

Order #59/04
Of 5 April 2018
Of the President of the National Bank of Georgia
Tbilisi

On Approval of the Liquidation Procedure for Microfinance Organizations

Pursuant to article 15 (1)(g), article 48 (3), article 50 (1)(j) of the *Organic Law of Georgia on the National Bank of Georgia*, article 10¹ of the *Law of Georgia on Microfinance Organizations*, I order:

Article 1

To approve the attached Liquidation Procedure for Microfinance Organizations.

Article 2

Before the entry into force of this Order, liquidation processes started based on the legal act of the National Bank of Georgia shall be completed in accordance with the procedure determined by the normative act of the National Bank of Georgia on starting liquidation processes.

Article 4

The order shall enter into force on upon its promulgation.

President of the National Bank of Georgia

Koba Gvenetadze

Liquidation Procedure for Microfinance Organizations

Article 1. General Provisions

1. Liquidation Procedure for Microfinance Organizations (hereinafter – the Procedure) shall be applied to the microfinance organization (hereinafter – the Microfinance Organization) whose registration has been revoked by the National Bank of Georgia (hereinafter – the National Bank).
2. Liquidation is a procedure, which commences upon the adoption of the Act envisaged by paragraph 4 of this Article by the National Bank of Georgia and which aims at the realization of assets/property of the Microfinance Organization and paying off the creditors of the Microfinance Organization. The monitoring of the procedure is carried out by the National Bank of Georgia.
3. The liquidation of the Microfinance Organization shall start immediately upon revocation of the registration of Microfinance Organization by the National Bank.
4. The National Bank shall issue an Administrative Act on the revocation of the registration of the Microfinance Organization and commencement of the liquidation process. Such Administrative Act shall be issued in the form of an order of the National Bank's President or Vice-President.
5. The liquidation of the Microfinance Organization shall be performed by a Liquidator that shall be appointed and dismissed by an Administrative Act of the National Bank. Such Administrative Act shall be issued in the form of an order of the National Bank's President or Vice-President. The Liquidator shall not be a body somehow connected to the Microfinance Organization.
6. The revocation of a registration of the Microfinance Organization, commencement of the liquidation process and appointment of a Liquidator may be executed by a single Administrative Act.
7. The Administrative Act(s) of the National Bank on the revocation of the registration of the Microfinance Organization, commencement of the Liquidation Process and appointment/dismissal of a Liquidator shall be published on the official webpage of the National Bank (www.nbg.gov.ge) and the Legislative Herald of Georgia (www.matsne.gov.ge).
8. The Administrative Act(s) of the National Bank on the revocation of the registration of the Microfinance Organization, commencement of the Liquidation Process and appointment/dismissal of a Liquidator shall be submitted to LEPL - National Agency of Public Registry to make an appropriate remark in the Registry of Entrepreneurial and Non-Entrepreneurial (Non-Commercial) Legal Entities and to a local system operator in case the Microfinance Organization was a member of the system.

Article 2. Specifics of the Liquidation Process

1. Upon commencement of the Liquidation Process, the Liquidator of the Microfinance Organization shall only carry out activities defined in the current Law and in the Procedure herein.
2. Upon commencement of the Liquidation Process compulsory enforcement against the Microfinance Organization shall be ceased.
3. If the Microfinance Organization being liquidated was an agent, the liquidator shall be obliged, upon appointment, to ensure that transfer orders accepted by the 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.

4. Based on the Administrative Act on the revocation of the registration of the Microfinance Organization and commencement of the Liquidation Process, liquidation accounts shall be opened in one of the commercial banks (both GEL and foreign currency). The amount existing on Organization's accounts in other banks shall be transferred to the liquidation account. The payment shall be made by means of the liquidation account.

5. From the date of the revocation of the registration of the Microfinance Organization, charge of interest and fines on deposits and other liabilities shall cease and pending interest charge to the date shall be transferred to the principal debt.

6. Upon the revocation of the registration, all accounts opened by the Microfinance Organization, shall be blocked based on the liquidator's notice.

7. In the Microfinance Organization, claims accrued on behalf of each creditor (whether natural or legal) in accordance with various contracts shall be merged and transferred to the account of the principal claim of a relevant natural or legal person. Accrued total amount on the principal claim of a creditor (whether natural or legal) shall be deemed the person's single claim towards the Microfinance Organization.

