



HOW TO OPEN BANK IN GEORGIA

Prepared by the BLC Law Office

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INTRODUCTION

➤ Commercial Bank under Georgian Legislation

Commercial Bank is a legal entity licensed by the National Bank of Georgia that attracts deposits and, through their application, conducts banking activity on its own behalf pursuant to applicable Georgian law.

Commercial Bank can be established only in the organizational legal form of a joint-stock company.

➤ The Activities of the Commercial Bank:

The license granted by the National Bank of Georgia (the NBG) allows commercial banks to engage in the following banking operations inside the country as well as overseas:

- Receiving interest-bearing and interest-free deposits (of fixed period, upon demand and other) and other returnable means of payment;
- Issuing consumer loans, mortgage loans, unsecured and other loans, engaging in factoring operations with and without the right of recourse, trade finance including the granting of guaranties, letters of credit, acceptance finance, and forfeiting.
- Upon its own or clients' funds, buying and selling of monetary instruments, such as promissory notes, checks, certificates of deposit, as well as securities, futures, options and swaps upon debt instruments or interest rates, currencies or interest instruments, debt

documents, foreign currencies, precious metals and precious stones.

- Cash and non-cash settlement operations and the provision of collection services
- Issuing payment instruments and managing their circulation (plastic cards, checks and bills of exchange).
- Interest-free banking services;
- Securities brokerage services;
- Trust operations on behalf of clients and funds management;
- Safekeeping and registration of valuables including securities;
- Credit-information services;
- Depository central activities;¹
- Lease-out of property;
- Conducting payment services, operating payment systems, exercising functions of a payment agent;
- Activities related to each of the above types of services.

REGISTRATION OF THE BANK

➤ Joint Step 1: Registration requirements for establishing JSC

JSC is a legal entity the charter capital of which is divided into shares of equal nominal value. The liability of a JSC is limited to its entire assets. Shareholders are not liable for obligations of the JSC.

In order to register a JSC, the founder(s) shall submit to the LEPL National Agency of Public Registry operating within the Ministry of

¹ As defined in the Law of Georgia on the Securities Market

Justice of Georgia (hereinafter Public Registry) the following documents:

- Application for registration, signed by all the founding partners of the JSC, containing information, obligatory for registration (see Appendix #1). Most notably, the required information can be included into supplementary documents referred to below; and
- Supplementary documents (see **Appendix #2**).

State registration fee for JSC is different, depending on the urgency of registration and varies from 100 to 200 GEL.

Most notably, at the stage of incorporation, there is no obligation to display the sufficient amount of share capital of JSC.

➤ **Step 2: Obtaining Commercial Bank License**

The banking license is issued by the NBG.

In order to obtain the license for banking activities JSC shall submit to the following documents to the NBG:

- Application of request; and
- Additional documents (see **Appendix #3**).

The banking license is issued for unlimited time period.

The fee for issuing the license for the banking activities amounts to 500 GEL.

TERMS AND CONDITIONS

➤ **Restrictions on Ownership**

Resident as well as non-resident individuals and legal entities, whose ownership is not restricted according to the applicable legislation, can become shareholders of a commercial bank.

A person shall have no right to be a *Significant Shareholder*² if he/she was tried for the legalization of unlawful incomes, financing terrorism, economic crime and/or crimes against entrepreneurial or other economic activities.

A person intending to acquire shares (in direct or indirect ownership) in a commercial bank exceeding 10, 25 or 50 per cent of the Bank's capital should submit a conformity declaration before the NBG.

➤ **Types of Bank Capital**

Declared Charter Capital - is the charter capital specified by the shareholders and envisaged by the charter which shall be paid up *only* in cash.

Regulatory Capital - is the capital formed for the purposes of performing the banking activities, indemnifying the possible financial

² A Significant Shareholder refers to any person who directly or indirectly owns 10% or more of the declared or paid up charter capital.

losses and protect from other types of risk. The Regulatory Capital should be paid up *only* in cash. The minimum amount of Regulatory Capital of a commercial bank is 12 million GEL.

