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This policy brief is intended for public policy makers and practitioners; it will also be useful for those groups and individuals seeking to influence the policymaking processes.

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Investment Plan for Agricultural Land Use

An overview of some of the issues related to the decision-making on investment plan

In 2017, important changes were made to the Constitution of Georgia; it was totally reformed. Among other amendments, a provision was added to the rules on the protection of property rights (article 19, paragraph 4), which specifically concerns the ownership of agricultural land. The Constitution of Georgia recognized agricultural land as a resource of special importance; it was established that it can only be owned by the state, a self-governing unit, a citizen of Georgia or a union of citizens of Georgia. At the same time, the Constitution allowed for the possibility of exceptional cases. The Constitution does not specify the cases when an exception is allowed. Later, this was defined by the Organic Law of Georgia on Ownership of Agricultural Land, adopted on June 25, 2019¹.

According to the Organic Law of Georgia on Ownership of Agricultural Land, in exceptional cases, agricultural land may be owned by a legal entity of private law registered in Georgia, whose dominant partner is a foreign and/or legal entity registered abroad, or whose dominant partner cannot be established^{2,3}. In such cases, the law requires that the decision on land ownership is made by the Government of Georgia on the basis of an investment plan submitted to the Government.

¹ Organic Law of Georgia on Ownership of Agricultural Land. Published on the Legislative Herald, registration code: [370030000.04.001.017924](#)

² Organic law sets out other exceptions that are not addressed in this study. These are: foreign, international financial institution and financial institution defined by the legislation of Georgia.

³ Dominant partner cannot be established under article (1)(d) of the Organic Law of Georgia on Ownership of Agricultural Land.

The Law clarifies what is meant by a dominant partner. For the purposes of the law, a dominant partner is a partner or group of partners of a legal entity of private law registered in Georgia which owns more than 50 percent of shares/equities and/or which represents the majority of partners or founders/members. At the same time, the dominant partner should have the practical ability of exerting decisive influence on the decision of the legal entity in respect of the agricultural land.

The obligation to submit an investment plan to the Government of Georgia arises in two cases:

- (1) In case of changing a partner of a legal entity of private law registered in Georgia (owning agricultural land);
- (2) Upon privatization of agricultural land owned by the state, autonomous republic and municipality by a legal entity of private law registered in Georgia.

In both cases, the precondition is the existence of a dominant partner: the obligation to submit an investment plan arises when, in the event of a change of a partner or the privatization of land by a private legal entity registered in Georgia, the dominant partner is a foreign and/or a legal entity registered abroad or whose dominant partner cannot be established.

What is an investment plan?

The Organic Law on Agricultural Land Ownership clarifies what an investment plan is. According to the Law, an investment plan is “a document on the use of agricultural land, which provides for the production of agricultural and/or other products, introduction of innovative activities, arrangement of tourism infrastructure, investment for implementing the projects of international, national and/or local significance that will contribute to socio-economic development of the state, protection of national security and creation of new jobs.”.

It is noteworthy that the Organic Law only clarifies the definition of an investment plan and imposes the obligation to submit it to the government. The law does not contain any guidance regarding the investment plan.

Together with the Organic Law on Agricultural Land Ownership (hereinafter referred to as the Organic Law), on the same day (June 25, 2019), the Parliament of Georgia adopted another normative act relating to agricultural land - the Law of Georgia on Determination of the Designated Purpose of Land and on Sustainable Management of Agricultural Land⁴ (hereinafter referred to as the Law). According to this law, the Ministry of Environmental Protection and Agriculture of Georgia established a legal entity of public law - the National Agency for Sustainable Land Management and Land Use Monitoring. The Agency has been authorized with certain powers related to the investment plan decision-making process. Only two articles of the Law (articles 11 and 12) refer to the rule of making a decision on an investment plan.

⁴ Published on the Legislative Herald, registration code: [370020000.05.001.019528](https://www.ebr.gov.ge/legislation/370020000.05.001.019528)

Two years after the adoption of the Organic Law and the Law, in May 2021, a by-law was adopted - on Approving the Rule for Submitting an Investment Plan and Making a Decision with regard to an Investment Plan⁵ (hereinafter referred to as the Decision-making Rule). Only one article refers to the requirements for the content of the investment plan in this document (article 7).

From the definition of the investment plan given in the Organic Law, from several provisions given in the Law and the Decision-making Rule, several main characteristics of the investment plan can be distinguished and the following conclusions can be drawn:

1. The investment plan to be implemented on agricultural land is not limited to the production of agricultural products. Any type of activity/project can be carried out on agricultural land (including the arrangement of tourist infrastructure) and any type of products can be produced ("... envisages investment for the purposes of production of agricultural products and/or other products ...")⁶. Nevertheless, the Organic Law, the Law and the Decision-making Rule, all three focus only on investing in agriculture and say nothing about other areas.

