Organisation for Economic Co-operation and Development

DAF/INV/WD(2020)17/REV1

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15 September 2020

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE

OECD Investment Policy Reviews: Georgia 2020

Draft

For discussion at a virtual meeting of the Investment Committee
28 September 2020, 13:30-15:00 Paris time

This meeting will take place virtually on the Zoom platform. The Committee will meet in enlarged session (Members and non-OECD Members that have adhered to the Declaration on International Investment and Multinational Enterprises).

This draft differs only slightly from the initial version issued in August. It incorporates some but not all of the comments received so far both in writing and in discussions with the government and stakeholders. These comments will be taken into account in the next version of the draft.

The Investment Policy Review of Georgia is funded by the EU under the EU4Business Initiative.

The document will be available in pdf only.

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JT03465302

EU4Business	This report has been developed within the framework of the OECD project "EU4Business: From Policies to Action", implemented with the financial support from the EU under the EU4Business Initiative. The EU4Business Initiative covers all EU support for small and medium-sized enterprises (SMEs) in the region of the Eastern Partnership which brings together the EU, its member states and six partner countries: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. www.eu4business.eu

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Assessment and recommendations

Georgia's rapid transformation from Soviet republic to a liberal market economy is nothing short of remarkable. In a few years, the country implemented more structural, regulatory and economic reforms than most countries attempt to advance in decades. These "big bang" reforms, beginning in 2004, eased the business environment, drastically reduced corruption, and opened the economy to investors. Reforms ushered in strong GDP growth, averaging 5.3% since 2004, and transformed Georgia from one of poorest post-Soviet states to an upper-middle income economy. Georgia now ranks among the top countries in the world to do business and has succeeded in substantially growing its FDI stock to over 100% of GDP.

However, in recent years the Georgian government has reflected on why these reforms have not facilitated more broad-based economic growth. Productivity and exports remain low, and unemployment and poverty high. FDI attraction has been fairly strong relative to the size of Georgia's economy, but inflows have not increased substantially over the past decade . The majority of FDI has gone to non-tradable sectors, including transport infrastructure, real estate, construction and financial services. These sectors are important contributors to economic growth, but have not sufficiently advanced job creation or productivity, and may be limited by Georgia's relatively small domestic market. With the exception of recent growth in tourism and renewable energy, FDI in export-oriented sectors, including manufacturing and agriculture, has remained flat, and at 11% and 1% of total FDI since 2007, far below potential.

Georgia is now, like much of the world, facing the unprecedented health and economic consequences of the COVID-19 pandemic. The government took swift monetary and fiscal measures to support healthcare provision, promote liquidity, and assist at-risk firms and individuals (OECD, 2020[1]). Disruptions to business, travel, remittances and investment are nonetheless likely to have a severe near-term impact on the economy. Early projections suggest that GDP growth could contract by 4 to 5.5% (IMF, 2020[2]) (EBRD, 2020[3]). Private investment, both foreign and domestic, will be essential for Georgia's economic recovery.

Georgia has removed much of the de jure barriers to FDI; its task is now to improve the overall enabling environment for investment. This includes addressing gaps in infrastructure and connectivity within the country, and upgrading the skills of the workforce. Improving not only regulatory constraints but the whole investment climate – including the wider legal framework, investment promotion strategy and institutions, policies to promote responsible business conduct, and impediments to growth of priority sectors – will help Georgia attract FDI that can have a positive impact on productivity and inclusive, sustainable growth.

Adopting a wide-angle approach based on the OECD Policy Framework for Investment (OECD, 2015[4]), this Investment Policy Review of Georgia looks at challenges to Georgia's investment policy framework, and provides policy recommendations for the government to consider to strengthen its reform efforts. The review analyses FDI trends and their impact on sustainable development (chapter 1), the legal and regulatory framework for investment and investor protection (chapter 2), promoting sustainable investment in Georgia's agri-food sector (chapter 3), investment promotion (chapter 4), and policies to promote and enable responsible business conduct (chapter 5). The main findings and recommendations of this

Investment Policy Review are summarised later in this overview chapter, which first presents the background to Georgia's liberalisation reforms, socio-economic challenges, and investment climate constraints.

Box 1. The Policy Framework for Investment

The Policy Framework for Investment (PFI) helps governments to mobilise private investment in support of sustainable development, thus contributing to the prosperity of countries and their citizens and to the fight against poverty. It offers a list of key questions to be examined by any government seeking to create a favourable investment climate. The PFI was first developed in 2006 by representatives of 60 OECD and non-OECD governments in association with business, labour, civil society and other international organisations and endorsed by OECD ministers. Designed by governments to support international investment policy dialogue, co-operation, and reform, it has been extensively used by over 35 countries as well as regional bodies to assess and reform the investment climate. The PFI was updated in 2015 to take this experience and changes in the global economic landscape into account.

The PFI is a flexible instrument that allows countries to evaluate their progress and to identify priorities for action in 12 policy areas: investment policy; investment promotion and facilitation; trade; competition; tax; corporate governance; promoting responsible business conduct; human resource development; infrastructure; financing investment; public governance; and investment in support of green growth. Three principles apply throughout the PFI: policy coherence, transparency in policy formulation and implementation, and regular evaluation of the impact of existing and proposed policies.

The value added of the PFI is in bringing together the different policy strands and stressing the overarching issue of governance. The aim is not necessarily to break new ground in individual policy areas but to tie them together to ensure policy coherence. It does not provide ready-made reform agendas but rather helps to improve the effectiveness of any reforms that are ultimately undertaken. By encouraging a structured process for formulating and implementing policies at all levels of government, the PFI can be used in various ways and for various purposes by different constituencies, including for self-evaluation and reform design by governments and for peer reviews in regional or multilateral discussions.

The PFI looks at the investment climate from a broad perspective. It is not just about increasing investment but about maximising the economic and social returns. Quality matters as much as the quantity as far as investment in concerned. It also recognises that a good investment climate should be good for all firms – foreign and domestic, large and small. The objective of a good investment climate is also to improve the flexibility of the economy to respond to new opportunities as they arise – allowing productive firms to expand and uncompetitive ones (including state-owned enterprises) to close. The government needs to be nimble: responsive to the needs of firms and other stakeholders through systematic public consultation and able to change course quickly when a given policy fails to meet its objectives. It should also create a champion for reform within the government itself. Most importantly, it needs to ensure that the investment climate supports sustainable and inclusive development.

The PFI was created in response to this complexity, fostering a flexible, whole-of-government approach which recognises that investment climate improvements require not just policy reform but also changes in the way governments go about their business.

For more information on the Policy Framework for Investment, see: www.oecd.org/investment/pfi.htm.

Source: (OECD, 2015[4]).

Historical context

Liberalisation reforms improved the business environment and propelled GDP growth

Georgia deserves accolades for its “big bang” reforms, which fundamentally altered the country after the 2003 Rose Revolution. Mass peaceful protests gave the new government a mandate to institute sweeping change. Reforms focused on: curbing rampant corruption, privatising state-owned enterprises, reducing regulations and barriers to business, reforming the tax system, and liberalising trade and investment, along with measures to improve Georgia’s macroeconomic standing. Though the scale and pace of reforms have varied over time, successive governments have continued efforts to improve the business and investment climate, with positive effects on economic growth.

Eliminating corruption was one of the post-2003 government’s chief priorities, and its approach was drastic. It dissolved the entire traffic police force, considered one of the most corrupt government agencies, firing 16 000 employees in one day. The body was replaced by a much smaller, better-paid cadre of officers (Gilauri, 2017[5]). Eighteen independent government departments and five ministries were either eliminated or restructured to reduce inefficiencies and dismiss corrupt officials (IMF, 2005[6]). These and other measures transformed Georgia from one of the most corrupt countries in the world, according to Transparency International’s Corruption Perceptions Index, to the least corrupt in Eastern Europe and Central Asia today (Transparency International, 2020[7]).

To advance Georgia’s transition to a market economy, the government accelerated privatisation of state-owned enterprises (SOEs), putting the majority of state assets up for open tenders. As a result, the share of the private sector in the economy rose to the highest in the region by 2010 (OECD, 2011[8]).

Other reforms have focused on improving the business environment and spurring international trade and investment. Licences and permits required to do business were systematically reduced from roughly 900 to fewer than 150 (Gugushvili, 2017[9]). In 2004 starting a business involved nine procedures and took 30 days; today it is one step and one day, making Georgia the second easiest country in the world to open a business, according to the World Bank’s Doing Business Indicators (Figure 2). A series of improvements to access to credit, protection of investors, provision of electricity, contract enforcement, and property registration propelled Georgia into the top 20 countries to do business in 2008, according to the World Bank’s index; today it ranks 7th in the world (World Bank, 2020[10]) (World Bank, 2004[11]) (World Bank, 2007[12]).

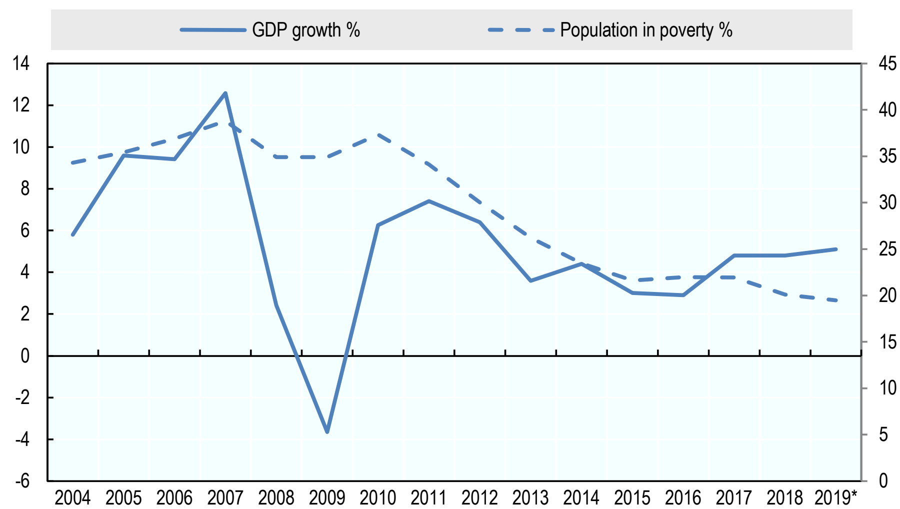
Early reforms also overhauled the tax system, reducing the overall number of taxes from more than 20 to 6, and cutting rates. The simplified system improved tax collection and substantially increased government revenue. Subsequent revisions to the tax code introduced favourable conditions for SMEs (OECD, 2011[8]). Most recently, in 2017, the government replaced corporate income tax (CIT) with a dividend tax of 15%, applied only to distributed profits. This so-called “Estonian model” exempts reinvested earnings from CIT. The government’s ability to implement changes to the tax code are limited however, following the 2011 Economic Liberty Act, which sets restrictions on fiscal policy, including a mandate that any new taxes or increased rates pass a national referendum.

To facilitate trade, successive reforms simplified customs procedures and reduced the number, rate and scope of tariffs. As of 2016, Georgia had one of the lowest tariff rates (MFN) in the world, and nearly 80% of imports were duty free (WTO, 2016[13]). Recent reforms have focused on approximating trade legislation and procedures with EU standards. Georgia signed an Association Agreement, including a preferential trade regime (DCFTA), with the European Union (EU) in 2014 (see Box 2 for a summary of Georgia’s commitments and reforms under the agreement). Georgia also has free trade agreements with the Commonwealth of Independent States (CIS), the European Free Trade Association (EFTA), and bilaterally with many countries, including Turkey, and China, and a Generalised System of Preferences agreement with the US.

In addition to the aforementioned measures, policy changes since 2004 have reduced restrictions on international investors and enshrined in law free movement of capital. Due in part to its liberal trade and investment framework, Georgia ranks 12th in the world on the Heritage Foundation's Economic Freedom Index – a measure of open markets and regulatory efficiency – and 6th in the Europe region (Heritage Foundation, 2020[14]). Georgia is also one of the most open economies to foreign investment based on the OECD *FDI Regulatory Restrictiveness Index*, which assesses and benchmarks market access and exceptions to national treatment for more than 70 economies (see Chapter 2). These reforms helped increase FDI inflows more than five-fold between 2003 and 2007, and in 2017 large-scale energy transport investments helped bring record levels of FDI to the country.

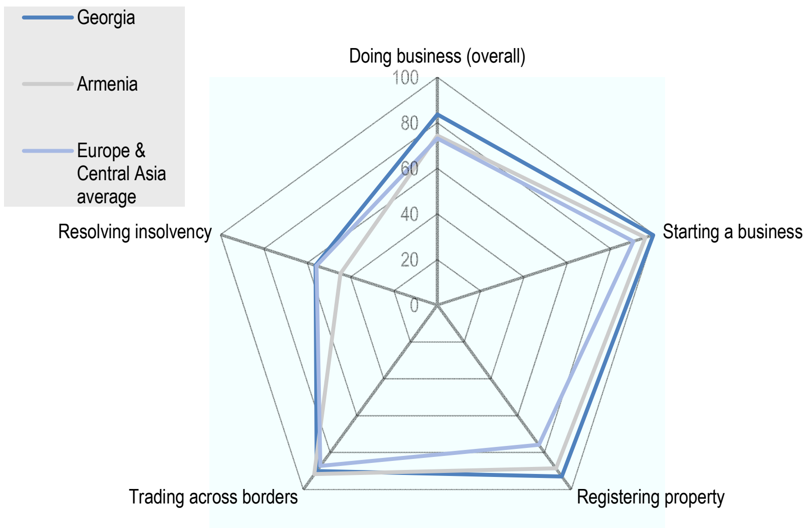
The initial wave of liberalisation measures after 2004 and subsequent reforms had a clear and positive effect on economic growth. GDP growth rates averaged 9% between 2004 and 2007, compared to -4% between independence and the Rose Revolution (Figure 1). Growth has been fairly resilient to substantial economic shocks, including a Russian trade embargo, the 2008 global financial crisis and Russia's August 2008 invasion, recovering quickly after a brief contraction. In the past five years, GDP growth has been more moderate but still strong at an average of 4.1%. This growth helped halve the percentage of the population living in poverty and more than quadrupled GDP per capita since 2004.

Figure 1. Strong average GDP growth has helped halve poverty



Note: Right axis shows the share of population living under the absolute poverty line, as defined by the Georgian government, with 2015 as a base year for calculating the poverty line. GDP growth for 2019 provisional data.
Source: Geostat (for poverty rate) and World Bank Development Indicators Data (for GDP growth)

Figure 2. Georgia ranks among the top countries in the world to do business



Note: Score on a scale of 0 to 100, 0 represents the lowest performance and 100 the best performance.
Source: (World Bank, 2020[10]).

Box 2. Georgia's free trade agreement with the EU (DCFTA) and related reforms

Central to Georgia's socio-economic development strategy is future integration in the European Union (EU). In an important step toward closer political and economic ties, Georgia and the EU signed in 2014 an Association Agreement, which establishes the framework for closer co-operation. The Agreement introduces a preferential trade regime, the Deep and Comprehensive Free Trade Area (DCFTA). The DCFTA facilitates trade and investment between Georgia and the EU, in particular by removing all import duties on goods, providing mutual access to trade in services, and establishing the principle of non-discrimination (that businesses receive the same treatment as domestic companies) for investors. The Agreement also outlines reform priorities for Georgia to further align policies and legislation with EU standards. Commitments relate to democracy, rule of law, human rights, good governance, trade, market economy, and sustainable development.

By removing customs tariffs and quotas and harmonising relevant Georgian laws, norms and regulations in trade-related sectors to EU standards, the Agreement envisions increased trade and investment between Georgia and Europe, supporting the development of the Georgian economy. It is not clear, however, that the Agreement has yet led to a measurable increase in either trade or investment. Georgia previously benefited from EU market access under the Generalised System of Preferences (GSP+) regime. The Association Agreement has led to visa-free travel for Georgians to Schengen and Schengen-associated countries as of 2017.

Under the terms of the Association Agreement, Georgia has pledged to take a range of political, socio-economic and institutional reforms to move closer to EU standards. Reforms cover the following policy areas:

- Trade in goods, services and e-commerce (including rules of origin)

- Customs and trade facilitation, technical barriers to trade, standardisation, metrology, accreditation and conformity assessment
- Sanitary and Phytosanitary measures (including food safety regulations)
- Intellectual property rights
- Competition policy
- Trade and sustainable development (including labour rights, SME development and environmental protection)
- Trade related energy provisions (including regulation of gas and electricity markets)
- Public procurement
- Dispute settlement
- Transparency

The Georgian government's major reforms to date include new legislation on customs procedures, company operations, and occupational health and safety, as well as the development of new strategies for labour market, agricultural and rural development, anti-corruption, and political decentralisation. Georgia has also made substantial progress on harmonising technical regulations on trade to EU standards, but ensuring compliance of businesses remains a challenge. For details on Georgia's reforms to date see: http://www.dcfta.gov.ge/en/implementation.

Source: (EU, 2014[15]), (European Commission, 2020[16]), (Government of Georgia, 2020[17]).

But socio-economic challenges remain

Despite tremendous progress on a range of measures, reforms have not advanced broad-based economic growth. Around 20% of the population still lives in poverty, according to the national poverty line, and half the population is at risk of falling below this line (World Bank, 2018[18]).[1] Significant inequalities between rural and urban areas also exist. While urban poverty has more than halved since 2004, rural poverty increased following liberalisation reforms, only declining markedly since 2012. Today around one in four rural dwellers lives below the poverty line, compared to one in six urban residents (Geostat, 2020[19]). Rural poverty reduction appears primarily due to increases in state transfers and other social assistance, rather than job opportunities (Gugushvili, 2017[9]).

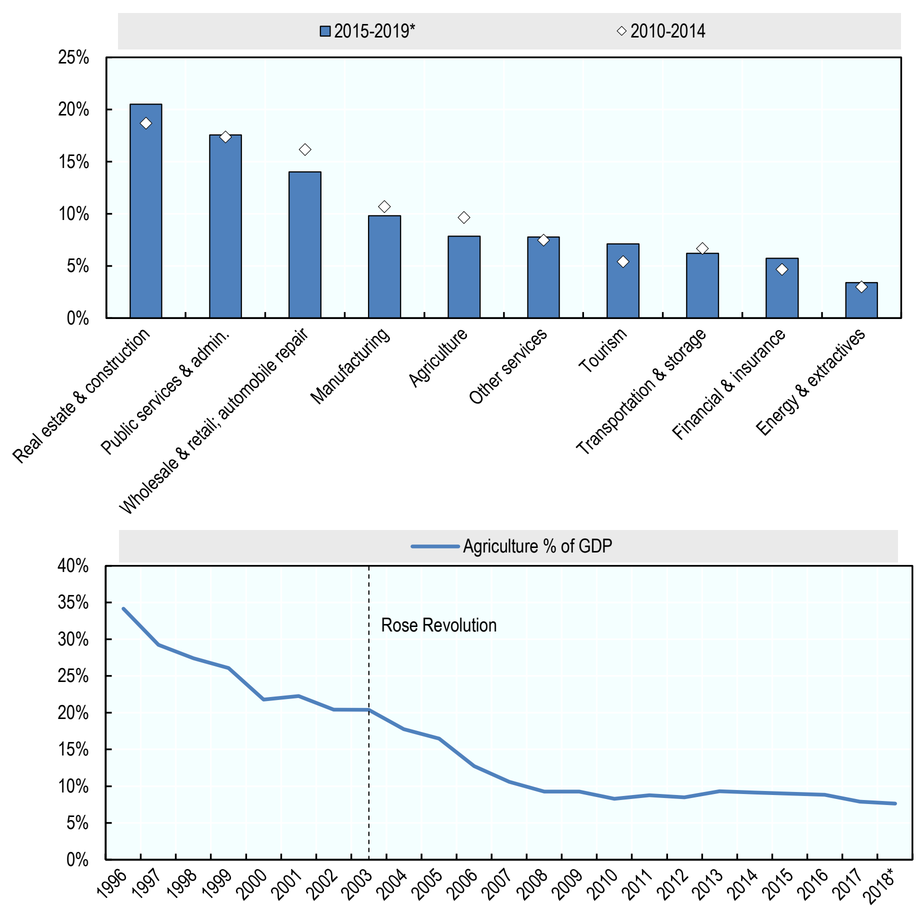
Overall unemployment has declined in recent years to around 11%, from an average of just under 20% after the 2008 global financial crisis and war with Russia. But this figure masks important differences within the country, geographically and by age group. Around one in six urban residents (active population) is unemployed, and one in four youths (aged 20-29). While the rural unemployment rate is lower, the vast majority of the rural labour force (70%) is self-employed or in unidentified work (Geostat, 2020[19]). Most rural residents work in agriculture, primarily as subsistence farmers. There are also substantial gaps in educational performance between urban and rural areas, with negative implications for skills development (Li et al., 2019[20]).

Actual unemployment or under-employment in Georgia is substantial when taking into account the self-employed or those in precarious work. According to one poll, more than half of working age respondents consider themselves unemployed. Among respondents who report having a job, only half consider it stable (NDI & CRRC, 2019[21]). Georgia has a large informal economy, estimated to constitute 53%[2] of GDP in 2015 (Medina and Schneider, 2018[22]). According to national data, around one-third of non-agricultural workers are in informal employment.

While successive reforms have improved livelihoods for some, they did not increase economic opportunities for most Georgians. GDP growth has not been accompanied by sustained growth in productivity, aside from initial gains following liberalisation. Over the past decade, economic growth has been driven largely by investment; total factor productivity has contributed little, and labour less (World Bank, 2018[18]). The past decade has also brought few changes to the structure of the Georgian economy, in terms of sectoral composition and drivers of growth. Service sectors, including real estate, construction, transport, financial services and wholesale trade, contribute the most, on average, to GDP (Figure 3). Many of these sectors attract significant capital (including FDI), but create relatively few jobs. Value added of export-oriented sectors, with the potential to advance productivity through integration in the global market, has been low.

The most significant structural change in Georgia's economy since liberalisation is the decline in value added of agriculture (Figure 3, lower panel). Agriculture accounted for more than one-third of GDP following independence; it now contributes just 8%. Yet this decline was not accompanied by a re-allocation of labour. Agriculture remains the country's largest employer, absorbing 42% of the workforce in 2019 (modelled ILO estimate).[3]

Figure 3. Contribution to GDP by economic sector

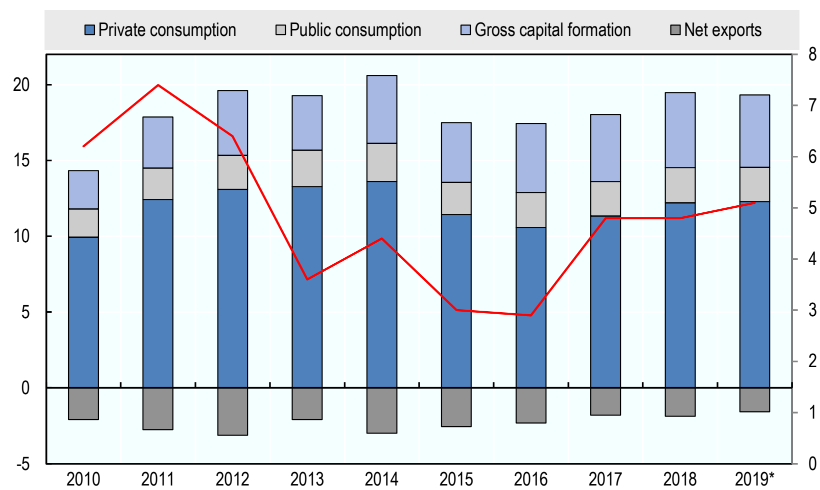


Note: Percentages calculated based on GDP at factor cost by economic activity. Agriculture data (lower panel) reflects 1993 System of National Accounts (SNA) methodology. Georgia now collects data based on SNA 2008 methodology, and has revised data for the years 2010-2019 accordingly. Upper panel figures reflect the SNA 2008 methodology.
Source: Geostat

GDP growth in the past ten years has been driven by domestic consumption and investment (Figure 4). But Georgia's small domestic market and declining population make this formula unstable. Increasing exports will be key to long-term economic growth (World Bank, 2018[18]). While the volume of exports has increased more than eight-fold since 2003, imports have grown faster (Geostat, 2020[19]). Georgia has run an average current account deficit of 9% of GDP since 2010. Though this has improved considerably in recent years, reaching an historical low of 5.1% in 2019, early projections suggest that the deficit will double in 2020, due to a sharp drop in exports precipitated by the COVID-19 pandemic (IMF, 2020[2]). Georgia's basket of exports remains relatively undiversified. Motor vehicles (primarily re-exports), copper ore and ferro-alloys made up nearly half of exports in 2019 (Geostat, 2020[19]). Georgia's trade agreements with the EU and China have helped diversify its trading partners, but many markets remain untapped.

Figure 4. GDP growth dependent on domestic consumption

GDP by categories of use (USD billions, left axis) and GDP growth (%, right axis)



Note: GDP % growth for year 2010 based on World Bank Development Indicators Data.
Source: Adapted from Geostat.

In addition to hindering productivity gains, Georgia's external imbalances are a source of macroeconomic risk, as it relies heavily on remittances and FDI to finance its current account deficit. Georgia also has high external debt (at 105% of GDP in 2019 according to the Central Bank), and most public and private debt is denominated in US dollars, making borrowers vulnerable to exchange rate risks. Due to these risks, credit rating agencies rate Georgia just below investment grade. In April 2020, Fitch revised down its outlook for Georgia from stable to negative in light of new macroeconomic pressures propelled by the COVID-19 pandemic (Fitch, 2020[23]).

The government is well aware of these challenges. Many are clearly outlined in its Socio-Economic Development Strategy (Georgia 2020), adopted in 2014. The strategy sets out plans to support export growth, improve infrastructure, enhance skills of the workforce and mobilise investment (Government of Georgia, 2014[24]). Much progress has been made in these areas, including continued efforts to improve the business climate, but many of the challenges outlined in 2014 persist.

Boosting investment and economic growth requires more than doing business reforms

Georgia's reform experience is in many ways an example to which other former Soviet republics in the region look for inspiration. These reforms have delivered growth and transformed parts of the economy, but they have not adequately addressed the lack of productivity growth and persistent under- or unemployment or led to broad-based improvements in living standards across the whole territory. This is not to pass judgement on the nature of Georgian reforms; dire circumstances sometimes require drastic measures. Rather, it is to argue that such reforms do not by themselves bring about inclusive and sustainable development. Removing impediments to business and sources of irredeemable corruption is often a necessary first step, particularly when such a radical transformation of the economy is called for. But bringing about inclusive and sustainable outcomes will require a more hands-on approach.

The government has been moving toward a more comprehensive approach to sustainable economic development for quite some time, at least since the launch of the Georgia 2020 Socio-Economic Development Plan in 2014 and the Association Agreement with the European Union in the same year (Box 2). Some of the recent changes have come through external pressure, as trading partners push for improved governance in Georgia as a condition for market access, but the limitations of the post-2004 approach are also widely acknowledged within the government. The Doing Business reforms described in Chapter 4, as impressive as they have been in Georgia, can only achieve so much. They have been a useful signalling device to potential investors, but by themselves neither equate with a suitable investment climate nor assure a steady inflow of FDI. Following initial strong FDI growth after 2004, FDI inflows have declined in the past couple of years, and remain below those of regional peers. Non-tradable sectors, including financial services, transport, real estate and construction, have consistently attracted the most FDI, but they have not sufficiently contributed to productivity or employment (Figure 5).

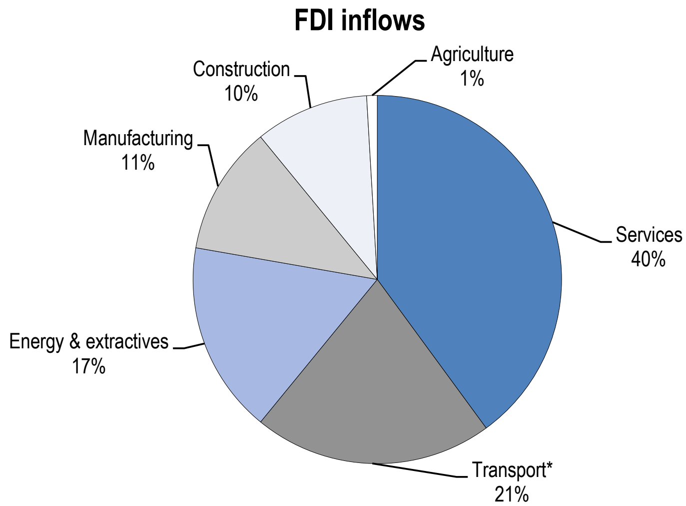
The Georgian experience with Doing Business reforms provides a cautionary tale for the many countries seeking to attract FDI through rank-seeking reforms (Box 3). Attracting FDI that can advance sustainable growth requires a wider approach. Georgia has removed nearly all policy and legal barriers to investment and trade. But exporters are still physically hampered by poor transport and storage infrastructure, limited connectivity within the country, and as a result, high transport costs and frequent delays (UNECE, 2018[25]). Despite growing investment in infrastructure, according to one survey, around one in five firms report that transport is a major constraint to doing business (World Bank, 2020[26]). ICT infrastructure has improved but internet connectivity is not widespread in rural regions. Rail and airport capacity, particularly for cargo flights, remains low (World Bank, 2018[18]).

Investors are also constrained by a lack of skilled workers and local partners producing to international standards. Most firms in Georgia are small, without the capacity to produce at the scale and standards international partners often seek. Much of the working-age population has not received sufficient education in soft-skills demanded by growing service sectors such as tourism, or in vocational training specific to modern manufacturing (WTO, 2015[27]). More than 40% of firms surveyed by the World Bank in 2019 reported an inadequately educated workforce as a major constraint (World Bank, 2020[26]).

More broadly, deregulation in Georgia resulted in low regulatory standards, such as in the areas of labour markets and the environment, which are only slowly being redressed, in part as a result of commitments under the DCFTA with the EU. Arguably many pre-existing regulations were already rendered ineffective through rampant corruption at the time. Examples of recent changes include the 2019 amendments to the Law on Occupational Health and Safety, the re-establishment of the Labour Conditions Inspection Department in 2015, the establishment of the National Agency of Mines in 2017, and the 2017 Environmental Impact Assessment Code. These reforms will help to ensure that future growth does not come at the expense of worker safety or the country's environment and biodiversity.

Figure 5. Non-tradable sectors attract the most FDI

% of total FDI inflows 2007-2019



Note: Data on FDI inflows in transport were combined with FDI in communications until 2015. Services includes financial services, hotels & restaurants, communications (after 2015), trade, education, R&D, health & social, and other community, social and personal service activities. 2019 data preliminary.
Source: Geostat.

Box 3. Doing Business rankings do not always reflect a suitable business climate

The shortcomings of Doing Business indicators have been widely discussed, including within the World Bank itself (Thomsen, 2019[28]). In spite of their unparalleled success in encouraging regulatory reform, they have not always generated the expected benefits for the host country. In Georgia, for example, the much-vaunted success in reaching 7th place worldwide in the overall ease of doing business ranking has not yielded a steady stream of diversified FDI inflows or done much to reduce levels of informality in the country. The reasons why this might be the case are numerous, but one important factor is likely to be the narrow scope of the indicators themselves, as can be seen in the following examples:

- Georgia ranks 5th in the ease of *registering property* (down from 1st place in 2014), but only a small share of land is officially titled, property rights are not properly observed, and disputes concerning property are not easily resolved.
- In terms of *enforcing contracts*, Georgia ranks 7th, but dispute resolution is a frequent problem for investors.
- Georgia does reasonably well in *getting electricity*, and yet over half of all firms in the latest World Bank Enterprise Survey report issues with electricity outages.
- In *protecting minority investors*, Georgia ranks 7th worldwide and yet an EBRD report on corporate governance rated minority shareholder protection in Georgia as only weak or fair (Piero Cigna, Kobel and Sigheartau, 2017[29]).

Source: (World Bank, 2020[10]), (World Bank, 2020[26]).

Main recommendations

Georgia has removed much of the de jure barriers to FDI, but more could be done to improve the overall enabling environment for investment. This includes addressing gaps in infrastructure and connectivity and upgrading the skills of the workforce. Improving not only regulatory constraints but the whole investment climate – including the wider legal framework, investment promotion strategy and institutions, policies to promote responsible business conduct, and impediments to growth of priority sectors – will help Georgia attract FDI that can have a positive impact on productivity and inclusive, sustainable growth.

Mobilising FDI will be essential to respond to the economic and social challenges of the COVID-19 pandemic. Supply disruptions, demand contractions and the pessimistic outlook of economic actors will have a significant negative effect on investment and economic growth. The OECD projects that in the most optimistic scenario, global FDI flows will drop by 30% and world economic output by 6% in 2020 (OECD, 2020[30]) (OECD, 2020[31]). In Georgia, an abrupt halt to tourism, exports and remittances will have a disruptive effect on economic activity and, potentially, macroeconomic stability. In the first two months of the crisis (March and April), a majority of Georgian firms reported revenue declines of more than 50%, acute liquidity challenges, and personnel reductions, according to a survey of around 2 000 companies. Firms in accommodation and food services have been most affected (PwC, 2020[32]). Tourism accounts for 7% of GDP (according to national statistics), but the indirect contribution of tourism and travel is estimated to be 26% (World Travel and Tourism Council, 2020[33]).

Successive Georgian governments have demonstrated their commitment to advancing bold and meaningful reforms. The government now has an opportunity to further strengthen its efforts to build a sound and transparent investment environment that supports sustainable economic growth. The section that follows presents the main findings and recommendations of this Investment Policy Review. The numerous policy options mix concrete measures that can be implemented relatively quickly with more aspirational recommendations. Some measures can only be implemented over a long time horizon, while the government is already considering others. The aim is to provide a list of policy options across a range of areas for the Georgian government to consider as it reforms its investment climate.

Legal framework and regulations on investor entry

The legal framework for investment has undergone substantial remodelling in the past three decades. Formerly a Soviet republic, it is now a blossoming liberal market economy. A series of reforms, starting in the early 2000s, have significantly improved the investment climate. Georgia is now open to foreign investment in most sectors. Limited restrictions remain, notably in the agricultural sector in light of a ban on foreign ownership of agricultural land. The remaining sectoral restrictions nonetheless fall within the same sectors as those found in both EaP and OECD countries.

With the vast majority of de jure barriers to FDI now removed, the government's task on investment policy lies in improving the overall climate for investment. Significant strides have been taken in this area, too. The Law on Promotion and Guarantees of Investment Activity (Law No. 3425 of 30 June 2006, as amended, hereafter the Investment Law) is a centrepiece of these developments. It seeks to establish a level playing field between domestic and foreign investors. Together with several other investment-related laws, it sets out non-discrimination guarantees, protections from expropriation, rights to free transfer of funds abroad and a limited set of investor obligations. The country's land laws provide a clear and predictable framework for property rights, which is another important pillar for the investment climate. Well-developed laws and institutions on data protection and cybersecurity, which are edging closer to alignment with EU rules in this area, are also noteworthy.

A number of important challenges remain despite these achievements. Foremost among these are the ongoing efforts to reinforce the independence, accountability and capacity of the country's judiciary. Legislative amendments adopted by Parliament in December 2019 seek to address some of the remaining concerns but there is a need for sustained momentum for systemic judicial reform to build investor confidence in the court system. Other important challenges include ensuring that intellectual property rights are enforced effectively, realising universal land registration and continuing to improve the legal and institutional infrastructure that supports alternative dispute resolution services. Recommendations in each of these areas are set out below.

Protections afforded under Georgia's investment treaties are another important part of the legal framework for investment. These treaties grant protections to certain foreign investors in addition to and independently from protections available under domestic law to all investors. Georgia is a party to 33 investment treaties in force today. Like investment treaties signed by many other countries, Georgia's investment treaties typically protect investments made by treaty-covered investors against expropriation and discrimination. They also give covered investors access to investor-state dispute settlement (ISDS) procedures, including international arbitration, in cases where they claim that the government has infringed these protections.

Georgia is participating actively in various inter-governmental discussions regarding possible reforms of investment treaties, including UNCITRAL's Working Group III on ISDS Reform and the modernisation process for the Energy Charter Treaty, a prominent multilateral treaty to which Georgia is a party. Like many other countries, however, Georgia still has a significant number of older investment treaties in force with vague investment protections and ISDS provisions that may create unintended consequences in ISDS cases and ultimately undermine reform efforts. Many countries have substantially revised their investment treaty policies in recent years in response to these concerns, as well as increased public questioning about the appropriate balance between investment protection and sovereign rights to regulate in the public interest and the costs and outcomes of ISDS. Recommendations to reconsider several aspects of the government's approach to investment treaties in this context are set out below.

Investment policy recommendations

- To signal Georgia's commitment to providing an open and transparent environment for international investment, the government could consider requesting to adhere to the OECD *Declaration on International Investment and Multinational Enterprises*. The *Declaration*, a non-binding policy commitment, consists of OECD instruments designed to promote international investment in a transparent and responsible manner. Adhering governments commit to enforce a balanced set of rights and obligations for foreign investors through the *National Treatment Instrument*, a pledge to treat foreign-owned or –controlled enterprises no less favourably than domestic enterprises in like situations, and the *Guidelines for Multinational Enterprises*, standards on responsible business conduct. Adherence would allow the Georgian government to improve transparency of the investment regime and the international reputation and impact of domestic firms as responsible actors. The government would also benefit from participation in the work of the OECD Investment Committee, a leading forum for international co-operation, policy analysis and advice to governments on how best to enhance the positive impact on foreign direct investment (FDI) on development.
- Assess the impact of foreign ownership restrictions on agricultural land on investment in the agri-business sector and on participation of that sector in global value chains (as described in Chapter 3). In light of those findings, reconsider whether such restrictions fulfil their role and whether other non-discriminatory measures could instead be used to protect small landholders and other stakeholders.
- Amend Article 7 of the Investment Law to provide further specification on investor rights to protection from unlawful expropriation and the government's right to regulate. Issues for possible clarification include whether investors are protected from indirect expropriation, exceptions to protect the government's right to regulate in the public interest, and the valuation methodology for determining the market value of expropriated property. The government should also consider the merits of consolidating and harmonising the various laws that address expropriation.
- Continue to prioritise efforts to improve the regime for intellectual property (IP) rights, especially enforcement measures. Investors continue to report concerns with widespread software piracy and unlicensed online content, as well as the level of technical capacity among local judges, lawyers, prosecutors, police officers and customs officers responsible for IP enforcement. The government is well aware of these concerns and designs initiatives to address them. Improving investor confidence with IP enforcement in the country is a precondition for attracting further investment in R&D, new technologies and innovation.
- Sustain momentum for systemic judicial reform. Concerns regarding the integrity of the judicial appointment process and the capacity of the courts to deliver quality outcomes continue to affect investor confidence in the court system. The government should continue to work closely with a wide range of stakeholders, including civil society organisations and international partners, to address persisting concerns. Low levels of trust in the judiciary affect the overall investment climate in a number of ways, not only the use of court services to adjudicate investment disputes but also perceptions about the integrity of court assistance with IP enforcement, arbitration and mediation, among other areas.
- Evaluate potential amendments to the Arbitration Law (Law No. 1280 of 2009, as amended). Areas for possible legislative clarification include the scope of arbitrable subject matter and the "public order" ground for refusing enforcement of an arbitral award under Article 44 of the Law. It may also be prudent for the government to take stock of court decisions and user experiences

under the Law over the past decade to assess the merits of these potential amendments to improve legal certainty, user experiences and the attractiveness of arbitration in Georgia.

- Support initiatives to improve public perceptions and awareness of arbitration and mediation as credible alternative dispute resolution options. Negative public perceptions of arbitration institutions, arbitrators and courts that harken back to experiences under earlier arbitration laws is hindering the development of arbitration in the country. Existing arbitration institutions may be able to complement the government's own efforts to foster a stronger culture of independence, competence and integrity in this sector.
- Strengthen land administration services by completing and, if possible, expediting the universal land registration reform and improving options to resolve land disputes, including the framework for mediation introduced as part of the 2016 land reforms.
- Maintain data protection and cybersecurity as a national policy priority. Georgia has relatively well-developed laws and institutions in these areas of increasing importance for all investors. It is nonetheless important to build on recent achievements by monitoring the effectiveness of the new State Inspector Service, seeking new opportunities to collaborate with international partners to exchange best practices and boost the government's in-house technical capacity in these areas, and ensuring that existing laws evolve to align with international standards such as the Budapest Convention on Cybercrime.
- Continue to reassess the government's priorities for investment treaty policy and consider possibilities for introducing further clarification of key provisions in older investment treaties. These treaties should be calibrated to reflect an appropriate balance between investment protection and preserving the government's right to regulate while also contributing to Georgia's efforts to attract FDI. Vague, unqualified provisions in treaties concluded by Georgia in the past may not appropriately safeguard the government's right to regulate and may attract unintended interpretations in ISDS disputes. Clearer specification of key provisions would help to reflect government intent and ensure policy space for government regulation.
- Actively manage the replacement of older investment treaties as part of new treaty negotiations with the same partners. Georgia has two or more investment treaties in force with 28 countries. Multiple investment agreements in force with the same treaty partners may undermine reform efforts, including future possible outcomes of the ongoing ECT modernisation process. The government may wish to engage with relevant treaty partners to consider whether overlapping treaty coverage reflects current priorities, especially in the context of the ECT modernisation process.
- Continue to participate actively in and follow closely government and other action on investment treaty reforms at the OECD, UNCITRAL and ECT modernisation process. Consideration of reforms and policy discussions on frequently-invoked provisions in ISDS cases and whether investment treaties are achieving their intended purposes are of particular importance in current investment treaty policy. Emerging issues such as the possible role for trade and investment treaties in fostering responsible business conduct as well as ongoing discussions about treaties and sustainable development also merit close attention and participation.

Promoting sustainable investment in Georgia's agri-food value chain

Promoting sustainable investment in Georgia's agri-food value chain is crucial to ensure broad-based economic growth, support rural development and maintain competitiveness in international markets. The agriculture and food sectors play an essential role in Georgia's economy, collectively accounting for 11% of GDP and 45% of employment in 2018. With favourable soil conditions and climate, and an abundance of water resources, Georgia has strong potential to attract investment in the agri-food value chain.

However, FDI inflows are below potential and the majority of investment in the value chain originates from domestic sources. Agri-food exports have grown at a rapid pace over the past two decades, but remain highly concentrated in beverages. Attracting FDI can help to boost exports of high-value food products, leading to increases in wages and productivity.

While Georgia has made enormous progress improving its investment climate in recent years, the agri-food value chain presents a unique set of challenges for investors. Most food products are predominantly grown by small-scale family holdings, which are often subsistence-oriented and with surplus production frequently sold on local markets. The farm structure is highly fragmented, with an average farm size of 1.4 hectares in 2014, and 77% of farms operating on land holdings of less than 1 hectare. Addressing these structural deficiencies is essential to promote investment and generate new growth opportunities for the sector.

Investment in agri-food value chain recommendations

- Introduce a specific objective and activities relating to investment promotion and facilitation within the new *Agriculture and Rural Development Strategy of Georgia 2021-2027* and the *Action Plan for 2021-2023*.
- Ensure full completion of the land registration reform, by raising awareness of the reform in rural communities and undertaking a systematic approach to land registration if necessary. Continue with the registration of state-owned lands, whilst ensuring that adequate safeguards are in place to protect the legitimate tenure rights of small-scale producers and rural communities.
- Develop a credit guarantee scheme to reduce lending risks and encourage greater commercial lending to agri-food SMEs. Consider providing targeted guarantees for exporters operating under long-term supply contracts.
- Continue investing in transport and utility infrastructure, and focus on improving the quality of rural road networks and increasing rural-urban connectivity. Ensure greater private sector participation in infrastructure development, and introduce measures to improve the quality of logistics services.
- Continue efforts to rehabilitate outdated irrigation infrastructure and drainage systems, and ensure access to affordable and reliable internet access in rural areas.
- Carefully assess the effectiveness of the co-financing schemes administered by the Agricultural and Rural Development Agency (ARDA), and consider allocating financial resources to encourage the formation of supply chain linkages.
- Offer targeted incentives to prospective investors, conditional on their engagement with small-scale producers and agricultural co-operatives. Provide assistance to food processors and retailers to build the capacities of their suppliers, by providing cash, inputs and technical assistance in exchange for product supply.
- Ensure that agri-food SMEs are able to benefit from well-resourced and functioning agricultural training institutes, extension services and vocational training systems. Well-trained extension workers can provide technical advice to SMEs and support the dissemination of new technologies, improving their ability to respond to the needs of large agricultural investors.
- Strengthen food safety and quality standards, and introduce measures to increase awareness and compliance by small-scale producers. Provide support to foreign investors that are willing to invest in upgrading the capacities of SMEs to comply with food safety and quality standards.

Investment promotion

Georgia is one of the easiest countries in which to do business, according to several international rankings. Since 2005, it has moved from 112th place in the World Bank's Doing Business indicators to 7th place worldwide, a remarkable achievement that many governments would like to emulate. As discussed in the previous section, this approach to reform relying on massive deregulation has reached its natural limits and has not yet yielded a well-diversified stock of inward investment through which to integrate in global value chains. Achieving this, along with broader goals of inclusiveness and sustainability, will require a more proactive approach which relies less on removing regulatory obstacles and more on building a coherent strategy and suitable institutional architecture. One key area in this respect is investment promotion.

A comprehensive scan of Georgia's framework for investment promotion and facilitation reveals areas for improvement to ensure investments are targeted strategically in areas that can contribute sustainably to Georgia's development. A look at the institutions promoting investment reveals a fragmented system, with different actors actively pursuing investors. While this in itself is not a weakness, the lack of strong co-ordination, starting with a single government focal point for investors leads to inefficiencies, duplication of efforts, and confusion for investors.

A central weakness in the overall system is the overlapping of investment promotion functions among various actors. Enterprise Georgia is the country's investment promotion agency (IPA) and well known for its support to enterprise development and export promotion. Other actors active in investment promotion include the Georgia Innovation and Technology Agency (GITA) and the Georgian Chamber of Commerce, while the Investors Council provides a platform for public-private exchanges on issues critical to investment. The Ministry of Economy and Sustainable Development is the government's line ministry in charge of investment and oversees Enterprise Georgia. Its recently created investment policy department should help address some of the co-ordination challenges. More generally, the strong "Invest in Georgia" brand inherited by Enterprise Georgia should be revived, which would strengthen the country's investment promotion efforts.

Georgia is ripe for a comprehensive investment strategy. Aligning all actors behind a joint vision, fostering synergies between investment, export, enterprise and innovation promotion, would allow Georgia to significantly leverage its strong points. The past 15 years have helped to build a strong governance foundation for economic growth. Georgia now needs a policy push through an investment strategy to fully achieve its potential.

Policy recommendations on investment promotion

- Develop a comprehensive investment strategy and policy statement

The significant investment-related reforms since 2003 have put Georgia on the map for investors, leading to numerous improvements in the business climate, taxation, innovation, financial markets and export development. Together, with the EU-Georgia Association Agreement and the associated regulatory reforms, Georgia requires a unified approach to ensure co-ordination of all these measures, as well as to align its investment objectives with efforts in other areas, such as export promotion, innovation and SME development. The Ministry of Economy and Sustainable Development and its recently created investment policy department is well placed to spearhead a new investment strategy, one that would align all related policy and regulatory measures, while also sending a strong message to the business community that the government is a partner in advancing investment reforms. The Ministry's strategy would provide the overall investment policy and direction, while Enterprise Georgia could focus on co-ordinating the various investment promotion efforts. The subsequent recommendations will follow from the strategy.

- Strengthen the investment promotion function in Georgia

Georgia's administration and key business stakeholders, including the Chamber of Commerce and Industry, have proven their dynamism in pushing through investment and business related reforms. A number of groups active in the field of business regulation improvements and advocacy, as well as investment promotion, have thus emerged over the years. Enterprise Georgia, as the official IPA, the Georgian Innovation and Technology Agency, and the Georgian Chamber of Commerce and Industry are but three major actors undertaking investment promotion. While multi-faceted initiatives to attract investment to Georgia should be encouraged, these activities need to be co-ordinated carefully. This entails clearly signalling to the business community – both domestic and international – which agency has the lead in investment promotion matters, as well as strengthening the investment promotion function and the agency's capacity. While Enterprise Georgia has seen recent additions to its investment promotion team, these efforts need to be sustained if the agency is to be the lead agency for investment promotion. Where the investment promotion function is situated, whether as part of a Ministry or as within an independent IPA for example, is secondary to the need to equip it with the needed skills and resources.

- Enhance the "Invest in Georgia" brand

The precursor to Enterprise Georgia was Invest in Georgia which was under the Prime Minister's Office (this changed in 2017 with the merger of the IPA with Enterprise Georgia). The agency received significant recognition due to its position directly under the prime minister and Invest in Georgia became a well-known brand. While the name was kept and transformed into the country's official investment portal within Enterprise Georgia, the IPA itself lost some visibility and clout vis-à-vis investors and other relevant government agencies. The investment strategy should entail a marketing effort to accentuate the "Invest in Georgia" brand, which is already well known to the international business community.

- Strengthen the investment aftercare system and improve one-stop shop services

Aftercare services for investors are vital, especially in retaining investors. Attracting new investors is more challenging and costly compared to supporting reinvestment and expansion, which account for a significant share of all investments. Enterprise Georgia could improve its aftercare services for investors. The government also needs to play its role in supporting the IPA in this effort by clearly communicating to the business community that Enterprise Georgia is the main focal point in Georgia's investment promotion system to deal with investor needs. Good aftercare and policy advocacy, including transmitting investors' feedback for more effective policy making, can be the determining factor in a decision to reinvest and help address investment climate challenges. The IPA should also consider enhancing its one-stop-shop services for investors. Georgia's experience with its Public Service Hall would be informative in this regard.

- Link export, innovation and investment promotion

Investment promotion can enhance participation in the global economy. The attraction of export-oriented FDI has enabled countries to shift quickly towards a model of economic growth driven by rapidly expanding exports. The opportunities presented by the Deep and Comprehensive Free Trade Area (DCFTA) with the EU as an export market should be part of Georgia's investment promotion strategy. The efforts that Georgia has put into strengthening innovation within its business community should also be considered in the investment strategy.

- Foster FDI-SME linkages

Anchoring investors through deep linkages with the local economy is an effective investment retention strategy and can usefully complement aftercare measures. Investor targeting and aftercare services can attract investors and help keep them satisfied, but it is the broader and more sophisticated, and hence more complex, efforts to strengthen the investment ecosystem that will determine a country's competitiveness. This includes providing investors with competitive local suppliers, facilitating linkages with local firms, developing the necessary hard and soft infrastructure, including institutional support, and keeping policy and macro-economic fundamentals in order. In turn, business linkages between MNEs and domestic companies, especially smaller suppliers, contribute significantly to local development. Linkages can be effective avenues for the transfer of technology, knowledge and managerial and technical skills, depending on the appropriate policy setting and absorptive capacity of domestic suppliers. Enterprise Georgia is strategically set up to support such linkages, hosting both investment and SME development functions, in addition to export development. However, given the complex task the agency already has at hand in terms of optimising the co-ordination across the functions, while strengthening each one in its own right, it should address priorities strategically. One way of starting to enhance linkages promotion would be to establish some linkages focal points in the investment promotion and enterprise promotion departments, which could identify and explore opportunities systematically.

- Set up an investment promotion governing board

Unlike most autonomous IPAs in OECD countries, Enterprise Georgia does not have a governing board. The role of boards can vary greatly from one agency to another, but they are often composed of high-level, experienced people who provide guidance and advice on strategic and management issues. They can have clear decision-making powers, such as appointing the head of the agency. A board can be a good mechanism to ensure the representation of different stakeholders in the governance of an IPA. Including senior representatives from the private sector is a good way to integrate experience and expertise from the private sector into strategic orientations. The government could envisage establishing such a board for Enterprise Georgia. This would provide it with an outsider's view to generate new ideas for collaboration and synergies within the agency, as well to identify and unlock opportunities for co-operation with other agencies and the private sector.

- Formalise strategic co-ordination for investment promotion

Overall, Enterprise Georgia would benefit from clearer terms of co-operation and mechanisms to work jointly with its key institutional partners. Currently, the agency operates on a rather ad hoc basis, without clear guidelines, shared protocols or tools, although this does not prevent the IPA from collaborating informally with GITA and the Chamber of Commerce, thanks to good relationships between agencies. Well-defined co-operation terms in strategic plans and dedicated tools such as shared information systems, processes and systematised protocols would nevertheless improve the quality of the co-operation while potentially reducing the workload thanks to efficiency gains. Enterprise Georgia is currently implementing a CRM tool and aims to share it with other agencies. This could be a decisive step to enhance the co-operation and maximise synergies between investment promotion, SME development and export, and innovation promotion.

- Strengthen investment promotion and facilitation at the sub-national level

Sub-national governments do not have formal mandates and roles in investment promotion and facilitation. According to local stakeholders however, regional governors express their interest in attracting foreign capital in their territories, and Enterprise Georgia is accompanying them in this goal. The next stage of the co-operation could be to establish focal points in the regions.

Responsible business conduct

In recent years, Georgia has made significant strides to establish and implement a regulatory and institutional framework that underpins and promotes sustainable development and RBC. In the context of its broader reform programme, the government has adopted a range of legislative and administrative measures to strengthen labour rights and environmental protection, amongst other issues, and has included RBC in its national human rights plan. Awareness of RBC principles and standards in Georgia, while still modest, is also on the rise, thanks to new initiatives by government, civil society and business associations. A continued focus on awareness-raising, particularly for small and medium-sized enterprises and sectors identified as high-risk, would be beneficial.

Taking into account these policy developments, this chapter identifies policy opportunities which Georgia could seize to bolster RBC and send a stronger signal to businesses of the importance of RBC for the country. The implementation of the EU Association and Partnership Agreements and the development of the National Human Rights Strategy and its Action Plan have been and will continue to be important opportunities to consolidate existing efforts and promote RBC principles and standards in a more explicit and comprehensive manner. The challenge will be in implementation.

The government could also demonstrate its commitment through its activities as an economic actor. Indeed, following best practices and pursuant to international standards such as the OECD *Policy Framework for Investment* (PFI), the UN *Guiding Principles for Business and Human Rights*, and the OECD *Guidelines on Corporate Governance of State-owned Enterprises*, governments are expected to lead by example and should demonstrate RBC in their activities. Public procurement, investment promotion and state-owned enterprises (SOEs) can serve as levers to foster RBC, and so far Georgia has yet to define and communicate the RBC standards it expects and applies in these areas.

Georgia faces additional challenges. While its system of human rights protection is well-established, further measures would be welcome to strengthen the independence of the judiciary and access to remedy, and fully protect civil society and human rights defenders – issues that underpin many aspects of RBC. The legacy of unregulated mining, the cumulative impacts of hydropower plants, and the labour conditions in those industries and others such as construction need to be addressed more comprehensively. The recent introduction of a labour inspection mechanism will serve to address these issues. The rather large gender pay gap and low representation of women in the market are also issues that offer scope for further improvement.

While significant improvements have been made over the years to strengthen environmental governance, comprehensive and swift enforcement of the new legislation, with enhanced public access to information and participation in decision-making, is warranted. This would help enhance responsible business practices in sectors with reported high risks, such as mining and hydropower.

Although Georgia's progress in preventing and combating corruption is internationally recognised, there remains scope for additional progress in relation to enforcing regulations and in launching initiatives targeting the private sector to prevent and address bribery and corruption. The promotion of business integrity through training and the development of codes of conduct is one area where stronger efforts by both government and businesses would be welcome.

Policy recommendations on responsible business conduct

- Clearly communicate expectations that all businesses operating in and from Georgia respect RBC standards. Engage further in awareness-raising and capacity-building activities for both employers and workers, particularly in small and medium-sized enterprises and sectors identified as high-risk, including mining, construction and hydropower. This includes promoting the implementation of available guidance, such as the OECD *Due Diligence Guidance for Responsible Business Conduct*.

- Promote policy coherence and alignment on RBC among government institutions. Consider developing a National Action Plan on RBC/BHR (business and human rights), with the active participation of stakeholders and in line with international good practices, which would greatly help ensure effective design, co-ordination and implementation of RBC policies. At a minimum, strengthening RBC/BHR commitments in the National Human Rights Strategy for 2021-30 and its subsequent Action Plan would be a welcome step. RBC commitments could also be more deeply and broadly mainstreamed into national sectoral strategies and plans.
- As an economic actor in its own right, the government should seize the opportunity to lead by example and establish clear expectations and objectives to respect and promote RBC standards in public procurement and through SOEs. In relation to SOEs, Georgia should look at ways to improve further its policy framework for state ownership in line with international best practices, including the OECD *Guidelines for Multinational Enterprises*, the OECD *Guidelines on Corporate Governance of State-owned Enterprises*, and the UN *Guiding Principles on Business and Human Rights*, and set clear expectations that SOEs comply with RBC standards, particularly on information disclosure, transparency and labour rights.
- In line with the OECD *MNE Guidelines*, continue to improve the legislative framework and its enforcement related to ensuring adequate working conditions, particularly occupational health and safety. In this respect continue to strengthen the labour inspection department, including its independence and autonomy and its capacity, and ensure its mandate and inspections are wide-ranging and robust. Further strengthen data reporting on violations of legislation, including on occupational safety and health. Increase efforts to guarantee non-discrimination in the workplace, and in particular strengthen measures to implement the principle of equal pay for work of equal value.
- Together with business associations, raise awareness about the importance of establishing effective company-based grievance mechanisms to prevent and address adverse impacts. Such grievance mechanisms would strengthen the ability of communities and workers to voice concerns.
- Promote stronger compliance with internationally recognised environmental standards as a competitive advantage that can open up opportunities for international investment and trade. Strengthen the quality of environmental impact assessment (EIAs), the public's access to them and participation in decision-making, and overall compliance with EIAs. Set clear expectations that businesses report on environmental risks and impacts of specific operations.
- Given the saliency of risks associated with the mining and hydropower sectors, promote and ensure enhanced implementation of RBC standards (particularly on human rights, environment, and labour) through existing reforms and other measures. Ensure that meaningful consultations with workers and potentially affected stakeholders, as well as RBC due diligence, are effectively carried out, in line with the OECD *MNE Guidelines* and the UN *Guiding Principles*.
- Continue ongoing promising reforms to combat corruption in the public and private sectors. Assist companies in combating corruption, including through developing and implementing preventive measures such as codes of conduct, internal controls, and compliance programmes. Differential approaches may be used with SMEs, based on capacity and needs.
- Overall, keep encouraging businesses and industry associations to play a more proactive role in promoting RBC.

