by subparagraphs (c), (d), (f), (h) and (o) of the same Law) and/or in the case provided for by Article 30(2)(q) of this Law if the application of resolution mode is necessary for the resolution purposes determined by Article 55<sup>1</sup>(1) of the Organic Law of Georgia on the National Bank of Georgia. Before applying resolution mode the National Bank shall, taking into account time and other relevant circumstances, evaluate the existence of the possibility of the complete elimination of the resolution grounds provided for by this paragraph by private sector and/or early intervention measure and/or supervisory measures.

2. Before making decision provided for by paragraph 1 of this article the National Bank shall, within the time limit determined by the National Bank, be authorised to hear the proposals of a commercial bank on the elimination of the grounds for the resolution mode if, taking into account all relevant circumstances, including the exigent nature of the issue, by evaluation of the National bank, this does not pose a threat on the achievement of the resolution purpose determined by Article 55<sup>1</sup>(1) of the Organic Law of Georgia on the National Bank of Georgia.

3. The use of the early intervention measure and/or supervisory measures provided for by Articles 30 and 30<sup>1</sup> of this Law by the National Bank shall not be a necessary prerequisite for the application of the resolution mode.





4. The resolution mode shall be applied to a commercial bank from the moment of the publication of the decision of the National Bank on the official website of the national Bank. The decision of the National Bank of the application of the resolution mode to a commercial bank shall include the information on the grounds of the application of the resolution mode. A commercial bank and interagency financial stability committee provided for by the Organic Law of Georgia on the National Bank of Georgia shall be immediately notified on the above-mentioned decision. The decision on the application of the resolution mode to a commercial bank shall be published on the website of the Legislative Herald of Georgia. Other information on this decision shall be published on the official website of the National Bank in accordance with the procedure of confidentiality. From the moment of the publication of the decision on the application of the resolution mode to a commercial bank on the website of the National Bank the relevant information shall be considered as delivered to the interested persons.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 6306 of 25 May 2012 – website, 12.6.2012*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

#### **Article 35 – Duration and termination of the resolution mode of a commercial bank**

1. The resolution mode shall be applied for not more than 12 months. The National Bank shall be authorised to extend this time limit for not more than 12 months. The decision of the National Bank on the extension of the time limit of the resolution mode shall include the grounds for its extension. This decision shall be published on the websites of the Legislative Herald of Georgia and the National Bank in accordance with the procedure for confidentiality.

2. The resolution mode of a commercial bank shall be terminated:

- a) if the time limit determined by paragraph 1 of this article expires;
- b) by the decision of the National bank, in the case of the elimination of the grounds for the application of the resolution mode;
- c) in the case of the cancellation of the banking licence of a commercial bank.

3. In the case of the beginning of the liquidation process of a commercial bank being in the resolution mode, Article 37<sup>12</sup>(7) shall not apply to the decision made in accordance with this chapter.

4. This article shall not ally to the interim bank.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*



## **Article 36 – (Deleted)**

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

## **Article 37 – Special manager**

1. The National Bank shall be authorised to directly carry out the resolution powers granted by this Law or appoint one or more special managers. An employee of the National Bank may be appointed as a special manager. A special manager shall comply with the eligibility criteria established by the National Bank.
2. The National Bank shall determine the powers and responsibilities of a special manager within which a special manager may exercise full control over a commercial bank and all powers of all bodies of a commercial bank may be transferred to a special manager.
3. Except for the actions carried out on the basis of the Law of Georgia on Financial Collateral Agreement, Mutual Offset and Derivatives, a special manager of a commercial bank shall be authorised to file a lawsuit and contest an action or transaction carried out by an administrator of a commercial bank within one year before the appointment of a special manager if as a result of this action/transaction, a person associated with the commercial bank receives material benefits from this commercial bank or enjoys any advantages, privileges or benefits that have affected the commercial bank or its creditors and require its invalidity.
4. A special manager shall act within the frames of the legislation of Georgia and the instructions and directions of the National Bank. A special manager shall be accountable only to the National Bank. A special manager shall, in accordance with the procedure and manner, and time limit established by the National Bank, submit a report on his/her activities regularly and/or on demand.
5. The National bank shall be authorised to dismiss a special manager any time with any reason and appoint another person as a special manager in accordance with the procedures established by the National Bank. The responsibility of a special manager and the issues of the conflict of interests shall be regulated by the Organic Law of Georgia on the National Bank and in accordance with the procedures established by the National Bank. A special manager shall receive a remuneration determined by the National Bank. All costs, including the remuneration of a special manager, incurred by a special manager when performing his/her activities shall be borne by a commercial bank in the resolution mode.
6. By the decision of the National Bank, if a commercial bank in the resolution mode is cancelled a banking licence and its liquidation process begins, a special manager may be appointed as a liquidator of a commercial bank.

