

## Overview of interventions supporting land-related investments





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# Introduction

Governments often use various instruments of investment incentives/promotion for the formation of investments in order to influence on the quality and quantity of investments made in this or that country. An “investment incentive” is a targeted measure provided by a government for an investor (in favor of an investor) to make a new investment or to expand the existing one. In such a case, the purpose of the government is to influence over the size, location, outcomes, sector, and other characteristics of the investment. According to the guide issued jointly by the Food and Agriculture Organization of the United Nations, (UN FAO) and Columbia Center on Sustainable Investment in 2021, which refers to the issues on incentives for responsible investments in agriculture and food systems<sup>1</sup>, investment incentive instruments can be divided into five groups, namely:

- Financial incentives: Non-tax-based financial supports (for example, grants, subsidies, loans)
- Technical or business support incentives: Can include assistance in obtaining licenses and permits, technological packages,” research and development”, and extension services.
- Tax incentives - Tax-based measures (for example, tax benefits, reduction of rates of income taxes).
- Regulatory incentives – creating incentives by allowing exceptions to general (for example, social, labor or environmental) regulatory rules.
- Other incentives – all other incentives that do not fit into the existing established categories listed above (for example, government procurement, or the creation of infrastructure for a specific purpose, in a new or specific field).

Investment incentives are introduced in many ways. The most common ways are:

- (a) Non-institutionalized special government programmes that are not necessarily directly prescribed in law;
- (b) Laws, subordinate acts, other regulations;
- (c) Contracts signed between the investor and a government entity.

## (a) Non-institutionalized special government programmes

As a rule, such programmes are not required by law, but the government adopts them to encourage investment in a specific field or a specific segment of business (for example, small entrepreneurs, or young

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<sup>1</sup> Bulman, A., Cordes, K.Y., Mehranvar, L., Merrill, E. and Fiedler, Y. 2021. Guide on incentives for responsible investment in agriculture and food systems. Rome, FAO and Columbia Center on Sustainable Investment. <https://doi.org/10.4060/cb3933en>

entrepreneurs). These programs are often funded by donor organizations and cease to operate after the donor funding runs out.

#### (b) Adoption of a legislation

Requirements on investment [incentives] can be scattered across the special investment regulatory normative acts, as well as in legislation regulating taxes, extractive industries, agriculture, free trade zones or other special economic zones. This approach, unlike the previous approach, provides more consistency and continuity in investment support. This approach might also create a good basis for introducing and systematizing mechanisms of transparency or accountability in investments.

International investment treaties are the parts of this approach. Such approaches influence both national legislation and specific investment projects. Proponents of international investment treaties – as an instrument, argue that such treaties can lead to increased investment flows between countries and investment incentives. However, on the other hand, based on the world’s experience, such treaties often not only do not deliver the promised benefits, but also increase the societal costs and sometimes even hinder the achievement of the development goals set by the host country.

#### (c) Investor-state contracts

Contracts between the state and a large-scale investor is a common practice when the state is eager to promote a specific investment project. As a rule, such contracts generally offer a package of incentives to the investor in exchange for certain investment commitments. Beyond the specific financial and tax incentives, such contracts may also offer regulatory incentives. This is sometimes done, for example, through a “stabilization” provision, which aims to exempt investors from changes in the law that may have the effect of increasing their costs of doing business. Good practice suggests that “stabilization” provisions should be avoided in the contract. In addition, such contracts themselves are problematic in another way: the nature of the obligations assumed by the contract depends on the negotiating parties, their ability to trade; contracts also need proper monitoring and administration; In case of agreements, the risk of corruption increases; Contracts are usually concluded with large investors and this grants them in a privileged position compared to entrepreneurs operating at a smaller scale.

As mentioned, one of the investment incentives are benefits in regulation. According to the above-mentioned guide, two more groups of benefits can be singled out here when investments are related to the land. These two groups are described below.

##### 1. To allow exceptions to the requirements set by the country’s legislation.

This is reflected in a weakening of environmental, labor, or other social laws. This approach can be applied to specific investment projects and, for example, give foreign investors special procedural rights. In

addition, such approaches can be applied in free trading zones or other special economic zones. Experience shows that such incentives undermine human rights. Furthermore, there is little evidence that such incentives increase investment.

2. To introduce special mechanisms for land tenure protection for large-scale investors.

In countries with weak or transitioning land governance systems: land tenure and use rights are often contested; Also, the legitimate rights of owners and users are often not formalized. Although governments effort to regulate these issues, due to the complexity, the process is slow and protracted. In this context, the government may attempt to give priority to the recognition of land tenure right to a large investor – to single out and ensure to recognize the investor's rights (taking inventory and demarcation of land needed for a project).

