

Order №90
of the Head of Insurance State Supervision Service of Georgia

December 26, 2024

Tbilisi

On the approval of fit and proper criteria for the liquidator of a pension company, the rule for compensation and carrying out activities by the liquidator

Pursuant to paragraph 9 of Article 7 of Organic Law of Georgia “On Normative Acts”, subparagraph “j” of paragraph 3 of Article 51 and subparagraph “a” of Article 58 of Law of Georgia “On Voluntary Private Pension” and subparagraph “k” of Article 3, paragraphs 3 and 4¹ of Article 4 of the Statute of LEPL Insurance State Supervision Service of Georgia approved by the Decree №102 of May 2, 2013 of the Government of Georgia, I hereby order:

Article 1

1. The attached “Fit and proper criteria for the liquidator of a pension company, the rule for compensation and carrying out activities by the liquidator” shall be approved as presented here.

Article 2

This order shall enter into force from January 1, 2025.

Acting Head of LEPL Insurance State

Supervision Service of Georgia

Irakli Tutarashvili

Fit and proper criteria for the liquidator of a pension company, the rule for compensation and carrying out activities by the liquidator

Article 1. General Provisions

1. "Fit and proper criteria for the liquidator of a pension company, the rule for compensation and carrying out activities by the liquidator (hereinafter - the Rule) establishes fit and proper criteria for the liquidator of a pension company, determines the rules for his/her compensation and the carrying out activities by him/her.
2. The liquidation of a pension company shall be carried out in accordance with the Law of Georgia "On Voluntary Private Pension" (hereinafter – the Law) and the requirements outlined in this Rule.
3. A person who does not meet the fit and proper criteria established by this Rule shall not be appointed as the liquidator of a pension company.
4. The liquidator shall act as a fiduciary in accordance with the requirements established by the Law.
5. A person who does not have any close relations with the pension company, insurer, asset management company, founder(s) of a pension company or members of the supervisory board or governing body of the aforementioned entities may be appointed as the liquidator of a pension company.
6. The terms used in this Rule shall have the meanings defined by the Law of Georgia "On Voluntary Private Pension" and the Law of Georgia "On Insurance".

Article 2. Grounds for liquidation of a pension company:

1. The grounds for liquidation of a pension company are:
 - a) revocation of the registration of a pension scheme (termination of a pension scheme) by Insurance State Supervision Service of Georgia (hereinafter - the Service):
 - a.a) based on a decision by the employer, employers' association, employees' association, professional organization, general meeting/partners' meeting of the pension company to terminate a pension scheme;
 - a.b) on the grounds set forth in paragraph 1 of Article 46 of the Law;
 - b) revocation of a license for voluntary private pension activities by the Service:
 - ba.a) based on a decision by the general meeting/partners' meeting of the pension company to liquidate the pension company;

b.b) on the grounds set forth in paragraph 1 of Article 48 of the Law.

2. The decision to initiate the liquidation of a pension company shall be submitted by the Service for registration with the National Agency of Public Registry on the day the decision is made.

Article 3. Liquidation process upon repealing a registration of the pension scheme

1. In the case outlined in subparagraph “a.a” of paragraph 1 of Article 2 of this Rule, the pension company is obliged to prepare a valuation of pension assets and a pension scheme report reflecting all assets and liabilities, which shall be submitted to the Service along with the application for termination of the pension scheme and shall be provided to all pension scheme participants within the timeframe established by the Law.

2. In case the liquid assets reflected in the pension scheme report outlined in paragraph 1 of this Article are insufficient to fully meet the existing rights to pension assets, a liquidation plan shall be submitted to the Service along with the pension scheme report, with a detailed description of the process and information on all measures taken to ensure compliance with the legislation on pension contributions of employers. The liquidation plan shall be approved by the Service. The liquidation plan shall be available to all participants of the pension scheme.

3. In accordance with the requirements established by the Service and with its consent, the liquidation process of a pension company may be managed by the pension company, through the supervisory board or the management body. Such management shall continue until the completion of the liquidation process.

4. The Service is authorized to refuse to carry out the liquidation process in accordance with the procedure specified in paragraph 3 of this Article and may appoint a liquidator in accordance with the rule determined by the legislation.

