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Governing for Growth in Georgia

SUPPORT FOR INVESTMENT FUNDS LAW DEVELOPMENT

USAID GOVERNING FOR GROWTH (G4G) IN GEORGIA

22 February 2018

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DELOITTE CONSULTING LLP

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USAID CONTRACTING OFFICER'S REPRESENTATIVE:

REVAZ ORMOTSADZE

AUTHOR(S): MICHELE PARNELL

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Reviewed by: Tamar Buadze, Michael Martley, George Amzashvili

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ACRONYMS

AIFMD	Alternative Investment Fund Managers Directive
ADB	Asian Development Fund
AIF's	Alternative Investment Funds
CIU	Collective Investment Undertaking
CMAC	Capital Markets Advisory Committee
ESMA	European Securities Markets Regulatory Authority
ESMA	European Security and Market Authority
EU	European Union
EU Acquis	The body of law applicable in the EU comprising of the Treaties, Legislation and Regulations
FCA	Financial Conduct Authority
G4G	Governing for Growth in Georgia
GITA	Georgia Innovation and Technology Agency
GoG	Government of Georgia
GSE	Georgian Stock Exchange
IMF	International Monetary Fund
IOSCO	International Organization of Security Commissions
LIF	Law on Investment Funds
LS	Law on Securities Market
MiFID	Markets in Financial Instruments Directives (MiFID I and II (as amended))
MoESD	Ministry of Economy and Sustainable Development
MoF	Ministry of Finance
MTF	Multilateral Trading Facility
NAV	Net Asset Value
NBG	National Bank of Georgia
OTF	Organized Trading Facilities
The IOSCO Principles	The Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation (Revised 2011)
ToR	Terms of Reference
UCITS	Undertakings in Collective Investments for Transferrable Securities
USAID	United States Agency for International Development

CONTENTS

1. EXECUTIVE SUMMARY 6
2. BACKGROUND 8
3. METHODOLOGY 9
4. FINDINGS 10
5. RECOMMENDATIONS 11
APPENDIX A: DETAILED CONCEPT OF DRAFT INVESTMENT FUNDS LAW 16
APPENDIX B: NOTE ON DEFINITION OF COLLECTIVE INVESTMENT UNDERTAKING (CIU), MANAGEMENT OF FUNDS; INVESTMENT AND BORROWING FOR UNDERTAKINGS IN COLLECTIVE INVESTMENTS FOR TRANSFERRABLE SECURITIES (UCITS) AND ALTERNATIVE INVESTMENT FUNDS (AIF'S) AND ALTERNATIVE INVESTMENT FUNDS MANAGER DIRECTIVE (AIFMD) 73
APPENDIX C: DRAFT COLLECTIVE INVESTMENT SCHEME LAW 77

1. EXECUTIVE SUMMARY

The objective of this consultancy is as follow:

- To contribute to the drafting of a new Law on Investment Funds in line with the European Union (EU) Acquis and current international standards and best practices.

The First Mission

The first mission was undertaken between 6 to 10 March 2017. G4G arranged meetings with key stakeholders including:

- Senior officials and staff of G4G;
- The Capital Markets Advisory Committee (CMAC);
- The Ministry of Finance (MoF);
- The Ministry of Economy and Sustainable Development (MoESD);
- Representatives of the National Bank of Georgia (NBG);
- Representatives of the Georgian Stock Exchange (GSE);
- Representatives of commercial banks;
- Representatives of private companies; and
- Representatives of brokerage firms.

Deliverables Provided During the First Mission

The consultant drafted and provided two deliverables during the first mission. These comprised of:

- A suggested list of key issues for CMAC's consideration when developing the legal and regulatory policy for investment funds (outlined in recommendations); and
- A "skeleton" or rather "**Suggested Areas of Coverage for an Investment Funds Law**" (found in recommendations), detailed matters which any new investment fund law should cover to align with the EU Acquis and international best practice and in particular the International Organization of Security Commissions (IOSCO) Principles relating to investment funds.

The consultant made a presentation to members of CMAC on each of these two documents providing an explanation as to the significance of these in terms of regulatory policy and specific areas that an investment funds law should cater for.

The consultant also recommended that in order to develop the nascent fund market in Georgia, it would be advisable to adopt an incremental approach towards compliance with the Undertakings in Collective Investments for Transferrable Securities (UCITS) Directives. This is because full compliance may stifle and conceivably undermine any development of the market due to the high level of sophistication and complexity of the detailed requirements of the Directives.

The Second Mission

The second mission was undertaken between 22 and 30 May 2017. In advance of the start of the mission, the consultant provided the following deliverable:

- The *Detailed Concept of the Investment Funds Law* (found in Appendix A), fully compliant with the EU Acquis, international best practices and developments in the legal structures of investment funds and which catered to the development of investment trust structures in the absence of a Trust Law in Georgia.

During this second mission, G4G again arranged meetings with key stakeholders. The consultant also met and engaged with representatives of the International Monetary Fund (IMF) who were in country to

advise the NBG and GoG on taxation issues in relation to capital markets instruments as a whole in order to discuss international best practices with regard to the taxation treatment of investment funds.

The mission also provided the opportunity for CMAC and the local legal expert to discuss in detail the concept of the draft investment funds law and how this "precedent" could be adjusted to meet the needs of the nascent Georgian market yet retain the essential elements required by the EU Directives and international best practice.

The Third Mission

This third mission was undertaken 14 to 25 October and its purpose was to:

- Discuss issues arising from the concept of the draft funds law supplied to the Drafting Committee and how to best develop this for the Georgian market;
- To engage in further discussions with the local legal expert with regard to investment funds; and
- To further engage with industry stakeholders with regard to the development of the fund market in Georgia.

A meeting was arranged with representatives of the industry in which they reiterated their concerns as to the taxation treatment of funds.

Comments were provided to the local expert on interpretational issues as to the legal structure of funds envisaged by the UCITS Directive and the Alternative Investment Fund Managers (found at Appendix B).

The Fourth and Final Project Mission

The final mission was conducted from 29 January to 2 February 2018 and its purpose was to finalize the planning for the further progress of the draft Collective Investment Schemes Law.

The consultant provided a comprehensive draft of the Law (found at Appendix C) accompanied by an explanatory note addressing the complexities of the UCITS Directive requirements and the Alternative Investment Fund Managers Directive (AIFM) requirements. This draft will serve as the basis for future discussions by the Drafting Committee as to how best to integrate the EU collective investment scheme requirements in to domestic Law.

2. BACKGROUND

The detailed background to this project in the context of the development of capital markets in Georgia is fully explored in the *The Georgian Capital Market Diagnostic Study and Recommendations,*conducted by Asian Development Bank (ADB) with G4G support. The means by which this development will be achieved is addressed in the *GoG Capital Market Development Strategy and Action Plan*.

Pertinent to this project is the fact that Georgia has entered into an Association Agreement (AA) with the EU which inter alia requires the Government of Georgia (GoG) to ensure that the EU Directives in the securities market sector are accurately reflected in the domestic legal and regulatory framework the so called "approximation process". The timescales for this to be achieved are provided for each Directive in the AA and these range between five and seven years from 1 September 2014.

This is a herculean task since the process of "approximation" is a unique obligation of membership of the EU and has been interpreted by the EU as meaning the following:

> "That countries aspiring to join the European Union must align their national laws, rules and procedures in order to give effect to the entire body of EU law contained in the acquis communautaire".

The pre-accession approximation process is normally used an opportunity for countries to organise their institutions and procedures and to train their staff for the daily processes and responsibilities of EU law making, implementation and enforcement.

There are three key elements in the approximation process:

- First, to adopt or change national laws, rules, and procedures so that the requirements of the relevant EU law are fully incorporated into the national legal order;
- Second, to provide the institutions and budgets necessary to carry out the laws and regulations (known as the 'implementation' or 'practical application' of the directive); and
- Third, to provide the necessary controls and penalties to ensure that the law is being complied with properly and in its entirety (enforcement).

The first step in the process of approximation is the analysis and comparison of EU and existing national environmental legislation to determine the existing state of conformity and the appropriate national response to the EU legislation.

This initial evaluation has two steps:

- Step 1. Is there national legislation covering this subject matter?
- Step 2. Where there is national legislation, each article of the EU law must be compared to the relevant national law(s) and regulations.

The national legislation may:

- Respond entirely to EU obligations in which case the evaluation is more a check of conformity;
- Correspond in part to EU obligations, in which case the evaluation will need to consider gaps which may remain and the possible ways of dealing with them; and
- Appear to be in conflict with EU legislation, in which case the evaluation should include a review of options for the modification of relevant national legislation (whether to adapt existing laws or to replace them, for example) and all parts of the relevant national law need to be considered.

When beginning the process of approximation, member states often compare their national laws, institutions and procedures with the requirements of a directive in tabular form, with each article or requirement of the national legislation set out in comparison to the reference of the relevant article of the directive. This can later be used as a guide to the texts the member states must provide to the Commission demonstrating that they have approximated the EU Directive in full.

In theory, at the end of the process of approximation the domestic regime should conform to EU requirements. In practice, this is a difficult and lengthy process for many member states as the EU Acquis is constantly evolving to reflect revisions to the EU Directives in the light of member states practical experiences, developments in international best practices and the obligation of European Security and Market Authority (ESMA) to review the effectiveness of implementation of the EU Directives across all members' securities markets at regular intervals. Thus, the reality is that only the most developed member states keep pace with these challenges.

3. METHODOLOGY

In accordance with the requirements of the terms of reference (ToR) by way of background to the project, the consultant reviewed the following materials:

- *The Georgian Capital Market Diagnostic Study and Recommendations* conducted by Asian Development Bank (ADB) with G4G support;
- *GoG Capital Market Development Strategy and Action Plan*;
- Current Law of Georgia on Investment Funds;
- Law of Georgia on Securities Market;
- EU legislation on investment funds;
- Law of Georgia on Entrepreneurs; and
- Law of Georgia on Activities of Commercial Banks.

In addition to the above, the consultant had regard to the following source materials:

- UCITS as amended;
- IOSCO Principles;
- IOSCO Principles for the Regulation of Collective Investment Schemes;
- Markets in Financial Instruments Directives (MiFID I and II (as amended) (MiFID) as amended); and
- The Proposed Prospectus Regulation (replacing The Prospectus Directive 2003/71/EC, implementing Regulation EC No 809/2004 and amending Directive 2010/73/EU).

4. FINDINGS

Investment Funds

A pragmatic approach is recommended in developing the new legislative framework for investment funds. The key focus should be to put in place those elements of law and regulation that are most important to developing and enhancing confidence in investment funds and securities markets, such as safety of client assets and transparency, and enforcing these effectively. Increasing confidence should lead to growing markets and the ability of both the market and regulator to sustain a developing legal and supervisory framework.

The Georgian capital markets will not develop successfully if the full panoply of all the EU requirements for investment funds are applied in the short to medium term. Rather "alignment" with the EU Directives should be viewed as a longer-term commitment and undertaken incrementally.

Furthermore, the consultant and stakeholders alike share concerns that the EU Directives as a whole and in particular the UCITS requirements for funds provide a level of sophistication that would not at present, sit easily with the current state of local market development and will place demands on the market and the regulator that they are not likely to be able to sustain or afford.

While the consultant appreciates and accepts the need for Georgia to develop its legal and regulatory framework in conformity with EU requirements, there are the following practical considerations in seeking to replicate these for the investment fund industry:

- The regulatory architecture enshrined in the current EU Directives applicable to the securities markets (and funds in particular) is complex and interacts with the banking, insurance sector (laws and regulations) as well as company and insolvency laws and general market infrastructure such as exchanges, listing, clearing, settlement and depositary arrangements;
- The legal and regulatory infrastructure needs to seamlessly interface with no gaps or misalignments yet meet the "cost benefit analysis" requirement so that the demands on market participants are ones that they understand, are capable of compliance with and can afford;
- The drafting style of the EU Directives follows a more principal based "common law" approach; and
- The EU Acquis assumes a developed and liquid market with wide number of investment vehicles and market participants, which is not yet the case in Georgia.

The consultant has already highlighted the fact that the European legislative approach contained in Directives and Regulations is more principles-based in its approach and that if conformity with European requirements is to be achieved it will be necessary to follow a similar line in the new funds law. This type of approach does not align with Georgia's legal tradition but must be followed if approximation to EU requirements is to be achieved.

5. RECOMMENDATIONS

- Enable a wider range of funds in a wider range of structures to be operated.

  Ideally, this would include limited partnership structure funds for use by non-publicly offered funds, close-ended contractual funds and funds able to have a finite life (such as five or ten years). Both partnership structure and contractual structure funds are typically more tax efficient than corporate structures and therefore more attractive to investors. The ability to have closed ended funds with a finite life can also make this vehicle more attractive to investors who know when they will get their money back when the fund is wound up, even if they cannot raise cash by selling holdings in the fund on an exchange before that time. These changes also would improve potential for successful operation of venture capital funds.

- Enable the offering of more lightly regulated funds able to invest in higher risk securities that are only offered to professional investors and very affluent or expert investors able to sustain the higher level of risk that such funds typically entail. This will necessitate the definition of different investor categories to enable the targeting of funds either to retail clients ('the man in the street') or to professional/affluent clients as enabled under MiFID.

- In the medium term, consider enabling the typical modern range of open ended funds including funds of funds, master and feeder funds, umbrella funds and the use of multiple unit or share classes.

- Enable flexible investment requirements for all funds which are better aligned with the likely future development of the Georgian capital markets; that differentiate between funds offered to the retail market and funds offered to the professional/very affluent market; funds that are open ended which should have more liquid assets; and close-ended funds that are ideally suited to investing in illiquid assets.

- Devolve to regulation the details of how and where types of funds may invest and or borrow (investment and borrowing powers) with the greatest scope of choice to private placements to professional/affluent investors all subject to clear disclosure.

- At the very least, encourage the GoG to create a tax neutral environment to enable the funds market to compete on a level playing field with other staple investments such as bank deposits.

Suggested Key Issues for Consideration in Respect of Investment Funds

- **Proposed Legal Structures for Funds:**

  Company; trust company; contractual and limited partnership.

- **Types of Funds:**

  Open: obligation to continuously redeem;

  Closed: no obligation to continuously redeem; and

  Interval: redeem at fixed periods.

- **Licencing of All Investment Funds:**

  Requirement of the law for private and public placements.

- **Capital Requirements for Funds:**

  What should be the minimum capital requirements given there will be custodian/segregation arrangements to protect unit holders?

- **Marketing of Funds:**

  All domestic funds can be marketed inside and outside Georgia;

  All foreign funds being marketed into Georgia must be licensed by their home country/state and "recognised" by NBG (required by MiFID).

- **Fund Charges and Fee Structures:**

Should there be a maximum percentage that funds can charge unit holders for fees? Or left to market forces?

- **Investment and Borrowing Powers for Publicly Offered Funds;**

  Fund manager to operate on a risk-based approach to the investment portfolio;

  General requirement for liquidity of assets for closed and interval funds;

  General limit of 10% ceiling on investment in any one securities;

  Cash of no more than 25% of net asset value (NAV) may be placed with any one licensed bank (inside or outside Georgia);

  Closed funds may invest 100% in property.

- **Investment and Borrowing Powers for Private Placements**

  No restrictions on fund managers but overriding duty of transparency and disclosure.

- **Valuation**

  Flexibility to cater for domestic market illiquidity and lack of availability of current and reliable asset prices;

  "Licensed appraisers" for valuation of assets (independent valuation framework).

- **Conflicts of Interest**

  Only role where absolute independence will be required is between the fund manager and the custodian/depositary otherwise firms will be expected to have robust "Chinese walls" and arrangements to address conflicts.

- **Regulatory Fees**

  One off application fee and annual fee percentage of funds under management?

- **Taxation**

  See through and tax neutral or positive incentives.

Suggested Areas of Coverage for an Investment Funds Law

Arrangement of Sections
Part I: Preliminary

1. Short title
2. Interpretation

Part II: Investment Funds

3. Objective of investment fund
4. Arrangements not constituting an investment fund
5. Structure of investment funds

Part III: Restrictions

6. Unlicensed persons and investment funds
7. Conversion of investment funds prohibited

Part IV: Offering of Investment Funds

8. Offer not to the public
9. Offers to the public
10. Limitation on offering

Part V: Financial Promotion of Investment Funds

11. Publicity

Part VI: Constituting Document of an Investment Fund

12. Constituting document of an investment fund

Part VII: Prospectus of Investment Fund

13. Requirements for prospectus of investment fund
14. Responsibility for and liability for prospectus of investment fund

Part VIII: Participations in Investment Funds

15. Participations in investment funds
16. Evidence of ownership and transfer of ownership

Part IX Investment Policy of Investment Funds

17. Spread of investment risk by investment funds

Part X Auditors of Investment Funds

18. Requirements for auditor of investment fund
19. Resignation of auditor of investment fund
20. Co-operation with auditor

Part XI Reports and Accounts of Investment Funds

21. Requirements for annual and interim report and accounts
22. Approval of report and accounts

Part XII: Investment Companies

23. Establishment of an investment company
24. Licensing of investment companies with fixed capital
25. Licensing of investment companies with variable capital

Part XIII: Unit Trusts

26. Establishment of a unit trust
27. Licensing of unit trusts

Part XIV: Investment Fund Partnerships

28. Establishment of investment fund partnership

Part XV: Variation, Suspension or Cancellation of Investment Funds

29. Variation, suspension or cancellation upon request
30. Variation, suspension or cancellation by regulatory authority

Part XVI: Winding-up of Investment Funds

31. Limitations on winding up of investment funds
32. Limitations on termination of sub-funds of investment funds
33. Winding up of a solvent fund
34. Required actions during termination and winding up

35. Transfer of investment funds
36. Circumstances in which an investment fund may be wound up by the Court
37. Winding up of an investment fund by order of the Court
38. Effect of winding up

Part XVII: Licensing and Recognition of Investment Funds

39. Licensing of investment funds established in Georgia
40. Recognition of investment funds established outside Georgia
41. Determining licensing or recognition
42. Refusal to grant licence or recognition
43. Variation, suspension or cancellation of licence or recognition upon request
44. Variation, suspension or cancellation of licence or recognition by regulatory authority

Part XVIII: Operation of Investment Funds

45. Duties of the management company
46. Functions of the management company
47. Requirements for management company
48. Replacement of management company

Part XIX: Trustees of Investment Funds

49. Duties of a trustee of a unit trust of an investment fund
50. Functions of a trustee of a unit trust of an investment fund
51. Property of an investment fund not to be property of the trustee
52. Requirements for the trustee of a unit trust of an investment fund
53. Replacement of the trustee of a unit trust of an investment fund

Part XX: Participations in Investment Funds

54. Participations to be fully paid up
55. Purchase of participations
56. Redemption of participations in open ended and interval investment funds
57. Suspension of sale and redemption of participations in open ended and interval investment funds
58. Voting rights of participations

Part XXI: Payments by Participants in Investment Funds

59. Payments by participants
60. Payments from investment funds

Part XXII: Documentation for Investment Funds

61. Prospectus
62. Annual and interim reports

Part XXIII: Investment and Borrowing Powers for Investment Funds

63. Permitted investments, lending and borrowing for investment funds

Part XXIV: Valuation of Investment Funds

64. Requirements for valuation of investment funds

Part XXV: Powers of the Regulatory Authority

65. Power of the regulatory authority to regulate investment funds

66. Power of the regulatory authority to issue, vary, suspend and revoke licences, and recognitions of investment funds
67. Notification and display of licence or recognition
68. Regulatory authority power to inspect and investigate and recognised investment funds
69. Inspection of recognised investment funds
70. Investigation of investment holdings
71. Exercise of investigation powers by inspector
72. Confidential information
73. Exceptions for disclosure of confidential information
74. Co-operation
75. Investigation in support for foreign regulatory authority
76. Power of regulatory authority to act in relation to investment funds
77. Maintenance of a register of investment funds by the regulatory authority

Part XXVI: Review of Decisions by the Regulatory Authority

78. Review of decisions
79. Application for review of decisions
80. Implementation of decisions pending review

APPENDIX A: DETAILED CONCEPT OF DRAFT INVESTMENT FUNDS LAW

CHAPTER I: INVESTMENT FUNDS **20**
1. INTERPRETATION AND GENERAL APPLICATION **20**
2. DEFINITION OF INVESTMENT FUNDS **23**
3. ARRANGEMENTS WHICH DO NOT CREATE AN INVESTMENT FUND **24**
4. THE LEGAL STRUCTURES OF INVESTMENT FUNDS **24**
5. THE OPERATIONAL STRUCTURE OF INVESTMENT FUNDS **25**
6. LICENSING REQUIREMENTS FOR ESTABLISHING A DOMESTIC INVESTMENT FUND **25**
7. GENERAL REQUIREMENTS FOR CONSTITUTING DOCUMENTS OF AN INVESTMENT FUND **25**
8. SUGGESTIONS FOR CAPITAL REQUIREMENTS (NOT FOR INCLUSION IN THE DRAFT LAW) **26**
9. SUGGESTIONS AS TO REGULATORY FEES (NOT FOR INCLUSION IN THE DRAFT LAW) **26**
10. CONVERSION OF INVESTMENT FUNDS INTO OTHER LEGAL COMPANIES IS PROHIBITED **27**
CHAPTER II: TYPES OF INVESTMENT FUNDS **27**
COMPANY INVESTMENT FUNDS **27**
11. OPEN ENDED INVESTMENT FUNDS **27**
12. THE INVESTMENT FUND MANAGER OF AN OPEN-ENDED INVESTMENT FUND **28**
13. THE CUSTODIAN OF AN OPEN-ENDED INVESTMENT FUND **28**
14. CLOSE-ENDED INVESTMENT FUNDS **29**
15. THE INVESTMENT FUND MANAGER OF A CLOSE-ENDED INVESTMENT FUND **29**
16. THE CUSTODIAN OF A CLOSE-ENDED INVESTMENT FUND **29**
PARTNERSHIP INVESTMENT FUNDS **29**
17. ESTABLISHMENT OF A LIMITED PARTNERSHIP INVESTMENT FUND **29**
18. THE INVESTMENT FUND MANAGER OF PARTNERSHIP INVESTMENT FUND **29**
19. THE CUSTODIAN OF A LIMITED PARTNERSHIP INVESTMENT FUND **29**
CONTRACTUAL INVESTMENT FUNDS **29**
20. ESTABLISHMENT OF A CONTRACTUAL INVESTMENT FUND **29**
21. THE INVESTMENT FUND MANAGER OF CONTRACTUAL INVESTMENT FUND **30**
22. THE CUSTODIAN OF A CONTRACTUAL INVESTMENT FUND **30**
CHAPTER III: INVESTMENT FUND MANAGERS **30**
23. FUNCTIONS OF THE INVESTMENT FUND MANAGER **30**
24. DUTIES OF THE INVESTMENT FUND MANAGER **31**
25. GENERAL CONDUCT OF BUSINESS REQUIREMENTS FOR INVESTMENT FUND MANAGERS **32**
26. REPLACEMENT OF AN INVESTMENT FUND MANAGER **32**
CHAPTER IV: CUSTODIANS OF INVESTMENT FUNDS **33**
27. FUNCTIONS OF A CUSTODIAN **33**

28. DUTIES OF A CUSTODIAN 33
29. PROPERTY OF AN INVESTMENT FUND IS NOT THE PROPERTY OF ITS CUSTODIAN 35
30. GENERAL CONDUCT OF BUSINESS OBLIGATIONS OF CUSTODIANS 35
31. REPLACEMENT OF THE CUSTODIAN OF AN INVESTMENT FUND 35
CHAPTER V: TRUSTEES OF INVESTMENT FUNDS 36
32. FUNCTIONS OF A TRUSTEE 36
33. DUTIES OF A TRUSTEE 36
34. PROPERTY OF AN INVESTMENT FUND IS NOT THE PROPERTY OF A TRUSTEE 37
35. GENERAL CONDUCT OF BUSINESS OBLIGATIONS OF TRUSTEES 37
36. REPLACEMENT OF THE TRUSTEE 38
CHAPTER VI: MARKETING OF INVESTMENT FUNDS 38
37. GENERAL REQUIREMENT FOR FAIR AND CLEAR INFORMATION; 38
38. RESPONSIBILITY FOR MARKETING AND PROMOTION; 38
39. REQUIREMENTS FOR THE NAME OF THE INVESTMENT FUND 38
40. PROHIBITION ON FORECASTS OR ESTIMATES OF FUTURE INCOME AND OR CAPITAL GROWTH 38
41. REQUIREMENTS FOR INFORMATION ABOUT PAST PERFORMANCE 38
42. PROHIBITION ON THE USE OF THE WORD GUARANTEE 39
43. DISCLOSURE OF INFORMATION TO PARTICIPANTS AND POTENTIAL PARTICIPANTS 39
44. REQUIREMENTS FOR PROSPECTUS OF INVESTMENT FUNDS 39
45. FORMAT OF PROSPECTUS 39
46. FALSE OR MISLEADING STATEMENTS IN ANY PROSPECTUS 40
CHAPTER VII: PARTICIPANTS HOLDINGS IN AN INVESTMENT FUND 40
47. PARTICIPANTS IN AN INVESTMENT FUND 40
48. GENERAL CONDITIONS FOR INITIAL OFFERS OF ALL INVESTMENT FUNDS 40
49. GENERAL CONDITIONS FOR SALE AND PURCHASE OF ALL HOLDINGS 41
50. SALE AND REDEMPTION OF HOLDINGS IN OPEN ENDED AND INTERVAL INVESTMENT FUNDS 41
51. MODIFICATION TO ISSUES OF AND CANCELLATIONS OF HOLDINGS (UNITS/SHARES) 42
52. GENERAL OBLIGATIONS AT TO CHARGES TO PARTICIPANTS 42
53. EVIDENCE OF OWNERSHIP OF HOLDING AND TRANSFER OF OWNERSHIP 42
54. LIABILITY OF PARTICIPANTS IN INVESTMENT FUNDS 43
55. REDEMPTION OF HOLDINGS IN AN OPEN ENDED OR INTERVAL INVESTMENT FUND 43
56. SUSPENSION AND REDEMPTION OF HOLDINGS IN AN OPEN ENDED OR INTERVAL INVESTMENT FUND 43
CHAPTER VIII: INVESTMENT AND BORROWING POWERS OF LICENSED INVESTMENT FUNDS 44
57. INVESTMENT OBJECTIVES 44
58. GENERAL LIMITATIONS ON INVESTMENTS OF INVESTMENT FUNDS 44
59. LIMITATIONS ON INVESTMENT IN GOVERNMENT SECURITIES [FOR REGULATIONS] 45
60. LIMITATIONS ON DEPOSITS WITH BANKS [FOR REGULATIONS] 45

61. LIMITATIONS ON INVESTMENT IN IMMOVABLE PROPERTY (REAL ESTATE) [FOR REGULATIONS] 45
62. REAL ESTATE INVESTMENT FUNDS 45
63. LIMITATIONS ON INVESTMENTS IN OTHER INVESTMENT FUNDS [FOR REGULATIONS] **46**
64. MONEY MARKET INVESTMENT FUNDS 46
65. LIMITATIONS ON BORROWING AND LENDING AND RELATED ACTIVITIES 47
66. CONTROL 47
67. POWER OF AUTHORITY TO VARY INVESTMENT LIMITS 47
CHAPTER IX: VALUATION OF LICENSED INVESTMENT FUNDS 47
68. VALUATION OF LICENSED INVESTMENT FUNDS 47
69. BASIS OF VALUATION 48
70. VALUATION POINT 48
71. VALUATION METHODOLOGY[FOR REGULATIONS] 48
72. VALUATION AND PRICING ERRORS 49
CHAPTER X: REPORTS AND ACCOUNTS OF INVESTMENT FUNDS 50
73. APPROVAL OF ANNUAL REPORTS AND ACCOUNTS 50
74. REQUIREMENTS FOR ANNUAL REPORTS AND ACCOUNTS 50
CHAPTER XI: APPOINTMENT OF AUDITORS 51
75. REQUIREMENTS FOR AUDITOR OF AN INVESTMENT FUND 51
76. RESIGNATION OF AUDITOR OF AN INVESTMENT FUND 52
77. CO-OPERATION WITH AUDITORS 52
CHAPTER XII: FOREIGN INVESTMENT FUNDS 53
78. RECOGNITION OF FOREIGN INVESTMENT FUNDS 53
79. PUBLIC OFFERS OF FOREIGN INVESTMENT FUNDS 53
80. CRITERIA FOR RECOGNITION OF FOREIGN INVESTMENT FUNDS 53
81. OBLIGATIONS OF FOREIGN INVESTMENT FUNDS 53
CHAPTER XIII: TRANSFER OF BUSINESS AND WINDING UP OF INVESTMENT FUNDS 54
82. TRANSFER OR MERGER OF AN INVESTMENT FUND 54
83. WINDING UP OF INVESTMENT FUNDS 54
84. VOLUNTARY WINDING UP OF AN INVESTMENT FUND 54
85. APPROVAL OF THE AUTHORITY REQUIRED FOR VOLUNTARY WINDING UP 54
86. WINDING UP OF AN INVESTMENT FUND 55
87. REQUIRED ACTIVITIES DURING WINDING UP OR TRANSFER OF AN INVESTMENT FUND. **56**
88. CESSATION OF ACTIVITIES DURING WINDING UP OR TRANSFER 56
89. PETITION BY THE AUTHORITY TO WIND UP AN INVESTMENT FUND 56
90. WINDING UP OF AN INVESTMENT FUND BY THE COURT 56
CHAPTER XIV: FINANCIAL PENALTIES AND CRIMINAL OFFENCES 57
91. PENALTIES 57
CHAPTER XV: POWERS OF THE AUTHORITY 57
92. RULEMAKING POWER OF THE AUTHORITY 57

93. POWER OF THE AUTHORITY TO GRANT, SUSPEND AND REVOKE LICENCES OF INVESTMENT FUNDS **57**
94. POWER TO INSPECT AND OR INVESTIGATE AN INVESTMENT FUND **57**
95. POWER TO INVESTIGATE INVESTMENT FUNDS **58**
96. INVESTIGATION POWERS **58**
97. EXERCISE OF INVESTIGATION POWERS BY INSPECTOR **59**
98. CONFIDENTIAL INFORMATION **59**
99. EXCEPTIONS FOR DISCLOSURE OF CONFIDENTIAL INFORMATION **60**
100. CO-OPERATION **60**
101. INVESTIGATION IN SUPPORT FOR FOREIGN AUTHORITY **60**
102. MAINTENANCE OF A REGISTER OF INVESTMENT FUNDS BY THE AUTHORITY **61**
PART XVI: REVIEW OF DECISIONS OF AUTHORITY **61**
103. REVIEW OF DECISIONS **61**
104. APPLICATION FOR REVIEW OF DECISIONS **61**
105. IMPLEMENTATION OF DECISIONS PENDING REVIEW **61**
PART XVII: REPEAL OF PREVIOUS ACT **61**
106. REPEAL OF EXISTING ACT AND TRANSITIONAL ARRANGEMENTS **61**

Chapter I: Investment Funds[1]

1. Interpretation and General Application

(1) All investment funds established in or marketed to Georgia (including those issued by way of public or private placement) must be licensed by the Authority;
(2) Licensed investment funds are under an ongoing obligation to comply with this Law or other applicable law in Georgia and all applicable regulations as may be from time to time issued by the Authority;
(3) In this Law or other applicable law in Georgia, unless the context otherwise requires –

"Advertisement" means any communication whether oral, written or electronic to the public or any section of the public, to clients, or any group of clients that provides information about an investment fund;

"Annual report and accounts" means, in relation to an investment fund, a report on the operations, financial performance and financial condition of such an investment fund over an accounting year including the auditor's report;

"Authority" means the National Bank of Georgia (the Authority);

"Beneficial owner" means a holder of a unit who has beneficial ownership over property of that unit;

"Beneficial ownership" means the rights over the property of a unit of a unit-holder proportionate to the number of holdings (units/shares) held relative to the total number of holdings (units/shares) in issue;

"**Capital property**" means the property, other than the income property and any amount for the time being standing to the credit of the distribution account;

"**Close-ended investment fund**" means an investment fund that has a fixed number of holdings (units/shares);

"Control" and **"controlling interest"** means [see A. 10 MiFID definition];[2]

"Constitution" of a company formed in Georgia has the meaning ascribed to in the Law on Entrepreneurs;

"Deposit"[3] means a sum of money paid on terms under which it will be repaid, with or without interest or a premium, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;

"**Distribution account**" means the account to which the income property of an investment fund must be transferred at the end of each annual accounting period;

"Durable medium" means paper; or any instrument which enables the recipient to store information addressed personally to him in a way accessible for future reference for a period of time adequate for

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[1] These draft suggestions for investment funds are drawn from earlier European Union Directives, such as the Investment Services Directive (the predecessor of the first MIFID) and the earlier Undertakings for Collective Investment in Transferable Securities Directive together with relevant parts of the Alternative Investment Fund Managers Directive. The suggestions also take account of IOSCO requirements (which are better suited to emerging markets) on the basis that as the market develops Directives or Regulations can be integrated into the regime.

[2] A.10 is particularly complex. Its purpose is to ensure that the regulatory authority knows who is exercising day to day control over the firm. And to ensure the regulatory authority can:

- keep track of acquisitions or disposals of shares that could influence the day to day control by one person or group of people;
- see where a change of shareholding may transform the firm into a subsidiary of a group or vice versa;
- ensure that change of controlling interest is shared with other Authorities where for example a group has subsidiaries with different licenses

Controlling interest over authorised persons (thresholds are incremental).

- Acquiring control.
- Increasing control.
- Reducing control.

Consider adding definition of subsidiary company and holding company or group

[3] Cross check with Banking Act

the purposes of the information and which allows the unchanged reproduction of the information stored;

"Exchange-traded derivative contracts" means standardized securities or financial instruments which derive their value from the value of underlying assets, indices, or interest rates that are transacted on a licensed derivatives exchange."

"Expert investor" means[4]

(a) A person who is licensed by the Authority;
(b) An investment fund;
(c) A bank, a subsidiary of a bank, insurance company, co-operative society,[5] statutory investment fund, pension or retirement investment fund; or
(d) A high net worth individual, company, partnership, association or a trustee on behalf of a trust which, either alone or with any associates on a joint account who subscribes for holdings (units/shares) as the Authority may prescribe from time to time.

"Feeder investment fund" means an open-ended investment fund dedicated to investing in other specified open-ended investment funds;

"Financial instrument" means [MiFID definition[6]];

"Foreign investment fund" means an investment fund domiciled outside Georgia and which is recognized by the Authority as complying with this Law or other applicable law in Georgia;

"Investment fund property" means the property subject to the investment fund constituted by it namely the capital property and the income property;

"Immovable" means land and any buildings and works of a permanent nature on the land and anything forming an integral part of the land;

"**Income property**" means all sums that the investment fund management company, in consultation with the auditor, considers to be in the nature of income received or receivable for the account of and in respect of the property of an investment fund, but excluding any amount for the time being standing to the credit of the distribution account;

"Interim report and accounts" means, in relation to an investment fund, a report on the operations, financial performance and financial condition of such an investment fund for the first six months of an accounting year;

"**Investment"** means the act of placing monetary resources into an investment fund or the acquisition of any assets, including the purchase of real and personal property and any form of securities and money market instruments;

"**Investment fund with fixed capital**" means a company incorporated under the Law on Entrepreneurs, which is close-ended, has a fixed number of holdings (units/shares) and which is licensed by the Authority;

"Investment fund with variable capital" means a company incorporated under the Law on Entrepreneurs which is open ended and has a variable number of holdings (units/shares) in issue and which is licensed by the Authority;

"**Master investment fund"** is an investment fund which has at least one feeder investment fund, which is not itself a feeder investment fund and which does not hold holdings (units/shares) in a feeder investment fund;

"**Money market investment fund**" means an open-ended investment fund whose primary objective must be to maintain the net asset value of the investment fund either constant at par (net of earnings)

[4] To discuss
[5] Do these exist?
[6] Transferable security. But in practice since the market is illiquid the securities will not be transferable. See later comments on valuation of illiquid securities. The application of full European Union standards - which are based on assumptions that securities markets are developed, functioning and liquid would appear neither feasible nor advisable in Georgia since these would place unduly burdensome demands on the market and the regulator

or at the value of the participants' initial capital plus earnings and which must sell and redeem its holdings (units/shares) every working day;

"Money market instrument"[7] means a debt security that gives the owner the unconditional right to receive a stated, fixed sum of money on a specified date; is issued at a discount dependent upon the interest rate and the time remaining to maturity including treasury bills; commercial and financial paper, bankers' acceptances and negotiable certificates of deposit with original maturities of one year or less; and short-term notes issued under note issuance facilities;

"Net asset value" means the aggregate value of the assets of an investment fund (or sub-investment fund) less the total amount of the liabilities of that investment fund (or sub-investment fund) at the time of the calculation;

"**Net asset value per unit**" is the net asset value of the investment fund divided by the number of holdings (units/shares) in issue at the time of the calculation of the net asset value;

"**Open-ended investment fund**" means an investment fund that has a variable number of holdings (units/shares);

"Participant" means any natural or legal person holding holdings (units/shares) or any other form of participation or right or interest in an investment fund by reason of having invested capital in the investment fund;

"Prospectus" means a written statement that discloses the terms of the offering of an investment fund;[8]

"**Recognized investment fund"** means an investment fund incorporated outside Georgia and which is recognized by the Authority;

"Records" in relation to an investment fund includes records of the accounting for the investment fund, valuation of investment fund assets, calculation of the net asset value of participations in an investment fund; the issue and cancellation and sale and redemption of participations and of the portfolio and portfolio transactions for the investment fund;

"**Stand-alone investment fund**" is an investment fund which is not an umbrella investment fund or a sub-investment fund;

"**Sub-investment fund**" means a separate part of the investment fund property of an umbrella investment fund that is pooled, managed and accounted for separately;

"Sub-investment fund property" is the property of a sub-investment fund which is beneficially owned by the participants in that sub-investment fund;

"Trust" means an obligation imposed by a trust deed or other or other legally binding agreement requiring the trustee to deal with the trust property solely for the benefit of the beneficiaries of the trust, any one of whom may enforce this obligation;

"Trust deed" means any trust deed or other legally binding agreement between an investment fund management company and a trustee that is the constituting document of a unit trust;

"Trustee" in relation to an investment fund means a corporate body appointed under a trust deed or other agreement and which is licensed by the Authority and carries out the duties and functions set out in this Law or other applicable law in Georgia;

"Umbrella investment fund" means an open-ended investment fund which may be divided into a number of sub-investment funds in which participants are entitled to exchange rights in one sub-investment fund for rights in another and "sub-investment fund" must be construed accordingly;

"Holdings (units/shares)" means the rights or interests, however described, of the participants in an investment fund;

[7] Is this definition necessary?
[8] To integrate the new EU Prospectus Regulations

"Unit-holder" means any person who by reason of the holding of holdings (units/shares) or by reason of having invested capital in an investment fund has a proportionate interest in the property and income of the investment fund.[9]

(4) Any document required to be sent or received under this Law or other applicable law in Georgia may be done so by electronic means.

2. Definition of Investment Funds[10]

(1) For the purposes of this Law or other applicable law in Georgia, an investment fund means, subject to this section, any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangement (the "participants"), whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;

(2) The arrangements must be such that:

(a) The participants do not have day to day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and

(b) The arrangements have either or both of the characteristics mentioned in subsection (3);

(3) The characteristics referred to in subsection (2) (b) are:

(a) The contributions of the participants and the profits or income out of which payments to be made are pooled; and

(b) The property in question is managed as a whole;

(4) Where any arrangements provide for such pooling as is mentioned in subsection (3) (a) in relation to separate parts of the property, and each such part is maintained in a portfolio segregated in the books of the investment fund from the other assets of the investment fund, then the arrangements must nevertheless be regarded as constituting an investment fund which is required to be regarded as an umbrella investment fund on the condition that the participants are entitled to exchange rights in one part for rights in another part;

(5) Where each part of the investment fund property is segregated in the books of the umbrella investment fund and is a sub-investment fund:[11]

(a) The property subject to the sub-investment fund is beneficially owned by the participants in that sub-investment fund and must not be used to discharge any liabilities of the participants in any other sub-investment fund;

(b) Any liability of the participants in the sub-investment fund arising from the acquisition, management or disposal of the property subject to the sub-investment fund must be discharged solely out of that property;

(c) A participant in the umbrella investment fund must not be liable for debts arising from the acquisition, management or disposal of the property subject to a sub-investment fund in which the participant has participations beyond the amount which, at the time when any debts fall to be discharged, is equal to the value at that time of the participant's participations in that sub-investment fund;

(d) The investment fund manager (but no other person) of the sub-investment fund may on behalf of participants in a sub-investment fund take and defend proceedings for the resolution of any matter relating that sub investment fund and take action in relation to the enforcement of any judgment given in such proceedings; and

[9] These definitions may be too numerous but are included out of an abundance of caution and for clarity

[10] This is the accepted international definition

[11] This creates the 'protected cell' regime protecting investors in a sub-investment fund from liabilities of other sub-investment funds of the same umbrella

(e) The Authority may exercise its powers in relation to a sub-investment fund as if that investment fund is a stand-alone investment fund.

3. Arrangements Which do not Create an Investment Fund

(1) Arrangements that do not constitute an investment fund are:

(a) An arrangement operated by a person other than by way of business;

(b) An arrangement where each of the participants carries on a business other than a business concerned with dealing in, arranging deals, managing or advising on securities or investments and enters into the arrangement for commercial purposes related to that business;

(c) An arrangement where each of the participants is a company in the same group as the management company of the investment fund;

(d) An arrangement where:[12]

i. Each of the participants is a bona fide employee or former employee, or the wife, husband, widow, widower, child or step child under the age of 18 years of age of such an employee or former employee, of a company in the same group as the management company; and

ii. The property to which the arrangement relates consists of shares or stock, debentures, loan stock, or any other instrument creating or acknowledging indebtedness or warrants or certificates conferring rights in relation to any such investment, in each case being an investment in or in a member of that group.

(e) A franchise arrangement, that is to say, an arrangement under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;

(f) An arrangement the predominant purpose of which is to enable persons participating in it to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;[13]

(g) A contract of insurance;

(h) A pension investment fund;

(i) A close-ended investment fund which is established by the investment fund manager of another investment fund:

i. For the purposes of holding investments, directly or indirectly, on behalf of that investment fund, or a series of investment funds established by a single sponsor to invest in parallel one with another (the “owning investment funds”); and

ii. The holdings (units/shares) of which are not marketed to or otherwise available to any participant other than the owning investment funds.

(j) Any other arrangement that the Authority may from time to time specify.

4. The Legal Structures of Investment Funds

(1) The Authority may license an investment fund established as:

(a) Company;

(b) A trust company;

(c) A limited partnership; or

[12] Employee share schemes

[13] Timeshare arrangements

(d) A contractual arrangement.[14]

(2) Without prejudice to (1) above the Authority may prescribe arrangements other than those set out at (1) above by which investment funds may be formed.

5. The Operational Structure of Investment Funds

(1) An investment fund may be established as:

(a) An open-ended investment fund, which is an investment fund that is obliged to redeem participant's holdings upon their request at a price related to the net asset value of the property of the investment fund at regular intervals as stated in the investment fund particulars, and in any case, not less than twice a month; or

(b) A close-ended investment fund, which is an investment fund that is not required to redeem participants' holdings at their request;[15] or

(c) An interval investment fund, which is an investment fund that is obliged to redeem participants' holdings at a price related to the net asset value of the property of the investment fund at regular periodic intervals prescribed in the investment fund particulars but in any case, not less than less than twice a year.[16]

(2) An investment fund which is an open-ended investment fund under (1) (a) may be an umbrella investment fund.

(3) A close-ended investment fund may have a fixed or indefinite life. A close-ended investment fund which has a life of more than ten years at inception must list its holdings (units/shares) on a licensed securities exchange in Georgia.[17]

6. Licensing Requirements for Establishing a Domestic Investment Fund

(1) When establishing a domestic investment fund the investment fund manager is required to comply with the licensing regulations made by the Authority.

7. General Requirements for Constituting Documents of an Investment Fund

(1) Constituting document means:

(a) In relation to an investment fund which is a company the memorandum and articles or charter or constitution of that company;
(b) In relation to an investment fund which is a trust company in addition to the requirements in above the trust deed or agreement;
(c) In relation to an investment fund which is a partnership the partnership deed or agreement; and
(d) In relation to an investment fund which is a contractual investment fund the agreement between the investor and the investment fund manager of the investment fund.

(2) Any provision of a constituting document of an investment fund which purports have the effect of exempting the investment fund manager, the trustee, the custodian or auditor of said investment fund

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[14] A contractual investment fund is created by a standard contract between the investor and the investment fund management company. The advantage of these investment funds is that they have no legal persona unlike corporate investment funds and cannot be taxed but the disadvantage is that participants have no voting rights and can only object to changes in the investment fund structure by redeeming their holdings (holdings (holdings (units/shares)/shares)/shares)

[15] Closed ended funds are ideally suited to investing in illiquid assets, because unlike open ended funds, redemption from these funds is not possible; therefore, they do not need to have liquid assets that they can buy quickly to invest new money coming into a fund, or that they can sell quickly if fund investors wish to take their money out of the fund ('redeem').

[16] Interval investment funds may well be a compromise that works in Georgia as these are advantageous where liquidity and valuation are challenging

[17] Is this too short a period?

from any duty or function under this Law or other applicable law in Georgia or of indemnifying any such person against liability for any failure to carry out such duty or function is void.[18]

(3) The constituting document of an investment fund must not contain any provision that:

(a) Conflicts with this Law or other applicable law in Georgia;
(b) Is unfairly prejudicial to the interests of participants generally or to holders of any class of holdings (units/shares) in an investment fund.

(4) The constituting document of an investment fund must require its investment fund manager, trustees, directors and custodian to be under a continuous duty to:

(a) Act in the best interests of the participants; and
(b) Deal with the Authority in relation to the investment fund in an open and co-operative way and to disclose to the Authority anything relating to the investment fund of which the Authority would reasonably expect notice to be given in a timely, accurate and complete manner.[19]

(5) The investment fund manager of an investment fund must make the constituting document of each investment fund under its operation available for inspection by participants in the investment funds either electronically or at its premises during normal working hours.

8. Suggestions for Capital Requirements[20] (not for inclusion in the draft law)

(1) An investment fund manager is required to have regulatory capital of US $ 50,000.00;[21]
(2) A custodian which is an investment bank is required to have regulatory capital of US $ 100,000.00 in addition to any capital that may be required by its banking license;
(3) A trustee of an investment fund is required to have regulatory capital of US $100,000.00.

