Changes proposed to the Commercial Code of Ethiopia

An overview of the proposed key changes to the Commercial Code in light of Ethiopia’s current economic climate and its development goals.

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This article will be discussing the proposed changes made to the Commercial Code of Ethiopia (the Code) in the latest draft of the amended Commercial Code (the Draft Code) that has recently been circulated to stakeholders. The drafter of the Code considered it revolutionary for its time as the political, social and economic context in which it was introduced was far behind from the modern economy that it had targeted to regulate. The Code laid the foundation for the uniform regulation of the business environment in Ethiopia but has not been able to catch up with the fast changing social and political realities of Ethiopia and the advent of globalization ushering diverse investments into the country. The Draft Code has been in the making for many years. The Ethiopian government has taken up the agenda of reforming the commercial law for many years and this is the first time that a draft has emerged and been circulated for consultation with stakeholders.

The Draft Code has introduced several amendments. Some of these amendments are not very significant. A few that we think are significant are discussed below. Out of practical considerations, we have limited our discussion to companies limited by shares ie Share companies (SCs) and Private Limited Companies (PLCs).

The explanatory note (expose des motifs) that introduces the Draft Code sets out the general rational for reviewing the existing Code as follows:

- to update the Code in light of the current global economic environment, technological advancement and the Ethiopia’s development goals
- to put in place an easier, more productive and cost effective process of establishing and operating businesses
- to strike a balance between the administrative powers of managers and the rights and benefits of stakeholders
- to give opportunities to individuals with know-how lacking capital to participate in organised commercial activities, and
- to maintain transparency and accountability in the commercial community.

Share companies (SCs)
**Change of nomenclature:** the Draft Code calls SCs Public Limited Companies. The name change does not seem to have much significance as the definition of a SC as a company whose capital is fixed in advance and divided into shares and whose liabilities are met only by its assets remains intact.

**Par value control:** the Draft Code introduces the idea of control of par value of shares by a regulatory government body. It maintains the minimum par value to be Ethiopian Birr (ETB) ten but empowers the relevant government body to review the amount on the basis of considerations that it deems are necessary. Under the existing legal framework, SCs in some sectors (eg banking) would be required to raise a minimum capital that is different from the ETB 50,000 that the Code generally provides for all SCs. The regulation of minimal par value is a new development.

**The Organiser:** the Draft Code has acknowledged what it refers to as the Organiser as distinct from founders of a share company. Individuals who take a prominent and leading role in setting up a SC are recognised. They may also be entitled to special payments in additional to what they get in their status as founders.

**Eliminating articles of association:** as part of its simplification drive, the Draft Code no longer requires as mandatory articles of association as one of the constitutive documents for SCs. Only the Memorandum of Association is stated as a requirement.

**Non-shareholders as directors:** The Draft Code removes the existing requirement of the Code that members of the Board of Directors of a SC be shareholders. Shareholders would be in a position to appoint persons whom they believe will run the company whether or not they are shareholders. The Draft Code introduces some eligibility criteria for becoming a director such as attaining the minimum age set on the memorandum of association, having good social standing, having not been convicted and punished previously while working as a founder, director, auditor, and other posts and fulfilling other requirements, if any.

**Optional Monitoring Board:** The Draft Code introduces another layer of management body for SCs which is called "Monitoring Board" responsible for major decision-making and overseeing the general affairs of the company. Under the Draft Code, SCs may have a Monitoring Board if it is provided for in their Memorandum of Association. The Monitoring Board reports to the general meeting of shareholders on the various activities of the management of the SC. It is intended to put a check on the wide power of directors and managers, who would otherwise be held accountable only to the general meeting of the shareholders who might not be well versed in the nitty-gritty of the company's activities.

**Minorities in management:** The Draft Code allows shareholders with at least 20% of the total capital to elect one representative in the Board of Directors, thereby enabling minority shareholders to participate in the management of a SC. Although the existing Code provides for this possibility, it is not mandatory.

**Private limited companies (PLCs)**

**One-person PLC:** the Draft Code removes the existing requirement that members of a PLC, or any partnership, be at least two. It allows a person to be able to form a PLC on its own.

**Mandatory auditors’ requirement:** the Draft Code introduces the requirement of auditors for PLCs which have an income above a certain threshold to be decided by the relevant government body. The existing Code only requires appointment of auditors for a PLC if the members of the PLC are more than 20.

**Mandatory annual meeting:** Regardless of the number of shareholders of the PLC, the Draft Code requires all PLCs to hold a general shareholders meeting each year on the date fixed by the MoA.
The new features of a SC introduced by the Draft Code and described above, the optional Monitoring Board, the par
value control, and the elimination of Articles of Association as one of the constitutive documents of a company also
apply to PLCs.

Finally, common to both SCs and PLCs, the Draft Code has allowed companies to conduct meetings online via
electronic means without the need to go through physical meetings. It also requires them to have a website.

In the June 2016 issue of our legal update, we discussed the features of the recently enacted Commercial Registration
and Business Licensing Proclamation No.980/2016 (Proclamation). On the basis of this Proclamation, the Council of
Ministers has enacted, effective from September 2016, the Commercial Registration and Business Licensing Regulation
No.392/2016 (Regulation).

The following two features stand out in the Regulation:

**Detail list of documentary requirements**

The bulk of the Regulation deals with the documents required to be submitted for the purpose of registration, renewal
and cancellation of registration certificate, business license and other special certificates. The list is prepared to address
various forms of business such as sole proprietorship, partnerships, limited liability companies, project offices,
commercial representative, etc.

**Limitation of retail trade by manufactures and importers**

Previously, domestic manufacturers and importers could sell their products to wholesalers, retailers, consumers or to
users. With respect to foreign investors, the Investment Regulation No.270/2012, permits them to sell their
manufactured products only in wholesale. On the basis of Article 22/4&6 of the Proclamation, the Regulation now
introduces restrictions on domestic manufactures or importers from engaging in retail trade in products other than the
following:

- motor powered manufacturing machineries
- motor powered vehicles
- office and household furniture
- musical instruments
- software
- bicycles
- lifts and mobile escalators
- medical equipment
- chemicals used in research, and
- petroleum pitch.

Further, the Regulation totally excludes importers but permits manufacturers to engage in the retail trade of the following
products:

- bread and sweet food, and
- cement and ceramics products and by-products.

The Regulation has empowered the Council of Ministers to decide other products or goods to be retailed by
Manufactures or Importers based on the nature of products or goods.