5. In the case specified in subparagraph “a.b” of paragraph 1 of Article 2 of this Rule, if there are grounds provided for by the legislation, the Service shall provide written notification to the supervisory board and the governing body of the pension company and set a deadline of no less than 30 (thirty) calendar days for eliminating the grounds for revocation of pension scheme registration, unless the Service considers that such notification would harm the interests of participants and beneficiaries. The supervisory board and the governing body of the pension company are authorized to submit a response letter to the Service within 30 (thirty) calendar days from the receipt of the Service's notification, along with a plan for eliminating and correcting the grounds for the revocation of the pension scheme registration.

6. In case the plan for eliminating and correcting the grounds for the revocation of the registration submitted by the pension company within the timeframe and in accordance with the rule outlined in paragraph 5 of this Article is deemed inappropriate or is not submitted in

accordance with the established rule, the Service shall make a decision to revoke the registration of the pension scheme and appoint a liquidator.

7. The liquidator appointed by the Service is authorized to transfer the assets and liabilities of the pension scheme to another individual pension scheme with the prior consent of the Service. Pension scheme participants shall be provided with written notification at least 30 (thirty) calendar days in advance.

8. From the moment the pension scheme registration is revoked, it is prohibited to make and receive pension contributions.

Article 4. Liquidation process upon repealing a license for voluntary private pension activities

1 In the case outlined in subparagraph “b.a” of Article 2 of this Rule, the governing body of the pension company is authorized to initiate the liquidation process of the pension company.

2. The founder of the pension scheme shall notify the Service and each participant of the pension scheme of the decision related to the liquidation process at least 90 (ninety) calendar days in advance.

3. In the event of the initiation of liquidation by the pension company, the governing body shall be obliged to do the valuation of the pension assets within the pension scheme, prepare a pension scheme liquidation plan and report within the timeframe established by the Law, which shall reflect all pension assets and liabilities within the pension company and information about the liquidator selected by it. The liquidation plan and report shall be submitted to the Service for approval together with a written application, and information on the liquidation decision shall be sent to each participant of the pension scheme.

4. In the case outlined in paragraph 1 of this Article, the pension company is authorized to select a liquidator, considering the criteria established by this Rule, and submit relevant information on the matter to the Service.

5. If, in accordance with the report submitted by the pension company to the Service, it is determined that the existing liquid assets are insufficient to fully meet the rights of participants to pension assets, the supervisory board is obliged to submit to the Service for approval a proposal on the continuation of the liquidation process and a detailed description of all the measures to be adopted, which shall include all subsequent steps to protect the rights of participants/beneficiaries.

6. In accordance with the requirements established by the Service and with its consent, during the liquidation process of a pension company, the supervisory board or the governing body is authorized to continue managing the pension scheme until the completion of the liquidation process or the liquidation of pension assets and liabilities. In addition, the Service is authorized

to refuse to continue the liquidation process/liquidation plan and appoint a liquidator in accordance with the rule established by legislation.

7. If there are grounds outlined in subparagraph “b.b” of Article 2 of this Rule, the Service, indicating the relevant reasons and within the timeframe established by the Law, shall provide written notification to the supervisory board and the governing body of the pension company about the decision to revoke the license and initiate the liquidation process, and shall appoint a liquidator in accordance with the procedure established by this Rule.

8. The liquidator shall be authorized, with prior consent of the Service, to transfer the assets and liabilities within the pension scheme of the pension company to another individual pension scheme.

9. The liquidator appointed by the Service shall be granted the full authority of the supervisory board and all other governing bodies of the pension company.

10. The liquidator appointed by the Service shall be accountable to the Service and to all pension scheme participants.

11. The Service shall present the information about the progress of the liquidation of the pension company in the register of entities carrying out voluntary private pension activities.

