



DOING BUSINESS IN ETHIOPIA



Welcome to this 2018 edition of Doing Business in Ethiopia Legal Guide prepared by Mehrteab Leul & Associates Law Office (MLA) in conjunction with DLA Piper Africa.

This handbook is a complimentary copy designed to serve as a general highlight of the Ethiopian legal environment for foreign investors and local businesses who are interested in doing business and investment in Ethiopia. In the following pages, you will find invaluable information on geography and demographics, vehicles for doing business, business rights and the regulatory environment, employment, corporate governance, banking and finance, investment regulation, tax, dispute settlement and exiting investment, which are all updated for the year 2017-2018.

MLA is a full service law office rendering quality legal service to foreign investors and local businesses. The service areas include, inter alia, Corporate and Tax, Intellectual Property, Employment, Mining and Energy, Charities and Societies, Immigration, and Aviation, Real Estate and Conveyancing and

International Arbitration. In all the practice areas, MLA is staffed with high caliber lawyers. Our quality services have enabled us to create clientele with several multinationals, such as, Coca Cola, General Electric, Hilton etc.

MLA is not only a member, but also active participant of the Ethiopian Bar Association, International Bar Association (IBA), and International Trade Mark Association (INTA). With more than 15 years in private practice and in recognition of its distinguished legal services, MLA joined DLA Piper Africa in 2012. One of the largest law firms in the world, DLA Piper created a strong network of independent law firms in Africa under the aegis of DLA Piper Africa with a view to providing seamless and efficient legal services throughout the continent of Africa. DLA Piper Africa foot print is now seen in many African countries, including Algeria, Angola, Botswana, Burundi, Ethiopia, Ghana, Kenya, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Senegal, Tanzania, Tunisia, Uganda, Zambia and Zimbabwe.

With lawyers located in more than 40 countries throughout the Americas, Africa, Europe, the Middle East, Africa and Asia Pacific and along with the DLA Piper Africa, DLA Piper offers a unique opportunity for MLA to tap into the wealth of experience of DLA Piper throughout the world to fulfill MLA's mission of providing legal services marked by excellence, integrity and accountability.

MLA has received a number of accolades and recognitions by all the major international legal directories for its excellent legal services. MLA has been ranked as "Band 1" General Business Law Office in Ethiopia in the 2018 edition of Chambers & Partners for the 4th time in a row. Additionally, MLA has been named as "Energy & Mining Sector Law Firm of the Year in Ethiopia" by 2018 Corporate Intl Magazine Global Award. MLA has also been named as Most Innovative Law Office in Ethiopia in 2018 by Acquisition International.

We hope you will find this Doing Business in Ethiopia Guide both interesting and informative, and we look forward to working with you.

Mehrteab Leul
Principal

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COUNTRY OVERVIEW

- **Name** – Federal Democratic Republic of Ethiopia
- **Capital city** – Addis Ababa
- **Total land area** – 1,104.3km²
- **Population (2016)** – 102.40 Million (World Bank)
- **Population growth (2016)** – 2.5% (World Bank)
- **Urban population growth (2017)** – 4.8% (World Bank)
- **Languages spoken (three most widely spoken)** – Amharic, Afan Oromo and Tigrigna
- **Neighboring countries** – Somalia, Kenya, South Sudan, Sudan, Eritrea and Djibouti
- **Independence** – Never been colonized

Government Structure

- **Head of State** – President Dr. Mulatu Teshome
- **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 9 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** – US\$ 72.37 Billion (December 2016)
- **GDP per capita** – US\$ 511.20 (2016) (Trading Economics)
- **GDP Growth Rate** – 10.2% (December 2017) (Trading Economics)
- **GDP per capita PPP** – 1608 USD (2016)
- **Inflation Rate** – 13.7% (April 2018)
- **GDP by sector (percentage) (2016) (World Bank)**
 - Agriculture – 37.2%
 - Industry – 21.3%
 - Services, etc – 41.5%
 - Export of goods and services – 8.0%
 - Export of goods and services – 27.8%
- **Net Inflow of FDI (2016)** – 3.2 Billion Dollars (World Investment Report)
- **Top three exports by value (2017)** – Gold, Coffee and Live animals (Trading Economics)
- **Top three import sources (2017)** – China, Saudi Arabia and United States (Trading Economics)
- **Top three export destinations (2017)** – Switzerland, Somalia and China (Trading Economics)
- **Imports** – Foodstuffs, textile, machinery and 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

Business can be set up in the form of sole proprietorship, business organizations 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 recognizes 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 twenty. 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 are recognized in August 2016 for the first in Ethiopia. The registration and operation of holding companies are not yet tested practically. However, the applicable 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:

- notarized and authenticated minutes of a resolution passed by an authorized organ of a foreign business organization authorizing 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 organization.