According to the Law (article 11, paragraph 7) and the Decision-making Rule (article 7, paragraph 2): An investment plan that envisages investment in agriculture must provide for the development of the value chain in agriculture and include a commitment that at least 4/5 employees are citizens of Georgia.

The Decision-making Rule (article 7, paragraph 5) further clarifies what is meant by the value chain development. According to the procedure, "the development of the value chain is considered to be the activities envisaged by the investment plan, as a result of which it will be possible to create additional value in the value chain in the relevant field of agriculture and/or which will facilitate the production of primary products and replace import to increase food security in the country."

2. The investment plan should provide for innovation, however, neither the Organic Law nor the Law define the type or field of innovation. Here it should be noted that from the definition of an investment plan it seems that innovation is a necessary feature of an investment plan; However, as appears from the Decision-making Rule (article 7, paragraph 1), this is not mandatory.

In the first paragraph of article 7 of the Decision-making Rule, innovation and introduction of technologies are mentioned in the list of necessary components of an investment plan, however, not as a necessary, but as a possible part: "The investment plan must include ... (h) a description of innovative activities (if it is provided for by the investment plan); (i) introduction and description of modern technologies (if it is provided for by the investment plan)".

3. The investment plan should envisage investments for implementing "international, national and/or local projects". The Organic Law says nothing about how to determine the significance, scope (international,

⁵ Decree #222 of the Government of Georgia on Approving the Procedure for Submitting an Investment Plan and Making a Decision with regard to an Investment Plan. Published on the Legislative Herald, registration code: [370020000.10.003.022777](https://www.ebr.gov.ge/legislation/370020000.10.003.022777)

⁶ Although article 6 of the Law of Georgia on Determination of the Designated Purpose of Land and on Sustainable Management of Agricultural Land establishes the obligation to use agricultural land for its intended purpose (for agricultural activities), at the same time it provides for using the land for other purposes, however, this is permissible after the formal procedure for changing the designated purpose of the land.

national, local) of a project, or to verify whether the project actually has these characteristics required by the Law.

4. Nor does the Organic Law define what is meant by "an investment". This was established later by the Decision-making Rule. According to this act, "investments are considered to be all types of property and non-property, including intellectual property or rights, which, for the purpose of obtaining possible profit, are capitalized by an interested person in the activity that is to be carried out on agricultural land purchased in Georgia. Funds received from an ongoing grant project/program in Georgia are not considered investments."

5. According to the definition given in the Organic Law, an investment plan must contribute to the "socio-economic development of the state, protection of national security, creation of new jobs." It seems that an investment plan, in addition to the above characteristics, must simultaneously meet these three requirements. The Organic Law does not contain any guidance on assessing the fulfillment of these three requirements of the investment plan.

As mentioned above, the Law and the Decision-making Rule consider only the case of investing in agriculture and mention the obligation to employ Georgian citizens in the project (at least 4/5 of employees must be Georgian citizens).

Protection of national security should also be mentioned. Paragraph 5 of article 11 of the Law requires that if an investment plan concerns "agricultural lands located in the border zone of Georgia or in a zone determined by a decision of the Government of Georgia", then the decision on the plan must be made in accordance with the national security policy. At the same time, the definition given in the Organic Law requires that the initiator of the investment plan not only takes into account national security policy but promotes national security, improves the current situation.

It is noteworthy that article 11 (paragraph 6) of the Law also requires that the Association Agreement between Georgia and the European Union be taken into account when considering an investment plan and making a decision.

Stages of decision-making on an investment plan and the opportunity for interested public to be involved in this process

As mentioned at the beginning, the Organic Law introduced only the concept of an investment plan; The decision-making stages on an investment plan and the parties involved are determined by the Law and the Decision-making Rule. In August 2021, another by-law was added to these two acts that determines the rules for establishment and operation of the Investment Plan Review Board⁷. The Diagram #1 below describes the decision-making stages on an investment plan as they are defined by the three mentioned normative acts. It should be noted that some of the procedural details are deliberately omitted as they are outside the scope of this study.

⁷ The Rules of Procedure of the Investment Plan Review Board, approved by the Order #2-1186 of the Minister of Environmental Protection and Agriculture of Georgia of August 3, 2021, published on the Legislative Herald, registration code: [370020000.22.023.016684](https://legislation.ge/doc/370020000.22.023.016684)

As can be seen from the diagram, the acts discussed in this study mostly determine the stages of decision-making on an investment plan in cases where agricultural land is owned by the legal entity of private law registered in Georgia - a case where its partner changes and the duty to submit an investment plan arises. The normative acts discussed in the study say almost nothing about the case where agricultural land is privatized (marked "(b)" in the diagram); decision-making stages on an investment plan are unclear in this case.

Diagram 1. The stages of decision-making on an investment plan

(a) In the case of privately owned agricultural land – the interested person submits an investment plan to the National Agency of Sustainable Land Management and Land Use (hereinafter - the Agency).

