

## Law of Georgia on Non-Bank Depository Institutions – Credit Unions

VAKHTANG GONGADZE\*

On 4 July 2002 parliament adopted the Law of Georgia on “Non-Bank Depository Institutions – Credit Unions” on the basis of a draft law elaborated within the framework of the Agricultural Development Project (ADP) of the World Bank International Fund for Agricultural Development (IFAD). This Law establishes the legal status and scope of credit unions, as well as mechanisms of supervision and control over them. The Law consists of 11 chapters and 32 articles.

Chapter One provides general provisions, including definitions and principles and powers governing the activity of credit unions and registration of credit unions.

According to Article 1 a non-bank depository institution – credit union – means “an enterprise registered in an organizational legal capacity of a co-operative society that receives deposits from only its members, provides lending to its members, undertakes banking activities allowed under this Law and the ultimate goal of which is not to gain profit”. Paragraph e) of the same Article reads that “a loan is any liability of a non-bank depository institution – credit union – related to the issuance of funds by a credit union to its members on the principle of repayment, valuation and maturity”.

Paragraphs 2 and 3 of Article 2 regulate the company name of credit unions and stipulate that credit unions shall include the term “credit union” as well as consider the requirement of the Law on Entrepreneurs.

Article 4 calls for credit unions to be registered in accordance with the requirements of the Law of Georgia on Entrepreneurs.

According to Article 21 of the Law as well as Article 59.7 of the Organic Law on the National Bank of Georgia, the National Bank shall periodically define for credit unions the minimum amount of issued capital in cash form which in accordance with Article 61 of the Law of Georgia on Entrepreneurs and Article 21.2 of this Law shall be formed of the shares deposited by the members of a cooperative society (credit union). According to Paragraph 3 of this Article, issued capital of a credit union may be reduced only upon the consent of the National Bank and shall not be less than the minimum amount of issued capital defined by the National Bank. Under Article 60.3 of the Law of Georgia on Entrepreneurs a cooperative society in terms of its obligations before its creditors shall be liable through its property. Considering the National Bank’s strict control and supervision over the activities of credit unions the Law clearly sets the composition of capital of an enter-

---

\* Student of Tbilisi State University Master’s Programme in European Law and Trainee at GEPLAC.

prise, according to Article 21.1: "the capital of a credit union shall consist of issued capital, additional monetary contributions, monetary donations, general reserves considered under this Law, the previous year's retained earnings and financial year's earnings." In addition, according to Article 18 of Chapter VII general reserves shall be formed by contributions from annual earnings, and shall not be less than 90% of the distributable earnings. This is one of the duties of a credit union and serves to cover loss.

Chapter II of the Law concerns the conditions for membership of credit unions and rights and duties of members. It consists of only one article according to which only individuals are entitled to become members of a credit union. Paragraph 2 of this Article specifies the principal duty of a credit union that they should invest a share within the time-limit and in an amount prescribed under the by-law of the credit union.

Chapter III concerns the management of a credit union. A three-layer management system (general meeting, supervisory council, executive board) provided for by the Law is in compatibility with the requirements of the Law of Georgia on Entrepreneurs. What is new is that the institute of an executive director is incorporated into this system. According to Article 9, the executive board out of its composition shall designate the executive director. He shall chair the executive board and represent it vis-a-vis third parties. Under Article 6.2 of the Law, non-members of a credit union may be designated for the position of an executive director.

Decisions regarding the establishment of branches and the reorganisation and liquidation of credit unions fall within the special authority of a general meeting. Article 7.3 stipulates that it is necessary to obtain prior consent from the National Bank.

It is also noteworthy that the Law prescribes the authorisation of a supervisory council for granting loans to members of the executive board.

A new feature in the Law is the institute of a credit committee outlined in article 10 in Chapter III. The credit institute is not a management body although placed in the chapter concerning management bodies. It is evident, that this chapter of the Law is not structurally well arranged. It would have been better to separate the provisions on credit committee in a special chapter as it is the body responsible for the credit union's lending activities. Article 10.1 also needs clarification. Its first sentence reads that a credit committee is accountable to the executive board but in the following sentence determines its duty to submit its progress report to the supervisory council together with the executive board.

The special authority of credit committee prescribed by the Law include consideration of loan applications submitted by the members of credit union, adoption of appropriate decisions, control over repayment of loans and deciding on other issues considered under the legislation or its charter.

Article 17.3 of the Law allows credit unions to carry out certain banking activities, such as acceptance of deposits, lending and making investments in accordance with Article 17.3. A credit union has the right to make investments with due consideration of so-called "excess

liquidity”, by using funds that remain with a credit union after timely settlement of members’ and other financial claims, as well as after the satisfaction of the members’ demand on loans (Article 1(h)).

According to Article 17.1 a credit union has the right to make investments in the form of short-term loans to other credit unions. This provision is especially important in terms of economy since it facilitates the establishment and strengthening of similar financial institutions in Georgia.

Chapters IX and X of the Law regulate the licensing as well as National Bank’s supervision over credit unions’ activities, including temporary administration, liquidation and the application of sanctions set by the National Bank in case of violations. All the above represents an integral processes of a single cycle of banking supervision which in its turn are the rights and duties of the National Bank as the regulatory body of the banking system and which is explicitly regulated in the new version of Article 59 of the Organic Law of Georgia on National Bank.