

ETHIO-SPOTLIGHT¹

ISSUE 1: INVESTMENT CLIMATE

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1. Country profile: quick facts and political overview

Ethiopia, in the Horn of Africa, is a landlocked country split by the Great Rift Valley. It is one of the world's oldest civilisations making it of significant historical character and Africa's oldest independent country. With a population of approximately 112 million people, it is also Africa's second largest most populous country after Nigeria and the fastest growing economy in the region⁴. Ethiopia has a federal, democratic government system, established in the early 1990s, with ten autonomous states ('regions') and two chartered cities. The Regions are Afar, Amhara, Benishangul-Gumuz, Gambella, Harari, Oromia, Somali, SNNPR (Southern Nations, Nationalities and Peoples), Sidama and Tigray. The chartered cities are Addis Ababa and Dire Dawa. Apart from a five-year occupation by Mussolini's Italy, it has never been colonised. It has a unique cultural heritage, being the home of the Ethiopian Orthodox Church and a monarchy that ended in the coup of 1974. Known as Africa's diplomatic capital, it served as a symbol of African independence throughout the continent's colonial period, was a founder member of the United Nations and is the African base for many international organisations. Drought and civil conflict left Ethiopia in a state of turmoil under a Marxist dictatorship from the fall of the monarchy until 1991, when the rule of Meles Zenawi brought a measure of stability. Known as the 'Land of Origins', Ethiopia is among the world's best destinations for tourism and is home to several cultural and historical heritage sites, nine of which are included in the UNESCO list of world heritage. Though English is widely spoken, the working federal language is known as Amharic a Semitic language descended from Ge'ez, the climate is temperate, the time-zone is GMT+3, the

¹Ethio-Spotlight is a free 6-part (initially) series on topics that we as authors and in-country Fellows observe are of interest to the regional and international community. These articles are published with a view to collate and transmit information that may spark further engagement with our host-country and with the Oxford Policy Fellowship

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⁴ 'Ethiopia - Overview' (World Bank, 2020) <https://www.worldbank.org/en/country/ethiopia/overview> accessed 11 January 2021

country code is +251, the currency is known as the Ethiopian Birr (ETB) and Ethiopians drive on the right side⁵.

The Constitution of Ethiopia (1995), provides for a multi-party-political system. Ethiopia has a Parliamentary form of government with a Bicameral Parliament which comprises of the House of the Peoples' Representative (HPR) and the House of the Federation (HoF). The HPR is the highest authority of the Federal Government. Power of government is assumed by the political party or a coalition of political parties that constitutes a majority in the HPR. Executive power is vested in the Prime Minister, elected from among the members of the HPR, for a five- year term. The Prime Minister appoints the Council of Ministers, which is then approved by the HPR⁶. In 2018, Dr. Abiy Ahmed was elected as the leader of the ruling Ethiopian People Revolutionary Democratic Front coalition⁷. Dr. Abiy pledged to end longstanding tensions with neighbouring Eritrea, and within months the two countries declared that the state of war between them was over. Thereafter, Dr. Abiy won the 2019 Nobel Peace Prize for these efforts⁸. Parliament elected Sahle-Work Zewde, an experienced diplomat as the Ethiopia's first woman president in October 2018 and she is one of a handful of women presidents in Africa.⁹

2. Economic overview: policy underpinning investment development

The policy-underpinnings of the modern economic climate in Ethiopia is articulated within the national development program, dubbed the Growth and Transformation Plan. Here, the country has set an ambitious target to become a middle-income country by the year 2025 by developing its strategic sectors. The overarching objective of the GTP II is to sustain the accelerated growth and establish a spring board for economic structural transformation and thereby realizing the national Vision of becoming a lower middle-income country by 2025. The plan is structured in 5-year terms and is now in its second installation i.e. GTP II (2015/16-2020/21)¹⁰.

As is suggested by the name, the pillar strategies under GTP II articulate the desire to build upon the foundational successes of the first installation of the Growth and Transformation Plan I (GTP I 2010/11 – 2014/15). The overarching objectives of the GTP I were: - to i) maintain at least an average real GDP growth rate of 11% per annum and attaining the Millennium Development Goals (MDGs) by 2014/15; ii) expand access and ensure the qualities of education and health services and achieve MDGs in the social sectors; iii) establish conditions for sustainable nation building through the creation of a stable democratic and developmental state; and finally iv) ensure the sustainability of growth by maintaining macroeconomic stability¹¹.

