

# **LAW OF GEORGIA ON ACTIVITIES OF COMMERCIAL BANKS**

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### LAW OF GEORGIA ON ACTIVITIES OF COMMERCIAL BANKS

#### CHAPTER I. GENERAL PROVISIONS

##### Article 1. Definitions

Wherever used in this Law, the following terms shall have the following meanings:

"Administrator" - any person who is a member of the Board of Supervisors, the Management Board or the Audit Committee of a bank or who alone or together with one or more others has the authority to enter into commitments on behalf of a bank;

"Branch office" - a unit of a bank approved by the National Bank, which conducts directly all or some banking activities at a location other than at the bank's principal office;

"Persons related to a bank" - administrators, significant shareholders or partners of a bank, and persons connected to them by marriage, close kinship or common business interest;

"Group of shareholders or partners acting in concert" - a number of either partners or shareholders of a bank who exercise together their interests in that bank.

"Bank" - a juridical person licensed by the National Bank that attracts deposits and uses them on its own behalf to conduct banking activity pursuant to applicable law;

"Credit" - any loan or commitment to lend by disbursing a sum of money to a borrower in exchange for a right to receive its repayment and including any guarantee of that repayment;

"Option" - a right, under present contract, to enjoy an agreed future benefit under terms and conditions presently agreed or concomitantly to choose not to enjoy such agreed future benefit ;

"Banking license" - an authorisation issued by the National Bank by which the permission to carry on the business of a bank is granted;

"Banking activities" - the activities that are listed in Article 21 of this law;

"Unsecured credit" - a credit, which is uncollateralized;

"Debt instrument" - any negotiable instrument representing a promise to repay an indebtedness and any equivalent instrument giving the right to acquire another such instrument by subscription or exchange. Debt instruments may be in certificated form or in book-entry form;

"Trust services" - fiduciary banking operations;

"Factoring" - trade finance whereunder the financing of a borrower's working capital is accomplished through either the outright discounting of accounts receivable due the borrower from its customers, or through the extending of credit collateralized by such accounts receivable to assume for the borrower all foreign exchange and credit risks inherent in such accounts receivable;

"Fiduciary banking operations" - trust services on behalf of a customer which a bank or trust company carries out according to the wishes or instructions of its customers and at his or her expense such as the investment management servicing of the customer's securities administered by the bank. Managed assets are not carried on the books of the bank all market and other risks being borne by the customer, the bank receiving only transaction, maintenance and management fees for its administration and management services;

"Forfeiting" - the financing by a bank of its customer's exports under a trade-credit agreement pursuant to which the bank discounts non-negotiable notes held by the customer-exporter which have been issued by the customer's foreign importer which notes carry the endorsement of the importer's bank as guarantor;

"Futures transactions" - time driven transactions on exchanges, providing for the sale and/or purchase of raw materials, gold or financial or debt instruments on a fixed future date for a fixed price prepaid at contract time;

"Subsidiary" - a legal entity of which another legal entity owns more than 50% of the voting shares;

"Regulatory Capital"- required capital of a bank as determined based by the risk weights of its assets for the purpose of cushioning expected or unexpected losses;

"Equity Capital" - capital paid into a bank or other company by its shareholders and representing the difference between total assets and total liabilities;

"Authorised Capital" - capital declared by shareholders of a bank or other company as provided for in its By-Laws;

"Paid in Capital" - the actually paid-in portion of Authorised Capital;

"Insolvent Bank" - a bank the total liabilities of which exceed its total assets.

"Control" - the exercise of a dominating influence, directly or indirectly, alone or in concert with others over the activities or decisions of a commercial bank or non-bank depository institution through the use of voting shares or other means;

"Controlling Person" - a person exercising control.

"Affiliate" - a subsidiary and a controlled corporate sister of a juridical person, as well as its controlling persons and their subsidiaries and controlled corporate sisters.

"Person" - an individual or juridical entity or any other organisational unit, which is not strictly a juridical entity.

## **Article 2. Scope of Operation Of This Law**

1. This Law shall apply to commercial banks.

Commercial banks shall be established in the organizational-legal form of the joint-stock company; This Law, the "Law on the National Bank of Georgia", the "Law of Georgia on Entrepreneurs" and other legislative and normative acts shall regulate all activities of commercial banks.

2. No-person shall have the right to attract deposits and use those to extend credits on its behalf without a license granted by the National Bank.

3. No one shall use the word "bank" or derivatives of the word "bank" without having received a banking license issued pursuant to this law, unless such usage is established or recognized by law or international agreement, or unless it shall be clear from the context in which the word "bank" is used, that the person using it is not engaged in banking activities, as defined by this law or by the "Law on the National Bank of Georgia".

4. Licensing of currency exchange bureaus shall be carried out by the National Bank pursuant to its regulations.

5. In the sphere of commercial banks where there is any inconsistency or conflict between this law and any other laws, the provisions of this law shall prevail.