*Law of Georgia No 1115 of 23 October 2001 – LHG I, No 32, 7.11.2001, Art. 125*

*Law of Georgia No 2787 of 17 March 2006 – LHG I, No 8, 24.3.2006, Art. 59*

*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

*Law of Georgia No 2830 of 23 March 2010 – LHG I, No 19, 13.4.2010, Art. 104*

*Law of Georgia No 5002 of 1 July 2011 – website, 15.7.2011*

*Law of Georgia No 6306 of 25 May 2012 – website, 12.6.2012*

*Law of Georgia No 4189 of 3 September 2015 – website, 10.9.2015*

*Law of Georgia No 439 of 10 March 2017 – website, 22.3.2017*

*Law of Georgia No 853 of 17 May 2017 – website, 02.6.2017*

*Law of Georgia No 1895 of 23 December 2017 – website, 11.1.2018*

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*



### **Article 37<sup>1</sup> – Controlling a commercial bank in the resolution mode**

1. After applying a resolution mode all powers of all bodies of a commercial bank shall be transferred to the National Bank. The National Bank shall be authorised to impose an obligation of carrying out certain actions on the bodies of a commercial bank in accordance with this Law. Every decision/action made/carried out by a commercial bank, special manager or in the name of a commercial bank in the resolution mode shall be considered invalid if it is not made/carried out in the frame of the powers granted by the National Bank.
2. Immediately after applying resolution mode to a commercial bank the National Bank shall have an unlimited access to the assets, accounting reposts and records of a commercial bank. The National Bank shall be authorised to apply all measures necessary for ensuring their accessibility, including the cancellation or limitation of the permission of a person to act in the name of a commercial bank.
3. Direct after the application of a resolution mode any action on behalf of a commercial bank shall be carried out only with the consent of a special manager and/or the National Bank, except for the cases provided for by the Law of Georgia on Payment Systems and Payment Services and Law of Georgia on Financial Collateral Agreement, Mutual Offset and Derivatives.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

*Law of Georgia No 5682 of 20 December 2019 – website, 31.12.2019*

### **Article 37<sup>2</sup> – Suspension of payments and restriction of legal procedures in the resolution mode**

1. The National Bank shall be authorised to suspend the distribution of the capital to the shareholders of a commercial bank in the process of resolution mode, as well as to suspend the payment of the remuneration to the administrators (except for the remuneration payable for services required by the National Bank during the resolution mode).
2. The National Bank shall be authorised to introduce a moratorium on outstanding payments of a commercial bank or a part of them, except for the payments related to the insured deposits, as well as the payments to the tax and reporting systems or the participants of these systems, the payments driven from the participation in the tax system and the payments to the National Bank. The time limit of a moratorium shall not exceed 90 calendar days.
3. The National Bank shall be authorised to apply to the court with the request of the suspension of proceedings against a commercial bank in the resolution mode and/or in the case of the beginning of the proceedings, to apply to the court with the request of the deferral of the hearing of the case. The above mentioned suspension/deferral shall not exceed 90 calendar days.
4. On the basis of the application of the National Bank, any compulsory enforcement measure shall be suspended and/or shall not be used against a commercial bank in the resolution mode (including the measures of the security of a claim and the measures of ensuring the enforcement of a decision), as well as the means of ensuring the requirements provided for by the Tax Code of Georgia and the Civil Code of Georgia (including measures to secure payment of tax debts, pledge and mortgage) during 90 calendar days.
5. The application of the resolution mode or exercising any of the resolution powers shall not be the reason for cancellation, change and/or expedition of the contractual rights or obligations of the contracting party of a commercial bank in the resolution mode. The application of the resolution mode or exercising any of the resolution powers shall not be the reason for financial collateral in accordance with the Law of Georgia on Financial Collateral Agreement, Mutual Offset and Derivatives if a commercial bank in the resolution mode fulfils its obligations properly.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

*Law of Georgia No 5682 of 20 December 2019 – website, 31.12.2019*



## **Article 37 – Evaluation of assets and liabilities of a commercial bank**

1. For the purpose of making decision on the application of a resolution mode to a commercial bank, in particular, to determine the existence of the grounds for cancellation of the banking licence provided for by Article 34(1) of this Law, the National Bank shall keep the record of the assets and liabilities of a commercial bank in accordance with the accounting and prudential supervisory requirements. The National Bank shall be authorised to carry out the evaluation of the value of the assets and liabilities. The non-existence of the independent evaluation shall not prevent the National Bank from making a decision provided for by Article 34 of this Law.
2. For the purpose of the application of the appropriate resolution powers and tools, as well as for the purpose of determining measures for the use of these tools, together with the record provided for by paragraph 1 of this article, the evaluation (complete evaluation) of the assets of a commercial bank, including the accrued loss and liabilities shall be carried out. In the case of some evaluation methods, the method that results in the lowest evaluation value shall be used (conservative approach).
3. The evaluation provided for by paragraph 2 of this article shall also include the information on the amount of loss in the case of the liquidation of a commercial bank borne by the owners of the first capital tools (shareholders) and the list of creditors determined by Article 37<sup>12</sup> of this Law. The above-mentioned evaluation shall not be used to determine the amount of compensation which may be paid to the shareholders and/or creditors if this evaluation proves that the shareholders and/or creditors are less affected by the liquidation of a commercial bank than by the application of a resolution mode.
4. The National Bank shall appoint an independent appraiser to carry out the evaluation provided for by this article. The National Bank shall be authorised to carry out the evaluation provided for by this article if carrying out the evaluation by an independent appraiser is impossible because of the relevant circumstances, including the exigent nature of the issue, or the achievement of the resolution goals determined by Article 55<sup>1</sup>(1) of the Organic Law of Georgia on the National Bank of Georgia is at risk. The National Bank shall be authorised to apply a resolution mode, make a decision on the application of any resolution tool and carry out resolution powers on the basis of an interim evaluation. If an interim evaluation is carried out in accordance with the purpose determined in paragraph 2 of this article, the National Bank shall consider a reserve for additional losses together with the relevant substantiation.
5. After carrying out any evaluation determined by this article, including an interim evaluation, the National Bank shall be obliged to ensure the evaluation by an independent appraiser as soon as possible. The National Bank shall be authorised to carry out additional resolution powers with the consideration of the results of the independent evaluation, in particular, enhance the loss of the shareholder and creditors of a commercial bank, restore a part of the requirements written off, carry out an additional transfer of assets and/or liabilities or return previously transferred assets and/or liabilities, increase or decrease the amount which has been paid for shares, assets and/or liabilities or for the alienation of an interim bank.
6. The National Bank shall establish the rules, procedures and methodology for the evaluation of the value of the assets and liabilities of a commercial bank provided for by this article, including the conservative stipulations that have to be considered by an independent appraiser and the qualification requirements of an independent appraiser.
7. The evaluation provided for by this article shall be a part of the decision on applying resolution tools and/or resolution powers and against it may be appealed in accordance with the requirements of Article 68 of the Organic Law of Georgia on the National Bank of Georgia.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Article 37<sup>4</sup> – Recapitalisation of shares and/or supervisory capital of a commercial bank in the resolution mode by writing them off or by converting them into shares or other property instruments**