Equity Capital - capital paid into a bank or other company by its shareholders and representing the difference between total assets and total liabilities;

Paid up Capital - the actually paid-in portion of the Declared Charter Capital;

➤ **Corporate Structure of Commercial Banks**

- *General Meeting of Shareholders* - the supreme administrative body of bank is the General Meeting of Shareholders, which acts in accordance with effective Georgian legislation and charter. It elects the Supervisory Board.
- *Supervisory Board* - consists of no less than 3 and no more than 21 members. The number of the elected members should be odd. Each member of the Supervisory Board shall be elected for a term of four years and may be re-elected for an unrestricted term.

Director(s) can be the member(s) of the Supervisory Board without making the majority of the board members.

- *Board of Directors* - carries out managerial functions and has the representation authority of the bank.

The Board of directors shall consist of at least 3 individuals appointed by the Supervisory Board for the term of four years and may be reappointed for an unrestricted term.

- *Audit Committee* - encourages proper functioning of the internal and external audits of the bank. The Audit Committee, which includes the independent member of the Supervisory Board (if any) is created by the Supervisory Board and is attached thereto.

➤ **Administrators' Compatibility Criteria**

Person to be appointed as an administrator of the commercial bank has to comply with the following compatibility criteria:

- The member of the Supervisory Board, Board of Directors, Audit Committee, head of the branch or other similar subdivision and its deputies should hold advanced degree in one of the following majors: economics, finances, banking, business administration, audit, accounting or law;
- The chief accountant of the bank and its deputy should hold advanced degree in one of the following majors: economics, finances, banking, business administration, audit or accounting;
- The member of the Board of Directors of the bank must have appropriate

- professional qualification and experience for which they should have at least 4 years work experience in financial field, including 2 years experience of occupying the managerial position (head or deputy of the structural unit);
- The director of Branch of the Bank and its deputies (subdivision of the Bank (service centre)) must have appropriate professional qualification and experience, namely they are required to have at least 3 years of work experience in banking- financial field, including 1 year experience of occupying the managerial position (head or deputy of the structural unit);
 - The chief accountant of the bank should have at least 3 years work experience in financial field;
 - The chief accountant of the branch of bank should have at least 2 years work experience in financial field;
 - A director, head of branch of the Bank or any head of similar subdivision, deputies thereof and any person acting in their capacity, chief accountant and its deputy may not occupy any of the following positions:
 - member of Supervisory Board or Revision Commission of the same commercial bank; and/or
 - administrator of other commercial bank, non-banking depository institution – credit union, and/or other company;
 - The member of the Supervisory Board shall not be an administrator of other commercial bank registered under the

laws of Georgia, except when such person is an administrator at subordinated bank or the bank to which the given commercial bank is subordinated to. Additionally, the member of the Supervisory Board shall not be a member of the Supervisory Board or Board of Director in more than 7 (seven) legal entities incorporated in Georgia.

- The member of Board of Directors, Supervisory Board and Audit Committee shall not be 1st or 2nd line³ heir of the member of Board of Directors or Supervisory Board.
- The chief accountant of the bank and its deputy, should not be 1st or 2nd line heir⁴ of the director or the deputy of the same bank.

ESTABLISHING BRANCH OF FOREIGN COMMERCIAL BANK

➤ *Step 1: Registration requirements for establishing a branch office*

Any foreign Commercial Bank may establish a branch office by means of submitting respective documentation to the Public Registry (see [Appendix #4](#)).

Branch of a Commercial Bank is a unit of a bank, which, once the relevant banking

³ In accordance with Georgian legislation 1st line heirs are children, spouse and parents and the 2nd line heirs are sisters and brothers.

⁴ Ibid

license is received, is authorized to directly conduct all banking activities.

The establishment of branches or representative offices of banks shall be authorized by Supervisory Board of the bank and shall be subject to conditions and restrictions established by regulation of the NBG.

