

Major Contents of the New Investment Law in Ethiopia

Description

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Ethiopia has adopted a new investment law. The Proclamation is called the Investment Proclamation No.1180/2020(hereafter the Proclamation). It was done on April 2,2020 to be effective on the date of publication in the Federal Negarit Gazettee.

Purposes of the Proclamation: The major purposes of the proclamation are to increase the role of private sector investment in all sectors of the economy, to create fast track economic framework, to increase export performance, expand employment opportunity, to increase and diversify foreign investment inflow and transfer technology, skill and knowledge, to link foreign and domestic investments in broader areas, to promote equitable distribution of investments among the regions of Ethiopia, to leverage foreign capital to promote the competitiveness of domestic investors, to put in place an efficient system to implement the National Investment Objectives and such system to be transparent, predictable, and efficient for investment attraction, retention and expansion.

In the Proclamation, '**Investment**' has been defined as expenditure of capital in **cash or in kind or in both** by an investor to establish a new enterprise or to acquire in part or in all, to expand or upgrade an existing enterprise. '**Capital**' is also defined as local or foreign currency, negotiable instrument, machinery or equipment, building, working capital, property right, intellectual property right or other tangible or intangible business assets. 'Investor' is defined as a domestic or foreign investor who has invested capital in Ethiopia. '**Domestic investors**' are defined to include among others a foreign national or foreign enterprise treated as domestic investor as pr the Ethiopian law or international treaty Ethiopia has ratified or a foreign national or foreign enterprise accorded a domestic investor investment permit earlier and continues to operate in Ethiopia and descendants of a foreign nationals. '

Export- oriented non-equity based foreign enterprise collaboration' is defined as a collaboration formed by a contractual agreement between a domestic investor and foreign enterprise in which the foreign enterprise provides among others guaranteed external market access, know-how of production of products for export, export business management know-how, export marketing know how and strategies for the supply of raw materials and intermediate inputs needed for export products.

Scope of the Investment Proclamation: The scope of application of the investment proclamation is in all investment sectors in Ethiopia except prospecting, exploration and development of minerals and petroleum.

Powers of EIC: The Ethiopian Investment Commission(here after Commission) is assigned the power to issue, renew, amendment, substitution, replacement and cancellation of investment permits, the issuance of investment permits and the expansion or upgrading permits for wholly foreign owned investments or joint investments by domestic and foreign investors, foreign nationals who are treated as domestic investors and investment areas that are eligible for incentives by a domestic investor. Sectors of investment in air transport services, the generation or transmission or distribution of electric power and the provision of communication services shall be carried out by the Ethiopian Civil Aviation Authority, the Ethiopian Energy Authority and the Ethiopian Communication Authority respectively representing the Commission. These later Authorities shall submit to the Ethiopian Investment

Commission a quarterly report regarding services they rendered through delegated powers, and further study potential sector specific investment strategies and engage in investment promotion works. Regional investment organs shall administer investments, that are outside the scope of the Commission or Authorities mentioned above.

Areas of Investment: Areas of investment open to an investor as a principle are any area of investment that are not contrary to law, moral, public health or security. Except areas of investment reserved for joint investment with the government or domestic investors and for joint investment with domestic investors, all other areas of investment shall be open to foreign investors. The list of areas of investments by joint investment with the government or domestic investors, or joint investment with domestic investors or areas of investment open for foreign investors may be revised from time to time by the EIC Board.

Joint Investment with the Government or PPP: The government body assigned to receive interested private investors proposals in areas of joint investment with the government, as public-private partnership, shall be the Public Enterprises Holding Administration. The Agency shall follow procedures under the law and upon approval, designate a public enterprise or establish a new project company to invest as partner in the joint investment.

Forms of Enterprises: Investments may be carried out in the form of sole proprietorship, enterprises established in Ethiopia or abroad, public enterprises established with the relevant law and cooperative societies formed in accordance with the relevant law. Any investment enterprise established abroad and registered in Ethiopia and all other enterprises registered in Ethiopia shall be governed by the Commercial Code of Ethiopia.

Minimum Capital Requirement: A foreign investor to be allowed to invest shall be required to allocate a minimum capital of USD 200,000.00 (Two Hundred Thousand USD) for a single investment project. Where the foreign investor jointly invests with a domestic investor, the minimum capital requirement shall be USD 150,000.00 (One Hundred Fifty Thousand). However, if the investment areas is in architectural or engineering works or related technical consultancy services, technical testing and analysis or in publishing works, the minimum capital investment shall be USD 100,000.00 (One Hundred Thousand) or USD 50,000.00 (Fifty Thousand) if the investment is made jointly with a domestic investor. The minimum capital requirement shall not apply to foreign investors re-investing his profits or dividends generated from his existing enterprise in any investment area open for foreign investors or persons elected as members of board of directors following the change of a private limited company to share company or a foreign investor buying the entirety of an existing enterprise owned by a foreign investor or the shares therein. Any foreign investor bringing investment capital into Ethiopia, need to registered it within one year and the obtain a certificate of registration. Such copy of certificate shall be sent to the National Bank of Ethiopia by the appropriate investment organ.

