

EXEMPTIONS OF ACQUISITION OF AGRICULTURAL LANDS BY FOREIGN NATIONALS WILL BE PROVIDED BY LAW

The Parliament of Georgia is considering draft laws On Ownership of Agricultural Lands and On Determination of Targeted Purpose of Lands and Sustainable Management of Agricultural Lands at first hearing. The law imposes restrictions related to the ownership of agricultural lands on foreigners, including on those who have lost Georgian citizenship.

DRAFT LAW, INITIATOR

Legislative initiative: [Organic Law on Ownership of Agricultural Lands](#) and [Law on Determination of Targeted Purpose of Lands and Sustainable Management of Agricultural Lands](#)

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ESSENCE OF THE DRAFT LAW

Adoption of the legislative amendments is conditioned by the entry into force of the new version of the Constitution. According to the Constitution agricultural lands can be owned only by the state, self-governing entity, a Georgia citizen or an association of Georgian citizens.

The legislative amendments provide for title to agricultural lands and exemptions:

- The status of persons, who owned agricultural lands before the effectuation of the new version of the Constitution or will inherit them in future, will be defined;
- Financial institutions/banks and microfinance organizations operating in Georgia, more than 50% of whose shares is owned by a foreign national or a legal entity registered abroad, will have to alienate lands within a period of 2 years. **If the lands are not sold within set timelines, sanction, prescribed by law, will be additionally applied against the owners;**
- Foreign national natural persons will acquire title to land plots only through inheritance. As regards foreign nationals who already own agricultural land plots, they will be required to use these lands only for agricultural purposes, and in the case of failure to abide by this obligation for 3 years successively, they will be subjected to pecuniary sanctions and will be required to alienate the land plots. **Otherwise, the land will be transferred under state ownership against compensation;**
- **Pecuniary fines are introduced for persons, prescribed by law, who will use the agricultural lands for non-targeted purposes**, what will result in the deterioration of the quality of lands. The fine will be calculated according to the methodology approved by the Government of Georgia.

1. WHO CAN BE AN OWNER OF AN AGRICULTURAL LAND PLOT?

CURRENT VERSION	PROPOSED AMENDMENT
<ul style="list-style-type: none"> • A Georgian citizen, household, a legal entity registered by a Georgian citizen in Georgia; • A foreign national, a legal entity registered abroad, a legal entity registered by a foreign national in Georgia according to Georgian legislation; • In highlands the land can be under private, community or state ownership. 	<ul style="list-style-type: none"> • State, Autonomous Republic, municipality; • Legal Entity of Public Law; • A Georgian citizen; • A company registered in Georgia if more than 50% of its shares is owned by a foreign national or a foreign company; • An association/partnership if foreign nationals do not constitute the majority of its members; • A foreign national if he/she inherited title to a land plot; • A company registered in Georgia, more than 50% of whose shares is owned by a foreign national or/and a company registered abroad, by decision of the Government of Georgia, on the basis of investment plan; • An international financial institution (they are required to alienate the land plot concerned within a period of 2 years from the date of origin of title thereto)

2. OBLIGATION TO ALIENATE AGRICULTURAL LANDS

CURRENT VERSION	PROPOSED AMENDMENT
Legal entities registered abroad are required to alienate agricultural land plots under their ownership to a Georgian citizen, household or/and legal entity registered in Georgia under Georgian legislation within a period of six months following the origin of title thereto.	<ul style="list-style-type: none"> • A legal entity of private law registered in Georgia (whose dominant partner is a foreign national or/and a legal entity registered abroad) will be required to alienate the land parcel concerned within a period of 1 year following the failure to perform the investment obligation; • In the case of inheritance of an agricultural land plot, a foreign national is required to ensure its usage for agricultural purposes. In the case of failure to perform this obligation, the former is required to alienate it within a period of 3 years (this obligation does not apply to an agricultural land plot of homestead category); • If a company, which has not fulfilled the investment obligation and a foreign national, who inherited an agricultural land plot and has not used it for intended purposes, fail to alienate the land plot, it will be transferred under state ownership against compensation.

3. USE OF AGRICULTURAL LAND IN THE CAPACITY OF A COLLATERAL

CURRENT VERSION	PROPOSED AMENDMENT
No restriction is provided for.	An agricultural land plot cannot be used as a collateral for the benefit of a company, whose dominant partner is a foreign national or a company, registered abroad.

4. STATE POLICY FOR USING LAND RESOURCES IN AN EFFICIENT AND TARGETED MANNER

CURRENT VERSION	PROPOSED AMENDMENT
Is not provided for.	The National Agency for Monitoring Sustainable Land Management and Land Use will be created with the following main functions: creation of unified database of land resources, development of the state policy for efficient and targeted utilization of land resources and monitoring of its fulfillment; the Agency will also combine the functions of the National Agency of Public Registry concerning the change of the purpose of agricultural lands.

5. OBLIGATION TO PRESENT AN INVESTMENT PLAN

CURRENT VERSION	PROPOSED AMENDMENT
Is not provided for.	<ul style="list-style-type: none"> • An investment plan should be presented by a company, registered in Georgia, the dominant partner of which is a foreign national or/and a legal entity registered abroad, upon acquisition of a land plot; • If a company, registered in Georgia, the dominant partner of which is a foreign national or/and a legal entity registered abroad, owns a land plot for the moment of effectuation of the Law, it is required to present an investment plan within a period of 2 years following the effectuation of the Law; • In the case of non-fulfillment of the commitment under investment plan, the company is required to ensure the alienation of the land plot within a period of one year.

