ST.Mary's University College

Faculty of Law

LL.B Thesis

Domestic and Foreign Investment Incentives under Proclamation Number 280 / 2002

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ID – RLD 1132 / 98

A.A Ethiopia

July 2010

Content **page**

Chapter-One

1 .Definition 3

2. Historical background and development of Ethiopia investment law 4

A, The people democratic republic of Ethiopia period / PDRE / 5

B, The transitional period 7

C, The federal democratic republic of Ethiopia period / PDRE/ from 1996 up to current.

Chapter-Two

2. Legal frame work for incentive regimes of private foreign investment. 10

2.1. Form of private foreign investment.

2.2. Major investment incentive scheme. 11

2.3. Guarantees and protection of private foreign investments. 13

2.4. Facilitating private foreign investment.

Chapter-Three

3. Private foreign investment in Ethiopia and problems of incentive regimes; the law and the practice 18

3.1. National determinants of foreign investment flows into Ethiopia.

3.2. Private foreign investment in Ethiopia in brief 19

3.3. The private foreign investment regulatory framework.

I, Economic sectors open to the above areas 20

II, Form of private foreign investments.

III, Ownership limitations and requirements. 21

IV, Monitoring and reporting requirements. 22

3.3.1. Institutional framework 23

I, Ethiopian investment commission

II, Promotional integration by other government agencies. 25

3.4. Encouragements and protection of private foreign investment. 26

3.5. Incentives regimes of private foreign investment in Ethiopia. 29

3.5.1. Objectives of foreign investment incentives.
3.5.2. Types and extent of major foreign private investment incentives. 31
3.5.2.1. Remittance of funds 34
3.5.3. Prospects for private foreign investment in Ethiopia 35

Domestic and foreign investment incentives under Proclamation Number 280 / 2002

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Submitted impartial fulfillment of the requirements for the bachelor's degree of law (LL.B) at the faculty of laws, ST. Mary's University College.

Addis Ababa, Ethiopia

July 2010

I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name ---

Signed ---

Acknowledgement

My gratitude and application goes to my advisor instructor Biniam Ahmed for his unfailing assistance and invaluable suggestions. I am also grateful to the instructors in the faculty of law. Particularly, instructor Assefa Ali, who contributed to my success.

I am deeply in debated to the various peoples, including those of the Ethiopian investment authority who have kindly allowed me to have access to information, which is difficult to obtain.

My gratitude also goes to my father Seyoum Shiferaw, who scarified his financial assets to make it possible for me to complete my study and to complete the LL.B degree.

Last but not least, thanks are due to my lord:

I, Statement of the Problem

Ethiopia has endeavored to make use of various investment laws of different times. Nonetheless, the objectives sought in these laws did not materialize because of social, political and economic obstacles, among which the central problem has to do with incentives scheme and guarantees. In other words, investment laws have a number of short comings and thus fail to achieve their intended objectives.

Therefore, in this research paper, an attempt will be made to deal with issues related to the afore mentioned statement.

II, Objective of the Study

A, General Objective

The over all objectives intended to be investigated in this research paper is to elucidate and analyze domestic and foreign investment incentives as well as their implementation in light of the investment law of Ethiopia under proclamation number 280/ 2002.

B, Specific Objectives

The specific objectives to be researched include:-

- To trace the historical development of investment law in Ethiopia.
- To see the legal framework for in certain regimes of private foreign investment.
- To uncover the gap between the law and practice in respect of private foreign investment.
- And finally, to see the prospects for private foreign investment in the country.

III, Significance of the Study

The benefit that will be gained out of this research paper is that:

- Reader will have a better understanding of what investment mean.
- The study will help investment incentive and guarantees of domestic and foreign investors to prefect designed policy and laws.
- The study informs concerns to solve lack of clarity and specific directives in the sector to corrective measures.

- The study will serve as a starting policy for other researchers who would like to study on the issue depth.

IV, Scope of the Study

The research is confined to investment law with special reference to the investment incentive scheme and guarantees. It also comprises a brief introduction to investment laws; it is one of the major investment law attractions. Moreover, emphasis to the investment law proclamation No. 280/2002 and its implementation is rendered.

V, Limitation of the Study

In the course of undertaking this research endeavor, some constraints arose in the way of my effort. Just to mention specially, financial problem as well as the excessive course load have been the most central problems.

VI, Research Methodology

For collecting data, library work is employed. Thus, various sorts of literatures relevant to the topic are utilized. To thoroughly assess the topic, existing legal documents in general and the investment law proclamation No. 280/2002 in particular are analyzed.

Chapter-One

Concept of Investment

Definition

The term investment has been defined by different scholars accordingly to their field of study. Tudor: - in his book “economic Development” defined the term “investment” as “part of the national income to the production of capital goods over a given period of time”

Other scholar called hymn in his book called “macro economics” defined the term “investment” as “the process of adding or replenishing capital stock.” These definitions are by the economists defined the term “investment” in terms of national income, as the process of replenishing or adding capital stock.

Black’s law dictionary defines the word investments follows.

“An Expenditure to acquire property or other assets in order to produces revenues: the asset so acquired. The placing of capital or laying out of money in away intended to secure income or profit from its employment. To purchase securities of a more or less permanent nature, or to place money or property in business ventures or real estate, or other wise lay it out, so that it may produce revenue or gain (or both) in the future”.

The investment proclamation No. 280/2002 also defines the following manner.

“Investment” means expenditure of capital by an investor to establish a new enterprise or to expand or upgrade one that already exists.”

Thus, according to this proclamation investment means the expenditure of capital and this expenditure of capital has to be carried out by an investor with main purpose of establishing new enterprise or to expand or upgrade an already existing establishment.

Therefore, the purpose of expenditure of capital seems to achieve economic development. The investment proclamation No. 280/ 2002 directed its objectives to wards accelerating the country’s economic development as well as the regional.