Partnerships

There are four types of partnership recognized 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 100,000.00 USD 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 100, 000.00 USD 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 & REGULATION

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 Center, 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 Ministry of Justice and the Federal Ethics and Anti-Corruption Commission are the bodies responsible for combating and prosecuting corruption.

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 & 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. The Ministry of Environment, Forest, 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 Organization (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 Neighboring 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 Rights 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 properly utilized. Industrial designs are protected for five years, with two possible five-year extensions. Once registered, trademarks have to be renewed every 7 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 authorized to allocate rural and urban land on lease in accordance with their respective laws.

An investor who acquires 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

INTRODUCTION

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), and the Social Health Insurance Proclamation (proc. No. 690/2010). These sets of laws are complemented by the different decisions of the Cassation Division of the Federal Supreme Court.

Under the 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.

For further information on the subject, refer to our publication **"From Recruitment to Retirement"** which sets out the principle of employment law considerations relating to workforces in Ethiopia. Please find the guide on our official website.

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.

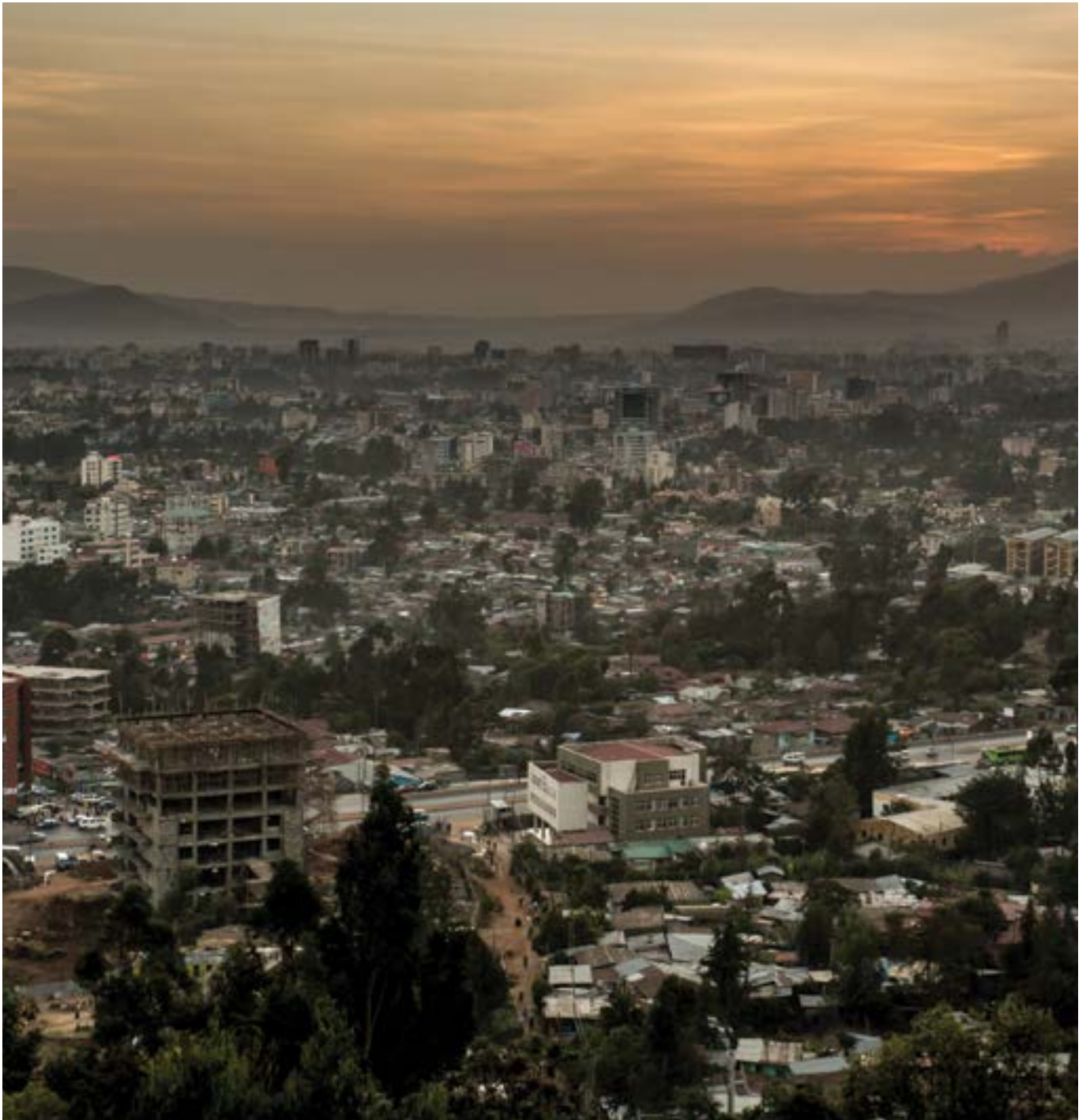


CORPORATE GOVERNANCE

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 of 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 twelve.



