Ethiopian Investment Law Reform

Key policy reform and departure points
Over the past few years, substantive issues which call for the revision of the Ethiopian investment legal regime have been identified

**POLICY-LEVEL RATIONALE**
- **Catching-up with changes**: global and local changing context
- **Changing perceptions**: reverse the long held perception that Ethiopia is closed for business and portray the message that the country welcomes productive investments in all sectors of the economy
- **The need to remain competitive**: make required reforms to match competitors

**TECHNICAL AND PRACTICAL REASONS**
- **Over the years a number of gaps and ambiguities have been identified that hindered the application of the law**
  - Attempts made to address these gaps and ambiguities through piecemeal amendment of the laws as well as decisions of the Ethiopian Investment Board (EIB)
  - This approach has brought about **uncertainty and unpredictability** in the investment legal regime; need for a comprehensive look at and revision to the legal regime has thus become evident.

The revision of the investment law has been dictated by the need to:-
- **Modernize** the investment regulatory and administrative framework
- **Align** the investment legal regime with recent changes in economic policy priorities
- **Revisit** investment areas open to the private sector
- **Consolidate** protracted rules on investment
- **Adopt best practices** for efficient investment administration/service provision, including One-Stop-Services and
- **Devise a faster and more transparent** investor grievance handling mechanism
Investment law reform: approach

- **Structure** - A technical working group covering 17 investment lawyers/advisors established by EIC in January 2019

- **Working mode** - The working group operated under the supervision of the EIC Management which guides, reviews and approves each milestone

- **Methodology** - The working group leveraged various methodology to deliver on tasks

- **Four staged approach**
  - Comprehensive diagnostics
  - Reform recommendation
  - Stakeholder validation
  - Legal drafting
  - Revision of draft

- **Legal analysis** - review of the current and preceding investment policy, proclamations, regulations etc.

- **Benchmarking** - In-depth desk research on best practice countries (~25 countries)

- **Empirical evidence** - gathered from international investment policy leads - UNCTAD, WBG etc

- **Key Informant Interview**
  - Federal government – one-to-one discussion with over 20 federal agencies
  - Regional investment commissions - Oromia, Amhara and Tigray

- Feedbacks received from investor associations

- Private sector survey

- **Public sector validation**
  - July 4th 2019
  - All relevant federal and regional agencies

- **Private sector validation**
  - July 6th 2019
  - 200+ private sector representatives (local and FDI)

- **Draft law shared with all relevant ministries/agencies and investor associations**
  - Feedback collected from over 20 Ministries/Agencies
**Investment law reform: policy considerations**

**A. Rethinking long-held assumptions on global investment order**
- Quickly changing global investment context, dynamic rules needed
- FDI inflow changing in size, composition and modality
- GVCs moving

**B. Revising objective setting with changing local context** (Home Grown Economic Reform et al)
- More and better jobs
- Expanding productive sectors and leveraging enabling sectors (including services)
- Enhancing export competitiveness
- Capital mobilization, leveraging the diaspora and FDI
- Supporting business startups
- Inclusive investment, FDI-domestic investment linkages

**C. The need to take a holistic approach towards improving investment => attraction, retention and expansion**
- Relaxing entry barriers
  - Sector restriction
  - Capital limits
  - Licensing/permit
  - Visa
- Addressing operational barriers
  - Inter-agency coordination (vertical/horizontal)
  - Expanding OSS
  - Protection and guarantees

**D. Focus on domestic investment and linkages**
- Facilitate access to foreign capital, skills and technology
- Nurture entrepreneurship
- Enhance market/supply linkages

**E. Investment administration**
- Effective IPA – targeted promotion, aftercare and problem solving
- Simple, modern, transparent and accountable administration
- Effective coordination
- Agile structure and manpower

**F. Ecosystem approach**
- Promotion Vs encouragement Vs opening Vs regulation
- Successful realization of investment attraction and retention even in selected few sectors requires well-functioning ecosystems
### Investment definition, scope and screening

