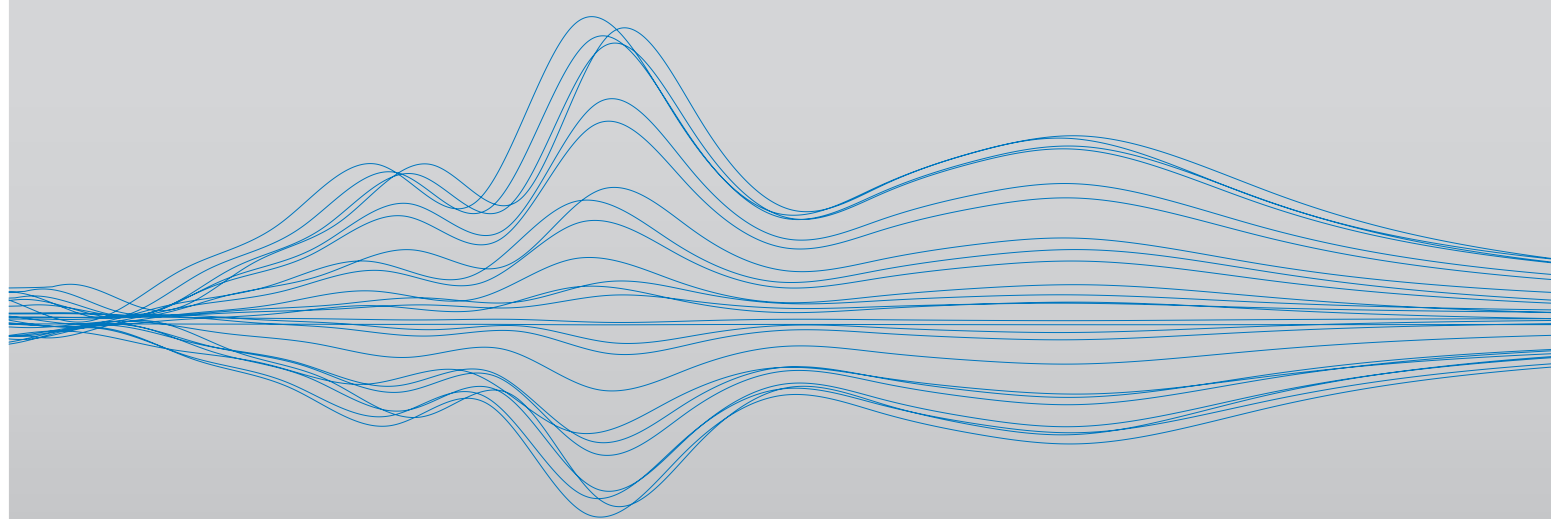


Doing Business in Ethiopia

AUGUST 2019



Contents

Contact information	3	Foreign exchange regulations	10
Country overview	4	Private equity	11
Business vehicles/structures for doing business.....	5	Tax, duties and tariffs	11
Business rights and regulatory environment.....	7	Charities and societies.....	12
Land rights.....	8	Mining and energy.....	12
Employment and labour relations.....	9	Real estate and conveyancing.....	13
Corporate governance.....	10	Exiting an investment.....	14
Banking and finance.....	10	Firm overview.....	15

Contact information

Name

Mehrteab Leul & Associates Law Office

Offices

Africa Avenue, Dembel City Centre, 8th Floor (via Lift No. 4)
Suite No. 8, PO Box 33449, Addis Ababa, Ethiopia

Contact details

T +251 115 15 97 98
M +251 911 20 91 55
E mehrteab@mehrteableul.com

Contact person



Mehrteab Leul Kokeb

Country overview

- Name – Federal Democratic Republic of Ethiopia
- Capital city – Addis Ababa
- Total land area – 1,104.3 km²
- Population (2017) – 105 million (World Bank)
- Population growth (2017) – 2.46% (World bank)
- Urban population growth (2017) – 4.67% (World Bank)
- Languages spoken (three most widely spoken) – Amharic, Afan Oromo, Tigrigna
- Neighbouring countries – Somalia, Kenya, South Sudan, Sudan, Eritrea, Djibouti
- Independence – Never been colonised

Government, type and structure

- Head of state – President Sahle-Work Zewde
- Term of office – Six years
- Type of government – Parliamentary Democracy
- Head of government – Prime Minister Dr. Abiy Ahmed
- Term of office – Five years
- Main political party – Ethiopian Peoples' Revolutionary Democratic Front (EPRDF)
- Main opposition parties – Forum for Democratic Dialogue in Ethiopia/Unity for Democracy and Justice
- Administrative divisions – Ethiopia has a federal system of government constituted by nine National Regional States and two city administrations which are – Tigray, Afar, Amhara, Oromia, Southern Nations, Nationalities and Peoples (SNNP), Somali, Harari, Gambella and Benishangul Gumuz regions and Addis Ababa and Dire Dawa city administrations respectively.
- Legal system – Majorly civil law legal system¹