Notes

[1] The absolute poverty line set by the Georgian government is based on a cost of basic needs methodology that sets the line higher than the World Bank's definition of poverty for low-income countries at USD 1.90 per day. Based on this latter measure, the poverty rate in Georgia was only 4.5% in 2018, down from 10.7% in 2003. However, using the World Bank's measure of poverty for upper-middle income countries (which Georgia has been classified as since 2018) of USD 5.50 per day, the poverty rate was 43% in 2018. All measures reveal similar trend lines for poverty in Georgia. For more on the Georgian government and World Bank poverty measures, see (World Bank, 2019[51]).

[2] 52% of respondents who reported themselves employed said there were not afraid to lose their job in the next six months. Survey conducted with a nationally representative sample of more than 2,000 respondents (NDI & CRRC, 2019[21]).

[3] Figure for agricultural employment based on ILO modelled estimate differs slightly from Georgian government figures, which estimate that 38% of the employed population works in agriculture, forestry and fishing (Geostat, 2020[19]). This figure is subject to change as Geostat is in the process of revising its methodology for agricultural employment.

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1 FDI trends and sustainable development impact

Georgia has succeeded in leveraging remarkable reforms and its strategic location to market itself as an attractive investment destination. But FDI inflows remain below potential and will be reduced by the COVID-19 pandemic. This chapter reviews recent FDI trends in Georgia, including the sectoral composition and origin of FDI. It also investigates how FDI contributes to key sustainable development priorities, including productivity, jobs, skills, gender equality and the greening of the economy.

Summary

Georgia has leveraged its open economy, business-friendly environment, and strategic location to attract sizable inflows of foreign direct investment (FDI). Sweeping liberalisation reforms helped FDI stocks grow 400% just five years after the 2003 Rose Revolution. Since this initial wave of reforms, successive governments have continued to advance measures to improve the business and investment environment, with positive returns. Georgia was one of the few countries in Eastern Europe and the Caucasus to quickly recover from contractions in FDI following the 2008 global financial crisis. Since then, investment in large-scale energy transport infrastructure helped bring record amounts of FDI to the country in 2017. A free trade agreement (DCFTA) with the EU could help attract new investors from Europe, while a 2018 trade accord with China may help fortify the country's position as a link between Asia and Europe.

With the exception of a few large-scale investments, FDI inflows have not grown substantially past decade. The majority of FDI in the past ten years has gone to non-tradable sectors, including transport infrastructure, construction, and banking. These sectors have contributed to economic growth, but have not sufficiently advanced job creation, particularly in rural areas, or productivity. With the exception of recent growth in FDI in renewable energy and tourism, FDI in export-oriented sectors, including manufacturing and agriculture, has remained flat and far below potential.

The coronavirus (COVID-19) health crisis, government measures to contain the pandemic, and the resulting economic upheaval will have a significant negative effect on FDI across the globe in the near- to medium-term. Global FDI inflows are projected to decline by at least 30% in 2020, not recovering until the end of 2021 in the most optimistic scenario. Reinvested earnings, which have become an increasingly important component of FDI inflows in Georgia, are likely to drop considerably as company revenues decline, while mergers and acquisitions (M&A) and greenfield investments are in many cases being put on hold. Sectors most affected by the crisis include many that are important to Georgia's economy, including tourism, wholesale retail and trade, and energy (OECD, 2020[30]).

Recovering and expanding FDI inflows will be key to respond to the economic challenges precipitated by the pandemic. Georgia relies heavily on FDI to finance its current account deficit, which could double to 11% of GDP in 2020 (IMF, 2020[2]). But FDI can provide additional advantages beyond its direct contribution to the capital stock (Box 1.1). Under the right conditions, international investment can raise productivity, support integration in global value chains (GVCs), create decent jobs, contribute to the development of human capital, diffuse cleaner technologies, and bring gender-inclusive work practices. OECD analysis suggests that foreign firms in Georgia pay higher wages, have greater employment growth, and have more trained employees than domestic firms. Foreign firms are also more energy efficient and innovative.

Recognising the positive role international investment can play in economic development, the government has actively sought to attract FDI to encourage new technology and knowledge spillovers, boost and diversify exports, and create jobs. This chapter reviews recent FDI trends in Georgia, including sectoral composition and origin, and investigates how FDI contributes to key sustainable development priorities.

Box 1.1. Means by which FDI contributes to sustainable growth

FDI can play a crucial role in making progress towards economic growth and sustainable development. Different channels exist through which these positive contributions can materialise:

- Foreign investment often contributes to growth, beyond what domestic investment normally would, by raising both total factor productivity and the efficient use of resources in host economies;
- FDI can support host economies' global trade integration by providing them with improved access to international markets, developing local export capabilities and integrating them with global value chains;
- MNEs often bring new technologies in recipient economies and FDI can thus lead to local technology transfers and innovation spillovers, especially through the creation of local supplier linkages;
- FDI creates direct and indirect jobs (i.e. through backward and forward linkages with small and medium-sized domestic companies) and can enhance human capital through the dissemination of new skills, know-how and management techniques – which can benefit both MNE workers and local firms that act as suppliers to MNEs;
- International investment can also support greater competition in host markets and thus lead to productivity gains, lower prices and more efficient resource allocation;
- Finally, FDI has the potential to bring social and environmental benefits to host countries by disseminating good practices of responsible business conduct (RBC), as laid out in the OECD *Guidelines for Multinational Enterprises*.

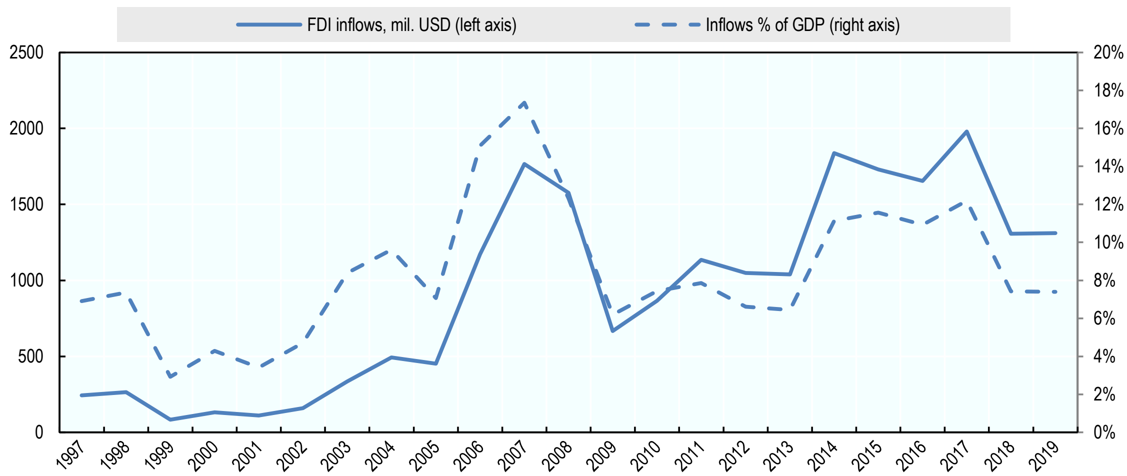
Source: (OECD, 2019[34]) (OECD, forthcoming).

Recent FDI trends suggest potential areas for growth

Georgia's transformation to a liberal market economy was accompanied by a sharp rise in foreign investment (Figure 1.1). FDI inflows increased more than five-fold between 2003 and 2007. Continued efforts by successive governments to improve the business environment and reduce barriers to investment helped the country recover FDI inflows relatively quickly after the 2008 global financial crisis. Georgia is one of the few countries in Eastern Europe and Central Asia to have quickly recovered FDI inflows after 2008. The 2012-17 period saw substantial infrastructure investments, including the South Caucasus gas pipeline, and growth in FDI in the financial sector, energy, and, to a lesser extent, tourism.

FDI has also become increasingly important to the economy. FDI stocks doubled from 55% of GDP in 2007 to over 100% in 2018, a substantially higher ratio than all of the other Eastern Partner (EaP) countries and the EU average (Figure 1.2).[1] Georgia has also attracted a growing share of total inward FDI stocks going to the six EaP countries, at 14% in 2018, compared to half this 20 years prior. Belarus, Azerbaijan and Ukraine hold larger shares of the region's FDI stock, however, and regional peers with larger populations, economies, or reserves of natural resources attract greater inflows in absolute value. However, relative to GDP, FDI inflows in Georgia have been similar to inflows in regional peers (Figure 1.2). FDI in Georgia is highly concentrated geographically; 75% of FDI since 2009 has gone to Tbilisi, and 10% to the Adjara region (home to Georgia's second largest city Batumi). Together these regions account for approximately 60% of GDP and 41% of the population (2019) (Geostat, 2020[19]).

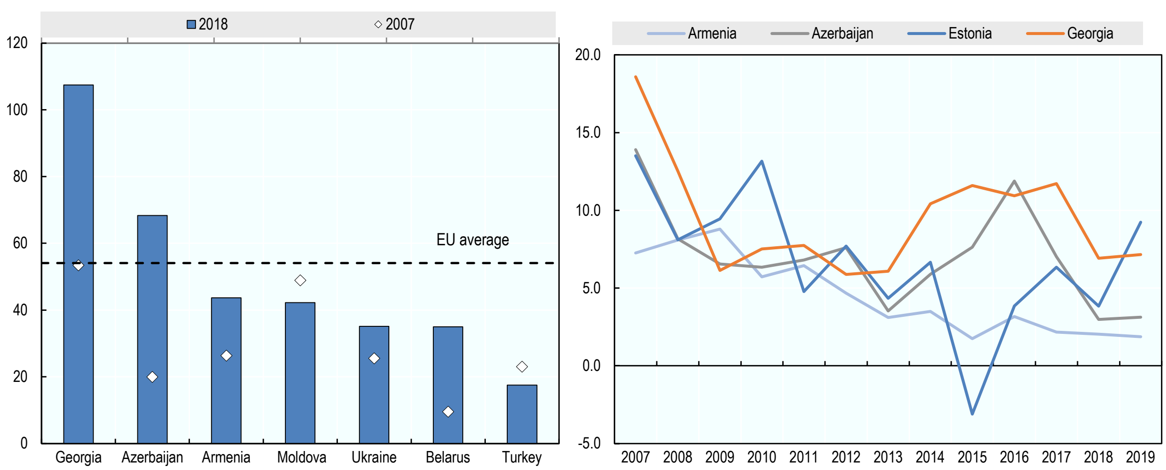
Figure 1.1. FDI inflows stagnate after initial growth



Source: Geostat

Figure 1.2. Georgia performs well compared to peers

FDI stocks (left) and inflows (right) as % of GDP



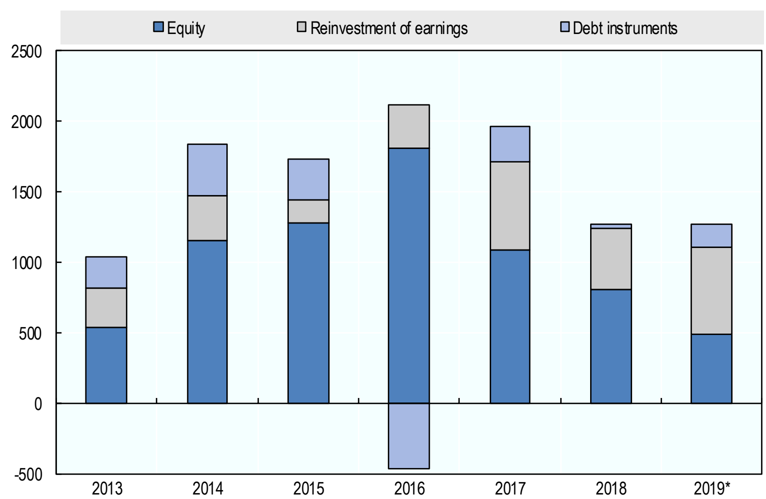
Note: EU average for 2018.

Source: UNCTAD (left panel), IMF Balance of Payments (right panel).Despite some spikes of large-scale investments, yearly FDI inflows have not substantially increased over the past decade, and have declined slightly since 2017. Regarding components of FDI, equity investments, including greenfield projects and mergers and acquisitions, have been declining in recent years, both in absolute value and as a share of total FDI (Figure 1.3). Greenfield investments are often sought by countries to advance the growth of a sector, as they involve new projects or expansions, as opposed to changes in ownership or mergers of existing activities. Georgia has attracted nearly 40% fewer greenfield FDI projects, worth 45% less in total capital expenditure, in the past eight years compared to the previous eight years (2004-2011) (fDi Markets, 2020[35]).

The near-term forecast suggests further contractions in investment. The COVID-19 pandemic and resulting global supply disruptions, demand contractions, and the pessimistic outlook of economic actors is likely to have a significant effect on FDI inflows in the coming year at least. The OECD projects that under the most optimistic scenario global FDI flows will fall by more than 30% in 2020 compared to 2019 (OECD, 2020[36]). In Georgia, the IMF forecasted at the end of April that FDI inflows could decline by 19% in 2020, but assessments are subject to high levels of uncertainty (IMF, 2020[2]). FDI inflows in the first quarter of 2020 were around half of the investment flows received in the first quarter of the previous two years (Geostat, 2020[19]). The current crisis may affect Georgia more severely than the 2008 financial crisis, given the country's greater integration in the global economy, and higher exposure to macroeconomic fluctuations in major trading partners, including the EU, Turkey and Russia (OECD, 2020[1]).

Figure 1.3. Equity investments have been declining

USD millions



Source: Geostat

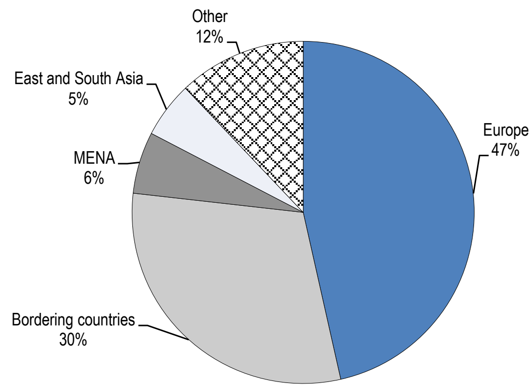
Firms in Europe and bordering countries provide the most FDI

Georgia appears to attract investors primarily from Europe and its neighbouring countries (Figure 1.4). European countries, including UK, Netherlands, Cyprus[2], Luxembourg and Czech Republic, accounted for half of Georgia's inward FDI stock in 2018. However, firms based elsewhere may route investments through affiliates in these countries for tax or other purposes, inflating the amount of investment from Europe. Georgia's bordering countries, primarily Azerbaijan and Turkey, and to a lesser extent Russia and Armenia, have also been substantial sources of investment. Georgia has also attracted FDI from the Middle East (primarily the UAE), Asia (China) and North America (US), though all three regions represent small shares of the country's total inward FDI stock.

Announced greenfield investments over 2003 to 2019 similarly originate primarily from Europe (39%) and bordering countries (21%), followed by the Middle East and North African (16%) and Asia-Pacific (13%) regions (fDi Markets, 2020[35]). In terms of capital expenditure, Germany, the Czech Republic, Egypt, Azerbaijan and Russia have been the largest sources of greenfield FDI since 2003.

Figure 1.4. Georgia attracts FDI primarily from Europe and bordering countries

As % of FDI stock 2018



Note: Bordering countries are Russia, Turkey, Armenia and Azerbaijan.
Source: Geostat

FDI in export-oriented sectors remains below potential

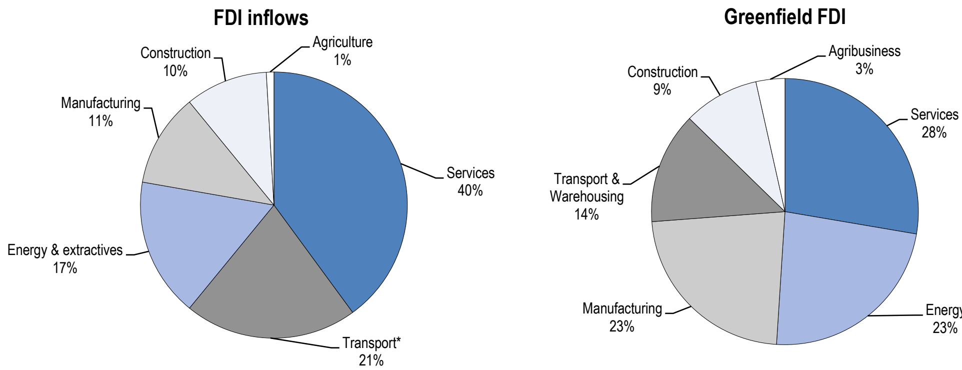
Georgia attracts FDI in a somewhat diversified portfolio of sectors. The majority of FDI inflows since 2007 has gone to services – primarily finance, real estate, trade, and tourism – followed by transport and energy (Figure 1.5, left panel). Infrastructure projects and financial services have seen the greatest FDI growth over the past decade. FDI in tourism has also been rising in recent years, but is below peak investments received in 2007 and 2008. With the exception of renewable energy, FDI in other export-oriented sectors, including manufacturing and agriculture, has remained relatively flat (Figure 1.6).

Manufacturing, including consumer electronics, building materials, automotive components, and textiles, received a higher share of greenfield FDI, accounting for close to a quarter of total announced greenfield inflows since 2007 (Figure 1.5). The majority of greenfield FDI, similar to overall FDI flows, has gone to financial services, energy (hydropower, coal, oil & gas), and transport & warehousing. Many of these investments have been important contributors to economic growth. FDI in infrastructure, including gas pipelines, logistics services, ports and other transport systems, are essential to advance Georgia's aims to serve as a regional logistics hub. Quality infrastructure is a crucial input to growth and connectivity, and despite some important improvements, according to one survey around one in five firms report that transport is a major constraint to doing business (World Bank, 2020[10]).

In terms of volume, the vast majority of greenfield projects have been in services, primarily in the financial sector. Since 2003, there have been nearly as many individual projects in financial services as in agribusiness, energy, manufacturing, real estate, and construction combined. Georgia has attracted relatively little FDI in export-oriented sectors, which have the potential to advance productivity through integration in the global market. Agribusiness (food and beverages) has received just 3% of announced greenfield FDI since 2007 (fDi Markets, 2020[35]). Favourable growing conditions, abundant water resources, and low labour and material costs present clear opportunities for investment in agriculture and agribusiness. But limitations in the quality and quantity of inputs remain hurdles for investors seeking to export in agriculture and other export-oriented sectors (Box 1.2).

Figure 1.5. Non-tradable sectors attract the most FDI

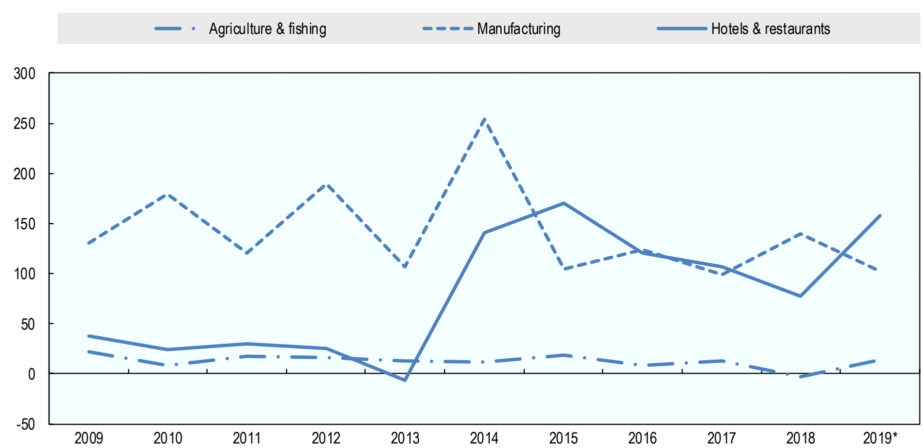
% of total inflows 2007-2019



Note: Data on FDI inflows in transport were combined with FDI in communications until 2015. Services includes financial services, hotels & restaurants, and communications (after 2015), trade, education, R&D, health & social, and other community, social and personal service activities. 2019 data preliminary.
Source: Greenfield data: fDi Markets by the FT; inflows: Geostat.

Figure 1.6. FDI in tourism growing but flat in agriculture and manufacturing

USD millions



Source: Geostat.

Box 1.2. Opportunities and challenges in agricultural exports: the case of organic apples

Georgia has had limited success attracting export-oriented investors. In agriculture and agribusiness, for example, only a handful of large foreign MNEs have invested in recent years. While favourable growing conditions, abundant water resources, and low labour and material costs present clear opportunities, challenges in the domestic supply chain continue to hinder exporters (see Chapter 3 on Promoting sustainable investment in Georgia's agri-food value chain). The case of an investor in organic food processing highlights the untapped potential for exports of niche products, and the productivity and skills upgrading this can bring, as well as some of the hurdles investors face.

HiPP, a market-leading organic baby food group headquartered in Germany, entered Georgia in 2006 to process organic and conventional apples for export. The company saw two opportunities: cheap inputs due to a glut in apple supply following the Russian embargo on agriculture products from Georgia in 2006, and an untapped source of organic produce. Because many apple producers are subsistence farmers, without the means to invest in modern agriculture practices, most plots have not been treated with agrochemicals for decades, making them suitable for organic food production. Georgia's free trade agreement with the EU (then under the GSP+ regime), gave the company free access to the EU market.

HiPP opened its own processing plant in 2009 in the Shida Kartli region and developed a supply chain over 1000 small-scale apple growers. It invested substantially in training plant employees and management to meet rigorous quality assurance requirements for organic food. HiPP's subsidiary in Turkey provided on-site technical guidance, and Georgian managers went to Turkey to receive additional training. The company estimated that this doubled productivity of staff. HiPP also contributed to skills upgrading of its apple suppliers, who had to meet strict requirements on farming procedures, soil characteristics and documentation.

The company closed its plant several years later however, citing insufficient supply of suitable apples. Small farmers usually lack the resources to increase their yield, and in Georgia often do not enter into long-term contractual agreements with purchasers, perhaps because limited trade opportunities and supply challenges incentivise farmers to prefer short-term or flexible agreements. Despite this, HiPP announced a project in Georgia in 2015 in organic agricultural production. There are uncorroborated reports that challenges in land acquisition delayed the initial investment. Foreign ownership of agricultural land is restricted in Georgia. HiPP's decision to re-invest highlights opportunities for MNEs in Georgia, but limitations in the quality and quantity of inputs remain sustainable hurdles for investors seeking to export, in agriculture and other export-oriented sectors.

Source: (USAID, 2014[37]), (IHK Munich & Upper Bavaria, 2016[38]), (Commersant Georgia, 2019[39]).

Harnessing FDI for sustainable development

Foreign direct investment can play a crucial role in advancing the Sustainable Development Goals (SDGs) in Georgia. It can enhance growth and innovation, create quality jobs, develop human capital, raise living standards, and improve environmental sustainability. By linking domestic firms to multinational enterprises (MNEs), FDI serves as a conduit to access international markets and integrate in global value chains (GVCs). The impact of FDI can be both direct and indirect. Direct impacts stem from foreign firms' operations in the host country, whereas indirect impacts (or spillovers) arise from foreign firms' interactions with domestic firms (OECD, 2019[34]).

Realising the positive contribution of FDI to sustainable development is not, however, a given. Maximising benefits and minimising potential risks associated with FDI may not be a primary concern for profit-seeking investors and may not receive sufficient attention by policymakers seeking to attract investment. Private sector incentives and both home and host country policies require careful consideration as they play a critical role in realising the potential of FDI to advance sustainable development (OECD, 2019[34]). This section draws on the OECD FDI Qualities Indicators (Box 1.3) to examine the relationship between FDI and five sustainable development outcomes in Georgia: employment and job quality, productivity and innovation, skills, gender equality, and carbon footprint.

Box 1.3. The OECD FDI Qualities Indicators

FDI Qualities Indicators describe how FDI relates to specific aspects of sustainable development in host countries. They are structured around economic, social and environmental sustainability. An in-depth assessment of all 17 SDGs, and their corresponding targets, was undertaken to identify the full spectrum of FDI Qualities – that is, areas where FDI may contribute to achieving the SDGs. This assessment further considers the extent to which FDI's potential for advancing the SDGs is reflected in the OECD Policy Framework of Investment, including related frameworks and guidelines, such as the OECD Guidelines on Multinational Enterprises and the OECD Policy Guidance for Investment in Clean Energy Infrastructure.

The FDI Qualities Indicators focus on five clusters: productivity and innovation, employment and job quality, skills, gender equality, and carbon footprint. For each of the five clusters, a number of different outcomes are identified and used to produce indicators that relate them to FDI or activity of foreign multinationals, allowing for comparisons both within and across clusters so as to identify potential sustainability trade-offs. This chapter examines differences in sustainability outcomes between foreign and domestic manufacturing firms.

Taking into account the country-specific context, policymakers can use FDI Qualities Indicators to assess how FDI supports national policy objectives, where challenges lie, and in what areas policy action is needed. Indicators also allow cross-country comparisons and benchmarking against regional peers or income groups, which, taking into account the country context, can help to identify good practices and make evidence-based policy decisions.

Source: (OECD, 2019[34]).

The FDI Qualities indicators reveal that foreign manufacturing firms perform better than domestic manufacturers in Georgia in a few areas (Figure 1.7). The association between FDI and development outcomes varies substantially across regions and countries; local contexts, including economic structure, domestic policies and FDI characteristics, all affect the role FDI can play in advancing sustainable development. In Georgia, FDI is positively associated with some labour market and environmental outcomes, but the relationship between FDI and productivity, innovation and gender equality is less clear.

Foreign manufacturing firms in Georgia have higher employment growth rates (Panel B) than domestic manufacturers. This is not the case for the average foreign firm in EaP countries, Central Asia, the Southern Mediterranean or Southeast Europe. While the results in Georgia are a positive indication of the role FDI can play in advancing job creation, they may also reflect the low dynamism of domestic manufacturers.

The extent to which FDI creates jobs varies depending on the labour intensity of the industries that attract FDI. FDI in capital-intensive sectors (including energy) generate fewer jobs per dollar invested than those in industries that are more labour-intensive (such as manufacturing or some services). Consistent with this, in Georgia nearly 40% of all jobs created by greenfield FDI since 2003 have been in manufacturing industries, including consumer electronics and textiles . Service sectors have been the second largest job creator, led by financial services (primarily retail banking), tourism, communications, and business services. Conversely, energy investments have created relatively few jobs since 2003. It is notable that per dollar invested, agribusiness has created nearly as many jobs as manufacturing.

While job creation is crucial, job quality is also important to advance inclusive development. In Georgia, foreign manufacturers pay higher wages than domestic firms (Panel E). It is notable that FDI in Georgia tends to be concentrated in sectors with low average wages, suggesting that FDI could help upgrade wages in these sectors, by putting pressure on domestic firms that compete for similar workers. There is also a positive relationship between FDI and on-the-job training in Georgia (Panel G), which is not observed in many other regions, although it could also suggest a lack of skilled workers in Georgia. Training is an important avenue by which companies can contribute to skills development.

The relationship between FDI and other labour market outcomes in Georgia is less clear. Foreign and domestic manufacturers hire similar shares of skilled workers (Panel F), and foreign firms do not necessarily offer greater job security than domestic peers (Panel H). In contrast, the average foreign firm in Eastern Partner countries and Southeast Europe tends to provide longer-term contracts, thereby perhaps contributing to better working conditions.

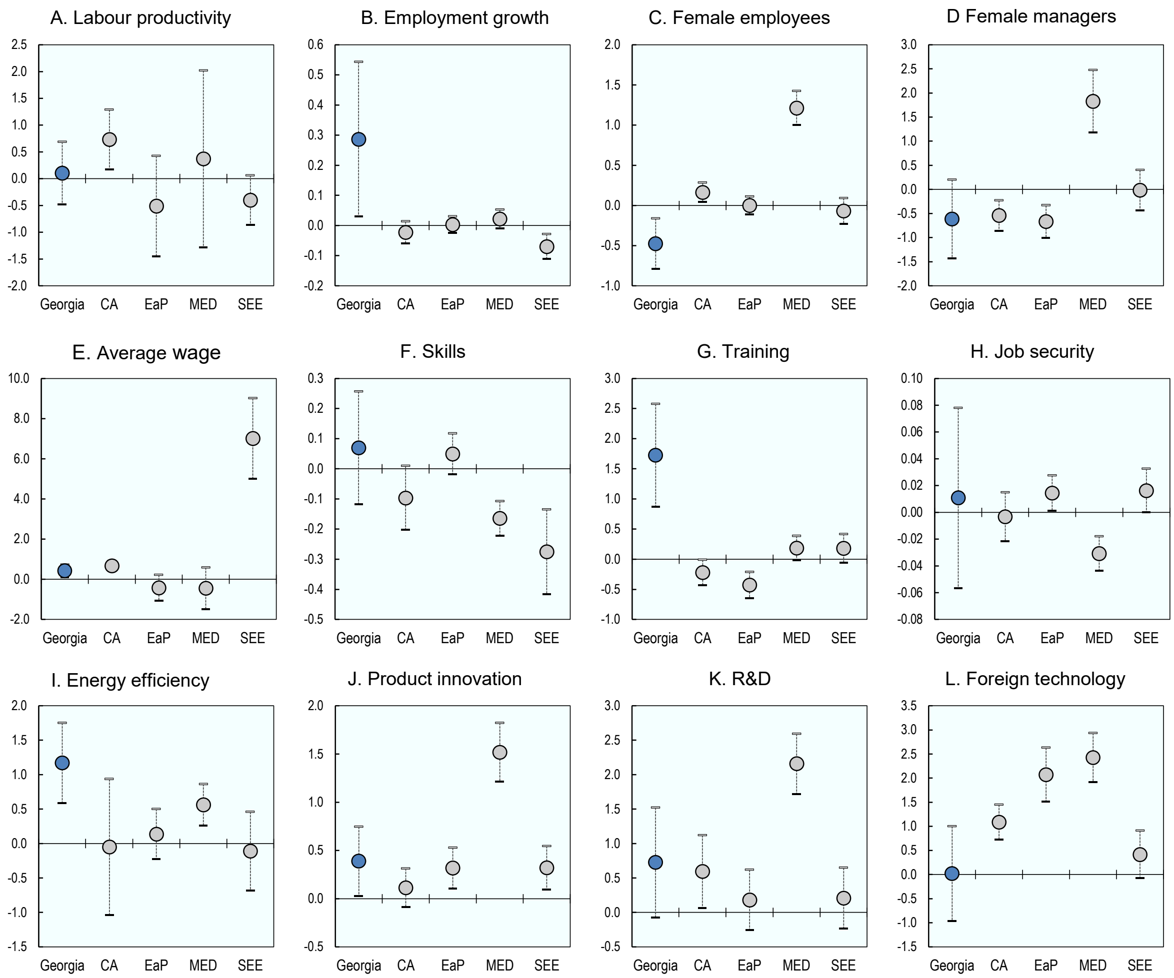
Foreign manufacturing firms are not necessarily more productive than domestic manufacturing firms overall in Georgia (Panel A), although this might simply reflect the fact that FDI tends to be concentrated in low-productivity sectors. This ambiguous relationship is similar in other regions where FDI tends to go to low-wage, low-skill and low-productivity sectors, with the exception of Central Asia. FDI does, however, contribute to product innovation in Georgia (Panel J), though less so the other dimensions of innovation examined (R&D, Panel K, and use of foreign technology, Panel L). This contrasts with the average Eastern Partner and Southern Mediterranean country, where there is a strong relationship between FDI and multiple measures of innovations.

The one area where FDI has a clear negative relationship in Georgia is gender equality. Foreign manufacturing firms employ lower shares of female workers (Panel C) and are less frequently owned by women than domestic firms. In many countries FDI does not appear to advance gender equality, which may be due to overall gender imbalances in manufacturing sectors that receive high levels of FDI, including, in Georgia, consumer electronics, building and automotive materials.

Finally, there is a clear positive relationship between FDI and environmental outcomes in Georgia. Foreign manufacturing firms are more energy efficient than their peers (Panel I), which is not the case in Central Asia, Southeast Europe or most of the Eastern Partner countries. Foreign firms can bring new production techniques, reducing emissions by diffusing cleaner or energy-saving technologies.

It is important to bear in mind that the FDI Qualities indicators come with some limitations. Most important, the indicators do not isolate causal effects, or the direction of causality. This means that the indicators are agnostic about whether FDI causes an outcome or vice versa, or whether correlations are driven by third factors. The indicators represent correlations and require contextualisation and additional information for interpretation, but provide some direction on what mechanisms are at play for a given outcome (OECD, 2019[34]).

Figure 1.7. Selected development outcomes of FDI



Note: The figure includes confidence intervals that indicate statistical significance at the 95% level. If the confidence interval crosses the zero line, the difference between foreign and domestic firms is statistically insignificant. Job security is measured as the share of workers with permanent contracts. For further details, see (OECD, 2019[34]). CA: Central Asia, EaP: Eastern Partners, MED: Southern Mediterranean, SEE: Southeast Europe.
Source: based on (OECD, 2019[34]).

Notes

[1] The six Eastern Partner countries are: Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine.

[2] Footnote by Turkey:

The information in the documents with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue"

Footnote by all the European Union Member States of the OECD and the European Union:

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in the documents relates to the area under the effective control of the Government of the Republic of Cyprus.

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2 Domestic regulatory framework and investor protection

This chapter focuses on several core investment policy issues – the non-discrimination principle, the degree of openness to foreign investment, protections for investors' property rights and mechanisms for settling investment disputes – under Georgian law and Georgia's investment treaties. It also addresses the government's approach to data protection and cybersecurity. It takes stock of recent achievements, identifies remaining challenges and makes recommendations to address them. In terms of investment treaty policy, this chapter provides an overview of Georgia's investment treaties, analyses the main substantive protections and investor-state dispute settlement provisions in these treaties and identifies considerations for possible policy reforms.

Summary and policy recommendations

The legal framework for investment has undergone substantial remodelling in the past three decades. Formerly a Soviet republic, Georgia is now a thriving liberal market economy. Georgia is now open to foreign investment in most sectors. Limited restrictions remain, notably in the agricultural sector in light of a ban on foreign ownership of agricultural land. The remaining sectoral restrictions nonetheless fall within the same sectors as those found in both EaP and OECD countries.

With the vast majority of de jure barriers to FDI now removed, the government's investment policy challenge lies in improving the overall climate for investment. Significant strides have been taken in this area too. The Law on Promotion and Guarantees of Investment Activity (Law No. 473-IS of 12 November 2006, as amended, hereafter the Investment Law) is a centrepiece of these developments. It seeks to establish a level playing field as between domestic and foreign investors. Together with several other investment-related laws, it sets out non-discrimination guarantees, protections from expropriation, rights to free transfer of funds abroad and a limited set of investor obligations. The country's land laws provide a clear and predictable framework for property rights, which is another important pillar for the investment climate. Well-developed laws and institutions on data protection and cybersecurity, which are edging closer to alignment with EU rules in this area, are also noteworthy.

A number of important challenges remain. Foremost among these are the ongoing efforts to reinforce the independence, accountability and capacity of the country's judiciary. Legislative amendments adopted by Parliament in December 2019 seek to address some of the remaining concerns but there is a need for sustained momentum for systemic judicial reform to build investor confidence in the court system. Other important challenges include ensuring that intellectual property rights are enforced effectively, realising universal land registration and continuing to improve the legal and institutional infrastructure that supports alternative dispute resolution services. Recommendations in each of these areas are set out in Box 2.1.

Protections afforded under Georgia's investment treaties are another important part of the legal framework for investment. These treaties grant protections to certain foreign investors in addition to and independently from protections available under domestic law to all investors. Georgia is a party to 33 investment treaties in force today. Like investment treaties signed by many other countries, Georgia's investment treaties typically protect investments made by treaty-covered investors against expropriation and discrimination. They also give covered investors access to investor-state dispute settlement (ISDS) procedures, including international arbitration, in cases where they claim that the government has infringed these protections.

Georgia is participating actively in various inter-governmental discussions regarding possible reforms of investment treaties, including UNCITRAL's Working Group III on ISDS Reform and the modernisation process for the Energy Charter Treaty, a prominent multilateral treaty to which Georgia is a party. Like many other countries, however, Georgia still has a significant number of older investment treaties in force with vague investment protections and ISDS provisions that may create unintended consequences in ISDS cases and ultimately undermine reform efforts. Many countries have substantially revised their investment treaty policies in recent years in response to these concerns as well as increased public questioning about the appropriate balance between investment protection and sovereign rights to regulate in the public interest and the costs and outcomes of ISDS. Recommendations to reconsider several aspects of the government's approach to investment treaties in this context are set out in Box 2.1.

Box 2.1. Key policy recommendations

- Assess the impact of foreign ownership restrictions on agricultural land on investment in the agri-business sector and on participation of that sector in global value chains (as described in Chapter 3). In light of those findings, reconsider whether such restrictions fulfil their role and whether other non-discriminatory measures could instead be used to protect small landholders and other stakeholders.
- Amend Article 7 of the Investment Law to provide further specification on investor rights to protection from unlawful expropriation and the government's right to regulate. Issues for possible clarification include whether investors are protected from indirect expropriation, exceptions to protect the government's right to regulate in the public interest, and the valuation methodology for determining the market value of expropriated property. The government should also consider the merits of consolidating and harmonising the various laws that address expropriation.
- Continue to prioritise efforts to improve the regime for intellectual property (IP) rights, especially enforcement measures. Investors continue to report concerns with widespread software piracy and unlicensed online content, as well as the level of technical capacity among local judges, lawyers, prosecutors, police officers and customs officers responsible for IP enforcement. The government is well aware of these concerns and designs initiatives to address them. Improving investor confidence with IP enforcement in the country is a precondition for attracting further investment in R&D, new technologies and innovation.
- Sustain momentum for systemic judicial reform. Concerns regarding the integrity of the judicial appointment process and the capacity of the courts to deliver quality outcomes continue to affect investor confidence in the court system. The government should continue to work closely with a wide range of stakeholders, including civil society organisations and international partners, to address persisting concerns. Low levels of trust in the judiciary affect the overall investment climate in a number of ways, not only the use of court services to adjudicate investment disputes but also perceptions about the integrity of court assistance with IP enforcement, arbitration and mediation, among other areas.
- Evaluate potential amendments to the Arbitration Law (Law No. 1280-IS of 19 June 2009, as amended). Areas for possible legislative clarification include the scope of arbitrable subject matter and the "public order" ground for refusing enforcement of an arbitral award under Article 44 of the Law. It may also be prudent for the government to take stock of court decisions and user experiences under the Law over the past decade to assess the merits of these potential amendments to improve legal certainty, user experiences and the attractiveness of arbitration in Georgia.
- Support initiatives to improve public perceptions and awareness of arbitration and mediation as credible alternative dispute resolution options. Negative public perceptions of arbitration institutions, arbitrators and courts that harken back to experiences under earlier arbitration laws is hindering the development of arbitration in the country. Existing arbitration institutions may be able to complement the government's own efforts to foster a stronger culture of independence, competence and integrity in this sector.
- Strengthen land administration services by completing and, if possible, expediting the universal land registration reform and improving options to resolve land disputes, including the framework for mediation introduced as part of the 2016 land reforms.
- Maintain data protection and cybersecurity as a national policy priority. Georgia has relatively well-developed laws and institutions in these areas of increasing importance for all investors. It

is nonetheless important to build on recent achievements by monitoring the effectiveness of the new State Inspector Service, seeking new opportunities to collaborate with international partners to exchange best practices and boost the government's in-house technical capacity in these areas, and ensuring that existing laws evolve to align with international standards such as the Budapest Convention on Cybercrime.

- Continue to reassess the government's priorities for investment treaty policy and consider possibilities for introducing further clarification of key provisions in older investment treaties. These treaties should be calibrated to reflect an appropriate balance between investment protection and preserving the government's right to regulate while also contributing to Georgia's efforts to attract FDI. Vague, unqualified provisions in treaties concluded by Georgia in the past may not appropriately safeguard the government's right to regulate and may attract unintended interpretations in ISDS disputes. Clearer specification of key provisions would help to reflect government intent and ensure policy space for government regulation.
- Actively manage the replacement of older investment treaties as part of new treaty negotiations with the same partners. Georgia has two or more investment treaties in force with 28 countries. Multiple investment agreements in force with the same treaty partners may undermine reform efforts, including future possible outcomes of the ongoing ECT modernisation process. The government may wish to engage with relevant treaty partners to consider whether overlapping treaty coverage reflects current priorities, especially in the context of the ECT modernisation process.
- Continue to participate actively in and follow closely government and other action on investment treaty reforms at the OECD, UNCITRAL and ECT modernisation process. Consideration of reforms and policy discussions on frequently-invoked provisions in ISDS cases and whether investment treaties are achieving their intended purposes are of particular importance in current investment treaty policy. Emerging issues such as the possible role for trade and investment treaties in fostering responsible business conduct as well as ongoing discussions about treaties and sustainable development also merit close attention and participation.

Georgia is open to foreign investment, with limited exceptions

An open and non-discriminatory investment environment is a central tenet of an attractive investment climate. It helps to ensure that all investors are treated alike in like circumstances, irrespective of their ownership. One of the concepts derived from the principle of non-discrimination in the context of foreign investment is that of national treatment, which requires that governments treat foreign-owned or foreign-controlled enterprises no less favourably than domestic enterprises in like situations (OECD, 2015[4]).

No economy, including Eastern Partner (EaP) and OECD economies, accords market access or national treatment to foreign-owned enterprises in their territories across the board. Despite the potential benefits of FDI being generally accepted, and FDI attraction having become an important policy tool to finance development in many economies, concerns over the loss of national sovereignty and the protection of national interests continue to lead governments to discriminate or impose statutory restrictions on foreign direct investments. While there have been great FDI liberalisation efforts in manufacturing industries, where governments have more readily accepted the benefits of FDI, some services and primary sectors still remain partly off limits to foreign investors, although this varies greatly across economies.

The following analysis uses the OECD *FDI Regulatory Restrictiveness Index* (the *FDI Index*) to assess and benchmark market access and exceptions to national treatment (Box 2.2). This index gauges the level of restrictiveness of an economy's statutory measures on FDI by looking at four main types of restrictions: *1)* foreign equity limitations; *2)* discriminatory screening and approval mechanisms for foreign investment;

3) restrictions on the employment of key foreign personnel; and *4)* other operational restrictions (e.g. restrictions on branching and capital repatriation or land ownership). The index is not a full measure of investment climate attractiveness – a range of other factors come into play, including how FDI rules are implemented. Nonetheless, FDI rules are a critical determinant of an economy's attractiveness to foreign investors: removing restrictions may not always lead to the hoped-for surge in FDI inflows, but high levels of restrictions are almost certainly likely to deter investors. Benchmarking FDI restrictions helps governments to see how they compare with their peers in terms of the restrictiveness of their FDI regimes.

Box 2.2. The OECD FDI Regulatory Restrictiveness Index

The OECD *FDI Regulatory Restrictiveness Index* seeks to gauge the restrictiveness of an economy's FDI rules. The *FDI Index* is currently available for more than 60 economies, including all OECD and G20 members, allowing one to compare FDI policies and identify potential areas for reform. It is commonly used on a stand-alone basis to assess the restrictiveness of FDI policies when reviewing candidates for OECD accession and in OECD *Investment Policy Reviews*, including reviews of new adherent countries to the OECD *Declaration on International Investment and Multinational Enterprises*. The index does not provide a full measure of an economy's investment climate as it does not score the actual implementation of formal restrictions and does not take into account other aspects of the investment regulatory framework, such as the extent of state ownership, and other institutional and informal restrictions which may also impinge on the FDI climate. Nonetheless, FDI rules are a critical determinant of an economy's attractiveness to foreign investors; and the index, used in combination with other indicators measuring the various aspects of the FDI climate, may help to explain variations among economies in attracting FDI.

The FDI Index covers 22 sectors, including agriculture, mining, electricity, manufacturing and main services (transport, construction, distribution, communications, real estate, and financial and professional services). For each sector, the scoring is based on the following elements:

- the level of foreign equity ownership permitted;
- the screening and approval procedures applied to inward foreign direct investment;
- restrictions on key foreign personnel (e.g. CEO, technical expert); and
- other operational restrictions (e.g. land ownership, branching, profit repatriation).

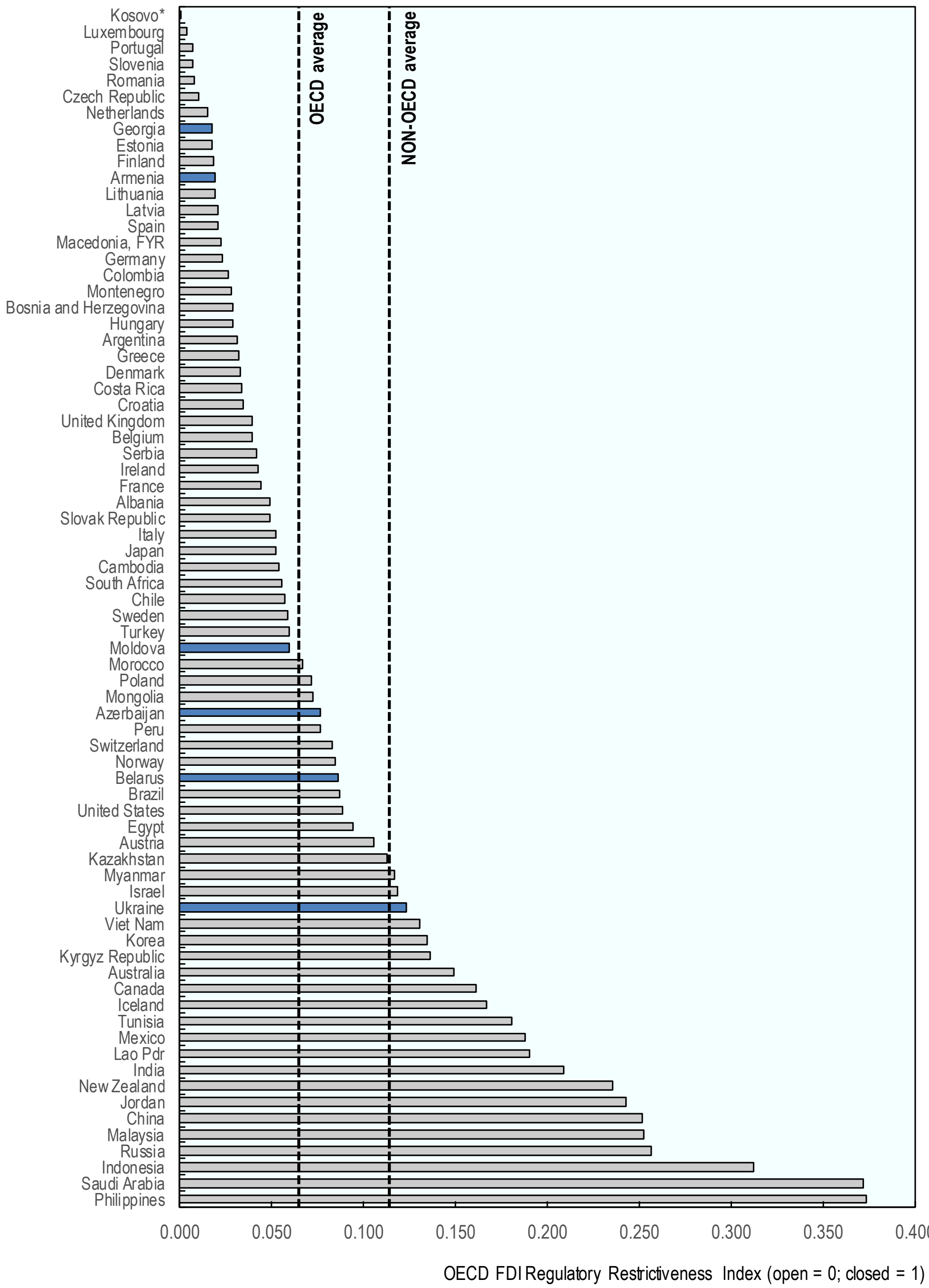
Restrictions are evaluated on a 0 (open) to 1 (closed) scale. The overall restrictiveness index is the average of the 22 individual sectoral scores. The discriminatory nature of measures, i.e. when they only apply to foreign investors, is the central criterion for scoring a measure. State ownership and state monopolies, to the extent they are not discriminatory towards foreigners, are not scored.

Source: (Kalinova, Palerm and Thomsen, 2010[40]) .

Overall, openness to FDI varies greatly across economies and regions (Figure 2.1). Larger economies and those in the Asia-Pacific region tend to be more restrictive on average. Smaller European economies tend to the most open to FDI as measured by the *FDI Index*. Substantial variation is observed across EaP countries, with Georgia and Armenia among the most open. Georgia is particularly restrictive in agriculture and forestry, given the ban on foreign ownership of agricultural land (Figure 2.2). Foreign-controlled locally established enterprises are, nevertheless allowed to lease land for agricultural use or to obtain special permission from the government to purchase agricultural land on the basis of an investment plan. In Georgia, foreign ownership of agricultural land is restricted to 50% of equity. Overall, Georgia's sectoral restrictions fall within the same sectors as those found in both EaP and OECD countries.

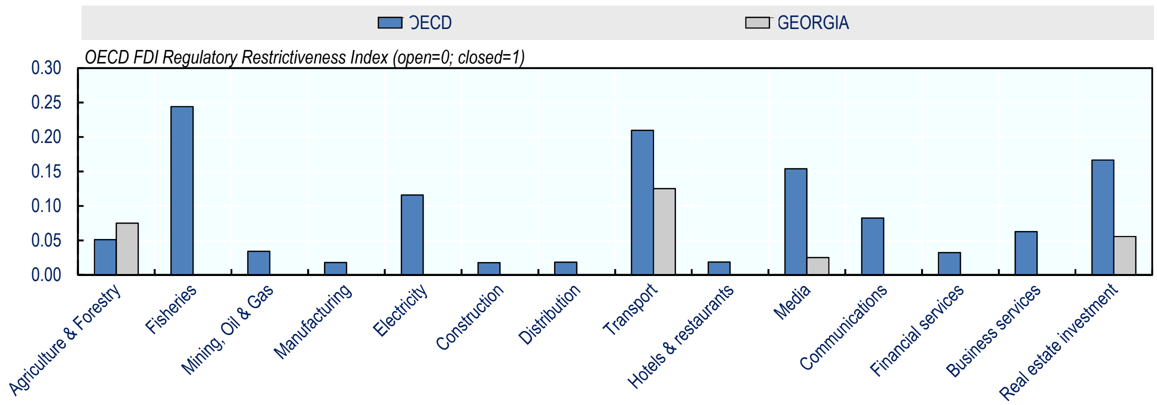
Relative to the size of its economy, Georgia attracts more investment than many other countries at a similar level of openness (Figure 2.3), although this performance is less pronounced when FDI stocks are measured on a per capita basis. Remaining restrictions may nevertheless be impeding investment into key sectors for structural transformation and economic development, particularly for agricultural land.

Figure 2.1. Georgia is one of the most open economies to foreign investment



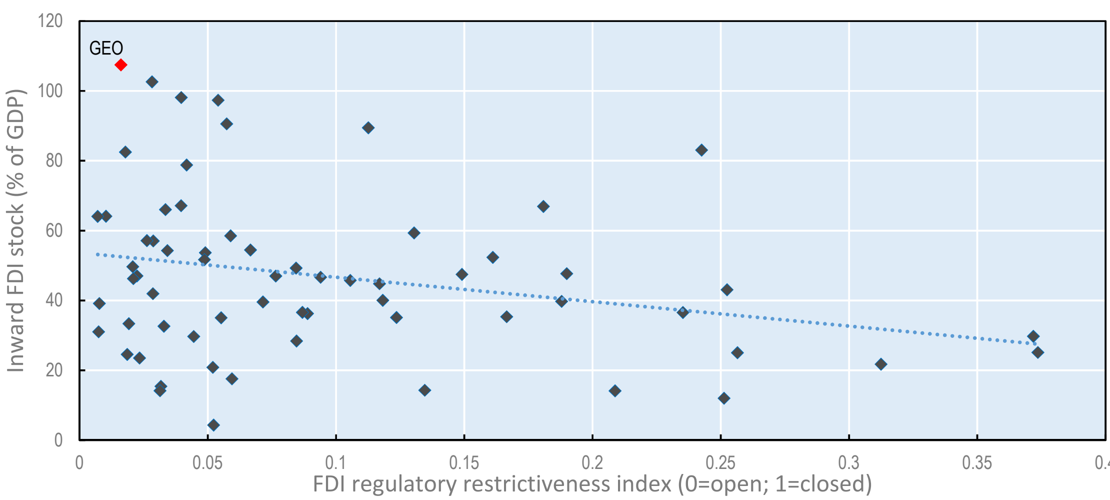
Note: The OECD FDI Regulatory Restrictiveness Index only covers statutory measures discriminating against foreign investors. The implementation of regulations, restrictions related to national security, state monopolies, preferential treatment for export-oriented investors and special economic zone regimes are not considered. Data reflect regulatory restrictions as of December each year.
Source: OECD FDI Regulatory Restrictiveness Index (database), www.oecd.org/investment/fdiindex.htm.

Figure 2.2. FDI restrictions by sector broadly match those found in OECD countries



Note: The OECD FDI Regulatory Restrictiveness Index only covers statutory measures discriminating against foreign investors. The implementation of regulations, restrictions related to national security, state monopolies, preferential treatment for export-oriented investors and special economic zone regimes are not considered. Data reflect regulatory restrictions as of December each year
Source: OECD FDI Regulatory Restrictiveness Index (database), www.oecd.org/investment/fdiindex.htm

Figure 2.3. As a small, open economy, Georgia performs relatively well in attracting FDI overall



Source: OECD and UNCTAD

Competition policy is still a work in progress

Many areas of Georgia's policy framework influence the attractiveness for investors as well as the potential benefits investment can bring to its economy. While this chapter provides an in-depth assessment of investment policies, other aspects of domestic market regulation can also have a significant impact on the investment climate. This is notably the case for competition policy. A full assessment of the regime for competition would go beyond the scope of this review and could merit a separate competition assessment by the OECD. This section provides an overview of some of the issues that were identified by stakeholders and in discussions with Georgian authorities concerning competition.

Effective competition is essential for a dynamic business environment, in which firms are willing to invest and take risks. Creating and maintaining a competitive environment requires a sound and well-structured competition law, an effective competition authority that enforces this law, and, more widely, economic policies that respect the principles of competition and avoid unnecessarily restricting it.

Unlike the progress made in other areas affecting the investment climate, Georgia's framework for competition remains underdeveloped. While the basic legal provisions on prohibited agreements, abusive conduct, and merger control are in place, the Competition Agency of Georgia (GCA) cannot exercise its mandate effectively as it lacks the powers to undertake key activities. As such, it lacks the necessary investigation, sanctioning and remedial tools that are international best practice, such as the power to impose remedies or accept commitments in merger and non-merger cases. This results in very limited enforcement. The GCA reviewed only seven mergers and conducted 15 investigations of antitrust infringements in 2016-18. The competition agency should have the necessary power and tools to uncover illegal practices and to impose sanctions for infringements, so as to ensure a reasonable level of deterrence, while being proportionate.

Other factors that impede competition on the Georgian markets include economic sectors that are directly excluded from the scope of competition law (e.g. the securities market, labour and intellectual property relations, subject to certain exemptions) and sectors that are subject to competition law but outside the authority of the GCA (e.g. energy, banking, telecommunication).

The principles of fair and effective competition should inform how the public sector procures its goods and services and awards concessions for the provision of services using public resources. Competitive tendering based on clear, transparent, and non-discriminatory rules should be used to select the best providers, and any form of bid-rigging should be detected and punished. In Georgia, long-term concession projects are frequently granted without any competitive process. This is detrimental to attracting the best provider of a required service, be it for smaller projects or large-scale infrastructure projects, such as the Anaklia Port, which has been struggling to get off the ground.

Policies should be designed so as to promote the entry of new players and sustainable and effective competition. This may include accounting or functional separation, and in some cases even structural separation when necessary to separate the competitive and non-competitive elements of the industry and to avoid discrimination and cross-subsidisation. Appropriate sectoral regulation has to be introduced, in order to balance the need to avoid the incumbent exploiting its advantages to foreclose entry and expansion, and the need to provide new and existing industry players (including incumbents) with the proper incentives to invest. Liberalisation, when properly implemented, is considered to have an unambiguously positive effect on investment. The size and structure of the economy also play a role, since it is often harder to prevent dominance in a small market, with fewer players: (WEF, 2018[41]) notes that, while Georgia is very externally open, it scores poorly on the extent of market dominance internally and, in particular, on competition in services.

Notwithstanding the limitations on its authority, the GCA is very active in competition advocacy. The agency regularly conducts trainings, seminars and conferences across all target groups, including the private sector, public officials, media, lawyers, judges, and carries out market studies. It also actively comments on draft laws and regulations, with the aim of reducing or abolishing unnecessary restrictions on competition, and its enforcement action addresses state actors when they commit competition law violations. In all these investigations, the GCA is acknowledged by the legal community as a fair and transparent actor that strictly adheres to the rule of law.

Amendments to the competition law have been proposed. Expected changes include the formation of an independent elected board for the agency, improved merger control rules and procedures, and the application of competition law to regulated sectors. In addition, the reform will possibly include the extension of the agency's investigative powers. The GCA is also expected to become the designated enforcement body for new laws on anti-dumping and consumer protection. Amendments of the public procurement act foresee that the staff of the dispute council will be subordinated to the GCA. However, the amendments have been pending for some time, and it is uncertain when and which amendments will enter into force.