6. PROCEDURE OF CHANGE OF THE TARGETED PURPOSE OF A LAND PLOT AND CHANGE OF THE PURPOSE OF AGRICULTURAL LANDS

CURRENT VERSION	PROPOSED AMENDMENT
A decision on targeted purpose of a land plot is made by Public Registry to what end the existence of "reasoned necessity" is sufficient and the principles of sustainable management of the land are not taken into account.	A decision on targeted purpose of a land plot will be made by the National Agency for Monitoring Sustainable Land Management and Land Use based on the principles of sustainable management of land and conditions of the spatial territory concerned.

ASSESSMENT / RECOMMENDATIONS

Legislation about ownership of agricultural lands has been repeatedly changing for the past years. The Government twice declared a moratorium on the sale of agricultural lands, in 2013 and 2017. The moratorium was prohibiting foreign nationals from acquisition of agricultural lands in Georgia. Last year the Constitutional Court found the moratorium on alienation of land plots to foreign nationals unconstitutional.

After the entry into force of the new version of the Constitution of Georgia the necessity of legislative amendments again became the point of agenda. Pursuant to the new version of the Constitution of Georgia the Parliament of Georgia, agricultural land can be under the ownership of the state, legal entity, Georgian citizen or association of Georgian citizens. Exemptions in the field of ownership of agricultural lands can be defined by Organic Law.

It is important for these amendments not to create artificial barriers and not to bear the risks of corruption.

The following points are problematic in the Draft Law and require further improvement:

1. The land ownership related issues should be regulated by law, should be predictable and the process should be transparent. Respectively, the range of issues, subject to determination/ resolution and regulation by a Governmental resolution should be limited to maximum practicable extent.

According to draft laws, subject to regulation by Governmental resolution should be the issues of crucial importance, like the procedure of presentation of an investment plan, making a decision on the transfer of an agricultural land plot under state ownership, determination of the value of land plot and its payment. A sublegal act will not ensure adequate regulation of such issues of key and crucial importance. They should be regulated by a law in order to, first of all, prevent the possibility of making amendments by the Government without relevant discussions and participation of political forces.

2. For the purposes of this Law the persons, who lost Georgian citizenship, cannot be legally equalised to the status of the foreign nationals

Quite a large part of the population of Georgia (1 million, according to unverified data) are illegal emigrants and part of them have lost Georgian citizenship due to social-economic problems, just to acquire the right to legal employment in other countries. Accounting for this situation it will be reasonable to provide for an exemption for those persons, who are Georgian citizens, own agricultural lands will be deprived of Georgian citizenship. To properly regulate this, the Law On Compatriots Residing Abroad and Diaspora Organisations, which provides a definition for compatriots and envisages the retaining of links of compatriots living abroad to Georgia.

3. The Law should not have the retroactive effect with regard to natural persons and legal entities, who have their title to agricultural lands registered before the entry into force of the restrictions concerned.

The restrictions prescribed by draft law will also apply to foreign nationals, who were the owners of agricultural land plots before the entry into force of the draft law. This approach deteriorates the legal status of the persons, who received land, as an object of civil circulation, under ownership without any condition. It should as well be mentioned, that introduction of such restrictions for financial institutions, moreover with regard to damage, they acquired title to before the effectuation of Law, will entail unreasonable financial damage.

It should be stressed that Georgia has bilateral investment agreements with many countries¹. Some investors own agricultural lands under this agreements on terms and conditions, that existed for the moment of investment. Introduction of additional discriminatory conditions for them may violate the terms and conditions of the agreements on bilateral investment.

4. The Law should not provide for a restriction with regard to change of a partner of a legal entity

The law prohibits alienation of a share of a company, who owns an agricultural land plot or its use as a collateral, if a foreigner will hold more than 50% of the shares. This restriction is an unjustified intervention into managerial activities of legal entities and contradicts the company law.

5. Use of agricultural lands as collateral should not be prohibited

According to draft law an agricultural land plot cannot be used as a collateral. Use of land as a collateral does not mean its immediate transfer under ownership and, respectively, such a restriction is beyond the goal of the Law. Prohibition of the use of an agricultural land plot as a collateral will further complicate the position of Georgian citizens, who want to use land as a source of income.

6. The obligation to cultivate the land is imposed only on foreigners

According to the draft law, a foreigner may receive agricultural land through inheritance but he/she is obliged to cultivate the land, otherwise he/she will be obliged to sell it. This regulation is not imposed on Georgian citizens. It is unclear what the purpose of this regulation is if it imposed only on foreigners. It can be said this violates the principle of equality to the law.

Furthermore, unfortunately the proposed amendments do not provide for the necessity of conduct of Regulatory Impact Analysis (RIA). Such analysis allows for the calculation of potential costs and expenses and benefits in advance and determination of all potential consequences of a new regulation. The Government of Georgia has committed itself to the introduction of RIA under "[Policy Planning System Reform Strategy](#)" document (May, 2015).

¹ <https://investmentpolicyhub.unctad.org/IIA/CountryBits/77>