Investment Permit: foreign investors, domestic and foreign investors investing jointly, investors investing as domestic investors, domestic investors who invest in areas eligible for incentives and who seek to be beneficiary of such incentive and an investor seeking to expand or upgrade an existing investment which is eligible for incentives and the investor seeks to be beneficiary of such incentive shall obtain investment permit. However, a foreign national of Ethiopian origin treated as a domestic investor shall have the right to invest without acquiring investment permit in areas not eligible for incentives or in areas eligible for incentives by waiving his right to claim incentives. Also a foreign investor seeking to buy an existing enterprise in order to operate it in its current state or to buy shares of an existing enterprise shall obtain prior approval from the EIC. The Commission shall not deny or delay the approval without sufficient cause. Nevertheless, no investor is allowed to hold domestic and foreign investor permits simultaneously.

An investment permit is subject for renewal annually until the investor commences marketing his products or services. Once a business licence is acquired, there shall be no need to renew investment permit. The renewal request should be sought within one month after the end of a period of one year for which the permit was valid. Unless the investment organ is convinced of a sufficient cause for delay in commencing or completion of the investment project, the investment permit will be revoked within two years.

Transfer of investment project in the implementation phase: an investor wishing to transfer to another investor a project which is under implementation shall submit his request to the investment organ and obtain approval. The investment organ shall not deny or delay the approval without sufficient cause.

Any investor who is issued an investment permit shall submit a quarterly progress report and provide information concerning his investment whenever requested.

Technology Transfer Agreement: Any investor concluding a technology transfer agreement shall register such agreement with the EIC. Unregistered technology transfer agreement shall have no legal recognition with the EIC.

Collaboration Agreement: Any domestic investor who concludes, in respect of export, a collaboration agreement with a foreign enterprise who does not contribute capital shall have the agreement registered with EIC. A collaboration agreement that is not registered shall have no legal recognition with the EIC.

Investment Incentives: areas of investments, types and amount of investment incentives shall be determined by regulation.

Immovable Property Ownership: a foreign investor or a foreign national treated as domestic investor shall have the right to own immovable property necessary for his investment. Whereas, if such an investor who owns large investment may be allowed to own one dwelling house. The details of the latter part shall be decided by a regulation. Immovable property as used in this provision does not include land and the ownership of immovable property shall apply to investors who invested prior to the adoption of this proclamation.

Expropriation: the government may expropriate any investment for public interest, in conformity with requirements of the law, on a non-discriminatory basis, with adequate compensation corresponding to the prevailing market value paid in advance.

Remittance of Funds: a foreign investor shall have the right in respect of his investment to remit in convertible currency at the prevailing exchange rate on the date of transfer profits and dividends, principal and interest payments on external loans, payments related to technology transfer agreements, payments related to collaboration agreements, proceeds from the transfer of shares or conferral of partial or total ownership of an enterprise to another investor, proceeds from sale, capital reduction or liquidation of an enterprise and compensation paid on expropriation. Expats employed for investments carried out pursuant to this Proclamation whose permanent residence is outside of Ethiopia may remit their salaries accruing from their employment. However, a domestic investor investing jointly with foreign investor shall not be allowed to remit funds earned from the investment out of Ethiopia.

External Loan: An investor may acquire a loan from outside of Ethiopia for his investment and operate a foreign currency account in a bank in Ethiopia for the purpose of its investment following the directives of the National Bank of Ethiopia (NBE).

Expatriate employment : an investor may employ duly qualified foreigners for his investment in positions of higher management positions including chief executive officer, chief operation officer and chief finance officers as necessary, supervision, trainers and other technical professions. However,

foreigners may be employed only when it can be ascertained that Ethiopians possessing similar qualification or experience required by the sector are not available.

Work Permits of Expats: The work permit of top management foreign workers shall be renewed without being required to comply with the conditions specified in this article in respect of other foreign workers. A work permit may be issued for a cohabiting spouse of any investor and a foreign worker employed. A work permit for employment in certain positions may be issued for up to three years and renewed every year. However an investor who employs foreigners shall be responsible for replacing within a limited period of time such foreign workers by Ethiopians by arranging and providing the necessary training. Renewal of work permit shall be done after ascertaining the non-availability of Ethiopian workers with similar qualification and of the concrete measure taken by the investor to train Ethiopian replacements. Where it is ascertained that a foreign worker is no longer required for the position he is employed, the EIC may decide not to renew or to cancel the work permit.