Effective enforcement requires well-functioning tools and procedures. In terms of tools, effective dawn raid powers are an indispensable tool for uncovering illegal cartels. The CGA has no power to conduct surprise on-site inspections ("dawn raids"), compel undertakings to provide information for merger assessment or apply financial penalties in merger cases. Cartel agreements cannot be established based on parallel conduct observations or other indirect evidence alone. They require direct proof of communication or agreement. In Georgia, where a few players dominate in many sectors of a relatively small economy, cartels can be expected to be a pervasive problem. This comes at a high cost to the country's consumers, who will pay 10–20 % higher prices for goods and services. As cartels often target public procurement, public services also come at a much higher cost to taxpayers. Concerns about the GCA's possible abuse of these powers seem to lack a realistic foundation and should in any case be managed – as in other jurisdictions – by having proper oversight and recourse mechanisms in place.

Other investigation tools, like merger notifications and requests for information, have to be enforceable, if necessary with sanctions for non-compliance. All enforcement instruments would benefit from more flexible, and, when necessary, longer legal deadlines. Currently, an investigation cannot last longer than three months (for significant and complicated cases this term can be extended to 10 months). This is very short by international standards. When necessary, longer timelines would enable better enforcement cases based on international best practice.

Effective enforcement requires an adequately resourced, skilled and independent competition authority, which fulfils its mandate free from any political interference. This requires highly qualified enforcers who act in an institutional environment that assures independence from political or private stakeholder interventions. The GCA needs to further establish its reputation for impartial and neutral enforcement against public and private restrictions to competition. Its resource constraints, including finances to support competitive salaries and to procure the needed IT and office equipment, need to be addressed for it to attract and retain highly qualified staff.

The extension of responsibilities not only for competition enforcement, but also for public procurement, anti-dumping and consumer protection may lead to a dilution of the competition mandate. Adequate staffing, funding and training for these additional tasks would need to assured. The GCA lacks discretion to decide on, and eventually dismiss incoming complaints based on their relevance and the GCA's enforcement priorities. This occupies resources that could be used in a more meaningful way.

Investment protections under the Investment Law and related legislation

Georgian law provides a number of core protections to investors. Most of them appear in the Law on Promotion and Guarantees of Investment Activity (Law No. 473-IS of 12 November 1996, as amended, hereafter the Investment Law) with several other laws providing additional content to the scope of these protections.

Like many other countries, Georgia has enshrined in its domestic law a principle of non-discriminatory treatment as between foreign and domestic investors. Article 3(1) of the Investment Law provides that foreign investors will enjoy the same rights and guarantees as Georgian nationals "except for cases defined by legislation". This basic rule establishes Georgia's commitment to a level playing field for all investors and send positive signals regarding an open investment policy, without prejudice to the possibility for the government to adopt limited exceptions through its laws in order to pursue specific policy objectives. This provision in the Investment Law reinforces an equality guarantee in Article 11 of the Constitution. This and other constitutional rights apply equally to Georgian nationals and foreign nationals living in Georgia. The Law of Georgia on the Elimination of All Forms of Discrimination (Law No. 2391-IIs of 2 May 2014) also prohibits all forms of discrimination, including based on race, language, citizenship, origin, place of birth or residence. Some stakeholders indicate that anti-discrimination laws are enforced unevenly, especially with respect to women and LGBTI people in the workplace (Freedom House, 2020). Formal exceptions to these rules on non-discrimination, however, are relatively rare. They include restrictions on foreign ownership of agricultural land (discussed further in Chapter 3) and market access restrictions in sectors listed in Article 9 of the Investment Law.

Another important legal protection for investors is the government's guarantee of protection from expropriation. Article 7 of the Investment Law provides that investors may only be "deprived" of their investments "in cases directly determined by law, by court decision and upon urgency determined by the organic law and only with appropriate compensation". It provides an avenue for investors to appeal decisions on "deprivation" to the Georgian courts in cases where investors are not covered by an applicable investment treaty. Article 8 provides that compensation for deprived investments shall be the equivalent of "real market value" immediately before the taking and shall be freely transferable abroad.

Several other laws affect investors' rights with respect to expropriation. The Constitution protects rights to own and inherit private property (Article 19). It provides that expropriation of private property shall only be possible "in cases of pressing social need as directly provided for by law, based on a court decision or in the case of urgent necessity". Compensation for expropriation shall be "preliminary, full and fair" and exempt from taxes and fees. It also requires the government to provide compensation to investors if it expropriates their property. Compensation should reflect the market value of the property. Disagreements regarding the valuation of expropriated property may be settled through arbitration, if the parties agree, or through domestic courts.

The Law on the Expropriation of Property for Pressing Social Needs (Law No. No 2349-რს of 23 July 1999, as amended) provides clarifications regarding the expropriation powers in the Constitution. The Law sets out an exhaustive list of public works for which the government may seek to expropriate private property (Article 2). Many of the listed categories relate to public infrastructure works (building roads, highways, pipelines and railways; laying communications or transmission cables). More general categories include works required for national security, extraction of natural resources or building other "structures and facilities for pressing social needs". The Law sets out in detail the procedures for carrying out an expropriation, including publication requirements, preconditions, valuation and payment of compensation and court review of disputed valuations. A separate law enacted in 1997 appears to cover similar subject matter in less detail (Law on the Procedure for Expropriation of Property upon the Urgent Necessity of Ensuring Public Needs, Law No. 1054-Iს of 11 November 1997). It is unclear whether or how the two laws interact.

Sectoral laws also refer to government powers to take property. The Oil and Gas Law (Law No. 1892-IIs of 16 April 1999, as amended), for example, allows the State Agency for Oil and Gas to apply to Georgian courts to "alienate" private property from landowners for the benefit of investors in oil and gas reserve areas (Articles 1(a.i.), 20(3)-(5)). This power applies in cases of "public necessity" and subject to "appropriate compensation". It provides that this process shall take place "according to the Constitution".

These various laws provide a relatively high degree of clarity for investors on rights in the event of an expropriation and the procedures that will apply. They also identify specific situations where expropriation by ministerial order or court judgment can occur, which further promotes legal certainty. Amendments to these laws in the past two decades have gradually increased the level of specificity and addressed issues with interpretation. Some stakeholders have also reported that disputes regarding expropriation are relatively uncommon (US Department of State, 2019).

The government may nonetheless wish to consider further clarifications in these laws. Expropriation regimes that Georgia has established for some foreign investors under its investment treaties and expropriation regimes under investment laws in other countries are more specific in some areas. Issues for possible clarification include:

- whether investors are protected from indirect expropriation in the form of government measures that have an effect equivalent to direct expropriation without formal transfer of title, ministerial order or court decision and, if so, how indirect expropriation is defined and whether there are any exceptions (e.g. for non-discriminatory regulatory actions designed to achieve legitimate public welfare objectives);
- the valuation methodology for determining market value, including the valuation date, and whether any specific factors should be taken into account when determining this value such as the investor's conduct, the reason for the expropriation or the profits made by the investor during the lifetime of investment;
- whether compensation for expropriation includes interest and, if so, how that interest should be calculated; and
- the distinction between compensable and non-compensable expropriations, if appropriate, to establish a minimum level of policy space for the government to implement public policy objectives without being constrained by obligations to compensate affected investors.

Further harmonisation or consolidation of the various laws that address expropriation should also be considered. The Georgia 2020 strategy describes the Investment Law as "outdated and disconnected from reality", noting that investor protections are "scattered among several normative acts". It signals the government's plan to update the Investment Law to address these and other concerns.

Another area for possible clarification is the interaction between the Law on the Expropriation of Property for Pressing Social Needs and the Investment Law. While the former Law provides clarifications on expropriation rights and procedures with reference to the Constitution, it does not refer to the expropriation regime in the Investment Law. The government should consider consolidating all relevant provisions on expropriation into the Investment Law or directly cross-referring to specific laws on expropriation in the Investment Law to reduce the scope for confusion and improve legal certainty. Consistent terminology should also be adopted. While the Investment Law refers to "deprivation" of property, most other laws refer to "expropriation" and Georgia's investment treaties often refer to "nationalisation". Confusion on terminology may also arise in sectoral laws. For example, the Oil and Gas Law appears to use the term "alienate" as a synonym for expropriation while the Law on Agricultural Land Ownership (Law No. 4848-IIს of 25 June 2019, as amended) uses "alienate" to refer to a landowner's rights to sell, transfer or otherwise dispose of land.

Aside from expropriation and non-discrimination, the Investment Law also guarantees that investors may freely transfer and repatriate in foreign currency profits and other funds associated with their investment activities (Article 3(6)). Repatriation is subject to obligations to pay taxes and other government income associated with investment activities. The Law also guarantees that investors may open bank accounts, take out loans and own various forms of real and intangible property (Article 3). Investors were also insulated from changes to other laws that adversely affected their investments through a stabilisation clause in Article 15 of the Law until this provision was repealed by way of a legislative amendment adopted in 2009.

Investor rights under the Investment Law are subject to a general obligation for investors to comply with Georgian law. This is a common feature of investment laws in other countries and Georgia's investment treaties. Some investment laws in other countries have gone further in terms of investor obligations in areas such as responsible business conduct, corporate governance expectations and contributions of investment activities to sustainable development goals. Consideration of further specification on investor obligations in the Investment Law may align with the government's aims to achieve Georgia's climate change and green growth targets, including under the OECD Declaration on Green Growth. Chapter 5 on responsible business conduct address some of these issues in further detail.

Opportunities to strengthen the protection and enforcement of intellectual property rights

An effective regime for registering, protecting and enforcing intellectual property (IP) rights is a crucial concern for many investors. As recognised in the Georgia 2020 strategy, strong IP rights provide investors with an incentive to invest in research and development (R&D) for innovative products and processes. These rights also instil confidence in investors sharing new technologies, for instance through joint ventures and licensing agreements. Successful innovations may be suffused within and across economies in this way, and contribute to elevating productivity and growth. This is a key goal of promoting innovation and R&D by small and medium-sized enterprises under the government's SME Development Strategy 2016-2020. At the same time, IP rights entitle their holders to the exclusive right to market their innovation for a certain period. The protection granted to intellectual property therefore needs to strike a balance between the need to foster innovation and society's interest in having certain products, such as pharmaceutical products, priced affordably and widely available.

Georgia has a relatively extensive legal framework for IP rights protection that generally complies with international standards in at least six main areas: trademarks, patents, industrial designs, copyright, geographical indications and plant varieties. Amendments to laws in all of these areas came into effect in 2018. The Constitution (Article 20) also recognises the protection of intellectual property rights as a constitutional guarantee.

At the international level, Georgia joined the World Intellectual Property Organisation (WIPO) in 1979 and the World Trade Organisation (WTO) in 2000. It is an active participant in the WTO Council for Trade-Related Aspects of Intellectual Rights. It has acceded to several key WIPO-administered IP treaties and made declarations regarding the continuing application of others originally signed by the USSR.[1]

The Georgian National Intellectual Property Centre (Sakpatenti) is responsible for defining the national agenda on IP policies. Sakpatenti is an independent legal entity with special status under Georgian public law. It has contributed to drafting and enacting over 30 laws, by-laws and guidelines for IP rights in various areas since its establishment in 1992. In its first 25 years of operation, Sakpatenti issued 8621 patents and registered more than 60,000 trademarks, 2254 applications for design and 208 applications for new plant varieties (Sakapenti, 2017). Sakpatenti also ensures the deposit of copyrighted works and registers Georgian geographical indications and appellations of origin. It has been a key driving force behind the considerable progress made in the past two decades to bring Georgia's IP rights regime into line with international standards.

Another important driver of this progress has been Georgia's co-operation with international partners. Georgia undertook to improve various aspects of its IP rights regime as part of the Deep and Comprehensive Free Trade Agreement (DCFTA) with the European Union, which it signed in June 2014 and brought into force in January 2016. The DCFTA attests to Georgia's commitment to implement international IP agreements effectively, provides for international co-operation on a range of issues including customs powers related to IP enforcement and sets a range of substantive and procedural standards for the treaty partners to meet. Commitments in the DCFTA prompted a suite of amendments to Georgian IP laws that came into force in January 2018 aimed largely at improving the scope of certain IP rights and suppressing IP infringements. These commitments have also prompted Georgia's accession in 2018 to the TRIPS amendment on measures to ensure better access to essential medicines that arose from the Doha Declaration.

Alongside DCFTA, Georgia has concluded a number of bilateral agreements with other countries on IP issues such as simplifying patent validation and mutual recognition of geographical indications. Protection for geographical indications and appellations of origin abroad is a particularly important issue for investors in the Georgian wine industry and other parts of the country's agricultural sector. Sakpatenti co-operates actively with IP agencies from the European Union and the United States, among others, as well as WIPO, to build in-house technical capacity, conduct awareness-raising activities, develop quality control tools and improve its e-filing system and electronic database for IP applications and other procedures.

These efforts over the past two decades have greatly improved the transparency, legal certainty and quality of outcomes under the Georgian IP rights regime for the benefit of all users, including investors. This appears to be having a positive impact on investor engagement. A study in 2011 by WIPO on IP trends in 23 transition economies including Georgia noted that Georgia had witnessed an increase in the number of applications for patents filed by foreign applicants, which suggested that more foreign investors were preparing or had recently entered the Georgian market when compared to other markets in the study (WIPO, 2011). More recent data published by WIPO for the period 2009-2018 indicates that patent activity remains relatively regular despite some decline since a peak in 2010, but trademark and industrial design filings have seen steady increases over the same period, especially by foreign applicants (WIPO, 2020).

Some issues nonetheless remain for improvement, most notably the effectiveness of enforcement measures for IP infringements. Georgia is not listed as a priority country for IP enforcement issues in the USTR's Special 301 Report or the EU Commission's annual report on IP protection in third countries. But some stakeholders have reported concerns with the availability of unlicensed software and other pirated content online, as well as the level of technical capacity among local judges, lawyers, prosecutors, police officers and customs officers responsible for IP enforcement (US Department of State, 2019; USAID, 2011a; USAID, 2011b; UNDP, 2010). Counterfeiting and software piracy can have real economic consequences through reduced sales and profitability for manufacturers of branded goods, depreciation of brand image, increased costs for brand protection and disincentives for investment in IP-intensive sectors. These concerns are partly reflected in Georgia's international rankings in this area. Georgia ranks 94th out of 141 countries in terms of IP Protection in the World Economic Forum's 2019 Global Competitiveness Report, well below its aggregated rank of 74th across all 103 indicators in the Report. It ranks 48th out of 129 economies in the Global Innovation Index 2019 prepared by WIPO, INSEAD and Cornell University.

The government is aware of these issues and seeks to address them. Legislative amendments mandated under the DCFTA have tightened sanctions for IP infringements and given new powers to rights holders (licencees and owners of IP rights) to apply to Georgian courts for the removal or destruction of offending objects together with compensation for damage suffered. These amendments take enforcement powers in Georgia beyond the TRIPS Agreement and bring them in line with the EU's IP Enforcement Directive No. 2004/48/EC (Centre for European Policy Studies, 2016). New provisions on liability for intermediary service providers (e.g. online service providers) align with the EU's E-Commerce Directive No. 2000/31/EC. The new amendments have also strengthened powers for customs officials to seize and detain suspected infringing goods at the border in line with similar powers in EU Regulation No. 608/2013 on customs enforcement of IP rights (see the Law on Border Measures related to Intellectual Property, Law No. N1723-Iს of 13 December 2017).

Sakpatenti works with government agencies and international partners to step up training and international co-operation as part of efforts to implement these new laws (Sakpatenti, 2018, 2019). Since 2015, Sakpatenti has hosted an annual conference on "Georgia against Counterfeiting and Piracy" with assistance from the Commercial Law Development Program (CLDP) of the US Department of Commerce and funding from the EU4Business Program. This annual event is a platform for national and international experts to discuss developments in the global fight against counterfeiting and piracy. CLDP arranges annual training workshops conducted by US judges for Georgian judges on adjudicating civil IP infringement cases. Sakpatenti offers distance learning and in-person training sessions to supplement these annual workshops. WIPO holds annual workshops to "train the trainers" in Sakpatenti's IP Training Centre. Further IP training and awareness-raising activities are scheduled in 2020 under the government's Action Plan for the Implementation of DCFTA.

The Revenue Service of the Ministry of Finance, which is responsible for customs enforcement at the border, works closely with the World Customs Organisation (WCO) to share experiences and best practices with customs officials from other countries in the International Customs Co-operation Council. It contributes to the WCO's interactive database of goods specifications to assist customs agents in distinguishing genuine and counterfeit goods. Customs agents participate in regular training sessions held by WCO, as well as EU and US customs officials, on IP border enforcement, counterfeiting and fraud.

The government should continue to prioritise efforts to strengthen IP rights protections and enforcement as an important part of its goal to improve the overall investment climate. Building on the success of the DCFTA, the government should consider IP rights commitments in future trade and investment agreements as avenues for impetus to continually improving the domestic framework. The government should continue to support a wide range of international collaboration and co-operation in this field. It could also consider developing roadmaps for future implementation of additional WIPO-administered treaties such as the Trademark Law Treaty, the Singapore Treaty on the Law of Trademarks, the Patent Law Treaty, the Nairobi Treaty and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

Software piracy and unlicensed online content remains an important challenge to tackle. Around 95% of software for sale in Georgia as of 2010 was pirated and illegal (UNDP, 2010). The government has since sought to lead by example through its agreement with Microsoft in 2014 for the use of genuine Microsoft software licences for all Georgian government workstations (WIPO, 2016). It should also support the passage of legislation on e-commerce and amendments to the Copyright Law (Law No. 2112 of 1999, as amended) to address liability for internet service providers, drafts of which have already been prepared by Sakpatenti and the Ministry of Economy and Sustainable Development. Other initiatives could also be considered. IP agencies in other countries have reported encouraging outcomes with infringing website lists, which seek to encourage advertising brokers and networks to avoid placing advertisements on websites that infringe copyrights on a commercial scale. Sakpatenti or the Ministry of Internal Affairs, as the responsible entity for enforcing IP rights within the country along with the Financial Police, could be given powers to order copyright-infringing websites to be blocked. Sakpatenti should continue to explore such initiatives to tackle software piracy as part of its existing dialogues with international partners.

Sustained momentum is needed to build on recent improvement for the independence, accountability and capacity of the judiciary

The ability to make and enforce contracts and resolve disputes efficiently is fundamental if markets are to function properly. Good enforcement procedures enhance predictability in commercial relationships by assuring investors that their contractual rights will be upheld promptly by local courts. When procedures for enforcing contracts are overly bureaucratic and cumbersome or when contract disputes cannot be resolved in a timely and cost effective manner, companies may restrict their activities. Uncertainty about the enforceability of lawful rights and obligations raises the cost of capital, thereby weakening firms' competitiveness and reducing investment. It can also foster corruption in the court system.

The government identifies its efforts to strengthen the judiciary as a key priority under the Georgia 2020 strategy, which notes that "a strong and independent judiciary is essential to efforts to improve the country's business and investment environment, especially in terms of protecting property rights". Four reform packages over the past decade have targeted various aspects of justice system reform. A key outcome of these reforms has been the increased level of independence and de-politicisation of the High Council of Justice (HCOJ). The HCOJ is a consultative body on the country's justice system that is responsible for, among other things, appointing and dismissing judges, recruiting judges, developing policy recommendations and defending the interests of the judiciary. Established in 1997 under the Organic Law on Common Courts (Law No. 767-IIs of 1997), power in the HCOJ resided in the hands of a few. Appointees from the executive branch dominated the HCOJ's activities in practice. One individual – the Chairperson of the Supreme Court – was responsible for nominating judicial members of the HCOJ rather than the self-governing Conference of Judges as envisaged by the previous Constitution. Part of Georgia's constitutional reform in 2017, which culminated in the adoption of a new Constitution in 2018, introduced new procedures for the selection and appointment of the Supreme Court judges that vested Parliament with the final decision, established selection criteria for judicial candidates and increased public-facing transparency.

The existing framework for adjudication of civil disputes in Georgian courts nonetheless continues to suffer from a number of significant problems despite the recent reforms. Foremost of these are persisting concerns with the independence, accountability and capacity of the HCOJ and the judiciary (European Commission, 2020b; Georgian Young Lawyers' Association, 2020; US Department of State, 2020 and 2019; Council of Europe, 2019; Public Defender, 2019b; Coalition, 2017; Transparency International, 2015; EU Commissioner for Human Rights, 2014; see also Chapter 5 on responsible business conduct). Survey feedback collected in 2018 from over 2,000 Georgian citizens from all parts of the country suggests that trust in judges is low; many participants considered that judges are not free from political pressure (EMC, CRRC and IDFI, 2018). Stakeholder interviews conducted by the OECD Secretariat in Tbilisi for this Review also indicated that many investors in the country continue to perceive court processes as slow, inefficient, lacking in transparency and hampered by a lack of technical expertise. All of these issues affect public trust in the judicial system. They are among the most pressing concerns for investors in their assessments of the investment climate in Georgia.

The government is aware of these challenges and tackles them head on with backing from the highest political levels. Amendments under the fourth wave of judicial reform were finalised and adopted by Parliament in December 2019. The amendments have introduced changes to improve procedures for appointing judges, managing caseloads for individual judges and adjudicating disciplinary breaches by judges who communicate improperly with third parties with a view to influencing the outcome of a case. The Ministry of Justice has also drafted legislative amendments to address issues in the criminal justice system including the independence of prosecutors. Various stakeholders including civil society organisations and international partners including the Council of Europe, the European Union and the United States have supported the government on justice reforms over several decades and have broadly welcomed the progress made to date.

It will be crucial for the government to sustain the momentum for systemic judicial reform. This starts with the full implementation of the fourth wave of judicial reforms adopted by Parliament in December 2019 but must extend to addressing a number of remaining issues, especially regarding the integrity of the judicial appointment process. Several global indicators attest to these persisting concerns. Georgia ranks, for instance, 42nd of 126 countries in the 2020 edition of the World Justice Project Rule of Law Index. Despite ranking first among 14 countries in the Eastern Europe and Central Asia region and 7th of 42 countries in the Upper Middle Income category in the Index, Georgia's performance is well below the Upper Middle Income category median score for "no improper government influence" in the civil and criminal justice system indicators. The World Economic Forum's Global Competitiveness Index 2019, in which Georgia ranks 80th out of 141 economies on independence of the judiciary, also highlights this issue. According to Freedom House's 2020 Freedom in the World Report, "despite ongoing judicial reforms, executive and legislative interference in the courts remains a substantial problem, as does a lack of transparency and professionalism surrounding judicial proceedings." The Heritage Foundation's 2020 Index of Economic Freedom also cites concerns about judicial independence as the main factor holding back progress in Georgia on the rule of law and greater economic freedom, prosperity and opportunity.

The government should continue to work closely with stakeholders to address persisting concerns. Various stakeholders are following closely the implementation of the recent reforms, especially those relating the HCOJ (Georgian Young Lawyers' Association, 2020; OSCE, 2019 and 2020; EMC and IDFI, 2019a and 2019b; Venice Commission, 2019; Coalition, 2017). The government should continue to strive towards a truly fair, transparent and merit-based appointment process for judges in line with the detailed recommendations made by the Council of Europe's Venice Commission and several civil society organisations. These observers have raised concerns that cronyism and a lack of transparency still plagues the culture surrounding judicial appointments despite recent legislative reforms. In particular, in December 2019 the Parliament appointed 14 candidates for life tenures to the Supreme Court through a process that lacked transparency. Events such as these continue to degrade public trust in the judiciary. Aside from setting rules that prevent events like this from happening in the future, changes to legal education and public awareness are key determinants in the success of these legal-institutional reforms. They may also be the only way to invert deep-seated attitudes regarding fairness and efficiency in the Georgian justice system for future generations of judges, prosecutors, lawyers, police officials and members of parliament. Another aspect of this culture is the availability of equal opportunities for women in the justice system. A recent study prepared for the Council of Europe suggests that transparent selection criteria for judges may have a positive effect on overcoming existing gender segregations in this field (ACT, 2019).

The government should continue to explore ways to improve the efficiency of court procedures to address concerns that routine cases take too long to resolve and judges lack sufficient technical capacity to deliver quality outcomes consistently. Stakeholders have welcomed a new electronic system for case distribution adopted by the HCOJ as part of the third wave of justice reforms but note that its usefulness may be limited by a lack of judges able to handle certain cases and have called on amendments to the system to address perceived deficiencies (EME and IDFI, 2019a; Coalition, 2017). These and other e-court services should be progressively designed, introduced and refined as ways to reduce the scope for corruption and cronyism in case allocation, increase access to court judgments, improve accuracy and reduce processing times.

Another issue under consideration in this regard is the merit of developing specialised judges or courts in certain areas. Georgia has a three-tiered court system consisting of over 25 first instance courts, two appellate courts and the Supreme Court together with a separate Constitutional Court. Investors have raised concerns with the absence of specialised courts or judges in this system with the government during consultations chaired by the Prime Minister in the Investors' Council of Georgia. Establishing specialised courts or judges to deal with commercial, tax and small claims matters, among others, is conducive to improving the quality and consistency of decisions with potential knock-on effects for the speed with which judges can resolve cases within their area of specialisation. Increased judicial specialisation can also entail certain pitfalls linked to the separation of specialist judges from the general body of judges (Consultative Council of European Judges, 2012). The Ministry should bear these competing considerations in mind when designing models for specialised judges or courts and tools to allocate cases to specialised judges.

Strong legal framework for arbitration and mediation but some challenges remain for Georgia becoming an attractive place for alternative dispute resolution

Commercial disputes may arise for investors with joint venture partners, employees, local suppliers or contractors, or government agencies. The cheapest and quickest way to resolve disputes is by negotiation or mediation whenever possible, but if the parties cannot reach an amicable settlement by these means, then they have no choice but to pursue the issue in the courts or arbitration. Arbitration is possible only if the parties agree to it in an underlying contract or after a dispute has arisen between them.

Article 16 of the Investment Law provides that investors can rely on Georgian courts, arbitration proceedings under applicable investment treaties or other procedures agreed by the parties to settle disputes that may arise with the government or its subsidiary entities. The Law does not specifically mention arbitration or mediation. The default option for all investors is court proceedings in the absence of any other agreed dispute resolution procedures.

The Arbitration Law (Law No. 1280 of 2009, as amended) governs domestic and international arbitrations in Georgia as well as the enforcement of foreign arbitral awards in line with the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The Law provides a robust framework for arbitration in Georgia. It follows closely the Model Law published by the United Nations Commission on International Trade Law (UNCITRAL) in 1985 and amended in 2006, which is designed to assist states in reforming and modernising their laws on arbitral procedure. The Law replaced an earlier arbitration law enacted in 1997 and sought to address a number of gaps and other concerns with the earlier law regarding the powers and competence of arbitral tribunals, finality of awards and the role of the courts in assisting arbitrations taking place in Georgia (Caucuses Research Resource Centre, 2018; Gogadze, 2018).

While the Arbitration Law and recent amendments to it have greatly improved the framework for arbitration in Georgia, the government may nonetheless wish to consider further amendments at an appropriate time in the future to clarify certain aspects of it. One important area for consideration is the definition of arbitrable subject matter, which is somewhat ambiguous in its current form. The Law provides that arbitral tribunals in Georgia may decide “property dispute[s] of a private nature based on the equality of the parties” and disputes relating to “public and private co-operation agreement under the Law of Georgia on Public and Private Co-operation” (Article 1(2)). This appears to create narrow categories of arbitrable disputes as opposed to the broader references in the UNCITRAL Model Law to “commercial arbitration” and “matters arising from all relationships of a commercial nature, whether contractual or not”. This may create uncertainty and discourage investors from agreeing to arbitrate their disputes in Georgia. The narrow categories in Article 1(2) also appear to sit uneasily with the broader reference to disputes arising under “various contractual or legal relations” in the definition of an arbitration agreement in Article 8(1). Broadening the scope of arbitrable subject matter or clarifying whether contract disputes involving claims based on tort or fraud fall within the definition of arbitrable disputes under the Law may help to avoid unnecessary litigation on this issue.

Other issues for possible clarification relate to enforcement of arbitral awards. Article 44 of the Arbitration Law does not provide guidance on when the court should refuse to enforce an award that “conflict[s] with public order”. It is silent on whether it refers to Georgian or international “public order”. By contrast, Article 42 on the powers of courts to set aside arbitral awards refers to the concept of “public order in Georgia” while the Model Law and the New York Convention refer to “public policy” of the country in which enforcement is sought. Ambiguities such as these can lead to uncertainty. Guidance for practitioners and judges or clarification in the Law would help to reduce inconsistency in judicial interpretations and dissuade award debtors from filing frivolous defences to delay enforcement through costly and lengthy court procedures. A study published in 2018 for the EU4Justice programme and UNDP sets out a range of other recommendations for possible amendments to the Law, mostly on technical or minor procedural issues, which the government may also wish to consider (Caucuses Research Resource Centre, 2018).

Improving the legal framework for arbitration is an important aspect of improving legal certainty and predictability but its success also depends on user experiences with the courts and arbitration institutions in Georgia. A recent study found that Georgian courts have interpreted several aspects of the Arbitration Law inconsistently across several decades of court practice including in respect of their powers to intervene in arbitration proceedings, the role of arbitral tribunals and the grounds for refusing enforcement of arbitral awards (Caucuses Research Resource Centre, 2018). Stakeholders have also reported bottlenecks with applications to enforce arbitral awards in Georgian courts, which may pose another disincentive for businesses considering whether arbitration is the best way to solve their disputes. Courts that act in aid of arbitrations taking place in Georgia must have the capacity to deal with enforcement and other applications efficiently. Mistrust of arbitration institutions and courts built on shortcomings in earlier arbitration legislation, perceptions about the integrity of arbitrators, the profit incentives for many Georgian arbitration institutions and low levels of public awareness about arbitration are also seen as major hindrances for the development of arbitration in Georgia.

The Georgian International Arbitration Centre (GIAC) may have an important role to play in addressing some of these concerns. The Georgian Chamber of Commerce and Industry established GIAC in Tbilisi in 2013 as a not-for-profit institution. GIAC aspires to serve as a leading arbitration institution in the country and wider Caucuses region by leveraging its independent status to promote arbitration as a credible method for resolving commercial disputes. It has developed a modern set of arbitration rules with a competitive fee structure. It contributes to awareness-raising efforts through an annual arbitration conference, co-operation agreements with other arbitration institutions, various publications and training activities. It co-operates with the Georgian Association of Arbitrators, which published in 2014 a draft Code of Ethics for Arbitrators. Together with amendments to the Arbitration Law regarding appointment criteria and procedures for challenging arbitrators, these developments should help gradually to overcome entrenched scepticism regarding arbitrator integrity.

A number of other local institutions besides GIAC administer arbitrations and provide a range of alternative dispute resolution (ADR) services. Although it is difficult to be precise due to the lack of public information regarding these institutions, there appears to be around 35 such institutions operating in Georgia (Caucuses Research Resource Centre, 2018). All of these institutions except GIAC appear to be registered as limited liability companies under Georgian company laws. The Investors' Council of Georgia and the Business Association of Georgia have discussed an initiative whereby the government could grant these companies a limited time to convert themselves to non-commercial entities as a way of removing profit-based incentives and seeking to redress negative public perceptions. Four of these institutions – GIAC, the Dispute Resolution Center, the Mediation and Arbitration Center of the European Business Association and the arbitration centre of the Chamber of Commerce and Industry of the Ajara Autonomous Republic – signed a memorandum of understanding in July 2020 agreeing to comply with the GAA's Code of Ethics.

Mediation has seen relatively little uptake in the local market to date but new legislation may prompt increased awareness and demand. The new Mediation Law (Law No. 4954 of 2019) enacted in September 2019 and effective as of January 2020 aims to promote mediation services in Georgia by providing a clear legal framework to regulate mediations. The Law sets rules for court-ordered and private mediations, including on the appointment of mediators, selection criteria, the efficient conduct of mediations, mediator remuneration, enforcement of mediator decisions and confidentiality. Importantly, it emphasises independence and impartiality as core principles. It establishes a self-regulated body, the Georgian Association of Mediators, to maintain a public register of certified mediators from which all court-appointed mediators must be selected. The new Law requires the Association to offer training for mediators, conduct awareness raising activities and providing recommendations to the government on future policy directions in this area. Aside from encouraging the creation of new mediation institutions, the Law may also open up opportunities for existing arbitral institutions to expand their offerings to provide mediation services and contribute to the Association's awareness-raising activities.

These are encouraging developments for the future of ADR services in Georgia but further efforts may be needed to overcome public perceptions that continue to hamper user uptake in this sector. The government may wish to evaluate the costs and benefits of regulating the organisational structure, ethical standards or activities of ADR service providers to foster a stronger culture of independence, competence and integrity in this sector. The Mediation and Arbitration Laws currently do not perform this role. This appears to align with the Georgia 2020 strategy, which identifies the development arbitration courts, the competence of arbitrators and independence of arbitration institutions as a priority for the government. These are vital priorities for the future of the ADR services in Georgia. In the meantime, many foreign investors are likely to prefer institutions based in established ADR hubs like Geneva, London, Paris or Stockholm.

The success of recent land reforms should provide a base for continual improvement of land tenure rules and land administration services

Secure rights for land tenure and an efficient, reliable system for land administration are key components of a sound investment climate. This requires a clear legal framework for acquiring, registering and disposing of land rights, as well as proactive land use plans at all levels of government.

Land tenure rules in Georgia are set out in the Constitution, several dedicated land laws and various sectoral laws. These rules provide a clear and predictable framework of property rights for all investors. The Constitution affirms the rights of individuals to own and inherit property (Article 19). Books 2 and 3 of the Civil Code clarify the conditions for land ownership, transfer of ownership and the permissible rights and claims over land including leases, mortgages and easements. Several other dedicated land laws and sectoral laws supplement this overarching framework.

- The Law on Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law (Law No. 5274-ES of 11 July 2007, as amended) clarifies the rights of individuals to use or squat in state-owned land lawfully.
- The Law on State Property (Law No. 3512-რს of 21 July 2010, as amended) regulates the privatisation of state-owned property, including land, and the conditions under which investors may acquire it.
- The Law on Oil and Gas (Law No. 1892-IIს of 16 April 1999, as amended) addresses state ownership of natural resources that exist in the subsoil and sets out investors' rights and obligations under land allotments to exploit natural resources.
- The Organic Law on Agricultural Land Ownership (Law No. 4848-IIს of 25 June 2019) regulates the right to own and use agricultural land.
- The Law on Determination of the Designated Purpose of Land and on Sustainable Management of Agricultural Land (Law No. 4849-II of 25 June 2019) provides pre-emptive rights for the state to acquire agricultural land.

Rules on ownership and rights over non-agricultural land apply equally to Georgian and foreign nationals. This means that unlike many other jurisdictions, foreign investors can own and transfer most types of residential or commercial property without any extra conditions or restrictions when compared to domestic investors. Restrictions exist, however, for foreign investors seeking to acquire agricultural land. The Constitution generally prohibits foreign nationals from owning agricultural land except in "exceptional cases" determined by other laws (Article 19(4)). The Law on Agricultural Land Ownership envisages two such exceptions to the general rule: where foreigners inherit agricultural land and where Georgian companies with foreign shareholders obtain the government's consent to buy agricultural land in accordance with an approved investment plan (Article 4). Chapter 3 on promoting sustainable investment in Georgia's agri-food value chain addresses these restrictions and the public debate surrounding them in further detail.

The government has taken significant strides in recent years towards ensuring streamlined, transparent and reliable land administration services to support legal rules on land tenure. Land reforms introduced in 2016 under the Law on the Improvement of Cadastral Data and the Systemic and Sporadic Registration of Rights to Plots of Land (Law No. 5153-რს of 3 June 2016) aim to register all available parcels of land in Georgia and improve the accuracy, quality and public accessibility of cadastral data.

The National Agency of Public Registry (NAPR), a sub-entity of the Ministry of Justice, is responsible for carrying out the land registration reforms. It reports that between August 2016 and February 2019 it registered over 300,000 hectares of land, taking the overall percentage of registered land in Georgia to 45 percent of the country's territory (Agenda, 2019). In May 2020, the Minister of Justice announced the government's plans to register a further 1.2 million hectares over the next three years (Agenda, 2020a and

2020b). These most recent plans appear to address stakeholder concerns regarding the massive resources needed to implement the reforms (for which financing has been secured from international donors) and the need to focus on systemic rather than sporadic land registration campaigns (with renewed focus on systemic land registration) (Transparency International, 2016). As of July 2020, NAPR has registered over 850,000 plots of land since August 2016. It is working with the Norwegian government and the World Bank to implement its systemic land registration programme and improve its digital land maps. The National Agency of State Property (NASP) has also started to register state-owned land but these efforts are currently on hold pending comprehensive registration of privately owned land. Chapter 3 on promoting sustainable investment in Georgia's agri-food value chain addresses issues relating to the registration of agricultural land in further detail.

The government's land reforms have also sought to simplify registration procedures, increase the availability of land information and reduce fraud in the titling process. NAPR has accepted and processed over 600,000 requests from private landholders to register their property, free of charge, under the new reforms. It has also created a "one-stop-shop" to provide landowners with free access to a variety of registration services upon submission of the relevant documents pertaining to their land plots (NAPR, 2019). NAPR reports that it can register property within one business day of receiving a registration application, which takes the form of a single document that can be lodged electronically. It has made an impressive amount of land data publicly available online. NAPR maintains electronic registers of pending registration applications, mortgages, leases, liens, debtors, public notifications and property seizures, as well as up-to-date statistical information on land registration, all of which are accessible to the public on its website. It accepts requests for information regarding other registered land titles through an online request form. New land titling information and a growing portion of pre-2016 land title data is stored electronically in a single database maintained by NAPR. Information stored in the database is encrypted using blockchain technology in order to reduce its vulnerability to fraudulent tampering (Agenda, 2019 and 2017).

International indicators partly reflect these achievements. Georgia ranks 5th out of 190 countries included in the 2020 edition of the World Bank's *Doing Business* indicators (down from 1st in 2014) in terms of the time and number of procedures needed to register property. Notwithstanding this overall ranking, Georgia ranks slightly lower on the quality measures for registering property in several comparator economies such as Armenia, Belarus and Moldova. The overview in Chapter 1 addresses some general concerns regarding these indicators. Georgia also ranks 41st out of 141 countries in terms of quality of land administration in the World Economic Forum's 2019 Global Competitiveness Report.

The government should seek to transform its largely successful land reform efforts since 2016 into a top tier offering of land registration services in the longer-term. It should sustain and, to the extent possible, expedite the systemic land registration programme and continue to raise awareness in rural communities of the free land registration services offered by NAPR. The quality, and not just the quantity, of data recorded in NAPR's electronic database during this process is paramount. Quality cadastral data and drawings of all available land parcels in the country obtained through a consistent surveying method would provide a valuable resource for many different actors. Aside from improving the security of existing land tenure, it would help to inform investment decisions and allow the government to identify suitable land plots for prospective investors. Conversely, large swathes of unregistered land titles, as is currently the case, has the potential to complicate transfers of land rights and hamper investment projects.

Universal land registration is also an essential precondition for potential land consolidation projects, which have an enormous potential to support the development of a well-functioning market for agricultural land (see Chapter 3 on promoting sustainable investment in Georgia's agri-food value chain). It would also support better government policies on land use, planning and spatial development. A new national land use agency, the National Agency for Sustainable Land Management and Land Use monitoring, established in 2019 will be responsible for establishing a database for registering agricultural land and developing land use policies. The success of the Agency and other government bodies that address land use and development policies including the Spatial Planning and Construction Policy Department of the Ministry of

Economy and Sustainable Development will depend, in large part, on the quality and extent of available land data.

Another area for possible improvement is the resolution of land disputes. Georgia's strong results in international indicators on land registration do not necessarily reflect the challenges that remain in this area. As noted in the Georgia 2020 strategy, promising results on property registration in the *Doing Business* indicators can be undermined if property rights are not properly observed and if disputes concerning property ownership are not resolved quickly. NAPR reports for the purposes of these indicators that 1175 "land disputes" were filed in the Tbilisi City Court during 2017 and 819 "land disputes" were filed in first instance courts across the country in 2018. It reports that these cases take 1-2 years on average to reach a first instance decision. The indicators do not, however, capture the wider issues regarding independence, efficiency and capacity in the judiciary addressed above in this Chapter that have undermined public trust in the court system.

The 2016 land reforms established a framework for mediation of land disputes arising from the implementation of the reforms, which signals that the government seeks to address these issues through greater use of ADR options. It is nonetheless likely that public awareness, uptake and confidence in mediation as a form of ADR will take some time to develop following the promising law reforms for the mediation services sector discussed above in this Chapter. The government should monitor the use of mediation services arising from the law reforms and collect user feedback to improve the quality of these services. Results of this monitoring could help to develop proposals to strengthen ADR services for land disputes. In June 2020, NAPR launched on its website a public registry of pending cases and administrative complaints brought against it by individuals. The government should consider pursuing similar initiatives, which promote transparency and accountability, in relation to other land-related disputes.

Strong legal frameworks for data protection and cyber security

Developing Georgia's digital economy is one of the government's top priorities. The Georgia 2020 strategy highlights the importance of improving the infrastructure and legal framework to support investments in new technologies, R&D and innovation. The National Strategy for the Protection of Human Rights 2014-2020 also recognises the importance of high standards of protection for personal data to support the right to privacy. Recent statements by the Deputy Minister of Economy and Sustainable Development at the 5th annual Georgian Internet Governance Forum in November 2019 reiterated these ambitions and noted the important challenges being tackled to achieve them (Ministry of Economy and Sustainable Development, 2019a). One of these challenges lies in establishing a strong regulatory framework for data protection and cybersecurity that businesses and consumers can trust.

The unprecedented health and economic consequences of the COVID-19 pandemic have only underscored the importance of these priorities. Reliance on information and communication technologies soared as governments sought to use personal health and geolocation data to track the spread of the virus, malicious actors sought to take advantage of business and consumers during the crisis and entire workforces were sent home to work remotely (OECD, 2020a, 2020b, 2020c).

Together with a strong framework for IP rights, data security is an increasingly important aspect of the regulatory framework for all investors, not just digital services and new technology firms. Data protection legislation and the institutions to support it are essential to guard against the risks of data processing and enhance business and consumer trust. Cybersecurity is equally important. Digital security incidents can have far-reaching economic consequences for investors in terms of disruption of operations (e.g. through inability to provide services or sabotage), direct financial loss, litigation costs, reputational damage, loss of competitiveness (e.g. in case of theft of trade secrets) and loss of trust with customers, employees, shareholders and partners. The most recent cyberattacks on Georgia hit the banking sector in 2018 and more than 2,000 websites in October 2019 including that of the President of Georgia, courts, NGOs, local governments and private enterprises. These attacks are a cause for some concern among Georgia's international partners. The EU has urged the government to align its cyber safeguards with the EU to prevent the country becoming a backdoor for cyberattacks against the EU (European Parliament, 2020; Akhvlediani, 2019). While investors must develop their own risk management and data integrity strategies, governments are increasingly being called upon to support investor efforts in this area with institutions to monitor and protect against cyber threats (OECD, 2012, 2015, 2018a).

Georgia has relatively well-developed laws and institutions for data privacy and cybersecurity. Amendments that came into effect in 2019 to the Law on Personal Data Protection (Law No. 5669-რს of 28 December 2011, as amended) have brought the legal framework on data privacy in line with the EU's General Data Protection Regulation. In response to stakeholder concerns, the functions of the Personal Data Protection Inspector under the Law were also overhauled in 2019 with the creation of the State Inspector Service. As the successor to the Personal Data Protection Inspector, the new State Inspector monitors compliance with data processing rules, handles individual complaints and investigates potential breaches. Together with over 50 staff, she also works with different ministries, the Prosecutor's Office, the High School of Justice, the private sector and academia to raise awareness about data protection rules (UNDP, 2019). The State Inspector's office conducted over 150 investigations in 2019 and received over 1300 rulings from first instance courts in 2018 and 2019, respectively, to conduct covert telecommunications recording and surveillance (State Inspector Service, 2019). These activities are encouraging, and increasingly transparent, but every effort should be made to continue to improve transparency and public awareness in this area. Stakeholders have raised concerns with non-transparent secret surveillance activities taking place under the Law and have filed challenges before the Constitutional Court (Transparency International, 2020). The State Inspector Service should also seek to address concerns raised by the Public Defender that unsanctioned breaches of privacy rights are still all too common in practice, whether through unjustified police raids and seizures or recent examples of personal data disseminated unlawfully as part of political smear campaigns (Public Defender, 2019a, 2016).

Cybersecurity has also been a priority for the government in recent years. The country's main cybersecurity legislation, the Law on Information Security (Law No. 6391-IS of 5 June 2012), was amended in June 2020 to more closely approximate EU cybersecurity regulations. Stakeholders nonetheless raised some concerns regarding certain aspects of the amendments and the reduced level of stakeholder consultation during their development (IDFI, 2019 and 2020). Two government entities are primarily responsible for cybersecurity policy: CERT.GOV.GE, operating under the Data Exchange Agency of the Ministry of Justice, and the Georgian Research and Educational Networking Association (GRENA). These entities contribute to developing and implementing the government's Cyber Security Strategy. Georgia's country profile in the 2018 edition of the Global Cybersecurity Index, prepared by the United Nations' International Telecommunication Union, notes that Georgia is developing its capacity in this area by providing on-the-job training to different stakeholders in the country. These improvements are linked to bilateral initiatives with international partners, such as the EaP Connect programme with the EU, that seek to improve training, technical capacity and public awareness. Georgia scores strongly in the Index (9th in the Europe region and 18th globally) which is a measure of the government's success in building effectively its capacity to prevent and manage cybersecurity incidents. Georgia is a member of the Committee of the Council of Europe responsible for the Budapest Convention on Cybercrime. The government should continue to engage with international partners to strengthen Georgia's cybersecurity laws, exchange good practices and implement fully the Budapest Convention, especially on outstanding procedural aspects.

Trade and investment treaties may be another means by which the government could seek to strengthen coherence on domestic laws affecting investors in this area. Georgia undertook to align its data protection laws with EU regulations as part of the DCFTA. The government has also signed several bilateral co-operation agreements on cyber security and information technology. Recent trade and investment agreements concluded by other countries have addressed the parties' domestic laws on cyber security, data protection and other aspects of the digital economy such as data localisation requirements, technology transfers and online consumer protection. Some agreements also require the treaty parties to take into account international guidelines and standards when developing their national laws such as the OECD Recommendation concerning Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (2013) and the OECD Recommendation on Digital Security Risk Management for Economic and Social Prosperity (2015).

Investment treaties

Investment treaties concluded between two or more states typically protect certain investments made by nationals of one treaty party in the territory of other treaty parties. Protections afforded under investment treaties generally arise in addition to and independently from domestic law protections. Treaty-based protections normally only cover investors defined as foreign. Increasingly, investment treaties also address market access for foreign investment.

Investment treaties typically contain substantive protections for covered investments against expropriation or discrimination. Provisions requiring "fair and equitable treatment" (FET) are also common and have given rise to widely varying interpretations. While there are some significant recent exceptions, investment treaties often give covered investors access to investor-state dispute settlement (ISDS) mechanisms that allow them access to international arbitration to seek monetary compensation in cases where they claim that the host country has infringed these provisions. While domestic law does not typically provide compensation beyond narrowly-defined situations, such as cases of direct expropriation of property through a formal transfer under domestic law, compensation has been a common remedy for investors in ISDS cases, including in some cases brought by foreign investors against Georgia.

Overview of Georgia's investment treaties

Georgia is a party to 33 investments treaties that are in force today:[2] 32 bilateral investment treaties (BITs)[3] and 1 multilateral trade and investment treaty, namely the Energy Charter Treaty (ECT) (see summary table in Annex 2.A.). Georgia has also acceded to two important multilateral treaties related to enforcement of arbitral awards in investor-state arbitration under investment treaties – the New York Convention (in 1994) and the Washington Convention (in 1992).

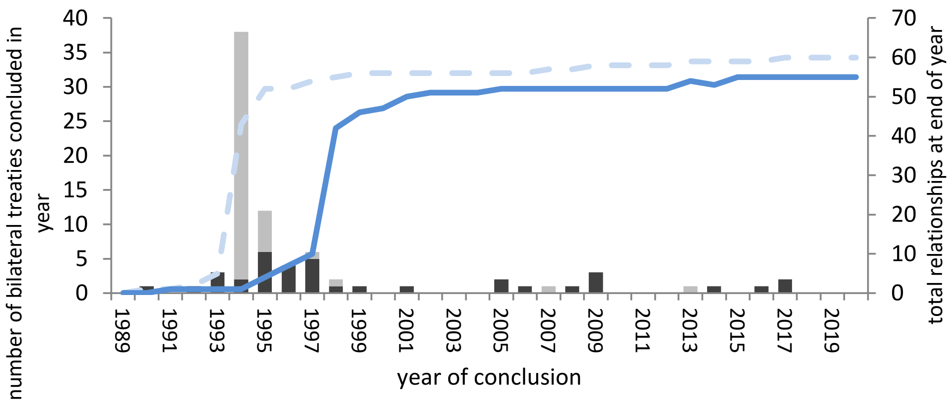
Georgia signed most of its investment treaties in the 1990s and early 2000s. The government has only signed four investment treaties since 2009: BITs with Belarus (2017), Switzerland (2014), Turkey (2016) and the United Arab Emirates (2017). A timeline of Georgia's investment treaties appears in Figure 2.4.

The government is currently negotiating or considering some new investment-related agreements. Many of these negotiations feature in Georgia's Foreign Policy Strategy 2019-2022. Negotiations regarding new investment agreements are ongoing with Canada (first round of negotiations in August 2018), Hong Kong, China (negotiations began in 2017), Hungary (draft text finalised in 2017), Japan (final stage of negotiations as of March 2019) and Qatar (draft text finalised in June 2017), among others. Several of Georgia's existing trade agreements including with China expressly contemplate future negotiations on investment protection. It is unclear whether trade negotiations expected in coming years with several other countries, including the United States, will address investment issues.

The government is also participating actively in multilateral discussions regarding potential amendments to the ECT aimed at "modernising" the existing treaty. These discussions are potentially very significant for investment treaty policy in Georgia. The ECT is the most frequently-invoked investment treaty in ISDS cases: investors have filed more than 130 known ISDS cases under the ECT since the first such claim was filed in 2001 (Energy Charter Secretariat, 2020); at least 3 of Georgia's 15 known ISDS cases were filed under the ECT. Formal negotiations in the ECT modernisation process began in November 2019. An approved list of topics for discussion includes all core investment protections and ISDS provisions. The

Energy Charter Secretariat published a set of policy options identified by the ECT Members, including Georgia, on the various topics in October 2019 (Energy Charter Secretariat, 2019); the EU published a detailed set of proposals separately in May 2020 (European Commission, 2020c). The discussion below addresses some of these proposals in further detail.

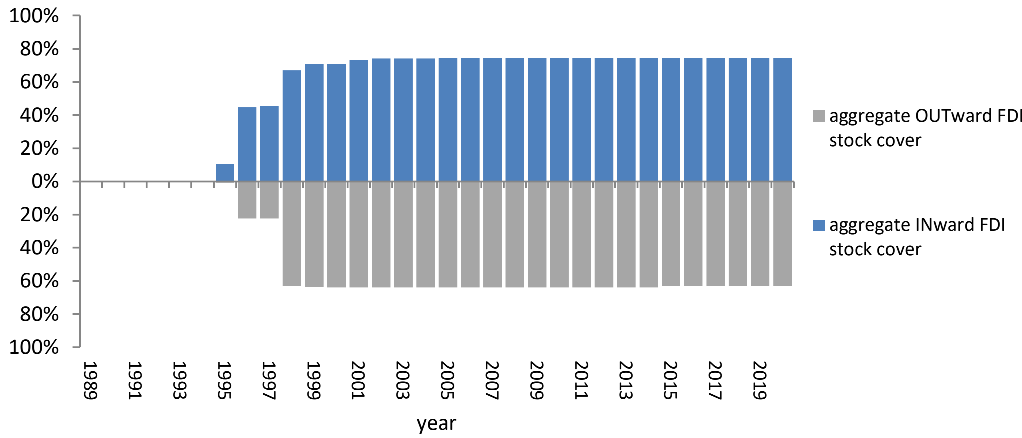
Figure 2.4. Evolution of Georgia's investment treaty relationships



Note: Signed relationships shown with the dashed line; in-force relationships shown with the dark blue line; new relationships concluded based on a multilateral agreement shown with light grey bars; new relationships concluded based on a bilateral relationship shown with dark grey bars.
Source: OECD calculations based on OECD treaty database.

Georgia has treaty protection in force for a significant portion of its inward FDI stock (74%) and outward FDI stock (64%) (Figure 2.5).[4] FDI trends are discussed in further detail in Chapter 1. For current purposes it is notable that Georgia's treaty relationships with Azerbaijan (under a BIT signed in 1996 and the ECT) cover just over a third of total inward FDI stock (34%) and a fifth of total outward FDI stock (22%). A treaty relationship with Russia (under the ECT) covers the largest portion of outward FDI stock (32%). BITs with China, the Netherlands and the United States account for a significant portion of inward FDI stock treaty coverage (22% combined); relationships with Kazakhstan (under a BIT signed in 1996 and the ECT) are also important for outward FDI stock coverage (24%). Many Georgian investment treaty relationships cover none of Georgia's inward or outward FDI stock or only negligible portions of it. This is a common phenomenon in many countries' treaty samples (Pohl, 2018).

Figure 2.5. Approximate evolution of Georgia's inward and outward FDI stock coverage from investment treaties in force



Source: OECD calculations based on OECD investment treaty database. FDI data was taken from OECD FDI database and IMF Direct Investment Positions and reflects FDI stock as of 2018 rather than historical values.

Treaty use: ISDS claims under Georgia's investment treaties

Georgia has had several first-hand experiences with investment treaties as a basis for ISDS claims by investors. Based on publicly available information,[5] foreign investors have filed at least fourteen treaty-based claims against Georgia: nine under the auspices of the ICSID Convention,[6] three with arbitral tribunals constituted under the UNCITRAL Arbitration Rules,[7] one under the SCC Arbitration Rules,[8] and one for which there is no public information regarding the applicable forum.[9]

The first of these cases commenced in 2005. The other fourteen cases were filed between 2005 and 2020. American investors were claimants in five of these cases. Investors from the Netherlands were claimants in four cases, while investors from France, Greece, Israel, Italy, Turkey and the United Kingdom filed the remaining six cases. Eleven claims were filed under BITs and one was filed under the ECT. Two cases were filed concurrently under both the ECT and a BIT.

Georgia's ISDS disputes have primarily concerned investments in the energy sector, especially in oil and gas projects, mining ventures and power generation plants. The most recent one, filed in July 2020, concerns a USD 2.5 billion construction project for a deep-sea port.

As of August 2020, five cases are still pending. One concluded case resulted in an award of damages in favour of the investor although details regarding the award are not public. The claimants in five other concluded cases either discontinued or settled their claims before the arbitral tribunal issued a decision on the merits of those claims. Settlement terms are unknown but may involve monetary payments by Georgia. Three concluded cases involved applications under the ICSID Convention to annul the arbitral tribunal's award, at least one of which was filed by Georgia. All three of these cases were discontinued before an annulment decision was rendered. Two of these three cases also involved other applications under the ICSID Convention for post-award remedies that were subsequently discontinued.

Aside from treaty-based claims, investors have brought at least three contract-based claims against Georgia relating to investment disputes: one under the ICSID Convention and two under the SCC Arbitration Rules.[10] At least two claims have also been filed by investors under provisions in a former version of the Investment Law that allowed for direct access to international arbitration;[11] these provisions were repealed in 2009.

As of August 2020, there have been no publicly-known treaty-based investment claims brought against Georgia's treaty partners by Georgian investors operating abroad.

Reconsidering Georgia's investment treaty policy

Georgia's investment treaty policy deserves continued attention. Many of Georgia's investment treaties in force today contain features often associated with older investment treaties concluded in great numbers in the 1990s and early 2000s. Such treaties are generally characterised by a lack of specificity of the meaning of key provisions and extensive protections for covered investors. Some of Georgia's most recent BITs contain more precise approaches in some areas. A significant number of Georgia's older investment treaties nonetheless remain in force alongside these newer agreements.

This scenario may expose Georgia to a range of unintended consequences, especially given the potential scope for ISDS claims under these types of treaties. While many countries have revised their approaches to negotiating new investment treaties in response to these and other concerns, retrospectively addressing older BITs has proven to be more challenging. Some governments have negotiated treaty amendments or joint interpretations with existing treaty partners to address individual treaties but these efforts can require significant time and resources. Ongoing multilateral initiatives at UNCITRAL and ICSID to consider possible reforms are primarily technical and narrow in scope (focussing on ISDS and ICSID's arbitration rules, respectively) while the ECT reform negotiations addressing substantive provisions and increasingly broader issues such as treaty impact on climate change goals are focused on a particular sector and concern only ECT member countries. For these reasons, the government should continue to follow and participate actively in intergovernmental discussions in the OECD and elsewhere on developing approaches to address these and other common challenges.

Governments continue to weigh concerns regarding older investment treaties against their potential benefits. Some consider that investment protection provided under investment treaties can play an important role in fostering a healthy regulatory climate for investment. Expropriation or discrimination by governments does occur. Government acceptance of legitimate constraints on policies can provide investors with greater certainty and predictability, lowering unwarranted risk and the cost of capital. Domestic judicial and administrative systems provide investors with one option for protecting themselves. Access to international arbitration under investment treaties gives substantial additional leverage to covered foreign investors in their dealings with host governments.

Investment treaties are also frequently promoted as a method of attracting FDI and this is a goal for many governments. Despite many studies, however, it remains difficult to establish strong evidence of impact in this regard (Pohl, 2018). Some studies suggest that treaties or instruments that reduce barriers and restrictions to foreign investments have more impact on FDI flows than BITs focused only on post-establishment protection (Mistura et al., 2019). These assumptions continue to be investigated by a growing strand of empirical literature on the purposes of investment treaties and how well they are being achieved.

