

Order N198/04
Of the President of the National Bank of Georgia
November 11, 2020
Tbilisi

On Approving the Liquidation Rule of the Investment Fund

According to the Article 15, paragraph first subparagraph “g”, Article 48 paragraph 3, Article 52⁴ paragraph “f” of the Organic Law of Georgia "On the National Bank of Georgia" and Article 72, paragraph 8 of the Law of Georgia "On Investment Funds", I order:

Article 1

To approve the rule on liquidation of the investment fund.

Article 2

This order shall enter into force immediately upon publication.

The President of National Bank

Koba Gvenetadze

Liquidation Rule for the Investment Fund

Article 1. General provisions

1. This rule, except for the cases provided for in paragraph 2 of this article, is applied:
 - a) upon cancellation of authorization or registration for an investment fund (hereinafter - the Investment Fund) authorized or registered by the National Bank of Georgia (hereinafter - the National Bank) based on the Law of Georgia "On Investment Funds" (hereinafter - the Law);
 - b) upon expiry of the period of activity of the sub-fund of the investment fund or upon the termination of the activity of the sub-fund in any other way in accordance with the regulatory legislation and the founding document of the investment fund.
2. This rule does not apply:
 - a) when transforming an investment fund on the basis of paragraph 5 of Article 14 of the Law;
 - b) when merging the investment fund or its sub-fund.
3. Liquidation is a process, the purpose of which is to sell the assets/property of the investment fund/sub-fund and to satisfy the demands of the creditors of the investment fund/sub-fund, as well as the unit owners, in the order defined by Article 76 of the Law. The liquidation process is monitored by the National Bank.
4. The liquidation of each sub-fund of the investment fund is carried out independently from other sub-funds. The initiation of liquidation of a sub-fund of an investment fund is not the basis for the initiation of liquidation of another sub-fund or investment fund.
5. The decision of the National Bank on the cancellation of the authorization or registration of the investment fund, the initiation of the process of liquidation of the investment fund or sub-fund, and the appointment and dismissal of the liquidator is formed by an individual administrative-legal act, which is published on the website of the National Bank and in the "Legislative Herald of Georgia".
6. The liquidation of the investment fund/sub-fund is carried out by the liquidator specified in (hereinafter – the Liquidator) in accordance with Article 2, paragraphs 1, 3 and 4, who is

appointed and dismissed by the individual administrative-legal act of the National Bank. The liquidator shall meet suitability requirements of the 1, 3 and 4 paragraphs of Article 5 of the "Rules for Licensing, Registration, Recognition and Activity Regulation of Asset Management Company" approved by Order N167/04 of the President of the National Bank. A liquidator is not allowed to be a liquidator if she/he is related to the investment fund or its assets management company defined by the Law of Georgia "On the Securities Market" (hereinafter - a related person), except for the case provided for in the first paragraph of Article 2 of this rule.

7. The individual administrative-legal act issued by the National Bank on the cancellation of the authorization or registration of the investment company and the start of the liquidation process, as well as the appointment-dismissal of the liquidator of the investment company or its sub-fund shall be submitted for registration by the National Bank on the same day to the legal entity of public law of the Ministry of Justice of Georgia - the National Agency of Public Registry, moreover, it is reflected in the registry defined by Article 18 of the Law. The individual administrative-legal act issued by the National Bank on the cancellation of the authorization or registration of the joint fund, the initiation of the liquidation process of the joint fund or its sub-fund, and the appointment and dismissal of the liquidator shall be immediately reflected by the National Bank in the register defined by Article 18 of the Law.

8. The liquidation of an investment fund/sub-fund participating in a mutual offsetting agreement or a financial pledge under the Law of Georgia "On Financial Collateral arrangements, nettig and and Derivatives" is carried out taking into account the special provisions of the Law of Georgia "On Financial Collateral arrangements, nettig and Derivatives.

