

# **ETHIOPIA**<sup>1</sup>

## **I. OVERVIEW OF COUNTRY**<sup>2</sup>

Ethiopia is a federal republic with a predominantly civil code legal system. The judicial system is divided into two parallel court structures, operating at the federal and state levels. The federal and state courts have distinct jurisdictions, as delineated by the Federal Court Proclamation of 1998.<sup>3</sup> The Federal Supreme Court also contains a Cassation Division, which has the power to overturn the decisions of lower federal and State Supreme courts on fundamental errors of law. These decisions are binding on the lower courts.

Ethiopia recognizes six forms of business organizations: ordinary partnerships, joint ventures, general partnerships, limited partnerships, share companies, and private limited companies. Ethiopia also recognizes “associations:” groupings, such as trade unions or churches, formed for purposes other than collecting profits. This category is further subdivided into “Charities” and “Societies.”

The Freedom of Association is enshrined in the Constitution of the Federal Democratic Republic, which provides that “Every person has the right to freedom of association for any cause or purpose,” other than breaking the law or subverting the constitution.<sup>4</sup>

## **II. REGISTRATION PROCEDURES**

### **A. For-Profit Organizations**

For-profit organizations are governed by the Commercial Code of 1960 (*CC*),<sup>5</sup> which sets out general requirements for corporate governance, foundation, and dissolution. This report will focus on the private limited company (*PLC*), defined as a company with limited liability formed for commercial purposes, made up of between two and fifty

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<sup>1</sup> The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>2</sup> Disclaimer: The associate who wrote this section is a US-trained associate, is not qualified to practice Ethiopian law, and relied on publicly available information such as Ethiopian statutes, government websites, and other websites.

<sup>3</sup> Proclamation no. 138/1998, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/53195/95203/F477077447/ETH53195.pdf>.

<sup>4</sup> Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation no. 1/1995, *available at* [http://www.ethiopianembassy.be/pdf/Constitution\\_of\\_the\\_FDRE.pdf](http://www.ethiopianembassy.be/pdf/Constitution_of_the_FDRE.pdf).

<sup>5</sup> *Available at* <http://www.wipo.int/edocs/lexdocs/laws/en/et/et014en.pdf>.

members, without publicly traded securities.<sup>6</sup> The PLC is the most common form of business organization in Ethiopia, especially for small and medium businesses.

### *i. Registration*

More specific registration requirements are found in the Commercial Registration and Business Licensing Proclamation (**CRBP**).<sup>7</sup> All companies must be registered in the commercial register before they are permitted to undertake commercial activities.<sup>8</sup> The registration process varies depending on the type of business organization being started, with share companies being the most complicated to register.

The process for registering a business organization other than a share company (including a PLC) is set out in Article 11 of the CRBP. Before submitting an application for registration, a person wishing to found a company must undertake several steps. First, they must register a trade name, pursuant to Article 24 of the CRBP. This process can be completed within a day and is free of charge.<sup>9</sup> The name registration and search process is designed to ensure that companies do not have confusing, deceptive, or otherwise impermissible names. The founders or their representative must then submit an application including copies of the articles of association, and the address of the business (including a title deed or lease contract). If the organization is being represented by an attorney, a signed power of attorney and copies of the identification cards of the founders must be included along with the application. Several additional steps are required if any of the members of the business is a foreign person (natural or juridical). These documents must be authenticated, a process which takes two days and costs 390 Birr (\$19), for registration and copies of the authenticated memorandum of association. Once the application has been submitted, the entrepreneurs may open a bank account in the company's name, and deposit the required paid-in capital, 15,000 ETB (\$730), in the bank account.<sup>10</sup> After submitting proof of capital, the company may obtain a Commercial Registration Certificate, and register the business, which costs 80 ETB.

The company must then register with the Revenue and Customs Authority to pay value added tax and income tax. Once registered, the company will receive a Tax Identification Number and VAT certificate. This takes approximately two days. Upon receiving these documents, it is possible to obtain a business license, which requires all of the documents listed above, as well as an affidavit stating the business' commercial competence to carry out the commercial activity for which it is registering and photographs of the founders.<sup>11</sup>

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<sup>6</sup> CC, Art 510.

<sup>7</sup> Proclamation no. 686/2010, available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=248525](http://www.wipo.int/wipolex/en/text.jsp?file_id=248525).

<sup>8</sup> CRBP, Art. 6.

<sup>9</sup> Timing and cost estimates for each step are taken from the World Bank's Doing Business Report. World Bank Group, *Starting a Business in Ethiopia*, June 2014, available at <http://www.doingbusiness.org/data/exploreeconomies/ethiopia/starting-a-business/>.