Economy

- GDP – USD80.56 billion (2017) (World Bank)
- GDP per capita – USD767.56 (2017) (World Bank)
- GDP growth rate – 10.3% (2017) (World Bank)
- GDP per capita PPP – USD1,890 (2017) (World Bank)
- Inflation rate – 10.9% (February 2019)
- GDP by sector (percentage) (2017) (World Bank)
 - Agriculture – 35.8%
 - Industry – 22.2%
 - Services – 42.0%
 - Export of goods and services – 8.0%
 - Export of goods and services – 27.8%
- Net inflow of FDI (2016) – USD3.2 billion (World Investment Report)
- Top three exports by value (2019) – Gold, coffee, live animals (trading economics)
- Top three import sources (2019) – China, Saudi Arabia, United States (trading economics)
- Top three export destinations (2019) – Switzerland, Somalia, China (trading economics)
- Imports – Foodstuffs, textile, machinery, fuel (trading economics)
- Currency – Ethiopian Birr (ETB)

Infrastructure

- Major international airport – Addis Ababa Bole International Airport
- Ports – Land locked so relies mainly on Port Djibouti and Port Sudan

¹ Even though Ethiopia is majorly a civil law country the Federal Supreme Court's cassation decisions are considered as precedent for all lower level of courts.

Business vehicles/structures for doing business

Introduction

Business can be set up in the form of sole proprietorship, business organisations incorporated in Ethiopia (a private limited company, a share company or partnerships), branch of a foreign company, public enterprises, and cooperative societies. Partnerships are associations of persons whose liability is unlimited (except limited partners in limited partnerships). Limited liability companies could take the form of a share company or a private limited company.

The laws that regulate formation of business entities in Ethiopia are the Ethiopian Commercial Code of 1960, Ethiopian Civil Code of 1960, Investment Proclamation of 2012 (as amended in 2014), Investment Regulation of 2012(as amended in 2014), Public Enterprises Proclamation of 1992, Cooperative Societies Proclamation of 2003, Commercial Registration and Business Licensing Proclamation of No. 980/2016, and the Commercial Registration and Business Licensing Regulation of 2016.

PRESENCE OF FOREIGN ENTITIES

Incorporating a subsidiary company and opening a branch of a foreign company are the main vehicles for foreign entities to trade in Ethiopia. Foreign companies may also promote their business in Ethiopia by opening a commercial representative office. A branch of a foreign company is treated as an extension of its parent foreign company. In contrast, a subsidiary of a foreign company is treated as separate from its parent company.

Foreign investors that come to operate in Ethiopia by winning international bids can also set up a project office to perform a specific contract. There is no minimum capital requirement for a project office. It can be used for the life of the contract engaged. The disadvantage of project office is that it will only be limited for a registered contract and cannot be used for multiple contracts.

The Commercial Registration and Business Licensing Proclamation of 2016 also recognises the formation of holding companies. This law provides that two or more private limited companies can establish a holding company. The holder company is jointly and severally liable with its member companies to the claim of third parties.

The Investment Proclamation of 2012 (as amended), the Commercial Registration and Business Licensing Proclamation of 2016, the Commercial Registration and Business Licensing Regulation of 2016, and the Ethiopian Commercial Code of 1960 regulate the requirements for incorporation of a subsidiary or registration of a branch, a commercial representative office, a project office and a holding company in Ethiopia.

Registration requirements and level of protection offered to share-holders of the various business vehicles

COMPANIES

A share company and a private limited company are associations of capital formally established by the signing of a memorandum of association and articles of association.

A private limited company and a share company require a minimum of two and five shareholders respectively. The maximum number of shareholders in a private limited company cannot exceed 50.

Once shareholders have signed the memorandum and articles of association before a public notary and the same are deposited in the commercial register, the company becomes a legal person. After registration, obtaining a business license is necessary to start business operations.

Companies are legal persons whose liabilities are met by their assets only. Shareholders of companies are liable only to the extent of their contributions.

Both legal and physical persons can be shareholders of either a share company or a private limited company. Foreign nationals are not permitted to invest in certain areas of investment reserved for either Ethiopian nationals or the Ethiopian Government. Foreign nationals may, however, be allowed to invest in reserved areas of investment with the approval of the Ethiopian Investment Board. Some areas of investments can only be carried on in joint venture with the Government of Ethiopia.

Private limited companies are not subject to detailed regulations when compared to a share company, which the law regulates strictly. A private limited company is more of a family company while a share company is a public company. A share company is required to have a board of directors and auditor/s and it should also conduct a general meeting of shareholders at least once a year. A private limited company is not required to have an auditor unless the number of its shareholders exceeds 20.

