
Investment Proclamation No. 1180/2020**Ethiopia Team****Team leaders**

Gianpiero Succi
Gianpiero.Succi@belex.com
phone: +39-010-84621

Tameru Wondm Agegnehu
Tameru.Wondmagegnehu@belex.com
phone: +251-116686200

**Authors**

Seble Geberegiorgis
Seble.Geberegiorgis@belex.com
phone: +251-911612197

Robel Mehari
Robel.Mehari@belex.com
phone: +251-930333331

1. Introduction

On 2 April 2020, the Ethiopian government issued Investment Proclamation No. 1180/2020 – a new investment proclamation repealing Investment Proclamation No. 769/2012 after close to eight years in force. The new proclamation ushers in a synchronised and focused investment administration system and introduces changes of varying degrees to almost all areas covered. For instance, one of the new proclamation’s stated objectives is to enhance the national economy’s competitiveness by promoting investments in production and enabling sectors. This is a revamped objective in that the focus has shifted to making the economy globally competitive.

The private sector now also has an increased role thanks to the inclusion of non-voting representatives in the Ethiopian Investment Board (“**Board**”), which has been re-established by the new proclamation. Proclamation No. 1180/2020 also addresses minor unclarity and mistakes that the previous proclamation should have avoided, such as using the term ‘patents’ interchangeably with ‘intellectual property’, an unclear distinction between ‘nationalisation’ and ‘expropriation’, and using both ‘local investor’ with ‘domestic investor’ when referring to joint investments with a foreign national.

The following paragraphs address relevant changes enshrined in the new proclamation to elucidate the new developments. The issues covered below are divided into topics and sub-topics in accordance with the general structure adapted by the new investment proclamation.

2. Competitiveness and job creation

The new proclamation’s stated objective emphasises competitiveness and increased employment opportunities even more than the previous investment proclamation. It also recognises the increasing role of the private sector and the need to leverage foreign capital to promote the competitiveness of domestic investors.

The pursuit of competitiveness is not limited to the foreign-domestic investor paradigm, as the proclamation envisions the nation becoming globally competitive and recording increased export levels.

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3. Open approach to foreign investment

The most significant change introduced by Proclamation No. 1180/2020 is its adoption of an open approach to foreign investment in the country. It has opened all areas of investment to foreign investors, except for areas reserved for: (a) joint investment with the government, (b) domestic investors, and (c) joint investment with domestic investors. For this reason, the new proclamation's implementing regulation – expected to be passed shortly by the Council of Ministers – will be very relevant.

The previous proclamation pre-emptively listed areas of investment reserved for the government or for joint investment with the government, and it enabled the Council of Ministers to issue a regulation to open these areas to private investors. However, under the new proclamation, areas of investment reserved for joint investment with the government, domestic investors, and joint investment with domestic investors are all to be specified by a regulation. Another new development is the introduction of reserved investment areas for “joint investment with domestic investors”: a category that was absent from the previous proclamation.

4. Minimum capital requirement

The new proclamation maintains the approach taken by the previous proclamation in terms of the minimum capital required from a foreign investor to invest in Ethiopia. However, the new proclamation exempts foreign investors appointed as board members of private limited companies reorganised into share companies from having to meet the minimum capital requirement. Additionally, a foreign investor buying the entirety of, or shares in, an existing enterprise owned by a foreign investor is exempt from having to meet the minimum capital requirement.

This variation appears to exclude the buying of investments owned by a domestic investor, which must thus meet the minimum capital requirement – unless, of course, a foreign investor is considered to be re-investing profits or dividends generated from his/her existing enterprise in any investment area open to foreign investors.

5. Procedural requirements

Like its predecessor, the new proclamation requires foreign investors and investors seeking to expand or upgrade an existing investment in an area eligible for incentives to obtain an investment permit to invest in Ethiopia. Additionally, domestic investors – including foreign nationals of Ethiopian origin – wishing to benefit from available investment incentives must also obtain an investment permit.

In terms of procedural requirements, the new proclamation takes the same approach as the preceding proclamation. However, it has removed the requirements that were specified in the previous proclamation for issuances and renewals of investment permits and for registration of technology transfer agreements and export-oriented non-equity-based foreign enterprise collaboration agreements.

This approach is a sign that the details on issuance, renewal, suspension and revocation of investment permits and the registration of the agreements mentioned above will be dealt with in lower-level legislation. The requirements regarding supporting (and other essential) documents for obtaining investment permits and registration of the above agreements will be dealt with by subsequent legislation, making their speedy introduction paramount.