Article 2. Appointment of liquidator

1. Upon canceling the authorization or registration of an investment fund based on subparagraphs "a" or "b" of Article 80 of the Law, the National Bank appoints the asset management company of the investment fund (if any) as the liquidator, and for the investment company that does not have an asset management company - the candidate nominated by the investment company, to whom the investment company fully transfers the managerial and representative authority. At the beginning of the liquidation process of the sub-fund of the investment fund on the basis of one of the grounds provided for in subparagraphs "a" or "b" of Article 80 of the Law, the National Bank appoints the asset management company of the investment fund (if any) as the liquidator, and for the sub-fund of the investment company that does not have an asset manager company – the candidate nominated by the investment company, to whom the investment company transfers the full authority of management and representation of the sub-fund.

2. The first paragraph of this article shall not be applied if the investment fund or its asset management company does not submit the liquidation plan to the National Bank in the prescribed manner in the case provided for in Article 80 subparagraph "a" or "b" of the law or the National Bank refuses to approve it.

3. In the case provided for in paragraph 2 of this article and upon cancellation of the authorization or registration of the investment fund on the basis of subsections "c"-"k" of article 80 of the law or when starting the liquidation process of the sub-fund on one of the grounds provided for in the same subparagraphs, a person selected by the National Bank is appointed as the liquidator. Upon entry into force of the individual administrative-legal act of the National Bank on the appointment of the liquidator of the investment fund, all bodies of the investment fund (including the meeting of unit owners) and the asset management company (if any) shall cease to have authority and be transferred to the liquidator. Upon the entry into force of the individual administrative-legal act of the National Bank on the appointment of the liquidator of the sub-fund, all the authorities of the investment fund (including the meeting of unit owners)

and the asset management company (if any) shall cease to have all powers regarding the sub-fund and it shall be transferred to the liquidator.

4. If during the liquidation process, the requirements of the legislation of Georgia and/or the terms of the liquidation plan approved by the National Bank are violated, the National Bank is authorized to issue an individual administrative-legal act on the termination of the authority of the liquidator specified in the first paragraph of this article and the appointment of a new liquidator. Upon entry into force of the individual administrative-legal act of the National Bank on the appointment of the liquidator of the investment fund, all bodies of the investment fund (including the meeting of unit owners and the existing liquidator) shall cease to have authority and it will be transferred to the new liquidator. Upon the entry into force of the individual administrative-legal act of the National Bank on the appointment of the liquidator of the sub-fund, all authorities of the investment fund (including the meeting of unit owners and the existing liquidator) shall cease to have all powers regarding the sub-fund and it will be transferred to the new liquidator.

5. In the cases provided by paragraphs 2-4 of this article, an employee of the National Bank may be appointed as a liquidator, and if the liquidator candidate is not an employee of the National Bank, an employment contract is signed between the National Bank and the liquidator candidate, which, among other things, determines the liquidator's remuneration. The compensation of the liquidator will be covered according to the procedure established by Article 3, paragraph 4 of this rule.

Article 3. Characteristics of the liquidation process

1. The liquidator represents the investment fund/sub-fund in the process of liquidation in relations with third parties. The liquidator enters into transactions and conducts activities on behalf of the investment fund/sub-fund only in accordance with this rule and the applicable legislation in order to complete the liquidation of the investment fund/sub-fund.

2. The liquidator is obliged to transfer the funds available in the current accounts of cash funds belonging to the investment fund/sub-fund to the liquidation account opened in the name of the investment fund/sub-fund in one of the commercial banks licensed on the basis of the law "On the activities of commercial banks" of Georgia, through which settlement will be made.

3. Regardless of the start of the liquidation of the authorized investment fund or its sub-fund, the specialized depositary is obliged, taking into account the characteristics of the liquidation process, to continue performing its functions, in accordance with the first paragraph of Article 37 of the Law, until the assets belonging to the investment fund/sub-fund in its possession are fully distributed/sold by the liquidator. From the beginning of the liquidation to its completion, the expenses of the services payable to the specialized depositary shall be covered in accordance with the procedure established by paragraph 4 of this article.