Registration fees are the same as for registration of JSC (see above):

➤ **Step 2: Obtaining banking license for the branch office of the Foreign Commercial Bank**

A license to a foreign bank branch office shall be issued only in case if the bank itself is authorized to attract deposits or other funds in the country where its head office is located.

In this case, the license is issued, after submission of an approval on establishing a branch in Georgia issued by the supervisory authority of the country where the bank is registered. This rule does not apply to the establishment of the branch office of the *Foreign Reliable Bank*⁵.

In order to obtain license for banking activities of the branch office of Foreign Commercial Bank, the latter shall submit an application and respective supplementary documentation to the NBG in the same manner as a separately organized entity (see above).

⁵ The Foreign Reliable Bank refers to a bank of developed country, which has certain rank granted by competent international rating organization.

➤ **License requirements for a branch of a foreign reliable bank**

The license requirements for a branch office of a *Foreign Reliable Bank* are rather simplified. The NBG shall issue the banking license to *Foreign Reliable Bank* for establishing branch office upon submission of the following documents:

- Application;
- Corporate Extract;
- Approval on establishing a branch in Georgia, issued by the supervisory authority of the country where the bank is registered;
- The document granting the bank the status of “Foreign Reliable Bank” on the basis of presented rank;
- The act appointing administrators of the branch;
- The document envisaging authorization of the person submitting the documents indicated above.

FAQ

➤ **Does the banking activity require any license/permit?**

Commercial bank should obtain Banking License in order to carry out the banking activity. Banking licenses shall be applied for in writing to the NBG.

➤ **What are the minimum regulatory capital requirements?**

Minimum required amount of the Charter Capital at the moment of the creation of the bank is its Regulatory Capital, which should constitute at least 12 million GEL and be fully paid in cash.

➤ **What is applicable timing for registering commercial bank in Georgia?**

Given that two-step procedure is required for establishing Commercial Bank, the aggregate time-frame is as follows:

- The state registration of JSC, carried out by the Public Registry, is performed immediately after submission of all necessary documents, within one business day.
- The registration of JSC is followed by obtaining the Banking License which is granted within the period of 3 months from the date of submission of the Application.

➤ **What are the preconditions of legal stay in Georgia?**

A Person possessing specific category of visa and intending to stay on the territory of Georgia longer than the period determined by the visa, should apply to the Public Registry for receiving temporary or permanent residence permit, at least 40 days prior to expiration of the terms of their legal stay. The

duration of a temporary residence permit can be up to 6 years.

➤ **For what time-period can a bank be incorporated?**

In accordance with the Georgian legislation a bank can be incorporated for unlimited time-period, thus latter entirely depends upon the choice of the founders.

➤ **Can a foreign national be a managing officer of a bank?**

Yes, the Georgian legislation does not contain any restraints as to the nationality of personas that are entitled to participate in corporate governance of the bank.

➤ **What is the minimum/maximum number of Directors/Founders Permitted in Georgia?**

Georgian legislation does not contain any limitations with regard to the minimum/maximum number of Founders of a bank, however, the Board of Directors should contain at least 3 members.

➤ **What is Legalization?**

Legalization of a document by the respective authority of a State certifies that the document accords with the legislation of that particular State. It attests the validity of notary signature and the seal thereto. Legalization is carried out

by the embassies and consular departments of Georgia in foreign states.

➤ **What is Apostille?**

A certificate confirming the authenticity of a document issued in one of the signatory countries for legal purposes in all the other signatory states. Georgia is the member of The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (October 5, 1961). Therefore, legalization can be substituted by the Apostille in the countries that are also signatories to Hague Convention.