The balance of this section examines four key aspects of possible reform – three frequently-invoked substantive protections in ISDS, namely the fair and equitable treatment (FET) standard, the most-favoured nation (MFN) treatment standard, and provisions on indirect expropriation, as well as ISDS provisions – before considering several other aspects of investment treaty policy.

Uncertain provisions referring generally to fair and equitable treatment (FET) should be clarified where possible

All of Georgia's investments treaties in force today contain provisions that require Georgia to provide covered investors and/or their investments with FET.[12] Since the early 2000s, the FET standard has become the most-frequent basis for claims in ISDS. Most FET provisions were agreed before the rise of

ISDS claims related to this treatment standard. Starting around 2000, broad theories for the interpretation of FET provisions by arbitral tribunals emerged as the number of ISDS cases increased markedly. Based on public information, investors in at least three of the fifteen known ISDS cases brought against Georgia have relied on FET provisions in older investment treaties.[13]

Most FET provisions in investment treaties do not provide specific guidance on what treatment should be considered fair and equitable. Arbitral tribunals in ISDS cases under investment treaties have taken different approaches to interpreting such "bare" FET provisions. This creates considerable uncertainty and high litigation costs for governments and investors alike. It has also resulted in some broad interpretations of bare FET provisions that go beyond the standards of investor protection in some advanced economies. Governments have reacted to these developments in various ways, including by adopting more precise or restrictive approaches to FET or excluding FET in recent treaties (Box 2.3). These recent approaches in broader treaty practice can serve as a useful point of comparison for varying approaches to FET in Georgia's investment treaties.

Box 2.3. Recent approaches to the FET provision and ISDS for FET claims

States are becoming more active in the ways in which they specify, address or exclude FET-type obligations in their treaties and submissions in ISDS. Dissatisfaction with and uncertainties about FET and its scope have also led some governments to exclude it from their treaties or from the scope of ISDS. Some important recent approaches are outlined below.

The MST-FET approach: express limitation of FET to the minimum standard of treatment under customary international law (MST). This approach has been used in a growing number of recent treaties, especially in treaties involving states from the Americas and Asia (Gaukrodger, 2017). In addition to using MST-FET, the CPTPP requires the claimant to establish any asserted rule of MST-FET by demonstrating widespread state practice and *opinio juris.* (Article 9.6 (3)-(5), fns 15 and 17, Annex 9A). Evidence of these two components has rarely, if ever, been provided by claimants. This approach has since been replicated by other states (e.g., Australia-Indonesia CEPA (2019), Article 14.7). Canada, Mexico and the United States have further restricted MST-FET claims in the United States-Mexico-Canada Agreement (USMCA).

Exclusion of FET from ISDS, investment arbitration or from treaties. The recently-concluded USMCA (which replaced the North American Free Trade Agreement (1992) on 1 July 2020) includes MST-FET but generally excludes it from the scope of ISDS (except for a narrow class of cases involving certain government contracts) (Article 14.D.3). ISDS under the USMCA generally applies only to claims of direct expropriation and post-establishment discrimination (and only to Mexico-United States relations); only state-to-state dispute settlement (SSDS) is available for MST-FET claims. India's Model BIT does not refer to FET and instead identifies specific elements; Brazil's model treaty and recent treaties also exclude FET.

The definition approach: stating what FET means or listing its elements. Recent treaties negotiated by the European Union, China, France and Slovakia contain defined lists for the elements of FET. This approach can vary greatly depending on the nature of the list. Some lists include elements such as a denial of justice, manifest arbitrariness, fundamental breach of due process, targeted discrimination on manifestly wrongful grounds, and/or abusive treatment of investors. This approach likely results in a broader concept of FET than MST-FET, especially if state practice and *opinio juris* must be demonstrated to establish rules under MST-FET.

Clarifications of treatment excluded from FET. Some recent treaties have also clarified that FET does not protect investors from certain types of treatment. Starting with the Australia-Singapore FTA as revised in 2016, and followed by the CPTPP signed in March 2018 and the Korea-United States FTA as revised in 2018, several treaties now exclude government measures that may be inconsistent with an investor's expectations concerning its investment from giving rise to a breach of the FET provision.[14] Several recent treaties concluded by Australia clarify that the modification of government subsidies or grants is not protected under the FET provision.[15]

Some Georgian investment treaties adopt some of these more precise or restrictive approaches to FET. For example, the France-Georgia BIT (1995) provides an indicative list of what could constitute a breach of FET. Other formulations of FET in Georgian treaties may leave scope for broad interpretations by arbitral tribunals. For example, Article 3(3) of the Belgium/Luxembourg-Georgia BIT (1993) refers to FET as being "in no case …less favourable than [treatment and protection] recognised under international law." This creates a "floor" for FET, rather than a "ceiling" that would limit FET to the protections already afforded under international law. There is no guidance in this BIT or any other Georgian BIT about the extent to which protections may exceed those under international law. Other Georgian treaties, including BITs with Azerbaijan (1996), Belarus (2017), Kazakhstan (1996), Kyrgyzstan (1997), and Ukraine (1995) contain multiple references to FET in different provisions of the treaty. This scenario may generate additional uncertainty as to how these provisions should be interpreted.

Most of Georgia's investment treaties contain an unqualified or "bare" reference to FET without any further specific guidance on its meaning. The prevalence of "bare" FET provisions and of varying approaches more generally creates uncertainty as to the scope of these FET obligations and exposure to expansive interpretations by arbitral tribunals in ISDS cases. More specific approaches to FET provisions could improve predictability for the government, investors and arbitrators alike. They could also potentially contribute to preserving the government's right to regulate in the context of investment treaties (Gaukrodger, 2017a, 2017b). In some cases, governments may be able to achieve greater clarity on the scope of FET by agreeing on joint government interpretations of provisions in existing investment treaties with treaty partners.[16] In other cases, agreement on new treaty language may be required to reflect government intent and preclude undesirable interpretations.

Members of the ECT, including Georgia, are considering the scope of FET as part of the ECT modernisation process. Most ECT Members agree on the need to update the existing provision on FET in the ECT to clarify further its scope (Energy Charter Secretariat, 2019). Issues for discussion include whether FET should be linked to the MST under customary international law, whether FET should be linked to other substantive protections or a stand-alone provision, and whether FET should refer to the concept of legitimate expectations. Some ECT Members, such as Switzerland, Turkey and the EU, propose a list-based definition of FET. Other Members, including Georgia, propose MST-FET but are open to considering list-based formulations that are consistent with prevailing understandings of the content of MST-FET. Georgia's proposals during the ECT modernisation process note the "serious inconsistencies" in ISDS cases regarding the "determination of the content and level of obligations" under FET provisions (Energy Charter Secretariat, 2019).

Most-favoured nation (MFN) treatment provisions in Georgia's investment treaties may have a range of unintended consequences

All of Georgia's investment treaties provide for MFN treatment. Like national treatment (NT) provisions, MFN clauses establish a relative standard: they require Georgia to treat covered investments at least as favourably as it treats comparable investments by investors from third countries. As with FET provisions, most of the MFN treatment provisions in Georgia's investment treaties and the global sample of investment treaties are vague with little guidance on how to interpret or apply them. More specific approaches to MFN treatment provisions could improve predictability for the government, investors and arbitrators alike (**Box 2.4**).

Box 2.4. Recent approaches to MFN treatment provisions and ISDS for MFN treatment claims

Recent investment treaty policies and debates over MFN have centred on three key issues outlined below.

MFN clauses and treaty shopping. ISDS arbitral tribunals have frequently interpreted MFN provisions to allow claimants in ISDS cases to engage in "treaty shopping". This phrase is used broadly here to describe the power for a beneficial owner of an investment to choose between investment treaties or between provisions of different investment treaties as the basis for claims in ISDS cases. These interpretations allow claimants to use MFN provisions to "import" substantive or procedural provisions from other investment treaties that they consider more favourable than the provision in the treaty under which their case is filed. Georgia has had first-hand experience of these interpretations in at least one ISDS case – *Bidzina Ivanishvili v. Georgia* (ICSID Case No. ARB/12/27) – where the claimant sought to rely on an MFN provision to benefit from provisions that it considered more favourable in other Georgian investment treaties, including dispute resolution provisions.

Arbitral interpretations in ISDS cases that have allowed claimants to treaty shop have attracted considerable public debate and criticism. A small minority of governments have decided to remove MFN treatment provisions from their investment treaties altogether to avoid unintended interpretations by arbitral tribunals in ISDS cases. Other governments have clarified in recent treaties that investors cannot use MFN treatment provisions to engage in treaty shopping. They have limited the application of MFN treatment provisions to cases where government measures have been adopted or maintained under the third country treaty. Article 8.7(4) of the CETA between Canada, the EU and EU Member States, for example, clarifies that "substantive obligations in other international investment treaties do not in themselves constitute 'treatment', and thus cannot give rise to a breach of [the MFN provision], absent measures adopted or maintained by a Party pursuant to those obligations". The CETA also prohibits "treaty shopping" for procedural provisions. The USMCA similarly clarifies that treaty shopping is excluded under its MFN clause for both substantive and procedural matters (Article 14.D.3(1)(a)(i)(A), footnote 22): "For the purposes of this paragraph […] the "treatment" referred to in Article 14.5 (Most-Favored-Nation Treatment) excludes provisions in other international trade or investment agreements that establish international dispute resolution procedures or impose substantive obligations".

Comparison criteria in MFN treatment provisions. A second area of interest and government action with regard to MFN treatment provisions involves the determination of what investments or investors are comparable. Many older treaties do not provide any specificity on what comparable treatment may entail, leaving this issue to arbitral interpretations in ISDS. Some recent treaties provide that comparability requires "like circumstances". Others clarify further that "like circumstances" requires, among other things, consideration of whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives (see, e.g., CPTPP (2018), "Note on Interpretation of 'In Like Circumstances'"; USMCA, Article 14.5(4)).

Negative lists, carve-outs or conditions. A third area of interest and government action with regard to MFN treatment provisions involves exclusions or limitations. Some recent treaties include negative lists of exclusions from MFN clauses in their investment chapters. Thus, a schedule may specify exceptions to MFN treatment for existing benefits granted under customs unions, other international treaties or specific domestic law schemes.

Some of Georgia's investment treaties include specifications or restrictions on MFN provisions that reflect these recent treaty practices and debates. All Georgian BITs exclude benefits granted under existing customs, economic or monetary unions, double taxation agreements and/or multilateral investment agreements from MFN treatment. Several of them – including with the Czech Republic (2009), Kuwait

(2009), United Arab Emirates (2017) and the United States (1994) – require an assessment of MFN treatment with respect to comparable investments. Four Georgian BITs clarify that MFN treatment does not extend to ISDS provisions in other investment treaties;[17] none contain a similar exclusion for substantive protections in other treaties. While the current text of the ECT does not contain any such specifications, the EU and several other ECT Members propose to update it to include them (European Commission, 2020c). Georgia supports these proposals and suggests further that "treatment" should be defined in line with recent treaty practice (Energy Charter Secretariat, 2019).

Unqualified provisions referring to protection for indirect expropriation should be clarified where possible

All of Georgia's investment treaties contain provisions that protect covered investments from expropriation without compensation. Many of these provisions refer to direct takings of investor property by the government (direct expropriation) as well as other government measures that have effects equivalent to a direct taking without a formal transfer or outright seizure (widely referred to as indirect expropriation). Provisions on indirect expropriation have become the second most frequently invoked basis for claims in ISDS cases after provisions on FET. As with FET and MFN treatment provisions, most of these provisions in Georgia's treaties and the global sample of investment treaties are vague with little guidance on how to interpret or apply them.

Only two of Georgia's BITs contain elements of further specificity on the scope of protection for indirect expropriation. BITs with Belarus (2017) and the United Arab Emirates (2017) clarify that investor protections against indirect expropriation shall not restrict the treaty parties' rights to enforce laws or take other measures that they deem appropriate to protect legitimate public welfare objectives such as public health, safety and the environment, or to ensure the payment of fines and taxes.

Since 2003, other countries have introduced a range of additional clarifications on the scope of indirect expropriation. The most common examples are positive definitions of the concept of "indirect expropriation", guidance on how to determine whether an indirect expropriation has occurred, clarifications that certain regulatory measures do not constitute indirect expropriation and restrictions on the types of assets covered by this protection. None of Georgia's investment treaties contains these features. The EU and other ECT Members have made proposals to update the existing ECT provisions on expropriation with these and other elements (Energy Charter Secretariat, 2019; European Commission, 2020c).

Clarifications such as these are likely to improve predictability as to the scope of indirect expropriation and reduce the possibility for unintended interpretations in ISDS cases. They are also likely to continue to feature in debates regarding the balance between investment protections and governments' rights to regulate in investment treaties. It remains to be seen, however, how arbitrators will interpret such provisions in practice, as very few ISDS cases have been brought under treaties that contain these features. At least one government (Brazil) has responded to this residual uncertainty by excluding indirect expropriation altogether from its investment treaties concluded since 2015 through clear language to that effect.

Georgia's investment treaties contain relatively few specifications or clarifications in investor-state dispute settlement (ISDS) provisions

Many investment treaties allow covered foreign investors to bring claims against host states in investor-state arbitration, in addition or as an alternative to domestic remedies. Investor-state arbitration currently generally involves *ad hoc* arbitration tribunals that adjudicate disputes in an approach derived from international commercial arbitration. ISDS provisions appear in all of Georgia's BITs in force today, as well as in the ECT.

Recent treaty practice has seen both greater specification of ISDS and, in some cases, replacement of investor-state arbitration with more court-like systems. Treaties like the CPTPP and the EU-Canada CETA are among some recent treaties that have included investor-state arbitration reforms to reduce possible exposure to unintended consequences of ISDS. Common features in these treaties include time limits for claims, possibilities for summary dismissal of unmeritorious claims, mandatory transparency requirements, provisions for non-disputing party participation and possibilities for joint interpretations of the treaty by the state parties that are binding on the arbitral tribunal. The USMCA contains many similar investor-state arbitration reforms but has reduced the scope for ISDS claims to direct expropriation and post-establishment discrimination (and only to Mexico-United States relations); only state-to-state dispute settlement (SSDS) is available for claims under other provisions, such as MST-FET claims. The EU, which supports the concept of a multilateral investment court, has included court-like dispute settlement in all its recent investment protection treaties. Brazil's treaties omit ISDS and designate domestic entities ("National Focal Points") to act as an ombudsperson by evaluating investor grievances and proposing solutions to a Joint Committee comprised of government representatives from both states. Under this model, state-state dispute settlement is also available if necessary. South Africa has terminated its BITs with European countries. Domestic legislation governs the claims of foreign investors against the government in domestic courts and provides for the possibility of case-by-case agreement to arbitration.

Some Georgian investment treaties contain reform elements in investor-state arbitration provisions that reflect recent treaty practice. At least seven Georgian treaties specify the governing law for ISDS cases, albeit using different formulations, and one other treaty addresses transparency in ISDS by requiring arbitrators and parties in ISDS cases to apply the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (see Switzerland-Georgia BIT (2014)). At least four treaties – BITs with Austria (2001), Belarus (2017), Switzerland (2014) and the United Arab Emirates (2017) – prescribe limitation periods for investor claims starting from when investors knew or should have known about the events giving rise to their claims. A standard feature of domestic law systems, time limitations have become increasingly common in investment treaties concluded since 2005. Most Georgian treaties in force today nonetheless do not include this feature.

The vast majority of Georgia's investment treaties contain no such specifications regarding investor-state arbitration procedures. They thus leave substantial decision-making power to arbitrators or investors and their legal counsel. Aside from the limited use of elements mentioned above, none of Georgia's treaties: (i) expressly provides for binding government interpretations of the treaty in ISDS cases; (ii) provides a mechanism for summary dismissal of unmeritorious claims; (iii) provides a mechanism for consolidating two or more related ISDS claims; or (iv) addresses the remedies that may be awarded by an arbitral tribunal.

Many of Georgia's investment treaties thus give claimants and their counsel substantial power over key procedural issues in addition to allowing them to choose when to claim. For example, in ISDS, the appointing authority in a case plays a key role notably because it chooses or influences the choice of the important chair of the typical three-person tribunal (Gaukrodger, 2018). Following NAFTA, many recent treaties provide for a single appointing authority for all cases. Some Georgian treaties – including BITs with France (1997), Israel (1995), the Netherlands (1998) and the United Kingdom (1995) – remove this choice by providing for a single forum for investor-state arbitration. Most other Georgian treaties give claimants and their counsel a choice between at least two and as many as four different arbitration institutions at the time they file a claim. This allows them to choose or influence the choice of appointing authority and exacerbates the competition for cases between arbitration institutions (Gaukrodger, 2018).

Multilateral reform efforts for ISDS are underway in numerous fora, including at UNCITRAL and ICSID. The government participates actively in these discussions. The government has not filed written submissions as part of the work programme of UNCITRAL's Working Group III on ISDS Reform but it has indicated as part of the ECT modernisation process that it supports a wide range of reforms in this area (Energy Charter Secretariat, 2019). These include mechanisms to discourage frivolous claims, require claimants to provide security for costs, impose time limits for claims, regulate claimants that rely on third party funding to litigate their claims and increase the level of transparency in for ISDS cases. Other possible

ISDS reforms under consideration at UNCITRAL and in the ECT modernisation process (no decisions have yet been reached) include both structural-type reforms (a permanent multilateral investment court with government-selected judges or a permanent appellate tribunal) as well as more incremental reforms such as a code of conduct for arbitrators or adjudicators.

In this context, where governments are engaging multilaterally on ISDS reforms, Georgia may wish to consider the costs and benefits of ISDS provisions in future treaties more broadly alongside potential alternatives or complementary steps. These might include *ad hoc* arbitration agreements with specific investors. The government may also wish to consider ways to leverage its position on whether and how to address ISDS in future treaties to achieve its objectives for other aspects of the treaty negotiations.

Clearer specification of investment protection provisions would help to reflect government intent and ensure policy space for government regulation

Specifications on key provisions in investment treaties play an important role calibrating the balance between investor protection and governments' right to regulate. The government is keenly aware of these concerns. It supports updates to the ECT that "strike balance between the protection of investors and their investments and Contracting Parties' sovereign regulatory, legislative and policy interests" (Energy Charter Secretariat, 2019). Specifications seeking to achieve this balance should reflect policy choices informed by Georgia's priorities. Policy-makers need to consider the costs and benefits of these choices and their potential impact on foreign and domestic investors, together with the government's legitimate regulatory interests and potential exposure to ISDS claims and damages.

There are a range of techniques that governments can use to affect the balance between the right to regulate and investor protections under investment treaties (Gaukrodger, 2017a). The most obvious technique involves decisions about whether to include or exclude particular provisions, whether to draft them narrowly or broadly, precisely or in vague terms. The most important provisions in this regard are likely to be those most often at issue in investor claims such as the FET provision. A second area of obvious interest is express provisions addressing the right to regulate, although some have pointed to risks that broad clauses to protect the right to regulate could create new areas of possible misinterpretation.

A partial list of additional techniques used recently to allow for greater policy space would likely include the following: interpretative statements; joint interpretive statements; general exceptions; specific exceptions; reservations; conditions precedent to consent to arbitration; standards of review; limits or exclusions of MFN clauses; or limits on injunctions, damages or other remedies. Reforms to ISDS provisions or consideration of alternatives such a court-like model may also be relevant considerations.

Depending on the context and treaty language, it may be possible to achieve these goals in relation to existing investment treaties through joint interpretations agreed with treaty partners. In other cases, treaty amendments may be required. These types of government action have been relatively rare in recent years, however, and can require significant time and resources to engage with individual treaty partners. Replacement of older investment treaties by consent in the context of new treaty negotiations may also be appropriate in some cases.

The government's experiences with the COVID-19 pandemic may shape how it views key treaty provisions or interpretations as well as the appropriate balance between investor protections and the right to regulate. Measures taken by governments to protect their societies and economies during the pandemic affect companies and investors. Investment treaties should allow governments sufficient policy space to respond effectively to the crisis and to take vital measures such as securing quick access to essential goods and services. While it may be too early to assess the consequences of the pandemic for this area of investment policy, it is likely that experiences with the crisis may refocus government attention on the balance between investor protection and governments' right to regulate, especially in times of crisis (OECD, 2020).

Governments have been addressing the balance between investment protection and the right to regulate in investment treaties through analysis and discussion at the OECD (Gaukrodger, 2017a, 2017b).

Investment treaties can be used as tools to liberalise domestic investment regimes

While liberalisation provisions are common features of international trade agreements, they have been much less common in BITs. Investment treaties can be used to liberalise investment policy by facilitating the making or establishment of new investments (Pohl, 2018). This can be achieved by extending the national treatment (NT) and MFN treatment standards to investors seeking to make investments (i.e. the pre-establishment phase of an investment) or by expressly prohibiting measures that block or impede market access.[18]

At least three Georgian BITs and three Georgian trade agreements grant so-called pre-establishment NT or MFN treatment, or both, to investors.[19] The provisions are subject to SSDS, like in trade agreements, but investors could also bring ISDS claims under these provisions in the three BITs. Article 10 of the ECT contains non-binding market access provisions envisaging that the parties "shall endeavour" to provide pre-establishment NT and MFN treatment. It also contemplates that the parties would conclude a "supplementary treaty" to formalise these undertakings into binding obligations but the parties never concluded such a treaty.

Some of the market access obligations in Georgia's treaties are accompanied by certain exclusions and reservations (**Box 2.5**). Georgia may wish to consider whether entering into liberalisation obligations aligns with its policy goals when signing new investment treaties in the future.

Box 2.5. Negative and positive list-approaches to NT and MFN exceptions

When countries grant national and/or most-favoured nation treatment, whether pre- or post-establishment, they typically do so subject to exceptions or reservations adopted under one of two different approaches.

A ***negative list-approach*** typically provides that MFN and NT are granted subject to specific exceptions or reservations (negative lists) that are often contained in detailed annexes to the treaty. Chapter 6 of the EFTA States-Georgia Free Trade Agreement (2016) and Chapter 10 of the Georgia-Hong Kong (China) Free Trade Agreement (2018) adopt this approach. They provide that the governments may adopt and maintain measures in certain sectors that do not confirm with the MFN and NT provisions and identify sectors in a Schedule of Reservations for which they wish to reserve full policy space.

A ***positive-list approach*** involves limiting the application of MFN and NT liberalisation provisions to specific identified sectors (positive lists). None of Georgia's investment treaties adopt this approach, an example of which appears in Article 3(3) of the ASEAN Comprehensive Investment Agreement (2009). Generally, the negative list-approach is seen as more conducive to investment liberalisation particularly over time. New areas of economic activity are not covered by negative lists.

Addressing the unique approach to claims for reflective loss in ISDS

Georgia should continue to engage in multilateral fora such as at the OECD and UNCITRAL to develop proposals to address the unique approach to claims for shareholders' reflective loss in ISDS.

Shareholders incur reflective loss if a company in which they hold shares suffers a loss that results, in turn, in the shareholders suffering a commensurate loss, typically a loss in value of the shares. Domestic legal systems around the world generally prohibit claims for reflective loss. Where a company is injured, the claim generally belongs to the directly-injured company rather than the shareholders of that company. This rule protects company creditors and all shareholders, lowering their risks and encouraging them to provide capital to companies. It also achieves judicial economy by limiting claims, avoiding inconsistent outcomes, facilitating amicable settlement, and precluding double recovery by the company and shareholders for the same loss.

In contrast to this domestic law approach, many existing investment treaties have been interpreted to allow ISDS claims by covered shareholders for losses incurred by companies in which they own shares. This greatly increases the chances of multiple claims against the government for the same alleged loss. For example, one or more foreign nationals who are minority shareholders in a local Georgian company could bring an ISDS claim against the government under an investment treaty while the same local Georgian company could bring a separate claim against the government under a government contract or in domestic courts. This scenario recently arose in relation to a dispute over a deep-sea port construction project in Anaklia, where a local investment vehicle for a consortium of foreign investors brought a contract-based claim against the government in July 2020 at the same time as one of the consortium partners, a Dutch investor, filed a treaty-based claim (see *Meijer v. Georgia* (ICSID))[20]. Most, if not all, of Georgia's known ISDS cases to date have been brought by foreign shareholders of local Georgian enterprises, including minority shareholders (e.g. *Kardassopoulos/Fuchs v. Georgia*) and indirect shareholders (e.g. *Range Resources v. Georgia; Telcell Wireless and others v. Georgia*).

Governments at the OECD have noted since 2013 that the availability of reflective loss claims in ISDS raises a broad range of policy issues including the risk of multiple legal claims, the risk of inconsistent decisions, increased costs defending legal claims, exposure to double recovery, the impact on predictability, hindering settlement, facilitating treaty shopping, and upsetting the hierarchy of claims so that a claimant gets better treatment than under normal legal principles (OECD, 2016; Gaukrodger, 2014a, 2014b, 2013; Summary of 19th FOI Roundtable, October 2013, pp. 12-19; Summary of 18th FOI Roundtable, March 2013, pp. 4-9). Ongoing discussions at UNCITRAL's Working Group III on ISDS Reform are addressing possible reforms to address these issues, which were underlined in a recent UNCITRAL Secretariat note (UNCITRAL, 2019). Given that the current approach towards reflective loss in ISDS provides claimants with exceptional benefits and greatly expands the number of actual and potential ISDS cases, however, only government-led reform is likely to address the issues.

Opportunities for investment treaties to address investor responsibilities

Georgian treaty makers may wish to consider new approaches to investor responsibilities in future investment treaties, including in relation to sustainable development and responsible business conduct (RBC). Provisions addressing these issues in investment treaties could be a way of complementing ongoing work to develop a National Action Plan on Business and Human Rights (see Chapter 5 on responsible business conduct). Such provisions could serve to strengthen existing provisions on investor responsibilities in the Investment Law.

The OECD Investment Committee is currently considering how trade and investment treaties can affect business responsibilities including through their impact on policy space for governments, their provisions that buttress domestic law or its enforcement, or their provisions that directly address business by, for example, encouraging observance of RBC standards or establishing conditions for access to investment treaty benefits (Gaukrodger, 2020).

Some Georgian BITs refer to RBC-related objectives and investor responsibilities. These provisions vary in terms of scope and level of generality; some are binding on arbitral tribunals in ISDS or SSDS but others may not be. Several Georgian BITs contain provisions that seek expressly to preserve policy space for government regulation, including provisions establishing a general right to regulate in the public interest[21] and general exceptions clauses.[22] Two of Georgia's newest BITs clarify that the expropriation provisions shall not restrict the parties' ability to regulate to achieve specified public interest objectives such as public health, safety and the environment.[23] Only one Georgian BIT buttresses domestic law in this area by clarifying the parties' understanding that it is inappropriate to encourage investment by relaxing environmental or health measures.[24] Treaty provisions that buttress domestic law or its enforcement in key areas in host states remain rare but they are increasing in importance. Some recent trade and investment treaties such as USMCA, EU-Canada CETA and the Australia-Indonesia Comprehensive Economic Partnership Agreement reaffirm government duties to regulate in key RBC-related areas.

Almost all of Georgia's BITs contain provisions that address investors directly on RBC-related issues. All but one of the BITs concluded by Georgia since 2000 contain legality requirements that restrict the scope of treaty protections to investments made in accordance with Georgian law. These requirements appear most frequently in provisions defining covered investments but also appear in provisions on the scope of application of the treaty. Some Georgian BITs also contain hortatory language in the preamble or elsewhere in the treaty reaffirming the importance of encouraging companies to respect corporate social responsibility norms.[25]

Investment treaties concluded by some other governments have addressed investor responsibilities in various other ways. For example, some treaties impose obligations on investors to uphold human rights and maintain an environmental management system;[26] exclude the possibility for ISDS in relation to government measures relating to the treaty's environmental and labour provisions;[27] exclude investments procured by corruption from the scope of ISDS;[28] refer to the parties' commitments to implement international standards related to RBC;[29] and recognise that investments should contribute to the economic development of the host state[30] (Gordon et. al., 2014; Gaukrodger, 2020). Some of Georgia's trade agreements, including the EU-Georgia Association Agreement, contain provisions of a similar nature in the context of bilateral trade relations.

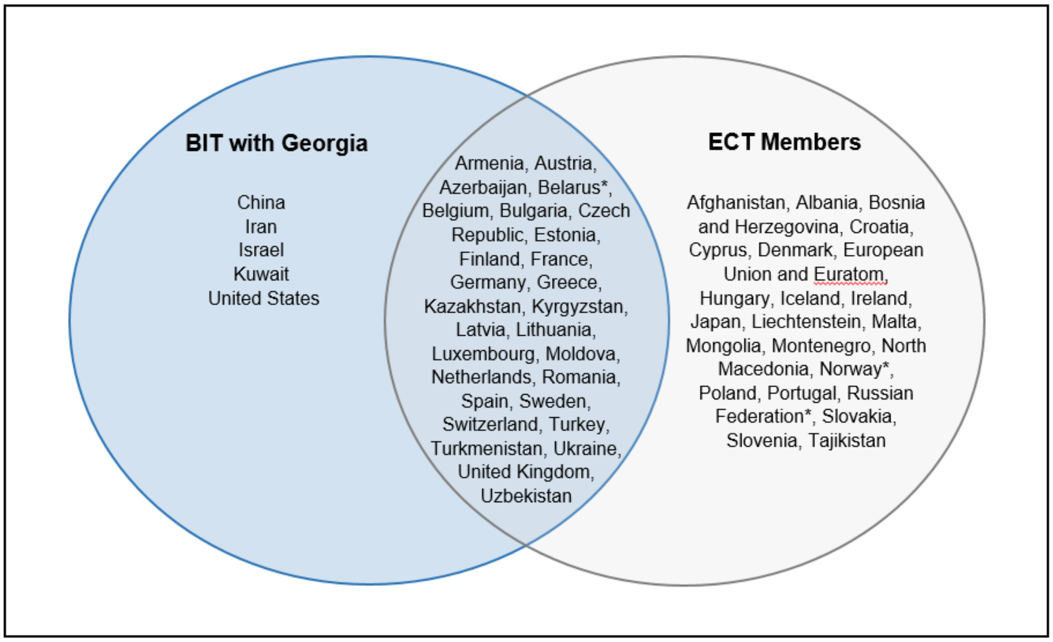
The government may wish to consider whether and how investor responsibilities should be included in more of its existing and future investment treaties. It should also engage with intergovernmental discussion on this topic, including as part of the ECT modernisation process and at the OECD. Some ECT Members including the EU propose to update the ECT by including new provisions addressing sustainable development and RBC-related objectives (European Commission, 2020c). Georgia has indicated that it supports amendments that seek to promote sustainable development and RBC-related objectives in this context (Energy Charter Secretariat, 2019). It proposes to affirm the parties' commitments to these issues in new preamble language and consider further the need to include additional provisions in this area.

Evaluating overlaps between investment treaties

Georgia has two investment treaties – namely a BIT and the ECT – in force with 28 countries. (**Figure 2.6**).

Overlapping investment treaties that apply to investments by investors from the same country may raise some policy concerns. As a general matter, Georgia should strive to minimise inefficient inconsistencies between international obligations entered into with different countries. Investors from countries with two or more treaties in force may be able to rely on more favourably-worded provisions in Georgia's older BITs in their dealings with the government or in ISDS disputes. This approach could also potentially undermine future outcomes of the ongoing ECT modernisation process if investors could circumvent reforms to ECT provisions by relying on older BITs that are still in force.

Figure 2.6. Overview of Georgia's overlapping investment treaty relationships in force today



Note: Belarus, Norway and the Russian Federation have signed but not ratified the ECT; Belarus applies the treaty provisionally.
Source: OECD Secretariat based on OECD investment treaty database.

Georgia may wish to engage with these treaty partners to review whether their respective international obligations reflect current priorities as part of the ongoing ECT modernisation process. Depending on the context and treaty language, it may be possible to achieve these goals for existing BITs through joint interpretations agreed with treaty partners. In other cases, treaty amendments may be required. It may also be possible for Georgia and its treaty partners to address the replacement of their older BITs during negotiations for an updated ECT text. Replacement could be effected through text in the agreement itself, an annex thereto or an exchange of side letters. Relationship clauses could also be considered. These clauses contemplate consultations between the treaty parties where one of them considers that the new treaty (in this case, an updated version of the ECT) is inconsistent with an existing treaty commitment between them. These mechanisms may help to clarify some issues with overlapping treaties but they do not preclude covered investors from relying on provisions in older BITs that remain in force concurrently with newer treaties.

Despite the concerns that may arise with overlapping treaties, some governments may consider that they need to provide certain extra incentives or guarantees to some treaty partners over others in order to attract FDI. This may be because they expect that investors from those countries are less likely to invest their capital in the absence of such treatment or assess that the broader benefits associated with attracting FDI from those countries are particularly lucrative. Some governments may also consider that similar provisions in different treaties, while framed differently, are likely to be interpreted in a consistent way. The balance between these interests and assessments is a delicate one and may evolve over time.

Evaluating overlaps between investment treaties and domestic law

The scope of investor protections and obligations under Georgia's domestic laws and its investment treaties overlap in some respects. Some overlaps appear to give rise to inconsistencies in approach. For example, the Investment Law does not contain a FET provision unlike all of Georgia's investment treaties in force today. Likewise, the protection from expropriation is narrower under domestic law than under many

Georgian BITs. Many of Georgia's investment treaties provide the government's consent to investor-state arbitration, while a provision on direct access to arbitration for all investors – not only certain foreign investors covered by Georgian treaties – was removed by legislative amendments to the Investment Law in 2009. Investment contracts that the government enters into with specific investors could create an additional layer of contractual rights and obligations for specific investors.

Differences between the domestic laws on investor protection and investment treaties may create more favourable legal regimes that apply to some investors and not others based on their nationality. It may also prompt some investors to structure their investments through a company in one of Georgia's treaty partner countries to seek to benefit from treaty protections and/or treaty-based ISDS if they perceive these to be more favourable than protections and dispute resolution options under domestic laws. The government may therefore wish to conduct a gap analysis between domestic laws on investor protection and investment treaty provisions to consider the implications of any differences and ensure that these different regimes continue to reflect the government's current priorities.

Developing approaches to prevention of ISDS claims and ISDS case management

Georgia may wish to prioritise the development of strategies to prevent and achieve early settlement of investment-related disputes, as well as its approach to case management of ISDS cases. Aside from participating in inter-governmental discussions on these topics, the government may wish to consider taking certain steps at a domestic level.

Several branches of the government have responsibilities in these areas. The Ministry of Foreign Affairs is responsible for negotiating investment treaties, while the Foreign Trade Policy Department of the Ministry of Economy and Sustainable Development is responsible for negotiating Georgia's trade and investment agreements. The Ministry of Justice is responsible for representing Georgia in disputes with investors under investment treaties. The Ministry's Department of State Representation in Arbitrations and Foreign Courts, established by Ministerial Order No. 191 of 19 October 2010, co-ordinates Georgia's involvement in arbitrations and foreign court proceedings, including any related settlement negotiations, annulment proceedings or enforcement actions. It is also responsible for policy proposals on dispute prevention but no public information is available on current dispute prevention strategies. It is unclear whether and how these different government departments co-ordinate in these areas.

The Ministry of Justice may wish to consider drawing on examples of institutional frameworks in other countries for the prevention of investment disputes as part of its policy-setting activities. At a domestic level, some countries, such as Colombia and Peru, have adopted comprehensive legislative and regulatory frameworks to encourage the early detection and resolution of investment disputes (OECD, 2018b; Joubin-Bret, 2015). Other countries, such as Chile, have opted for an informal prevention system where sectoral agencies directly manage disputes with investors. Some governments have reported successful outcomes with inter-ministerial committees established to advise line agencies on investor grievances, propose strategies for reforming investment treaty policy and domestic legal frameworks for investment protection, and supervise the government's defence of ISDS cases. As noted above, Brazil does not include ISDS in its investment treaties but instead establishes with each treaty partner a Focal Point or ombudsman within each government to address investor grievances, with a Joint Committee of government representatives to oversee the administration of the agreement. Korea has also had a successful track-record of early dispute resolution with its Foreign Investment Ombudsman since it was established in 1999 (Nicolas, Thomsen and Bang, 2013). It may be worth exploring options to build awareness within government ministries, agencies and local or sub-national government entities regarding Georgia's obligations under investment treaties and the potential impact that government decisions may have on investor rights under these treaties. Internal written guidelines or a handbook could be a useful way to disseminate this information and encourage continuity of institutional knowledge as personnel changes occur over time.

The government may also wish to explore ways to share and learn from its experiences with ISDS and those of other governments. Several states that have been frequent respondents in ISDS cases – including Argentina, Canada, Mexico, Spain and the United States – have developed dedicated teams of government lawyers to advise the government on investment disputes and investment treaty policy. The Department of State Representation in Arbitrations and Foreign Courts of the Ministry of Justice appears to play this role in Georgia. Nurturing an internal expertise to evaluate investor claims candidly before a legal dispute arises can be an important step in preventing a protracted and costly legal process.

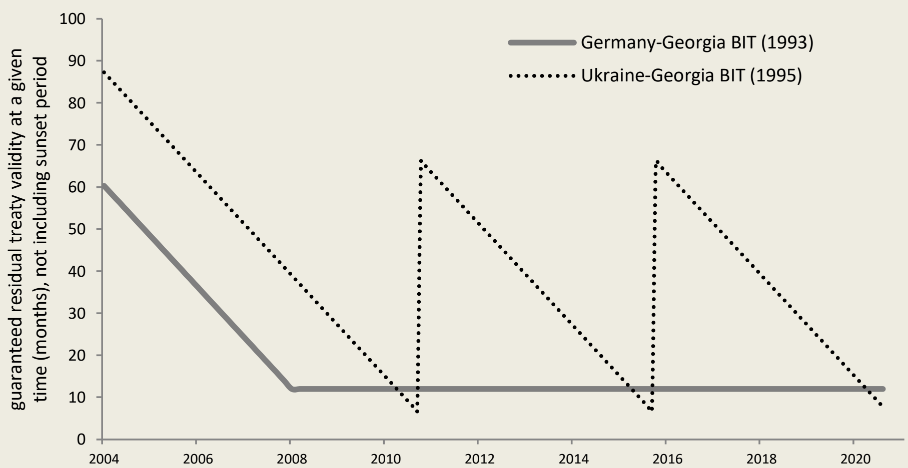
Procedural considerations: exit and renegotiation

A growing number of countries are considering ways to replace, update or exit older investment treaties that no longer reflect governments' current priorities. Review and renegotiation of investment treaties takes time and significant governmental resources, however, and the option to terminate a treaty is not necessarily available at any moment, as the relevant provisions on temporal validity in the treaty may place limits on exit options (Box 2.6).

Box 2.6. Designs of temporal validity provisions in investment treaties

Unlike most international treaties, which can be denounced at relatively short notice, investment treaties typically contain clauses that extend their temporal validity for significant periods of time. Three designs can be found, often cumulatively in the same agreement. First, most investment treaties set an initial validity period of often 10 years or more, counting from the treaty's entry into force. After that period, many treaties only allow states parties to denounce the treaty at the end of specific intervals of often 10 years or more. Finally, treaty obligations almost universally continue to apply for a sunset period after the termination of the treaty, again for periods of typically 10 years or more. Many treaties thus bind the treaty parties for at least two decades, and in some extreme cases for up to 50 years.

Treaty designs that automatically extend the validity of the treaty for fixed terms are included in around 30% of the global treaty stock, but this design is used less frequently in recent times. This design tends to prolong the period for which states parties are bound without granting additional benefits in terms of predictability for investors: on the contrary, the oscillating residual treaty validity is hard to predict without detailed study (see illustrative comparison in the figure below).



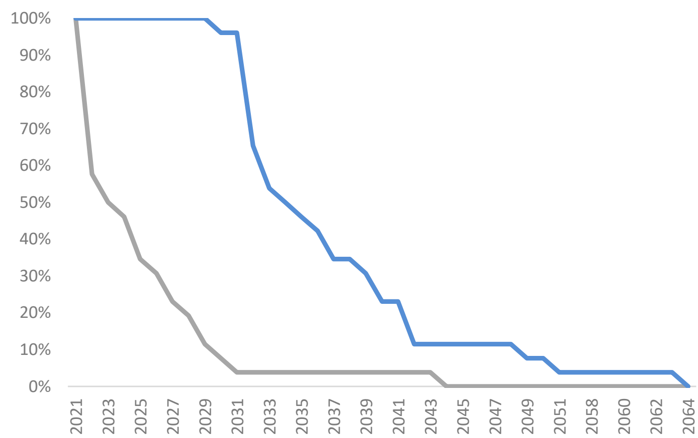
Source: Adapted from Pohl, J. (2013) "Temporal Validity of International Investment Agreements: A Large Sample Survey of Treaty Provisions", OECD Working Papers on International Investment, No. 2013/04, OECD Publishing, Paris.

Many Georgian investment treaties in force today contain temporal validity provisions that will operate to delay possibilities for unilateral exit from the treaty. Most of Georgia's investment treaties contain an initial validity period of between 5 and 20 years. This period is 30 years for one of Georgia's treaties – the Georgia-Kuwait BIT (2009). Seventeen of Georgia's investment treaties in force today provide for an automatic renewal period after the period of initial validity and allow either treaty party to denounce the treaty within 6 or 12 months (depending on the treaty) of the expiry of the renewed period. Treaties that renew for fixed terms require more monitoring as they limit the possibilities to update or unilaterally end the agreement. If no termination occurs in the defined notice period, the treaty automatically renews for the agreed period, thereby committing Georgia to these treaties for a further 5 or 10 years in most cases – and 30 years in one case – before the next opportunity to terminate the treaty will arise.

Even if Georgia were to terminate unilaterally some or all of its treaties, most of them would continue to apply for a survival period of at least 10 years or more. This situation may leave the government potentially exposed to ISDS claims far beyond the termination date. Treaty partners may be able to agree mutually to replace or exit an older treaty in such a way that the survival provisions no longer apply.

Based on available treaty data for Georgia's investment treaties, the earliest occasion that Georgia could exit all of its treaties is 2043, taking into account the automatic renewal periods in some treaties. This means that even if it were to unilaterally withdraw from all of its investment treaties at the earliest possible occasion, effects of its past treaty policy – through the post-termination sunset periods in these treaties – could bind Georgia until 2063 (Figure 2.7).

Figure 2.7. Projection of the temporal validity of Georgia's investment treaties (blue line) compared to global sample (grey line)



Source: OECD calculations based on OECD investment treaty database. Projections based on a hypothetical scenario of unilateral denunciation of all treaties in the available sample at the earliest possible occasion.

Unilateral action is not the only option to update or address older investment treaties but the impact of temporal validity provisions may influence how treaty amendments or agreed exits can be negotiated with treaty partners, especially if the renewal period is imminent. Georgia may therefore wish to consider whether the current design of its temporal validity provisions can serve its interests in discussions with treaty partners.

Another possible option for updating older investment treaties is through joint government interpretations. These can be issued at any time and may represent a simpler, faster and politically-acceptable device through which to address some aspects of treaty policy if the treaty text allows sufficient scope to achieve the jointly-desired interpretation. Georgia may wish to consider examples of recent joint interpretations signed by other governments or develop a model for joint interpretations through consultations with interested stakeholders. These types of government action have been relatively rare in recent years, however, and can require significant time and resources to engage with individual treaty partners. It may also be prudent to consider revising existing provisions on temporal validity systematically in the context of amendments or renegotiations of existing treaties to remove lock-in provisions and reduce post-termination sunset periods.

Notes

[1] These treaties include the Madrid Protocol Concerning the International Registration of Marks (in 1998), the Paris Convention for the Protection of Industrial Property (in 1994), the Patent Co-operation Treaty (in 1994), the Berne Convention for the Protection of Literary and Artistic Works (in 1995), the WIPO Copyright Treaty (in 2001), the WIPO Performances and Phonograms Treaty (in 2001), the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (in 2002), the Hague Agreement Concerning the International Registration of Industrial Designs (in 2003), the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (in 2004), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (in 2004), the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (in 2005) and the International Convention for the Protection of New Varieties of Plants (2008).

[2] Investment treaties considered for the purposes of this Chapter contain investment protections, investor-state dispute resolution provisions and/or investment liberalisation provisions. Georgia has concluded a range of other treaties that also relate to investment matters, at least partially. It has concluded investment co-operation agreements with Italy (1997), Moldova (1995), the United Kingdom (1995) and Uzbekistan (1995). It has also addressed certain investment-related matters in the context of trade agreements such as establishment rights for businesses and investment-related aspects of labour and environmental issues without including dedicated investment chapters in these agreements. These include free trade agreements concluded with China (2017), Hong Kong, China (2018) and the EFTA states (2016), as well as the Georgia-United States Trade and Investment Framework Agreement (2007), the EU-Georgia Association Agreement (2014) and the Georgia-United Kingdom Strategic Partnership Agreement (2019).

[3] One of these BITs is the Spain-USSR BIT (1990). Spain states publicly that it considers this treaty to remain binding as between Georgia and Spain. Preliminary research undertaken for the purposes of this Review indicates that this may be the only BIT of the 14 BITs concluded by the former USSR that Georgia or a relevant third country considers binding on Georgia today. Ten of the other 13 countries that concluded a BIT with the former USSR subsequently concluded a new BIT with Georgia: Austria, Belgium/Luxembourg Economic Union, China, Finland, France, Germany, the Netherlands, Switzerland, Turkey and the United Kingdom. The remaining three countries – Canada, Denmark and Korea – have not concluded a new BIT with Georgia and do not state publicly that their treaty with the former USSR is binding on Georgia. It is beyond the scope of this Chapter to address debates surrounding the application of the Vienna Convention on Succession of States (1978) to bilateral investment treaties. In addition to the 32 BITs in force, three BITs signed by Georgia are not in force as of August 2020: the Georgia-Egypt BIT (1999), the Georgia-Turkey BIT (2016) and the Georgia-United Arab Emirates BIT (2017).

[4] The coverage is assessed based on FDI stock data (2017 or, where 2017 data was unavailable, data of preceding years, giving preference to more recent data, based on data released by OECD and IMF) and investment treaties in force in July 2020. For several reasons, reported FDI stock data is not a valid measure for assets that benefit from treaty protections (Pohl, 2018) and available data does not allow to determine ultimate ownership of assets. The proportions of FDI stock data may nonetheless serve as a rough approximation of stock held by the immediate investing country to illustrate features and outcomes of Georgia's past investment treaty policies.

[5] The discussion here refers only to known claims. The number of actual ISDS claims against Georgia may be higher on account of confidential pending cases.

[6] *Bob Meijer v. Georgia* (ICSID Case No. ARB/20/28); *Telcell Wireless, LLC and International Telcell Cellular, LLC v. Georgia* (ICSID Case No. ARB/20/5); *Gardabani Holdings B.V. and Silk Road Holdings*

B.V. v. Georgia (ICSID Case No. ARB/17/29); *Bidzina Ivanishvili v. Georgia* (ICSID Case No. ARB/12/27); *Itera International Energy LLC and Itera Group NV v. Georgia* (ICSID Case No. ARB/09/22); *Karmer Marble Tourism Construction Industry and Commerce Limited Liability Company v. Georgia* (ICSID Case No. ARB/08/19); *Itera International Energy LLC and Itera Group NV v. Georgia* (ICSID Case No. ARB/08/7); *Ron Fuchs v. Georgia* (ICSID Case No. ARB/07/15); *Ares International S.r.l. and MetalGeo S.r.l. v Georgia* (ICSID Case No. ARB/05/23); *Ioannis Kardassopoulos v. Georgia* (ICSID Case No. ARB/05/18).

7 *Iconia Capital LLC v. Georgia* (UNCITRAL); *KazTransGas JSC v. Georgia* (UNCITRAL); *iZee Enterprises LLC, Lazer-2 Tbilisi Ltd., and Cafe Rustaveli Ltd. v. Georgia* (UNCITRAL).

8 *Zaza Okuashvili v. Georgia* (SCC).

9 *Range Resources Limited v. Georgia* (unknown).

10 *Gardabani Holdings B.V., Inter RAO UES PJSC, Telasi JSC v. Government of Georgia, Ministry of Economy and Sustainable Development of Georgia, State Service Bureau Ltd* (ICSID Case No. ADM/18/1 and SCC Case No V2018/039); *PJSC Inter RAO and Telasi JSC v. Government of Georgia* (SCC); *Gardabani Holdings B.V. v. Government of Georgia, Ministry of Economy and State Service Bureau LLC* (SCC).

11 *Inna Gudavadze v. Georgia* (UNICTRAL); *Zhinvali Development Ltd. v. Republic of Georgia* (ICSID Case No. ARB/00/1).

12 Most Georgian treaties refer to “fair and equitable” treatment but some refer to “fair and impartial” treatment (Georgia-Kuwait BIT (2009)); “fair and equal” treatment (BITs with Armenia (1996), Azerbaijan (1996), Kyrgyzstan (1997), Moldova (1997) and Ukraine (1995)); or “just and fair” treatment (Italy-Georgia BIT (1997), which was terminated in 2014).

13 See claims filed in *Bidzina Ivanishvili v. Georgia* (ICSID Case No. ARB/12/27) under Article 3(1) of the France-Georgia BIT (1997); *Ron Fuchs v. Georgia* (ICSID Case No. ARB/07/15) under Article 2(2) of the Georgia-Israel BIT (1995); and *Ioannis Kardassopoulos v. Georgia* (ICSID Case No. ARB/05/18) under Article 2(2) of the Georgia-Greece BIT (1994) and Article 10(1) of the ECT.

14 See also, e.g., Argentina-Japan BIT (2018); Australia-Peru FTA (2018); USMCA (2018); Australia-Hong Kong Investment Agreement (2019); Australia-Indonesia CEPA (2019). Recent EU treaties such as the EU-Singapore Investment Protection Agreement and the EU-Viet Nam Investment Protection Agreement also contain clarifications relating to investor expectations. However, they clarify certain exclusions of liability generally rather than referring specifically to the FET provision.

15 Australia-Singapore FTA (2003), as amended in 2016, Article 6(5); Australia-Peru FTA (2018), Article 8.6(5); Australia-Uruguay BIT (2019), Article 4(5).

16 Gaukrodger, D. (2016) (reviewing the applicable law on joint interpretations of investment treaties without express provisions on the issue); Gordon, K. and Pohl, J. (2015). For a recent example of a joint interpretation, see the Joint Interpretative Declaration between Columbia and India (2018) regarding the Columbia-India BIT (2009).

17 Georgia-Estonia BIT (2009) as amended by the Georgia-Estonia Protocol (2015), Switzerland-Georgia BIT (2014), Georgia-United Arab Emirates (2017) (not in force), and Georgia-Belarus BIT (2017).

18 See, for example, EU-Canada CETA (2016), Article 8.4; EU-Vietnam FTA (2018), Article 8.4.

[19] Estonia-Georgia BIT (2009), Article 3; Georgia-Finland BIT (2006), Article 3; Georgia-Latvia BIT (2005), Article 3; EFTA States-Georgia Free Trade Agreement (2016), Chapter 6 (Establishment); EU-Georgia Association Agreement (2014), Article 79; Georgia-Hong Kong (China) Free Trade Agreement (2018), Chapter 10 (Establishment).

[20] *[Note to draft: update citation with case name and number when publicly known.]*

[21] See, for example, Georgia-United Arab Emirates BIT (2017), Article 10; Belarus-Georgia BIT (2017), Article 11; Georgia-Switzerland BIT (2014), Article 9.

[22] See, for example, Finland-Georgia BIT (2006), Article 14; Georgia-Latvia BIT (2005), Article 13.

[23] Georgia-United Arab Emirates BIT (2017), Article 6(3); Belarus-Georgia BIT (2017), Article 4(3).

[24] Georgia-Switzerland BIT (2014), Article 3.

[25] Georgia-Switzerland BIT (2014), preamble; Georgia-Sweden BIT (2008), preamble.

[26] Morocco-Nigeria BIT (2016), Article 18.

[27] See, e.g., Belgium/Luxembourg-Colombia BIT (2009), Articles VII(5) and VIII(4).

[28] See, e.g., Australia-Indonesia Economic Partnership Agreement (2019), Article 14.21.

[29] See, e.g., Chile-United States FTA (2003), Article 18.1.

[30] See, e.g. China-Peru FTA (2009), which states in the preamble that the State Parties "RECOGNIZE that this Agreement should be implemented with a view toward raising the standard of living, creating new employment opportunities, reducing poverty and […]".

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Annex 2.A. Georgia's investment treaties

Table 2.1. Bilateral investment treaties – in force

No	Treaty partner	Date of signature	Date of entry into force
1.	Belarus	01/03/2017	01/12/2017
2.	Switzerland	03/06/2014	17/04/2015
3.	Estonia	24/11/2009	21/11/2016
4.	Kuwait	13/10/2009	30/05/2013
5.	Czech Republic	29/08/2009	13/03/2011
6.	Sweden	30/10/2008	01/04/2009
7.	Finland	24/11/2006	30/12/2013
8.	Lithuania	09/11/2005	01/11/2006
9.	Latvia	05/10/2005	05/03/2006
10.	Austria	18/10/2001	01/03/2004
11.	Moldova	28/11/1997	25/02/1999
12.	Netherlands	03/02/1998	01/04/1999
13.	Romania	11/12/1999	01/07/1998 or 24/07/1998 (see note)
14.	Kyrgyzstan	22/04/1997	28/10/1997
15.	France	03/02/1997	13/04/2000
16.	Kazakhstan	17/09/1996	24/04/1998
17.	Armenia	04/06/1996	18/01/1999
18.	Turkmenistan	20/03/1996	28/07/1995
19.	Azerbaijan	08/03/1996	10/03/1996
20.	Iran	27/09/1995	22/06/2005
21.	Uzbekistan	04/09/1995	24/05/1999
22.	Israel	19/06/1995	18/02/1997
23.	United Kingdom	15/02/1995	15/02/1995
24.	Bulgaria	19/01/1995	06/08/1999
25.	Ukraine	09/01/1995	18/12/1996
26.	Greece	09/11/1994	03/08/1996
27.	United States	07/03/1994	17/08/1997
28.	Germany	25/06/1993	27/09/1998
29.	Belgium/Luxembourg	23/06/1993	03/07/1999
30.	China	03/06/1993	01/03/1995
31.	Turkey	30/07/1992	28/07/1995
32.	Spain	26/10/1990	28/11/1991

Note: Arranged in descending chronological order based on date of signature. It is difficult to be precise about the exact status of Georgia's BITs due to some inconsistencies in publicly-available information, especially entry into force dates. Full-text versions of many Georgian BITs are available on the Legislative Herald of Georgia website maintained by the Ministry of Justice: https://matsne.gov.ge/. The Ministry of Foreign Affairs also publishes information on the dates of signature and entry into force for many of Georgia's treaties: https://mfa.gov.ge/MainNav/ForeignPolicy/InternationallegalAgreements.aspx. Some of the information published by Georgia is inconsistent with information published by Georgia's treaty partners, in particular with respect to dates of signature and entry into force. For example, information published on the Legislative Herald of Georgia website indicates that the Georgia-Romania BIT (1997) entered into force on 1 July 2008 while the Romanian government's legislation portal (http://legislatie.just.ro/) indicates that it took effect on 24 July 1998. Third-party databases for investment treaties indicate a range of other conflicting dates that have not been taken into account for the purposes of this Chapter.

Table 2.2. Bilateral investment treaties – terminated

No	Treaty partner	Date of signature	Date of entry into force	Effective date of termination	Type of termination
1.	Italy	15/05/1997	26/07/1999	26/07/2014	Unilaterally denounced

Table 2.3. Bilateral investment treaties – signed but not in force

No.	Treaty partner	Date of signature	Date of entry into force
1.	United Arab Emirates	17/07/2017	-
2.	Turkey	19/07/2016	-
3.	Egypt	10/08/1999	-

Table 2.4. Multilateral trade and investment treaties – in force

No.	Treaty	Date of signature for Georgia	Date of entry into force	Date of entry into force for Georgia
1.	Energy Charter Treaty (as amended)	17/12/1994	16/04/1998	16/04/1998

3 Promoting sustainable investment in Georgia's agri-food value chain

Promoting sustainable investment in Georgia's agri-food value chain is crucial to ensure broad-based economic growth, support rural development and maintain competitiveness in international markets. This chapter underlines the key challenges to be addressed to attract more and better investment in Georgia's agri-food value chain, and offers policy recommendations to address these challenges.

Summary and policy recommendations

The agriculture and food sectors play an essential role in Georgia's economy, together accounting for 11% of GDP and 45% of employment in 2018. With favourable climatic and soil conditions and an abundance of water resources, Georgia has great potential to attract investment in the agri-food value chain, but FDI inflows are below potential and the majority of investment in the value chain originates from domestic sources. Agri-food exports have grown rapidly over the past two decades but remain highly concentrated in beverages. Attracting FDI can help to boost exports of high-value food products, leading to increases in wages and productivity.

Whilst Georgia has made enormous progress in improving its investment climate in recent years, the agri-food value chain presents a unique set of challenges for investors. Most food products are predominantly grown by small-scale family holdings, which are often subsistence-oriented, with surplus production frequently sold on local markets. The farm structure is highly fragmented, with an average farm size of 1.4 hectares in 2014, and 77% of farms operating on land holdings of less than 1 hectare. Addressing these structural deficiencies is essential to promoting investment and generating new growth opportunities for the sector. Recommendations to promote sustainable investment in Georgia's agri-food value chain are outlined in Box 3.1 below.