## **CHAPTER II. LICENSING**

### **Article 3. Banking License Applications**

1. Banking licenses shall be applied for in writing to the National Bank in such form as shall be prescribed by its regulations and shall be accompanied by the following information:

a. The charter, registered in the appropriate court and constitutive documents, in original form or other notarially confirmed copies ;

b. Appropriate information about the qualifications and banking experience of all proposed directors;

c. A statement setting forth the amounts of authorized and paid capital of the bank. The statement shall include appropriate information on the ownership and origination of both the authorized and regulatory capital components of the proposed bank;

d. A business plan for the proposed bank, setting out inter alia the types of activities envisaged for it and its proposed organization chart;

e. The name, residence, and occupation or profession of each person (head office in the case of a juridical person), who owns five percent or more of the outstanding shares of the proposed bank, and the amount of the shares held;

f. Such additional information as shall be prescribed by regulations of the National Bank which should include at a minimum all amounts of the proposed bank's authorized capital and other financial resources, the location of the bank's Head Office and all proposed branch offices and any other information, which the National Bank shall reasonably request in the circumstances of each case.

g. Documentation proving title ownership or right to use any pertinent property destined to be occupied by the applicant bank or its branches.

2. A special law shall define the fees on licensing, which shall be equal for all banks and shall be transferred to the income of the National Bank.

### **Article 4. Decisions on Granting of Licenses**

1. Within three months from the date of receipt of an application for a banking license, the National Bank shall make a reasoned-based decision on the application and notify the applicant thereof in writing .

2. The National Bank shall grant a banking license to a juridical person which is registered according to law where the amounts of its issued capital, its proposed office space, the work experience and qualifications of its proposed administrators and its submitted business-plan comply with the assessment criteria previously defined by the National Bank, and where the banking activities applied for conform to proper criteria.

3. Banking licenses will be granted to commercial banks only if the National Bank deems that:

a) the full amount of the minimum required issued capital established by the National Bank is paid up in cash;

b) all managers are fit and proper pursuant to the requirements of the National Bank and are not ineligible to serve under the restrictions on eligibility provided for by Section 4 of this Article.

Fit and proper criteria applicable for the managers of commercial banks shall be defined under normative acts issued by the National Bank.

c) documents and information submitted are complete and reliable and serve to realistically predict the stability of the bank's profitability and its financial position.

4. A person shall be prohibited from serving as a manager of a commercial bank if:

a. he or she has taken part in any operation or transaction that has resulted in substantial loss for a commercial bank or a non-bank depositary institution;

b. he or she has engaged in abusive practice when acting as an administrator of a bank or a non-bank depositary institution;

c. he or she has previously served as an administrator of a commercial bank or a non-bank depositary institution, and as the result of his or her activities, the commercial bank or non-bank depositary institution has become insolvent;

d. he or she has failed to fulfill any financial obligation to a bank or a non-bank depositary institution;

e. he or she has been in violation of any other prohibition or restriction provided under this law.

5. Licenses to branches of foreign banks shall be granted only if the foreign bank is authorized to engage in the business of receiving deposits in its home country. Licenses applied for by foreign banks shall be granted only following consultations between the National Bank and the competent bank supervisory authorities of the pertinent foreign country.

### **Article 5. Conditions of Licensing**

1. Banking licenses shall be granted for indefinite periods of time and shall not be transferable.
2. By its decision to grant a banking license, the National Bank may attach conditions or restrictions to the banking license if the provisions of subsection 2 of Article 4 are not fully satisfied. Thereafter, conditions or restrictions may be attached to a particular banking license only if the bank concerned has failed repeatedly to comply with the provisions of this law or any applicable regulation, guideline or instruction issued by the National Bank and only to the extent required to remedy such failure.

#### **Article 6. Revocations of Banking Licenses.**

1. Banking licenses may be cancelled only upon a decision of the National Bank in the following circumstances:
  - a. upon a request of a bank pursuant to Article 7 of this law;
  - b. following an infraction pursuant to Article 21 of this Law;
  - c. upon one or more of the following grounds:
    - The license has been obtained on the ground of false statements or other material irregularities that occurred in connection with the license application;
    - The bank has not made use of the banking license within 6 months after the date of its effectiveness;
    - A merger, amalgamation or partition of the bank or its assets has occurred;
    - The bank no longer possesses the minimum amount of authorised capital or regulatory capital in cash as required by regulation of the National Bank or can no longer be relied upon to fulfil its obligations towards its creditors and, in particular, no longer provides safety for the assets entrusted to it;
    - The shareholders have decided to dissolve or to liquidate the bank, or the bank has ceased to exist as a person.
    - The commercial bank is engaged in or has been engaged in a pattern of unsafe or unsound practices threatening the bank's financial condition, which constitute a significant danger to its depositors;
    - The commercial bank is in the process of liquidation based on a decision of shareholders;
    - In case of insolvency of the bank.
2. The National Bank shall be obliged to revoke or suspend banking licenses of subsidiaries or branch offices of a foreign bank that has lost authority to engage in the banking business in its home office.
3. Upon its cancelling of a license, the liquidation process of the legal entity holding the banking license shall be undertaken by the National Bank according to the procedures stipulated under Article 37 of this law.