Appendix #1

INFORMATION MANDATORY FOR REGISTRATION OF JSC

Application form should contain at least the following information:

- Company (firm) name of a business entity;
- Legal form of a business entity (JSC);
- Legal address of a business entity;
- Official e-mail address of a business entity;
- Name, residing address, personal number and signature of founding partner(s), persons; If the founder is a business entity – the application should include its legal name and registration details, legal address, the name of a body that registered the business entity, the date of registration and identification code, information regarding its representatives;
- The governing bodies of the business entity (Meeting of Shareholders, Supervisory Board, Board of Directors,

Audit Committee), the procedure of their decision-making;

- Name, residing address, personal number and signature of members of Board of Directors (the Directors). The application should indicate, whether they represent the company jointly or separately;
- The date of submitting the application for registration.

Appendix #2

DOCUMENTS REQUIRED FOR REGISTRATION OF JSC

For registration of JSC, the following documents shall be submitted (including **Application**) to the Public Registry⁶:

- Decision of the founders on creation of JSC in Georgia;
- Charter of the JSC;
- Charter (Articles of Association) of the founder company;
- Document certifying the proof of registration by the founder in the foreign jurisdiction; if the founder is a legal entity, the same or a separate document should indicate the names of the authorized representatives, supervising authority and other corporate details of the founder (Certificate of Registration);
- Decision on appointing the members of governing bodies of the Company and the respective consents of all persons appointed/elected;
- Passport photocopies of the founders and director(s).

⁶ Please note that documents issued abroad should be notarized and legalized in founder's country / or certified by apostille, translated and notarized in Georgia

If the founders (partners) are not present at submitting the Application and supplementary documents to the Public Registry, they shall issue a power of attorney.

Appendix #3

DOCUMENTS REQUIRED FOR OBTAINING BANKING LICENSE

The NBG requires following documents to be submitted by the JSC for obtaining a banking license (including **Application**)⁷:

- The originals or notarized copies of the JSC registration documents;
- Information regarding the Compatibility Criteria of members of governing bodies of the JSC;
- Bank statement confirming the amount of the Declared Charter Capital and its paid up part, as well as the information regarding the ownership of Declared Charter Capital and Regulatory Capital and the origins thereof;⁸
- Compatibility declaration concerning the direct as well as beneficiary owner with regards to the criteria established by the respective Georgian legislation;
- Additional information determined by the rules of the NBG, which should include at least information regarding the Charter Capital and other financial resources, the location of the head office and the branches of the bank as well as

⁷ Please note that document issued abroad, also the samples of the signature needed, should be notarized and legalized in founder's country / or certified by apostille, translated and notarized in Georgia

⁸ Branch office of a foreign commercial bank shall submit information regarding the resources allocated for it by its head office.

additional information, which is requested by the NBG on case by case basis.

- Documents certifying the right of ownership or of the use of the immovable property, where the commercial bank or its branch shall be located;
- Receipt of paying the registration fee.

Appendix #4

DOCUMENTS REQUIRED FOR THE REGISTRATION OF A BRANCH OFFICE

The Public Registry requires following documents to be submitted by foreign legal entities of a branch⁹: (including an application for registration)

- Decision of the founder on opening a branch in Georgia;
- Charter (Articles) of the founder company;
- Document certifying the proof of registration of the founder company in the foreign jurisdiction; the same or the separate document should indicate the names of the authorized representatives and other corporate details of the founder;
- Legal address of the branch;
- Official e-mail address of the branch;
- Decision on appointing the members of governing bodies of the Company and the respective consents of all persons appointed/elected;

⁹ Please note that document issued abroad, also the samples of the signature needed, should be notarized and legalized in founder's country / or apostilled, translated and notarized in Georgia

- Passport photocopies of the the members of governing bodies;
- Name, residing address, personal number and signature of members of Board of Directors (the Directors). The application should indicate, whether they represent the company jointly or separately;
- Power of Attorney from the director (head) to be appointed at the branch;

The date of submitting the application for registration;

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It is prepared solely for informative purposes and cannot substitute legal advice and/or cannot be used by third parties for similar purposes. Brochure contains general information and does not list any and all items related to the reviewed issue in details.

This Brochure is limited to the matters directly addressed herein and shall not be deemed applicable to the explanations, clarifications or matters other than expressly contemplated herein.

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