<sup>10</sup> CC, Art. 512(1).

<sup>11</sup> CRBP, Art. 32

This process can be completed on the same day, and also costs 80 ETB. After the business has been registered, the company must acquire a sales register machine, and link it to the Tax Administration system. The total time to start a business is estimated at, 15 days, with the total cost being approximately 20,000 ETB.

If the registration office rejects an application submitted to it, it must provide a written explanation of its reasons to the applicant.<sup>12</sup> Administrative decisions may be appealed to regular courts “on matters of law.”<sup>13</sup>

## *ii. Dissolution*

Business licenses must be renewed annually.<sup>14</sup> A business license may be suspended if the business holder fails to maintain safety, environmental or health standards, conducts illegal activity in relation to the license, fails to provide requested information to the appropriate authorities, or otherwise violates the CRBP.<sup>15</sup> Termination of a license may take place for repeated violations of the above standards, submission of false documentation, use of the license for an illegal purpose, bankruptcy, or non-renewal of the license.<sup>16</sup> The license holder is notified by mail of an impending termination and has 30 days to submit a written opinion on the subject; termination will take place when “the license holder has not submitted his opinion within 30 days from the day the letter was received by him or his opinion is not adequate.”<sup>17</sup>

A PLC will be dissolved where its purpose has been or cannot be achieved, where its members agree to a dissolution, or where it is subject to a term of existence, that term has expired.<sup>18</sup> Dissolution can also be ordered by a court, on the application of a member and the showing of good cause. Specified examples of “good cause” include incapacity of a member or irremediable inability of members to agree.<sup>19</sup> Parties have recourse to the court system for redress.

## **B. Not-for-Profit Organizations**

Not for profit organizations in Ethiopia are divided into “Charities” and “Societies” by the Charities and Societies Proclamation (*CSP*).<sup>20</sup> Charities are defined as institutions which are “established exclusively for charitable purposes and give[] benefit to the

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<sup>12</sup> CRBP, Art. 7(3).

<sup>13</sup> CRBP, Art. 61.

<sup>14</sup> CRBP, Art. 36.

<sup>15</sup> CRBP, Art. 37.

<sup>16</sup> CRBP, Art. 39.

<sup>17</sup> CRBP, Art 39(3).

<sup>18</sup> CC, Arts. 217, 542

<sup>19</sup> CC, Art. 218.

<sup>20</sup> Proclamation no. 621/2009, *available at*

<http://www.mfa.gov.et/docs/Charities%20and%20Societies%20Legislation.pdf>.

public;”<sup>21</sup> a non-exhaustive list of charitable purposes is included within the law itself. Charities are further subdivided into charitable endowments, institutions, trusts, and societies. A Society is any other association organized for non-profit making purposes.

#### *i. Registration*

Both Charities and Societies must register with the Charities and Societies Agency (CSA) within three months of their formation.<sup>22</sup> Failure to do so may lead to dissolution of the entity. An application for registration must include a completed copy of a registration form created by the CSA setting out the goals, objectives and activities of the association, as well as a copy of the association’s rules. The Agency may also require additional documentation.<sup>23</sup> The fee for registration is 500 ETB, with additional fees of 200 ETB for registration of a logo and publication in the government register. After a completed application has been submitted, the CSA “shall issue a certificate of legal personality” within 30 days.<sup>24</sup> However, registration may be denied if the application does not conform with the regulations set out in the statute, the name of the association is similar to one that is already in existence or otherwise impermissible, or it appears that the association “is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare, or good order.”<sup>25</sup> As with other Agency decisions, a decision to deny a registration application may be appealed to the Director General of the CSA, and then to the Board of the Agency. Ethiopian organizations may also appeal the Director General’s decision to a Federal High Court, while Ethiopian resident or foreign organizations may not.<sup>26</sup>

Organizations established abroad must submit significant additional documentation. This includes a local certificate of registration, the founding documents of the association, a copy of the decision of the board of the association to open an office in Ethiopia, identification of a local representative, a detailed project proposal, and letters of recommendation from their home government and the Ethiopian Ministry of Foreign Affairs. The fee for registration is \$300 USD (6200 ETB), plus a 100 ETB vetting fee and 5 ETB per page of documents to be authenticated.

It should be noted that organizations face significant restrictions on establishment and operations if they are deemed to be non-Ethiopian. “Foreign Charities” are barred from engaging in activities including “the advancement of human and democratic rights,” promotion of equality based on nationality, gender and religion, promotion of the rights of children and the disabled, promotion of conflict resolution, and promotion of “the

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<sup>21</sup> CSP, Art. 14.

