
THE INVESTMENT ENVIRONMENT AND THE PROBLEMS OF ORIGINATION OF INVESTORS' OWNERSHIP OVER REAL ESTATE IN GEORGIA

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Abstract: In this research of the Investment Environment and the Problems of Origination of Investors' Ownership over Real Estate in Georgia we have discussed importance of attraction of the direct foreign investments and the problems existing in the economy of Georgia. Besides, we have analyzed the direct foreign investments based on the statistic data and proved the effective role of the direct foreign investments in stimulation of the Georgian economy. In our research we have analyzed the problematic aspects preventing attraction of investments in Georgia. Also we have considered the ways and methods promoting influx of direct foreign investments in Georgia. The main accent is made on the Georgian legislative basis.

Key words: investment environment, FDI, ownership, legal regulation, land

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1. Introduction

The investment environment and the problems of origination of investors' ownership over real estate are very actual. Such actuality is caused with the phenomena accompanying globalization process, technical and technological progress, recessions caused with the global pandemic, etc. (Abuselidze, Mamaladze, 2020; Abuselidze, Slobodanyk, 2021).

It is no coincidence that in the conditions of globalization the countries which actively participate in the international, scientific, high technological and information exchange become more successful. Development of the international integration promotes rise of the international movement scale, besides, direct foreign investments and money transfers gain the great importance for all countries.

Small open economy countries, such as Georgia, shortage of internal investments, problems of the alternative investment (Abuselidze & Beridze, 2018; Abuselidze & Slobodanyk, 2019; Bellak & Leibrecht, 2020; Deichmann, et al., 2003; Kenisarin & Andrews-Speed, 2008) sources make the typical factor, what determines competitiveness of such country's economy in the global field. Attracting of direct foreign investments is connected with many factors, which hindered functioning prevents influx of investments. According to Papers (Abuselidze, 2005a; 2005b; 2009a; Collier & Way, 2004) the formation of the optimal economic and social organization model of the country is essentially dependent on the correct fiscal policy implementation. To achieve economic growth, support investment, etc., it is necessary to develop an appropriate program. The tax payment rates and privileges should get out not mechanically but follow from real economic condition. Two important terms should be created for the tax-bearer: to create such tax payment rate which will not give to lose manufactures stimulus and together with this punishment - in our case it is penalty, which must be so strict to force tax-bearer to refuse an idea of concealment of the incomes (Abuselidze, 2009b; Abuselidze, 2012b; 2012c). Study questions financial stability of the banking system of Georgia caused by the fact that the identification in the development of the banking system factors of financial stability and finding practical accomplishments gives you the opportunity to obtain significant market impact and full use of the achievements of economic stabilization (Abuselidze, 2019b).

The aim of the paper is to study the investment environment of Georgia and the problems of investors' ownership of the real estate. The object of research is the investment environment of Georgia and the legislative base. Based on the study of these factors, the problematic aspects that hinder the attraction of investments in Georgia should be identified.

2. Methods and Methodology of Research

2.1. General Review of the Georgian Legislation

One of the important matters for attraction of the investments includes the legislative basis of the country. Foreign investors need the appropriate

legal guarantees related to their immunity, protection of capital, taxation of incomes and dividends, capital movement etc.

In respect of the Georgian legislation, we shall point to the international contracts “Double Taxation Avoidance Treaties” aiming to propose the guarantees to the investors. Proceeding from the above mentioned, it becomes clear that the investors have the guarantees stipulated in these agreements. We should also name the Law of Georgia “On Promotion and Guarantees of Investment Activity”, which provides the foreign and local investors with the guarantees. For example, in article 3 of the named Law, during implementation of investment and entrepreneurial activities, rights and guarantees of foreign investors may not be less than rights and guarantees enjoyed by natural and legal persons of for cases defined Georgia, except by legislation. I think, even only this article is enough for implementation of investments in Georgia. According to the same Law:

- An investor may open current and other accounts in any currency in banking institutions in the territory of Georgia.

- An investor may be granted loans from banking and financial institutions in the territory of Georgia and abroad, or from natural or legal persons.

- An investor may purchase shares, bonds and other securities, as well as property existing in the territory of Georgia and abroad.

