EUROPEAN BANKING GUIDE FOR NONPROFITS

HOW TO OPEN AND MANAGE AN ORGANIZATIONAL BANK ACCOUNT

European Center for Not-for-Profit Law

PILnet

GEORGIA

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European Center for Not-for-Profit Law Stichting (ECNL)

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PILnet

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1. OPENING AN ORGANIZATIONAL BANK ACCOUNT

a. What are the requirements to open an organizational bank account?

i. Do organizations have to be physically present in the country to open a bank account? I.e., can they operate in country X but have a bank account in country Y?

Organization does not have to be physically present in Georgia to open a bank account. It can operate in country X but have a bank account in Georgia. The presence of a statutory representative is not required, however in this case organization would have to provide the bank with additional documents requested by it in each case. We contacted one of the biggest commercial banks in Georgia on no name basis and they have informed us that such information may include the information on the activities of the organization and its connection with Georgia.

ii. Are there specific requirements for CSOs to open accounts by law or asked in practice by the banks (e.g, years of operations, annual turnover, to have director or member of governing body to be national of the country)

No, there are no specific requirements.

iii. Who is authorized/required to open a bank account? Can this be done online, or that person needs to be present in the country? In case of requirement of presence can this be fulfilled by signing the paperwork at an embassy or notary?

Generally, a person responsible for the management and representation of the legal person is authorized to open a bank account on behalf of that legal person. Alternatively, a person responsible for the management and representation of the legal person can issue a Power of Attorney and authorize another person to represent the entity with the bank and open a bank account on its behalf. An authorized person needs to be present in the country. Hence, a bank account can be opened by singing the Power of Attorney, authenticating it and sending it in the material form.

iv. What is the process of setting up a bank account? E.g., how long it takes, is there a practice to have an interview in the bank?

Generally, no interview is required for setting up a bank account. The representative of the legal person addresses the relevant bank with the application and relevant documents.

Based on the information provided by one of the largest commercial banks in Georgia, the following documents are usually required for the opening of a bank account:

1. Registration application of the legal person or the charter (if any);
2. Extract from the registry of entrepreneurs and non-entrepreneurial (non-commercial) legal entities;
3. Information on the founders issued by the chairmen or founding documents;
4. Statement of the representative on the founder holding 25% or more of the shares or on the persons having controlling influence and their documentation.;
5. Signature sample of the representatives and persons authorized to manage the accounts;
6. ID-s of the representatives and persons authorized to manage the accounts;
7. Document containing the information on the management body of the legal person – if such information can be established based on other documents submitted for opening a bank account, such document is no longer required.

If there are specific conditions that draws attention of the bank some additional information may be required.

The account is usually opened in one or two days. Please note that Under Article 211(4) of the Law of Georgia on Commercial Banks, banks operating in Georgia have the right to refuse to open an account or provide service without any justification.

2. BANKING ACTIVITIES

a. What customer due diligence requirements are in place and what is their impact on civil society organizations' banking activities?

There are no customer due diligence requirements for opening a bank account. However, under Article 11(1)(a) of the Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism (hereinafter the "**Money Laundering Law**") banks have the obligation to carry out general preventive measures when establishing a business relationship.

Under such measures bank should (Article 10(1) of the Money Laundering Law):

a. identify and verify a client based on a reliable and independent source;
b. identify a beneficial owner and take reasonable measures for the verification thereof based on a reliable source;
c. establish the goal and the intended nature of a business relationship;
d. monitor a business relationship.

b. Which internal principles or official (central bank) "suspicious transaction" monitoring criteria are in place affecting the civil society organizations? Is it publicly available?

There are no special regulations in place for civil society organizations.

Generally, banks must comply with the Money Laundering Law, as well as the Agreement between the Government of the United States of America and the Government of Georgia to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act (FATCA) (Article 211(1) of the Law of Georgia on Commercial Banks). Both legal documents are publicly available.

Money Laundering Law defines the "suspicious transaction" as a transaction subject to a reasonable belief that it was prepared, made or completed on the basis of illegally acquired property or income gained from such property, and/or for the purpose of money laundering, or that is related to the financing of terrorism.

Banks have the obligation to examine an extraordinary transaction, its purpose, and grounds and, if necessary, carry out the intensified monitoring of a business relationship to detect a suspicious transaction (Article 20(2) of the Money Laundering Law). For the purposes of the Law, an extraordinary transaction is a complex, extraordinarily large transaction or an extraordinary set of transactions without a clear economic (commercial) or legal purpose (Article 20(1) of the Money Laundering Law).

Generally, under Article 8(1) of the Money Laundering Law banks have the obligation to introduce an effective system for the evaluation and management of the risks of money laundering and the financing of terrorism, considering the nature and volume of their activity. Furthermore, banks have the obligation to create an appropriate electronic system for recording and processing data, in order to retain information (document(s)), in order to detect related transactions, an extraordinary transaction, or a suspicious transaction (Article 27(6) of the Money Laundering Law).

c. Do the banks in the country of operations have any restrictions/limitations to bank transactions and transfers to certain jurisdictions (such as high-risk ones).