BANKING AND FINANCE

The Commercial Code of 1960, the Banking Business Proclamation No. 592/2009, the Insurance Business Proclamation No. 746/2012, the Capital Goods Leasing Business (Amendment) Proclamation No. 807/2013, 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. 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 under section 7.1 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.

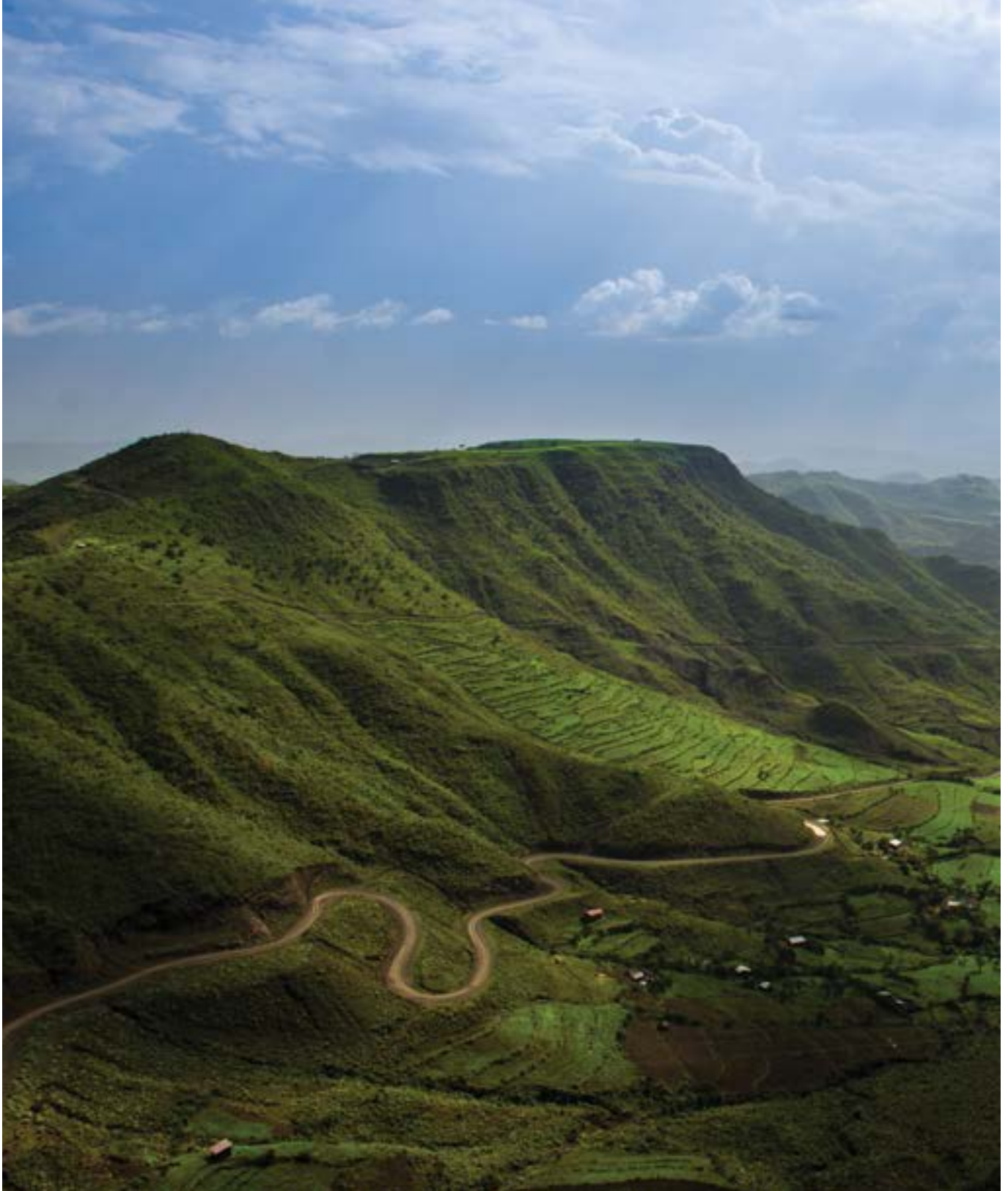
The foreign exchange regulations of the National Bank of Ethiopia allow expatriate employees to remit their salaries subject to certain restrictions. The local currency, the Ethiopian Birr, is not freely convertible. Since 2004, the National Bank has permitted non-resident Ethiopians and non-resident foreign nationals of Ethiopian origin to establish and maintain foreign currency accounts of up to USD 50,000.

