

CAPITAL REPATRIATION FOR FOREIGN INVESTORS

Description

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The National Bank of Ethiopia introduced “The Foreign Exchange Directive No. FXD/01/2024” effective as of July 29, 2024 also known as the Green Forex Directive (hereafter the Directive). This Directive repealed and replaced all foreign exchange directives and circulars previously issued by the National Bank of Ethiopia (NBE).

The main objective of the Directive is stated on its preamble and it aims to create “a more open and competitive foreign exchange market that can attract substantial foreign exchange inflows, ensure efficient resource allocation, and foster greater transparency in foreign exchange transaction activity”. This is good news for foreign investors that have already invested in the country and are struggling to remit proceeds of their investment due to lack of foreign exchange in banks. The Directive provides clear and simple foreign exchange remittance procedures for foreign investors. This will attract foreign direct investment. This article will deal with the definition of foreign investor, remittance of registered foreign investment, required documents for remittance of profits and dividends, backlog treatment for the existing foreign currency requests, documents required for remittance of proceeds from liquidation and sale of shares, and fund transfer for failed investment operations. A brief conclusion shall follow at the end.

Foreign Investor

Foreign investor is defined under the Investment Proclamation No 1180/2020 and this Directive imported a similar definition. Foreign investor means a foreigner or an enterprise wholly owned by foreign nationals, having invested foreign capital in Ethiopia or a foreigner or an Ethiopian incorporated enterprise owned by foreign nationals jointly investing with domestic investors, and includes an Ethiopian permanently residing abroad and preferring treatment as a foreign investor.

Remittance of Registered Foreign Investments

Article 16.2 of the Directive allows foreign investments which are registered by the National Bank or Ethiopia, Investment Commission and other pertinent Government Organ to repatriate the following upon National Bank’s approval:- a. Profit and Dividends accruing from investment; b. Proceeds from the sale of liquidation of an enterprise and c. Proceeds from the transfer of shares or ownership of an enterprise. d. Return back of investment if unable to start operation e. Profits from portfolio investment in equity securities or debt securities

Required Documents for Remittance of Profits and Dividends

According to Article 16.3 of the Directive foreign investors who earn profits or dividends from recognized and registered foreign investments are entitled to remit net profit/dividend abroad on condition that the following documents are submitted to National Bank; a. Authenticated minutes of the

Board of Directors or an equivalent body distributing the profit or declaring dividend duly signed by the chairman or secretary of the Board b. Copy of the usual closing financial documents duly audited by an independent third party auditing institution permitted to operate in Ethiopia. c. Capital registration letter issued by National Bank or Investment Authority; d. Tax receipts evidencing the payment of all taxes due to the government (Business and Dividend tax receipts) e. Memorandum & Article of Association or any other similar document by whatsoever name it may be referred; f. Valid business License; g. Application letter; and h. Any other document of evidence that the NBE may require.

Branch Offices of foreign companies operating in Ethiopia desirous of repatriating foreign exchange shall fulfill the requirements enumerated under (b-h) above.

Backlog Treatment: Special Repayment Schedule Applies

Those dividend repatriations requested and approved by the NBE but for which payment has not been made by banks due to foreign exchange shortage, will be treated in a special manner. As an exceptional treatment for any profit and dividend amounts that may be outstanding as of the issuance of this Directive, the NBE will stipulate a special repayment schedule to be applied to address the backlog of such dividend cases. Article 16.3.4 provides that such a repayment schedule will not apply to any new dividend repatriation requests that are initiated after the issuance of this Directive, which shall—for such new cases—be accepted and settled by banks upon demand.

Remittance of Proceeds from Liquidation: Documents Required

Article 16.3.5 of the Directive states that if an investor ceased operation or closes his/her business, which is recognized and registered by the National Bank or Investment Authority, the following documents will be required to transfer the capital. a. Minutes of the decisions of shareholders/partners, if organized in the form of a legal entity. b. Letter of declaration by the owner, in case of sole proprietorship. c. Liquidation report authenticated by the competent authority court and letter from ministry of trade confirming the revoke/strike out of the license. d. Audited Balance sheet & income statement. e. Foreign Capital registration letter f. Tax clearance from pertinent Government Authority. g. Any other document that may be required by the National Bank.

Sale of Shares of Foreign Investors: Documents Required

Remittance of proceeds from sales of shares foreign investors who transfer his/her share-holdings partially or wholly to the Ethiopian National and/or foreign investor can apply for remittance of sale of shares value. As per Article 16.3.6 of the Directive, the seller has to present the following documents. a. Updated foreign capital registration certificate and document. b. Bank credit advice confirming the receipt of the corresponding value in foreign currency, if sold to a foreigner. c. Sales agreement authenticated by document registration and authentication d. Tax Clearance from pertinent Government Organization.

Fund Transfer for Failed Investment Operations

Foreign investors who have registered their foreign investment but are unable to start operations for whatever reason may make foreign exchange remittance upon presentation of confirmation letter from Ethiopian Investment Commission. However, the fund to be transferred should not exceed the registered capital.

Conclusion

The National Bank of Ethiopia has issued a clear, direct, easily implementable foreign exchange directive that addresses not only the existing foreign exchange problem but also attracts future foreign investors to come and invest in Ethiopia. One of the bottle neck problems for foreign investors has been the inability to remit proceeds from their business. Now, the market determination of the foreign exchange, and specific guarantees by the National Bank to treat capital repatriation for foreign investors is great news and shall bring a great opportunity for Ethiopia.

For related investment inquires, you may contact us at info@dmethiolawyers.com

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