9. Suggestions as to Regulatory Fees (not for inclusion in the draft law)

(1) An application to be licensed by the authority must be accompanied by a non-refundable license fee which is:

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[18] opt out provisions from liability must be void

[19] This places a general overriding obligation of continuous disclosure on the fund

[20] The amount of capital needed by an investment fund management company is a much-debated topic among regulators. There is no right or wrong or "average" amount. Essentially there are three basic methods of calculating capital as follows:

- A fixed amount of capital unrelated to the investment funds under management or the operating expenses;
- Capital expressed as a percentage of the market value of the investment funds under management (for investment fund managers) or under administration (for custodians);
- A minimum amount of fixed capital plus liquid capital expressed as a fraction/multiple of operating expenses.

This capital is also normally required to be "ring fenced" i.e. in place not just at the time of granting the licence but also on a continuing basis.

The choice of the approach to capital is also determined by the legislative, regulatory and management environment. The most significant factors are:

- The existence of custodians and/or trustees who are independent of the investment fund management companies and who are all themselves significantly capitalised;
- The availability of insurance for professional indemnity, errors and omissions; and
- The existence of consumer compensation arrangements.

If few or none of the above factors are present, then it may be necessary to require investment fund management companies to have significant capital resources to underwrite potential investors caused by negligence or by maladministration.

However, setting capital requirements too high can have potentially damaging effects and may deter new market entrants and restrict competition. Investment fund management is not a capital-intensive business when undertaken competently and there is no intrinsic need for large amounts of capital save for cases of negligence or misfeasance as described above.

[21] The figures that are suggested in this draft are based on the financial resources requirements for well-respected and liberal off shore financial centers such as Mauritius

(a) US $20,000.00 for each investment fund manager;

(b) US $2,500 for each investment fund;

(c) US $20,000.00 for a trustee; or

(d) US $20,000.00 for a custodian.

(2) The annual licensing fee for:

(a) Investment fund manager is 0.05% of the net asset value investment funds under management;

(b) A trustee or a custodian is 0.025% of the net asset value of investment funds under managements.

10. Conversion of Investment Funds into other Legal Companies is Prohibited[22]

(1) No investment fund established in Georgia may convert from one type of legal or operational structure under this Law or other applicable law in Georgia;

(2) Where an investment fund wishes to change its legal or operational structure it must wind up that investment fund and have the investment funds license cancelled by the Authority.

Chapter II: Types of Investment Funds

Company Investment Funds

11. Open-Ended Investment Funds

(1) An open-ended investment fund with variable capital may be established as a limited liability company;

(2) An open-ended investment fund must include the words 'investment fund company with variable capital' in its memorandum and articles or charter, prospectus, reports and accounts and all disclosures required under this Law or other applicable law in Georgia;

(3) Notwithstanding any provisions in the Law on Entrepreneurs, an open-ended investment fund must not be required to state in its constituting documents a fixed amount of capital;

(4) A participant in an open-ended investment fund with variable capital must be entitled to request redemption of all or part of his holdings (units/shares) in the investment fund at the frequency stated in the prospectus and where such a request is made, the investment fund must purchase such holdings (units/shares), subject to any requirements of the investment fund as to the minimum level of investment;

(5) The sale and purchase of holdings (units/shares) of an open-ended investment fund must be based on their net asset value and be subject to such initial charges or exit charges as may be prescribed in the investment fund prospectus;

(6) An open-ended investment fund may issue ordinary holdings (units/shares) of different classes with different rights attaching to these that relate to:

(a) The accumulation of income by way of periodical credit to capital as opposed to the distribution of income; or

(b) Charges and expenses that may be taken out of investment fund property or payable upon entry to the investment fund or exit from the investment fund by participants; or

(c) The currency in which prices or values of investment fund holdings (units/shares) are expressed or payments made.

[22] In order for an investment fund to "convert" best practice dictates that the investment fund be wound down and closed and then it can be reorganised in order to meet the offers of public investment funds requirements

(7) Notwithstanding any provisions in the Law on Entrepreneurs, an open-ended investment fund must not be required to comply with provisions relating to:

(a) The giving of financial assistance by a company for the purchase of its shares;

(b) Notice to the [Registrar of Companies[23]] of certain alterations in share capital;

(c) Notice of increase of share capital;

(d) The power of a company to reduce its share capital;

(e) Pre-emptive rights;[24]

(f) Maintenance of capital;

(g) Restrictions on the distribution of profits and assets;

(h) Creation of a legal reserve.[25]

12. The Investment Fund Manager of an Open-Ended Investment Fund

(a) The investment fund manager of an open-ended investment fund must be a company and must be licensed by the Authority as an investment fund manager;

(b) The investment fund manager of an open-ended investment fund must have powers to issue new holdings upon receipt of a valid fully paid application for subscription for such holdings and must increase the issued share capital accordingly in accordance with the methodology provided for in the constituting documents of the investment fund;

(c) The investment fund manager of an open-ended investment fund must have the powers to purchase its holdings upon receipt of a valid application to redeem such holdings and must cancel those holdings and reduce the issued share capital of the investment fund in accordance the methodology provided for in the constituting documents of the investment fund;

(d) Where the investment fund manager of an open-ended investment fund is a bank then the day to day management of the portfolio of the investment fund must be delegated by the bank to a company[26] holding a license as an investment fund manager.

13. The Custodian of an Open-Ended Investment Fund

(1) An open-ended investment fund must have a licensed custodian;[27]

(2) The investment fund manager of an open-ended investment fund and its custodian must not be related companies;

(3) The custodian of the investment fund may, subject to the approval of the Authority, serve as the Registrar for the investment fund.

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[23] To check what is required by the Law on Entrepreneurs

[24] A pre-emption right is an anti-dilution mechanism that allows shareholders to preserve their percentage shareholding in a company provided they have sufficient funds available to exercise their rights. Statutory pre-emption rights on the allotment and issue of ordinary shares or the rights to subscribe for or to convert securities into ordinary shares are normally imposed by company law but they may be found in a company's articles of association, shareholders' agreement or a trust deed.

[25] For discussion but this is to cater for the fact that an investment company does not operate like other companies and has different duties and responsibilities

[26] Subsidiary company; independent department of the bank operating with robust Chinese walls. This suggestion is not in line with international best practice but is there to address the fact that this is a developing market without the ability to set up “arm’s length” arrangements at present

[27] Terminology. I have used the word custodian we need to discuss if “depositary” is more appropriate.

14. Close-Ended Investment Funds

(1) A close-ended investment fund may be established as a limited liability company;

(2) A close-ended investment fund with fixed capital is required to include the words 'investment fund with fixed capital' in its memorandum and articles or charter, prospectus, reports and accounts and all disclosures required under this Law or other applicable law in Georgia.

15. The Investment Fund Manager of a Close-Ended Investment Fund

(1) The investment fund manager of a close-ended investment fund must be a company and licensed by the Authority;

(2) Where the investment fund manager of a close-ended investment fund is a bank then the management of the portfolio of the investment fund must be delegated by the bank to an entity holding a license as an investment fund manager.

16. The Custodian of a Close-Ended Investment Fund

(1) A close-ended investment fund must have a licensed custodian;

(2) The investment fund manager of a close-ended investment fund and the custodian must not be related companies;

(3) The custodian of the investment fund may, subject to the approval of the Authority, also act as the registrar for the investment fund.

Partnership Investment Funds

17. Establishment of a Limited Partnership Investment Fund

(1) An investment fund may be established as a limited partnership investment fund;

(2) A limited partnership investment fund is required to include the words 'limited partnership investment fund' in its partnership deed or agreement, prospectus, reports and accounts and all disclosures required under this Law or other applicable law in Georgia.

18. The Investment Fund Manager of Partnership Investment Fund

(1) The investment fund manager of a partnership investment fund must be the general partner which is a body corporate licensed by the Authority as an investment fund manager or a bank;

(2) Where the investment fund manager of a partnership investment fund is an investment bank then the management of the portfolio of the investment fund must be delegated by the to an entity holding a license as an investment fund manager.

19. The Custodian of a Limited Partnership Investment Fund

(1) A limited partnership investment fund must have a licensed custodian;

(2) The investment fund manager of the limited partnership investment fund and the custodian must not be related companies;

(3) The custodian of the investment fund may, subject to the approval of the Authority, serve as the Registrar for the investment fund.

Contractual Investment Funds

20. Establishment of a Contractual Investment Fund

(1) An investment fund may be established as a contractual investment fund;

(2) A contractual investment fund must include the words 'contractual investment fund' in its constituting documents, prospectus, reports and accounts and all disclosures required under this Law or other applicable law in Georgia.

21. The Investment Fund Manager of a Contractual Investment Fund

(1) The investment fund manager of a contractual investment fund must be a management company which is a body corporate licensed by the Authority as an investment fund manager or bank;

(2) Where the investment fund manager of a contractual investment fund is a bank then the day to day management of the portfolio of the investment fund must be delegated by the bank to an entity holding a license as an investment fund manager.

22. The Custodian of a Contractual Investment Fund

(1) A contractual investment fund must have a licensed custodian;

(2) The investment fund manager of the contractual investment fund and the custodian must not be related companies;

(3) The custodian of the investment fund may, subject to the approval of the Authority, serve as the Registrar for the investment fund.

Chapter III: Investment Fund Managers

23. Functions of the Investment Fund Manager

(1) The investment fund manager of an investment fund is required to be responsible for:

(a) Ensuring that all property of the investment fund is clearly identified as the property of that investment fund and is held by a custodian separately from the property of the investment fund manager and from the property of other investment funds operated by the same investment fund manager and from other clients of the investment fund manager and the custodian;

(b) Providing all administrative services required by the investment fund;

(c) Creating and maintaining the register[28] and transfer facilities of the investment fund;

(d) Offering and distribution of the holdings (holdings (units/shares)/shares) of the investment fund;

(e) In the case of open ended and interval investment funds, dealing in the holdings (units/shares) of the investment fund;

(f) Creating and maintaining accounting records of the investment fund and accounting for the property and expenses of the investment fund;

(g) Valuing the investment fund and calculating the net asset value of the investment fund and the net asset value per unit of the investment fund and where relevant the price per unit for sales and redemptions;

(h) Making decisions as to the composition of investment fund property in accordance with the constituting document and prospectus of the investment fund and its stated investment objectives and policy;

(i) Instructing the custodian in writing as to the exercise of rights attaching to investment fund property;

[28]This can be outsourced to the Custodian but the ultimate responsibility will remain that of the manager

(j) Preparation of all required disclosure of information concerning the investment fund and for the required content and distribution of that information;

(k) Creating and maintaining all records necessary to achieve and demonstrate the ongoing compliance of the operation of any investment fund with this Law or other applicable law in Georgia;

(l) Filing all required reports concerning an investment fund on a timely basis with the Authority; and

(m) Any further functions as may be prescribed by the Authority.

(2) Subject to (3), the investment fund manager of an investment fund may delegate to another party the provision of any of the functions in (1) above but must remain responsible for those functions and their proper performance and for oversight of any person to which it delegates such functions;

(3) The investment fund manager of an investment fund must not delegate the functions in (1) (h) and (i) to the custodian of the investment fund;

(4) Where the investment fund manager of an investment fund delegates any of the functions in (1), it must ensure that:

(a) The investment fund manager can effectively monitor the performance of the delegated function at all times;

(b) It does not inhibit the Authority's capacity to supervise the investment fund; and

(c) It must not prevent the investment fund being managed in the best interest of participants.

(5) The investment fund manager of an investment fund must exercise due care and diligence in the discharge of its duties and must be liable to the investment fund and its participants for any loss suffered by them arising from negligence, fraud, willful default or recklessness or omission in the performance of the said duties;

(6) The investment fund manager of an investment fund must make and keep for each investment fund and sub-investment fund for which it acts such records as are necessary to:

(a) Enable the investment fund and the investment fund manager to comply with the requirements of this Law or other applicable law in Georgia; and
(b) Demonstrate that such compliance has been achieved.

(7) The investment fund manager must ensure that the records for each investment fund and sub-investment fund for which it acts are kept in such a way that the Authority is able to access them readily and that:

(a) It is possible for any corrections or other amendments to the contents of such records prior to such corrections or amendments are easily ascertained; and
(b) It must not be possible for the records to be otherwise manipulated or altered.

(8) The records in (7) must be kept for a minimum of [seven/five] years.

24. Duties of the Investment Fund Manager[29]

(1) The investment fund manager of an investment fund must at all times:

(a) Operate the investment fund with due care and diligence in compliance with this Law or other applicable law in Georgia and the constituting document and prospectus of the investment fund;
(b) Exercise its powers in the best interests of the participants of the investment fund;
(c) Act impartially between all participants in the investment fund;

[29] These overriding obligations are there (in part) to reinforce the lack of separation between the banks and the fund managers.

(d) Not profit by its office except through the payment of remuneration permitted under this Law or other applicable law in Georgia;
(e) Avoid conflicts of interest between itself and the participants in the investment fund;
(f) Act honestly; and
(g) Ensure that there is an annual independent audit of the investment fund.

(2) The investment fund manager of an investment fund must report to the Authority immediately after it becomes aware of any material breach of:

(a) This Law or other applicable law in Georgia; and

(b) The investment fund constitutes documents and prospectus.

25. General Conduct of Business Requirements for Investment Fund Managers[30]

(1) The investment fund manager of an investment fund may only engage:

(a) In activities related or ancillary to the operation of investment funds and activities relating to or ancillary to its licensed status as an investment fund manager;

(b) Must comply at all times with such conduct of business regulations as may be prescribed by the Authority;

(c) Must have such financial resources on an on-going basis as are prescribed by the Authority in this Law or other applicable law in Georgia; and

(d) Must file with the Authority the reports and information on the investment funds that it operates that are required by the Authority in a timely, accurate and complete manner.

26. Replacement of an Investment Fund Manager

(1) The investment fund manager of an investment fund must not voluntarily terminate its appointment unless the termination is effective at the same time as the commencement of the appointment of a successor investment fund manager;

(2) Subject to (1) above, the Authority must be notified immediately by the investment fund manager of:

(a) The voluntary termination of its appointment by the outgoing investment fund manager; and

(b) The commencement of the new appointment by the incoming investment fund manager.

(3) The replacement of the investment fund manager must not take effect without the agreement of the prior approval of the Authority;

(4) The custodian of an investment fund may replace the investment fund manager of an investment fund where:

(a) Proceedings for winding up of the investment fund manager have commenced;

(b) An application has been made to dissolve the investment fund manager or strike it off the [Register of Companies];

(c) A petition for winding up of the investment fund manager has been filed in court;

(d) The investment fund manager has entered into arrangements to defer or pay off its debts with one of its creditors;

(e) A receiver has been appointed for the investment fund manager.

[30] This caters for the MiFID requirements which apply to funds and their dealings with participants

(5) In the event of involuntary termination of the appointment of the investment fund manager, the custodian of the investment fund must appoint a new investment fund manager for the investment fund, subject to approval of:

(a) The directors, in the case of a company investment fund;

(b) The trustees in the case of a trust company investment fund;

(c) The partners in the case of a partnership investment fund; and

(d) The Authority.

Chapter IV: Custodians[31] of Investment Funds

27. Functions of a Custodian

(1) The custodian of an investment fund is required to:

(a) Hold and deal with the assets of the investment fund in accordance with this Law or other applicable law in Georgia and the constituting documents of the investment fund in a manner that promotes the best interests of the participants in the investment fund;

(b) Totally segregate the property of the investment fund from its own property, from those of other investment funds, from those of its other clients and from those of the investment fund manager of the investment fund; and

(c) Be responsible for the collection of income due to be paid for the account of the investment fund.

(2) Ensure that the safe keeping arrangements for the property of the investment fund are at all times compliant with the Authority's client money regulations;

(3) The custodian of an investment fund is required to make and keep in respect of each investment fund such records as are necessary to:

(a) Enable the custodian to comply with the requirements of this Law or other applicable law in Georgia; and

(b) Demonstrate that it and the investment fund for which it acts have achieved such compliance.

(4) The custodian of an investment fund is required to ensure that the records for each investment fund and sub-investment fund for which it acts are kept in such a way that the Authority is able to access them readily and that:

(a) It is possible for any corrections or other amendments to the contents of such records prior to such corrections or amendments are easily ascertained; and

(b) It must not be possible for the records to be otherwise manipulated or altered.

(5) The records referred to above must be kept for a minimum of [seven/five] years;

(6) The custodian of an investment fund must be liable to the investment fund manager and participants for any loss suffered by them arising from negligence, fraud, willful default, omission or recklessness in the performance of the its duties.

28. Duties of a Custodian

(1) A custodian of an investment fund is required to act at all times in compliance with the Securities Law and this Law or other applicable law in Georgia and the constituting documents prospectus of the investment fund;

(2) A custodian of an investment fund must:

(a) Act with due care and diligence in accordance with the constituting documents of the investment fund;

[31] Terminology to discuss. But role may be safe custody and income collection/distribution

(b) Exercise its powers in the best interests of the participants of the investment fund;

(c) Act impartially between all participants in the investment fund;

(d) Not profit by its office except through the payment of remuneration permitted under this Law or other applicable law in Georgia;

(e) Avoid conflicts of interest between itself and the participants in the investment fund;

(f) Act honestly at all times;

(g) Exercise due diligence and care in the exercise of its duties and functions;

(h) Keep proper accounts and records;

(i) Ensure that there is an annual independent audit of the investment fund;

(j) Take all the steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the investment fund;

(k) Ensure that all investment fund property is as soon as practicable,[32] registered in the name of the custodian or nominee of the custodian;

(l) Take into its custody or under its control all documents of title to investment fund property;

(m) Collect all income due to be paid to the account of the investment fund;

(n) Advise the investment fund manager immediately of any corporate actions arising from investment fund property and the need to take decisions relating to those actions; and

(o) Ensure that instructions given to it by the investment fund manager for the exercise of rights attaching to the ownership of investment fund property are carried out.

(3) The custodian of an investment fund is required to take reasonable care to ensure that the investment fund is operated by the in accordance with the provisions of this Law or other applicable law in Georgia and in particular that:

(a) The issue and cancellation of holdings (units/shares) in the investment fund is carried out in accordance with this Law or other applicable law in Georgia and the constituting documents of the investment fund; and

(b) The net asset value and in the case of open ended and interval investment funds, the price of holdings (units/shares) in the investment fund are calculated in accordance with this Law or other applicable law in Georgia and the constituting documents of the investment fund;

(c) Any consideration due to the investment fund in respect of issue or cancellation of holdings (units/shares) is remitted to the investment fund immediately;[33]

(d) That any income due to the investment fund is remitted to it immediately and that the income is applied in accordance with this Law or other applicable law in Georgia;

(e) That the instructions of the investment fund manager are carried out unless they conflict with this Law or other applicable law in Georgia or the constituting document or prospectus of the investment fund;

(f) Provide an annual report to the participants of the investment fund including whether in the opinion of the custodian, the investment fund manager has managed the investment fund in the reporting period in accordance with the limitations placed on it by the investment and borrowing powers of the investment fund and its constituting documents and as well as measures taken to identify any breaches of these and corrective measures taken by the custodian in respect thereof; and

(g) In the case of an open ended or interval investment fund take all reasonable care to ensure that the sale and redemption of holdings (units/shares) is carried out by the investment fund manager in accordance with the provisions of this Law or other applicable law in Georgia.

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[32] Specify a number of days?

[33] To consider 2 working days for subsections c and d above

(4) The investment fund manager of an investment fund must issue and cancel holdings (units/shares) in the investment fund and immediately inform the custodian in writing of the number and value of holdings (units/shares) in the investment fund issued or cancelled in each dealing period.

(5) The custodian of an investment fund must, where it is of the opinion that a transaction in the property of an investment fund property contravenes the provisions of this Law or other applicable law in Georgia or the constituting documents of the investment fund, must require the investment fund manager to cancel the transaction or make a corresponding disposal or acquisition to remedy the contravention and compensate the investment fund for any resulting loss or expense.

(6) The custodian of an investment fund must at regular intervals of not less than once per month undertake a reconciliation of their records of the holdings (units/shares) of the investment fund that are in issue with the equivalent records of the investment fund manager and any failure of such reconciliation must be reported immediately to the Authority, the investment fund manager and as appropriate the directors of the investment fund, the trustees of the investment fund or the partners of the investment fund.

(7) The custodian must act independently from the investment fund manager.

29. Property of an Investment Fund is not the Property of its Custodian[34]

(1) The property of an investment fund and sub-investment fund must not by operation of any Law of Georgia be deemed to be the property of the custodian or any of its related companies;

(2) No creditor of the custodian of an investment fund and/or sub-investment fund other than a participant of that investment fund and/or sub-investment fund must have any claim against the property of that investment fund and/or sub-investment fund.

30. General Conduct of Business Obligations of Custodians

(1) The custodian of an investment fund:

(a) Must comply at all times with such conduct of business regulations as may be prescribed by the Authority;

(b) Must have such financial resources on an on-going basis as are prescribed by the Authority in this Law or other applicable law in Georgia;[35] and

(c) Must file with the Authority the reports and information on the investment funds that it operates that are required by the Authority in a timely, accurate and complete manner.

(2) The custodian of an investment fund must report to the Authority immediately after it becomes aware of any breach of:

(a) This Law or other applicable law in Georgia;

(b) The constituting documents of an investment fund or prospectus that has had, or is likely to have, a materially adverse impact on the interests of participants.

31. Replacement of the Custodian of an Investment Fund[36]

(1) The investment fund manager of an investment fund may, replace the custodian of the investment fund in accordance with the provisions of the constituting documents of the

[34] This is an essential provision and ensures that the assets of the fund are ring fenced in insolvency and cannot in any way be pledged or otherwise dealt with

[35] These amounts can be prescribed by regulations but see comments above in relation to capital requirements

[36] These requirements ensure the Authority is pre-notified and in a position to undertake “due diligence” on any replacement custodian

investment fund and such replacement must not take place without the prior approval of the Authority;

(2) The custodian of an investment fund must not voluntarily terminate its appointment unless the termination is effective at the same time as the commencement of the appointment of a successor custodian and it has the prior approval of the Authority for its successor;

(3) The Authority must be notified immediately and in advance of:

(a) The voluntary termination by the outgoing custodian; and

(b) The commencement of the new appointment by the incoming custodian.

Chapter V: Trustees of Investment Funds[37]

32. Functions of a Trustee

(1) The trustee of an investment fund is required to:

(a) Hold and deal with the assets of the investment fund in accordance with this Law or other applicable law in Georgia and the constituting documents of the investment fund in a manner that promotes the best interests of the participants in the investment fund;

(b) Segregate the property of the investment fund from its own property, from those of other investment funds, from those of its other clients and from those of the investment fund manager of the investment fund;

(c) Be responsible for the collection of income due to be paid for the account of the investment fund.

(2) Ensure that there are segregated safe keeping arrangements for the property of the investment fund;

(3) The trustee of an investment fund is required to make and keep in respect of each investment fund such records as are necessary to:

(a) Enable the trustee to comply with the requirements of this Law or other applicable law in Georgia; and

(b) Demonstrate that it and the investment fund for which it acts have achieved such compliance.

(4) The trustee of an investment fund is required to ensure that the records for each investment fund and sub-investment fund for which it acts are kept in such a way that the Authority is able to access them readily and that:

(a) It is possible for any corrections or other amendments to the contents of such records prior to such corrections or amendments are easily ascertained; and

(b) It must not be possible for the records to be otherwise manipulated or altered.

(5) The records referred to above must be kept for a minimum of seven years;

(6) The trustee of an investment fund must be liable to the investment fund manager and participants for any loss suffered by them arising from negligence, fraud, willful default, omission or recklessness in the performance of its duties.

33. Duties of a Trustee

(1) A trustee of an investment fund is required to act at all times act in compliance with the Securities Law and these and in the constituting documents of the investment fund and prospectus of the investment fund;

(2) A trustee of an investment fund must:

[37] To consider if these obligations should be contained in an Annex -see example attached to the end of the draft.

(a) Act with due care and diligence in accordance with the terms of the trust deed;

(b) Exercise its powers in the best interests of the unit holders who are the beneficiaries of the investment fund trust arrangements;

(c) Act impartially between all the participants who are the beneficiaries of the investment fund trust arrangements;

(d) Not profit by its office except through the payment of remuneration permitted under this Law or other applicable law in Georgia;

(e) Avoid conflicts of interest between itself and the participants who are the beneficiaries of the investment fund trust arrangements;

(f) Act honestly at all times;

(g) Exercise due diligence and care in the exercise of its duties and functions;

(h) Keep proper accounts and records;

(i) Ensure that there is an independent audit of the investment fund;

(j) Take all the steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the investment fund;

(k) Ensure that all investment fund property in registered form is, as soon as practicable, registered in the name of the trustee or a person retained by it as custodian;

(l) Take into its custody or under its control all documents of title to the investment fund property;

(m) Collect all income due to be paid to the account of the investment fund;

(n) Advise the investment fund manager immediately of any corporate actions in relation to the investment fund trust property and the need to take decisions relating to these; and

(o) Ensure that instructions given to it by the investment fund manager for the exercise of rights attaching to the ownership of investment fund trust property are carried out.

34. Property of an Investment Fund is not the Property of a Trustee

(1) The property of an investment fund and sub-investment fund must not be deemed to be the property of the trustee;

(2) No creditor of the trustee of an investment fund and/or sub-investment fund other than a participant of that investment fund and/or sub-investment fund must have any claim against the property of that investment fund and/or sub-investment fund.

35. General Conduct of Business Obligations of Trustees

(1) The trustee of an investment fund:

(a) Must comply at all times with such conduct of business regulations as may be prescribed by the Authority;

(b) Must have such financial resources on an on-going basis as are prescribed by the Authority in this Law or other applicable law in Georgia; and

(c) Must file with the Authority the reports and information on the investment funds that it operates that are required by the Authority in a timely, accurate and complete manner.

(2) The trustee of an investment fund must report to the Authority immediately after it becomes aware of any breach of:

(a) This Law or other applicable law in Georgia;

(b) The constituting documents of an investment fund or prospectus that has had, or is likely to have, a materially adverse impact on the interests of participants.

36. Replacement of the Trustee

(1) The investment fund manager of an investment fund may, subject to the approval of the Authority, replace the trustee of the investment fund in accordance with the provisions of the constituting documents of the investment fund and such replacement must not take place without the prior approval of the Authority;

(2) The trustee of an investment fund must not voluntarily terminate its appointment unless the termination is effective at the same time as the commencement of the appointment of a successor trustee;

(3) The Authority must be notified immediately and prior to of:

(a) The voluntary termination by the outgoing trustee; and

(b) The commencement of the new appointment by the incoming trustee.

Chapter VI: Marketing of Investment Funds

37. General Requirement for Fair and Clear Information;

(1) The information used to market or promote an investment fund must be clear and fair and must not contain any provision which is unfairly prejudicial to the interests of participants generally or to any class thereof;

(2) The information that must be included in marketing information is:

(a) Such information as is material information; and

(b) Information is material if it is either:

(i) Within the knowledge of the investment fund managers of the investment fund; or

(ii) Information which the investment fund managers of the investment fund ought reasonably to have obtained by making reasonable enquiries.

38. Responsibility for Marketing and Promotion

(1) For the purposes of this Law or other applicable law in Georgia the investment fund manager is responsible for all marketing and promotional information for each and every investment fund that it manages even where that is outsourced to a third party.

39. Requirements for the Name of the Investment Fund

(1) The investment fund manager of an investment fund must ensure that the name of the investment fund or class of holdings (units/shares) in the investment fund is not undesirable, misleading or in conflict with the name of another investment fund or class of holdings (units/shares) in that investment fund.

40. Prohibition on Forecasts or Estimates of Future Income and or Capital Growth[38]

(1) Marketing or promotional information for an investment fund must not contain any forecast or estimate as to the income or capital growth that may be achieve by that investment fund.

41. Requirements for Information about Past Performance

(1) Marketing or promotional information which contains information about the past performance of an investment fund whether in terms of income or of capital or of total returns shall contain the following

[38]Use of forecasts etc. comparative tales can be subject to manipulation and abuse and create a misleading impression of the performance of the investment fund.

statement which shall be equally as prominent as any reference to said past performance: “Past performance is not a reliable indicator of future results”.

42. Prohibition on the Use of the Word Guarantee[39]

(1) Before using as part of or in connection with the name of an investment fund or class of holdings (units/shares) in an investment fund the words “guaranteed”, “protected” or any other words with a similar meaning implying a degree of security in relation to the capital or income, the investment fund manager must demonstrate to the satisfaction of the Authority that:

(a) The guarantor has the authority and resources to honor the terms of the guarantee; and

(b) All the terms of the guarantee and the credentials of the guarantor are clearly set out in detail in the investment fund marketing documents and that any exclusions such as force majeure are highlighted.

43. Disclosure of Information to Participants and Potential Participants

(1) The investment fund manager of an open ended or interval investment fund or sub-investment fund must publish immediately, as often as it is calculated, the price per share or unit of the investment fund or sub-investment fund on the website of the investment fund manager or in such other manner as the Authority may direct.

(2) The investment fund manager of a close-ended investment fund or sub-investment fund must publish immediately, as often as it is calculated, the net asset value per share or unit of the investment fund on the website of the investment fund manager and in such other manner as the Authority may direct.

(3) The investment fund manager of an investment fund or sub-investment fund must make available on its website in downloadable form the current prospectus and annual audited report for that investment fund or sub-investment fund.

44. Requirements for Prospectus of Investment Funds[40]

(1) An investment fund must not be offered either by way of public or private placement to investors unless such offer is accompanied by a prospectus which has been determined as compliant by the Authority with the requirements of this Law or other applicable law in Georgia;

(2) The prospectus must be clear, concise and understandable and must be in the Arabic language;

(3) The prospectus must contain all the information investors would reasonably require for the purpose of making an informed decision to become a participant in the investment fund;

(4) Every prospectus of an investment fund must contain a prominent statement of the investment fund’s regulatory status, the regulatory regime applying to the investment fund and its prospectus and the date of the prospectus;

(5) The investment fund manager of the investment fund is responsible for every prospectus of the investment fund including any prospectus even where that task has been outsourced to a third party.

45. Format of Prospectus

(1) The prospectus may be made available in hard copy form, electronic form or other durable medium;

(2) If at any time after the issue of the prospectus of an investment fund and during the offering of the investment fund, there is a material change affecting any matter contained in the prospectus or a

[39] The use of the word “guarantee” rings alarm bells in terms of enforcement and is generally prohibited

[40] These general requirements are in line with the new EU Prospectus Regulations

significant new matter arises, the investment fund manager must immediately amend the prospectus and provide a copy of these amendments to the Authority.

46. False or Misleading Statements in any Prospectus

(1) A person must not make an offer of holdings (units/shares) in an investment fund established in Georgia or elsewhere if there is:

(a) A misleading or deceptive statement:

i) In the prospectus; or
In the application form that is part of the prospectus; or
ii) Any other advertising or promotional material that relates to the offer of the holdings (units/shares) or to the application form; or

(b) An omission of information that is required or which causes the prospectus or any other advertising or promotional material to be misleading;

(2) A person does not contravene sub-section (1) above where that person establishes to the satisfaction of the Authority that they:

(a) Made all enquiries that were reasonable in the circumstances; and

(b) After doing so, believed on reasonable grounds that the statement or omission was not misleading or deceptive.[41]

Chapter VII: Participants Holdings in an Investment Fund

47. Participants in an Investment Fund

(1) Participants in a close-ended investment fund are issued with holdings which are shares[42] in accordance with the provisions of the Entrepreneurs Law and which according to the constituting document may be fractions of shares in the investment fund;

(2) Different classes of shares may be issued in an open ended or interval investment funds or in a sub-investment fund of an open ended or interval umbrella investment fund, provided that:

(a) A class of share does not provide any advantage for that class that would result in prejudice to the holders of any other class in the same investment fund or in the same sub-investment fund; and

(b) The nature, operation and effect of any class is capable of being explained clearly in the prospectus and is envisaged in the instrument constituting the investment fund;

(3) Classes of shares of an open ended or interval investment fund or sub-investment fund may include currency classes and where purchase and sale of the share and payment of distributions are made in the same currency.

48. General Conditions for Initial Offers of All Investment Funds

(1) During the initial offer period for an investment fund the price paid per holding (unit/share) will be the fixed price set out in the prospectus;

(2) The initial offer period must not exceed [21 working days] and no redemptions can take place in this period;

(3) All monies subscribed during the initial offer period must be paid into the bank account of the investment fund which must be controlled by its trustee or custodian and must not be invested in any other manner until the initial offer period is completed. No charges for entry or exit or management of the investment fund may be made against these monies until the end of the fixed

[41] The due diligence defense.

[42] Does the Entrepreneurs Law permit fractional shareholdings?

price initial offer period or the minimum subscription amount being reached, whichever is the sooner;

(4) If the initial fixed price offering fails to reach any minimum subscription value required by the prospectus within the initial fixed price offer period, the monies held in the account by the trustee or custodian must be returned to the subscribers in full within ten days of the ending of the initial fixed price offer period. The Authority must be informed immediately of this occurrence;

(5) Immediately after the end of the fixed price initial offer period, the price at which holdings (units/shares) must be offered for sale is the net asset value of the unit however, a separately disclosed initial charge expressed as a percentage of the net asset value per unit may be added provided that the charge is clearly stated in the prospectus;

(6) Immediately after the end of the fixed price initial offer period, the price at which a holding may be redeemed must be the net asset value of the holding however, a separately disclosed exit charge expressed as a percentage of the net asset value per holding may be added provided that charge is clearly stated in the prospectus.

49. General Conditions for Sale and Purchase of all Holdings

(1) Purchase of holdings (units/shares) (including initial purchase) in an investment fund must be fully paid up and a holder must not be entered on the register until such time as payment for the holdings (units/shares) has been received.[43]

50. Sale and Redemption of Holdings in Open-ended and Interval Investment Funds

(1) Holdings (units/shares) in an open ended or interval investment funds are issued by entry upon the register by making a record of the holdings (units/shares) of the number and class concerned following receipt of a valid order and payment and cannot be issued in any other way;

(2) Holdings (units/shares) in open ended or interval investment funds are cancelled by recording the cancellation of existing holdings (units/shares) of the number and class concerned following receipt of a valid order for the redemption of the holdings (units/shares);

(3) Sale of holdings (units/shares) must only take place at the next price calculated after receipt of a valid order and payment;

(4) Redemption of holdings (units/shares) must only take place at the next price calculated after receipt of a valid order;

(5) The time of the issue or cancellation is the time when the record is made;

(6) The investment fund manager company must on each dealing day inform the trustee or custodian in writing of the number of holdings (units/shares) to be issued and cancelled that day in each investment fund and sub-investment fund;

(7) The investment fund manager must ensure that at each valuation point there are as many holdings (units/shares) in issue of any class as there are holdings (units/shares) of that class registered to participants for that class;

(8) The investment fund manager when issuing or cancelling holdings (units/shares) must not do, or omit to do, anything that would confer an advantage on itself or associated persons at the expense of a holder or potential holder;

(9) The investment fund manager of an open ended or an interval investment fund must at all times during the dealing day be willing to affect the sale of holdings (units/shares) except where the

[43] Investment fund managers should not be providing credit lines to prospective investors and it is recommended that a regulation to prevent this should be specifically provided. If investors need to borrow to invest in holdings (holdings (units/shares)/shares)/shares), this (if permitted) should be done via a loan from a regulated lending institution such as a bank but for further discussion as fund managers will to start off with at least be part of a bank (albeit separated by Chinese walls) and thus perhaps motivated to refer customers to that bank for a loan.

constituting documents of an interval investment fund may limit the issue and sale of holdings (units/shares);

(10) Payment for holdings (units/shares) must be made within 7 working days of their issue;[44]

(11) The investment fund manager of an open ended or an interval investment fund must at all times during the dealing day be willing to affect the redemption of holdings (units/shares) except where the constituting document of an interval investment fund limits the redemption and cancellation of holdings (units/shares);

(12) The proceeds of the redemption of holdings (units/shares) in an open-ended investment fund must be paid to the redeeming holder within 10 working days of the acceptance of the redemption order.

51. Modification to Issues of and Cancellations of Holdings (units/shares)

(1) An instruction to issue and cancel holdings (units/shares) may only be modified only if the trustee or the custodian has taken reasonable steps to ascertain the modification results from an error and the error is an isolated one.

52. General Obligations at to Charges to Participants

(1) The investment fund manager may impose a charge on a participant when they buy or sell holdings (units/shares) in that investment fund only where that charge is clearly and prominently disclosed in the prospectus of the investment fund;

(2) The investment fund manager may not in any event charge more than:[45]

(a) 0.75% of the net asset value of holdings (units/shares) in the investment fund by way of annual management fees; and

(b) 5% of the net asset value of the holdings (units/shares) in investment fund by way of entry and exit charges.

53. Evidence of Ownership of Holding and Transfer of Ownership

(1) The investment fund manager must be ultimately responsible for creating and maintaining the register of the investment fund participants even where this function is outsourced to a custodian;

(2) The register must be conclusive evidence of the persons entitled to the holdings (units/shares) entered in it.

(3) The register of an investment fund must contain:[46]

(a) The name and address of each participant; and
(b) The number of holdings, shares or holdings (units/shares) of each class held by each participant;
(c) The date on which the participant was registered for the holdings (units/shares) standing to their name; and
(d) The number of holdings of each class in issue.

(4) Every participant in an investment fund has a right to transfer their holdings as evidenced on the register by an instrument of transfer in any form that the person responsible for the register may approve provided such a transfer unless it is permitted by the constituting document of the investment fun;

[44] To consider time periods.
[45] For discussion and perhaps this should be dealt with by way of regulation?
[46] To consider putting these requirements in regulations?

(5) Every instrument of transfer must be signed by or on behalf of the participant transferring the holdings and the transferee must not be treated as a participant in the investment fund until such time as the name of the transferee has been entered in the register;

(6) Every instrument of transfer, duly stamped,[47] must be left for registration with the person responsible for the register, accompanied by any other evidence reasonably required by the person responsible for the register;

(7) An instrument of transfer issued by a body corporate must signed by one or more officers authorized to execute documents on behalf of the body corporate and authenticated by a seal of the body corporate;[48]

(8) Transfer of dematerialized holdings (units/shares) in an investment fund must be effected in accordance with the law in force in Georgia applicable to transfer of such holdings, shares or holdings (units/shares).[49]

54. Liability of Participants in Investment Funds

(1) The liability of a participant in an investment fund is limited to the amount which, at the time when any debts fall due to be discharged, is equal to the net asset value at that time of their holdings (units/shares) in the investment fund;

(2) A participant in an investment fund is not liable for acts or omissions of the investment fund manager, trustee or of the custodian of that investment fund.

55. Redemption of Holdings in an Open-Ended or Interval Investment Fund

(1) Orders to redeem holdings (units/shares) in an open ended or interval investment fund must be fulfilled except:

(a) Where the resulting value or amount of holdings (units/shares) in the investment fund will be lower than the minimum investment required in the prospectus of the investment fund;

(b) In any other circumstances specified in the prospectus of the investment fund; or

(c) In any other circumstances, as may be prescribed by the Authority.

56. Suspension and Redemption of Holdings in an Open Ended or Interval Investment Fund

(1) The investment fund manager of an open ended and an interval investment fund or sub-investment fund may, in consultation with the custodian of that investment fund or sub-investment fund, where it is in the interests of participants of that investment fund or sub-investment fund, suspend redemption of holdings (units/shares) in that investment fund or sub-investment fund provided sales of holdings (units/shares) in the same investment fund or sub-investment fund are also suspended;

(2) The investment fund manager of an investment fund which suspends redemption and sales of holdings (units/shares) under (1) above is required to immediately notify the Authority and the participants of:

(a) Such suspension and the reasons for such suspension;

(b) The proposed resumption of redemptions and sales.

(3) The Authority may prescribe a time limit on suspension of dealings in investment funds;

(4) The Authority must have the power to:

(a) Require an investment fund manager of an investment fund or sub-investment fund or all investment funds in exceptional circumstances to temporarily suspend the sale and

[47] Mechanism: certified? Notarised signed by the Investment fund manager and transferor?
[48] To check Entrepreneurs Law to see if seal is required
[49] How does transfer of dematerialised securities work in Georgia

redemption holdings (units/shares) where it is necessary to protect the interests of participants in one or more investment funds; and

(b) Require the resumption by an investment fund manager of the sale and redemption of holdings (units/shares) in one or more investment fund or sub-investment fund or all investment funds.

Chapter VIII: Investment and Borrowing Powers of Licensed Investment Funds[50]

57. Investment Objectives

(1) The investment fund manager of an investment fund must ensure that, subject to the investment objectives and policy of the investment fund as stated in its most recently published prospectus, the investment fund aims to provide a prudent spread of risk;

(2) The portfolio of an investment fund must be consistent with the investment fund's investment objectives.

58. General Limitations on Investments of Investment Funds

(1) Subject to the provisions of this Law or other applicable law in Georgia, at any one time, an open ended or interval investment fund that is offered to the public must not invest more than [30%] of the net asset value of an investment fund securities of any one issuer;

(2) There are no limitations on the concentration of investment fund assets in any one security where the investment fund is a private placement;

(3) An investment fund which is offered to the public may only invest in securities[51] where the potential loss which the investment fund may incur is limited to the amount the investment fund paid for the securities. This provision does not apply to private placements of investment funds;

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[50]This chapter will be of particular interest to the industry. Policy options are as follows:

- Let investment funds essentially determine their own powers (and risk appetite) thus providing an incentive for starting the industry save for minimum requirements of warnings for potential investors or require these investment funds to operate by way of private placement. The danger would be the "all your eggs in one basket" and the potential of a market crash;
- Place particular restrictions tailored to the domestic situation in Georgia; or
- Place more complex restrictions akin to those imposed internationally however these may stifle an emerging market; and or

Include the power to grant waivers on a case by case basis for particular investment funds save for the basic general limitations and amend the powers part of any regulations in the light of the experience of the market as it develops? The suggested percentages reflect off shore financial centres such as Mauritius which have the most liberal requirements for private placements.

[51]This will include ETF's which is an investment fund where the portfolio is indexed and is open ended and can be traded on exchange. Index investment funds have encountered several problems in practice:

- They have difficulty in precisely replicating indexes as these change constantly so portfolios need to be continuously adjusted to take account of the weightings of individual securities within and index and also for entrants and leavers;
- The transaction costs will the portfolio to lag behind the index itself as the index is not adjusted for transaction costs and the time period between the changes in the index and the portfolio may cause "tracking errors";
- It is uneconomic to run small indexed investment funds for example an index that tracked the S&P 500 would need to have 500 holdings of different sizes which would need to be fractionally adjusted to the index components if the buying and selling of shares was small thus resulting in disproportionally portfolio charges;
- It may be impossible to replicate an index for example in emerging markets where a major company may represent 25% or more of the market;
- Most indices are weighted for the size of the market cap of individual companies which means highly rated companies may enter an index compelling all index investment funds to buy their shares thus forcing the price even higher (the dot com bubble);
- Indices of major countries such as the UK whose listed companies are multinational do not represent the economy of the country for example many members of the FTSE 100 are just foreign companies domiciled in the UK or UK companies the majority of whose business is abroad; and
- Index companies may be weighted to just a few sectors in which the companies tend to be large for example nearly 50% the FTSE 100 is accounted for by just 10 companies.

(4) Where an investment fund replicates or tracks an index, it must:

(a) Clearly set out its potential exposure in the investment fund's prospectus; and

(b) Only offer such investment funds to sophisticated investors.

59. Limitations on Investment in Government Securities[52] [for regulations]

(1) An investment fund may invest up to 100% of its net asset value in transferable securities issued or guaranteed by the government of Georgia or other foreign government provided that the international credit rating of the foreign government is not lower than ABB;

(2) Where such an investment fund is offered to the public at no time may such an investment fund invest more than 30% of its net asset value in any single issue of such securities. This subsection does not apply to private placements.

60. Limitations on Deposits with Banks [For regulations]

(1) An investment fund must not place its cash on deposit with an entity other than a bank licensed by the Central Bank of Georgia or foreign bank which is fully compliant with the requirements of the Basle Committee on Banking Supervision and which is not a subsidiary of or connected to the investment fund manager;

(2) During the initial fixed price offer period of an investment fund, all capital contributed, and any interest earned must be held in a single bank account controlled by the custodian;

(3) Other than during the initial fixed price offering period of an investment fund, at any one time no more than [30%] of the net asset value of an investment fund must be deposited with any one bank and its associated companies, provided that an investment fund may deposit or invest up to [30%][53] of the net asset value in securities evidencing deposits with any one eligible bank where this is clearly and prominently stated in the investment fund prospectus.

61. Limitations on Investment in Immovable Property (Real Estate)[54] [for regulations]

(1) A close-ended investment which is not offered to the public investment fund may invest in immovable property up to [100%] of its net asset value; and

(2) An open-ended investment or interval investment fund which is offered to the public may invest up to [75%] of its net asset value in a diversified portfolio of immovable property provided that this is clearly and prominently stated in the prospectus of the investment fund.

62. Real Estate Investment Funds

(1) Any investment fund that invests in immovable property must comply with the following requirements:

(a) The investment fund must only invest in land or buildings situated in the country or territory specified in the prospectus of the investment fund;

(b) The investment in land must be a freehold or leasehold interest or any interest or estate in or over land including a long lease or an interest that grants beneficial ownership of the immovable property and provides good legal title;

(c) The investment fund manager must take reasonable care to determine that the title to the immovable property is good legal marketable title;

(d) The investment fund manager of the investment fund, must, prior to investment, obtain a report from a licensed appraiser containing a valuation of the property and indicating that in

[52] For discussion
[53] If there are insufficient banks to spread the investment funds between banks this percentage figure could be raised
[54] This gives the greatest latitude to offer real estate investment funds by way of public and private placement

the appraisers' opinion, the immovable property, would, if acquired by the investment fund, be capable of being disposed of reasonably quickly at that valuation;

(e) The immovable property must be bought by enforceable contract within six months after receipt of the report from the licensed appraiser;

(f) The investment fund manager must not purchase the immovable property where it is apparent that the licensed appraisers report can no longer be relied upon;

(g) The immovable property must not be bought at more than 105% of the value given by the licensed valuer.

