

**Law of Georgia on  
the Amendment to the Law of Georgia  
on the Ownership of Agricultural Land**

**Article 1.** „The Law of Georgia on the Ownership of Agricultural Land” (Parliamentary Bulletin, No 007, 30.04.96, Pg. 17), Article 22, Subsections 3<sup>1</sup> and 3<sup>2</sup> shall be amended as follows:

“3<sup>1</sup>. Subsection 3 of this Article shall not apply to:

- a) commercial banks and microfinance organizations defined under the laws of Georgia, as well any wholly-owned subsidiary of a commercial bank or microfinance organization;
- b) sovereign or public international financial institutions which have entered into bilateral or multilateral agreements with Georgia governed by norms of international law;
- c) financial institutions of developed countries, defined in accordance with the Law of Georgia on the Activities of Commercial Banks;
- d) transfer of shares of companies registered in Georgia, which owned agricultural land as of June 28, 2013;
- e) the special cases which shall be determined by a decision of the Government of Georgia in accordance with the rule established under Subsection 3<sup>2</sup> of this Article.

3<sup>2</sup>. In the event envisaged under Subsection 3<sup>1</sup>(e) of this Article, an interested person shall apply to the relevant agency of executive government implementing policy in the field which shall present the issue to the Government of Georgia for resolution in case of justified [reasonable] necessity and in view of state and public interests.”

**Article 2.** This Law shall come into force upon the promulgation thereof.

The President of Georgia  
**Margvelashvili**

**Giorgi**

Kutaisi,

..... 2014

## **Explanatory Note**

### **Draft Law of Georgia on the Amendment to the Law of Georgia on the Ownership of Agricultural Land**

#### **a) General information on the draft law:**

In June 2013, the Parliament of Georgia adopted Draft Law of Georgia on the Amendment to the Law of Georgia on the Ownership of Agricultural Land, according to which, until 31 December 2014, a legal entity registered in Georgia by a foreigner will not be entitled to purchase agricultural land. One of the adverse effects of this moratorium is the fact that banks, microfinance organizations and those representatives of the financial sector which have foreign shareholders, in cases of default by the borrower, will not be able to gain the ownership title or/and sell the agricultural land/actives, which they had as collateral provided by the borrower, and, therefore, the damages incurred as a result of the default will not be repaid.

Along with the legislative amendment made in February, 2014, such restriction was lifted for banks, however, the restriction was not lifted for the microfinance organizations and other representatives of the financial sector, which will have an adverse effect on existence of a free, fair and competitive business environment in this segment of the market. Namely, representatives of the financial sector which were created by participation of foreign shareholders (e.g. microfinance organizations) will be disadvantaged as opposed to banks and companies/organizations created solely by Georgian citizens, which will also significantly restrict the Georgian farmers' possibility to use foreign agricultural loans.

It is important to note that microfinance organizations together with banks are financial institutions and, according to the Law of Georgia on "Microfinance Organizations", their main function is to give micro loans. Crediting business of microfinance organizations is often related to gaining ownership of mortgaged real estate, including agricultural land. The temporary moratorium (until 31 December 2014) set by the law will hinder this process in this period and, therefore, will have a negative effect not only on the business of commercial banks, but also – microfinance organizations. Consequently, applying the mentioned exemptions for banks creates a possibility of unfair competition as with microfinance organizations.

It is also advisable to consider the special role of microfinance organizations in crediting the agriculture: they have a broad network of branches in regions and, unlike banks (except for "Bank Constanta"), they have the strong experience of providing microloans to farmers in villages. According to the trends of last 7 years, the share of loans for agriculture provided by banks has been just approximately 1% of their overall loan portfolio, whereas the similar figure for microfinance organizations stood at average 27% and, in absolute figures, even has exceeded the volume of loans provided by banks for agriculture, even though the actives of microfinance organizations constitute only 2-5% of banks' assets.

Georgia's microfinance sector is growing. The overall assets of microfinance organizations have grown six-fold in the course of 5 years. This sector attracts foreign investments – certain microfinance organizations have foreign founders and shareholders. Nonexistence of norms giving certain exemptions for microfinance organizations (like banks) restricts the foreign financing of the credit market. The little competition will have a negative effect on farmers and businesses: will hinder their business and, in general, will have a negative effect on the investment climate; in addition, it will turn the agricultural land illiquid as opposed to them.