3.1. Context

The agri-food value chain plays an essential role in Georgia's economy

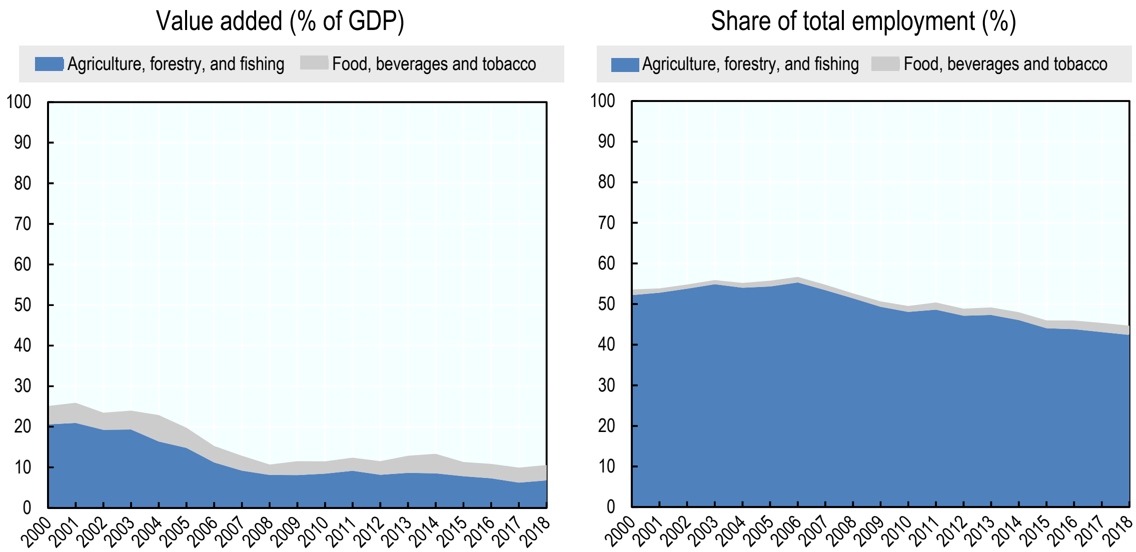
Georgia's agricultural sector underwent a significant adjustment following the end of Soviet central planning in 1991. The collapse of collectivised agriculture, the removal of the former agricultural support system and the liberalisation of prices led to a sharp decline in agricultural output. The sector took some time to stabilise, with the transition enduring well into the mid-2000s. Nonetheless, the agri-food value chain still plays an essential role in Georgia's economy. In 2018, primary agricultural production accounted for 6.8% of GDP and 42% of employment, while food, beverages and tobacco (food processing) accounted for 3.8% of GDP and 2.2% of employment (**Error! Reference source not found.**). Food processing is also the largest manufacturing segment, representing 43% of value-added and 41% of employment in Georgia's manufacturing sector in 2018.

With 41% of the population residing in rural areas, agriculture's share of employment remains high (although it has declined slightly over the past decade). Nearly three-quarters of households involved in agriculture report producing mainly for their own consumption, and economic opportunities in non-agricultural activities are limited (World Bank, 2018). Thus, the sector provides an important safety net for much of the rural population, particularly subsistence-oriented households who may be more vulnerable to sharp economic contractions.

Box 3.1. Key policy recommendations

- Introduce a specific objective and activities relating to investment promotion and facilitation within the new *Agriculture and Rural Development Strategy of Georgia 2021-2027* and the *Action Plan for 2021-2023*.
- Ensure full completion of the land registration reform, by raising awareness of the reform in rural communities and undertaking a systematic approach to land registration if necessary. Continue with the registration of state-owned lands, whilst ensuring that adequate safeguards are in place to protect the legitimate tenure rights of small-scale producers and rural communities.
- Develop a credit guarantee scheme to reduce lending risks and encourage greater commercial lending to agri-food SMEs. Consider providing targeted guarantees for exporters operating under long-term supply contracts.
- Continue investing in transport and utility infrastructure, and focus on improving the quality of rural road networks and increasing rural-urban connectivity. Ensure greater private sector participation in infrastructure development, and introduce measures to improve the quality of logistics services.
- Continue efforts to rehabilitate outdated irrigation infrastructure and drainage systems, and ensure access to affordable and reliable internet access in rural areas.
- Carefully assess the effectiveness of the co-financing schemes administered by the Agricultural and Rural Development Agency (ARDA), and consider allocating financial resources to encourage the formation of supply chain linkages.
- Offer targeted incentives to prospective investors, conditional on their engagement with small-scale producers and agricultural co-operatives. Provide assistance to food processors and retailers to build the capacities of their suppliers, by providing cash, inputs and technical assistance in exchange for product supply.
- Ensure that agri-food SMEs are able to benefit from well-resourced and functioning agricultural training institutes, extension services and vocational training systems. Well-trained extension workers can provide technical advice to SMEs and support the dissemination of new technologies, improving their ability to respond to the needs of large agricultural investors.
- Strengthen food safety and quality standards, and introduce measures to increase awareness and compliance by small-scale producers. Provide support to foreign investors that are willing to invest in upgrading the capacities of SMEs to comply with food safety and quality standards.

Figure 3.1. The agri-food value chain's role in the economy



Source: World Bank World Development Indicators (2019); Geostat (2019).

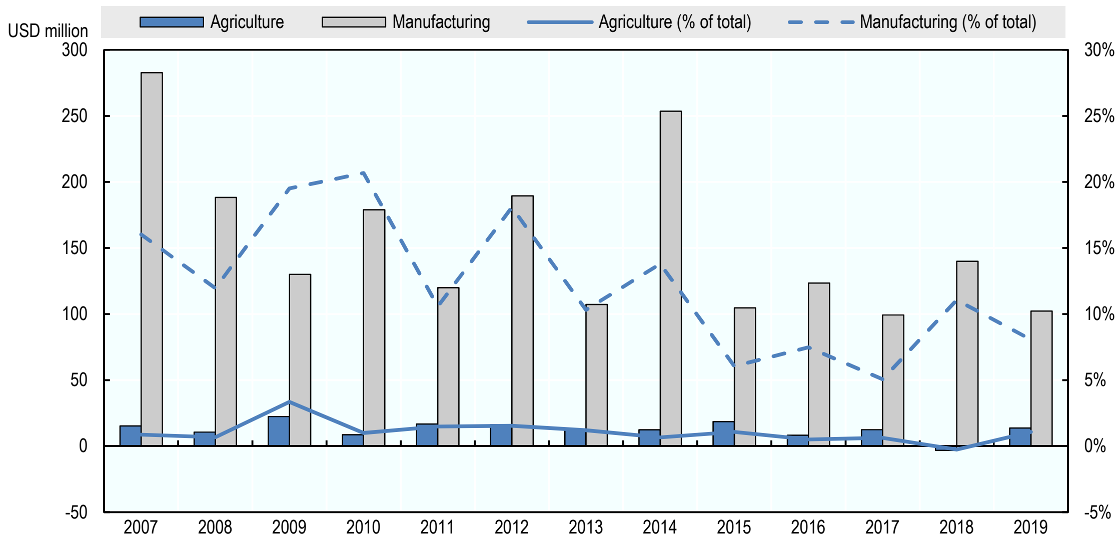
Foreign and domestic investment can support the development of Georgia's agri-food value chain

Investment – both foreign and domestic – has the potential to generate substantial benefits for Georgia's agriculture and food sectors. In addition to being an essential source of capital and job creation, investment can help to enhance productivity growth and drive improvements in the efficiency of agri-food value chains. Agricultural investment also plays a critical role in bolstering incomes, improving food security and supporting rural development. Furthermore, investment can generate positive spillovers for the local economy through business linkages, the transfer of knowledge, and the dissemination of new technologies (OECD, 2014).

Georgia has a number of favourable conditions for attracting investment in the agri-food value chain. It is strategically located at the crossroads of Europe and Asia, with important markets in the EU, Turkey, Russia and the Middle East at its doorstep. Georgia has a rich agricultural tradition and food is an integral part of the country's culture and history. Rainfall and water resources are abundant, and high quality soils along with a wide variety of microclimates support the production of many high value crops and food products.

In spite of these advantageous circumstances, foreign direct investment (FDI) inflows in Georgia's agricultural sector are low, particularly when compared with other sectors, such as manufacturing. FDI in agriculture fluctuates considerably from year to year and reached a high of USD 22 million in 2009 (or 3.3% of total FDI inflows). Agriculture recorded a small outflow of USD -3 million in 2018, but the sector has generally accounted for about 1% of total FDI inflows over the 13-year period covered in **Error! Reference source not found.**. Unfortunately, detailed FDI data are not available for food processing and other manufacturing sub-sectors due to the confidentiality and sensitivity of business information, but, given food processing's high share in manufacturing value-added, it is likely that the sector receives higher volumes of FDI inflows than primary agriculture.

Figure 3.2. FDI in agriculture and manufacturing



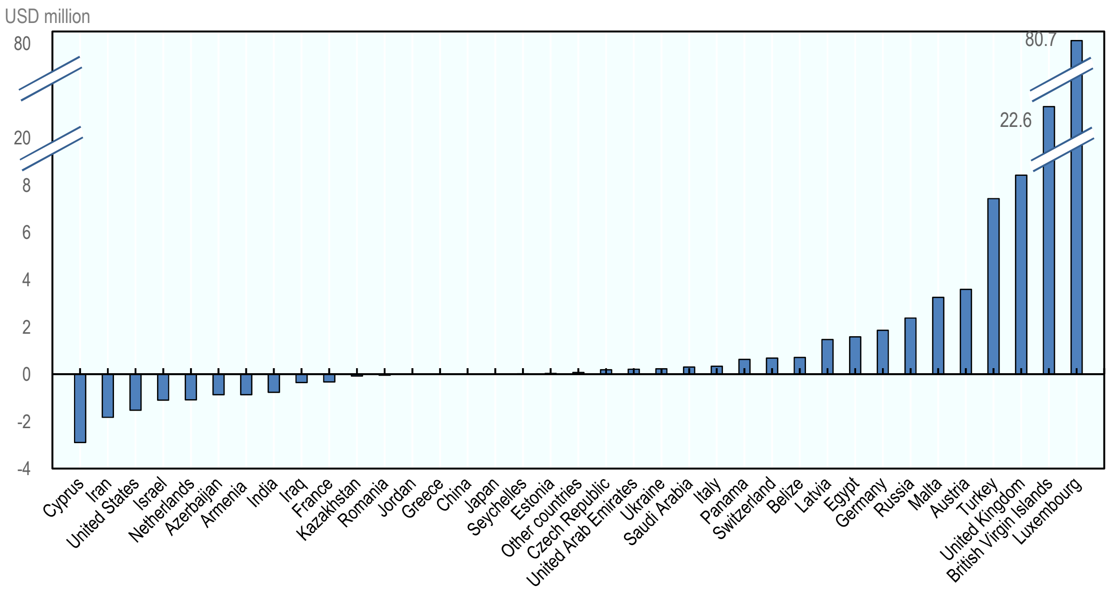
Source: Geostat (2020).

Error! Reference source not found. provides a breakdown of FDI in Georgia's agricultural sector by country of origin. Over the ten-year period from 2009 to 2018, the four largest foreign investors were Luxembourg, the British Virgin Islands, the United Kingdom and Turkey. Together, these four countries accounted for USD 119 million (more than 95%) of net inflows of FDI in agriculture.

The breakdown by nationality in **Error! Reference source not found.** shows that a number of "offshore" low-tax jurisdictions feature prominently as sources of investment in Georgia's agricultural sector. In addition to Luxembourg and the British Virgin Islands, it is worth noting that Cyprus[1] and the Netherlands featured among the largest sources of divestment in Georgia's agricultural sector over the past decade. One possible explanation for the outsized role of these jurisdictions is the use of "round-tripping" FDI – whereby some Georgian businesses may be channelling their investments through tax havens in order to re-invest in Georgia. Trans-shipping FDI transactions (for instance, Turkish investments channelled to Georgia through a low-tax jurisdiction) may also be an important contributing factor. In addition to the obvious fiscal advantages, round-tripping and trans-shipping FDI may be motivated by a desire to ensure confidentiality of the ultimate controlling investor, or to obtain coverage under an existing Georgian investment treaty. The exact share of round-tripping and trans-shipping in FDI between Georgia and these jurisdictions remains unknown.

Figure 3.3. FDI in agriculture by country of origin

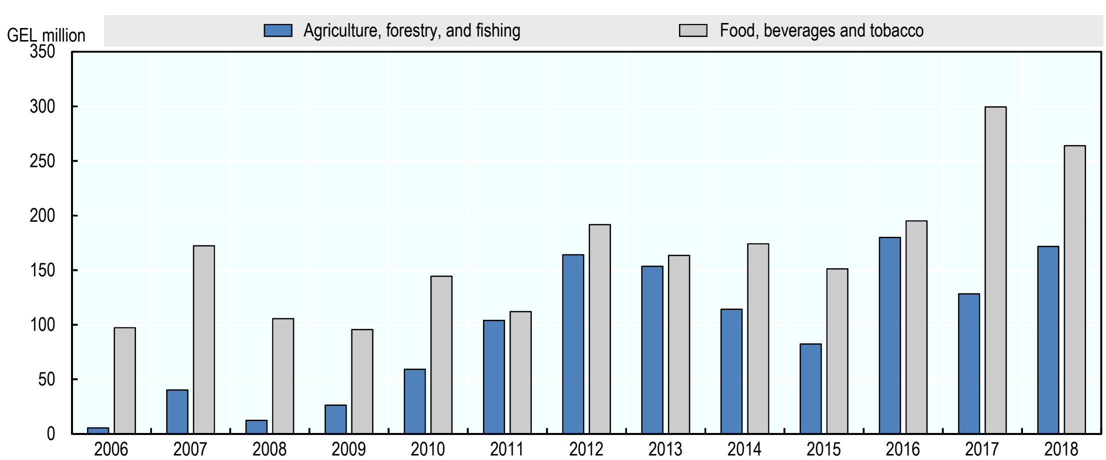
FDI in agriculture and fishing, total over the period 2009-2018



Source: Geostat (2019).

Fixed asset investment is a measure of capital spending on physical assets (e.g. real estate, infrastructure, machinery) that are held for more than one year. It can serve as a useful indicator for how much investment is occurring in a particular sector. **Error! Reference source not found.** illustrates the evolution of investments in fixed assets in the agriculture and food sectors. The data suggest that domestic investment in the agri-food value chain may exceed FDI inflows by a substantial margin. Furthermore, it is likely that an important share of agri-food FDI originates in the domestic economy (through round-tripping), suggesting that domestic investors provide an important source of capital for the sector's growth and development.

Figure 3.4. Investments in fixed assets in agriculture and food processing



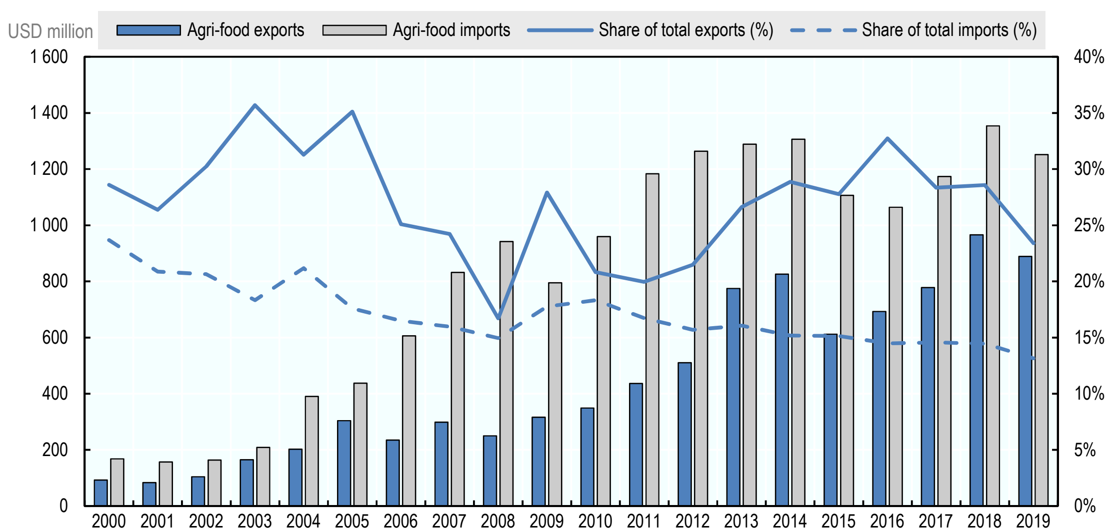
Source: Geostat (2019).

Trade is a crucial component of agri-food MNEs' investment strategies

Trade is central to the operations of multinational enterprises (MNEs) in the agriculture and food sectors. Access to export markets is essential, as MNEs often invest with a view to exporting agri-food products. In addition, as MNEs increasingly spread their activities across countries in complex production chains, the availability of imported intermediate goods is increasingly necessary for firms to maintain their competitiveness in international markets (Greenville, Kawasaki and Jouanjean, 2019; OECD, 2019a). Increasing participation in agri-food global value chains (GVCs) is particularly relevant in the Georgian context, given the small size of the country's land area and limited internal market.

Georgia's agri-food exports have grown substantially over the past two decades, from USD 93 million in 2000 to USD 889 million in 2019 (**Error! Reference source not found.**). When viewed relative to total exports, however, the share of agri-food exports has fluctuated between 17% and 36%. Imports of agri-food products also grew rapidly, from USD 168 million in 2000 to USD 1.25 billion in 2019, while the sector's share in total imports declined steadily, from 24% to 13%. Import growth was fuelled by improvements in incomes and living standards, which generated growing consumer demand for a wide variety of food products. As a result, Georgia remains a net importer of agri-food products.

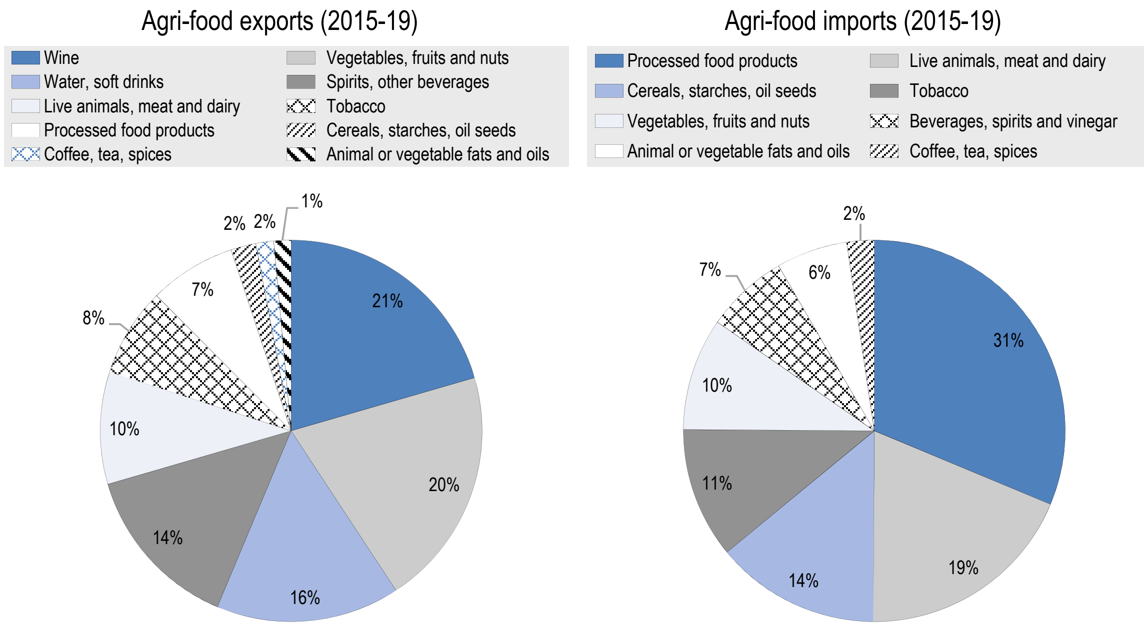
Figure 3.5. Agri-food exports and imports



Note: Agri-food exports and imports are defined as the Harmonised System (HS) 2-digit commodity codes 01-24.
Source: Geostat (2020).

The composition of agri-food exports and imports over the 5-year period from 2015 to 2019 is shown in **Error! Reference source not found.**. Beverages make up the majority of agri-food exports, with wine, spirits, mineral waters and soft drinks representing 50% of the total. Vegetables, fruits and nuts (including hazelnuts) are another major export category, accounting for 20% of agri-food exports. Georgia is highly dependent on imports to satisfy domestic demand for many staple food products. As a result, agri-food imports are more diversified, and include a broad range of processed food products, meat, dairy, cereals and tobacco.

Figure 3.6. Composition of agri-food exports and imports



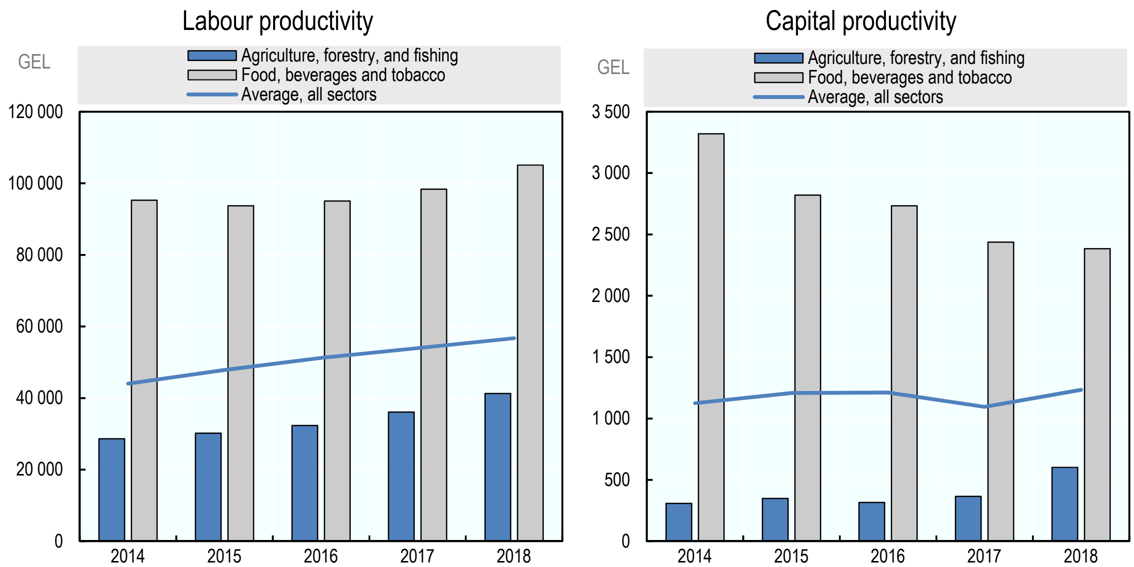
Note: Agri-food exports and imports are defined as the Harmonised System (HS) 2-digit commodity codes 01-24.
Source: Geostat (2020a).

Attracting FDI can boost productivity and wages in Georgia's agri-food value chain

Recent OECD research finds that sectors receiving FDI are likely to experience stronger labour productivity growth, as foreign firms often outperform domestic firms. The performance premium of foreign multinationals can be explained by their access to advanced technologies and managerial expertise from their global branches, as well as their tendency to be larger and more capital-intensive than their domestic counterparts (OECD, 2019b).

Productivity in Georgia's agricultural sector is low when compared with the national average, reflecting its limited capacity to attract investment in recent years. Conversely, the food processing sector exhibits significantly higher levels of productivity. Labour productivity in Georgia's agricultural and food sectors has increased steadily over the past five years. Capital productivity in agriculture has nearly doubled, while the productivity of capital in the food processing sector has decreased by nearly 30% (**Error! Reference source not found.**).

Figure 3.7. Productivity in agriculture and food processing

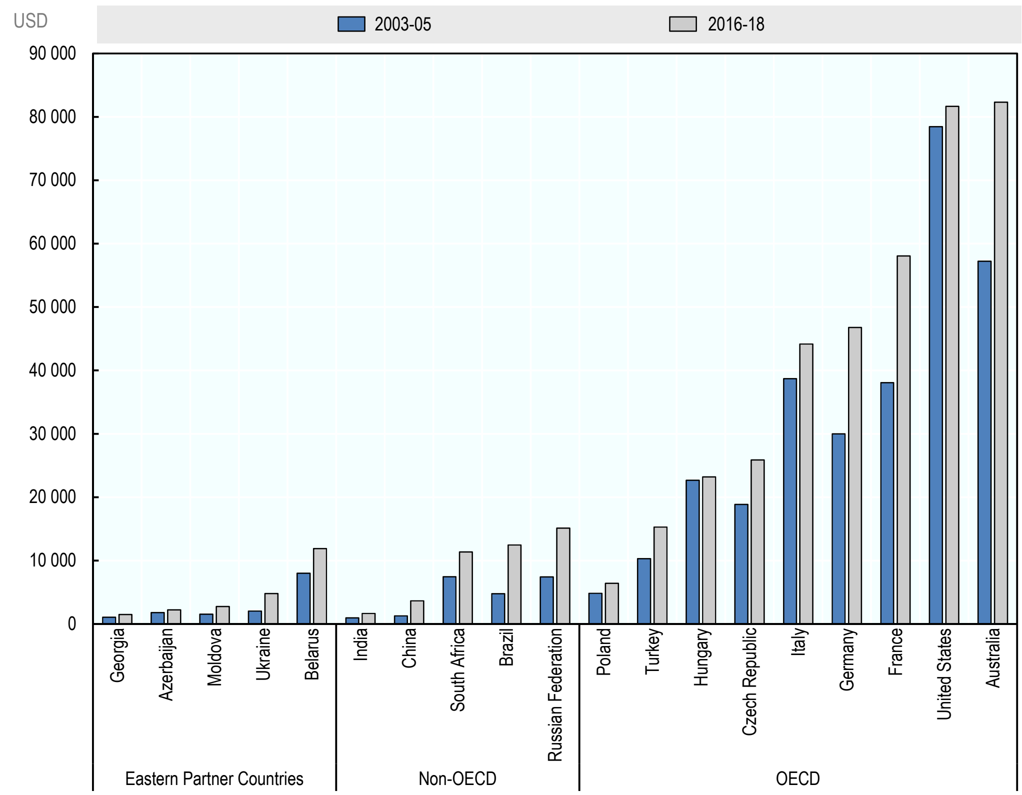


Note: Labour productivity is calculated as output divided by the number of employees. Capital productivity is calculated as output per 1000 GEL of fixed capital.
Source: Geostat (2019a).

Labour productivity in Georgia's agricultural sector (measured as agricultural value added per worker) is lower than comparable countries in the region, and several degrees of magnitude lower than the levels observed in a number of OECD and non-OECD countries (**Error! Reference source not found.**). Low productivity levels in agriculture are a significant driver of rural poverty and are exacerbated by the lack of investment, limited financial resources, and inadequate information about markets and new technologies (WTO, 2016). Measures to attract investment (particularly FDI) in Georgia's agricultural sector could therefore help to introduce more efficient production practices to the sector and reduce the productivity gap.

Figure 3.8. Labour productivity in agriculture: international comparisons

Agricultural value added per worker, constant 2010 USD

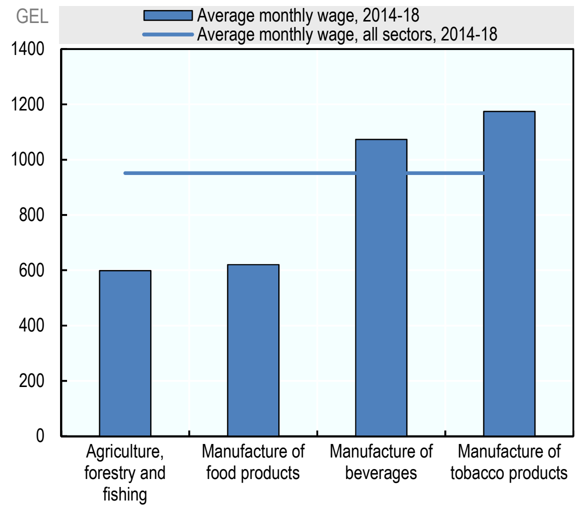


Source: World Bank World Development Indicators (2019).

A similar picture emerges when looking at wages (**Error! Reference source not found.**). Over the five-year period from 2014 to 2018, the average monthly wage of agricultural workers stood at GEL 599, 37% below the national average for the same period (GEL 951). Monthly wages in the “manufacture of food products” sector were also substantially lower than the national average, at GEL 620. On the other hand, wages in the beverage and tobacco manufacturing sectors were higher than the average for all sectors.

Evidence from the OECD (2019b) suggests that foreign affiliates pay higher wages than the average domestic business (although the extent of the foreign wage premium may vary considerably). Efforts to attract and retain FDI could potentially lead to important improvements in productivity and the creation of higher-paying jobs in Georgia’s agri-food value chain.

Figure 3.9. Wages in the agri-food value chain

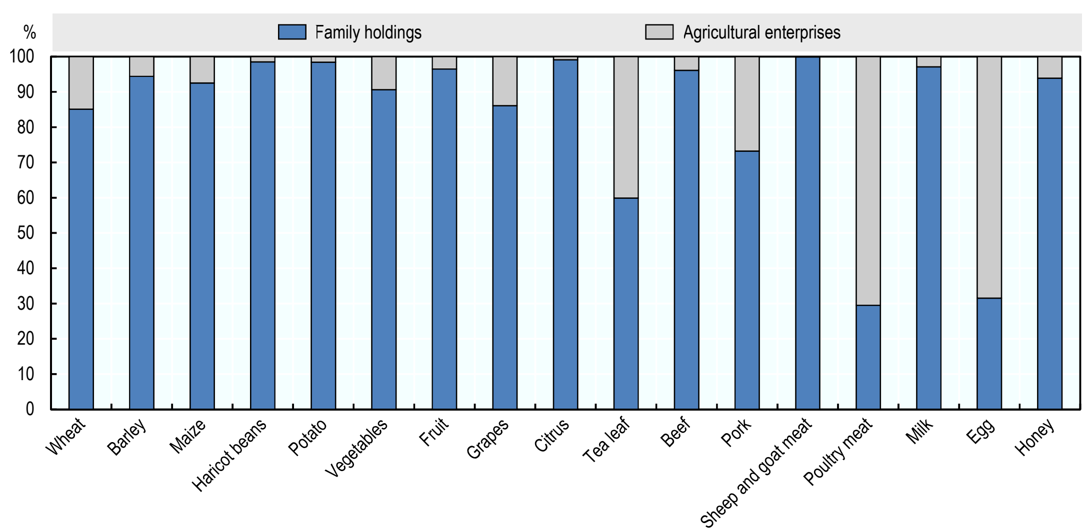


Source: Geostat (2019).

Low productivity in agriculture results from a confluence of factors. One of the most important reasons is that production is dominated by small-scale family holdings, which are often subsistence-oriented and only sell their surplus production in local markets. Family holdings account for more than 90% of the production of most agricultural commodities (**Error! Reference source not found.**). Agricultural enterprises tend to be larger in size, and play a more substantial role in the production of wheat (15%), grapes (14%), tea leaves (40%), pork (27%), poultry meat (71%) and eggs (69%).

Figure 3.10. Production of agricultural commodities by farm type

Share of production (%), 2019



Source: Geostat (2020a).

In spite of these challenges, a number of foreign MNEs have successfully invested in Georgia's agri-food value chain in recent years. Some examples are listed in **Error! Reference source not found.** below.

Table 3.1. Foreign investors in Georgia's agri-food value chain

Company (Parent)	Country of origin	Year established	Sector of production	Land area (approx.)
AgriGeorgia (Ferrero)	Luxembourg	2007	Hazelnuts	4000 ha
Agrowest Ltd.	Egypt	2012	Dryland cereals and pulses	1650 ha
Chateau Mukhrani	Sweden	2006	Wine	160 ha
Chirina	Georgia/Russia	2013	Chicken meat	170 ha
Foodland Ltd.	Canada	2010	Liquorice and herbs	95 ha
Georgian Wine and Spirits (Marussia Beverages)	France	2013	Wine	400 ha
Habibco Agriculture	Egypt	2012	Dryland cereals and pulses	700 ha
Hipp Georgia Ltd. (Hipp Switzerland)	Switzerland	2006	Organic apple processing	Sources from local suppliers
Landmark Ltd.	Canada	2012	Potatoes	30 ha
Marneuli Food Factory	Georgia/Switzerland	2007	Canned and bottled preserves	1000 ha
TR Georgia	United Kingdom	2011	Wheat, corn, barley, colza, soya, pomegranate, pistachio, hazelnuts	7500 ha

Source: USAID (2014), Transparency International Georgia (2014).

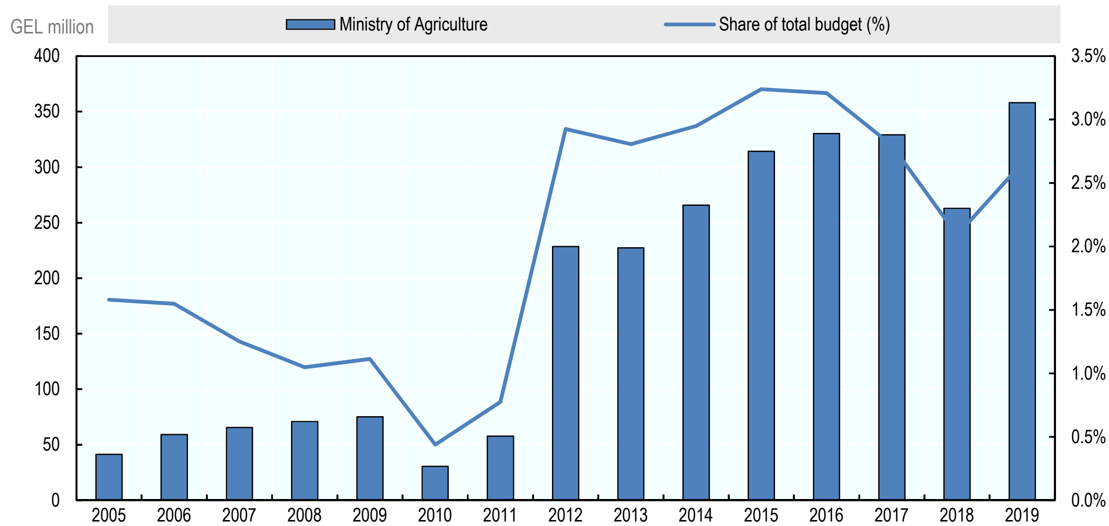
3.2. The policy environment for agri-food investment

The quality of a country's investment climate can have an important influence on its ability to attract FDI. Foreign investors often have high expectations of the regulatory environment, infrastructure and support services provided by government bodies. By communicating their concerns to government agencies, foreign investors also play an important role in helping to improve regulatory approaches and modernise industry standards. This section reviews some of the relevant policy areas that influence investment (in particular FDI) in Georgia's agri-food value chain.

A broad range of policies and strategies have been developed to support Georgia's agri-food value chain

Agriculture was largely neglected during the decade following the 2003 Rose Revolution. Beginning in 2012, the government demonstrated a renewed focus on agriculture, increasing budgetary allocations for the Ministry of Agriculture nearly fourfold from 0.8% to 2.9% of the total government budget (**Error! Reference source not found.**). A number of new policy initiatives were also introduced, including the adoption of a new Law on Agricultural Co-operatives in 2013, the establishment of an Agricultural Co-operatives Development Agency, investments to upgrade rural infrastructure and irrigation systems, and subsidised loans and tax concessions for farmers (USAID, 2014). Furthermore, the "Produce in Georgia" programme was introduced in 2014 to support local SMEs and stimulate food processing and industrial production. The programme allocated USD 27 million for the provision of financial support, free real estate and consulting services to prospective investors (Agenda.ge, 2014).

Figure 3.11. Budgetary allocations for the Ministry of Agriculture



Source: MAG (2015); Ministry of Finance of Georgia (2020).

The Ministry of Environmental Protection and Agriculture of Georgia (MEPA) has drafted a new *Agriculture and Rural Development Strategy of Georgia 2021-2027,* which was adopted by the government in December 2019. MEPA also developed the *2021-2023 Action Plan of the Agriculture and Rural Development Strategy 2021-2027*, which is to be updated on an annual basis. The strategy and action plan were developed with financial support from the European Neighbourhood Programme for Agriculture and Rural Development (ENPARD), and technical advice provided by the United Nations Food and Agriculture Organisation (FAO) and the United Nations Development Programme (UNDP).

The new strategy provides a coherent and co-ordinated approach to agricultural and rural development (previously, the government had developed two separate strategies: the *Strategy for Agricultural Development in Georgia 2015-2020* and the *Rural Development Strategy of Georgia 2017-2020*). The new strategy for 2021-2027 outlines three strategic goals: 1) competitive agricultural and non-agricultural sectors; 2) sustainable usage of natural resources, retaining the eco-system, adaptation to climate change; and 3) effective systems of food/feed safety, veterinary and plant protection. The three goals are then broken down into a number of specific objectives, and ten results-based indicators are listed with the baseline level as of 2018, and target levels to be achieved by 2027. Furthermore, the action plan lists more than fifty specific activities to be implemented, along with "implementation indicators" to measure and monitor progress. Responsible institutions are listed alongside each activity, with annual allocations of budgetary resources for 2021-2023 (MEPA, 2020a, 2020b). This marks a significant improvement from the previous strategies, which were lacking in quantitative, time-bound targets with clear delegation of responsibilities.

The new strategy and action plan contain a broad range of measures that, if implemented correctly, would undoubtedly strengthen the investment climate. However, there is no specific mention of "investment" amongst the current list of strategic goals, objectives, activities and implementation indicators. Introducing a specific objective and activities relating to investment promotion and facilitation could strengthen Georgia's ability to attract and retain FDI in the agri-food value chain.

Investors in the agri-food value chain benefit from a relatively liberal trade policy regime

The government recognises that open, transparent and predictable trade policies play an important role in reducing transaction costs and increasing rates of return on investment. Georgia joined the World Trade Organization (WTO) in June 2000 and has since benefited from Most-Favoured-Nation (MFN) treatment by all WTO members. In addition, the country has established GSP arrangements with Canada, the EU, Japan, Switzerland, Turkey and the United States. Georgia has also signed bilateral and regional trade agreements with China, Turkey, the EFTA member states (Iceland, Liechtenstein, Norway and Switzerland) and eight countries of the former Soviet Union (Armenia, Azerbaijan, Kazakhstan, the Republic of Moldova, the Russian Federation, Turkmenistan, Ukraine and Uzbekistan).

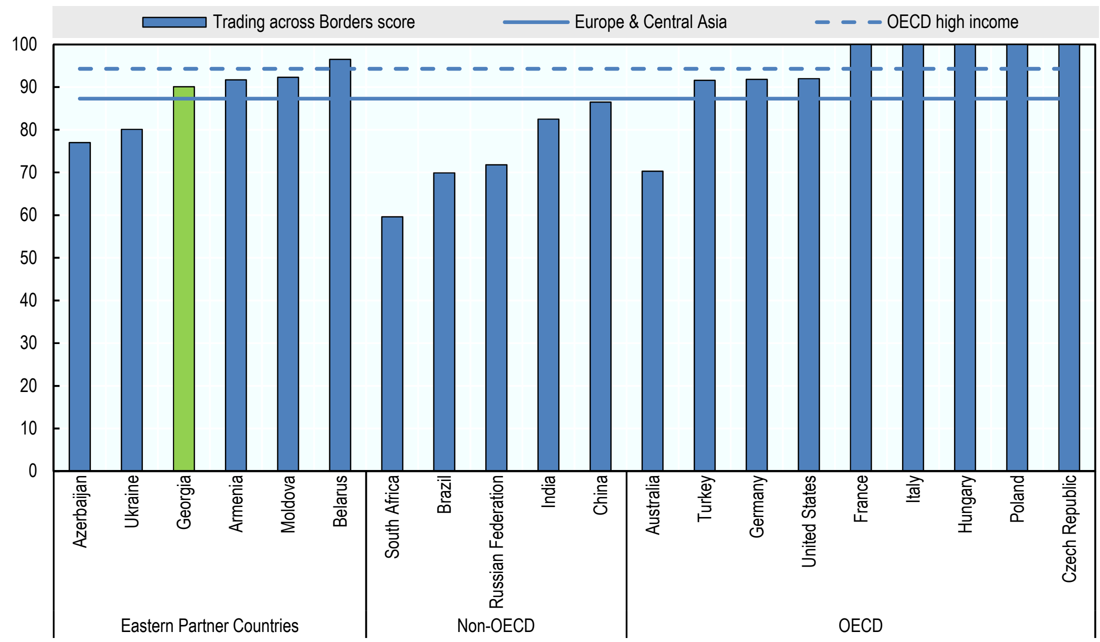
Access to a competitive and diverse set of imports can generate growth in the agri-food value chain by allowing countries to leverage their comparative advantage in different stages of production (Greenville, Kawasaki and Jouanjean, 2019; OECD, 2019a). Georgia's MFN tariff rate of 1.5% is among the lowest in the world, and more than 80% of Georgia's imports are duty-free. While imports of agricultural products are subject to tariffs and SPS measures, the simple average MFN tariff rate for agricultural products (WTO definition) has fallen steadily, from 7.2% in 2009 to 6.5% in 2018 (WTO, 2019).

Agri-food exports fell sharply in 2006, when Russia introduced a trade embargo on Georgian agricultural products. The embargo was eventually lifted and Russia reopened the border to Georgian freight in 2013, resulting in the resumption of Georgian exports of wine and mineral water.

The EU is one of Georgia's largest trade partners, accounting for 19% of agri-food exports and 22% of agri-food imports in 2017 (Kakulia and Deisadze, 2018). In 2012, the government embarked on a series of reforms seeking to approximate EU standards and legislation across a range of different areas. These efforts culminated with the signing of an Association Agreement between the EU and Georgia in June 2014. As part of the Association Agreement, a Deep and Comprehensive Free Trade Area (DCFTA) was set up in September 2014, resulting in the removal of all import duties on agricultural products by both parties. The increased market access led to a sharp increase in the exports of some Georgian agri-food products: exports of hazelnuts and fruit juices more than doubled in the six-month period following the introduction of the DCFTA (European Commission, 2015).

Georgia has undertaken an impressive range of reform initiatives to streamline, liberalise and simplify trade regulations and their implementation. Customs regulations and trade facilitation measures have improved steadily over the past decade, helping to position the country as a regional logistics and transit hub linking Europe and Asia via the Caucasus. In addition to reducing the time and cost of importing and exporting, the government has opened several customs clearance zones to support businesses with filling out customs declarations, customs clearance, examination and inspection services, issuing certificates and permits, and other trade facilitation services. Georgia ranked 45th out of 190 economies in the World Bank's Doing Business assessment of *Trading across Borders* in 2020. The country's score is above the average for the Europe and Central Asia region, but below the average for OECD high-income countries (**Error! Reference source not found.**). The government also adhered to the WTO Trade Facilitation Agreement in 2016, which should help to improve the movement of goods across borders and ultimately, to facilitate Georgia's integration in agri-food GVCs.

Figure 3.12. Trading across borders: international comparisons



Note: A score of 100 represents the best regulatory performance.
Source: World Bank Doing Business (2020).

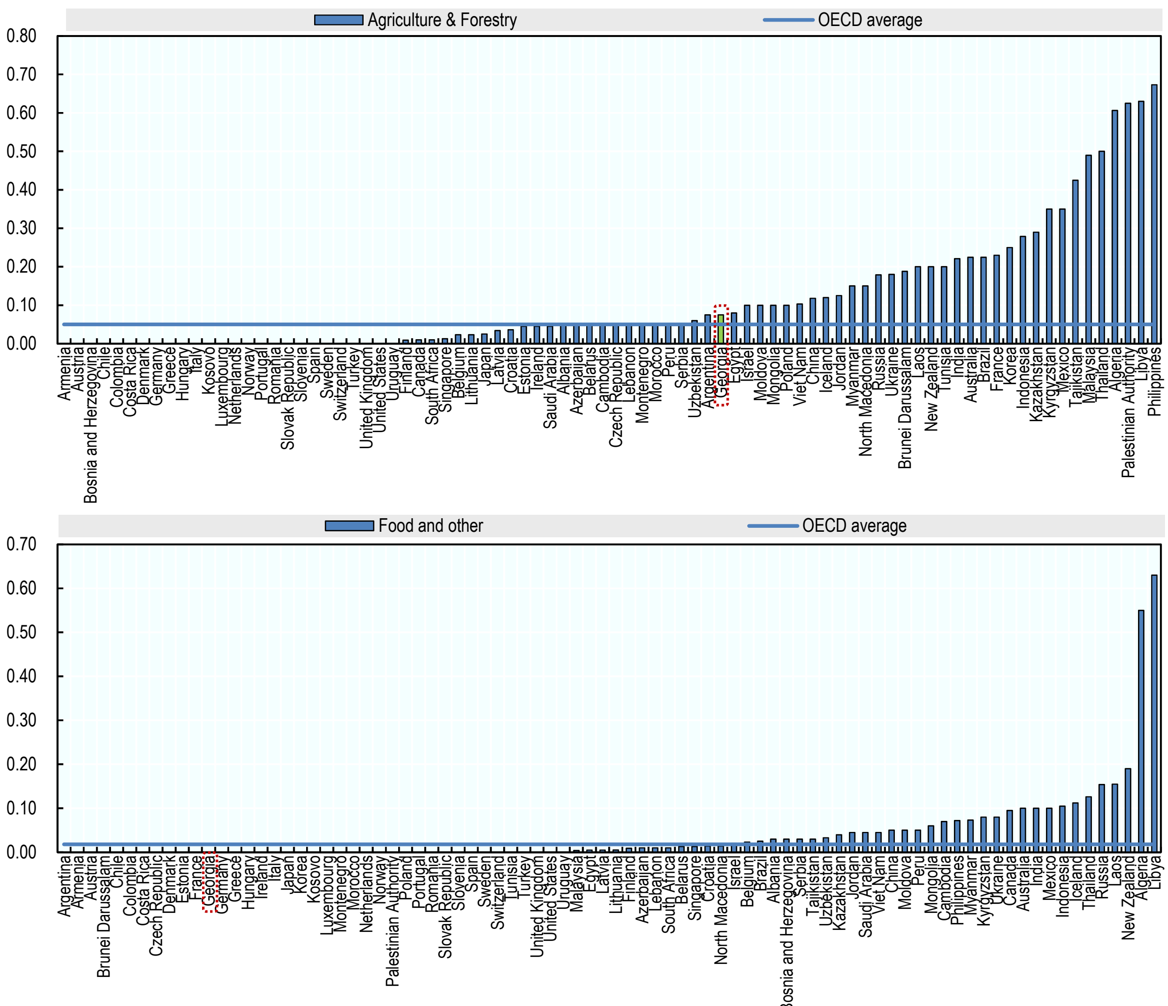
Investment restrictions in the agriculture and food sectors are low by international standards

Georgia offers a relatively open and liberal environment for investors in the agriculture and food sectors. Apart from restrictions on foreign ownership of agricultural land (discussed below), the law secures equal treatment and rights for both foreign and Georgian investors. The government does not screen foreign investment in the agriculture and food sectors; registration is the only requirement. Licenses are not mandatory for agricultural and food processing firms, as the government has eliminated licensing requirements in nearly all sectors, with the exception of those that may affect public health, national security and the financial sector (WTO, 2016).

Investment restrictions in agriculture and forestry, when measured using the OECD's FDI Regulatory Restrictiveness Index, are slightly higher than the OECD average, but still significantly lower than the restrictions observed in many non-OECD countries. The food processing sector is open for foreign investment and not subject to any statutory restrictions (**Error! Reference source not found.**).

Figure 3.13. FDI restrictions in agriculture and food

OECD FDI Regulatory Restrictiveness Index, 2019



Note: Open = 0; Closed = 1.
Source: OECD.Stat (2020).

Reforms restricting foreign ownership of agricultural land in Georgia have sparked considerable controversy in recent years. In June 2013, the Parliament introduced a temporary legal ban restricting foreigners (and Georgian entities with foreign minority shareholders) from purchasing or inheriting agricultural land. The ban, which was due to last until December 2014, was declared unconstitutional and suspended by the Constitutional Court in June 2014. The government also passed amendments to the land legislation in February 2014, establishing a government-appointed commission to screen foreign purchases of agricultural land on a case-by-case basis.

Parliamentary debate on the issue continued and in June 2017, an amendment was made to the *Law on Agricultural Land Ownership* re-introducing the ban preventing foreigners, legal entities registered abroad, and legal entities registered by foreigners in Georgia from purchasing agricultural land. The amendment was designed as a temporary measure, to be put in place until a new Constitution entered into force. The new Constitution was adopted In December 2018, specifying under Article 19 that *“agricultural land may* *be owned only by the State, a self-governing unit, a citizen of Georgia or an association of citizens of Georgia"* (Parliament of Georgia, 2018). The new Constitution also states, *"Exceptional cases may be determined by the organic law, which shall be adopted by a majority of at least two thirds of the total number of the Members of Parliament."* This clause paved the way for the preparation of a new law on agricultural land ownership.

After much deliberation, the *Organic Law of Georgia on Agricultural Land Ownership* was adopted on 25 June 2019. While the new law does not allow foreign-registered legal entities to own agricultural land in Georgia, it does specify two exceptional circumstances under which foreigners may be entitled to own agricultural land. The first allows foreign citizens to receive agricultural land as an inheritance. The second applies to legal entities registered in Georgia, whose "dominant partner"[2] is owned and controlled by a foreigner. In such cases, the foreign-owned or foreign-controlled Georgian company may be granted permission by the government to purchase agricultural land on the basis of an investment plan. According to the new law, an investment plan should specify how an agricultural land parcel would be used to support agricultural production, new innovative activities, tourism infrastructure, or important projects that help to protect national security or support job creation (Parliament of Georgia, 2019).

Restrictions on foreign ownership of agricultural land have been a contentious topic in recent years, partly because they had the unintended consequence of reducing access to finance for small-scale farmers. With the largest banks in Georgia being mostly foreign-owned, the restrictions prevented them from seizing mortgaged land from borrowers that had defaulted on their loans. As a result, many smallholders were unable to obtain financing, as banks refused to accept their land holdings as collateral.[3] The new law helps to assuage some of these concerns, by stating that the restrictions do not apply to banks and other financial institutions that obtain ownership rights for agricultural land by undertaking activities permitted by Georgian legislation, *"including in case of acquisition of collateral by a creditor"* (Parliament of Georgia, 2019).

During previous reforms to the legislation on land ownership, a number of groups expressed concerns that the restrictions might affect Georgia's ability to attract FDI in the agri-food value chain. The reforms were seen as an impediment to the operations of foreign businesses, with the added uncertainty having a negative impact on investor sentiment (Transparency International Georgia, 2014; Lomsadze, 2017; Bacchi, 2019). A stable policy framework was therefore necessary to encourage foreign investment and reap the full benefits of the finance, skills and training provided by foreign companies.

Evidence suggests that secure and well-defined land rights (either ownership or lease rights) have a positive influence on the foreign investment decisions of agri-food MNEs (Punthakey, 2020). In particular, strong protection of land tenure and land rights can provide businesses with the confidence to make long-term investments to improve the productivity and sustainability of their land holdings. At the same time, adequate safeguards are needed to protect the legitimate tenure rights of small-scale producers and rural communities. The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* provide guidance for policy makers to promote secure tenure rights and equitable access to land, fisheries and forests (FAO, 2012).

A well-functioning market for agricultural land could help to encourage investment

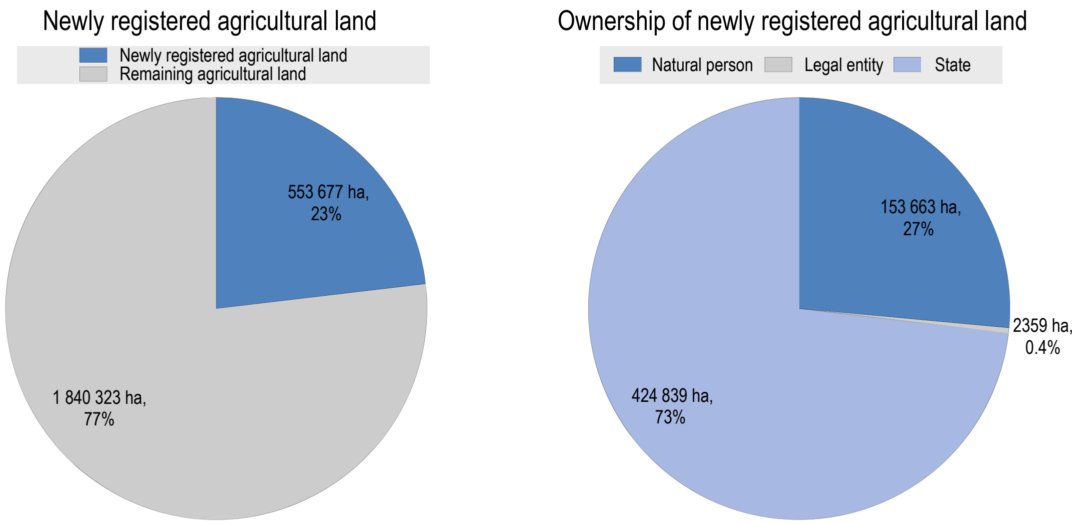
Georgia is endowed with 6.9 million hectares of land, of which 2.4 million hectares (about 34%) is classified as agricultural. However, only a portion of this land is currently in use: according to the 2014 Agricultural Census, there were 571 900 households and 2 200 legal entities operating on 787 700 hectares of agricultural land. The average farm size was 1.4 hectares in October 2014, with 77% of farms operating on land holdings less than 1 hectare in size (utilising 21.5% of the total area of operated agricultural land) (Geostat, 2016).

Fragmentation of land holdings is one of the root causes of low productivity and a key issue faced by both domestic and foreign investors in the agri-food value chain. As a result, there are very few large-scale FDI projects in Georgia's agri-food value chain. In 2014, two investors (Ferrero/Agri Georgia and TR Georgia) collectively owned about 11 000 hectares of land, accounting for two-thirds of the total area of foreign-owned agricultural land (Transparency International Georgia, 2014). Furthermore, many of the micro-sized land plots in Georgia are cultivated using outdated methods, and a significant number of plots are not cultivated at all. Some degree of consolidation is therefore necessary to allow farm holdings to benefit from economies of scale, attract investment in the value chain and foster the development of commercial agriculture.

The fragmented farm structure dates back to Georgia's transition from the Soviet Union. In 1992 and 1993, agricultural land was divided into micro-sized plots and distributed amongst the rural population, with approximately 760 000 hectares of agricultural land transferred into private ownership (Millns, 2013). However, much of this land was unregistered and land property rights in rural areas remained largely informal for many years. A first attempt at land registration began in the late 1990s, but encountered substantial difficulties due to the lack of a functioning land cadastre and heavy reliance on outdated maps of villages and municipalities. A more formal land registration process based on a new cadastre began a decade later, registering over 1.2 million hectares of land between 2008 and 2016 (Kochlamazashvili, 2019; NAPR, 2019).

A new land registration reform commenced in 2016, led by the National Agency of Public Registry (NAPR) under the Ministry of Justice. The reform aims to achieve full coverage of the country's land resources, improved accuracy and quality of data, and clear land titles guaranteeing property rights. The Land Registration Reform Act was adopted on 1 August 2016, simplifying procedures and making land registration more accessible to citizens. In particular, NAPR developed a "one-stop-shop" to provide landowners with free access to a variety of registration services upon submission of the relevant documents pertaining to their land plots (NAPR, 2019). Between August 2016 and September 2019, over 550 000 hectares, or 23% of Georgia's total stock of agricultural land, was registered by NAPR. Looking at the ownership structure of this land, however, it becomes apparent that the vast majority (73%) of newly registered agricultural land is state-owned (**Error! Reference source not found.**). The National Agency of State Property (NASP) is responsible for privatising state-owned lands and leasing agricultural land belonging to the state. Initially, measures taken by the NASP to register state-owned land triggered some disputes with rural landowners. To avoid the risk of further disputes, the NASP has decided to wait until all privately owned land plots are registered, before continuing with the registration of state-owned land.

Figure 3.14. Progress in the registration of agricultural land



Note: Includes land registered between August 2016 and September 2019.
Source: NAPR (2019).

The reform undertaken by the NAPR relies primarily on a *sporadic* approach to land registration, with voluntary participation by landowners. A *systematic* approach, whereby the government directly approaches landowners to register their parcels, has also been piloted in twelve settlements across Georgia, although a recent study by the ISET Policy Institute found that many small-scale farmers do not wish to register their land plots (Kochlamazashvili, 2019). A number of the surveyed farmers were afraid that registration would lead to the loss of social benefits, being subject to taxation, or disputes over the boundaries of their land. Furthermore, some overly indebted landowners expressed fears that registration could result in their land holdings being seized by creditors. The study also observed a general lack of awareness and understanding of the reform amongst rural inhabitants.

A comprehensive land register can facilitate land consolidation and support the development of a transparent and well-functioning market for agricultural land. The study conducted by the ISET Policy Institute suggests that a *systematic* approach may be needed to ensure completion of the land registration reform. Such an approach could be combined with information campaigns to raise awareness in rural communities and improve the public's understanding of the importance of the reform (Kochlamazashvili, Kakulia and Deisadze, 2018). Greater progress on the registration of state-owned lands may also be necessary, particularly if the pace of *sporadic* (i.e. voluntary) land registration slows considerably.

In 2020, MEPA plans to spend GEL 2.4 million on establishing a national agency for sustainable land management and land use monitoring. The agency will employ 70 people and will be in charge of developing an agricultural land policy, collecting data on agricultural land use, and establishing a unified land database (Georgia Today, 2019). Having a complete land register could improve the security of land tenure, strengthen spatial land-use planning and the management of state-owned lands, and help the government to identify new land plots for prospective investors (World Bank, 2018). Furthermore, increased investment in agricultural land can lead to higher land valuations, providing small-scale producers with opportunities to use their land as collateral and to lease, sell or invest in their land.