8. After the commencement of a liquidation process, only matured claims may be netted out under article 5 of this Procedure. If the creditor's claims are not fully satisfied after the netting, the remaining part of it shall be satisfied in accordance with the Procedure hereunder.

9. Upon issuance of the Administrative Act on revocation of the registration and the commencement of Liquidation Process, the Liquidator shall seal and register all documents, buildings and other major assets of the liquidated Microfinance Organization in order to protect monetary and material assets.

10. Expenses related to the liquidation process will be reimbursed from the liquidation account of the Microfinance Organization, which, as an initial matter, will be first satisfied in accordance with subparagraph "a" of paragraph 1 of Article 5 of this Procedure.

11. Till completion of the Liquidation Process, the Microfinance Organization shall be subject to the requirements of the *Law of Georgia on Microfinance Organizations* and *Organic Law of Georgia On the National Bank of Georgia*.

12. Upon the revocation of the registration, the Microfinance Organization shall be prohibited from carrying out any activity defined by the registration and is obliged to fulfill all obligations under the laws of Georgia in the shortest possible time.

13. If a liquidated Microfinance Organization's branches or/and subsidiaries are abroad, the National Bank shall notify the supervisory authorities of the country where the branch or/and subsidiary enterprise is located.

14. The Liquidator's remuneration is determined in accordance with 10 paragraph of this Article, except for employs of the National Bank.

15. Property purchased after commencement of a liquidation process is transferred to the Microfinance Organization's assets and is subject to realization in accordance with paragraph 8 of Article 3.

Article 3. Liquidator's Rights

1. Upon entry into force of an administrative-legal act on the commencement of the liquidation process and appointment of a liquidator, powers of managing bodies of the Microfinance Organization shall be terminated. The liquidator shall have all the

rights of managing bodies of the Microfinance Organization. The Liquidator shall represent the Microfinance Organization in its relationships with third parties.

2. The Liquidator shall have the right to carry out any activities related to the liquidation of Microfinance Organization, accomplish arbitrary activities or complete disputes and enter into new transactions if necessary. Upon entry into force of an administrative-legal act on the commencement of the liquidation process and appointment of a liquidator, all arrangements executed by managing bodies of the Microfinance Organization are null and void.

3. In agreement with the National Bank the liquidator is authorized to create a liquidation commission.

4. From the date of appointment the Liquidator until completion of a liquidation process the Liquidator can terminate:

a) Contracts for Microfinance Organization personnel hire;

b) Contracts for services that the Microfinance Organization was a party to;

c) Any responsibility of the Microfinance Organization as a Lessor, if the Lessee (who shall be given a 3 months' prior notice about the Microfinance Organization's intention to use its right for tenancy agreement termination) does not have a claim for rental besides the amount that has been paid by the agreement termination date and does not claim compensation for the damage resulting from such termination.

The Liquidator has the right to initiate a dispute in Court against or claim cancellation of an activity or transaction carried out by the Microfinance Organization's Administrator a year before the Liquidator's appointment as a result of which persons connected to the Microfinance Organization had any property gain at the Microfinance Organization's expense or any other benefit, privilege, advantage that caused damage to the Microfinance Organization or/and its creditors.

6. In order to perform the Microfinance Organization Liquidation Process timely and in a proper manner, the Liquidator shall have the right to:

a) With the consent of the National Bank, enter into labor agreements with different persons for performance of different works related to the Liquidation activities, also with relevant agencies for carrying out proper registration of the Microfinance Organization's documents, their filing and storage.

b) Carry out any activities envisaged by laws of Georgia that he deems necessary for satisfying claims of the Microfinance Organization's creditors and other financial requirements.

7. Only with a written consent from the National Bank the Liquidator shall have the right to:

a) Temporarily keep open existing corresponding accounts in other banks;

b) Receive a loan from the National Bank;

c) 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 a representative of a financial sector and arrange for the transfer of liabilities to these entities.

8. The liquidator is entitled to sell the assets of the Microfinance Organization at a public auction (at the electronic auction) or choose another form of their realization in agreement with the National Bank. To this end, the liquidator shall substantiate the calculations and assumptions to the National Bank based on which he/she/it shall choose a form of realization, in particular the receivable amount, terms of realization, interest rates, inflation, expenses related to the possession of assets and other costs.