4. The costs related to the liquidation process will be reimbursed from the liquidation account of the investment fund/sub-fund and will first be satisfied in accordance with Article 76, paragraph 2, sub paragraph "a" of the Law.

5. If the liquidation process has been started for an investment fund that has branches and/or subsidiary enterprises abroad, the National Bank sends a notification to the supervisory authorities of the country where the branch and/or subsidiary enterprise is located.

Article 4. Liquidator's rights

1. The liquidator, in order to carry out the liquidation process of the investment fund/sub-fund in a timely and correct manner, is entitled to:

- a) carry out cases related to the liquidation of the investment fund, to conclude court and arbitration cases or to settle disputes;
- b) sign relevant agreements with various persons and/or relevant services to ensure registration/storage and archiving of investment fund documentation in the prescribed manner;
- c) in order to protect the assets, to seal and record the documentation, buildings and other main means of the investment fund/sub-fund in the process of liquidation;
- d) take all the measures provided for by the current legislation, which it considers necessary to satisfy the creditors and other financial requirements of the investment fund/sub-fund in the process of liquidation.

2. Only with the written consent of the National Bank, the liquidator is entitled to:

- a) create a liquidation commission;
- b) not to close current accounts in commercial banks for a specified period;
- c) take a loan or undertake a financial obligation to a third party in another equivalent form;
- d) transfer the right to claim assets to creditors in order, organize the transfer of investment fund/sub-fund obligations to third parties.

3. The liquidator has the right to file a lawsuit in court to claim the action or transaction carried out on behalf of the investment fund/sub-fund within 1 year before the appointment of the liquidator and to request its invalidation, if as a result of this the persons related to the investment fund/sub-fund received property benefits or enjoyed any advantage at the expense of the investment fund/sub-fund, with a privilege or an advantage that caused damage to the investment fund/sub-fund and/or its creditors.

4. The liquidator is authorized to sell the assets of the investment fund/sub-fund in the process of liquidation at a public (electronic) auction or to choose another form of their sale in agreement with the National Bank, as well as to transfer the right of demand for these assets to the creditors according to the order, to transfer the right of demand for these assets to a representative of the financial sector or another person. The liquidator must substantiate to the National Bank the calculations and assumptions he/she will rely on when selecting the form of sale, namely, the current and expected market prices, the amount of the outstanding amount, the terms of sale, interest rates, inflation, asset ownership and other costs. The liquidation plan, which the liquidator submits to the National Bank for approval in accordance with Article 73 of the Law, shall contain the information defined by this paragraph.

5. If the consent of the debtor/creditor is required for the transfer of assets or liabilities of the investment fund/sub-fund, the debtor/creditor is obliged to give consent or refusal to transfer the asset/liability to another person within the time limit set by the liquidator. After the expiration of the term set by the liquidator, such consent shall be automatically deemed to have been given. The consent of the debtor/creditor is not required if the conditions of the asset/liability do not change during the transfer of the asset/liability to another person.

Article 5. Obligations of the liquidator

1. The liquidator shall act in good faith during the liquidation process of the investment fund/sub-fund. In case of non-fulfilment or improper fulfillment of duties, the liquidator shall be liable in accordance with the law.

2. Members of the management body of the investment fund and/or asset management company

(if the member of the management body/asset management company does not liquidate the investment fund/sub-fund itself in accordance with this rule), as well as the portfolio manager of the investment fund/sub-fund (if any), acting as a delegated person, are obliged to hand over the affairs of the investment fund/sub-fund to the liquidator within the terms specified by the National Bank, and the liquidator, from the date of appointment, shall describe and hand over the affairs of the investment fund/sub-fund within the terms specified by the National Bank.

3. If the members of the management body of the investment fund, the asset management company or the portfolio manager avoid handing over the affairs of the investment fund/sub-fund to the liquidator, the liquidator shall describe and draw up the act of inventorying the affairs of the investment fund/sub-fund, which is confirmed by the liquidation commission established by him/her (if any). At the same time, the liquidator shall take the measures defined by the current legislation of Georgia to raise the issue of the responsibility of the mentioned persons.

