

Legal Memo #11/01/23

Factual circumstances: Non-Fungible Equity is a subcategory of NFT which should be registered as a securities class and insured to protect NFE Holders. The NFE (Non-Fungible Equity) represents a portion of diverse real world business assets and works to minimize risk, accumulate and distribute DeFi allocations in the DAO according to the governance portfolio management rules.

Question: What are the ways to register NFE as a security in Georgia?

To answer the above-mentioned question, we have analyzed the following laws:

- [Law of Georgia on Entrepreneurs](#)
- [The Law of Georgia on Investment Funds](#)
- [Law of Georgia on Securities Market](#)
- Explanatory card on the draft of the Organic Law of Georgia "About the National Bank of Georgia" regarding making amendments to the Organic Law of Georgia"

We have analyzed two possibilities:

1. To register NFEs as traded securities according to the Georgian Law on Securities Market.
2. To register a common investment fund according to Law on Georgian on Investment Funds.

As a result, we conclude that at this stage it is practically impossible to use the above-mentioned two possibilities, however, a solution to register a joint stock company, which will replicate digital transactions to the conventional world can be an alternative solution.

Possibility 1. The first possibility was to register NFEs as publicly traded securities according to the Georgian Law on Securities Market. The Georgian law does not provide for the separate denomination of NFT given as NFE to be defined as a security. This means that it is impossible to register investment securities or funds through crypto assets in Georgia.

Argument 1 - if we consider DAO to be a company that will issue shares (in the form of NFE), it needs to go through a complex regulatory procedure set for the publicly traded securities according to the

Georgian law on Securities Market. A complex regulatory procedure means indirectly applying legislation adapted to conventional activities to digital activities. No matter how much effort we put into it, the securities issued by DAO cannot be considered as analogs of conventional securities, and the existing regulations on securities market in Georgia will not apply to NFEs. As a result, the DAO NFEs will not fall under the regulation of securities market regulated by the National Bank of Georgia.

Possibility 2. The second possibility was to register a common investment fund according to Law on Georgian on Investment Funds. The Georgian law on Investment Funds only regulates the investments raised through traditional monetary methods.

Argument 2 - if we consider that the owners of NFE create an investment platform that will attract funds and invest it, we can consider it as an analogue of a conventional investment fund (in particular, Common Fund) in the digital environment. However, we face the same problem here. The Investment Fund Law regulates only the management of investments raised and managed by traditional monetary methods. Raising investment through the democratized finance rules is something that is not regulated by this law. The same can be said about the democratic method of governance used in the case of DAO investments. Therefore, despite our efforts, we will not be able to register an investment company or fund with the existing business model in Georgia.

We have also contacted local brokerage and asset management companies, who confirmed our conclusion that it is practically impossible to register investment securities or funds through crypto assets in Georgia.

Furthermore, we have analyzed the explanatory card of legislative changes initiated by the Parliament of Georgia on the regulating the virtual assets. According to the mentioned legislative changes, from 2023, only convertible virtual assets fall within the scope of regulation of the National Bank of Georgia, which **excludes the regulation of such virtual assets that are not subject to transfer or exchange** and are not used for payment and/or investment purposes. These include, for example, loyalty program points, gaming points, and others that can only be used indoors. **The concept of virtual asset also excludes the so-called Regulation of non-fungible token (Non-Fungible Token)**, which is unique, non-fungible and has a collectable nature.

Accordingly, we believe that at this stage, adjusting any kind of regulation for the existing project is not appropriate and possible.

Proposed solution: As a solution, we offer to register a traditional joint stock company, where the company will issue a number of shares equal to tokens which will be owned by the DAO. Shares that are converted into NFEs may be converted into voting shares according to the Georgian law. The rest of the shares will be left as non-voting shares.

This model will give us the possibility to register the shares, but the shares will not be offered to the public. Accordingly, DAO will remain outside the regulation of the National Bank of Georgia, but it will have shares, which will be recorded and documented by the registrar.

At a later stage, I will be able to provide you with a detailed analysis of the relevant articles of the above-mentioned laws. Assess the risks, write to you the responses of other regulatory authorities to our requests, and describe in detail the procedures for how our proposed plan will work.

Prepared by PB Services LLC

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