

Rule on Developing a Resolution Plan for a Commercial Bank

Decree №242/04; December 29, 2020

Article 1. General Provisions

1. The purpose of the rule on developing a resolution plan for a commercial bank (hereinafter referred to as - the Rule) is to determine the key elements of Resolution Plan, the criteria for selecting a Resolution Strategy, and the rules for assessing the resolvability of a commercial bank.

2. The resolution plan shall be developed by the National Bank of Georgia (hereinafter - the National Bank) for all commercial banks and branches of foreign banks (hereinafter - the Bank), towards which, in presence of the grounds established by legislation, it is feasible and credible to introduce a resolution regime instead of liquidation. The bank for which a resolution plan has been developed has the right to get acquainted only with the summary of the resolution plan specified in Article 3, paragraph 1, subparagraph "a" of this Rule.

3. After the development of the initial resolution plan for the bank, the National Bank shall review the resolution plan annually, no later than December 31, and, if necessary, which includes situations such are: changes in the Bank's operations, organizational structure and/or financial position that could materially affect the content of resolution plan and/or its implementation - make appropriate changes to it.

4. If this rule does not address certain issues related to the development of the resolution plans, the National Bank shall be guided by the best international practice, including the Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016, Directive 15/2014/ EU of the European Parliament and of the Council of 15 May 2014 and guidelines for resolution planning of the Single Resolution Board (SRB) of European Union, in accordance with the requirements set out in the Georgian legislation.

Article 2. Definition of terms

1. For the purposes of this rule, the terms used in this rule shall have the following meanings:

a) resolution strategy – set of resolution actions provided for in a resolution plan by the National Bank;

b) preferred resolution strategy – a resolution strategy capable of best achieving the resolution objectives given the business model and structure of the bank;

c) variants of preferred resolution strategy – an integral part of the preferred resolution strategy, which is defined in response to scenarios and circumstances to which the preferred resolution strategy cannot be implemented or is not feasible and credible;

2. Other terms used in this rule shall have relevant meanings as provided in the legislation of Georgia.

Article 3. Key elements of the resolution plan

The resolution plan shall include at least following key elements:

a) a summary of the resolution plan, which is a brief overview of each key element of the plan provided for in subparagraphs (b) to (h) of this article;

b) a description of the resolution strategy, which shall include at least:

b.a) a detailed description of the resolution powers and tools to be used for the purpose of resolution;

b.b) an information on the subsidiary/subsidiaries of the bank or the enterprises belonging to the banking group, which influence the use of resolution tools towards the bank;

b.c) an information on the critical functions of the bank, for the maintenance the continuity of which the resolution strategy is implemented, as well as on the critical functions, which are expected to be separated from other functions;

b.d) the time frame required for the implementation of each material action envisaged by the resolution strategy;

b.e) a detailed description of variants of the preferred resolution strategy considered to address circumstances in which the preferred strategy cannot be implemented; also, the time frame required for the implementation;

b.f) a detailed description of the decision-making process for implementing the resolution strategy, including the time frame required for decisions;

c) a description of the information, and the measures necessary for ensuring the availability of the information, necessary in order to implement the resolution strategy, including at least:

c.a) the information required for the valuation of the assets and liabilities of the bank pursuant to article 37³ of the Law of Georgia on the Activities of Commercial Banks, together with the measures necessary to ensure its availability in a timely manner, including measures which shall ensure that the independent valuer has access to the information needed to carry out the valuation;

c.b) information on the subsidiaries of the bank or enterprises belonging to the banking group, on the activities of which the performance of critical functions by the bank essentially depends.

c.c) a description of the arrangements necessary for sharing of information between the National Bank and the relevant administrative authorities, in order to implement the resolution strategy;

c.d) a detailed description of arrangements for ensuring that information necessary for the implementation of resolution strategy is up to date and available when required;

d) a description of arrangements to ensure operational continuity of critical functions during resolution, including the description of:

d.a) management information systems and operations which need to be continued to maintain continuity of critical functions and arrangements for ensuring their contractual and operational robustness in resolution;

d.b) internal and external financial, legal and operational interdependencies which are critical to the maintenance of operational continuity, in particular:

d.b.a) an information on the internal and external financial and legal interdependencies implies information in respect of own funds, assets and liabilities, risk and derivative positions and other material financial and legal interdependencies;