There is scope to enhance access to finance in the agri-food value chain

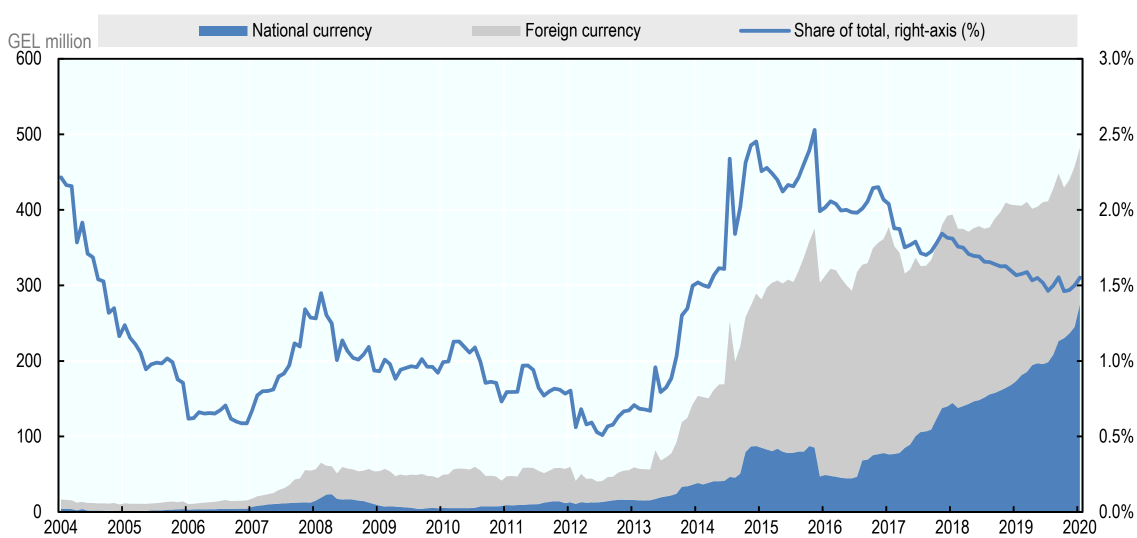
Investors in the agri-food value chain can benefit from well-functioning financial markets with adequate competition in financial services. A transparent regulatory framework with clearly defined and well-enforced rights of borrowers, creditors and shareholders is essential to encourage lending by financial intermediaries. Microfinance organisations and other non-bank financial institutions can complement the formal banking sector, by providing credit to smallholders in remote areas that do not meet banks' lending requirements. Other supply-side measures, such as leasing contracts, factoring, and credit guarantee schemes, can also improve access to finance. On the demand side, financial literacy programmes can help small-scale producers to evaluate available financing options more effectively, leading to increased uptake of financial services (OECD, 2014).

Georgia has made important progress in strengthening access to finance in recent years. The legal and regulatory framework is well developed with adequate protection of creditors' rights, and capital requirement regulations are in line with Basel III. Efforts have also been made to strengthen minority shareholder rights and insolvency procedures. The coverage of the private credit information bureau has expanded to cover 100% of Georgia's population, and now includes data on non-bank financial institutions, retailers and utility providers (OECD/European Union/EBRD/ETF, 2020). The new law on agricultural land ownership adopted on 25 June 2019 (described above) allows for the use of land as collateral, which should facilitate access to credit from formal financial institutions.

Commercial lending to agriculture has expanded significantly since 2013, albeit from a low base (**Error! Reference source not found.**). Fast growth in domestic currency lending led to a substantial reduction in the share of foreign currency loans, from 85% in July 2016 to 43% in January 2020. The agricultural sector's share of total bank lending has fluctuated between 0.5% and 2.5% over the past two decades, which is substantially lower than its contribution to GDP. This reflects an overall reluctance on the part of the banking sector to lend to agricultural enterprises.

Figure 3.15. Commercial lending to the agricultural sector

Stock of commercial bank loans to agriculture, forestry and fishing, January 2004 – January 2020

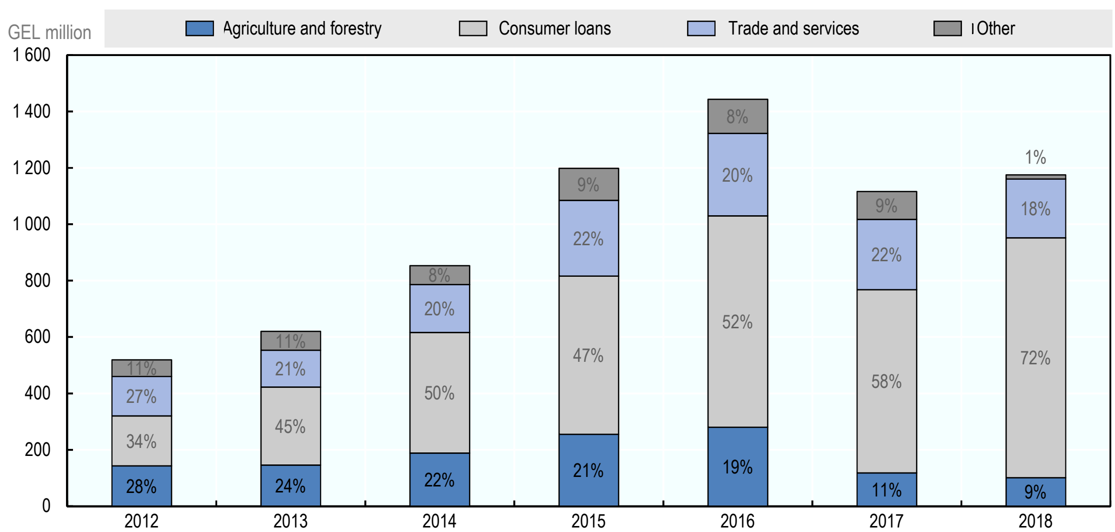


Note: "Share of total" represents the share of "Agriculture, forestry and fishing" in total commercial bank lending.
Source: National Bank of Georgia (2020).

The non-bank financial sector includes 67 microfinance organisations and two credit unions (as of 31 December 2018). Microfinance organisations provided GEL 101 million of loans to agriculture and forestry in 2018, which amounted to 9% of the total credit portfolio. This represents a significant reduction from the levels observed in 2012, when the sector attracted GEL 143 million of loans and accounted for 28% of lending (**Error! Reference source not found.**). The National Bank of Georgia has strengthened the regulation and supervision of the non-bank financial sector, by introducing more stringent registration requirements for microfinance organisations and by making it mandatory for them to provide information about their sources of capital (National Bank of Georgia, 2019). Whilst regulatory standards should facilitate the provision of small-scale rural financial services, policies should also ensure that the sector has sufficient capabilities to limit systemic risk (OECD, 2014).

Figure 3.16. Lending by microfinance organisations

Structure of the microfinance credit portfolio, 2012-2018



Source: National Bank of Georgia (2019).

In spite of fast credit growth and ample liquidity in the banking and non-bank financial sectors, the level of dollarisation remains significant, which can be problematic for smallholders and agri-food SMEs, as they are unlikely to be hedged against foreign exchange risks. To help alleviate financial difficulties associated with currency fluctuations, the government introduced a programme to support the “larisation” of loans in January 2017. Citizens were given an opportunity to convert their US Dollar denominated loans to Georgian Lari at a preferential rate, and the government decreed that all loans of less than GEL 100 000 could no longer be issued in foreign currency. Consequently, the dollarisation rate of the microfinance credit portfolio fell from 54% in 2016 to 16% in 2018 (National Bank of Georgia, 2019).

Public financial support programmes are mostly channelled through the Agricultural and Rural Development Agency (ARDA), an implementing agency under the Ministry of Environmental Protection and Agriculture (MEPA). ARDA receives the largest share of MEPA’s funding: in 2020, the agency will be allocated GEL 143 million, or 41% of the Ministry’s total budget[4] (Georgia Today, 2019). **Error! Reference source not found.** outlines the main financial support programmes provided by ARDA to farmers and companies in the agri-food value chain. The majority of funding goes to the *Preferential Agrocredit Project,* which was allocated GEL 74 million in 2020 (about 52% of ARDA’s budget).

Box 3.2. The Agricultural and Rural Development Agency (ARDA)

The Agricultural and Rural Development Agency (ARDA) is an implementing agency under the Ministry of Environmental Protection and Agriculture of Georgia (MEPA). Some of the main support programmes provided by ARDA include:

- *Plant the Future:* Financial and technical assistance is provided to growers of perennial crops (e.g. berries, fruits, nuts) and nursery gardens. Co-financing is provided for purchases of saplings of perennial plants and the installation of modern drip irrigation systems.
- *Georgian Tea Plantation Rehabilitation Programme:* Co-financing is available for rehabilitation works on tea plantations.
- *Improving Rural Development in Georgia:* Implemented with funding from the EU's ENPARD programme, this programme provides co-financing to businesses for non-agricultural activities that support economic diversification and job creation in rural municipalities.
- *Programmes to Support the Development of Agricultural Co-operatives:* Includes co-financing of equipment, machinery, branding, and other expenses of agricultural co-operatives.
- *Young Entrepreneur:* Implemented with support from the Danish International Development Agency (DANIDA), a combination of financial support (co-financing) and technical assistance is provided to young entrepreneurs in rural areas, primarily for agricultural business activities.
- *Co-financing of Agro Processing and Storage Enterprises:* Co-financing and preferential lending/leasing is provided for new food processing plants and storage enterprises.
- *Programme of Agro-production Promotion:* Co-financing is provided to individual farmers, food processing plants and agricultural co-operatives, to support productivity and quality improvements, the expansion and modernisation of facilities, and the implementation of international standards. The programme is funded by the International Fund for Agricultural Development (IFAD) and the Global Environment Facility (GEF).
- *Preferential Agrocredit Project:* Provides preferential loans or leasing to finance working capital or fixed assets for primary agricultural production, processing and storage companies.
- *Agroinsurance:* This programme aims to develop a market for agricultural insurance in Georgia, by providing farmers with subsidised insurance premiums.

Source: ARDA (2020).

Enterprise Georgia also provides support to agri-food SMEs, via the "Produce in Georgia" programme. Launched in 2014 with a budget of USD 27 million, the programme provides businesses with financing, real estate, and consulting services. Enterprise Georgia works with the NASP to identify available state-owned land plots, and transfers them to prospective investors free of charge (conditional on their meeting certain investment obligations). Between May 2014 and May 2018, the programme provided financing for 17 food processing enterprises, creating 805 jobs and generating GEL 118 million of investment (including loans issued by commercial banks and additional investments made by beneficiaries) (OECD, 2019c).

The EU is a major donor providing financial and technical assistance to the agri-food value chain through ENPARD. With a budget of EUR 180 million over the period 2013-2022, the programme has allocated significant resources to finance rural development projects and local business initiatives across Georgia. An important objective of ENPARD is to strengthen co-operation amongst small farmers, and the programme has provided more than 280 co-operatives with direct funding and technical assistance.

The Partnership Fund is a state-run investment fund established in 2011 to facilitate private investment in Georgia by providing co-financing for new projects in key strategic sectors (including agriculture, energy, manufacturing, real estate, tourism, infrastructure and logistics). To date, the Partnership Fund has supported five projects in the agri-food value chain (**Error! Reference source not found.**).

Table 3.2. The Partnership Fund: support for agri-food investment projects

Project	Description	Partner	Date/Status	Cost
Georgian Mountain Pig Breeding Farm	Construction of a pig breeding farm and modern meat processing plant	DeRaza ibérico (Spain)	Ongoing, 5-7 years	USD 700 000
Greenhouse "Imereti Greener"	Production of lettuce and high quality vegetables with modern Dutch technology	FoodVentures BV (Netherlands)	June 2016	USD 4.8 million
Blueberry plantation	Largest blueberry plantation in Georgia	Vanrik Agro (Georgia)	February 2015	USD 6.7 million
Livestock complex "Kalanda"	Pig breeding farm equipped with modern machinery	Geopharm (Georgia)	June 2013	USD 10.3 million
Georgian Tea Rehabilitation Project	Establishment and restoration of tea plantations	Beijing Jinfenghengye Agricultural Development Co. Ltd. (China)	Ongoing, 12 years	USD 500 million

Source: Georgia Today (2018); Partnership Fund (2020).

Whilst the government has established the foundations for lending in the agri-food value chain, more can be done to address underlying weaknesses in financial markets. Beyond the provision of co-financing and concessional loans, a greater emphasis on supply chain linkages (explored in detail in the next section) could provide a more sustainable solution to existing credit constraints in the sector. In addition, measures to reduce some of the risks inherent in agriculture are necessary to encourage greater engagement between financial institutions and the agri-food value chain. Market-based instruments such as credit guarantees could be developed and targeted to exporters operating under long-term supply contracts, helping to reduce lending risks to commercially acceptable levels. Greater investment in early warning and prevention systems could help to mitigate weather-related risks (World Bank, 2018). Finally, capital market financing remains underdeveloped in Georgia. Over the long run, the government should work to establish transparent and liquid capital markets that can act as a financing channel for medium and large-scale agri-food investors.

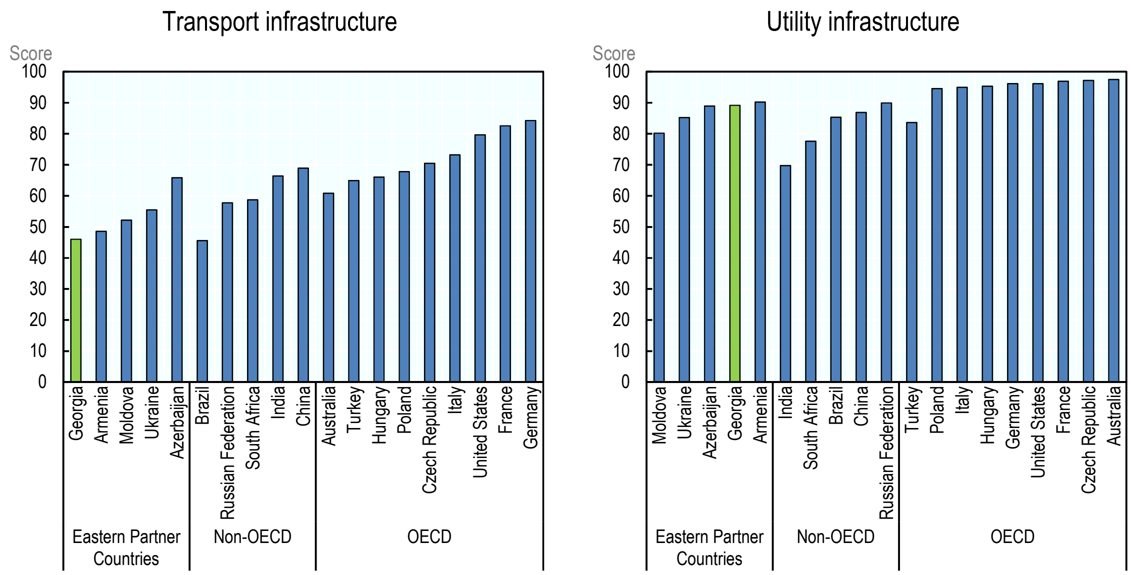
Further improvements to infrastructure and logistics services are needed

Investors require well-developed infrastructure, including access to reliable road networks, energy supplies, and information and communication technologies (ICTs). In the agri-food value chain, rural road networks play an essential role in connecting farmers to markets and supporting integration in GVCs. Reliable transport and storage infrastructure can facilitate the development of value chains, by reducing post-harvest losses and linking agricultural production in remote rural areas with domestic and international markets. Well-maintained and efficient irrigation networks can reduce the risks of chronic water shortages and provide an important channel for agricultural productivity improvements (OECD, 2014). Furthermore, ensuring affordable access to ICTs in rural areas can provide farmers with real-time information on food prices and weather conditions, improve the reach of early-warning systems, and facilitate the adoption of new digital technologies and innovations in the agri-food value chain.

The quality of Georgia's existing infrastructure varies significantly. Transport infrastructure ranks amongst the poorest in the region, whilst utility infrastructure is relatively well developed (**Error! Reference source not found.**). Improvements to the major road and railway routes have helped to strengthen transport connectivity, but substantial deficiencies remain. Major transport corridors have limited capacity to allow for increased traffic, and seasonal port congestion is a recurring issue. Internal connectivity is also weak, with one third of secondary and half of local roads in poor condition (World Bank, 2018). Underdeveloped rural road networks prevent farmers from connecting with local and regional markets and are a significant constraint for investors in the agri-food value chain. Improving transport connections between urban and rural areas can foster both agricultural and non-agricultural activities, generating improved living standards in rural areas.

Figure 3.17. Quality of infrastructure: international comparisons

World Economic Forum Global Competitiveness Report indicators, 2019

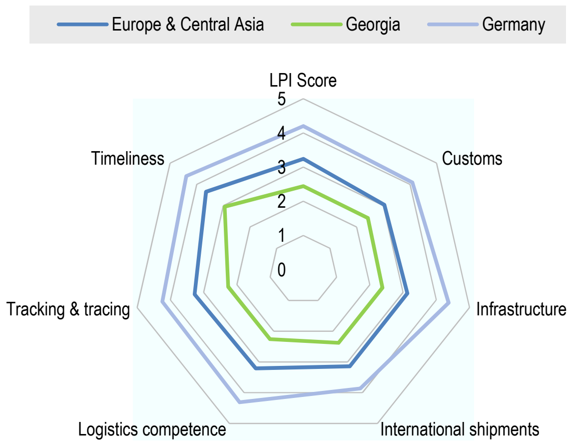


Source: WEF (2019).

The quality of a country's logistics services, and its efficiency in moving physical goods both across and within its borders, are key determinants of its ability to participate in agri-food GVCs. Georgia performs poorly in the World Bank's Logistics Performance Index, reflecting the limited capacity of its transport infrastructure and low efficiency of logistics providers (**Error! Reference source not found.**). Georgia's scores were lower than the average for the Europe & Central Asia region across all sub-dimensions of the index, and significantly lower than Germany, which was the top performer in 2018. The areas where Georgia has the greatest room for improvement include the ability to track and trace consignments (ranked 139th), the competence and quality of logistics services, such as transport operators and customs brokers (132nd), and the ease of arranging competitively priced international shipments (124th). Addressing these "soft" constraints is a necessary precondition for Georgia to realise the benefits of greater investments in physical infrastructure.

Figure 3.18. Logistics Performance

World Bank Logistics Performance Index, 2018



Source: World Bank Logistics Performance Index (2018).

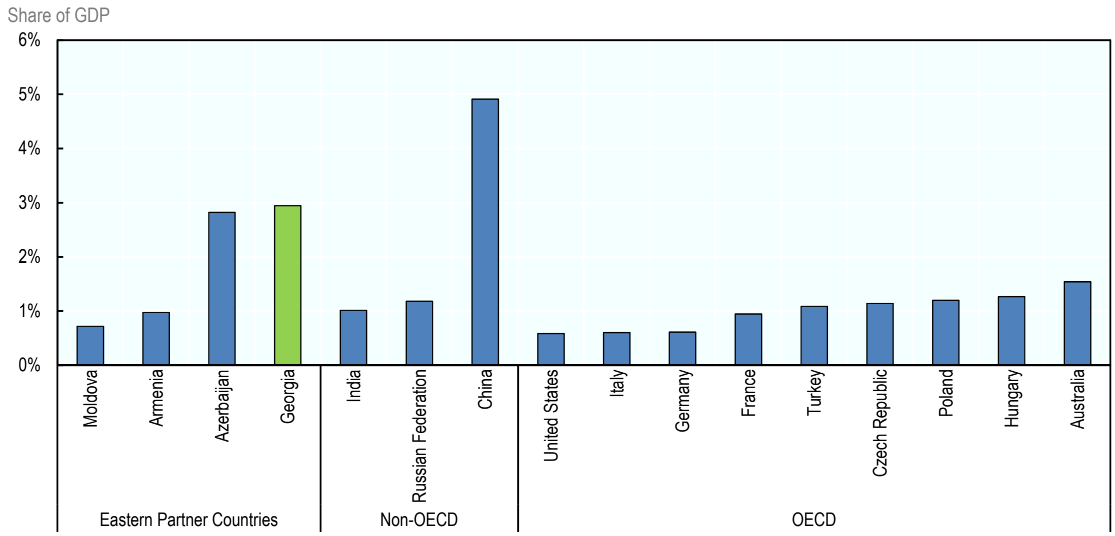
Georgia's total investment in inland transport infrastructure averaged 2.9% of GDP over the decade from 2008 to 2017 (**Error! Reference source not found.**). This was comparable with neighbouring Azerbaijan, but three times higher than Armenia and four times higher than the levels recorded in Moldova. Georgia's infrastructure investment as a share of GDP also surpassed the levels observed in a number of OECD member and non-member countries. The only exception was China, where infrastructure investment averaged 4.9% of GDP.

These figures take account of all sources of financing and mask the growing financing gap in Georgia's infrastructure sector. Around 75% of road infrastructure investment is financed by development partners, and there is little to no participation from the private sector. According to the World Bank (2018), the government currently spends about half of what is needed to support the maintenance and rehabilitation of secondary and local roads. The additional costs and delays resulting from weak internal connectivity also limit Georgia's potential to realise the gains from larger-scale infrastructure investments.

Attracting private investment could therefore be an effective way to address fiscal constraints, improve the provision of transport infrastructure, and support the maintenance of rural road networks. In addition to developing new financing mechanisms, institutional capacities to plan and manage infrastructure projects could be strengthened significantly. When implementing public-private partnerships (PPPs), the government can play an important role in developing projects, analysing risks and returns, bringing projects to market and supervising their implementation. A strong regulatory framework that effectively balances risks between the public and private sectors is crucial to minimise potential contingent liabilities for the public sector (World Bank, 2018).

Figure 3.19. Transport infrastructure investment: international comparisons

Total investment in inland transport infrastructure as a share of GDP, 2008-2017



Note: Inland infrastructure investment covers spending on new transport construction and improvements to the existing network of road, rail, inland waterways, maritime ports and airports. 2017 data not available for Armenia, India and Italy. 2015-2017 data not available for Moldova.
Source: ITF (2019).

Further investments in irrigation and drainage systems are necessary to support the growing production of high-value food products, such as fruits and vegetables. The total area of irrigated lands amounted to 400 000 hectares during the Soviet period, but declined precipitously to 160 000 hectares by 2000. A lack of resources and poor management by inexperienced government-owned corporations led to further declines, with the total irrigated area dropping to 40 000 hectares in 2014.

A new reform effort began in late 2012, resulting in a significant increase in government funding for the rehabilitation of irrigation infrastructure. The Georgian Amelioration Company, which owns and manages the public irrigation infrastructure in Georgia, developed an *Irrigation Strategy for Georgia 2017-2025* with support from the World Bank. The strategy aims to modernise the irrigation infrastructure and boost the area of irrigated lands to 200 000 hectares by 2025. Furthermore, it plans to remodel the Georgian Amelioration Company into a professional and financially sustainable irrigation service provider, with data-based management and decision-making, a new irrigation tariff system, and local-level management entities as its clients. A formal system for water resource allocation is currently lacking in Georgia (Georgian Amelioration Company, 2017). A new law was drafted in 2015 with the aim of re-establishing a water permitting system in the country, but its adoption has been delayed.

Investors in Georgia’s agri-food value chain also face an acute shortage of storage infrastructure and sorting facilities. The lack of functioning cold chains, specialised food industry logistics and other forms of value chain infrastructure generates added costs for businesses. PPPs in value chain infrastructure are currently not commercially viable, but could become feasible with improvements to irrigation infrastructure and other supporting services (World Bank, 2018).

Access to affordable and reliable ICT infrastructure has improved substantially in recent years, but many rural areas are still poorly connected, preventing the diffusion of knowledge and the adoption of new productivity-enhancing production practices. Improving mobile phone coverage and internet access in rural areas can play an essential role in improving the competitiveness and resilience of Georgia’s agri-food value chain, by providing farmers with real-time information on food prices and weather conditions, improving the reach of early-warning systems, and facilitating the adoption of new digital technologies and innovative production practices.

3.3. Strengthening supply chain linkages in the agri-food value chain

Investors in the agri-food value chain often build close relationships with local suppliers, bringing new technologies and improved production practices to local farmers and SMEs. As the production of agri-food products becomes increasingly distributed across the globe, SMEs have greater opportunities to participate in agri-food GVCs, by establishing supply chain linkages with foreign investors. Countries can encourage these positive spillovers from agri-food MNEs by introducing a comprehensive regulatory framework for contract farming and system of contract enforcement, ensuring strong capabilities amongst domestic firms, building highly integrated domestic supply chains, and developing an organised base of local suppliers (Punthakey, 2020).

Georgian farmers and agricultural SMEs face difficulties establishing supply chain linkages, and tend to prefer spot market transactions to the establishment of longer-term supplier relationships with large-scale food processing and retail enterprises. This is reflected in the World Economic Forum's Global Competitiveness Report 2017-2018, which ranked Georgia at 129th out of 137 economies in local supplier quantity, 115th in local supplier quality, and 127th in the state of cluster development (WEF, 2017). Furthermore, USAID (2014) conducted a survey of eight foreign investors in Georgia's agri-food value chain, and identified the "quality and range of suppliers and business services" as the most binding challenge and constraint in the local business environment. According to the authors of the study, the issue is so severe that many investors are forced to vertically integrate and become self-sufficient in input supply and distribution. The study nonetheless cites some examples of foreign investors that have successfully established supply chain linkages with agri-food SMEs:

- Ferrero and its subsidiary AgriGeorgia trained thousands of hazelnut growers in the Samegrelo region, promoting modern cultivation and post-harvest handling methods. The programme was implemented with support from USAID, and resulted in the establishment of the Georgian Association of Hazelnut Growers.
- Hipp Georgia developed a supply chain of over 1000 certified small-scale apple growers adhering to a rigorous organic quality assurance regime.
- Marneuli Food Factory, through its sister company Marneuli Agro, has established long-term supplier relationships with more than 150 small and medium-sized farmers. The firm helps to improve the productivity of its suppliers by recommending seeds and providing technical support to its suppliers.

In 2017-18, the UK's Good Governance Fund initiated a pilot project with Enterprise Georgia to establish linkages between MNEs and SMEs operating in the hotels, restaurants and catering sector. The project began with an assessment phase to identify MNEs that were willing to deepen their engagement with local SMEs, and select SMEs with relevant products and the potential to act as suppliers for MNEs. During the pilot implementation phase, training and coaching programmes were designed to boost the capacities of eligible SMEs, and a matchmaking event was organised to facilitate business meetings between SMEs and MNEs. The pilot project demonstrated some initial success in establishing linkages in the agri-food value chain. As a result, the project team recommended that the government provide specialised training to SMEs, organise exhibitions and matchmaking events, and develop an online database of SMEs with the potential to supply MNEs (Good Governance Fund, 2019).

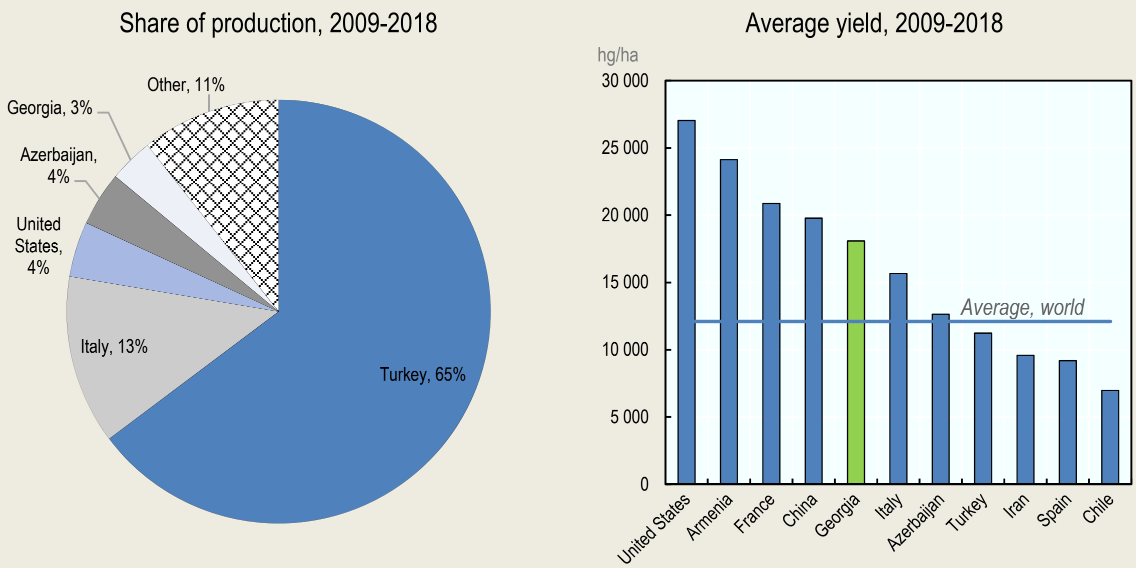
Efforts to establish linkages with food processors and retailers can be particularly beneficial for small-scale producers of high-value food products. **Error! Reference source not found.** provides an insight into the importance of supply chain linkages in Georgia's hazelnut value chain.

Box 3.3. The Hazelnut Value Chain in Georgia

Georgia is the 5th largest producer of hazelnuts in the world, accounting for 3% of global production between 2009 and 2018. Yields are higher than neighbouring Turkey and well above the global average, but still show considerable room for improvement (**Error! Reference source not found.**). According to the 2014 Agricultural Census, approximately 107 000 Georgian households are involved in the production of hazelnuts.

Most of Georgia's hazelnuts are destined for export markets in the EU. Hazelnut exports have dropped sharply in recent years, from USD 179 million in 2016 to USD 57 million in 2018 (Geostat, 2019b). This was primarily due to a series of bad harvests caused by unfavourable weather conditions, the onset of various fungal diseases, and the Brown Marmorated Stink Bug (*Halyamorpha halys*) invasion.

Figure 3.20. Global production and yield of hazelnuts



Source: FAOSTAT (2020).

The ISET Policy Institute recently conducted a "Study on Private Service Providers in the Organic Hazelnut Value Chain in Georgia". The study identified a number of challenges for the sector, including limited awareness amongst farmers of the importance of laboratory services, soil analysis and pruning practices, a lack of machinery services, limited access to finance, a lack of qualified agronomists and consultants, and a lack of trust between different actors in the value chain. Three key recommendations were provided:

- Increase trust between value chain actors (e.g. by hiring qualified agronomists in each village, establishing drying and storage centres).
- Enhance value chain financing (e.g. through contract farming and linkages between processing companies, farmers, extension providers and microfinance institutions).
- Create partnerships and strengthen the dual education system to create a pool of knowledgeable and skilled young farmers and agronomists.

Source: Kakulia and Deisadze (2018); Katsia and Deisadze (2018).

Boosting the capacities of agri-food SMEs could help to facilitate linkages

Georgia has progressed in the *Enforcing Contracts* indicator of the World Bank's Doing Business assessment, ranking 12th in 2020 (vs. 23rd in 2015). This suggests that the regulatory framework for resolving commercial disputes is well developed, with a relatively fast and cost-effective court system. However, farmers rarely enter into formal contracts with large-scale processors and retailers and often renege on supply contracts when higher prices are offered on local markets, sacrificing long-term relationships for short-term gains. Food processors in turn complain that local producers are unable to meet their strict quality requirements, produce in sufficient volumes, or deliver produce in a timely fashion. Further assistance could be provided to encourage large-scale processors to build the capacities of their suppliers, by providing cash, inputs and technical assistance in exchange for product supply.

Co-operatives can help to connect small-scale producers with larger players in the value chain, whilst mitigating some of the challenges associated with Georgia's highly fragmented farm structure. An Agricultural Co-operatives Development Agency was established with support from the FAO and is currently managed by ARDA. Most agricultural co-operatives are eligible for the concessional loans and co-financing programmes provided by ARDA. The government can play an important role in encouraging food processors and retailers to establish supply chain linkages, by offering land or tax concessions to prospective investors conditional on their engagement with small-scale producers and co-operatives. Well-structured PPPs can also help to integrate farmers in agri-food value chains, whilst taking full advantages of the economic opportunities offered by investors.

Agri-food SMEs in Georgia suffer from a lack of specialised human capital (e.g. skilled agronomists, veterinarians, food safety specialists, laboratory technicians and other specialists). The government should ensure that agri-food SMEs are able to benefit from well-resourced and functioning agricultural training institutes, extension services and vocational training systems. Well-trained extension workers can provide technical advice to SMEs and support the dissemination of new technologies, improving their ability to respond to the needs of large agricultural investors. Targeted incentives for supplier engagement can be an effective tool, but must be accompanied by credible efforts to develop SME skills and capabilities in areas such as cultivation, post-harvest treatment, packaging and transportation.

More can be done to improve food safety and quality standards

The inability of Georgian farmers to provide a stable supply of high-quality products contributes to the lack of trust between actors in the agri-food value chain. Producers often lack the necessary skills and resources to comply with stringent food safety and quality standards, such as those imposed by the EU. As part of the EU Association Agreement and DCFTA, the EU has provided support for reforms to Georgia's rules on animal and plant health and hygiene. These initiatives have helped to improve the safety of Georgian food products and open up new export opportunities in the EU and other markets with strict food safety regulations (European Commission, 2015).

The government has taken steps to build the capacity of the National Food Agency, harmonise food safety legislation with EU legislation, and develop disease control strategies, although ensuring compliance with food safety and quality standards is an ongoing challenge. Measures are needed to increase Georgian farmers' awareness of food safety, veterinary and phytosanitary issues, as well as the specific requirements imposed by the EU and other international markets.

Foreign investors in Georgia's agri-food value chain can play an important role in supporting local SMEs to adopt the necessary standards and certifications required to operate in international markets. Georgian subsidiaries of large-scale multinationals can benefit from access to new technologies and advanced production and management practices, allowing them to meet stringent food safety and certification requirements. Improvements in food safety and quality could have a transformative effect on Georgia's agri-food value chain, opening up new opportunities for trade and investment in international markets.

3.4. Notes

[1] Footnote by Turkey:

The information in the documents with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue"

Footnote by all the European Union Member States of the OECD and the European Union:

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in the documents relates to the area under the effective control of the Government of the Republic of Cyprus.

[2] The law defines "dominant partner" as *"a partner or a group of partners of a legal entity under private law registered in Georgia that owns more than 50 per cent of the equity/shares/units and/or constitutes a majority of the partners (in the case of partners of a general partnership or general partners (komplementars) of a limited partnership) or the founders/members (in the case of a non-entrepreneurial (non-commercial) legal entity) and, at the same time, has a practical ability to have a decisive influence on the decision of a legal entity in relation to agricultural land."* (Parliament of Georgia, 2019).

[3] See for example, Lomsadze (2017) and Bacchi (2019).

[4] According to the state budget for 2020, MEPA will receive GEL 353 million (2.4% of the total budget allocation), out of which approximately GEL 293 million (83%) will be spent on agricultural development, and GEL 60 million (17%) will be spent on environmental protection.

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4 Promoting investment in Georgia

This chapter reviews the strategy and institutional structure for investment promotion in Georgia and makes recommendations to raise the effectiveness of investment promotion in Georgia, including on the role of Enterprise Georgia and how it interacts with other agencies.

Summary and recommendations

Georgia is one of the easiest countries in which to do business, according to several international rankings. Since 2005, it has moved from 112th place in the World Bank's Doing Business indicators to 7th place worldwide, a remarkable achievement that many governments would like to emulate. As discussed in the Overview, this approach to reform relying on massive deregulation has reached its natural limits and has not yet yielded a well-diversified stock of inward investment through which to integrate in global value chains. Achieving this, along with broader goals of inclusiveness and sustainability, will require a more proactive approach which relies less on removing regulatory obstacles and more on building a coherent strategy and suitable institutional architecture. One key area in this respect is investment promotion.

A comprehensive scan of Georgia's framework for investment promotion and facilitation reveals areas for improvement to ensure investments are targeted strategically in areas that can contribute sustainably to Georgia's development. A look at the institutions promoting investment reveals a fragmented system, with different actors actively pursuing investors. While this in itself is not a weakness, the lack of strong co-ordination, starting with a single government focal point for investors leads to inefficiencies, duplication of efforts, and confusion for investors.

A central weakness in the overall system is the overlapping of investment promotion functions among various actors. Enterprise Georgia is Georgia's investment promotion agency (IPA) and well known for its support to enterprise development and export promotion. Other actors active in investment promotion include the Georgia Innovation and Technology Agency (GITA) and the Georgian Chamber of Commerce, while the Investors Council provides a platform for public-private exchanges on issues critical to investment. The Ministry of Economy and Sustainable Development is the government's line ministry in charge of investment and oversees Enterprise Georgia. Its recently created investment policy department should help address some of the co-ordination challenges. More generally, the strong Invest in Georgia brand inherited by Enterprise Georgia should be revived, which would strengthen the country's investment promotion efforts.

Georgia is ripe for a comprehensive investment strategy. Aligning all actors behind a joint vision, fostering synergies between investment, export, enterprise and innovation promotion, would allow Georgia to significantly leverage its strong points. The past 15 years have helped to build a strong governance foundation for economic growth. Georgia now needs a policy push through an investment strategy to fully achieve its potential.

Policy recommendations

- Develop a comprehensive investment strategy and policy statement

The significant investment-related reforms since 2003 have put Georgia on the map for investors, leading to numerous improvements in the business climate, taxation, innovation, financial markets and export development. Together, with the EU-Georgia Association Agreement and the associated regulatory reforms, Georgia requires a unified approach to ensure co-ordination of all these measures, as well as to align its investment objectives with efforts in other areas, such as export promotion, innovation and SME development. The Ministry of Economy and Sustainable Development and its recently created investment policy department is well placed to spearhead a new investment strategy, one that would align all related policy and regulatory measures, while also sending a strong message to the business community that the government is a partner in advancing investment reforms. The Ministry's strategy would provide the overall investment policy and direction, while Enterprise Georgia, could focus on co-ordinating the various investment promotion efforts. The subsequent recommendations will follow from the strategy.

- Strengthen the investment promotion function in Georgia

Georgia's administration and key business stakeholders, including the Chamber of Commerce and Industry, have proven their dynamism in pushing through investment and business related reforms. A number of groups active in the field of business regulation improvements and advocacy, as well as investment promotion has thus emerged over the years. Enterprise Georgia, as the official IPA, the Georgian Innovation and Technology Agency, and the Georgian Chamber of Commerce and Industry are but three major actors undertaking investment promotion. While multi-faceted initiatives to attract investment to Georgia should be encouraged, these activities need to be co-ordinated carefully. This entails clearly signalling to the business community – both domestic and international – which agency has the lead in investment promotion matters, as well as strengthening the investment promotion function and the agency's capacity. While Enterprise Georgia has seen recent additions to its investment promotion team, these efforts need to be sustained if the agency is to be the lead agency for investment promotion. Where the investment promotion function is situated, whether as part of a Ministry, within the Prime Minister's Office or as an independent IPA for example, is secondary to the need to equip it with the needed skills and resources.

- Enhance the Invest in Georgia brand

The precursor to Enterprise Georgia was Invest in Georgia which was under the Prime Minister's Office (which changed in 2017 with the merger of the IPA with Enterprise Georgia). The agency received significant recognition due to its position directly under the prime minister and Invest in Georgia became a well-known brand. While the name was kept and transformed into the country's official investment portal within Enterprise Georgia, the IPA itself lost some visibility and clout vis-à-vis investors and other relevant government agencies. The investment strategy should entail a marketing effort to accentuate the Invest in Georgia brand, which is already well known to the international business community.

- Strengthen the investment aftercare system and improve one-stop shop services

Aftercare services for investors are vital, especially in retaining investors. Attracting new investors is more challenging and costly compared to supporting reinvestment and expansion, which account for a significant share of all investments. Enterprise Georgia could improve its aftercare services for investors. The government also needs to play its role in supporting the IPA in this effort by clearly communicating to the business community that Enterprise Georgia is the main focal point in Georgia's investment promotion system to deal with investor needs. Good aftercare and policy advocacy, including transmitting investors' feedback for more effective policy making, can be the determining factor in a decision to reinvest and help address investment climate challenges. The IPA should also consider enhancing its one-stop-shop services for investors. Georgia's experience with its Public Service Hall would be informative in this regard.[1]

- Link export, innovation and investment promotion

Investment promotion can enhance participation in the global economy. The attraction of export-oriented foreign direct investment (FDI) has enabled countries to shift quickly towards a model of economic growth driven by rapidly expanding exports. The opportunities presented by the Deep and Comprehensive Free Trade Area (DCFTA) with the EU as an export market should be part of Georgia's investment promotion strategy. The efforts that Georgia has put into strengthening innovation within its business community should also be considered in the investment strategy.

- Foster FDI-SME linkages

Anchoring investors through deep linkages with the local economy is an effective investment retention strategy and can usefully complement aftercare measures. Investor targeting and aftercare services can attract investors and help keep them satisfied, but it is the broader and more sophisticated, and hence more complex, effort to strengthen the investment ecosystem that will determine a country's competitiveness. This includes providing investors with competitive local suppliers, facilitating linkages with local firms, developing the necessary hard and soft infrastructure, including institutional support, and keeping policy and macro-economic fundamentals in order. In turn, business linkages between MNEs and domestic companies, especially smaller suppliers, contribute significantly to local development. Linkages can be effective avenues for the transfer of technology, knowledge and managerial and technical skills, depending on the appropriate policy setting and absorptive capacity of domestic suppliers. Enterprise Georgia is strategically set up to support such linkages, hosting both investment and SME development functions, in addition to export development. However, given the complex task the agency already has at hand in terms of optimising the co-ordination across the functions, while strengthening each one in its own right, it should address priorities strategically. One way of starting to enhance linkages promotion would be to establish some linkages focal points in the investment promotion and enterprise promotion departments, which could identify and explore opportunities systematically.

- Set up an investment promotion governing board

Unlike most autonomous IPAs in OECD countries, Enterprise Georgia does not have a governing board. The role of boards can vary greatly from one agency to another, but they are often composed of high-level, experienced people who provide guidance and advice on strategic and management issues. They can have clear decision-making powers, such as appointing the head of the agency. A board can be a good mechanism to ensure the representation of different stakeholders in the governance of an IPA. Including senior representatives from the private sector is a good way to integrate experience and expertise from the private sector into strategic orientations. The government could envisage establishing such a board for Enterprise Georgia. This would provide it with an outsider's view to generate new ideas for collaboration and synergies within the agency, as well to identify and unlock opportunities for co-operation with other agencies and the private sector.

- Formalise strategic co-ordination for investment promotion

Overall, Enterprise Georgia would benefit from clearer terms of co-operation and mechanisms to work jointly with its key institutional partners. Currently, the agency operates on a rather ad hoc basis, without clear guidelines, shared protocols or tools, although this does not prevent the IPA from collaborating informally with GITA and the Chamber of Commerce, thanks to good relationships between agencies. Well-defined co-operation terms in strategic plans and dedicated tools such as shared information systems, processes and systematised protocols would nevertheless improve the quality of the co-operation while potentially reducing the workload thanks to efficiency gains. Enterprise Georgia is currently implementing a CRM tool and aims to share it with other agencies. This could be a decisive step to enhance the co-operation and maximise synergies between investment promotion, SME development and export, and innovation promotion.

- Strengthen investment promotion and facilitation at the sub-national level

Sub-national governments do not have formal mandates and roles in investment promotion and facilitation. According to local stakeholders however, regional governors express their interest in attracting foreign capital in their territories, and Enterprise Georgia is accompanying them in this goal. The next stage of the co-operation could be to establish focal points in the regions.

Investment promotion and facilitation structure and actors involved

The strategic and institutional framework for investment promotion and facilitation

"Produce in Georgia", the overall industrial development framework implemented by Enterprise Georgia.

Investment promotion strategies and their associated institutional arrangements, vary greatly from country to country, depending on broader economic and industrial development objectives as well as historical contexts. The degree of centralisation of the country's governance, for example, can be one of the key drivers shaping the overall investment promotion strategy, along with economic characteristics such as, for example, the sectoral composition of GDP or the maturity of the local SME sector. The OECD-IDB survey of Investment Promotion Agencies (IPAs) (Box 4.1), and recent survey reports of countries from the OECD, Latin America and the Caribbean (LAC), the Middle East and North Africa (MENA) and Eurasia, illustrate this diversity well. The OECD administered the IPA survey in Georgia in 2019 in the framework of the Eurasia Competitiveness Programme and the project "EU4Business: From Policies to Action"[2]. This review uses the results to benchmark Georgia's investment promotion strategy and institutional framework against peers from Eastern Partner countries, as well as selected OECD country agencies.

Box 4.1. The OECD-IDB survey of investment promotion agencies

The OECD and the Inter-American Development Bank (IDB) have partnered to design a comprehensive survey of IPAs. The questionnaire provides detailed data that reflect the multiple recent policy developments as well as rich and comparable information on the work of national agencies in different countries.

In 2017-18, the survey was distributed to IPA representatives from 32 OECD and 19 Latin America and Caribbean countries and 10 national agencies from the Mediterranean region. In 2019, 10 countries from the Eastern Europe, South Caucasus and Central Asia regions participated in the same survey, which consisted of an online questionnaire, divided into nine parts:

- Basic profile;
- Budget; Personnel;
- Offices (home and abroad);
- Activities;
- Prioritisation;
- Monitoring and evaluation;
- Institutional interactions; and
- IPA perceptions on FDI.

The results of the survey are gathered and presented in comprehensive IPA mapping reports, which provide a full and comparative picture of IPAs in selected regions. The reports benchmark agencies against one another as well as the average IPA in a region against other regions.

Georgia's overarching investment promotion strategic framework supports its current industrial state programme "Produce in Georgia", under the leadership of the Ministry of Economy and Sustainable Development. This programme, launched in 2014, aims to develop local production of agricultural and industrial goods and to decrease imports, particularly by supporting business creation in ten different industrial industries (e.g. pharmaceuticals, building materials and textile), five agro-food sectors (e.g. cattle and poultry farms and dairy processing plants), the filmmaking industry, and tourism. It entails three components on access to finance, access to infrastructure and real estate and technical assistance, with dedicated resources to support the development of private businesses, both domestic and foreign in targeted sectors. For example, the programme supports access to finance by co-financing interest rates of commercial loans and providing guarantees. From its inception until 2019, Produce in Georgia mobilised an estimated EUR 320 million in private investment (OECD, 2019[42]).

Enterprise Georgia is the main agency in charge of implementing the programme "Produce in Georgia" via its three main divisions: Business Development, Invest in Georgia and Export Support. The agency was created in February 2014 and its statutes were revised in May 2017 to integrate the investment promotion agency Invest in Georgia, which was formerly independent. According to its legal status, the agency now aims to improve the competitiveness of the local private sector, support entrepreneurship and the development of an entrepreneurial culture, export promotion, and investment promotion. The Invest division of Enterprise Georgia, also called "Invest in Georgia", is the body acting as the country's IPA. Details on its governance, resources and activities are discussed below.

"Produce in Georgia" does not explicitly refer to foreign investment, although it provides directions for developing the private sector. Government officials highlight that the programme applies to foreign and domestic investors alike, although in practice, it focuses more on domestic SMEs. Georgia is not short of strategies, but these do not provide a convincing vision for investment policy and promotion, nor do they link domestic enterprises to foreign investment. The draft innovation strategy, which the OECD could consult during the review, for example, does take into account the need for investment to reach the country's innovation goals, but does not provide concrete avenues for investment promotion. Georgia would benefit from having a clear, formal strategic framework specifically detailing the investment pillar of its industrial plan, and articulating it with other pillars, providing a unified vision for the industrial and economic development of the country.

A first, important step in this direction was taken with the "Foreign Direct Investments Attraction Strategy 2020–2021", developed by Enterprise Georgia with the support of the IFC. The plan establishes a strategic direction, identifies a list of priority sectors for investment promotion and a list of strategic objectives for each investment promotion function of the IPA, as discussed below. It lays out the rationale for investment attraction in Georgia and for selecting six priority industries and formalises some of the key strategic features of Georgia's current overarching approach, in particular the goal to attract efficiency-seeking FDI as opposed to resource- and market-seeking FDI. A broader investment strategy would nevertheless help to further articulate the investment attraction effort with Georgia's wider economic development agenda, and suggest avenues for policy reforms and cross-sectoral co-ordination.

According to OECD experience, establishing a clear overarching investment strategy helps align stakeholders at all levels of the institutional framework and improves the efficiency of the investment promotion and facilitation effort. The first objective of an investment promotion and facilitation strategy is to lay out the FDI attraction rationale, in connection with larger social and economic objectives. The second objective is to translate this vision into agency-level strategies and action plans including target objectives, means and key performance indicators (KPIs). Three broad types of strategic documents exist:

- National policy statements on investment, presenting the investment landscape and the government's strategic orientation;
- Investment promotion strategies defining main targets, tools and KPIs to attract inward foreign investment; and
- Detailed operational action plans with detailed objectives, associated resources, timelines and indicators.

Governments often prepare an overarching vision that is translated into a strategic plan at the IPA level, which, in turn, serves as a basis for operational plans in different teams (such as geographical, sectoral, marketing or servicing teams, depending on how agencies are structured). Other agencies contributing to investment promotion, such as innovation or export agencies, can also integrate elements of the vision in their strategic plan. Defining the different institutions' roles and responsibilities in the vision facilitates this process.

Designing a similar framework in Georgia would allow for a clear, more coherent strategy for investment promotion. The business development/SME promotion pillar is well documented and detailed, as well as the export pillar, whereas the rationale for investment attraction lacks clarity and well-defined connections with SME and export development. Georgia could consider the example of Ireland's 2014 FDI Policy Statement when developing an overarching vision for FDI attraction (Box 4.2).

Box 4.2. Ireland's 2014 FDI Policy Statement

The Policy Statement on Foreign Direct Investment in Ireland was published by the Irish Department of Jobs, Enterprise and Innovation in July 2014 under the authority of the former minister. It was released halfway through the government's term (2011-16).

The purpose of this document is to take stock of the foreign investment policy implemented during the past three years (and sometimes beyond) and to highlight recent achievements and ongoing reforms. It also presents the government's strategic vision for 2014-20 by identifying areas for improvement, but without providing a detailed set of measures to be adopted. To justify these strategic choices, the statement brings to the fore some empirical research work on the impact of investment policies on the economy. An overview of this strategic vision is given through the minister's foreword, which indicates that this policy was designed through a whole-of-government approach to create quality jobs and improve the quality of life of the Irish.

The Policy Statement includes an introduction that describes global investment trends, Ireland's performance in attracting FDI and its contribution to the national economy. The overarching objectives of this FDI strategy are also presented and include the necessity to create employment and enhance national productivity. The strategy aims to contribute to the development of key industrial sectors through the creation of ecosystems and to enable access to global value chains for Irish-owned enterprises. Amongst its objectives, three strategic elements are identified in the strategy:

1. identifying promising sectors based on the Irish industry's strengths;
2. identifying strategic FDI source markets; and
3. facilitating different modes of investment, including greenfield investments, mergers and acquisitions and partnerships with research institutions.

The document identifies strategic policy enablers to reach these objectives: fostering Ireland's key differentiators (human resources, R&D and urban planning); developing sectoral ecosystems; preserving a competitive tax system and maintaining business cost levels; developing infrastructure; and guaranteeing the access to real-estate. For all dimensions, a stocktaking of reforms is made. Actions to be implemented are also identified for each area, although they remain rather general, as they do not provide precise details on the way these actions should be put into effect.

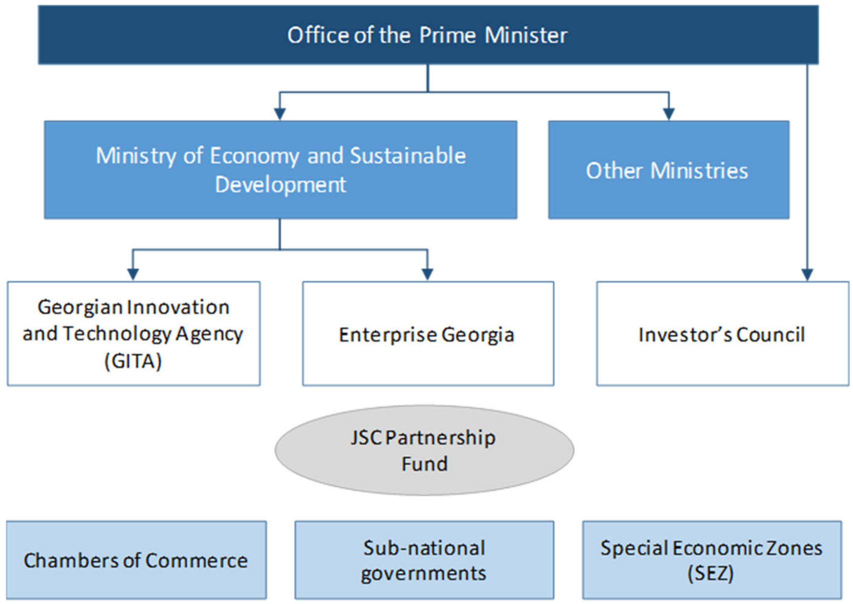
Finally, the Policy Statement briefly presents IDA Ireland, the Irish IPA. It describes its mandate and those from related national agencies such as Enterprise Ireland and the Science Foundation Ireland. It recommends the development of a new strategy in line with this FDI Policy Statement.

Source: OECD based on https://dbei.gov.ie/en/Publications/Publication-files/Forf%C3%A1s/Policy-Statement-on-Foreign-Direct-Investment-in-Ireland1.pdf

A fragmented institutional framework for investment promotion and a need to strengthen Enterprise Georgia's Invest branch

Institutional frameworks for investment promotion and attraction often include a number of institutions, in which the IPA plays a central role. In Georgia, the institutional ecosystem, beyond Enterprise Georgia, is composed of ministries, other public agencies and bodies, sub-national governments, special economic zones and chambers of commerce (Figure 4.1).

Figure 4.1. Georgia's institutional framework for investment promotion



Source: OECD (2019)

The Georgian Innovation and Technological Agency (GITA) plays a prominent role in promoting and supporting the development of innovative sectors of the economy, including through the attraction of foreign investment. Like Enterprise Georgia, GITA is sponsored by the Ministry of Economy and Sustainable Development. Its aim is to stimulate the development of innovation capabilities in Georgia, including research and innovation (R&D), innovation commercialisation and export. Although most of its actions target start-ups and SMEs, its work also entails the attraction of FDI to support Georgia's innovation system, and notably its information and communication technology (ICT) sector. The agency carries out its own work to attract FDI although it falls short of making links with sizeable investment projects or large MNEs.

Georgia established an Investor's Council in 2015 as a platform for government-investor dialogue, with the support of the EBRD. The Prime Minister chairs the Council and several relevant ministries are represented, along with local and international chambers of commerce and financial institutions such as the EBRD and the IFC (on a temporary basis). Such forums exist in many other countries and can be a good way to promote and maintain an ongoing dialogue with investors to inform policy-making. According to local stakeholders from the private sector, the quarterly meetings of the Council have been useful to discuss issues critical to the promotion of foreign investment, such as the new land law. Enterprise Georgia is invited to attend the Council's meetings as a guest, but not on a regular basis.

Georgia's Partnership Fund also participates in investment promotion as it provides a tool to co-invest in private projects. The Fund is state-owned and manages large state assets (state-owned enterprises or SOEs in the railway, energy and oil and gas sectors). It uses dividends from SOEs to invest equity of up to 49% in private investment projects according to a list of priority sectors (agribusiness, energy, infrastructure and logistics, manufacturing, real estate and tourism). Investors can buy out the fund's shares at any time at a pre-defined price, or the Fund can sell its shares on the market. The Partnership Fund has already co-financed 25 projects and is currently managing a project portfolio of USD 2.5 billion. The Fund works closely with the Invest division of Enterprise Georgia, and its co-financing scheme can serve as a guarantee for investors. In its last report however, the IMF points out that the government should reassess the Partnership Fund's role, because contrary to its original mandate, some of its investments do not follow commercial objectives and are not limited to minority shares (IMF, 2019[43]). Moreover, the state assets managed by the Fund do not generate many dividends, and some of them are even losing money. These are some elements that have led to the ongoing reform of the Partnership Fund.

The Georgian Chamber of Commerce plays an active role in investment attraction. The Chamber has a strong presence in the Georgian economy, with its network of 1 500 member SMEs, not only in Tbilisi but also in the regions. Its president is experienced in the field of investment, as former ombudsman and former head of the Georgian IPA, before it was part of Enterprise Georgia. The Chamber actively seeks foreign investors to involve them as partners in projects together with its members. To this end, it provides matchmaking and project modelling services, working closely with Enterprise Georgia.

Sub-national governments do not have formal mandates and roles in investment promotion and facilitation. But, according to local stakeholders, regional governors express their interest in attracting foreign capital in their territories, and Enterprise Georgia is accompanying them in this goal. The next stage of the co-operation could be to establish focal points in the regions.

Four special economic zones (SEZs) in Georgia seek to attract investment and provide export platforms for businesses. Their main tools consist in tax holidays, which bear the risk of being costly and inefficient if not well-designed and managed (OECD, 2019[44]). Each SEZ is managed by a private company in charge of its infrastructure and promotion.

Overall, the institutional framework appears to be fragmented, with many actors undertaking their own investment promotion activities, while the main IPA's investment promotion efforts, notwithstanding its well-established SME and export promotion activities, currently lack the clout to lead the investment promotion mandate vis-à-vis stakeholders. The absence of a clear investment strategy, as highlighted above, is one main reason for this, and the fact that other agencies are involved in foreign investment attraction (GITA and the Chamber of Commerce notably) also contributes to this fragmentation. As a result, the investment promotion mandate of Enterprise Georgia does not have the necessary visibility to succeed. The change in status and reporting line of the IPA in 2014, and its current level of resources, as explained below, further contribute to this situation. Along with a clear strategic framework, measures are needed to make sure that the Invest division of Enterprise Georgia is the go-to partner of foreign investors, including clarifying mandates and the distribution of roles in the broader institutional framework of investment promotion. Once this is established, effective co-operation and collaboration mechanisms among the different agencies can help maximise the outcome.

Enterprise Georgia's mandate, governance and resources

Governments can adopt a wide array of investment promotion and facilitation structures, either concentrating mandates within one dedicated agency, or choosing to involve other, already existing structures (OECD, 2015[4]). In many countries however, governments have set up dedicated organisations or teams in charge of promoting and attracting foreign investment at the national level, known as investment promotion agencies (IPAs). This practice started in a small number of OECD countries at the beginning of the 20th century, becoming a global trend in the 1990s: in the OECD and in Latin America and Caribbean for example, the number of IPAs have quadrupled in the last 30 years (Volpe Martincus and Sztajerowska, 2019[45]).