<table>
<thead>
<tr>
<th>Area</th>
<th>Gaps under current law</th>
<th>Draft law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Investment definition</strong></td>
<td>▪ Limited to establishment of new enterprises and 50-100% expansion/upgrading</td>
<td>▪ Recognizes acquisition of shares</td>
</tr>
<tr>
<td></td>
<td>▪ Limited definition of capital (patent)</td>
<td>▪ Recognizes all forms of IPRs</td>
</tr>
<tr>
<td><strong>Scope</strong></td>
<td>▪ Exclusion limited to investments in minerals and petroleum</td>
<td>▪ Exclusion adds natural gas</td>
</tr>
<tr>
<td><strong>Minimum capital for foreign investment</strong> ($200,000 – 150,000)</td>
<td>▪ Limits possible investments in local startups and innovative ideas</td>
<td>▪ Exception for investment in innovative local startups by PE, venture capital, angel investors etc</td>
</tr>
<tr>
<td></td>
<td>▪ Limits investment retention, expansion and diversification</td>
<td>▪ Exception for existing investments wanting to engage in new areas</td>
</tr>
<tr>
<td></td>
<td>▪ Requires minimum capital during transfer of share in FDI firm and on conversation of a PLC into SC</td>
<td>▪ Exception as main FDI firm and/or PLC fulfilled the requirement</td>
</tr>
</tbody>
</table>
## 3 Investment facilitation

<table>
<thead>
<tr>
<th>Area</th>
<th>Gaps under current law</th>
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</tr>
</thead>
</table>
| **a** OSS | • Limited to federal/EIC (FDI)  
                 • Limited to per-establishment stage | • Expansion to regions (for domestic investment)  
                                                      • Expand to post-establishment stage (business license renewal) |
| **b** Visa       | • Restrictive → entry barrier                                   | • EIC facilitation role defined  
                                  • Right to request from 3rd country  
                                  • 3 years multiple entry investment visa  
                                                    (for owner, shareholder, top management, board member, frequently visiting professional staff) |
| **c** Work permit | • Loose on the terms of employing expats and duty to train/replace  
                        • Restrictive for spouses → entry barrier | • Expat employment rules firmed-up (to promote local employment)  
                                                      • Right to work permit for cohabiting spouse of an investor & expat employee |
### Investment administration

<table>
<thead>
<tr>
<th>Area</th>
<th>Gaps under current law</th>
<th>Draft law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment permit issuance renewal and cancelation</td>
<td>- Manual</td>
<td>- Online system recognized</td>
</tr>
<tr>
<td></td>
<td>- Lack of transparency &amp; due process</td>
<td>- Timeline for permit approval defined, Grounds and process for suspension and revocation clearly defined</td>
</tr>
<tr>
<td></td>
<td>- Maximum 2 renewal (limits innovative investments)</td>
<td>- 3 times renewal allowed for start ups and innovative investments</td>
</tr>
<tr>
<td>Grievance handling</td>
<td>- Lack of clear platform for investment grievance management ➔ investment down-sizing, cancelation, arbitration</td>
<td>- Process for grievance handing outlined</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- against final decision of EIC &amp; other agencies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- escalation mechanism set (to EIB)</td>
</tr>
<tr>
<td>Dispute settlement/Investment protection</td>
<td>- No rule on dispute settlement ➔ limits investment protection/investors’ confidence (especially sizeable investments)</td>
<td>- Duty to execute</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Provides ADR and court options</td>
</tr>
</tbody>
</table>
### Investment organs