<sup>22</sup> CSP, Art. 64.

<sup>23</sup> CSP, Art. 68.

<sup>24</sup> CSP, Art. 68(1).

<sup>25</sup> CSP, Art. 69.

<sup>26</sup> CSP, Art. 104.

efficiency of the justice and law enforcement services.”<sup>27</sup> A charity is deemed to be “Foreign” if it is based in another country, has non-Ethiopian members, is controlled by non-Ethiopians, or receives more than 10% of its funding from international sources.<sup>28</sup>

## *ii. Dissolution*

Non-profit organizations can have their licenses suspended or canceled for submitting insufficient or inaccurate information, submitting falsified accounts, engaging in fraud or other unlawful activity, or failing to renew the license.<sup>29</sup> An organization can be dissolved on three grounds: a decision by its own executive body to dissolve it, cancelation of its license, for any of the reasons set out above, or insolvency.<sup>30</sup> Upon dissolution, the organization will retain its personality until winding-up has been completed by an appointed liquidator.<sup>31</sup> In the case of Ethiopian Charities and Societies, dissolution can only be effectuated by an order of a Federal High Court; the CSA must apply for an order of dissolution, which the organization can oppose. In the case of Ethiopian Residents’ or Foreign Charities or Societies, on the other hand, the CSA may make a decision on dissolution *sua sponte*, with the only right of redress for the organization being an administrative appeal to the Agency’s Board.<sup>32</sup> After dissolution, any remaining assets are given to another Charity or Society “with a similar purpose,” or “to any Charity or Society by the order of the Agency.”<sup>33</sup>

## **C. Comparison**

The processes for registering a for-profit and not-for-profit organization are quite different. The process for registering a non-profit association is, in principle, much simpler, although it is subject to a significant degree of regulatory discretion. There are also much more stringent restrictions placed on the involvement of non-Ethiopians in non-profit organizations. For-profit companies face a more clear, although rather more complex, process for registration. Ethiopia is ranked 168 of 189 countries by the World

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<sup>27</sup> CSP, Arts. 14(5), 14(2)(j)–(n).

<sup>28</sup> CSP, Arts. 2(2), 2(4). An additional category, “Ethiopian Resident Charities,” describes those charities that meet every other requirement for domestic status, but receive more than 10% of their funding from foreign sources.

<sup>29</sup> CSP, Art. 92.

<sup>30</sup> CSP, Art. 93.

<sup>31</sup> CSP, Art. 94.

<sup>32</sup> CSP, Art. 104; Ethiopia-EU Civil Society Fund II, Taskforce on Enabling Environment for Civil Society in Ethiopia, *Users’ Manual for Charities and Societies Law*, 2011, p. 41, available at <http://csf2.org/sites/default/files/Users%20Manual%20for%20the%20Charities%20and%20Societies%20Law%20%281%29.pdf>.

<sup>33</sup> CSP, Art. 94(1)(b).

Bank in terms of the ease of starting a business, indicating the number and difficulty of steps required to do so.<sup>34</sup>

With respect to dissolution, rules for business organizations and non-profits are generally similar, with the important caveat that Charities and Societies which are not classified as domestic have significantly reduced opportunities to seek protection from decisions of the CSA to dissolve them and distribute their assets to other groups.

These standards indicate an intention on the part of the Ethiopian government to limit the operations of foreign NGOs within the country, while still allowing the possibility of foreign investment by international for-profit corporations.

### **III. TAX LAWS**

#### **A. For-Profit Organizations**

For-profit companies are subject to approximately 30 total tax payments, the most important of which is the corporate income tax, which is set at a rate of 30%.<sup>35</sup> Payment of taxes, especially those related to pensions and payrolls, may also pose a significant administrative hurdle to small businesses. The World Bank estimates that the average small- or medium-sized enterprise will be required to spend over 300 hours per year preparing taxes.<sup>36</sup>

Significant tax breaks are provided to businesses importing capital equipment or exporting processed goods.<sup>37</sup> Under the regulation on Investment Incentives, investments made in certain sectors are granted a complete exemption from income tax for a certain period of time, depending on their location.<sup>38</sup> A 30% discount on income tax for three years after the initial exemption is granted for companies investing in one of six specified provinces.<sup>39</sup> Customs duties are waived on imports of capital goods which are not produced in Ethiopia, as well as for raw materials that are necessary for the production of

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<sup>34</sup> World Bank Group, *Starting a Business*, June 2014, available at <http://www.doingbusiness.org/data/exploretopics/starting-a-business>.

