

BILATERAL INVESTMENT AGREEMENTS OF GEORGIA: THREATS, CHALLENGES AND OPPORTUNITIES

Shota Veshapidze¹, Nino Bendianishvili², Gia Zoidze³

Abstract. *Relevance of the topic.* Bilateral investment treaties are an extremely important form of investment promotion. The purpose of signing these agreements is to deepen the economic ties between the countries. No matter how big the role of investments is in the economy, it is necessary to regulate them. It is necessary to pay more attention to the discussion of this issue from an academic point of view. Especially, taking into account the adverse experience that Georgia received from the judgments against it from international arbitrations. It is important to facilitate the legal study of various norms and protective measures for foreign investments, taking into account the agreements. Insufficient consideration of regulations and relevant norms regarding the issue, considering the development of investments, may even lead to financial responsibility. *The purpose of the article.* To evaluate the effectiveness of bilateral agreements. *Scientific novelty of the paper.* The issue is very relevant and its practical purpose is the possibility of using the obtained results in the educational process during the study of the mentioned topic, through analysis. Identifying advantages, disadvantages, as well as opportunities and threats, developing relevant recommendations in terms of effectiveness. Accepting the challenges in this field is a necessary condition. The mentioned issues have practical value and potential impact on the field and wider society. *Methodology.* Based on the SWOT analysis of bilateral investment agreements, their importance and socio-economic aspects are evaluated. The importance of investment agreements, foreign experience of their regulation is reviewed. As well as an innovative SWOT analysis of the concluded bilateral investment agreements. *Discussion.* An in-depth analysis of this issue leads to the promotion of the foreign investment regulation process. It will also give Georgia the opportunity to establish more effective approaches for attracting and protecting foreign investment capital. *Conclusions.* Taking into account the recommendations based on the scientific analysis proposed in the work will contribute to the improvement of the investment environment, thus raising employment and living standards, and the economic situation of Georgia.

Keywords: investment climate, ensuring the security of foreign capital, effective use of local resources, international level, investment policy.

JEL Classification: F21, O16, K20

1. Introduction

Today, the problem of legal regulation of foreign investments is little studied. Means of attracting foreign investments in the economy of our state and mechanisms of legal regulation, therefore, the analysis of real issues of solving this problem was not often done. In the legislation on foreign investments, in the modern period, it is necessary to scientifically consider many legal aspects of attracting and using foreign investments (Otinashvili *et al.*, 2023). However, in recent years, a number of works have appeared on the problem of foreign investment, most of which are

devoted to the economic and managerial aspects of investment (Colen *et al.*, 2016).

In addition, the legislative function of the state is a very relevant issue. The role of the country is manifested in many measures, which means that it can create equal conditions for all individuals. This is the beginning of the formation of a democratic state. The state is obliged to carry out activities of vital importance to the society. For this, it performs various functions.

International investment treaties are an indispensable mechanism for protecting investments abroad. By

¹ Tbilisi State University, Georgia

² Georgian Technical University, Georgia

³ Batumi Shota Rustaveli State University, Georgia (*corresponding author*)
E-mail: giazoidze@yahoo.com

ORCID: <https://orcid.org/0000-0002-0155-5775>

ResearcherID: <https://publons.com/researcher/4610363/giazoidze/>



investing abroad, companies face not only economic, but also political risks. Bilateral and multilateral treaties between states offer protection against political risks as well as clear dispute resolution procedures (Frenkel and Walter, 2019). Foreign direct investment comes with great opportunities for prosperity and development (Schlemmer, 2016).

International investment agreements are indispensable for the protection of investments. Georgia implements an appropriate flexible policy in terms of promoting investment activities (Zoidze *et al.*, 2023). In connection with this, a number of legal frameworks have been developed.

Of course, for a developing country like Georgia, the conclusion of bilateral investment agreements is important to attract investors, to make them feel more secure and risk-free to invest in Georgia. Indeed, foreign investments determine the country's economic development. But it should also be said that academic circles do not fully agree that bilateral investment agreements have a positive effect on investment growth. The reason for this is the scarce and incomplete information on the mentioned issue and different approaches.

