

Investor's Handbook

A Legal Guide to Business in Georgia
2013

Part 4: State Promotion of Investments

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State Promotion of Investments

Investment-related issues are currently regulated in Georgia by two laws; these are: the Law of Georgia on State Promotion and Guarantees of Investments dated 12 November 1996 and the Law of Georgia on State Promotion of Investments dated 30 June 2006. These legislative acts stipulate the concept of an investment, legal guarantees for protection of investments and the rights and obligations of investors.

Investing

According to the Georgian legislation, an investment can be a proprietary or intellectual value or right of any time that can be invested and used for a commercial activity in Georgia.

It is evident that the concept of investing is broad and does not only cover monetary investments or purchases of immovable property.

Any natural person, legal entity or international organization may be an investor.

The following persons are considered to be foreign investors:

- a) foreign nationals;
- b) persons without citizenship who do not reside in Georgia;
- c) Georgian nationals with permanent residence abroad;
- d) legal persons registered outside Georgia.

(The Law on Promotion and Guarantees of Investments, Article 2.2)

An investment can be of foreign as well as local origin, i.e. an investor can also be a Georgian national or a company registered in Georgia.

To encourage investing, the State offers similar promotion and guarantees to foreign and local investments as well as to individuals and legal entities.

Georgia's current legislation grants an investor the right to invest in almost any field of activity with a few exceptions. Specifically, Georgia bans investments in the following areas:

- a) Creation, production and proliferation of nuclear, bacteriological and chemical weapons;
- b) Construction of nuclear, bacteriological and chemical test ranges;
- c) Import of nuclear and toxic waste materials from foreign countries for dumping or rendering harmless;
- d) Execution of scientific and research projects related to human cloning;
- e) Production of narcotics;
- f) Cultivation of poppy, coca bush and hemp plant of somatic effect;
- g) Any activity prohibited by international agreements to which Georgia is part;
- h) Import and use of lead-containing (above 0.013 gram per liter) motor gasoline, tetraethyl lead, as well as counterfeit (irregular) liquid gas for communal consumption (investment in import of tetraethyl lead is only allowed in special cases permitted by the production technology)

(Law on Promotion and Guarantees of Investments, Article 9.1)

Apparently the prohibition of certain investment types in Georgia is not unique and affects only the fields which are generally restricted or prohibited in almost every country.

Restrictions are also imposed on investments in the fields that represent the exclusive authority of the

State of Georgia.

Specifically, only the State of Georgia is entitled to invest in:

- a) Production of banknotes and coins, symbols of State awards, postal stamps;
- b) Activities related to marking of products from precious metals;
- c) Activities related to the import, export, shipment, or wholesaling of narcotic substances for medical use and producing new narcotics;
- d) Activities related to the production, processing, import, export, shipment, wholesale and fabrication of new types of psychotropic drugs under special control;
- e) Energy dispatching.

(Law on Promotion and Guarantees of Investments, Article 9.2)

The above-listed restrictions are exhaustive and apply to foreign as well as to local investors.

Apart from direct prohibitions, the law provides a list of the fields of activity where investments are only allowed with certain limitations.

These limitations apply to economically important strategic areas. Specifically, investors are only allowed to invest in the following fields in Georgia without the right of management:

- a) Activities related to regulation, security and control of movement of sea-transportation in the territorial waters and seaport zones of Georgia;
- b) Railway dispatching;
- c) Activities related to the regulation, security and flight control of aircraft in the airspace of Georgia;
- d) Manufacture and realization of military technologies, producing and testing of new and modified weaponry in agreement with the National Security Council by the President of Georgia, for the purpose of enhancing the defence of the country;
- e) Military industry;
- f) Activities related to using nuclear energy for peaceful purposes.

(Law on Promotion and Guarantees of Investments, Article 9.3)

The aforementioned restrictions imply the possibility of e.g. investing in the field of arms production, provided that the investor does not manage such a company. In similar cases the investor is only entitled to own shares or stocks and receive profit or dividends.

The above-listed restrictions are exhaustive. Any kind of investments in any sector that is not covered by the above can be undertaken freely and without any limitation.

The Government of Georgia ensures protection of the investors' rights and State promotion of investments through the National Investment Agency of Georgia. The Agency is a legal entity of public law with the main function to promote investments.

An investor is able to get the desired information through the Agency. In addition, on the request of the investor the Agency is authorized to represent the investor in dealings with other State authorities and assist him/her to obtain licenses/permits. Usually the Agency charges a fee for this type of service. The fee rates and the terms and conditions of the service are spelled out in an agreement signed by and between the investor and the Agency.

Investments of high importance are exempted from payment of the service fee.

The grant of the representation right to the Agency does not prevent an investor from liaising with administrative authorities directly or through another representative.

Investments of high importance

The Georgian legislation offers a special status to investments that are of strategic importance for the State and have a value of at least GEL 8 million, or serve a special purpose, or are of strategic importance for the country's economy.

The status of an investment of high importance can also be assigned to an investment which exceeds GEL 2 million and is implemented in any of the highland regions of Georgia.

