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#  **Briefing Note July 2020**

## **eTHIOPIA’S NEW Commercial Code: wHAT DOES IT MEAN FOR iNVESTORS?**

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**Background**

Ethiopia is set to enact a new Commercial Code after 60 years since the enactment of the first comprehensive Commercial Code in 1960. The Draft Commercial Code is under deliberation at the parliament and is expected to be approved in before the end of 2020. The new Commercial Code regulates new technology related developments in commerce to ensure Ethiopia’s competitiveness in the global commerce and investment climate. The new code comprises only three books cutting the two books related to carriage, insurance, banking and negotiable instruments under the former code. Book one regulates issues related to traders and businesses, while book two and three deal with business organizations and bankruptcy respectively. The new code introduced major developments for the business community removing unnecessary burdens that affect ease of doing business. Addis Partners prepared this brief note with a view to introduce major changes of the new commercial code to the business community.

**Introduction of New Type of Business Vehicles**

The new Commercial Code introduced new types of business organizations that were not recognized under the previous law. Among others, the code allowed operation of business in a Limited Liability Partnership, and One Man Company arrangement. Professionals such as lawyers, accountants or engineers can operate professional business by establishing an LLP. The code also introduced detailed provisions through which foreign companies can operate in Ethiopia via a branch office. The law considers branches as an extension of the main foreign company with no separate legal personality. Accordingly, foreign businesses can operate in Ethiopia through a branch office just upon registration by the ministry of trade and industry fulfilling the necessary requirements.

**Removal of Ordinary Partnership as a Business Organization**

The former law recognized ordinary partnerships as one of the six business organizations. Ordinary partnerships are partnerships that are not commercial in nature and do not engage in commercial activities. The new Code, however, removed such type of entities from the ambit of its applications as it only governs commercial business organizations. Accordingly, any partnership formed with a purpose other than undertaking commercial activities is not considered as a business organization and will not be regulated by the new code.

**Removal of Membership Related Burdens**

The new Code also removed membership based burdens to establish a business organization. Under the former law there must be at least 5 members to establish a Share Company. The new code, however, removed such requirement and made it possible to establish a Company even by oneself as it allows establishment of One Man Company. Introduction of One Man Company is very important for foreign and domestic investors who have sufficient capital to establish a Company but are forced to make partnership with others under the former law. One Man Company presents the benefit of limited liability for business men, which was not available under the sole proprietorship arrangement in the former law. Accordingly, one Man Company Owners cannot be personally responsible for the liabilities of the company.

**Corporate Governance and Protection of Minority Shareholders**

The other major pro-business area of reform is related to corporate governance and management. The new Code introduced the possibility for businesses to assign independent Board of Directors that are not shareholders. This enables foreign investors to assign a non-shareholder expert as a Board of Director to safeguard their interest and insure transparency and accountability. The Code also provided detailed protections for minority shareholders. The Code empowered minority shareholders to assign their representative in the Board of Directors. Minority shareholders have the right to transfer their shares to the dominant shareholder who owns 90 % and above of the shares of the company. Similarly a shareholder who owns 90% and above shares has the right to purchase the remaining shares from minority shareholders. Unlike the previous Code, the new Code provides detailed obligations on Board of Directors related to disclosure, transparency, conflict of interest and protection of minority shareholders. Any business organization is under obligation to maintain a record on the personal status, profession, and the stake and position of members of Board of Directors, executive managers, auditors and executive secretaries. The code also introduced a Supervisory Board for Share Companies to oversee the activities of the Board of Directors and ensure transparency.

**Credit and Corporate Reorganization of Financially Strained Businesses**

The new Code introduced broad range of schemes to save financially strained businesses. The Code provides detailed credit and corporate reorganization way-outs that need to be exploited before entering bankruptcy procedure. The debtor who is not yet suspended payment or suspended payment in the last 45 days can apply for credit reorganization to a court of law attaching documents that describe its financial flow. Credit reorganization evolves re-planning the capital, assets or contracts of the debtor in such a manner that can resolve its financial strains. Whenever it is proved that the debtor cannot effect payments, the debtor, public prosecutor or the court at its initiative can decide the business organization to be reorganized.

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