



Investors Council

Investors Council Secretariat

Recommendations on the Ban of Ownership of the Agricultural Land by Foreigners

Investors Council Land Law Working Group

Below recommendations relate to the proposed ban of ownership of the agricultural land by foreigners/Georgian companies with foreign shareholders.

The issue became particularly critical after the second hearing on the draft constitutional changes by the Parliament of Georgia and the initiation of draft changes to the existing Law on Agricultural Land Ownership.

Background

Georgian farm yields are generally 25% that of Western Europe and only half the arable land is used.¹ Hence, Georgia could eventually produce up to eight times the food it currently does. However, this will require a great deal of fixed capital investment on-farm (GEL 12,000-50,000/Ha depending on the crop). An approximate estimate would be USD \$7 billion in on-farm capital investment on Georgia's 1 million hectares of arable land. Georgia does not have those resources, privately or at state level, and neither do foreign donors to Georgia, thus foreign private capital is a necessary part of the investment mix for Agricultural development.

Experience suggests that FDI, commercial farming and western best practices, combined with the modern post-harvest management, cold chain infrastructure and modern logistics lead to increased yields, greater prosperity, and financial security for all participants. Local rural communities probably need a funded western / IFI program to gain confidence and move forwards.

The majority of stakeholders agree that a ban on the ownership of the agricultural land by foreigners will most likely cause hindrance of economic and agricultural development in Georgia. However, provided that the relevant legislative changes are passed, the high tech FDI in the agricultural sector may be less jeopardised.

To address this issue of utmost importance the ICS established a working group comprising IC members and other stakeholders to provide recommendations to the Georgian Government. The present document summarizes the main points based on the recent discussions:

¹ <http://www.geostat.ge>; <http://moa.gov.ge>; <http://data.worldbank.org>; <http://ec.europa.eu>; 2014 Agricultural Census

- At the current time the constitutional change reads, “land” rather than “agricultural land”. If left unchanged (just “land”), the impact on the investment will be disastrous, as it will make it more or less impossible for foreign investors including IFIs and banks, to invest in large categories of the Georgian economy.

The new Art. 19.4 of Draft Changes to the Constitution of Georgia should read: “***Agricultural land*** as a resource of special significance may only be in the ownership of the state, a municipality, a Georgian citizen, an association of Georgian citizens, or a legal entity incorporated in Georgia with majority Georgian Nationals’ shareholding. Exceptions thereto *can be* stipulated by an organic law adopted by two thirds of the total number of the members of the Parliament of Georgia.”

- Exceptions should explicitly be mentioned in the constitution, something like "Exceptions to this rule will be made under a separate organic law";
- The exceptions will have to be stipulated in a clear and transparent way in the Organic Law, in order to limit uncertainties among the potential investors.
- The decision making process should be streamlined and centralized.
- There is also significant concern that the suggested constitutional amendment appears to be in conflict with most of the more than 30 Bilateral Investment Treaties (BIT) that Georgia has signed with other countries. This could make any such law even more damaging to international investor relations and subject to legal challenge. The BIT with the United States (1995), Article II, Paragraph 1, states that US Investors and Companies cannot face more difficult investment terms than Georgian nationals. Furthermore, since many other BITs invoke Most Favoured Nation clauses, this provision would also apply to them.
- The organic law should include at least the following considerations:

A statement that the ban does not affect already purchased property. The law needs to state explicitly that existing investors can pass on ownership through inheritance, otherwise transfer or sell their shares to any other foreign persons they choose. Allowing such flexibility sends a clear signal that existing investors in Georgia are protected. Without this measure, there is a significant risk that investors in all fields will conclude that laws could change to constrain their rights retroactively. This could do a huge damage to any kind of FDI.

Commercial Banks, Microfinance Institutions, Merchant Banks, Investment Banks, Private Equity Funds and International Financial Institutions, that own land as a result of foreclosure on defaulted debt, should ideally be excluded from the Ban. However if

this is not accepted, then these institutions should be given a minimum term of 4 years to liquidate these assets. There should be no discrimination regarding the country of domicile of the financial institution.

Inalienable purchasing and thus ownership right of agricultural land for companies with a minority (lower than 50%) foreign ownership, in the future. Minority shareholdings must remain attractive. (Otherwise foreigners will be excluded from even being PART of any agricultural development.)

Inalienable ownership right of agricultural right for companies who can demonstrate capital-intensive investment².

Laws governing land ownership are commonplace internationally, but small changes can create large and negative unintended results. To develop the best possible law, in agreement with Georgia's overall European and Atlantic path, it is necessary to integrate international expertise in the development of the organic law. This expertise should be mobilized, from partners with relevant experience. This is particularly relevant also with regards to the bilateral investment treaties. The ICS can help identify and mobilize donor financing for such technical assistance work.

There should be extensive consultation with all the stakeholders, including small farmers and foreign parties/players, and finally it would be helpful to obtain an in-depth understanding of the concerns the Authorities have on the matter of land ownership by foreigners in order to assess where parties can meet.

Investors Council Land Law Working Group would like to have the opportunity to review the draft law, before it goes out to the Parliament.

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On Behalf of the
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18.08.2017

² A sensible criterion is that at least GEL 15.000 be invested, per hectare. This will deter speculative purchases.