4. The liquidator is obliged, within 10 working days after the entry into force of the individual administrative-legal act of the National Bank on the initiation of the liquidation process of the investment fund/sub-fund:

a) to send notices to the relevant financial institutions (including the specialized depository - if any, commercial banks, securities market intermediaries) with whom, according to the information available to him/her, cash funds/securities of the investment fund/sub-fund are placed, so that they do not transfer them without the liquidator's permission to dispose of the assets of the investment fund/sub-fund. Such a notification shall be sent to the financial institution even after the expiration of the period specified in this paragraph, if information about other assets belonging to the investment fund/sub-fund became known to the liquidator later;

b) to notify the National Agency of Public Registry and the National Agency of Public Registry and the Service Agency of the Ministry of Internal Affairs of Georgia, so that the property (real estate, motor vehicles, etc.) belonging to the investment fund/sub-fund in the process of liquidation cannot be disposed of without a liquidator;

c) send notices to the former member(s) of the management body of the investment fund and/or the asset management company with the request to hand over all seals and stamps (if any) of the investment fund and its structural units within 10 working days;

d) publish a statement on the initiation of liquidation together with the individual administrative-legal act of the National Bank in the "Legislative Herald of Georgia" and on the website of the National Bank; The statement shall indicate that the creditors have the right to submit a substantiated written request to the liquidator indicating the amount and grounds of their creditor's request within 1 month after the repeated publication of the said statement through the same means.

5. The liquidator of the investment fund/sub-fund, together with the liquidation commission created by him/her (if any), shall destroy all seals and stamps of the investment fund/sub-fund and its structural units (if any) and at the same time ensure the production of the seal and stamp of the liquidator. The liquidator is obliged to submit the appropriate act of destruction to the National Bank. The act of destruction is drawn up in the form of a protocol, which is signed by the persons participating in the destruction process.

6. In order to conduct the investment fund/sub-fund liquidation process in a timely and correct manner, the liquidator is obliged to:

a) to conduct accurate accounting and reporting by making correct accounting records;

b) within 1 month from the entry into force of the individual administrative-legal act of the National Bank on the initiation of the liquidation process, draw up the initial balance of the

investment fund/sub-fund in the process of liquidation based on the existing daily accounting reporting forms or other relevant documents and submit it to the National Bank;

c) within 1 month from the publication of the statement provided for in subparagraph "d" of paragraph 4 of this article, to publish a statement of the same content in the "Legislative Herald of Georgia" and on the website of the National Bank;

d) within 1 month from the drawing up of the initial balance sheet, notify the creditors known to him/her in writing about the start of the liquidation and inform them that they have the right to submit claims in accordance with this rule;

e) to send a written notice to the debtors within 1 month after drawing up the initial balance sheet and request them to fulfill their obligations towards the investment fund/sub-fund within the time limit set by the liquidator;

f) within three months from the appointment, carry out an inventory and accounting of all assets and liabilities of the investment fund/sub-fund, if necessary - estimate their fair value;

g) within three months from the appointment, taking into account the documentation submitted on the basis of subparagraphs "c"- "e" of this paragraph, to compile a detailed list of assets and liabilities (balance sheet) of the investment fund/sub-fund and submit it to the National Bank;

h) to ensure the legality/authenticity of all claims made by creditors to the investment fund/sub-fund and the verification of the information provided by debtors regarding debts;

i) in case of non-fulfillment of obligations by the debtors, to implement all measures stipulated by the law, including filing a lawsuit in court;

k) to inform the National Bank and law enforcement authorities immediately after the facts of embezzlement and/or appropriation of investment fund/sub-fund property or signs of other crimes are detected in order to take appropriate measures;

k) to appeal any decision or act that may be unfavorable for meeting the financial requirements of the creditors and unit owners of the investment fund/sub-fund;

m) in accordance with the law, to submit the liquidation plan to the National Bank for approval, and in case of substantial changes in the information provided for in the liquidation plan, no later than the end of the relevant month - to submit the updated liquidation plan for approval;

n) to submit to the National Bank the report of the performed activities, any information and documents at the periodicity established by the National Bank or upon request;

n) implement all the measures defined by this rule, which will contribute to meeting the claims of creditors and unit owners as much as possible and in a timely manner;

p) to be guided by the principle of good faith and ethical norms in the exercise of authority;

p) in every 6 months, ensure that creditors and unit owners are informed about the progress of the liquidation process by publishing it on the official website of the National Bank.