Thus, we can understand from the above definitions, investment could be conceived as an endeavor in which an investor makes use of his capital to establish a new enterprise or upgrade the existing one.

Historical background and development of Ethiopian investment law.

Ethiopia is one of the developing countries in Africa where the living standard of the peoples is at the lowest stage as compared to other developed nations. In this country, there is lack of technology and know how required for economic development. Therefore, to improve the living condition of the people, creating favorable investment climate to attract private investment become an essential requirement for the country. Even though, Ethiopia has formulated different investment laws at different time the intended results have not been achieved due to social, political and economic problem. Hence, series of changes have been made to investment laws and regulations to enhance the investment activity in the country.

The development of investment laws can be summarized in to different period.

1. The Peoples Democratic Republic of Ethiopia (1974-1990)

This period can be regarded as a time in which the participation of the private sector in the development of the country economy was not take into effect. During the period of the emperor, the private sector was highly encourage whereas, the Dergee’s regime made a swift change by introducing the socialist economic system. It declared national democratic revolution in which it started to lead the country with socialist principles both for economic and social development in 1978.

PDRE’s regime continued to nationalize privately owned enterprises. Moreover, privatization was not allowed and it proclaimed the policy of nationalization by proclamation No. 26/1977. The preamble of proclamation states that:

“It is necessary to transfer to government ownership of there resources that are crucial for the economic development, or are of such character which promotes an indispensable service to the community and it is the duty of the government to ensure the services by participating in essential economic activity.

One can argue from this that: the system of government at the time of PDRE's regimes was not intended to allow private sector participation in the economic development of the country. It simply emphasized that, the government has the duty to ensure the indispensable services by its own involved in essential economic activities. Thus, the government took over ownership and operation of many of private manufacturing enterprises. Moreover, the whole legal statutes enacted at the period show the involvement the government in all economic sectors. The private sector which has to be encouraged for the economic development of the country was excluded from economic activities.

At the last period of the regime (1989-1990) the need for economic reform was realized. The country become the member of multilateral investment guarantee agency and adopted a mixed economic policy. This reform sees to minimize the serious problems encountered by the country at the time. But the reform was too late thus; it failed to achieve the intended result.

Finally, the period of PDRE's regime had completely excluded the private sectors to participate in sectors which are crucial for economic development of the country. Only the public sector had monopolized the over all economic activity of the country. Therefore, when we compare the private and public sector the gross domestic product was continuously increasing. Hence unemployment, and low income due to the state dominance in the economy resulted in efficiency and retarded economic growth, indeed, it aggravated poverty.

2 .The Transitional period (since 1991)

This period was a time in which the present government tried to the extent necessary to assure its commitment to overcome the economic policy. The transitional economic policy, thus, identified the cause of economic policy of the previous government was the absence of private sector's participation in the economic development of the country. Understanding this constraint, the transitional economic policy stressed the need for the change of policy and gave due consideration for the participation of private sector in the economic development of Ethiopia. These commitments are emphasis on

1. Creating enabling conditions for the participation of both domestic and foreign capital in economic activity without a capital limitation.

2. Removing all existing bureaucratic procedures and red tape and introduce new laws and regulations and enforce them to enhance domestic and foreign capital participation, and
3. Provide incentives and encouragement to promote domestic capital participation and encourage a wider participation of private foreign capital. The states laws to work out a comprehensive package of incentives for domestic and foreign private capital participation.

Even through, policy is a general guideline; it tries to address the main basic components which promote the private sector. Especially the policy was aimed of achieving the participation of both domestic and foreign private capital in economic activity, to remove existing bureaucratic procedures and provide incentives for the encouragement of economic development in the country. Thus, it can be stated that from the date of the enactment of the policy on wards the government had realized its commitment to encourage the private in the economic development of the country.

The features of economic policy that had been adopted by the transitional governments were a free market economic policy. (A free market economic policy is encouradable for the partiticipation of private sector will only subject to the rules of participation of the private sector will be determined by the market). Therefore, in free market economic policy the market is free to decide the supply and demand. During the transitional time in order to apply the economic policy, there by have a legal framework for private investment proclamation No. 15/1992 encourage private investment not only as a right but also a right with an incentives were there for, the plot for the private sector to participate in the economic development of the country was set.
The proclamation which was enacted during the transitional period, did not limit the manner of formation of joint venture as the previous government, used to limited it self to be a part to any joint ventures. Moreover, the proclamation established an investment administration region in both tries of government (federal and regional levels).
However, proclamation 15/1992 reserved some sensitive areas of activities to be government economic strategies including power, and postal services.
The proclamation during the transitional stipulates a guarantee for investors (domestic and foreign) against nationalization and expropriation of their property with out due process of law.
At the end proclamation No. 31/1996 had been enacted to remove some problem of proclamation No. 15/1992.

3. The FDRE Period From 1996 up to Current

It was in 1996 that proclamation No. 37/1996 and regulation No.7/1996 were enacted. These legal instruments had been enacted to provide a better incentives and encouragement for the participation of private sector in the economy.

In 1996 proclamation No. 37/1996 and regulation No.7/1996 were amended by proclamation No.116/1998 and regulation 36/1998 respectively. The enactment of this law contributed much to the promotion and encouragement of private sector.

The currently worky investment law is proclamation No. 280/2002 and investment (Amendment) is repealed by proclamation No. 280/2002.

There was no big difference between proclamation No.37/1996 and proclamation No.280/2002 of investment proclamation.

The only difference if at all it is considered as a difference, were

1. On the definition of domestic investment
2. On the area of investment reserved for the government article of proclamation No. 280/2002.
3. On capital requirement for foreign investor.

Chapter-Two

2. Legal Framework for Incentive Regimes of Private Foreign Investment

The policy under provides that adequate system will be putting place to stimulate the confidence of private investors and to help them operate profitably.

The investment law gives incentives for investment on different selectors are considered by the government to be important for development; and need encouragement. These incentives are given in form of exemption from paying import custom duties when importing machinery and equipments for production: in an exemption from payment of income tax for a certain given period and in a form of carrying forward losses in a future year.