It is also important that the restrictions laid down by the Georgian legislation does not apply to sovereign and public international financial institutions (as a rule, such relations are regulated by international law and bilateral and multilateral treaties concluded with Georgia), such as OPIC, IFC, EBRD, ADB, BSTDB etc. and private international financial institutions which are the main source of credit in the Georgian economy. These institutions will not provide loans in support of the agriculture, if they are not able to have the agricultural land as collateral, as well as not being able to gain ownership title on the land in case of the borrower's failure to fulfill an obligation or/and sale thereof to any person/entity in an open market.

After the law was adopted suspending foreign acquisition of agricultural land, the Public Registry refused to register transfer of shares to non-Georgian citizens of Georgian companies that own agricultural land. The Public Registry is refusing to register such transfers even if the transfer of share to a non-Georgian citizen would not increase foreign shareholding in the Georgian company and even if foreign ownership was a minority of the shareholding in the Georgian company. The Public Registry's interpretation of the law in this way has deprived Georgian owners of

shares in companies that own agricultural land of the right to alienate their shares to buyers of their choice. Moreover it means that Georgian agricultural companies cannot raise capital for agricultural development in Georgia by selling shares to foreign investors. Therefore, it is important that the mentioned norm specifically allowed shareholders in Georgian companies, which own agricultural land, to transfer those shares to any buyer, including a non-Georgian citizen.

**a.a) Reason for adopting the draft law:**

The reason to add microfinance organizations to the exemption in clause 3<sup>1</sup> (a) is that microfinance organizations provide loans to Georgian small businesses and farmers, which are sometimes secured by an agricultural land plot. Like Georgian commercial banks, many Georgian microfinance organizations have non-Georgian shareholders (whether minority or majority). If microfinance organizations cannot foreclose against agricultural land plots in case of the borrower's de-fault, then they will not take such plots as collateral for loans, which will reduce the availability of credit to Georgian borrowers who wish to use agricultural land as collateral for loans, or who may not even have any other collateral to offer. This can have a particularly negative impact on micro-lending to small farmers for agricultural purposes, which is contrary to the state's policy to support agriculture and small farmers in Georgia.

The reason for the insertion of the further language in clause 3<sup>1</sup> (b) about subsidiaries of commercial banks and microfinance organizations is as follows: banks and microfinance organizations may (and banks do) create wholly-owned subsidiaries for the purpose of temporarily managing and ultimately selling in the open market assets that they have acquired from debtors through the exercise of the bank's or microfinance organization's rights as a mortgagee. Such subsidiaries need to be able to acquire all re-possessed collateral from their parent bank or microfinance organization, including agricultural land and re-sell such collateral in the open market to any buyer, including a non-Georgian person. These further transactions involving collateral re-possessed by a bank from a borrower are essential to the bank or microfinance organization being able to recover value from the collateral to compensate it for the borrower's default in re-paying the loan, and therefore are essential to the functioning of the country's credit system.

The reason to add sovereign and public international financial institutions to the exemption (clause 3<sup>1</sup> (c)), is because these institutions are major sources of credit into the Georgian economy. The government wishes to

encourage them to make loans into the Georgian agricultural sector, to promote the development of agriculture in Georgia. These public international and sovereign financial institutions are not Georgian-owned, and they will not make loans to support agricultural development in Georgia unless they can take agricultural land as collateral, acquire such land in case of the borrower's default, and/or re-sell such land on the open market to any buyer. Sovereign and public international financial institutions normally have framework or cooperation agreements with the Government of Georgia, which are public international law agreements under Georgian law, and this is chosen as the definition of such institutions for purposes of this law. Such institutions include for example OPIC, IFC, EBRD, ADB, BSTDB and others.