A private limited company cannot issue transferable securities like bonds, debentures, while a share company can issue transferable securities.

Two and more private limited companies can form a holding company that manages and supervises the businesses of these companies. Holding companies were recognised in August 2016 for the first time in Ethiopia. The registration and operation of holding companies are not yet tested practically. However, the applicable law states that holding companies are jointly and severally liable with their member companies to the claim of third parties.

BRANCH OF FOREIGN ENTITIES

Foreign incorporated companies can register a branch in Ethiopia to undertake business activities.

The requirements for registering a branch of a foreign company include the submission of:

- notarised and authenticated minutes of a resolution passed by an authorised organ of a foreign business organisation authorising the opening of a branch in Ethiopia
- Certificate of incorporation of a foreign parent company
- Copies of memorandum and articles of association or similar documents of the business organisation.

PARTNERSHIPS

There are four types of partnership recognised under Ethiopian law. These are ordinary partnership, general partnership, limited partnership and joint venture. Partnerships should be formed by a partnership agreement and registration is a prerequisite for a partnership to obtain legal personality. However, these requirements do not apply to joint ventures, which have no legal personality.

Partners are liable jointly and severally for the activities of a partnership except for limited partners in a limited partnership. Partnerships are associations of persons and usually they are not recommended for foreign investors.

SOLE PROPRIETOR

A sole proprietor is a person who conducts a business in his/her own name with unlimited liability. For a sole proprietor to operate a business, he/she has to obtain a commercial registration certificate and a business license.

TRADE REPRESENTATIVE OFFICE

Foreign investors who are not interested in trading activities can register a commercial representative (liaison) office and appoint a commercial representative to undertake pro – motional activities in Ethiopia.

Before starting its operation, the commercial representative should be registered with the Ministry of Trade and get a certificate of commercial representative. To secure the certificate, among other things, a minimum of USD100,000 has to be brought into Ethiopia, which is expected to cover salaries and operational expenditures of the office for a year. After the issuance of a valid certificate, a commercial representative can promote the products and services of the principal foreign company, study projects that will enable the principal to make investments in Ethiopia and to promote export products of Ethiopia in the country of origin of the principal company.

The commercial representative certificate should be renewed annually. Renewal requires the transfer of a minimum of USD100,000 every year to a bank account of the commercial representative office in Ethiopia.

REGISTRATION REQUIREMENTS

Registration is a requirement for companies to do businesses in Ethiopia. Operating a business without obtaining a business license entails administrative and criminal liabilities.

Business rights and regulatory environment

Licenses and regulatory

REQUIREMENTS TO TRADE

Various kinds of permits, registrations and licenses are required to operate business in Ethiopia. These include investment permit, business license, commercial and tax registrations. No person may carry out a commercial activity without obtaining a valid business license.

Anti-money laundering, anti-bribery and corruption

The Prevention and Suppression of Money-Laundering and Financing of Terrorism Proclamation No. 780/2013, the Criminal Code of 2004, Anti-Terrorism Proclamation No. 652/2009, Corruption Crimes Proclamation No. 881/2015, Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation No. 882/2015, Financial Intelligence Centre Establishment Council of Ministers Regulation No. 171/2009, Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation No. 883/2015 and the National Payment System Proclamation No. 718/2011 are major laws that regulate crimes related to money laundering, bribery and corruption in Ethiopia.

The Council of Ministers established the Financial Intelligence Centre, which is the organ responsible for the prevention and suppression of money laundering and financing of terrorism in Ethiopia. Ethiopia ratified the United Nations Anti-Corruption Convention in 2007. It is a crime to give or receive bribes in Ethiopia. The Federal Attorney General and the Federal Ethics and Anti-Corruption Commission are the bodies responsible for combating and prosecuting corruption at the Federal level, while the respective state institutions do the same at the Regional States level.

Competition

The Trade Competition and Consumers' Protection Proclamation No. 813/2013 aims to promote competitive practices in the local market, and eliminate or prevent anti-competitive and unfair trade practices. It also regulates anti-competitive practices such as price-fixing, collusive tendering, market and consumer segregation, refusals to deal to sell or render services, practices intended to eliminate competitors, and practices regarded as abuse of dominance.

The Trade Competition and Consumers Protection Authority was established as an autonomous Federal Government body having its own legal personality accountable to the Ministry of Trade. The Authority has the mandate to promote trade competition and protect the business community from anti-competitive and unfair market practice and consumers from misleading market conducts.

Regarding mergers, the law requires the consent of shareholders and the amendment of memorandum and articles of associations for mergers to take place. Two or more firms may merge, either by taking over or by the formation of a new firm. A decision to merge shall be taken by each of the firms concerned. Special meetings of shareholders of different classes or meetings of debenture holders shall approve the taking over or being taken over. The claims and liabilities of the firms that have been merged shall pass to the firm taking over as a result of the merger.