<table>
<thead>
<tr>
<th>Area</th>
<th>Gaps under current law</th>
<th>Draft law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ethiopian Investment Commission</strong></td>
<td>▪ General mandate in view of international best practice and its role on the ground</td>
<td>▪ Mandate clarified (proactive investment promotion, aftercare, IC improvement, investor feedback loop etc)</td>
</tr>
</tbody>
</table>
| **Ethiopian Investment Board**          | ▪ Lack of clarity on membership  
▪ Lack of transparency with decisions made  
▪ Infrequent meetings                     | ▪ 2 non-voting private sector rep.  
▪ Directive to be issues on procedures for submission of apps, decision making, dissemination of decisions  
▪ Meeting frequency pushed to quarterly  |
| **Standing Council on Inter-Gov. Relations (on inv. admin.)** | ▪ Delink in investment administration  
▪ Increasing number of grievances investment down-sizing, cancellation and arbitration | ▪ Federal-regional coordination and problem solving platform  
▪ Strategic and high-level issues  
▪ Chaired by the PM, includes regional presidents, A/A & D/D city mayors, investment commissioners/heads  
▪ Discipline/timeframe on land approval |
## Investment sector regulation

<table>
<thead>
<tr>
<th>Current law</th>
<th>Gaps</th>
<th>Draft law</th>
</tr>
</thead>
</table>
| **Positive listing** | ▪ **Restrictive** by design  
▪ Rigid, limits innovation and new developments  
▪ Restricts integrated business models  
▪ Restricts investments in value adding and **enabling** service sectors  
▪ Policy reversal from the past 3 consecutive laws  
▪ Against **global** trend and best practice | **Negative listing** | Listed sectors: fully or partially restricted for FDI  
All other sectors: open for FDI  
EIB mandated to revise the list (add or remove from the negative list) |

### Gaps

**Listed sectors**:
- Open for FDI
- JV with Govt
- Reserved for Gov
- Reserved for Ethiopian nationals
- Reserved for domestic investors
- Closed for FDI

**All other sectors**:
- Open for FDI
- JV with domestic investors
- Reserved for domestic investors
- JV with Govt
Annex
Role of investment for development: Investment plays an increasingly vital as a source of development finance and economic competitiveness; its in recognition of this that developing countries have put in place investment policy and legislation that primarily aim to attract and retain quality investment to their economies.

✓ Largest and less volatile source of external finance, surpassing official development assistance (ODA)
✓ Access to foreign markets
✓ Transfer of technology and innovation for better productivity and competitiveness
✓ More and better jobs
✓ Technical know-how, managerial and organizational skills
✓ Domestic firms upgrading through linkages and spillover
Changing global investment trend: Global FDI inflow dropped by 13% to $1.3 trillion in 2018; host countries are taking investment reform measures to diversify investment sectors and remain competitive

- In 2018, **55 countries adopted 112 investment policy measures** affecting foreign investment
- **Two thirds** of these measures sought to liberalize, promote and facilitate new investment
Changing global investment modalities: new forms/modes of investment, additional source of foreign capital

- Fund managers for idle resources/funds such as pension funds
- Impact investments, Angle investors
- Incubators & Accelerators
- About $3 trillion valued assets are globally managed through Pes
- Africa is becoming an attractive destination for PE, especially for investments in consumer-driven SMEs.
- PE going to Africa is generally increasing both in number and value
### Changing global investment composition: Service sector accounts for the largest share of FDI inflow (both green and brown field)

Value and number of announced FDI greenfield projects, by sector and selected industries, 2017-2018

<table>
<thead>
<tr>
<th>Sector/industry</th>
<th>Value (Billions of dollars)</th>
<th>Growth rate (%)</th>
<th>Number</th>
<th>Growth rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
<td></td>
<td>2017</td>
</tr>
<tr>
<td>Total</td>
<td>698</td>
<td>981</td>
<td>41</td>
<td>16,350</td>
</tr>
<tr>
<td>Primary</td>
<td>21</td>
<td>41</td>
<td>101</td>
<td>83</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>345</td>
<td>466</td>
<td>35</td>
<td>7,856</td>
</tr>
<tr>
<td>Services</td>
<td>332</td>
<td>473</td>
<td>43</td>
<td>8,412</td>
</tr>
</tbody>
</table>

