LEGAL NEWSLETTER

SEPTEMBER-OCTOBER 2024, VOL. 4

Fourth Edition

We are pleased to present the fourth edition of our newsletter.

This newsletter is our way of staying connected with you, our valued clients, and partners, and ensuring you have the information and insights you need to navigate the ever-evolving Ethiopian legal landscape.

Welcome to the Fourth Issue of Our Newsletter!

In this edition, we have compiled a legal update featuring key legislative developments that may impact your business.

We are also pleased to announce our comprehensive guide on data privacy rights in Ethiopia has been published on OneTrust Data Guidance in October 2024. This guide is designed to help individuals and organizations navigate Ethiopia's data privacy requirements. It offers detailed insights into Ethiopia's data protection landscape, covering key topics such as applicable laws, data subject rights, data processing obligations, and cross-border data transfers.

Contents:

This newsletter provides a concise overview of key legislative changes enacted in September and October 2024. This are:

We value your feedback, so please don't hesitate to reach out to us with any suggestions or topics you would like us to cover in future editions.

CONTACT US

Rizq House, 5th floor, 444 Gabon St
P.O. Box 120448
Kirkos, Addis Ababa, Ethiopia
info@dadimoshaile.com

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A. Social Welfare Levy Imposed on Import of Goods Directive

Background

The Ministry of Finance ("MoF") has issued a new Directive, titled "Directive to Exempt Goods from Social Welfare Levy Imposed on Import of Goods 1023/2024" in September 2024. The Directive, issued pursuant to the Social Welfare Levy on Imported Goods Regulation No.519/2022, outlines the type of goods that are exempted from Social Welfare Levy based on specific social and economic considerations, along with the applicable exceptions.

Key Features

- **Exempted Goods**

The Directive primarily exempts goods donated from abroad to designated social welfare institutions, such as state-owned educational and health institutions, as well as organizations supporting vulnerable groups, including children, women, the elderly, and individuals with disabilities. Additionally, goods sent as emergency aid to individuals affected by natural or man-made disasters are also exempt.

Furthermore, the Directive stipulates that goods exempt from taxes and duties under international agreements to which Ethiopia is a party are also free from the Social Welfare Levy. The same exemption applies to the importation of defense and public security equipment by various government agencies, including the Ministry of National Defense and Federal Police Institutions.

However, the Directive also delineates goods that are explicitly ineligible for the exemption. These include automobiles designed to accommodate fewer than eight passengers, along with their spare parts; pickup trucks with one or two cabins; and office equipment and materials, all of which remain subject to the levy.

- **Documentation Requirements**

To qualify for exemption, importing parties must provide specific supporting documents. This includes a donation certificate confirming that the goods are donated, a detailed inventory with an invoice outlining their value, and a support letter from the relevant government institution confirming the intended use of the goods. The Directive also requires transparency and accountability in the utilisation of exempted goods, requiring a report on their utilisation to be submitted to the Ministry of Finance and the Customs Commission.

- **Administrative Provision**

The Directive outlines the responsibilities of the Customs Commission, including the maintenance of detailed records of levies paid on exempted goods and the submission of quarterly reports to the Ministry of Finance. Furthermore, the Commission is responsible for overseeing the use of imported goods that are exempt from the levy, ensuring they are utilised for their intended purposes.

B. Emergency Liquidity Assistance Directive

Background

The National Bank of Ethiopia ("NBE") has introduced the Emergency Liquidity Assistance Directive No. NBE/ELA/001/2024 ("The Directive"). The Directive, which will come into effect on October 15,2024, is part of the ongoing reform aimed at reinforcing the stability of Ethiopia's financial system. The Directive establishes an Emergency Liquidity Assistance (ELA) framework that provides temporary liquidity to solvent banks facing liquidity crunch. By setting clear eligibility and collateral requirements, it ensures that emergency assistance is granted prudently, protecting the banking system and the NBE's balance sheet.

Key Provisions of the Directive

- **Eligibility and Collateral Requirements**

The Directive specifies that only solvent and viable banks experiencing temporary liquidity challenges are eligible for ELA. The loan provided by the NBE will be exclusively in Ethiopian Birr. To qualify, banks must meet the minimum capital adequacy ratio, provide eligible collateral, and sign a bilateral ELA agreement. Collateral assets must fully cover the loan, be free of encumbrances, and include government or NBE debt instruments, corporate bonds, or government-guaranteed bonds. Additionally, NBE applies a haircut on eligible collateral for ELA loans and may require additional collateral (margin call) if its value decreases.