#### **Article 7. Voluntary Surrender of Banking Licenses**

1. A bank may request the National Bank in writing to revoke its banking license. This request must present reasonable grounds for such surrender.
2. Within 3 months after its receipt of the request, the National Bank shall decide on the request. Its decision shall be communicated in writing to the bank as soon as possible giving, in the event of denial of the request, the grounds therefor.

#### **Article 8. Publication and Effect of Decisions To Cancel Banking Licenses**

1. The decision to cancel a banking license shall immediately be published in the National Bank's gazette in and other journals of general circulation. The decision shall become effective on the date of such publication or on another date as the decision shall specify.
2. Starting on the date that the cancellation of a banking license takes effect, the bank shall be prohibited from engaging in any of the banking activities and it must be liquidated pursuant to Article 37 of this Law. Starting from the date that the revocation of a banking license takes effect, the bank shall as soon as possible thereafter discharge its liabilities. During the winding up of its affairs the bank shall otherwise continue to be subject to the provisions of this Law as if it were licensed
3. Only the National Bank of Georgia shall make a decision on declaring a commercial bank insolvent or bankrupt.

### **CHAPTER III. OWNERSHIP AND ADMINISTRATION OF BANKS**

#### **Article 9. Standard Requirements On Capital And Reserves Of Banks**

1. The National Bank of Georgia shall periodically define for commercial banks the minimum required amount of reserves, issued capital and regulatory capital and the rules for their creation. Commercial banks are hereby prohibited from non-cash authorized capital.
2. No bank shall decrease its authorized capital by repurchasing shares or decrease its regulatory capital using reserves without prior written authorization from the National Bank of Georgia and appropriate changing of their charter.

#### **Article 10. Restrictions on Ownership And Structure Of Assets**

1. No shareholder of a commercial bank or group of shareholders acting in concert shall hold any number of shares, which exceeds 25 percent of the outstanding total capital of that commercial bank. The National Bank shall be authorised to make an exception to the above restriction only for a shareholder, which has a banking license or represents a commercial bank.
2. Commercial banks shall be authorized to:
  - a. hold equity interests in a juridical person that represents no more than 20 percent of authorized capital stock of that

juridical person when the net current value of the bank's holding is in excess of 15 percent of the bank's equity capital;

b. hold an unlimited amount of equity interest in persons engaged in business, which are connected with banking. Without the written permission of the National Bank, this amount shall not exceed 15% of the bank's equity capital;

c. pursuant to written authorisation of the National Bank banks may establish or acquire subsidiaries engaged in activities other than banking. This authorisation shall define for each subsidiary the kind of its permissible activities in which it may engage;

d. hold equity interests that it has acquired in lieu of repayment of credit granted In such cases, if the limitations of subsections 2 or 3 of this Article are violated, the bank shall be obligated to dispose of such acquired shares in excess of any such limitations no later than 6 months after their acquisition. In special cases, the National Bank may extend the 6 months period.

e. establish or purchase subsidiaries - brokerage companies - that only participate in brokerage activities as defined in the Law of Georgia on Securities Markets and hold an unlimited share in their equity, if without the permission from the National Bank this share does not exceed 15% of the sum of this bank's equity capital.

3. The aggregate net value of all equity interests held pursuant to all of the above subsections shall never exceed 50 percent of the value of the bank's Tier I Capital.

4. In the event of the purchase of 5% or more of a bank's shares by any person, or in the event of any change in the ownership on such amount of shares of any bank, the new beneficial owner of the shares shall notify National Commission of Securities and the National Bank as soon as possible after such purchase but in any case no later than 15 days thereafter. In the event of non-observance of this requirement, such person shall forfeit all voting right at the next following General Meeting of Shareholders of the bank.

### **Article 11. Bank Mergers, Amalgamation Or Division**

To have legal effect, the merger, amalgamation or division of a bank shall require the prior written authorization of the National Bank. Mergers, amalgamations or divisions that would be inconsistent with the provisions of Article 10 above shall not be authorized.

### **Article 12. Charter And By-Laws**

1. Each bank shall have a charter consistent with all applicable law. The National Bank shall be promptly informed in writing about any amendment of its charter.

2. Each bank shall be governed by internal by-laws, which shall be consistent with its charter and which shall establish:

- the positions which may be appointed or elected to the administrative positions of the bank accompanied by a list of the qualification and experience criteria required for each position as may be specified by the National Bank;
- The structure of the organization and administration of the bank, including its operational and administrative units, their sub-units and functions, their supervisory positions and reporting relationships;
- The duties of each departmental director and the units under his supervision;
- The functions of the Audit Committee and other permanent internal committees;
- The limits of the authority of the various administrators and other employees of the bank to engage in banking activities in the name and for the account of the bank.