Value and number of net cross-border M&As, by sector and selected industries, 2017-2018

<table>
<thead>
<tr>
<th>Sector/industry</th>
<th>Value (Billions of dollars)</th>
<th>Growth rate (%)</th>
<th>Number</th>
<th>Growth rate (%)</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>2017</td>
<td>2018</td>
<td></td>
<td>2017</td>
</tr>
<tr>
<td>Total</td>
<td>694</td>
<td>816</td>
<td>18</td>
<td>6,967</td>
</tr>
<tr>
<td>Primary</td>
<td>24</td>
<td>39</td>
<td>60</td>
<td>550</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>327</td>
<td>307</td>
<td>-6</td>
<td>1,690</td>
</tr>
<tr>
<td>Services</td>
<td>343</td>
<td>469</td>
<td>37</td>
<td>4,727</td>
</tr>
</tbody>
</table>
In the past five years, FDI flow to Ethiopia has increased by more than four folds.

With $3.3 billion FDI inflow in 2018, Ethiopia stands as the 5th largest FDI recipient in Africa.

- Nearly half of total inflow to East Africa
- Largely in light manufacturing/textile and apparel via industrial parks

**FDI:** 13% of total investment, about 5% of GDP (2017), 7x higher in terms of capital invested than domestic investment.

**Investment to GDP ratio:** averaged 37.5% over the last 5 years (average of 31% for 2009-2013) and an average of 26.3% (2004-2008)

**Public investment** has been the main driver of the country’s rapid growth (Share of public investment in GDP rose from 5% in the early 1990s to 17% in the 2013/14 fiscal year); but it has declined to 13.8% in 2017/18.
Ethiopia's Investment Profile: Productive and enabling sectors of the economy are yet to be effectively enhanced, and role of FDI yet to be optimized

- **Services**: traditional, restricted, limited jobs
- **Agriculture**: low productivity, technology, know-how, aggregation
- **Industry**: declining manufacturing share in industry

- Manufacturing is the biggest driver of FDI accounting for 69% of total FDI inflow, and 50% of all investment projects
Services sector in Ethiopia: Restrictions in the service sector affects Ethiopia’s economy at various levels

- Limited product value addition/sophistication undermining export competitiveness
- Lost investment/FDI opportunities
- Lost job opportunities: Services account for 74% jobs in high income countries, 40% in upper-middle income countries and 33% in lower-middle-income countries
Changing local policy context - Measures taken by the government in that last year is a clear indication of the distinctive shift towards enhanced private sector participation in the economy

- A range of political and economic policy reforms which appear to signal a significant departure from the previous practice of State-led economic growth and provide for a greater space for private sector involvement and enhance the role of the private sector in the economy; Some of the clear indications of this shift include the following:
  - More and better jobs
  - Expanding productive sectors of the economy
  - Privatization program involving partial equity sales in the four strategic sectors (airlines, telecom, power, and logistics); plan to fully privatize several other state enterprises (sugar plants, railways, industrial parks, etc.);
  - Leveraging private investment for development financing: PPPs
  - Improving Ease of doing business for local and SME businesses, increased linkages
  - Regional integration and multilateral trade agreements – ratification of the African Continental Free Trade Area (AfCFTA) and accession to the World Trade Organization (WTO), implies significant liberalization in trade in goods and services and introduce disciplines on investment, intellectual property and competition policy.
Evolution of the sector listing approach - Since the introduction of a free market economy in 1991, Ethiopia has enacted four proclamations regulating investment and all except the current one followed negative listing approach

**PROCLAMATION TO PROVIDE FOR THE ENCOURAGEMENT, EXPANSION AND COORDINATION OF INVESTMENT NO 15/1992 (15/1984)**

**Negative List approach**

1. Government (5) (large scale, B & I)
2. JV with Gov’t (3)
3. Ethiopian Nationals - small scale air, rail, marine transport, electricity supply.
4. All others Open.