Furthermore, the process of acquiring an existing business – either in its entirety or some of its shares – requires the approval of the Ethiopian Investment Commission (“**Commission**”), which is the administrative body that replaced the former Ethiopian Investment Agency. The previous proclamation conferred this power on the Ministry of Trade. The procedures to be followed by the Commission after approval have not been stipulated; however, the Commission may not deny approval without good cause.

6. Suspension and revocation

Unlike the previous proclamation, the new proclamation outlines detailed grounds for suspension of investment permits. Some of these grounds were listed as grounds of revocation under the previous investment proclamation. Additionally, the new proclamation grants an investor whose permit is suspended one year to take corrective measures. Failure to take corrective measures within this period – and other circumstances, such as delay in carrying out the investment, voluntarily abandonment, and misuse or illegal transfers of investment incentives – will result in the investment permit being revoked. In the previous proclamation, a failure to carry out an investment within two years resulted in a permit being unconditionally revoked. However, the new investment proclamation grants the Commission the power to extend the period in which an investment is to be carried out if certain conditions are satisfied. These conditions have yet to be specified.

The effects of revocation are the same as those indicated in the previous proclamation, apart from the clear recognition of the government’s right to bring criminal charges irrespective of administrative measures taken by a relevant investment body. Another important issue to note in terms of procedures and their legal effects relates to the failure to register technology transfer agreements or export-oriented non-equity-based foreign enterprise collaboration agreements. In the previous proclamation, failure to

register with the Ethiopian Investment Agency (now the Commission) resulted in these agreements being declared void. In the new proclamation, however, the effect of non-registration is restricted to a mere lack of recognition by the Commission. In other words, unregistered agreements will not be recognised by the commission as having effect, which will limit the right to utilise an incentive and/or remit profits from the agreements in foreign currency. However, the agreements will not be considered void between the parties on the ground that they were not registered with the Commission. This correction by the new proclamation is in line with the general principle of Ethiopian contract law.

7. Investment incentives, rights and facilitation

Apart from a few notable changes, the old and new investment proclamations are similar in terms of the administration of incentives. For instance, the new proclamation removes the requirement that investments be in line with the proclamation's investment objectives in order to be eligible for incentives; it leaves the types and amount of incentives to be determined by a regulation to be issued by the Council of Ministers. The following are some of the notable developments introduced by the new proclamation:

- A) *Ownership of immovable property:*** Like the previous proclamation, the new proclamation gives foreign investors the right to own immovable property other than land. However, although the new proclamation confers similar rights with respect to the ownership of dwellings, it limits these rights only to foreign investors with large investments in the country. This automatically excludes those who have invested the minimum required capital from being entitled to own dwellings. A question remains as to the size of the investment that can be considered a large investment for the purpose of this incentive. Unless specific details are stipulated in subsequent legislation, implementation/execution-related challenges will arise and affect the transparent investment administration system envisioned.
- B) *Foreign currency remittances:*** The variation here is found with respect to a foreign investor's right to remit payments and earnings related to their investment in Ethiopia. Unlike the previous proclamation, the new proclamation allows a foreign investor to remit proceeds from transfers of shares or partial ownership of a business to any investor, whether foreign or domestic. Additionally, it recognises remittances of proceeds from capital reductions of businesses. However, foreign currency remitted by expatriates is restricted to non-resident employees only.
- C) *Work permits:*** In general, the two proclamations are similar in this regard. The difference concerns how work permit applications are processed, as it is the Commission that grants work permits

under the new proclamation. The new proclamation does not address whether company owners working in the company may acquire work permits. Conversely, it does explicitly allow a cohabiting spouse of an investor or of a foreign worker employed by the investor to be granted a work permit.

D) Visas: One of the ways the Commission and other delegated investment bodies now facilitate investment is by processing visa applications. The Commission is to undertake the function in cooperation with the Immigration, Nationality and Vital Events Agency. Under the new proclamation, company owners and shareholders are granted five-year multiple entry visas, whereas top management and board members are granted three-year multiple entry visas.

Irrespective of the duration of the visa, no single stay may exceed 90 days. This restriction appears to be in line with Ethiopia's general immigration legal framework, according to which a stay exceeding 90 days requires the person concerned to obtain a residence permit.