⁵Ethiopia Investment Guide 2017/2018' (*Africalegalnetwork.com*, 2017) <https://www.africalegalnetwork.com/ethiopia/wp-content/uploads/sites/16/2017/01/Ethiopia-Investment-Guide-3.pdf> accessed 11 January 2021

⁶ *ibid*

⁷ 'Ethiopia Country Profile' (BBC News, 2019) <https://www.bbc.com/news/world-africa-13349398>> accessed 11 January 2021

⁸ 'The Nobel Peace Prize 2019' (*NobelPrize.org*, 2019) <https://www.nobelprize.org/prizes/peace/2019/press-release/> accessed 11 January 2021

⁹ *ibid*

¹⁰ 'Growth and Transformation Plan II' (*Ethiopia*) <https://ethiopia.un.org/en/15231-growth-and-transformation-plan-ii> accessed 11 January 2021

¹¹ 'Ethiopia Growth and Transformation Plan I' (*Green Growth Knowledge Platform*, 2010) <https://www.greengrowthknowledge.org/national-documents/ethiopia-growth-and-transformation-plan-i> accessed 11 January 2021

Under the GTP II, the following are identified as the pillars upon which the desired development will continue to be pursued: - i) Improve the quality, productivity and competitiveness of productive sectors i.e. identified as the agriculture, manufacturing and modern tradeable service industries; ii) Speed up and catalyse transformation of the domestic private sector; iii) Build the capacity of the domestic construction sector; iv) Properly manage and administer the on-going rapid urbanization to unlock its potential for sustaining growth and structural transformation of the economy; v) Accelerate human development and technological capacity building and ensure its sustainability; vi) Establish democratic and developmental good governance through enhancing implementation capacity of the public sector and mobilization of public participation; vii) Promote women and youth empowerment, ensure their participation in the development process and enable them equitably benefit from the outcomes of development; and finally, viii) Pursue this social and economic development through sustainable means i.e. within the framework of the Climate Resilient Green Economy Strategy (to be discussed in a subsequent article within the series)

3. Legal, Regulatory and Institutional Framework

Ethiopia follows a civil law legal system where major laws are codified under civil, commercial, penal and other codes. The Constitution of the Federal Republic of Ethiopia 1995 is the supreme law of the country. Under the Constitution are proclamations that are passed by the Parliament, followed by regulations that are enacted by the Council of Ministers, and implementing directives passed by ministries or agencies. All proclamations and regulations are published in official gazettes. The legislation most relevant to investment includes the Investment Laws, Industrial park laws, Commercial laws, Tax laws, Labour law, Customs Law, Intellectual property laws, Environmental laws and the Foreign exchange laws.

Several public institutions play proactive role in the promotion and facilitation of investment in Ethiopia including: - the Ethiopian Investment Board, the Ethiopian Investment Commission, the Industrial Parks Development Corporation, the Ministries of Foreign Affairs, Trade, Industry, Finance, Water Irrigation and Energy (and ancillary parastatals), Mines Petroleum and Natural gas, Labour and Social Affairs, the Ethiopian Revenue and Customs Authority, the Addis Ababa Chamber of Commerce and Sectoral Associations, the Development Bank of Ethiopia and the National Bank of Ethiopia.¹²

4. What are the key industries to watch out for?

Whilst the timely delivery of GTP II has been delayed slightly due to the globally impactful COVID 19¹³ pandemic which continues to wreak socio-economic upheaval, Ethiopia's plans are still underway to execute massive manufacturing, industrial and infrastructure projects in road, railway, energy (power production, transmission and sale), telecommunication, housing and industrial parks¹⁴. Sectors earmarked as strategic include – agriculture and agro-processing, textile and apparel, leather and leather products, pharmaceuticals, ICT, tourism, energy (power) and mining. The GTP II anticipated an annual growth rate of 11.2% in the GDP

¹²Investethiopia.gov.et. 2021. *Overview – Investment Process* [online] Available at: <http://www.investethiopia.gov.et/index.php/investment-opportunities/other-sectors-of-opportunity/overview.html> [Accessed 29 January 2021].