1. The National Bank shall be authorised to write off the assets and/or other instruments of supervisory capital of a commercial bank in a resolution mode or convert the mentioned instruments into shares of a commercial bank or other property instruments. This power may be exercised independently or together with other resolution tools.
2. For the purpose of the fulfilment of principles determined by Article 32(a) and (b), the writing off of the shares and/or other instruments of supervisory capital or the conversion of the mentioned instruments into shares shall be carried out before the application of the resolution tools by using which the creditors (except for the shareholders and owners of other instruments of supervisory capital) shall bear the first loss. The National Bank may not apply this power if the assets and/or liabilities of a commercial bank are partially transferred and the value of the assets and other instruments of supervisory capital left on the balance of a commercial bank covers the existing loss.



3. The writing off of the instruments of supervisory capital or their conversion into shares shall be based on the evaluation of the assets and liabilities of a commercial bank in accordance with Article 37<sup>3</sup>(2) of this Law.

4. In the process of exercising the powers provided for by this article, the National Bank shall follow the reverse procedure of liquidation requirements to ensure:

a) the decrease of the nominal value of the core capital instruments in proportion to the loss and/or cancellation and/or transfer of the supervisory capital instruments

b) in addition to the instruments provided for by subparagraph (a) of this paragraph, the decrease of the nominal value of other supervisory capital instruments and/or conversion into ordinary shares or other property instruments of a commercial bank.

5. The decision of the National Bank on writing off the supervisory capital instruments or their conversion into the shares of a commercial bank shall enter into force immediately.

6. The National Bank shall, on its own terms, before carrying out temporary state financing, be authorised to require from a commercial bank to emit ordinary shares so that the owners of the relevant capital instruments acquire them.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

### **Article 37<sup>5</sup> – Resolution tools of the National Bank**

1. When exercising its powers the National Bank may apply one or more of the following resolution tools:

a) commercial bank merger;

b) the alienation of the shares, assets and/or liabilities of a commercial bank;

c) the transfer of the shares, assets and/or liabilities of a commercial bank to an interim bank;

d) the recapitalisation of a commercial bank by the emission of new shares;

e) the recapitalisation of a commercial bank by writing off or converting its liabilities.

2. The application of the resolution tools by the National Bank shall not require the consent of the shareholders, debtors, and creditors of a commercial bank. In addition, before applying the resolution tools by the National Bank, prior notification, publication and/or approval of issue prospectus in the cases determined by the Law of Georgia on Securities Market shall not be required.

3. Legal norms regulating the activities of a commercial bank as a legal entity may not be taken into account in order to prevent the interruption of the resolution mode.

4. For the resolution purposes, the National Bank shall be authorised to establish the simplified procedures of giving a consent in the supervisory process provided for by this Law in order to effectively use resolution tools.

5. The National Bank shall be authorised to make changes to the decisions related to the resolution tools or make a decision on the application of other resolution tools anytime.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

### **Article 37<sup>6</sup> – Commercial bank merger**

The National Bank shall be authorised to carry out a merger of a commercial bank in a resolution mode with another commercial bank. The decision of the National Bank on the mentioned merger shall become effective notwithstanding the requirements/procedures established by the legislation of Georgia.