- **Application and Approval Process**

Banks seeking ELA must submit a comprehensive application to the NBE, including signed request from the board chair, proof of solvency, board minute, board-approved documents detailing the reasons for liquidity challenges, a daily ELA utilization plan, maturing debt obligations and customer deposits. They must also submit evidence of unsuccessful attempts to source liquidity from other avenues. The application process additionally requires a weekly ~~a~~ liquidity gap analysis to demonstrate the bank's long-term viability, as well as-an agreement to the NBE's conditionality requirements, the details of which will be covered by internal procedures. The ELA approval process is guided by core principles to minimise risks, ensure transparency, and maintain price stability.

- **Loan Tenure, Interest Rate and Renewal**

The ELA loan is available for a maximum period of six months, with the possibility of renewal based on the bank's performance. Loan amounts are determined by liquidity needs, adequacy of collateral, repayment capacity, and financial stability considerations, with an interest rate set at the overnight lending rate plus two percentage points, alongside a higher penalty rate for non-compliance. Requests for renewal for an additional six months may be approved under specific conditions, including board authorisation, timely application, ongoing solvency, sufficient collateral, and adherence to NBE requirements.

- **Supervision, Settlement, and Compliance**

The borrowing bank under ELA is subject to enhanced oversight, with the NBE imposing additional requirements as needed to ensure compliance with the liquidity restoration plan and a swift return to stability. To uphold ELA objectives, banks are prohibited from engaging in activities that may compromise these objectives. In cases of default, the NBE may impose penalties, including a higher penalty interest rate and, if necessary, the foreclosure of collaterals. ELA loans must be settled on the first business day following maturity or the next business day if it falls on a non-business day, with options for early repayment, either partially or in full.

The Directive prohibits the NBE from disclosing information to the public about the provision of ELA unless there are legal grounds or a strong public interest in such disclosure.

C. Draft Real Estate Proclamation

Background

A Draft Proclamation on Real Estate Development, Real Property Marketing, and Valuation (the "Draft Proclamation") has been submitted to the House of People's Representatives (HoPR) for ratification. Ethiopia's real estate sector has remained largely under-regulated, with no comprehensive legal framework in place. The absence of a specific law governing real estate transactions has resulted in significant regulatory gaps, particularly concerning the relationship between developers and prospective buyers. The Draft Proclamation seeks to remedy these shortcomings by introducing clear legal guidelines and protections for all parties involved.

Key Features of the Proclamation

- **Mandatory Qualification License for Real Estate Developers**

The Draft Proclamation introduces a pivotal reform by mandating the licensing of all real estate developers, both domestic and foreign. To obtain a real estate developer license, an applicant must demonstrate the ability to construct at least 50 housing units, prove their financial capacity or secure authorisation for preselling homes, and submit a comprehensive project analysis and action plan. Additionally, the Proclamation introduces extra compliance requirements for foreign developers, requiring them to adhere to minimum capital requirements according to the investment law, and fulfil other requirements in administrative laws as may be applicable. Further implementation details are to be specified by regulation.

- **Specific Obligation on Real Estate Developers**

The Draft Proclamation also sets specific obligations for developers. These include a prohibition on transferring housing units that are less than 80% complete without the buyer's consent, a ban on misleading advertisements, and restrictions on registering prospective buyers or collecting payments before securing land ownership certificates and building permits. Additionally, developers must ensure transparency by providing clients with comprehensive documentation, including land possession certificates and permits, and by issuing legal receipts for all payments received.

Furthermore, the Draft Proclamation permits local developers to engage in the pre-sale of units before construction is complete, setting out strict warranty conditions. These developers must secure government approval, deposit presale payments into a designated closed bank account, and are prohibited from selling the units until the houses are built and handed over to buyers. To ensure robust oversight, the Draft Proclamation assigns the Ministry of Urban and Infrastructure Development the responsibility of regulating brokers and valuers, supporting local authorities, and monitoring real estate supply and demand. The Ministry will also provide indicative price ranges for rent and sale, to promote market transparency and stability.