¹³ 'Coronavirus Disease (COVID-19)' (*Who.int*, 2020) <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19>> accessed 11 January 2021

¹⁴ 'Growth and Transformation Plan II' (*Ethiopia*) <https://ethiopia.un.org/en/15231-growth-and-transformation-plan-ii> accessed 11 January 2021

and growth rates in value added of 8.6% in the agriculture sector, 10.2% in the service sector, and 21.4% in the industrial sector¹⁵. GTP II puts strong emphasis on structural transformation, industrialization, urbanization and export promotion. Notably, in order to realise the vision of Ethiopia as a leading manufacturing hub in Africa by 2025, the Government of Ethiopia had placed a high focus on industrial park development and expansion and has so far constructed and operationalized over 20 state-of-the-art industrial parks which are located along key development corridors – each with a distinct specialty in the priority strategic sectors.¹⁶

5. What are the entry requirements and investment incentives?

With the exception of nationals of Kenya, foreign nationals must obtain a business or investment permit. Investors wishing to enter the Ethiopian market and establish enterprise must first apply for an investment permit at the Ethiopian Investment Commission (EIC)¹⁷. Those preferring to acquire an existing enterprise or shares require approval from the Ministry of Trade. To gain approval for an investment permit, the project must meet the following base capital requirements¹⁸: -

- i) USD 200,000 for a single investment project by a foreign investor;
- ii) USD 150,000 if the investment is joint with a domestic investor;
- iii) USD 100,000 if the investment is on architectural or engineering works or related technical consultancy services, technical testing and analysis or in publishing work, and is solely owned by a foreign investor¹⁹;
- iv) There is no capital requirement for reinvestment of profit or dividend.

For the initial visit to Ethiopia, a business visa can be obtained from an overseas diplomatic mission. Thereafter, once an investment permit is obtained, the Department for Immigration and Nationality Affairs issues a residence permit subject to all other conditions having been met satisfactorily. Foreign investors who are shareholders are then entitled to get a residence permit. For investors in industrial parks, multiple entry five-year visas are provided.

There are several significant investment incentives offered by the Ethiopian Investment Commission.²⁰ They fall under three main categories as follows: -

- i) Fiscal incentives which are tax measures geared to encourage industrial development and designed to assist manufacturing entrepreneurship under the Ethiopian tax system which comprises both direct and indirect taxes;
- ii) Non-Fiscal incentives which are given to all investors who produce export products. In this regard, such investors will be allowed to import machinery and equipment necessary for their investment projects through suppliers' credit. Foreign investors

¹⁵ *ibid*

¹⁶ Investethiopia.gov.et. 2021. *Overview - Industrial Parks*. [online] Available at: <http://www.investethiopia.gov.et/index.php/investment-opportunities/other-sectors-of-opportunity/overview.html> Accessed 29 January 2021

¹⁷ Investethiopia.gov.et. 2021. *Overview – Ethiopian Investment Commission*. [online] Available at: <http://www.investethiopia.gov.et/index.php/investment-opportunities/other-sectors-of-opportunity/overview.html> Accessed 29 January 2021

¹⁸ 'An Investment Guide to Ethiopia' (*Theguides.org*, 2020) <https://www.theguides.org/public-docs/guides/ethiopia> accessed 11 January 2021

¹⁹ where the investment is in partnership with a domestic investor in these specific sectors, the required base capital amount is USD 50,000

²⁰ Sources

- a) 'An Investment Guide to Ethiopia' (*Theguides.org*, 2020) <https://www.theguides.org/public-docs/guides/ethiopia> accessed 11 January 2021;
- b) Investethiopia.gov.et. 2021. *Taxation* [online] Available at: <http://www.investethiopia.gov.et/index.php/investment-opportunities/other-sectors-of-opportunity/overview.html> Accessed 29 January 2021

also have the right to make certain remittances out of Ethiopia in convertible foreign currency including profits and dividends, principals and interest payments on external loans, payments related to technology transfer agreements, proceeds from the sale or liquidation of an enterprise, compensation paid to an investor and proceeds from the sale or transfer of shares or partial ownership of an enterprise to a domestic investor; and

- iii) Financial incentives which are grants that may be provided by the government to foster the success of firms in selected sectors. These grants may be provided by the government as investment grants or as direct subsidies which may cover the entire or substantial part of capital, production or marketing costs in relation to an investment project.