63. Limitations on Investments in other Investment Funds[55] [for regulations]

(1) An investment fund must not invest in the holdings (units/shares) of another investment fund or sub-investment fund except where:

(a) The investment fund is a licensed or is regulated as a publicly offered investment fund in foreign country which is a full member of the IOSCO and a signatory to their Memorandum of Understanding;[56]

(b) The investment fund into which investment is to be made invests predominantly in assets which are consistent with the investment objective and policy of the investment fund making the investment;

(c) It is clearly and prominently stated in the prospectus of the investment fund that it must invest in other investment funds; and

(d) The investment fund is not a sub-investment fund within the same umbrella investment fund making the investment.

(2) An investment fund must not invest in another investment fund or sub-investment fund operated by the same investment fund manager or its associates unless this intention is clearly and prominently stated in its prospectus;

(3) An open ended or interval investment fund that is offered to the public must not invest in:

(a) Securities that are not transferable;

(b) Securities whose inability to be sold for cash sufficiently quickly without a price discount will compromise the ability of the investment fund to meet its obligation to redeem holdings (units/shares);

(c) Assets that cannot be reliably valued by reference to market prices made available by valuation systems; or

(d) Securities for which there is no regular, accurate or comprehensive information available to the market.

64. Money Market Investment Funds[57]

(1) An investment fund may invest in a money market instrument:

(a) Whose issuer is regulated as a bank by the Bank of Georgia;

(b) Whose issuer or guarantor is a national or regional or municipal government; and

(c) Which is freely transferable.

(2) A money market investment fund must invest only in:

(a) Money market instruments:

[55] The usual more onerous restrictions for investments in sub investment funds have been removed to facilitate investment choice for investment fund managers
[56] To discuss
[57] To discuss

(i) With a maturity or residual maturity of not more than 397 days;

(ii) A weighted average maturity of no more than 120 days; and

(iii) In deposits of commercial banks licensed by the Central Bank of Georgia or foreign bank which is fully compliant with the requirements of the Basle Committee on Banking Supervision.

(b) Foreign money market instruments that are rated as less than ABB by an international credit rating agency.

65. Limitations on Borrowing and Lending and Related Activities

(1) An open ended or interval investment fund that is offered to the public must not borrow by any method whatsoever except where the borrowing:

(a) Is temporary for a period not exceeding three calendar months;

(b) Must not exceed 10% of the net asset value of the investment fund; and

(c) Must not be used to leverage investment returns.

(2) An investment fund that is not offered to the public is permitted to borrow by any method.

(3) An investment fund must not engage in any form of lending of any part of its assets.

(4) An investment fund must not assume, guarantee, endorse or otherwise become directly or indirectly liable for or in connection with any obligation or indebtedness of any person.

66. Control[58]

(1) An investment fund must not acquire transferable securities issued by a body corporate and carrying rights to vote at a general assembly meeting of that body corporate if as a result, it would exercise or control the exercise of **10%** or more of the voting rights of that body corporate or its gives the investment fund manager of that investment fund that power;

(2) Subsection (1) above applies across all investment funds managed by the same investment fund manager.

67. Power of Authority to Vary Investment Limits

(1) The Authority may, in extra-ordinary circumstances, on the application of the investment fund manager vary investment limits prescribed under this Law or other applicable law in Georgia as the Authority sees fit.[59]

Chapter IX: Valuation of Licensed Investment Funds

68. Valuation of Licensed Investment Funds

(1) The investment fund manager of an investment fund is responsible for valuation of the property of that investment fund and any sub-investment funds and for calculating the price of holdings (units/shares);

(2) Where an investment fund has invested in immoveable property the investment fund manager must use an appraiser licensed by the Authority for the valuation of that property.[60]

[58] To discuss
[59] Is this legally possible and as a matter of regulatory policy should the I and BPS's be in regulations?
[60] Is there a process for "licensing" appraisers/valuers?

69. Basis of Valuation

(1) The investment fund manager of the investment fund must agree with the custodian the basis of valuation methodology to be applied to an investment fund or sub-investment fund and disclose this in the prospectus and short form prospectus of that investment fund and must ensure that the methodology is applied consistently and fairly;

(2) All investments, assets and cash held by the investment fund at the time of the valuation must be included in the valuation;

(3) A valuation point is not required during a fixed price offer period.

70. Valuation Point

(1) The investment fund manager of an open ended or interval investment fund must establish a regular valuation point which must be disclosed in the investment fund or sub-investment fund's prospectus;

(2) In an open ended or interval investment fund where the holdings (units/shares) are offered for sale and redeemed at the same price, otherwise known as "single priced investment fund", the investment fund property must be valued on a mid-market basis excluding transaction costs;

(3) For purposes of sub-section (2), an initial charge may be added to the single price for subscription or an exit charge may be deducted from redemption proceeds;

(4) In an open ended or interval investment fund where holdings (units/shares) are offered for sale at one price known as the "offer price" and redeemed at another lower price known as the "bid price", otherwise known as a "dual priced investment fund" the property of the investment fund must be valued by reference to:

  (a) The offer price including an initial charge where applicable, and transaction costs;

  (b) The bid price including an exit charge where applicable and transaction costs.

(5) An initial charge may be included in the offer price and an exit charge may be included in the bid price;

(6) For purposes of this section transaction costs include fees, charges, commissions or other charges payable on acquisition or disposal of the investment fund property;

(7) The prospectus of an open ended or interval investment fund must state whether it is priced on a single or a dual priced basis and the valuation basis used.

71. Valuation Methodology[61] [for regulations]

(1) A money market investment fund must value money market instruments on an amortised cost basis as follows:

  (a) The amount at which the asset or liability is measured at initial recognition which is usually cost;

  (b) Minus any repayments of principal;

  (c) Minus any reduction for impairment or uncollectability; and

  (d) Plus, or minus the cumulative amortisation of the difference between that initial amount and the maturity amount.

(2) Securities should be valued using the most recently available price from a reputable source of market prices independent of the investment fund manager;

(3) Holdings in open ended and interval investment funds must be valued:

  (a) For a single priced investment fund, at the most recent single price less any applicable redemption charge; and

[61] To discuss and possibly devolve to regulations rather than the law

(b) For a dual priced investment fund, at the most recent bid price of that investment fund.

(4) Shares in close-ended investment funds must:

(a) Where the shares are listed on a securities exchange, be valued in accordance with sub-section (2); and

(b) Where the shares are not listed on a securities exchange, be valued at the most recently calculated net asset value per share.

(5) Deposits with financial institutions must be valued at nominal or cash value;

(6) Money market instruments:

(a) Which are traded on a securities exchange must be valued at the weighted average price at which that instrument was traded on the most recent day before the valuation is calculated; and

(b) Which are not traded on a securities exchange must be valued on an amortized cost basis.

(7) Immovable properties must be valued by a licensed appraiser not less than once annually;

(8) Where there is no trade in a security or instrument for more than 6 months[62] or there has been a significant event since the most recent price of a security or instrument was created which is likely to affect that price, the investment fund manager and the custodian must determine a fair value price for that asset;

(9) For purposes of sub-section 8, the investment fund manager must:

(a) Subject to the approval of the custodian, document the basis of their fair value pricing policy and the basis of any methodology to be used;

(b) Apply the pricing policy and valuation methodology in sub-section (8) consistently and fairly;

(c) Disclose the price and methodology in sub-section (8) in the prospectus of the investment fund;

(d) Document the reasons for each fair value pricing decision and must maintain such records for [seven/five] years after the making of that decision.

(10) Gross or net income, as applicable, must be accrued from valuation point to valuation point in respect of fixed interest securities and cash deposits and at ex-dividend date for equities or, if payment of the interest or dividend is not regarded as certain, upon receipt of that interest or dividend;

(11) Ad valorem expenses or charges expressed as a percentage of the investment fund or sub-investment fund asset value, must be accrued from valuation point to valuation point and other expenses must be taken into valuation upon occurrence;

(12) Allowances for any taxes due to be paid by the investment fund must also be accrued;

(13) The principal amount of any borrowing outstanding at the valuation point must be included in the valuation calculation including any accrued but unpaid interest due.

72. Valuation and Pricing Errors[63]

(1) The investment fund manager of a close-ended investment fund, an open ended or interval investment fund must record each instance where the valuation or price of a holding (units/shares) is incorrect as soon as the error is discovered and immediately report it to the custodian together with details of action taken or to be taken to avoid repetition of such error;

(2) Where a custodian is made aware of any material occurrence of incorrect valuation of holdings in an investment fund he must notify the Authority forthwith;

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[62] 10 days is the internationally accepted time but this may be increased

[63] See comments on valuation at the end of the document. And the possible difficulties of “material” error in pricing in an illiquid market

(3) For the purposes of sub-section "material" means an error of more than one per cent (1%) of the correct valuation or price of holdings in an investment fund;[64]

(4) The investment fund manager must take action to reimburse participants or former participants and the investment fund in instances where loss has been sustained as a result of material incorrect pricing under sub-section (3);

(5) The custodian must satisfy itself that any payments required by sub-section (4) are paid and must report any failure in this respect to the Authority.

Chapter X: Reports and Accounts of Investment Funds

73. Approval of Annual Reports and Accounts

(1) The annual audited report for an investment fund must:

(a) In the case of an investment company, be approved by the board of directors of the investment fund and signed by a director of the investment fund and the chief executive of the investment fund manager;

(b) In the case of a contractual investment fund, be approved by the investment fund manager and signed by two directors of the investment fund manager;

(c) In the case of a partnership, be approved by the general partner; and two directors of that company.

74. Requirements for Annual Reports and Accounts

(1) The annual audited report and accounts must give a true and fair view of the financial position of an investment fund and each sub-investment fund and be produced by the investment fund manager of an investment fund and sub-investment fund for each annual accounting period and approved by any directors of the investment fund and must contain:

(a) Reports from:

(i) The investment fund manager;

(ii) The auditor;

(iii) The directors;

(iv) The custodian.

Summarizing their duties and making the statements required under this Law or other applicable law in Georgia.

(b) A balance sheet or statement of assets and liabilities and any off-balance sheet commitments;

(c) A statement of total return including a detailed income and expenditure account for the period;

(d) A report on the activities of the period;

(e) For an open ended or interval investment fund, a statement of movement of holders' assets;

(f) Any other information that may be required by any other applicable law and regulations; and

(g) Any significant information which must enable investors to make an informed judgement on the activities and investments and performance of the investment fund.

(2) An annual audited report and accounts must be produced by the investment fund manager for each investment fund and sub-investment fund that they operate for each annual accounting

[64] To consider if these subsections should be devolved to regulations?

period and submitted to the Authority within four[65] calendar months of the end of the annual accounting period;

(3) The annual audited report must be made available to participants in the investment fund in writing or other durable medium as requested by the participant;

(4) The annual audited report and accounts for an investment fund and sub-investment fund for a reporting period must within four calendar months of the end of the annual accounting period, be sent to all participants who are entered in the register or entitled to be entered on the register of that investment fund on the last day of the financial year being reported upon;

(5) A copy of the most recent annual audited report and accounts of an investment fund or sub-investment fund is required to be offered to potential participants free of charge before entering a contract to purchase holdings, shares or holdings (units/shares) in that investment fund;

(6) The annual audited report and accounts of an investment fund must be stand-alone documents and must not contain any extraneous or financial promotion material.

Chapter XI: Appointment of Auditors

75. Requirements for Auditor of an Investment Fund

(1) The investment fund manager of an investment fund must appoint an independent auditor who must hold office for the whole of the financial year;

(2) The appointment of the auditor in sub-section (1) must be approved by the custodian;

(3) An auditor must be eligible for appointment under sub-section (1) where:

(a) The auditor has, prior to the appointment, consented in writing to serve as auditor to the investment fund;

(b) On reasonable enquiry, the investment fund manager, and the custodian of the investment fund are not made aware of any matter which would preclude the auditor from serving as auditor to the investment fund;

(c) The auditor is licensed / accredited by [Professional Accountancy Body in Georgia], and

(d) The auditor has not been disqualified from auditing a bank, insurance company, listed company or investment fund in Georgia by any professional association or regulatory authority.

(4) The financial statements provided in the annual report of an investment fund must be audited by an auditor appointed in accordance with prevailing International Financial Reporting Standards and International Standards on Auditing as applicable in Georgia;[66]

(5) The auditor's report, including any qualifications, must be reproduced in full in the annual audited report and accounts of the investment fund;

(6) Where the auditor of an investment fund has reason to believe that:

(a) The information provided to participants or to the Authority in the reports or other documents of the investment fund does not truly reflect the financial situation and the assets and liabilities of the investment fund;

(b) The assets of the investment fund are not, or have not been, invested in accordance with the provisions of this Law or other applicable law in Georgia, the prospectus or the constituting document;

(c) There exist circumstances which are likely to affect materially the ability of the investment fund to fulfil its obligations to participants or meet any of its financial obligations under this Law or other applicable law in Georgia;

[65] Is this the right amount of time?

[66] To confirm that use of IFRS and IAS are in use in Georgia

(d) There are material defects in the financial systems and controls or accounting records of the investment fund;

(e) There are material inaccuracies in or omissions from any returns of a financial nature made by the investment fund to the Authority;

(f) The auditor proposes to qualify any statements, which he is to provide in relation to financial statements or returns of the investment fund under this Law or other applicable law in Georgia.

The auditor must immediately report the matter to the Authority in writing.

76. Resignation of Auditor of an Investment Fund[67]

(1) An auditor of an investment fund may resign from office by depositing a notice in writing to that effect together with a statement under sub-section (2) at the investment fund manager's registered office and with the Authority and any such notice acts to bring its term of office to an end on the date on which the notice is deposited or on such later date as may be specified in it;

(2) Where an auditor of an investment fund ceases for any reason to hold office, the auditor must deposit at the investment fund manager's registered office, the custodian or custodian's registered office and the Authority:

(a) A statement to the effect that there are no circumstances connected with the ceasing to hold office which the auditor considers should be brought to the attention of the participants or creditors of the investment fund or the Authority; or

(b) A statement of any circumstances mentioned in (a) above.

(3) Where a statement under sub-section (1) falls under sub-section (2) (b), the investment fund manager of the investment fund must send a copy of the statement to the Authority with any comments within 10 working days.

77. Co-operation with Auditors

(1) An investment fund manager, a custodian, a trustee and a member of the board of directors of an investment fund and their respective officers must not knowingly or recklessly make a statement to an auditor, whether written or oral, which:

(a) Conveys or purports to convey any information or explanation which the auditor requires, or is entitled to require, as auditor of the investment fund; and

(b) Is either:

(i) False, misleading or deceptive in a material particular; or

(ii) Such that it omits information where the omission of such information is likely to mislead or deceive the auditor.

(2) An investment fund manager, a custodian, a trustee and a member of the board of directors of an investment fund and their respective officers must not without reasonable excuse engage in conduct, including without limitation the:

(a) Destruction, amendment or concealment of records;

(b) Coercion, manipulation, misleading, or influencing the auditor;

(c) Failure to provide access to information or documents specified by the auditor;

(d) Failure to give any information or explanation which the person is able to give where the person knows or ought to know that such conduct could if successful:

[67] Resignation may be indicative of an underlying regulatory problem hence the necessity of a statement

(i) Obstruct the auditor in the performance of his duties under this part;

(ii) Result in the rendering of accounts of the investment fund or the auditor's report being materially misleading.

Chapter XII: Foreign Investment Funds

78. Recognition of Foreign Investment Funds

(1) A foreign investment fund which seeks to be established within Georgia must be recognized by the Authority and comply with this Law or other applicable law in Georgia;

(2) No person may market any foreign investment fund in Georgia unless it is recognized by the Authority.

79. Public Offers of Foreign Investment Funds

(1) A recognized investment fund must not in or from Georgia offer holdings (units/shares) of a foreign investment fund to the general public unless those holdings (units/shares) can be offered, under the home jurisdiction regulations applying to that investment fund, to members of the general public.[68]

80. Criteria for Recognition of Foreign Investment funds[69]

(1) In order to be able to offer holdings (units/shares) of a foreign investment fund to the general public the following conditions must be met:

(a) The foreign investment fund must be established and operated in a jurisdiction which is a full member of IOSCO and a signatory to the IOSCO MMoU[70] and be recognised by the Authority;

(b) The holdings (units/shares) must be marketed through a domestic investment fund manager licensed by the Authority; and[71]

(b) The Authority has published on its website notice of such recognition.

81. Obligations of Foreign Investment Funds

(1) Foreign investment funds that are recognised under this Law or other applicable law in Georgia must:

(a) Provide a copy of the annual audited report for the investment fund to the Authority within four months of the end of their financial year;

(b) Provide the Authority with an annual statement of the number and value of holdings, shares of holdings (units/shares) in the investment fund sold and redeemed in Georgia for the calendar year;

(c) Publish the price of an open ended or interval investment fund or the net asset value of a close-ended investment fund on a website accessible to Georgian citizens and in such manner as the Authority may direct;

(d) Provide facilities for purchase and sale of shares or holdings (units/shares) in the investment fund or sub-investment fund and for payment of proceeds within Georgia;

(e) Provide a copy of the annual audited report of the investment fund or sub-investment fund to participants in the investment fund or sub-investment fund who are residents of Georgia

[68] For consideration: this is the usual international practice
[69] This caters for the EU Passporting requirements
[70] This may be too onerous?
[71] For consideration to assist domestic investment fund managers

within four months of the end of the financial year of the investment fund or sub-investment fund concerned.

Chapter XIII: Transfer of Business and Winding-up[72] of Investment Funds

82. Transfer or Merger of an Investment Fund[73]

(1) An investment fund or sub-investment fund may be transferred in whole or in part to another investment fund by an investment fund of arrangement subject to the prior approval of the Authority.

83. Winding up of Investment Funds

(1) An insolvent investment fund must, subject to the provisions of this Law or other applicable law in Georgia, be wound up under the provisions of the Law on Entrepreneurs;

(2) Where any person other than the Authority makes an application to the Court for the winding up of any investment fund which is or has been licensed or has been undertaking investment business in contravention of this Law or other applicable law in Georgia, the Authority must be entitled to be heard and participate in such proceedings.[74]

84. Voluntary Winding up of an Investment Fund

(1) A solvent investment fund or sub-investment fund may be voluntarily wound up where:

(a) An eventuality arises upon which the constituting documents of the investment fund require the investment fund be wound up; or

(b) The investment fund or sub-investment fund is not economically viable or cannot achieve its purpose or has reached the end of its fixed term of life.

85. Approval of the Authority Required for Voluntary Winding Up

(1) Notwithstanding the provisions of the Law on Entrepreneurs, the investment fund manager of a licensed investment fund must not commence proceedings for voluntary winding up without the prior approval of the Authority;

(2) An application for voluntary winding of an investment fund must be submitted to the Authority accompanied by a:

(a) Plan for winding up of the investment fund or sub-investment fund; and

(b) Statement of solvency of the investment fund or sub-investment fund confirming that the investment fund or sub-investment fund will be able to meet all its liabilities within twelve months of the date of the statement or stating that such confirmation cannot be given.

(3) The solvency statement must:

(a) Relate to the investment fund or sub-investment fund's affairs, business and property at a date no more than 28 working days before the date on which an application is made to the Authority;

(b) Be approved by the investment fund manager and custodian or trustee of the investment fund; and

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[72] To check use of terminology? Would liquidation be more appropriate?

[73] The Authority should have regulatory hold over this process for investor protection and to ensure that the transfer is to a suitably licensed person and the process itself is done swiftly. Regulations can address the details of the actual process.

[74] Essential for the protection of participants in the investment fund

(c) Be accompanied by the statement of the auditor of the investment fund or sub-investment fund to the effect that, in his opinion, the statement of solvency fairly reflects the situation of the investment fund or sub-investment fund.

(4) The Authority must not approve a plan for the voluntary winding up of an investment fund or sub-investment fund unless it is satisfied that the interests of the participants in the investment fund are adequately protected;

(5) Where the Authority has granted approval for voluntary winding up of the investment fund, the investment fund manager or custodian or trustee of the investment fund must:

(a) Immediately notify all participants on the register as at the date of commencement;

(b) Commence proceedings for voluntary winding up in accordance with the provisions of the Law on Entrepreneurs.

86. Winding up of an Investment Fund

(1) Notwithstanding the provisions in the Law on Entrepreneurs,[75] winding up of an investment fund must be affected by:

(a) In the case of a company investment fund, the investment fund manager;

(b) In the case of a contractual investment fund, the investment fund manager;

(c) In the case of a partnership investment fund, the general partner.

(2) The person responsible for winding up the investment fund in sub-section (1) must:

(a) Where the investment fund is wound up pursuant to an investment fund of arrangement with creditors, cancel all holdings, shares or holdings (units/shares) in issue and wind up the investment fund in accordance with the investment fund of arrangement;

(b) In all other cases:

(i) Instruct the custodian to realize the investment fund property; and

(ii) Instruct the custodian how such proceeds must be held to prudently protect the creditors and shareholders against loss; and

(iii) Where sufficient liquid investment funds are available after making adequate provision for the expenses of winding up and the discharge of the investment fund or sub-investment fund's remaining liabilities, arrange for the custodian to make one or more interim distributions to the participants proportionately to the right of their respective holdings, shares or holdings (units/shares) to participate in investment fund property at the commencement of winding up.

(3) The provisions of sub-section (2) (b) (i) to (iii) must be subject to any terms of any investment fund of arrangement agreed by special resolution passed on or before the commencement of the winding up;

(4) Where the person responsible for winding up the investment fund and one or more participants agree, the requirement in sub-section (2) (b) (ii) to realise the investment fund property does not apply to that part of the property proportionate to the entitlement of that or those participants and the custodian must distribute that part of the property after making adjustments or provisions for ensuring that that or those participants bear their proportional share of the liabilities and costs;

(5) On completion of the winding up, the investment fund manager must notify the Authority in writing and request the Authority to cancel the licence of the investment fund;[76]

(6) Where any sum of money stands to the account of the investment fund or sub-investment fund at the date of its dissolution, the person responsible for winding up the investment fund must

[75] To check if such an override provision is permissible?

[76] The investment fundamental reason for waiting for the completion of the winding up to relinquish regulatory hold is that the Authority can only exercise its power only whilst the licence is in existence

arrange for the custodian to pay such money in accordance with the provisions of the [Insolvency Law];

(7) Where, after the commencement of a winding up or termination of an investment fund, and before the notice of completion of the winding up or termination has been sent to the Authority, there is a vacancy in the position of the person responsible for effecting the winding up under sub-section (1), the custodian must immediately present a petition for winding up of the investment fund under the Law on Entrepreneurs.

87. Required Activities During Winding up or Transfer of an Investment Fund

(1) On commencement of any winding up or transfer of an investment fund, the investment fund manager:

(a) is under an obligation to prepare annual audited and interim unaudited report and accounts and to provide them free of charge to participants, continues to apply until completion of winding up or transfer of the investment fund;

(b) must keep participants and the Authority appropriately informed about the winding up or transfer of the investment fund or sub-investment fund and, if known, its likely duration.

88. Cessation of Activities During Winding up or Transfer

(1) On commencement of winding up or transfer of an investment fund:

(a) Dealing, valuation and investment and borrowing powers and requirements under this Law or other applicable law in Georgia cease to apply to the investment fund or sub-investment fund;

(b) Issuance and cancellation of holdings (units/shares) must cease except in respect of final cancellation;

(c) The investment fund manager must cease to sell or redeem holdings (units/shares);

(d) No transfers of holdings (units/shares) may be registered and no change may be made to the register of participants without the agreement of the custodian; and

(e) Subject to approval by the custodian, the investment fund manager of the investment fund need not prepare any short form reports[77] required this Law or other applicable law in Georgia.

89. Petition by the Authority to Wind Up an Investment Fund

(1) The Authority may present a petition to the Court for the winding up of an investment fund which:

(a) Is or has been licensed;

(b) Is or has been carrying on or has carried on the investment funds activities in contravention of the provisions of this Law or other applicable law in Georgia;

(2) On a petition by the Authority, the Court may wind up the investment fund where:

(a) The investment fund is unable to pay its debts as they fall due within the meaning of the [Law on Entrepreneurs]; or

(b) The Court is of the opinion that it is just and equitable that the investment fund should be wound up.[78]

90. Winding up of an Investment Fund by the Court

(1) An investment fund may be wound up:

[77] If short form accounts are permitted

[78] To discuss if Entrepreneurs Law provides for this and if courts have power to use the “just and equitable” remedy?

(a) By order of the Court on application by the Authority;

(b) By order of the Court on application by the investment fund manager, or trustee, or custodian of that investment fund;

(c) In any other circumstances, as may be prescribed in this Law or other applicable law in Georgia.

Chapter XIV: Financial Penalties and Criminal Offences

91. Penalties[79]

Chapter XV: Powers of the Authority

92. Rulemaking Power of the Authority

(1) The Authority may make, amend, vary and revoke regulations governing:

(a) The regulatory fees payable by investment funds;

(b) Requirements for licensing or recognition of investment funds including requirements for their directors, auditors, operators, trustees and custodians;

(c) The variation, duration, suspension, expiration, renewal or cancellation of licenses, recognitions and registrations under this Act, whether by request or by the decision of the Authority;

(d) The activities or functions undertaken by the directors, operator, trustee or custodian of an investment fund;

(e) The minimum and maximum capital requirements for investment funds;

(f) Fines and penalties applicable to those persons breaching requirements of this Law and any regulations made thereunder;

(g) The format, content and timing of disclosure of all information relating to investment funds, both to the Authority and to participants;

(h) The scope of the auditor's report; and

(g) Any other measures that may be necessary for the protection of participants or potential participants in investment funds.

93. Power of the Authority to Grant, Suspend and Revoke Licenses of Investment Funds

(1) The Authority shall have the power to:

(a) Grant, vary, suspend or revoke licenses and recognitions of investment funds;

(b) Impose conditions in relation to a licence or recognition of an investment fund.

94. Power to Inspect and or Investigate an Investment Fund

(1) The Authority may, by instrument in writing, appoint a person to be an inspector or investigator of an investment fund;

(2) The Authority shall provide to each inspector and investigator an identity card issued by the Regulatory;

(3) An inspector or investigator, when exercising a power conferred by this law, shall, on reasonable demand, produce his identity card for inspection, but failure to do so does not make the exercise of this power invalid.

[79] To be discussed

95. Power to Investigate Investment Funds

(1) An inspector may at any time inspect the affairs or any part of the affairs of an investment fund to identify whether the investment fund is being offered and operated in compliance with this law, with or without prior notice;

(2) For the purposes of such an inspection, the inspector may enter any premises used by a person which is an investment fund or its operator or its trustee, custodian and auditor, at any reasonable time and may inspect and make copies or take extracts from any relevant records, documents or things in those premises and may interview any person relevant to the inspection. Where any of these persons has delegated any task for which it is responsible to another entity, the inspector may enter any premises used by that entity and undertake the same activities;

(3) An investment fund, its operator or its trustee, custodian and auditor shall afford an inspector full and free access to its premises, records, personnel and documents as relevant to the inspection and where any of these persons has delegated any task for which it is responsible to another entity, shall ensure that the inspector shall have the same access in relation to that entity;

(4) A person who, without reasonable excuse, contravenes subsection (3) shall be liable to a civil penalty.[80]

96. Investigation Powers

(1) The powers of the Authority under this section shall be exercisable in any case in which it appears to it that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person so far as relevant to any investment fund activities which he was carrying on or appears to the Authority to be or to have been carrying on or appears to be about to carry on;

(2) The Authority may require the person whose affairs are to be investigated ("the person under investigation") or any other connected person to appear before the Authority at a specified time and place and answer questions or otherwise provide information with respect to any matter relevant to the investigation;

(3) The Authority may require the person under investigation or any other person to produce at a specified time and place any specified documents which appear to the to relate to any matter relevant to the investigation; and:

(a) If any such documents are produced, the Authority may take copies from them or require the person producing them or any other person to provide an explanation of them; and

(b) If any such documents are not produced, the Authority may require the person or other person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) A statement by a person or other person in compliance with a requirement imposed by virtue of this section may be used in evidence against him;[81]

(5) In this section connected in relation to any other person means:

(a) Any person who is or was that other person's partner, employee, agent, appointed representative, banker, auditor or solicitor; and

(b) Where the other person is a body corporate, any person who is or was a director, secretary or controller of that body corporate or of another body corporate of which it is or was a subsidiary; and

(c) Where the other person is an unincorporated association, any person who is or was a member of the governing body or an officer or controller of the association; and

(d) Where the other person is a representative of a person, any person who is or was his principal; and

[80] To add to the penalties section
[81] Is this legally permissible?

(e) Where the other person is the person under investigation (being a body corporate), any related company of that body corporate and any person who is a connected person in relation to that company.

In this section, “documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.

In this section “related company", in relation to a person under investigation (being a body corporate), means any other body corporate which is or at any material time was:

(a) A holding company or subsidiary of the person under investigation;

(b) A subsidiary of a holding company of that person; or

(c) A holding company of a subsidiary of that person; and

(d) Whose affairs it is in the Authority’s opinion necessary to investigate for the purpose of investigating the affairs of that person.

97. Exercise of Investigation Powers by Inspector

1) The Authority may appoint any officer of the Authority or any other person to exercise on its behalf all or any of the investigation powers and such power to investigate shall specify the affairs, or any aspects of the affairs, of the person or firm to be investigated in an Investigation Notice;

(2) No person or firm shall be bound to comply with any requirement imposed by a person exercising powers by virtue of an Investigation Notice granted under this section unless the Inspector has, if required to do so, produced evidence of his appointment by the Authority;

(3) A person shall not by virtue of an Investigation Notice be required to disclose any information or produce any documents in respect of which he owes an obligation of confidence unless:

(a) He is the person or firm under investigation or a related company;

(b) The person or firm to whom the obligation of confidence is owed is the person or firm under investigation or a related company;

(c) The person or firm to whom the obligation of confidence is owed consents to the disclosure or production, or

(d) The Authority has specifically required the information or documents.

(4) Where the Authority appoints a person other than one of his officers to exercise any investigation powers that person shall make a report to the Authority on the exercise of those powers and the results of exercising them.

98. Confidential Information[82]

(1) Subject to exemptions on restrictions on disclosure, information which is restricted for the purposes of this section and relates to the business or other affairs of any person shall not be disclosed by a person mentioned in subsection (3) or any person obtaining the information directly or indirectly from him without the consent of the person from whom the primary recipient obtained the information and if different, the person to whom it relates;

(2) Subject to subsection (4) information is confidential information for the purposes of this article if it was obtained by the primary recipient for the purposes of, or in the discharge of his functions under, this Law or any regulations made thereunder.

(3) The persons mentioned in subsection (1) are:

(a) The Authority;

[82] MiFID and IOSCO MMoU requirements

(b) [Any body administering a compensation scheme[83]];

(c) Any member of the Panel;

(d) Any person appointed or authorised to exercise any powers of investigation;

(e) Any officer or servant of any such firm as is mentioned in paragraphs (a) to (e) above.

(4) Information shall not be treated as confidential information for the purposes of this section if it has been made available to the public by virtue of being disclosed in any circumstances which are not precluded by this article;

(5) This section shall not preclude the disclosure of information for the purpose of enabling or assisting any public or other body to discharge its functions as may be further specified by the Authority in regulations;

(6) Any person who knowingly discloses restricted information under this Law shall be guilty of an offence.

99. Exceptions for Disclosure of Confidential Information

(1) Restrictions on disclosure of information mentioned above shall not preclude disclosure of the following;

(a) With a view to the institution of or otherwise for the purposes of criminal proceedings;

(b) With a view to the institution of or otherwise for the purposes of any civil or disciplinary proceedings or proceedings before the Panel;

(c) For the purpose of enabling or assisting the Authority to exercise any powers conferred on it by this Law;

(d) For the purpose of enabling or assisting a stock exchange, regulated market, central securities depositary or clearing and settlement organization to discharge its functions under this Law or enabling or assisting the body administering a compensation scheme under this to discharge its functions under the scheme;

(e) For the purpose of enabling or assisting an official receiver to discharge his functions under legislation relating to insolvency;

(f) For the purpose of enabling or assisting any firm appointed to exercise any investigation powers or any auditor appointed under this Law to discharge his functions;

(g) For the purpose of enabling or assisting an overseas regulatory agency to exercise its regulatory functions.

100. Co-operation[84]

(1) The Authority may take such steps as it considers appropriate to cooperate with a foreign regulatory authority which has functions:

(a) Which correspond to those exercisable by the Authority under this Law; and/ or

(b) Powers in relation to the detection of financial crime.

101. Investigation in Support for Foreign Authority[85]

(1) At the request of a foreign regulatory authority the Regulatory Authority may exercise its investigation powers under this Law; or appoint one or more competent persons to investigate any matter;

[83] EU Directive requirement

[84] MiFID requirement

[85] MiFID requirement

(2) In deciding whether or not to exercise its investigative power, the Authority may take into account in particular:

(a) Whether in the country or territory of the foreign regulatory authority concerned, corresponding assistance would be given to the Authority;

(b) Whether the case concerns the breach of a law, or other requirement, which has no close parallel in Georgia involves the assertion of a jurisdiction not recognized by Georgia;

(c) The seriousness of the case and its importance to persons in Georgia;

(d) Whether it is otherwise appropriate in the public interest to give the assistance sought.

(3) The Authority may decide that it will not exercise its investigative power unless the foreign regulatory authority undertakes to make such contribution towards the cost of its exercise as the Authority considers appropriate;

(4) If the Authority has appointed an investigator in response to a request from a foreign regulatory authority, it may direct the investigator to permit a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation;

(5) A direction under subsection (4) is not to be given unless the Authority is satisfied that any information obtained by a foreign regulatory authority as a result of the interview will be subject to safeguards equivalent to those contained in the restrictions on disclosure of confidential information in this Law.

102. Maintenance of a Register of Investment Funds by the Authority

(1) The Authority shall create and maintain a register of licensed and recognised investment funds and shall make the register publicly accessible free of charge. The register shall also record any suspensions, variations or revocations of licenses and recognitions of investment funds.

Part XVI: Review of Decisions of Authority

103. Review of Decisions[86]

(1) A decision of the Authority made in under [grant, refusal, suspension or withdrawal of licence] may be subject to a review by an [independent] Panel established under this Law.

(2) The Authority may establish for the purposes of this law a Panel which is to have the powers to review the decisions of the Authority under sub section (1) by regulations made by the Authority.

104. Application for Review of Decisions[87]

(1) A person aggrieved by, or whose interests are affected by, a decision made by the Authority may apply to the Panel for a review of the decision.

(2) An application to the Panel for a review of a decision shall be made within 20 working days of the making of the decision.

105. Implementation of Decisions Pending Review

(1) An application for a review of a decision shall not affect the operation of the decision but the Panel may, on application, suspend the operation of the decision as specified by, and on terms determined by it.

Part XVII: Repeal of previous Act

106. Repeal of Existing Act and Transitional Arrangements

[86] This is in line with IOSCO requirements and international bet practices
[87] The procedural rules under which an independent panel operates are usually prescribed by regulations

Schedule I: Limited Partnerships

General Provisions

1. For the purposes of this Law a "partnership scheme" is an investment fund which at all times satisfies the following conditions:
   (a) The scheme is a limited partnership; and
   (b) The limited partnership:
      i. Is formed by deed;
      ii. At any time, has only one general partner; and
      iii. On formation, has at least one limited partner, who is the proposed custodian.
   (c) That the deed provides that where an exemption is granted under this Law in respect of the limited partnership then:
      i. The partnership property subject to the scheme is to be held by a custodian;
      ii. Such custodian must be a limited partner and eligible to act as such;
      iii. Every other limited partner is to be a participant in the scheme; and
      iv. Units are to be issued to participants in exchange for a contribution to the partnership.
2. For the purposes of this Law a partnership is the relationship which subsists between persons carrying on a business in common with a view to profit under a partnership agreement and the word "business" includes every trade, profession and occupation;
3. A limited partnership shall consist of no more than one hundred persons, at least one of whom must be a general partner who is licensed by the Authority has unlimited liability for all debts and obligations of the firm, and one or more of whom who are limited partners who shall at the time of entering into such partnership contribute such capital sums subject to section 6.7 below save that the custodian or proposed custodian of a partnership scheme shall not be required to make any capital contribution;
4. For the avoidance of doubt the general partner is a person who is a partner in a limited partnership and is not itself a limited partner.

Arrangements which do not Create Limited Partnerships

5. The following are not limited partnerships for the purposes of this Law:
   (a) A limited liability partnership established under the Law on Entrepreneurs;
   (b) Any other body corporate wherever incorporated;
   (c) An investment company whenever incorporated;
   (d) A partnership constituted under the law of a country or territory outside Georgia which does not comply with this Law or
   (e) Any other association or body formed under any other law, enactment, letters patent or charter or under the law of a country or territory outside Georgia.
6. The following arrangements do not constitute carrying on the business of a limited partnership for the purposes of this Law:
   (a) Where a person receives a payment contingent on or varying with the profits of a business;
   (b) Where a person is an agent of a person engaged in a business and has a contract for his remuneration by a share of the profits of the business;
   (c) Where a person receives a debt or other liquidated amount (by instalments or otherwise) out of the accruing profits of a business;
   (d) Where a person is the beneficiary of the estate of a person who has died, and receives by way of annuity a share of profits made in a business in which the deceased was a partner;

(e) Where a person lends money to a person engaged in or about to engage in a business and is by the terms of the loan agreement to receive a rate of interest varying with the profits of the business or a share of those profits;

(f) Where a person sells the goodwill of a business and receives (by way of annuity or otherwise) a share of the profits of the business in return for the sale;

(g) Where a person shares an interest in property (whether or not they share profits made by the use of the property); and

(h) Where a person shares gross profits (whether or not they have a joint or common interest in any property from which, or from the use of which, the returns are derived).

The Partnership Deed

A partnership deed may be amended in accordance with its terms or with the agreement of all existing Partners save as expressly prohibited in this schedule and but must contain the following arrangements:

7. Full Disclosure

Each partner and prospective partner is under an overriding obligation to Law in good faith towards the partnership and its partners; and each partner and prospective partner must keep each of the other partners fully informed of all matters which a prudent partner would reasonably expect to be disclosed to the partnership.

8**.** Partnership Property

Partnership property must be held and applied by a custodian who must be a limited partner and eligible to act as such.

9. Management of the Partnership by the General Partners

(1) The general partner will undertake all day to day aspect of the management of the partnership business and affairs;

(2) Subsections (1) above be cannot be varied by the general powers to amend a partnership deed under section 6 above; and

(3) The custodian of a partnership scheme shall not be deemed to take part in the management of the partnership business of the scheme by virtue of performing the powers and duties of the custodian.

10. The Role of the Limited Partner

(1) A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm;

(2) A limited partner that is the custodian may, with the consent of the general partner and, the consent of the Authority, assign his share in the partnership to another custodian, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor and the substitution is made in accordance with the partnership agreement.

11. The Liability of the Limited Partner

(1) A limited partner who is a participant in a partnership scheme:

(a) Shall not be liable for the debts of the scheme beyond the amount which, at the time when any debts fall to be discharged, is equal to the value at that time of the limited partner's units; and

(b) Shall cease to have any liability for the debts of the scheme upon the redemption of the limited partner's units.

(2) While a person remains a limited partner, he is not entitled either directly or indirectly to draw out or receive back the whole or part of any capital contribution made by him to the partnership;

(3) Where a limited partner decides to draw back or receive capital contributions under subsection (2) above he becomes personally jointly and severally liable for a partnership obligation incurred while he was a limited partner save that his liability cannot exceed the amount drawn out or received back;

(4) Where a limited partner takes part in the day to day management of the business of the partnership he is personally liable as if he were a general partner for any partnership obligation incurred as a result of this.

12. The Liability of the General Partner

(1) A Partnership is bound by anything done by a general partner in the normal business of the partnership save where:

(a) The general partner has no authority to do the thing on behalf of the Partnership; and

(b) The person with whom the partner is dealing has notice that the partner has no authority or does not know or believe him to be a partner in the partnership.

13. Accounting Requirements

(1) The general partner must ensure that proper accounting records are kept of all transactions affecting the partnership; and

(2) Comply with the auditing, accounting and financial requirements imposed by this Law.

14. Disclosure of Partnership Details

(1) Any person dealing with a partnership is entitled, on request to be informed of the full name of each partner; and an address for service on each partner.

Schedule II: Unit Trusts

General Provisions

1. Save as otherwise provided by this Law this Schedule governs the duties and powers of a Trustee and the rights and interests of participants in a unit trust licensed and exempted under this Law;
2. For the avoidance of doubt a trustee is under an overriding obligation to act in good faith, in accordance with the purposes of the trust and otherwise consistent with its fiduciary duties;
3. The trust and its terms must be for the benefit of the participants and must have a purpose that is lawful, not contrary to public policy, and possible to achieve; and
4. The trust of an investment fund must be created by deed and such trust may continue indefinitely or terminate in accordance with this Law or with the terms of the deed;
5. Subject to sections 3 and 4 above a trust established under this Law and any regulations made thereunder shall be valid and enforceable in accordance with its terms.

Variation and Termination of Trust

6. A trust deed may expressly provide that with the consent of the Authority:

   (1) Its terms are capable of variation; or
   (2) The trust itself or a power exercisable under the trust is revocable either in whole or in part.

7. A trust may terminate under this Law where:

   (1) The Authority exercises its powers under this Law; or
   (2) Where it is revoked, or expires pursuant to its terms; or
   (3) If the purposes of the unit trust have become unlawful, or impossible to achieve.

8. Where a unit trust is terminated the trustee may retain such reasonable proportion of the trust property to make provisions any liabilities present or future before distributing the property in accordance with this Law and the trust deed.

The Participants of the Trust

9. All participants in the trust arrangements must be identifiable and ascertainable;
10. The trustee of the trust may not be a participant in the trust;
11. The participants of the trust may subject to the terms of the deed sell, charge, transfer or otherwise deal with their interests.

The Trustee: Remuneration and Expenses

12. The Trustee save as expressly provided for by the terms of the trust deed shall not be entitled to remuneration for his services and such remuneration where permitted must be proportionate and reasonable with regard to the skills and services of the trustee;
13. A Trustee may where expressly provided by the trust deed be reimbursed for all expenses and liabilities properly incurred in connection with the administration of the Trust.

Powers and Duties of the Trustee

14. Upon appointment the Trustee shall in the execution of his duties and in the exercise of his powers and discretions:

    (1) Law with due diligence as would a prudent person to the best of his ability and skill; and
    (2) observe the utmost good faith;

    In accordance with the terms and purposes of the trust and this Law.

15. A Trustee shall administer the trust solely in the interest of the participants and or in furtherance or support of the purposes of the Trust and subject to the terms of the trust, a Trustee shall so far as is reasonably practical preserve the value of the trust property;

16. A trustee shall act impartially as between all participants in the trust;

17. Except with the approval of the Authority or as permitted by this Law or expressly provided by the terms of the trust, a Trustee shall not:

    (1) Directly or indirectly profit from his Trusteeship;
    (2) Cause or permit any other Person to profit directly or indirectly from such Trusteeship; or
    (3) On his own account enter into any transaction with the Trustees or relating to the trust property which may result in such profit;
    (4) Sell or otherwise encumber trust property unless:
        (i) The transaction was expressly permitted terms of the trust deed;
        (ii) The transaction was undertaken as a result of a direction from the Authority in the exercise of its powers under this Law.

18. A Trustee shall not delegate his powers save where expressly provided for by this Law or regulations made thereunder or by the terms of the trust deed;

19. A Trustee may take reasonable steps to enforce claims of the trust and to defend claims against the trust.

Disclosure

20. Subject to the terms of this Law and regulations made thereunder and the provision of the trust deed a Trustee shall not be required to disclose to any person, any document which:

    (1) Discloses his deliberations as to the manner in which he has exercised a power or discretion or performed a duty conferred upon him;

    (2) Discloses the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason shall or might have been based; or

    (3) Relates to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.

Liability for Breach of Trust

21. A Trustee shall be liable for a breach of trust committed by the Trustee or in which the Trustee has concurred;

22. A Trustee who is liable for a breach of trust shall be liable for:

    (1) The loss or depreciation in value of the trust property resulting from such breach; and

    (2) The profit, if any, which would have accrued to the trust property if there had been no such breach.

23. A Trustee shall not be liable for a breach of trust committed prior to his appointment, if such breach of trust was committed by some other person;

24. A Trustee who becomes aware of a breach of trust shall take all reasonable steps to have such breach remedied;

25. Nothing in the terms of a trust deed shall relieve, release, or exonerate a Trustee from liability for breach of trust arising from his own fraud, willful misconduct or gross negligence and any such clause which purports so to do is void.

Third Parties Dealing with Trustee

26. A third party other than a participant who in good faith assists a Trustee, or who in good faith and for fair value deals with a Trustee, without knowledge that the Trustee is exceeding or improperly

exercising the Trustee's powers is protected from liability as if the Trustee properly exercised the power.

27. A person other than a participant who in good faith deals with a Trustee is not required to inquire into the extent of the Trustee's powers to act on behalf of the trust.

1. Notes: For Information

1. Investment Fund Structures

	Corporate Investment fund	**Trust Investment fund**	**Contractual Investment fund**	**Partnership Investment fund**
Legal Form	Company	Trust	Not a legal person	Not a legal person
Governing Law	Company law and investment fund law	Trust law or precedent and investment fund law	Contract law and investment fund law	Company Law
Investors buy	Shares/Holdings (units/shares)	Holdings (units/shares)	Holdings (units/shares) or certificates of participation	Holdings (units/shares)
Investor status	Shareholder or participant	Beneficiary of the Trust or unit holder	Unit holder or participant	Unit holder or participant
Voting rights of investors	As per any shareholder plus any additional rights in the investment fund law	As per trust deed and any additional rights in the investment fund law	None or only those in contractual agreement	Only those in partnership agreement
Meetings	Annual and extraordinary	Extraordinary only	None or extraordinary only	None or extraordinary only
Fiduciary duty to investors	Investment fund directors	Trustee	None unless specified in investment fund law or contract	None unless specified in investment fund law or partnership agreement
Holder of investment fund assets	Custodian	Trustee or custodian on trustee's behalf	Custodian	Custodian
Assets registered in the name of	Investment fund or custodian on behalf of investment fund	Trustee or custodian on Trustee's behalf	Management company or custodian on behalf of investment fund	Management company or custodian on behalf of investment fund
Founding documents	Charter or Memorandum and Articles	Trust deed	Contract agreement	Partnership agreement

2. Valuation

Accurate valuation is particularly important for open-ended investment funds because it is the basis of price that investors will buy or sell shares or holdings (units/shares) in these investment funds. Since every share or unit in issue in an investment fund has rights over an equal proportionate part over each of the assets of the investment fund this means that the money that a new investor pays per share or unit should be sufficient to go into the market to buy an equivalent proportion of each of the investment fund's existing assets at current prices and vice versa for a redeeming investor. This means that investment fund assets must be "marked to market" for valuation purposes or investors will enter or exit the investment fund at the wrong price and ongoing investors will have their holdings:

(a) "Diluted" namely have the value of their holding reduced if incoming investors have paid too little or outgoing investors have been paid too much; or

(b) "Concentrated" namely have the value of their holding reduced if incoming investors have paid too much or outgoing investors have been paid too little.

