

# LEGAL UPDATE

Special Issue: Ethiopia Introduces New Investment Law | February 2020

Ethiopia's House of Peoples' Representatives, the legislative organ of the government, approved a new investment bill on 30 January 2020 (New Investment Proclamation), which will enter into force from the date of its publication on the Federal Negarit Gazette. This law repeals the Investment Proclamation No. 769/2012 (as amended). A draft investment regulation – i.e. a subsidiary legislation to implement the New Investment Proclamation is also expected to be approved by the Council of Ministers. The New Investment Proclamation and the draft investment regulation shall together be referred to as the 'new investment law' hereinafter.

The new investment law is part of the broader initiative by the government to increase private sector participation in the country's economy. Even before the approval of the New Investment Proclamation, the government had undertaken significant liberalization measures, including the enactment of a new proclamation liberalizing the telecom sector, the announcement to privatize several state-owned enterprises and the engagement of the private sector through a public-private partnership arrangement in major infrastructure and development projects.

In this update, we discuss some of the major departures introduced by the new investment law affecting foreign investors. We will highlight some key points from the new investment law.

The new Law  
has taken  
significant steps  
in opening up  
investment areas  
for foreign  
participation.



## ENTRY REQUIREMENTS

The new investment law does not make a significant departure from its predecessor on the fundamentals of entry requirements and the substantive test of what “investment” and “capital” constitute. In particular, the new investment law maintains the minimum capital requirements of USD 200,000 for foreign investors, USD 150,000 for joint venture with domestic investors and the reduced requirement of USD 50,000 or USD 100,000 for few investment areas, including engineering, architectural, consultancy, testing and publishing services. While the new law maintains the capital requirement waiver for foreign investors re-investing their profits and dividends, it has now explicitly provided that foreign investors buying shares from an existing foreign investor and foreign nationals holding shares as nominees in the context of a share company will benefit from similar waiver.

As noted above, the new investment law largely upholds the principles adopted by its predecessor with respect to the substantive test of what constitutes “investment” and “capital”. That said, the definition of “investment” now extends to brownfield investments even when the new investor does not have expansion/upgrading plan.



## NEW SECTORS OPEN TO FOREIGN INVESTMENTS

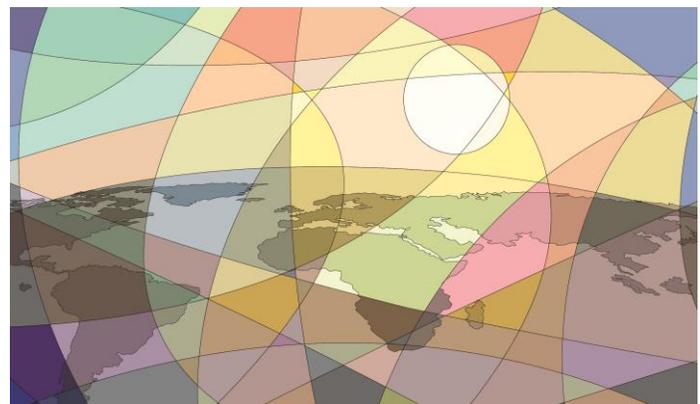
The new investment law, in a stark deviation from its predecessor, has changed the ‘positive list’ approach into a ‘negative list’. In the repealed law, foreign investors were only allowed to invest in sectors expressly listed in the investment regulation or in sectors opened by the decision of the Ethiopian Investment Board (EIB). The shift towards a ‘negative list’ is probably the most significant aspect of the new investment law because foreign investors are now allowed to invest in any investment area except those that are expressly reserved; (a) for domestic investors; or (b) for joint investment with domestic investors or the government.

Some of the areas of investment which were exclusively reserved for Ethiopian nationals under the previous law are likely to be opened for foreign investments with the condition that foreign investors undertake these investments in joint venture with the government and/or domestic investors. Some of these areas under the current draft regulation include forwarding and shipping agency services, domestic air transport services, accounting and auditing services, inland public transport (with a capacity of more than forty five seats) and freight transport services (with a capacity of more than 32 tones), mass media services, and advertisement and promotion works. The maximum percentage allocation for foreign investors in the context of these joint investments is generally set at forty nine (49) per cent. However, the draft regulation allows foreign investors to hold up to a maximum of seventy five (75) per cent of equity participation in few investment areas such as forwarding and shipping agency services. Further, investment in the transmission and distribution of electricity energy through the national grid system, previously reserved for the government, is now open for joint venture investment with the government.

Investment areas that are likely to remain closed to foreign investors include banking, insurance and micro-credit and saving services, retail trade, import trade (except liquefied petroleum gas and bitumen) and few other selected areas of investment that have made it into the list with a view to protecting small and medium enterprises and domestic investors.