- After paying taxes and obligatory fees, foreign investors shall enjoy the right to convert profits (income) gained from investments, as well as other monetary funds at the market rate in banking institutions of Georgia, and the right of their unlimited repatriation abroad.

- Foreign investor may take the property under his/her ownership abroad.

Law of Georgia “On Promotion and Guarantees of Investment Activity” recognizes immunity of investments, correspondingly, investments are fully and unconditionally safe. Confiscation of investments is admissible only in the cases directly determined by law, under court decisions, providing the appropriate compensation. Such compensation shall correspond to the factual market value fixed for the moment of confiscation. It should be paid without any delay and include the losses born by such investor from the moment of confiscation to the moment of payment of compensation.

It should be also mentioned that a foreigner who does not permanently reside in Georgia may take abroad the profit earned in Georgia without difficulties providing payment of taxes fixed by the Georgian legislation.

As for the matters related to lands, we should mention that the Law On Promotion and Guarantees of Investment Activity makes reference to the other laws in respect of ownership over lands and the other natural recourses,

obtaining of the rights of processing and development of the natural resources. Namely, it is pointed that the matters related to lands are governed by the Civil Code of Georgia, Organic Law of Georgia On Ownership over Agricultural Lands”, Law of Georgia “On Determination Of The Designated Purpose Of Land And On Sustainable Management Of Agricultural Land”, Law of Georgia “On Subsoil”, Law of Georgia “On Gas and Oil” and the other legislative acts of Georgia. On the face of it, article 12 of Law of Georgia “On Promotion and Guarantees of Investment Activity” should be considered relevant, as lands and any related matters are such important for all the nations, that it is very difficult to cover them with the single law. But when we discuss promotion of investors, it is important for legislation to meet the strategy chosen by a country. In this concrete case, investors have to examine the whole legislation of Georgia to determine, whether they may or not obtain the right over land or any other national resources or the right of processing and development of natural resources.

2.2. Methods of Research

Research of these matters requires fundamental learning of economical and legal aspects. For the research purpose the qualitative methods were chosen. First of all, the publication concerning the matters under research were analyzed with the methods of comparative and historical analysis.

During the qualitative research we not only fix the investment environment and the problems of origination of investors’ ownership over real estate in Georgia, but try to explain the existing situation.

In this work the statistic method was applied, as it allows us to assess the situation in Georgia in terms of development of investments.