Article 5. Liquidation plan

1. The liquidation plan submitted to the Service for approval shall determine the measures to be taken in the liquidation process, taking into account the best interests of the participants, and shall, at a minimum, include the following documents and information:

- a) the decision of the partners/general meeting on liquidation;
- b) the reasons for the liquidation of the pension company and an assessment of whether the liquidation of the pension company serves the protection of the interests of the participants;
- c) the maximum amount of expenses related to liquidation;
- d) the identification data of the participants;
- e) a description of the assets of the pension company;
- f) the number of the creditors of the pension company and the amount of liabilities to them and information about them;
- g) all measures taken to receive pension contributions from employers (if applicable);
- h) the method and procedures for selling and distributing pension assets among participants and beneficiaries;

i) the expected duration of the liquidation process and the rule for providing information to participants and beneficiaries in this process.

2. The Service is authorized to request the submission of additional information and/or documents, to examine and, if necessary, conduct an audit, conduct an on-site inspection of the pension company and to request written or oral explanations from the members of the supervisory board and governing body of the pension company, audit companies and their representatives, and any third party regarding the submitted documentation/information.

3. The Service shall make a decision on the approval of the liquidation plan within 30 (thirty) calendar days from the submission of the liquidation plan. If necessary, the Service shall be authorized to extend the given period.

4. The Service may refuse to approve the liquidation plan because of one of the following circumstances:

a) the information referred in the application for approval of the liquidation plan and the documentation submitted with this application do not fully, clearly and explicitly cover the process of liquidation of the pension company and all circumstances;

b) the liquidation of the pension company does not comply with the requirements of this Law;

c) the liquidation of the pension company compromised the interests of participants and beneficiaries.

Article 6. Fit and proper criteria for the liquidator

1. The liquidator determined by this Rule shall comply with fit and proper criteria established by this Article.

2. The liquidator shall have:

a) a good reputation, a reliable and conscientious attitude to work, in accordance with the requirements established by Article 7 of this Rule;

b) knowledge, skills and experience necessary for conducting the liquidation process in a pension company, in accordance with the requirements established by Article 8 of this Rule;

c) ability to make decisions based on independent and objective judgment, and avoid conflicts of interest, in accordance with the requirements established by Article 9 of this Rule;

3. When assessing compliance with fit and proper criteria for the liquidator, the pension company and the Service shall be guided by the principle of proportionality, which means taking into account the size, scale, internal organizational structure, risk profile and complexity of the

pension company in the assessment process. The principle of proportionality shall not be applied when assessing the criteria for a good reputation, reliability and conscientious attitude to work.

Article 7. Good reputation, reliability and conscientious attitude

1. For the purposes of this Rule, a person shall be considered to have a good reputation, reliability and conscientious attitude unless there are clear, objective circumstances to the contrary.

2. A person is considered to be inconsistent with the criteria set out in paragraph 1 of this Article if:

a) he/she participated in an operation in any country that has caused significant damage to a financial institution and/or has infringed the rights of consumers and/or beneficiaries and/or has led to the insolvency or bankruptcy of this institution;

b) he/she has misused his/her rights while performing his/her duties in a financial institution;

c) he/she did not fulfil and/or does not fulfil one or more financial obligations;

d) has been convicted of a serious or particularly serious crime, money laundering, financing of terrorism and/or legalization of illegal income or other economic crime.

3. When assessing the reputation of a person, the following shall be taken into account:

a) the professional reputation of the person, including the fact of revocation of the license/registration/membership related to professional activity, if any;

b) the existence of disciplinary liability and/or dismissal from work against the person, taking into account the relevant reasons.

Article 8. Necessary knowledge, skills and experience

1. For the purposes of this Rule, a person is considered to have the knowledge and experience necessary to conduct activities if:

a) he/she has an academic degree - a qualification document (diploma) awarded by a higher education institution after completing an appropriate level of higher academic education;

b) he/she has at least 5 (five) years of professional experience in the financial or other relevant field.

2. The liquidator shall have the relevant skills and abilities necessary to perform properly the functions and duties assigned to him/her.

3. Knowledge, skills and experience of the liquidator shall not be assessed only by confirming the fact of the academic degree and work experience. The assessment shall include an analysis of the

person's knowledge and experience, which means taking into account the duties assigned in the past, the specificity, scope and complexity of the work.