Consumer protection

The Trade Competition and Consumers' Protection Proclamation No. 813/2013 established the Trade Competition and Consumer Protection Authority. Under this Proclamation, consumers have the right to be provided with accurate information on the quality and type of goods or services, and to claim for remedies in relation to problems associated with such transactions. There are also provisions dealing with consumer protection scattered in various legislations.

Data protection and privacy

Ethiopia does not have a comprehensive law, which is specifically designed to regulate privacy and data protection issues. However, there are a set of rules contained in various pieces of legislation that guarantee the right to privacy in an indirect fashion. These are the Ethiopian Constitution, international human rights instruments ratified by Ethiopia, the Civil Code of 1960, the Criminal Code of 2004, the Freedom of Mass Media and Access to Information Proclamation No. 590/2008, Registration of Vital Events and National Identity Card Proclamation No. 760/2012.

Environmental law

The Environmental Pollution Control Proclamation No. 300/2002 and the Environmental Impact Assessment Proclamation No. 299/2002 provide rules intended to control pollution and to govern environmental impact assessment in Ethiopia. Environment, Forest, and Climate Change Commission and regional environmental authorities set environmental standards and ensure compliance with those standards, review environmental impact study reports of projects and notify their decision to the concerned licensing agency and, as may be appropriate, audit and regulate their implementation in accordance with the conditions set out in the standards.

Intellectual property (IP)

Ethiopia acceded to the Convention establishing the World Intellectual Property Organisation (WIPO) in 1998. The Ethiopian Constitution of 1995 provides the foundation for protection of intellectual property rights. Additionally, the Inventions, Minor Inventions and Industrial Designs Proclamation No. 123/1995, the Copyright and Neighbouring Rights Proclamation No. 410/2004 (as amended by Proclamation No. 872/2014) and Trademark Registration and Protection Proclamation No. 501/2006 are in place to protect intellectual property rights.

The Ethiopian Intellectual Property Office, established in 2003, is responsible for the administration of patents, trademarks, copyrights, and other intellectual property policy and legal issues. Patents are protected for 10 to 15 years, with an additional five years of protection if there is proof that it is being properly utilised. Industrial designs are protected for five years, with two possible five-year extensions. Once registered, trademarks can be renewed every seven years.

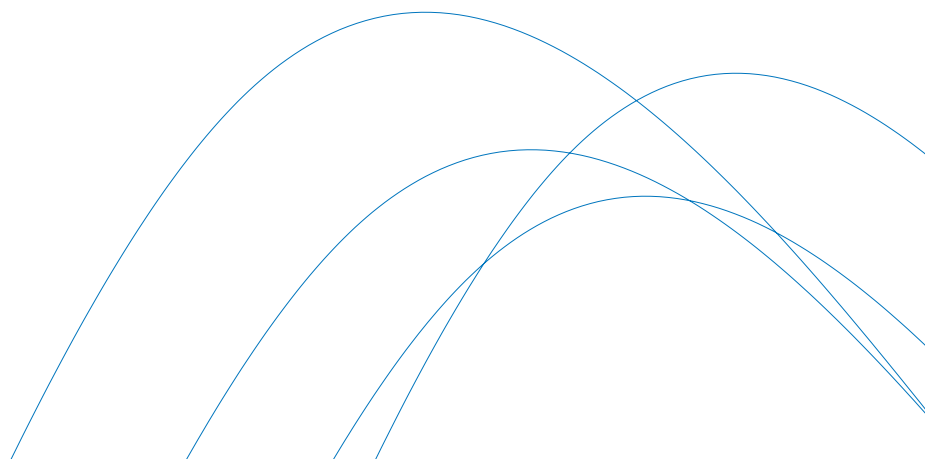
Land rights

The Constitution of Ethiopia provides that ownership of land belongs to the state and the nations, nationalities and peoples of Ethiopia. The Constitution similarly provides that the Government will ensure the right of private investors to use land on a lease holding basis.

The Urban Land Lease Proclamation of 2011 gives investors the right to use of land on leasehold for periods of 15 years up to 99 years. The land cannot be mortgaged or sold, but the lease value

of the land and the fixed assets thereon may be mortgaged or transferred to third parties. Regional governments and municipal administrations are authorised to allocate rural and urban land on rent lease in accordance with their respective laws.

An investor who acquires urban or rural land through lease has to conclude a land lease agreement with the government and then obtain a lease holding certificate issued in its name.