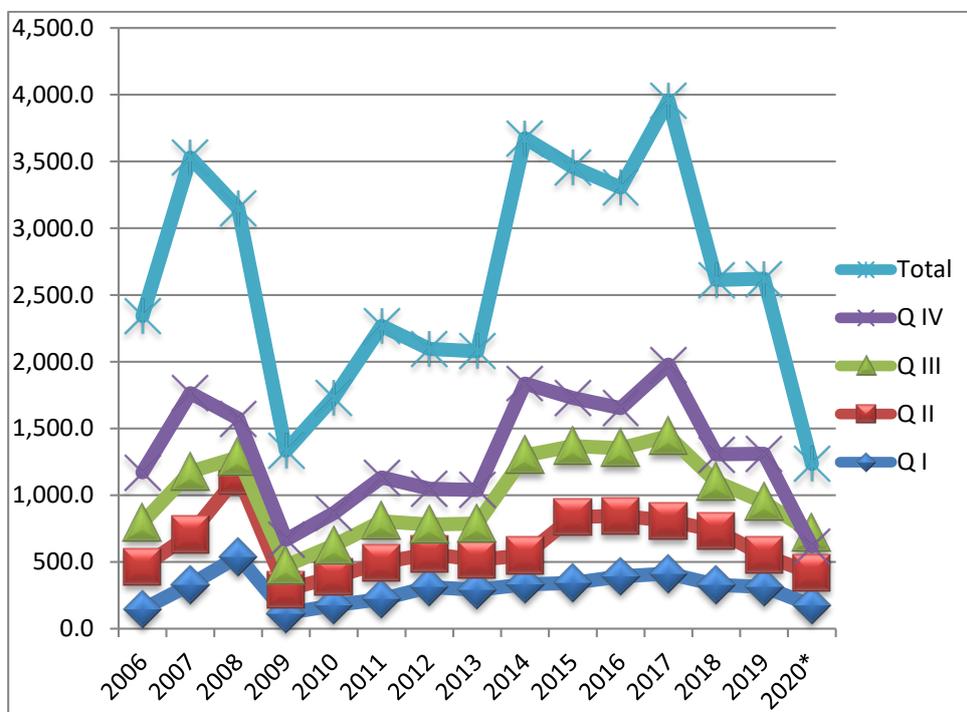
3. The Georgian Investment Environment

After gaining independence, Georgia went through a difficult period of socio-economic development (Abuselidze, 2008; Gamsakhurdia, 1996; Meskhia, 2000; 2013). Political and financial-economic crises constantly threatened the country's independence and European integration (Abuselidze, 2012a; 2015; 2018b; Cornett & Snickars, 2002; Czerewacz-Filipowicz & Konopelko, 2017; Dikkaya & ÖZYAKIŞIR, 2008; Grimalda et al., 2010). Therefore, it is very difficult to assess the Georgian investment environment. According to Papers (Abuselidze, 2013b; 2019a; Davydenko, 2016) successful transformation requires strong financial support, one of the main preconditions where of includes settlement of fiscal legislation. For this purpose it is required to develop and analyze the various factors including

analyze and research of the national economic potentiality, political environment and legal status. In this work we discuss only the legal status/regulation. Although, the following moments should be taken into account for attraction of investments in general:

1. Socioeconomic policy practiced by Georgia in respect of direct foreign investors;
2. Is investment business promoted or not
3. Economic factors.

The investment policy practiced in Georgia shall be also taken into consideration, as influx of investments mainly depends on the actions carried out by the state. In general, the effective investment policy practiced in Georgia makes the attractive investment climate. Also it should be mentioned, that investment of 4 milliard US Dollars in the various sectors of economy is a great sum for Georgia, but for the USA such amount is very small.



Source: National Service of Statistics, 2020

Figure 1. Foreign Direct Investments in Georgia for 2006-2020 (Mil. USD)

In terms of attraction of investments, during the last decades the worst index was fixed in 2013 and amounted 1,039.2 million US Dollars. But

according to the data fixed in 2019 the investments amounted 1,310.8 million US Dollars.

Surely, investments have an effect on economic growth. Nature of such effect depends on the indexes of the accepting country (Abuselidze, 2019c; Balasubramanyam, et al., 1996; Franco & Gerussi, 2013). It is also remarkable, that in the conditions of governmental crisis, investments make the most important mean for restructuring of the social and industrial potential and its subordinating to market (Kuznetsov, 2015; Stobaugh, 1969; Davydenko, 2017).

In our policy to foreign investing we should take into account the fact that the government shows liberalization of investing routine, namely (Maskay, et al., 2006):

- the list of restricted kinds of business for foreign investors shortens;
- the requirements limiting share of foreign capital in a company capital soften;
- foreign investors are allowed to establish a company with 100% participation;
- exportation of incomes and dividends abroad becomes easier;
- procedure of registration of foreign investments simplifies;
- measures of stimulation of foreign investments are carried out etc.

Attraction of foreign investments significantly provides effective inclusion of national economy into the world economy.

For example, the government of Singapore actively promotes influx of the foreign investments and treats foreign investors the same way as the domestic businessmen. Besides, the government of Singapore offers to foreign investors low tax tariffs and even establishes the grants for the concrete types of business (Maskay, et al., 2006; Tøndel, 2001).

In the frames of association with European Union (Legislative Herald of Georgia, 2014), Georgia tries to become more attractive for foreign investors. Although In order to overcome the problems, it is necessary to improve the existing economic policy in the country, to form an effective fiscal and monetary policy (Abuselidze, 2018c; 2019b; Meskhia, 2008; 2015a; 2015b), which ensure the reduction of tax pressure, exchange rate stabilization, the establishment of an alternative investment market, capital market, targeted integration with international financial markets (Abuselidze, 2013a; Abuselidze, 2018a; Abuselidze, 2019c; Atik, 2014; Vinokurov & Libman, 2011) and of course the reduction of the country's financial risks. In addition, it is necessary to encourage the private sector through state subsidies and in general to create a fair and secure business environment.

