

**Order N153/04**  
**Of President of National Bank of Georgia**  
**October 31, 2022**  
**Tbilisi**

**On Approval of the Regulation on the Acquisition of a Significant Share of a Commercial Bank**

Based on article 15, paragraph 1, sub-paragraph "g" of the Organic Law of Georgia "On National Bank of Georgia", article 8<sup>1</sup> of the Law of Georgia "On the Activities of Commercial Banks" and article 25, paragraph 1, sub-paragraph "b" of the Organic Law of Georgia "On Normative Acts", I order:

**Article 1**

The regulation on the acquisition of a significant share of the commercial bank be approved with the attached edition.

**Article 2**

The ordinance N130/04 of the President of National Bank of Georgia dated as of June 29, 2020 "On Approval of the Rule on Simplified Procedures for Acquisition of a Significant Share of a Commercial Bank in Resolution Mode" be declared invalid.

**Article 3**

The existing owners of a significant share of the commercial bank should meet the requirements defined by the regulations approved by this order and submit information/documentation confirming compliance with the updated requirements to the National Bank of Georgia until August 1, 2023.

**Article 4**

The administrative proceedings related to the acquisition of a significant share of the commercial bank in the National Bank of Georgia existing before this order enters into force shall be completed in accordance with the procedure existing before the entry into force of this order. In the case provided for in this article, the owners of a significant share of the commercial bank must meet the requirements defined by the regulations approved under this order and submit information/documentation confirming compliance with the updated requirements to the National Bank of Georgia until August 1, 2023.

## **Article 5**

This order shall take effect immediately upon publication.

President of National Bank

Koba Gvenetadze

## **Regulation on the Acquisition of a Significant Share of a Commercial Bank**

### **Article 1**

1. The regulation on the acquisition of a significant share of a commercial bank (hereinafter - the "Regulation") determines the content of the suitability criteria for the owner/acquirer (hereinafter - the applicant) of a significant share of a commercial bank operating in Georgia and a branch of a foreign bank (hereinafter - the bank), additional issues to be considered when evaluating the purchase of a significant share, an information to be submitted to the National Bank of Georgia (hereinafter - the National Bank) to assess the applicant's suitability, the rule of evaluation and the simplified procedure for the acquisition of a significant share of the bank that is in resolution mode.

2. The purpose of this regulation is to promote the stability and security of the banking and financial system and to ensure the clarity and transparency of the process of acquisition of a significant share.

3. The acquisition of a significant share refers to the purchase of a bank share or the increase of an share already owned to the extent that the applicant's direct or indirect participation in the paid-in or authorized capital and/or voting shares of this bank exceeds 10, 20, 30 or 50 percent and/or the applicant gains significant influence or control over the bank regardless of the amount of capital and/or voting shares.

4. When determining the amount of a significant share, those voting shares of the bank, which are allowed for public trading, shall be taken into account. In addition, the share and/or shares with voting rights, which are the result of placement of financial instruments with firm commitment basis, are not taken into account, provided that they are not used to interfere in the management of the issuer and are alienated within one year of acquisition.

5. In assessing the suitability of the applicant, the National Bank is guided by the principle of proportionality, which implies the assessment of the suitability criteria considering the bank's size, internal organizational structure, risk profile and complex nature, the amount of the share, the type of acquirer (natural person, legal entity, direct/indirect owner/acquirer), the purpose of acquiring the share and according to the possible impact on the bank. In accordance with the principle of proportionality, the degree of evaluation intensity, the evaluation procedure and the content of the submitted information/documentation are determined. The

principle of proportionality does not apply to the evaluation of the applicant's credibility within the framework of the evaluation of the applicant's reputation.

6. The owner of a significant share shall meet the requirements defined by the Law of Georgia "On the Activities of Commercial Banks" and this regulation during the entire period of ownership of the share.

7. The suitability criteria and requirements defined in this regulation are based on the joint guidelines of the European Banking Authority and the European Securities and Markets Authority of December 20, 2016 "On the Prudential Assessment of the Acquisition of/Increase in a significant Share in the Financial Sector". If a specific issue is not regulated by this regulation or the definition of a certain term is not given and the issue is not additionally explained by the National Bank, the bank, in agreement with the National Bank, should be guided by the guidelines provided for in this paragraph. If the Bank and the National Bank cannot agree regarding the definition of any of the concepts defined by this regulation and/or other issues, the issue will be resolved in accordance with the opinion of the National Bank.