Employment and labour relations

Currently the principal legislations that regulate private employment relationships in Ethiopia include the Ethiopian Civil Code of 1960, the Labour Proclamation (Proc. No. 377/2003), as amended, the Private Enterprise Employees Social Security Proclamation (Proc. No. 715/2011), as amended and the Social Health Insurance Proclamation (Proc. No. 690/2010). These sets of law are complemented by different decisions of the Cassation Division of the Federal Supreme Court.

The Government has also recently announced a revision on its 15 year old Labor Law, Proclamation No. 377/2003. It is believed to be one of the key pieces of legislation that the Government has adopted in order to move forward in alignment with the Country's fast – growing economy and evolving employment relations.

It was also essential to bring up to date the law with multiple International Labor Organization's ("ILO") Treaties and Commentaries, which have been adopted by the GoE and government's policies and strategies to attract and facilitate private sector investments. The revised proclamation, although has not been published on the Federal Negarit Gazette as of yet.

Under the current Ethiopian Employment Law regime, broadly speaking, there are two categories of employees: managerial and non-managerial, while the Labour Proclamation applies to private employment relationships based on a contract that exists between a non-managerial worker and an employer, the Civil Code governs the case of managerial employees.

Managerial employees are defined as those employees vested with a power to formulate and execute management policies, to hire, transfer, suspends, assign or take disciplinary measures against other employees. The Labour Proclamation accords greater protection to non-managerial workers by laying down minimum conditions below which parties may not opt to agree. In contrast, the Civil Code gives a greater discretion to the parties' agreement in the case of managerial employees.

The Labour Proclamation which applies to the employment of non-managerial workers provides that, except for contract of employment concluded for a definite period or for piece work, all other types of employment contracts are deemed to have been concluded for an indefinite period. The law prescribes an exhaustive list of instances whereby a contract of employment can be concluded for a definite period or for piecework. If these conditions are not met, the parties' designation of indefinite period contract as definite will have no effect under the eyes of the law. On the other hand, the Civil Code that regulates the employment of managerial workers allows for parties to enter into a definite term contract. The revised Proclamation slightly modifies the definition of "Managerial Employee" provided for under the current applicable Proclamation. Accordingly, the phrase "an individual who is vested with the power to take disciplinary measures against employees..." which was previously considered as one point of distinction between managerial and non-managerial employees has been removed from the definition of managerial employee. Accordingly, employees with sole powers to take disciplinary actions will not be considered as managerial employees unless they possess other 'managerial powers' indicated by the law.

For further information on the subject, refer to our publication From Recruitment to Retirement which sets out the principle of the current applicable employment law considerations relating to workforces in Ethiopia and the legal update on the revised Labour Proclamation.

Employment of foreign nationals

Any investor can employ duly qualified expatriate experts required for the operations of its business. A foreign investor can employ expatriates for top management positions without any restriction. However, the right to employ expatriates for non-top management positions is limited by the law's requirement that foreign investors should replace, within a limited period, such expatriate personnel by Ethiopians by arranging the necessary training thereof.

Corporate governance

Laws governing corporate governance

The Ethiopian Commercial Code of 1960, the Banking Business Proclamation No. 592/2009, Bank Corporate Governance Directives No. SBB/62/2015, the Insurance Business Proclamation No. 746/2012 and the Commercial Registration and Business Licensing Proclamation No. 980/2016 are the principal sources on corporate governance.

Only shareholders can be appointed as a member of a board of directors. The minimum number of directors is three and the maximum is 12.

Banking and finance

The Commercial Code of 1960, the National Bank of Ethiopia Establishment Proclamation No. 591/2008, the Banking Business Proclamation No. 592/2008, the Insurance Business Proclamation No. 746/2012, the Capital Goods Leasing Business Proclamation No. 103/1998 (as amended), the Registration and Supervision of Capital Goods and Capital Goods Leasing Agreement Regulation No. 309/2014, the Micro-Financing Business Proclamation No. 626/2009, and different directives of the National Bank of Ethiopia regulate the financial services sector in Ethiopia.

Financial services are reserved for Ethiopian nationals and foreign nationals of Ethiopian origin. Foreign financial institutions are not allowed to operate in Ethiopia and foreign nationals and companies are prohibited from owning shares of local financial institutions.

A foreign company may open a local bank account through its subsidiary or branch or representative offices duly registered in Ethiopia.

Foreign exchange regulations

Ethiopia has a number of exchange control directives issued by the national bank of Ethiopia at various times. All capital brought in and invested in Ethiopia should be registered by the Ethiopian Investment Commission and the National Bank of Ethiopia. Technology transfer agreements should also be registered with the Ethiopian Investment Commission to avoid difficulties during repatriation.

It is very important to comply with the requirements set forth above as subsequent requests for repatriation of profits and dividends and other payments depend in large part upon compliance with this requirement.

