

Minutes of the Sixth Meeting of the Investors Council

**6th September 2017, 14:00 at the State Chancellery Chaired by the
Prime Minister of Georgia Giorgi Kvirkashvili**

Present at the meeting

Participating Members of the Investors Council:

- Giorgi Kvirkashvili, Prime Minister, Chair of Investors Council
- Dimitri Kumsishvili, First Vice Prime Minister, Minister of Finance
- Giorgi Gakharia, Minister of Economy and Sustainable Development
- Ilia Eloshvili, Minister of Energy
- Zurab Alavidze, Minister of Regional Development and Infrastructure
- Levan Davitashvili, Minister of Agriculture
- Zurab Dznelashvili, Acting Business Ombudsman
- Michael Cowgill, President, American Chamber of Commerce
- Samson Pkhakadze, Vice-President, Business Association of Georgia
- Zviad Chumburidze, President, EU-Georgia Business Council
- Fady Asly, Chairman, International Chamber of Commerce Georgia
- Bruno Balvanera, Director for Caucasus, Moldova and Belarus, EBRD
- Jan Van Bilsen, Regional Manager for South Caucasus, IFC
- Mariam Megvinetukhutsesi, Head of IC Secretariat

Invited Guests:

- Suma Chakrabarti, President European Bank for Reconstruction and Development
- Francis Malige, Managing Director, Eastern Europe and the Caucasus, EBRD
- Tea Tsulukiani, Minister of Justice
- Nino Gvenetadze, Chief Justice
- Giorgi Mikautadze, Secretary of the High Council of Justice
- Maia Tskitishvili, Head of the Prime Minister's Administration
- Laszlo Havas, Member of the Board of Directors, EBRD
- Francis Delaey, Deputy Director, President's Office, EBRD
- Oleksandr Pavlyuk, Senior Counselor, EBRD
- Nikoloz Gagua, Deputy Minister of Finance
- Nino Javakhadze, Deputy Minister of Economy and Sustainable Development
- Mzia Giorgobiani, Ministry of Finance
- Charles F. Seten, Economic Officer, US Embassy
- Ben Luckock, Regional Portfolio Manager, UK Embassy
- Sarah Williamson, Vice-President, American Chamber of Commerce
- Chris Schlueter, Chairman, EU-Georgia Business Council
- Irakli Aslanishvili, Executive Director, Business Association of Georgia
- George Welton, Executive Director, American Chamber of Commerce
- Zurab Katchkatchishvili, Executive Director, International Chamber of Commerce Georgia
- Tamta Shermadini, Head of Advisory Services, PWC Georgia
- Beka Injia, Georgian Chamber of Commerce and Industry, Legal Council
- Loretta Martikian, EBRD, Communications
- George Jugeli, Legal Expert, IC Secretariat
- Erekle Kokaia, Business Analyst, IC Secretariat

Opening Remarks by the Prime Minister:

Giorgi Kvirikashvili, Prime Minister in his opening remarks:

- Welcomed everyone, and extended special greetings to the President of the EBRD, Sir Suma Chakrabarti.
- Announced that there was a discussion about the ongoing programs with the EBRD delegation with the cumulative investments from the EBRD reaching 3 Billion Euros.
- Thanked the EBRD for launching the Investors Council, as an important platform for gathering stakeholders from private sector and the government to discuss the most important issues for businesses and investment climate improvement.
- Also thanked the EBRD for assisting Georgia in Judicial reform, especially in establishing Commercial Chambers, which will become a revolutionary step forward.

Suma Chakrabarti, President, European Bank for Reconstruction and Development

- Underlined Georgian-EBRD relationship as a benchmark partnership.
- Mentioned that Georgia is a leader in the second wave of transition countries, where the business climate and policy environment keeps improving.
- Underlined, that there has been a significant increase of the EBRD projects in the past 18 months. One of the reasons for such a move forward is the Investors Council.
- Noted that Georgia is in the 2nd place with respect to per capita investment by the EBRD.

Giorgi Kvirikashvili, Prime Minister:

- Thanked Bruno Balvanera and the local EBRD team for their efforts; thanked Mariam Megvinetukhutsesi for leading the secretariat work.

Mariam Megvinetukhutsesi, Head of Investors Council Secretariat:

- Welcomed the guests and thanked Minister of Justice Tea Tsulukiani, Chief Justice Nino Gvenetadze and the Secretary of the High Council of Justice Giorgi Mikautadze for joining the meeting.
- Thanked the Minister of Justice for her cooperation over the establishment of Commercial Chambers and her efforts to make the reform of the judiciary successful.
- Thanked the British Government for its interest to fund the first technical assistant project for the Ministry of Justice, which will cover risk and cost/benefit analysis, legal drafting, and developing of a structural/organizational and technical setup, as well as, financial plan and most importantly the governance structure for the commercial chambers.

