

**Order №168/04**  
**Of the President of the National Bank of Georgia**  
**Dated September 22, 2020**

**On the Approval of the Rule of activity of the Specialized Depository**

On the basis of subparagraph “g” of the first paragraph of the Article 15, paragraph “d” of the Article 52<sup>4</sup> of the Organic Law of Georgia On National Bank of Georgia, on the basis of the Law of Georgia on Investment Funds paragraphs 3 and 5 of Article 33 , paragraph 8 of the Article 34, paragraph 4 of the Article 35, paragraph 2 of the Article 36 and in accordance with subparagraph “c” of the Article 86 I order:

Article 1. To approve the rule of activity of the specialized depository together with the attachments.

Article 2. This Order shall enter into force on October 19, 2020.

**Article 1. General Provisions**

1.The Rule on activities of the Specialized Depository (hereafter - the Rule) determined by the National Bank of Georgia (hereinafter - the National Bank) defines the procedure for obtaining consent for the activities of a specialized depository and regulation issues, including:

- a. The conditions for the issuance of consent by the National Bank for the activities of a specialized depository, the relevant application form and submission procedure, as well as the grounds for issuing the consent and its revocation and refusal to give consent;
- b. The rights, functions and duties of a specialized depository; organizational and financial requirements, including requirements for record keeping and the minimum capital;
- c. The procedures for the preparation of reports by the specialized depository and frequency for submitting them to the National Bank;
- d. Requirements for the agreement between the specialized depository and the asset management company/investment company.

2. This rule applies to the specialized depositories specified in the first paragraph of Article 2 of this Rule, who provide services to authorized investment funds.

## **Article 2 – Eligible Persons to Perform the Functions of a Specialized Depositary, to Apply for the Consent of the National Bank to Carry out the Activities of a Specialized Depositary**

1. The specialized depositary of investment fund shall be a commercial bank licensed in Georgia or another legal entity (Hereinafter: financial institution) licensed under the legislation of Georgia which has the right to provide safekeeping service in relation to financial instruments.

2. In addition to the requirements provided by the legislation of Georgia, a financial institution licensed by the National Bank to provide specialized depositary services to an investment fund shall additionally meet the following requirements:

a) The own capital of the financial institution, calculated in accordance with International Financial Reporting Standards, shall not be less than GEL 750,000 (seven hundred fifty thousand).

b) The financial institution shall have a sound corporate governance system, shall have a sufficient financial and human resources, as well as relevant information systems to ensure proper fulfillment of the obligations imposed on it by this rule and by the Georgian legislation;

3. It is inadmissible for the same person to act in relation to the investment fund as the asset management company (hereinafter referred to as the asset manager) specified in Article 2 (1) (hh) of the Law of Georgia on Investment Funds (hereinafter - the Law) and as a specialized depositary. It is inadmissible for the same person to act as an investment company and a specialized depositary.

4. A financial institution shall not carry out activities with regard to the investment company, or the asset manager, acting on behalf of the investment fund, that may create conflicts of interest between the investment fund, unit-holders in the investment fund, or the asset manager and itself. This does not apply to the case when the financial institution has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks and the potential conflicts of interest are properly managed, monitored and disclosed to the unit-holders and members in the investment fund.

5. A financial institution shall obtain consent from the National Bank before concluding a specialized depositary service agreement with an investment company/asset manager. For this purpose, the consent seeker shall apply to the National Bank with a written application, which shall be accompanied by the following information and documents:

a) application for a consent to carry out the activities of a specialized depositary (Annex № 1);

b) a description of the organizational structure and information/documents proving that the financial institution has an appropriate number, qualifications and experience of staff to ensure the performance of the duties assigned to the specialized depositary;

c) strategy and business plan of how the financial institution ensures the performance of the functions of a specialized depositary;

d) description of the features of the information systems and technical infrastructure specified in Article 6 of this Rule to ensure timely and effective implementation of the functions of the specialized depositary defined by the legislation of Georgia and this Rule;

6. The National Bank is authorized to request to the financial institution additional information and/or documentation in addition to the information submitted, as well as to determine the form and timing of their submission.

7. The National Bank is authorized to identify shortcomings in the documentation submitted by the applicant for consent to specify the corrective term, form and procedure.

8. The consent issued in accordance with paragraph 5 of this article shall be equivalent to the authorization granted to the financial institution under the "The regulatory rule of the specialized depositary of the funded pension scheme" approved by order of the President of the National Bank of Georgia No. 259/04 of November 30, 2018. Authorized specialized depositary is obliged to act in accordance with this rule in relation to investment funds.