All investment funds are required to value their assets at regular interval and open-ended investment funds must value as frequently as they deal whereas close-ended investment funds value their assets less frequently and perhaps as little as only once a year.

Where the market is illiquid there will be valuation problems and most regulators will require illiquid assets to be valued at a "fair value" which in itself presents problems for an investment fund that will be responsible for an incorrect valuation. Valuation of illiquid assets requires great care

Summary of Asset Valuation Bases

Type of Asset	Valuation Method
Cash and short-term deposits	At face value
Bonds traded on a recognized market	At the day's closing market price or the market price available immediately prior to the valuation point
Equities traded regularly on a recognized market	At the day's closing market price or the market price available immediately prior to the valuation point
Derivatives traded on a recognized market	At the day's closing market price or the market price available immediately prior to the valuation point
Equities traded irregularly or traded on an unofficial or OTC market	Cost (price paid by investment fund) or the most recent traded price provided this was a genuine price resulting from several unconnected deals and not simply one trade or several trades by connected parties or quotes from brokers. Possible write down provision
Short term paper (bills or CD's)	Straight line to redemption unless there are violent fluctuations in interest rates
Bonds not traded	Comparative basis: 1. Taking the price of a comparable traded bond and discounting for less liquidity; or 2. Using a methodology designed to attribute a discounted present value to future income receipts and redemption proceeds
Equities not traded	Cost or estimated value. Estimation methods are: 1. Using a fixed multiple of earnings (the P/E ratio) and discounting; 2. Comparing with a traded share and applying a discount; or 3. The company's net asset value e.g. in the case property companies
Property (real estate)	Cost or independently estimated market value

GUIDANCE ON ASSET VALUATION AND PRICING[88]

General

1. This guidance relates to the calculation of a single price and net asset value. An investment fund manager should take all reasonable steps, and exercise due diligence, to ensure that the assets of the investment fund is valued in accordance with this Law, the regulations and the investment fund's Constituting documents and rules;

2. This guidance sets out minimum standards of control in relation to the valuation of the investment fund assets to which the investment fund manager should have regard in determining whether they have met their obligations;

3. The investment fund manager should take action forthwith to rectify any breach in respect of valuation. Where the breach relates to the incorrect pricing of holdings (units/shares) rectification should extend to the reimbursement or payment of money by the investment fund manager to the participants of the investment fund;

4. The Custodian or Trustee of the investment fund may direct that rectification need not extend to reimbursement where it appears that the incorrect pricing is of minimal significance;

5. The price of a holding of any class should be calculated by valuing the investment fund assets attributable to holdings (units/shares) of that class and dividing that value by the number of holdings (units/shares) of the class in issue. All the investment fund assets should be valued at each valuation point and any part of the assets which is not an investment should be valued at fair value. There should be in place an agreed methodology for valuing the investment fund assets and that methodology must be applied consistently;

6. In respect of Securities quoted on an Exchange:

   (i) The investment fund's constituting documents should set out the valuation policy that will be adopted by the investment fund manager where a single price for buying and selling a Security is quoted; and where separate buying and selling prices are quoted on an Exchange. Either the official mid-market price or the last trade price should provide an appropriate basis of valuation for the investment fund. The investment fund manager should, however, document the choice of methodology and ensure that the procedures are applied consistently and fairly; and

   (ii) Where there has been no recent trade in the Security concerned, or no reliable price exists, holdings should be valued at a price which, reflects a fair and reasonable price for that investment. For example, an investment fund manager may obtain a valuation from three experienced brokers and average the value. In such cases, the investment fund manager is required to document the reasons for his decision and should be prepared to justify any assumptions made.

7. Where instances of incorrect pricing occur, the de minimis provisions set out in this guidance should apply only where this is an isolated incident. Evidence of persistent or repetitive errors, or errors consistently in the investment fund manager's favour, are likely to make it more difficult for the investment fund manager to demonstrate that he is able to meet the standards in this guidance.

Pricing Controls by the Investment Fund Manager

8. Unit prices and currency rates used in valuations should be up to date and from a reputable source. The reliability of the source of prices and rates should be kept under regular review, and the use of doubtful prices or rates should be followed up;

9. The mere use of a source for prices and rates does not amount to delegation. However, the use of a third party to carry out the pricing function, whether it is an associate of the investment fund manager, or the director of the investment fund or any independent third party, amounts to outsourcing. In this case, the investment fund manager still retains its operating responsibilities

[88] I have included this guidance to consider the desirability of issuing this as it sets out the internationally accepted best practices for valuation and pricing.

and duties and, remains liable for the acts and omissions of that third party in performing the pricing functions as if they were the acts or omissions of the investment fund manager;

10. Where the pricing function is outsourced, the investment fund manager is required, in accordance with this Law or other applicable law in Georgia to satisfy himself that the pricing agent remains competent to carry out the function, and that he has taken reasonable care to ensure that the pricing agent has carried out his duties in a competent manner;
11. The investment fund manager should seek assurance that the pricing agent's system is robust and will produce accurate results. The investment fund manager should review the outputs from the system at least annually, and on any significant system change. In addition, if the pricing agent is also responsible for calculation of dealing prices of holdings (units/shares), the investment fund manager should ensure that this system is reviewed to his satisfaction at least annually;
12. Unless the valuation and record keeping systems are integrated, the valuation output should be agreed with the investment fund manager's records of the fund at each valuation point. In addition, the investment fund manager's records, including debtors and creditors, should be agreed with a Custodian's records at least monthly, with reconciling items followed up promptly and debtors reviewed for recoverability;
13. Systems should be in place whereby all transactions are confirmed in writing or by electronic means to the investment fund manager [or to a pricing agent] as quickly as possible. It is desirable that all deals to which the investment fund is committed, which have been notified, at most, one hour before a valuation, are included in that valuation, at estimated prices if necessary. Unless, however, there is likely to be significant movement in a price of a holding, it is more important that an accurate cut-off procedure is in place to ensure that omissions or duplications do not take place, than it is to ensure that estimates are included in a valuation;
14. Where prices are obtained otherwise than from the main pricing source (e.g. unquoted, suspended, or illiquid stocks), the investment fund manager should maintain a record of the source and basis for the value placed on the investment. These should be regularly reviewed;
15. A system should be in place to ensure that investment and borrowing powers which are contained in the investment fund's constituting documents (and prospectus) are not breached, and that if breaches occur they are identified and rectified;
16. A system should be in place to ensure that dividends are accounted for as soon as stocks are quoted ex-dividend, unless, as with some foreign stocks, it is prudent to account for them only on receipt. Fixed interest dividends and interest should be accrued at each point unless the level of materiality makes a longer interval appropriate. Similar considerations apply to the expenses of the investment fund;
17. The investment fund manager should ensure periodically that any charge which is levied on a participant in respect of dilution has been calculated in accordance with the methodology which has been disclosed in the constituting documents or prospectus;
18. The investment fund manager should set a percentage or absolute limit for certain key elements of the valuation, such that any movement outside these limits is investigated. The process for the investigation and a report of its outcome should be in writing and evidenced by an appropriate signature. These key elements could, where relevant, include the movement of the overall price of the investment fund against relevant markets, the movement of the prices and values of individual stocks, changes in currency rates, and accrual figures for income, expenses, and tax. In addition, prices which appear not to have changed after a fixed period of time should be investigated, since this may be the result of a price movement having been missed;
19. Cash should be reconciled to the bank account regularly, with outstanding items promptly followed up, and a full reconciliation sent to the directors, partners or trustees of the investment fund monthly;
20. Controls should be in place to ensure that the correct number of holdings (units/shares) in issue is recorded at each valuation point. This should be reconciled with the participants' holder register at least monthly;
21. A copy of the valuation report should be sent to the investment fund manager on a regular basis and he should specifically check that the correct holdings are recorded.

Incorrect Pricing

22. The investment fund manager should record each instance where the holding price is incorrect and, as soon as the error is discovered, report the fact to the Directors, Partners or Trustees of the investment fund together with details of the action taken, or to be taken, to avoid repetition;
23. Materiality of incorrect pricing should be determined by taking into account a number of factors, including whether the investment fund manager has followed the pricing controls set out in this guidance;
24. The significance of any breakdown in management controls or other checking procedures should also be taken into account. This may include situations where inadequate back-up arrangements exist. The duration of an error should also be taken into account; the longer an error persists, the more likely that it will have a material effect on a price;
25. The level of compensation paid to participants and the investment fund manager's ability (or otherwise) to meet claims for compensation in full, may also be relevant;
26. The investment fund manager should also report forthwith any instance of incorrect pricing where the error is greater than 1.0% of the price of a holding. Where the investment fund manager believes that compensation is inappropriate he should set out the reasons for that belief.

Action to be taken as Regards Compensation for Incorrect Pricing

27. Prices found to be incorrect by less than 1.0%:
    a. Where the dealing price of any holding (units/shares) of an investment fund is found to be incorrect by less than 1.0% of the price compensation to participants will not normally be required;
    b. Where an issue or cancellation of holdings (units/shares) has taken place at a price which is incorrect by less than 1.0% of the price compensation to or from the investment fund will not normally be required.
28. Where the dealing price of any holding in an investment fund is found to be incorrect by 1.0% or more compensation to participants will normally be required.

APPENDIX B: NOTE ON DEFINITION OF COLLECTIVE INVESTMENT UNDERTAKING (CIU), MANAGEMENT OF FUNDS; INVESTMENT AND BORROWING FOR UNDERTAKINGS IN COLLECTIVE INVESTMENTS FOR TRANSFERRABLE SECURITIES (UCITS) AND ALTERNATIVE INVESTMENT FUNDS (AIF'S) AND ALTERNATIVE INVESTMENT FUNDS MANAGER DIRECTIVE (AIFMD)

- All "hedge fund" type managers that are established in the Georgia will have to be authorized as AIFM's, other than small managers that fall within the threshold exemption of total fund assets under management (€100 million assets or less than €500 million assets during a period of five years);[89]
- There appears to be no EU requirement to have a separate fund manager save for authorized contractual UCITS; and
- With UCITS and AIF's the depositary must be independent, and no company may act as both a management company and depositary or investment company and depositary.

1. Basic Definition of a Collective Investment Undertaking

Under the ESMA AIFMD key concepts guidelines if all of the following characteristics are met then the undertaking is a CIU:

(1) The undertaking does not have a general commercial or industrial purpose;

(2) It pools together capital raised from its investors for the purpose of investment with a view to generating a pooled return for those investors from investments; and

(3) The Unitholders or shareholders of the undertaking - as a collective group - have no day-to-day discretion or control.

And note that for:

(2 above) It is the return generated by the pooled risk arising from acquiring, holding or selling investment assets - including activities to optimise or increase the value of these assets - irrespective of whether different returns to investors, such as a tailored dividend policy, are generated; and

(3 above) The fact that one or more, but not all, of the Unitholders or shareholders are granted day-to-day discretion or control cannot be conclusive evidence that the undertaking is not a CIU.

2. Fund Management

UCITS are required either to be self-managed or appoint a management company. Only Funds that are organised contractually (i.e., partnerships) are required to have a UCITS management company;[90]

[89] I have no idea of how many funds would be able to avail themselves of this exemption in Georgia. And local fund may want to deliberately avail themselves of this exemption and apply limits to the funds that are created.
[90] This should hopefully assist the domestic market in Georgia

The management company, through its board of directors, is ultimately responsible for the operations of the UCITS and most of its functions but will generally delegate most tasks to more efficiently conduct business (portfolio management, administration, marketing and distribution, etc.);

Self-managed funds are not required to appoint a management company but can do so. A self-managed UCITS does not have a UCITS management company and will instead, through a board of directors, appoint directly the investment manager, administrator, depositary bank, distributors and auditor;

Only UCITS organised as companies can elect to be self-managed. An application to be self-managed, similar to the application for an entity to become a UCITS management company, must be submitted to the regulatory authority in the country of domicile and detailed requirements exist for a fund to be self-managed.

And it appears that there is nothing that prevents AIF's from being similarly be self-managed.

3. Investment and Borrowing Rule for UCITS[91]

UCITS are subject to detailed investment and borrowing rules with a general focus on both liquidity and diversification. UCITS must invest in only eligible assets which include the following:

a. Transferable securities admitted to or dealt in on a regulated market;

b. Money market instruments;

c. Deposits with credit institutions;

d. Closed-ended funds;

e. Open-ended funds; and

f. Financial derivative instruments of which the underlying consists of eligible assets or interest rates, foreign exchange rates or currencies and financial indices.

No more than 10% of net assets (the so called "trash ratio") may be invested in transferable securities and money market instruments that are not listed on an exchange or dealt in another regulated market.

In general, UCITS are restricted from borrowing with the exception of borrowing on a temporary basis with a limit of up to 10% of the net asset value of the fund.

But to Note that:

- A UCITS may also obtain foreign currency by means of back-to-back loans, which are not considered to be borrowing under the Directive; and
- Although short selling of securities is generally not permitted in the EU it may be possible to use derivative instruments to create synthetic short positions and use of all types of derivatives for both hedging and investment purposes.

4. AIF's and AIFM Directive

Unlike the UCITS Directive (which governs all retail investment funds), the AIFM Directive does not directly introduce EU legislation for AIF's. Instead, it requires authorisation and supervision for fund managers managing AIFs in the EU broadly similar to the regime for managers of UCITS funds. And, AIFs are required to have an independent depositary for fund assets.

5. Thresholds for AIFMD

The AIFMD will not apply to:

[91] The prescriptive detail of these requirements may cause practical difficulties in establishing domestic UCITS compliant funds

- AIFMs managing AIFs that have total assets of less than €100 million; or
- AIFMs managing AIFs that have total assets of less than €500 million subject to the AIFs not being leveraged and have no redemption rights during a period of 5 years following the date of initial investment in each AIF.[92]

6. Definition of AIF

An AIF is a CIU which:

(1) Raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

(2) Does not require authorization pursuant to article 5 of the UCITS Directive.

The key elements of the definition are:

(3) It is a collective investment undertaking (CIU);

(4) It has a defined investment policy;

(5) It raises capital with a view to investing that capital for the benefit of those investors in accordance with that policy;

(6) An AIF does not include an undertaking that requires authorisation under article 5 of the UCITS Directive.

It is not necessary to satisfy all the elements of the definition in order to be an AIF. An AIF may or may not be listed. Nor does an AIF have to take any particular legal form. It does not matter whether if an AIF is set up under contract, trust or statute or as any form of partnership or company.

Note: This means in practice the concepts of CIU's and AIF's overlap considerably.

7. Types of AIF's:

The Commission Staff Working Document (Impact Assessment) accompanying the Proposal for the Directive (COM (2009) 207) lists the commonest types:

(1) Hedge funds;

(2) Commodity funds;

(3) Private equity funds (including large buy-out funds, mid-cap investment funds and venture capital funds);

(4) Infrastructure funds;

(5) Real estate funds;

(6) Conventional non-UCITS investment funds which invest primarily in traditional asset classes (such as equities, bonds and derivatives) and pursue traditional investment strategies.

See also list of fund types in the reporting templates in the AIFMD level 2 regulation which sets out the following:

(1) Hedge funds;

(2) Private equity funds;

(3) Real estate funds;

(4) Fund of funds;

(5) Commodity funds;

(6) Equity funds;

(7) Fixed income funds; and

[92] This threshold may give some scope for the establishment of unregulated funds in Georgia

(8) Infrastructure funds.

8. Marketing an AIF in the EU

Onshore or offshore hedge funds can only be marketed in the EU to professional investors (namely a professional client within the meaning of MiFID, including individuals which satisfy the conditions to be treated as professional investors); and

Marketing is defined as “any direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of the units or shares in an AIF it manages to or with investors domiciled in the EU”.

“Passive” marketing or “reverse solicitation” (i.e. not at the direct or indirect initiative of the AIFM) continues to be permitted as it is outside the scope of AIFMD.

9. Regulatory Reporting

AIFM’s are subject to general regulatory reporting which broadly covers:

- Quarterly or half-yearly reporting under AIFMD of a large amount of data on their positions and exposures;
- Derivatives reporting under Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR);
- Reporting of short positions under Regulation (EU) 236/2012 on short selling and certain aspects of credit default swaps (EU Short Selling Regulation); and
- Reporting of securities financing (repurchase (repo) and reverse repo) transactions under Regulation (EU) 2015/2365 (EU Securities Financing Transactions).

They are also subject to the requirements:

- Which apply to OTC and exchange traded derivatives under EMIR, including margining and clearing requirements; and
- Largely subject to the rules that apply to "investment firms" under MiFID, which (from 3 January 2018) introduces new rules for high-frequency and algorithmic trading, best execution, the use of dealing commission to pay for research from brokers, fee disclosure, transaction reporting and fund distribution.

APPENDIX C: DRAFT COLLECTIVE INVESTMENT SCHEME LAW

INTRODUCTORY NOTE:

This is a first draft and as such seeks to enable the widest range of fund structures and types that may be possible. It is recommended that the law should enable widest range of schemes so that all the options are available rather than starting narrowly and not including all possibilities for schemes and subsequently regretting this.

The draft as it stands gives more detail and may therefore be longer and less flexible to apply over the medium to long term than may be desirable for the nascent domestic market.

The draft does contain some inconsistencies and duplications due to the considerable complexity of the document since it sets out to cover both Schemes for Collective Investment in Transferable Securities (UCITS) and Alternative Investment Funds (AIF's) operated by Alternative Investment Fund Managers as required by the Schemes for Collective Investment in Transferable Securities Directive (UCITSD) and the Alternative Investment Fund Managers Directive (AIFMD).

Essentially the draft seeks to cover:

Domestic Georgian Scheme:

- Authorised funds for public offer:
  - Schemes that are open-ended publicly offered funds investing and operated in line with the UCITS in corporate form (namely an investment company with variable capital and contractual form (an investment fund);
  - Retail collective investment schemes. These are funds able to be offered to the public in Georgia which do not meet the criteria of the UCITSD including:
    - Open-ended funds in corporate form namely an investment company with variable capital and contractual form namely an investment fund;
    - Interval funds (authorised schemes);
    - Close-ended funds corporate form namely an investment company with fixed capital and contractual form namely an investment fund.

    All these funds are technically AIF's under AIFMD since they are funds which are not UCITS; however, it is normal to allow funds that meet certain requirements for investor protection, spread of risk, etc. to be allowed to be offered to the public even if they are not UCITS: this would permit any existing investment funds in Georgia to continue to operate as they are;

- Registered schemes only for offers (private placements) to qualified investors. These which may be open-ended, interval or close-ended and may be in corporate, contractual (investment fund) or partnership form: these again are AIF's under the AIFMD.

However, the draft Law applies the requirements for management of UCITS and for depositaries to UCITS to all management companies of authorised SCHEME (that is, publicly offered funds).
The first section of the law, up to Chapter X applies to the operation of all types of fund and contains any provisions that are specific to non-publicly offered funds. Non-publicly offered (private placements) funds, AIF's which can only be offered to qualified investors will be required to be registered with NBG and their managers and depositaries are required to be authorised, in line with the AIFMD. NBG will not, however, approve or authorise such funds, just register their existence and receive certain information about them (such as annual reports and accounts) the so called "light" regulatory regime. The sections from Chapter X onwards up until the section on the Powers of the Authority concern publicly offered funds. A key question here is whether an open-ended or interval investment company (that is, a company under an obligation to redeem its shares and able to issue new shares on a continuing basis) can be made to work under Georgian Law on Entrepreneurs as it now stands. Domestic Legal advice on is being sought. If this is not the case these provisions can be deleted.

Foreign Schemes

- Recognised schemes for public offer namely schemes in transferable securities under that Directive that can be sold across borders;
- Registered schemes only for offer to qualified investors, namely AIF's under that Directive which are permitted to be offered cross border to professional investors.

Management of Schemes

At present, the authorisation of management of a scheme and separately of management of AIFs follow each other in the draft. It may be that the running order of this should be changed. Requirements for depositaries of AIFs are very similar to those for UCITS though where not identical, UCITS type requirements have been applied only to authorised (publicly offered) funds.

DRAFT COLLECTIVE INVESTMENT SCHEME LAW CONTENTS

Draft Law on Collective Investment Schemes 84
Chapter I: General Provisions 84
Part 1: Scope and Application 84
1. Purpose 84
2. Definitions 84
3. Collective Investment Schemes 91
4. Arrangements not Constituting a Collective Investment Scheme 92
5. Requirements for Schemes established in Georgia 93
6. Unauthorised Persons and Collective Investment Schemes 94
7. Prohibition of Conversion of Collective Investment Scheme 95
Chapter II: Offering of Schemes in Georgia 95
8. Offer not to the Public 95
9. Offer to the Public 95
Chapter III: Constituting Instrument of a Collective Investment Scheme Established in Georgia 95
10. Constituting Instrument of a Collective Investment Scheme Established in Georgia 95
Chapter IV: Prospectus of a Collective Investment Scheme Established in Georgia 98
11. Requirements for the Prospectus of a Collective Investment Scheme established in Georgia 98
12. Responsibility and Liability for the Prospectus of a Collective Investment Scheme Established in Georgia 99
13. Provision of the Scheme Prospectus 99
14. Contravention of this Chapter 99
Chapter V: Evidence of Ownership of Participations in Schemes Established in Georgia 99
15. Evidence of Ownership of Participations and Transfer of Ownership 99
16. Maintenance of the Register of Ownership of Schemes Established in Georgia 99
17. Transfer of Participations in Schemes 99
Chapter VI: Investment Policy of Schemes Established in Georgia 100
18. Spread of Investment Risk by a Scheme 100
Chapter VII: Audit of Schemes Established in Georgia 100
19. Requirements for the Auditor of a Collective Investment Scheme 100
20. Audit of an Authorised Collective Investment Scheme 100
21. Resignation of Auditor of Collective Investment Scheme 101
Chapter VIII: Reports and Accounts of Schemes Established in Georgia 102
22. Requirements for Annual Reports and Accounts 102
23. Approval of Reports and Accounts 103
Chapter IX: Taxation of Schemes Established in Georgia 103

24. Taxation of Collective Investment Schemes 103
25. Authorisation of Collective Investment Schemes 103
Part 4: UCITS Schemes 104
Chapter X Collective Investment Schemes in Transferable Securities (UCITS) 104
26. General Provisions and Scope 104
27. Common Funds in Transferable Securities ('UCITS investment funds') 104
28. Investment Companies with Variable Capital Investing in Transferable Securities (UCITS Investment Company with Variable Capital) 107
29. Marketing of a UCITS in a Foreign Country 109
30. Provision of UCITS Information when Marketing in a Foreign Country 110
31. Names and UCITS 110
Chapter XI: Mergers of UCITS 110
32. Mergers of UCITS 110
Chapter XII: UCITS Master and Feeders 112
33. Scope and Approval 112
34. Requirements for UCITS Master/Feeders 112
35. Communication by the Authority in Relation to Master/Feeders 113
Chapter XIII: UCITS Established in Foreign Countries which Market their Shares or Units in Georgia 114
36. Marketing of Foreign UCITS 114
37. Names and Foreign UCITS 114
Chapter XIV: Retail Collective Investment Schemes 115
38. General Provisions and Scope 115
39. Common Funds that are Retail Collective Investment Schemes 115
40. Investment Companies that are Retail Collective Investment Schemes 117
41. Investment and Borrowing Powers of Retail Collective Investment Schemes 120
Chapter XV Winding up of authorised Scheme and Termination of Sub-Funds of Scheme Established in Georgia 121
42. Limitations on Winding Up 121
43. Limitations on Termination of a Sub-Fund 121
44. Winding up of a Solvent Collective Investment Scheme 121
45. Winding up of an Investment Fund 121
46. Winding up of an Investment Company 122
47. Required Activities During Termination and Winding Up 123
48. Transfer of Authorised Collective Investment Scheme 123
49. Circumstances in which a Collective Investment Scheme may be Wound up by the Court 123
50. Winding up of Collective Investment Scheme by Order of the Court 123
51. Effect of winding up 124
Chapter XVI: Authorisation, Recognition and Registration of a Collective Investment Scheme 124
52. Conditions for Application for Authorisation of a Scheme for Collective Investment 124

53. Conditions for Application for Recognition of a Scheme Established Outside Georgia and Recognition of Georgian scheme by Foreign Regulatory Authorities 125
54. Conditions for Registration of Domestic Schemes for offer to Qualified Investors Only 125
55. Requirements for Registration of Foreign Scheme for offer to Qualified Investors Only 126
56. Authorisation of Collective Investment Schemes 126
57. Recognition of Collective Investment Schemes 126
58. Refusal to Grant Authorisation 127
59. Refusal to Grant Recognition 127
Chapter XVII: Variation, Suspension or Revocation of Authorisation or Recognition of a Scheme ... 127
60. Variation, Suspension or Revocation of Authorisation or Registration of a Domestic Collective Investment Scheme Upon Request 127
61. Revocation of Authorisation or Registration by the Authority 128
62. Variation, Suspension or Revocation of Recognition or Registration of a Foreign Collective Investment Scheme Upon Request 128
63. Variation, Suspension and Revocation of Recognition or Registration of a Foreign Collective Investment Scheme by the Authority 129
Chapter XVIII: Register of Authorised and Recognised Collective Investment Schemes 130
64. Entry into register and maintenance of register 130
Chapter XIX Authorisation of Operators of Collective Investment Schemes 131
Management of Authorised Schemes for Collective Investment and Collective Investment Schemes in Transferable Securities 131
65. Authorisation of a Management Company of Authorised Schemes for Collective Investment131
66. Grant of Authorisation 133
67. Refusal of Authorisation as Management Company of Authorised Collective Investment Schemes 134
68. Change of Scope of Authorisation 134
69. Revocation of Aauthorisation as Management Company 134
Managers of Alternative Investment Funds 135
70. Authorisation of a Manager of an Alternative Investment Fund 135
71. Grant of Authorisation 138
72. Refusal of Authorisation as Alternative Investment Fund Manager 138
73. Change of Scope of Authorisation 139
74. Revocation of Authorisation as an Alternative Investment Fund Manager 139
75. Freedom of Establishment and to Provide Services by a Management Company Authorised to Manage Collective Investment Schemes in Transferable Securities or an Alternative Investment Fund Manager 139
76. Use of Names 141
Reporting by Authorised Operators of Schemes 142
77. Reporting Obligations to the Authority 142
Chapter XX: Authorisation of Depositaries to Collective Investment Schemes in Georgia 142
78. Authorisation of Depositaries of a Collective Investment Scheme 142

79. Grant of Authorisation 143
80. Refusal of Authorisation as Depositary 144
81. Change of Scope of Authorisation 144
82. Revocation of Authorisation as Depositary 144
83. Use of Names 144
Reporting by Authorised Depositaries of Collective Investment Schemes 144
84. Reporting Obligations to the Authority 144
Chapter XXI: Operation of Authorised Collective Investment Schemes 145
General Provisions on the Operation Of Authorised Schemes 145
85. Duties of the Management Company of an Authorised Collective Investment Scheme 145
86. Liability of the Management Company 145
87. Functions of the Management Company of an Authorised Scheme 145
88. Delegation by Management Company 146
89. Replacement of Management Company or Manager 146
Chapter XXII Depositaries of Schemes 147
General Provisions on Depositaries of Schemes 147
90. Duties of a Depositary of Collective Investment Schemes 147
91. Separation of Assets of Scheme from the Assets of a Depositary 148
92. Liability of the Depositary 148
93. Delegation by Depositary 149
94. Replacement of a Depositary of an Authorised Scheme 150
Chapter XXIII: Investment and Borrowing Powers of Authorised Schemes 150
Limitations on Investment and Borrowing 150
95. Permitted Investments, Lending and Borrowing for Authorised Schemes and Sub-Funds .. 150
Limitations on Investment and Borrowing by Collective Investment Schemes in Transferable Securities 151
96. Investment and Borrowing Powers for UCITS 151
97. Limits on Exposures of Collective Investment Schemes in Transferable Securities for UCITS 153
98. Derogation for UCITS 154
99. Limits on Investment in other Schemes for UCITS 155
100. Disclosure in Relation to Investment for UCITS 155
101. Aggregation for UCITS 156
102. Alleviation of Requirements for UCITS 156
103. Borrowing for UCITS 157
104. Lending for UCITS 157
Chapter XXIV: Valuation of Authorised Collective Investment Schemes 157
105. Requirements for Valuation of Authorised Collective Investment Schemes 157
Chapter XXV: Information to be Provided to Investors 158
106. Key Investor Information of a Scheme for Collective Investment in Transferable Securities 158

107. The Scheme Prospectus of an Authorised Collective Investment Scheme..... 158
108. Annual Audited Report and Accounts and Interim Report and Accounts of an Authorised Collective Investment Scheme..... 159
109. Net Asset Value and Price Per Authorised Collective Investment Scheme Participation .. 159
Chapter XXVI: Marketing Communications in Relation to Authorised Collective Investment Schemes159
110. Marketing Communications 159
Chapter XXVI Costs and Charges of Authorised Collective Investment Schemes 159
111. Costs and Charges 159
Chapter XXVII: Powers of the Authority..... 160
112. Article 112 Powers of the Authority..... 160
113. Co-operation in Supervisory Activities 161
114. Administrative Penalties..... 161
115. Application of Penalties..... 162
116. Chapter XXIX: Transitional 162

1. Draft Law on Collective Investment Schemes

Chapter I: General Provisions

Part 1: Scope and Application

1. Purpose

The purpose of this law is to regulate the establishment, constitution and operation of Collective Investment Schemes and the offering and marketing of such schemes in Georgia.

2. Definitions

"Accumulation unit (or share)" means a unit or share in a collective investment scheme which accumulates income by way of periodical credit to capital rather than distribution.

"Advertisement" means a communication relating to a specific offer of securities to the public or to an admission to trading on a regulated market aiming to specifically promote the potential subscription or acquisition of securities.

"NBG Law" means the Law No.

"Alternative investment fund (AIF)" means a scheme including any investment compartments which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors and which would not require authorisation as a scheme for collective investment in transferable securities under the European Union UCITS Directive.

"Alternative investment fund manager (AIFM)" means a legal person whose regular business is managing one or more alternative investment funds which may in addition undertake administration and marketing of alternative investment funds.

"Annual report and accounts" means, in relation to a collective investment scheme, a report on the operations, financial performance and financial condition of such a scheme over an accounting year including the auditor's report.

"Authority" means the NBG established under Law.

"Branch" means a place of business which is a part of a management company or alternative investment fund manager which has no legal personality, and which provides the services for which the management company or manager was authorised; all the places of business established in the same country or territory by a management company with its registered office in a third country shall be regarded as a single branch.

"Capital property" means the scheme property, other than the income property and any amount for the time being standing to the credit of the distribution account.

"Scheme prospectus" means a written statement that discloses the terms of the offering of a collective investment scheme.

"Close-ended" in relation to a collective investment scheme has the meaning assigned in Article 5.

"Close links" means a situation in which two or more natural or legal persons are linked by:

(a) Participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

(b) 'Control' which means the relationship between a parent undertaking and a subsidiary, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;

(c) A permanent link of both or all of them to the same person by a control relationship.

"Close-ended investment company" means an investment company which has a fixed number of shares in issue which is a scheme.

"Collective investment scheme" has the meaning assigned in Article 3.

"Companies Law" means the Law [number] on Entrepreneurs and Companies.

"Conducting persons" means those persons who, under the law or the instruments of incorporation, represent the depositary, or who effectively determine the policy of the depositary.

"Constituting instrument" means for an investment company, the Statute or Instrument of Incorporation of that company; for a partnership, the partnership agreement and for an investment fund the fund rules or an equivalent thereof.

"Control" has the meaning ascribed under 'close links'.

"Country" means an organised political community, unitary or federal, with one sovereign government recognised by the United Nations.

"Cross-border merger" means a merger of collective investment schemes in transferable securities:

a) At least two of which are established in different member states of the European Union; or

b) Established in the same member state of the European Union into a newly constituted scheme for collective investment in transferable securities established in another member state of the European Union.

"Custody" means safekeeping and administration of financial instruments.

"Debenture" has the meaning ascribed to it in the Companies Law.

"Deposit" means a sum of money paid on terms under which it will be repaid, with or without interest or a premium, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it.

"Depositary" in relation to collective investment scheme, means a bank or credit institution authorised by a regulatory authority to whom the property subject to the scheme is entrusted for safekeeping that has the duties and functions set out in this law.

"Director" has the meaning ascribed to it under the Companies Law.

"Distribution account" means the account to which the income property of a collective investment scheme must be transferred at the end of each annual accounting period.

"Durable medium" means an instrument that enables the recipient to store information addressed personally to that recipient in a way that is accessible for future reference for a period adequate for the purposes of the information and which allows unchanged reproduction of the information stored.

"Domestic merger" means a merger between one or more schemes for transferable securities established in Georgia where at least one of those schemes has notified its intention to market in a foreign country.

"Feeder collective investment scheme" means an open-ended collective investment scheme dedicated to investing not less than 85% of its assets in participations in one other specified open-ended collective investment scheme (the 'master' collective investment scheme).

"Financial instrument" means:

(1) Transferable securities;

(2) Money-market instruments;

(3) Units in collective investment undertakings;

(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

(5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

(6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, multilateral trading facility (MTF), or an organized trading facility (OTF), except for wholesale energy products traded on an OTF that must be physically settled;

(7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;

(8) Derivative instruments for the transfer of credit risk;

(9) Financial contracts for differences;

(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF.

And, for the avoidance of doubt, includes participations in a collective investment scheme**.**

"Foreign collective investment scheme" means a collective investment scheme created under the law of a country other than Georgia.

"Foreign company" means a company incorporated outside Georgia.

"Foreign registered collective investment scheme" ('foreign registered scheme') means a collective investment scheme domiciled outside Georgia registered by the Authority for offer to qualified investors only within Georgia.

"Holding company" has the meaning ascribed to it under the Companies Law.

"Home state" is the State or territory in which a collective investment scheme, management company or depositary is registered or authorised under applicable law or the State in which the collective investment scheme has its registered office or head office.

"Home state authority" is the body empowered by the government of the home state of an operator or depositary of a scheme for collective investment or of a scheme for collective investment to supervise that operator or that depositary or that scheme in that State or territory.

"Host state" in relation to a collective investment scheme is a country or territory in which the collective investment scheme's participations are marketed which is not its home state; in relation to a management company is a country which is not its home and in relation to a depositary is a country or territory which is not its home state.

"Host state authority" means the regulatory authority responsible for supervision of a collective investment scheme, an operator of a collective investment scheme or a depositary of a collective investment scheme.

"Immovable" means land, and any constructions and works of a permanent nature located thereon and anything forming an integral part thereof.

"Income property" means all sums that the management company, in consultation with the auditor, considers to be in the nature of income received or receivable for the account of and in respect of the property of a collective investment scheme, but excluding any amount for the time being standing to the credit of the distribution account.

"Income unit (or share)" means a unit or share in a collective investment scheme that periodically distributes income and does not credit this income to capital.

"Independent director" means in relation to an investment company means a non-executive director of an investment company who meets the requirements to be able to Law independently of the management company of that scheme, of its alternative investment fund manager, its auditor, its legal adviser, its depositary or custodian and who is not a director, employee, partner, officer or professional adviser to any of these entities and who has not acted in that capacity in the most recent three years.

"Initial capital" means paid up equity capital subscribed by shareholders or other owners excluding cumulative preference shares.

“Interim report and accounts” means, in relation to a collective investment scheme, a report on the operations, financial performance and financial condition of such a scheme for the first six months of an accounting year.

“Interval” means, in relation to a collective investment scheme has the meaning given in this Law.

“Investment company” means a collective investment scheme which is a body corporate, the principal object of which is the diversified investment of its property in real or personal property of whatever kind.

“Investment company with fixed capital” means a joint stock company or limited liability company under the Companies Law which is a close-ended scheme and has a fixed number of shares in issue, which is authorised or exempted under this Law.

“Investment company with variable capital” means a joint stock company or limited liability company under the Companies Law which is open-ended or interval and has a variable number of shares in issue, which is authorised or exempted under this Law.

“Investment firm” means any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more regulated activities on a professional basis.

“Investment fund” is a collective investment scheme formed as a common fund.

“Investment services and activities” means any of the following (in relation to financial instruments:

(a) Reception and transmission of orders in relation to one or more financial instruments;

(b) Execution of orders on behalf of clients;

(c) Dealing on own account;

(d) Portfolio management; including managing a collective investment undertaking

(e) Investment advice;

(f) Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;

(g) Placing of financial instruments without a firm commitment basis;

(h) Operation of an MTF;

(i) Operation of an OTF.

“Joint stock company” has the meaning ascribed in the Companies Law.

“Issuer” means a natural or legal person, or other legal entity governed by law, including a country whose securities are admitted to trading on a regulated market the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented.

“Leverage” means any method by which the management company of an alternative investment fund increases the exposure of the fund whether by borrowing or use of derivatives or otherwise.

“Limited liability Company” has the meaning ascribed in the Companies Law.

“Liquid market” means a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:

(a) The average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;

(b) The number and type of market participants, including the ratio of market participants to traded instruments in a particular product;

(c) The average size of spreads, where available.

“Listed company” means any company which has its securities listed on the stock exchange and includes:

(a) Any public company [including a joint stock company] which has its securities listed on a licensed stock exchange; and

(b) Any company which is not registered in Georgia, but which has been admitted to the official list of a stock exchange.

"Management company" means a legal person, the regular business of which is the management of collective investment schemes in transferable securities in the form of common funds or of investment companies (collective portfolio management of UCITS).

"Managing an alternative investment fund" means scheme portfolio management and risk management for at least one alternative investment fund.

"Marketing" means a direct or indirect offering or placement at the initiative of a management company of units or shares in a collective investment scheme managed by that company.

"Master scheme" is a scheme which has amongst its participants at least one feeder scheme and which is not itself a feeder scheme and which does not hold participations in a feeder scheme.

"Merger" means an operation whereby:

(a) Type 1: One or more schemes or a sub-fund thereof which being dissolved without going into liquidation (the 'merging collective investment scheme') transfers all of its assets and liabilities to another existing collective investment scheme or sub-fund ('the receiving collective investment scheme') in exchange for the issue to its unitholders of units of the receiving collective investment scheme and if applicable, a cash payment not exceeding 10% of the net asset value of those shares or units;

(b) Type 2: Two or more schemes or sub-funds thereof 'the merging collective investment scheme', on being dissolved without going into liquidation, transfer all of their assets and liabilities to a collective investment scheme which they form a sub-fund thereof, the 'receiving scheme for collective investment' in exchange for the issue to their share or unitholders of shares or units in the receiving collective investment scheme and, if applicable, a cash payment not exceeding 10% of the net value of those shares or units;

(c)Type 3: One or more schemes or sub-funds thereof 'the merging scheme for collective investment scheme which continues to exist until the liabilities have been discharged, transfer their net assets to another sub-fund of the same umbrella, to a collective investment scheme which they form or to another existing collective investment scheme thereof 'the receiving collective investment scheme.

"Money market collective investment scheme" means an open-ended collective investment scheme whose primary objective is to maintain the net asset value of the scheme either constant at par (net of earnings) or at the value of the participants' initial capital plus earnings and which must sell and redeem its participations every working day.

"Money market instrument" in the context of this law means a debt security that gives the owner the unconditional right to receive a stated, fixed sum of money on a specified date, is issued at a discount dependent upon the interest rate and the time remaining to maturity including treasury bills, commercial and financial paper, bankers' acceptances and negotiable certificates of deposit with original maturities of one year or less, and short-term notes issued under note issuance facilities.[93]

"Net asset value" means the aggregate value of the assets of a collective investment scheme (or sub-fund) less the total amount of the liabilities of that collective investment scheme (or sub-fund) at the time of the calculation.

"Net asset value per participation" is the net asset value of the collective investment scheme (or sub-fund) divided by the number of participations in issue at the time of the calculation of the net asset value.

[93] This is the same as the UCITS Directive which is– 'instruments normally dealt in on the money market which are liquid and have a value which can accurately be determined at any time' and which probably will not work in Georgia at the present time

"Offer of securities to the public" means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. This definition also applies to the placing of securities through financial intermediaries.

"Offer period" means the time period during which potential investors may purchase or subscribe for the securities.

"Offeror means" a legal entity or individual which offers securities to the public.

"Open-ended" in relation to a collective investment scheme has the meaning given in this law).

"Operator of a collective investment scheme" means the legal person that has overall responsibility for the management and performance of the functions of the collective investment scheme, which may include investment advice and operational services.

"Participant" means any person holding units or shares or a partnership or any other form of participation or right or interest in a collective investment scheme by reason of having invested capital in the collective investment scheme.

"Participation" includes, where the context so requires, a share, a unit, a partnership and any other instrument or interest granting a proportionate entitlement to scheme property and the income earned by scheme property and capital returns earned by scheme property.

"Person" means a natural or legal person.

"Person closely associated" means:

(a) A spouse, or a partner considered to be equivalent to a spouse in accordance with national law;

(b) A dependent child, in accordance with national law;

(c) A relative who has shared the same household for at least one year on the date of the transaction concerned; or

(d) A legal person, trust or partnership, the managerial responsibilities of which are discharged by a person discharging managerial responsibilities or by a person referred to in point (a), (b) or (c), which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person.

"Prescribed exemptions" means such exemptions to the provisions of this Law as the Authority may determine.

"Qualified investor" means an investor who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered a qualified investor, in relation to all investment services and activities and financial instruments the investor must meet the following criteria:

(1) The investors is required to be licensed or recognised to operate in the financial markets namely:

(a) Credit institutions;

(b) Investment firms;

(c) Other licensed, or recognised financial institutions;

(d) Insurance undertakings;

(e) Collective investment schemes and management companies of such schemes;

(f) Pension funds and management companies of such funds;

(g) Commodity and commodity derivatives dealers;

(h) Locals; or

(i) Other institutional investors.

(2) Large undertakings which meet at least two of the three 'large undertakings' criteria:

(a) A balance sheet total of at least EUR 20 million;

(b) Net turnover of at least EUR 40 million; or

(c) Own capital of at least EUR 2 million.

Or such lower figures which the Authority may prescribe by way of regulation.[94]

(3) National and regional governments, public bodies that manage public debt, central banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;

(4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financial transactions. The entities mentioned above are considered to be professionals;

And for the avoidance of doubt any investors not falling within this list are, by default, Retail Clients.

"Qualifying holding" means a direct or indirect holding in a management company or alternative investment fund manager which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that entity.

"Recognised collective investment scheme" means a foreign collective investment scheme recognised by the Authority for public offer in Georgia.

"Registered collective investment scheme" means a domestic or foreign collective investment scheme registered with the Authority for offer only to qualified investors in Georgia.

"Records" in relation to a collective investment scheme or sub-fund includes the register of owners of participations in an scheme or sub-fund and in addition records of the accounting for the scheme or sub-fund, valuation of scheme or sub-fund assets, calculation of the net asset value and price of participations in an scheme or sub-fund; of the issue and cancellation and sale and redemption of participations in the scheme or sub-fund; and of the portfolio and portfolio transactions for the scheme or sub-fund.

"Regulatory authority" in relation to a collective investment scheme or a management company or alternative investment manager or a depositary of a collective investment scheme is the body empowered by law or regulation to register or authorise and supervise that scheme, management company or manager or depositary.

"Retail collective investment scheme" means a collective investment scheme created under this Law authorised by the Authority for offer to the public in Georgia.

"Retail client" is anyone who is not a qualified investor as defined above.

"Share" in relation to the capital of a company, has the meaning ascribed to it in the Companies Law;

"Stand-alone scheme" is a scheme which is not an umbrella scheme or a sub-fund.

"Statute" of a company formed in Georgia has the meaning ascribed in the Companies Law.

"Subsidiary company" has the meaning ascribed to it in the Companies Law.

"Sub-fund" means a separate part of the scheme property of an umbrella scheme that is pooled, managed and accounted for separately.

"Sub-fund property" is the property of a sub-fund which is beneficially owned by the participants in that sub-fund.

"Territory" in relation to a collective investment scheme is a geographical region governed by a legal regime specific to that geographic region.

[94] This enables lower figures to be used which are better suited to the domestic market. These persons cannot opt out of being qualified investors.

"Transferable securities" means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment namely:

a) Shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;

b) Bonds or other forms of securitised debt, including depositary receipts in respect of such securities; and

c) Any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

"Umbrella scheme" means an open-ended collective investment scheme which, to the extent as may be approved and subject to such conditions as may be applied by the Authority or a foreign equivalent may be divided into a number of sub-funds in which participants are entitled to exchange rights in one sub-fund for rights in another and "sub-fund" shall be construed accordingly.

"Scheme for collective investment in transferable securities" is a collective investment in transferable securities that meets the requirements of this law.[95]

"Scheme property" means the property subject to the collective investment scheme constituted by it namely the capital property and the income property.

"Unit-holder" means any person who by reason of the holding of units or shares or by reason of having invested capital in a collective investment scheme is entitled to a proportionate part of scheme property.