9. If while transfer of assets and obligations under subparagraph c of paragraph 7 of this article, the creditor or/and debtor fails to consent or reject the transfer of an asset or obligation to another person within the term set by the liquidator, the consent shall be deemed automatically granted.

10. For the execution of the transfer as per paragraph 9 of this Article, the corresponding recipient organization shall be obliged to ensure the record-keeping of the information and documents transferred and their storage in accordance with the rule established by laws of Georgia.

Article 4. Liquidator's Obligations

1. The liquidator shall be accountable to the National Bank for its activities.

2. The Liquidator shall carry out liquidation activities in good faith. If the Liquidator fails to fulfill his obligations or to fulfill them in a proper manner, he will be held responsible by Law of Georgia.

3. Former Administrators of the Microfinance Organization are obliged to delegate Microfinance Organization activities to the Liquidator within terms set by the National Bank, while the Liquidator, from the date of appointment, shall register and take over duties from the Microfinance Organization within terms set by the National Bank.

4. If former administrators of the Microfinance Organization avoid the transfer of the activities of the Microfinance Organizations to the Liquidator, the Liquidator shall describe and draft a stock-taking act on Microfinance Organization's activities, which shall be certified by the liquidation committee created by the Liquidator. At the same time, the liquidator shall take measures established by applicable laws of Georgia for the responsibility of the administrators concerned.

5. Within 10 days from the commencement of the liquidation process the Liquidator shall perform the following:

a) Make up an opening balance of the liquidated Microfinance Organization on the basis of existing daily accounting forms and other relevant documents and submit them to the National Bank;

b) Send notifications to commercial banks, organizations serving bank card and wire transfer settlements notifying them that correspondent account operations can be carried out only at Liquidator's permission, and request cancellation of bank cards issued by the Microfinance Organization.

c) Send written notification to LEPL - National Agency of Public Registry and the Ministry of Internal Affairs of Georgia to prevent alienation of property belonging to the liquidated Microfinance Organization (real estate, transport, etc);

d) Send notifications to all former Microfinance Organization Administrators to request a 10-calendar-days return of all seals and stamps of the Microfinance Organization and its structural units. The Liquidator shall immediately notify relevant law-enforcement bodies on any failure to fulfill this requirement.

6. The Liquidator, together with the liquidation committee created by it, shall destruct all seals and stamps of the Microfinance Organization and its structural units and shall provide for the preparation of the Liquidator's seal and stamp. The liquidator is obliged to submit a relevant certificate of destruction to the National Bank. The certificate of destruction is made up in the form of an act which is signed by all participants.

7. The Liquidator shall submit the templates of signatures and seals to commercial banks per their request.

8. Within one month after make-up of the Liquidated Microfinance Organization's opening balance, the Liquidator shall:

a) notify creditors about commencement of the Microfinance Organization liquidation process by a special notice, and for creditors whose legal address is unknown arrange for announcements in the Legislative Herald and Microfinance Organization's website (if any), notifying that they should provide the liquidator with documents verifying their claims within set terms. If necessary, a similar announcement shall be repeatedly published after a month's interval.

b) Send notifications to Microfinance Organization borrowers and other debtors requiring settlement of their existing debts to the Microfinance Organization (principal and accrued interest) and request them to submit a written confirmation of their commitments within one month on repayment of their liabilities within terms fixed by their agreements.

9. In order to complete the Microfinance Organization liquidation process timely and in a proper manner, the Liquidator shall have the responsibility to:

a) Carry out accurate bookkeeping/accounting making accurate account entries;

b) Within three months after appointment, ensure the stock-taking and record-keeping of all assets and liabilities of the Microfinance Organization, if necessary, provide their audit evaluation.

c) Considering the documents submitted to him under subparagraphs a and b of paragraph 9 of this Article, develop an adjusted balance of assets and passives of the Microfinance Organization and submit it to the National Bank.

d) Provide for checking validity of all claims raised by Microfinance Organization creditors and legality of information on indebtedness submitted by other debtors.