## **Article 37<sup>7</sup> – Alienation of the shares, assets and/or liabilities of a commercial bank**

1. The National Bank shall be authorised to alienate the shares, assets and/or liabilities of a commercial bank in resolution mode in full or in part to the purchaser (except for an interim bank).
2. The National Bank shall be authorised to apply the resolution tool provided for by paragraph 1 of this article multiple times, as well as request the alienated shares, assets and/or liabilities of a commercial bank in the resolution mode from the purchaser by his/her consent and return them to a commercial bank in the resolution mode.
3. The amount received from the alienation of the shares, assets and/or liabilities of a commercial bank in the resolution mode shall be given to the shareholders of this commercial bank or to the commercial bank in the resolution mode after the reimbursement of the expenses (if any) of the resolution fund provided for by the Organic Law of Georgia on the National bank of Georgia.
4. The decision on the alienation of the shares, assets and/or liabilities of a commercial bank shall become effective immediately notwithstanding the requirements/procedures established by the legislation of Georgia. A purchaser of the shares of a commercial bank in the resolution mode shall be the shareholder of this commercial bank, and the purchaser of the assets and/or liabilities of a commercial bank in the resolution mode shall be the successor in title of a commercial bank in the resolution mode in respect of each alienated asset and liability. If the purchaser does not meet the criteria for participation in payment, clearing and settlement systems or for access to the stock market, by the decision of the National Bank, the purchaser may be granted an access to the above-mentioned systems/stock exchange for not more than 24 months.
5. The shareholders and creditors of a commercial bank in the resolution mode, as well as the third parties whose shares, assets and/or liabilities have not been alienated, shall have no right on the alienated shares, assets and/or liabilities.
6. In the supervision process the purchaser shall be obliged to obtain every consent provided for by this Law from the National Bank. In the case of the transfer of deposits to the purchaser, he/she shall possess a current banking licence.
7. If the direct/indirect participation of the purchaser (including the beneficial owner) in the capital of a commercial bank exceeds 10, 25 or 50 percent as a consequence of the alienation of the shares, assets and/or liabilities of a commercial bank in the resolution mode, the National Bank shall review the application on the acquisition of the significant share of the mentioned commercial bank in a simplified procedure established by Article 8<sup>1</sup> of this Law in order not to hinder the resolution mode. If the resolution tool provided for in this article needs to be applied immediately in order to speed up the resolution mode, the National Bank shall be authorised to alienate shares, assets and/or liabilities of a commercial bank without the evaluation of the transaction of purchasing the significant share and limit the voting shares before the evaluation by the National Bank and/or make a decision on using the voting rights by the National Bank. On the basis of the results of the above evaluation the National Bank shall be authorised to request the purchaser to alienate shares if the purchaser does not meet the eligibility criteria established by the legislation of Georgia.
8. The process of the alienation of the shares, assets and/or liabilities of a commercial bank in the resolution mode shall be transparent, impartial and non-discriminatory and this process shall ensure that the alienation value is increased maximally and the conflict of interests is eliminated. This shall not exclude the authority of the National Bank to alienate the shares, assets and/or liabilities of a commercial bank in the resolution mode by making an offer to one person if otherwise the effectiveness of the resolution mode may be hindered and the achievement of the resolution purposes jeopardised.
9. The information disclosure requirements provided for by the legislation of Georgia regulating the securities market may be postponed or observed when using the resolution tool provided for by this Article.
10. The shares of a commercial bank shall be alienated in proportion to the equity participation of its shareholders.

## **Article 37<sup>8</sup> – Interim Bank**



1. In order to ensure continuity of the critical functions of a commercial bank in the resolution mode, the National Bank shall be authorised to make a decision of transferring the shares, assets and/or liabilities of a commercial bank in the resolution mode, fully or partially, to an interim bank.
2. The Ministry of Finance of Georgia shall establish an interim bank for the purpose of providing the resolution tools provided for by this Article for the subsequent alienation of the transferred shares, assets and/or liabilities. Before the application of a resolution mode the Ministry of Finance of Georgia shall be authorised to establish a joint stock company which shall operate as an interim bank directly after granting the banking licence by the National Bank. The relevant authorities and registration bodies shall take all measures necessary to complete the process of establishing the interim bank in time.
3. The amount of liabilities transferred to the interim bank shall not exceed the sum of the assets transferred by a commercial bank in the resolution mode or the sum of the assets transferred by other sources.
4. If some shares, assets and/or liabilities of a commercial bank in the resolution mode transferred to an interim bank do not comply with the criteria established by the decision on their transfer, by the decision of the National Bank the above shares, assets and/or liabilities may be returned to a commercial bank in the resolution mode.
5. Upon the request of the Ministry of Finance of Georgia, the National Bank shall, as soon as possible but not later than one month, make a decision on granting a licence to an interim bank. This decision shall specify the types of activities permitted to an interim bank. The National Bank shall be authorised to establish the procedure for licencing an interim bank, including the simplified procedures and the list of the documents which may be filed after granting a banking licence to an interim bank.
6. An interim bank shall comply with criteria established by the legislation of Georgia. In the interest of financial sector stability, the National Bank shall be authorised to exempt an interim bank from the requirement of the minimal amount of the supervisory capital for a period not exceeding 6 months from the date of issuance of banking licence.
7. Founding documents of an interim bank, strategy and risk profile, as well as the remuneration and duties of the administrators of an interim bank shall be agreed with the National Bank.
8. An interim bank shall be managed on the basis of professional and commercial grounds. An interim bank shall not be a permanent tool and its shares, assets and/or liabilities shall be alienated as soon as possible. For this purpose, an interim bank shall, on the basis of the instructions and directions of the National Bank, develop and implement the banking market exit plan according to which an interim bank may be merged with another commercial bank, the shares, assets and/or liabilities of an interim bank may be alienated in full or in part, an interim bank may be recapitalised, including by writing off or converting the liabilities.
9. Except for the cases provided for by Article 7 of this Law, by the decision of the National Bank, an interim bank shall be cancelled banking licence after executing the banking market exit plan and completely writing off its rest assets and/or liabilities.
10. The shareholders of an interim bank shall receive the proceeds after the execution of the banking market exit plan.
11. When transferring the assets and/or liabilities of a commercial bank in the resolution mode to an interim bank, a procedure established by Article 37<sup>7</sup> shall be applied, except for the requirements determined by paragraphs 7 and 8 of the same article.
12. Legal norms regulating the activity of a commercial bank shall apply to an interim bank unless otherwise provided for by the Organic Law of Georgia on the National Bank of Georgia, this Law or the legal act of the National Bank.
13. The National Bank shall be authorised to determine additional requirements regulating the activity of an interim bank by a legal act, as well as the procedures and terms of development and implementation of the banking market exit plan.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

#### **Article 37<sup>9</sup> – Recapitalisation of a commercial bank by the emission of new shares**

1. The National Bank shall, in order to increase the supervisory capital of a commercial bank in the resolution mode and ensuring its healthy functioning, be authorised to make a decision on the emission of new shares by this bank and their sale.
2. The National Bank shall, in order to quickly finish the resolution mode, be authorised to offer the shareholders of a commercial bank in a resolution mode the new shares emitted by this bank if they meet the eligibility criteria established by the legislation of



Georgia and have not violated the requirements and directions of the National Bank.

