

Commercial Representative Office for Foreign Traders

Description

By Mahlet Mesganaw, Partner at DMLO

Email: mahlet@dmethiolawyers.com

Introduction

Presence of foreign businesses in Ethiopia can be done by incorporating a subsidiary company or opening a branch of a foreign company. These are the main vehicles for foreign businesses to enter into the Ethiopian market. Foreign companies may also promote their business in Ethiopia by opening commercial representative offices. The new Commercial Code of Ethiopia Proclamation No 1243/2021 from Article 37-41 incorporates provisions regarding commercial representatives employment, termination and compensation. However the Code states that detailed rules applicable to commercial representatives of foreign traders will be determined by law. Thus detailed rules on commercial representatives of foreign traders can be found on the Commercial Registration and Licencing Proclamation 980/2016 and its amendment Proclamation No 1150/2019 and Commercial Registration and Licencing Council of Ministers Regulation No 392/2016 and its amendment Regulation No 461/2020.

Definition

The term “commercial representative” is defined in Proclamation 980/2016 as any person who is not domiciled in the country where the head office of the business organization or the business person he represents is situate, bound to such business organization or business person by a contract of employment and entrusted with the carrying out of any trade promotion activities on behalf and in the name of the business organization or the business person he represents, without being a business person himself.

Special Certificate of Commercial Representative

Any person interested to engage as a commercial representative shall get registered on the commercial register of the Ministry of Trade and Industry before commencing his business and obtain a special certificate. The commercial representative certificate should be renewed annually. Renewal requires the transfer of a minimum of US\$100,000 every year to a bank account of the commercial representative office in Ethiopia.

Requirements to Obtain Special Certificate of Commercial Representative

Application for Special Certificate of Commercial Representative shall be submitted to the Ministry of Trade and Industry by attaching the following documents with the application form:

- a) original and necessary copies of valid identity card or passport of the representative;

- b) two passport size photographs taken within six months, which shows the clear identity of the representative;
- c) where the application is submitted by an attorney; original and copy of power of attorney given by the principal business person, original and necessary copies of identity card or passport of the representative and the principal;
- d) proof of registration and legal personality of the principal business organization in the country of its formation or in the country of operation;
- e) a bank statement certifying deposit of a minimum of USD 100,000(One hundred thousand) earmarked for salary and administrative expenses is deposited in the name of the principal or in the name of his representative;
- f) an authenticated proof of appointment of the representative by the principal business person as its commercial representative;
- g) statement of the principal business address of the representative applicant and branch offices, if any and: i) the title deed, if the house used for business is owned by the applicant; or ii) a valid and authenticated lease agreement, if the house used for business is leased by the applicant from another lessor or lease agreement document issued by appropriate government body if the house used is owned by the Government; ii) written confirmation letter of address issued by the local administration, if one of the evidences stated under paragraph (i) or (ii) of this sub-article could not be produced;
- h) where the principal is a business organization, in addition to requirements specified under paragraph (a) to (g), its original copies of memorandum and article of association or similar documents notarized by a legal authorized body in Ethiopia and
- i) Certificate of Tax Identification Number (TIN).

Major Tasks of Commercial Representative

Any person issued with the special certificate of commercial representative shall be allowed to promote in Ethiopia the products and services of the company he represents, conduct market survey and trade expansion that could help the company in investing in Ethiopia in the future and promote Ethiopian export products in the country where the company he represents is stationed. A commercial representative shall, on behalf of the company he represents, not engage in supplying goods or services to customers and clients or shall not enter contracts with the customers. A commercial representative shall not work on behalf of other business persons, in any manner, other than the business person he represents.

Private Business

In no case may commercial representatives act on behalf of a trader selling goods or offering services similar to the goods sold or services offered by the trader to whom he is bound. Unless otherwise provided in the contract of employment, commercial representatives may not carry on similar private business for themselves and on behalf of third parties. Unless otherwise agreed, commercial representatives may not act on behalf of traders other than the trader to whom they are bound. Where

they carry on private business, or act on behalf of other traders, they shall lose their right to fees or compensation.

Remuneration

The remuneration of the commercial representative shall be fixed by the contract of employment or, where not fixed, by custom. Commercial representatives may be paid in the form of salary or on commission or both.

Compensation in Case of Termination of Contract

Where a contract entered into for an undefined or defined period of time is terminated by the trader for no fault attributable to the commercial representative, the commercial representative shall receive fair compensation which shall be fixed having regard to expansion of the trader's market or the customers introduced by him and the like. Where the principal terminates the contract without good cause, commercial representatives who are bound by a contract entered into for an undefined period of time shall be entitled to compensation fixed in accordance with the relevant labor law.

Conclusion

Foreign traders and businesses who are interested in trading activities in Ethiopia can register a commercial representative office and appoint a commercial representative to undertake promotional activities of their products and services. To secure the special certificate of commercial representative, among other things, a minimum of US\$100,000 has to be brought into Ethiopia which is expected to cover salaries and operational expenditures of the office for a year. Therefore commercial representation is one vehicle among others in which a foreign business can enter into the Ethiopian market to promote its products and services.

For more information or inquiries you may write for us at info@dmethiolawyers.com

Category

1. Latest Posts

Date Created

March 6, 2022

Author

dmethiol_admin