"Unit" means one of the equal proportionate participations into which the beneficial interests in the assets subject to the collective investment scheme are divided;

Any reference in this Law to a Law shall also be to any Law that subsequently replaces the Law cited.[96]

3. Collective Investment Schemes

a) For the purposes of this Law, a collective investment scheme means, subject to this section, any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangement (the "participants"), whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;

b) The arrangements must be such that:

i. The participants do not have day to day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and
ii. The arrangements have either or both of the characteristics mentioned in subsection (c); and
iii. The arrangements satisfy the conditions set out in subsection (d).

c) The characteristics referred to in subsection (3) (b) (ii) are:

i. The contributions of the participants and the profits or income out of which payments to be made are pooled; and
ii. The property in question is managed as a whole by or on behalf of the operator of the collective investment scheme.

d) The condition referred to in subsection (3)(b)(iii) is that the property belongs beneficially to, and is managed by or on behalf of, a company or investors in a contractual pool or other entity or arrangement having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that company, trust, entity or management;

[95] Which follows the current provision of the UCITS Directive;
[96] Will this provision work in Georgia?

e) Where any arrangements provide for such pooling as is mentioned in subsection (3) in relation to separate parts of the property, and each such part is maintained in a portfolio segregated in the books of the scheme from the other assets of the scheme, then the arrangements shall nevertheless be regarded as constituting a collective investment scheme which shall be regarded as an umbrella scheme on the condition that the participants are entitled to exchange rights in one part for rights in another part;

f) Where each part of the scheme property is segregated in the books of the umbrella scheme and is a sub-fund:[97]

i. The property subject to the sub-fund is beneficially owned by the participants in that sub-fund and must not be used to discharge any liabilities of the participants in any other sub-fund;
ii. Any liability of the participants in the sub-fund arising from the acquisition, management or disposal of the property subject to the sub-fund shall be discharged solely out of that property;
iii. A participant in the umbrella scheme shall not be liable for debts arising from the acquisition, management or disposal of the property subject to a sub-fund in which the participant has participations beyond the amount which, at the time when any debts fall to be discharged, is equal to the value at that time of the participant's participations in that sub-fund;
iv. The management company (but no other person) of the sub-fund may on behalf of participants in a sub-fund take and defend proceedings for the resolution of any matter relating to an authorised contract and take action in relation to the enforcement of any judgment given in such proceedings;
v. The Authority may exercise its powers in relation to a sub-fund as if that sub-fund were a stand-alone scheme.

4. Arrangements not Constituting Collective Investment Scheme

a) Arrangements that do not constitute a collective investment scheme are:

i. An arrangement operated by a person other than by way of business;
ii. An arrangement where each of the participants carries on a business other than a business concerned with dealing in, arranging deals, managing or advising on securities or investments and enters into the arrangement for commercial purposes related to that business;
iii. An arrangement where each of the participants is a company in the same group as the management company of the scheme;
iv. Holding companies;
v. An arrangement where:
    (a) Each of the participants is a bona fide employee or former employee, or the wife, husband, widow, widower, child or step child under the age of 18 years of age of such an employee or former employee, of a company in the same group as the management company; and
    (b) The property to which the arrangement relates consists of shares or stock, debentures, loan stock, or any other instrument creating or acknowledging indebtedness or warrants or certificates conferring rights in relation to any such investment, in each case being an investment in or in a member of that group.
vi. A franchise arrangement, that is to say, an arrangement under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the goodwill attached to it;
vii. An arrangement the predominant purpose of which is to enable persons participating in it to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
viii. An arrangement under which the rights or interests of the participants consist of the benefit of certificates or other instruments conferring rights in relation to securities other than shares in an investment company;

[97] This creates the 'protected cell' regime protecting investors in a sub-fund from liabilities of other sub-funds of the same umbrella

ix. A contract of insurance;
x. A pension scheme;
xi. A close-ended investment company which is established by the operator of another collective investment scheme:
xii. For the purposes of holding investments, directly or indirectly, on behalf of that scheme, or a series of schemes established by a single sponsor to invest in parallel one with another (the "owning schemes"); and
xiii. The shares of which are not marketed to or otherwise available to any participant other than the owning schemes;
xiv. A building society;[98]
xv. A bank;
xvi. A central bank;
xvii. An occupational pension funds or voluntary pension funds;
xviii. A supranational organisation in the event that they manage alternative investment funds in the public interest;
xix. A national, local and municipal government or other organisation or institution which manages funds supporting social security and pension systems;
xx. An employee participation scheme and employee savings scheme;
xxi. Securitisation special purpose entities;
xxii. A co-operative society including funeral societies;
xxiii. A credit union;
xxiv. Any other arrangement that the [Minister of Finance] in consultation with the Authority may specify [by publication].

b) An entity which is not a collective investment scheme under this Law or under an equivalent foreign law shall not use in its name or description the term 'collective investment scheme' or any term or description for such a scheme under this Law, or any similar term.

5. Requirements for Schemes Established in Georgia

a) A collective investment scheme established in Georgia shall only be constituted as:

i. A contract pool or common fund ('investment fund'); or
ii. A joint stock company with fixed capital under the Companies Law; or
iii. A joint stock company with variable capital under the Companies Law; or
iv. A limited partnership under the Companies Law.

b) The Authority may prescribe by regulations arrangements, other than those set out in subsection (a), under which a scheme may be constituted;

c) A collective investment scheme shall be constituted as:

i. A close-ended scheme which has no obligation to redeem its participations from holders upon their request; or
ii. An open-ended scheme, which is obliged to redeem its participations from holders upon their request at a price related to net asset value of the scheme property not less frequently than twice a month at regular intervals; or
iii. An interval scheme, which is obliged to redeem its participations from holders at a price related to net asset value of the scheme property on a regular periodic basis which shall not be less frequently than twice per annum;
iv. In the case of an open-ended or interval scheme the price shall be determined in accordance with this Law and regulations under this Law and for the purposes of this subsection, the scheme may be treated as complying with this requirement if its constituting instrument enables a participant to sell his participations on a regulated market at a price not significantly different from that defined in sub-subsections ii) and iii) of this subsection.

d) A collective investment scheme which is an open-ended scheme or an interval scheme under subsection (c) may be:

[98] To check if these exist in Georgia

i. An umbrella scheme; or
ii. A master scheme or sub-fund or a feeder scheme or sub-fund.

e) No collective investment scheme may offer or purport to offer any guarantee or certainty whatsoever as to performance relating either to income or to capital;
The assets of a collective investment scheme are beneficially owned by the holders of participations in that scheme and are not the property of the operator of the scheme or of the depositary to the scheme except insofar as any liability of the scheme payable to those entities is outstanding;

A collective investment scheme must appoint:

i. In the case of a scheme for collective investment in transferable securities, a management company authorised by the Authority to manage collective investment in transferable securities and a depositary authorised to Law as depositary to a collective investment scheme in transferable securities;
ii. In the case of an authorised collective investment scheme, a management company authorised by the Authority to manage a retail collective investment scheme and a depositary authorised by the Authority to Law as depositary to a retail collective investment scheme;
iii. In the case of a registered collective investment scheme, a manager authorised by the Authority to manage alternative investment funds and a depositary authorised by the Authority to Law as depositary to an alternative investment fund.

f) An open-ended or interval collective investment scheme may issue either income shares or units or accumulation shares or units or both;

g) A single depositary must be appointed to every collective investment scheme;

h) The authorised person that is the management company or the alternative investment fund manager of a collective investment scheme may not be the same person as the depositary to that scheme;

i) In relation to each collective investment scheme here must be a written contract with a depositary which meets the requirements of this Law;

j) In the case of an investment company authorised under this Law its scheme prospectus, statute, key investor information document and annual and interim report and accounts shall describe the company as:

i. In the case of a company authorised as a UCITS scheme as ‘a UCITS investment company with variable capital;
ii. In the case of a company authorised as a retail collective investment scheme:
    (i) Where this is an investment company with variable capital as ‘an open-ended retail collective investment company with variable capital’ or ‘an interval retail collective investment company with variable capital;
    (ii) Where this is an investment company with fixed capital as ‘a retail investment company with fixed capital.

k) In the case of a common fund authorised under this Law its scheme prospectus, rules of the fund, key investor information document and annual and interim report and accounts shall describe the fund as:

i. In the case of a common fund authorised as a UCITS as ‘a UCITS investment fun;
ii. In the case of a common fund authorised as a retail collective investment scheme:
    (i) Where this is an open-ended fund, as ‘an open-ended retail investment fund;
    (ii) Where this is an interval fund, as ‘an interval retail investment fund’; or
    (iii) Where this is a close-ended fund, as ‘a close-ended retail investment fund.

6. Unauthorised Persons and Collective Investment Schemes

a) No person shall:

i. Establish or operate a collective investment scheme in Georgia, or purport to establish or operate or manage such a scheme, or Law or purport to Law as a depositary or operator of a scheme in Georgia unless that person is:
A person authorised by the Authority as required by this law;
A person recognised by the Authority as eligible to establish a collective investment scheme in Georgia.

ii. The Authority shall have the power to issue regulations establishing requirements in relation to foreign persons able to operate a collective investment scheme in Georgia. becoming a member state of the European Union.

b) Issue or cause to be issued an advertisement offering participations in a collective investment scheme in Georgia unless that person is authorised or recognised by the Authority as required by this Law and the [new Securities Law] and the scheme has been authorised by the Authority under this Law or has been recognised by the Authority under this Law.

7. Prohibition of Conversion of Collective Investment Schemes

a) A collective investment scheme established under this Law shall not cease to be a scheme to which this Law applies except upon completion of the winding up of that scheme and cancellation of its authorisation or registration by the Authority;

b) A collective investment scheme authorised or registered as such under this Law shall not cease to be a scheme save on the completion of the winding up of that scheme and subsequent cancellation of its authorisation or registration.[99]

Chapter II: Offering of Schemes in Georgia

8. Offer not to the public[100]

a) An offer for the subscription or sale of participations in a collective investment scheme in Georgia shall not be construed as an offer to the public if the offer is made only to qualified investors under this law.[101]

9. Offer to the public[102]

a) Any offer of a collective investment scheme in Georgia that does not comply with Article 8 is an offer to the public;

b) Only a collective investment scheme that has been authorised or recognised by the Authority may be offered to the public in Georgia;

c) For the avoidance of doubt, the listing or trading of participations in a collective investment scheme on an exchange which is open to the public and which is regulated by the Authority or foreign equivalent to the Authority shall constitute a public offer.

Part 2: Requirements for Schemes Established in Georgia

Chapter III: Constituting Instrument of a Collective Investment Scheme Established in Georgia

10. Constituting Instrument of a Collective Investment Scheme Established in Georgia

a) Any provision of a constituting instrument of a collective investment scheme shall be void in so far as it would have the effect of exempting the management company, the alternative investment fund manager, the depositary or auditor of said scheme from any duty or function under this Law

[99] Authorisation should never be cancelled until the Authority is satisfied that the scheme has been properly wound up and its assets properly distributed
[100] Note: registered domestic or foreign collective scheme = alternative investment fund
[101] Potential conflict with existing Securities Law
[102] Note: authorised collective investment scheme = UCITS, retail schemes and recognised collective investment schemes

or of indemnifying any such person against liability for any failure to carry out such duty or function;

b) The constituting instrument of a scheme must not contain any provision that:

i. Conflicts with this Law or any regulations or rules issued under this Law;
ii. Is unfair to the interests of participants generally or to holders of any class of participation.

c) The constituting instrument of a collective investment scheme must:

i. Require any contract relating to the operation of the scheme to place its management company, alternative investment fund manager, directors (if any) and depositary under a duty to deal with the Authority in relation to the scheme in an open and cooperative way and to disclose to the Authority anything relating to the scheme of which the Authority would reasonably expect notice to be given in a timely, accurate and complete manner; and
ii. Require any contracts relating to the operation of the scheme to place its management company, alternative investment fund manager, directors (if any) and depositary under a duty to disclose to each of these parties in a complete, accurate and timely manner the information required by that party to fulfil its obligations to holders of participations in that scheme under this Law and the constituting instrument of the scheme.

d) The constituting instrument of a collective investment scheme established in Georgia shall state whether the scheme is:

i. A scheme for collective investment in transferable securities; a retail collective investment scheme or an alternative investment fund;
ii. An open-ended scheme, an interval scheme or a close-ended scheme;
iii. A stand-alone scheme or an umbrella scheme;
iv. A master scheme;
v. A feeder scheme.

e) The constituting instrument of an open-ended or interval collective investment scheme may specify that:

i. Fractions of participations in that scheme may be issued;
ii. Different classes of participations may be issued provided that:
    (i) A participation class does not provide any advantage for that class that would result in prejudice to the holders of any other class of participation in the same scheme or in the same sub-fund;
    (ii) The nature, operation and effect of any participation class is capable of being explained clearly in the prospectus and is envisaged in the instrument constituting the scheme.
iii. The effect of introduction of any new participation class is not contrary to the purpose of any part of this Law;
iv. Classes of participation may include currency classes whereby the participation price is expressed as the foreign currency equivalent of the Georgian currency price of the participation and where purchase and sale of participations and payment of distributions is made in the same foreign currency;
v. Classes of participation which have different rights attached to one class of shares or units and another class of shares or units may be issued provided that this relates solely to:
    (i) The accumulation of income by way of periodical credit to capital rather than distribution (“accumulation shares or units”) as opposed to the distribution of income (“income shares or units”); or
    (ii) Charges and expenses that may be taken out of scheme property or payable upon entry to the scheme or exit from the scheme by shareholders; or
    (iii) The currency in which prices or values of scheme shares are expressed or payments made.

f) A constituting instrument of a collective investment scheme may provide for an initial offering of participations at a fixed price;

g) The constituting instrument of an investment company:

i. In the case of a company with fixed capital may permit the company to issue securities as permitted by the Companies Law;
ii. In the case of a company with variable capital must limit issue of securities by the company to ordinary shares carrying equal voting rights, subject to (e) above;

iii. Shall require a vote of shareholders in the case of the following eventualities:
   (i) An increase in the annual management charge payable to the management company or alternative investment fund manager above that stated in the prospectus of the scheme;
   (ii) A change to the investment objective of the investment company from that stated in the prospectus of the scheme;
   (iii) In the case of an investment company with fixed capital, redemption of the shares of the company;
   (iv) In the case of an investment company created with a finite period of time for its operation, an extension of the operation of the company beyond that finite time;
   (v) A merger with another investment company or division of the investment company.

h) A constituting instrument of an open-ended or interval collective investment scheme shall not place a scheme under an obligation to redeem a participation in that open-ended or interval collective investment scheme if payment for that participation has not been received;

i) The constituting instrument of a collective investment scheme may permit subscription for participations or redemption of participations in specie. In the case of an authorised collective investment scheme this may only be undertaken by a methodology clearly set out in the scheme prospectus that has been agreed with the depositary of the scheme;

j) The constituting instrument of an authorised collective investment scheme must:

   i. State that the holder of a participation in that scheme is not liable for the Laws or omissions of the operator or depositary of that scheme; and
   ii. Limit the liability of the holder of a participation in the scheme to the amount which, at the time when any debts fall due to be discharged, is equal to the net asset value at that time of the holder's participations.

k) The constituting instrument of an alternative investment fund shall establish that the fund has only one alternative investment fund manager which shall be responsible for compliance with this Law;

l) The constituting instrument of an investment company shall require that the majority of the members of its supervisory board are independent directors and that the members of the supervisory board must Law with the same degree of care and skill that a reasonably prudent person would use in the same situation or in connection with his or her own money;

m) The constituting document of an investment company shall state that the supervisory board in addition to its responsibilities under the Companies Law is responsible for:

   i. Approving contracts with the management company and the depositary; such contracts shall not be concluded for a period of longer than one year;
   ii. Supervising the performance of the contract;
   iii. Handling disputes in relation to contracts;
   iv. Terminating that contract in the event of failure to fulfil the contract in which case none of the fees payable as a result of such termination may exceed the amount of a three-month remuneration period under the terminated contract;
   v. Approving use of sub-custodians or central securities depositories;
   vi. Recommending to shareholders proposed decisions on share issue and redemption (where relevant) and investment company restructuring;
   vii. Notifying the Authority of any failure of the management company and depositary to comply with this Law and relevant regulations;
   viii. Determining the investment company's financial reports, upon the proposal of the management company.

n) The constituting instrument of a collective investment scheme shall state the circumstances in which it will be dissolved or wound up or liquidated and the procedure that will be followed in each case;

o) The Authority shall have the power to issue regulations in respect of any additional requirements for constituting instruments of schemes established in Georgia.

Chapter IV: Prospectus of a Collective Investment Scheme Established In Georgia

11. Requirements for the Prospectus of a Collective Investment Scheme Established in Georgia

a) A collective investment scheme shall not be offered in Georgia unless:

i. In the case of an authorised collective investment scheme the scheme prospectus has been approved by the Authority;
ii. In the case of a registered collective investment scheme, the scheme prospectus has been filed with the Authority.

b) In the case of a scheme prospectus for a scheme which is an umbrella scheme:

i. The information required to be given in the scheme prospectus must be given in relation to each sub-fund where the information differs for that for any other sub-fund; and
ii. For the umbrella as a whole, but only where the information is relevant to the umbrella as a whole.

c) The scheme prospectus of a collective investment scheme established in Georgia shall state whether the scheme is:

i. A scheme for collective investment in transferable securities, a retail scheme for collective investment or an alternative investment fund;
ii. An open-ended scheme, an interval scheme or a close-ended scheme;
iii. A stand-alone scheme or an umbrella scheme;
iv. A master scheme;
v. A feeder scheme.

d) A scheme prospectus of a collective investment scheme established in Georgia must in in the Georgian language and must contain a prominent statement of the scheme's registered or authorised status under this Law and shall state the date of issue of the scheme prospectus;

e) The scheme prospectus of a collective investment scheme shall be clear, concise and understandable;

f) The scheme prospectus of a collective investment scheme shall contain the information investors would reasonably require for the purpose of making an informed decision to become a participant in the collective investment scheme and in particular of the risks related to such participation;

g) A scheme prospectus for a collective investment scheme must contain at a minimum the information required in [Schedule x] in so far as that information is not provided in the constituting instrument of the scheme that must be annexed to the scheme prospectus. However, the constituting instrument of the scheme is not required to be annexed to the scheme prospectus where the scheme prospectus states how a copy of the constituting instrument may be obtained free of charge;

h) If at any time after the issue of the scheme prospectus and during the offering of said scheme there is a material change affecting any matter contained in the scheme prospectus or a significant new matter arises, the scheme prospectus must be amended immediately in compliance with the requirements of this Article and the updated scheme prospectus filed with the Authority and provided upon request to any foreign regulatory authority;

i) The scheme prospectus for an open-ended or interval scheme shall be updated for any material change and to take into account results from the most recent audited accounting period;

j) Acceptance of the terms of a scheme prospectus is signified by the purchase of participations in the collective investment scheme described in that scheme prospectus;

k) The Authority may by regulations establish additional requirements as to investor relations and disclosure for the scheme including information concerning:

i. Use of securities financing transactions and total return swaps;
ii. Provision of information ancillary to the scheme prospectus upon investor request relating to risk management and risk limitations and recent investment developments;
iii. Provision of information relating to master and feeder schemes and sub-funds.

12. Responsibility and Liability for the Prospectus of a Collective Investment Scheme Established in Georgia

a) The scheme prospectus of a registered collective investment scheme shall identify the authorised person or persons that are responsible for the prospectus of the scheme and any related liability;

b) The authorised person that is the management company of an authorised scheme which is an investment fund is responsible for the prospectus of that scheme;

c) The directors of an authorised scheme that is an authorised investment company are responsible jointly and severally with the authorised person that manages the investments of the scheme for the prospectus of that scheme;

d) The person or persons responsible for the prospectus under b) and c) are liable to pay compensation to another person who has suffered loss or damage arising from any untrue, deceptive, or misleading statement in the prospectus or the omission from it of any material matter required to have been included in the prospectus under this Law and any regulations made thereunder.

13. Provision of the Scheme Prospectus

a) The scheme prospectus of a collective investment scheme shall be provided to potential investors free of charge before the conclusion of a contract to purchase participations except in the case of an authorised collective investment scheme that instead provides for a key investor information document.

14. Contravention of this Chapter

a) Any person who contravenes any provision of this Chapter and, if such person is a company, any director or officer of such company who knowingly is party to the contravention, or if a partnership, any employee of a general partner of that partnership who knowingly is party to the contravention, shall be guilty of an offence and punishable under [Section of Law relating to penalties or as provided for by the Criminal Code?].

Chapter V: Evidence of Ownership of Participations in Schemes Established in Georgia

15. Evidence of Ownership of Participations and Transfer of Ownership

a) The register of a collective investment scheme is conclusive evidence of the persons entitled to the participations entered in it;

b) The register of a collective investment scheme must contain:

i. The name and address of each participant; and
ii. The number of participations of each class held by each participant; and
iii. The date on which the participant was registered for the participations standing to their name; and
iv. The number of participations of each class in issue.

c) The person responsible for creation and maintenance of the register of owners of participations in a collective investment scheme shall ensure that the register is complete, accurate and up to date.

16. Maintenance of the Register of Ownership of Schemes Established in Georgia

a) The prospectus of a collective investment scheme shall state the name of the person or persons responsible for the creation and maintenance of the register of owners of participations in that scheme.

17. Transfer of Participations in Schemes

a) Every participant in a collective investment scheme is entitled to transfer participations held on the register by an instrument of transfer in any form that the person responsible for the register may approve, but that person is under no duty to accept a transfer unless it is permitted by this Law and the constituting instrument of the scheme;

b) Every instrument of transfer must be signed by or on behalf of the participant transferring the participations (or for a body corporate, sealed by that body corporate or signed by one or more officers authorised to sign it) and the transferor must be treated as the participant until such time as the name of the transferee has been entered in the register;

c) Every instrument of transfer (stamped as necessary) must be left for registration with the person responsible for the register, accompanied by:

i. Any necessary documents required by legislation; and
ii. Any other evidence reasonably required by the person responsible for the register.

Chapter VI: Investment Policy of Schemes Established in Georgia

18. Spread of Investment Risk by a Scheme

a) The authorised person responsible for management of the portfolio of a collective investment scheme and a sub-fund of a collective investment scheme must ensure that, taking account of the investment objectives of the collective investment scheme or sub-fund as stated in its current prospectus, the property of the scheme or sub-fund is invested to provide a spread of investment risk;

b) Subsection a) shall not apply to a collective investment scheme or sub-fund that is authorised or registered as a feeder collective scheme or sub-fund provided that the master collective investment scheme into which that scheme or sub-fund feeds complies with a) above.

Chapter VII: Audit of Schemes Established in Georgia

19. Requirements for the Auditor of a Collective Investment Scheme

a) An independent auditor who is suitably qualified to undertake statutory audits in accordance with applicable financial reporting standards shall be appointed to each scheme that shall hold office for the whole of the financial year;

b) The operator of the scheme shall ensure that at all times the collective investment scheme has an eligible auditor;

c) An auditor is only eligible to be appointed if:

i. The auditor has, prior to the appointment, consented in writing to serve as auditor to the collective investment scheme;
ii. On reasonable enquiry, the operator of the scheme is not made aware of any matter which would preclude the auditor from giving its consent under i) above;
iii. The auditor is registered with the [insert appropriate body];
iv. The auditor has not been disqualified from auditing a bank or non-bank financial institution or collective investment scheme in Georgia by any professional association or regulatory authority.

d) The auditor's report, including any qualifications, shall be reproduced in full in the annual audited report and accounts of the scheme.

20. Audit of an Authorised Collective Investment Scheme

a) If the auditor of an authorised collective investment scheme has reason to believe that:

i. The information provided to participants or to the Authority in the reports or other documents of the collective investment scheme do not truly describe the financial situation and the assets and liabilities of the collective investment scheme;
ii. The assets of the collective investment scheme are not, or have not been, invested in accordance with the provisions of this Law, the prospectus or the constituting instrument;
iii. There exist circumstances which are likely to affect materially the ability of the collective investment scheme to fulfil its obligations to participants or meet any of its financial obligations under this Law;
iv. There are material defects in the financial systems and controls or accounting records of the collective investment scheme;

v. There are material inaccuracies in or omissions from any returns of a financial nature made by the collective investment scheme;
vi. The auditor proposes to qualify any certificate, which he is to provide in relation to financial statements or returns of the collective investment scheme under Companies Law;
The auditor shall report the matter to the Authority in writing immediately.

b) The auditor shall, if requested by the Authority, furnish to the Authority a report stating whether, in his opinion and to the best of his knowledge, the collective investment scheme has or has not complied with a specified obligation of a financial nature under this Law. The operator of the scheme concerned shall bear the cost of any such report;

c) At the request of the auditor, the Authority shall provide him with written details of any financial returns made to the Authority for the collective investment scheme and required by the auditor to enable him to exercise his functions under this Law;

d) The auditor shall send to the operator of the collective investment scheme a copy of any report made by him to the Authority under subsections b) and c);

e) The Authority may require the auditor to supply it with any information in relation to the audit of the business of the collective investment scheme which, in the Authority's opinion, it needs for the exercise of its functions under this Law or the protection of the interests of participants, and the auditor shall comply with this requirement without delay;

f) The Authority may require that, in supplying information for the purposes of subsection e), the auditor shall Law independently of the collective investment scheme;

g) No duty to which the auditor is subject shall be regarded as contravened, and no liability to the collective investment scheme, or its participants, creditors or other interested parties, shall attach to the auditor, by reason of his compliance with any obligation imposed on him by or under this Law;

h) The Authority may direct an operator to terminate the appointment of an auditor of a collective investment scheme which contravenes any requirements of this Law or regulations under this Law;

i) The Authority shall not issue a direction under h) above unless:

i. The reasons for the termination have been disclosed; and
ii. The auditor and the operator are given an opportunity to make representations on the matter.

j) The operator of an authorised collective investment scheme shall ensure that the auditor of that scheme is invited to attend any meeting of participants and receives the notice that any holder of a participation in that scheme receives and may be heard at any meeting of participants which he attends on any part of the business that affects him as an auditor.

21. Resignation of Auditor of Collective Investment Scheme[103]

a) An auditor of a collective investment scheme may resign from office by depositing a notice in writing to that effect together with a statement under subsection b) at the operator's registered office and at the registered office of an investment company and with the Authority and any such notice operates to bring its term of office to an end on the date on which the notice is deposited or on such later date as may be specified in it;

b) When an auditor of a collective investment scheme ceases for any reason to hold office the auditor shall deposit at the operator's registered office and at the depositary's registered office and at the registered office of the Authority:

i. A statement to the effect that there are no circumstances connected with the ceasing to hold office which the auditor considers should be brought to the attention of the participants or creditors of the collective investment scheme or the Authority; or
ii. A statement of any circumstances mentioned in (i) above.

[103] This is a matter that should send up a "red flag" to the Authority who should always enquire into the reasons for resignation and verify these

c) When a statement under subsection a) falls under subsection b) ii) the operator and where relevant the directors of the collective investment scheme shall send a copy of the statement to the Authority with any comments within [10] working days.

Chapter VIII: Reports and Accounts of Schemes Established in Georgia

22. Requirements for Annual Reports and Accounts

a) An audited report and accounts shall be prepared at the end of every financial year for each collective investment scheme and for each sub-fund of an umbrella scheme;
The annual audited report and accounts must give a true and fair view of the financial position of a collective investment scheme and each sub-fund for each annual accounting period and shall contain:

i. Reports from the operator and auditor and depositary and the directors of an investment company summarising their duties and making the statements required under this Law and regulations under this Law; and
ii. A balance sheet or statement of assets and liabilities and any off-balance sheet commitments; and
iii. A statement of total return including a detailed income and expenditure account for the period; and
iv. An income and expenditure account; and
v. A report on the activities of the period; and
vi. For an open-ended or interval collective investment scheme, a statement of movement of holders' assets; and
vii. Any other information that may be prescribed by regulations or rules; and
viii. Any significant information which shall enable investors to make an informed judgement on the activities and investments and performance of the collective investment scheme.

b) The preparation and publication of the annual report and accounts for each collective investment scheme and each sub-fund of a collective investment scheme and any interim report unaudited report and accounts required by this Law and the filing of these reports with the Authority is the responsibility of:

i. In the case of an investment fund, the management company of that scheme;
ii. In the case of an investment company, the directors of an investment company or, where an external manager or management company is appointed, jointly the responsibility of the directors and the manager or management company;
iii. In the case of a partnership scheme, the general partner of that scheme.[104]

c) The annual report and accounts of an authorised collective investment scheme shall be filed with the Authority within four calendar months of the end of the annual accounting period concerned;

d) The annual report and accounts of a qualifying investor collective investment scheme shall be filed with the Authority within six months of the end of the annual accounting period concerned;

e) An interim unaudited report and accounts must be produced for each authorised collective investment scheme and sub-fund for the first six months of each annual accounting reporting period and shall contain the same information as required in the annual audited report and accounts but unaudited and shall not contain an auditor's and depositary's reports. An interim report and accounts shall be filed with the Authority within two calendar months of the end of the annual accounting period concerned;

f) The annual audited report and interim unaudited report of a collective investment scheme shall be made available in a durable medium;

g) The annual audited report and accounts for an authorised collective investment scheme and sub-fund for a reporting period must be sent to all participants who are entered in the register or entitled to be entered on the register of that scheme or sub-fund on the last day of the financial year being reported upon and must be sent to participants within four calendar months of the end

[104] Company law will have to be amended to permit this or see comment as to whether this law can override Company law in respect of partnership funds?

of the annual accounting period by the person or persons responsible for preparation of the accounts under b);

h) The annual audited report and accounts for a qualifying investor scheme and sub-fund for a reporting period must be made available to investors upon request;

i) The interim unaudited report and accounts for a collective investment scheme and sub-fund for a reporting period must be sent to all participants who are entered in the register or entitled to be entered on the register of that scheme on the last day of the first six months of the financial year being reported upon. The interim report and accounts must be sent to participants within two calendar months of the end of the first six months of the annual accounting period;

j) The annual audited report and accounts and the interim report and accounts of a scheme must be a stand-alone document and must not contain any extraneous or financial promotion material;

k) The Authority may by way of regulations establish further requirements relating to the scope, content and provision of annual audited report and accounts and unaudited interim reports and accounts of retail schemes and collective investment schemes in transferable securities;

l) The annual audited report and accounts of an alternative investment fund shall include information concerning:

i. The percentage of the fund's assets which are subject to special arrangements arising from their illiquid nature;
ii. Any new arrangements for managing the liquidity of the fund;
iii. The current risk profile of the fund and the risk management systems employed by the alternative investment fund manager of the fund to manage those risks;
iv. In the case of a fund employing leverage any changes to the maximum level of leverage employed on behalf of the fund as well as any right of the reuse of collateral or any guarantee granted under a leverage arrangement;
v. The total amount of leverage employed by that fund.

23. Approval of Reports and Accounts

a) The annual audited and interim unaudited report shall:

i. In the case of an investment company, be approved by the directors of the company and by the management company or manager if any and signed by not less than two persons being directors of that investment company or in the case of an investment company that has appointed an external management company or manager, one director of the management company or manager and one director of the investment company;
ii. In the case of an investment fund, be approved by the management company and signed by two directors of the management company;
iii. In the case of a partnership, be approved by the general partner; and if this partner is a corporation signed by two directors of that corporation.

Chapter IX: Taxation of Schemes Established in Georgia

24. Taxation of Collective Investment Schemes

a) The tax administration of Georgia shall, at the request of the operator of a scheme established in Georgia and for tax purposes issue a certificate evidencing the tax regime for a collective investment scheme established in Georgia;

b) Unless otherwise provided for by tax legislation, a collective investment scheme shall be considered, for taxation purposes, an owner of the securities or of the overall scheme's assets, as well as the final beneficiary.

Part 3: Requirements for Publicly Offered Schemes in Georgia

25. Authorisation of Collective Investment Schemes

a) The Authority may authorise an open-ended or interval collective investment scheme for public offer only subject to its conformity with the requirements for either:

i. Collective investment schemes in transferable securities (UCITS);
ii. Retail collective investment schemes.

b) The application for authorisation shall be made:

i. In the case of a scheme for collective investment in transferable securities, (UCITS) by a person authorised to manage collective investment schemes in transferable securities by the Authority or by a foreign regulatory authority of a member state of the European Union;
ii. In the case of a retail collective investment scheme, by a person authorised by the Authority to manage retail collective investment schemes.

c) The Authority may authorise a close-ended collective investment scheme for public offer only subject to its conformity with requirements for retail collective investment schemes;

d) The Authority may by regulation prescribe the requirements and procedures for applications for authorisation for collective investment schemes.

Part 4: UCITS Schemes

Chapter X Collective Investment Schemes in Transferable Securities (UCITS)

26. General Provisions and Scope

a) This chapter applies to all collective investment schemes in transferable securities (UCITS) established in Georgia;

b) For the purposes of this law and subject to c) below UCITS means a scheme:

i. With the sole object of collective investment in transferable securities or in other liquid financial assets referred to in Articles 97 to 105 of this Law, of capital raised from the public and which operates with the principle of risk-spreading;
ii. Where the participations which are, at the request of holders, repurchased, directly or indirectly, out of this scheme's assets; and
iii. Action taken by a UCITS to ensure that the stock exchange value of its participations does not significantly vary from their net asset value shall be regarded as equivalent to any such repurchase.

c) Any such scheme may be constituted under the law of contract (common funds managed by management companies) or under statute (investment companies);

d) Investment companies whose assets are invested through the intermediary of subsidiary companies, mainly in other assets than transferable securities or in other liquid financial assets referred to in Articles 97 to 105 of this Law shall not, however, be subject to this part;

e) This Part applies only to publicly offered open-ended schemes whose investment and borrowing policies comply with any Investment and Borrowing Regulations governing investment and borrowing by collective investment schemes in transferable securities promulgated by the Authority;

f) A UCITS is deemed to be established in Georgia if it is authorised in accordance with this Law.

27. Common Funds in Transferable Securities ("UCITS Investment Funds")

a) For the purposes of this Part, any undivided collection of transferable securities and/or other financial liquid assets whose investments and borrowing comply with the requirements of Article 26 e) shall be regarded as a common fund if it is made up and managed according to the principle of risk-spreading on behalf of joint owners who are liable only up to the amount contributed by them and whose rights are represented by units representing equal proportionate rights intended for placement with the public;

b) The management of a UCITS common fund shall be carried out by a person authorised as a UCITS management company;

c) The UCITS management company shall issue written confirmation of entry in the register of units or fractions of units without limitation on the fractioning of units. Rights attaching to units are exercised in proportion to the fraction of a unit held save for voting rights which can only be exercised by whole units;

Units shall be issued at a price obtained by dividing the net asset value of the common fund by the number of units outstanding which may be increased by expenses and commissions only as permitted by this Law;

d) The valuation of the assets of the fund shall be undertaken by the UCITS management company in conformity with regulations promulgated by the Authority governing asset valuation;

e) The purchase and sale of fund assets may only be undertaken at prices conforming to the valuation criteria applied under e), after addition of any expenses or charges permitted by this Law;

f) Neither the holders of units nor their creditors may require the distribution of the dissolution of the common fund;

g) An open-ended and interval common fund must repurchase its units at the request of the unitholder under the terms of its prospectus;

h) The redemption of units shall be effected on the basis of the value calculated in accordance with e), after deduction of any expenses and charges permitted by this Law;

i) By way of derogation from f) and h), the UCITS management company may, in the cases and according to the procedures provided for in the rule of the fund, temporarily suspend the redemption of units but only in exceptional cases and where suspension is justified having regard to the interests of unitholders. Sale of units must be suspended whenever redemption of units is suspended;

j) The Authority may, in the interests of unitholders or of the public, require the suspension of sale and redemption of units, in particular where the provisions of laws, regulations or agreements concerning the activity and operation of the common fund are not observed;

k) During a suspension under j) or k) the UCITS management company may continue to receive orders for sale or redemption of units once the next sale and redemption prices are calculated but must make it clear that this will be undertaken at a price that will be formed in the future;

l) In the case of j) the UCTS management company must immediately communicate its decision to the Authority and, if the units in the fund are offered outside Georgia, to the foreign regulatory authority in the countries in which the fund is offered;

m) The UCITS management company shall resume redemption as soon as possible;

n) The UCITS management company shall publish details of suspension and resumption of redemption as soon as possible in a nationally distributed newspaper;

o) The sale and repurchase of units is prohibited:

i. During any period where there is no UCITS management company or UCITS depositary;
ii. Where the UCITS management company or the UCITS depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors or is the subject of similar proceedings.

p) The UCITS management company shall draw up fund rules for the common fund which are subject to Georgian law and must contain the provisions required in Schedule [x];

q) The UCITS management company shall manage the common fund in accordance with the fund rules and exclusively in the interest of fund investors;

r) The UCITS management company shall Law in its own name clearly indicating that it is acting on behalf of the fund;

s) The UCITS management company must act with due care, skill and diligence and shall be liable to unitholders for any loss resulting from non-fulfilment or improper fulfilment of its obligations.

t) The assets of the common fund must be entrusted to a depositary for safe-keeping;

u) The UCITS depositary must have its registered office in Georgia;

v) The UCITS depositary must be an authorised commercial bank;

w) The UCITS depositary's liability shall not be affected by the fact that it has entrusted to a third party some or all of the assets in its keeping;

x) The conducting persons of the UCITS depositary (those persons who under law or statute represent the depository or effectively determine the conduct of its activity) must be of sufficiently good repute and be sufficiently experienced, also in relation to the common fund concerned;

y) The UCITS depositary shall carry out all operations concerning the day to day administration of the assets of the common fund;

z) The UCITS depositary must:

i. Ensure that the sale, issue, repurchase and cancellation of units effected on behalf of the common fund or by the management company are carried out in accordance with the law and the rules of the fund;
ii. Ensure that the value of units is calculated in accordance with the law and the rules of the fund;
iii. Carry out the instructions of the UCITS management company, unless they conflict with the law or the rules of the fund;
iv. Ensure that in transactions involving the common fund's assets, any consideration is remitted to it within normal time limits;
v. Ensure that the common fund's income is applied in accordance with the rules of the fund.

aa) Where the common fund is managed by a foreign UCITS management company the depositary must have a written agreement in place to ensure effective flow of information to permit it to perform its functions under aa);

bb) The UCITS depositary shall be liable in accordance with Georgian law, to the management company and the unitholders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them;

cc) Liability to unitholders shall be invoked through the UCITS management company. Should the UCITS management company fail to act despite a written notice to that effect from a unitholder within a period of three months following receipt of such a notice, the unitholder may directly invoke the liability of the UCITS depositary;

dd) In the context of their respective roles, the UCITS management company and UCITS depositary must Law independently and solely in the interests of unitholders;

ee) The duties of the UCITS management company and depositary in respect of a common fund shall cease:

i. In the case of withdrawal of the UCITS management company, provided that it is replaced by another management company authorised in accordance with this law or the UCITS Directive;
ii. In the case of voluntary withdrawal of the UCITS depositary or its removal by the management company; until the replacement of the UCITS depositary which must be within sixty working days, the UCITS depositary must take all necessary steps for the good preservation of the interests of unitholders;
iii. Where the UCITS management company or UCITS depositary is declared bankrupt, has entered into an agreement with creditors, has been put under external management or has been the subject of similar proceedings or has been put into liquidation;
iv. Where the authorisation of the UCITS management company or UCITS depositary has been withdrawn;
v. In all other cases provided for in the rules of the fund.

ff) Liquidation of a common fund shall take place:

i. Upon the expiry of any period as may be fixed in the rules of the fund;
ii. In the event of cessation of their duties by the UCITS depositary or the UCITS management company under ff) iii), iv) and v) if they have not been replaced within sixty working days;
iii. In the event of bankruptcy of the UCITS management company;
iv. If the net assets of the fund fall below [amount] for more than [number] of months;
v. In all other cases provided for in the rules of the fund.

gg) Notice of the liquidation shall be published immediately by the UCITS management company in a nationally distributed newspaper. Failing this such notice will be published by the Authority;

hh) The UCITS management company and the UCITS depositary shall immediately inform the Authority in the event that circumstances under ff) and gg) arise.

28. Investment Companies with Variable Capital Investing in Transferable Securities (UCITS Investment Company with Variable Capital)

a) For the purposes of this Part, UCITS investment companies shall be taken to mean those joint stock companies under Companies Law investing in transferable securities:

i. Whose sole object is to invest their funds in transferable securities and/or other liquid financial assets referred to in Article 97 of this Law in order to spread investment risk and ensure their shareholders the benefit of the result of the management of their assets; and
ii. Whose shares are intended to the offered to the public; and
iii. Whose statute provides that the amount of their capital shall at all times be equal to the net asset value of the company.

b) The provisions of this Law and regulations under this Law shall govern an investment company. Only in the case where a matter concerning an investment company is not provided for in this Law shall the provisions of the Companies Law apply;

c) The statute of a UCITS investment company created under this Law and in compliance with this Law and regulations made thereunder shall constitute the statute required for said investment company under the Companies Law;

d) The statute of a UCITS investment company shall be filed with the [Company Registration Bureau] following Authority consent to issuance of an authorisation for said investment company;

e) The annual audited report and accounts and any interim unaudited report and accounts of an investment company issued in compliance with the requirements of this Law and regulation under this Law shall constitute any annual or interim report and accounts required for said investment company under the Companies Law;

f) The annual and interim report and accounts for a UCITS investment company shall be filed with the [Company Registration Bureau] simultaneously with the filing of these documents with the Authority;

g) A UCITS investment company shall not be obliged to create a legal reserve;

h) The offering of shares in a UCITS investment company shall be governed by this Law;

i) A UCITS investment company must appoint a UCITS management company and a UCITS depositary;

j) In the context of their respective roles, the UCITS management company and UCITS depositary must act independently and solely in the interests of unitholders;

k) Subject to any contrary provisions in its Statute, the UCITS investment company may issue shares at any time and must repurchase its shares at the request of the shareholder subject to provisions relation to suspension of sale and redemption;

l) Shares in the UCITS investment company may not be issued unless the equivalent of the issue price is paid into the assets of the investment company;

m) Shares shall be issued at a price obtained by dividing the net asset value of the investment company by the number of shares outstanding which may be increased by expenses and commissions only as permitted by this Law;

n) The valuation of the assets of the investment company shall be undertaken by the UCITS management company in conformity with regulations governing asset valuation promulgated by the Authority;

o) The purchase and sale of UCITS investment company assets may only be undertaken at prices conforming to the valuation criteria applied under m), after addition of any expenses or charges permitted by this Law;

p) Neither the holders of shares nor their creditors may require the distribution of the dissolution of the UCITS investment company;

q) A UCITS investment company must repurchase its shares at the request of the unitholder under the terms of its prospectus;

r) The redemption of shares shall be effected on the basis of the value calculated in accordance with m), after deduction of any expenses and charges permitted by this Law;

s) By way of derogation from f) and h), the UCITS investment company may, in the cases and according to the procedures provided for in the Statute of the UCITS investment company, temporarily suspend the redemption of shares but only in exceptional cases and where suspension is justified having regard to the interests of shareholders. Sale of shares must be suspended whenever redemption of shares is suspended;

t) The Authority may, in the interests of shareholders or of the public, require the suspension of sale and redemption of shares, in particular where the provisions of laws, regulations or agreements concerning the activity and operation of the investment company are not observed;

u) During a suspension under j) or k) the UCITS investment company may continue to receive orders for sale or redemption of shares once the next sale and redemption prices are calculated but must make it clear that this will be undertaken at a price that will be formed in the future;

v) In the case of j) the UCITS investment company must immediately communicate its decision to the Authority and, if the shares of the company are offered outside Georgia, to the foreign regulatory authority in the countries in which the company is offered;

w) The UCITS investment company shall resume redemption as soon as possible;

x) The statute of the UCITS investment company must determine the frequency of calculation of the sale and redemption price per share;

y) The UCITS investment company shall publish details of suspension and resumption of redemption as soon as possible in a nationally distributed newspaper;

z) The sale and repurchase of shares is prohibited:

i. During any period where there is no UCITS management company or UCITS depositary;
ii. Where the UCITS management company or the UCITS depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors or is the subject of similar proceedings.

aa) Shares in a UCITS investment company shall have no par value. A share shall specify the minimum amount of capital and give no indication regarding its par value of the portion of capital it represents;

bb) Variation in the capital of the investment company shall be effected by operation of law and without compliance with any measures regarding publication or entry in the [Company Registration Bureau] prescribed for increases and decreases of capital of joint stock companies;

cc) The assets of the investment company must be entrusted to a UCITS depositary for safe-keeping;

dd) The UCITS depositary must have its registered office in Georgia;

ee) The UCITS depositary must be an authorised commercial bank;

ff) The UCITS depositary's liability shall not be affected by the fact that it has entrusted to a third party some or all of the assets in its keeping;

gg) The conducting persons of the UCITS depositary (those persons who under law or statute represent the depository or effectively determine the conduct of its activity) must be of sufficiently good repute and be sufficiently experienced, also in relation to the investment company concerned;

hh) The UCITS depositary shall carry out all operations concerning the day to day administration of the assets of the investment company;

ii) The UCITS depositary must:

i. Ensure that the sale, issue, repurchase and cancellation of shares effected on behalf of or by the investment company are carried out in accordance with the law and the statue of the company;
ii. Ensure that the value of shares is calculated in accordance with the law and the statute of the investment company;
iii. Carry out the instructions of the UCITS management company or investment company, unless they conflict with the law or the statute of the company;
iv. Ensure that in transactions involving the investment company's assets, any consideration is remitted to it within normal time limits;
v. Ensure that the investment company's income is applied in accordance with the statute of the company.

jj) Where the investment company is managed by a foreign UCITS management company the depositary must have a written agreement in place to ensure effective flow of information to permit it to perform its functions under aa);

kk) The UCITS depositary shall be liable in accordance with Georgian law to the investment company for any loss suffered by it as a result of its unjustifiable failure to perform its obligations or its improper performance of them;

ll) In the context of their respective roles, the UCITS management company and UCITS depositary must Law independently and solely in the interests of unitholders;

mm) The duties of the UCITS management company and UCITS depositary in respect of an investment company shall cease:

i. In the case of voluntary withdrawal of the UCITS management company or its removal by the investment company, provided that it is replaced by another management company authorised in accordance with this law or the UCITS Directive;
ii. In the case of voluntary withdrawal of the UCITS depositary or its removal by the investment company; until the replacement of the UCITS depositary which must be within sixty working days, the UCITS depositary must take all necessary steps for the good preservation of the interests of unitholders;
iii. Where the investment company, UCITS management company or UCITS depositary is declared bankrupt, has entered into an agreement with creditors, has been put under external management or has been the subject of similar proceedings or has been put into liquidation;
iv. Where the authorisation of the investment company, UCITS management company or UCITS depositary has been withdrawn;
v. In all other cases provided for in the Statute of the investment company.

nn) Liquidation of a UCITS investment company shall take place:

i. Upon the expiry of any period as may be fixed in the Statute of the investment company;
ii. In the event of cessation of their duties by the UCITS depositary or the UCITS management company under mm) iii), iv) and v) if they have not been replaced within sixty working days;
iii. If the net assets of the fund fall below [amount] for more than [number] months;
iv. In all other cases provided for in the Statute of the investment company.

oo) Notice of the liquidation shall be published immediately by the investment company in a nationally distributed newspaper. Failing this such notice will be published by the Authority;

pp) The UCITS management company and the UCITS depositary shall immediately inform the Authority in the event that circumstances under mm) and nn) arise;

29. Marketing of a UCITS in a Foreign Country

a) A UCITS which markets its shares or units in a foreign country shall in accordance with the laws, regulations and administrative procedures of that foreign country in force in the country where its shares or units are market, take the measures necessary to ensure that facilities are available in that foreign country for making payments to shareholders or unitholders, repurchasing shares or units and making available the information which UCITS are required to provide;

b) A UCITS which proposes to markets its shares or units in a foreign country shall first submit a notification to the Authority. The form and content of such notification shall be prescribed by regulations promulgated by the Authority;

c) The Authority shall verify that the information submitted by notification is complete and shall transmit the complete notification documentation to the foreign regulatory authority in the country in which the UCITS proposes to market its shares or units no later than ten working days of the date of receipt of the notification accompanied by the complete documentation. The Authority shall enclose with the documentation an attestation that the scheme for collective investment in transferable securities fulfils the requirements of this Law and complies with the Undertaking or Collective Investment in Transferable Securities Directive;

Upon the transmission of this documentation the Authority shall immediately notify the UCITS of the transmission. The UCITS may access the market of the relevant foreign country as from the date of that notification;

d) In the event of a change in the information concerning the arrangements made for marketing communicated in the notification in accordance with a) or a change regarding share or unit classes to be marketed, the UCITS must give written notice thereof to the foreign regulatory authority concerned before implementing the change.

