

Merger and Acquisition Requirements under Ethiopian Law

Description

By DMLF Team

The principle in which Merger and Acquisition takes place has been provided in the Commercial Code of Ethiopia Proclamation No 1243/2021. Merger of business organizations is defined in the Commercial Code as *'an operation whereby two or more organizations merge into one either by one of them acquiring the rest or two or more organizations forming a new organization and merging into the new one'*. On the other hand a merger by acquisition is also defined as *'the operation whereby one or more business organizations are wound up without liquidation by transferring all their assets and liabilities to a preexisting organization'*. The shareholders or partners of the business organization that is wound up are issued in exchange shares in the acquiring organization. They may also be given, as the case may be, additional payment in cash. Merger may take place between any forms of business organizations. Under the Commercial Code a directive can be issued to implement the Commercial Code. As a result a Directive to Provide for Commercial Registration and Licencing and Post-Licensing Inspection No 935/2022 has been issued. The contents of this Directive in terms of merger and acquisition requirements shall be the focus of this article.

Acquisition of a Business through Sale or Lease

A business or business organization can be transferred through sale or lease as the case may be. In order to transfer a business/ business organization by sale or lease, the following documents need to be organized: there should be an agreement authenticated by Document Authentication and Registration Agency(DARA), a tax clearance certificate related to the previous business license, a minute authenticated by DARA that shows the unanimous agreement of the members to transfer same of the transferor, and a minute authenticated by DARA which indicates that the transfer is adopted by members of the transferee with voting rights representing two third (2/3) of the shares of the organization present at the extraordinary meeting. An investment permit shall also be submitted where the person to whom the business/business organization is being transferred to a foreigner or a business organization in which a foreigner is a member. A verification shall also be made whether the area of investment is open for foreign investors. You may click the link to see which areas of investment are open.

[Investment Areas Open for Foreign Investors to Engage with Full Ownership in Ethiopia](#)

The trader to which the business/business organization/ is transferred by lease or sale shall obtain a business license in his name. The license issued in the name of the previous owner shall be returned. For the transferee to acquire the new business license, it has to provide a copy of the newspaper or the link, if it is a digital newspaper, having nationwide circulation as an evidence. If the trader to which the business/business organization/is transferred is already engaged in the same business, it may

cause the business to be registered as a branch. If it is not engaged in the same business, it shall obtain a business license on the basis of the previous commercial registration.

A Foreigner or Foreign Business Organization Joining An Existing Business Organization

Whenever the interested party to join an existing enterprise is a foreigner or foreign organization, the first checkpoint is to ascertain the area of investment is open for foreign investors. Subject to the openness of the investment area for foreigners, the following documents shall be submitted: a) a permission granted by Ministry of Trade Competition and Consumer Protection (MoTCCP) Merger and Acquisitions Department (b) unauthenticated minute of the existing business organization which indicates that it has given its consent to allow the foreigner or the foreign business organization to join the business organization; c) a proof showing that the minimum capital required of a foreign investor provided for in the laws regulating investment has been transferred to local bank save some exceptions, you may read the exceptions using this link:

<https://dmethiolawyers.com/four-investment-options-that-minimum-capital-requirement-doesnt-apply-for-foreign-investors/> d) a proof showing the consent of the foreign business organization who is to acquire shares from existing business organization; e) valid business license of the existing business organization. The registering body shall write a letter of support to a body authorized by law to authenticate documents for authentication of the minute by ensuring that the requirements have been met. The minute that has been authenticated shall be submitted to the registering body.

Merger of Business Organizations

Where the merger of business organizations is under consideration, the request to the Merger and Acquisition Department of the MoTCCP shall be submitted following the link here in attached.

<https://chilot.me/2021/07/04/procedure-of-application-for-merger-notification/> Thus an authorization for merger from such body and a minute authenticated by Federal Document Authentication and Registration Agency which indicates that the merger is adopted by members with voting rights representing two third (2/3) of the shares of each business organization present at the extraordinary meeting shall be provided. Where the merger of business organizations is not under consideration by MoTCCP, a minute authenticated by a body authorized by law, which indicates that the merger is adopted by unanimous vote of all members of the business organizations to be merged shall be submitted.

Merging business organizations shall each submit a separate closure tax clearance certificate. Provided however, if the merging companies agree to consolidate their debts/liabilities, the agreement authenticated by a body authorized by law shall be submitted. A copy of the newspaper or the link, if it is a digital newspaper, having nationwide circulation in which the merger plan is notified to the public once in month shall be submitted as evidence within two months from the date the plan is adopted by the general meeting. The business organizations to be merged shall submit the business name and trade name of the business organization to be merged. Where the business organization to be merged uses a new business name and trade name other than the one used by one of the merging business organizations, the previous trade name and business name shall be canceled. The new name shall be amended by recording in a minute which shall be authenticated by a body authorized by law. Where the business organization to be merged uses the trade and business names of one of the merging business organizations, the other name or names shall be canceled.

For your merger and acquisition needs, you may contact us at info@dmethiolawyers.com

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Date Created

December 11, 2022

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