Setting-up an IPA can be an important aspect of a country's investment promotion tools and strategies. The work of the OECD and the IDB shows that IPAs' organisational models can vary greatly across countries, depending on their legal status, governance model, structure and resources (OECD, 2018[46]) (Volpe Martincus and Sztajerowska, 2019[45]). These characteristics largely reflect a government's policy objectives. For instance, a multi-mandate agency with strong co-operation links will likely signal that the government is pursuing a linkage strategy, such as between investment and export or investment and innovation. An IPA's set-up will also inevitably influence its ability to fulfil its mission and deliver on its objectives; pursuing an active targeting strategy to attract investors from specific countries without offices or staff abroad can be a challenging task. The alignment between an IPA's organisational model and resources and its assigned role in attracting foreign investors is therefore an important condition for a sound investment promotion strategy.

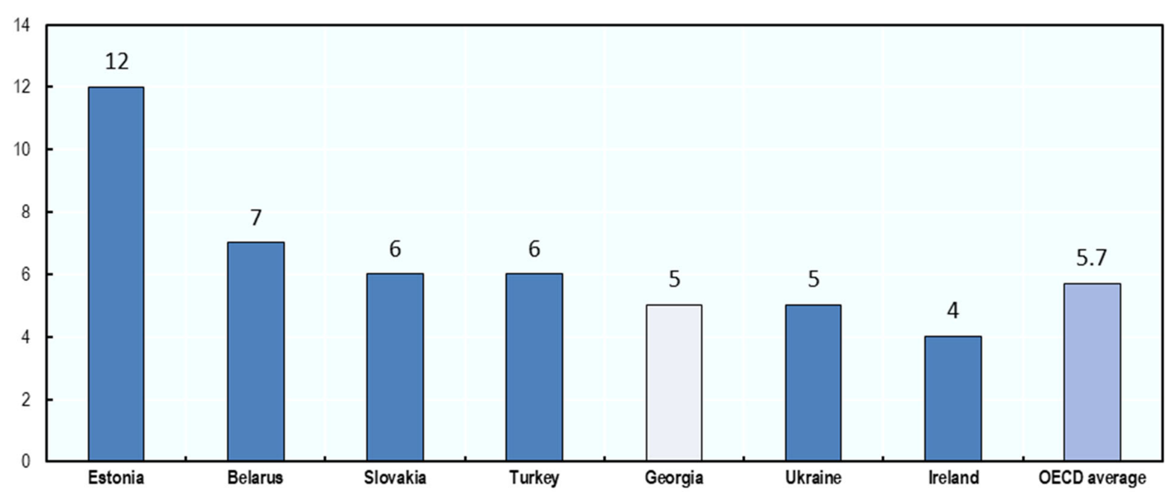
Allocating more resources to investment promotion would raise its visibility and hence effectiveness

The location of investment promotion activities within Enterprise Georgia is recent and is the last of a series of IPA reforms. Before 2012, when it was merged with the Partnership Fund, the Georgian National Investment Promotion Agency was part of the Ministry of Economy and Sustainable Development. In 2015, the IPA was separated from the Fund and became a standalone agency, under the direct supervision of the prime minister. The IPA was later integrated as a division of Enterprise Georgia in 2017. Overall, it has undergone four reforms in the past seven years; although a high pace of reform is common for IPAs, the average for OECD IPAs is 2.2 reforms over the past 10 years.

Cumulating several mandates is very common among IPAs, and Enterprise Georgia is not an exception. The agency has five formal mandates in total (out of a list of 18 possible mandates). This number is close to the OECD average of 5.7 and to the average of the selected benchmarks for this review (Figure 4.2). This number reflects the broader mandate of Enterprise Georgia to encourage local enterprise development, beyond investing foreign firms in the country.

- Export promotion;
- Inward foreign investment promotion;
- Domestic investment promotion;
- Promotion of regional development, and
- Granting financial incentives

Figure 4.2. Number of mandates of Enterprise Georgia and selected other IPAs



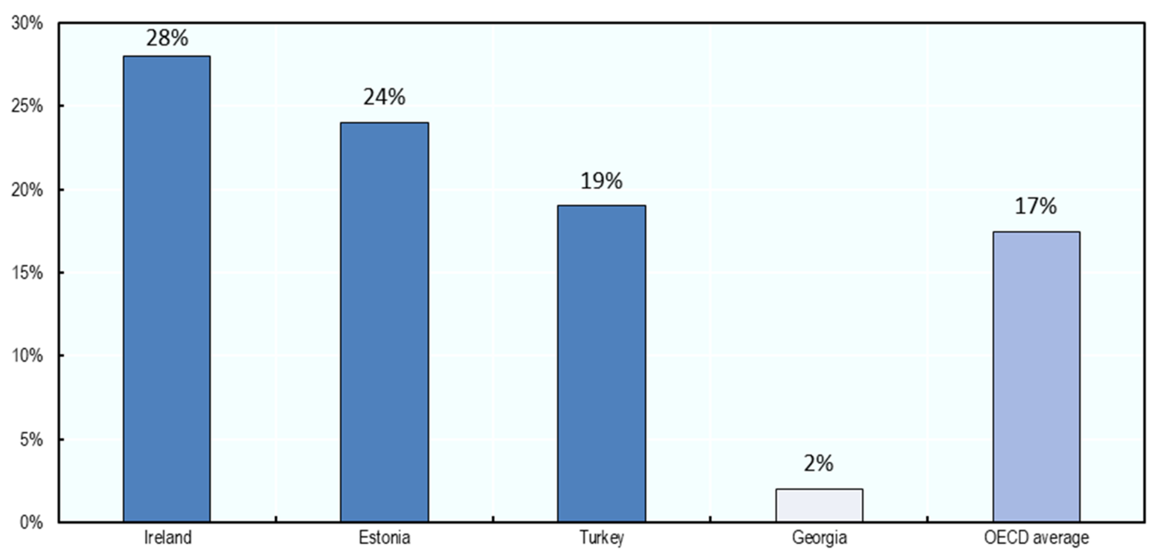
Source: Author's elaboration based on (OECD, 2018[46]).

Among these five mandates, export promotion is one of the most frequent additional mandates of OECD IPAs, along with innovation promotion. The granting of financial incentives, on the other hand, is not a widespread mandate in the OECD (only 9% of IPAs do it), which reflects international best practice to have the tax authorities deal with fiscal issues (although not necessarily other financial incentives such as grants). This looks different in other regions; in MENA, for example, 50% of IPAs are responsible for fiscal incentives.

Under the right framework conditions, combining several mandates such as investment and export promotion can generate synergies. For example, FDI can lead to the integration of local SMEs into global GVCs when MNEs source locally and can contribute to the diffusion of new knowledge and technology to and among domestic SMEs. The resulting potential business growth and upgrading may, in turn, enable local SMEs to compete better on international markets, and ultimately to directly export their products (OECD-UNIDO, 2019[47]). Similarly, FDI may also contribute to regional development in the areas where foreign firms operate, although realising such synergies is far from automatic and requires a sound enabling environment that is conducive to effective cluster development. This includes providing platforms and mechanisms for engaging dedicated agencies, e.g. SME promotion, regional development or innovation agencies, with the IPA in a shared national vision on investment.

In the case of Georgia, however, the limited share of resources allocated to the investment promotion mandate further strengthens the argument made earlier that the investment mandate of the IPA lacks visibility. Only 2% of the total budget of Enterprise Georgia goes to investment promotion (Figure 4.3). This share is very low when compared to other IPAs and may partly stem from the recent addition of the investment promotion mandate to an agency where other mandates were already well established. Following the 2017 merger, the IPA team also lost some of its members and is now a relatively small unit in a large agency.

Figure 4.3. Share of investment promotion in total budget



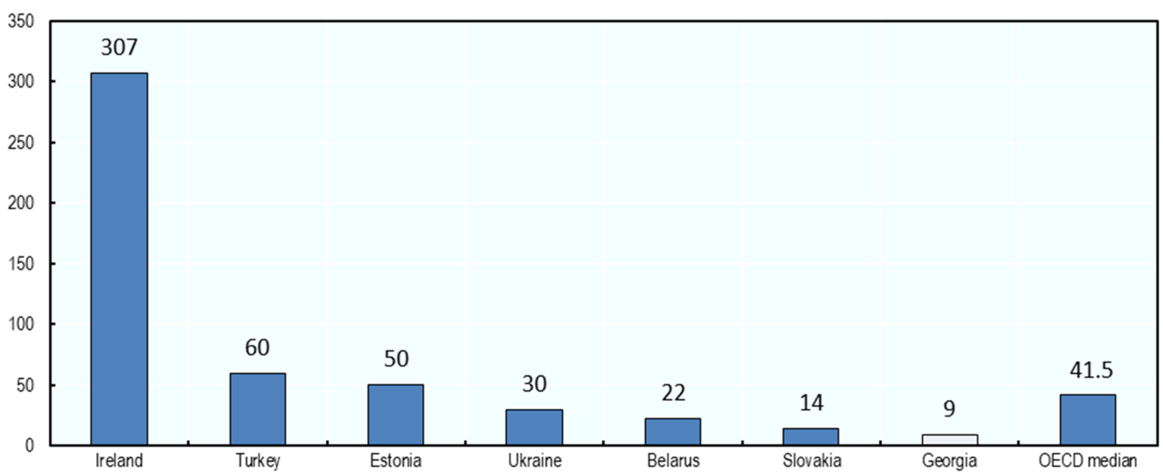
Note: 2016 data for OECD average and OECD countries; 2018 data for Georgia
Source: Author's elaboration based on (OECD, 2018[46])

Comparisons with other agencies confirm that Enterprise Georgia's resources dedicated to investment promotion are low. Its investment promotion budget is much lower than the median budget of OECD and LAC IPAs, although when compared to a group of six countries with similar levels of GDP per capita,[3] it is very close to the average. The investment promotion team is small, compared with peers (Figure 4.4). The current capacity of the IPA does not allow it to fully engage in a large portfolio of activities. Although there have been recent additions to the team, including the arrival of a new Deputy CEO, more could be done to ensure that Enterprise Georgia has the adequate resources to fulfil its investment promotion mandate. A clear strategic framework and plan for the IPA will help in this regard by aligning objectives, means and resources.

Currently, 100% of Enterprise Georgia's annual budget envelope is allocated through national budgets. The agency could envisage charging foreign investors for some of its services as a way to increase its resources, although few IPAs actually do it (fees only represent 2.2% of IPAs' total budgets on average). Public agencies tend to charge more for export services than for services to foreign investors, probably because in most countries, foreign investors often have higher bargaining power than exporting SMEs and are seen as "clients" rather than "service users".

Figure 4.4. Georgia has relatively few staff dedicated to investment promotion

In number of full time equivalents (FTEs)



Source: Author's elaboration based on (OECD, 2018[46])

Besides increasing the resources – and hence the impact and visibility – of the investment promotion mandate, the government and Enterprise Georgia would benefit from encouraging more collaboration among the different divisions of the agency. Currently, teams have limited interactions, which prevents potential synergies and gains from the full integration of investment promotion into Enterprise Georgia. In a recent case study developed with Business France, the OECD highlights that shared tools, such as SME databases, and joint initiatives such as commonly developed programmes and staff rotation, can help make the most of a being multi-mandate agency (OECD, 2019[48]). Once again, clearly articulating the different pillars of Georgia's economic and industrial development into a single vision can help in bridging mandates and creating synergies among the different areas of competence within Enterprise Georgia and with other agencies.

A governing board for Enterprise Georgia's could further empower the agency and support its investment promotion functions

Like most OECD IPAs (60%), Enterprise Georgia is an autonomous public agency that reports to a single Ministry. A department in charge of investment policy and its co-ordination was also set up in September 2019 within the Ministry of Economy and Sustainable Development. Locating the IPA under the Ministry in charge of investment can contribute to facilitate coherence and exchanges between the investment policy-making and the investment promotion functions. It can notably facilitate the policy advocacy process thanks to the proximity of the functions and direct links between investment policy and promotion.

As mentioned, the current arrangement is relatively recent, as before 2017 the Invest division of Enterprise Georgia was an independent agency under the authority of the Prime Minister. This recent change has led to the perception among stakeholders that the IPA has lost visibility on investment promotion matters, and that whole-of-government co-ordination on investment might thus become more of a challenge. In that sense, the creation of an investment co-ordination function within the lead ministry is welcome, but the long term perspective should be to strengthen the IPA's capacity to undertake investment promotion.

An IPA's governance system can greatly affect its ability to support and service foreign investors, especially in countries where business processes can be complex and powers are relatively centralised. Striking a balance between granting access to higher levels of governments and ensuring the availability of sponsoring authorities in such cases can be a tricky challenge. Multiple reporting lines can offer a viable solution. In the OECD, 38% of IPAs have more than one reporting line within the government, and among them, four IPAs have a reporting line to the Head of Government (OECD, 2018[46]). Two of these IPAs have an autonomous status and two are part of the government. Having a reporting line to the Head of Government in addition to their other reporting lines can enable these IPAs to get support from the highest level when facing strategic decisions or complex problems. To avoid overlaps and redundancies, roles should be well-defined in the case of multiple reporting lines. The key is to make sure the IPA has enough institutional support, leverage and visibility to carry out its mission.

Enterprise Georgia's reporting authority should be careful to keep the volume of supporting and reporting activities manageable, considering the agency's limited resources. Data from OECD-IDB survey of investment promotion agencies show that Enterprise Georgia reports on its activity at a higher frequency than the majority of IPAs in other regions. In the OECD region, 89% of IPAs report annually or less frequently. In Eastern Europe, South Caucasus and Central Asia region, the proportion is 77% as states of the region tend to report more frequently, given more centralised models of governance. Enterprise Georgia reports more than quarterly on its activities and financials. Considering its small number of staff, this could be a burden, even if monitoring the IPA is legitimate. When agencies have limited resources, the constraints of supporting and reporting to ministries in charge should be carefully assessed and kept at a level that is compatible with the IPA's objective and resources to deliver on its core mandate.

Contrary to most autonomous OECD IPAs, Enterprise Georgia does not have a board (Box 4.3). The role of a board can vary greatly from one agency to another, but they are often composed of high-level, experienced experts who provide guidance and advice on strategic and management issues. They can sometimes have significant decision-making powers, such as appointing the head of the agency. A board can be a good mechanism to ensure the representation of different stakeholders in the governance of an organisation. Having senior profiles from the private sector in the governance model of IPAs is a good way to integrate experience and expertise from the private sector into strategic orientations. The government could envisage establishing such a board for Enterprise Georgia. An outsider's view would further help to generate new ideas for collaboration and synergies within the agency, help with co-ordination, as well as to identify and unlock opportunities for co-operation with other agencies and the private sector.

Box 4.3. Boards in OECD IPAs

Over two-thirds of OECD IPAs have a board. They can be either supervisory boards that oversee and approve the work of IPAs, or they can be of an advisory nature and provide strategic guidance to the management. The presence of a board is higher among IPAs that have an autonomous legal status than those that are part of a governmental body.

OECD IPA boards are typically composed of representatives of the private and public sectors (respectively 40.5% and 37.6% of board members in the average OECD IPA). Representatives from research, academia and the civil society sometimes participate to a lesser extent.

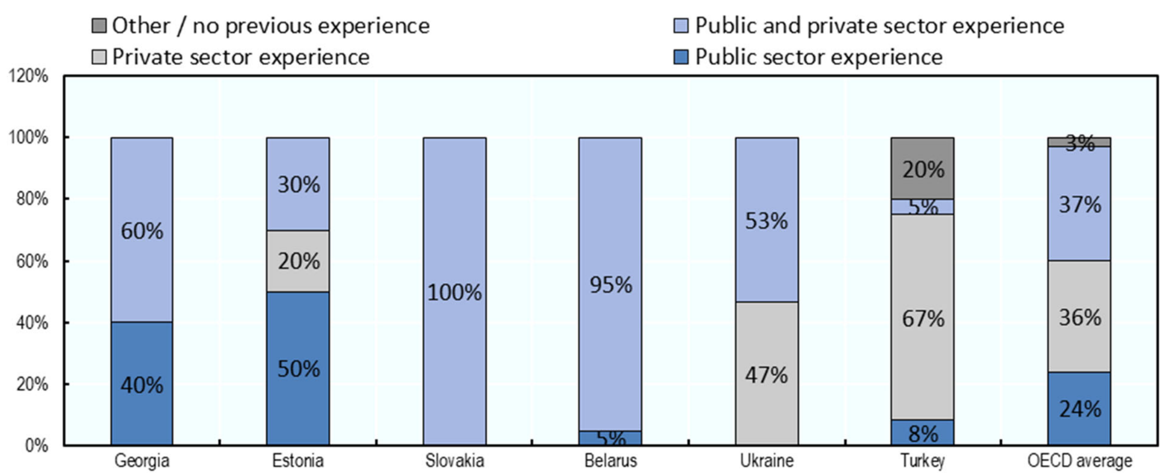
Source: Author based on OECD (2018a), "Mapping of OECD Investment Promotion Agencies".

Enterprise Georgia would benefit from recruiting more staff from the private sector

Like all organisations, an IPA's success relies on its ability to attract suitable and motivated staff. Given the nature of IPA work, the staff should be mixed and include public and private sector profiles, as well as analytical, marketing and managerial skills. The staff at Enterprise Georgia is composed of people coming from the public sector and people with a mixed public and private sector experience (Figure 4.5). The agency is already considering hiring experienced people from the private sector, to work on proactive investor targeting in specific economic activities. More generally, this also helps to address the human resource challenge alluded to earlier.

Figure 4.5. Staff profiles in Enterprise Georgia and in other selected IPAs

(% of total staff)



Source: Authors' elaboration based on (OECD, 2018[46])

The strategy and instruments of investment promotion

Enterprise Georgia's activity mix is balanced overall, but with less investment facilitation and aftercare services than peers

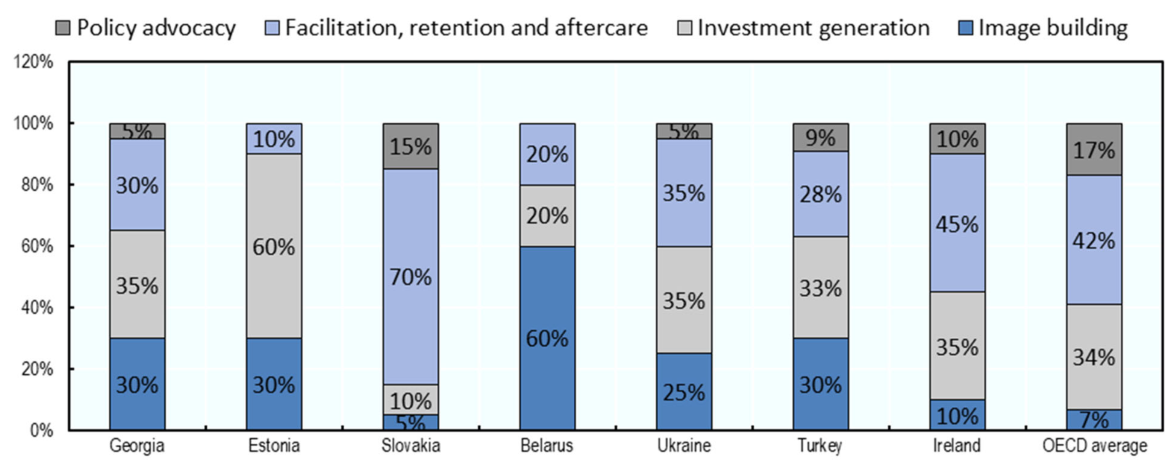
IPAs typically carry out four core functions within their investment promotion and facilitation mandate:

- *image building:* general marketing activities to raise awareness and create positive perceptions about a country as an investment destination;
- *investment generation:* outreach and targeted marketing activities to convince foreign investors to locate their investment projects in the host country;
- *investment facilitation, retention and aftercare:* services and actions to facilitate implementation of investment projects, maximise their local economic benefits and generate follow-up investment; and
- *policy advocacy:* monitoring investors' perceptions of the investment climate and suggesting changes to the government to improve the investment policy.

Enterprise Georgia's investment team has yet to establish a formal division of labour, because of its small size. The team members all carry out tasks related to the four core functions (image building, investment promotion, investment facilitation and aftercare and policy advocacy). The result is an overall human resource split that is almost equally divided among image building, investment generation and investment facilitation and aftercare, while the policy advocacy function only represents 5% of the total, less than the 17% on average on the OECD (Figure 4.6).

Figure 4.6. Staff allocation in Enterprise Georgia and selected IPAs

(% of full-time equivalents)

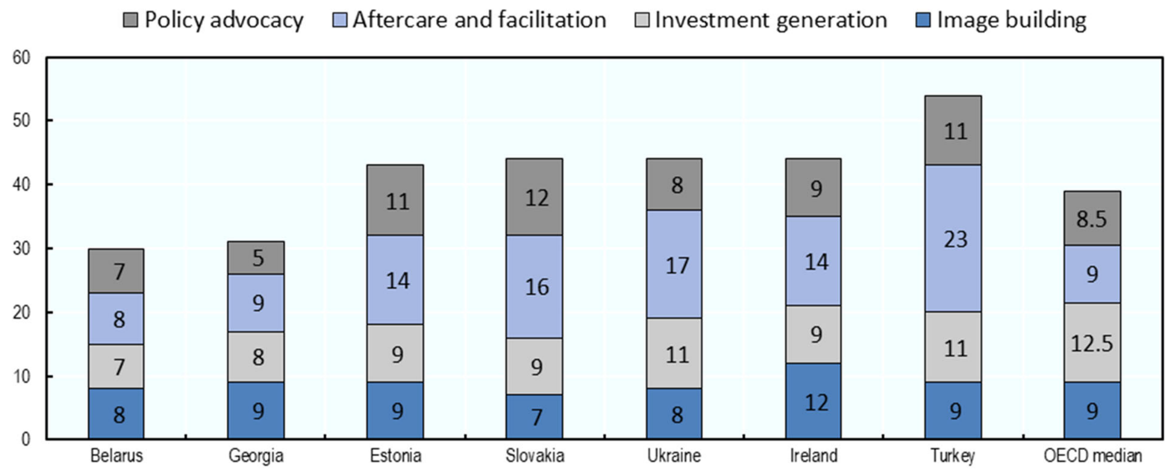


Source: Authors' elaboration based on (OECD, 2018[46]).

Overall, the number of activities carried out by Enterprise Georgia is lower than the OECD median (Figure 4.7), especially in investment facilitation and aftercare, and policy advocacy. The number of facilitation and aftercare activities is low compared to peers from Estonia, Slovakia, Ukraine, Ireland and Turkey, which is unsurprising, considering the limited staff of the Georgian IPA and fits with the allocation of human resources to the four functions described above.

Figure 4.7. Enterprise Georgia carries out fewer activities than other selected IPAs

(Number of investment promotion activities performed out of a list of 67 choices)



Source: Authors' elaboration based on (OECD, 2018[46])

Enterprise Georgia's restructuring can give renewed emphasis to investment attraction

The core promotion functions of an IPA are image building and investment generation, which, together, aim to promote a country or region as an attractive investment destination. Truly effective investment promotion "leverages the strong points of a country's investment environment [and] highlights profitable investment opportunities" (OECD, 2015, p. 39[4]). OECD IPAs typically use a wide array of tools and initiatives to conduct image building and investment campaigns, the most common being a dedicated website, promotion materials and general promotion events and missions, as well as market studies, request handling services, and sector- or investor-specific events and meetings (OECD, 2018[46]). To focus their efforts and maximise their desired outcomes, a large majority of them also use prioritisation strategies, targeting countries, sectors, and to a lesser extent, projects.

In the framework of its new "FDI attraction strategy 2020-2021", Enterprise Georgia is notably working on a new marketing campaign including pro-active targeting of companies within a list of six priority industries. An exhaustive analysis of industries and their potential, based on a methodology developed by the IFC, helped to identify six priority sectors: business process outsourcing (BPO), hospitality and tourism-related infrastructure, apparel and footwear, automobile and aircraft industries, and manufacturing of computers, electronic and electrical equipment. The methodology for the selection of priority sectors involved assessments of domestic capacities, global demand and competitiveness analyses, and consultations with a range of stakeholders including experts, domestic companies and foreign investors. The agency identified 220 companies for outreach activities, based on a list of 3 000 potential investing MNEs and is now working to put up a new webpage for its marketing campaign. The FDI attraction strategy also provides strategic directions beyond investment promotion, although these considerations remain relatively broad at this stage. The plan is nevertheless a stepping-stone for further strategic planning, as Enterprise Georgia evolves in its IPA role.

The overarching promotion narrative could also be further strengthened. Available public resources and stakeholder consultations converge towards a number of key features of Georgia's vision for investment promotion. Foreign investment is considered a means to move up value chains and support export-led development. Some stakeholders refer to the strategy of Ireland as a leading example, notably the way that it started attracting investment in low-added business services to move up the value chain and develop high-value added industries such as financial services and software development. The current vision relies on the BPO industry as a starting point, as well as tourism, to develop the image of the country and generate FDI. Another key feature of the promotion narrative is access to export markets. Georgia's domestic market is limited, but thanks to its location and foreign trade agreements, it is marketing itself as a good destination for export-led businesses, giving access to 2.3 billion consumers without customs duties, including the EU, China, Turkey, Ukraine, CIS and EFTA countries[4].

Designing a clear strategic framework, as recommended earlier, requires developing a clear vision for investment promotion. The framework should ideally further articulate linkages with policy objectives related to innovation, entrepreneurship and SMEs. It is important that stakeholders share and support the vision at all levels, as beyond the alignment of interests, speaking with one voice contributes to strengthening the message with potential investors and giving it more visibility.

An enhanced investment narrative would also support Enterprise Georgia's current outreach activities. Stakeholders agree that Georgia has made great progress in investment facilitation by streamlining its investment procedures, which already constitutes a major step. This work has contributed to establishing the image of Georgia as an open economy. It now needs to strengthen its approach to identify and communicate its economic strengths and business opportunities. Not only can this process enable Georgia to foster more domestic and foreign private investment, it will also help identify areas where cross-cutting policies are needed to support the development of the private sector, such as for example education and skills development, and labour market policies. With its new 2020-21 strategic plan, Enterprise Georgia has already made a step in this direction, by identifying a list of priority sectors and by planning detailed surveys aimed at assessing and qualifying within-sector opportunities for development and investment projects. If well implemented, this effort will contribute to a stronger narrative for foreign investment attraction in Georgia.

Investment facilitation, aftercare and policy advocacy activities

Investment facilitation-aftercare and policy advocacy functions consist of securing the implementation of new foreign investment projects, retaining foreign investors and contributing to improving the overall investment climate as well as the investment promotion approach. Facilitation services aim to accompany foreign investors in implementing their projects by helping them refine their understanding of the local business environment and navigate the local administration. Aftercare focuses on conflict and problem resolution and on programmes to link foreign investors with the local economy according to their needs, to encourage them to remain in the country and expand their activities further. Policy advocacy is the function through which IPAs can inform investment policy-making on what works and what would need to change from the perspective of foreign investors.

Investment facilitation-aftercare and policy advocacy are also the most heterogeneous functions across IPAs, as highlighted in the 2018 OECD IPA Mapping report. Activity mixes vary widely among IPAs in these two functions, in contrast with promotion functions. Several factors can explain this heterogeneity. First, the core mandates of IPAs often focus more on promotion than on investor servicing. Second, the labour intensive nature of these activities often leads to weaknesses in the facilitation and aftercare functions. Lastly, the existence of other agencies in charge of business facilitation and the degree to which business processes are already streamlined can influence the way that IPAs carry out investment facilitation and facilitation services.

Georgia has established itself as an easy place to do business since 2003

Georgia has considerably improved its overall business environment over almost two decades, starting in the early 2000s when the government undertook a series of reforms to establish a sound regulatory framework for businesses and tackle corruption – an area that receives more attention, even today. Among other measures, the government considerably streamlined its tax system with the introduction of a new tax code and abolished many business licences and permit requirements. The government also worked on improving its ranking in the World Bank Doing Business indicators which gave Georgia a credible reputation of a place in which it is easy to do business. A challenge going forward will be to make sure that the regulations in place still meet development objectives and are assessed *ex post* and *ex ante* as reforms are being advanced. More recently, Georgia has further strengthened its relationship with the EU through the EU Georgia Association Agreement (AA) including a Deep and Comprehensive Free Trade Area (DCFTA) (see Assessment and Recommendations section). The deepening of Georgia's economic integration with the EU is expected to drive further reforms, as the AA and DCTFA include provisions on the country's alignment with EU legislative standards in areas such as public procurement, intellectual property rights and competition rules.

As a result of its past reforms, Georgia is now the most open economy in the region, and one of the countries where establishing a company is the easiest. In the World Bank's *Doing Business* rankings, Georgia now ranks 7th in terms of the ease of doing business out of 190 countries (Table 4.1), and in the world's top ten for three categories: starting a business (2nd), protecting minority investors (7th), registering property (5th). Georgia also ranks 16th out of 180 countries worldwide in the 2018 Index of Economic Reforms (Heritage Foundation) (OECD, 2019[42]).

Table 4.1. Doing Business in Georgia and selected countries

Ranking out of 190 countries in 2020 and 189 in 2014

		Georgia	Estonia	Slovak Republic	Belarus	Ukraine	Turkey	Ireland
Ease of doing business	2020	7	18	45	49	64	33	24
	2014	8	22	49	63	112	69	15
Starting a business	2020	2	14	118	30	61	77	23

Note: The Doing Business methodology changed between 2014 and 2020 which can partly explain some of the changes in rankings.
Source: World Bank

Georgia has successfully led business facilitation reforms and achieved the status of the most open economy in a region where countries have transitioned to a market economy only recently, but some challenges persist. Specific investment facilitation measures are currently in place to resolve potential conflicts. Georgia first established the role of ombudsman for the private sector in 2011 through a government decree. Its initial functions focused on tax issues and were based on article 42 of the Georgia Tax Code. In 2015, its remits were widened and the function was renamed to become the Business Ombudsman of Georgia. The number of applications recorded by the Ombudsman increased from 192 in 2013 to 338 in 2016, down to 257 in 2017.[5] The increase of applications from regions outside the capital is a positive sign of the importance of the functions. The office requires more budgetary resources to further enhance its impact, including by more pro-actively reaching out to the business community, rather than passively awaiting applications. Also, so far, the support of the Prime Minister has been critical for an Ombudsman's recommendation to be accepted. Reviewing the system so that the Ombudsman's recommendation forms part of a systematic dispute resolution system could help improve the impact of the function.

The government also recently set up a "trouble-shooting group" composed of representatives of the Ministry of Economy and Sustainable Development and Enterprise Georgia, with weekly meetings to discuss ongoing problems and potential remedies. This new setting could alleviate the risk of foreign investors going directly to the prime minister to solve their problems, as some have done in the recent past. This phenomenon poses governance challenges as it can encourage investors to bypass regulations or mechanisms in place. It also weakens the IPA's position as a go-to partner of businesses.

In the longer term, Enterprise Georgia could strengthen aftercare and policy advocacy

Enterprise Georgia provides most of the same facilitation activities delivered by other IPAs in the OECD and in other regions (Table 4.2). The IPA currently focuses on the provision of information and organisation of meetings, including site visits and working meetings with officials and potential local business partners, providing information about the local business environment, and assisting investors in obtaining visas and work permits, as well as in other administrative processes such as obtaining licences and access to utilities.

Table 4.2. Provision of facilitation and aftercare services by Enterprise Georgia and selected IPAs

	Georgia	Estonia	Slovakia	Belarus	Ukraine	Turkey	Ireland	Share of OECD IPAs*
Provision of information on local suppliers / clients	✓	✓	✓	✓	✓	✓	✓	94%
Site visits	✓	✓	✓	✓	✓	✓	✓	94%
Working meetings (with officials, potential suppliers, etc.)	✓	✓	✓	✓	✓	✓	✓	90%
Structured trouble-shooting with individual investors	✓	✓	✓		✓	✓	✓	81%
Assistance to obtain visas and work permits	✓	✓	✓			✓	✓	71%
Assistance in obtaining financing		✓	✓			✓		71%
Database of local suppliers	✓	✓	✓	✓		✓	✓	65%
Matchmaking service between investors and local firms		✓	✓		✓	✓	✓	65%
Assistance to obtain land and construction approvals	✓	✓	✓	✓	✓	✓	✓	58%
Assistance with legal issues		✓			✓	✓	✓	58%
Airport pick-ups		✓		✓	✓	✓	✓	58%
Assistance with business/tax registration	✓	✓	✓	✓		✓		58%
Assistance with utilities		✓	✓		✓	✓	✓	55%
Assistance to obtain licenses (e.g. sectoral)	✓	✓		✓	✓	✓		52%
Cluster programmes					✓	✓	✓	48%
Mitigation of conflicts					✓	✓	✓	45%
Capacity-building support for local firms		✓				✓		39%
Assistance in recruiting local staff		✓				✓		39%
Assistance with other business matters			✓		✓	✓		33%
Ombudsman intervention					✓	✓		26%
Training or educational programmes for local staff						✓	✓	19%

Note: *share of OECD IPAs providing the service
Source: Author's elaboration based on (OECD, 2018[46])

In the areas of aftercare and policy advocacy, on the other hand, Enterprise Georgia performs fewer activities than most IPAs. Enterprise Georgia only carries out two formal aftercare activities (structured troubleshooting and database of local suppliers), while the average is 4.7 among OECD IPAs, and 5 among IPAs of the Eastern Europe, South Caucasus and Central Asia (OECD, Forthcoming[49]). As regards policy advocacy, the agency performs five activities, while the OECD median is 9.

Both aftercare and policy advocacy are important functions. Aftercare is vital for re-investment and expansion, which account for a significant share of all investments. In its FDI attraction strategy 2020-2021, Enterprise Georgia underscores that the share of reinvestment in total FDI increased in Georgia in the past few years to reach 35% in 2018. Retaining existing investors is also significantly less costly than attracting new ones, while being particularly crucial when seeking investment in higher value-added activities (OECD, 2015[4]). A strong aftercare function relies on maintaining an ongoing dialogue with foreign investors. Policy advocacy, on the other hand, provides opportunities to integrate feedback from foreign investors to enhance the policy framework, address structural investment climate challenges, and ultimately potentially reduce the number of complaints.

In the longer run, once Georgian policymakers have addressed the more pressing challenges of establishing an overarching strategic framework and launched the new marketing programme, the IPA could seek to strengthen its aftercare and policy advocacy approaches. Although the FDI attraction strategy 2020-2021 states the importance of the IPA's contribution to investment policymaking, it does not yet provide a roadmap for doing so. In particular, Enterprise Georgia would benefit from clarifying and structuring its approach, including tools and mechanisms through which the dialogue with existing investors is maintained (e.g. through a key account management approach). It would also gain from establishing clear channels for relevant information from the IPA's first-hand experience with investment projects to feed into policymaking. The example of Business France can provide some guidance, although the approach needs to be tailored according to specific needs and available resources (Box 4.4). The Ministry of Economy and Sustainable Development could also make sure to include Enterprise Georgia in relevant investment policy discussions. Granting the IPA a permanent seat at the Investor's Council could be considered in this regard.

Box 4.4. A structured approach to aftercare: the example of Business France

Re-investment projects account for 40-50% of all FDI in France. In recognising this opportunity, Business France has set up a dedicated aftercare team to identify new leads, trigger re-investment, and establish and strengthen the relationship with international companies in France over the medium to long term.

The agency follows a structured approach using a key account management system, through which the aftercare service team maintains an ongoing dialogue with established investors. It also attends VIP networking events to foster relationships with high-level decision makers, including cabinet ministers, among others. The agency provides services at both the operational level, helping investors deal with administrative issues, and the strategic level, supporting investment/reinvestment decisions. Customer satisfaction surveys, annual meetings with key accounts, customer satisfaction calls, and annual FDI surveys are all means that Business France uses to measure the impact of aftercare services.

Source: Business France (2019), OECD workshop on investment promotion practices in Eurasia (2019)

Enterprise Georgia could also gradually engage in an FDI-SME linkage programme. Such programmes are designed to support MNEs' engagement with domestic companies through contracting arrangements, such as supplier or, more rarely, buyer contracts. IPAs are often well positioned to fill information gaps and help MNEs identify reliable, technology-ready local business partners. Enterprise Georgia could use its current database of local suppliers, based on the SME database of Georgia's national office of statistics Geostat, as a first step to develop such a programme. Ideally, the agency could establish co-operation processes between its different divisions and with GITA to identify opportunities.

Formal co-ordination and co-operation terms and mechanisms would improve investment promotion and encourage synergies

The OECD's framework for institutional co-operation and co-ordination in investment promotion shows that IPAs are often required to co-ordinate both vertically and horizontally to carry out their mandates (Table

4.3). Although co-ordination poses a number of challenges to most IPAs, some tools and mechanisms can help.

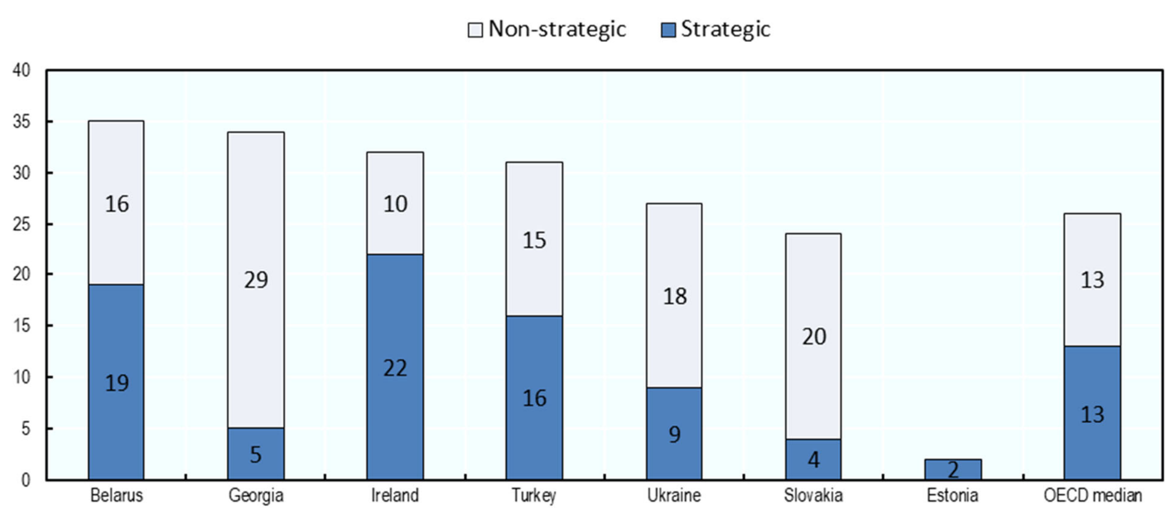
Table 4.3. General framework of institutional co-operation and co-ordination for IPAs

	Strategic alignment	Operational co-operation and co-ordination
International level (representation abroad)	Strategic marketing alignment ("one voice" / clear messaging) with authorities abroad	Investment promotion co-ordination with diplomatic missions and governmental missions abroad
National level (central government and other national agencies and administrations)	Overarching national investment policy and other national economic policies (e.g. industrial development policies) National branding strategy Strategic reporting and planning to the Head of Government and Sponsor authorities	Co-ordination with other national promotion agencies (e.g. innovation and export promotion agencies) and with industry-specific initiatives Co-ordination with national administrative bodies for facilitation services Co-operation and co-ordination for troubleshooting (can require strong interactions with different Ministries)
Sub-national level (sub-national authorities and agencies)	Attraction and promotion strategy formulation / offering definition Strategic marketing alignment ("one voice" / clear messaging)	Investment promotion at sub-national level Investment facilitation services (e.g. site visits) Aftercare (e.g. local cluster programmes) Local administrative procedures (e.g. for local incentives) Troubleshooting at sub-national level

Source: (OECD, 2018[46]).

Overall, the comparison between Enterprise Georgia and selected peers shows that the Georgian IPA deals with a high number of organisations, although its number of strategic relationships is limited (Figure 4.8). Enterprise Georgia's network is composed of 34 different organisations, while the OECD median IPA's is 26. When taking into account the limited resources of the Enterprise Georgia, this figure appears even more challenging. The strategic relationships are concentrated around five stakeholders including the Ministry of Economic and Sustainable Development, agencies in charge of investment incentives and SEZ, and the inter-ministerial investment committee (Table 4.4).

Figure 4.8. Enterprise Georgia has more institutional relationships than many other IPAs



Source: Author's elaboration based on (OECD, 2018[46])

Contrary to most OECD IPAs, Enterprise Georgia does not consider embassies, consulates, and sub-national governments as strategic partners. In the OECD, 69% of IPAs consider embassies and consulates as strategic partners, even among those that have affiliated offices abroad. The nature of these relationships can vary from joint promotion plans to co-ordination on facilitation issues such as visa delivery. The same goes for subnational governments and agencies, considered as strategic partners by more than half of OECD IPAs. Enterprise Georgia does not have a network of affiliated offices abroad and in the regions. It could consider establishing strategic partnerships and formulate formal co-operation instruments with the diplomatic network and the sub-national governments to enhance co-operation. The agency is currently considering the idea of having commercial attachés in embassies and consulates abroad. This measure, if well implemented, could be very useful and provide further reach to the IPA as it seeks to launch a new marketing effort.

Table 4.4. Institutional relations of Enterprise Georgia

	Strategic	Non-strategic
More than weekly	Sponsor Ministry Agency in charge of investment incentives	Ministry of Finance Ministry of Foreign Affairs Embassies and consulates Foreign Embassies Agency in charge of tourism promotion Agency in charge of land allocation Industry groups / associations
3 times a month to weekly	Other national IPAs Agencies in charge of Special Economic Zones	Ministry of Education Subnational governments Agency in charge of innovation promotion (GITA) Tax agency Immigration agency National statistical office Sectoral or other regulatory bodies (e.g. registrations, licensing) Chambers of Commerce Individual private firms (e.g. consulting or legal firms) Influencers International organisations
once or twice a month	Inter-ministerial Investment Committee	President / Presidential Administration or Prime Minister Ministry of Infrastructure Customs Financial institutions Universities Other academic or scientific organisations
3 to 11 times a year	-	Border regulatory agency NGOs
once or twice a year	-	Competition authority Central Bank Workers' associations

Overall, Enterprise Georgia would benefit from clearer terms of co-operation and mechanisms to work jointly with its key institutional partners. Currently, the agency operates on a rather ad hoc basis, without clear guidelines, shared protocol or tools. This does not prevent the IPA from collaborating informally with GITA and the Chamber of Commerce, thanks to good relationships between agencies. Well-defined co-operation terms in strategic plans and dedicated tools such as shared information systems and systematised protocols could nevertheless improve the quality of the co-operation while potentially reducing the workload thanks to efficiency gains. Enterprise Georgia is currently implementing a CRM tool and aims to share it with other agencies. This could enhance co-operation and maximise synergies between investment promotion, SME development and export, and innovation promotion.

Notes

[1] Originating from a 2011 vision from the Ministry of Justice, the Public Service Hall has today become a highly effective and efficient single point of public services delivery, based on the one-stop shop principle. The majority of public agencies are represented in the Hall, with 20 000 customers per day receiving services from driver's licence issuing to business registration in 24 Public Service Hall branches across the country. More information can be found on a dedicated website, available in various languages, including English: http://psh.gov.ge/

[2] With the financial support of the European Union's EU4Business initiative.

[3] Algeria, Azerbaijan, El Salvador, Jordan, Mongolia and Paraguay.

[4] http://www.enterprisegeorgia.gov.ge/uploads/files/publications/5cadb10264501-1-PRINT-Master-2019-small.pdf

[5] https://businessombudsman.ge/en/public-information/activity-statistics

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5 Promoting responsible business conduct in Georgia

Promoting and enabling responsible business conduct (RBC) is of central interest to policy makers wishing to ensure that business activity contributes to broader value creation and sustainable development. This chapter offers an overview of the RBC landscape in Georgia since a first assessment of Georgia's RBC landscape undertaken by the OECD in 2016 (OECD, 2016). It considers the range of measures the government has taken to bolster RBC in the country, highlighting key challenges in this respect as well as opportunities for progress.

Summary and policy recommendations

In recent years, Georgia has made significant strides to establish and implement a regulatory and institutional framework that underpins and promotes sustainable development and RBC. In the context of its broader reform programme, the government has adopted a range of legislative and administrative measures to strengthen labour rights and environmental protection, amongst other issues, and has included RBC in its national human rights plan. Awareness of RBC principles and standards in Georgia, while still modest, is also on the rise when compared with the situation 2016, thanks to new initiatives by government, civil society and business associations. A continuing focus on awareness-raising, particularly for small and medium enterprises and sectors identified as high-risk, would be beneficial.

Taking into account these policy developments, this chapter identifies policy opportunities which Georgia could seize to bolster RBC and send a stronger signal to businesses of the importance of RBC for the country. The implementation of the EU Association and Partnership Agreements and the development of the National Human Rights Strategy and its Action Plan have been and will continue to be important opportunities to consolidate existing efforts and promote RBC principles and standards in a more explicit and comprehensive manner. The challenge will be in implementation.

The government could also demonstrate its commitment through its activities as an economic actor. Indeed, following best practices and pursuant to international standards such as the OECD *Policy Framework for Investment* (PFI), the UN *Guiding Principles for Business and Human Rights*, and the OECD *Guidelines on Corporate Governance of State-owned Enterprises*, governments are expected to lead by example and should demonstrate RBC in their activities. Public procurement, investment promotion and state-owned enterprises (SOEs) can serve as levers to foster RBC, and so far Georgia has yet to clearly determine and communicate the RBC standards it expects and applies in these areas.

Georgia faces additional challenges. While Georgia's system of human rights protection is well-established, further measures would be welcome to strengthen the independence of the judiciary and access to remedy, and fully protect civil society and human rights defenders – issues that underpin many aspects of RBC. The legacy of unregulated mining, the cumulative impacts of hydropower plants, and the labour conditions in those industries and others such as construction need to be addressed more comprehensively. The recent introduction of a labour inspection mechanism will serve to address these issues. The rather large gender pay gap and low representation of women in the market are also issues that offer scope for further improvement.

While significant improvements have been made over the years to strengthen environmental governance, comprehensive and swift enforcement of the new legislation, with enhanced public access to information and participation in decision-making, is warranted. This would help enhance responsible business practices in sectors with reported high risks, such as mining and hydropower.

Although Georgia's progress in preventing and combating corruption is internationally recognised, there remains scope for additional progress in relation to enforcing regulations and in launching initiatives targeting the private sector to prevent and address bribery and corruption. The promotion of business integrity through training and the development of codes of conduct is one area where stronger efforts by both government and businesses would be welcome.

Policy recommendations

- Clearly communicate expectations that all businesses operating in and from Georgia respect RBC standards. Engage further in awareness-raising and capacity-building activities for both employers and workers, particularly in small and medium enterprises and sectors identified as high-risk, including mining, construction and hydropower. This includes promoting the implementation of available guidance, such as the OECD *Due Diligence Guidance for Responsible Business Conduct*.
- Promote policy coherence and alignment on RBC among government institutions. Consider developing a National Action Plan on RBC/BHR (business and human rights), with the active participation of stakeholders and in line with international good practices, which would greatly help ensure effective design, co-ordination and implementation of RBC policies. At a minimum, strengthening RBC/BHR commitments in the National Human Rights Strategy for 2021-30 and its subsequent Action Plan would be a welcome step. RBC commitments could also be more deeply and broadly mainstreamed into national sectoral strategies and plans.
- As an economic actor in its own right, the government should seize the opportunity to lead by example and establish clear expectations and objectives to respect and promote RBC standards in public procurement and through SOEs. In relation to SOEs, Georgia should look at ways to improve further its policy framework for state ownership in line with international best practices, including the OECD *Guidelines for Multinational Enterprises*, the OECD *Guidelines on Corporate Governance of State-owned Enterprises*, and the UN *Guiding Principles on Business and Human Rights*, and set clear expectations that SOEs comply with RBC standards, particularly on information disclosure, transparency and labour rights.
- In line with the *Guidelines*, continue to improve the legislative framework and its enforcement related to ensuring adequate working conditions, particularly occupational health and safety. In this respect continue to strengthen the labour inspection department, including its independence and autonomy and its capacity, and ensure its mandate and inspections are wide-ranging and robust. Further strengthen data reporting on violations of legislation, including on occupational safety and health. Increase efforts to guarantee non-discrimination in the workplace, and in particular strengthen measures to implement the principle of equal pay for work of equal value.
- Together with business associations, raise awareness about the importance of establishing effective company-based grievance mechanisms to prevent and address adverse impacts. Such grievance mechanisms would strengthen the ability of communities and workers to voice concerns.
- Promote stronger compliance with internationally recognised environmental standards as a competitive advantage that can open up opportunities for international investment and trade. Strengthen the quality of environmental impact assessment (EIAs), the public's access to them and participation in decision-making, and overall compliance with EIAs. Set clear expectations that businesses report on environmental risks and impacts of specific operations.
- Given the saliency of risks associated with the mining and hydropower sectors, promote and ensure enhanced implementation of RBC standards (particularly on human rights, environment, and labour) through existing reforms and other measures. Ensure that meaningful consultations with workers and potentially affected stakeholders, as well as RBC due diligence, are effectively carried out, in line with the *Guidelines* and the UN *Guiding Principles*.
- Continue ongoing promising reforms to combat corruption in the public and private sectors. Assist companies in combating corruption, including through developing and implementing

preventive measures such as codes of conduct, internal controls, and compliance programmes. Differential approaches may be used with SMEs, based on capacity and needs.

- Overall, keep encouraging businesses and industry associations to play a more proactive role in promoting RBC.

Scope and importance of responsible business conduct

Responsible business conduct is a key element of a healthy business environment – one that attracts quality investment, minimises risks for businesses, ensures stakeholder rights are respected, and ultimately contributes to sustainable development. RBC principles and standards set out the expectation that businesses – regardless of their legal status, size, ownership structure or sector – should avoid and address potential adverse impacts of their activities in the countries where they operate. The three main instruments that have become the key reference points for responsible business, and which outline how companies can act responsibly, are the OECD *Guidelines for Multinational Enterprises* (Box 5.1), which are the most comprehensive set of government-backed recommendations on RBC, covering all areas of business responsibility, the ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (ILO MNE Declaration), and the UN *Guiding Principles on Business and Human Rights* (the UN Guiding Principles). They are aligned with, and complement, each other (OECD et al, 2019a). RBC expectations are also integrated in regional systems such as the European Union and, increasingly, in national legislation (Box 5.2).

Box 5.1. OECD Guidelines for Multinational Enterprises: a primary reference for responsible business

The OECD *Guidelines for Multinational Enterprises* (the *Guidelines*) offer comprehensive recommendations on what constitutes responsible business, addressed by 49 adhering governments to businesses operating in or from their jurisdictions, on the following major RBC areas: information disclosure, human rights, employment and industrial relations, environment, bribery and corruption, consumer interests, science and technology, competition, and taxation.

Their purpose is to ensure that business operations are in harmony with government policies, to strengthen the basis of mutual confidence between businesses and the societies in which they operate, to improve the foreign investment climate, and to enhance the contribution of the private sector to sustainable development. The *Guidelines* do not aim to introduce differences of treatment between multinational and domestic enterprises, but to reflect good practice for all. Adherents to the *Declaration on International Investment and Multinational Enterprises*, of which the Guidelines are an integral part, wish to encourage the widest possible observance of the *Guidelines* to the fullest extent possible, including among SMEs, while acknowledging that these businesses may not have the same capacities as larger enterprises.

Each adhering country sets up a National Contact Point (NCP), an agency tasked with promoting RBC and the *Guidelines*. NCPs also help enterprises and stakeholders to resolve issues on a case-by-case basis arising from the implementation of the *Guidelines*.

Source: OECD (2011), OECD et al. (2019a)

Box 5.2. Responsible business conduct: international convergence and coherence

RBC means integrating environmental and social concerns within core business activities and throughout supply chains and business relationships. A key element of RBC is risk-based due diligence – a process through which businesses identify, prevent and mitigate their actual and potential negative societal impacts and account for how those impacts are addressed.

Many businesses, governments and stakeholders are familiar with the term corporate social responsibility (CSR), which has historically been used to describe activities by businesses that aim to contribute to society and the common good. Over the last years, CSR has increasingly been used alongside RBC and business and human rights (BHR), with some using the terms interchangeably (for instance, the European Union – the EU).

How do these concepts relate to one another? They all reflect the expectation that businesses should consider the impact of their operations and supply chains on people, the planet and society as part of their core business considerations and not as an add-on. This includes the need to avoid and address negative environmental and social impacts. A key characteristic of CSR, RBC and BHR is that they refer to corporate conduct beyond simply complying with domestic law and call on business to contribute positively to sustainable development while managing risks and impacts that may result from their activities. These concepts should not be understood to be equivalent to philanthropy.

The consensus built around the 2011 update of the OECD *Guidelines for Multinational Enterprises* and the unanimous endorsement of the UN *Guiding Principles on Business and Human Rights* by the UN Human Rights Council, together with the ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (ILO MNE Declaration, last updated in 2017), has brought about international convergence and coherence on what RBC entails.

Human rights are an important aspect of RBC. The *Guidelines* include a dedicated chapter on Human Rights which is aligned with the UN *Guiding Principles*. The *Principles* clarify businesses' responsibility to respect human rights and ways in which companies should operate to prevent, mitigate and redress adverse human rights impacts, as well as the state duty to protect against such impacts by companies. The EU endorsed the UN *Guiding Principles* in its 2015 Action Plan on Human Rights and Democracy and has committed to their implementation. The Council of Europe's Committee of Ministers 2016 Recommendation also called upon its member states to "effectively implement the UN *Guiding Principles* as the current globally agreed baseline in the field of business and human rights."

At national level, an increasing number of countries are integrating RBC principles and standards in domestic law, in particular in relation to due diligence (increasingly as a mandatory requirement) and non-financial information reporting. Importantly, in April 2020 the European Commission announced that it will commit to introducing rules for mandatory corporate environmental and human rights due diligence, which will ultimately be applicable to all EU member states. In 2015, the UK adopted the Modern Slavery Act requiring businesses offering goods and services on the UK market and with a certain turnover to report each year on the steps they have taken to ensure that slavery and human trafficking are not taking place in their operations. In 2018, Australia adopted its own Modern Slavery Act, with similar requirements. In 2017, France adopted due diligence legislation applicable to very large French companies and other companies with a substantial presence in France. Other governments, such as Canada and Germany, have foreseen consequences for companies in terms of trade advocacy support in case of non-compliance with the *Guidelines*.

Source: OECD (2011); UN (2011); EC (2011); OECD et al. (2019a); BHRRC (2020)

Many businesses also find that, beyond the obligation to comply with relevant laws and regulations and international standards, responsible business is good business. Responsible businesses are more likely to obtain and retain the social licence to operate, a critical component of long-term business strategy. Understanding, addressing, and avoiding risks material to business operations – beyond financial risks – often leads to a competitive advantage. For example, environmentally friendly production processes can significantly decrease overall costs, while effective management of labour practices in supply chains can boost productivity and protect brand capital. Conversely, an economy in which internationally accepted environmental and social principles and standards are not respected faces an increased risk of being excluded from value chain activity.

The ways that companies have been responding to the range of RBC issues triggered by the COVID-19 crisis will have lasting repercussions for their balance sheets and productivity during the recovery period. Companies taking proactive steps to address these risks in a way that mitigates adverse impacts on workers and supply chains are likely to build more long-term value and resilience to better deal with current and future crises and supply chain disruptions. Taking an "RBC approach", based on the OECD *Guidelines*, and using risk-based due diligence to identify and address adverse impacts, as described in the OECD *Due Diligence Guidance for Responsible Business Conduct*, would help improve their viability in the short term and their prospects for recovery in the medium to long term.[1]

Promoting and enabling RBC is of central interest to policy makers that wish to attract quality investment and ensure that business activity in their countries contributes to broader value creation and sustainable development. The RBC chapter in the OECD *Policy Framework for Investment*, outlines several ways in which governments can promote and enable RBC (Box 5.3). In relation to COVID-19, an RBC approach means ensuring that health and economic measures do not exacerbate the adverse socio-economic impacts of the crisis, and rather incentivise companies to identify and mitigate any potential harms and maximise the positive impacts of their response. Governments could for instance use RBC standards as a framework for identifying the environmental, social and governance risks and vulnerabilities in strategic industries, and ensure no undue restriction is put on public participation and information. A strong and visible commitment to RBC by governments is particularly important, as many companies in need of government support may not adopt an RBC approach in their response to the crisis.

Box 5.3. Role of governments in promoting and enabling responsible business

Governments can promote and enable RBC by:

Regulating: establishing and enforcing an adequate legal framework that protects the public interest and underpins RBC, and monitoring business performance and compliance;

Facilitating: clearly communicating expectations on what constitutes RBC, providing guidance with respect to specific practices and enabling enterprises to meet those expectations;

Co-operating: working with stakeholders in the business community, workers' organisations, civil society, general public, across internal government structures, as well as other governments to create synergies and establish coherence with regard to RBC;

Promoting: demonstrating support for best practices in RBC;

Leading by example: setting an example as an economic actor.

Source: OECD (2019)

RBC in Georgia: context, incentives and opportunities

Georgia has been making noticeable progress towards establishing a regulatory and institutional framework that fosters sustainable development and RBC. The government has taken steps to consolidate and co-ordinate policies on RBC and to raise awareness amongst state ministries and other bodies and business enterprises, with Georgia's relations with the EU offering additional incentives and opportunities. Work is understandably in progress and, for this reason, strengthening policies on RBC through economic and commercial activities, as highlighted below, is needed.

Awareness of RBC is on the rise

Awareness of RBC principles and standards in Georgia is overall on the rise, thanks to initiatives by government, civil society and business associations. In 2016, the OECD assessed the level of RBC awareness among businesses and the general public to be overall low (OECD, 2016). Since then, the Georgian government, civil society organisations, along with international organisations, and business associations and chambers of commerce have made strides in raising awareness on RBC issues amongst businesses and the public at large. The government has foreseen and implemented a number of awareness raising activities on RBC through its National Human Rights Action Plan (see below). Sectoral ministries have begun to be more engaged as the recent organisation of training to government staff and employers on labour regulations demonstrates (Government of Georgia, 2019c).