3. Each bank shall maintain on file with the National Bank a copy of its charter, its By-Laws, and a list of its officers who are currently authorized to contractually bind the bank, together with their specimen signatures and a description of the limits of their authorities.

### **Article 13. Managing Bodies of Commercial Banks**

The administration of banks shall function and be formed in conformance with the Law of Georgia on Entrepreneurs, taking into account the requirements of this law. The highest administrative body of bank is the General Meeting of Shareholders, which acts in accordance with legislation and charter. It elects the Supervisory Council and the Audit Commission. The NBS shall be informed of the date and agenda of the General Meeting of Shareholders, as well as its likely participants within a time period established under applicable law.

### **Article 14. Supervisory Council**

1. The Supervisory Councils of banks shall ensure oversight of its activities. The Supervisory Council shall consist of an odd number of no fewer than 3 and no more than 21 members.

2. Each member of the Supervisory Council shall be elected for a term of four years. Their re-election shall not be restricted.

3. A bank's General Meeting of Shareholders shall set the compensation of the members of the its Supervisory Council provided that it shall be paid only from the bank's net profits.

4. A person shall not be eligible to be elected to the Supervisory Council or the Management Board of a bank on the basis of a decision made by its General Meeting of Shareholders if he or she:

- is a member of the supervisory board or directorate of more than three other corporations registered in Georgia;
- is a member of the Supervisory Council, Management Directorate or Audit Committee of any bank or non-bank depository institution.;
- is an employee of the bank;
- has by law been deprived of the right to sit on the Supervisory Council of any person;
- has been declared a bankrupt;

5. In addition to the requirements provided for in the Law on Entrepreneurs, the following acts of a bank shall be performed exclusively with the consent of the Supervisory Council:

- starting a new type of banking activity, or terminating a current activity;
- determining and approving foreign exchange, credit and investment policies, asset and liability management, asset evaluation, rules and procedures for asset classification and the creation of loss reserves, the organization and operation of the bank's Internal Audit Department and the setting of policies and procedures.

- c) determining and approving the internal policy and procedures governing credit, investment, foreign exchange, assets and liabilities management, assets' evaluation and their classification and establishment of adequate reserves for loan losses.
  - d) determining and approving the amount of minimum and maximum foreign exchange rates to be used with regard to credit resources and deposits.
  - e) the repurchase of shares as provided under this law.
6. Members of a bank's Supervisory Council shall conduct the bank's activities in an honest manner and shall exercise their duty of care in the same manner that a reasonable person in the same position and under the same circumstances would exercise always keeping in mind the stability and best interests of the bank.
- Members of the Supervisory Council failing to fulfil this responsibility shall be jointly liable for losses incurred by the bank. In such cases, members of the Supervisory Council have the burden of proof to show that they have acted in an honest manner keeping in mind the bank's stability and best interests.
- A bank's denial on a request regarding a regressive compensation or a bank's compromise shall be void if the compensation is necessary for satisfying the bank's creditors. This rule shall not apply if the person liable for compensating is solvent, or comes to a compromise with the creditors with the purpose of avoiding bankruptcy or terminating the banking activity. If the compensation is necessary for satisfying the bank's creditors, the liability of the bank's managers shall not cease because of them acting to fulfil the shareholders' decision.
7. Decisions of each Supervisory Council member shall be in conformity with the commercial bank's best interests. Their approach to their work shall be reasonable and independent and shall ensure election and maintenance of competent directors, establishment of the commercial bank's business strategy, and formulate in writing the bank's policy to guide the bank's management.
8. Members of a bank's Supervisory Council shall not delegate their authorities to others without the consent of the General Meeting of Shareholders.

#### **Article 15. Management Board**

1. The management and representation of the company shall be the duty of the Management Board of a commercial bank. They shall be responsible for operating the bank and carrying out its activities. The Management Board shall consist of at least three individuals appointed by the Supervisory Council for terms not exceeding four years. Their re-appointment is not limited.

2. An individual shall not be appointed as a member of a bank's Management Board or, upon the decision of its Supervisory Council shall be removed if:

- a) He or she is not in compliance with the fit and proper criteria;
- b) He or she is a member of the bank's Supervisory Council, or that of another bank or non-bank depository institution or of the Management Board of another enterprise;
- c) He or she has by law been deprived of the right to sit on a Management Board;
- d) He/she has been declared a bankrupt;
- e) He or she has been convicted of an economic crime and his or her previous convictions have not been cancelled;
- f) He or she is the spouse, son, daughter or close relative of a member of the bank's Management Board..

3. The Board of Directors of a bank is authorised to delegate its powers in special cases partly or completely on the grounds of the written consent of the Supervisory Council.