Foreign investments, from the legal point of view, require serious support from the state (Haftel and Thompson, 2013). These funds can be raised in different ways. This process is beneficial for the economy of Georgia, because these investments will help the country to modernize its industrial base (Zoidze and Veshapidze, 2022). It ensures the growth of the country's industrial potential, introduction of labor experience.

When making foreign direct investment, the following factors are taken into account: safe environment, stable political situation, favorable geographic location, strong legal framework (Grieveson *et al.*, 2021). It is necessary to raise the level of education, ensure long-term economic growth at relatively high rates, deepen economic-political integration with foreign countries.

2. Methodology

To study the research topic, we used the method of data collection, which includes:

- Legislative acts and agreements: analysis of primary sources (texts of bilateral agreements);
- Conducted studies and reports: analysis of local and foreign researchers' papers and government sources.

Therefore, we have chosen different methods of analysis:

- Legal analysis: interpretation of legal obligations and disputes;
- Comparative analysis: SWOT analysis of bilateral agreements signed between Georgia and other

countries and reconciliation of identified differences in order to be able to evaluate the effectiveness of the concluded agreements.

The investment political and institutional framework created in Georgia is especially noteworthy, which should be made a priority direction. We should create and refine it based on foreign experience and processed data using the world's successful investment political model. This refers to the conclusion, development, refinement of bilateral investment agreements and various factors directly related to the attraction of foreign investments.

Therefore, the methodological part is built through the SWOT analysis of bilateral agreements, which examines the strengths, weaknesses, opportunities and threats presented in this direction.

At the end of the topic, based on the data obtained based on the analysis of the research issue, we identified the main results, determined their importance and compliance with the goals of the agreements; Also, we have formulated possible future directions, research limitations and recommendations.

3. Results and Discussion

3.1. Legislative Function of the State and Investment Climate

Multilateral international agreements, as well as agreements in bilateral format, are of great importance. Georgia is a participating country of the 2002 Multilateral Agreement on the Creation of a Free Trade Zone, which operates within the framework of the Organization for Democracy and Economic Development (SUAM).

Georgia has signed bilateral free trade agreements with various countries. Also important is the "Free Trade Agreement between the Government of Georgia and the Government of the People's Republic of China". The Deep and Comprehensive Free Trade Area (DCFTA) Agreement with the European Union entered into force on September 1, 2014. And the "Strategic partnership and cooperation agreement between Georgia, Great Britain and the United Kingdom of Northern Ireland" was adopted on October 21, 2019, which is effective from December 31, 2020.

Within the framework of the legislative function of the state, law-making, entrepreneurial and international functions are noteworthy (Abuselidze and Zoidze, 2023). The legislative function of the state includes the development and implementation of such laws that ensure the promotion of the development of society (Jang, 2011; Chaisse and Bellak, 2011; Aisbett *et al.*, 2018).

Legislation stimulating entrepreneurial activity is an improving factor of the market mechanism (Kox and Rojas-Romgosa, 2020). The legal framework is in

the hands of the state and it can determine the "rules of the game". The entrepreneurial function of the state includes various forms of economic activity (Vandevelde, 2010). This is based on state ownership. In state ownership, it is important to have branches of the economy of general national importance.

These processes require ensuring the security of foreign capital, which is very important, as well as the concentration of profits of foreign investors (Schwebel, 2015). However, along with foreign investments, an important role should be given to the effective use of local resources.

It is necessary to create a strong legal framework, especially in the field of international relations (Leal-Arcas *et al.*, 2020; Alschner and Skougarevskiy, 2016). Indeed, the economic policy should properly take into account the interests of local producers when foreign firms enter.

Nowadays, mixed methods and regulations focused on export promotion are relevant: 1) by providing cheap credit; 2) by implementing an attractive investment policy; 3) by infrastructure development (Veshapidze *et al.*, 2024).