The reason to add the transfer of shares of the companies registered in Georgia which owned agricultural land as of 28 June, 2013 to the exemptions (Article 22(3<sup>1</sup>)(d)) is the fact that, after the law was adopted suspending foreign acquisition of agricultural land, the Public Registry refused to register transfer of shares to non-Georgian citizens of Georgian companies that own agricultural land. The Public Registry is refusing to register such transfers even if the transfer of share to a non-Georgian citizen would not increase foreign shareholding in the Georgian company and even if foreign ownership was a minority of the shareholding in the Georgian company. There was nothing in the amendment on suspending foreign acquisition of agricultural land that would have prohibited transfer of shares in Georgian companies that own agricultural land. The Public Registry's interpretation of the law in this way has deprived Georgian owners of shares in companies that own agricultural land of the right to alienate their shares to buyers of their choice. Moreover it means that Georgian agricultural companies cannot raise capital for agricultural development in Georgia by selling shares to foreign investors. Accordingly, sub-clause (d) of the proposed amendment restores the right of shareholders in Georgian companies, which own agricultural land, to transfer those shares to any buyer, including a non-Georgian citizen.

#### **a.b) The goal of the draft law**

The goal of the draft law is to provide equal and fair treatment of all representatives of the financial sector, and like for banks, to abolish the restrictions under the moratorium on acquisition of agricultural land for microfinance organizations, sovereign and public international financial institutions and private international financial institutions. The draft law also specifies that the restrictions under the moratorium do not apply to transfers of shares of the companies registered in Georgia which owned agricultural land as of 28 June 2013.

### **a.c) The substance of the draft law**

The draft law amends the wording of Article 22(3<sup>1</sup>), according to which Subsection 3 of the same Article (restricting companies registered by foreigners in Georgia from the acquisition of agricultural land) does not apply to:

- a) commercial banks and microfinance organizations defined under the laws of Georgia, as well any wholly-owned subsidiary of a commercial bank or microfinance organization;
- b) sovereign or public international financial institutions which have entered into bilateral or multilateral agreements with Georgia governed by norms of International Law;
- c) financial institutions of developed countries, defined in accordance with clause 1(e) of the Law of Georgia on the Activities of Commercial Banks;
- d) transfer of shares of Georgian companies, which owned agricultural land as of June 28, 2013;
- e) the special cases which shall be determined by the resolution of the Government of Georgia in accordance with the rule established under Subparagraph 3<sup>2</sup> of this Article.

### **b) Financial Justification of the Draft Law**

#### **b.a) The source of necessary expenditures related to adoption of the draft law:**

Adoption of the draft law will not cause assignment of additional expenditures from the state budget.

#### **b.b) The impact of the draft law on the revenues' section of the budget:**

The adoption of the draft law may have positive effect on the revenues' section of the budget in terms of payment of taxes on transactions related to disposal of agricultural land.

#### **b.c) The impact of the draft law on the expenditures' section of the budget:**

The adoption of the draft law will not have an effect on the expenditures' section of the budget.

#### **b.d) New Financial Obligations for the State:**

The adoption of the draft law will not create new financial obligations for the state.

**b.e) Expected financial results for those whom the law applies to:**

The adoption of the draft law may have a positive effect for those whom the law applies to as the restrictions are lifted to a certain segment of buyers of agricultural land, which broadens the list thereof and increases possibilities of transactions on this category of land.

**b.f) The amount and the principle of determining the amount of taxes, dues or other type of taxes as determined by the draft law:**

The draft law is not related to adopting a new tax, due or other type of taxes, neither – amending the existing amounts thereof.

**c) The draft law's relation with international law standards:**

**c.a) The draft law's relation with the EU's directives:**

The draft law does not contradict the EU's directives.

**c.b) The draft law's relation with Georgia's commitments with regards to its membership in international organizations:**

The draft law does not create Georgia's commitments with regards to its membership in international organizations.

**c.c) The draft law's relation with Georgia's bilateral and multilateral treaties:**

The draft law does not contradict Georgia's bilateral and multilateral treaties.

**d) Conducted consultations in preparing the draft law:**

**d.a) Governmental, non-governmental or/and international organization/institution, experts, which participated in preparing the draft law, if any:**

The following were involved in preparing the draft law: "Transparency International – Georgia", "American Chamber of Commerce" and "Association of Development and Support of Microfinance Organizations of Georgia".

**d.a) Assessment by organizations (institutions) or/and experts participating in preparing the draft law about the draft law, if any:**

None.

**e) Author of the draft law:**

**f) Sponsor of the draft law:**