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 authorize 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 to acquire shares of existing companies. The approval of Trade Competition and Consumer 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 duty 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) are subject to corporate tax, provided that they are established to operate a business or a trade. A business or a trade is defined as any industrial, commercial, professional or vocational activity or any other activity recognized 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. However, unlike company shareholders, partners in partnerships are not subject to dividend tax on profits distributed to them from the partnership.

Distribution of dividends is subject to 10% withholding tax at the time of declaration of dividends by companies. Ethiopian income tax laws are not as detailed as one would wish, but the tax authorities have recently held the view that companies are liable for dividend taxation regardless of whether they have distributed dividends or not as long as the companies have not transferred their profits into the capital account in accordance with the Commercial Code of Ethiopia. Interest on bank deposits is subject to 5% withholding tax, which is final. Interest paid on loan from foreign lender recognized 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. Ethiopia has ratified double taxation treaties with countries like France, Israel, Romania, Russia, Turkey, South Africa, Tunisia, Algeria, Yemen and Czech Republic.

The issuance of new shares by companies does not attract capital gains tax, but the transfer of shares attracts capital gains tax. The capital gains tax rate on transfer of shares is 30% of the gain. Similarly, income tax shall be payable on gains obtained from the transfer (sale or gift) of building held for business, factory or office. The capital gains tax rate on transfer of buildings held for business, factory or office is 15% of the gain.

The supply of goods and services by registered persons is subject to the value added tax (VAT) at the rate of 15%. 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 and Export Tariffs: Customs duties are payable on imports by all persons and entities which have no duty-free privileges. The rate of customs duty 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.

Tax Incentives: Ethiopia's 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

The major legislations that regulate the NGO sector in Ethiopia are the Charities and Societies Proclamation No. 621/2009 and Charities and Societies Council of Ministers Regulation No.168/2009 supplemented by a number of directives issued by the Charities and Societies Agency. The Charities and Societies Agency is the government organ that is mandated to license, register, and supervise Charities and Societies in accordance with the Proclamation.

The proclamation is not applicable to religious organizations; international or foreign organizations operating in Ethiopia by virtue of an agreement with the Government of The Federal Democratic Republic of Ethiopia; “Edir”, “Ekub” and other similar cultural or religious associations, and Societies governed by other laws.

The law makes a clear distinction between the different types of NGOs with regard to the laws under which they are formed, its members, source of funds, and types of

charitable activities they can engage in. An Ethiopian charity is a charity formed under the laws of Ethiopia; all of whom its members are Ethiopians and generates income from Ethiopia or raise not more than 10% of its funds from foreign sources. An Ethiopian Resident Charity is a charity formed under the laws of Ethiopia, which consists of members who reside in Ethiopia, and which receives more than 10% of its funds from foreign sources. Foreign Charities, on the other hand, are those that are formed under the laws of foreign countries or which consist of members who are foreign nationals and/or receive more than 10% funds from foreign sources.

The advancement of human and democratic rights, the promotion of equality, the promotion of the rights of the disabled and children’s rights, the promotion of conflict resolution or reconciliation, promotion of the efficiency of the justice sector are areas which are reserved for Ethiopian charities only.



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; 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, Petroleum and Natural Gas 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%.

Investments in the Ethiopian energy sector are regulated principally by the Energy Proclamation No. 810/2013, the Geothermal Resources Development Proclamation and the Electricity Operations Council of Ministers Regulation No. 49/1999. 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. Typically, the state-owned electricity off-taker (Ethiopian Electric Power, EEP) will enter into a power purchase agreement (PPA) by first issuing an internationally competitive bid. However, the current laws, as well as the highly anticipated Public Private Partnership draft law and policy, also provide for the possibility of entering into direct negotiations with the EEP upon fulfilment of certain conditions. 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, geothermal wellfield development and use license, and environmental and social impact assessment. 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. The IPPs through the IA may get some indispensable incentives such as duty-free importation of capital goods and spare parts, and exemption from income tax.



REAL ESTATE & 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 Constitution of Ethiopia provides that 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 leasehold basis.

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 authorized to allocate rural and urban land 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 fulfills all requirements such as proof of a minimum capital of USD 200,000 for a wholly foreign owned investment and USD 150,000 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 and obtain a lease holding certificate issued in its name.

Once the necessary permits and certificates have been acquired, an investor must then 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 nationalized 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 nationalization. In the event of expropriation or nationalization, 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.



OFFICE OVERVIEW

Mehrteab Leul & Associates Law Office is a leading full service law office in Ethiopia. It is staffed with dedicated and highly qualified legal professionals, and is based in Addis Ababa.

PRACTICE AREAS

Mehrteab Leul & Associates Law Office specializes in and provides legal advisory and services in the following 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 economic sectors.





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