

Foreign Investors Ownership of Immovable in Ethiopia

Description

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Introduction

Historically, under the Civil Code of Ethiopia in 1960, under Article 390, a foreigner is not allowed to own an immovable property in Ethiopia. However when investments are increasing by foreigners in Ethiopia, there arises a need provide incentive. Thus as part of the investment incentive together with income tax waivers, the Ethiopian government allows foreigners to own immovable property. A brief look on the subject matter is made here below.

The Shift

The 1960 Civil Code of Ethiopia on Article 390 clearly state that foreigners may not own immovable property situated in Ethiopia except in accordance with an Imperial Order. Such a stance has not been changed when the Imperial Era came out with an investment Proclamation No 242/1966. Similarly the Dergue regime's investment Proclamation No 17/1990 did not change the situation. Neither the Transitional Government of Ethiopia Proclamation No 15/1992. Investment Proclamation No 37/1996 incorporated no specific law regarding ownership of immovable by foreigners as well. The first investment proclamation to introduce the shift was Investment Proclamation No 280/2002. Under Article 38 of the Proclamation, it states that notwithstanding the provisions of Article 390-393 of the Civil Code, a foreign national taken for domestic investor or a foreign investor is granted the right to own a dwelling house and other immovable property requisite for his investment. This right of ownership of an immovable covers those investors who have invested prior to the issuance of the proclamation. Then similar provisions allowing foreign investors ownership right of immovable has been included in Investment Proclamation No 769/2012 and the latest Investment Proclamation No 1180/2020 and its Regulation No 474/2020. We shall see who is eligible for ownership of immovable property next.

Who is Eligible

To own an immovable property in Ethiopia as a foreigner, the foreigner has to be a foreign national who invested in Ethiopia or a foreign national considered as domestic investor. "Foreign Investor" is defined under the latest investment proclamation as a person who has invested foreign capital in Ethiopia as a foreign national or as an enterprise in which a foreign national has an ownership stake or as an enterprise incorporated outside of Ethiopia by any investor. A foreign national will be considered as domestic investor by application made by the foreign investor. A foreign national or foreign enterprise will be treated as domestic investor as per the relevant law or international treaty ratified by

Ethiopia and issued with permit. A foreign national or foreign enterprise accorded a domestic investor investment permit as per laws which were in effect when the permit was issued will be considered as a domestic investor. Thus foreign nationals who brought capital to Ethiopia as an investor and foreign nationals considered as domestic investors shall have the right to own immovable property. What constitutes an immovable property will be dealt next.

Immovable Property

A foreign investor or a foreign national treated as domestic investor will have the right to own immovable property necessary for his investment. Immovable property as used in this provision does not include land. The reason land is excluded is because of the FDRE Constitution. Under Article 40 Sub Article 3 of the Constitution, the ownership right of land in Ethiopia is assigned to the Nations, Nationalities and Peoples of Ethiopia. A foreign investor or a foreign national treated as domestic investor who owns large investment may be allowed to own one dwelling house. Article 17 of the Investment Regulation No 474/2020 state that a foreign investor or foreign national considered as a domestic investor may own a dwelling house if he has invested a minimum of USD10 million. Comparing the latest proclamation with the earlier investment proclamations show strict conditions are set in this latest investment proclamation for ownership of dwelling house. For instance the previous investment proclamations namely Investment Proclamation No 769/2012 and 280/2002 provide that foreign investors or a foreign national treated as a domestic investor has the right to own a dwelling house and other immovable property requisite for his investment. There was no capital requirement for owning dwelling house.

Conclusion

In compliance with the economic progress and the size of the foreign investment in Ethiopia, the Ethiopian government has continuously amending its investment laws to meet the needs of foreign investors to reside and operate their commercial activities. Ethiopian Investment law as an investment incentive rendering ownership right of immovable for foreign investors will encourage investment, but requiring huge investment to own dwelling house may discourage the same.

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Date Created

August 22, 2021

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