Regarding bilateral investment treaties, the world's first bilateral investment treaty (BIT) was signed in 1959 between Germany and Pakistan (Bandelj and Mahutga, 2013; Kim, 2023). Since then, for 60 years, an important part of investment legislation has been developed and created Bickenbach *et al.*, 2015). Currently, there are more than 2,500 such agreements covering more than 150 countries of the world (Tsertsvadze, 2013).

According to a simple definition, a bilateral investment treaty is an international agreement concluded between two countries and contains mutual obligations for the promotion and protection of private investments made by investors of one of these states in the territory of the other state (Allee and Peinhardt, 2010). When both parties from the signatories agree on the rules of the game, then a favorable and optimal environment for settlement of investment disputes is created.

Bilateral investment agreements during the implementation of foreign investments make it possible to specify the expectations and possible benefits related to the implementation of a specific investment, as well as to distribute unforeseen or expected risks between the foreign investor and the local government (Zoidze and Abuselidze, 2021).

It also has an economic meaning: development of a new facility or increase in the production potential of an existing facility, increase in its efficiency, increase in production output, increase in employee incomes, etc. Although many of the thousands of existing treaties contain similar meanings and terms, they are not uniform (Desbordes, 2016; Allee and Peinhardt, 2014).

Each contract is individual and their terms define the terms of protection in a particular context.

The bilateral investment agreements concluded for Georgia have a positive effect. However, due to faulty conditions of state institutions or an insufficiently prepared internal environment, it may have a negative impact, because in general there is no generalized conclusion that brings any unambiguously positive benefits (Aisbett *et al.*, 2016; Egger and Merlo, 2012).

Although the said agreement provides equal conditions to the foreign investor compared to other investors or investors from the origin of the contracting party, by applying to arbitration tribunals, the foreign company can bypass the domestic laws and courts of the state. So, the foreign company can independently appeal the unfair action committed by the state and demand damages.

A disadvantage is also the fact that since most arbitration forums do not maintain a public register of complaints, the total number of cases based on the actual contract may be higher.

In general, most investment disputes are settled against states, and we may even receive large losses, meaning millions of dollars (Busse *et al.*, 2010). We can also consider negatively that it is necessary to go through many procedures. Also the amount of costs required for the claim.

In case of losing the dispute, reputational damage will be done to the state, which in turn will affect future investment flows (Falvey and Foster-McGregor, 2018). Therefore, it is very cautious for Georgia to sign the mentioned agreements, especially under the conditions that there is an unfavorable situation in terms of property protection. As a result of consideration of numerous sources and based on various data, it is possible to formulate future development perspectives and measures to be taken in terms of investment activity.

3.2. SWOT Analysis and Socio-Economic Aspects of Bilateral Investment Agreements

Socio-economic aspects of bilateral investment agreements can be formulated as follows:

- 1) financial resources are being mobilized and effectively accumulated for the purpose determined in a specific direction;
- 2) the investment measure is protected and designed for the long-term perspective, which brings additional benefits;
- 3) the development of a new object is carried out, or the production potential of an existing object is increased, its efficiency is increased, as well as the increase in output of products and the increase in the incomes of employees, etc., which are directly dependent on the development of the country's economy;

- 4) bilateral investment agreements during the implementation of foreign investments make it possible to specify the expectations and possible benefits related to the implementation of a specific investment, as well as to distribute unforeseen or expected risks between the foreign investor and the local government;
- 5) the investor's goal is to obtain multiple profits;
- 6) the investor is involved in the management process, employs local personnel and disposes of the profit;
- 7) the investor accordingly assesses business risks, implements prevention and conducts research taking into account the relevant environmental factors, which is beneficial for the local people;
- 8) the inflow of foreign investments ensures the country's strength and liquidity;
- 9) infrastructural development is facilitated;
- 10) innovations are introduced;
- 11) the progress of the state is ensured;
- 12) favorable conditions for attracting investments are created;
- 13) investors become interested, because equal conditions are created by bilateral investment agreements;
- 14) flexible and unified administrative and formal issues simplify procedures, which is focused on supporting investors;
- 15) an orderly environment is created, which is attractive for investors;
- 16) the experience of protecting existing investments is extremely important, which is an example for investors and attracts them.