2.1. Form of private Foreign Investment

These are a number of different forms of private companies a available. The following are some of the possible forms of business organizations available for private foreign investors in many countries. These are personal associations and other kinds of business organizations.

Investment laws in some under-developed countries make mandatory domestic partnership a per-condition for the establishment of any commercial enterprise by foreign investors. Often the law fixes the percentage of the requisite domestic-capital participation. For example, no company is allowed to engage in the exploitation of natural resources in foreign and local capital is a commendable method of financing economic development. It is beneficial to the investee state because it affords a good opportunity for training indigenous entrepreneurs, on the other hand, foreign investors sometimes seek partnership as a guarantee for their capital and enterprise against ;local political measures.

2.2. Major Investment Incentive Scheme

As mentioned in the preceding section of this paper, investment is not generally made for reasons of welfare, but it is to make profit in a kind of returning except in case public investment, which is for social and economic services. Proclamation No. 280/2002 article-4, states investment which is primarily designed to improve the living standards of the peoples of Ethiopia through thee realization of sustainable economic and social development, the particulars of which are the following:

4(1) To accelerate the country's economic development.

(2) To exploit and develop the immense natural resources of the country.

(3) To develop the domestic market through the growth of production, productivity, and Services.

(4) To increase foreign exchange earnings by encouraging expansion in volume and Variety of the country's export products and services and the important of their Quality as well as to save foreign exchange through production of import Substituting products.

(5) To encourage balanced development and integrated economic activity among the regions and to strength the inter-sect oral linkage of the economy.

(6) To enhance the role of the private sector in the acceleration of the development of the country's economy.

(7) To render foreign investment play its proper role in the country's economic development.

(8) To create wide employment opportunities for Ethiopians and to foster the transfer of technical know-how, of managerial skills, and of technology required for the progress of the country.

Furthermore, what motivate foreign investors to invest and commit their funds are not only their economic activities out of which they are to extract profits. But also the incentives and guarantees given and promised to them by investment enactments. That is, investment polices create adequate incentives system to build the confidence of private foreign investors and help them operate profitably. And, proclamation No. 280/2002 under article 9 states areas of investment specified by regulations to be issued by the council of ministers pursuant to the investment objectives under

article 4 of this proclamation shall be eligible for investment incentives and a regulation will be issued pursuant to sub article to determine the type and extent of entitlement to incentives.
Thus, some of the incentives that are granted to foreign private investors are incentives given in the form of one-stop service, income tax holiday, import and export duties relief, remittance of capital, loss carried forward (that is, business enterprises suffer losses during the tax holiday period can carry forward losses following the expiry of the exemption period), acquisition of immovable property and above all legal protection against expropriation and if the need arises with adequate, prompt and effective compensation. When a given holding is wanted for public interest. Nevertheless, the reality in developing countries witnesses arbitrary expropriation with no adequate prompt and effective compensation due to some bureaucratic procedures.

2.3. Guarantees and Protection of Private Foreign Investments

One of the many causes usually cited as responsible for to day as shortage of private investment in the under developed countries is the unfavorable investment climate existing in a number of them. And, proclamation No. 280/2002 under Article 21 states investment guarantees and protection. Here, investment climate refers to the general altitude in a given country to wards private foreign investment as it affects investor's exception, where political, psychological. For instance boarder conflict, civil war and unstable political situation to a given countries, "no investment may be expropriated or nationalized except when required by the interest and then, only in compliance with the requirements of the law. The proclamation also states the need for adequate compensation, corresponding to the prevailing market value, to be paid in advance in case of expropriation or nationalization of an investment for public interest and sub article 3 the proclamation allows investors to may remit compensation paid to them, out of Ethiopia in convertible foreign currency, with an aim of promoting foreign investments.

In the case of many of developing countries, including Ethiopia, however, it is almost impossible to predict with confidence, that conditions of stability and security will exist during the period of dynamic changed a head of course, such countries are badly in need of capital and seek method of attracting the same. Hence, arises the need for legal guarantees to the prospective private foreign investors in order to assure them they will receive in the future, well to day, certain definite legal treatment, as specified in the guarantees and consequently that need not fear any major change unfavorable to their interests in legal or political conditions.

The basic devices most commonly used, in guaranteeing non-commercial risks, are special statutes and statements of government policy regarding private investments.

Investment laws provide a variety of measures intended to encourage and attract private investments. No private investment is nationalized or expropriated except when required by public interest and then only in compliance with the requirements of the well as fair treatment, non-discrimination, and the like. Guarantees may also be found in proclamation and codes as well as fair treatment, non-discrimination and the like.

2.4. Facilitating Private Foreign Investment

One of the most widely recommended and widely instituted changes has been the move to some kind of “Remittance of funds “and “one-stop shop services’. According to proclamation No. 280/2002 article 20 “remittance of Funds” 20(1) any foreign investor shall have the right, in respect of an approved investment, to make the following remittances out of Ethiopia in convertible foreign currency at the prevailing rate of exchange on the date of remittance.

(a) Profits and dividends accruing from investment.

(b) Principal and interest payments on external loans.

(C) Payments related to a technology transfer agreement registered in accordance with this proclamation.

(D) Proceeds from the sale or liquidation of an enterprise.

(E) Proceeds from the transfer of shares or of partial ownership of an enterprise to a domestic investor.

20(2) Expatriates employed in an enterprise may remit, in convertible foreign currency, salaries and other payment accruing from their employment in accordance with the foreign exchange regulations or directives of the country.

So, foreign investors have right to remit in respect of approved investment in the above. But, in Ethiopian context foreign investors has can not right to remit, because in practice commercial bank of Ethiopia and any other banks shall not convertible to foreign currency because lack of foreign exchange rate (dollars) and any other problem to waste of the time. Source for balance of payment shortage will not be attracting in this context.