#### **Article 16. Audit Committee and Internal Controls**

1. Every bank shall have an Audit Committee, which shall consist of at least three members appointed by the General Meeting for four years. Their re-election shall not be restricted.

2. A member of the Audit Committee of a bank shall not be a member of that bank's Management Board or its Supervisory Council or a member of the Supervisory Council or Management Board of another bank, and, in addition, shall be a person who is eligible under law to take a seat on a bank Supervisory Council.

3. The Audit Committee shall be charged with the following responsibilities:

- a. to establish appropriate rules for accounting controls and to oversee their observance and to conduct inspection of reporting and accounting records through the bank's Internal Audit Department.
- b. to supervise the bank's compliance with applicable law.
- c. to approve the Internal Auditing policies, and to organize the operations of the bank's Internal Audit Department;
- d. To ensure that the Internal Department is objective and independent from the bank's Management Board and its Supervisory Council;
- e. To approve the work plan of the internal audit department for the coming fiscal year, which, as a rule, shall include the exercise of control by the bank's appropriate organs over the management of currency, credit, investment, settlement, accounting and other types of risks.
- f. To review all quarterly reports of the Internal Audit Department and to approve and report audit findings and recommendations to the Supervisory Council and the Management Board.
- g. To monitor the activities of the Internal Audit Department, comparing its actual performance against its Work Plan for each quarter and year;
- h. To evaluate the performance of the Director of the Internal Audit Department and of individual internal auditors.

4. The Audit Committee shall meet at least once per quarter and in extraordinary cases upon the request of the bank's Supervisory Council. Decisions shall be made by a majority of the members present and no abstentions shall be allowed.

5. The General Meeting of Shareholders shall be authorized to determine the amount of salaries for members of the Audit Committee on condition that such salaries be paid from the bank's net income.

#### **Article 17. Banking Confidentiality**

1. No person shall be permitted to reveal a bank's confidential information about any person or to disclose, disseminate or use such information for personal gain. Such information may be disclosed only to the National Bank within the appropriate areas of its responsibilities.
2. Information on operations, balances and accounts of any persons may be disclosed to account holders and their representatives. Such information may be disclosed to other persons on pursuant to a the court's decision.
3. Prior to receiving court permission therefor, neither courts, investigative bodies, nor tax authorities shall disclose confidential information obtained from any bank to any other bodies, including the media nor may any of them use such information in any public presentation.

#### **Article 18. Branch Offices**

The establishment of branches or representative offices of banks shall be authorized by a bank's Board of Supervisors and shall be subject to such conditions and restrictions as may be established by regulation of the National Bank.

### **CHAPTER IV. OPERATIONAL REQUIREMENTS**

#### **Article 19. General Banking Principles**

1. Banks shall conduct their administration and operations in accordance with sound administrative and accounting procedures, the requirements of law, the conditions and restrictions attached to their banking licenses, and shall comply with all rules, regulations, and instructions issued by the National Bank of Twin Falls, Idaho. All rules, regulations and instructions issued by the National Bank that apply to more than one bank shall be published in the official bulletin and shall take effect on the date of such publication or on such later date as shall be specified in the publication.

- In the absence of National Bank instructions in a specific area of operations, a bank shall conduct such operations in accordance with international norms and standards.
2. Banks shall maintain adequate capital and sufficient liquid resources, and shall ensure that their assets are diversified as to risk of loss, in accordance with regulations issued by the National Bank.
  3. The interaction between a bank and its customers shall be regulated by the conditions of agreements between them. In the event of late transfer violations by a bank of the terms of money transfer agreement with a customer, the bank shall pay to such aggrieved customer liquidated damages in an amount of not less than 0.5 percent of the amount outstanding for each day overdue.

#### **Article 20. Banking Activities**

1. Commercial banks are authorized to engage in only the following types of activities:
  - a) receiving interest-bearing and interest-free deposits (time, demand and other) and other returnable means of payment;
  - b) extending consumer loans, mortgage loans other credits both secured and unsecured credits and engaging in factoring operations with and without the right of recourse, trade finance including the granting of guaranties, letters of credit, acceptance finance, and forfeiting.
  - c) buying, selling, paying and receiving monetary instruments, such as notes, drafts and checks, certificates of deposit, as well as securities, futures, options and swaps on debt instruments, and interest rates, currencies, foreign exchange, precious metals and precious stones.
  - d) cash and non-cash settlement operations and the provision of collection services.
  - e) issuing money orders and managing money circulation (including tax cards, checks and bills of exchange).
  - f) securities brokerage services;
  - g) trust operations on behalf of clients and funds management
  - h) safekeeping and registration of valuables including securities;
  - i) credit-information services;
  - j) activities incidental to each of the above types of services.
2. Activities connected to securities' operations listed in subsection 1 of this Article shall be regulated by the "Law of Georgia on the Securities Market".