Activities by business associations and other stakeholders are also growing. In 2016, the local UN Global Compact Network, which had been inactive for some time in the country, was relaunched to bring together businesses to share experiences and understand what the Global Compact principles mean.[2] Civil society organisations have conducted awareness-raising activities and surveys to assess companies' awareness of corporate social responsibility, and promoted good practices, for instance through the launch of a prize for 'CSR excellence'.[3] Some work has also been done by foreign chambers, the ombudsman and trade unions to promote RBC in the extractive sector (United States, 2019). Additional government-driven initiatives in high-risk sectors and in relation to specific RBC issues would contribute to greater awareness amongst businesses and civil society.

The government, in co-operation with international organisations, has also made efforts to promote gender equality amongst businesses, for instance by raising awareness about equal pay policies and gender-sensitive recruitment. As of late 2019, 43 local companies were signatories to the Women's Empowerment Principles, which offer guidance to business on how to promote gender equality and women's empowerment in the workplace, marketplace and community (UN Women, 2020).

Notwithstanding the above initiatives, awareness and understanding of RBC is more developed among MNEs while the overwhelming number of business enterprises in Georgia are SMEs.[4] Promoting RBC among SMEs might require developing additional, specific, activities and tools that take into account SMEs' business model, incentives and capacities. Beyond government actions, business associations and multinational enterprises operating in Georgia also have a role to play in promoting RBC amongst Georgian SMEs (OHCHR, 2017).

Consolidating efforts: government commitments and policies

The government has embarked on a series of reforms in areas relevant to RBC, adopting for instance wide-ranging legislative and administrative measures to strengthen labour rights and environmental protection, amongst other issues (see further below). Georgia's relations with international organisations, and in particular the signing of the Association Agreement with the EU, provide additional incentives and opportunities for such reforms (Box 5.4). Besides sectoral reforms, governments can develop overarching action plans on RBC in broad consultation with stakeholders to promote policy coherence and channel national efforts on RBC.

An effective tool to demonstrate a government's commitment to RBC, highlight relevant policies, and signal the need for future action, is through a national action plan (NAP). NAPs are also a useful tool to ensure policy coherence on a number of topics related to RBC. As governments often have many different laws, policies and practices that are relevant to RBC, NAPs can help ensure that all government actors are working in a coherent manner to include RBC in their policies. The UN has recommended that all states develop NAPs on BHR as part of their responsibility to disseminate and implement the UN *Guiding Principles*. The EU and CoE have made similar recommendations to their member states.

As of May 2020, 23 countries (20 of which are adherents to the OECD *Guidelines*) have adopted a self-standing NAP on either RBC or BHR. They include several countries in Central and Eastern Europe (Table 5.1). Additional countries are in the process of developing their first NAP or committed to do so in 2020. An increasing number of governments, like the Czech Republic, France and the United States, have taken a broad view of RBC/BHR, and have included issues ranging from the environment, public procurement, to information disclosure, whistle-blower protection and trade in their NAPs.

Box 5.4. Georgia's partnerships with regional and international organisations bolster RBC commitments

Georgia's co-operation with international organisations has bolstered commitments on RBC. For example, Georgia actively participates in the OECD Anti-Corruption Network for Eastern Europe and Central Asia, which provides a regional forum for promotion of anti-corruption activities, exchange of information, elaboration of best practices and donor co-ordination. Georgia also actively participates in the GREEN Action Task Force for the countries in Eastern Europe, the Caucasus and Central Asia, whose mandate is to guide improvement of environmental policies in transition economies of Eastern Europe, Caucasus, and Central Asia by promoting the integration of environmental considerations into the processes of economic, social and political reform. Furthermore, in chapter 25 on business and human rights of its National Action Plan on Human Rights (2018-2020), Georgia committed to "ensure connection with" the OECD *Guidelines for Multinational Enterprises*, despite not being a formal Adherent to the OECD *Declaration for International Investment and Multinational Enterprises*, following various engagements on RBC throughout the years.

Another example is the Association Agreement between Georgia and the EU, including a preferential trade regime, the Deep and Comprehensive Free Trade Area, which has also strengthened Georgia's reform path with respect to RBC. The Association Agreement includes an explicit reference to the OECD Guidelines, including in Article 352 a commitment to "promote corporate social responsibility and accountability and encourage responsible business practices, such as those promoted by a number of international corporate social responsibility guidelines and especially the OECD *Guidelines for Multinational Enterprises*." The Agreement also includes commitments on a range of policy areas relevant to RBC, such as human rights, labour rights, environmental governance, and the fight against corruption (see e.g. Article 229 on labour standards). Since the signing of the Association Agreement, its gradual implementation has led to the strengthening of the legal and institutional framework that underpins RBC in many of the policy areas covered by the OECD *Guidelines* (see further below).

Finally, Georgia is member of the Council of Europe (CoE) and has ratified a number of CoE conventions covering issues relevant to RBC, such as human rights, labour rights, bioethics, combating corruption and human trafficking.

Table 5.1. National Action plans on RBC/BHR in Central, Eastern European and Eastern Partner countries

As of May 2020

Country	National action plan (year launched)
Czech Republic	Yes (2017)
Georgia	Chapter on BHR in NAP on Human Rights 2018-2020 (2018)
Lithuania	Yes (2015)
Poland	Yes (2017)
Slovenia	Yes (2018)
Ukraine	In the process of developing NAP on BHR

Source: https://globalnaps.org; www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx

Georgia has moved towards developing a NAP on RBC/BHR. In March 2018, the government adopted its National Human Rights Action Plan for 2018-2020, which includes a chapter on business and human rights which was informed by a National Baseline Study on business and human rights.[5] Chapter 25 on business and human rights foresees various activities to raise awareness of RBC among businesses and government institutions. Encouragingly it includes objectives on whistle-blower protection, human rights in public procurement, and women's entrepreneurship and empowerment. Chapter 25 nevertheless lacks specific information on other RBC issues potentially relevant to Georgia, such as due diligence, information disclosure and reporting, or high-risks sectors. While awareness-raising activities and workshops on RBC appear to have taken place, it is unclear whether other objectives are on target to be implemented. The lack of adequate funding and delays in implementation have been noted by the UN Working Group on BHR (OHCHR, 2019b).

The Human Rights Secretariat under the prime minister's office is currently working on the National Human Rights Strategy for 2021-2030, on the basis of which a National Human Rights Action Plan for 2020-2022 will be developed. RBC should be front and centre in these efforts, which provide an opportunity not only to strengthen and broaden commitments on RBC but also to adopt more robust and effective measures for implementation and monitoring, with concomitant resources. In this context, ensuring the meaningful participation of relevant stakeholders in the process is critical (OHCHR, 2020). Georgia should consider whether adopting a comprehensive NAP on RBC is needed or whether the above efforts would meet its policy goals and ensure policy coherence through a broader range of issues and sectors.

Beyond NAPs, governments may incorporate RBC principles in development strategies or as provisions in legislation to clarify what they expect from businesses. For instance, a priority action of Georgia's 2016-2020 SME Development Strategy is the promotion of RBC (Gov. of Georgia, 2015). Governments can also incorporate RBC principles and requirements in their own economic activities, as discussed below.

RBC and the state as an economic actor: leading by example in the state's own economic activities

Governments are increasingly seeking to promote the implementation of RBC standards by using their leverage as economic actors and leading by example on RBC. This includes ensuring that state-owned enterprises (SOEs) act in accordance with RBC standards, integrating RBC criteria in public spending (e.g., in public procurement, export credits), including RBC in corporate governance regulations as well as in investment promotion policies. In Georgia today, public procurement, SOEs and investment promotion present particularly promising opportunities in this regard.

Public procurement

Public procurement policies and processes offer an important avenue for governments to incentivise RBC. Governments are the largest buyers of goods, services and public works, with public procurement accounting for approximately 12% of GDP in OECD countries.[6] Public procurement is critical to the delivery of public services such as infrastructure, health and education. If not properly managed, however, some products, services and works risk being produced and delivered in violation of environmental criteria, human rights, labour rights and other RBC standards such as corruption prevention.

According to the World Bank, from 2013 through 2016 public procurement in Georgia averaged around 9.9% of the country's GDP and 31.7% of overall public spending, with little year-to-year variation (World Bank, 2018). These figures demonstrate the core role of Georgia's public authorities as a purchaser of goods, works and services. Over the last decade the government has made strides in establishing an effective system of public procurement. Notably, its public procurement electronic platform, adopted in 2010, is considered to be one of the most transparent in Europe and Central Asia, and Georgia's overall system of public procurement has been assessed to be generally compliant with international standards (World Bank, 2018).

An emerging area for Georgia is the integration of environmental criteria into procurement. As part of the EU4Environment project, Eastern Partner countries including Georgia are given support to devise and implement 'Green public procurement' plans (EU, 2019a/2019b). Georgia's State Procurement Agency might also consider integrating environmental and energy performance criteria into the Law on Public Procurement (OECD, 2019).

The inclusion of social (including human rights) considerations into public procurement is growing globally.[7] The government has shown interest in learning from international practice; in its NAP on human rights, it committed to identify issues of human rights protection, including women's rights, in state procurement processes, and to explore making such assessments mandatory (Government of Georgia, 2018). The government is encouraged to build upon its commitments to develop green procurement plans and use this opportunity to integrate additional aspects of RBC such as human rights in procurement requirements.

State-owned enterprises

After the fall of the Soviet Union, the new Georgian government privatised most SOEs and since then has continued to increase its privatisation target, continually identifying the privatisation of SOEs as a government priority.[8] The remaining SOEs (around 400 in 2020) operate in the energy and transport sectors, health, tourism, under various institutional arrangements and ownership structures at both national and municipal level.[9] The five largest SOEs in Georgia comprise 80-90% of the total assets of SOEs and include LLC Georgian Railway, JSC Georgian Oil and Gas Corporation, JSC Georgian State Electrosystems, JSC Electricity System Commercial Operator, and JSC Telasi.

Reforms of the SOE sector in Georgia have been assessed by international observers to be proceeding at a slow pace, despite the fact that some work has been done, for instance to assess and manage fiscal risks related to SOEs (Government of Georgia, 2018c). In 2014, the high level of decentralisation, with, reportedly, no single government entity having a comprehensive picture of SOE performance, was considered to be an obstacle to data analysis and management of state ownership according to best practices (World Bank, 2014). Others have noted issues with transparency and information disclosure, and the process of recruitment for board members and directors (Transparency International, 2016; OHCHR, 2019b). In the past, interference with trade union activities was also reported in some major SOEs, some of which are large employers such as Georgian Railway which is the largest employer in the country with an estimated 12 000 employees (ITUC, 2013-2019). By and large, SOEs do not seem to have RBC/CSR policies (only philanthropic activities).[10]

Georgia's management of state ownership could be addressed more decisively, with a view to aligning it with international best practices (Box 5.5) In the BHR chapter of its NAP on Human Rights, Georgia committed to assess relevant issues of human rights protection for companies providing public services and ensure training of respective members of staff. This objective could be expanded upon to assess more comprehensively whether the current legislative and administrative framework in relation to SOEs is in line with international standards. Georgia's public authorities could consider taking additional legislative and administrative measures to ensure better corporate governance of SOEs, improve transparency and disclosure, and clearly state their expectations that SOEs comply with RBC standards, in line with the OECD *Guidelines on SOEs*. As some of the Georgian SOEs are large employers, a stronger attention to labour rights would also be warranted.

Box 5.5. International guidelines on SOEs and RBC

International standards for SOEs and RBC are spelled out in the 2015 OECD Guidelines on Corporate Governance of State-Owned Enterprises (OECD *SOE Guidelines*), the Guidelines and the UN *Guiding Principles*. The OECD *SOE Guidelines* give concrete advice to countries on how to manage more effectively their responsibilities as company owners, thus helping to make state-owned enterprises more competitive, efficient and transparent. They recommend that the state ownership policy recognises SOE responsibilities towards stakeholders, and makes clear any expectations the state has in respect of RBC by SOEs (OECD, 2015b, Chapter V). The SOE Guidelines further recommend measures to report on risks, including in the areas of human rights, labour, the environment, and risks related to corruption and taxation (OECD, 2015b, Ch.VI).

The OECD *Guidelines* and the UN *Guiding Principles* apply to all business enterprises in all sectors, whether of private, state or mixed ownership. UN Guiding Principle 4 stipulates that states "should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, (…) including, where appropriate, by requiring human rights due diligence". The UN Working Group on Business and Human Rights (2016) has called upon states to lead by example and has a suggested a number of steps states should take as owners of enterprises, starting with setting clear expectations in law and policy that SOEs not only respect human rights throughout their operations, but that they should be role models in this regard.

Investment promotion

As highlighted in Box 5.3, based on the OECD *Policy Framework for Investment*, governments are encouraged to promote and enable RBC as part of their duty to lead by example. Georgia's Investment Promotion Agency, Enterprise Georgia, can play a role in this respect. An IPA has an explicit mandate to promote RBC, can target or exclude investors based on their RBC record, or take an action when an investor is found to be in breach of internationally-recognised RBC principles. For example, two thirds of OECD IPAs take action when investors are found in breach with legislation and over half when investors do not comply with RBC principles (OECD, 2018). Yet, there is a high divergence on this aspect across IPAs in different regions and countries are still learning how to promote RBC, and sustainable development more generally, through IPA activities.[11]

In the case of Enterprise Georgia, the main message to potential investors on the agency's website is that Georgia has one of the most flexible labour codes and ranks high on the Heritage Foundation's Economic Freedom Index, which includes a component of labour 'freedom' (deregulation).[12] This can pose a challenge for branding Georgia as a responsible business destination and warrants more nuance as Georgia is shifting its strategies to attract responsible investors. This is particularly relevant in the context of its trade relationship with the EU, as companies from the EU are important investors in Georgia and are expected to demonstrate RBC and at times are required to do so legally (Box 5.2). Making an explicit link between RBC and investment promotion efforts could help fill the information gap for foreign investors, who may otherwise perceive the risk of operating in Georgia to be higher than it otherwise is in reality.

Georgia's special economic zones (or free investment zones) are another relevant avenue for RBC. Following its visit to Georgia in 2019, the UN Working Group on BHR expressed views that human rights and labour rights considerations could be better articulated in the existing four FIZs, even though formally national regulations on human rights and labour apply to them. Risks to human rights and the environment in SEZs have been observed worldwide (UNCTAD, 2019). In light of this, the government could consider assessing how companies located in FIZs exercise due diligence in their operations and to what extent RBC-related standards are respected, and explore making due diligence a standard operating procedure.

Policies in specific areas covered by the Guidelines and relevant to Georgia: Policy developments and remaining challenges

The scope of RBC is broad and cross-cutting as business-related impacts to society, both positive and negative, cover a range of substantive areas. In addition to general recommendations on RBC, the Guidelines include specific recommendations to enterprises in the areas of information disclosure, human rights, employment and industrial relations, environment, bribery and corruption, consumer interests, science and technology, competition, and taxation. The present section highlights key policy developments in the areas of human rights, employment, environment, corruption, with a cross cutting focus on information disclosure.

Need for maintaining gains in human rights protection

Governments have a primary duty to ensure human rights and protect against abuses by business. Expectations on businesses to engage in RBC are high on the international agenda. Businesses have the responsibility to respect human rights independently of the state's ability or willingness to fulfil its obligations. These expectations are set out in internationally recognised, government-backed frameworks such as the OECD *Guideline*s, the UN *Guiding Principles on Business and Human Rights* (UNGPs) and the *ILO MNE Declaration on labour rights.* For example, according to the *Guidelines* (in Chapter IV), companies are required to avoid causing or contributing to adverse human rights impacts in their own activities and to seek to prevent or mitigate impacts to which they are directly linked through their business relationships.

In Georgia, while the authorities as a whole are working to abide by their international human rights commitments, including through a NAP on human rights (which includes BHR), stronger efforts are needed to address concerns over the independence of the judiciary and access to remedy overall, as well as the protection of civil society and human rights defenders. These issues greatly facilitate, or (when weak) restrict, the promotion and respect of RBC.

Georgia is party to all but two of the nine core international human rights treaties, and has ratified most Optional Protocols except for two related to individual communications procedures.[13] It is also party to the CoE's European Convention on Human Rights. Georgia's Ombudsman ("Public Defender's Office"), with a mandate to promote and protect human rights and receive individual complaints, is fully independent ('A' status) and has been very active on RBC issues.[14]

In 2018 the Georgian parliament completed a constitutional reform process by approving final amendments to the Constitution. The revised Constitution includes new provisions on gender equality, anti-discrimination and children's rights. In June 2020, it also introduced constitutional amendments to increase parliamentary pluralism and all for a more representative legislature, although according to some non-governmental international observers there has reportedly been some uncertainty as to the intention of the government to fully implement that objective (Freedom House, 2020). In addition, Georgia has adopted a National Human Rights Strategy and related Action Plan (including a chapter on BHR) and is generally considered to be making serious efforts to implement it commitments (Nicholson, 2019). At the time of writing, the government was drafting the National Human Rights Strategy for 2021-2030, with a related NAP on human rights to follow. The drafting of the 2020-2022 NAP on human rights could provide an opportunity to strengthen RBC commitments and measures, and expand their scope to a broader range of sectors.

Access to remedy and independence of the judiciary

Access to remedy is an essential part of the state duty to protect against adverse impacts by private actors such as businesses. States are expected to take appropriate steps to ensure, through judicial, administrative, legislative, and other appropriate means, that when such abuses occur within their territory or jurisdiction those affected have access to effective remedy. At the same time, the independence of the judiciary is a crucial foundation of law enforcement that affects investment as highlighted in this IPR, as business enterprises and the public need a reliable and impartial mechanism for resolving disputes, whether labour, commercial, environmental or otherwise, as well as for combatting corruption.

In the WEF's Global Competitiveness Index 2019, Georgia ranked 74 out of 141 economies overall (with 1 being the best), and 80 on independence of the judiciary, highlighting the need for further progress in this area of particular relevance to RBC. Despite noticeable progress in judicial reforms, challenges remain to ensure the full independence and accountability of the judiciary, free from executive and legislative interference, and the transparency and professionalism surrounding judicial selection and proceedings (EC, 2020). The contested appointment process of 20 new Supreme Court judges in 2019 highlighted weaknesses in the system and low public trust. Some NGOs, parliamentarians, and international observers noted shortcomings in relation to transparency and selection criteria, and the absence of effective rules to ward off partisan politics (OSCE, 2019 and 2020; Public Defender, 2018a). Additional concerns have been expressed over selected investigations involving major businesses (EC 2020, Open Society Fund Georgia et al, 2019).

Effective access to remedy for corporate harms is still a work in progress. The UN (OHCHR, 2020) has for instance noted the high costs of litigation, complex corporate structures, delays in deciding cases, and practical obstacles in enforcing court orders. Ineffective remedy to discriminatory dismissals of employees has also been noted (OHCHR, 2020). Non-judicial mechanisms, in particular the Public Defender of Georgia, who is active in promoting RBC in Georgia and monitoring business-related human rights impacts, play an important role in ensuring remedy and their mandate could be strengthened. A positive development in this regard was the establishment in 2015 of the Business Ombudsman of Georgia, an institution whose mandate includes resolving disputes related to corporate activities. The Ombudsman is actively promoting business integrity and is mandated to receive complaints in this respect, even though some NGOs such as Transparency International at the time of the Ombudsman's establishment had questioned its independence. [15]

The *Guidelines* and UN *Guiding Principles* state that when causing or contributing to adverse impacts, companies are expected to provide for or co-operate with legitimate remediation mechanisms through which affected stakeholders can raise complaints and seek to have them addressed. Today, little evidence is found of businesses providing or co-operating in such mechanisms (OHCHR, 2020). The government and business associations are encouraged to raise awareness about the importance of establishing effective company-based grievance mechanisms to address concerns by potentially affected stakeholders and adverse impacts at an early stage (OHCHR, 2020).

Civil society space and human rights defenders

Human rights defenders play a critical role in enabling companies to understand the concerns of affected stakeholders. The OECD *Due Diligence Guidance for Responsible Business Conduct* stresses the importance of consulting relevant stakeholders including civil society organisations, trade unions, community-based organisations and human rights defenders when conducting due diligence, (OECD, 2018c). While states have a duty to protect freedom of expression, association and assembly, businesses have a responsibility to respect human rights defenders as emphasised in Chapter 4 of the OECD *Guidelines*.

Georgia has an active civil society, which has become an important contributor to the democratic process. Although the last two years have seen signs of deterioration of civil society space due to attacks on civil society organisations by public authorities. For instance, some non-governmental organisations faced verbal attacks (the main narrative being of alleged political bias and anti-national motives) following concerns they had publicly expressed about the appointment of new Supreme Court Justices in 2018-2019

(OHCHR, 2019a; Public Defender, 2018a). While recent events relate to the judiciary and civil freedoms, they send a mixed message to all human rights defenders and NGOs, including those defending stakeholders potentially affected by business activities. The government should send a clear signal to the public and state authorities that Georgia respects the rights of civil society organisations and human rights defenders and protects them from abuse of any sort (including defamation) by third parties. The trust between civil society organisations (CSOs) and public authorities could also be strengthened through, for example, stronger involvement of CSOs in the different steps of the political process (European Commission, 2020).

Lastly, the *Guidelines* call on businesses to respect human rights and recommend that companies carry out human rights due diligence, and provide for or co-operate with legitimate remediation processes where such adverse human rights impacts occur. Enhanced action is needed to more effectively and comprehensively assess and address business-related adverse impacts, especially in high-risk sectors.

Business-related RBC impacts: spotlight on high-risk sectors

According to the OECD *Guidelines* (section II), enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts and account for how these impacts are addressed. The OECD *Due Diligence Guidance* provides a practical framework to implement these recommendations. Due diligence addresses actual or potential (risks) and adverse impacts related to the following topics covered in the *Guidelines*: human rights, workers and industrial relations, environment, bribery and corruption, disclosure, and consumer interests.

In Georgia, some industry sectors, namely mining, hydropower development, and to a lesser extent construction, appear marred by adverse impacts and risks across several areas: inter-related impacts on human rights, labour and the environment have been observed, with cross-cutting concerns of information disclosure , transparency and corporate governance. Such impacts and risks in the mining and hydropower sectors are discussed in this section, highlighting their compounding impacts and resulting need for enhanced due diligence (see also sections on environment and employment).

Georgia's mining sector has several significant deposits and investments in manganese, copper and gold and small-to-medium size quarry operations, primarily marble and construction materials. The mining sector is economically significant to Georgia: as of January 2020, copper ores, precious metal ores and ferro-alloys made up 30.8% of Georgia's exports. The need to address environmental harm has been recognised by the government (Government of Georgia, 2018b).

The soil, air and water pollution from hazardous mining waste and outdated equipment remains an issue, affecting agricultural land, fauna and flora. In a number of mining operations, such as the larger operations in Chiatura (manganese) (Box 5.6), Tkibuli (coal), and Sakdrisi (gold and copper), adverse impacts have been reported on people's health, livestock and agricultural land, as well as with regard to inadequate working conditions and risks for occupational safety and health (see section on employment), population displacement and damage to property. Perceptions of inadequate company communication and consultation with communities and workers also appear to be a common issue (OHCHR, 2020, Adam Smith International, 2018; Public Defender, 2018b). Weak regulations on environmental impact assessments and information disclosure in this sector, has been perceived as challenging (Box 5.8).

Box 5.6. Manganese mining operations in Chiatura municipality

Manganese mining operations in Chiatura municipality have been emblematic of the industry's devastating impact on human rights and the environment. The mine operator, Georgia Manganese, has struggled to remediate the 140-year-old mine's legacy environmental impacts and update its infrastructure and environmental management system. Alleged shortcomings in wastewater management have led to water and soil pollution. Residents have also complained about air pollution affecting their health. Workers have reported issues related to working conditions leading to a high number of injuries in Chiatura mines. Communities have complained that local authorities and the company had not taken sufficient measures to remedy these impacts. The company's ability to disclose relevant information and engage meaningfully with affected communities has also been questioned. The company has denied these accusations,

Tensions with the population have been reported. In early 2020 for instance, residents of one village in Chiatura municipality blocked the mine access for weeks to protest over the mine's allegedly extensive damage over the environment, roads, and their property (with most houses in the 280-inhabitants village said to be damaged).

In 2016 the mine was brought under 'special management' appointed through court order upon request from the Ministry of Environmental Protection and Agriculture, in order to implement a range of remediation and mitigation measures.

Source: OHCHR (2020); Public Defender (2020); Adam Smith International (2018).

Hydropower development is another potentially high-risk sector, if not managed sustainably and responsibly. Over 80% of electricity currently generated in Georgia comes from hydropower. In 2019, Georgia had a total of 84 hydropower plants (with a rated capacity of 3 227 MW), while 24 hydropower projects (rated capacity of 1 235 MW) were at the construction and licensing stage, and another 67 projects (rated capacity of 1 314 MW) were at the licensing stage (OHCHR, 2019b). The government estimates that about 25% of Georgia's energy generation potential is currently exploited and that the untapped potential comes mostly from hydro resources. Georgia's IPA encourages investment in the sector, noting the lack of regulation, especially for small hydropower plants.[16]

Hydropower development can have a range of adverse effects on the environment and surrounding communities, including in relation to groundwater levels, loss of forests and biodiversity, loss of agricultural land, population displacement, safety, damage to property, and risks for cultural heritage sites (Box 5.7). Concerns have been raised at the lack of social and environmental safeguards attached to the construction of hydro-power plants, shortcomings in past environmental and social impact assessments and mitigation measures, inadequate attention to the cumulative impacts of multiple projects, and lack of genuine consultations with potentially affected communities. Tensions and conflicts with local communities have erupted on occasions (Public Defender, 2018b, OHCHR, 2020; WB, 2018b).

Box 5.7. Examples of impact of hydropower plants in Georgia

Cases before accountability mechanisms of international finance institutions

A complaint was submitted in February 2018 to the Compliance Advisory Ombudsman (CAO) of the IFC concerning the construction of a cascade of hydroelectric power plants in the Adjaristsqali region. The cascade was originally proposed to include three phases, namely the 185-megawatt (MW) Shuakhevi scheme, the 150MW Koromkheti scheme, and the 65MW Khertvisi scheme. The Khertvisi scheme was not pursued by AGL due to significant economic and environmental risks and Koromkheti is in early stages of development under a separate project. Thus, only Shuakhevi is considered by CAO. It is being developed by **Adjaristsqali Georgia LLC (AGL)** as a joint venture between India's Tata Power, Norway's Clean Energy Invest (40% each) and the IFC (20%).

The complaint, submitted by 17 residents of the Rabati District of the Makhalakidzeebi village, Shuakhevi Municipality, Adjara, alleged that construction activities related to the Shuakhevi power plant have had a negative impact on their lives, causing an increase in risk of rockfalls and landslides, a decrease in groundwater levels, as well as negative effects on the biodiversity of the Adjaristsqali river, including the disappearance of local fish species. Complainants allege that AGL failed to properly address the geological and social risks linked to the project, and failed to comply with an agreement entered into force in 2014 with the Government of Adjara and the village residents, to provide compensation in case of damages caused by the construction. The complainants submitted a similar complaint to the accountability mechanisms of the European Bank for Reconstruction and Development (EBRD) and Asian Development Bank, as both banks are co-financing the Shuakhevi hydropower project. The complaint is currently under a dispute resolution process. As requested by the parties, CAO and EBRD's mechanism jointly facilitate the dialogue process, with ADB's acting as observer.

The **Nenskra hydropower project** in the Upper Svaneti region (280 MW power plant, 125 m high dam and a storage reservoir) has been the subject of complaints to the European Investment Bank (EIB), the EBRD and the ADB, which are amongst the financiers of the project. The project is led by JSC Nenskra Hydro, a joint venture of Korea Water Resources Corporation and of the state-owned "JSC Partnership Fund". The project has met with strong opposition from the nearby Svan communities.

In 2015, the Ministry of Environment and Natural Resources Protection approved the project based on an environmental and social impact assessment carried out by the company. To meet international finance institutions' standards, the company had to carry out supplementary studies, including a more comprehensive social impact assessment, completed in 2017. These measures were not considered sufficient by the communities and in 2018, CSOs, on behalf of communities, lodged complaints with the grievance mechanisms of the EIB, EBRD and ADB. Environmental and social issues raised include the loss of large areas of forests and biodiversity, safety and property damage due to geological risks (e.g. increased mudflows and landslides), economic displacement and its disproportionate impact on women whose incomes from traditional livelihoods and local forests could be lost.

The complainants also argued that consultations with communities had been inadequate (which the company contests), and specifically requested that the finance institutions apply their safeguards on indigenous peoples to the Nenskra case. The Svans make up an ethnic subgroup with their own language, laws and traditions. They identify themselves as an indigenous people but are not recognised as such by the government. The EBRD and EIB are set to publish their decisions in the coming months.

Source: IFC and MIGA, Office of the Compliance Advisory Ombudsman, 2020; OHCHR, 2020; CEE Bankwatch Network, 2020; Lomsadze, 2020

An emerging issue, as Georgia develops not only hydropower but also other economic sectors such as tourism and agriculture, is the unintended effects of new power plants on these other areas. The planned Namakhvani power plant for instance has met with opposition from local communities, who complain of serious risks to their small businesses in new tourism-related activities and agriculture, particularly wine-making, should the project go ahead (Green Alternative, 2019). Given the number of hydropower projects active and planned in Georgia, a more robust and systematic assessment of their environmental and social impacts, and of the cumulative impacts of multiple projects and potential consequences on other economic sectors, would be warranted.

Continue to strengthen environmental governance, including enforcement

The *Guidelines* (Chapter VI) call on enterprises to take due account of the need to protect the environment and to conduct their activities in a manner that contributes to wider sustainable development. This entails, among other responsibilities, establishing and maintaining appropriate environmental management systems; assessing and addressing the environmental impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them; improving environmental performance; and being transparent about environmental impacts and risks. Governments should set clear expectations to business enterprises in this regard.

Existing environmental issues

Georgia has a wealth of natural resources, but much of the exploitation of those resources has in the past been conducted without due regard to its impacts on the environment, the country's biodiversity, and the public interest. Georgia's ranking on the Yale Environmental Performance Index (2018), which ranks performance across criteria covering environmental health and ecosystem vitality, is relatively low (94th rank out of 180 countries). This ranking is likely linked to the previous decade, during which environmental protection was less of a priority, environmental pollution increased and needed policy reforms slowed down (UNECE, 2016).

As highlighted above, addressing the legacy of unregulated mining on the environment is particularly challenging. Mining waste and water (such as acidic water seeping from aged tunnels) have yet to be adequately addressed. The strengthening of regulatory tools at the disposal of the government is required, as they currently fall short of expectations: for example, the 2015 Waste Management Code based on EU regulations does not cover mining waste. Other sources of water and soil pollution include obsolete pesticides in agricultural areas.

Hydropower development is also reported to have various adverse environmental impacts, including on biodiversity, forests, protected areas and biodiversity, ground water and water availability, and geological and geothermal risks (Box 5.7).

In addition, Georgia has high levels of indoor and outdoor pollution, significantly affecting morbidity and mortality. In the 2018 Yale Environmental Performance Index cited above, Georgia ranked 93rd out of 180 for air pollution due to coal or other types of industrial combustion, and 139th for air quality. Various factors are said to contribute to ambient air pollution in Georgia, most importantly household solid fuels consumption, but also automobile emissions and construction work (WB, 2018; OHCHR, 2020).

Environmental governance

Georgia has been working to strengthen its environmental framework and align it more closely to international standards and in particular EU standards as required in the EU-Georgia Association Agreement (which defines goals in relation to environmental governance, air quality, water quality and resource management, waste management, industrial pollution and hazards, and climate change, among others). In 2019, the European Commission noted that Georgia was making good progress in transposing the EU acquis (EC, 2019).

Georgia is a party to a range of global and regional Multilateral Environmental Agreements including the 2009 OECD Declaration on Green Growth, the UN Convention on Biological Diversity, and the UN Framework Convention on Climate Change and the Paris Agreement. Georgia adopted its Third National Environment Action Programme (2017-21) in 2018, which represents the country's main strategic document in the field of environment and natural resources protection and defines the long-term priorities and plans for the sector (Government of Georgia, 2018b).

Environmental impact assessments (EIAs) are an essential preventive tool at the disposal of both governments and businesses. A new Environmental Assessment Code, elaborated in line with EU directives, was adopted in 2017 and entered into force on 1 January 2018. The Code established procedures for EIA processes for certain public and private projects that entail significant environmental and human health risks, expanding the scope of procedures in relation to environmental impact assessments, strategic environmental impact assessments, transboundary environmental impact assessments, and public participation in decision-making. Following the adoption of the Code, regulations on the strategic environmental assessment (SEA) were adopted in 2018. Strategies on various sectors can today be submitted for screening by the Ministry of Environmental Protection and Agriculture, although it appears that not all strategies are screened adequately (OSF, 2018 and 2020). According to an assessment undertaken by the European Commission, further work is needed to improve resources and capacities for enforcement, including the need to adopt a new Law on Environmental Liability (EC, 2019).

Another critical aspect of environmental governance is access to environmental information. Georgia is party to the Aarhus Convention, which recognises people's rights to access information and to participate in decision-making in environmental matters. In the last few years, the government has reintroduced public participation in the environmental impact assessment with the adoption of relevant by-laws (Nicholson, 2019). The Ministry of Environmental Protection and Agriculture has also adopted regulations on public access to environmental information, and provides environmental and agricultural information through the Environmental Information and Education Center (Government of Georgia, 2020a, OSF 2018). In its National Human Rights Action Plan (chapter on BHR) the government also included commitments to ensure public information and participation in environmental matters. However, in practice, NGOs have noted that requirements for public participation, such as timeframes for consultation or accessibility of documentation, have not always been honoured (OSF, 2018). During the COVID-19, crisis measures were reportedly taken that somewhat restricted the public's ability to participate in environmental decision-making.[17] Georgia, as other governments, should be encouraged to uphold those fundamental aspects of environmental governance and RBC in order to prevent adverse impacts of COVID-19 measures.

Businesses have a concomitant responsibility to communicate to stakeholders about the environmental risks of their operations and to ensure access to such information, as an integral part of due diligence and the management of environmental impacts. Increased efforts are needed to ensure that people have full access to environmental information in matters that concern them and they can participate meaningfully in decision-making processes (OHCHR, 2020; CEE Bankwatch Network).

Box 5.8. Mineral resources extraction: recent reforms and remaining needs in relation to environmental protection, transparency and information disclosure

The legislative framework in which mineral rights are awarded, regulated and monitored is fragmented. With the support of international organisations, the government has been working to comprehensively reform the sector, including on regulatory oversight, fiscal regime, geodata management, and social and environmental impacts. Reforms so far include the establishment of the National Agency of Mines in 2017 (which awards mineral rights) and the adoption in 2019 of the Mining Sector Policy. A key improvement on environmental issues is the reinstatement, in the 2017 Environmental Impact Assessment Code, of the requirement of an EIA for the extraction of mineral resources, addressing an important protection and information gap. From 2005 through 2017, mineral resources licences were issued by a simple administrative process with no requirement for environmental impact assessments or public disclosure and participation. More specific regulations or advice on ways to capture the specific and dangerous environmental impacts that certain mineral extraction and mining methodologies create would be helpful, beyond standard industry oversight.

Further work could be done to address remaining restrictions to transparency and access to information. In particular, article 29 ("ownership of information on subsoil") of the Law on Subsoil restricts public access to information about the reserves and resources, mining and processing factors, providing that data cannot be obtained without the consent of the (private) entity that operates the mineral resources. In addition, the government has recognised in its mining sector policy that institutional overlaps, capacity limitations, technically suspect methodologies, insufficiently monitored private sector activities, and discretionary powers have all been identified as creating opportunities for corrupt practices.

Against this backdrop civil society organisations and other observers have been advocating for Georgia to join the Extractive Industries Transparency Initiative (EITI), stressing the need for more transparency and public disclosure in the extractive sector. Georgia is already member of the Open Government Partnership, which encourages its members to increase transparency and public access to information, including in the extractive sector, and in 2019 it also joined the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development. Joining the EITI would seem to be a logical next step for Georgia. The EITI has established a global standard to promote the open and accountable management of oil, gas and mineral resources. Membership of the EITI and increased transparency and disclosure of information in the sector would strengthen protections against corruption. Amongst Eastern Partner countries, Armenia and Ukraine are members of the EITI.

Source: Government of Georgia, 2019d; 2020b; Institute for Development of Freedom of Information, 2019; Green Alternative, 2017; Adam Smith International, 2018; www.eiti.org

Environmental performance of SMEs

In 2017, 99.7% of all firms in Georgia were SMEs. In 2018, they accounted for 64% of business sector employment and 61% of value added. SMEs have the potential to be key drivers in the shift towards a greener economy. Improving the environmental performance of SMEs is also essential given the underappreciated responsibility of SMEs for industrial emissions (OECD et al., 2020).

Environmental regulation remains one of the key means by which governments can directly improve the environmental performance of SMEs, but the focus is currently on larger polluters, often leaving SMEs de facto unregulated. A simplified EIA process for small enterprises could help (OECD, 2018; OECD et al., 2020). Georgia's public authorities have taken a number of measures, including in the SME Development Strategy 2016-2020 and its associated Action Plan, to improve practices in relation to resource efficiency and clean production, and waste management. Other measures have been suggested to enhance SME's environmental performance (OECD et al., 2020). Another important measure would be access to finance. At the moment, SMEs face significant barriers when seeking access to green finance, including in relation to the level of interest rates and collateral requirements (OECD, 2019). Georgia could explore new green finance instruments to fully support the greening of SMEs.

Employment and industrial relations: Georgia is strengthening its system of labour rights protection

Chapter V of the OECD *Guidelines* highlights the promotion of observance among enterprises of international labour standards, notably the fundamental principles and rights at work as recognised in the ILO *Declaration on Fundamental Principles and Rights at Work*. These include prohibition of discrimination on any grounds, prohibition of child and forced labour, protection of adequate working conditions and the recognition of freedom of association and collective bargaining. In Georgia, particularly salient issues have been found in relation to adequate working conditions, occupational health and safety, and the overall effectiveness of labour protection and inspection.

Policy developments: Georgia's path towards stronger protection of labour rights

For several years after independence, low workers' protection and ineffective systems of enforcement and inspection characterised Georgia's labour sector – a legacy of the liberalisation reforms undertaken by the government in the mid-2000s. In 2006, the government abolished the labour inspectorate and substantially reduced worker protections in the Labour Code, for instance removing provisions on weekly rest, limits on overtime hours, rate of overtime pay, and breaks during shifts, and facilitating ways to dismiss workers. As a result of these policy developments, some observers have assessed Georgia's labour law until 2013 as one of the most deregulated in Europe (Muller, 2012).

Georgia's rate of ratification of ILO Conventions has also remained somewhat low compared to its peers (Table 5.2). And while the country ratified the CoE's European Social Charter, it did so with several reservations, including on just conditions of work, safe and healthy working conditions, vocational training, and maternity protection (CoE, 2015). In 2013, the International Trade Union Confederation (ITUC), in its Global Rights Index, flagged Georgia as a 'country at risk' and in 2015 rated it at number 4 out of 5 (5 being the worst) for 'systematic violations of rights' (ITUC, 2013-2019).

Table 5.2. Ratification of ILO Conventions among Eastern Partner countries

Country (member since)	Fundamental (8)	Governance (4)	Technical (178)	Total (190)
Armenia (1992)	8	3	18	29
Azerbaijan (1992)	8	4	46	58
Belarus (1954)	8	3	40	51
Georgia (1993)	8	2	8	18
Moldova (1992)	8	4	38	42
Ukraine (1954)	8	4	59	71

Source: ILO (2020), https://www.ilo.org/dyn/normlex/en.

Over the past few years since the 2016 OECD assessment[18], Georgia has been taking important steps to improve the protection of labour rights, through strengthening labour regulations and mechanisms. The 2013 amendments to the Labour Code instituted important provisions, including recognition of freedom of assembly, prohibition of discrimination and stronger protections regarding contractual provisions, although shortcomings remained, and the labour inspection was still weak (Public Defender of Georgia, 2018). Additional reforms since have significantly strengthened occupational health and safety regulations, as well as re-establishing an effective labour inspection system (Box 5.9). Because of these policy developments, Georgia's ranking in the ITUC Global Relations Index has improved from 4 to 3 (ITUC 2013-2019).

Box 5.9. The reintroduction and reinforcement of labour inspection in Georgia

Amidst widespread reforms to deregulate the labour sector, in 2006 the labour inspectorate was abolished, leaving workers protection and occupational health and safety conditions unchecked. In 2015, the government re-established a Labour Conditions Inspection Department, although with some shortcomings. A new Law on Labour Safety was introduced in 2018 to reinforce the mandate of labour inspectors. While a positive development, the law only covered sectors identified as especially hard, risky and hazardous, and thus remained limited in scope.

A range of additional positive developments took place in 2019. First, amendments were adopted that elevated the status of the Law "On occupational health and safety" to an "Organic Law", broadening the mandate of the Labour Conditions Inspection Department to cover all sectors of economic activity, public and private, and allowing it to perform unannounced checks and charge fines without a court order or prior notice. This law came into effect on 1 September 2019, when the Inspection Department became a special entity, albeit still within the Ministry. Further amendments to the Organic Law were made in 2019 to ensure that from 2022 onwards, inspectors will cover all sectors and the full range of labour rights. The current team of 40 inspectors was also set to increase to 100 in 2020.

Recent data from the new Labour Conditions Inspection Department show a substantial increase in the number of facilities inspected in 2019 compared to 2018 (835 compared to 467 in 2018). The increase is largely related to the increased number of inspections in relation to occupational health and safety – 558 facilities inspected compared to 87 in 2018. Inspections in relation to forced labour and other provisions of the labour legislation decreased slightly. In addition, supervision aimed at creating a safe and healthy work environment covered about nine times more employees compared to 2018.

The government also reported in 2019 that it was drafting a legislative act to make the Inspection Department a Legal Entity of Public Law, which would strengthen its independence and autonomy. As an additional step, ratifying the ILO Convention on labour inspection (No.81) would be a helpful way to reiterate and strengthen Georgia's commitment to an effective labour inspection system.

Source: Government of Georgia, 2019c; OHCHR, 2020; Public Defender of Georgia, 2018.

Working conditions and occupational safety and health

Adequate conditions of work include fair remuneration, reasonable working hours, paid leave, and occupational safety and health. Since the mid-2000s workers in Georgia have had to pay a high toll for the inadequacy of the labour protection legislation, including on working conditions and occupational health and safety. It is hoped that the 2019 amendments to the law on Occupational Health and Safety, which include both preventive and remedial measures, and mandates reporting of accidents by employers, with the continuing strengthening of the labour inspection department, will bring much needed improvements.

Until the recent reforms, workers' safety and health were in some instances at risk in the mining and construction sectors, with several deaths and serious injuries recorded. In 2018 for instance, two incidents within months cost the lives of 10 miners in the Tkibuli coal mine in Western Georgia, where most of the country's estimated 400 million tons of coal reserves are concentrated. As a result, extraction was suspended pending an external audit (OHCHR, 2020; HRW, 2019). Given the inherently hazardous nature of mining work, enhanced measures should be taken to ensure occupational health and safety. In Georgia, mining practices seem to have made the matter worse: lengthy shifts, the lack of weekly rest, no reasonable limits on working hours, and the practice of prioritising production quotas over workers' safety, are all said to be compounding factors (OHCHR, 2020; Human Rights Watch, 2019; Public Defender, 2018a). The low level of awareness amongst employers of their responsibility to ensure workers' safety across all industries also seem to be an issue.

Gaining a comprehensive picture of the extent of occupational hazards in Georgia is not easy, especially prior to 2018 as employers were neither required to report accidents nor to insure their workers (OHCHR, 2020). Some observers have expressed concerns about the number of accidents, in particular fatal or near-fatal ones, that they have assessed as high. The data available are fragmented: unofficial estimates are that 1 081 workers were injured and 376 died from 2010 to 2018.[19] Others note that between 2007 and 2017, the average number of deaths at work per year in Georgia was 41, compared to an average of 24 deaths per year between 2002 and 2005. In 2014, it was estimated that the country averaged 5.5 deaths per 100 000 workers, three times the EU average for the same year (Tchanturidze, 2018).

According to official data, in 2018, almost 200 persons were injured and 59 died in the workplace, whereas in 2019, the numbers were 168 and 41 persons respectively, which represent a decrease from 2018 (Government of Georgia, 2019c). By contrast, the OECD average of reported occupational injuries, per 100 000 inhabitants, was 1 ,455 for non-fatal injuries and 2.5 for fatal injuries in 2019.[20] The discrepancy between reported injuries compared to the OECD average suggests that there is still significant under-reporting of occupational accidents in Georgia, particularly non-fatal injuries. The lack of adequate insurance coverage, the inadequacy of record-keeping of incidents by companies, and lack of awareness among workers about their rights, is likely to contribute to under-reporting (OHCHR, 2020).

Non-discrimination

Non-discrimination in employment is a fundamental element of a labour system as underlined in Chapter V of the OECD *Guidelines* and other relevant international standards. The ILO Non-Discrimination in employment Convention No.111 calls upon states to promote equality of opportunity and treatment in respect of employment. In Georgia, particular attention could be paid to discrimination on the basis of sex, disability, and sexual orientation and gender identity. The UN Working Group on BHR has for instance discussed the issues faced by persons with disabilities in employment (OHCHR, 2020).

Gender equality is another important consideration for governments and businesses. For example, the OECD *Guidelines* recommend that companies' operations be guided "by the principle of equal opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status". Georgia has made important steps towards the legal recognition and protection of the principle of equal remuneration for men and women for work of equal value, in both the private and public sectors. The legislative framework is broadly in place, with relevant laws including the Law on Gender Equality and the Law on the Elimination of All Forms of Discrimination. It has been noted that legal provisions could nonetheless be strengthened to fully align with international and EU standards, in particular the ILO Equal Remuneration Convention No.100 and EC Directive 2006/54/EC (CoE, 2018; ILO, 2019).[21] In 2019, amendments were made to the law on the elimination of all forms of discrimination, namely the inclusion of harassment and sexual harassment as forms of discrimination, with further amendments strengthening the anti-discrimination mechanism in the private sector (OHCHR, 2019a). The issue will now be their application in practice.

Despite these achievements in law, similar to other Eastern European countries, gender equality in practice could be further improved. For example, in 2018, women's average monthly wage was 65% of men's. Women are also underrepresented in the workforce (Government of Georgia, 2019b). In the Global Gender Gap index (WEF, 2020), Georgia ranked 74 out of 153 countries in 2020 (with rank 1 best), and 61 for women's economic participation and opportunity. This is nevertheless a noticeable improvement compared to 2018, whereby Georgia ranked 99 out of 149 countries overall.

Freedom of association and collective bargaining

Freedom of association and collective bargaining are another fundamental element of a responsible and integrative labour system as underlined in Chapter V of the OECD *Guidelines* and other relevant international standards. Today, Georgia broadly recognises and protects freedom of association and collective bargaining, a major improvement to the previous decade, during which anti-union actions were frequently observed (ITUC, 2013-2019). Some NGOs have suggested that progress could be made in enforcing existing legislation more fully, for instance in relation to the protection against discrimination based on trade union membership (Freedom House Index, 2020). Other observers have noted that social dialogue and its mechanisms, in particular the "Tripartite Social Partnership Commission," could be strengthened. The Commission, composed of government, business and trade union representatives, is mandated to facilitate the development of social partnership and social dialogue at all levels between employees, employers and the government and to suggest recommendations on labour issues (Government of Georgia, 2019a). The Commission's effectiveness has been questioned (OHCHR, 2020; CoE, 2018). The Commission should be encouraged to strengthen the effectiveness of its procedures and recommendations to fully play its part in strengthening the labour system.

Forced labour and human trafficking

In chapter V of the *Guidelines* companies are called upon to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, and take adequate steps to ensure that forced or compulsory labour does not exist in their operations. The prohibition of child and forced labour is part of the ILO *Declaration on Fundamental Principles and Rights at Work*. Of relevance are also international standards against trafficking, such as the UN Convention against Transnational Organized Crime and CoE's Convention on Action against Trafficking in Human Beings, both of which Georgia has ratified.

Georgia is a country of origin, transit and destination for human trafficking. Human traffickers exploit domestic and foreign victims in Georgia, and traffickers exploit victims from Georgia abroad. While the majority of trafficking victims appear to be women and children, and for sexual exploitation, Georgian men and women are also subjected to forced labour within Georgia and abroad (US, 2019c; Nicholson, 2019).

Georgia has put in place a policy framework to combat trafficking, including the Law on Combating Trafficking in Persons and a co-ordination body (the Inter-Agency Council on Combating Trafficking in Persons – TIP Council, which adopts national action plans), that is considered to meet minimum international standards.[22] While Georgia has been congratulated for its efforts to combat human trafficking and moved to 'Tier 1' in the US Department of State in 2016 and has kept its ranking since, the number of traffickers investigated, prosecuted and convicted remains relatively low and few victims are identified.[23] Other areas of progress appear to be transparency of institutions and increasing efforts to identify forced labour (US, 2019c; GRETA, 2016).

The recent reforms of the labour inspection mechanism and in particular the new ability of inspectors to conduct unannounced inspections should hopefully contribute to prevention and identification of potential forced labour/trafficking issues.

The fight against corruption has advanced

The fight against corruption is an important agenda for both governments and companies, as bribery and corruption can discourage investment, erode democratic institutions, hinder RBC practices, and slow down progress toward development goals. Corruption can have negative effects on people and the overall business environment. Companies have an important role to play in contributing to government's efforts to preventing and combating corruption, as highlighted in Chapter VII of the *Guidelines*.

Georgia has ratified the UN Convention against Corruption and the Council of Europe's Criminal Law Convention on Corruption, and has come a long way in creating a regulatory and institutional framework for fighting corruption in line with international standards and EU association agenda commitments (EC, 2020b). The introduction of an effective and transparent e-procurement system in 2010-11, with the support of international organisations, received international recognition and accolade (WB, 2018). More recently, some positive developments have taken place regarding the prevention of corruption of members of parliament, with various measures taken to further enhance the transparency of the legislative process, and the adoption of a code of ethics for members of parliament in 2019. Amendments to the Law on Conflicts of Interest and Corruption in Public Institutions entered into force in 2017, granting the Civil Service Bureau the authority to monitor declarations, verify the accuracy of the data contained therein, and impose sanctions in case of non-compliance. The monitoring has been assessed as working effectively.[24]

Georgia's policy actions have been positively assessed by governmental and non-governmental international organisations. For example, Georgia's score on Transparency International's Corruption Perception Index (CPI) in 2019 (56/100), ranking 44 out of 180 countries, was the best amongst countries in Eastern Europe and Central Asia. According to other international reports, Georgia would have succeeded in significantly reducing petty corruption, and the overall perception amongst businesses seems to be that the country is a secure place to invest in. Georgia also ranked 39 out of 141 in the WEF Global Competitiveness Report in relation to the incidence of corruption indicator.

However, concerns over high-level corruption, judicial and prosecutorial independence and enforcement, as well as over the high number of exemptions and deficiencies in the procurement framework (which allow for non-competitive processes), remain (GRECO, 2019; OECD ACN, 2016; Transparency International, 2020). These concerns might jeopardise gains made until now. Georgia's CPI score of 2019 (56) went down two points from 2018 due to these concerns.

In compliance with international standards such as the one enshrined in the OECD *Guidelines* or the UN Convention Against Corruption, Georgia has put in place a system to report instances of corruption, including a newly set up whistle-blower platform (www.mkhileba.gov.ge), through which businesses can report public corruption. However, it appears that in practice the legal and institutional set-up might not offer reliable protection for whistle-blowers. It has been noted in this regard that the lack of data on cases reported from the private sector and on any resulting enforcement action makes it difficult to evaluate the efficiency of the protection system (OECD et al, 2020).

Corruption prevention in the private sector is an area where Georgia, as many other countries in the world including OECD member countries, could be subject to stronger efforts. The *Guidelines* (in Chapter VII) call for enterprises to not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage, and to resist the solicitation of bribes and extortion. The OECD *Due Diligence Guidance for Responsible Business Conduct* provides practical guidance that can help enterprises avoid and address risks of corruption that may be associated with their operations, supply chains and other business relationships.

Adopted in 2015, the Anti-corruption Strategy of Georgia addresses the prevention of corruption in the private sector and is the main strategic document guiding business integrity policy development and implementation. Mechanisms for the prevention of corruption in the private sector include enforcement of criminal liability for legal persons, disclosure of beneficial owners of companies, and protection for bona fide whistle-blowers. While Georgia was a leader in the region in establishing criminal legal liability, enforcement appears to be lacking. Georgia has introduced mandatory beneficial ownership disclosure, but the mechanism is said to lack the tools required to effectively verify the validity of provided information (OECD ACN, 2016; OECD et al, 2020). And while there are legal guarantees for the protection of whistle-blowers in the public sector, this is not the case for whistle-blowers reporting corruption in the private sector.[25] Increased transparency measures in the extractive industry could also contribute to corruption prevention (Box 5.8).

Finally, Georgia could increase its efforts to promote business integrity and encourage the development of good practices in the corporate sector including with respect to SOEs, such as the establishment of internal codes of conduct, as highlighted in the latest report on Georgia issued in the course of the 4th round of monitoring of the Istanbul Anti-Corruption Action Plan. Chapter VII of the *Guidelines* calls for enterprises to develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery through a risk-based approach. Awareness-raising programmes to encourage small companies to develop and adopt internal compliance processes are currently lacking.

Some recent notable efforts include the expansion of the Business Ombudsman's mandate to encompass promotion of business integrity policy, which has led to the organisation of business integrity seminars in the region and the launch of an e-platform for business complaints and requests (OECD et al, 2020). Georgia could engage in increased promotion of business integrity, by scaling up awareness-raising activities for companies – in particular SMEs as well as SOEs, and introducing incentives for companies to adopt compliance programmes.

Notes

[1] https://read.oecd-ilibrary.org/view/?ref=129_129619-6upr496iui&title=COVID-19-and-Responsible-Business-Conduct

[2] www.unglobalcompact.org/engage-locally/europe/georgia

[3] https://meliora.ge/en/home/

[4] In 2016, SMEs accounted for 99.7% of all firms in the country, and many are very small (below 19 employees). OECD, 2019.

[5] The NAP was co-ordinated by the Human Rights Secretariat (under the Prime Minister's office) in co-operation with relevant State agencies. Throughout 2017, the Human Rights Secretariat, jointly with the Public Defender (Ombudsman), conducted National Baseline Study on business and human rights.

[6] See www.oecd.org/governance/public-procurement/

[7] The OECD has launched a programme to advance the integration of RBC considerations and supply chain due diligence into public procurement policies and processes. http://www.oecd.org/governance/public-procurement/procurement-and-rbc/

[8] "Georgia set to end 2019 with new privatisation push", *Emerging Europe*, 1 October 2019, https://emerging-europe.com/news/georgia-set-to-end-2019-with-new-privatisation-push/

[9] The Ministry of Finance considers that the number of "noteworthy SOEs" -from a fiscal risk perspective- is 286. Government of Georgia, 2018c.

[10] See for instance GOGC's website, mentioning philanthropic activities under CSR, and noting on labour that 'it takes care of its employees'. https://www.gogc.ge/en/sustainability/corporate-social-responsibility/11

[11] For example, Business Sweden follows the government's Action Plan for Business and Human Rights, and may decide not to assist certain investors in breach of the UN *Guiding Principles on Business and Human Rights*, the principles of the UN *Global Compact or the* OECD *Guidelines for Multinational* in its activities (www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf)

[12] http://investingeorgia.org/en/georgia/labor. In 2019, Georgia ranked 16th in the Economic Freedom Index, https://www.heritage.org/index/ranking.

[13] See list of all core international human rights instruments at: www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx

[14] Global Alliance of National Human Rights Institutions, accreditation status as of 4 March 2019, https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20%2804%20March%202019.pdf

[15] See www.transparency.ge/en/blog/new-law-must-ensure-institutional-independence-business-ombudsman

[16] http://investingeorgia.org/en/keysectors/energy

[17] BHRRC, "In Eastern Europe, the COVID-19 pandemic is being used to attack human rights defenders", 9 June 2020, https://www.business-humanrights.org/en/in-eastern-europe-the-covid-19-pandemic-is-being-used-to-attack-human-rights-defenders?mc_cid=7efa618770&mc_eid=209ce25a67

[18] www.oecd.org/daf/inv/mne/RBC-in-Georgia-2016.pdf

[19] "Violation of safety rules named as possible reason behind death of two workers in Tbilisi", 1 April 2019, https://agenda.ge/en/news/2019/896

[20] Data covers occupational injuries including cases of disease and of injury due to commuting accidents. ILO Statistics (2020); Public Defender, 2018a.

[21] Under the EU-Georgia Association Agreement Georgia committed to approximate its legislation to the EU acquis, including transposition of EC Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

[22] https://police.ge/en/projects/you-are-not-for-sale. Georgia is rated as 'Tier 1' by the U.S. State Department; U.S., 2019c.

[23] GRETA, 2016. In 2018 a total of 21 criminal investigations on grounds of human trafficking were initiated, 10 of them involving sex trafficking, seven forced labour and two concerning both. Prosecutions were brought against five defendants, three for sex trafficking and two for forced labour. Nicholson, 2019. In 2019, a total of 22 investigations were initiated. https://info.police.ge/uploads/5e3bfa34e4aea.pdf

[24] EC, 2019; Greco, 2019. In 2017, the CSB monitored 287 declarations in total; for 2018, 448 declarations were monitored.

[25] Provisions on protecting whistle-blowers are part of the Law on the Conflict of Interest and Corruption in Public Service. Additional provisions can be found in the Law on Public Service. Transparency International, 2015; OECD et al, 2020.

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