Revisiting Minimum Capital Requirement for Foreign Investors As Part of Ease of Doing Business In Ethiopia

Description

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Introduction
Minimum capital requirement (MCR) is the capital that must be deposited by investor before starting business operations. The deposited amount can be withdrawn soon after the company is formed. MCR is another concern often mentioned in relation to investment codes that regulate flow of foreign investment. In recent years, many governments have stopped requiring new businesses to deposit minimum investment capital in banks or with notaries before they can begin operations. A brief look into the experiences of African counterparts that highly attract foreign direct investment (FDI) such as Rwanda and Tunisia will be made first. Based on those experiences, a brief discussion into the investment MCR of Ethiopia shall be made and a brief conclusion will follow.

1.1. **Rwanda**
Rwanda is land locked country. However such factor does not limit the attractiveness of the country for investment. Recently Rwanda created favorable condition for foreign investor. Seeking to attract more FDI, the government of Rwanda enacted a new investment code. The aim is to attract investor. The code provides tax breaks and other incentives to investors. Beside that, Rwanda has no minimum investment capital requirement. There is no statutory limit to foreign investor. In Rwanda there is no difference between foreign and domestic investor. Foreign investors have right to own and establish business enterprises in all sector. Rwandan laws' provide equal treatment for local and foreign investor with regard to business operation.

Rwanda does not set minimum investment capital requirement. Hence foreign investors can start their business in Rwanda with the capital the investor wishes to invest. Rwanda provides equal opportunity to foreign investor with high capital and low capital. There is no discrimination between them. Due to these factors, investors in Rwanda are creating better employment opportunities, transfer of knowledge, skill and technology. Moreover the investment atmosphere of Rwanda is generating significant effect on the social and economic development of the country.

However rather than focusing on putting hurdles at the entry level in investment, Rwanda put criteria for investment projects evaluation. These evaluations include engaging in non trading activity, creation of quality jobs, transfer of skills and knowledge, use of local raw materials, potential for export, potential to create backward and forward linkages, and innovation and creativity.

After evaluating the investment projects, Rwanda provides investment permit for the investor. This strategy or criteria has been very successful for Rwanda. The country is also impressively ranked in the Doing business 2020 report published by the World Bank, ranking 38th out of 190 economies in terms of ease of doing business and this made Rwanda the highest ranked country in Africa.

1.2.**Tunisia**

Tunisia government is working on with the objectives of raising the country's economy through foreign direct investment. Government of Tunisia attracts foreign investor to the country by reforming policies and enacting a new laws. Government of Tunisia considers the investment and business climate will be attractive by reforming and enacting laws. To mention few areas of reform include bankruptcy law, investment code and public private partnership.

Moreover Tunisian government adopted laws that allow starting investment and business more easily. The law in Tunisia does not require a minimum capital requirement, if a company being created is in the form of a Limited Liability Company or a Single Member Liability Company. For a Limited Company, a minimum capital requirement of no less than 5,000 TND is required. The capital requirement will grow to 50,000 TND if the Limited Company does make a public invitation. The minimum capital requirement must be divided in membership shares whose nominal value may not be less than 1 TND. Tunisia renders equal treatment for local and foreign investor. Both of them have the same right and can engage on any business activity. This improvement is booster to portfolio investments and helped country progress in World Bank's Doing Business 2020 report. Tunisia ranked 78 out of 190 countries. Nevertheless, there are still huge bureaucratic problem to investment. State owned enterprises are major player in Tunisian economy. However relatively, Tunisia attract foreign investors.

1.3. **Ethiopia**

MCR is one of the vital preconditions for an admission/entry of a foreign investment in Ethiopia. Such requirement is solely applicable to foreign investors. Minimum investment capital requirement is a regulatory instrument that set the who can invest in the country depending on specific policy goals of country. In the Ethiopian context, MCR is put in place particularly to achieve the promises contemplated by the investment legislation.

Article 9 of the Investment Proclamation No 1180/2020 set the amount of MCR. Any foreign investor, to be given the permission to invest in Ethiopia, is obliged to allocate a minimum capital of USD 200,000 for a single project. If the foreigner is investing together with a domestic investor, the minimum capital requirement will reduce by 50k and becomes USD 150,000. A foreign investor investing in architectural or engineering works or related technical consultancy services, technical testing and analysis or in publishing works, is required to invest minimum capital of USD 100,000. If the investment is made together with a domestic investor, then the minimum capital will reduce to USD 50,000.

There are few exceptions. When a foreign investor is re-investing his profit or dividend obtained from his pre-existing company in Ethiopia, the investor will not be required to invest the minimum capital. Similarly, minimum capital requirement will not apply when a foreign investor buys the entirety of an existing company owned by a foreign investor or the shares therein. Another exception is when a foreigner is appointed a board member in a share company that is converted from a private limited company.

The minimum capital requirement need to be registered. Any foreign investor bringing investment capital into the country shall have such capital registered by appropriate investment organ within one year and obtain a certificate of registration. This enables the investor for remittance at a later stage.

Not only this recent investment proclamation but also the previous investment proclamation of Ethiopia namely Investment Proclamation No 769/2012 (as amended) also incorporate minimum capital requirement for foreign investors.

Different African countries reformed their investment laws to excluding minimum investment capital requirement. Ethiopia enacted a new investment law in 2020. However, still the MCR is incorporated. The country does not provide the opportunity for foreign investor who wanted to test the business investment environment with capital less than USD 200,000 or USD 100,000, or USD 50,000. So long as the investment area is open for foreign investment, the MCR should have been avoided. The equal business treatment of a foreign investor with that of a domestic investor is a huge attraction point in Rwanda and Tunisia. Similarly Ethiopia should avoid what seems to be a discriminatory treatment of foreign investors in doing business in Ethiopia. Entry level hurdles and obstacles to business need to be reformed. This will attract FDI. Any amount of FDI should be invited into the country. Specially small and medium FDI's will grow into big investments in the country. More so, small and medium FDI's attract the big ones, by showing them that doing business in Ethiopia is possible, attractive and profitable. Huge investment attraction like Dubai, for instance, allows all types of FDI's, including structuring zones, so that anyone who wants to invest and do business can do so. The Dubai government earns its share from charging in thousands of dollars on issuing permits and licences and their renewals.

Minimum capital set out in the Commercial Code of Ethiopia Proclamation No 1243/2021 for a single member private limited company or private limited company or share company should equally serve foreign investors initial investment capital requirement. The MCR in the Investment Proclamation is discriminatory and need to be revisited.

Due to the fact that Ethiopia is fixed on setting MCR, foreign investor may look away and invest in other countries. Specially those big or small investors who wants to start business small, will be discouraged at entry level.

Ethiopia ranked 159 among 190 countries in the ease of doing business according to World Bank annual ratings. The rank of Ethiopia remained unchanged at 159 in 2019 from 159 in 2018. To change the rank, Ethiopia should repeal the statutory requirement of MCR.

Conclusion

Minimum investment capital requirements is set to regulate the flow of foreign investor into a country. Ethiopia use minimum investment capital requirements as preconditions for entry of an investment into the country. Having minimum investment capital requirement highly affect the flow of FDI. Foreign investor who wish to invest less, lack access to invest in Ethiopia. Because of this unfavorable legislative condition, Ethiopia will lose many investment opportunities. In order to improve the investment climate, attract more FDI and tackle unemployment challenges, Ethiopia should create favorable condition for foreign investor at entry level. Excluding of MCR may improve the investment climate and attract more FDI.

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