- **Establishment of a Standardised Property Valuation System**

The Draft Proclamation establishes a standardised system for real property valuation and marketing, requiring valuations to be clear, up-to-date, and based on local market data. Approved valuation methods include replacement cost, market comparison, and income capitalization, with specialised approaches for unique properties. Additionally, it requires that valuers possess a valid professional and business license issued at the federal, regional, or city level, depending on the property type and value. Valuations must be updated every five years, with adjustments made annually to reflect price changes, ensuring consistent accuracy.

- **Eligibility for acquisition of extensive land by Real Estate Developers**

The Draft Proclamation introduces incentives for real estate developers by creating favourable conditions for accessing extensive land for development when they meet certain criteria. These criteria include constructing between 500 to 5,000 houses, with at least 40% designated as affordable housing; importing construction materials and reinvesting 60% of remittance profits in Ethiopia for up to ten years; or establishing factories to produce construction materials locally.

- **Classification of Urban Land Grade**

The Draft Proclamation establishes a uniform and compressive classification of urban land grades, which will be determined by regional directives, taking into account infrastructure costs and price differences in each area. A land grade chart and map will be made available to the public. For property valuation, building services will be categorised into residential, manufacturing, and service buildings. Other buildings that do not fit these categories will be classified based on local service characteristics, in accordance with regional guidelines.

- **Establishment of a Complaints Committee**

The Draft Proclamation establishes a structured complaints procedure, allowing individuals to submit matters such as developer disputes, delays in property transfer, substandard construction quality, or inaccuracies in property appraisal to the appropriate authority, within specified timeframes generally 30 days, or up to one year for issues related to construction quality. It also mandates the formation of a Complaint Hearing Committee by regional or city authorities, which will be responsible for investigating grievances, collecting relevant evidence, and rendering decisions. Aggrieved parties may appeal to the competent regular courts or the Appeals Council, with the final ruling resting with the competent appellate court.

- **Transitional Provisions**

The Draft Proclamation marks a significant step towards regulating Ethiopia's real estate sector. Once enacted, real estate development projects initiated before the issuance of the new legislation would be exempted from its compliance requirements if they can be completed in not more than a year after the effective date of the new legislation. Otherwise, they must register within six months of the effective date. Furthermore, activities related to real estate development, marketing, and valuation that began prior to the proclamation will be considered compliant, provided they do not conflict with its provisions.

A. Draft Directive for Dematerialization of Securities

The Ethiopian Capital Market Authority ("ECMA") has issued a Draft Dematerialization of Securities Directive (The Draft Directive), which aims to advance Ethiopia's capital markets by shifting from paper-based securities to a fully electronic system. The Draft Directive mandates that all publicly offered securities be registered with a Central Securities Depository and Clearing Services Provider (CSDCSP) prior to trading. This will ensure that all trading activities are conducted within a centralized and regulated system. Following the official dematerialization date, electronic records will serve as the sole proof of ownership, streamlining the transfer of securities.

The Draft Directive requires issuers to migrate and reconcile shareholder data with the Central Securities Depository (CSD) system to ensure accuracy and up-to-date information. To enforce compliance, ECMA may conduct inspections and impose penalties. A dematerialisation date will be declared, after which all publicly offered securities will be considered dematerialised. Physical securities not verified within ten years of dematerialisation will be transferred to a special account managed by ECMA. Benefits from these securities, including dividends and interest, will be directed to a special fund. Holders of these unverified securities will lose voting rights, the ability to participate in shareholder meetings, and their inclusion in quorum calculations. They will not be eligible for refunds of dividends or interest.

Finally, the Draft Directive was made available for public comment from October 12 to 27, allowing a two-week review period for interested parties. The Authority will announce the date for a public consultation meeting in the near future.

ABOUT US

Dadimos & Partners LLP is a premier, full-service law firm in Ethiopia. From commercial and corporate law, including cross-border M&A, to banking and finance, international arbitration, tax, competition, intellectual property, employment, and non-profit law, we deliver legal solutions tailored to meet our clients' diverse needs. Our team is composed of lawyers with wide-ranging expertise, rich local and international experience, and in-depth knowledge of the law.

We blend Ethiopian legal expertise with global perspectives.

Our vision of modern legal practice forms the foundation of our innovative, reliable, and results-oriented legal advice and support.

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