## **Article 2. Definition of terms**

1. For the purposes of this regulation, the terms used therein shall have the following meanings:

a) **Control test** – identification of the indirect acquirer of a significant share, by determining the person controlling the owner of the significant share (direct or indirect) and/or the person controlling the direct acquirer;

b) **Multiplication test** – identification of the indirect acquirer of a significant share by multiplying the amounts of shares at all levels in the ownership hierarchy, if the acquisition of control is not established using the control test.

2. Other terms used in this regulation have the meaning defined by the Law of Georgia "On the Activities of Commercial Banks" and the legislation of Georgia. International financial accounting standards are also used for purposes of determining control and significant influence.

## **Article 3. Group of partners (shareholders) acting in concert.**

1. Partners (shareholders) acting in concert are authorized to submit notification and relevant information/documentation to the National Bank through one person acting on their behalf.

2. If no joint notification has been submitted by the partners (shareholders) acting in concert, and the National Bank considers that there may be an implicit or explicit agreement between the partners (shareholders) provided for in article 1 subparagraph "f" of the Law of Georgia "On the Activities of Commercial Banks" on acquisition of significant share of the bank, in

order to determine the above-mentioned, the National Bank takes into account at least the following circumstances and/or the results caused by their combination:

- a) the existence of an agreement between partners (shareholders), including on issues of corporate management;
- b) membership in the bank's directorate/supervisory board and/or the authority to appoint a member of the supervisory board;
- c) the relationship between the member enterprises of one group in terms of independent use of voting rights;
- d) using the same financial source to purchase a significant share of the bank;
- e) existence of the same practice of voting by shareholders to decide various issues.

3. The circumstances specified in paragraph 2 of this article shall not be interpreted in such a way as to prevent reaching agreement between shareholders for the implementation of good corporate governance practices. The following shall not be considered as acting in concert , among others:

- a) communication and discussion between shareholders about issues to be submitted for discussion with the directorate/supervisory board;
- b) submission of joint proposals by the shareholders to the directorate/supervisory board regarding the implementation of the bank's general policy, practice and/or specific action;
- c) exercise of such rights by shareholders that are not related to the appointment of members of the directorate/supervisory board, such as:
  - c.a) adding issues to the agenda of the general meeting;
  - c.b) convening an extraordinary general meeting;
  - c.c) except of the appointment of members of the directorate/supervisory board, agreement on joint voting on other issues, such as:
    - c.c.a) amount of remuneration of directors;
    - c.c.b) acquisition and/or alienation of assets;
    - c.c.c) reduction, increase of capital and/or redemption of shares;
    - c.c.d) distribution of dividends;
    - c.c.e) issues related to the appointment, dismissal and/or remuneration of auditors;
    - c.c.f) issues related to financial reporting;

c.c.g) policies related to environmental protection, and/or any other issue related to the bank's social responsibility and/or compliance with ethics and conduct standards.

4. The existence of an agreement on issues different from those provided for in paragraph 3 of this article, including, appointment of administrators, does not in itself imply that partners (shareholders) are acting in concert. In the event of an agreement on the appointment of an administrator, to determine that partners (shareholders) are acting in concert for the purpose of acquiring shares, the interdependence between the partners (shareholders) and the persons nominated for appointment, the existence of the practice of jointly appointing members of the governing bodies by the partners (shareholders) in the past, and the change in the distribution of power in this governing body as a result of the appointment shall be taken into account.

5. The rule for determining if the partners (shareholders) are acting in concert specified in this article is used solely for the purposes of assessing the acquisition of a significant share.

#### Article 4. Assessment of the presence of significant influence

1. Significant influence means the right to participate in decision-making related to the bank's financial and operational policy, which is not control or joint control of this policy. Holding 20 percent or more of the bank's capital and/or voting shares, directly or indirectly, is considered significant influence. However, significant influence may exist regardless of the amount of the stake, given the following circumstances:

- a) existence of material and regular transactions with the bank;
- b) exercising additional rights based on the existing agreement with the bank or the founding document of the bank;
- c) Membership of the bank's directorate/supervisory board, having a representative or the authority to appoint representative, as well as the interchange of persons in the position of administrator between the applicant and the bank;
- d) provision of essential technical information;
- e) ownership structure of the bank and/or its parent enterprise, the number of shareholders, among whom shares and voting rights are distributed;
- f) existence of such relationship and/or agreements with the shareholders of the bank, which will give the person the opportunity to have a significant influence on the bank.

2. In addition to the circumstances provided for in the first paragraph of this article, the National Bank may take into consideration other facts and circumstances that it deems appropriate for assessing the existence of significant influence.

## **Article 5. Indirect acquisition of a significant share**

1. The following persons are considered indirect acquirers of a significant share of the bank, if as a result of the respective transaction, their indirect participation in the bank's capital and/or voting shares reaches the amount of a significant share:

- a) a person who intends to acquire/increase direct or indirect participation in the existing owner of a significant share of the bank;
- b) direct or indirect owner of the share of the direct acquirer of a significant share of the bank.