4. Origination of Ownership over Lands

The matter of guarantees in the exporter countries are researched by the Organization for Economic Cooperation and Development (OECD, 2020). Most of developing countries including Georgia try to set almost the same guarantees as the member countries of the Organization for Economic Cooperation and Development.

For example, in Egypt (OECD, 2014) there foreign investors obtaining lands for expanding of production and construction are paid the adequate compensation. According to the legislation of Brazil (PwC - Brazil – Information and Documentation Center, 2013), repatriation of investment capital and profit is allowed. Besides, repatriation of capital is income tax-free and carried out automatically.

As for Georgia, as we also mentioned, article 12 of the Law of Georgia on Promotion and Guarantees of Investment Activity, in respect of lands matters refers to the other laws only.

The Law on Determination of Designated Purpose of Land and Sustainable Management of Agricultural Land tells of making decisions on the ground of investment plan. It is mentioned that making decisions in respect of investment plan is a competence of the government of Georgia. A person who intends to obtain the right over the land on the ground of the investment plan shall:

- a) submit to the Agency the investment plan for agricultural land existing in private ownership;
- b) submit the investment plan for agricultural land belonging to Georgia, its autonomous republic or municipality to the appropriate body having the authority of privatization.

The investment plan may be sent to the respective institution of the executive authority of Georgia for approval.

In consideration of the investment plan and making of decisions the conditions stipulated by Agreement of Association between Georgia and the EU and Europe Atomic Energy Union and their member countries shall be taken into account.

Also we should note the circumstance that any investment plans designed for the agricultural sector shall include the obligation that at least 4/5 of employees shall be the Georgian citizens. Such clause is very actual for strengthening of the economy of Georgia as well as for settlement of the employment problems.

The Law on Determination of Designated Purpose of Land and Sustainable Management of Agricultural Land also considers the events of failure to fulfill the obligations provided by investment plans. Namely, it is

fixed that in case of failure of the obligations of the approved investment plan the Agency provides the appropriate information to the Minister of Protection of the Environment and Agriculture for making decision, save the case, when a person confirms failure to fulfill the obligations. It is proved that a person acted beyond the scope of the investment plan, within 1 week after confirmation of such failure the Agency appeals to LEPL – Public Registry National Agency under the Ministry of Justice of Georgia for including of the information of the obligation of alienation of land into the Public Registry keeping information of the rights over immovable. After that a person is obliged within 1 year upon reflecting of the appropriate information in the Public Registry carry out alienation of the land. In case of failure to fulfill this obligation the authorized body of the Ministry of Economy and Sustainable Development of Georgia complying with the order approved by the government of Georgia carries out transfer of the land into possession of the state. The land and buildings located thereon (if any) shall transfer into possession of the state providing preliminary, full and fair compensation. The order of evaluation of land and payment of compensation is subject to determination by the government of Georgia. If a person disagrees with the conditions of transfer of a plot of land into possession of the state, such land shall be transferred into possession of the state in compliance with the order of confiscation of ownership due to public needs.

It is seen that the Law on Determination of Designated Purpose of Land and Sustainable Management of Agricultural Land is enough strict to the investors who decide to act in the manner dissimilar to the kind of business indicated in the investment plan. In such event, severity of the law is reasonable, as investor re allowed to fill and submit the investment plan at their will.

So, the matters related to lands are governed by The Law on Determination of Designated Purpose of Land and Sustainable Management of Agricultural Land better, then by the Law on Promotion and Guarantees of Investment Activity. But it remains a problem that:

- the legislative basis of foreign investors business is not clearly determined and often changes;
- complex national policy for attraction of foreign investments does not operate;

In the various sectors of economy and at the level of the concrete companies and projects some interesting business-plans are developed, although there have not been found any effective mechanisms of attraction of the foreign investors.

5. Legal Regulation of Alienation of Agricultural Lands in Favour of Foreigners and Legislative Problems

The matter of origination of ownership over the agricultural land in Georgia remains actual. It is also proved by variety of resolutions by the Constitutional Court. The Constitutional Court announced restriction of ownership over agricultural lands for foreigners unconstitutional. Namely, under Decision N 3/1/512 by Plenary session of the Constitutional Court of Georgia dated 26 June, 2012 for the case “Denmark citizen Heike Cronquist vs. Parliament of Georgia” the foreigner’s right of acquiring of ownership was announced unconstitutional (Constitutional Court of Georgia, 2017).