Therefore, below we present a SWOT analysis of bilateral investment treaties (Table 1).

Today, one of the most urgent tasks is the transition of the economy to the path of innovative development. However, there are a number of problems in the area under consideration (Yackee, 2010). Probably the root of the current problems is that there is no system in place to quickly and efficiently turn innovative developments into profitable commercial products (Gazzini, 2012).

Overall, of course, the concluded bilateral investment agreements positively serve to establish an international level legal regime for the purpose of facilitating investments (Bendianishvili, 2023; Lavopa *et al*, 2013; Titi, 2015).

As of 2024, according to the Global Economic and Political Survey, there are currently 2,591 investment-related treaties in the world, which have great benefits for companies (Matano, 2024). And in terms of disputes, according to the statements filed by the claimants, the total number of publicly known cases in 2022 was 1257 (UNCTAD, 2023).

According to the 2024 data of the World Investment Policy Hub, 39 countries are listed in the list of bilateral investment treaties (BIT) signed by Georgia

(UN Trade and Development: Investment Policy Hub, 2024). The data are as follows: Georgia – Qatar BIT (2022); Georgia – Japan BIT (2021); Georgia – United Arab Emirates BIT (2017); Belarus – Georgia BIT (2017); Georgia – Kyrgyzstan BIT (2016); Georgia – Turkey BIT (2016); Georgia – Switzerland BIT (2014); Estonia – Georgia BIT (2009); Georgia – Kuwait BIT (2009); Czech Republic – Georgia BIT (2009); Georgia – Sweden BIT (2008); Finland – Georgia BIT (2006); Georgia – Lithuania BIT (2005); Georgia – Latvia BIT (2005); Austria – Georgia BIT (2001); Egypt – Georgia BIT (1999); Georgia – Moldova, BIT (1997); Georgia – Netherlands BIT (1998); Georgia – Romania BIT (1997); Georgia – Italy BIT (1997); Georgia – Kyrgyzstan BIT (1997); France – Georgia BIT (1997); Georgia – Kazakhstan BIT (1996); Armenia – Georgia BIT (1996); Georgia – Turkmenistan BIT (1996); Azerbaijan – Georgia BIT (1996); Georgia – Iran, BIT Islamic Republic (1995); Georgia – Uzbekistan BIT (1995); Georgia – Israel BIT (1995); Georgia – United Kingdom BIT (1995); Bulgaria – Georgia BIT (1995); Georgia – Ukraine BIT (1995); Georgia – Greece BIT (1994); Georgia – United States of America BIT (1994); Georgia – Germany BIT (1993); BLEU (Belgium-Luxembourg Economic Union) – Georgia BIT (1993); China – Georgia BIT (1993); Georgia – Turkey BIT (1992); Georgia – Spain BIT (1990). Three of them are signed but not in force: Qatar, Kyrgyzstan and Egypt. And it has been discontinued with two: Italy, Turkey.

They include internal norms and legislation. Each of them is unique and represents the interests of the countries participating in the agreement. The following countries are members of the European Union: Estonia, Czech Republic, Sweden, Finland, Latvia, Austria, Netherlands, Romania, Italy, France, United Kingdom, Bulgaria, Greece, Germany, Belgium, Luxembourg, Spain.

Regulation of the investment climate, creation of appropriate environment-conditions and search for ways of development of the said activity are of the utmost importance. In order to implement the appropriate investment policy in Georgia, basic and main regulatory laws have been drawn up. The first is the Law on Promotion and Guarantees of Investment Activities, which was signed on November 12, 1996, and the consolidated or final version was developed on June 25, 2019 (Law of Georgia on promotion and guarantees of investment activity).

Regarding the Law of Georgia on Investment Support, which was developed on June 30, 2006, it must be said that these regulations are certainly important in the economic progress of the country and in the establishment of a reliable regime (Law of Georgia on State Support of Investments).