Foreign investors having business in Ethiopia have the right to repatriation of profits and dividends accruing from their investments, principal and interest due on foreign loans, payments related to technology transfer, payments related to collaboration agreements, capital gains proceeds from transfer of shares or transfer of partial ownership to a domestic investor, proceeds from the sale or liquidation of the business and compensation paid to an investor under the investment laws.

The foreign exchange regulations of the National Bank of Ethiopia allow expatriate employees to remit their salaries subject to certain restrictions. The local currency, the Ethiopian Birr, is not freely convertible. Since 2004, the National Bank has permitted non-resident Ethiopians and non-resident foreign nationals of Ethiopian origin to establish and maintain foreign currency accounts of up to USD50,000.

There are strict regulations governing access to foreign loans. Payment of interests on foreign loans is allowed only if the National Bank approves the foreign loan in the first place. The National Bank of Ethiopia will not authorise the repatriation of interest and principal payments on the loan or credit facilities that have not been approved by it.

Private equity

The law requires that foreign investors should obtain approval from the Ministry of Trade and Industry in order to acquire shares of existing companies. The approval of the Trade Competition and Consumers Protection Authority is also a requirement.

Tax, duties and tariffs

The principal taxes currently in place are corporate income tax, value added tax (VAT), customs duties and excise taxes. A number of final withholding taxes are imposed on income such as income from employment, dividend, and royalties.

Ethiopia follows a classical corporate income taxation system in which tax is imposed both at corporate and shareholder level. Corporate income tax rate is 30% and dividend tax rate is 10%. All entities (except those currently enjoying income tax holidays) that carry on business or trade are subject to corporate tax. A business or a trade is defined as any industrial, commercial, professional or vocational activity or any other activity recognised as trade by the Commercial Code of Ethiopia and carried on by any person for profit.

Partnerships are treated as entities for tax purposes and are therefore subject to corporate income tax.

Distribution of dividends is subject to 10% withholding tax at the time of declaration of dividends by companies. Companies are liable for withholding of dividend tax regardless of whether they distribute dividends or not unless they transfer the dividends declared to increase their capital within the time limit set down in directives issued by the Tax Authorities.

Interest on bank deposits is subject to 5% withholding tax, which is final. Interest paid on loan from foreign lender recognised as a financial institution by the National Bank of Ethiopia is subject to a 10% withholding tax, which again is final. The borrower in Ethiopia must withhold the 10% tax on a foreign loan in order to obtain deduction of the interest in Ethiopia.

The withholding tax rates may be reduced by the provisions of an applicable double taxation treaty for non-resident shareholders but these reductions are subject to taxpayers

meeting beneficial ownership limitations. Ethiopia has ratified double taxation treaties with countries like France, Israel, Romania, Russia, Turkey, South Africa, Tunisia, Algeria, Yemen and Czech Republic.

Capital gains tax applies to transfers of shares, bonds and buildings held for business purposes. The capital gains tax rate on transfer of shares or bonds is 30% of the gain. The capital gains tax on transfer of buildings held for businesses is 15% of the gain.

VAT is chargeable on the supply of goods or services by registered suppliers. Suppliers are normally required to register for VAT if their annual turnover of supply exceeds one Million Ethiopian Birr. Some supplies are exempted from the VAT. These include financial services, educational, health and transportation services. Some supplies, most notably exports and international transport services, are zero-rated under the VAT regime of Ethiopia.

Import duties are payable on imports by all persons and entities which have no duty-free privileges. The rate of customs duties ranges from 0% to 35%. Other taxes may also be imposed on imports: Excise duties on selected goods (e.g., tobacco); sur tax on many imports and the value added tax (15%).

Most export products and services from Ethiopia are free from export tariffs. However, some exports from Ethiopia such as raw hides and skins are subject to export duties.

Ethiopian investment and tax laws grant tax incentives in the form of duty free privileges for imports, income tax holidays, and in some cases income tax deductions. The tax incentives depend on the type, size and location of investments.

Charities and societies

A new legislation, that has repealed the previous Charities and Societies Proclamation No. 621/2009, was recently enacted by the Parliament. The Civil Society Organisations (CSO) Proclamation, as opposed to the previous law and regime which placed excessive restrictions, creates a foundation for an enabling environment for CSOs to play their role without curbs.

There are major aspects and significant developments of the new law.

The law is made applicable on CSOs operating in two or more regions, Addis Ababa & Dire Dawa, foreign NGOs and charities established by religious organisations. The scope clearly excludes religious organisations CSOs governed by other laws.

The Proclamation establishes the Civil Society Organisations Agency (CSOA), having its own legal personality and as an institution of the Federal Government. The CSOA shall be accountable to the Office of Attorney General. This Agency replaces the previous Charities and Societies Agency as the regulator of the sector.