d.b.b) the internal operational interdependencies implies interdependencies between organizational units, which could lead to impediments to resolution and shall include at a minimum information about essential internal services and critical internal services;

d.b.c) an information on the external operational interdependencies includes a description of the material external service providers and material outsourced services and an analysis of their impact on the continuity of critical functions of the bank;

d.g) the arrangements for ensuring any access to payment systems or other financial infrastructures necessary to maintain the continuity of critical functions, including an assessment of the portability of client positions;

e) a description of the financing sources necessary for the implementation of the resolution strategy, including at least:

e.a) the description of financing and liquidity requirements necessary for the implementation of the resolution strategy;

e.b) the description of potential sources of resolution funding, including the terms of financing, the timing of their availability, any collateral requirements and also information on the enterprises to which the financing is provided, if necessary;

e.c) a description of the arrangements using of which, if necessary, the bank will ensure access to the loan specified in article 31 of the Organic Law of Georgia on the National Bank of Georgia, including with the identification of the respective collateral.

f) a description of a communication plan with stakeholders, including with the:

f.a) management bodies, respective structural units, shareholders and staff of the bank;

f.b) customers of the key products and services of the bank;

f.c) depositors, counterparties, financial marks and other stakeholders;

f.d) administrative bodies (if necessary, including a foreign country) whose involvement in the resolution process is essential to the implementation of the resolution strategy;

f.e) valuator, auditor and other persons (if any) whose involvement in the resolution process is required to implement the resolution strategy.

g) the summary of the assessment of resolvability, including at least:

g.a) the conclusion whether or not the bank is currently resolvable;

g.b) a summary of the assessment of the feasibility and credibility of liquidation carried out in accordance with the article 5 of this rule;

g.c) a detailed description of any impediments of the implementation of resolution strategy identified by the National Bank in accordance with this rule, and of any measures necessary to remove those impediments;

g.d) a quantified analyses of the requirements for eligible liabilities and capital instruments, if that is required to remove or address impediments to resolvability;

h) A summary of the opinions expressed by the bank (if any) in relation to the resolution plan.

Article 4. Assessment of resolvability of the bank

1. The National Bank assesses the resolvability of the bank, for the purpose of which the National Bank:

a) assesses, in the presence of the respective grounds provided for in the legislation, the feasibility and credibility of the liquidation of the bank in accordance with the article 5 of this rule;

b) selects the preferred resolution strategy, in accordance with the article 6 of this rule;

c) assesses the feasibility of selected resolution strategy, in accordance with the articles 7 to 12 of this rule;

d) assesses the credibility of selected strategy, in accordance with the article 13 of this rule.

2. If, as a result of the assessment carried out in accordance with article 5 of this rule, the National Bank concludes that the liquidation process against the Bank is not feasible or credible, or if the introduction of a resolution regime is necessary based on the requirements stipulated in the Georgian legislation, the National Bank shall develop the preferred resolution strategy in accordance with the requirements set

forth in this rule, which may also include variants of the preferred resolution to address circumstances in which the preferred resolution strategy would not be feasible or credible.

3. The assessments of the feasibility and credibility of the preferred resolution strategy shall include assessment of the variant strategies.

4. The National Bank is authorized to revise the preferred resolution strategy or replace it with another (alternative) strategy, if changed circumstances preclude the feasibility or credibility of a resolution strategy or make it inconsistent with the objectives of the resolution.

Article 5. Assessment of the feasibility and credibility of liquidation

1. Assessment of the credibility of initiating a bank liquidation process involves assessing the potential impact of the bank liquidation process on the financial system and the continuity of critical functions performed by the bank, for the purpose of which the National Bank assesses the adverse impact of the liquidation process:

a) on the functioning of the financial market and market confidence;

b) on the financial market infrastructure, in particular:

b.a) the threat of such a restriction of the financial market infrastructure due to the termination of the bank in the process of liquidation of the bank, which has an adverse impact on the financial sector as a whole;

b.b) the threat of a contagion of adverse impact on the financial sector through the financial market infrastructure, as a result of the bank's liquidation;

c) on other financial institutions, in particular:

c.a) whether liquidation would raise the funding costs of or reduce the availability of funding to other financial institutions to the extent that they may have a significant adverse effect on the stability of the financial sector;

c.b) the risks of the adverse effect of the liquidation process on macroeconomic factors;

d) on the real economy, and in particular on the availability of critical financial services.