2. The National Bank uses the control and multiplication tests to determine the indirect acquirer of a significant share. At the first stage, a control test is used. If, as a result of the application of the control test, the acquisition of control over the bank was not established, the multiplication test shall be used.

3. According to the control test, an indirect acquirer of a significant share of the bank is considered a natural or legal person is, who:

- a) directly or indirectly acquires control over the direct or indirect owner of a significant share of the bank;
- b) directly or indirectly has control over the direct acquirer of a significant share of the bank.

4. The amount of share of each indirect acquirer identified in the ownership structure according to the control test is equal to the amount of the share of the relevant owner/direct acquirer of a significant share of the bank.

5. In the case provided by paragraph 3, subparagraph "a" of this article, the obligation to submit notification and relevant information/documentation to the National Bank rests with the indirect acquirer of a significant share, while the existing direct or indirect owner of a significant share, as well as the bank, has only the obligation to notify. In the case provided for in paragraph 3, subparagraph "b" of this article, the notification and relevant information/documentation shall be submitted by both the indirect owner and the direct acquirer. The obligation to submit the notification also rests with the bank.

6. In order to determine the indirect acquirer of a significant share according to the multiplication test, the multiplication of shares starts from the direct owner of the bank's share, whose share is multiplied by the amount of the share of the owner of the share at the next level of the hierarchy in the ownership structure, (the result of the multiplication is the amount of the indirect share of the last person in the bank), until the amount of the share calculated in such way is equal to the amount of the significant share.

7. According to the multiplication test, all those persons are considered to be indirect acquirers of a significant share of the bank:

a) the amount of whose share, as a result of the application of the multiplication test, constituted the amount of a significant share;

(b) who directly or indirectly has control over a person identified under subparagraph (a) of this paragraph.

8. If the indirect acquirer of a significant share identified as a result of control and/or multiplication tests is an entity subject to the supervision of the National Bank and/or the National Bank has current and updated information about it, at the decision of the National Bank, only a full assessment of the suitability of the beneficial owner and the direct acquirer may be considered sufficient. This does not exempt the intermediate acquirers in the ownership structure from the obligation to submit the notification, unless the National Bank considers it permissible for the beneficial owner to submit the notification and information/documentation on behalf of the intermediate acquirers in the lower tiers of the structure. The beneficial owner applies to the National Bank for a decision on the above. The National Bank makes a decision within 5 working days from the application and informs the applicant in writing.

#### **Article 6. Decision on the acquisition of a significant share**

1. A decision on the acquisition of a significant share is considered to be made by a person when the person knew or, based on the information available to him, should have known about the acquisition of/increase in a significant share and had the opportunity to influence, oppose and/or avoid the said transaction, which was not carried out by them.

2. In case of acquisition of a significant share without prior intention of the applicant, relevant information/documentation should be submitted to the National Bank immediately after the applicant becomes aware of the said fact. A person shall not exercise the voting rights and other powers associated with the ownership of a significant share until a decision is made by the National Bank on the suitability of the holder of a significant share. In the case of acquisition of a significant share without the prior intention of the applicant, the obligation to submit information/documentation exists regardless of whether the acquirer plans to dispose of such amount of share to bring the share in own possession back to the threshold amount.

3. Acquisition of a significant share without prior intention implies to the following cases:

a) Redemption of shares owned by shareholders by the bank, which directly results in a change in the amount of shares;

b) allocation of share on the basis of court decision;

c) acquisition of a share through inheritance;

d) another case, when the acquirer is not and/or could not have known the fact of the acquisition of the share.

## **Article 7. Suitability criteria**

1. The applicant should meet the following criteria:

- a) reputation, in accordance with Article 8 of this regulation;
- b) compliance of the persons selected by the applicant as administrators of the bank (if such authority exists) with the requirements determined by the Law of Georgia "On the Activities of Commercial Banks" and "On Approving the Regulations on the Suitability Criteria of Administrators of Commercial Banks" approved by the order of the President of the National Bank of Georgia;
- c) financial soundness of the applicant, in accordance with Article 9 of this regulation;
- d) compliance of the bank with prudential supervisory requirements after the acquisition of the share by the applicant, in accordance with Article 10 of this regulation;
- e) Absence of money laundering and terrorist financing risks associated with the applicant/transaction, in accordance with Article 11 of this regulation.