Under the Proclamation, any CSO shall have the right to operate in any lawful activities; including taking part in government policy formulation and implementation; advancement of human and democratic rights, the promotion of equality and promotion of the efficiency of the justice sector – which were previously reserved for local NGOs. However, foreign NGOs cannot engage in the acts of influencing political parties by inducement or persuasion, educating voters and observing an election.

With regard to registration of foreign NGOs, documentary and procedural requirements have been made less bureaucratic. The Proclamation also provides lesser time for the process of registration. Provided all requirements are met, certificate shall be issued within 30 days for local NGOs and 45 days for foreign charities.

A clear and exhaustive list of the grounds on which applications for registration could be rejected is provided in the Proclamation. Furthermore, one of the major improvements this law brought with regard to cancellation of registration and dissolution, is that it can only be done only through court order. Previously, this was left to the discretion of the regulator.

Any civil society organisation can engage in any income generating activities provided they are legal and the organisation has obtained all the necessary approvals and permits from the relevant authorities. With regard to source of funding, previous restriction have been lifted. Any CSO can derive its funding through any legal means to be able to meet realise their objectives.

Previously, although there was no clear indication in the law that foreign NGOs cannot be registered for the sole purpose of provision of grants, in practice they were not allowed to. However, under the new law, foreign NGOs can freely work either as implementer or as channel of technical and financial supports.

Mining and energy

Ethiopian Constitution Provides for State form of land and resource tenure. The fast-growing mining sector, primarily as a result of the foreign direct investment, in Ethiopia, has necessitated the revision of antiquated mining laws that were in place. Currently, there are a number of laws that govern mining operations, petroleum operations, and transaction in precious minerals. The laws that currently regulate the industry include: Mining Operations Proclamation No. 678/2010; Mining Operation (Amendment) Proclamation No. 816/2013; Petroleum Operations Proclamation No. 295/1996; Mining Operations Regulation No. 423/2018 and Transaction of Precious Minerals Proclamation No. 651/2009. The laws regulate the requirements and procedures for acquiring the different licenses

(Reconnaissance, Exploration and Mining) that are required to undertake various activities associated with mining and minerals. The rights and duties that these licenses carry are also dealt with under these laws. These laws task, among others, the FDRE Ministry of Mines and Petroleum and the respective regional bodies to license and supervise entities that are involved in the mining industry.

The specialized income tax proclamations that used to regulate mining and petroleum operations were recently repealed and replaced by the new Federal Income Tax Proclamation No .979/2016. The new Federal Income Tax Proclamation consolidated the taxation of mining and petroleum operations

into a single body of legislation which regulates income generated from different sources. However, there were no major changes to the mining sector that resulted from this consolidation and the previously set income tax rate for mining business remains unchanged at the rate of 25%.

On the other hand, Investments in the Ethiopian energy sector are regulated principally by the Energy Proclamation No. 810/2013 (as Amended) and the recently announced Council of Ministers Energy Regulation No. 447/ 2019, which is intended to implement and enforce its predecessor, Energy Proclamation No. 810/2013, and its amendment.

Pursuant to the Investment (Amendment) Proclamation No. 373/2003, the business of generation of electricity as well as off- grid transmission and distribution are open to foreign investors either to carry out the investment in a solely foreign- owned entity or through a joint venture with a local company or the government.

Following the enactment of the Public Private Partnership Proclamation No. 1076/2018 (hereinafter the “PPP Proclamation”) on February 22, 2018, the mandate to issue bids and select the IPPs as well as private entities interested in off-grid transmission and distribution of electricity has been transferred to the PPP Directorate in the Ministry of Finance and Economic Cooperation. The PPP Proclamation provides for procurement through open bidding with prequalification as the default method for selection of private parties, whereas application of selection mechanisms other than open bidding is the exception.

Once the PPA and the Implementation Agreement (IA) are signed, an IPP will be required to incorporate a special purpose vehicle (SPV) that will implement the terms of the PPA and IA For the implementation of the terms of the PPA,

the IPP will be required to obtain a commercial registration certificate, investment permit, environmental and social impact assessment, and other project related documents as may be required. And once the construction of the generation facility is completed, the IPP will also be required to obtain a generation license in order to produce electricity and sell it to the off-taker. In light of this, the Energy Regulation eases registration and licensing processes of off-grid IPP. It also categorizes off-grid sector in to two sections: Independent Power Producers (IPPs) who own generation plant and sell bulk electricity to the national grid through power purchase agreement, and off-grid small scale generators, distributors and sellers.

Even though, the scope of the definition of IPPs limited only to those who sell energy to the national grid through Power Purchase Agreement (PPA), the GoE grants access to international energy traders.

The Law does not clarify the requirements, procedure and other details for the issuance of off-grid small scale generation, distribution and sell licenses instead it mandates Ethiopian Energy Authority to issue directive and guidelines with regards to issuance of off-grid small scale generation, distribution and sale licenses.