e) To maximize return of the Microfinance Organization's assets and with consent of the National Bank, provide for beneficial restructuring terms for the debts of borrowers, who do not have sufficient funds and tangible assets to completely and timely pay their debts.

f) In case the debtors fail to pay their debts within the time indicated in the written confirmation or terms of restructuring, take all action envisaged by Law including legal proceedings in court.

g) Notify the National Bank about any facts of embezzlement and misappropriation of the Microfinance Organization's property or signs of any other crime, and claim law-enforcement agencies for relevant measures to be taken.

h) Appeal against any decision or act, including court's ruling, on sequestration or realization of property of the Microfinance Organization under liquidation, which could interfere with satisfaction of claims of creditors of the Microfinance Organization.

i) Submit to the National Bank records of the Microfinance Organization under liquidation according to the procedures and within terms set by the National Bank.

j) At agreed intervals or upon request submit a report on performed activities, any information and document to the National Bank;

k) Immediately upon discovery of insolvency or bankruptcy of the Microfinance Organization prepare an insolvency or bankruptcy report and submit it to the National Bank for a relevant decision on the termination of the liquidation process, after which the Liquidator shall only act considering and in accordance with the aims of the *Law of Georgia on Insolvency Proceedings*.

n) Take all measures indicated herein that would promote maximum and timely satisfaction of claims related to the return of the Microfinance Organization creditors' funds.

- o) Be guided by the principle of fairness and observe business ethics while exercising the authority;
- p) Provide information on the liquidation process to creditors every 6 months through the publication on the official website of the National Bank.

10. If the Liquidator is dismissed during the liquidation process, he shall turn over matters related to the Microfinance Organization under liquidation and any information obtained within the liquidation process to the new Liquidator on the basis of a duly signed and sealed Act.

Article 5. Settlement of Claims

1. During the liquidation process, collateral and mortgage claims shall be satisfied in compliance with terms of relevant agreements (within the cost of the collateral and mortgage), whereas all other justified claims shall be satisfied in the following order of priorities:

- a) Creditors, in relation to which the Microfinance Organization's obligation was created after the revocation of the registration of the Microfinance Organization.
- b) Claims of creditors who are natural persons;
- c) Claims of creditors who are legal entities;
- d) Budgetary debts, including claims secured with lien;
- e) Any claims against the Microfinance Organization except for the claims under Subparagraph "g";
- f) Subordinated liabilities according to the sequence of repayment dates;
- g) Other liabilities of the Microfinance Organization in relation to direct and indirect owners of the Microfinance Organization.

2. If the existing sum is not sufficient for complete payment of claims envisaged in paragraph 1 above, all relevant claims shall be paid pro rata.

3. Each subsequent claim shall be satisfied after satisfying claims of preceding order. The liquidator shall be entitled to satisfy a claim of subsequent order if there are enough financial resources to settle claims of preceding order without damaging the settlement of claims of preceding order.

4. To ensure the settlement of claims specified in each subparagraph of paragraph 1 of this Article, the liquidator shall have the right to accumulate the amounts received by installments from realization of the assets.

5. Contingent liabilities that existed prior to liquidation and the settlement obligation of which was created after the commencement of liquidation process shall be deemed created prior to the commencement of the liquidation process. The claim referred to in the court decision shall be deemed to originate from the moment when the creditor's claim arises as a matter of dispute that should be satisfied by the Microfinance Organization considering the factual circumstances indicated in the court decision.

6. Costs related to the settlement of claims envisaged in paragraph 1 of this Article shall be borne by the Client.

7. Claims envisaged in paragraph 1 of this Article which exceed GEL 1500 shall be paid by non-cash settlement.

8. Before the settlement, the Liquidator is obliged to check whether a person is included in the list of terrorists or persons facilitating terrorism.

9. The liquidator is obliged to provide the settlement of claims without prejudice to the liquidation process.

Article 6. The Procedure for Holding a Public (electronic) Auction in the Microfinance Organization under Liquidation.