Obviously, obtaining the land tenure rights is greatly important for the investor (especially, for some certain investments); But at the same time, such a selection of an investor/investment project by the government contains significant risks. In particular: prioritizing tenure protections for large-scale investors creates risks that legitimate tenure rights claims to the land may be ignored. In such case, there is an increased possibility that the investor will ultimately still not be able to enjoy the land tenure rights granted by the government, as those persons having legitimate rights to the land will continue to dispute. This may lead to costly conflict with local communities, or costly disputes with the government regarding unfulfilled obligations to protect the investor's interests.

Beyond the above-described incentives, governments sometimes take other land-related actions with the aim of supporting investment projects or investors:

- Using the power of compulsory acquisition (eminent domain) to acquire land so that it can be offered to an investor for the investment project.
- Investor is offered the land from the so-called land bank. A land bank is formed from plots of land that the government acquires in advance, before this or that investor appears. In such case, there is an extreme power differences between the parties (government and the legitimate tenure rights holders).
- The government registers land as state-owned and does not consider the claims of legitimate tenure rights holders whose families and communities have used and relied on the land for generations. The government transfers such large land areas with cheap rent (e.g., lease) to the investor.

According to the above-mentioned guide, in countries of weak or transitioning land governance systems, such actions are deeply concerning. When applying the above-described actions, the government may

violate human rights obligations and result in conflicts and severe negative outcomes. Whether such actions should be considered “investment incentives” is debatable.

## **Investment Legislation of Georgia**

The present chapter reviews the legal framework regulating the investment field. This field is distinguished by its complexity, concerning the regulation of practically all directions of economic activity and state administration. Thus, for the purposes of this study, attention is focused on the main normative acts regulating the investment; however, the norms, directly or indirectly associated with (a) lands and/or (b) transparency of the decision-making process and opportunities of public participation, are reviewed even in these acts.

### **Law of Georgia on Promotion and Guarantees of Investment Activity**

The Law of Georgia on Promotion and Guarantees of Investment Activity was adopted in 1996 and it is one of the first laws <sup>2</sup> in the history of the independent Georgia that forms the general framework of investment regulation. The Law has been amended for several times since its adoption; Finally - in June 2019.

Based on the title of the Law and its preamble, the purpose of the Law is “to define a legal order to promote investments”. It refers to both foreign and local investments.

Pursuant to the Law, “Investments are considered to be all types of property and intellectual values or rights that will be invested and used in entrepreneurial activity carried out in the territory of Georgia to gain potential profit” (Article 1). Also, the Law explains the values or rights defined by this Law and “rights of using land or other natural resources (including concessions)” are included in this list.

Article 3 of the Law defines rights of an investor and specifies that rights and guarantees of foreign investors may not be less than rights and guarantees enjoyed by natural and legal persons of Georgia, except for cases defined by legislation.

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<sup>2</sup> This law was preceded by the law of Georgia "On the Procedure for Granting Concessions to Foreign Countries and Companies" adopted in 1994. This Law determined general principles and procedures for issuing concessions to foreign investors for the procession of natural resources and for other related economic activities in the territory of Georgia, on the basis of a special agreement. The Law was repealed in 2018 and replaced by another law that is discussed in the following chapter. The above-mentioned law was also preceded by the Law of the Republic of Georgia "On Foreign Investments" adopted in 1991, which was repealed in 1995.

Investment promotion measures are considered as follows by the Law: (1) the Law allows that the state shall carry out state policy related to development and implementation of state programmes for the promotion of investment activities; (2) establishing of the Investment Centre of Georgia at the Ministry of Foreign Affairs of Georgia, functions of which are: “provision of services for investors and rendering assistance in their entrepreneurial activities” and “attraction of investments, identification of foreign countries and companies and establishment of individual contacts with them”.

One-point Article 4 of the Law is dedicated to obligations of investors, who shall be obligated to carry out activities according to the legislation of Georgia, including the legislation related to environment and health protection.

For the purposes of this study, Article 12 of this Law, which deals with obtaining property rights to land and other natural resources. The article does not introduce any additional norms in this area; It simply clarifies that the issues of obtaining property rights to land and other natural resources, as well as the right to process and utilize natural resources, are regulated by the relevant legislation of this field (e.g., The Civil Code of Georgia, the Organic Law of Georgia on Agricultural Land Ownership, the Law of Georgia on the Determination of the Designated Purpose of Land and the Sustainable Management of Agricultural Land, the Law of Georgia on Subsoil and the Law of Georgia on Oil and Gas).