The IPPs through the IA may also get some indispensable incentives such as duty-free importation of capital goods and spare parts, and exemption from income tax.

Finally, it is undeniable that the energy sector will benefit from the Government of Ethiopia's plan to open up various government monopoly enterprises as it has granted access to international energy traders to use the national transmission grid in order to enable the country to be a leading energy exporter of the region.

Real estate and conveyancing

Ethiopia's current investment policy not only encourages foreign investment in the real estate sector but it is 100% free and suitable for foreigners to enter into the sector. Nonetheless, there are no duty free privileges or any other incentives provided by the government to the sector.

Legal framework

The 1960 Civil Code of Ethiopia, Investment Proclamation No. 769/2012 and its amendment, Ethiopian Building Proclamation No. 624/2009, Building Regulation No. 243/2011

and the Building Directive, Urban Land Lease Holding Proclamation No. 721/2011 are the principal laws that govern land and real estate matters in Ethiopia.

However, Real estate is one of the under regulated sectors in Ethiopia. Since there is no single law that specifically applies to the sector, there exists a huge gap in laws that govern the area. It is a recent development, however, that the government is designing and drafting such a law.

The Urban Land Lease Holding Proclamation of 2011 gives investors the right to use of land on leasehold for periods of 15 years up to 99 years. The period of urban land lease is currently 99 years for residential purposes and 60 years for land acquired for commercial purposes. The land cannot be mortgaged or sold, but the lease value of the land and the fixed assets thereon may be mortgaged or transferred to third parties. Regional governments and municipal administrations are authorised to allocate rural and urban land to investors on lease in accordance with their respective laws.

Requirements

An investor who wants to develop real estate in Ethiopia must first secure an investment permit from the Ethiopian Investment Commission provided that it fulfils all requirements such as proof of a minimum capital of USD200,000 for a wholly foreign owned investment and USD150,000 for a joint investment of foreign and domestic investors, and payment of registration and permit fees. Any foreign real estate developer may acquire land in Ethiopia through lease from the government or a private contract. An investor who acquires land under a lease has to enter into a land lease agreement with the Government. Once the necessary permits and certificates have been acquired, an investor must then apply for and be issued with a construction permit from the competent office, on presentation of documents such as the proposed building plan and a land lease certificate.

Exiting an investment

Disposal of investment

Shareholders can dispose their shares in companies through direct sale to willing third party purchasers. There is also a possibility under the Ethiopian Commercial Code for companies to redeem their own shares.

Shareholders may also agree to contractually provide for call options in company bylaws or shareholders/investment agreement in accordance with which the sale or purchase of shares can be enforced under specified conditions.

Listing

There is no stock exchange market in Ethiopia although the National Bank of Ethiopia is studying the possibility of establishing a stock market in Ethiopia.

Stock acquisition, asset acquisition and business acquisition

The Ministry of Trade must approve the acquisition of shares of existing companies by foreign investors and the Ethiopian Trade Competition, and Consumer Protection Authority should approve an acquisition of share interests in existing companies in Ethiopia.

Under Ethiopian Labor Proclamation No. 377/2003, amalgamation, division or transfer of ownership of an undertaking, would not have the effect of either modifying or terminating the contract of employment.

Investment protection

In Ethiopia, no investment can be expropriated or nationalised by the government except for public interest and then, only in conformity with the requirements of the law. The Constitution of Ethiopia protects private property. The Investment Proclamation also provides investment guarantees against measures of expropriation and nationalisation. In the event of expropriation or nationalisation, adequate compensation has to be paid in advance.

Ethiopia is a member of the World Bank affiliated Multilateral Investment Guarantee Agency (MIGA), which issues guarantees to investors against non-commercial risks such as expropriation. Moreover, Ethiopia has also concluded bilateral investment promotion and protection agreements with various countries. Ethiopia has also signed (but not ratified yet) the Convention on Settlement of Investment Disputes between States and nationals of other states.

Firm overview

Introduction

Mehrteab Leul & Associates Law Office is a leading full-service law office in Addis Ababa. MLA is staffed with high-calibre lawyers who are accomplished in their fields of expertise as well as support staff which include legal assistants and other office personnel.

Practice areas

- Arbitration and litigation
- Aviation
- Banking and finance
- Charities and societies
- Contract negotiation and drafting
- Corporate and commercial
- Employment and immigration
- Hospitality and leisure
- Intellectual property
- Investment
- Mergers and acquisitions
- Mining and energy
- Private equity
- Real estate and conveyancing
- Sovereign debt
- Tax

Clients

Our clients range from start-up companies, to government entities and multinational corporations across a broad range of industry sectors.

Website

www.mehrteableul.com