1. Fixed assets possessed by the Microfinance Organization shall be sold at a public (electronic) auction by means of www.eauction.ge in compliance with the bellow-given procedures:

a) The date of holding the public auction (electronic auction) shall be established by the liquidator, who shall also define the price of the property/asset to be sold, the amount of earnest money and bids at the public auction (electronic auction). The liquidator shall place a short description of the property and/or asset to be sold on www.eauction.ge. The public auction (electronic auction) shall continue 10 calendar days.

b) At least 14 calendar days prior to holding the auction the liquidator shall submit a draft project of auction announcement on holding a public auction (electronic auction) to the National Bank for agreement.

c) After the price of property/asset acquired at public auction (at the electronic auction) is paid, an agreement shall be executed with an authorized person;

d) The winner of a public auction (electronic auction) may use its legal rights in relation to the property/asset only after the full payment of the price. The amount of earnest money paid by the purchaser shall be included in the final settlement;

e) A new owner of the item sold at the auction shall take the former owner's place and become the participant of legal relationships, which are linked to this item in the process of property transferring.

f) If during the first public auction (electronic auction) the property and/or asset is not sold at the initial price the liquidator shall set the subsequent public auction (electronic auction), observing the procedures required for setting the first auction. The initial selling price of the property and/or asset at the subsequent auction may be determined by no less than 75% of the initial price of the first auction.

g) In case of failure to sold the property and/or asset at the subsequent public auction (electronic auction) within no less than 75% of the initial price the initial price of the property and/or asset at the next public auction (electronic auction) can be determined within no less than 50% of the initial price of the first auction.

2. The property/ asset to be sold at a public auction (electronic auction) shall be assessed by an independent auditor.

3. In order to ensure that Microfinance Organization under liquidation may exercise its rights to claim financial actives, the Liquidator shall hold the public auction (electronic auction) observing the procedures envisaged in paragraph 1 of this Article.

4. Except for subparagraphs "f" and "g" of paragraph 1 of this Article, considering the interests of Microfinance Organization creditors, the Liquidator, with the consent of the National Bank, may hold an additional public auction (electronic auction) to the purpose of protecting claim rights.

5. The liquidator, observing appropriate accounting standards, shall be entitled to write off the balance sheet those claim rights that were not exercised during any public auction (electronic auction) and is assessed as having a zero price by an independent auditor.

Article 6. Completion of the Liquidation Process

1. Duration of the liquidation process depends on the payment period of the Microfinance Organization's debts that in its turn depends on the terms of the Microfinance Organization's assets realization and settlement of disputes in court.
2. The Liquidation process shall be deemed complete when payment is made against all existing claims to the Microfinance Organization;
3. The liquidation process is terminated if the Microfinance Organization has outstanding obligations, but it does not have assets to cover these obligations. In this case, the Liquidator shall act in accordance with paragraph 8 of this article.
4. The Microfinance Organization does not have any assets if:
 - a) All assets are realized (removed);
 - b) Market (realization) value of unrealized assets equals zero;
 - c) Loans and other assets cannot be removed because their owners are bankrupt or have no property to be realized.
5. Upon completion of the liquidation process the Liquidator shall draft a Liquidation Act that should include the following:
 - a) Information regarding all assets realized by the Liquidator since commencement of the Microfinance Organization liquidation indicating their final price;
 - b) Independent auditor's evaluation of all the Microfinance Organization's unrealized assets that has been used as a basis for concluding that the market price of the assets is zero;
 - c) Court's decisions confirming bankruptcy of legal or physical persons who are due to the Bank;
 - d) Information regarding payment against claims of the Microfinance Organization's depositors and other creditors;
 - e) Information regarding all other actions taken by the Liquidator.
6. The Microfinance Organization Liquidation Act verified by the Liquidator's signature and seal shall be submitted to the National Bank for pronouncing a decision on the completion of the Microfinance Organization liquidation process.
7. The National Bank shall issue an Administrative Act on the Completion of the Microfinance Organization Liquidation Process. This Administrative Act shall be issued in the form of an order of the National Bank's President or Vice-President.
8. In case of signs of insolvency or/and bankruptcy under paragraph 3 of this article, the Liquidator shall draw up the liquidation act and submits it to the National Bank for decision. The decision above shall be made by the President or Vice-President of the National Bank of Georgia, after which the Liquidator shall only act considering and in accordance with the aims of the Law of Georgia on Insolvency Proceedings.
9. Upon completion of the Microfinance Organization Liquidation Process, the Administrative Act of the National Bank shall be submitted to the LEPL - National Agency of Public Registry for withdrawing the Microfinance Organization registration and removing it from the Registry of Entrepreneurial and Non-Entrepreneurial (Non-Commercial) Legal Entities.