Another widely recommended and widely instituted changes has been the move to some kind of "one stop shop services" according to the proclamation No.280/2002 article 24/1 the issuance of business licenses, the graining of work permit to expatriate employees, and the registration of business organizations as required under the relevant laws shall, with respect to investors holding investment permit, be carried out of the authority or by a regional investment organ as may be appropriate, representing the competent federal or regional executive bodies respectively.

Article 24(2) the authority shall register and render a one-stop services to export-oriented non-equity based foreign enterprise collaborations 24(3) the authority and regional investment organs shall carry out their functions under sub-article (1) of this article in compliance with the relevant laws thereof and 24(4) the authority or a regional investment organ shall issue a license within 5 days after receiving an application pursuant to this article, and is in full conformity with the requirements of the relevant law.

Thus, the issuance of business licenses, the granting of work premises to expatriate employees and registering in the commercial register as required under the relevant law will, with respect to investors holding investment permits, be carried out by the authority or by a regional investment organs may be appropriate, representing the federal or regional executive organs.

The Ethiopian investment authority registers and renders a one stop shop service to export oriented non-equity based enterprise collaborations.

The Ethiopian investment authority registers and renders a one-stop shop services to export oriented non-equity based foreign enterprise collaborations to various forms in practice. However, is that a single organization in a country is to have responsibility for the conducting or coordinating various matters related to the entry or supervision of foreign investment. Thus a would be foreign investor would have to deal only with this one organization to obtain all the permits needed to invest in the country.

One organization with responsibility for all investment matters could achieve several goals. In its evaluation of proposal investments, such as organization could weigh rationally all the advantages and disadvantages of proposed investment because of its broad perspectives of a proposed investment and its ability to assemble expertise on a variety of matters in one place. Speed and predictability of decisions are thought to be important elements in a program designed to encourage foreign investment. The advantages of organizations are also believed to other government an activity during an investment’s lives, such as promoting the investment, provides. Services to investors and monitoring investment projects.

The other most important aspect of facilitating private foreign investment is monitoring which is in some senses, a regular function of government. Every business entity, whether foreign or domestic is likely to be subjected to certain forms of monitoring by government authorities .scientific departments of governments with responsibility for various areas of business operations monitor the extent to which business, including foreign investors, complies with government regulations. Tax authority, customs administrations and foreign exchange control authorities are all likely to engage in monitoring activities with each department focusing on its specialized functions.

Chapter-Three

3. Private Foreign Investment in Ethiopia and Problems of Incentive regimes: The law and the practice

This chapter offers a high light of national determinations of foreign investment flows in to Ethiopia, Ethiopia's policies and laws on private foreign investment in brief, and as the main body of the thesis, the problems of incentive regimes in details.

3.1. National Determinants of Foreign Investment Flows into Ethiopia

There are a number of positive strategic factors that markets Ethiopia an attractive location for foreign investment .some of the positive elements include:-

I, Large domestic market and a unique geographical location enabling investors in Ethiopia to service markets and customers in East Africa, North Africa and the middle East and to Competitively supply specific products to selected European markets. These are all reasonably affluent markets with positive growth prospects over the medium term.

II, a unique history, national culture and tradition with a pool of highly educated elite to draw up on as managers and advisors, with English (the language of business) widely spoken.

III, A resurgent private enterprise ethos, with a portfolio of local or regional enterprises established by indigenous entrepreneurs that deserves to be better promoted including an emerging group of internationally recognized companies (E.g. Ethiopian Airlines) that have already established a competitive market presence.

IV, A comparatively safe and less corrupt business and social environment that stands out in stark contrast to many other countries and a generally friendly and helpful attitude to foreigners;

V, Capital city that hosts the head quarters of regional and international organizations as well as a significant cosmopolitan middle class with experience in international business and

VI, An attractive climate and an evolving tourism that combines antiquities with wildlife and visual beauty.

3.2. Private Foreign Investment in Ethiopia. In brief

It is to be noted that the formulation and enactment of the policy and law on private foreign investment capital emanates from the investment policy of the country, in particular and economic policy, in general.

3.3. The private Foreign Investment Regulatory Framework

The present regulatory regime governing private foreign investment in Ethiopia is based on a series of investment proclamations issued between 1996 and 2003, proclamations any regulators and directives 98, in combination, there establish the economic sectors open to foreign private investment: the financial limits and requirements and foreign private investment the monitoring and reporting requirements; and the financial incentives that are a available. Hence it is worth briefly summarizing the main features of the present regulatory regime in each of the above areas.

(I) Economic Sectors open to Private Foreign Investment.

Foreign investors are encouraged to invest in all economic sectors, except those currently reserved for domestic private and public investment, with the domestic private investor category including foreign national who are permanent residents in Ethiopia. There is a continuous review of the sectors closed to private foreign investment in deed, the amendments to the investment code made in June 1998 and 2002 have opened up energy generation and telecommunication services to the private sectors both joint venture. Under this proclamation, the generation of electricity from hydropower is allowed for both foreign and domestic investors without any limitation on generation capacity.

(II) Forms of Private Foreign Investments

The legislative framework in Ethiopia offers private foreign investors a number of method of doing business and opportunities for organizing business activities in the country. In Ethiopia, a business or an investment may be carried out in any one of the following forms: (a) sole proprietorship:

(b) Business organizations incorporated in Ethiopia or abroad:

(c) Public enterprise establiblished in accordance with the relevant law:

(d) Cooperative societies formed in accordance with the relevant law.

The commercial code of Ethiopia defines five forms of business organizations that are legal persons. These are :- (a) ordinary partnership

(b) General Paternership

(c) Limited partnership

(d) Share company

(e) Private limited company

Although all these forms of business organizations practically exist, the most commonly used forms are private limited company and Share Company. The law that are applicable to business organizations are the commercial code of Ethiopia: the commercial registration and business licensing proclamation No. 67/1997 and the federal government commercial registration and licensing council of ministers regulation No. 13 / 1997. Before a business organization starts operations, it should be registered in the commercial register kept by the ministry of trade and industry. But as a one shop, the Ethiopian investment commission serves as a trade register to foreign investment pursuant to the power vested upon it by proclamation No. 67 of 1997 article 43 cum article 14 No. 280 / 2002. Companies incorporated in Ethiopia may operate through a sub subsidiary (i.e. incorporated under the law of Ethiopia) or through a branch (i.e. incorporated under the laws of a foreign country).

