

The Rule on appointing and activities of the Special Manager of the Commercial Bank

Decree №243/04; December 29, 2020

Article 1. General provisions

1. The Rule on appointing and activities of the special manager of the commercial bank (hereinafter: the Rule) determines the procedures of appointing, dismissing, accountability and rule of activities of the special manager of the commercial bank as defined in Article 37 of the Law of Georgia on “Commercial Bank Activities”, of the authority of the National Bank of Georgia (hereinafter NBG) of implementing resolution tool.
2. The purpose of this Rule is to promote the effective exercise of resolution authority through a special manager, the stable functioning of banks and the banking sector, and to protect the interests of the bank's depositors or other creditors.
3. Only NBG has the authority to make a decision on the appointment and dismissal of a special manager in the bank.

Article 2. Appointing of a special manager

1. By the decision of the NBG, in order to exercise resolution powers defined in the legislation, one or more special managers can be appointed at any stage of the resolution process. The special manager can be an employee of the NBG or any other person.
2. A special manager shall meet the fit and proper criteria defined in accordance with the legislation and shall be free from any conflict of interest.
3. A special manager shall be appointed according to the procedures set by article 3 of this Rule. Upon request of NBG, a candidate of the special manager shall provide information/documentation proving that he/she meets the fit and proper criteria set by article 3 of this Rule.
4. In cases provided in the 1-st paragraph of this article, the NBG issues a legal act on appointing a special manager. This act shall enter into force upon its publication.
5. The decision on appointing of a special manager shall contain the following elements:
 - a) Identification data of a special manager;
 - b) Grounds and period of appointing of a special manager;
 - c) Powers and duties of a special manager.
6. A special manager is appointed for no longer than one year. This time may be extended by the decision of the NBG if the grounds for appointing a special manager continue to be met. In case of extension, NBG shall publish its decision according to paragraph 4 of this article.

Article 3. Fit and proper criteria for a special manager

1. A special manager 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 special administrator or company held by him/her;

f.b) personal or professional relations with the owners of a significant share of the Bank;

f.c) personal or professional relations with the staff of the bank and / or enterprises belonging to the banking group;

f.d) Positions held in a bank or other financial institution during the last 5 years;

f.e) personal or professional relations with external stakeholders related to the bank, such as provider, consulting and other service providers;

f.f) ownership of a company or membership of a governing body with which the bank/company belonging to the banking group has a competitive interest;

f.g) 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.h) 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) He/she must not be an administrator of another bank, on the basis of an employment contract, must not carry out any activity in another bank.
2. Beyond this article, other legislative requirements and restrictions of the bank's administrator are mandatory to be fully met by the special administrator.

Article 4. Powers and Duties of the Special Manager

1. The Special Manager shall act within the framework of the rights and obligations established by this Article, in accordance with the instructions issued by the National Bank.
2. Within the scope of authority defined by the National Bank, the special manager may exercise full control over the bank and may be transferred to the full authority of all bodies of the bank.
3. The Special Manager, within his/her capacity, shall make every effort to protect the interests of the Bank and to conduct his/her activities in compliance with the principles of the Resolution provided for in Article 32 of the Law of Georgia "on Commercial Banks".
4. From the moment of appointment of a special manager, any transaction carried out by the bank shall be void, unless it has been previously agreed with the special manager, except in cases provided by the Law of Georgia "on Payment System and Payment Services".
5. The special manager of the bank is authorized to:
 - a. In addition to the action taken on the basis of the Law of Georgia on "Financial Collateral, Netting and Derivatives, to file a lawsuit in court to take action or transaction made by the bank administrator within 1 year before the date of appointment of the special manager and request its annulment. The related person received property benefits at the expense of this bank or enjoyed any advantage, privilege or privilege that caused damage to the bank or its creditors;
 - b. provide information to any structural unit of the Bank on the terms and conditions of its appointment, as well as provide information to employees on the principles of future activities, decision-making rules and procedures;
 - c. to transfer any tangible and intangible property, inventory and archived documents of the Bank within 30 days after the appointment in order to properly carry out the activities, including the fulfillment of the obligations provided for in Article 5 of this Rule;
 - d. request from any employee of the Bank, including senior managers, all information about the Bank's activities, including written materials and documentation archived through the Bank's internal procedures;
 - e. in accordance with the procedures established by the Georgian legislation, dismiss any employee of the Bank who, without proper justification, refuses to provide the information required for the performance of the special manager or within the limits established by this Rule and the instructions of the National Bank, shall not cooperate with the special manager;
 - f. change the rules of access to the bank premises, or separate parts of them, including codes and passwords, where the valuables are placed, important documents, information, outfits, the unscrupulous use of which will endanger the interests of the bank;
 - g. change the authorities of its subordinates, including those authorized to represent the bank, and redistribute liabilities in the best interests of the bank;

- h. in agreement with the National Bank, to carry out other activities in order to properly conduct the resolution process, taking into account the interests of the bank.
6. All expenses incurred by the Special Manager in carrying out his/her activities, including the salary of the Special Manager, except for the salary of an employee of the National Bank, if an employee of the National Bank is appointed as a special manager, shall be reimbursed by the Bank.

Article 5. Accountability of a Special Manager

1. The special manager shall be accountable only to NBG and its activities shall be supervised by NBG.
2. The special manager is obliged to submit a report on his/her activities to NBG in the form and within the timeframe requested by the National Bank upon completion of its activities and/or upon request.
3. The report submitted by the special manager to NBG shall include, at a minimum, information on the financial condition of the Bank and its resolution powers.

Article 6. Dismissal of a Special Manager

1. NBG is entitled to dismiss a special manager at any time, on any grounds, as well as to change the powers and obligations of a special manager in a decision made in accordance with Article 2 of this Rule or to appoint another person as a special manager in accordance with the procedures established by this rule.
2. NBG shall issue an individual administrative-legal act on the dismissal of a special manager, which shall enter into force on the day of its publication on the website of NBG.
3. If the banking license of the bank in the mode of resolution is revoked and the process of its liquidation begins, by the decision of NBG, a special manager may be appointed as the liquidator of the commercial bank.