### **Article 3 - Granting Consent and Refusal to Grant Consent by the National Bank for the Activities of a Specialized Depositary**

1. The National Bank is authorized to refuse to grant consent to the applicant if:

a) the written application and the enclosed documentation do not meet the requirements of Georgian legislation and this Rule, are incomplete, misleading or inaccurate and / or the circumstance has not been remedied by the applicant within the timeframe set by the National Bank;

b) the applicant does not have the necessary resources and/or experience to ensure the continuity of specialized depositary business and the proper performance of duties;

c) granting consent to carry out the activities of a specialized depositary may endanger the existing business of the applicant or fail to fulfill the obligations imposed on it under the existing license;

d) granting consent to carry out the activities of a specialized depositary may jeopardize the interests of investment fund investors or the stability of the financial system.

2. The National Bank shall decide on granting or refusing consent within 30 days after receiving the application of which it shall notify the applicant in writing. In case of refusal, the National Bank shall notify the applicant in writing of the argued response. It will be regarded as refusal to give consent if the

National Bank does not make a decision on giving consent or refusing to give consent within the period specified in this paragraph.

#### **Article 4. Grounds for Termination of the Authority of the Specialized Depositary**

1. The authority of a specialized depositary to provide depositary services to an investment fund shall be terminated in the cases specified in the first paragraph of Article 39 of the Law. In the cases provided for in sub-paragraphs “c” and “d” of first paragraph of Article 39 of the Law, the consent issued for the activities of a specialized depositary shall be revoked.
2. For the purposes of paragraph 2 of Article 39 of the Law, the National Bank is authorized to terminate the authority of a specialized depositary to provide depositary services to one or more investment funds/to revoke the consent of the Specialized Depositary for the activities, if the Specialized Depositary violates the requirements established by law, other laws regulating the financial sector, legal requirements issued by them, or the National Bank, or poses an obvious threat to the investment fund or its investors, including under an agreement with an investment company/asset manager due to non-fulfillment or improper performance of obligations imposed on it or if a resolution regime has been introduced for a commercial bank.
3. The Specialized Depositary shall notify the National Bank within 3 working days of the decision to terminate the activities of the Specialized Depositary.

#### **Article 5. Agreement Between the Asset Manager/Investment Company and the Specialized Depositary**

1. A specialized depositary shall be appointed on the basis of a written agreement with the asset manager/investment company.
2. The contract referred to in paragraph 1 of this Article shall cover at least the following:
  - a) the rights and obligations of the parties; Liabilities of the parties in case of violation of the terms of the contract, which should include the liability of the specialized depositary in case of transfer of the authority to safe-keep the assets to a third party.
  - b) the terms and procedures of the specialized depositary, through which the specialized depositary will fulfill the imposed obligations; Deadlines for fulfilling these obligations;
  - c) the amount of the specialized depositary's remuneration and the calculation procedure;
  - d) a description of the channels and procedures for the exchange of information between the specialized depositary and the asset manager/investment company necessary for the specialized depositary and

asset manager/investment company to perform their functions; as well as the obligation to protect confidential information;

e) the procedure for making changes in the constituting instrument of the fund and/or in the prospectus which should take into account the cases when it is necessary to inform the specialized depositary after the change or obtain prior consent from it before making changes to the rules;

f) where parties to the contract envisage appointing third parties to carry out parts of their respective duties, a commitment to provide, on a regular basis, details of any third party appointed and, upon request, information on the criteria used to select the third party and the steps envisaged to monitor the activities carried out by the selected third party;

g) dispute resolution procedures between the parties;

h) the period of validity and the conditions for amendment and termination of the contract, including the situations which could lead to the termination of the contract and details regarding the termination procedure and the procedures by which the specialized depositary send all relevant information to its successor;

i) the frequency of delivery of a comprehensive list of all assets of the investment fund by the specialized depositary to the asset manager/investment company.

3. The specialized depositary agreement between the asset manager/investment company and the specialized depositary may be terminated in accordance with Georgian legislation and conditions of the agreement; the party willing to terminate the contract must in advance notify the other party in writing before the deadline stipulated in the contract, which must be at least 1 (one) month.

4. In case of termination of the contract, the specialized depositary is obliged to perform the functions entrusted to it before selecting the new specialized depositary. Specialized depositary services provided by a specialized depositary will be reimbursed in accordance with the terms of the specialized depositary service agreement in force until the termination of his/her authority.