(b) In the case of privatization of agricultural land – the interested person submits an investment plan to the relevant body authorized to take decision on privatization (depending on who owns the land – the state, autonomous republic or municipality).

The Agency makes a decision within 5 days from the date of registration of the application on admissibility of an application (or establishing a deficiency or refusal to review).

The Agency reviews the investment plan. The time for review should not exceed two months. This term can be prolonged for not more than one month upon a reasoned decision of the Agency. During this period:

- The Agency “carries out preliminary inquiry from relevant municipality” (article 6, paragraph 2 of the Decision-making Rule);
- “The investment plan, depending on its content, can be transferred for agreement to the relevant institution of the executive authority exercising state policy in the relevant area (article 11, paragraph 3 of the Law);
- The Agency establishes the Investment Plan Review Board (see next stages).

The municipality and the relevant executive authority have 10 working days for submitting information to the Agency and agreeing on the investment plan.

The investment plan shall be submitted to the Investment Plan Review Board (hereinafter - the Board). The composition of the Board shall be approved by the Minister of Environmental Protection and Agriculture upon submission by the Agency.

In order to “make a legally correct and optimal decision”, the Board reviews the investment plan and prepares “proposals and recommendations” (or postpones consideration of the investment plan; or returns it to the initiator for processing). The Board makes a decision at the meeting of the Board.

The Agency shall submit minutes of the meeting and the investment plan to the Minister of Environmental Protection and Agriculture.

- (a) The Ministry shall submit the investment plan to the Government of Georgia within two weeks.
- (b) In case of privatization of agricultural land, the investment plan is submitted for consideration to the Meeting of the Government of Georgia by the relevant body with the authority to initiate.

The Government of Georgia issues an order to approve or reject the investment plan.

The interested person is obliged to submit to the Agency an unconditional and irrevocable bank guarantee no later than four months after the decision of the Government of Georgia to approve the investment plan.

Within 10 calendar days after the submission of a bank guarantee, the Agency and the person concerned conclude an agreement.

The initiator submits to the registering body the decision of the Government of Georgia on the approval of the investment plan, the investment plan approved by the Government of Georgia and the agreement concluded with the Agency.

It should also be noted that the Decision-making Rule mentions the conclusion of an agreement with the Agency (see the last box of the Diagram #1), however, the Procedure does not provide an explanation about the essence, purpose, rules on conclusion and other characteristics of this agreement.

As is known, the issue of ownership of agricultural land is the subject of heated discussions in all groups of Georgian society. There are frequent cases when disputes arise over alienation of agricultural land that is in the use of one or another local community; It is not uncommon for disputes to escalate into acute conflicts. Local communities usually complain that decisions on the alienation of land in their use and/or traditional ownership and the implementation of various projects are made without informing them, without their participation and taking into account their opinion. For these circumstances, it is interesting whether the acts discussed in this study provide for an opportunity to the public concerned and in particular, communities being affected by such decisions to be informed and participate in the decision-making process on an investment plan? Unfortunately, the answer to this question is short and simple; - No, it does not.

The Organic law, as repeatedly mentioned above, only introduces the notion of an investment plan. As regards the Law and the Decision-making Rule, none of them provide for informing the public at any stage of the decision-making process and/or for ensuring the participation of the public concerned in the decision-making process.

In recent years, when making decisions on land and land-based resources (e.g., mineral resources), the state authorities established a semi-formal practice of consulting with municipalities. This practice, unfortunately, is often presented as an attempt of the government authorities to inform the public and ensure their participation.

Representatives of government agencies claim that before making a decision, they send information about the decision to be made to the municipalities and wait for a response from them whether the local community will resist it. The resistance may be due to the fact that there may be conflicting interests with respect to the use of natural resources. The authorities consider the response of the municipalities as a response received in consultation with the local communities, but in reality, of course, this is not the case. Municipalities are neither empowered nor obliged (especially in the absence of appropriate procedures) to ensure public access to information and participation; they do not even have the resources to do so. In addition, they cannot be held responsible for the response returned to the public authorities, for its correctness.

Unfortunately, it is very likely that the step described in one of the boxes of the diagram above - when the Agency conducts a preliminary inquiry of information from the respective municipality - it exactly implies this fictitious practice (and in just 10 days). This means that the process of making investment decisions may be smooth and painless for those involved but it will not be as painless for local communities and other stakeholders affected by these decisions. Ignoring the voice of local communities and the public concerned, as shown from vast experience both in Georgia and in different parts of the world, significantly increases the risks of failure or non-fulfillment of investment projects, as well as discrediting the authorities and damaging reputation of investors.

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This policy brief was produced under the framework of Green Alternative's project - Responsible land politics. Green Alternative gratefully acknowledges the financial assistance of the Heinrich-Böll-Stiftung e.V. South Caucasus Regional Office.

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