(III) Ownership limitations and Requirements

Under the new Proclamation 280 / 2002 a minimum investment sum is required for both wholly owned operations and joint ventures with Ethiopia companies or individuals. The value of the investment must be either in cash or in-kind. In fact this has always been the number one requirement in all the previous laws too.

For wholly owned private foreign investment into the open sectors, an initial investment of 100. 000 of USA dollar and jointly with a domestic investor 60.000 of USA dollar is required and in the case of engineering , architectural, accounting, and audit services project studies or business and management consultancy services an initial investment of 50.000 of USA dollar is required.

For joint ventures, in the investment areas mentioned here in above with Ethiopian investors the foreign partner is expected to contribute 25,000 of USA dollars with this minimum equity requirement representing either cash or the value of the capital equipment imported to establish the venture.

There is no capital requirement if a foreign investor invests his profit or dividends or exports at least 75 % of his out puts. An important and serious obligation imposed on a foreign investors bringing his capital to the country is that investment capital brought has to be registered at the national bank of Ethiopia.

If the government wishes to give priority to a attracting larger private foreign investment project it may be right to have a threshold level to ration the presently limited private foreign investment promotional and management capability in Ethiopia investment commission and the regional promotion agencies, however a minimum investment requirement is not a common features of investment regulatory regimes of most host countries that are competing to attract foreign private investment. It seems because of this realization in its minimum investment capital requirement is reduced to a minimum prepare in the new investment code. A part from these minimum capitalization conditions, the investment code does not require foreign direct investment to meet specific performance goals or guidelines through their operations.

(IV) Monitoring and reporting requirements

The Ethiopian investment commission (formerly known as office of investment and later as Ethiopian investment Authority) is the principal government organ responsible for the promotion and facilitation of foreign investments in the country. Envisaged to be organized as one –stop-shop, the Ethiopian investment commission provides all the necessary information required by foreign investors, approves investment application and issues investment permits for foreign investors, provides registration services to newly incorporated business organizations, approves expatriate posts in an approved investments issues work permits to foreign employers, issues trade and operating licenses to approved foreign investments: and facilitates the acquisition of land by foreign investors in accordance with the relevant federal and regional government laws and regulations.

There is currently a requirement for both private foreign and domestic investors, under proclamation 280/2002 (as a mended) to submit progress reports to Ethiopian investment commission on the status of projects every six months once the original investment permit has been issued. The purpose of this is for Ethiopian investment commission to be regularly informed on progress and also to identity (as early as possible) emerging problems in order that Ethiopian investment commission or other government agencies can help resolve the problem constraint.

3.3.1. Institutional frame work

(I) Ethiopian Investment Commission

The current organizational structure of the Ethiopian investment commission shows five cores operational departments each of which contain a varying number of team leaders of divisions, three supporting units for legal services, administration and finance and the planning and foreign assistance coordination service. These departments all report previously through the deputy general manager but nor directly through the commissioner of Ethiopian investment commission and through him to broad of investment of which he is a member. The organizational structure of Ethiopians investment reflects the political environment in which it was created.

In considering the effectiveness of the present organizational structure and management of Ethiopian investment commission the following three important observations are worth nothing: - First, the present notion of Ethiopian investment commissions organizational structure is that it is primarily process driven and that much of the activates undertaken by its staff have to do with regulatory aspects of foreign private investment such as permits, reports and registration. It is interesting to note that the only three sectorial groups are in the license registration and coordination department. Much of their daily work is on ensuring whether potential foreign private investment meets regulatory requirements.

Second the present occupational structure and skills base is shaped by the nature of the tasks that are done in each department and division, which over the long-term will constrain the emergence of multi-skilled teams and (from the experience of similar organizational else where) encourage the strengthening of divisional walls and identities.

Thirdly at present, the organization is not foreign direct investment client centered, nor does it appear to have a customer driven skills base or promotional process. It is difficult for public agencies like Ethiopian investment commission to have a set client focus, especially when clients operate in the private sector and in foreign national cultures. These organizational issues are important to Ethiopian investment commission's future evolution and it's competitive in an increasingly tough foreign private investment.

(II) Promotional Integration by other Government Agencies

In the immediate future, it is probable that Ethiopian investment commission (EIC) will not have the funds or the skilled personal needed to open up representative offices in targeted foreign private investment home countries.consecequently, the prime overseas investment promotion presence will be Ethiopian Embassies under the direct control of the ministry of foreign Affairs (MFA). MFA thus has a key role to play provided to other factors, of including, are available in attracting inward investment. This is lowly being developed with inappropriate initial focus on the Middle East and Asia. All ambassadors have been instructed to give priority to promoting Ethiopia suitable investment location, find markets for Ethiopian exports and encourage tourism to Ethiopia.

In an editorial statment of the weekly reporters under the title " to attract foreign investment consolidate the domestic one " it has been stated that the main duties assigned to the diplomats are to enhance economic development. Diplomats have also been instructed and warned so to say and they soon to see this mission as serious as anything in an extensive kind of seminar conducted to diplomats gathered from al over the world.

The content of the warning given by the different high officials of the government organs and made by the diplomats was that they have to work very hard and decisively to attract foreign investment. It is also said by the higher officials of the ministry of foreign affairs that the evaluation of every diplomat, after wards shall be based on the number of foreign investors induced to invest in the country. But factors and conditions that attract foreign investors are not economic diplomacy of the country. A foreign investor may not be attracted by agitation and propaganda of diplomacy from a host country. In observing and deciding whether conducive conditions are prevailing given country, a foreign investor mainly depends on the information served to him from his host country diplomats.