2. The National Bank, in accordance with the principle of proportionality, uses a conservative approach when assessing complex transactions for the acquisition of a significant share, which implies to the following cases:

- a) applicant's and/or bank's complex group structure;
- b) transactions involving trusts;
- c) a significant change in the bank's business plan and/or strategy;
- d) use of borrowed funds in full or in a significant amount to finance the transaction of acquisition of a significant share.

## **Article 8. Reputation of the applicant**

1. The applicant must have a good reputation, which includes their integrity and the presence of appropriate competence. A person is considered as having good reputation unless there are clear, objective circumstances to the contrary. In the case of the applicant legal entity, the assessment includes both the assessment of the reputation of the applicant legal entity within the framework of the requirements relevant to the legal entity, as well as the assessment of the persons responsible for its management.



2. A person is considered inconsistent with the integrity requirement if:

- a) participated in an transaction that caused significant damage to the financial institution and/or violated the rights of depositors and/or other creditors of the financial institution, and/or caused the financial institution's insolvency or bankruptcy;
- b) misused his/her rights while performing his/her duties in the financial institution;
- c) did not fulfill and/or does not fulfill one or more financial obligations;
- d) is declared insolvent;
- e) has been convicted of a grave or particularly grave crime, financing of terrorism and/or legalization of illegal income or other economic crime;
- f) The court recognized him/her as the recipient of support, if the otherwise is not set forth under the same court decision.

3. The assessment of a person's credibility, taking into account the presumption of innocence and other fundamental rights, is also based on information received from reliable sources about at least the following circumstances and the analysis of the consequences caused by their combination:

- a) criminal (banking, financial, securities, insurance, tax, entrepreneurial and/or insolvency and consumer rights related crimes), administrative and/or relevant civil proceedings and/or investigative proceedings against the applicant, during the assessment of which the assigned responsibilities, the applicant's involvement and role, mitigating circumstances are taken into account;
- b) past and current business activities. Solvency of the organizations managed by the applicant, and/or in which applicant owns or holds a significant share and/or has/had a significant influence. Applicant's role in the organization's insolvency, as well as the ongoing investigative process, criminal, administrative and/or relevant civil proceedings against the mentioned organizations, the applicant's involvement and role;
- c) professional reputation, within the framework of which the cancellation of license/registration/membership related to trade, business and professional activities, dismissal from the workplace and relevant reasons are evaluated;
- d) transparency, openness and willingness to cooperate with relevant supervisory authorities.

4. The assessment of the applicant's competence includes their management competence and knowledge of the field related to the bank's activities – sectoral competence. Management and sectoral competence should be based on the applicant's experience in owning, operating and/or managing an enterprise/financial institution, and should have the appropriate skills, foresight and diligent attitude towards business.

5. When increasing the existing share, taking into account the principle of proportionality, a reassessment of the person should be carried out in accordance with article 16, paragraph 4 of this regulation, in the part of the changed circumstances, during which the scope of responsibility/authority related to the increase of the share is taken into account.

6. If the applicant does not aim to be actively involved in the bank's activities, and the purpose of acquiring a share is only to diversify the portfolio and/or passively receive dividends, taking into account the principle of proportionality, the importance of the requirement of professional competence is reduced. If the applicant will have a significant influence on the bank, plans to actively engage in its activities or gain control, which includes the powers of review and approval of the bank's business plan, strategy, the requirement of sectoral competence increases in accordance with the principle of proportionality, which should correspond to the complex nature of the activity to be implemented.

#### **Article 9. Financial soundness of the applicant**

1. The financial soundness of the applicant refers to its ability to finance the acquisition of a significant share and for the foreseeable future period (at least three years), to maintain its own and the bank's solid financial position, which also includes the assessment of reliability and consistency of forecasts.

2. The National Bank will not grant approval for the acquisition of a significant share if, based on the submitted information, it concludes that the applicant will face financial difficulties during the acquisition of the share and/or during the foreseeable future period (at least three years).

3. The origin of the funds used to acquire a significant share, and/or the existing financial relationship with the bank should not create a conflict of interest that would have a negative impact on the bank.

4. Determining the adequate degree of financial soundness is based on the principle of proportionality, taking into account the following factors:

- a) expected influence of the applicant on the bank;
- b) type of applicant (e.g., is the acquirer a strategic or financial investor, investment fund);
- c) change in the bank's control powers caused by the transaction.

5. In case of using borrowed funds to acquire a share, the National Bank evaluates the possibility of fulfilling the applicant's financial obligation, how the existing financial obligation affects the applicant's financial situation and compliance with the bank's prudential supervision requirements.