8. Administration

The administrative bodies designated as responsible for the administration of investments in the previous proclamation are conferred with similar powers and duties in the new proclamation – except for the newly established federal government and state administration investment council (“**Council**”), which did not exist under the old proclamation. Under the new proclamation, those administrative bodies have undergone internal restructuring. Judging from the restructuring, it can be said that the new proclamation aims to make the investment administration system transparent, predictable and efficient in order to increase the attraction, retention and expansion of foreign investment.

A) The investment board: The Board was established as the highest governing body of the previous investment agency, which was later reorganised as a commission. The new proclamation expressly establishes the Board, which comprises: (a) the prime minister, as chairperson; (b) a government official designated to act as chairperson by the prime minister; (c) eight government officials with administrative mandates in finance, trade, revenue, agriculture, industry and other related sectors; (d) two non-voting members from the private sector; and (e) the commissioner and secretary of the Commission. In effect, the Board maintains its highest position in the investment hierarchy, including the power to revise investment areas reserved for the government, domestic investors and joint investment with the government or domestic investors.

B) Commission: The new proclamation – in addition to transferring the powers and duties of the previous investment agency to the new Commission – makes a few additions to those powers and

duties that are aligned with the vision of it serving as a nucleus for the envisioned investment administration system. Among these, it empowers the Commission to lead investment promotion activities and carry out targeted investment recruitment work regarding potential investors. It also attributes the Commission the function of establishing an information exchange system that enables current and accurate information flow between the Commission, investors and other government agencies.

C) Council: The Council is established with the view of creating a cooperative and coordinated administration of investment between the federal government and regional state administrations. Its powers and duties include, among other things, directing and overseeing all aspects of the horizontal relationship/coordination between the federal government and state administrations, with the goal of establishing simplified and synchronised investment systems. It is also authorised to pass decisions and propose recommended solutions relating to fundamental grievances or significant misunderstandings submitted by investors regarding the provision of pre-investment and post-investment services (including the allocation of land) by regional state investment administrative bodies with respect to investments affected by the new proclamation. In light of this, the Council is expected to pass decisions and adopt recommended solutions based on evidence and informed discussions. Under the new proclamation, regions are required to execute the Council's decisions.

D) Regional investment bodies: Without prejudice to their powers and duties as designated by their respective regional investment legislation, regional investment bodies are to: (a) handle land requests for investments in manufacturing, agriculture and other sectors in an efficient manner (ideally within 60 days for the manufacturing sector and 90 days for investments in other sectors); and (b) establish a transparent and predictable system for handling requests pertaining to the allocation of investment land. The new proclamation thus removes this power from the Commission, which was previously granted the function of processing investment-related land requests. The regional investment bodies are, however, duty-bound to transfer information regarding investment land to the Commission. Under the new proclamation, standing regional state investment desks should be established within the Commission.

9. Complaints and dispute resolution

This is one of the major differences between the two proclamations. The new proclamation distinguishes between complaints and disputes and stipulates detailed procedures for their respective resolution. Complaints

against administrative decisions of executive bodies or of the Commission are to be resolved using speedy, equitable and efficient procedures.

Investors may lodge complaints against decisions of executive bodies of the federal government that significantly affect an investment. In this case, the complaint must first be submitted to the Commission, which is to produce a written recommended solution after engaging in consultation with the executive body in question. Investors who are dissatisfied with the recommended solution have 30 days from the date they became aware of it to submit a complaint to the Board. The Board then issues a final decision within 90 business days that is binding on the executive organ.

Investors may also lodge complaints against Commission decisions. These complaints must be submitted to the Board within 30 business days from the date the investor became aware of the decision. The Board must issue its decision within 90 business days from the date the complaint was submitted. The Board's decision must be communicated to the investor within seven days from the decision's date.

Lastly, the new proclamation calls for the settlement of disputes through negotiations or consultation, without prejudice to the right of investors to have access to justice. It also states that the federal government may agree to resolve foreign investment disputes through arbitration. Once an investor chooses a competent judicial or arbitral body for dispute resolution, the choice is considered final.



Ethiopia Team

The Ethiopia Team is a constellation of skills in different practice areas.

Gianpiero Succi
Corporate

Tameru Wodm Agegnebu
Corporate

Seble Geberegiorgis
IP

Weynalem Weldesenbet
Litigation

Riccardo Salerno
Corporate

Daniele Gambirasio
Corporate

Michele Saponaro
Corporate

Robel Mehari
Tax