Visa Services: EIC or a delegated investment organ may facilitate the processing of visa application of foreigners coming into Ethiopia for investment purposes and that of the families (spouses, children and parents) of investors undertaking investments in Ethiopia. Visa may be issued to an investor intending to enter into Ethiopia, from a country that is not his home country, for investment purposes based on a support letter the EIC may offer. An owner or shareholder of an investment under this proclamation may be issued a five-year multiple visa based on the confirmation by the EIC. The general manager, board member or top management of an investment enterprise in Ethiopia and the Parent or holding company of the Enterprise may be issued a three year multiple entry visa based on confirmation by EIC. No single stay of any foreigner entering Ethiopia using multiple entry visa may exceed 90(Ninety) days.

One Stop Service: EIC or regional investment organs shall provide one-stop services to investors by coordinating relevant agencies and synchronize their daily functions.

Complaint Procedure in EIC: Any grievance shall be resolved using speedy, equitable and efficient procedure. Any investor who has grievance shall have the right to submit it to the appropriate investment organ. Such grievance shall follow the administrative chain and get final administrative decision. A written copy of the administrative decision shall be given to investor within 7(Seven) working days from the date from the date of the decision. If the investor has a grievance against the final administrative decision of EIC, then he can submit a complaint to EIC Board within 30(thirty) working days from the date the investor becomes aware of such decision. Then the Board shall give its decision within 90(Ninety) working days from the date of submission of the Complaint and a written Board decision will be given to the investor within 7(seven) working day.

Complaint procedure against Executive Bodies: An investor shall have the right to submit a complaint to the EIC against final administrative decision of any federal government executive body where such decision significantly affects the investment. The Federal executive body shall give to investor within 7(seven) working days a written copy of the final decision. The investor then has 30(thirty) working days to submit the final administrative decision to EIC. EIC shall engage with the government body and propose a recommended solution in writing within 30(thirty) days from the submission of the complaint. A written copy of the proposed solution shall be given to the investor within 7(seven) working days from the date the recommended solution is tabled. Still the investor may file a complaint to EIC Board against the EIC's recommended solution, or the the solution is not accepted by the government body. The complaint to the Board should be presented within 30(thirty) working days from the date the investor is notified of the recommended solution or learns that the government body rejected the recommended solution. The Board shall then give its decision within 90(Ninety) working days. Any Federal government body has a duty to comply with and execute in

accordance with the decision of the Board.

Dispute Settlement: without prejudice to the right of access to justice through a competent body with judicial power, any dispute between an investor and the Government involving investments effected pursuant to this Proclamation will be resolved through consultation or negotiation. The Federal government may agree to resolve investment disputes involving foreign investments through arbitration. Where a foreign investor chooses to submit an investment dispute to a competent body with judicial powers or arbitration, the choice shall be deemed final to the exclusion of the other.

Investment Administration Organs: The investment administration organs include the Ethiopian Investment Board, the Ethiopian Investment Commission, the Federal Government and Regional State Administrations Investment Councils and the Investment Administration organs established pursuant to Regional laws.

Members of the Ethiopian Investment Board are 13(thirteen) including the Prime Minister as chairperson, a government official designated by the Prime Minister as Vice Chair person, EIC Commissioner and Secretary, Eight core or investment related government officials, two private sector representatives.

Council: a council for the cooperation and coordinated administration of investment between the Federal government and Regional state administrations is established by this Proclamation. Members of the Council include the Prime Minister or in his absence the Deputy Prime Minister as chairpersons, Presidents of all regions and Mayors of the Addis Ababa and Dire Dawa City Administrations, EIC Commissioner and heads of investment organs of all Regions and Addis Ababa and Dire Dawa City Administrations and other members designated by the Prime Minister as necessary.

Coordination with Regional States: the Commission shall work in close cooperation with Regional State Investment Administration organs and other stakeholders with a view to creating a uniform, coordinated and efficient national investment administration system. Standing regional state investment Desks shall be established.

Provision of Land: Regions shall handle land requests for investments in the manufacturing, agriculture and other sectors in an efficient manner and shall establish a transparent and predictable system for the handling of such requests. Regions shall identify and classify land to be used for investment projects, organize such land centrally under one Regional State Administration body and transfer the information to the appropriate investment organs. The EIC shall coordinate the Regional State Administration and appropriate investment organs to facilitate and follow through the efficient handling of such requests. Regions shall respond to land allocation request of an investor for manufacturing within 60(Sixty) days and 90(Ninety) days where the investment is in other sectors.

Transitory Provisions: rights and entitlements bestowed pursuant to Investment Proclamation no 769/2012 as amended and Regulations and Directives issued there under shall remain applicable in respect of investments approved prior to the coming into force of this Proclamation.

Duty to Observe: all investors have a duty to observe laws of the country and shall give due regard to social and environmental values.

Category

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