2. If the National Bank, based on the assessment provided for in this article, concludes that liquidation process is credible, it shall assess the feasibility of liquidation process.

3. In order to assess the feasibility of the liquidation process, the National Bank assesses the Bank's ability to ensure timely access to the complete and accurate information, which is required by Deposit Insurance Agency in order to fulfill its powers under the Law of Georgia on the Deposit Insurance System.

Article 6. Identification of a resolution strategy

1. The National Bank selects and defines the resolution strategy in the resolution plan, which, considering the business model, organizational and group structure of the bank (in the presence of the banking group), is most appropriate to achieve the resolution objectives than other possible resolution strategies.

2. When selecting the resolution strategy, the National Bank shall take into account:

- a) the resolution tools to be used to implement the resolution strategy and their availability;
- b) the amount of eligible liabilities under the proposed resolution strategy for loss absorption or recapitalization; as well as the risk that their use will not ensure the loss absorption or recapitalization;
- c) the contractual arrangements in place (if any) for losses to be distributed between legal entities in a banking group;
- d) the operational structure and business model of the bank or the banking group, which implies the assessment whether it is highly integrated or has a decentralized structure;
- e) the enforceability of resolution tools provided for in a resolution strategy (including in third countries, if necessary).

3. The National Bank, shall assess whether variants of the resolution strategy are necessary to address scenarios or circumstances where the resolution strategy cannot be feasibly and credibly implemented.

4. The National Bank, shall consider the extent to which any variant strategy is likely to achieve the resolution objectives and to ensure the continuity of critical functions. Measures to remove impediments to variants of the resolution strategy shall only be implemented if they do not impair the feasible and credible implementation of the preferred resolution strategy.

Article 7. Assessment of feasibility of a resolution strategy

1. The National Bank shall assess whether it is possible to feasibly implement the selected resolution strategy in an appropriate time frame, for the purpose of which it shall identify material impediments to the implementation of the resolution strategy, including the impediments to the short-term stabilization of the financial position of the bank and impediments to a business reorganization.

2. Impediments shall be classified in at least the following categories:

- a) structure and operations of the bank, in accordance with the article 8 of this rule;
- b) financial resources, in accordance with the article 9 of this rule;

- c) availability of the information related to the bank, in accordance with the article 10 of this rule;
- d) cross-border issues, in accordance with the article 11 of this rule;
- e) other impediments to the implementation of resolution strategy, in accordance with the article 12 of this rule.

Article 8. Structure and operations of the bank

National Bank shall consider the following issues in assessing whether there are impediments to the resolution strategy related to the structure and operations of the bank:

- a) which of the Bank's subsidiaries or members of the banking group have an impact on maintaining the continuity of the critical functions of the bank;
- b) appropriateness of the organizational structure of the bank with its critical functions;
- c) the measures taken by the bank in order to ensure the human resources, infrastructure, financing, regulatory capital and liquidity, necessary for the continuity of critical functions;
- d) possibility of fulfillment of contracts related to essential services by the bank in the process of resolution, if they continue to be valid;
- e) the adequacy of the corporate governance structure of the bank to ensure that service-level agreements are managed and comply with the internal policy and procedures;
- f) service-level agreements and the processes required to transfer the services covered by these agreements to third parties when critical functions of the bank are separated;
- g) existence of appropriate plan and/or measures, using of which access to payment systems will be maintained in resolution regime;
- h) the impact of the legal structure of the banking group on the application of the resolution strategy as a result of the number of entities, the complexity of the group structure or the difficulty in aligning critical functions to group entities;
- i) dependencies of critical functions and significant banking operations on the financial market infrastructure, information technology, treasury operations, financial functions and employees;
- j) whether corporate governance and risk management frameworks are consistent with any planned changes to the structure of the bank based on the resolution, if any;
- k) whether the legal and franchise structure of the bank is consistent with any planned changes to the business structure of the bank, if any;

Article 9. Financial resources

National Bank shall consider at least the following issues in assessing whether there are impediments to the implementation of the resolution strategy related to financial resources:

- a) the amount and type of eligible liabilities;
- b) the need to identify and quantify the amount of any liabilities and regulatory capital instruments which are likely under the preferred resolution strategy not to contributing to loss absorption or recapitalization, considering at a minimum the following factors:
 - b.a) maturity of claims arising from the liabilities under this subparagraph;
 - b.b) subordination ranking of claims arising from the liabilities under this subparagraph;
 - b.c) the types of holders of the instruments related to the liabilities under this subparagraph and the instrument's transferability;
 - b.d) legal impediments to loss absorbency such as lack of recognition of resolution tools under foreign law or existence of set-off rights;
 - b.e) the factors creating risk that the liabilities and/or regulatory capital instruments cannot be used for loss absorption or recapitalization;
 - b.f) issuing legal entities and the amount of eligible liabilities which would ensure the loss absorption or recapitalization;
- c) the amount of funding needed during the resolution, form and the availability of sources of funding. If there is a banking group, the significant circumstances hindering the transfer of capital within the group are taken into account.

Article 10. Availability of the information related to the bank

National Bank shall consider at least the following issues in assessing whether there are impediments to the implementation of resolution strategy in terms of the availability of the information related to the bank:

- a) the functionality of the management information systems in ensuring that the accurate and complete information regarding the critical functions of the bank will be provided to the National Bank in a timely manner, in order to ensure rapid decision making, including in the rapidly changing circumstances;

b) the test-results of the management information systems under stress scenarios as defined by the National Bank;

c) the extent to which the bank can ensure the continuity and availability of its management information systems during the resolution, both for the bank and for the new institution in the case that the critical functions are separated from the rest of the functions;

d) measures taken by the bank to provide the Deposit Insurance Agency with the information necessary to fulfill its powers under the Law of Georgia on the Deposit Insurance System;

e) ability of the bank to provide the National Bank in a timely manner with detailed information on the assets that may be used as collateral to obtain a loan specified in Article 31 of the Organic Law of Georgia on the National Bank of Georgia;

f) ability of the Bank to timely provide the National Bank with the information necessary to carry out the valuation of assets and liabilities required for the recapitalization of the bank through write-down of regulatory capital instruments and/or liabilities or their conversion into shares, as defined in Article 37³ of the Law of Georgia on the Activities of Commercial Banks.

Article 11. Cross-border issues

National Bank shall consider at least the following issues in assessing whether there are impediments to the implementation of resolution strategy related to cross-border issues:

a) whether third-country authorities have the resolution tools provided for in the resolution strategy, and the scope for coordinated action between National Bank and third-country authorities in order to support the implementation of resolution strategy, existence of adequate processes for coordination and communication and the effectiveness of measures to be taken by local and foreign administrative authorities to implement the resolution strategy;

b) whether the legislation of third country overrides the right to terminate the contract/contracts early, the basis of which is only the introduction of the resolution regime against the affiliated company of the bank or its insolvency.

Article 12. Other impediments to the implementation of resolution strategy

National Bank considers following issues in order to identify the other legal impediments to the implementation of the resolution strategy, along with other relevant circumstances:

a) possibility and time frame for relevant approvals by other administrative authorities necessary to deliver the resolution strategy;

b) whether contractual obligations prohibit any use of assets and/or liabilities envisaged in the resolution strategy, for resolution purposes.

Article 13. Assessment of credibility of a resolution strategy

In order to assess the credibility of the resolution strategy, the National Bank, in addition to the issues provided for in the first paragraph of Article 5 of this Rule, shall assess the following issues:

a) the appropriateness of the resolution tools with the objectives of the resolution, taking into account the business model, organizational and group structure of the bank;

b) the credibility of using resolution tools given possible impacts on creditors, counterparties, customers of key services and employees;

c) the extent to which the impact of the Banks's resolution on the financial system and on financial market's confidence and real economy can be adequately and fully evaluated and the degree of direct or indirect adverse impact on them;

d) the extent to which contagion of adverse impact to other institutions or to the financial sector through the application of the resolution strategy could be avoided;

e) degree of possible adverse impact of the resolution on payment systems.

Article 14. Transitional provisions

The National Bank shall develop the resolution plans for systemically important commercial banks no later than December 31, 2021. For banks that are not systemically important, the National Bank shall develop resolution plans as needed.