3. Following the principle of resolution that the shareholders and owners of other supervisory capital instruments of a commercial bank in resolution mode receive the first loss, the National Bank shall, before emitting the new shares by this bank, write off the supervisory capital instruments of this commercial bank or convert them in accordance with Article 37<sup>4</sup> of this Law.

4. The National Bank shall, by a legal act, be authorised to establish the terms of recapitalisation by the emission of new shares, as well as the time limit for their capital contributions which shall not exceed 10 working days. These contributions shall be paid in full. By the decision of the National Bank this obligation may be extended for no more than 10 days.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

### **Article 37<sup>10</sup> – Recapitalisation of a commercial bank by writing off or converting its liabilities**

1. The National Bank shall be authorised to apply recapitalisation instrument by writing off or converting the liabilities of a commercial bank in a resolution mode for:

- a) recapitalisation of a commercial bank in the resolution mode;
- b) recapitalisation of an interim bank when applying resolution tool.

2. The recapitalisation instrument by writing off or converting the liabilities of a commercial bank shall be applied on the basis of the evaluation provided for by Article 37<sup>3</sup> of this Law.

3. When applying a recapitalisation instrument by writing off or converting the liabilities of a commercial bank in a resolution mode writing off or conversion of the liabilities shall be carried out in the reverse order to the requirements established for liquidation taking into account the requirements of the paragraphs 5 and 6 of this article. If the respective order of the creditor liabilities of a commercial bank in a resolution mode is not a subject to full write-off or conversion, their writing off or conversion shall be carried out in proportion to the claim amount of each creditor in the order listed.

4. Before applying a recapitalisation instrument by writing off or converting the liabilities of a commercial bank in a resolution mode, writing off or conversion of those liabilities shall be carried out first, the contractual terms of which explicitly provide for an obligation to write off or convert the liabilities into ordinary shares of a commercial bank.

5. Recapitalisation instrument by writing off or converting the liabilities of a commercial bank in a resolution mode shall not be applied to:

- a) insured deposits provided for by the Law of Georgia on Deposits Insurance System;
- b) contributions provided for by the Law of Georgia on Deposits Insurance System;
- c) liabilities to tax and social security authorities;
- d) any liability arising from the ownership of the assets of client;
- e) liability secured by right in rem within the value of such security;
- f) liability to the employee of a commercial bank, except for the non-salary remuneration of the administrator of a commercial bank;
- g) liabilities to tax, clearing and payment systems with a validity of less than 7 days;
- h) liabilities to other commercial banks (except for the commercial banks of the same group) with a validity of less than 7 days;
- i) liabilities to the creditors of a commercial bank which arise from the provision of such products and services (including information technology, utility, lease or other technical services) to a commercial bank which are critical to the daily activities of a commercial bank.





6. The National Bank shall be authorised to eliminate other liabilities, in full or in part, from the scope of recapitalisation instruments by writing off or conversion of the liabilities of a commercial bank in the resolution mode, except for the liabilities determined by paragraph 5 of this article if, by the evaluation of the National Bank, one or more conditions provided for by Article 37<sup>11</sup>(3) exist.

7. Writing off or conversion of the liabilities arising from derivatives may be carried out only after their mutual offset.

8. When applying a recapitalisation instrument by writing off or converting the liabilities of a commercial bank in a resolution mode, the National Bank shall be authorised to carry out the following activities in relation to the shareholders and/or owners of other property instruments:

a) cancel the existing shares and/or other property instruments or transfer them to the creditors against who the instrument provided for by this article have been applied;

b) convert the supervisory capital and/or liabilities into the ordinary shares or other property instruments of a commercial bank in the case of the positive share capital to maximally reduce the interest of shareholders of this commercial bank.

9. Recapitalisation instrument by writing off or converting the liabilities of a commercial bank in a resolution mode may be applied to the shares provided for by paragraph 4 of this article if the conversion of liabilities into shares has been carried out before the application of resolution mode or after writing off or conversion of the shares and/or supervisory capital instruments of a commercial bank in the resolution mode on the basis of Article 37<sup>4</sup> of this Law.

10. To apply a recapitalisation instrument by writing off or converting liabilities of a commercial bank in the resolution mode the National Bank shall determine the amount of a supervisory capital which is necessary to observe the established coefficient of core capital of this commercial bank, and in the case of an interim bank – established coefficient of capital. In the case provided for by this paragraph, when determining the amount of the supervisory capital the temporary state financing and resources necessary to build confidence in the commercial bank/interim bank and to meet the licence requirements of the commercial bank/interim bank for at least the next 1 year shall be taken into account.

11. By writing off or converting liabilities of a commercial bank in the resolution mode, within the recapitalisation instrument the National Bank shall:

a) reduce the value of the shares and/or other instruments of supervisory capital and/or liabilities to zero in the reverse order of compliance with the order requirements established for liquidation, to the limit when the share capital of a bank reaches zero. The liabilities shall be reduced by maximum amount;

b) convert the liabilities of this commercial bank into ordinary shares or other property instruments of a commercial bank in order to achieve the compliance provided for by paragraph 10 of this article.