## **Law of Georgia on State Support for Investments**

The Law of Georgia on State Support for Investment was adopted in 2006 and like the above-discussed law, it has been amended for several times as well (finally – July of 2020). As to the title, this law establishes specific mechanisms for the promotion/incentives of investments and a number of articles of the law directly refer to land management issues. Pursuant to Article 2, the mechanisms established by the Law apply to all natural and legal persons, as well as any foreign and domestic investments. The Law introduces three mechanisms for the promotion of investments, namely: (1) special body for the promotion of investments – “Produce in Georgia”; (2) preliminary license and permit; and (3) Investments of special importance. These three mechanisms are reviewed below.

### **(1) Special body for the promotion of investments – Produce in Georgia**

Pursuant to the Law, the state support of investments is the competence of the Government of Georgia and the representative of the government in this field is “Produce in Georgia” - a Legal Entity of Public Law subordinated to Ministry of Economy and Sustainable Development of Georgia (hereinafter – LEPL in this study).

The Law gives a right to the LEPL to represent the investor in relations with administrative bodies and other persons (however, it does not restrict the investor to establish relations with administrative bodies

himself/herself). For this, a contract must be concluded between the LEPL and investor. In some cases, the service of the LEPL is chargeable, while in other cases – free of charge (for investments with a special status). According to the law, the Government of Georgia should determine in which cases the services of the LEPL is chargeable and also the amount of the fee. What can the LEPL do? Based on the law, the LEPL can assist the investor in obtaining all necessary licenses and/or permits for investment activities or in the implementation of any other representative powers. In the Law, there is no a direct reference to the land, but this provision enables us to assume the LEPL can assist the investor to obtain the right to the land.

Article 4 lists the investor’s rights. Namely, according to this Article, an investor has the right to request (a) the issuance of any kind of license/permit (including a preliminary license/permit) through the LEPL and (b) property acquisition (including land). The Law obliges the administrative bodies to collaborate with the LEPL and investor in exercising of their rights provided in this Law.

Talking about the LEPL, it should be noted that “Produce in Georgia” was initially established in 2014 as a state program for promoting entrepreneurship development in Georgia<sup>3</sup>. The program consisted of two parts, sub-programs; namely: industrial part and agricultural part. Since its adoption, the program has been changed about 50 times; Today, the program already includes other types of sub-programs. It should be noted that the majority of projects/activities the promotion of which was or is considered by the program is directly related to the acquisition of land tenure rights and land use.

The term “LEPL” was introduced as a result of amendments made to the Law on State Support for Investments, in 2017<sup>4</sup>. Until 2017, the rights and duties established by the law for the LEPL was assigned to the Georgian National Investment Agency<sup>5</sup>. In 2017, the Parliament of Georgia adopted a special law<sup>6</sup>, by which the Georgian National Investment Agency was liquidated; “Produce in Georgia” LEPL was defined as its successor in title.

## **(2) Preliminary License and Permit**

Article 5 of the Law explains what do the preliminary license and permit mean. Pursuant to the Law, the preliminary license/permit is the right granted by an administrative body to a person to carry out a

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<sup>3</sup> [Ordinance #365 of the Government of Georgia of May 30, 2014 on “Approval of the State Program “Produce in Georgia”](#)

<sup>4</sup> [Law of Georgia on State Support for Investments on Amendments to the Law of Georgia “](#)

<sup>5</sup> The issues of establishment and competence of this agency are regulated by the laws that are no longer valid: 2002 [Law of Georgia on the Georgian National Investment Agency](#) (2020) and the law of the same name adopted in 2015 [Law of Georgia on the Georgian National Investment Agency](#).

<sup>66</sup> [Law of Georgia on the Georgian National Investment Agency on Declaring the Law of Georgia Invalid ; Ordinance #300 of the Governemnt of Georgia of June 22, 2017 on the “Liquidation of the Legal Entity of Public Law – Georgian National Investment Agency](#).

specified activity or action provided that later (this term can be established or not) he/she will meet the requirements established by the law for obtaining appropriate license/permit.

Based on the Law, any type of license or/and permit can be issued in advance, except three of them; they are: license to use (such license includes, for example, mineral extraction license)<sup>7</sup>, construction permit and license (permit) to move/transport and transfer weapons and ammunition. Obtaining of two listed licenses – the license to use and the construction permit is related to land tenure rights.