**INVESTMENT PROCLAMATION NO 280/2002 (280/1994)**

- **Negative list approach**
  1. Government (2- Grid, Postal)
  2. JV with Government (weapons, telecom)
  3. Ethiopian Nationals (4 - B&I, Broadcasting, shipping, airport)
  4. Domestic Investors (19 Sectors) –
  5. All others sectors open

**INVESTMENT PROCLAMATION NO 37/1996 (37/1988)**

- **Negative approach**-
  1. Government (same as 1992)
  2. Ethiopian Nationals (B & I, Energy up to 25MW, air transport upto20)
  3. Domestic investors (18 Sectors) -
  4. JV with domestic investors – (4 sectors) – Pharma, Fertilizer, Chemical (20mil +27%)
  5. All areas that were not mentioned in 1-4 were open for FDI

**CURRENT INVESTMENT PROCLAMATION NO. 769/2012 (769/2005)**

- **Positive list + Negative List.**
  1. Government – Grid, postal and air
  2. JV with Government –weapon + Tele
  3. Ethiopian nationals -
  4. Domestic Investors -
  5. Foreign Investors -
Host country **admits FDI without a formal screening and approval process** or a mere filing or notification requirement.

- Fully open countries are not many.
- OECD Regulatory restrictiveness Index shows:
  - EU member States, Eastern Europe, Chile and Argentina.
  - From Africa: Rwanda and Mauritius stand out.

**Host country puts conditions for admission,**
- Sector specific restrictions
- Equity restriction or local management requirement
- Performance requirements
- Case-by-case approval/ screening
- **Further divided into a positive listing and negative listing approaches.**
**Sector listing approach: Restrictive system approach**

**POSITIVE LISTING APPROACH**

- Exhaustive enumeration of all sectors or sub-sectors in which foreign investors may invest in.
- It’s a static document and is not seen as progressive.
- Fails to cope with technological evolutions and pace of business in a globalized World.

**NEGATIVE LISTING APPROACH**

- Enumeration of sectors or sub-sectors in which foreign investors are prohibited or restricted.
- Any sector or sub sector that does not appear on the list is considered open.
- On the list may be prohibitions, ownership limitations, screening requirement, minimum investment requirement, and performance requirements are the major ones.
Sector listing approach: The shift back to the negative list is based on the review of 25 countries

Review of the legislations of 25 countries

- Selection based on policy similarities, historical and economical comparators
- To mention few: Uganda, Kenya, Tanzania, Ghana, Rwanda, Mauritius, Vietnam, Sri Lanka, Philippines, Brazil, Argentina, China, India, and Kazakhstan among others.

General takeaways:

- Historical trend towards more liberalization
- Shift from positive to negative
- Most still maintain restrictive approaches
- Specific country policy priorities reflected
- Every country is different on the details but overwhelming general similarity on prohibitions, equity restrictions, local content requirements and special approvals
Global benchmarking: economy-wide and sector specific investment regulations

- UNCTAD Investment Policy Database
- OECD FDI Regulatory Restrictiveness Index
- WBG Investing Across Borders Database

Source: OECD FDI Regulatory Restrictiveness Index database, [www.oecd.org/investment/fdiindex.htm](http://www.oecd.org/investment/fdiindex.htm)

Note: (*) Countries without shading are not covered in the index. Scores are preliminary for Thailand and Singapore (base year 2014), Cambodia (base year 2015), Namibia, Mozambique, Mauritius and Seychelles (base year 2013).
Current Investment Law (Positive listing approach)

- Open for FDI
- JV with Govt
- Reserved for Gov
- Reserved for Ethiopian nationals
- Reserved for domestic investors
- Closed for FDI

Positive list

Negative list

What is neither in the positive nor in negative list
New Investment Law (Negative listing approach)

- Open for FDI
- Reserved for domestic investors
- JV with domestic investors
- JV with Govt

What is not in the negative list

Negative list
Thank you!