12. If as a result of applying recapitalisation instrument by writing off or converting liabilities of a commercial bank in the resolution mode the compliance provided for by paragraph 10 of this article is not reached, in order to finance a resolution a temporary state financing provided for by the Organic Law of Georgia on the National Bank of Georgia may be implemented. The temporary state funding may be carried out in one or both of the following ways:

a) in order to reduce the share capital of a commercial bank in a resolution mode the Ministry of Finance of Georgia shall, through the resolution fund, reimburse any losses that were not compensated by applying the instrument provided for in this article;

b) the Ministry of Finance of Georgia shall acquire the shares or other supervisory capital instruments of a commercial bank in a resolution mode.

13. The decision on the application of the recapitalisation instrument by writing off or converting liabilities of a commercial bank in the resolution mode shall come into force immediately and its execution shall be mandatory for a commercial bank, interim bank and the shareholders and creditors of a commercial bank and an interim bank. A liability of a commercial bank in a resolution mode or any requirement related to this liability which has not been accrued yet shall be cancelled and never restored. In the case of the partial write-off of the liability of a commercial bank in the resolution mode the agreement which is the basis for this liability shall continue to apply to the other half. The other half of the above agreement shall be a subject to changes in accordance with the requirement of the National Bank.

14. If as a result of the application of a recapitalisation instrument by writing off or converting liabilities of a commercial bank the direct/indirect participation of a person or a group of partners (shareholders) acting together or beneficial owner in the bank capital exceeds 10, 25 or 50 percent, the National bank shall review the application on the acquisition of the significant share in an



expedited manner in accordance with the procedure established by Article 8 of this Law.

15. The National Bank shall be authorised to demand a commercial bank to develop and implement an acting plan which shall include measures for improving the long-term financial status of a commercial bank. The above plan shall be agreed with the National Bank. A commercial bank shall regularly report to the National Bank on the implementation of the action plan.

16. The National Bank shall be authorised to establish procedures and terms related to the application of a recapitalisation instrument by writing off or converting the liabilities of a commercial bank, including the issues of calculation, evaluation, determination of conversion rates of the allowed liabilities and capital instruments, development, approval and implementation of the action plan necessary to achieve compliance provided for by paragraph 10 of this article.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

## **Article 37<sup>11</sup> – Legal guarantees of resolution**

1. When applying resolution tools, the National Bank shall apply the order of priority to satisfy the requirements established for liquidation taking into account the exceptions provided for by paragraph 37<sup>10</sup>(5) of this Law. The National Bank shall be authorised not to adhere to this principle in the cases provided for by paragraph 3 of this article.

2. When carrying out resolution powers the National Bank shall ensure the observance of the principle of equal treatment of the creditors of the same order taking into account the exceptions of liability requirements determined by Article 37<sup>10</sup>(5) of this Law. The National Bank shall be authorised not to adhere to this principle in the cases provided for by paragraph 3 of this article.

3. When applying resolution tools provided for by Articles 37<sup>7</sup> or 37<sup>8</sup> of this Law and in the cases provided for by Article 37<sup>10</sup>(6) the National Bank shall be authorised not to adhere to the principles determined by paragraphs 1 and 2 of this article if one or more of the following conditions exist:

- a) notwithstanding the efforts of the National Bank, application of the resolution tool within a reasonable time is impossible;
- b) it is necessary and proportionate for supporting the essential functions and main activities of a commercial bank in resolution mode in order to ensure the continuity of the main operations, services and transactions of this commercial bank;
- c) it is necessary and proportionate for reducing the risks of the distribution of financial difficulties and threats on other participants of the financial sector;
- d) other creditors are affected more than in the case of the adherence to the principles provided for by paragraphs 1 and 2 of this article.

4. The shareholders and creditors of a commercial bank in the resolution mode shall not be affected more than they would be affected in the case of liquidation of a commercial bank. This principle shall be observed by the final result of resolution. If as the result of the evaluation made after the completion of the resolution mode it is confirmed that the shareholders and/or creditors of a commercial bank in the resolution mode would be affected less in the case of liquidation than they have been affected in the case of the application of the resolution mode to this commercial bank, they shall have right to claim monetary compensation. The monetary compensation shall be paid from the resolution fund.

5. For the evaluation of the right to compensation of the shareholders and/or creditors and determining its amount the evaluation shall be carried out by an independent appraiser after the application of the resolution powers till the completion of the resolution mode. The mentioned evaluation shall differ from the evaluation provided for by Article 37<sup>3</sup> of this Law. The National Bank shall establish the rules, procedures and methodology of the evaluation provided for by this paragraph, including the qualification requirements of an independent appraiser. In the frame of this evaluation any type of the existing and potential financial support of the State as well as of the National Bank shall be excluded (except for the cases when a commercial bank might take a loan in accordance with Articles 31 and 33(1) of the Organic Law of Georgia on the National Bank of Georgia).

6. In the case of transferring a liability, the separation of a liability and its security shall be inadmissible. In a particular case, for the purpose of the effective resolution the National Bank is authorised to separate liability from its security provided that the security shall be substituted by a security of the same type and value and/or financial compensation shall be paid. Financial collateral agreement and mutual offset agreement which have the same contracting party and is a subject to the mutual offset of the same liability shall not be separated except for the case when it is necessary for the resolution purposes.