30. Provision of UCITS Information When Marketing in a Foreign Country

a) Where a UCITS markets its shares or units in a foreign country it shall provide to investors within the territory of that foreign country all information and documents which it is required to provide to investors in Georgia in accordance with this Law. Such information shall:

i. Be provided to investors in the way prescribed by the laws, regulations or administrative procedures of that foreign country;
ii. The key information document shall be translated into the official language/s of the foreign country or into a language approved by the foreign regulatory authority concerned;
iii. Information and documents other than the key investor information document shall be translated at the choice of the UCITS into the official language/s of the foreign country or into a language approved by the foreign regulatory authority concerned or into a language customary in the sphere of international finance;
iv. Translations under ii) and iii) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

b) The requirements of paragraph a) shall also be applicable to any changes in the information and documents referred to therein;

c) The frequency of the publication of the sale and redemption price of shares or units shall be subject to this Law.

31. Names and UCITS

a) For the purposes of pursuing its activities a UCITS may use the same reference to its legal form namely ‘common fund’ or ‘investment fund’ and ‘investment company with variable capital’ as it uses in Georgia in its designation in a foreign country;

b) For the purposes of this chapter, the term ‘UCITS’ refers also to the sub-fund of a UCITS.

Chapter XI: Mergers of UCITS

32. Mergers of UCITS[105]

a) For the purposes of this chapter the term ‘UCITS’ also refers to a sub-fund of an umbrella UCITS;

[105] In conformity with the UCITS Directive

b) Subject to this Chapter and irrespective of the manner in which a UCITS under the UCITS Directive is structured, a UCITS established in Georgia may, either as a receiving UCITS or a merging UCITS, be subject to cross border or domestic mergers in accordance with one of the merger techniques identified in this Law;

c) Mergers between UCITS established in Georgia where none of the UCITS concerned has been notified for marketing outside Georgia shall also be subject to this Chapter;

d) The provisions of the Companies Law do not apply to mergers of UCITS;

e) Any merger is subject to the prior approval of the Authority;

f) The Authority may promulgate regulations for approval of mergers of UCITS concerning but not limited to:

i. Decision taking in respect of mergers by management companies and share and unitholders of UCITS and provision for such decision taking in investment fund rules and investment company statutes;
ii. Application of UCITS merger requirements to mergers between domestic UCITS and between domestic UCITS and foreign UCITS;
iii. Information disclosure by merging and receiving UCITS;
iv. Provision of information by merging and receiving UCITS to the Authority;
v. Communication between the Authority and the foreign regulatory authority of a merging or receiving UCITS;
vi. Conditions to be met by the proposed merger;
vii. Requirements for and contents of draft terms of merger;
viii. Verification of the draft terms of merger by the depositaries of the merging and receiving UCITS;
ix. Validation of valuation criteria, cash payment per unit (if any) and calculation method of the exchange ratio and the actual exchange ratio;
x. Provision of information to shareholders and unitholders by the merging and receiving UCITS including the background and rationale to the merger, the potential impact of the merger on shareholders or unitholders in the merging and receiving UCITS including tax implications, specific rights in relation to obtaining information and to request redemption or conversion of their shares or units without charge, the procedural aspects and planned effective date of the merger and a copy of the key investor information document of the receiving UCITS;
xi. The language in which information the Authority requires information to be provided to shareholders or unitholders of the merging or receiving UCITS;
xii. The costs and entry into effect of the merger;
xiii. Deadlines for submission of information by the Authority from merging or receiving UCITS;
xiv. Deadlines for action by the Authority.

g) A Type 1 merger shall have the following consequences:

i. All the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or as the case may be to the depositary of the receiving UCITS;
ii. The share or unit holders of the merging UCITS become share or unit holders of the receiving UCITS and, as the case may be, they are entitled to a cash payment not exceeding 10% of net asset value of their shares or units in the merging UCITS; and
iii. The merging UCITS established in Georgia ceases to exist on the entry into effect of the merger.

h) A Type 2 merger shall have the following consequences:

i. All the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;
ii. The share or unit holders of the merging UCITS become share or unitholders of the newly constituted receiving UCITS and as the case may be, they are entitled to a cash payment not exceeding 10% of net asset value of their shares or units in the merging UCITS; and
iii. The merging UCITS established in Georgia ceases to exist on the entry into effect of the merger.

i) A Type 3 merger shall have the following consequences:

i. The net assets of the merging UCITS are transferred to the receiving UCITS or, as the case may be, to the depositary of the receiving UCITS;

ii. The share or unitholder of the merging UCITS become share or unit holders of the receiving UCITS; and
iii. The merging UCITS established in Georgia continues to exist until the liabilities have been discharged.

j) The management company of the receiving UCITS shall confirm in writing to the depositary of the receiving UCITS that the transfer of assets and, as the case may be, liabilities is complete. Where the receiving UCITS does not have a management company, it shall give that confirmation to the depositary of the receiving UCITS.

Chapter XII: UCITS Master and Feeders

33. Scope and Approval

a) A feeder UCITS is a UCITS or a sub-fund of a UCITS, which has been approved to invest at least 85% of its assets in the units of another UCITS or sub-fund thereof ('the master UCITS');

b) A feeder UCITS may hold up to 15% of its assets in one or more of the following:

i. Ancillary liquid assets as permitted by this Law and any regulations promulgated by the authority regarding Master/Feeder schemes;
ii. Financial derivative instruments which may be used only for hedging purposes as permitted by this Law and the Master/Feeder Regulation;
iii. Movable and immovable property as permitted by this Law and the Master/Feeder Regulation.

The global exposure of the feeder UCITS to financial derivative instruments shall be calculated as required by any Master/Feeder regulations promulgated by the Authority.

c) A master UCITS is a UCITS or sub-fund thereof which:

i. Has amongst its share or unit holders at least one feeder UCITS;
ii. Is not itself a feeder UCITS;
iii. Does not hold units of a feeder UCITS.

34. Requirements for UCITS Master/Feeders

a) The Authority shall have the power to issue a Master/Feeder Regulation governing approval and operation of master and feeder UCITS including:
i. Agreements between master and feeder UCITS and their date of effectiveness or in the case of a master and feeder UCITS operated by the same UCITS management company, internal conduct of business rules ensuring compliance with this Law and any Master/Feeder regulations made thereunder;
ii. Measures to co-ordinate the timing of net asset value calculation and publication of share or unit prices in order to prevent arbitrage opportunities;
iii. The entitlement of a feeder UCITS to suspend sale and redemption of its shares or units upon the suspension of sale or redemption of the master UCITS whether at its own initiative or at the instruction of the Authority or a foreign regulatory authority;
iv. Requirements for feeder UCITS upon the liquidation of its master UCITS;
v. Required actions of a feeder UCITS upon the merger of a master UCITS or splitting of a master UCITS;
vi. Conditions for approval by the Authority of a merger or division of a master UCITS;
vii. Requirements for information sharing agreements between depositaries of master and feeder UCITS where the depositary is not the same person and date of effectiveness of such agreement and related conditions – where they comply with these requirements neither the depositary of the master UCITS nor the depositary of the feeder UCITS shall be found to be in breach of any rules that restrict disclosure of information or relate to data protection, where such rules are provided for in a contract or in a law, regulation or administrative procedure. Such compliance shall not give rise to any liability on behalf of such depositary or any person Acting on their behalf;
viii. Requirements for provision of information by the feeder UCITS or management company of the feeder UCITS which must be in charge of communicating to the depositary of the feeder

UCITS any information about the master UCITS which is required for the completion of the duties of the feeder UCITS;

ix. Immediate notification by the depositary of the master UCITS to the Authority or its foreign regulatory authority, the feeder UCITS or where applicable the management company and the depositary of the feeder UCITS about any irregularities it detects with regard to the master UCITS;

x. Requirements for information sharing agreements between the auditor of the master UCITS and the auditor of the feeder UCITS if they have different auditors, the effective date of such agreements and related conditions;

xi. Requirements for co-ordination of audited reports and accounting years of the master and the feeder UCITS and production of ad hoc reports where needed;

xii. Requirements for the auditor of the feeder UCITS to take into account the audit report of the master UCITS and to report any irregularities revealed in that audit report and its impact on the feeder UCITS – where they comply with these requirements neither the auditor of the master UCITS or the feeder UCITS shall be found to be in breach of any rules that restrict disclosure of information or relate to data protection, where such rules are provided for in a contract or in a law, regulation or administrative procedure. Such compliance shall not give rise to any liability on behalf of such auditor or any person acting on their behalf;

xiii. Requirements for information to be contained in the scheme prospectus, key investor information document and the annual and interim report of a feeder UCITS;

xiv. Requirements for mandatory content of marketing communications by a feeder UCITS;

xv. Requirements for provision of the scheme prospectus and annual and interim reports of a feeder UCITS to investors upon request and free of charge;

xvi. Requirements for provision of information to share or unitholders in relation to conversion of an existing UCITS into a feeder UCITS and change of a master UCITS at least thirty days before its effectiveness prior to the ability to implement said conversion or change;

xvii. Requirements for the language in which the information is notified and responsibility for translation which shall faithfully reflect the content of the original;

xviii. Requirements for the monitoring of the activity of the master UCITS by the feeder UCITS and reliance on information provided by the master UCITS, its management company, depositary and auditor;

xix. Requirements for any fee, commission or other monetary benefit payable by the master UCITS to the feeder UCITS or its management company upon purpose of its shares or units by the feeder UCITS to be paid to the feeder UCITS;

xx. Requirements for notification by a master UCITS to the Authority of the identity of feeder UCITS which invest in its shares or units and for notification by the Authority to the foreign regulatory authority if that feeder UCITS is a foreign feeder UCITS;

xxi. Requirements restricting the charging by the master UCITS of subscription or redemption fees for the investment or divestment of its shares or units by a feeder UCITS;

xxii. Requirements for the master UCITS to ensure timely availability of information required in accordance with this Law and any regulations made thereunder as to Collective Investment in Transferable Securities Directive as well as the rules of the fund or the statutes of the investment company to the feeder UCITS or where applicable its management company, its foreign regulatory authority, the depositary and the auditor of the feeder UCITS.

35. Communication by the Authority in Relation to Master/Feeders

a) If the master UCITS and the feeder UCITS are both established in Georgia the Authority shall immediately communicate to the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Chapter or any audit report under Article 20 a) with regard to the master UCITS or where appropriate its management company, depositary or audito;

b) If the master UCITS is established in Georgia and the feeder UCITS is established in a member state of the European Union, the Authority shall immediately communicate to the feeder UCITS of any decisions, measure, observation of non-compliance with the conditions of this Chapter or any auditor's report under Article 20 a) with regard to the master UCITS or where appropriate to its management company, depositary or auditor and the foreign regulatory authority of the UCITS feeder;

c) If the master UCITS is in a member state of the European Union and the feeder UCITS is established in Georgia, the Authority shall transmit any decision, measure, or observation or any

auditor's report under Article 20 a) and which have been communicated to the Authority by the foreign regulatory authority of the master UCITS;

d) The Authority shall have the power to issue a Suspension and Termination Regulation governing UCITS and retail collective investment schemes.

Chapter XIII: UCITS Established in Foreign Countries Which Market Their Shares or Units in Georgia

36. Marketing of Foreign UCITS

a) A UCITS established in a foreign country which markets its shares or units in Georgia must appoint an authorised person in Georgia to ensure that facilities are available in Georgia for making payments to share or unit holders and redeeming shares or units;

The UCITS must take the necessary measures to ensure that the information which it is obliged to provide is made available to share or unit holders in Georgia;

b) If the foreign UCITS proposes to market its shares or units in Georgia, the Authority will receive from the foreign regulatory authority of the UCITS:

i. Notification including arrangements for marketing the UCITS shares or units in Georgia including where relevant share or unit classes and an indication that the UCITS is marketed by the management company that manages the UCITS;
ii. The latest version of the
    (i) Constituting instrument of the UCITS;
    (ii) scheme prospectus;
    (iii) Most recent annual and interim report and accounts;
    (iv) Key investor information document;
    (v) Attestation by the foreign regulatory authority of the conformity of the collective investment scheme with the UCITS Directive.

c) Upon notification to the UCITS of the transmission to the Authority of the information under b) the UCITS can have access to the Georgian market from the date of this notification;

d) In the event of a change in the information relating to the arrangements made for marketing communicated in the notification in accordance with a) or a change regarding share or unit classes to be marketed, the UCITS shall give written notice thereof to the Authority;

e) If a UCITS established in a foreign country markets its shares or units in Georgia it must provide investors in Georgia with all information that it is required to provide under its home state law, regulations and administrative procedures including:

i. Scheme prospectus;
ii. Annual and interim reports and accounts;
iii. Share or unit sale and redemption prices;
iv. Key investor information document.

This information and documents must be provided as prescribed by this Law and regulations under this Law and shall be provided in Georgian unless otherwise permitted by the Authority by regulation. Translations of documents shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original.

f) The requirements of e) shall also be applicable to any changes to the information and documents referred to therein;

g) The frequency of the publication of share or unit share or redemption prices of the UCITS shall be subject to the laws, regulations and administrative procedures of the home state of the UCITS.

37. Names and Foreign UCITS

a) For the purposes of pursuing its activities a UCITS may use the same reference to its legal form in Georgia as it uses in its designation in its home state;

b) For the purposes of this chapter, the term 'UCITS' refers also to the sub-fund of a UCITS.

Chapter XIV: Retail Collective Investment Schemes

38. General Provisions and Scope

a) For the purposes of this Law a retail collective investment scheme means a scheme with the sole object of investment in a portfolio of securities or other assets permitted by this Law which operates with the principle of risk-spreading;

b) Any such scheme may be constituted by the law of contract (common funds managed by a management company) or under statute (investment companies managed by a management company);

c) Investment companies whose assets are invested through the intermediary of subsidiary companies, mainly in asses other than transferable securities or in other liquid financial asses referred to in Article [xxxx] of this Law shall not, however, be subject to this part.

d) This Part applies only to publicly offered scheme whose investment and borrowing policies comply with the Investment and Borrowing Regulations governing investment and borrowing by retail collective investment schemes;

e) A retail collective investment scheme is deemed to be established in Georgia:

i. In the case of a common fund, if the registered office of the management company is established in Georgia;
ii. In the case of an investment company, if the registered office of the investment company is in Georgia.

f) A retail collective investment scheme may be open-ended, interval or close-ended.

39. Common Funds that are Retail Collective Investment Schemes

a) For the purposes of this Article, any undivided collection of assets shall be regarded as a common fund if it is made up and managed according to the principle of risk-spreading on behalf of joint owners who are liable only up to the amount contributed to them and whose rights are presented by units representing equal proportionate rights intended for placement with the public;

b) The management of a common fund shall be carried out by a management company having its registered office in Georgia which complies with the conditions set out in chapter [xxx] (non UCITS section);

c) The management company shall issue written confirmation of entry in the register of units or fractions of units without limitation on the fractioning of units. Rights attaching to units are exercised in proportion to the fraction of a unit held except for possible voting rights which can only be exercised by whole units;

d) The valuation of the assets of the fund shall be undertaken by the management company in accordance with valuation regulations which may be promulgated by the Authority;

e) The purchase and sale of fund assets may only be undertaken at prices conforming to the valuation criteria applied under d), after addition of any expenses or charges permitted by this Law;

f) Neither the holders of units nor their creditors may require the distribution of the dissolution of the common fund;

g) In the case of an open-ended or interval common fund it must:

i. Issue units at a price obtained by dividing the net asset value of the common fund calculated in accordance with d) by the number of units outstanding which may be increased by expenses and commissions only as permitted by this Law;
ii. Redeem its units at the request of the unitholder under the terms of its prospectus at a price obtained by dividing the net asset value of the common fund calculated in accordance with d) by the number of units outstanding which may be increased by, after deduction of any expenses and charges permitted by this Law;
iii. By way of derogation from i) and ii), the management company may, in the cases and according to the procedures provided for in the rules of the fund, temporarily suspend the redemption of units but only in exceptional cases and where suspension is justified having regard to the

interests of unitholders. Sale of units must be suspended whenever redemption of units is suspended;

iv. The Authority may, in the interests of unitholders or of the public, require the suspension of sale and redemption of units, in particular where the provisions of laws, regulations or agreements concerning the activity and operation of the common fund are not observed;

v. During a suspension under iii) or iv) the management company may continue to receive orders for sale or redemption of units once the next sale and redemption prices are calculated but must make it clear that this will be undertaken at a price that will be formed in the future;

vi. In the case of iii) the management company must immediately communicate its decision to the Authority and, if the units in the fund are offered outside Georgia, to the foreign regulatory authority in the countries in which the fund is offered;

vii. The management company shall resume redemption as soon as possible;

viii. The management company shall publish details of suspension and resumption of redemption as soon as possible in a nationally distributed newspaper.

h) The sale and repurchase of units is prohibited:

i. During any period where there is no management company or depositary;

ii. Where a management company or the depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors or is the subject of similar proceedings.

i) The management company shall draw up fund rules for the common fund which are subject to Georgian law and must contain the provisions required in Schedule [x];

j) The management company shall manage the common fund in accordance with the fund rules and exclusively in the interest of fund investors;

k) The management company shall Law in its own name clearly indicating that it is Acting on behalf of the fund;

l) The management company must Law with due care, skill and diligence and shall be liable to unitholders for any loss resulting from non-fulfilment or improper fulfilment of its obligations;

m) The assets of the common fund must be entrusted to a depositary for safe-keeping;

n) The depositary must have its registered office in Georgia;

o) The UCITS depositary must be an authorised commercial bank;

p) The depositary's liability shall not be affected by the fact that it has entrusted to a third party some or all of the assets in its keeping;

q) The conducting persons of the depositary (those persons who under law or statute represent the depository or effectively determine the conduct of its activity) must be of sufficiently good repute and be sufficiently experienced, also in relation to the common fund concerned;

r) The depositary shall carry out all operations concerning the day to day administration of the assets of the common fund.

s) The depositary must:

i. Ensure that the sale, issue, repurchase and cancellation of units effected on behalf of the common fund or by the management company are carried out in accordance with the law and the rules of the fund;

ii. Ensure that the value of units is calculated in accordance with the law and the rules of the fund;

iii. Carry out the instructions of the management company, unless they conflict with the law or the rules of the fund;

iv. Ensure that in transactions involving the common fund's assets, any consideration is remitted to it within normal time limits;

v. Ensure that the common fund's income is applied in accordance with the rules of the fund.

t) Where the common fund is managed by a foreign management company the depositary must have a written agreement in place to ensure effective flow of information to permit it to perform its functions under s).

u) The depositary shall be liable in accordance with Georgian law, to the management company and the unitholders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them;

v) Liability to unitholders shall be invoked through the management company. Should the management company fail to Law despite a written notice to that effect from a unitholder within a period of three months following receipt of such a notice, the unitholder may directly invoke the liability of the depositary;

w) In the context of their respective roles, the management company and depositary must Law independently and solely in the interests of unitholders;

x) The duties of the management company and depositary in respect of a common fund shall cease:
   i. In the case of withdrawal of the management company, provided that it is replaced by another management company authorised in accordance with this law;
   ii. In the case of voluntary withdrawal of the depositary or its removal by the management company; until the replacement of the depositary which must be within sixty working days, the depositary must take all necessary steps for the good preservation of the interests of unitholders;
   iii. Where the management company or depositary is declared bankrupt, has entered into an agreement with creditors, has been put under external management or has been the subject of similar proceedings or has been put into liquidation;
   iv. Where the authorisation of the management company or depositary has been withdrawn;
   v. In all other cases provided for in the rules of the fund.

y) Liquidation of a common fund shall take place:
   i. Upon the expiry of any period as may be fixed in the rules of the fund;
   ii. In the event of cessation of their duties by the depositary or the management company under x) iii), iv) and v) if they have not been replaced within sixty working days;
   iii. In the event of bankruptcy of the management company;
   iv. If the net assets of the fund fall below [amount] for more than [number] of months;
   v. In all other cases provided for in the rules of the fund.

z) Notice of the liquidation shall be published immediately by the management company in a nationally distributed newspaper. Failing this such notice will be published by the Authority;

aa) The management company and the depositary shall immediately inform the Authority in the event that circumstances under x and y) arise.

40. Investment Companies that are Retail Collective Investment Schemes

a) For the purposes of this Article, investment companies shall be taken to mean those joint stock companies under Companies Law:
   i. Whose sole object is to invest in assets in order to spread investment risks in compliance with Chapter [x] (non-UCITS investments) of this Law and ensure their shareholders the benefit of the result of the management of their assets; and
   ii. Whose shares are intended to the offered to the public; and
   iii. In the case of an open-ended or interval scheme, whose statute provides that the amount of their capital shall at all times be equal to the net asset value of the company.

b) The provisions of this Law and regulations under this Law shall govern an investment company. Only in the case where a matter concerning an investment company is not provided for in this Law shall the provisions of the Companies Law apply;

c) The statute of an investment company created under this Law and in compliance with this Law and regulations under this Law shall constitute the statute required for said investment company under the Companies Law;

d) The statute of an investment company shall be filed with the [Company Registration Bureau] following Authority consent to issuance of an authorisation for said investment company;

e) The annual audited report and accounts and any interim unaudited report and accounts of an investment company issued in compliance with the requirements of this Law and regulation under this Law shall constitute any annual or interim report and accounts required for said investment company under the Companies Law;

f) The annual and interim report and accounts for an investment company shall be filed with the [Company Registration Bureau] simultaneously with the filing of these documents with the Authority;

g) An open-ended or interval investment company shall not be obliged to create a legal reserve;

h) The offering of shares in an investment company shall be governed by this Law;

i) An investment company must appoint a management company and a depositary;

j) In the context of their respective roles, the management company and depositary must Law independently and solely in the interests of unitholders;

k) Subject to any contrary provisions in its Statute, an open-ended and an interval investment company:

i. May issue shares at any time and must repurchase its shares at the request of the shareholder subject to provisions in relation to suspension of sale and redemption; and
ii. May not issue shares unless the equivalent of the issue price is paid into the assets of the investment company; and
iii. Must issue shares at a price obtained by dividing the net asset value of the investment company calculated in conformity with l) by the number of shares outstanding which may be increased by expenses and commissions only as permitted by this Law;
iv. Must redeem shares under the terms of its scheme prospectus at a price obtained by dividing the net asset value of the investment company calculated in conformity with l) by the number of shares outstanding which may be decreased by expenses and commissions only as permitted by this Law.

l) The valuation of the assets of the investment company shall be undertaken by the management company in accordance with any regulations promulgated by the Authority as to valuation of assets;

m) The purchase and sale of investment company assets may only be undertaken at prices conforming to the valuation criteria applied under l), after addition of any expenses or charges permitted by this Law;

n) Neither the holders of shares nor their creditors may require the distribution or the dissolution of the investment company;

o) By way of derogation from k), an open-ended or interval investment company may, in the cases and according to the procedures provided for in the statute of the investment company, temporarily suspend the redemption of shares but only in exceptional cases and where suspension is justified having regard to the interests of shareholders. Sale of shares must be suspended whenever redemption of shares is suspended;

p) The Authority may, in the interests of shareholders or of the public, require the suspension of sale and redemption of investment company shares, in particular where the provisions of laws, regulations or agreements concerning the activity and operation of the investment company are not observed;

q) During a suspension under o) or p) the investment company may continue to receive orders for sale or redemption of shares once the next sale and redemption prices are calculated but must make it clear that this will be undertaken at a price that will be formed in the future;

r) In the case of o) the investment company must immediately communicate its decision to the Authority and, if the shares of the company are offered outside Georgia, to the foreign regulatory authority in the countries in which the company is offered;

s) The investment company shall resume redemption as soon as possible;

t) The statute of the investment company must determine the frequency of calculation of the sale and redemption price per share;

u) The investment company shall publish details of suspension and resumption of redemption as soon as possible in a nationally distributed newspaper;

v) The sale and redemption of shares is prohibited:

i. During any period where there is no management company or depositary;
ii. Where the management company or the depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors or is the subject of similar proceedings.

w) Shares in an investment company shall have no par value. A share shall specify the minimum amount of capital and give no indication regarding its par value of the portion of capital it represents;

x) Variation in the capital of the investment company shall be effected by operation of law and without compliance with any measures regarding publication or entry in the [Company Registration Bureau] prescribed for increases and decreases of capital of joint stock companies;

y) The assets of the investment company must be entrusted to a depositary for safe-keeping;

z) The depositary must have its registered office in Georgia;

aa) The depositary must be an authorised commercial bank;

bb) The depositary's liability shall not be affected by the fact that it has entrusted to a third party some or all of the assets in its keeping;

cc) The conducting persons of the depositary (those persons who under law or statute represent the depository or effectively determine the conduct of its activity) must be of sufficiently good repute and be sufficiently experienced, also in relation to the investment company concerned;

dd) The depositary shall carry out all operations concerning the day to day administration of the assets of the investment company;

ee) The depositary must:

i. In the case of an open-ended or interval investment company, ensure that the sale, issue, repurchase and cancellation of shares effected on behalf of or by the investment company are carried out in accordance with the law and the statue of the company;
ii. Ensure that the value of shares is calculated in accordance with the law and the statute of the investment company;
iii. Carry out the instructions of the management company or investment company, unless they conflict with the law or the statute of the company;
iv. Ensure that in transactions involving the investment company's assets, any consideration is remitted to it within normal time limits;
v. Ensure that the investment company's income is applied in accordance with the statute of the company.

ff) Where the investment company is managed by a foreign management company the depositary must have a written agreement in place to ensure effective flow of information to permit it to perform its functions under gg);

gg) The depositary shall be liable in accordance with Georgian law to the investment company for any loss suffered by it as a result of its unjustifiable failure to perform its obligations or its improper performance of them;

hh) In the context of their respective roles, the management company and depositary must act independently and solely in the interests of unitholders;

ii) The duties of the management company and depositary in respect of an investment company shall cease:

i. In the case of voluntary withdrawal of the management company or its removal by the investment company, provided that it is replaced by another management company;
ii. In the case of voluntary withdrawal of the depositary or its removal by the investment company; until the replacement of the depositary which must be within sixty working days, the depositary must take all necessary steps for the good preservation of the interests of shareholders;
iii. Where the investment company, management company or depositary is declared bankrupt, has entered into an agreement with creditors, has been put under external management or has been the subject of similar proceedings or has been put into liquidation;
iv. Where the authorisation of the investment company, management company or depositary has been withdrawn;
v. In all other cases provided for in the statute of the investment company.

jj) Liquidation of an investment company shall take place:

i. Upon the expiry of any period as may be fixed in the statute of the investment company;

ii. In the event of cessation of their duties by the depositary or the management company under section ii) subsection i), ii) and iii) if they have not been replaced within sixty working days;
iii. If the net assets of the fund fall below [amount] for more than [number] months;
iv. In all other cases provided for in the statute of the investment company.

kk) Notice of the liquidation shall be published immediately by the investment company in a nationally distributed newspaper. Failing this such notice will be published by the Authority;

ll) The management company and the depositary shall immediately inform the Authority in the event that circumstances under ii) and jj) arise;

mm) The depositary may not also be appointed as external valuer of the same scheme, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the alternative investment fund.

41. Investment and Borrowing Powers of Retail Collective Investment Schemes

a) The property of a scheme for collective investment or a sub-fund of a collective investment may only be invested in accordance with this Law and any regulations promulgated by the Authority with regard to the Investment and Borrowing powers for collective investment in transferable securities as to:
i. The kind of property in which the scheme may invest; and
ii. The proportion of the property of the scheme that may be invested in assets of any description; and
iii. The description of the transactions that are permitted; and
iv. The criteria for eligibility of asset classes and individual assets for investment by open-ended, interval and close-ended collective investment schemes; and
v. The maximum exposure of any scheme to the securities of any one issuer or group of issuers or credit institution or property or scheme; and
vi. The maximum concentration of ownership or influence over an issuer permitted to any one scheme or to all schemes managed or influenced by the same management company or associated management companies; and
vii. Requirements for transactions with associated persons or entities or other pools of assets managed by the same management company and for transactions conducted through associated enterprises; and
viii. The minimum percentage of the assets of the scheme which must be represented by liquid assets;
ix. The maximum percentage of the assets of the scheme that may be invested in transferable securities that are not listed or traded on a stock exchange or dealt on an organised market; and
x. The conditions under which and the maximum percentages the scheme may invest in other collective schemes; and
xi. The permitted use of derivatives and forward contracts; and
xii. The maximum percentage of the amounts the scheme is permitted to borrow in relation to its total assets and the terms and conditions of such borrowings; and
xiii. These limits shall apply at the time of purchase of assets except in the cases of i), iii), iv), vii), viii), x), xi) and xii) which shall apply at all times.

b) If the limits prescribed under subsection a) are exceeded for reasons beyond the control of the operator or as a result of the exercise of subscription rights, the excess shall be remedied, taking due account of the interests of participants, within a maximum of 130 working days except in the case where force majeure is declared by the Authority by regulation;

c) A newly created retail scheme for collective investment may whilst ensuring observance with the principle of risk spreading, derogate from a) v) during its first six months of operation;

d) The Authority shall have the power to declare a force majeure by direction;

e) Only a close-ended retail collective investment scheme may invest more than 10% of its asset value directly in immovable;

f) The Authority shall have the power to issue regulations governing the investment and borrowing powers of retail schemes that are open-ended, interval and close-ended schemes.

Chapter XV Winding-up of Authorised Scheme and Termination of Sub-funds of Scheme Established in Georgia

42. Limitations on Winding-up

a) A solvent authorised collective investment scheme shall only be wound up under the provisions of this Law and regulations and rules under this Law;

b) An insolvent authorised collective investment scheme shall only be wound up under the provisions of the [reference to insolvency legislation];

c) Where any person other than the Authority makes an application to the Court for the winding up of any collective investment scheme which is or has been authorised and is or has been carrying on a regulated activity in contravention of this or any other enactment which regulates non-bank financial institutions then the Authority shall be entitled to be heard and participate in such proceedings.

43. Limitations on Termination of a Sub-fund

a) A solvent sub-fund shall be terminated only under the provisions of this Law and regulations and rules under this Law.

44. Winding-up of a Solvent Collective Investment Scheme

a) The Authority shall not approve a plan for the winding up of a collective investment scheme unless it is satisfied that the interests of the participants are properly protected;

b) The circumstances in which a collective investment scheme may be terminated or wound up are as follows:

i. If the authorisation of the scheme is revoked;
ii. If a special resolution to either effect is passed provided the Authority's prior consent to the resolution has been obtained by the operator or depositary;
iii. On the date the fixed life of the scheme expires, or an eventuality arises upon which the constituting instrument requires the scheme be wound up;
iv. On the date agreed by the Authority for the termination or winding up upon application by the operator of the collective investment scheme for such termination or winding up in the case that the scheme or sub-fund is not economically viable or cannot achieve its purpose;
v. The effective date of a scheme of arrangement which will result in the scheme or sub-fund that is subject to the scheme of arrangement being left with no property.

c) If the operator has not previously notified participants of the proposal to wind up the scheme or terminate the sub-fund, it must immediately after winding up or termination has commenced given written notice of such commencement to all participants on the register as at the date of commencement;

d) Winding up or termination shall not commence unless the operator or depositary of the scheme have submitted to the Authority a plan for winding up or termination and a statement of solvency of the scheme or sub-fund concerned, and that plan has been approved by the Authority;

e) The solvency statement shall confirm that the scheme or sub-fund will be able to meet all its liabilities within twelve months of the date of the statement or stating that such confirmation cannot be given. The statement must relate to the scheme or sub-fund's affairs, business and property at a date no more than 28 working days before the date on which notice is given to the Authority and shall be approved by the operator and depositary and be accompanied by the statement of the auditor of the scheme or sub-fund to the effect that, in his opinion, the statement of solvency fairly reflects the situation of the scheme or sub-fund.

45. Winding-up of an Investment Fund

a) The management company of an investment fund shall be responsible for the execution of the winding up of that fund except in the circumstances of [insert reference to removal of

management company or manager] when the depositary shall be responsible. The management company shall:

i. In the case of Article 44 (b) v) above cancel all units in issue and wind up or terminate the fund or sub-fund in accordance with the scheme of arrangement;

ii. In all other cases in Article 44 (b) above the management company shall:

(i) Realise the scheme property; and

(ii) After paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, instruct the depositary to cancel all units in issue and distribute the proceeds of that realisation to the unitholders proportionately to their respective interests in the investment fund or sub-fund of the unit trust as at the date of the event under subsection b) above; and

(iii) Any unclaimed net proceeds or other cash (including any unclaimed distribution payments) held by the depositary after one year on which they became payable must be paid by the depositary into [Court] subject to the depositary having a right to retain any expenses properly incurred by him relating to that payment;

(iv) Where the management company and one or more unitholders agree, the requirement in ii) (2) to realise the scheme property does not apply to that part of the property proportionate to the entitlement of that or those unitholders. The depositary must distribute that part of the property after making adjustments or provisions for ensuring that that or those unitholders bear their proportional share of the liabilities and costs;

(v) On completion of the winding up the management company shall notify the Authority in writing and at the same time the management company shall request the Authority to revoke the relevant authorisation. The investment fund or sub-fund may be treated as having been wound up or terminated when the steps given in (1) to (3) are completed.

46. Winding-up of an Investment Company

a) The directors shall be responsible for the execution of the winding up of an investment company or termination of a sub-fund of an investment company. The directors shall:

i. In the case of article 44 b) v) cancel all shares in issue and wind up or terminate the investment company or sub-fund of the investment company in accordance with the scheme of arrangement;

ii. In all other cases in article 44 b) above the directors shall:

(i) Instruct the depositary to realise the scheme property; and

(ii) Instruct the depositary how such proceeds must be held to prudently protect the creditors and shareholders against loss; and

(iii) Where sufficient liquid funds are available after making adequate provision for the expenses of winding up or termination and the discharge of the investment company's or sub-fund's remaining liabilities, arrange for the depositary to make one or more interim distributions to the shareholders proportionately to the right of their respective shares to participate in scheme property at the commencement of winding up or termination;

(iv) Subsections (ii) (1) to (3) above shall be subject to any terms of any scheme of arrangement agreed by special resolution passed on or before the commencement of the winding up or termination.

iii. Where the directors and one or more shareholders agree, the requirement in (b) (ii) to realise the scheme property does not apply to that part of the property proportionate to the entitlement of that or those shareholders. The depositary must distribute that part of the property after making adjustments or provisions for ensuring that that or those shareholders bear their proportional share of the liabilities and costs;

iv. On completion of the winding up the directors shall notify the Authority in writing and at the same time the directors shall request the Authority to revoke the relevant authorisation. The investment company or investment company sub-fund may be treated as having been wound up or terminated when the steps given in ii) (1) to (3) are completed.

b) Where any sum of money stands to the account of the investment company or investment company sub-fund at the date of its dissolution the directors must arrange for the depositary to pay or lodge that sum within one month after that date with the Court.

47. Required Activities During Termination and Winding-up

a) Once winding up or termination has commenced:
   i. Dealing, valuation and investment and borrowing powers and requirements under this Law and regulations made thereunder shall cease to apply to the scheme or sub-fund; and
   ii. Issuance of participations shall cease, and cancellation of participations shall cease except in respect of final cancellation; and
   iii. The operator shall cease to sell or redeem participations; and
   iv. No transfers of participations may be registered, and no change may be made to the register of participants without the agreement of the depositary; and
   v. When winding up an investment company, the investment company must cease to carry on its business except for its beneficial winding up; and
   vi. The corporate status and powers of an investment company (subject to this section) and the powers of the directors continue until the investment company is dissolved.

b) Once winding up or termination has commenced the operator of a collective investment scheme or sub-fund need not, if the depositary agrees, prepare any short form report due under this Law however where this applies a copy of the annual audited report and accounts must be prepared and must be supplied free of charge to any participant upon request. For the avoidance of doubt, the obligation to prepare an annual audited and interim unaudited report and accounts continues to apply until completion of winding up or termination;

c) Where subsection b) applies, the operator must keep participants appropriately informed about the winding up or termination of the scheme or sub-fund and, if known, it's likely duration;

d) Where subsection c) applies the operator must send a copy of the information required by subsection c) to every person who was a participant in the scheme immediately before the winding up or termination commenced, unless a final distribution has been made, and to the Authority;

e) If after the commencement of a winding up or termination of an investment fund or partnership scheme and before the notice of completion of the winding up or termination has been sent to the Authority there is a vacancy in the position of management company or general partner respectively, the depositary must immediately present a petition for winding up of the scheme under the [refer to Insolvency Law].

48. Transfer of Authorised Collective Investment Scheme

a) An authorised collective investment scheme or sub-fund may be transferred in whole or in part to another authorised collective investment scheme or sub-fund by a scheme of arrangement subject to the approval of the Authority.

49. Circumstances in which a Collective Investment Scheme may be Wound-up by the Court

a) A collective investment scheme may be wound up:
   i. By order of the Court upon application by the Authority;
   ii. By order of the Court on application by the operator or depositary of that scheme;
   iii. In any other circumstances as may be prescribed in this Law and any regulation promulgated by the Authority.

50. Winding-up of Collective Investment Scheme by Order of the Court

a) The Authority may present a petition to the Court for the winding up of a collective investment scheme which:
   i. Is or has been authorised;
   ii. Is or has been carrying on or has carried on any regulated activity in contravention of this Law or any other enactment regulating non-bank financial institutions.

b) On such a petition the Court may wind up the collective investment scheme if:
   i. The collective investment scheme is unable to pay its debts as they fall due within the meaning of the Companies Law; or
   ii. The Court is of the opinion that it is just and equitable that the collective investment scheme should be wound up.

51. Effect of Winding up

a) The presentation of a petition for winding up has the effect of suspending all the activities of the collective investment scheme.

Chapter XVI: Authorisation, Recognition and Registration of a Collective Investment Scheme

52. Conditions for Application for Authorisation of a Scheme for Collective Investment

a) The Authority shall only authorise a collective investment scheme if:
   i. It is incorporated or created under Georgian law; and
   ii. The application for the authorisation is made by:
      (i) In the case of application of an investment fund for authorisation as a collective investment scheme in transferable securities, a management company authorised to manage collective investment schemes in transferable securities under this Law and the [new securities law] or by an entity eligible to be granted such authorisation; and
      (ii) In the case of application of an investment fund for authorisation as a retail collective investment scheme, a management company authorised to manage a scheme under this Law and the [new securities law];
      (iii) In the case of application for an investment company with variable capital for authorisation as a retail collective investment scheme for collective investment in transferable securities, by the directors of the investment company and an external management company authorised to manage collective investment schemes in transferable securities under this Law and the [new securities law] or by an entity eligible to be granted such authorisation; and
      (iv) In the case of an application of an investment company with variable capital for authorisation as a retail collective investment scheme, by the directors of the investment company and an external management company authorised to manage retail collective investment schemes; and
      (v) In the case of an application of an investment company with fixed capital for authorisation as a retail collective investment scheme, by the directors of the investment company and an external management company authorised to manage retail collective investment schemes.

   iii. All the assets of the collective investment scheme are to be held and will at all times be held by depositary which is legally and functionally independent of the scheme and its operator which:
      (i) In the case of an application for authorisation as an authorised scheme for collective investment in transferable securities there is a depositary authorised to Law as depositary for collective investment in transferable securities under this Law and [the new securities law] or eligible to be so authorised; and
      (ii) In the case of an application for authorisation as retail collective investment schemes, there is a depositary which is authorised to Law as depositary to retail collective investment schemes; and
      (iii) There is a written contract with that depositary meeting the requirements of this Law.

b) The name of the scheme is not undesirable or misleading and is not the same as an existing scheme; and

c) The purposes of the scheme are reasonably capable of being successfully carried into effect; and

d) In the case of an investment company, the statute of the company states that it is an investment company of the joint stock company type under the Companies Law; and

e) In the case of an application for an authorisation for a close-ended scheme, the constituting instrument of the scheme contains a scheme to become listed on a regulated market within six calendar months of the closing of its initial public offering or the scheme is established for a finite period of time of not more than seven years after which the scheme will be wound up and the proceeds distributed to participants; and

f) In the case of an investment company, all directors of the company are of good repute and in good financial standing and have the competence and experience required for the performance of their duties and that the majority of the non-executive directors are independent directors; and

g) In the case of a scheme that will invest more than 10% of its assets directly into immovable, the scheme is a close-ended scheme and the application is accompanied by the written consent of a professionally qualified independent valuer eligible to Law in that capacity; and

h) The application is accompanied by the written consent of an auditor eligible to Law as such capacity to the scheme; and

i) The constituting instrument and the prospectus of the scheme state that no agreement may be made to dispose of property or rights of the scheme unless the obligation could be immediately honoured by the scheme and the property or rights are owned by the scheme at the time of the agreement; and

j) The application for the authorisation of the scheme is made according to the requirements of the Authority; and

k) The required fee is paid;

l) The Authority may by regulation provide for eligibility requirements for the authorisation of collective investment schemes in transferable securities and retail collective investment schemes, related application forms and documents and information to be supplied with applications; for notification of changes to authorised schemes; and for reporting to the Authority in relation to authorised schemes.

53. Conditions for Application for Recognition of a Scheme Established Outside Georgia and Recognition of Georgian Scheme by Foreign Regulatory Authorities

a) The Authority shall have the power to recognise as eligible for public offer in Georgia a scheme:
   i. That is established under the law of a country or territory outside Georgia;
   ii. Subsequent to Georgia's becoming a member state of the European Union, are collective investment schemes in transferable securities under the current provisions of the UCITS Directive authorised by a foreign regulator authority of a member state of the European Union in which case the provisions of Articles [list] apply;
   iii. That are individual foreign schemes authorised for public offer by their foreign regulatory authority under a regime that in the judgement of the Authority offers equivalent investor protection to the Georgian public as an authorised collective investment scheme under this Law and [the new securities law].

b) The Authority shall have the power to issue a regulation governing the recognition of foreign scheme that establishes requirements which shall include but are not limited to:

   i. Facilities for making payments to holders of participations; for making repurchases of participations; and making available information to potential and existing holders of participations in Georgia which shall in the case of a scheme under a) ii) include provision of a key investor information document in Georgian; and
   ii. Notification and communication between the Authority and foreign regulatory authorities in relation to foreign scheme being marketed in Georgia and Georgian scheme being marketed abroad;
   iii. Any fees payable; and
   iv. Reporting to the Authority.

54. Conditions for Registration of Domestic Schemes for Offer to Qualified Investors Only

a) The Authority may register a collective investment scheme created under Georgian law for offer only to qualified investors in Georgia upon submission of the application to the Authority.

b) The application shall contain:

   i. The constituting instrument of the scheme in accordance with Schedule [x];
   ii. The scheme prospectus of the scheme in accordance with Schedule [x];
   iii. The prospectus of the scheme must identify the investment objective and strategy of the scheme or sub-fund, proposed investment in underlying collective investment schemes; the use of leverage and the risk profile of the scheme or sub-fund; in relation to a feeder scheme, the foreign country or territory in which the master scheme is based; and
   iv. Such other information as is required by the Authority.

55. Requirements for Registration of Foreign Scheme for Offer to Qualified Investors Only

a) The Authority may register a foreign collective investment scheme for offer only to qualified investors in Georgia;

b) Subsequent to Georgia's becoming a member state of the European Union, the Authority may register alternative investment funds under the current provisions of the Alternative Investment Fund Managers Directive created under the law of another member state for offer only to qualified investors in Georgia.

56. Authorisation of Collective Investment Schemes

a) The Authority shall only authorise a collective investment scheme if:
   i. In the case of an investment company, where close links exist between the investment company and other natural or legal persons, those close links do not prevent the Authority exercising its supervisory functions;
   ii. A complete application is submitted to the Authority accompanied by the information required by the Authority and any fee payable to the Authority is paid;
   iii. The Authority is satisfied that the scheme meets the requirements of Article 53.

b) The Authority may determine an incomplete application if it considers it appropriate to do so;

c) An application for authorisation may be withdrawn, by giving written notice, at any time before the Authority determines it;

d) The Authority shall determine whether to authorise a collective investment scheme within six calendar months of receipt of a complete application;

e) The Authority shall state in writing to the applicant its reasons for refusal to grant authorisation.

57. Recognition of Collective Investment Schemes

a) The Authority shall only recognise a collective investment scheme if:
   i. A complete application is submitted accompanied by the information required by the Authority and any fee payable to the Authority is paid; or
   ii. Subsequent to Georgia becoming a member state of the European Union, notification has been made to the Authority under Article [x] in accordance with that Article;
      i) A memorandum of understanding for the exchange of information is in place between the Authority and the foreign regulatory authority of the scheme or sub-fund concerned;
      ii) The foreign scheme or sub-fund is authorised by its foreign regulatory authority for public offer and satisfactory proof of this status is provided;
      iii) The Authority is satisfied that:
         (1) The scheme or sub-fund will be offered and sold in Georgia in conformity with this Law and Georgian law; and
         (2) The scheme or sub-fund will comply with any requirements established by the Authority governing the recognition, post-recognition and ongoing compliance of recognised schemes or sub-funds and the sale and distribution of the recognised scheme or sub-fund in Georgia; and
         (3) The operator of the fund will ensure holders in both home state and Georgia receive fair and the same treatment, including in respect of investor protection, exercise of rights, compensation and disclosure of information; and
         (4) Ongoing disclosure of information on the scheme or sub-fund will be made available to investors in both the scheme's home state and Georgia at the same time.

b) The Authority may at its discretion take into consideration when determining recognition of foreign schemes under a) iii) the existence of equivalent arrangements for recognition[106] of foreign schemes in the legislation of the applicant scheme's jurisdiction except that this shall not apply

[106] Provision for reciprocity ('mutual recognition' by each country of schemes from the other country

subsequent to Georgia becoming a members state of the European Union in relation to foreign collective investment schemes in transferable securities under the current provisions of the UCITS Directive and foreign Alternative Investment Funds under the current provisions of the AIFM Directive where such funds are created under the law of a member state of the European Union;

c) The Authority may determine an incomplete application if it considers it appropriate to do so;

d) An application for recognition may be withdrawn, by giving written notice, at any time before the Authority determines it;

e) The Authority shall determine whether to recognise a foreign collective investment scheme within six calendar months of receiving a complete application except in relation to notifications under a) ii) when Article [x] shall apply;

f) The Authority shall state in writing to the applicant its reasons for refusal to grant such recognition.

