HIGHLIGHTS OF ETHIOPIA'S NEW JOINT VENTURE LAW

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1. Introduction

On 22 January 1983 the Provisional Military Administrative Council (PMAC) passed the new law on joint ventures using Ethiopian state capital and foreign state or private capital. The joint venture law went into effect on the date of its publication in the Negarit Gazeta. It is widely believed to be the first practical step taken by the PMAC to establish a framework for the formation, operation, and establishment of joint ventures between the Ethiopian government and its para-statal bodies on one hand and foreign private or state capital on the other.

The joint venture law does not govern all aspects of foreign investment in Ethiopia. It is merely designed to regulate joint venture problems and other forms of investment are not covered by the joint venture law. Many other detailed laws applicable to joint ventures are bound to be published as a result of the lacunae of the present law.

The promulgation of the new joint venture law is important for many reasons. First, it indicates how the Government intends to accommodate foreign state or private investment. Secondly, it forms the basis of encouraging direct foreign investment and to risk and profit sharing. Thirdly, it can be used to help train Ethiopian technicians and management personnel and therefore can facilitate the transfer and diffusion of technology.

But practice alone will be the criterion to judge whether such a joint venture law has been good or bad. This is because the joint venture law is only a guide. Much depends on how the joint venture agreements are negotiated and whether the final net result protects national interest or foreign interests.

The Preamble of the Joint Venture Establishment Proclamation no.235/1983 states that: “the primary objective of the Ethiopian Revolution is the all-round development of the national economy and the achievement of a higher standard of living for the broad masses”.

The PMAC acknowledges in the same Preamble that in order to build a strong national economy and achieve a higher standard of living it is necessary to develop the natural resources of the country. It seems that more emphasis will be given to the exploration and exploitation of the country’s rich mineral and oil resources.
According to the Preamble, the objective of the joint venture law is to establish a basis of participation of foreign capital with Ethiopian public capital in joint ventures and the transfer of foreign technology through such participation. These are expected to facilitate the realization of the above objectives.

2. Formation, Operation, and Management

A joint venture may be formed jointly by Ethiopian “public” (which in actual fact is state) capital and foreign private or public capital. The National Revolutionary Development Campaign and Central Planning Supreme Council, which the Proclamation calls the “Supreme Council” (Art.2 (1)), is responsible for appointing the competent government organ to be a party to a joint venture agreement representing the Ethiopian Government.

2.1. Formalities and Procedures Relating to Submission and Approvals of Application

An application for the registration of a joint venture must be made to the Ministry of Domestic Trade in the form prescribed by the same Ministry. The joint venture agreement and other necessary documents as well as a letter issued by the Supreme Council endorsing the joint venture agreement must be submitted together with the application for registration.

Any changes in the particulars contained in the form of application and in the joint venture agreement made subsequent to registration must also be registered. A joint venture registered in accordance with the joint venture law is issued a certificate of registration from the Ministry of Domestic Trade.

Any investment application for participation in joint ventures must be submitted to the Supreme Council in the form prescribed by the latter. The Supreme Council must act upon the application within a reasonable period of time.

2.2. Forms of the Joint Venture

A joint venture shall have legal personality and take the form of a limited liability company. The joint venture will have legal existence after the above-mentioned procedural formalities relating to submission of application, registration, and approvals have been satisfied.

2.3. Liability and Limit to Foreign Equity Participation

The maximum liability of the shareholders of a joint venture is to the extent of their shareholdings of contribution to the joint venture. The joint venture itself is liable only to the extent of its assets.