## **Article 10. Bank Compliance with Prudential Supervision Requirements**

1. The implementation of a significant share acquisition transaction should not prevent compliance with the bank's prudential supervision requirements.
2. When assessing the criterion stipulated in this article, the National Bank takes into account not only the volume of the share to be purchased, the reputation of the applicant, its financial soundness and the group structure, but also the declared goals of the applicant in relation to the bank, which must be declared in the business plan and/or strategy submitted by them in proportion to the share to be acquired. This should be supported by the applicant's obligations to ensure the bank's compliance with prudential supervision requirements, which may include financial support in the event of liquidity and/or solvency problems, issues related to corporate governance, the increase in the amount of shares planned for the future, development directions and goals.
3. The National Bank assesses the compliance of the bank with the requirements of prudential supervision both at the time of the transaction and for the foreseeable future period (at least three years) in accordance with the business plan and/or strategy submitted by the applicant, which includes the assessment of compliance with the requirements related to capital, liquidity, and corporate governance.
4. The acquisition of a significant share should not prevent the ability to effectively supervise the bank and the transparency of the ownership structure/group structure, including obtaining and/or exchanging information from the competent authorities of other countries. The exercise of supervisory powers should not be hindered, including taking into account the legislation of another country to whose jurisdiction natural and legal persons owning a significant share of the bank and/or the bank's sister companies are subject. Both the bank and the group as a whole must have a transparent organizational structure of corporate governance.
5. The applicant shall be able to provide financial support to the bank, provide additional capital and/or other appropriate support as needed.

## **Article 11. Assessment of money laundering and terrorist financing risks related to the applicant/transaction**

1. The National Bank refuses to give consent to the transaction of acquisition of a significant share in the presence of one of the following circumstances or in the presence of reasonable doubts about them:

a) the applicant is directly or indirectly involved or was involved in money laundering transaction and/or its attempt, terrorist activity and/or terrorist financing, grave or particularly grave or economic crime;

b) Carrying out a significant share acquisition transaction increases the risks of money laundering and/or terrorist financing.

2. The assessment provided for in the first paragraph of this article should include those persons related to the applicant who, according to the Civil Code of Georgia, are included in the first and second rows of the circle of legal heirs, as well as persons related to the applicant by business interests. as well as administrators, significant shareholders and beneficial owners of the applicant legal entity.

3. To assess the increased risk of money laundering and terrorist financing, the National Bank takes into account the information about the applicant received during the assessment process, the assessments and reports of relevant international organizations in the field of combating money laundering and terrorist financing, as well as information received from public sources, which includes, among others, the following circumstances:

a) The applicant legal entity is based, or the applicant has personal and business connections, in the high-risk jurisdiction, as defined by the order of the President of the National Bank of Georgia N 240/04 of December 18, 2019 “on the approval of the list of high-risk jurisdictions for the purposes of the Law of Georgia "On the Promotion of the Prevention of Money Laundering and Financing of Terrorism"” , and/or a jurisdiction identified by the Financial Action Task Force (FATF) as having significant deficiencies;

b) the origin of the funds used to purchase a significant share, which includes both the activity that is the source of the funds and the channels used for its transfer, in particular, the following circumstances:

b.a) use of transaction channels of financial institutions subject to the supervision of relevant competent bodies in terms of money laundering and financing of terrorism, for the transfer of funds;

b.b) the reliability of the information about the origin of the funds, including the applicant's business history and financial schemes, and adequacy with the value of the transaction of acquiring a significant share;

b.c) to confirm the origin of the funds continuously, with appropriate documentation or other information that allows the National Bank to verify their authenticity.

4. If the origin of the funds cannot be continuously confirmed by relevant documentation/information, the National Bank assesses the validity and reliability of the explanation submitted by the applicant.

5. The assessment of money laundering and terrorist financing risks is carried out to the same degree regardless of the amount of the share to be purchased.

#### **Article 12. Information/documentation to be submitted to the National Bank**

1. The applicant is obliged to submit to the National Bank the information/documentation defined by this article and articles 13-15 of this regulation before acquiring the share. The information submitted by the applicant should include:

a) identification data;

b) in the case of a natural person, information:

b.a) that he/she has not been convicted of a grave or particularly grave crime, financing of terrorism and/or legalization of illegal income or other economic crime (notice of conviction);

b.b) on citizenship and residency;

b.c) about his/her education and professional experience;

b.d) about the investigative process, criminal, relevant civil and/or administrative proceedings against him/her and the penalties imposed and/or the person's written statement that such did not take place;

b.e) regarding cancellation of license/registration/membership related to business and professional activities, dismissal from the workplace, disciplinary responsibility and relevant reasons;

b.f) on the solvency (bankruptcy/enforcement process) of the organizations that the applicant manages/managed, and/or in which he/she owns or holds a significant share and/or has/had a significant influence, and/or a written confirmation that such has not occurred (information from the credit-information bureau, from the register of debtors, if any, and/or in the form of information otherwise provided by the applicant);