#### **Article 21. Prudential Limits And Standards**

1. Banks shall observe prudential limits in the following areas as prescribed by regulations of the National Bank:
  - a. Minimum amounts of issued and regulatory capital
  - b. Amounts of required regulatory capital to support the different risks applicable to various types of assets categorized according to National Bank regulation.
  - c. The maximum ratios of deposits to its regulatory capital;
  - d. The ratio of aggregate amount of credits and other obligations issued to any single person, insider or outsider, to the bank regulatory capital;
  - e. The ratio of aggregate amount of credits and other obligations, issued to all insiders (persons, closely related to the bank or to each other), to the bank regulatory capital;
  - f. The maximum aggregate amount of credits, expressed as a percentage of the aggregate amount of all its credits, that a bank shall be permitted to extend to its ten largest borrowers (including insiders and related persons).
2. Banks shall observe prudential standards and ratios in connection with the following areas of activity as may be prescribed by regulations of the National Bank:

- a. Requirements concerning minimum aggregate amounts of liquid asset holdings or specific categories of such holdings in relation to their value, such ratio to be established with assets or liabilities (including off-balance-sheet liabilities) in general or according to specific type, provided that in any case banks shall be permitted to meet their minimum liquidity requirements by maintaining with the National Bank deposits of equivalent values;
- b. Requirements concerning the maximum aggregate amount of credits and investments, or specific categories thereof;
- c. Requirements concerning the classification of assets and off-balance sheet liabilities as well as formation and use of reserves for loan losses as well as the terms and time limits governing income from such assets may no longer be accounted for as revenue unless received in cash;
- d. Prohibitions, restrictions or conditions concerning:
  1. the types or forms of credits and investment ;
  2. matching as to maturity and interest in respect of assets and liabilities including off-balance sheet items;
  3. Unhedged exposure positions, exceeding specific limits in foreign currencies, precious metals or precious stones.

#### **Article 22. Prohibited Transactions And Practices**

1. Banks shall refrain from entering into transactions or engaging in practices of any kind that provide them, alone or together with others, a position of dominance on the money, financial or foreign exchange markets. Banks shall refrain from engaging in manipulative practices which could result in unfair advantages for themselves or for third parties, by contributing fostering reduced competition in banking services such as through cooperative price fixing interest rates or in brokerage fees. The National Bank is authorised to set parameters, evaluate criteria and provide regulatory measures to police this field pursuant to applicable law.
2. No bank shall enter into any agreement with any customer under which the granting of any loan or the provision of any other banking service to such customer is conditioned upon the purchase or use of any additional service of that bank or of any of its affiliates.

#### **Article 23. Records of Transactions And Commitments**

1. Commercial banks shall keep on file for periods prescribed by the National Bank all pertinent documentation supporting each of its transactions, namely:
  - a. the application and all contract documents pertaining to the transaction (including credit, guarantee and collateral agreements);
  - b. the financial records of its customer and other pertinent parties (including borrowers and guarantors), and any other documentary evidence, on which the bank relied in approving the transaction;
  - c. the signed written record of the bank's decision approving the transaction;
  - d. such other documents as the National Bank may specify by regulation.

#### **Article 24 (removed)**

#### **Article 25. Transactions With Related Parties**

Banks prohibited from extending any loans or rendering any other banking services under preferential terms to any of their administrators, controlling persons, affiliates or their related parties regardless the type of service with regard to pricing, maturity, security, value of collateral or any other terms or conditions.

### **CHAPTER IV**

#### **1. PECULIARITIES CONCERNING DISPUTES ABOUT CERTAIN ACTIVITIES OF COMMERCIAL BANKS**

##### **Article 251. Disputes on Realization of Property Which is Pledged as Collateral**

1. An application by a bank arising out of any dispute with respect to its realisation on property pledged with it as collateral, which application is brought before a circuit court pursuant the First Instance Rule of civil pleading, shall be heard at the circuit court no later than 20 days following the filing date of such application.
2. A decision made by the circuit court on the realisation on property pledged with a bank as collateral may be appealed within 10 days only pursuant to the Rule of Cassation.

### **CHAPTER V. ACCOUNTS, AUDIT, REPORTING AND INSPECTIONS**

#### **Article 26. Accounts and Financial Statements**

1. Banks and their subsidiaries shall maintain at all times accurate accounts and records, and shall prepare annual financial statements, adequate to their respective operations and financial conditions in accordance with sound accounting practices pursuant to international accounting standards. Financial reporting shall be in in such form and detail as shall be prescribed by regulation of the National Bank.
2. The accounts, records and financial statements of a bank shall reflect the operations and financial condition of its subsidiaries on a consolidated basis.

#### **Article 27. External Audits**

1. Each bank and its subsidiaries shall cause their books to be audited annually by an external auditor who shall conduct each such audit in accordance with procedures established by the National Bank.
2. Each commercial bank shall submit to the National Bank a complete report of its annual external audit as soon as it is



completed, and shall publish its annual financial statement and external audit report in the official Gazette in such form as shall be provided for by the National Bank.