As the Law states, any person can request a preliminary license or/and permit. At the same time, the Law defines the necessary procedures to be followed by an applicant eager to obtain a preliminary license and/or permit, as well as the obligations of the administrative bodies in this process. It must be noted that almost all licenses and permits valid in Georgia established by the Law of Georgia on Licenses and Permits are issued in compliance with the simple administrative proceedings established by General Administrative Code of Georgia. This rule excludes the participation of interested parties in the decision-making process of issuing licenses and permits. The same can be said on the preliminary license and permit.

Paragraph 6 of Article 5 introduces the provision of “stability”. In particular, based on this paragraph, if the license/permit conditions determined by the legislation are changed to the detriment of the investor, then the changes shall not apply to the preliminary license/permit holder without his/her consent for 5 years after the issuance of the preliminary license/permit.

It is noteworthy that as to Paragraph 7 of the same Article, the time limits and procedures for issuing preliminary licenses/permits shall be determined by ordinance of the Government of Georgia. Such ordinance cannot be found on the website of the official printed body "Legislative Herald of Georgia". It is assumed that such an act has not been adopted up to date. Despite this, three acts issued on the issuance of preliminary licenses for the production and transmission of electricity are being searched on the website of the "Legislative Herald of Georgia".<sup>8</sup>.

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<sup>7</sup> According to the [Law of Georgia on Licenses and Permits](#), besides the mineral extraction licenses, other types of licenses to use are: License to use underground space, General license to use oil and gas resources (special license for oil and gas exploration and special license for oil and gas extraction), special license for hunting sector, Fishing license, and License to export fir cones, as well as snowdrop bulbs and/or cyclamen tubers that are listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

<sup>8</sup> [Statement \(28/11/2012\) of the Georgian National Energy and Water Supply Regulatory Commission on the Issuance of the Preliminary License for Electricity Production of "Saknakshiri" Ltd \(GIG Group\)](#); [Statement \(09/12/2015\) of the Georgian National Energy and Water Supply Regulatory Commission on the issuance of the Preliminary License for the Electricity Transmission of JSC Energo-Pro Georgia](#); [Statement \(04/08/2016\) of the Georgian National Energy and Water Supply Regulatory Commission on the Issuance of the Preliminary License for Electricity Production for Kartli Wind Power Plant LLC](#)

### 3. Investments of Special Importance

Chapter 4 of the Law is devoted to the concept of investment of special importance and arrangements for supporting of such investment. The law defines an investment of special importance as “an investment with a total amount of more than eight million lari or an investment that functionally and strategically has a significant influence on the development of the country’s economy and infrastructure”. There are two ways to grant this status to an investment: one - at the request of the investor and the other - at the initiative of the Government of Georgia.

In the first case, an investment implementer (investor) with the above-described characteristics is granted the right to request the government of Georgia to grant the status of Investments of Special Importance. In the second case, the Government of Georgia may award this status to investments made in the mountainous regions with a total amount of more than two million lari, or investments that functionally and strategically have a positive effect on the development of the local economy and infrastructure. In both cases, as it is already clear, the Government makes a decision. However, in the first case, the government has the right to refuse to grant such status to the investment.

An investor may request the Status of Investment of Special Importance before or after making an investment. This status is granted to the investment for a period set by the government.

Upon awarding the Status, a contract shall be concluded between the Government of Georgia and the investor; the contract shall determine the conditions for the investment. As to the Law, the conditions of the contract shall be public. As soon as the contract is concluded, the investor, in order to ensure the fulfilment of contractual obligations, shall be obligated to deposit a guarantee amount for the investment in the amount of 2 % of the investment, or submit an appropriate bank guarantee.

What are the benefits of such Status for the investor? Paragraph 6 of Article 10 provides the answer for this question, according to which, the investment with this status gets under the protection of “Produce in Georgia” LEPL. As to the Law, the LEPL shall be obliged to conduct systematic monitoring of the implementation of investments of special importance and submit corresponding reports to the Government of Georgia. If necessary, on the basis of the reports, the Government of Georgia may decide to take additional measures intended to support an investment of special importance.

In addition, in case of such status, an investor has the right to “notify the LEPL of the state control exercised over its activity.” The Law allows that the controlling bodies may exercise the control over the investor’s activity in breach of the law or otherwise hinder the implementation of the investment. If, on the basis of the study, the LEPL finds this is the case, it notifies the Government about the fact.

In the context of land rights and the planning of land use, one of the last articles of the law (Article 13) is interesting, which establishes additional measures promoting Investments of Special Importance in

specific resort areas (Bakuriani, Gudauri, Borjomi). In particular, pursuant to this Article, by the decision of the Government of Georgia, in the above-mentioned settlements, (the disposal of the land (except for private land), the granting of construction permits and monitoring of the ongoing construction works, the maintenance of roads, water supply and wastewater networks, the provision of first aid and rescue services, as well as the development of touristic infrastructure for promoting tourism and organization of the associated public services) shall be carried out by an administrative body designated by the Government of Georgia or a legal person under public law. The Government of Georgia may delegate this authority, for a specified period, to a self-governing unit.