7. The National Bank shall be authorised to limit the early termination right of the financial collateral agreement or mutual offset agreement provided that the observance of the following conditions is ensured:

- a) only the rights which arose from the terms of these agreements as a result of the application of the resolution mode and/or implementation of the resolution powers shall be limited;
- b) the limitation shall be carried out only for 2 working days;
- c) when transferring these agreements to the acquiring part, resulting from the mentioned agreements, their early termination right continue to apply to the acquiring party in the case of failure to properly fulfil its contractual obligations;
- d) the contracting party shall have right to carry out an early termination right as soon as the limitation determined by this article is finished or in the case if the National Bank notifies that the above agreements shall not be transferred to the third party.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

### **Article 37<sup>12</sup> – Liquidation of a commercial bank**

1. A commercial bank shall be liquidated when a banking licence is revoked. The purpose of liquidation is to support the stable functioning of financial sector, protection of insured deposits in accordance with the Law of Georgia on Deposits Insurance System and maximal satisfaction of the requirements of creditors. A person appointed by the National Bank shall act as a liquidator of a commercial bank as determined by the National Bank. A person connected to the commercial bank may not be appointed as a liquidator. Compulsory enforcement shall be terminated as soon as the liquidation process starts.

2. If a liquidated commercial bank was a payment system operator and/or a settlement agent, the liquidator shall be obliged, upon appointment, to ensure that transfer orders accepted by the payment system before the liquidator began his/her functions are performed, the settlement positions are defined and/or settlements are performed under the Law of Georgia on Payment System and Payment Services.

3. The liquidator of a commercial bank shall be obliged, within three months after appointment, to prepare a list of assets and liabilities and submit a copy to the National Bank. The commercial bank liquidator shall be accountable to the National Bank in accordance with the procedure established by the National Bank.

4. A commercial bank liquidator shall be authorised to sell bank assets at a public auction, or choose another form of their realisation with the approval of the National bank, or to transfer the right of demand for assets to creditors according to their priority, or transfer the right of demand of loans or other financial assets to other commercial banks and arrange for the transfer of liabilities to these banks.

5. When transferring assets and liabilities provided for by paragraph 4 of this article, the consent of the creditors of a commercial bank to transfer assets or liabilities to another commercial bank shall not be required.

6. The commercial bank liquidator shall be authorised to terminate:

- a) a deal for recruiting a bank employee;
- b) contracts for services in the provision of which the bank was taking part;
- c) any liability of the bank as a real property lessee, unless a lessor (who must be notified 60 days in advance that the bank intends to cancel the lease agreement) has any claims on the lease payment, except for the amount that has accrued until the lease cancellation date and unless the lessor requires compensation for damages incurred due to cancelling the lease.
- d) Bank guarantees issued by a commercial bank and transfer them with the same terms to another commercial bank. For transferring no consent of the bank guarantee beneficiary or principal is needed. The liquidator is obliged to inform the beneficiary and the principal about transferring bank guarantees to another commercial bank.

7. Except for the action carried out on the basis of the Law of Georgia on Financial Collateral Agreement, Mutual Offset and Derivatives, a liquidator of a commercial bank shall be authorised to bring an action in court to challenge any act or transaction performed by the commercial bank administrator during one year before the liquidator was appointed and to require that the act or transaction be declared void if as a result, persons related to the commercial bank enjoyed any material benefits or advantages,



privileges or preferences for the account of this commercial bank, and which inflicted damage to the bank or its creditors.

8. The commercial bank liquidator must:

- a) take all necessary measures to terminate all functions of a fiduciary person that were performed by the institution, return all assets and property held by the company as a fiduciary person to their owners and settle all accounts of the fiduciary;
- b) send statements of requirement types and amounts according to the bank's accounting documents to all depositors, the rest of its creditors, customers who store valuables in the bank's safes; also to the depositors of the property administered by the company. The statement shall indicate that claims may be submitted to the liquidator within one month after receiving the letter and that the customers can receive their valuables back.
- c) require from the borrowers and other debtors of a commercial bank to cover all existing liabilities against a commercial bank within the time limit set by a liquidator; for the purpose of maximal seizure of assets, with the agreement of the National Bank, achieve the restructuring of the debts of those borrowers and other debtors (including the forgiveness of penalties and fines) who do not have sufficient funds and material means to pay off the debts completely and within the time limit required by liquidator.

9. Any property that is stored on a commercial bank premises and which is not claimed within the time frame indicated in the statement, any unclaimed financial resources and property remaining on the bank's balance sheet under an agreement, shall be considered as unclaimed resources and shall become the property of the National Bank in order for it to identify the owners. Unclaimed financial resources are kept on the account of unclaimed funds.

10. When liquidating a commercial bank, a pledger of a financial pledge shall have a preferential right that its claim secured by the financial pledge be satisfied. When liquidating a commercial bank, claims shall be satisfied in the following order:

- a) the resolution fund, the Ministry of Finance of Georgia, except for the cases provided for by subparagraph (k) of this paragraph within the frame of financing determined by the Organic Law of Georgia on the National Bank of Georgia (except for temporary state financing carried out by means of the resolution fund), the National Bank, other creditors to which a commercial bank became liable after having its banking licence revoked, except for the loans issued by other commercial banks during liquidation period. Tax liabilities arising after the termination of banking licence shall be satisfied in the order stipulated by subparagraph (k);
- b) insured deposits within the frame of the limits established by the Law of Georgia on Deposits Insurance System and/or the requirements of the Legal Entity under Public Law called Deposits Insurance Agency, including the requirements provided for by Article 20(2) of the Law of Georgia on Deposits Insurance System;
- c) amounts of not more than GEL 10 000 on the accounts of natural persons and funds corresponding to the deposit certificates or its equivalent in the foreign currency;
- d) amounts of not more than GEL 10 000 on the accounts of legal persons and funds corresponding to the deposit certificates or its equivalent in the foreign currency;
- e) amounts of not more than GEL 100 000 on the accounts of natural persons and funds corresponding to the deposit certificates or its equivalent in the foreign currency ;
- f) amounts in national currency on the accounts of natural persons and funds corresponding to the deposit certificates which have not been paid in accordance with subparagraphs (c) and (e) of this paragraph;
- g) amounts in foreign currency on the accounts of natural persons and funds corresponding to the deposit certificates which have not been paid in accordance with subparagraphs (c), (e) and (f) of this paragraph;
- h) amounts in national currency on the accounts of legal persons and funds corresponding to the deposit certificates which have not been paid in accordance with subparagraph (d) of this paragraph;
- i) amounts in foreign currency on the accounts of legal persons and funds corresponding to the deposit certificates which have not been paid in accordance with subparagraphs d) and h) of this paragraph;
- j) loans issued by other commercial banks during the liquidation period of a commercial bank;
- k) budgetary liabilities and debts, including claims secured with tax lien;
- l) other requirements against a commercial bank, except for the cases provided for by subparagraphs (m)-(r);