Article 9. Independence and conflict of interest

1. The liquidator shall have the ability to make decisions based on independent and objective judgment, to evaluate the decisions made by others and to avoid conflicts of interest.
2. In order to avoid a conflict of interest, the liquidator shall not have close relations with the pension company, the insurer or asset management company hired by the pension company, the founder of the pension company, the employer(s) making pension contributions to the pension schemes, or members of the supervisory board or governing body of the aforementioned entities.
3. In the event of a conflict of interest, the liquidator shall immediately notify the Service.

Article 10. Rule for compensation of the liquidator

1. The compensation (remuneration) of the liquidator appointed by the Service shall be adequate for the duties assigned to him/her.
2. The Service is authorized to reimburse from its own funds all expenses and remuneration related to the appointment of the liquidator and the performance of his duties. In such a case, a fixed-term employment contract shall be concluded between the Service and the liquidator, which shall also determine the terms and conditions of compensation (remuneration) of the liquidator.
3. The Service may appoint the same individual as liquidator for more than one pension company simultaneously.

Article 11. Rights and obligations of the liquidator

1. A pension company in the process of liquidation shall be represented in its relations with third parties by a liquidator. He/she shall have full authority over the supervisory board of the pension company and all other governing bodies (including the general meeting of shareholders and partners) (except for cases when the supervisory board or the governing body is authorized to continue managing the pension scheme until the end of the liquidation process).
2. In accordance with the Law "On Voluntary Private Pension" and this Rule, upon the entry into force of the individual administrative legal act on the initiation of the liquidation process and the appointment of a liquidator, the authority of management/governing bodies of the pension company is terminated.

3. The liquidator shall be authorized to conduct activities related to the liquidation of the pension company, to accomplish court/arbitration cases or to settle disputes.

4. The liquidator shall be obliged to:

a) manage assets, including investments, cash and other financial assets belonging to pension schemes;

b) assess liabilities, which includes the assessment and identification of all current/matured liabilities, including liabilities to pension scheme participants, unpaid contributions and any administrative costs;

c) to satisfy creditors' claims, which includes the fulfillment of any matured liabilities, including the payment of imposed penalties and administrative costs, before the distribution of assets to pension scheme participants;

d) ensure fair distribution, which includes the distribution of remaining assets to pension scheme members in accordance with their rights.

5. The liquidator shall conduct the liquidation process with conscientious attitude, in case of failure to perform or improper performance of duties, the liquidator shall be liable in accordance with the legislation of Georgia.

Article 12. Stages of the liquidation process

The liquidation process includes the following stages:

a) valuation of assets and liabilities;

b) satisfaction of claims;

c) distribution of remaining assets to pension scheme members;

c) reporting to the Service;

d) completion of the liquidation process of the pension company.

Article 13. Order of meeting the requirements

1. When conducting the liquidation process, at the stage of satisfaction of claims, priority shall be given to pension obligations towards pension scheme participants, in accordance with the rules of the pension scheme.

2. Taking into account paragraph 1 of this Article, the liquidator shall satisfy the claims towards the pension company in the following order:

- a) all expenses and remuneration related to the appointment of the liquidator and the performance of his duties;
 - b) claims of pension scheme participants towards the pension company;
 - c) claims of all other creditors (in case of sufficient assets);
 - d) budgetary debts (if any).
3. If the existing assets (amount) are insufficient to fully cover the claims outlined in this Article, then all relevant overdue claims shall be covered in proportion to the amount of each creditor's claim, in the order specified in paragraph 2 of this Article.

Article 14. Completion of the liquidation process and submission of the liquidation report

1. No later than 30 (thirty) calendar days after satisfying all claims against the pension company and selling all assets of the pension company, the liquidator is obliged to submit to the Service a final balance sheet and a report on all actions taken by him/her during the liquidation process.
2. After submitting the balance sheet and report outlined in paragraph 1 of this Article, the Service shall issue an individual administrative-legal act on the completion of the liquidation process of the pension company.
3. The Service shall submit the individual administrative-legal act issued on the completion of the liquidation of the pension company to the National Agency of Public Registry on the same day for the purpose of registering the completion of the liquidation process of the pension company and removing the pension company from the relevant register.
4. On the basis of the individual administrative-legal act issued by the Service on the completion of the liquidation process, the completion of liquidation of the pension company is marked in the register of the entities carrying out voluntary private pension activities