There are no *per se* restrictions or limitations. However, banks have the obligation to carry out intensified preventive measures if (Article 19(2) of the Money Laundering Law):

a. a client is a legal person registered in a high-risk jurisdiction, or a branch of said legal person registered in Georgia;
b. a client is a natural person whose place of registration and/or factual place of residence is in a high-risk jurisdiction;
c. a transaction is made or completed through financial institutions located in a high-risk jurisdiction;

and when the following grounds exist (Article 11 (1) of the Money Laundering Law):

a. the establishment of a business relationship;
b. the entrance into a single transaction if the total amount of the transaction or related transactions exceeds 15 000 GEL, or if in foreign currency, the equivalent of 15 000 GEL;
c. a one – time transfer of monetary funds if the total amount of the transaction or related transactions exceeds 3 000 GEL, or if in foreign currency, the equivalent of 3 000 GEL;

d. the accuracy of identification data obtained through the implementation of preventive measures or their compliance with the requirements of the Law are in doubt.

If there is any suspicion of money laundering or the financing of terrorism, banks are obliged to implement the preventive measures irrespective of the amount limit or any other ground (Article 11 (4) of the Money Laundering Law).

i. If yes, is the list of jurisdictions publicly available?

Yes, the list is approved by the Order of the President of the National Bank of Georgia and is published on the official legislative herald of Georgia – Matsne.gov.ge. You can see the official document here.

ii. What would be the procedures the bank would follow in this case for their CSO clients?

There are no specific procedures for CSO, hence, the general rule applies. In this case, banks would have to carry out both general and intensified preventive measures (Article 19(2) of the Money Laundering Law). Banks are obliged to implement such preventive measures in accordance with a client's risk level before a single transaction is made and a business relationship is established, as well as in the course of a business relationship with appropriate periodicity and when essential circumstances related to the client are changed (Article 12(1) of the Money Laundering Law).

General preventive measures include those listed in the answer to question 3(a) of this document.

Under intensified preventive measures banks should (Article 18(1) of the Money Laundering Law):

a. obtain additional information on the property and activity of a client and/or a beneficial owner;
b. increase the frequency of updating the identification data of a client and/or a beneficial owner;
c. obtain additional information on the intended nature of a business relationship, including the goals and grounds of prepared, made or completed transactions;
d. receive a permit from the management to establish or continue a business relationship;
e. take reasonable measures to determine the origin of the property and financial resources of a client;

f. carry out the intensified monitoring of a business relationship, including increasing the number and/or the frequency of risk management measures, and detecting a set of transactions that needs further consideration.

If necessary, banks should be obliged to implement further effective measures in relation to a client assigned to a high-risk level in order to manage detected risks (Article 18(2) of the Money Laundering Law).

3. OBLIGATIONS AND REPORTING REQUIREMENTS

a. Are banks required to provide CSO clients' financial information to CSO regulatory authorities or public officials? If yes, under what circumstances must banks do so, and what types of information must they provide?

Confidential information may be communicated only to the National Bank within its authority (Article 17(1) of the Law of Georgia on Commercial Banks). Information on any agreement (including in the case of an attempt to conclude an agreement), payment operation, account, transaction conducted from this account and account balance may be granted to a party to a respective agreement, in the case of payment operation – to the person carrying out a payment and/or receiving person, a respective account holder and their representatives, and in the cases provided for by the legislation of Georgia – to the Financial Monitoring Service of Georgia, and to persons that are authorised to execute the enforcement subordinate acts defined under the Law of Georgia on Enforcement Proceedings during the course of their enforcement; during the inspection provided for by the Law of Georgia on Personal Data Protection – to Personal Data Protection Service; to a tax authority, based on a judicial decision under the Code of Administrative Procedure of Georgia, and the Agreement between the Government of the United States of America and the Government of Georgia to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act (FATCA); also, to the Legal Entity under Public Law called Deposits Insurance Agency, in the cases provided for by the Law of Georgia on Deposits Insurance System. This information may also be issued based on the relevant court decision (Article 17(2) of the Law of Georgia on Commercial Banks).

b. What obligations do banks have to protect the privacy of clients' information?

Banks have the obligation to keep confidential the facts relating to the account and other facts made known to it in the course of business relations with the account holder except as provided by law or except where the matter concerns ordinary banking information that is not prejudicial to the account holder's interests. This obligation survives the termination of the contract (Article 863 of the Civil Code of Georgia).

This is the general requirement. Banks usually have their own privacy policies. For further information see the privacy policy of one of the largest banks in Georgia.

c. Are there specific reporting obligations for banks to inform governments on civil society banking in certain circumstances?

There are no specific rules on civil society banking.

Generally, banks must submit to the Legal Entity under Public Law called the Financial Monitoring Service of Georgia report on a suspicious transaction or the attempt to prepare, make, or complete such a transaction (Article 25(1) of the Money Laundering Law).

d. Are you aware of any change in regulation/practice due to the Russian sanctions?

No regulatory changes have been made in Georgia due to the sanctions.

As for the practice, generally, banks tend to make further inquiries when foreign nationals are involved and require additional documents. Several commercial banks in Georgia are more alert now where Russian and Belarus nationals are involved, as they consider these countries to be of high risk due to the existing circumstances. This may lengthen the procedure for opening a bank account.

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