58. Refusal to Grant Authorisation

a) The Authority may refuse to grant authorisation to a collective investment scheme or sub-fund if:
   i. The application does not meet the requirements of this Law and or any regulations made thereunder;
   ii. The directors of the depositary are not of sufficiently good repute nor sufficiently experienced in relation to the type of scheme for which authorisation is sought; or
   iii. The directors of the operator or investment company are not sufficiently experienced in relation to the type of scheme for which authorisation is sought; or
   iv. In the case of recognition of a scheme for collective investment in transferable securities if it is legally prevented from promotion of participations in its home state.

b) The Authority shall state, in writing, its reasons for refusal to grant such recognition or exemption.

59. Refusal to Grant Recognition

a) The Authority may refuse to grant recognition to a foreign collective investment scheme or sub-fund if the application does not meet the requirements of this Law and or any regulations made thereunder;

b) The Authority shall state, in writing, its reasons for refusal to grant such recognition or exemption.

Chapter XVII: Variation, Suspension or Revocation of Authorisation or Recognition of a Scheme

60. Variation, Suspension or Revocation of Authorisation or Registration of a Domestic Collective Investment Scheme Upon Request

a) The operator of an authorised or registered domestic collective investment scheme must immediately give written notice to the Authority of any alteration to the scheme. The following shall be treated as an alteration to an authorised or registered scheme:
   i. Any proposed alteration to the constituting instrument of the scheme;
   ii. Any proposed change to the operator or depositary or directors of the scheme;
   iii. Any proposed change to the prospectus of the scheme which, if made, would be significant;
   iv. The addition of any new sub-fund to an umbrella scheme or termination of an existing sub-fund;
   v. Any proposed reconstruction or amalgamation involving the scheme;
   vi. Any proposal to wind up the scheme.

b) The directors of an investment company must immediately give written notice to the Authority of any proposal to terminate the appointment of the management company or alternative investment manager of the scheme;

c) The depositary of a partnership scheme must immediately give written notice to the Authority of any proposal to terminate the appointment of the general partner of the scheme;

d) No alteration to an authorised or registered collective investment scheme under this Chapter shall be effective unless the Authority has been informed and, where required by this Law or the

constituting instrument of the scheme, the Authority has given approval and where required by this Law the participants have approved the change by way of extraordinary resolution;

e) The Authority may, upon the written request of the operator of an authorised or registered domestic collective investment scheme, by notice to the operator:
   i. Vary the conditions of the collective investment scheme's authorisation or registration (including by imposing additional conditions);
   ii. Suspend the collective investment scheme's authorisation or registration for the period specified in the notice; or
   iii. Revoke the collective investment scheme's authorisation or registration.

f) Effect is not to be given to any proposal of which notice has been given to the Authority unless the Authority by written notice has given its approval to the proposal or 40 working days have elapsed, beginning with the date on which the notice was given, without the operator of the scheme or the person making such notification having received from the Authority a refusal to accept the proposal;

g) The Authority must not approve or accept a proposal to change the operator or depositary or auditor or director of an authorised or of a registered collective investment scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with this Law.

61. Revocation of Authorisation or Registration by the Authority

a) This Article applies in relation to the authorisation or registration of a scheme created under Georgian law if it appears to the Authority that:
   i. The collective investment scheme no longer complies with one or more of the requirements of authorisation or registration;
   ii. The operator of the scheme has contravened a requirement imposed upon it by or under this Law;
   iii. The operator of the scheme or the depositary to the scheme or the directors of an investment company have knowingly or recklessly given the Authority information relating to the scheme which is false or misleading in a material particular;
   iv. No regulated activity is being carried out in relation to the scheme and that period of inactivity began at least twelve months earlier;
   v. The operator has failed to disclose information concerning the scheme to the Authority as required by this Law in a complete, accurate and timely manner;
   vi. The operator has had its authorisation revoked and no eligible replacement is appointed within 20 working days or the depositary has had its licence revoked and no eligible replacement is appointed within 20 working days.

b) If section a) above applies, the Authority may, by notice to the operator of the scheme, copied to depositary and any directors of scheme, revoke the scheme's authorisation or registration;

c) The Authority shall not Law in terms of subsection a) in relation to an authorised or registered collective investment scheme unless:

   i. The Authority has given the operator of the collective investment scheme written notice of the proposed action, setting out the reasons for the proposed action and stating that the institution has a specified period of at least 14 working days to make representations to the Authority about the matter; and
   ii. The Authority has taken into account any representations made by or for the institution within that period;

   The notice period in i) shall not apply where it is necessary in the interests of the participants in the scheme for immediate action to be taken.

62. Variation, Suspension or Revocation of Recognition or Registration of a Foreign Collective Investment Scheme Upon Request

a) If it appears to the Authority that:
   i. A foreign scheme or sub-fund no longer meets the conditions for recognition or registration;

ii. The operator or directors of the scheme or the entity Acting as depositary to the scheme (or the equivalents thereof) has knowingly or recklessly given the Authority information relating to the scheme or sub-fund which is false or misleading in a material particular;
iii. The operator of the scheme or sub-fund (or the equivalents thereof) has failed to disclose information concerning the scheme to the Authority as required by this Law in a complete, accurate and timely manner.

The Authority may, by notice to the operator of the foreign scheme and directors of the foreign investment company (or equivalents thereof):

(1) Vary the foreign scheme's recognition or exemption; or
(2) Suspend the foreign scheme's recognition or registration for the period specified in the notice; or
(3) Revoke the foreign scheme's recognition or registration.

b) Subsequent to Georgia becoming a member state of the European Union variation, suspension or revocation of recognition or exemption of a scheme or sub-fund that is a scheme for collective investment in transferable securities under the current provisions of the UCITS Directive or that is an alternative investment fund under current provisions of the AIFM Directive shall only be made upon notification from the home state regulator of the scheme or sub-fund concerned under Articles[x].

63. Variation, Suspension and Revocation of Recognition or Registration of a Foreign Collective Investment Scheme by the Authority

a) This Article applies in relation to the authorisation of a scheme if it appears to the Authority that:
i. The collective investment scheme no longer complies with one or more of the requirements of this Part;
ii. The operator of the scheme has contravened a requirement imposed upon it by or under this Law;
iii. The operator or the depositary of the scheme has knowingly or recklessly given the Authority information relating to the scheme which is false or misleading in a material particular;
iv. No regulated activity is being carried out in relation to the scheme and that period of inactivity began at least twelve months earlier;
v. The operator has failed to disclose information concerning the scheme to the Authority as required by this Law in a complete, accurate and timely manner;
vi. The operator has had its authorisation cancelled and no eligible replacement is appointed within 20 working days or the depositary has had its licence cancelled and no eligible replacement is appointed within 20 working days; or
vii. None of the above apply but it is desirable to revoke the authorisation or to protect the interests of the participants or potential participants in the scheme.

b) If section a) above applies, the Authority may, by notice to the operator of the scheme, copied to the depositary and board of the investment company:

i. Vary the scheme's authorisation; or
ii. Suspend the scheme's authorisation for the period specified in the notice; or
iii. Revoke the scheme's licence.

c) This section applies in relation to the recognition of a scheme if it appears to the Authority that:

i. The regulatory regime applying to the category of recognised scheme no longer meets the requirements of article 48;
ii. The scheme concerned no longer meets the requirements of article 48;
iii. The operator of the scheme or board of the investment company (or the equivalents thereof) has contravened a requirement imposed upon it by or under this Law and or any regulation made thereunder;
iv. The operator of the scheme or the depositary to the scheme (or the equivalents thereof) has knowingly or recklessly given the Authority information relating to the scheme which is false or misleading in a material particular;
v. No regulated activity is being carried out in relation to the scheme and that period of inactivity began at least twelve months earlier;

vi. The operator of the scheme has failed to disclose information concerning the scheme to the Authority as required by this Law in a complete, accurate and timely manner;
vii. Or none of the above apply but it is desirable to revoke the recognition to protect the interests of the participants or potential participants in the scheme.

d) If subsection c) above applies, the Authority may, by notice to the operator of the scheme:

i. Vary the scheme's recognition; or
ii. Suspend the scheme's recognition for the period specified in the notice; or
iii. Revoke the scheme's recognition.

e) The Authority shall not Law in terms of subsection b) or d) in relation to an authorised or recognised collective investment scheme respectively unless:

i. The Authority has given the operator written notice of the proposed action, setting out the reasons for the proposed action and stating that the institution has a specified period of at least 15 working days to make representations to the Authority about the matter; and
ii. The Authority has taken into account any representations made by or for the institution within that period;
iii. The notice period in i) shall not apply where it is necessary in the interests of the participants in the scheme for immediate action to be taken.

f) The Authority shall not act in terms of subsection b) or d) in relation to a recognised or registered foreign collective investment scheme respectively unless:

i. The Authority has given the operator written notice of the proposed action, setting out the reasons for the proposed action and stating that the institution has a specified period of at least 15 working days to make representations to the Authority about the matter; and
ii. The Authority has taken into account any representations made by or for the institution within that period.

g) The notice period in i) shall not apply where it is necessary in the interests of the participants in the scheme for immediate action to be taken.

Chapter XVIII: Register of Authorised and Recognised Collective Investment Schemes

64. Entry into Register and Maintenance of Register

a) All authorised, recognised and registered scheme shall be entered into the Register of Collective Investment Schemes of Georgia;

b) The Authority shall establish and maintain the Register of Schemes and shall make the list of authorised and recognised recorded in the Register accessible to the public;

c) Each scheme and each sub-fund of a scheme shall be assigned a unique identification number in the Register;

d) The Register shall contain the name of the scheme and its authorised, recognised or registered status and in the case of registered schemes whether they are created under Georgian or foreign law;

e) The Register shall be updated by the Authority immediately following:
i. Authorisation or registration of an individual collective investment scheme or sub-fund created under Georgian law or a change to that status; and
ii. Notification of a foreign scheme for collective investment in transferable securities or an alternative investment fund for marketing into Georgia received from the foreign regulatory authority or change to that status; and
iii. Recognition of an individual foreign scheme or sub-fund by the Authority and any change to that status.

f) The Authority shall announce the decision on the registration of an authorised collective investment scheme in the Authority’s official website.

Chapter XIX Authorisation of Operators of Collective Investment Schemes

Management of Authorised Schemes for Collective Investment and Collective Investment Schemes in Transferable Securities

65. Authorisation of a Management Company of Authorised Schemes for Collective Investment

a) The Authority shall only authorise a management company of authorised schemes for collective investment if:

i. It is incorporated under Georgian law as a joint stock company and registered as required by Georgian law; and

ii. The head office and registered offices are both in Georgia; and

iii. Its statute limits the activities of the company to:

(i) Managing authorised schemes for collective investment including schemes for investment in transferable securities;

(ii) Managing alternative investment funds;

(iii) Managing voluntary pension funds;

(iv) Management of portfolios, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in [refer section of new securities law that covers MIFID list of financial instruments];

(v) And as non-core services:

1. Investment advice as defined under [the new securities law] concerning one or more of the instruments listed in [refer section of new securities law that covers MIFI list of financial instruments];
2. Safekeeping and administration as defined under [the new securities law] in relation to units of collective investment schemes.

iv. The assets under management listed under a) iii) do not form part of the estate in the case of the bankruptcy of the management company and cannot be claimed by the creditors of the management company;

v. The initial capital of the management company is not less that the Georgian Lari equivalent of EUR 125,000 taking account of the following:

(i) When the value of the portfolios managed by the company exceeds the Georgian Lari equivalent of EUR two hundred and fifty million (250,000,000) the management company must be required to provide an additional amount of own funds. This additional amount of own funds is equal to 0.02% of the amount by which the value of the portfolios of the management company exceed the Georgian Lari equivalent of EUR two hundred and fifty million (250,000,000). The required total of the initial capital and the additional amount must not, however, exceed the Georgian Lari equivalent of EUR ten million (10,000,000).

(ii) For the purposes of (1) the following portfolios are deemed to be those of the management company:

a. Common funds managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation; and
b. Investment companies for which the management company is the designated management company; and
c. Other schemes managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation; and

(iii) Irrespective of the amount of these requirements the own funds of the management company shall never be less than [one quarter of their preceding year's fixed overheads or in the case of a new management company a quarter of the fixed overheads projected in its business plan, unless an adjustment to that plan is required by the Authority;

(iv) For the purposes of v) management companies may not provide up to 50% of the additional amount of own funds if they benefit from a guarantee of the same amount given by a credit institution or insurance scheme subject to prudential rules equivalent to those in Georgia [or subsequent to Georgia's becoming a Member State of the European Union, equivalent to prudential rules established by Community law];

(v) The funds referred to in v) are to be maintained at the permanent disposal of the management company and to be invested in its own interest.

vi. Evidence is provided to the Authority that the minimum mandatory capital has been fully paid in cash and that this capital derives from legitimate sources [in compliance with the AML requirements];

vii. Evidence is provided to the Authority that the persons who effectively conduct the business of the management company ('conducting persons') are of sufficiently good repute and are sufficiently experienced also in relation to the type of collective investment schemes in transferable securities managed by the company and meet the requirements of [the new securities law and licensing regulation under it] and the conduct of the business of the management company must be determined by at least two persons meeting these conditions;

viii. The management company business plan is provided which is projected for a minimum of three years, giving a description of the business, the applicant intends to conduct, how the capital adequacy requirements is to be maintained, and projected development of the business. The business plan shall contain detailed descriptions of the:
(i) Organization of the company, including information on the forecasted volume of the funds which the management company intends to market;
(ii) Marketing plan of the company;
(iii) Operational plan of the company, including the applicant's reporting arrangements, both internally to its own management and externally to the Authority;
(iv) Financial plan, including a description of how the start-up cost will be covered and the capital adequacy requirements maintained;
(v) Risk analysis, including a description of how the applicant will address operational risk, credit risk, market risk, compliance risk, and reputational risk;
(vi) Staff remuneration policy and practices.

ix. The description of the applicant's organisational structure shows:
(i) It has a single management board;
(ii) Internal audit function, including names of persons responsible for this function;
(iii) Risk management function, including names of persons responsible for this function;
(iv) Information on the technology systems to be used, including a statement issued by the external auditor certifying that the management company's information system is suitable for providing the information required by this Law.

x. Where close links exist between the management company and other natural or legal persons those links do not prevent the efficient exercise of the Authority's supervisory functions;

xi. Where laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the management company has close links do not prevent the effective exercise of the Authority's supervisory functions;

xii. The management company demonstrates to the Authority that it will an ongoing basis immediately and completely provide the Authority with the information required to monitor their continuing compliance with the conditions of this Article including changes to the administrative body, management or supervisory board;

xiii. The identities of the shareholders or members of the management company, whether direct or indirect, legal or natural persons that have qualifying holdings and the amounts of these holdings have been provided to the Authority and the Authority is satisfied as to the suitability of such shareholders or members as fit and proper persons;

xiv. The audit of the annual accounting documents of the management company is entrusted to an independent auditor which can demonstrate they have adequate professional experience and evidence of their agreement to Law as auditor;

xv. The management company, having regard to the nature of schemes managed, has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the scheme for collective investment in transferable securities may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the schemes managed by the management

company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;

xvi. The management company is structured and organised in such a way as to minimise the risk of schemes' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a scheme, or between two schemes;

xvii. In the case that the management company is also authorised to undertake discretionary portfolio management:

(i) It is not permitted to invest all or part of the investor's portfolio in participations of schemes it manages unless it has received the prior general approval of the client; and

(ii) It is subject with regard to the non-core services referred to under Article 67 a) iii) 4) In relation to a management company and under Article 60 c) iii) 3 and 4 in relation to an alternative investment fund manager to the provisions laid down under [the new securities law].

xviii. The company is not an investment company;

xix. The company is not a depositary to schemes for collective investment;

b) The Authority shall have the power to issue regulations in relation to management companies of authorised collective investment schemes governing:

i. Additional authorisation requirements;
ii. Application requirements;
iii. Authorisation fees;
iv. Disclosure in relation to staff remuneration policy and practices;
v. Professional indemnity insurance and own funds requirements; and
vi. Staff remuneration policies and practices;
vii. Ongoing compliance with authorisation requirements;
viii. The operating conditions for management companies of authorised schemes including delegation of tasks;
ix. Transparency and disclosure requirements;
x. Reporting obligations concerning the management company and the authorised scheme;
xi. Requirements for management of particular types of authorised schemes;
xii. Marketing of authorised schemes under its management in Georgia or in foreign countries; and
xiii. Management of collective investment schemes in transferable securities marketed in foreign countries.

66. Grant of Authorisation

a) Subsequent to Georgia becoming a member state of the European Union, the Authority shall consult beforehand the foreign regulatory authority of another member state in relation to any management company which is:

i. A subsidiary of another management company, an investment firm, a credit institution or an insurance scheme authorised in another member state;
ii. A subsidiary of the parent scheme of another management company, investment firm, credit institution or insurance scheme authorised in another member state;
iii. Controlled by the same natural or legal persons as those who control another management company, investment firm, credit institution or insurance scheme authorised in another member state.

b) The Authority shall inform the applicant for authorisation of whether or not the authorisation has been granted within six months of the submission of a complete application;

g) The Authority may determine an incomplete application if it considers it appropriate to do so;

c) An application for authorisation may be withdrawn, by giving written notice, at any time before the Authority determines it;

d) Reasons shall be given in writing where authorisation is not granted;

e) A management company of authorised scheme may commence business as soon as authorisation has been granted;

f) A management company must at all times be in compliance with Article 65 and [the new securities law].

67. Refusal of Authorisation as Management Company of Authorised Collective Investment Schemes

a) The Authority shall not grant authorisation as a management company of authorised scheme if:

i. The applicant does not meet the requirements of Article 65 in any respect and specifically if, taking into account the need to ensure the sound and prudent management of a management company of authorised collective investment schemes, the Authority is not satisfied as to the suitability of its shareholders or members; and

ii. Unless it is satisfied that the company will be able to meet the conditions of this Law; and

iii. Where the effective exercise of its supervisory functions is prevented by:

(i) Close links between the management company and other legal or natural persons;

(ii) The laws, regulations or administrative provisions of another country or territory governing natural or legal persons with whom the alternative investment fund manager has close links;

(iii) Difficulties involved in the enforcement of those laws, regulations and administrative provisions.

68. Change of Scope of Authorisation

a) A management company of authorised collective investment schemes must notify the Authority of any material changes to the conditions of its authorisation, in particular any changes in the information provided in accordance with Article 65;

b) If the Authority decides to impose restrictions or to reject those changes it shall within 20 working days of receipt of that notification, inform the management company of authorised collective investment schemes. This period may be prolonged by another 20 working days where the Authority deems it necessary due to the specifics of the case and having notified the alternative investment fund manager accordingly;

c) The changes notified shall be implemented if the Authority has not opposed the changes within the relevant assessment period under b).

69. Revocation of Authorisation as Management Company

a) The Authority shall only revoke the authorisation of a management company of authorised scheme subject to this Chapter where that company:

i. Does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased to exercise the activity covered by this Chapter for more than six months;

ii. Has obtained the authorisation by making false statements or by any other irregular means;

iii. No longer fulfils the conditions under which authorisation was granted;

iv. No longer complies with the requirements of [the new securities law] if its authorisation also covers discretionary portfolio management under that law;

v. Has seriously and/or systematically breached the provisions of this Law or of regulations under this Law;

vi. Falls within any other cases in this Law which provides for such revocation.

b) Subsequent to Georgia becoming a member state of the European Union, in circumstances where a management company pursues collective investment scheme or portfolio management activities outside Georgia by establishing a branch in another member state, the Authority shall consult the foreign regulatory authority in that member state before revoking the authorisation of the management company.

Managers of Alternative Investment Funds[107]

70. Authorisation of a Manager of an Alternative Investment Fund

a) In the case of an authorised management company of a collective investment scheme in transferable securities making an application for authorisation as a manager of an alternative investment fund the Authority shall not require that management company to provide information or documents already provided when applying for authorisation as a management company for collective investment schemes in transferable securities provided that that information remains up to date;

b) An application for authorisation as a manager of an alternative investment fund shall provide the following information regarding the applicant:

i. Information about the persons effectively conducting the business of the applicant ('conducting persons');

ii. Information about the identities of the applicant's shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amount of those holdings;

iii. A programme of activity setting out the organisational structure of the applicant including information on how it plans to comply with its obligations in relation to:
   (i) Staff remuneration policies and practices;
   (ii) Ongoing conformity with authorisation requirements under this Law and any regulations made thereunder and the [new securities law and any regulations made thereunder];
   (iii) The operating conditions for alternative investment fund managers under this Law and any regulations made thereunder and the [new securities law and any regulations made thereunder] including delegation of tasks;
   (iv) Transparency and disclosure requirements under this Law and any regulations made thereunder and the [new securities law and any regulations made thereunder];
   (v) Reporting obligations concerning the manager and the alternative investment funds managed under this Law any regulations made thereunder and the [new securities law and any regulations made thereunder];
   (vi) Requirements for management of particular types of alternative investment fund managed under this Law, any regulations made thereunder and the [new securities law and any regulations made thereunder];
   (vii) Marketing of alternative investment funds under is management in Georgia or in foreign countries;
   (viii) Management of foreign alternative investment funds marketed in foreign countries.

iv. Information on staff remuneration policies and practices of the applicant in alignment with the requirements of regulation under this law;

v. Information on arrangements made for the delegation and sub-delegation to third parties of functions which are the responsibility of the alternative investment fund manager under this Law any regulations made thereunder and the [new securities law and any regulations made thereunder];

vi. Evidence of additional own funds appropriate to cover potential liability risks arising from professional negligence or of professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered: in the case of an internally managed alternative investment fund this requirement shall apply to the alternative investment fund;

vii. 'Own funds' including in the context of vi) shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions;

viii. Appropriate arrangements are made for the valuation of alternative investment fund assets which shall be by an external valuer that is independent of the manager and any alternative investment fund under their management.

c) The Authority shall only authorise a manager of an alternative investment fund if:

i. It is incorporated under Georgian law as a joint stock company and registered as required by Georgian law; and

[107] AIFMD does permit the exemption of some alternative investment fund managers on the basis that they manage less than EUR 100 million or where they manage less than EUR 500 million and the funds concerned are not leveraged and there are no redemption rights for five years from the creation of the fund.

ii. The head office and registered office are in Georgia; and
iii. Its statute limits the activities of the company to:
    (i) Managing authorised schemes including collective investment schemes in transferable securities;
    (ii) Managing voluntary pension funds;
    (iii) Managing alternative investment funds;
    (iv) Management of portfolios, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in [the new securities law that covers MIFID list of financial instruments];
    (v) And as non-core services:
        1. Investment advice as defined under [the new securities law] concerning one or more of the instruments listed in [the new securities law that covers MIFID list of financial instruments];
        2. Safekeeping and administration as defined under [the new securities law] in relation to units of collective investment schemes.
iv. The assets under management listed under a) iii) do not form part of the estate in the case of the bankruptcy of the company and cannot be claimed by the creditors of the company;
v. The initial capital of the company is not less that the Georgian Lari equivalent of EUR [125,000] taking account of the following:
    (i) When the value of the alternative investment fund portfolios managed by the company exceeds the Georgian Lari equivalent of EUR two hundred and fifty million (250,000,000) the company must be required to provide an additional amount of own funds. This additional amount of own funds is equal to 0.02% of the amount by which the value of the portfolios of the company exceed the Georgian led equivalent of EUR two hundred and fifty million (250,000,000). The required total of the initial capital and the additional amount must not, however, exceed the Georgian Lari equivalent of EUR ten million (10,000,000);
    (ii) For the purposes of (1) the value of portfolios is of the alternative investment funds managed by the company including alternative investment funds for which the company has delegated functions in accordance with [insert reference] but excluding alternative investment fund portfolios that the company is managing under delegation shall be deemed to be the portfolios of the alternative investment fund manager;
    (iii) Irrespective of the amount of these requirements the own funds of the management shall never be less than [one quarter of their preceding year's fixed overheads or in the case of a new management company a quarter of the fixed overheads projected in its business plan, unless an adjustment to that plan is required by the Authority pursuant to regulations;
    (iv) For the purposes of v) alternative investment fund managers may provide up to 50% of the additional amount of own funds if they benefit from a guarantee of the same amount given by a credit institution or insurance scheme subject to prudential rules equivalent to those in Georgia [or subsequent to Georgia's becoming a Member State of the European Union, equivalent to prudential rules established by Community law];
    (v) The funds referred to in v) are to be maintained at the permanent disposal of the alternative investment fund manager and to be invested in its own interest.

vi. Evidence is provided to the Authority that the minimum required capital has been fully paid in cash and that this capital derives from legitimate sources in compliance with the [AML legislation];
vii. Evidence is provided to the Authority that the persons who effectively conduct the business of the manager of alternative investment funds ('conducting persons') are of sufficiently good repute and are sufficiently experienced also in relation to the type of alternative investment funds managed by the company and meet the requirements of [the securities law as regards authorisation] and the conduct of the business of the manager of alternative investment funds must be determined by at least two persons meeting these conditions;
viii. A business plan is provided for the company which is projected for a minimum of three years, giving a description of the business, the applicant intends to conduct, how the capital adequacy requirements is to be maintained, and projected development of the business. The business plan shall contain detailed descriptions of the:
    (i) Organisation of the company, including information on the forecasted volume of the funds which the management company intends to market;

(ii) Marketing plan of the company;
(iii) Operational plan of the company, including the applicant's reporting arrangements, both internally to its own management and externally to the Authority;
(iv) Financial plan, including a description of how the start-up cost will be covered and the capital adequacy requirements maintained;
(v) Risk analysis, including a description of how the applicant will address operational risk, credit risk, market risk, compliance risk, and reputational risk;
(vi) A description of the applicant's organizational structure, showing:
1. Internal audit function, including names of persons responsible for this function;
2. Risk management function, including names of persons responsible for this function;
3. Information on the technology systems to be used, including a statement issued by the external auditor certifying that the company's information system is suitable for providing the information required by this Law.

ix. Where close links exist between the company and other natural or legal persons those links do not prevent the efficient exercise of the Authority's supervisory functions;
x. Where laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the company has close links do not prevent the effective exercise of the Authority's supervisory functions;
xi. The company demonstrates that it is capable on an ongoing basis of immediately and completely provides the Authority with the information required to monitor their continuing compliance with the conditions of this article including changes to the administrative body, management or supervisory board;
xii. The identities of the shareholders or members of the management company, whether direct or indirect, legal or natural persons that have qualifying holdings and the amounts of these holdings have been provided to the Authority and the Authority is satisfied as to the suitability of such shareholders or members taking into account the need for the sound and prudent management of the manager;
xiii. The audit of the annual accounting documents of the management company is entrusted to an independent auditor which can demonstrate they have adequate professional experience and evidence of their agreement to Law as auditor;
xiv. The company, having regard to the nature of alternative investment funds managed, has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transactions involving an alternative investment fund may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the alternative investment funds manged are invested according to the fund rules or the constituting instrument and the legal provisions in force;
xv. The company is structured and organised in such a way as to minimise the risk of alternative investment funds' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a scheme, or between two alternative investment funds;
xvi. The company is not an investment company;
xvii. The company is not a depositary to schemes for collective investment;
xviii. The contract for management of alternative investment funds by the manager will place the manager under a duty at all times:
(i) To act honestly and fairly with due care, skill and diligence in conducting their activities; and
(ii) Act in the best interests of the alternative investment funds or the investors in the alternative investment funds managed and the integrity of the market; and
(iii) To have and to employ effectively the resources and procedures that are necessary for the proper performance of their business activities; and
(iv) To comply with all regulatory requirements applicable to the conduct of their business activities to as to promote the best interests of the alternative investment funds or the investors in the alternative investment funds they manage and the integrity of the market; and
(v) Treat all investors fairly.

d) The Authority shall have the power to promulgate regulations in relation to managers of alternative investment funds governing:
   i. Additional authorisation requirements;
   ii. Application requirements;
   iii. Authorisation fees;
   iv. Disclosure in relation to staff remuneration policy and practices;
   v. Professional indemnity insurance and own funds requirements; and
   vi. Staff remuneration policies and practices;
   vii. Ongoing conformity with authorisation requirements under this Law, and any regulations made thereunder and the [new securities law and any regulations made thereunder];
   i. The operating conditions for alternative investment fund managers under this Law, and any regulations made thereunder and the [new securities law and any regulations made thereunder] including delegation of tasks;
   ii. Transparency and disclosure requirements under this Law, and any regulations made thereunder and the [new securities law and any regulations made thereunder];
   viii. Reporting obligations concerning the manager and the alternative investment funds managed under this Law, and any regulations made thereunder and the [new securities law and any regulations made thereunder];
   ix. Requirements for management of particular types of alternative investment fund managed under this Law, and any regulations made thereunder and the [new securities law and any regulations made thereunder];
   iii. Marketing of alternative investment funds under its management in Georgia or in foreign countries;
   iv. Management of foreign alternative investment funds marketed in foreign countries;
   v. Reporting in relation to continuing compliance with authorisation requirements.

71. Grant of Authorisation

a) Subsequent to Georgia becoming a member state of the European Union, the Authority shall consult beforehand the foreign regulatory authority of another member state in relation to any alternative investment fund manager which is:
   i. A subsidiary of another alternative investment fund manager, of a collective investment scheme in transferable securities, of an investment firm, of a credit institution or an insurance scheme authorised in another member state;
   ii. A subsidiary of the parent scheme of another alternative investment fund manager, of a collective investment scheme in transferable securities management company, of an investment firm, credit institution or insurance scheme authorised in another member state; and
   iii. A company controlled by the same natural or legal persons as those who control another alternative investment fund manager, of a collective investment scheme in transferable securities management company, of an investment firm, credit institution or insurance scheme authorised in another member state.

b) The Authority shall inform the applicant for authorisation of whether or not the authorisation has been granted within six months of the submission of a complete application;

c) The Authority may determine an incomplete application if it considers it appropriate to do so;

d) An application for authorisation may be withdrawn, by giving written notice, at any time before the Authority determines it;

e) Reasons shall be given in writing where authorisation is not granted;

f) An alternative investment fund manager may start business as soon as authorisation has been granted;

g) The Authority shall have the power to restrict the scope of an authorisation granted to an alternative investment fund manager in particular with regard to the investment strategies of the alternative investment funds that the alternative investment fund manager is allowed to manage;

h) An alternative investment fund manager must remain in compliance with Article 70 at all times.

72. Refusal of Authorisation as Alternative Investment Fund Manager

a) The Authority shall not grant authorisation as an alternative investment fund manager if:

i. The applicant does not meet the requirements of Article 70 in any respect and specifically if, taking into account the need to ensure the sound and prudent management of an alternative investment fund manager, the Authority is not satisfied as to the suitability of its shareholders or members; and
ii. Unless it is satisfied that the company will be able to meet the conditions of this Law; and
iii. Where the effective exercise of its supervisory functions is prevented by:
    (i) Close links between the alternative investment fund manager and other legal or natural persons;
    (ii) The laws, regulations or administrative provisions of another country or territory governing natural or legal persons with whom the alternative investment fund manager has close links;
    (iii) Difficulties involved in the enforcement of those laws, regulations and administrative provisions.

73. Change of Scope of Authorisation

a) An alternative investment fund manager must notify the Authority of any material changes to the conditions of its authorisation, in particular any changes in the information provided in accordance with Article 70;

b) If the Authority decides to impose restrictions or to reject those changes it shall within 20 working days of receipt of that notification, inform the alternative investment fund manager. This period may be prolonged by another 20 working days where the Authority deems it necessary due to the specifics of the case and having notified the alternative investment fund manager accordingly;

c) The changes notified shall be implemented if the Authority has not opposed the changes within the relevant assessment period under b).

74. Revocation of Authorisation as an Alternative Investment Fund Manager

a) The Authority shall only revoke the authorisation of an alternative investment fund manager subject to this Chapter where that company:
i. Does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased to exercise the activity covered by this Chapter for more than six months;
ii. Has obtained the authorisation by making false statements or by any other irregular means;
iii. No longer fulfils the conditions under which authorisation was granted;
iv. No longer complies with the requirements of [the new securities law] if its authorisation also covers discretionary portfolio management under that law;
v. Has seriously and/or systematically breached the provisions of this Law or of regulations under this Law;
vi. Falls within any other cases in this Law or the [new securities law] which provides for such revocation.

b) Subsequent to Georgia becoming a member state of the European Union, in circumstances where an alternative investment fund manager pursues alternative investment fund management or portfolio management activities outside Georgia by establishing a branch in another member state, the Authority shall consult the foreign regulatory authority in that member state before revoking the authorisation of the alternative investment fund manager.

75. Freedom of Establishment and to Provide Services by a Management Company Authorised to Manage Collective Investment Schemes in Transferable Securities or an Alternative Investment Fund Manager

a) Subsequent to Georgia becoming a member state of the European Union, a management company authorised to manage collective investment schemes in transferable securities or an alternative investment fund manager authorised under this Law wishing to establish a branch within the territory of another member state to pursue the activities for which it is authorised in Georgia shall notify the Authority;

b) The notification shall be accompanied by the following information and documents:

i. The member state within the territory of which the management company or alternative investment fund manager intends to establish a branch;
ii. A programme of operations setting out the activities and services envisaged under Article 75 k) ii);
iii. The address in the management company or manager's host member state from which documents may be obtained;
iv. Organisational structure of the branch;
v. And the names of those responsible for the management of the branch.

c) Unless the Authority has reason to doubt the adequacy of the administrative structure or the financial situation of the management company or alternative investment fund manager, taking into account the activities envisaged, it shall, within 40 working days of receiving all the information under b), communicate the information to the relevant foreign regulatory authority and shall inform the management company or alternative investment fund manager appropriately. Where the Authority refuses to communicate the information in b) to the foreign regulatory authority it shall give reasons for such refusal in writing to the management company or alternative investment fund manager within 40 working days of receiving all the information;

d) Where a management company or alternative investment fund manager wishes to pursue the activity of portfolio management; administration, legal and fund management accounting services, customer enquiries, valuation of portfolio and pricing of units (including tax returns), regulatory compliance monitoring, maintenance of the scheme register, distribution of income, unit issues and repurchases, contracts settlements (and certificate dispatch), record keeping; marketing [refer Annex II UCITS Directive] the Authority shall include with the documentation sent to the foreign regulatory authority an attestation that the management company or alternative investment fund manager has been authorised pursuant to this Law, a description of the authorisation's scope and details on any restriction on the types of schemes the management company or alternative investment fund manager is authorised to manage;

e) A management company or alternative investment fund manager which pursues activity with a branch in a foreign country or territory shall comply with the conduct of business and remuneration rules drawn up by the foreign regulatory authority in that foreign country or territory;

f) Before the branch of the management company or alternative investment manager starts business, the foreign regulatory authority shall within 40 days of receiving the information under b) and d) prepare for supervision of compliance of that entity with the rules under their responsibility;

g) On receipt of a communication from the foreign regulatory authority or upon the expiry of the period under c) without receipt of any communication from that authority the branch may be established and commence business;

h) In the event of a change under b) the management company or alternative investment fund manager shall give written notice to the Authority and to the relevant foreign regulatory authority at least 20 working days before implementing the change so that the Authority may take a decision under c) and the foreign regulator authority may do so under f);

i) In the event of a change in the in the particulars under b) the Authority shall inform the foreign regulatory authority accordingly;

j) The Authority shall update the information contained in the attestation under c) and shall inform the foreign regulatory authority whenever there is a change of the authorisation of the management company or alternative investment fund manager or in the restriction in the type of collective investment schemes in transferable securities or alternative investment funds the management company or alternative investment fund manager respectively is authorised to manage;

k) Any management company or alternative investment fund manager authorised pursuant to this Chapter wishing to pursue the activities for which it has been authorised within the territory of another member state of the European Union for the first time under the freedom to provide services shall communicate the following information to the Authority:
i. The member state within the territory of which the management company or manager intends to operate; and
ii. A programme of operations as under b) ii) which shall include a description of the risk management process put in place by the management company or manager. It shall also

include a description of the procedures and arrangements for investment complaints and that there are no restrictions to investors exercising their rights in the event that the management company or manager establishes a scheme for collective investment in transferable securities or alternative investment fund respectively in another member state in the official language or one of the official languages of the member state.

l) The Authority shall within 20 working days of receiving the information referred to in k) forward it to the relevant foreign regulatory authority;

m) Where a management company or alternative investment fund manager wishes to pursue the activity of portfolio management; administration - legal and fund management accounting services, customer enquiries, valuation of portfolio and pricing of units (including tax returns), regulatory compliance monitoring, maintenance of the scheme register, distribution of income, unit issues and repurchases, contract settlements (and certificate dispatch), record keeping; marketing [refer Annex II UCITS Directive] the Authority shall include with the documentation sent to the foreign regulatory authority an attestation that the management company or alternative investment fund manager has been authorised pursuant to this Law, a description of the authorisation's scope and details on any restriction on the types of schemes the management company or alternative investment fund manager is authorised to manage;

n) The management company or alternative investment fund manager may then start business in the relevant member state;

o) A management company or alternative investment fund manager that pursues activities under the freedom to provide services shall comply with the regulations promulgated by the respective Authority;

p) In the event of a change of the information under k) ii) the management company or manager shall give written notice to the Authority and to the relevant host state authority at least 20 working days before implementing the change. The Authority shall update the information contained in the attestation under m) and shall inform the foreign regulatory authority whenever there is a change in the scope of the management company or alternative investment fund manager's authorisation or in the details of any restriction in the type of collective investment schemes in transferable securities or alternative investment funds the management company or alternative investment fund manager respectively is authorised to manage;

q) A management company or alternative investment fund manager authorised pursuant to this Chapter which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with this Law as regards its organisation, including delegation arrangements, risk management procedures, prudential rules and supervision, procedures under in the case of a management company Article 66 a) xv) and in the case of an alternative investment fund manager article 71 c) xiv.

76. Use of Names

a) Only an operator of a collective investment scheme authorised under this Law or under an equivalent foreign law may use in its name the term 'management company of collective investment schemes' or 'alternative investment fund manager' or similar term.

Reporting by Authorised Operators of Schemes[108]

77. Reporting Obligations to the Authority

a) An authorised operator of a collective investment scheme shall regularly report to the Authority information on:

i. Each of the scheme it manages;
ii. The operator and its compliance with the provisions of this Chapter;
iii. The compliance of the schemes under its management with the provisions of this Law and underlying regulation.

b) The Authority shall have the power to specify in Authorisation, Recognition and Registration Regulation the reporting obligations of operators of scheme including provision of:

i. Information concerning the operator; and
ii. Information concerning an individual scheme or sub-fund including its portfolio, risk profile and risk management, use of leverage and sources of borrowings, liquidity management, illiquidity, any special arrangements relating to illiquid assets, ownership of unlisted companies, categories of assets in which a scheme has invested, and results of any stress-tests required under this Law;
iii. Information under ii) concerning each of any number of funds, cumulative information on a group of funds or on the totality of schemes managed by the operator.

Chapter XX: Authorisation of Depositaries to Collective Investment Schemes in Georgia

78. Authorisation of Depositaries of a Collective Investment Scheme

a) The Authority may only grant authorisation to a depositary if:
i. Its registered office is in Georgia;
ii. It is a national central bank;
iii. It is:
i. A bank authorised by the Bank of Georgia;
ii. The wholly-owned subsidiary of a bank authorised by the Bank of Georgia formed as a joint stock company under the Companies Law;
iii. A branch of a foreign bank with a registered office in Georgia which is authorised by the Bank of Georgia to provide custodial, depositary and fiduciary services;
iv. It is an authorised investment firm [under the new securities law] which provides the services of safe-keeping and administration of financial instruments and which has own funds of not less than the Georgian Lari equivalent of EUR 730,000.
iv. In the case of iv) the depositary shall be subject to prudential regulation and ongoing supervision and shall satisfy the following minimum requirements:
i. It shall have the infrastructure necessary to keep in custody financial instruments that can be registered in a financial instruments account opened in the depositary's books;
ii. It shall establish adequate policies and procedures sufficient to ensure compliance of the entity, including its managers and employees, with its obligations under this Law;

[108]The general authorisation requirements governing the management company and alternative investment fund manager namely fitness and properness, reporting including reports and accounts, etc. are normally provided for under authorisation requirements under the securities law rather than the CIS law (the same applies to depositaries also) since these requirements will apply to all authorised persons scheme securities markets business. Related parties (close links, persons closely associated) and conflicts of interest, client relationships etc. also usually dealt with under Conduct of Business requirements. Therefore, these are not provided for in this draft law *except where they are specific to funds* they are in this law.
Provisions for acquisitions and mergers of management companies are not usually made in a funds or security law since only persons deemed fit and proper by the Authority can acquire ownership of authorised management companies or alternative investment fund managers and the remaining matters are commercial and not supervisory in nature.
Provision is not usually made for transfer of business from one management company to another however, transfer is only possible from one authorised management company to another but otherwise it is a commercial matter for the management companies concerned.

iii. It shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems;
iv. It shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;
v. It shall arrange for records to be kept of all services, activities and transactions that it undertakes, which shall be sufficient to enable the Authority to fulfil its supervisory tasks and to perform the enforcement actions provided for in this Law;
vi. It shall take reasonable steps to ensure continuity and regularity in the performance of its depositary functions by employing appropriate and proportionate systems, resources and procedures including to perform its depositary activities;
vii. All members of its management body and senior management, shall, at all times, be of sufficiently good repute, possess sufficient knowledge, skills and experience;
viii. skills and experience to be able to understand the depositary's activities, including the main risks;
ix. Each member of its management body and senior management shall act with honesty and integrity.

v. The conducting persons of the depositary are of sufficiently good repute and sufficiently experienced in relation to the operation of a depositary business and the collective investment scheme for which they act or propose to act: to that end, the identity of the conducting persons and of any person succeeding them in office must be communicated immediately to the Authority;
vi. It does not also hold an authorisation as an investment company;
vii. It does not hold an authorisation as an alternative investment fund manager or a management company of authorised scheme including a management company of collective investment schemes in transferable securities.

b) In the case of an alternative investment fund that is a qualified investor scheme that invests predominantly in the securities of unlisted and untraded companies (private equity) the depositary may be an entity which carries out depositary functions as a part of its professional or business activities in respect of which the entity is subject to mandatory professional registration recognised by law or to legal and regulatory provisions or rules of professional conduct and which can provide sufficient financial and professional guarantees to enable it to perform effectively the relevant depositary functions and meet the commitments inherent in these functions;

c) In the case of an alternative investment fund that is a qualified investor scheme the prime broker acting as counterparty to that alternative investment fund shall not act as depositary to that fund unless it has functionally and hierarchically separated the performance of its depositary tasks from its tasks as a prime broker and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors in the alternative investment fund. Delegation by the depositary to the prime broker of its custody tasks is allowed if relevant conditions are met;

d) In the case of c) the depositary shall be provided by the manager with a copy of the prime broker contract.

79. Grant of Authorisation

a) The Authority shall inform the applicant for authorisation of whether or not the authorisation has been granted within six months of the submission of a complete application. The Authority may determine an incomplete application if it considers it appropriate to do so;

b) An application for authorisation may be withdrawn, by giving written notice, at any time before the Authority determines it;

c) Reasons shall be given in writing where authorisation is not granted;

d) A depositary may start business as a depositary as soon as authorisation has been granted.

80. Refusal of Authorisation as Depositary

a) The Authority shall not grant authorisation as a depositary if:
   i. The applicant does not meet the requirements of Article 78 in any respect; and
   ii. Unless it is satisfied that the company will be able to meet the conditions of this Law; and
   iii. Where the effective exercise of its supervisory functions is prevented by:
      (i) Close links between the depositary and other legal or natural persons;
      (ii) The laws, regulations or administrative provisions of another country or territory governing natural or legal persons with whom the depositary has close links;
      (iii) Difficulties involved in the enforcement of those laws, regulations and administrative provisions.

81. Change of Scope of Authorisation

a) A depositary of a collective investment scheme must notify the Authority of any material changes to the conditions of its authorisation, in particular any changes in the information provided in accordance with Article 78;

b) If the Authority decides to impose restrictions or to reject those changes it shall within 20 working days of receipt of that notification, inform the depositary of collective investment schemes. This period may be prolonged by another 20 working days where the Authority deems it necessary due to the specifics of the case and having notified the alternative investment fund manager accordingly;

c) The changes notified shall be implemented if the Authority has not opposed the changes within the relevant assessment period under b).

82. Revocation of Authorisation as Depositary

a) The Authority shall only revoke the authorisation of a depositary subject to this Chapter where that company:
   i. Does not make use of the authorisation within twelve months, expressly renounces the authorisation or has ceased to exercise the activity covered by this Chapter for more than six months;
   ii. Has obtained the authorisation by making false statements or by any other irregular means;
   iii. No longer fulfils the conditions under which authorisation was granted;
   iv. Has seriously and/or systematically breached the provisions of this Law or of any regulations promulgated thereunder;
   v. Falls within any other cases in this Law which provides for such revocation.

83. Use of Names

a) Only a depositary of a collective investment scheme authorised under this Law or under an equivalent foreign law may use in its name the term ‘depositary for collective investment schemes’ or ‘depositary for alternative investment funds’ or similar term.

Reporting by Authorised Depositaries of Collective Investment Schemes

84. Reporting Obligations to the Authority

a) An authorised depositary of a collective investment scheme shall regularly report to the Authority information on:
   i. Each of the schemes for which it acts as depositary;
   ii. The compliance of the schemes for which it acts with the requirements of Article 90.

b) The Authority shall have the power to promulgate regulations for the reporting obligations of depositaries of schemes including provision of:
   i. Information concerning the depositary; and
   ii. Information concerning the collective investment scheme in transferable securities for which it acts.

