

The Rule on appointing and activities of the Temporary Administrator of the Commercial Bank

Decree №240/04; December 29, 2020

Article 1. General provisions

1. The Rule on appointing and activities of the Temporary Administrator of the Commercial Bank (hereinafter: Rule) determines the procedures of appointing, dismissing, accountability and rule of activities of the Temporary Administrator of the commercial bank as defined by the Article 30¹ of the Law of Georgia on “Commercial Bank Activities” through the authority of the National Bank of Georgia (hereinafter NBG) of early intervention.
2. This Rule aims to support effective implementation of the early intervention measure – appointing the temporary administrator and facilitate the stable and efficient operation of the banking sector and a commercial bank and protection of the interests of a bank’s depositors and other creditors.
3. Solely NBG is entitled to appoint and dismiss the temporary administrator in a commercial bank.

Article 2. Appointing of a temporary administrator

1. If one of the grounds under the first paragraph of Article 30 is identified, or if imposing the supervisory measures was insufficient or to the NBG’s opinion would not be sufficient to reach the result, to facilitate the stable and efficient operation of the financial sector and a commercial bank and protection of the interests of a bank’s depositors and other creditors, NBG is authorized to appoint one or more temporary administrator independently or simultaneously with one or more supervisory measures defined in paragraph 2 and/or paragraph 3 of Article 30.
2. A temporary administrator might be an employee of the NBG or any other person.
3. A temporary administrator shall meet the fit and proper criteria defined in accordance with the legislation and shall be free from any conflict of interest.
4. A temporary administrator shall be appointed according to the procedures set by article 3 of this Rule. Upon request of NBG, a candidate of the temporary administrator shall provide information/documentation proving that he/she meets the fit and proper criteria set by article 3 of this Rule.
5. In case of 1st paragraph of this article, NBG issues a legal act on appointing a temporary administrator. This act shall enter into force upon its publication.
6. The decision on appointing of a temporary administrator shall contain the following elements:
 - a) Identification data of a temporary administrator;
 - b) Grounds and period of appointment of a temporary administrator;

- c) Powers and duties of a temporary administrator;
 - d) Terms and conditions of collaboration between temporary and existing administrator(s) of the bank, if by the decision of NBG they work simultaneously;
 - e) List of actions and decisions which might require prior consent of NBG.
7. A temporary administrator is appointed for no longer than one year. This time may be extended by the decision of NBG if the grounds for appointing a temporary administrator continue to be met. In case of extension, NBG shall publish its decision according to the paragraph 5 of this article and provide relevant justification to the shareholders of the bank.

Article 3. Fit and proper criteria for a temporary administrator

1. A temporary administrator shall meet the following criteria set in this article:
- a) Must have a good reputation, reliability and good faith towards a job. A person shall be deemed incompatible with this criterion if:
 - a.a) He/she took part in the operation which had important damage to the financial institution and/or rights of its depositors or creditors or resulted in insolvency or bankruptcy of this institution;
 - a.b) He/she abused his/her rights while working in the financial institution;
 - a.c) He/she did not fulfill or does not fulfill one or more his/her financial duties;
 - a.d) He/she was declared insolvent.
 - b) Has a university degree in economics, finances, banking, business administration, audit, accounting, IT or other relevant fields, which is necessary to fulfill his/her duties;
 - c) Has relevant professional experience and at least 3-year working experience in the financial sector;
 - d) Does not have a criminal record of serious or particularly serious crime, among others, financing of terrorism, legalization of illegal income of other economic crimes;
 - e) In the past 5 years does not have an administrative fine for abusing financial sector regulations;
 - f) Does not have a conflict of interest with the interests of the bank. The assessment of conflict of interests, at least, covers the following aspects:
 - f.a) Having economic interests, which means directly or indirectly holding shares or having other type of economic interests or other entities in the banking group. Also, granting loan by the bank to the temporary administrator or company held by him/her;
 - f.b) Personal or professional relationship with holders of significant shares of the bank;

f.c) Personal or professional relationship to the administrators of the bank or other entities of the banking group;

f.c) Holding or being a member of the board in such company, which has a particular interest to the bank or other entities of the banking group;

f.d) In the past 2 years, court records or other business disputes with administrators or holders of significant shares of the bank or other entities of the banking group;

f.e) Political influence and activity, which means carrying activities defined in subparagraph 1 of article 21 of the law of Georgia on "Facilitating the prevention of money laundering and the financing of terrorism". Also, membership of political associations or supporting such associations by financing defined in the article 25 of the law of Georgia on "Political associations of citizens."

g) He/she should not be recognized as a beneficiary of support by the court;

h) Regardless type of contract, a temporary administrator should not be an employee of the other bank.

2. Beyond this article, other legislative requirements and restrictions of the bank's administrator are mandatory to be fully met by the temporary administrator.

Article 4. Powers, duties and responsibilities of the temporary administrator

1. A temporary administrator operates within the powers and duties set under this article and instructions given by NBG.

2. By the decision of NBG, a temporary administrator may exercise full powers and duties of any management body of the bank except the general meeting of shareholders.

3. A temporary administrator should take all the measures under his/her powers to protect the interests of a bank and properly carry out his/her activities.

4. The powers and duties of a temporary administrator are the following:

a) Determining financial condition of a bank, which also implies checking all necessary documentation and materials;

b) Taking all necessary measures to recover the financial condition of the bank that also includes closing or selling branches, offices or units of the bank, dismissing employees of the bank with or without paying necessary funds;

c) With the prior consent of the NBG, convene a general meeting of shareholders;

d) Carry out other activities granted by the NBG.

5. A temporary administrator starts carrying out his/her powers and duties from the moment defined in paragraph 4 of article 2 of this Rule.

6. If temporary administrator is appointed together with the bank's management, NBG may require that certain decisions of a bank require prior consent of a temporary administrator.

7. The temporary administrator shall not be liable to any person for any action or omission if he/she has committed or refrained from performing this duty in good faith in accordance with the Georgian legislation. The National Bank is obliged to protect the interests of the temporary administrator in disputes

arising out of the performance of official duties, which may be reflected in the provision of legal services of the temporary administrator, reimbursement of costs related to the dispute and other measures deemed necessary by the National Bank if they were conditioned by the conscientious performance of official duties.

8. In cases defined in the subparagraph “e” of paragraph 6 of paragraph 2 of this article, the obligation to obtain prior consent from NBG may be determined both at the time of appointment of the temporary administrator and at the stage of fulfillment of his/her rights and duties.

9. The prior consent of the NBG is not required in cases defined in the Law of Georgia on “Payment systems and payment services” and the Law of Georgia on “Financial collateral arrangements, netting and derivatives.”

10. All expenses incurred in the performance of his/her activities by the temporary administrator, including the salary of the temporary administrator, shall be reimbursed by the bank, unless an employee of NBG is appointed as a temporary administrator.

Article 5. Accountability of a temporary administrator

1. A temporary administrator is accountable solely to the NBG and the NBG supervises his/her activities.
2. A temporary administrator is obliged to provide reports upon request or at the end of his/her service by the form and timeframe set by the NBG.
3. The report submitted by a temporary administrator at least should contain information regarding the financial conditions of the bank and activities carried by the temporary administrator.

Article 6. Dismissal of a temporary administrator

1. The National Bank may, at any time, dismiss a temporary administrator on any grounds, as well as change the powers and obligations of a temporary administrator in a decision under Article 2 of this Rule or appoint another person as a temporary administrator in accordance with the procedures established by this Rule.
2. The National Bank shall issue an individual administrative-legal act on dismissal of a temporary administrator, which shall enter into force on the day of its publication on the website of the National Bank.