3.4. Encouragements and Protections of Private Foreign Investment

There are several factors that commonly motivate businessmen to invest in a developing country. The most important is usually that the country is, so to speak, within the interest area, for example, business in the UK will look a first at countries in the British common wealth while a business man in the United States will book at America, Liberia or the Philippines. The political ties b/n states within such interest areas may have made the investor reasonably acquainted with the political climate of the country he is interested in, although he can not assume that conditions will not change.

"Another common factors that might motivate an investor is longstanding business ties between country and the state where he proposes to invest" since ties between his own country and the state where he proposes to invest" for example, as miss investor may find it natural to locate his investment in Peru and German investor in Argentina, as there has been considerable previous investment by Swiss and German firms in these two conditions.

Secondary considerations that make a particular country attractive include tax-free income and interest on loan, depreciation allowances, advantageous, rules for revaluation of assets and customs duty relief for building materials, machinery or the raw material that will be needed in the enterprise. Furthermore, unless there is reasonable certainty that the bulk of the profits can be repatriated there may be little point in continuing with the project

As to securities of investment, that is guarantees available to investors sin Ethiopia, constitutional guarantees were provided since time immemorial. The 1955 revised constitution provided that:

Every one has the right to own and disposes of property .no one may be
Deprived of his property except upon order issued pursuant to the

Requirements of a special expropriation law enacted. And except upon
Payment of just compensation determined by judicial procedures Established by law.
We may observe from the above statement that the investment policy and law of the imperial government concentrated on encouraging, developing and expanding both foreign and domestic private investments.
The new investment code has also provided guarantees and protection to investors. In its Article 21 of the proclamation on investment stipulates. But the experience of many developing countries, (including Ethiopia when the Derg extensively nationalized private properties and investments) has witnessed adequate, effective and prompt compensation for expropriated and nationalized investments is beyond the reality. However, in the present case, whether compensation could be effected adequately, effectively and promptly as provided in the law, remains to be judged. As the legal provision stands now, Ethiopia provides the following guarantees to investors; repatriation of capital and profits where capital repatriation and remittance of dividerds and interest are guaranteed to foreign investors under the investment proclamation.
Both the constitution of the federal democratic republic of Ethiopia and the investment proclamation provide protection to private property and guarantee against measures expropriations and nationalization. There are other guarantees too. Ethiopia paying members paying fees is a member of the World Bank affiliated Multilateral Investment Guarantee Agency (MIGA) which issues guarantees and the benefits the Ethiopia may get from being members is to be seen. One thing is evident and beneficial . That is, the existence of these legal guarantees and Ethiopia’s accession to the same as signatory may attract foreign private capital.

Further more, bilateral investment promotion and protection treaties with any country is one of the guarantees available to foreign invest and, in fact Ethiopia is currently concluding such agreement between the government of Italian republic and the government of Ethiopia on the promotion and protection of investments states:
I, Nationals or companies of one contracting party whose investments--Suffer losses owing to war or other armed conflict, states of national Emergency ; civil strife--- shall be accorded---as regards restitution,
Indemnification, compensation or other settlement.

II, investments of investors of the contracting parties shall not be nationalities, Expropriated, sequestrated---- except for public purposes or national interest and in exchange for prompt, full and provisions and procedures------

From this contractual provisions and obligations it is clear the corresponding government guarantees that foreign investor of either party from non-business risks such as war and expropriation. Although the new Ethiopian investment law has deleted the provision of article 22 of the former law, a provision which was providing to the effect that disputes between a foreign investor and the government could be settled amicably through mutual discussions: and a dispute not amicably settled may be submitted to the competent court of the country or to the international arbitration, these alternatives are always there by a means of stipulating in the agreement of the parties.

3.5. Incentive Regimes of Private Foreign Investment in Ethiopia

3.5.1. Objectives of Foreign Investment Incentives

The fundamental importance of most foreign investment incentive laws is to promote economic development by making the investment climate more attractive than it would other wise be. This is the general underling of what purposes do investment incentives serve.

Many countries have adopted investment proclamation or take other investment incentives measures to encourage increased private investment, both domestic and foreign. Basically investment legislation is an instrument for the implementation of the economic policy of a country. Different legislations try in their preamble to show the importance of investment incentive schemes, together with the objectives of policies, since incentives are used to promote the policy objectives. Thus, governments provide different kinds of incentive measures to foreign investors for the following reasons. First, through it is up to the investor to decide which activity and area is more profitable to invest his capital, government's grants incentives to some business enterprises from the view point of satisfying the basic economic needs of the society. In addition to this, it is necessary to encourage foreign investment so as to accelerate the economic development of the country and to improve the living standard of the peoples.

Secondly, some enterprises are very necessary for the economic development but their expenditure is very high from the very outset. Because of this high expenditure investors may hesitate to invest their capital in such kind of enterprises. Therefore, in order to induce such investors, governments take necessary measures and encourage them by way of granting incentives.

Thirdly, in order to divert investors from looking over the enterprises which are more profitable within a short period of time, and to make them to invest in the areas of direct productive enterprise and projects, incentive schemes are necessary. Fourthly, in order to encourage more those enterprises with maximum utilization of domestic raw materials and those engaged in production of intermediate goods to be used by other industries and to create sustainable economic development to a given country, incentive schemes are important mechanisms to attract investment. Last but not least, incentives are also important, to increase the degree of participation of foreign investors in addition to that of domestic investors and to facilitate conditions necessary to enhance economic growth. It is widely believed that inevitable resources should, to a larger extent, be mobilized from domestic source, and that foreign investment should play a complementary role to domestic efforts at saving. In situation where domestic saving fails due to short of investment requirements or where the requisite for transfer of technology is the primary objective, foreign investment in general, and foreign direct investment in particular become important sources of investment particularly for developing countries. In general when governments try to encourage the participation of foreign investors it is with the view of the importance of promoting foreign investors it is with the view of the importance of promoting foreign investors, to effect transfer of technology: to encourage inflow of foreign capital: to promote exports: to generate employment opportunities and to bring about over all development.