#### **Article 28. Foreign Bank Branches**

The provisions of Articles 26, 27, and 29 shall apply to branch offices of foreign banks that operate in Georgia under a banking license issued by the National Bank and to subsidiaries of foreign banks. Statutory and regulatory provisions requiring financial statements in the case of branch offices may be satisfied by financial statements prepared on a pro forma basis, with the effect that an Audit Committee or other representative organ of the Home Office may function as the Audit Committee of the branch office.

#### **Article 29. Reports and Inspections**

1. Each bank shall prepare and submit to the National Bank both for the bank itself and separately for each of its subsidiaries reports concerning organizational-administrative and operational activities and concerning liquidity, solvency, and profitability in order to enable the National Bank to assess their financial conditions both individually and on a consolidated basis. These reports shall be prepared in such form and detail and shall be submitted at such intervals as shall be prescribed by regulation of the National Bank.
2. Each bank and each of its subsidiaries shall be subject to inspections by inspectors of the National Bank or by auditors appointed by it. Such auditors may include employees of the monetary or prudential supervision divisions of pertinent foreign regulators in cases where such inspections are to take place with respect to a branch office or subsidiary of a foreign bank.
3. In their inspections of banks and their subsidiaries, the National Bank and its auditors may:
  - a. examine all books, records, accounts, funds and other documents of banks and their subsidiaries; require that administrators and employees of banks and their affiliates submit to review information on the bank's shareholders, controlling persons and administrators and any information concerning the bank's operation and transactions. In case these requirements are not fully observed sanctions set forth in Article 30 shall apply.

### **CHAPTER VI. INFRACTIONS AND PENALTIES**

#### **Article 30. Infractions and Sanctions**

1. The penalties provided for infractions described in this Article shall be determined in particular cases by the National Bank. Any aggrieved party may appeal such determination to the courts of law.
2. The National Bank shall be authorized to impose the following actions and sanctions with respect to banks, their administrators and controlling persons if a bank, any of its administrators or controlling persons is guilty of an infraction consisting of:
  - a. a violation of a provision of this law or of any regulation, instruction, rule, decree, order or written guidelines of the National Bank;
  - b. a violation of any condition or restriction attached to the banking license of a bank or to a regulation issued by the National Bank;
  - c. failure to meet a timeframe for the submission of reports or the submission of incorrect reports or of other inaccurate information.
3. When the above-mentioned violations are revealed, the National Bank has the right, with increasing severity depending on the seriousness of such violation and any actual or potential risk it poses to the assets of the bank, to impose on banks the following sanctions:
  - a. issue written warnings;
  - b. carry out special actions or issue instructions requiring that a bank must cease certain current practices and desist from future ones and other violations and take measures to eliminate violations within a specified period.
  - c. impose fines according to rules and amounts established by the National Bank, but not in excess of a bank's own funds;
  - d. to impose civil money penalties in such amounts and pursuant to such procedures as are established by the National Bank if action of the bank's administrators caused financial loss to the bank or permitted the violation of regulations and requirements of the National Bank.;
  - e. suspend the signing authority of the bank's administrators and to require the bank's Supervisory Council to dismiss him or her temporarily or permanently;
  - f. require the Supervisory Council and Management Directorate to call a special meeting of the bank's shareholders to discuss the violations and to take necessary measures to eliminate them..
  - g. suspend or terminate asset growth, distribution of profits, payment of dividends and bonuses, and salary increases and the reception of deposits;
  - h. in special cases, when the interests of the bank's depositors and other creditors are jeopardized, to suspend active operations and to place the bank in Temporary Administration;
  - i. to request from the controlling persons of a bank to divest or reduce their control in case of failure to provide financial or other information to the National Bank or in cases where a violation has been discovered. Such divestiture or reduction shall be undertaken in accordance with such terms and conditions the National Bank shall deem necessary in the particular circumstances;
  - j. to cancel the bank's license.
6. Sanctions shall correspond with the seriousness of the violation and the loss or potential danger for the bank's assets.
7. Amounts of fines imposed in accordance with this Article shall be transferred to the income of the National Bank of Georgia.

### **CHAPTER VII. TEMPORARY ADMINISTRATION AND LIQUIDATION**

#### **Article 32. Decision Ordering Appointment of the Temporary Administration**

The decision, ordering the appointment of a Temporary Administrator, shall indicate:

- a. The reasons for the appointment of the Temporary Administrator;
- b. The name of the Temporary Administrator (s);
- c. The duration of the Temporary Administration;
- d. A warning about possible freezing of deposits or other customer funds in the bank;
- e. Actions to be taken against the administrators of the bank.