Progress on decisions of the previous IC meeting dated 14 June 2017

1. Reform of Judiciary:

Presenter: Mariam Megvinetukhutsesi, Head of Investors Council Secretariat

Main Points:

- Although significant progress has been recognized vis-à-vis the criminal justice system, the civil courts, and especially commercial courts have been one of the key concerns that the investors, both domestic and foreign, have been facing in Georgia.

- In order to address part of the problems the Ministry of Justice has been leading the process of creation of Commercial and Tax Chambers within the court system in order to provide comfort to both local and international investors in making investment commitments in the country.
- ICS has been working with the Ministry of Justice to coordinate number of donors' initiatives to assist the Georgian Government in establishing the chambers.
- A number of donors have already expressed interest in providing technical assistance for this initiative.
- Dechert Consultants were engaged by the Ministry of Justice to draft the concept for the establishment of Commercial Chambers.

Comments:

Tea Tsulukiani, Minister of Justice:

- Underlined achievements in the criminal and administrative justice system, where judges have demonstrated independence in making competent decisions.
- Mentioned that the business cases still remain as a significant challenge; therefore, the establishment of Commercial Chambers remains a priority. The ministry will take time until October for consultations and discussions about the details of the concept.
- Thanked Dechert for their work; also thanked the EBRD and its president for their support of the reform, including the potential project to provide capacity building to the judges of the commercial chambers.
- Explained that drafting process will start as soon as the concept is finalized and cleared with the government and the judiciary.

Zviad Chumburidze, President, EU-Georgia Business Council:

- Expressed his delight that the Supreme Court, Courts of Appeal and City Courts started dialogue with the business community after the last IC meeting, hoping that this kind of dialogue on specific problems the businesses face, will yield a positive result.
- Announced that the EU-Georgia Business Council plans a conference on the business disputes and the court practices in nearest future.

Michael Cowgill, President, American Chamber of Commerce:

- Touched upon some of the ways to tackle problems with the judiciary discussed at the Investors Council, one of which was creating a working committee separate from the commercial chambers working group, which would work on the comprehensive judicial reform.
- Inquired about the availability of the full report prepared by Dechert.

Giorgi Kvirikashvili, Prime Minister:

- Notified the IC members that there is a special new format within the Parliament that is working on the judicial reform, with the Chairman of the Legal Committee of the Parliament, Eka Beselia leading it, and underlined that this platform is open for communication and discussions with other stakeholders.

Mariam Megvinetukhutsesi, Head of Investors Council Secretariat:

- Reminded the IC members that a new project of the capacity building for the incoming judges of commercial chambers by the EBRD will be initiated simultaneously with the first phase of Dechert/PWC project.
- GIZ will be doing the Regulatory Impact Assessment with respect to the establishment of Commercial Chambers.

- ICS will be approaching other donors including USAID and EU for further assistance to the Commercial Chambers.
- Explained that the ICS is in discussions with Eka Beselia on the ways to cooperate and share information with the newly established platform, and will be reporting to the IC on the proposed format for future cooperation.

Fady Asly, Chairman, International Chamber of Commerce Georgia:

- Commented on the Commercial Chambers initiative, and underlined two main issues to be addressed by the chambers:
- The need to expedite the process, and the lack of trust toward judges, due to perceptions of interference and distortion, which needs to be addressed immediately.
- Stated that the society has been waiting for the much-desired proactivity by the High Council of Justice in terms of disciplining the judges of questionable reputation.

Giorgi Kvirikashvili, Prime Minister:

- Agreed that the reform needs to be expedited and the courts need to be off loaded. Capacity building is necessary for judges who will be engaged in commercial cases.
- Disagreed with Mr. Asly regarding the lack of trust, and stated that the trust is being rebuilt.

Giorgi Mikautadze, Secretary of the High Council of Justice:

- Stated, that the justice reform has brought positive results, evidenced by increased number of litigations, which caused such a court overload.
- Expressed his desire to take actions to tackle the challenges of the judiciary, to participate in discussions and to listen to the stakeholders.

2. Law of Entrepreneurs

Presenter: Dr. George Jugeli, Legal Expert, IC Secretariat:

- Announced that the working group on company law reform completed the review of the new draft law of entrepreneurs developed by the Ministry of Justice in cooperation with donors and other stakeholders, to contribute to a more coherent and predictable legal and judicial practice.
- Explained that the comments provided by the IC Company Law Working Group, which consisted of the leading professionals in the field, are intended to assist drafters to make the regulations more flexible and business friendly.
- Expressed his hope that their recommendations will be reviewed and considered before the draft goes out to the Parliament

Tea Tsulukiani, Minister of Justice:

- Notified the audience that the impacts the new provisions can have on economic growth of the country will be analyzed together with the Ministry of Economy and Sustainable Development and the Ministry of Finance; once the analysis is ready the draft will be introduced to the Parliament.