7. In case of dismissal of the liquidator of the investment fund/sub-fund during the liquidation process, he/she is obliged to hand over the affairs of the investment fund/sub-fund under liquidation and any information and related documentation obtained during the liquidation process to the new liquidator based on the deed certified by signature and seal.

Article 6. Satisfaction of creditors

1. The claims of the creditors of the investment fund/sub-fund will be satisfied from the liquidation amount, which consists of the assets belonging to the investment fund/sub-fund at the moment of entry into force of the individual administrative-legal act of the National Bank on the initiation of liquidation and the assets acquired during the liquidation process.

2. The creditor, whose ground for the request arose before the entry into force of the individual administrative-legal act of the National Bank on the initiation of liquidation, is obliged to submit

to the liquidator a substantiated written request for its creditor's request within 1 month from the publication of the announcement provided for in Article 5, paragraph 6 subparagraph "c" of this rule, specifying the amount and a ground. A request submitted in violation of the specified deadline will be considered a late request.

3. The creditor claim provided for in the first paragraph of this article is a debt or a claim for the performance of an obligation, which can be expressed in monetary form and which, without any limitation, includes due claims, unspecified claims, conditional claims and unexpired (future) claims.

4. Obligations that existed before the start of the liquidation and whose performance obligation arose after the start of the liquidation process are considered to have arisen before the start of the liquidation process. The claim specified in the court decision is considered to have arisen from the moment when the creditor's claim on the subject of the dispute arose, which should have been satisfied by the investment fund/sub-fund, taking into account the factual circumstances specified in the court decision.

5. In the process of liquidation, the demands of creditors will be satisfied taking into account the order established by paragraph 2 of Article 76 of the Law.

6. The creditor will bear the expenses related to meeting the requirements stipulated in the first paragraph of this article.

7. Before meeting the requirements, the liquidator is obliged to verify whether the person is included in the list of terrorists or persons supporting terrorism.

8. The liquidator is obliged to ensure that the requirements are met in such a way that the liquidation process is not endangered.

Article 7. The procedure for carrying out a public (electronic) auction of the assets of the investment fund/sub-fund in the process of liquidation

1. The public (electronic) auction of the assets belonging to the investment fund/sub-fund will be carried out through www.eauction.ge in compliance with the following procedures:

a) During the public (electronic) auction, the liquidator determines the price of the property/asset to be sold, the amount of the deposit and the bids of the public (electronic) auction. The liquidator will post a brief description of the sale property/assets on the website www.eauction.ge. The auction runs for 10 calendar days;

b) the liquidator submits the draft of the statement on the holding of the public (electronic) auction to the National Bank for agreement at least 14 calendar days before the auction;

c) after paying the price of the property/asset purchased at the public (electronic) auction, a relevant contract is signed with the authorized person;

d) The winner of the public (electronic) auction can exercise its legal rights to the property/asset only after full payment of the price. The buyer will be included in the final settlement;

e) If the property/asset is not sold at the initial price during the first public (electronic) auction, then the liquidator shall appoint a repeated public (electronic) auction following the procedures provided for the appointment of the first auction. The initial sale price of the property/asset at the repeated public (electronic) auction can be determined within the limits of not less than 75% of the initial price at the first public auction;

f) In the event that at the repeated public (electronic) auction it was not possible to sell the property/asset within the limits of not less than 75% of the initial price, the initial price of the

property/asset for sale at the next public (electronic) auction can be determined at not less than 50% of the initial price of the first auction.