## **Other relevant normative acts**

In addition to the above-provided legislative act, attention should be focused on another law: the Law of Georgia on Public-Private Partnership, adopted in 2018<sup>9</sup>. According to the explanatory note of the Law, the necessity of adoption of the law was stipulated by the fact that there were different institutional approaches to public and private cooperation projects due to the absence of a unified legal framework in the country; This did not correspond to the best international practice. According to the legislators, the optimal mechanism for satisfying public demand for the provision of quality public infrastructure and/or service is to increase the participation of the private sector in the process of development public infrastructure and services. This, in its turn, requires the investor to clearly see the state support mechanisms, guarantees or legal protection mechanisms for the investment. Georgia took the obligation to adopt the law with the International Monetary Fund.

Besides normative acts creating a general framework of investing and investments, Georgian legislation includes investment promotion norms that are scattered in sectoral legislation. For example, the Law of Georgia on Promoting the Generation and Consumption of Energy from Renewable Sources, adopted in 2019<sup>10</sup> (and the subordinate act adopted on its basis<sup>11</sup>) considers the possibility of introducing schemes supporting the use of energy received from renewable sources in Georgia, which, among other arrangements, may include various types of investment assistance. Other arrangements for investment incentives in the same sector are established by another act – resolution<sup>12</sup> adopted in 2018 by the Government of Georgia concerning to the construction of power plants that are not public-private partnership projects.

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<sup>9</sup> [The Law of Georgia on Public-Private Partnership](#)

<sup>10</sup> [Law of Georgia on Promoting the Generation and Consumption of Energy from Renewable Sources](#)

<sup>11</sup> [Ordinance #403 of the Government of Georgia of July 2, 2020 on Approval of the Scheme of Promoting the Generation and Consumption of Energy from Renewable Sources](#)

<sup>12</sup> [Ordinance #515 of the Government of Georgia of October 31, 2018](#) “on Approval of the rules and conditions for submission proposals for the feasibility study, construction, hold and operation of power plants that do not represent a public-private partnership project, to the Ministry of Economy and Sustainable Development of Georgia and review”

The legislation of Georgia also includes normative acts that create special conditions for investment in certain areas on the territory of Georgia. Such normative acts are: the Law of Georgia on Free Industrial Zones, adopted in 2007<sup>13</sup> and the Law of Georgia On Supporting the Development of Free Tourism Zones, adopted in 2010<sup>14</sup>. Both laws include special provisions on acquisition of land rights and land use in such zones. On the basis of these laws, subordinate acts are adopted; in addition, free industrial zones have already been created in Kulevi<sup>15</sup>, Poti<sup>16</sup>, Sagarejo<sup>17</sup>, Kutaisi (two zones)<sup>18</sup> and Tbilisi<sup>19</sup>.

Finally, it should be mentioned that the Government of Georgia has signed agreements with governments of various states on the promotion and mutual protection of investments. Agreements concluded with the governments of the following countries are published on the website of the "Legislative Herald of Georgia": Turkmenistan, Kyrgyzstan, Uzbekistan, Kazakhstan, Azerbaijan, Armenia, Kuwait, Greece, Italy, Romania, Moldova, the Netherlands, Estonia and the USA.

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<sup>13</sup> [the Law of Georgia on Free Industrial Zones](#)

<sup>14</sup> [the Law of Georgia On Supporting the Development of Free Tourism Zones](#)

<sup>15</sup> [Ordinance #376 of the Government of Georgia of September 12, 2009 "On the creation of the Kulevi free industrial zone"](#)

<sup>16</sup> [Ordinance #479 of the Government of Georgia of April 14, 2012 "On the creation of the Poti free industrial zone"](#)

<sup>17</sup> [Ordinance #72 of the Government of Georgia of October 10, 2012 "On the creation of the Sagarejo free industrial zone"](#)

<sup>18</sup> [Ordinance #106 of the Government of Georgia of June 5, 2009 "on the creation of Kutaisi Free Industrial Zone" and Ordinance #109 of the Government of Georgia of March 10, 2015 "on the creation of Kutaisi Hualing free industrial zone"](#)

<sup>19</sup> [Ordinance #549 of the Government of Georgia of October 26, 2015 "on the creation of the free industrial zone of Tbilisi Technological Park"](#)