The legislation relevant to investment incentives includes: - i) the Investment Proclamation No. 769/2012 (updated in 2018); ii) the Council of Ministers Regulations No. 270/2012; iii) the Investment Incentives and Investment Areas Reserved for Domestic Investors and its amendment Regulation No. 312/2014; and iv) the Export trade Duty Incentive Schemes Proclamation No. 768/2012

6. Public Private Partnerships: legal developments and projects to watch

The GTP II recognizes infrastructure development as pivotal to spurring economic growth and development in Ethiopia.²¹ Among the priority infrastructure development targets is an expansion in energy production, transmission and distribution networks, expansion of transportation infrastructure and logistic services, extension of water supply service coverage and irrigation infrastructure. Private sector participation in infrastructure services has, therefore, become vital as government sources alone cannot meet the infrastructure demand. Public Private Partnerships (PPPs) are one of the tools the Government of Ethiopia has used to fill the gap in infrastructure financing, in efforts to secure sources of financing outside of traditional government financing, and to leverage the benefits of private sector involvement in infrastructure development.²²

Public Private Partnerships are a procurement option for delivering and managing public assets and services through contract²³. PPPs are defined, within the Ethiopian PPP Framework, as long-term agreements between a Contracting Authority and a private party in terms of which the latter undertakes to perform a public service, receives a benefit of compensation from the contracting authority or tariffs collected from users or a combination of the two and takes on significant risk arising from the performance of the public activity.²⁴

To this end, the Ethiopian PPP framework, which was established in 2018, consists of the Public Private Partnership Policy²⁵, the Public Private Partnership Proclamation²⁶, a Directive issued to implement Public Private Partnerships²⁷, and the Public Private Partnerships General and Sector Guidelines²⁸. While the PPP policy provides policy support for development of PPPs in key sectors of the economy, the PPP Proclamation *inter alia* sets out rules and

²¹ *ibid* 10

²² Ministry of Finance and Cooperation, Federal Democratic Republic of Ethiopia Public- Private Partnership Policy, August 2017

²³ Asian Development Bank, Public Private Partnerships- Guidance Note on Procurement, (April 2020), <https://www.adb.org/sites/default/files/ppp-procurement.pdf> accessed on 15th January 2021

²⁴ Public Private Partnership Proclamation No. 1076/2018

²⁵ *ibid* 24

²⁶ *ibid* 26

²⁷ No.55/2018

²⁸ Issued in 2020

procedures for the identification, assessment, selection, prioritization, procurement and implementation of projects throughout the PPP life cycle. The PPP proclamation also establishes and identifies key institutions that are actors within the PPP framework including the Public Private Partnership Board, the Public Private Partnership Directorate General, and the Contracting Authorities.

PPPs have become an important means through which Ethiopia's infrastructure development objectives can be met. In this regard, out of the 17 projects approved for the 2018/2019 PPP project pipeline²⁹, a total of 14 projects are power projects with 6 PPP Hydro Power Projects and 8 PPP Solar Projects while the balance of the projects are highway schemes³⁰. On 19th December 2019, the two maiden PPP solar power plant projects in Gad and Dicheto (with a combined generation capacity of 250MW)³¹, procured by Ethiopian Electric Power (the Contracting Authority) through the Office of the PPP Directorate General, reached commercial close. It is also worth mentioning here that other power projects were procured under the PPP modality prior to the establishment of the current PPP legal framework and these projects include Daewoo Aysha 60MW wind farm, Corbetti 500 MW Geothermal Power project, Encom 30 Mw temporary power plant, and Aggreko 30 MW temporary power plant.³²