5. The specialized depositary shall transfer the assets and any documents relating to its obligations under the specialized depositary agreement to the new specialized depositary within the timeframe specified in the agreement or as agreed additionally between the parties.

## **Article 6. Organizational Requirements**

1. Organizational structure and technical facilities of the specialized depositary, its financial standing, competence and experience of its employees must be sufficient under the requirements of this Rule and

depository agreement signed with the asset manager/investment company to perform the functions specified in the agreement.

2. The specialized depository shall have:

- a) organizational structure which is adequate and appropriate for its size, which will separate specialized depository functions from other functions of the financial institution, clearly define the responsibilities of its structural units and through which the specialized depository will ensure provision of its duties;
- b) appropriate number of employees with qualifications and experience required to carry out specialized depository activities;
- c) policies and procedures for identifying, managing, and mitigating existing and/or potential operational or other risks related to its activities;
- d) adequate internal control mechanisms, including appropriate administrative and reporting procedures, which should include procedures for reporting on identified faults and various incidents during its operations;
- e) Relevant information systems and technical infrastructure to ensure that operational requirements are met and operational risks are reduced.
- f) The information systems of the specialized depository which:
  - f.a) shall be flexible and of sufficient capacity to be able to function properly in the event of a stressful market situation;
  - f.b) shall provide mechanisms for protection, privacy and integrity of information contained in the system;
  - f.c) shall have in place an effective mechanism for cybersecurity;
- g) effective mechanisms for the storage, protection and control of information, including confidential information;
- h) business continuity plan.

3. The specialized depository shall be responsible at each stage of its activity for updating and monitoring the compliance with its policies and procedures.

#### **Article 7. Functions and Duties of a Specialized Depository**

- 1. Specialized depository of an investment fund must comply with the legislation of Georgia and requirements of the specialized depository agreement.
- 2. Specialized depository shall assess the risks associated with the investment fund and asset manager according to the nature, scale and complexity of the investment strategy and policy of the investment fund. On the basis of that assessment, the specialized depository shall devise oversight procedures which are

appropriate to fund and the assets in which it invests and which are then implemented, applied and regularly updated.

3. Specialized depositary shall ensure safekeeping of investment fund assets and regular assessment and monitoring of the risks associated with the safekeeping (ownership) chain of these assets; Aslo, it shall keep the asset manager informed with regards to any material risks that are identified.

4. For the purpose of compliance with sub-paragraph “a” of paragraph 2 of Article 34 of the Law, specialized depositary must develop and implement procedures related to safekeeping and reporting procedures. Such procedures shall include procedures for recording investment fund assets and verifying ownership of investment fund assets that cannot be maintained by a specialized depositary, and must ensure that such assets cannot be used without informing the specialized depositary.

5. For the purpose of compliance with sub-paragraph “b” or paragraph 2 of Article 34 of Law, the specialized depositary shall ensure:

- a. Effective and proper procedures to reconcile all cash flow movements and performs such reconciliations on a daily basis, or, in case of infrequent cash movements, when such cash flow movements occur;
- b. to develop and implement procedures for identifying significant amount of cash and/or cash flows at the end of each business day, that may be inconsistent with the activities of the investment fund.

6. For the purpose of compliance with sub-paragraph “c” of paragraph 2 of Article 34 of Law, specialized depositary shall ensure regular monitoring of investment fund units registry; in particular, ensure reconciliation of total amount of units in investment fund’s issuance accounts and private (including investment fund’s own account)/nominal ownership accounts according to pre-defined frequency.

7. For the purpose of compliance with sub-paragraph “d” of paragraph 2 of Article 34 of Law, the specialized depositary must ensure monitoring of investment fund assets and units valuation calculation at the frequency consistent with the frequency of fund’s assets/units valuation. In case of illiquid or assets with no publicly accessible market prices, the specialized depositary may rely on valuation report used by the investment fund.

8. For the purpose of compliance with sub-paragraph “e” of paragraph 2 of Article 34 of Law, specialized depositary must ensure execution of instructions from asset manager or investment company and monitoring of their compliance with legislation, the fund’s constituting instrument and prospectus terms; in particular, compliance with permitted assets, investment restrictions and leverage limits. Such monitoring procedure shall be proportional to the fund’s size and risk profile.