Mariam Megvinetukhutsesi, Head of Investors Council Secretariat:

- Requested the Ministers to consider Businesses' interests and their recommendations during the analysis.

Giorgi Kvirikashvili, Prime Minister:

- Encouraged the Ministers to consider Mariam Megvinetukhutsesi's request to factor in the businesses' interests while reviewing the proposed changes.

Decision:

The ICS to meet with the relevant Ministries' representatives to discuss follow up and discuss the comments before the Parliamentary submission.

Discussion Topics

Legislative changes to Agricultural Land Ownership Rights

Presenter: Mariam Megvinetukhutsesi, Head of Investors Council Secretariat

- Presented Land Ownership Working Group's opinion about the changes in the agricultural land ownership draft. The detailed recommendations can be found in the Letter addressed to the Members of the IC attached to the minutes as Annex 1.

Giorgi Kvirikashvili, Prime Minister:

- Agreed that the consultations are necessary to formulate the criteria for the exceptions with respect to ownership of agricultural land by foreigners, to be stipulated by the organic law.
- Agreed that the criteria for the exceptions will be discussed in detail with the stakeholders
- Announced that Bilateral Investment Treaties (BIT) are being examined to identify if there is a conflict between the treaties and the language of the constitution.
- Confirmed that the law will not be retroactive.

Bruno Balvanera, EBRD Director for Caucasus, Moldova and Belarus

- Inquired about the language to be used in the constitution

Giorgi Kvirikashvili, Prime Minister:

- Confirmed that the wording in the constitution will read "Agricultural Land" and this has always been intended.

Samson Phakadze, Vice-President, Business Association of Georgia:

- Thanked the President of the EBRD for his support of Georgia
- Agreed with Mariam Megvinetukhutsesi's comments and expressed the hope that comments prepared by the ICS working group would be considered.

Michael Cowgill, President, American Chamber of Georgia:

- Stated that the longer the moratorium on land ownership lasts the worse it will be for Georgia's investment climate.

Tea Tsulukiani, Minister of Justice:

- Explained that all BITs are being studied as well as all the recommendations supplied and the results will be sent to the Parliament and the Government members.
- Explained that the moratorium will last until the new organic law enters into force.

Chris Schlueter, Chairman, EUGBC:

- Underlined that it would be useful to leave an open window for banks in the land law, as different bankers might have different opinions on collateral period of agricultural land ownership.
- Stressed the importance of non-retroactivity of the ban and the importance of allowing minority foreign ownership.

Francis Malige, Managing Director, Eastern Europe and the Caucasus, EBRD:

- Praised Georgia as the country where he can have productive and frank conversations with the Government.
- Stated that 2 years of ownership of agricultural land by banks will not be enough for two reasons: firstly, becoming a full owner can be a time consuming process due to disputes and secondly, as agriculture is a cyclical market (due to weather changes) it is harder to use agricultural land as collateral, making banks more reluctant to give funding, thus resulting in larger haircuts when evaluating land as collateral.
- Explained that if Georgia becomes a member of EU this ban will be incompatible with the union, as Georgians and citizens of other EU states should be treated equally.
- Stressed the importance of leaving agricultural land as solely agricultural for use, to avoid speculations.
- Underlined the gap between the productivity of Georgian and European, namely French farmers, indicating that Georgia needs to learn from foreign farmers to address the problem of productivity.

Giorgi Kvirikashvili, Prime Minister, Chair of Investors Council:

- Reassured everyone that the respective legislation will be in line with EU regulations.

Levan Davitashvili, Minister of Agriculture:

- Presented the reforms and programs in agriculture that were introduced during past 5 years and how they affected the agriculture and the agricultural land market, pointing out that the overall trend has been positive.

Jan Van Bilsen, Regional Manager for South Caucasus, IFC:

- Expressed his gratitude for addressing and reacting to the paper prepared by the working group, hoping that all stakeholders will be heard

Mariam Megvinetukhutsesi, Head of Investors Council Secretariat:

- Requested the Prime Minister to have the draft law provided to the ICS Working Group for a review before the draft is passed to the parliament.

Giorgi Kvirikashvili, Prime Minister, Chair of Investors Council:

- Underlined that the working group would be welcome to review the draft.

Decision:

The draft of the Organic Law on Land Ownership to be shared with the ICS working group for review and comments.

It was agreed that next meeting would take place in the first half of December 2017

Agenda of the next meeting among other issues will include:

1. Tourism Board Establishment cooperation with the MoESD
2. Tax Administration: new technical assistance Project lead by PWC

Giorgi Kvirikashvili

Chair of investors Council

Mariam Megvinetukhutsesi

Head of IC Secretariat