It is important to note that unlike the repealed law, the new investment law does not distinguish between areas of investment reserved for “Ethiopian nationals” and “domestic investors”. In the

new law, “domestic investor” is broadly defined to include Ethiopian nationals, foreign nationals of Ethiopian origin, the government, enterprises incorporated in Ethiopia and wholly owned by Ethiopian nationals, public enterprises, cooperative societies, and foreign nationals or foreign enterprises treated as domestic investor under a treaty or domestic law. In addition, foreign nationals or enterprises with heritage investment permits, and descendants of foreign nationals with heritage investments have been included under the definition of domestic investors. This suggests that for sectors open for joint venture investments, foreign investors’ potential list of partners can be any one or more of the persons or enterprises falling under the “domestic investor” definition. Further, investment areas, including banking and insurance, that were exclusively reserved for Ethiopian nationals in the previous law are now open to any person falling within the definition of domestic investor, including foreign nationals of Ethiopian origin.



## INVESTMENT ADMINISTRATION AND SERVICE DELIVERY

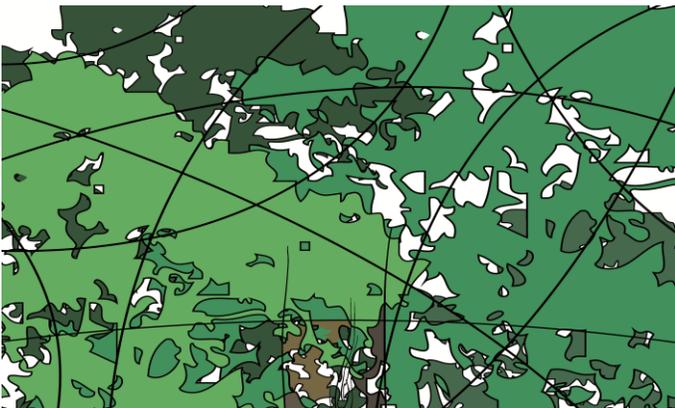
Needless to say, an efficient and transparent investment administration regime is important in attracting, retaining and expanding private capital. It is in this regard that the new law made certain amendments in the administration and service delivery of investment.

From an investment administration standpoint, the new investment law has;

## INVESTMENT INCENTIVES

- Introduced an Inter-governmental Relations Standing Council chaired by the Prime Minister and primarily comprising of the Presidents and/or Mayors of Regional States and City Administrations, respectively. This platform is designed to address investment implementation and coordination challenges investors face at federal and regional levels.
- Expanded the mandate of the Ethiopian Investment Commission (EIC) to provide approvals to foreign investors proposing to buy an existing enterprise. Further, the new investment law mandates the EIC with certain additional powers which previously were carried out by the Ministry of Trade and Industry and other institutions. This is expected to provide an efficient one-stop shop service to investors. On the other hand, EIC's licensing mandate relating to investments in the air transport service, energy generation and transmission, telecommunication and financial services has been delegated to the Ethiopian Civil Aviation Authority, the Ethiopian Energy Authority, the Ethiopian Communications Authority and the National Bank of Ethiopia, respectively.
- Expanded the mandate of the EIB to decide on investment policy matters, entertain appeals lodged against the EIC or other government institutions and to further open or close investment sectors to foreign investors.

The new investment law has also taken certain steps towards improving service delivery. In particular, the draft investment regulation has specified service delivery timelines, broadened one-stop shop service and envisions a more transparent and predictable regime of service delivery.



The new investment proclamation envisages a regulation to determine the details of investment areas eligible for incentives. We understand that this regulation is being developed by the Ministry of Finance. To provide further context, it is critical to recall that the recent Customs Amendment Proclamation No. 1160/2019 has taken back powers formerly given to different government bodies including the EIC in relation to permitting duty free imports. Going forward, it is anticipated that the EIC will need to closely work with the Customs Commission and the Ministry of Finance to facilitate the incentives and duty free importation entitlements of investors.

On a related note, it is important to note that the new investment law maintains the right of foreign investors to repatriate funds in convertible foreign currency. While foreign currency shortage continues to challenge investors' right to repatriate, the NBE Directive No. FXD/62/2019 puts the remittance of profits and dividends as a second priority (among the list of few priorities), only next to pharmaceuticals (medicine and laboratory reagents) and fuel related foreign payments.

On a final note, the new investment law has relaxed the visa and work permit regimes such as listing additional beneficiaries of work permit (including spouses of expat employees).

In our view, we consider the new investment law to have taken a fundamental and major departure from the previous law in terms of expanding the field of activities open for foreigner investors. In addition, the introduction of the Inter-governmental Relations Standing Council, the highest echelon of political power in light of the composition of its members, is a significant step towards an enhanced collaborative effort to implement the new investment law.

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## DISCLAIMER

- The information contained in this legal update is only for general information purposes. Nothing herein shall be considered as a legal advice or a substitute thereto.
- This legal update is based on the latest draft versions of the ratified investment proclamation and the draft investment regulation. Therefore, the final version of the investment proclamation which is yet to be published in the Negarit Gazette has not been consulted.