b.g) about the current financial situation, existing financial assets and liabilities, including the amount of shares in commercial banks currently or in the past operating in the territory of Georgia and other business interests;

b.h) about current business activities;

b.i) about financial interests and/or family ties with the following persons:

b.i.a) any other shareholder of the bank;

b.i.b.) the third party to whom voting rights have been transferred;

b.i.c) bank administrators;

b.i.d.) the bank and the group to which it belongs;

b.j) about any other interest that may create a conflict of interest with the bank and ways to eliminate it;

b.k) identification information and conviction notices of persons related to the applicant who, according to the Civil Code of Georgia, are included in the I and II rows of the circle of legal heirs;

c) in the case of a legal entity:

c.a) information about its legal form, place of registration and location of head office and contact information;

c.b) notice on its criminal responsibility;

c.c) list of persons authorized to manage it, their identification data, date and place of birth, contact information and information about their education and professional experience;

c.d) identification data, date and place of birth, address and contact information of beneficial owners;

c.e) information about the applicant, its administrators, shareholders with a significant share and administrators of the applicant's subsidiary enterprises:

c.e.a) information about the criminal, relevant civil and/or administrative proceedings and the penalties imposed against them, including the convictions of the applicant's administrators, shareholders with a significant share and beneficial owners;

c.e.b) information about cancellation of license/registration/membership related to business and professional activities, dismissal from the workplace, disciplinary responsibility and relevant reasons (about the legal entity, its management persons and shareholders with significant influence);

c.f) information about financial interests and connections of the applicant, the group to which the applicant belongs, and the applicant's administrators' with the persons specified in subsection "b.i" of this section;

c.g) information about any interest that may create a conflict of interest with the bank and ways to eliminate it;

c.h) information on the applicant's ownership/group structure at all levels of ownership, identifying shareholders with significant influence, including existing agreements between shareholders. This should also include information about non-financial institutions that are members of the group;

c.i) in the event of a change in the structure of the group as a result of the applicant's acquisition of a significant share of the bank, information about the members of the group included in the scope of consolidated supervision and analysis of the impact the transaction will have on the smooth implementation of supervision in the future and on the provision of timely and accurate information;

c.j) information on the current financial situation, audited financial statements for the period of the last three years, including balance sheets and profit and loss statements;

c.k.) information about current business activities, as well as the amount of shares in commercial banks currently or in the past operating in the territory of Georgia and other business interests;

c.l) if the applicant is a newly established company, the forecast balance sheet and profit and loss statement for the next three years;

c.m) if the applicant has its head office outside of Georgia:

c.m.a) confirmation from the supervisory authority of the relevant country that the applicant is registered in compliance with legal requirements and has the relevant legal status;

c.m.b) confirmation from the supervisory authority of the relevant country that there are no obstacles and/or limitations in obtaining the information necessary for the implementation of effective supervision;

c.m.c.) general information about the regulatory regime that applies to the applicant;

c.n) if the applicant is an investment fund:

c.n.a) information about significant shares of financial institutions acquired by the applicant;

c.n.b) details of the applicant's investment policy, information on investment restrictions, investment monitoring and factors that will affect the applicant's exit plan;

c.n.c) information about the framework for making investment decisions and the identity of the responsible persons;

c.n.d) information about the applicant's money laundering and terrorist financing risk management procedures and relevant legal framework;

d) confirmation, that the information/documentation submitted is true and accurate.

2. In the case of the existence of a trust or its creation as a result of a transaction, the applicant shall submit to the National Bank:

a) the document on the creation of the trust and, in case of the request of the National Bank, the declaration of the trust;

- b) information about all persons who have the right to manage assets and make strategic decisions based on the document on the creation of the trust and, if necessary, their respective share in the distribution of income;
  - c) information about all the persons who are the beneficial owners or trustees according to the document on the creation of the trust and, if necessary, their respective share in the distribution of income;
  - d) at the request of the National Bank, other relevant information, including the relevant information specified in article 4 of the "Guideline for Determining the Beneficial Owner" approved by the order of the President of the National Bank of Georgia N 74/04 of June 15, 2021;
3. If the amount of the share to be acquired gives the applicant the right to appoint bank administrators, the applicant must submit information/documentation about the persons selected for the relevant positions in accordance with the Law of Georgia "On the Activities of Commercial Banks" and regulation "On Commercial Bank Administrators Suitability Criteria" or to confirm that no replacement of the existing administrators is planned for the foreseeable period.