3.5.2. Types and Extent of Major Foreign Private Investment Incentives

Foreign investment incentives play the most important role to encourage and stimulate private foreign investors to commit their funds in investment activities and limitations and obstacles to private foreign capital participation in the economic development of the country, and the opportunities, which attract the prospective private foreign investors, entail quite large number of issues to be dealt with. Accordingly, this section attempts to present the subject matter. In order to encourage development, Ethiopia has for long, since the beginning of the enactment of laws, offered exemption from income tax for certain kind of enterprises which invest foreign capital and more than a stated amount of capital. Ethiopia is not unusual in this respect many developing countries have similar provisions. The purpose of this section of the thesis is to discuss the use of fiscal exemption as a technique to en courage economic development and more particularly, to consider the desirability of use of that technique in Ethiopia, that has bees done on the income tax exemption of some developing countries because very little material is available on most developing countries, including Ethiopia. The focus of this discussion of Ethiopia's income tax exemption law, there fore, is of necessity on its structure, and not on its actual implementation, except to the extent that conversations and correspondence with people who have had legal experience in Ethiopia permits.

The nature of incentive may, for private foreign investor, vary from country to country. It depends on the objective and policy of a particular country. However, the common nature of private foreign investments incentives are to benefit, encourage, so to say foreign firms, domestic enterprises or both where such incentives are available only to foreign investors it is discriminatory in nature.

Private foreign investment incentives frequently have indirect restrictive effects. They are usually offered only to enterprise meeting certain conditions. The conditions provided for investment incentives also vary from country to country, for example, any investor to avail himself of any of the benefits provided, he must invest in one of the predetermined areas of economic activities: he must fulfill of or all of the objectives enumerated under the law: he must invest in the areas of priority: he must invest certain amount of capital fixed by law etc. hence, the incentive measures may not be granted to all investors. They require application or screening procedures and may be used in return for performance requirements, or as an indirect means for regulating or channeling private foreign investment.

Private foreign investment incentives usually are affected through tax exemptions and others. Both developed countries use a wide variety of incentives to promote their investment policy objectives. The main categories of investment incentives include tax incentives (tax holidays, investment allowances, tax credits, lower tax rates): other financial incentives. such as grants, preferential loans rates, loan guarantees, tariff concessions and priority access to credits, and non-financial measures, include the provision of infrastructure and business services. Acts of incentives regimes of some African countries may help us to see whether ours are competitive the investment, act (1986) of Zambia for instance, offers several type of incentives to foreign investor. These are : retention of a percentage of their foreign exchange earnings : preferential tax rates ; access to any existing free trade zones : exemption of foreign investors in agriculture and forestry from paying selective employment tax : full exemption from tax an dividend tax for a period of 5 years, etc.

some of Malawi investment incentives including :free access to foreign exchange no license requirements for imports : full remittance of dividends , 100 % deduction from manufacturing company operating expense etc.

In Madagascar, the package of incentives offered to foreign investors including several benefits notably in the field of customs full exemption from duties on imports and soles tax on equipment and initial working capital : exemption from corporate profit taxes and from registration fees and on requirement of guarantee for bank loans. Guarantees for the repatriation of dividends, profits income from licensing fees, royalties and loans in foreign currency from foreign institution : and no restrictions on personal recruitment of expatriates. The Ghana, investment codes of grants different kinds of incentives. These are: requisite permission for importing essential, plant machinery, equipment and accessories required for the enterprise, exemption from payment of custom duties, depreciation or capital allowance and exemption staff from income tax : exemption from tax payment levied on building properties.

The types of fiscal incentives presently available to a foreign investor in Ethiopia are: in come tax holiday; customs import duty, guarantee incentives, remittance of capital, loss carried forward depreciation. The availability of all these type of fiscal incentives was provided in the law of 1994 current and in the guide line brochure of the office and authority. But, in the presently working regulations No.280/2002, acquisition of immovable and depreciation are not in the list. Thus it is not clear whether the governmental decided to deny these incentives or not. In the opinion of this writer the investment authority may not dare to these schemes, which are not provided in the law and no experience has been recorded in this respect. This is infact one problem where one could observe the discrepancy between the law and the guideline already distributed to stake holders which may result in undermining certainty and predictability of foreign investment climate.

From all these what we can conclude is that, incentives have a broad and wide scope of coverage ranging from tax and custom duty exemption up to permission for establishment of an enterprise. The commencement period of exemption and capital requirement for granting incentives also differs from country to country; depending on the policy and objectives of governments, the importance of that particular enterprise for the economic development.

3.5.2.1. Remittance of funds

In order to control foreign exchange thereby, protect balance of payments governments, need to have laws that permit investors to remit their capital and profit in convertible currency. Thus, Ethiopian investment proclamation allowed foreign investors to remit in freely convertible currency, in comes derived from any profits from investment, proceeds from the sale or transfer of any right on investment. In addition to this, any investor is entitled to remit out of the country in freely convertible currency, payments in respect of debt servicing and fee or royalties in respect of any technology transfer agreement relating to its investment activity.

Generally, the Ethiopian investment proclamation no. 280/2002 has had its own short comings in the area of incentives regimes. First, as to remittance of funds, there was no any restriction either to protect the country is balance of payment position or to make sure that part of profit of foreign investors was reinvested in Ethiopia second as to tax exemption, it was granted only to agricultural, industrial and hotel activities were to exemption circumstances, other economic activities were totally excluded from tax exemption. Therefore, it could be noted the scope of application of income tax exemption was narrow. Thirdly, unlike tax exemption the scope of custom duty relief was wide in its application. Last but not least, the proclamation did not incorporate export duty relief, which was provided by the pre-revolutionary investment proclamations and notices which where granted for a reasonable period of time provided that exemption fest necessary to ensure the competitive position of the goods to be exported.