9. For the purpose of compliance with sub-paragraph “g” of paragraph 2 of Article 34 of the Law, specialized depositary shall ensure investment funds net profit calculation is in accordance with respective legislation, investment fund’s constituting instruments and prospectus;
10. Specialized depositary shall ensure compliance verification of the fees paid to asset manager with respective legislation, constituting instrument and prospectus of the investment fund;
11. Specialized depositary or a third party completing its tasks to which safekeeping of assets is delegated is prohibited from using/disposing investment fund’s assets for its own purposes in all cases unless:
- a) The reuse of the assets is executed for the purposes of the investment fund and the objectives of the unit holders with the prior consent of that investment fund; and
  - b) The transaction is covered by high-quality and liquid collateral received by the investment fund under a title transfer arrangement. Market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.
12. The monitoring specified in paragraphs 6-10 of this Article (including verification of compliance with the instructions received from the asset manager/investment company) shall be carried out by a specialized depositary after the performance of the relevant operation.
13. When delegating a function provided by law to a third party, the specialized depositary shall be guided in accordance with the requirements set forth in Article 38 of the Law.
14. Specialized depositary shall develop and implement response procedures for incidents identified during its supervision operation.

#### **Article 8. Record Keeping**

1. The specialized depositary shall take registry and keep up to date all documentation and records relating to its business, in particular:
- a. Information and documentation on all received instructions and orders, both through its internal records and in the form of original documentation;
  - b. detailed information on all transactions carried out both in its internal records and in the form of original documentation;
  - c. Information and documentation regarding investment fund’s assets registry, including information/documentation certifying the ownership of the investment fund assets;
  - d. Information and documentation regarding investment fund monitoring, including information regarding assets/units value and investment fund net returns calculation and data verification of investment fund registry;



- e. Information and documentation regarding reconciliations with investment fund/third parties;
  - f. Information and documentation on any legal or other violations found in the course of performing the duties assigned to it;
  - g. All other information and documentation relating to its activities and responsibilities which will provide relevant information to the National Bank for the purpose of conducting its supervisory functions.
2. At any stage of its operations, the specialized depositary shall ensure that records are kept and maintained in such a way as to maintain the accuracy and completeness of the records.
  3. Records should be stored in a way that all the changes made, the pre-change versions of the record, the date of change and the person responsible for making changes can be viewed.
  4. The documentation and records referred to in this Article may be available in both material and electronic form, and the specialized depositary shall keep them for at least 6 years;
  5. The specialized depositary's documentation, records and transaction data shall be available to the National Bank upon request within the time limit specified by it.

#### **Article 9. Obligations of the Asset Manager/Investment Company towards a Specialized Depositary**

1. The asset manager/investment company shall provide the specialized depositary with all types of information/documentation necessary for the performance of its duties;
2. Asset manager/investment company shall ensure that all instructions and information related to investment fund's assets are sent to the specialized depositary, to enable the specialized depositary to perform relevant monitoring and reconciliation procedure;
3. Asset manager/investment company shall ensure that specialized depositary has access to information related to investment fund's cash accounts, which shall include information regarding opening of new accounts.
4. Asset manager/investment company shall ensure that at the end of each business day specialized depositary is provided with information regarding payments made for purchasing fund units by investors or their representatives. Asset manager shall ensure that specialized depositary has all necessary information to be assured that the payments made by investors are received and the investment funds cash flows are placed in a Georgian or a foreign-licensed commercial bank on the investment fund's bank account or a bank account of an asset manager or a specialized depositary acting on behalf of the investment fund;

5. Asset manager/investment company shall ensure that specialized depositary has all required information relating to investment fund's assets valuation and audited accounts; information regarding inconsistencies and corrections in such accounts shall be included.

**Article 10. Reports and Notifications to be Submitted by a Specialized Depositary**

1. Specialized depositary shall provide asset manager/investment company with a registry of investment fund's all assets and information regarding completed transactions in accordance with the frequency agreed in the written contract.

2. Specialized depositary shall immediately provide information to the National Bank if it identifies any wrongdoing in the activities of the investment fund that violate Georgian legislation as well as any other violations which it identifies while in the process of performing the duties assigned to it.

3. The specialized depositary shall immediately notify the National Bank of the case specified in paragraph 11 of Article 7 of this Rule.

4. Specialized depositary shall prepare and submit to the National Bank current report (notice) no later than 7 calendar days from the occurrence of such events in case if its amount of capital has decreased below the minimum requirement of this rule. In such case specialized depositary shall submit to the National Bank action plan/schedule for the purpose of mitigating the circumstances. The National Bank has the power to make amendments to the submitted plan/schedule.

5. Specialized depositary shall submit the reports (notices) and accounts defined in this Article in both material and electronic format. Information provided in electronic format shall be in Excel and PDF formats.