### **Article 13. Information about the bank**

The applicant must submit the following information regarding the bank:

- a) name and identification data of the bank;
- b) the applicant's objectives regarding the acquisition of a significant share (strategic or portfolio investment);
- c) the number of shares of the bank and their nominal value that he/she owns and/or plans to acquire in the future;
- d) share in the total capital of the bank (current and after the acquisition of the share);
- e) a share in shares with voting rights, if it is different from a share in the capital (both current and after the acquisition of the share);
- f) content of future agreements with other shareholders regarding the bank;
- g) the value of the transaction for the acquisition of a significant share and the criteria used for its determination. Appropriate reasoning, if the value differs from the market value.

### **Article 14. Information about the funds used for the transaction of acquisition of a significant share**



1. The applicant must submit detailed information about the funds needed to carry out the transaction, which includes information on:

- a) the origin and availability of funds, which must be supported by appropriate documentation;
- b) means of payment and channels used for transfer;
- c) access to financial instruments and financial markets and sources of capital;
- d) financial agreements with other shareholders of the bank;
- e) terms of the respective agreement if the applicant alienated its assets for financing the acquisition of a significant share, as well as information on when and under what conditions the said assets were acquired;
- f) other information at the request of the National Bank.

2. When using borrowed funds, the applicant must submit the name of the creditor and complete information about the loan, as well as information about the income with which he/she must ensure the fulfillment of the obligation. Information about the origin of the borrowed funds, if the creditor is not an entity subject to the supervision of the National Bank, and other information related to the funds at the request of the National Bank.

#### **Article 15. Additional information to be submitted depending on the amount of share to be acquired**

1. In case of acquisition of up to 20% share, the applicant must submit a strategy document, which must include at least the following information:

- a) For what period intends the applicant to own a significant share, as well as future plans related to its increase or reduction;
- b) whether he/she plans to be actively involved in the management of the bank;
- c) information about his/her financial situation and his/her willingness to help the bank in case of need for additional funds and financial difficulties.

2. In case of acquisition of 20% to 50% share, the strategy document should include at least:

- a) the information provided for in the first paragraph of this article;
- b) plans related to changes in financial position and/or dividend distribution policy, resource allocation and strategic development;
- c) forecasts for the next three years, which should include:
  - c.a) the purpose of acquisition the share;

c.b) financial goals;

c.c) information about activities, products, possible change of target customers and possible redistribution of funds;

c.d) description of the general process of integration of the bank into the structure of the applicant group, which should include a description of the main relationships with other entities of the group, as well as the policy of internal relations.

3. In case of acquisition of more than 50% share or otherwise gaining control, the applicant must submit a business plan, which must include at least:

a) the strategic development plan, which should reflect the main goals, the ways to achieve them and the information defined by subparagraph "c" of paragraph 2 of this article;

b) forecasts of financial indicators;

c) assessment of the expected impact of the transaction on corporate governance and general organizational structure, which includes:

c.a) information about changes in the composition of the directorate/supervisory board and the composition of committees;

c.b) assessment of impact on internal control procedures and systems, money laundering and terrorist financing risk management, main functions of internal auditors and risk management;

c.c) information about changes in information security infrastructure, outsourcing policy, systems security, continuity plan and audit systems;

d) any other relevant information related to the change in corporate management and general organizational structure as a result of the transaction, including the change in voting rights.

#### **Article 16. The procedure for submitting information and cases of simplifying to be submitted information and assessment procedure**

1. The documents stipulated by this regulation must be submitted in the form of originals or their notarized copies. Documents issued in a foreign country must also be confirmed with apostille and/or legalized. In addition, a duly certified translation of the mentioned documentation into Georgian must be submitted.

2. A certificate of conviction/criminal liability must be submitted from the administrative authorities of all countries resident of which countries the person has been for the past 10 years. The time elapsed from the issuance of notices of conviction and criminal responsibility of a legal entity on the territory of Georgia should not exceed 15 calendar days, and in the case of a foreign country - 60 calendar days or the validity period specified in this document, if any.

3. In the case of a non-resident legal entity, if the legislation of the relevant country does not provide for the issuance of a notice of criminal liability, an official document issued by an authorized agency confirming the above must be submitted to the National Bank.

4. If the applicant's suitability has been assessed by the National Bank within the last two years and the applicant intends to purchase an additional share, his suitability will be checked by the National Bank only in the part of requirements related to the changed circumstances and the increase of the share amount. The applicant is obliged to provide additional information/documentation related to the amount of the share and information/documentation related to the changed circumstances during the mentioned period, and in the absence of such, a proof that the change did not take place.