In general, it is appropriate for Georgia to join the secure investment union at the world level and sign

Table 1

SWOT analysis of bilateral investment treaties

Strengths:	Weaknesses:
1) promoting the growth of the volume of foreign investments; 2) creation of conditions for fair treatment of foreign investors; 3) security guarantee; 4) increasing the country's image on an international scale; 5) legal stability; 6) compliance with national development goals; 7) assisting the country in formulating the right investment policy; 8) transparency of procedures; 9) it is a reform accelerator for countries to implement the Sustainable Development Goals, offering a ready-to-use common language.	1) faulty conditions of state institutions or insufficiently prepared internal environment will have a negative impact on the investment process; 2) the ability of a foreign company to bypass state courts and domestic legislation by applying to arbitration tribunals; 3) Absence of a public register of complaints in most arbitration forums, they do not keep the mentioned data. Therefore, the total number of cases based on actual contracts may be higher; 4) imprecise definitions of terms; 5) improvement of regional investment policy; 6) requires adding and improving functions from a technical point of view; 7) amount of costs and procedures required for the claim; 8) investor-state dispute settlement is carried out through the old generation agreement; 9) existence of proper investment jurisdiction.
Opportunities:	Threats:
1) refinement of the provisions of the agreements and discussion of reform options; 2) inclusion of internal regulatory measures as an exception to implement reasonable measures; 3) development of a common world plan for the country's development oriented towards the goals of sustainable development; 4) attempt to reform common networks; 5) internal policy coordination; 6) reform-oriented accelerators and formulations can be used directly at the national, bilateral, regional and multilateral levels to interpret, amend or replace older generation agreements; 7) from the point of view of the development of appropriate investment management, the allocation of an investment moderator in the field of concluded agreements, which ensures the establishment of communication between different agencies; as well as establishing an independent investment institution; 8) transfer of possible services to the electronic space, adjustment of investor-state dispute settlement (ISDS) cases to modern standards and digital innovations; 9) development of a modern contract model.	1) facts of abuse of exceptions by the host states; 2) a kind of control and management mechanism from the foreign side; 3) reliance on international standards; 4) caution regarding safety principles; 5) indirect expropriation; 6) according to the existing experience, most of the investment disputes decided against the states, which may bring a big loss to the country; 7) reputational damage when losing a dispute.

Source: Compiled by the authors

bilateral investment agreements. These agreements ensure that the receiving state plays a big role in the economic development and in general, it is undoubtedly a positive event in the issue of world-wide integration.

4. Conclusions

From the point of view of investment, the deepening of international economic ties between countries is a determining condition for the development not only of Georgia, but also of the entire civilized world. Georgia's relations with foreign countries have a long history, especially with developed countries.

One of the important factors of the general economic situation of the country is the investment climate.

In the modern period, studying the investment legislation and revealing the latest aspects of the legal regulation of investments in Georgia is very important. Georgia is still creating a modern investment regime that will be in line with international law.

An important factor of the investment climate of each country is the current legal system, which defines the national legal regime of investment activity, regulates the mechanism and principles of interaction between investors and government bodies. At the same time, it establishes connections with other participants in economic relations.

The role of foreign direct investments in the development of Georgia's economy is as follows: in the conditions of savings, therefore, the shortage of local financial resources, the demand for financial resources

is met and investments are made in specific, important production facilities for the country (infrastructural, industrial or financial sectors, etc.).

Factors promoting foreign investment include: availability of cheap labor force, ease of legislation related to business start-up and registration, proximity of Georgian market to foreign market. Much attention should be paid to the development of areas where more investments are made. Especially these are technologies, education, tourism, financial sector, agriculture, healthcare.

There is a need to create a national policy for effective management and protection of the issue.

Attention needs to be given to the facts of the offer of worse conditions. The regulation and cooperation of the mentioned issues ensures consideration of national interests and the creation of appropriate local business environment.

From this point of view, international cooperation and concluded bilateral investment agreements are important, which in turn ensures the attractiveness of Georgia for foreign investments. Within the framework of regular bilateral investment agreements, it will be possible for investors to export the products produced in Georgia to the foreign market, which will be beneficial for our country.

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