An investment is granted the high importance status by a decree of the Government of Georgia. To acquire such a status an investor needs to apply to the Government of Georgia with a relevant request.

Along with an application, the investor is expected to submit to the Government of Georgia a detailed plan of implementation of the investment. The Government of Georgia reviews the application, assesses the presented plan and makes a decision on whether to grant it a high importance status. As a rule, a decision has to be made within one month of the filing date of the application. If the decision is not made within this period, it means that the investor has been refused the status.

If the Government of Georgia decides to grant an investment the status of high importance, an agreement is signed by and between the investor and the Government of Georgia. The terms of the investment and the responsibilities of the parties are stated in the agreement. Such an agreement is public and may not be treated by the parties as confidential information.

Upon signing of an agreement with the Government, the investor has to present a bank guarantee for 2% of the total investment. Instead of the bank guarantee, the investor may also deposit the respective amount. This is a security deposit securing the fulfilment of the obligations assumed by the investor.

The Agency monitors implementation of high importance investments and checks whether the investor is fully and duly in compliance with the obligations assumed under the agreement. The Agency also investigates any the circumstances that prevent and delay the investing process and submits the respective report to the Government of Georgia. The Government of Georgia may provide the investor additional support during the implementation of the investment.

The status of an investment of high importance grants the investor additional rights and guarantees.

If the investor thinks that the State control has violated his rights, he is entitled to appeal to the Agency and submit the relevant information. The Agency studies the submitted information and if it finds that a violation delaying the investment is proven, the Agency will inform the Government of Georgia. Such a mechanism ensures the best guarantees for protection of the investor rights.

The status of high importance is not permanent for an investment. It applies for a particular period. This period is determined in the decree of the Government of Georgia granting this status.

The Government of Georgia has the right to cancel the status before the expiration of its term if the investor fails to fulfil his obligations under the agreement. In such a case the security deposit provided by the investor goes to the State budget. Cancellation of the status does not entail withdrawal of licenses and permits granted to the investor.

If the investor fulfils in full the obligations assumed under the agreement, the security deposit will be returned to the investor without delay.

The Rights and Guarantees of an Investor

Unless expressly limited by the Georgian legislation, any investor enjoys the same rights in Georgia as a company registered in Georgia.

The legislation provides the list of additional rights that can only be used by investors:

An investor is entitled to:

- a) Claim issuance of any license/permit (including a preliminary license/permit) through the Agency;
- b) Require purchase of a property and implementation of all related procedures with the assistance of the Agency;
- c) Require any information related to granting of a license/permit (including a preliminary license/permit) and obtaining a property as well as the issues connected with implementation of investments;

(Law on State Promotion of Investments, Article 4.1)

In Georgia ownership rights are protected by the Constitution of Georgia. Seizure of property is only permitted in situations described in the law where such a seizure is required in public and State interests.

Adequate compensation will be given to an investor for the seized property. Compensation may not be less than the market value of the seized property. Compensation should also include reimbursement for the loss incurred by the investor.

Having paid taxes and duties, an investor is entitled to convert the proceeds (income) from his investment and other funds in a banking institution of Georgia at the market exchange rate and repatriate them abroad without limitation. The investor may also freely sell, lease or mortgage property obtained in Georgia.

The investor is entitled to take abroad any movable property owned by him.

Legislative Framework

The Law on Investments and Guarantees

November 12, 1996

Article 1. An Investment

1. *An Investment is a proprietary or intellectual value of any kind or a right that can be contributed and used in the entrepreneurial activities in Georgia for generation of possible income.*
2. *Such a value or right may be:*
 - a) *Funds, shares, stocks and other securities;*
 - b) *Movable and immovable property - land, buildings, equipment and other values;*
 - c) *The right to use land or other natural resources (also by virtue of a concession), patent, license, "Know-how", expertise and other intellectual property;*
 - d) *Other legally recognized property, intellectual property or right.*

Article 2. The Subject (Investor) and Object of Investing

1. *An Investor is any natural person, legal entity or international organization realizing investments in Georgia.*
2. *A Foreign investor may be:*
 - a) *A foreign national;*
 - b) *A person without citizenship not residing in Georgia;*
 - c) *A citizen of Georgia permanently residing abroad;*
 - d) *A legal person registered outside Georgia.*

Article 3. Investor's Rights

1. *A foreign investor, whilst realizing investment and entrepreneurship, enjoys the rights and guarantees that are not less than those granted to a natural person and legal entity of Georgia except in the cases spelled out in the law.*
2. *An investor is entitled to open current and other types of accounts in any currency in any banking institution operating in Georgia.*
3. *An investor is entitled to take a loan at any banking and financial institution, or from a natural person or legal entity in Georgia and abroad.*
4. *An investor is entitled to acquire stocks, bonds and other securities as well as property in Georgia and abroad.*
6. *Having paid taxes and duties, a foreign investor is entitled to convert the earnings (income) from the investments and other funds at the market exchange rate in banking institutions of Georgia and repatriate them abroad without any limitation.*