#### **Article 17. Acquisition of a significant share of a bank in resolution mode in a simplified manner**

1. The purpose of simplifying the procedure for acquiring a significant share of a commercial bank in resolution mode is to facilitate the rapid conduct and smooth running of the resolution mode.

2. When using the resolution tools provided for in articles 37<sup>7</sup> and 37<sup>9</sup> of the Law of Georgia "On the Activities of Commercial Banks", if as a result of the sale of the bank's shares, assets and/or liabilities or recapitalization through the issuance of new shares and their sale, the acquirer's (including the beneficiary) direct/indirect participation in the bank exceeds 10, 20, 30 or 50 percent and/or he/she obtains significant influence or control over the bank, regardless of the amount of share in the capital and/or voting shares; and , moreover, if in accordance of the article 37<sup>10</sup> of the same law, due to write-off or conversion of the bank's liabilities, the direct/indirect participation of a person or a group of partners (shareholders) acting in concert, in the bank's capital will exceed 10, 20, 30 or 50 percent, and/or he/she will gain significant influence or control over the bank, regardless of the share in capital and/or voting shares, the National Bank will consider the notification on the acquisition of a significant share of the said bank in accordance with the simplified procedure defined in this article, so as not to hinder the resolution regime. Simplification of the procedure for the purposes of this article means shortening the term of assessment of the acquirer's suitability and simplifying the requirements regarding the information/documentation to be submitted before the final assessment.

3. In the cases provided for in paragraph 2 of this article, the National Bank assesses the applicant's integrity, financial soundness and the origin of the funds needed for the acquisition of a significant share no later than within 10 working days from the submission of information/documentation, for which the following information must be submitted to the National Bank:

a) identification data of the applicant;

b) identification data of the beneficial owner/owners and other natural and legal persons included in the ownership structure of the applicant, whose share amount will exceed 10, 20, 30 or 50 percent in the event of the transaction and/or gain significant influence and/or control over the bank, regardless of the share in capital or / and voting shares, or confirmation that according to the information available to him/her, there will be no such persons as a result of this transaction;

c) information that the applicant and the persons specified in subparagraph "b" of this paragraph have not been convicted of a grave or particularly grave crime, financing of terrorism and/or legalization of illegal income or other economic crime;

d) information about the origin and availability of the money needed for the acquisition of a significant share;

e) information about the current financial situation, existing financial assets and liabilities;

f) confirmation that the presented information is true and accurate;

g) other additional information, upon request of the National Bank.

4. The National Bank is authorized, based on the initial assessment of the information specified in paragraph 3 of this article, to issue a conditional approval for the acquisition of a significant share, which may be accompanied by the restriction of the use of voting rights related to the shares until the submission of the complete information/documentation required by the National Bank for the final assessment and completion of it; and/or the decision that the voting rights will be exercised by the National Bank itself.

5. The applicant may submit the information/documentation specified in paragraph 3 of this article in the form of uncertified copies/translations (both in physical and electronic form). If the documentation submitted by the applicant does not meet the requirements set forth in this article, the National Bank shall give a time the applicant in order to eliminate the deficiency no more than 10 working days, during which the time limit provided for in paragraph 3 of this article shall be suspended. Exceeding the deadline set for the elimination of the deficiency is the basis for refusal of acquisition of the share. In case it is not possible to provide the information specified in paragraph 3 of this article, and for the purposes of the resolution regime, it is necessary to use the appropriate resolution instrument immediately, consent to the acquisition of shares is given in accordance with paragraph 7 of this article.

6. The acquirer of a significant share of the bank is obliged to submit the complete information/documentation defined by this regulation and additional information requested by the National Bank in the form of originals or notarized/ certified with apostille and/or legalized copies (in physical and/or electronic form) immediately after the purchase of the share.

7. If it is necessary to use the appropriate resolution tool immediately for the rapid conduct of the resolution regime, and if it is not possible to submit the information/documentation specified in paragraph 3 of this article within the time limit specified hereunder, the National Bank is authorized to use the relevant resolution tools without assessing the transaction of the acquisition of a significant share and until carrying out the assessment to restrict the use of voting rights related to the shares and/or make a decision that the voting rights will be used by the National Bank itself. After the acquisition of the share, , an assessment of the suitability of the acquirer should be carried out, immediately, as soon as possible, according to the rules and terms defined by the Law of Georgia "On the Activities of Commercial Banks" and this regulation, for which the relevant information/documentation defined by this regulation and requested by the National Bank should be submitted to the National Bank. Based on the results of the assessment, the National Bank is authorized to request the acquirer to alienate the shares if the acquirer cannot meet the suitability criteria established by the Georgian legislation, and in case of non-fulfillment of the said requirement, to apply appropriate supervisory measures and/or sanction (monetary fine).