2. The property/asset to be sold at the public (electronic) auction must be appraised by an independent auditor.

3. In addition to subparagraphs "e" and "f" of the first paragraph of this article, taking into account the interests of the creditors of the investment fund/sub-fund and unit owners, the liquidator, in agreement with the National Bank, may additionally conduct a public (electronic) auction for the purpose of realizing claim rights.

4. The liquidator is entitled to write off the assets from the balance sheet through accounting standards, which were not sold during any public (electronic) auction and are assessed as having zero value by an independent auditor.

5. Based on this rule, as a result of the transfer of the asset of the investment fund/sub-fund to the ownership of the acquirer (regardless of the form of sale), all the rights and obligations on it are cancelled.

Article 8. Completion of the liquidation process

1. The duration of the liquidation process is determined by the duration of repayment of the liabilities of the investment fund/sub-fund under liquidation and the redemption of units, which depends on the sale of the assets of the investment fund/sub-fund and the deadlines for the completion of court cases. The liquidation process cannot be completed if there are ongoing court cases.

2. The basis for ending the liquidation process is one of the following cases:

- a) all creditor claims against the investment fund/sub-fund are fully covered and, in the presence of net assets, the units belonging to the unit owners are redeemed;
- b) The investment fund/sub-fund accrues unsettled claims, but no longer has assets to cover such claims.

3. The investment fund/sub-fund no longer has assets if one of the following conditions is met:

- a) all assets are sold (removed);
- b) the market (sale) value of unsold assets is equal to zero;
- c) The remaining assets cannot be recovered because the respective debtors are bankrupt or have no realizable assets.

4. The liquidator is obliged to submit to the National Bank the final balance sheet and the report on his/her actions within 1 month from the origination of the grounds for ending the liquidation process provided for in the second paragraph of this article.

5. Upon completion of the liquidation process, the liquidator establishes the liquidation act of the investment fund/sub-fund, which should include:

- a) information about all assets realized by the liquidator after the start of the liquidation of the investment fund/sub-fund, showing the final price of their realization;
- b) evaluation of all unrealized assets of the investment fund/sub-fund by an independent auditor, on the basis of which it is confirmed that the market (sale) value of this asset is equal to zero;
- c) court decisions confirming the bankruptcy of a legal or natural person in debt to the investment fund/sub-fund;
- d) information on meeting the requirements of creditors of the investment fund/sub-fund;
- e) information about all other measures implemented by the liquidator.

6. The liquidator submits the act of liquidation of the investment fund/sub-fund, confirmed by his/her signature and seal, to the National Bank in order to make a decision on the completion of the liquidation process of the investment fund/sub-fund.
7. The National Bank issues an individual administrative-legal act on the completion of the investment fund/sub-fund liquidation process.
8. The individual administrative-legal act of the National Bank on the completion of the liquidation process of the investment company shall be submitted on the same day to the National Agency of Public Registry for registration of the liquidation of the investment fund and its removal from the register of entrepreneurs and non-entrepreneurial (non-commercial) legal entities, and shall also be reflected in the provisions of Article 18 of the Law in the registry.
9. The individual administrative-legal act of the National Bank on the completion of the liquidation process of the joint fund or the sub-fund of the investment fund is immediately reflected in the register defined by Article 18 of the law.

Article 9. Authority of the National Bank

1. The National Bank is entitled to:
 - a) check the investment fund/sub-fund in the process of liquidation at any time;
 - b) check the activities of the liquidator;
 - c) dismiss the liquidator and appoint another person in his/her place;
 - d) request any information about the liquidation process of the investment fund/sub-fund;
 - e) request the suspension or cancellation of any measure taken by the liquidator, if it is against the goals of the liquidation;
 - f) request the liquidator to update the liquidation plan;
 - g) exercise other powers granted to him by the legislation.
2. The National Bank is authorized to apply the measures of responsibility provided for by the law against the liquidator, including, taking into account the seriousness of the committed violation, to transfer the case to the law enforcement authorities.