As soon as proclamation No. 280/2002 was enacted many investors submitted application to get incentives. Therefore, starting from 2002 G.C. (when the investment proclamation come in to force) many investors involved either in industrial activities, construction activities, agricultural activities and Tourism (hotel) project activities asked the investment committee to get benefit as incentives.

3.5.3. Prospects for Private Foreign investment in Ethiopia

Given Ethiopia's natural and human resources endowments, there are tremendous opportunities for investment in Ethiopia. There are three main reasons why potential investors would consider Ethiopia as a location for foreign investment: there is what is potentially one of the largest domestic markets in Africa with 80 million consumers: Ethiopia's exceptional climate, it is said more than half the country consists of highlands with average annual temperature under 20 degree Celsius : the climate officers and excellent environment last for various agricultural activities and there are the moral assets of the country Ethiopia in exceptional among the least developed countries (LDCS) in its in its virtually complete absence of routine corruption, it is said that the bureaucracy may be difficult to deal with, especially at the lower levels, but investors say that it almost never demands unofficial payment to do its job.

Regarding opportunities, it is said that these are varied in Ethiopia: the country has one of the most diverse agricultures resources in Africa. There are opportunities as well in leather and textiles tourism represents yet another opportunity for foreign investment. Ethiopia has an ancient cultural heritage and the historic route in the north encompasses memorable sites. Certain sectors which are expected to emerge as significant investment areas new investments and substantial expansion of existing facilities have been specifically identified. Despite some lack of infrastrucral development such as power supply and communication facilities, there is considerable scope for wide range of agriculture, agro-processing, manufacturing, mining and service industries in Ethiopia. Investments profiles for some of the sectors and for specific projects the sectors and for specific projects in these fields are available on request. In other words, except for very few areas of investment reserved for government sole entrepreurship, many of the sectors are open to foreign investment. But foreign investors to have the gut and the capacity to overcome limitations and obstacles, and fulfills strict conditional ties to exploit the investment opportunities available. However, since there are other developing countries which are competitive to Ethiopia, and are open with facitating foreign investment conditions are opportunities, we should not expect foreign investors to meet challenges, obstacles and limitations, which is our business to do a way with them and create favorable and conducive conditions and incentives schemes comparable with neighboring countries to attract foreign private investment promise a lot, there are limitations and obstacles on the ground, such as lack of adequate information on the land size and price inventory, in appropriate, auction system, lightly process to obtain land for investment activities. On top of this land scarcity is critical: and there are hundred and one private foreign investors only with investment certificates.

There are adequate labs our supply in Ethiopia, very low lab our cost. The Ethiopian worker is enthusiastic to work hard to wards the modernization of his country to the oft-repeated sating of pre judicial notion that people in less developed countries are lazy and do not have receptive mind. An Ethiopian is diligent and intelligent. The dignity of lab our reality. There is also a new lab our code that carefully regulates employer employee relationships. But unskilled lab our supply a lone would not attract private investor seen from the view point of foreign investor.

The fiscal policy of the government is also encouraging. There is a frequent devaluation of domestic's currency against currency and purchase of foreign currency is based on demand and supply. And this policy may be convenient especially for private foreign investors who want to import machineries equipments a draw materials, for cost them less. In concluding this section, even through the government has formulated and enacted polices and laws on private foreign investment and privatization to foster and enhance the private sector, the pace could not be as desired. This is because of lack of basic infrastructural developments and service such as limited supply of electric power, transport scarcity, lack of postal, telephone, etc---communication services and lack of water supply.

Conclusion

In chapter one, we have to understand from the definitions, investment could be conceived as an endeavor in which an investor makes use of his capital to establish a new enterprise or up grade the existing one.

In chapter two, we have elucidated that the legal framework for incentive regimes of private foreign investments. Accordingly, it can be conceived that there are two forms of business organizations in which private foreign investors can involve. These are personal associations and business organizations. As practices show, most underdeveloped countries call for partnerships for foreign investors to engage in investment with the purpose of encouraging foreign investment, national governments make use of various incentives. Not only incentives schemes, but also the general investment climate that is determinant for foreign investment.

In chapter three, a proper attempt was made to cover issues related to incentive regimes in Ethiopia in light of their stipulation and implementation. Thus, Ethiopia has certain unique factors that make it destinations of foreign investment in Ethiopia. Particularly, since 1991, a series of investment proclamations were designed, including 280/2002. Besides, there is an institutional framework envisaged to played by the Ethiopian investment commission is commendable.

Therefore, significant and visible issues pertaining to private foreign investment have properly highlighted and elucidated.

Recommendations

In my endeavor in the research paper, a number of problems of various types that inhabit private foreign investment have been pin down. Although a series of proclamations has been stipulated to encourage foreign investment, the situation still is not commendable.

Therefore, it is now imperative to suggest certain recommendations as possible panacea to the problems. Thus, to promote private foreign investment in the country, the following worthwhile.

- The general investment climate of the country should clearly be assessed and ensured. To this end, the current government should instill a spirit of confidence in foreign investors. This is because some experts anticipate that revolutionary is a stringy that finally leads to socialism, which is the antithesis of private investment. Thus, it is recommended that the government of the country.
- The government should also overcome uncertainties. For instance, there have been frequent and revisions and enactments to regulate foreign investment in the country, this may panic investors that there would be a like hood that future governments may reverse same enactments. This discourages foreign investment in the country.
- A duty emphasis should be given to the country’s social and economic infrastructure too. Compared with other African countries, Ethiopia still lags behind interms of its infrastructure, financial institutions and professionals.
- Corrections should be made to rectify gaps in law and practice. For instance, their is a problem confronting a remittance of fund. Although both private and public banks deliver foreign exchange service, it’s still inadequate. Some investors complain about shortage of foreign exchange whenever they seek to convert currencies.

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