### **Article 33. Effects of Temporary Administration**

1. The decision shall be published in an appropriate publication.
  2. Upon the date of its approval of the decision ordering Temporary Administration, no action is permissible on behalf or for the account of the bank without the prior approval in writing of the Temporary Administration.
  3. The Temporary Administrator shall succeed to the full authority of all bodies (including the General Meeting of Shareholders and of all administrators) of the bank.
  4. The Temporary Administrator shall as soon as possible apply for the necessary changes in the list of authorised officials of the bank that is kept by the National Bank.
  5. If the financial condition of a bank is aggravated due to the wrongdoing of the Temporary Administrator, the National Bank shall fully reimburse the bank for losses.
- Article 34. Powers of Temporary Administrator

1. The Temporary Administrator appointed by the National Bank has the power to take all necessary actions required to remedy the condition of the bank, including the sale or closure of branches, representative offices and any other offices, making or suspending of payments and the dismissal of employees of the bank. In addition, the authority of the Temporary Administrator shall include the power to arrange a merger of the bank under administration with another bank; to arrange for the recapitalization of the bank or to arrange for the acquisition of all or a substantial portion of its assets and the assumption of its liabilities by another bank.

2. For the purpose of rehabilitating the bank, the Temporary Administrator has the right to partially or fully block any funds of individuals and legal entities during the period of the Temporary Administration but only in order to maintain the stability of the bank.

### **Article 35. Cessation of Temporary Administration**

Temporary Administration shall cease:

- a) Upon the expiration of its term, which shall be published in an appropriate publication.
- b) Upon the reasoned decision of the National Bank.
- c) In case the license of the bank is revoked.

### **Article 37. Liquidations**

1. A bank shall be liquidated when its banking license is revoked. Liquidators shall be appointed by the National Bank pursuant to rules established by the National Bank. It is prohibited to appoint a person associated with a bank as its liquidator.
2. A Liquidator shall prepare within period of 3 months after his or her appointment a list of the bank's assets and liabilities and submit a copy to the National Bank for publication. A bank's liquidator is accountable to the National Bank under the rules set by the National Bank.
3. A Liquidator shall be authorized to sell fixed assets of the bank at public auction, transfer its assets to other banks and to arrange for the assumption of its liabilities by other banks.g
4. A Liquidator within 3 months after his appointment is empowered to terminate:
  - a. Employment agreements of any employee of the bank;
  - b. Service agreements, to which the bank was a party;
  - c. Any lease liabilities of the bank, if the landlord, is given 60 days notice that the bank will terminate the lease and claims no other occupancy related fees, then the last rentals and does not assert any damages caused by such termination.
41. A Temporary Administrator or Liquidator shall have the power to challenge by applying to a court any action or transaction by an administrator of the bank done or entered into during a period of one year before the appointment of the Temporary Administrator and may demand their cancellation if persons related to the bank benefited at the expense of the bank, or took advantage and abused privileges or allowances which caused damages to the bank (its creditors).
5. The Liquidator within 2 months after his or her appointment shall:
  - a. take necessary measures for the termination of all trust functions being undertaken by bank, the return to their owners all assets and valuables which have been entrusted to the bank and the settlement of all trustees' accounts;
  - b. send by means of insured letters, to the addresses listed in the records of the bank, to depositors, creditors and customers, whose valuables are safekept in the vault of the bank and also to that customers, whose property is managed by the bank, statements of their accounts. The statement shall indicate that the Liquidator will receive all claims within 1 month after receiving the notice letter to repossess their valuables kept in the vaults of the bank.
6. All property kept by the bank and not demanded within the specified set forth in the notice letter's stated claim period and unclaimed amounts of cash and hhhhhhproperty, held by the bank under agreements should be considered as abandoned property and shall become the property of the National Bank for the purpose of seeking their rightful owners.
7. During the liquidation period, the claims on collateral, shall be satisfied in accordance with the terms of the security agreement (up to the value of the collateral), and all other lawful claims shall be met in the following order:
  - a) Claims of the National Bank and other creditors to whom the bank became liable after revocation of its license;
  - b) Deposits of individuals in the amount of the size of one-hundred times of untaxed minimum.
  - c) Deposits of individuals, which have not been paid in accordance with (b) above .
  - d) Other deposits of any type;

- e) Other claims against the bank.
- f) Necessary and reasonable costs incurred by the National Bank.

8. If all available amounts are insufficient to fully meet all of the payment distributions set forth in subsections (b) (c), (d) and (e) above, all the claims shall be paid on a pro rata basis.

## **CHAPTER VIII TRANSITIONAL PROVISIONS**

### **Article 38. Acting Banks' Licenses**

1. After the effective date of this law, the National Bank shall notify each bank in writing as to any limitations which this law shall have imposed on its operations. These limitations shall then be considered as conditions attached to the banks' licenses.
2. Banks in operation as of the effective date of this law shall be considered as validly licensed for a period of one year following the effective date of this law. During this period all banks shall bring their activities into conformity with this law.

President of Georgia  
Eduard Shevardnadze