Chapter XXI: Operation of Authorised Collective Investment Schemes

General Provisions on the Operation of Authorised Schemes

85. Duties of the Management Company of an Authorised Collective Investment Scheme

a) The management company shall at all times:
   i. In the case of an investment fund, operate the collective investment scheme with due care and diligence in compliance with this Law and the constituting instrument and prospectus of the scheme and in accordance with the obligations of a management company of an authorised collective investment scheme under this Law and any regulations promulgated thereunder; and
   ii. In the case of an investment company, provide services to the company in accordance with its written contract with that investment company and its constituting instrument and prospectus in compliance with this Law and any applicable regulations promulgated thereunder and in accordance with the obligations of a management company under this law;
   iii. Act in the best interests of holders of participations in the collective investment scheme; and
   iv. Ensure that holders of participations in the collective investment scheme are treated fairly; and
   v. Refrain from placing the interests of any one holder of participations or any group of holders of participations above any other holder of participations or group of holders of participations; and
   vi. Apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of an individual scheme or the market;
   vii. Only undertake transactions with its related parties on arms' length terms;
   viii. Disclose any conflicts of interest arising in the operation of a scheme in the prospectus of that scheme and how such conflicts will be handled;
   ix. A management company shall report to the Authority immediately after it becomes aware of any material breach of:
      (i) This Law or any applicable regulations or rules made under this Law; or
      (ii) Of the scheme's or sub-fund's constituting instrument and prospectus.

86. Liability of the Management Company

a) The management company of an authorised collective investment scheme shall be liable to the participants in the scheme for any loss resulting from negligence, fraud, wilful default or recklessness or omission in the performance of the said duties;

b) The liability of the management company shall not be affected by delegation by the management company of any functions to third parties;

c) Liability to unitholders in a common fund shall be invoked through the management company. In the case of a common fund should the management company fail to Law despite a written notice to that effect from a participant within a period of 60 working days following receipt of such a notice, the participant may directly invoke the liability of the depositary.

87. Functions of the Management Company of an Authorised Scheme

a) A management company of an authorised scheme is responsible for:
   i. Ensuring that all property of a collective investment scheme is clearly identified as the property of that scheme and is held by a depositary separately, segregated from the property of the management company and from the property of other schemes operated by the same management company and from other clients of the management company and the depositary;
   ii. Provision of all administrative services required by the scheme;
   iii. Creating and maintaining the register or participants and transfer facilities with the exception that in the case of a close-ended scheme listed or traded on a stock exchange, the register shall be held instead at a central securities depository;
   iv. Offering, marketing and distribution of the participations of the scheme;
   v. In the case of open-ended and interval schemes, dealing in participations of the scheme;
   vi. creating and maintaining accounting records of the scheme and accounting for the income property, capital property and expenses of the scheme;

vii. Valuing the scheme and calculating the net asset value of the scheme and the net asset value per participation of the scheme and (except where participations are traded on a regulated market as permitted by this Law) the price per participation for sale and redemption of participations;
viii. Making decisions as to the constituents of scheme property in accordance with the constituting instrument and prospectus of the scheme and the stated investment objective and policy;
ix. Instructing the depositary in writing as to the exercise of rights attaching to scheme property;
x. Preparation of all required disclosure of information concerning the scheme and for the required content and dissemination of said information;
xi. Creating and maintaining all records necessary to achieve and demonstrate the ongoing compliance of the operation of any collective investment scheme with this Law;
xii. Filing all required reports with the Authority concerning a scheme; and
xiii. Any further functions established by the Authority by regulation, codes of conduct and guidance under this Law or the [new securities law].

b) A management company must make and keep for each scheme and sub-fund for which it Laws such records as are necessary to:
i. Enable the scheme and the management company to comply with this Law and regulations and rules under this Law; and
ii. Demonstrate that such compliance has been achieved;
iii. The records of a scheme must be kept in such a way that the Authority is able to access them readily and it must be possible for any corrections or other amendments and the contents of such records prior to such corrections or amendments to be easily ascertained and it must not be possible for the records to be otherwise manipulated or altered. Such records must be kept for a minimum of [number] years.

88. Delegation by Management Company

a) A management company may delegate to another party the provision of any of the functions for which it is responsible under Article 87 a) but the management company remains responsible for those functions and their proper performance and for oversight of any person to which it contracts such functions. Functions under (a) viii) and ix) cannot be delegated to the depositary;

b) A management company of a scheme for collective investment for transferable securities shall not delegate its functions to the extent that it becomes a letter-box entity;

c) A management company may only delegate a function under Article 87 a) to an entity that holds any authorisation required to perform that function under this Law and under the [new securities law] and if it delegates a function to an entity outside Georgia the said entity must hold the equivalent of the required authorisation within Georgia in the country or territory in which it will perform the delegated function. Said delegation must be such that:

i. The operator can effectively monitor the performance of the delegated function at all times; and
ii. It must not inhibit the Authority's capacity to supervise the scheme; and
iii. It must not prevent the scheme being managed in the best interest of participants.

89. Replacement of Management Company or Manager

a) A management company of an authorised scheme must not voluntarily terminate its appointment unless the termination is effective at the same time as the commencement of the appointment of a successor authorised management company. The Authority must be notified immediately by the management company of:
i. The voluntary termination by the outgoing management company; and

ii. The commencement of the new appointment by the incoming authorised management company.

b) The replacement of a management company of an authorised scheme shall not take effect without the agreement of the approval of the Authority;

c) The management company of an authorised scheme shall be replaced in the circumstances specified in subsection d);

d) The circumstances in which management company of an investment scheme shall be replaced are:

i. The calling of a meeting to consider a resolution for the winding up of the management company or manager;
ii. An application being made to dissolve the management company or manager or [strike it off the Register of Companies];
iii. The presentation of a petition for the winding up of the management company;
iv. The making of, or any proposals for the making of, a composition or arrangement with any one or more of the management company's creditors;
v. The revocation of the authorisation of the management company;
vi. The appointment of a receiver to the management company.

e) In the event of involuntary termination of the appointment of a management company if a new management company or manager is not appointed within 60 working days the authorised scheme shall be wound up.

Chapter XXII Depositaries of Schemes

General Provisions on Depositaries of Schemes

90. Duties of a Depositary of Collective Investment Schemes

a) A depositary of a collective investment scheme shall at all times act in relation to that scheme in compliance with this Law and regulations made thereunder, and in accordance with the obligations of a depositary [under the new securities law and any regulations made thereunder] and in compliance with the constituting instrument and prospectus of the scheme;

b) A depositary of a collective investment scheme shall:

i. Act honestly, fairly, professionally and independently; and
ii. Act solely in the interests of the scheme and its participants;
iii. not profit by its office except through the payment of remuneration permitted under this Law and under the written contract to provide services to the scheme; and

c) A depositary must not carry out activities with regard to the scheme, or the management company, acting on behalf of the scheme, that may create conflicts of interest between the scheme, participants in the scheme, or the management company and itself, unless:
i. The depositary has properly identified any such potential conflicts of interest;
ii. The depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks; and
iii. The potential conflicts of interest are properly managed, monitored and disclosed to the participants in the scheme.

d) The depositary must ensure that its appointment as depositary of an authorised scheme is evidenced by a written contract and that contract must regulate the flow of information deemed necessary to allow the depositary to perform its functions for the scheme. The contract may cover more than one authorised scheme. The minimum information to be contained in the written contract shall be prescribed by regulation promulgated by the Authority;

e) The depositary must for each scheme for which it is appointed:

i. Ensure that the issue and cancellation of participations in the scheme are carried out in accordance with applicable national law, the constituting instrument of the scheme, the prospectus of the scheme and regulations made under this Law;
ii. Ensure that the price of participations in an open-ended or interval authorised scheme is calculated in accordance with applicable national law, the constituting instrument of the scheme, the prospectus of the scheme and regulations made under this Law;
iii. Carry out the instructions of the management company unless they conflict with applicable national law, the constituting instrument of the scheme, the prospectus of the scheme and regulations made under this Law;
iv. Ensure that, in transactions involving the assets of the scheme, any payment is paid to the scheme within usual time limits; and
v. Ensure that the income of the scheme is applied in accordance with applicable national law, the constituting instrument of the scheme, the prospectus of the scheme and regulation made under this Law.

f) The depositary must ensure that the cash flows of each scheme are properly monitored and that:

i. All payments made by, or on behalf of, investors upon subscription of participations have been received;
ii. All cash of the scheme has been booked in cash accounts which are:
    (i) Opened in the name
        1. Of the scheme;
        2. Or the management company acting on behalf of the scheme;
        3. Or the depositary acting on behalf of the scheme.
    (ii) At
        1. A central bank;
        2. A bank authorised by the Bank of Georgia;
        3. An entity in another country which is authorised as the [equivalent of a bank under ii) or as credit institution].
    (iii) Where cash accounts are opened in the name of the depositary acting on behalf of the scheme under (1) (c) the depositary shall ensure that no cash of the entity under (2) and none of the depositary's own accounts is booked on such accounts.

g) The depositary of an authorised scheme must hold in custody all scheme assets that can be registered in a financial instruments account in the depositary's books and all the financial instruments that can be physically delivered to the depositary;

h) The depositary must ensure that all financial instruments that can be registered in a financial instruments account are registered in the depositary's books in segregated accounts opened in the name of:

i. The scheme or sub-fund;
ii. The management company acting on behalf of the scheme or sub-fund; and
iii. Can be clearly identified as belonging to the scheme in accordance with applicable law at all times:
    (i) In accordance with applicable law; and
    (ii) Regulations under the [new securities law].

i) For other assets not covered by c), the depositary of an authorised scheme shall:
i. Verify that the scheme or the management company acting on behalf of the scheme is the owner of the assets based:
    (i) On information or documents provided by the management company; and
    (ii) Where available, on external evidence.
ii. Maintain and keep up to date a record of those assets for which it is satisfied that the scheme or the management company acting on behalf of the scheme or sub-fund, is the owner.

j) The Depositary must provide a comprehensive inventory of all the assets comprising the scheme property of a scheme to the management company on a regular basis specified in the written contract which shall be not less than [once a month].

k) The Depositary must not re-use scheme assets under h) including by transferring, pledging, selling and lending unless:
i. It is permitted by regulation under this Law; and
ii. It is carrying out the instructions of the management company.

91. Separation of Assets of Scheme From the Assets of a Depositary

a) Collective investment scheme assets held with the depositary shall enjoy the right of separation, shall not be included in the depositary assets, neither in liquidation or bankruptcy estate initiated under the Georgian law, nor for the execution of claims against the depositary;

b) No creditor of the depositary of a scheme or sub-fund other than a participant of that scheme shall have any claim against the property of that scheme or sub-fund.

92. Liability of the Depositary

a) The depositary is liable to a scheme for which it acts and participants in that scheme for the loss by the depositary or a third party to whom custody of financial instruments under Article 90 h) has

been delegated. In the case of a loss of a financial instrument the depositary must return a financial instrument of an identical type or the corresponding amount to the scheme without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary;

b) The liability of a depositary may not be excluded or limited by agreement;

c) Depositary liability to participants may be invoked either directly or indirectly through the management company.

93. Delegation by Depositary

a) A depositary of an authorised scheme shall not delegate its oversight function under Article 90 e) or f) to a third party. In this context, a third party means any party that is not a part of the same legal entity as the depositary whether in Georgia or abroad;
   i. For the avoidance of doubt, the use of securities settlement systems under the [Settlement Finality Directive/new securities law] or similar services provided by third country securities settlement systems, does not constitute delegation by a depositary of its functions under this Article.

b) A depositary that performs part of its functions through a branch or registered office in a country outside Georgia should ensure that those arrangements do not impede the ability of the Authority to supervise that depositary effectively;

c) A depositary may delegate the functions under Article 90 h) and i) to one or more third parties if:
   i. The tasks are not delegated with the intention of avoiding the requirements of this Law;
   ii. The depositary can demonstrate that there is an objective reason for that delegation;
   iii. The depositary:
      (i) Has exercised due skill, care and diligence in the selection and appointment of any third party to whom it intends to delegate parts of its tasks; and
      (ii) Continues to exercise due skill, care and diligence in the periodic review and ongoing monitoring:
         1. Of any third party to whom it has delegated parts of its tasks; and
         2. Of the arrangements of that third party in respect of the matters delegated to it.
   iv. The depositary ensures that any third-party delegate meets the following conditions at all times:
      1. The third party has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the scheme that have been entrusted to it;
      2. For custody tasks in relation to scheme assets under article 90 h) the third party is subject to:
         a. Effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned; and
         b. An external periodic audit to ensure that the financial instruments remain in its custody.
      3. The third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;
      4. The third party takes all necessary steps to ensure that in the event of the insolvency of the third party, scheme assets under 90) h) held by the third party are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
      5. The third party complies with the obligations and prohibitions relating to the depositary under article 90 b), c), d), h), i) and k).

d) A depositary may delegate custody tasks in relation to scheme assets under article 90 h) to an entity in a third country even if it does not meet the requirements of c) iv) b) (i) if:
   i. The law of that country requires those assets to be held in custody by a local entity;
   ii. No local entity satisfies the conditions of c) iv) b) (i);
   iii. The depositary delegates its functions to such a local entity only:
      (i) To the extend required by the law of that country; and
      (ii) For as long as there is no local entity that satisfies article c) iv) b) (i).
   iv. The investors in the relevant scheme are informed before their investment:
      (i) That such delegation is required due to legal constraints in that third country;

(ii) Of the reasons for which the delegation is necessary;
(iii) Of the risks involved in the delegation; and

v. The management company, acting on behalf of the scheme, has consented to the delegation arrangements before they become effective.

e) A depositary must ensure that a third party to whom the depositary has delegated functions under c) does not in turn sub-delegate those functions unless the delegate complies with the requirements that apply to the depositary, with any necessary changes, in relation to delegation by the depositary under c) and d);

f) A depositary may delegate safekeeping of assets to a third party that maintains an omnibus account for multiple schemes, provided that it is a segregated common account that is segregated from the third party's own assets;

g) The depositary shall report to the Authority immediately after it becomes aware of any breach of:

(i) This Law and any applicable regulations or rules made under this Law;
(ii) A scheme's or sub-fund's constituting instrument or prospectus that has had, or is likely to have, a materially adverse impact on the interests of participants;

In relation to a scheme or sub-fund for which it acts under written contract.

h) The depositary must enable the Authority to obtain on request all the information that the Authority considers necessary;

i) Following Georgia becoming a member of the European Union, a depositary must have appropriate procedures for its employees to report potential or actual breaches of the UCITS Directive internally through a specific, independent and autonomous channel.

94. Replacement of a Depositary of an Authorised Scheme

a) The management company shall replace the depositary in the circumstances specified in the Law and in the constituting instrument and prospectus of the scheme;

b) The replacement of the depositary shall not take effect without the approval of the Authority;

c) A depositary shall not voluntarily terminate its appointment unless the termination is effective at the same time as the commencement of the appointment of a successor authorised depositary. The Authority must be notified immediately of:

i. The voluntary termination by the outgoing depositary; and
ii. The commencement of the new appointment by the incoming depositary.

d) The depositary shall not retire voluntarily unless before its retirement it has ensured that the new depositary has been informed of any circumstance of which the retiring entity has informed the Authority.

Chapter XXIII: Investment and Borrowing Powers of Authorised Schemes

Limitations on Investment and Borrowing

95. Permitted Investments, Lending and Borrowing for Authorised Schemes and Sub-Funds

a) The property of an authorised collective investment scheme or sub-fund of an authorised scheme may only be invested in accordance with this Law and regulations made thereunder establishing:

i. The kind of property in which the scheme may invest; and
ii. The proportion of the property of the scheme that may be invested in assets of any description; and
iii. The description of the transactions that are permitted; and
iv. The criteria for eligibility of asset classes and individual assets for investment by open-ended, interval and close-ended collective investment schemes; and
v. The maximum exposure of any scheme to one issuer or group of issuers or credit institution or property or scheme; and

vi. The maximum concentration of ownership or influence over an issuer permitted to any one scheme or to all schemes managed or influenced by the same management company or associated management companies; and
vii. Requirements for transactions with associated persons or entities or other scheme pools of assets managed by the same management company and for transactions conducted through associated enterprises; and
viii. The permitted use of derivatives and forward contracts; and
ix. These limits shall apply at the time of purchase of assets except in the cases of i), iii), iv), vi) and vii) which shall apply at all times.

b) If the limits prescribed under subsection a) are exceeded for reasons beyond the control of the management company or as a result of the exercise of subscription rights, the excess shall be remedied, taking due account of the interests of participants, within a maximum of 130 working days except in the case where force majeure is declared by the Authority by regulation;

c) The Authority shall have the power to declare force majeure by regulation;

d) Borrowing by an authorised and sub-fund of an authorised scheme by a management company or manager on behalf of such a scheme is only permitted in accordance with regulation under this Law establishing:

i. The maximum percentage of the asset value of a collective investment scheme which may be borrowed;
ii. The permitted method, nature and term of such borrowing;
iii. Requirements as to the status and eligibility of lenders.

e) An authorised scheme or sub-fund of an open-ended or interval authorised scheme may not lend other than by investment in debentures or instruments signifying indebtedness or making deposits;

f) An authorised scheme and a sub-fund of an authorised scheme shall not invest in participations of another collective investment scheme or sub-fund of a collective investment scheme except as permitted by regulation under this Law. A sub-fund of a collective investment scheme shall not invest in another sub-fund of the same collective investment scheme;

g) An authorised collective investment scheme which invests directly in immovables may only be constituted as a close-ended scheme;

h) The management company on behalf of an authorised scheme must not carry out a sale of any investment that is not in the ownership of the scheme.

Limitations on Investment and Borrowing by Collective Investment Schemes in Transferable Securities

96. Investment and Borrowing Powers for UCITS

a) A scheme which is a collective investment scheme in transferable securities shall only invest, lend and borrow as permitted by Articles 97 to 105;

b) Where a collective investment scheme in transferable securities has sub-funds, each sub-fund shall be regarded as a separate scheme for collective investment in transferable securities for the purposes of Articles 97 to 105;

c) The investments of a scheme for collective investment in transferable securities must comprise only one or more of the following:

i. Transferable securities and money-market instruments admitted to or dealt in on a regulated market under the [new securities law];
ii. Transferable securities and money-market instruments admitted to official listing on a stock exchange in a member state of the European Union or another country or territory which is regulated, operates regularly and is recognised and open to the public, provided that the choice of the stock exchange or market has been provided for in the constituting instrument and prospectus of the scheme;
iii. Recently issued transferable securities and money-market instruments, provided that:

(i) The terms of issue include a scheme that application will be made for admission to official listing on a stock exchange or on another regulated market which operates regularly and is recognised and open to the public, provided that the choice of the stock exchange or the market has been provided for the constituting instrument and prospectus of the scheme;
(ii) The admission is secured within one year of issue.

iv. Units of collective investment schemes in transferable securities authorised according to the UCITS Directive and/or other open-ended collective investment schemes, whether or not established in a European Union member state provided that:
(i) Such other schemes are authorised under laws which provide that they are subject to supervision considered by the Authority to be equivalent to that laid down in this Law, and that cooperation between authorities is sufficiently ensured;
(ii) The level of protection for participants in the other schemes is equivalent to that provided for participants in collective investment schemes in transferable securities, and in particular that the rules on assets segregation, borrowing, lending, and uncovered sales of transferable securities and money-market instruments are equivalent to the relevant requirements of this Law;
(iii) The business of the other schemes is reported in half-yearly and annual reports to enable an assessment of the assets and liabilities, income and operations over the reporting period;
(iv) No more than 10% of the assets of the scheme for collective investment in transferable securities or of the other schemes whose acquisition is contemplated can, according to their constituting instruments, be invested in aggregate in participations of other collective investment schemes in transferable securities or other schemes.

v. Deposits with a credit institution which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a European Member State or, if the registered office of the credit institution is situated in a third country, provided that it is subject to prudential rules considered by the Authority as equivalent to those laid down in this Law and European Community law;

vi. Financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in points c) (1), (2) and (3) above and/or financial derivative instruments dealt in over-the-counter ("OTC derivatives"), provided that:
(i) The underlying consists of instruments covered by c) (1), financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in the scheme's constituting instrument,
(ii) The counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belong to the categories approved by the Authority; and
(iii) The OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the scheme's initiative.

vii. Money-market instruments other than those dealt in on a regulated market and which are liquid and have a value which can accurately be determined at any time, if the issue or the issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that these investments are:
1. Issued or guaranteed by a central, regional or local authority or by a central bank of a European Union member state, the European Central Bank, the European Union or the European Investment Bank, a non-Member State or, in case of a federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong; or
2. Issued by a scheme in respect of any securities of which are dealt in on regulated markets referred to in points c) i) and ii) above; or
3. Issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by European Union or by an establishment which is subject to and complies with prudential rules considered by the Authority to be at least as stringent as those laid down by European Union law; or
4. Issued by other bodies belonging to the categories approved by the Authority, provided that investments in such instruments are subject to investor protection equivalent to that laid down in (a), (b) and (c) and provided that the issuer is a company whose capital and

reserves amount to at least ten million euro (EUR 10,000,000) and which presents and publishes its annual accounts in accordance with the [fourth Directive 78/660/EEC], is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

d) A collective investment scheme in transferable securities shall not, however:
   i. Invest more than 10% of its assets in transferable securities or money-market instruments other than those referred to in paragraph c);
   ii. Acquire either precious metals or certificates representing them.

e) A UCITS may hold ancillary liquid assets;

f) An investment company may acquire movable and immovable property which is essential for the direct pursuit of its business;

g) A management company or manager having its registered office in Georgia shall employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio; it shall employ a process for accurate and independent assessment of the value of OTC derivatives. It shall communicate to the Authority regularly, in accordance with the regulations the latter shall define, in regard to the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed scheme for collective investment in transferable securities;

h) An investment company having its registered office in Georgia is subject to the same obligation;

i) A collective investment scheme in transferable securities:
   i. Is authorised to employ techniques and instruments relating to transferable securities and money-market instruments under the conditions and within the limits laid down by the Authority, provided that such techniques and instruments are used for the purpose of efficient portfolio management. When these operations concern the use of derivative instruments, these conditions and limits shall conform to the provisions laid down in this Law. Under no circumstances shall these operations cause the scheme to diverge from its investment objectives as laid down in the schemes' constituting instrument or prospectus;
   ii. Shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio: the exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. This shall also apply to iii) and iv);
   iii. May invest, as a part of its investment policy and within the limits laid down in Article 97 x) vi) in financial derivative instruments, provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Article 97. When a scheme for collective investment in transferable securities invests in index-based financial derivative instruments, those investments are not required to be combined for the purposes of the limits laid down in Article 97.

When a transferable security or a money-market instrument embed a derivative instrument, the derivative instrument shall be taken into account when complying with the requirements of this Article.

97. Limits on Exposures of Collective Investment Schemes in Transferable Securities for UCITS

a) A scheme may invest:
   i. No more than 10% of its assets in transferable securities or money-market instruments issued by the same body;
   ii. No more than 20% of its assets in deposits made with the same body. The risk exposure to a counterparty of the scheme in an OTC derivative transaction may not exceed 10% of its assets when the counterparty is a credit institution referred to in Article 97 c) v), or 5% of its assets in other cases.

b) The total value of the transferable securities and money-market instruments held by a scheme for collective investment in transferable securities in the issuing bodies in each of which it invests more than 5% of its assets shall not exceed 40% of the value of its assets. This limitation does not apply to deposits and OTC derivative transactions made with financial institutions subject to prudential supervision.

Notwithstanding the individual limits laid down in paragraph a), a scheme shall not combine, where this would lead to investing more than 20% of its assets in a single body, any of the following:

i. Investments in transferable securities or money-market instruments issued by that body;
ii. Deposits made with that body; or
iii. Exposures arising from OTC derivative transactions undertaken with that body.

c) The limit laid down in the first sentence of paragraph a) may be of a maximum of 35% if the transferable securities or money-market instruments are issued or guaranteed by a European Union Member State, by its public local authorities, by a non-Member State or by public international bodies of which one or more European Union Member States belong;

d) The limit laid down in the first sentence of paragraph a) may be of a maximum of 25% for certain bonds where they are issued by a credit institution which has its registered office in a European Union member state and is subject by law to special public supervision designed to protect bondholders. In particular, sums deriving from the issue of those bonds must be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in case of bankruptcy of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.If a scheme for collective investment in transferable securities invests more than 5% of its assets in the bonds referred to in the first subparagraph which are issued by a single issuer, the total value of such investments may not exceed 80% of the value of the assets of the scheme;

e) The transferable securities and money-market instruments referred to in paragraphs d) and e) shall not be taken into account for the purpose of applying the limit of 40% referred to in b);

f) The limits set out in paragraphs a), b), c) and d) shall not be combined; thus, investments in transferable securities or money-market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with paragraphs a), b), c) and d) shall not exceed in total 35% of the assets of the scheme;

g) Companies which are included in the same group for the purposes of consolidated accounts, as defined in accordance with the current provisions of the Accounting Directive or in accordance with recognised international accounting rules], shall be regarded as a single body for the purpose of calculating the limits contained in this Article;

h) A collective investment scheme in transferable securities may cumulatively invest up to a limit of 20% of its assets in transferable securities and money-market instruments within the same group;

i) Without prejudice to the limits laid down in this Article, the limits laid down in this Article are raised to a maximum of 20% for investments in shares and/or debt securities issued by the same body when, according to the constituting instrument of the scheme, the aim of the scheme's investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the Authority, on the following basis:

i. The composition of the index is sufficiently diversified;
ii. The index represents an adequate benchmark for the market to which it refers;
iii. It is published in an appropriate manner.

j) The limit laid down in i) is raised to 35% where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money-market instruments are highly dominant. The investment up to this limit is only permitted for a single issuer.

98. Derogation for UCITS

a) By way of derogation from Article 97, the Authority may authorise an scheme for collective investment in transferable securities to invest in accordance with the principle of risk-spreading up to 100% of its assets in different transferable securities and money-market instruments issued or guaranteed by a European Union member state, one or more of its local authorities, a non-member state of the European Union or public international body to which one or more member states of the European Union belong;

b) The Authority shall grant an authorisation under a) only if it considers that unitholders in the scheme have protection equivalent to that of unitholders in collective investment schemes in transferable securities complying with the limits laid down in articles 96 and 97;

c) These schemes shall hold securities from at least six different issues, but securities from any single issue shall not account for more than 30% of its total assets;

d) The schemes referred to in paragraph a) must make express mention, in their constituting instrument, of the States, local public authorities or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35% of their assets;

e) In addition, the schemes referred to in paragraph a) must include a prominent statement in their prospectuses or marketing communications, drawing attention to such authorisation and indicating the States, local public authorities and public international bodies in the securities of which they intend to invest or have invested more than 35% of their assets.

99. Limits on Investment in Other Schemes for UCITS

a) A collective investment scheme in transferable securities may acquire the participations of units of collective investment schemes in transferable securities and/or other schemes for collective investment referred to in Article 96 c) iv), provided that no more than 20% of its assets are invested in the units of a single scheme;

b) For the purpose of the application of this investment limit, each compartment of a collective investment scheme with multiple compartments is to be considered as a separate issuer provided that the principle of segregation of the obligations of the various compartments vis-à-vis third parties is ensured;

c) Investments made in units of a collective investment scheme other than a collective investment scheme in transferable securities may not in aggregate exceed 30% of the assets of a collective investment scheme in transferable securities;

d) When a scheme for collective investment in transferable securities has acquired units of a collective investment scheme, the assets of the respective schemes do not have to be combined for the purposes of the limits laid down in Article 97;

e) When a collective investment scheme in transferable securities invests in the units of another scheme that are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, that management company or other company may not charge subscription or redemption fees on account of the scheme for collective investment in transferable securities investment in the units of such other schemes;

f) A scheme for collective investment in transferable securities that invests a substantial proportion of its assets in other schemes shall disclose in its prospectus the maximum level of the management fees that may be charged both to the scheme itself and to the other schemes in which it intends to invest. In its annual report it shall indicate the maximum proportion of management fees charged both to the scheme for collective investment in transferable securities itself and the other schemes in which it invests.

100. Disclosure in Relation to Investment for UCITS

a) The prospectus shall indicate in which categories of assets a collective investment scheme in transferable securities is authorised to invest. It shall mention if transactions in financial derivative instruments are authorised; in this event, it must include a prominent statement indicating if these operations may be carried out for the purpose of hedging or with the aim of meeting investment goals, and the possible outcome of the use of financial derivative instruments on the risk profile;

b) When a collective investment scheme in transferable securities invests principally in any category of assets defined in article 96 other than transferable securities and money-market instruments or replicates a stock or debt securities index in accordance with Article 97 i), its prospectus and, where necessary, marketing communications must include a prominent statement drawing attention to its investment policy;

c) When the net asset value of a collective investment scheme in transferable securities is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, its prospectus and, where necessary, marketing communications must include a prominent statement drawing attention to this characteristic of the scheme;

d) Upon request of an investor, the management company must also provide supplementary information relating to the quantitative limits that apply in the risk management of the scheme, to the methods chosen to this end and to the recent evolution of the main risks and yields of the categories of instruments.

101. Aggregation for UCITS

a) An investment company or a management company acting in connection with all of the schemes which it manages, and which are collective investment schemes in transferable securities, may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body;

b) A collective investment scheme in transferable securities may acquire no more than:
i. 10% of the non-voting shares of the same issuer;
ii. 10% of the debt securities of the same issuer;
iii. 25% of the units of the same collective investment scheme;
iv. 10% of the money-market instruments of any single issuer.

c) The limits laid down in the second, third and fourth indents may be disregarded at the time of acquisition if at that time the gross amount of bonds or of the money-market instruments, or the net amount of the instruments in issue cannot be calculated;

d) Paragraphs a) and b) are waived as regards:
i. Transferable securities and money-market instruments issued or guaranteed by a European Union member state or its local authorities;
ii. Transferable securities and money-market instruments issued or guaranteed by a non-member state of the European Union;
iii. Transferable securities and money-market instruments issued by public international bodies of which one or more-member states of the European Union are members;
iv. Shares held by UCITS in the capital of a company incorporated in a non-member state of the European Union which invests its assets mainly in the securities of issuing bodies having their registered office in that State, where under the legislation of that State, such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that State. This derogation, however, shall apply only if in its investment policy the company from the non-member state of the European Union complies with the limits laid down in Articles 97 and 100 and Article paragraphs a) and b) of this article. Where the limits set in Articles 97 and 100 are exceeded, article 103 shall apply mutatis mutandis;
v. Shares held by one or more investment companies in the capital of subsidiary companies which carry on the business of management, advice or marketing in the country where the subsidiary is established, in regard to the repurchase of units at the request of unitholders exclusively on its or their behalf.

102. Alleviation of Requirements for UCITS

a) A scheme for collective investment in transferable securities need not comply with the limits laid down in this Chapter when exercising subscription rights attaching to transferable securities or money-market instruments which form part of their assets;

b) While ensuring observance of the principle of risk spreading, newly authorised UCITS may derogate from articles 96, 97, 98 and 99 for six months following the date of their authorisation;

c) If the limits referred to in paragraph a) are exceeded for reasons beyond the control of the UCITS or as a result of the exercise of subscription rights, it must adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unitholders.

103. Borrowing for UCITS

a) Neither:
   i. An investment company; nor
   ii. A management company or depositary Acting on behalf of a common fund,
   may borrow.

b) However, a UCITS may acquire foreign currency by means of back-to-back loans;

c) By way of derogation from a), a collective investment scheme in transferable securities may borrow provided that such a borrowing is:

   i. On a temporary basis and represents:
      (i) In the case of investment companies, no more than 10% of their assets; or
      (ii) In the case of common funds, no more than 10% of the value of the fund; or
   ii. To enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an investment company, no more than 10% of its assets.

Where a UCITS is authorised to borrow under points (i) and (ii), that borrowing shall not exceed 15% of its assets in total.

104. Lending for UCITS

a) Without prejudice to the application of articles 98 and 99, neither:
   i. An investment company; nor
   ii. A management company or depositary Acting on behalf of a common fund,may grant loans to or Law as guarantor for third parties.Paragraph a) shall not prevent such schemes from acquiring transferable securities, money-market instruments or other financial instruments referred to in Article 97, paragraph c), points v), vii) and viii) which are not fully paid.

b) Neither:
   i. An investment company; nor
   ii. A management company or depositary Acting on behalf of a common fund,may carry out uncovered sales of transferable securities, money-market instruments or other financial instruments referred to in Article 97, paragraph c), points v), vii) and viii).

Chapter XXIV: Valuation of Authorised Collective Investment Schemes

105. Requirements for Valuation of Authorised Collective Investment Schemes

a) The management company of an authorised collective investment scheme is responsible for valuation of the property of that scheme and of collective investment scheme sub-funds and for calculating the price of participations of open-ended and interval schemes and of open-ended and interval sub-funds;

b) To determine the value of a participation in an authorised collective investment scheme or sub-fund the management company must carry out a fair and accurate valuation of all the scheme or sub-fund property in accordance with the constituting instrument of the scheme and the prospectus and this Law and regulations made thereunder;

c) The management company of an authorised scheme or sub-fund shall carry out a valuation under subsection b):

   i. In the case of close-ended scheme, not less than every year at regular intervals stated in the prospectus;
   ii. In the case of an open-ended scheme and sub-fund not less than once every two weeks at regular intervals stated in the prospectus except during a fixed price initial offer period;
   iii. In the case of an interval scheme or sub-fund not less than once every six months at regular intervals stated in the prospectus except during a fixed price initial offer period;
   iv. In the case of a money market collective investment scheme not less than once every working day.

d) The management company of an open-ended or interval scheme must undertake a valuation under subsection c) immediately before it creates a price at which participations are sold or redeemed;

e) The management company must agree with the depositary of a scheme the basis of valuation methodology to be applied to a collective investment scheme or sub-fund and must disclose this in the prospectus of that scheme or sub-fund and the depositary shall ensure that the methodology is applied consistently and fairly;

f) The management company may be required by the depositary of a collective investment scheme or the Authority to compensate subscribers for participations, redeemers of participations or a collective investment scheme or sub-fund for any loss suffered as a consequence of any error in valuation that exceeds one per cent of the net asset value per participation of the scheme concerned. The Authority may establish a lesser percentage by regulation.

Chapter XXV: Information to be Provided to Investors

106. Key Investor Information of a Scheme for Collective Investment in Transferable Securities

a) A management company of an authorised collective investment scheme and sub-fund that is a collective investment scheme in transferable securities shall draw up a short document containing key information for investors ('the key investor information document'). The words 'key investor information' shall be clearly stated in that document in the national language;

b) The key investor information document shall be:

i. Provided free of charge;
ii. Provided by the management company before the investor subscribes to an authorised collective investment scheme;
iii. Where the sale of participations is made through another person, or advice on investing in that scheme is provided by another person, the management company shall provide the key investor information document to that person;
iv. Fair, clear and not misleading;
v. Written in plain language;
vi. Kept up to date by the management company;
vii. Submitted to the Authority as part of the application for authorisation of the authorised collective investment scheme.

c) The key investor information document shall include:

i. Appropriate information about the essential characteristics of the collective investment scheme or sub-fund concerned which is to be provided to investors so that they are reasonably able to understand the nature and risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis;
ii. Information on how to obtain additional information including but not limited to where and how the prospectus of the scheme or sub-fund and annual and interim reports and accounts can be obtained on request and free of charge at any time and the language in which such information is available to investors;
iii. A statement to the effect that the details of the up to date remuneration policy are available on a website, a reference to that website and information that a paper copy will be made available free of charge upon request.

d) The key investor information document shall be made available in a durable medium or by way of a website. A paper copy shall be delivered upon the request of the investor free of charge;

e) The Authority may promulgate regulations to establish the requirements for the information to be contained in the key investor information document and for the provision of the document to investors both for collective investment schemes in transferable securities and for other authorised collective investment schemes.

107. The Scheme Prospectus of an Authorised Collective Investment Scheme

a) The prospectus of an authorised collective investment scheme shall be provided free of charge only upon request by investors or potential investors in authorised scheme and shall be made available in a durable medium or by means of a website. A paper copy shall be delivered upon the request of the investor free of charge;

b) The prospectus shall contain the information required in Schedule [x] in relation to an authorised collective investment scheme.

108. Annual Audited Report and Accounts and Interim Report and Accounts of an Authorised Collective Investment Scheme

a) The most recent annual report and accounts and interim report and accounts of an authorised collective investment scheme shall be provided to potential investors free of charge upon request in a durable medium or by means of a website. A paper copy shall be delivered upon request of the investor free of charge.

109. Net Asset Value and Price Per Authorised Collective Investment Scheme Participation

a) The management company of an authorised collective investment scheme shall:
   i. In the case of an open-ended collective investment scheme make public the sale and redemption price of its participations each time it sells and repurchases participations s which shall be not less than once every two weeks;
   ii. In the case of an interval collective investment scheme make public the sale and redemption price of its participations each time it sells and repurchases participations which shall be not less than once every six months and shall, for information purposes only, publish the net asset value per participation once every month;
   iii. In the case of a close-ended scheme, make public the net asset value per participation not less than once per annum.

b) The Authority shall promulgate by way of regulations additional requirements for disclosure of information concerning authorised scheme under this Chapter including the means of making such disclosure public.

Chapter XXVI: Marketing Communications in Relation to Authorised Collective Investment Schemes

110. Marketing Communications

a) All marketing communications to investors or potential investors in relation to authorised scheme shall be clearly identifiable as such and shall be fair, clear, and not misleading;

b) Any marketing communication relating to an authorised collective investment scheme or sub-fund comprising an invitation to subscribe for participations in that scheme or sub-fund that contains specific information about that scheme or sub-fund shall make no statement that contradicts or diminishes the significance of the information contained in the scheme prospectus and the key investor information document and shall indicate that the scheme prospectus and key investor information document exist and are available free of charge. It shall also specify where and in which language this information and documents may be obtained by investors or potential investors and how they may obtain access to them.

Chapter XXVII Costs and Charges of Authorised Collective Investment Schemes

111. Costs and Charges

a) Costs and charges may only be levied on authorised scheme in relation to:
   i. The annual management charge payable to the management company;
   ii. Fees and costs payable to payable to the depositary;
   iii. Costs of commissions or commissions relating to acquisition and sale of scheme assets;
   iv. Costs of registration and servicing of holders of participations in a scheme and cost of distribution of income [and profits?] to holders;
   v. Costs of annual audit;
   vi. Fees and costs of an independent valuer (in relation to schemes investing in real estate);
   vii. Costs of annual and interim reports and accounts;
   viii. Taxes payable by the scheme.

b) Only the management company of an authorised collective investment scheme may levy a charge on investors upon purchase of participations as an entry charge which is added to the net asset value per participation at the time of purchase;

c) Only a management company of an authorised collective investment scheme may levy a charge on investors upon redemption of participations (the exit charge that is deducted from the net asset value per participation at the time of redemption);

d) The charging of a fee by the management company or any other authorised person related to scheme performance is not permitted;

e) No fee or cost shall be payable by an authorised scheme unless it has been clearly disclosed in the scheme prospectus;

f) No fee or cost of marketing shall be charged to an authorised scheme;

g) The total annual operating cost of an authorised scheme shall not exceed [percentage amount];

h) The total annual operating cost of an authorised scheme shall be calculated as required by the Authority and shall be published in the key investor information document;[109]

i) The Authority shall establish requirements for the calculation of the annual operating cost of an authorised scheme in the Investor Relations and Disclosure Regulation.

Chapter XXVIII: Powers of the Authority[110]

112. Powers of the Authority

a) The powers of the Authority may be exercised in any of the following ways:
   i. Directly;
   ii. In collaboration with other authorities;
   iii. Under their responsibility by delegation to entities to which tasks have been delegated;
   iv. By application to the competent judicial authorities.

b) The Authority shall have the power to:
   i. Have access to any document in any form and to receive a copy of it;
   ii. Require any person to provide information and, if necessary, to summon and question a person with a view to obtaining information;
   iii. Carry out on-site inspections with or without prior announcements;
   iv. Require existing telephone and existing data traffic records held by a management company, an alternative investment fund manager, investment company or depositary held under this law or by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to an investigation into infringements of this Law or, subsequent to Georgia becoming a member state of the European Union, an infringement of the current provisions of the UCITS and the AIFM Directive;
   v. Require the cessation of any practice that is contrary to the provisions adopted in the implementation of this Law;
   vi. Request the freezing or the sequestration of assets;
   vii. Request the temporary prohibition of regulated activity;
   viii. Require authorised management companies or alternative investment fund managers, depositaries or auditors to provide information;
   ix. Adopt any type of measure to ensure that investment companies, management companies, alternative investment fund managers and depositaries continue to comply with the requirements of this Law;
   x. Require the suspension of the issue, repurchase or redemption of participations in the interest of their holders or of the public;
   xi. Withdraw the authorisation or registration granted to a collective investment scheme

[109] The key investor information document establishes that costs must be disclosed as the 'ongoing charges' of a fund which are essentially all costs other than cost of buying and selling scheme investments, borrowing and taxes – Georgia will have to follow this model.
[110] This may to an extend duplicate the powers under the Securities Law or NBG Law and can be deleted as long as the corresponding powers appear in those laws and apply to all authorised persons

xii. Withdraw the authorisation granted to a management company, alternative investment fund manager or a depositary;
xiii. Refer matters for criminal prosecution;
xiv. Request that auditors or experts carry out verifications or investigations.

113. Co-operation in Supervisory Activities

a) A foreign regulatory authority may request the cooperation of Authority (or vice versa) in a supervisory activity or for an on- the-spot verification or in an investigation in the territory of the latter within the framework of their powers. Where the Authority receives a request with respect to an on-the-spot verification or an investigation, it shall perform one of the following:
i. Carry out the verification or investigation itself;
ii. Allow the requesting authority to carry out the verification or investigation;
iii. Allow auditors or experts to carry out the verification or investigation.

b) In the case referred to in point a) i) the regulatory authority which has requested cooperation may ask that members of its own personnel assist the personnel carrying out the verification or investigation. The verification or investigation shall, however, be the subject of the overall control of the regulatory authority in the country on whose territory it is conducted;

c) In the case referred to in point a) ii) the regulatory authority of the country on whose territory the verification or investigation is carried out may request that members of its own personnel assist the personnel carrying out the verification or investigation;

d) The Authority may refuse to exchange information or to Law on a request for cooperation in carrying out an investigation or on-the-spot verification only in the following cases:

i. The investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public order of the country addressed in particular the fight against terrorism and other serious crimes;
ii. Compliance with the request is likely to affect adversely its own investigation, enforcement activities or, where applicable, a criminal investigation;
iii. Judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the country addressed;
iv. Final judgment has already been delivered in the country addressed in respect of the same persons and the same actions.

114. Administrative Penalties

a) The administrative penalties that may be applied include:
i. A public statement identifying the person responsible and the infringement;
ii. An order requiring the person responsible to cease the conduct and desist from a repetition of that conduct;
iii. In the case of an authorised collective investment scheme, a collective investment scheme in transferable securities, a management company, an alternative investment fund manager and a depositary, withdrawal of authorisation;
iv. A temporary, or for repeated serious infringements, a permanent ban against a member of the management body of the management company or investment company or against any other natural person who is held responsible, from exercising management functions in those or other such companies;
v. In the case of a legal person, maximum administrative pecuniary sanctions of the Georgian Lari equivalent of EUR 5,000,000 or 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body; in the case the person is a parent or subsidiary of a company that has to prepare consolidated accounts the relevant total annual turnover will be the total annual turnover or the corresponding type of income in accordance with relevant law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent scheme;
vi. In the case of a natural person, maximum administrative pecuniary sanctions of at least the equivalent in Georgian Lari of EUR 5,000,000;
vii. [or as an alternative to v) and vi), maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the infringement where that benefit can be determined even if it exceeds the maximum amounts in v) and vi).]

115. Application of Penalties

a) Penalties shall be applied in the case of:
   i. Acting as a scheme without authorisation;
   ii. Acting as a management company or alternative investment fund manager without authorisation;
   iii. Acting as an investment company without authorisation;
   iv. A qualifying holding in a management company or alternative investment fund manager is acquired, directly or indirectly, or such a qualifying holding is further increased so that the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the management company or alternative investment fund manager would become its subsidiary, without notifying in writing the regulatory authority of the management company or alternative investment manager in which the acquirer is seeking to acquire or increase a qualifying holding;
   v. A qualifying holding in a management company or alternative investment fund manager is disposed of, directly or indirectly, or reduced so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% so that the management company or alternative investment fund manager would cease to be a subsidiary, without notifying the regulatory authority of that person in writing;
   vi. A management company or alternative investment manager [or depositary?] has obtained an authorisation through giving false statements or any other irregular means;
   vii. An investment company has obtained an authorisation through giving false statements or any other irregular means;
   viii. A management company or alternative investment manager, on becoming aware of any acquisition or disposal of holdings in their capital that cause holdings to exceed or fall below one of the thresholds of the [new securities law/MIFID Article 11 (1)] fails to inform the Authority of this acquisition or disposal;
   ix. A management company or alternative investment manager fails to inform the Authority at least once per annum of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings;
   x. A management company or alternative investment manager fails to comply with procedures and arrangements imposed under Article 66 a) xv) and Article 71 c) xiv) respectively;
   xi. A management company or alternative investment manager fails to comply with structural and organisational provisions under Article 66 a) xvi) and Article 71 c) xv) respectively;
   xii. A management company or alternative investment fund manager fails to comply with requirements related to delegation of functions under this Law or regulations made thereunder;
   xiii. A management company or alternative investment fund manager fails to comply with Conduct of Business Regulations under the [new securities law];
   xiv. A depositary fails to perform its tasks under Article 90 e) to k);
   xv. A management company repeatedly fails to comply with obligations concerning the investment policies of authorised scheme;
   xvi. A management company fails to employ a risk management process or a process for accurate and independent assessment of the value of Over the Counter Derivatives as laid down in Article 97 c) vi) (3);
   xvii. A management company or alternative investment fund manager repeatedly fails to comply with obligations concerning information to be provided to investors under this Law or regulations made thereunder.

116. Chapter XXIX: Transitional

USAID Governing for Growth (G4G) in Georgia

Deloitte Consulting Overseas Projects LLP

Address: 85 Z. Paliashvili Street, Tbilisi

Phone: +995 322 240115 / 16

E-mail: info@g4g.ge