7. Investment protection and the implication of Ethiopia's ratification of the New York Convention, 1958

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards³³, commonly known as the New York Convention, requires courts of contracting states to give effect to private agreements to arbitrate and to recognize and enforce arbitration awards made in other contracting states. The convention is recognized as the basic instrument governing international arbitration. Ethiopia signed the convention early on but stalled the ratification for more than 60 years.³⁴ On February 13, 2020 the Ethiopian parliament approved the ratification of the 1958 New York Convention³⁵. The ratification also notably coincides with Ethiopia drafting a comprehensive domestic legislation on arbitration³⁶. The ratification proclamation³⁷ makes two reservations; (a) Ethiopia will apply the Convention only for arbitral awards made in the territory of another state that is party of the Convention (b) Ethiopia will apply the Convention only to differences arising out of legal relationships which are considered as commercial under the laws of Ethiopia. It should, however, be highlighted that outstanding awards against an

²⁹ Federal Democratic of Ethiopia, Ministry of Finance Office of Public Private Partnership Directorate General ,2018/2019 PPP Project Pipeline, April 2019

³⁰ From Adama to Awash (125km), Awash to Mieso (72km), and Mieso to Dire Dawa (160km).

³¹ Jean Marie Takouleu, 'Ethiopia: Acwa Power secures Gad and Dicheto Solar Power Plant Contract', (Afrik 21, 19th September 2019) <https://www.afrik21.africa/en/ethiopia-acwa-power-secures-gad-and-dicheto-solar-power-plants-contract/> accessed 15th January 2021

³² African Legal Support Facility, 'PPP Country profile- Ethiopia', <https://www.aflsf.org/sites/default/files/PPP%20Country%20Profile%20-%20Ethiopia.pdf> accessed 20th January 2021

³³ The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, (New York, 1958), <https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf> accessed 15th January 2021

³⁴ Mesfin Tafesse, 'Ethiopia's ratification of the New York Convention', (African Legal Network, February 2020) <https://www.africanlegalnetwork.com/ethiopias-ratification-new-york-convention/> accessed 15th January 2021

³⁵ Ethiopia Ratifies the New York Convention, (New York Convention, 27th February 2020) <<http://www.newyorkconvention.org/news/ethiopia+ratifies+the+new+york+convention#:~:text=On%2013%20February%202020%2C%20the,Enforcement%20of%20Foreign%20Arbitral%20Awards.> accessed 20th January 2021

³⁶Ibid 36

³⁷ Proclamation No. 1184 of 13th February 2020, published in the official Gazette dated 13th April 2020

Ethiopian party made prior to the ratification of the Convention cannot be enforced under the convention. The ratification of the convention results in the treaty becoming an integral part of the law of the land³⁸. This Convention will oblige Ethiopian Courts to recognize and enforce foreign arbitral awards made in the jurisdiction of other convention party states without reviewing the merits of the award including any error in the law. The ratification of the Convention is a significant development in increasing project bankability, in the context of PPPs, because it will encourage foreigner lenders to participate in Ethiopia's infrastructure development. More broadly, the ratification of the convention will boost Ethiopia's investment attractiveness.

Additionally, Ethiopia is a member of the Multilateral Investment Guarantee Agency (MIGA) and the World Intellectual Property Organization (WIPO) and has signed over 30 Bilateral Investment Treaties and several Double Taxation Avoidance Agreements. Further, the Constitution of Ethiopia 1995 guarantees property rights as well as repatriation of profits, dividends and other funds.

Conclusion

Notwithstanding the effects of the COVID 19 pandemic that has, unavoidably, slowed down delivery of the GTP II, Ethiopia is well on its way to achieving economic structural transformation and meeting its national development objectives. With a clear regulatory framework for entry and establishment of investment, and the notable legal developments in PPPs, as well as the enforcement of arbitration awards, Ethiopia has positioned itself as an attractive destination for investment. In particular, while the PPP legal framework is still under construction, the existing laws and institutions have clearly communicated the Ethiopian Government's commitment to PPPs by promoting transparency, fairness, accountability and efficiency and as a result generating much needed private sector interest into PPPs and more broadly in infrastructure development. Furthermore, Ethiopia's recent ratification of the New York Convention will boost investor participation in Ethiopia's economic development, with much needed confidence that the Ethiopian courts shall enforce investment related arbitral awards.

³⁸ Constitution of Federal Democratic Republic of Ethiopia (1995), Article 9 (4)