10. If after the completion of the liquidation, the Microfinance Organization has fully covered its obligations and has assets, the liquidator shall transfer these assets to the Microfinance Organization's shareholders/partners in agreement with them and executes a properly certified Act.

11. In exceptional cases, only with the consent of the National Bank, the Microfinance Organization under the liquidation can change its activity and be converted into entrepreneurial entity carrying out non-microfinance activities. Conversion of the activities should serve the purpose of Microfinance Organization's debt payment, which requires a decision of the Microfinance Organization's shareholders/partners and notarized consent of all other creditors with this decision.

12. In the event of the conversation of the activity of the Microfinance Organization under liquidation, the Microfinance Organization liquidation process shall cease and it shall no longer be subject to the requirements of the *Law of Georgia On Microfinance Organizations*.

Article 7. Rights of the National Bank

1. The National Bank has the right to:

- a) Check the Microfinance Organization under liquidation at any time;
- b) Check the activities of the Liquidator;
- c) Dismiss the Liquidator in cases envisaged by laws of Georgia by an Administrative Act and appoint a substitute.
- d) Demand any information about the course of the Microfinance Organization Liquidation process.
- e) Demand stopping or canceling of any action taken by the Liquidator if it contradicts the aims of a liquidation process.

2. The National Bank has the right to use administrative punishment or sue the Liquidator for revealed offences depending on their severity, including applying to law enforcement bodies considering the gravity of the committed crime.

Article 9. Liquidator's Responsibility

1. The Liquidator shall be held responsible for:

- a) Carrying out the Liquidation process with violation of the requirements of laws of Georgia and this Procedure, also for intended protraction of the Liquidation works and activities;
- b) Observing claim satisfaction priorities as described in Article 5 hereof;
- c) Failure to notify law-enforcement agencies about cases of squander/embezzlement of the Bank's assets and other similar facts during the period of his activities.
- b) Embezzlement or/and misappropriation of assets of the Microfinance Organization during its activity and Failure to notify law-enforcement agencies about cases of squander/embezzlement of the Microfinance Organization's assets and other similar facts during the period of his activities.
- d) Misuse of loans received from the National bank or other banks;
- e) Validity and accuracy of the entries in the liquidated Microfinance Organization's accounting records and information on the Bank's activities;

- f) Preparation and submittal of inaccurate information about the Microfinance Organization's assets and liabilities;
- g) Failure to file a claim in court for recovery of money in cases of delinquency by the Microfinance Organization's borrowers and other debtors;
- h) Financial violations;
- i) Violation of client relationship ethics.

2. The liquidator shall not be held responsible to any person for any acts or omissions, if the liquidator committed this act or omission to carry out his activities in good faith in accordance with the laws of Georgia. The National Bank is obliged to protect the liquidator's interests in disputes arising from execution of official liabilities by him, which can be expressed by covering fees related to dispute settlement other measures which the National Bank considers necessary to protect the interests of the liquidator, if the act or omission was conditioned by carrying out official liabilities in good faith.

Article 9. Criteria of Liquidator's Qualifications

1. A candidate for a liquidator shall be selected by the National Bank according to the requirements set under this article.
2. To carry out a Microfinance Organization's liquidation in an efficient manner, the Microfinance Organization's liquidator shall have appropriate qualifications and professional experience needed for performing banking-financial activities certified with relevant documents.
3. A person shall be prohibited to be a liquidator of a microfinance organization if he/she is convicted for a grave or especially grave crime, financing terrorism and/or legalization of illicit income or other economic crimes.
4. A person to be appointed as a Microfinance Organization's liquidator shall have the university education in one of the fields such as economics, finances, banking, business administration, audit, accounting or law.
5. A liquidator shall have appropriate qualifications and professional experience of minimum 3 years working in the banking-financial sector.
6. One and the same person may be appointed as a liquidator in several financial organizations.
7. If the Liquidator is not an employee of the National Bank, from the date of appointment, the National Bank and the Liquidator shall execute a fixed term employment contract.
8. The amount of the liquidator's salary to be noted in the labor contract shall be defined by the National Bank of Georgia.