After issuing of this Decision the declared recognition of foreigners’ ownership over agricultural lands was replaced with the absolute recognition, which exercising became free. Georgia became one of the European countries, where the significantly equal rules and conditions apply to citizens and foreigners (Mirianashvili, 2017).

On under Ruling of the Constitutional Court of Georgia N 1/2/563 dated 24 June, 2014 for the case “Austrian citizen Mathias Huter vs. Parliament of Georgia”, content of p. 3, articles 22 of the Law of Georgia On Ownership over Agricultural Land which suspends the ownership over agricultural lands with respect to foreign individuals and the companies founded by the legal persons in Georgia until December 31, 2014, was announced unconstitutional (Constitutional Court of Georgia, 2014).

Decision of the plenary session of the Constitutional Court of Georgia made foreigners’ and Georgian citizens’ property rights equal. Moreover, we can tell that foreigners’ property rights became preferential. Such preference is conditioned with the land price, as although it is enough low in Georgia, Georgians hardly can buy because of the economic background.

In such case, the scientist I. Kharazi’s opinion is correct according to which, agricultural lands make the main vital term for nation and state and this vital term requires proper cherish” (Kharazi, et al., 2014, p.9). Just because of this, legislators placing such a limitation states, that land is not only economic category, but the cultural value as well. Land means more than simply immovable property, although it is a fact that the named Decision of the plenary session of the Constitutional Court of Georgia caused preferential situation for foreigners. Besides, there is one more problem, that in Georgia there is no service controlling condition of the land market, so, we have not any real data of quantity of lands alienated in favour of foreigners.

In 2019 the Organic Law of Georgia “On Agricultural Land Ownership” was adopted. This Law is stricter towards foreigners, then its prior editions. In this Law it is clearly fixed that taking into consideration the

stipulated restrictions, agricultural land may be: in possession of foreigners as acquired by inheritance. As for legal persons, they are allowed to acquire title to the Georgian land in cases provided by law, but in case of failure to fulfill the obligations provided by the investment plan, they shall within 1 year upon resolution of the appropriate authority provide alienation of such land. In case of such debtor's failure to alienate the agricultural land, such land transfers into possession of the state in order provided by the Georgian legislation.

Evidently, the new legislative policy of Georgia in respect of land is directed to protection of both national interests of Georgia and promotion of investors. But it is very difficult to say to what extent it is possible to succeed in both directions.

It is notable, that limitation of foreigners' ownership over agricultural land and prolong legislative vacuum appear preventing the government's privatization policy in the agrarian sector and accessibility of finances, as well as attraction of foreign investments and development of economy (Kartozia, 2018).

Unfortunately, despite of many changes, they still have not managed to improve the legislative basis. That is why, we cannot rule out that the Law On ownership over Agricultural Land will not be changed again.

Conclusion

Property is one the most important institutes of civil law of any countries. There are various ways of origination of ownership over a thing, although, as for origination of ownership over lands, as a rule it is acquired from landlord.

In 1997, after adoption of the Civil Code of Georgia and determination of the appropriate articles, the Law on Ownership over Agricultural Land was adopted. It governed these problems to more or less extent. But nowadays the matters related to agricultural land in Georgia are governed by the new Law on Ownership over Agricultural Land, which was adopted in 2019. This law is much more severe to foreigners, then the prior ones.

Foreign investors (legal persons) are allowed to acquire ownership over lands on the basis of the investment plans, but in case of failure to fulfill the activity provided by such investment plan an investor is obliged to alienate the land.

As we mentioned above, the new legislative policy of Georgia in respect of land is directed to protection of national interests of Georgia and promotion of investors. We hope, that this will be positively interpreted by the

investors, as they can acquire ownership over the lands on the basis of the investment plans and retain them providing implementation of such plans.

So, according to the legislation of Georgia, a foreign investor can retain a land in his/her possession only in case of implementation of investment plan, but he/she is not limited in drawing a plan up. Investors can precisely schedule all the activities which he/she intends to execute on the land belonging to him/her and retain ownership over the land without any problems.

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