- m) loan liability of a commercial bank to its direct and indirect owners, except for the cases provided for by subparagraphs (n)-(r);
- n) subordinated debt of a commercial bank which is not a supervisory capital instrument;
- o) those liabilities of a commercial bank which shall be written off or converted in accordance with an agreement, except for the cases provided for by subparagraphs (q) and (r) of this paragraph;
- p) secondary capital instruments of a commercial bank;
- q) additional initial capital instruments of a commercial bank;
- r) other liabilities of a commercial bank to its direct and indirect owners.

11. If the existing money is not sufficient to completely satisfy claims under paragraph 10 of this article, all respective claims shall be paid in proportion to the claim amount of each creditor in the order listed.

12. The claim of each following order shall be satisfied after the claims of a preceding order are satisfied.

13. In the case of failing to submit a request for the withdrawal of own funds by a depositor of a commercial bank within the time limit set by the liquidator of a commercial bank, such funds shall be transferred to an account opened at the National Bank for unclaimed funds for the purpose of revealing the owner.

14. For the purpose of the timely completion of the liquidation process of a commercial bank a liquidator, in agreement with the National Bank, is authorised to transfer accounts existing in the commercial bank, to which the legal restrictions and/or provisional measures provided for by the legislation of Georgia apply, unchanged to another commercial bank and/or the National Bank, without breaching the existing order of the legal restrictions and/or provisional measures of a commercial bank under the liquidation process.

15. After seizing an asset which was a commercial bank asset before an administrative-legal act on completion of a liquidation process was issued, it shall automatically be considered as the liquidated commercial bank's asset, the right of the management of which shall be granted to the National Bank. If the seized asset of the liquidated commercial bank is monetary funds, they must be transferred to an account opened at the National Bank for the liquidated bank's unclaimed funds. The monetary funds must be distributed according to the final and verified order of liabilities submitted by the liquidator in accordance with the procedure established by the National Bank. If a non-monetary material asset is seized, in order to manage it, the National Bank shall issue an individual administrative-legal act to determine the procedure for management of the seized asset to satisfy the liquidated bank's liabilities.

*Law of Georgia No 5655 of 20 December 2019 – website, 31.12.2019*

*Law of Georgia No 5682 of 20 December 2019 – website, 31.12.2019*

### **Article 37<sup>13</sup> – Mutual Offset and Final Offset**

A mutual offset carried out on the basis of the Law of Georgia on Financial Collateral Agreement, Mutual Offset and Derivatives as well as a final offset carried out on the basis of the mutual offset agreement entered between the parties and the operations on its basis shall not be disputed by third parties, administrative and regulatory/supervisory bodies, the liquidator of a commercial bank, guardian, bankruptcy commissioner, temporary administrator, the special manager of a commercial bank, anyone else performing similar functions.

*Law of Georgia No 5682 of 20 December 2019 – website, 31.12.2019*

## **Chapter VIII – Transitional Provisions**

### **Article 38 – (Deleted)**



*Law of Georgia No 5909 of 14 March 2008 – LHG I, No 7, 26.3.2008, Art. 29*

*Law of Georgia No 1677 of 24 September 2009 – LHG I, No 29, 12.10.2009, Art. 160*

**Article 38<sup>1</sup> – Legal regulation during transition period in relation to persons declared as legally incompetent by court before 1 April 2015**

A person may be a commercial bank administrator if he/she:

- a) is not a person declared as legally incompetent by the court before 1 April 2015;
- b) has no criminal records for a serious or particularly serious crime, or for financing terrorism, and/or legalising illicit income, or other economic crimes;
- c) has appropriate education and/or experience;
- d) at the same time is not an administrator of another commercial bank, except when holding the position of an administrator in a bank under control of this bank, or in a bank that controls this commercial bank;

*Law of Georgia No 3392 of 20 March 2015 – website, 31.3.2015*

**Article 39 – Requirements towards subsidiaries established or acquired by commercial banks**

A commercial bank, which established or acquired, before Article 10<sup>1</sup> of this Law was effected, a subsidiary that conducts activities outside Georgia as provided for by the legislation of Georgia for persons carrying out monitoring under the Law of Georgia on Facilitating the Prevention of Illicit Income Legalisation, shall submit documents under Article 10<sup>1</sup> of this Law to the National Bank within six months after this Law takes effect.

*Law of Georgia No 2830 of 23 March 2010 – LHG I, No 19, 13.4.2010, Art. 104*

**President of Georgia**

**Eduard Shevardnadze**

**Tbilisi**

**23 February 1996**

**No 121-III**