Article 7. Inviolability of Investment

1. *The investments are entirely and unconditionally protected in Georgia by the applicable law.*
2. *An investment may be seized only in the cases directly spelled out in the law, by court decision or in case of an emergency established by the organic law. The seizure may be accomplished only on condition of a relevant compensation.*

Article 8. Compensation in case of seizure of an investment

1. *Compensation to be given to the investor shall correspond to the real market value of the confiscated investment at the time of the seizure.*
2. *Compensation shall be given without any delay and shall include the losses suffered by the investor from the time of seizure till payment of the compensation.*
3. *A foreign investor may convert the compensation at the market exchange rate in a banking institution in Georgia and transfer it abroad freely and without delay.*

Article 2. Scope of the Law

1. The law applies to any foreign and local investments that are invested and used in Georgia.

Article 3. National Investment Agency of Georgia

1. The State promotion of investments shall be ensured by the Government of Georgia.

2. In the field of State promotion of investments, the Government of Georgia shall be represented by the Georgian National Investments Agency.

3. The Agency shall be entitled to represent an investor in his dealings with the administrative authorities and other persons. For this purpose, an agreement shall be made by and between the investor and the Agency, providing for the scope of representation. By virtue of the agreement made between the investor and the Agency, the Agency shall assist the investor in obtaining all the licenses and/or permits necessary for the conduct of investment activities, also realize other representative authority. The agency shall implement the aforementioned powers against consideration, excepting the cases involving high importance investments. The amount of fee for rendered services is defined on consent of the supervisory board of the Agency. High importance investments shall be exempted from payment of the service fee.

4. The representative powers of the Agency guaranteed by this Law shall not restrict the investor in his liaison with the administrative authorities personally or through other representative.

Article 9. High Importance Investment

1. An investor who intends to make an investment exceeding GEL 8 million or the one which has a significant impact on the development of the national economy and infrastructure from functional and strategic point of view shall be entitled to request the status of high importance for the investment he is going to make.

2. Except for the cases, envisaged in Paragraph 1 of this Article, the Government of Georgia shall be entitled to grant the status of high importance to the investments made in the highlands of Georgia, the total amount of which exceeds GEL 2 million or which has a positive impact on the development of local economy and infrastructure from functional and strategic point of view.

3. The status of a high importance investment shall be granted by the decree of the Government of Georgia.

Article 10. The Procedure of Granting the Status of a High Importance Investment

1. An investor may request the status of a high importance investment before or after making the investment.

2. To obtain the status envisaged by this Law, the investor shall submit the investment application to the Government of Georgia, which must be supplemented by the detailed plan of the investment implementation.

3. The investment application shall be examined by the ministry (ministries) or/and other administrative body (bodies) identified by the Government of Georgia within no more than 1 month of the filing date of the application. On the basis of the aforementioned study the Government of Georgia shall make a decision on granting of the adequate status to the investment. This timeframe may be extended by the decision of the Government of Georgia on the basis of a motivated proposal submitted by the line ministry identified by the respective decree of the Government of Georgia whereof the investor shall be duly informed. Non-issuance of a decree by the Government of Georgia within the specified timeframe shall be regarded as a refusal to grant the status of high importance to the investment.

4. When granting the status of high importance to an investment, an agreement shall be made between the Government of Georgia and the investor, specifying the conditions of the investments.

As agreed between the parties, the investment plan and agreement shall be subject to further modification. The terms and conditions of the agreement shall be publicized.

5. From the time the status of high importance is granted to the investment, the investor shall be required to deposit the investment guarantee amount totalling 2% of the investment or submit a bank guarantee to secure the fulfilment of the obligations assumed under the agreement.

6. The Agency shall be required to monitor the implementation of high importance investments on a regular basis and submit respective reports to the Government of Georgia. The reporting schedule shall be specified by the decree of the Government of Georgia. If required, the Government of Georgia shall make a decision on the basis of these reports regarding implementation of additional measures for support of a high importance investment.

Article 11. State Control over Entrepreneurial Activity in the Case of High Importance Investments

1. In the case of a high importance investment, the investor shall be entitled to inform the Agency on the State control undertaken in respect to the activity thereof. The Agency shall examine and provide the Government of Georgia with the information about violations committed in the course of monitoring the entrepreneurial activity or other impediments hindering the accomplishment of the investment.

2. To exercise the authority stipulated in Paragraph 1 of this article, the Agency shall be entitled to require information from the controlling authorities, excepting the confidential information directly spelled out in the Law

Article 12. Expiry of the Validity Term of the Status of High Importance Investment

1. The status of a high importance investment shall be valid for the period specified by the decree of the Government of Georgia.

2. The status of a high importance investment shall be cancelled if the investor fails to observe the terms of the agreement signed in accordance with this Law.

3. Cancellation of the status of a high importance investment shall not result in the withdrawal of the issued licenses and permits (including preliminary licenses and permits). Any license/permit shall remain valid unless withdrawn according to the Georgian legislation.

4. In the case of fulfilment of the terms and conditions of the agreement the security deposit spelled out in Article 10 of this Law shall be returned to the investor without delay.

5. In the case of cancellation of the status of a high importance investment the security deposit envisaged by Article 10 of this Law shall be transferred to the State budget.



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