<sup>35</sup> World Bank Group, *Paying Taxes in Ethiopia*, 2013, available at <http://www.doingbusiness.org/data/exploreeconomies/ethiopia/paying-taxes/>

<sup>36</sup> *Id.*

<sup>37</sup> Ethiopian Investment Commission, *Incentives, Taxation, and Other Procedures*, available at <http://www.investethiopia.gov.et/investment-process/incentives-taxation-and-other-procedures>; KPMG, *Ethiopia Fiscal Guide*, 2013/14, available at <http://www.kpmg.com/Africa/en/KPMG-in-Africa/Documents/2014%20Fiscal%20Guides/Fiscal%20Guide%20Ethiopia.pdf>.

<sup>38</sup> Council of Ministers Regulation on Investment Incentives and Investment Areas Reserved for Domestic Investors, Regulation 270/2012, Schedule 1, available at [http://www.2merkato.com/images/downloads/regulation\\_270\\_2012.pdf](http://www.2merkato.com/images/downloads/regulation_270_2012.pdf)

<sup>39</sup> Regulation 270/2012, Art. 5(2).

export goods. In addition, products developed in Ethiopia are excluded from export customs duty.

The Ethiopian government has also recently created a number of special economic zones for foreign industrial investors.<sup>40</sup> These zones offer discounted land lease rate, income and customs tax incentives, and infrastructure development. There are currently five economic zones under preparation, ranging from 270 to 1050 hectares.

## **B. Not-for-Profit Organizations**

Income from membership dues, grants and donations is not subject to income tax; Charities and Societies must pay income tax on other revenues, including those derived from all income-generating activities.<sup>41</sup> Certain types of charities are exempted from taxes on imported goods, or from VAT.

In general, donations to non-profits are not tax-deductible expenses. This makes raising money from Ethiopian sources significantly more difficult for charities than it would otherwise be, which is particularly important, because, as discussed in greater depth below, Ethiopian non-profits are severely restricted in the amount of money that they can raise from foreign sources. Under Income Tax Regulation 78/2002,<sup>42</sup> there are certain situations in which donations may be tax deductible, namely when the donee organization has a “record of outstanding achievement,” where the contribution is made in response to an emergency request made by the Ethiopian government, or where it is made to non-commercial education or health facilities.<sup>43</sup>

## **C. Comparison**

Both for-profit and non-profit organizations face difficulties associated with taxes in Ethiopia. While international companies are given large tax incentives to invest in Ethiopia, local smaller companies face significant monetary and time costs to pay their taxes. In the case of Charities and Societies, the lack of tax deductibility of donations and the restrictions on other types of fund-raising activities makes it difficult to collect sufficient funds to operate in an effective manner.

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<sup>40</sup> Ethiopian Investment Commission, *Industry Zone Development*, available at <http://www.investethiopia.gov.et/investment-opportunities/strategic-sectors/industry-zone-development>.

<sup>41</sup> International Center for Not-For-Profit Law, *NGO Law Monitor: Ethiopia*, December 17, 2009. <http://www.africanafrican.com/folder15/alot%20more%20of%20african%20&%20african%20american%20history12/ap%20exam/ngo-law-monitor-ethiopia.pdf>

<sup>42</sup> Council of Ministers Regulations no. 78/2002, Regulations Issue Pursuant to the Income Tax Proclamation, available at [http://www.erca.gov.et/images/Documents/Regulation/Domestic\\_Tax\\_Regulations/67.pdf](http://www.erca.gov.et/images/Documents/Regulation/Domestic_Tax_Regulations/67.pdf).

<sup>43</sup> Regulation 78/2002, Article 11.

## IV. FINANCIAL TRANSACTION LAWS

### A. For-Profit Organizations

#### *i. Foreign Investment and Funding*

There are no explicit limitations on use of foreign funds in sectors that are open to foreign investors. However, pursuant to Regulation 270/2012, foreign investment and funding are not permitted in certain delineated sectors, including banking, insurance, mass media/broadcasting, and legal services.<sup>44</sup> In these sectors, only business organizations whose total capital is owned by Ethiopian nationals are permitted to operate. The areas in which foreign investors can invest are set out in Article 4 and the Schedule appended to Regulation 270/2012. In addition, certain sectors are restricted to governmental operations only, including electrical transmission, postal services, air transport, manufacturing of weapons and telecoms.<sup>45</sup> In the last seven years, Ethiopia has seen a nearly 1500% increase in foreign direct investment.<sup>46</sup> The minimum capital requirement for an investment is \$200,000 US, although this requirement is lowered if an investment is made with an Ethiopian partner, or in certain specific sectors.<sup>47</sup>

Also, as noted above, in section II.A, foreign individuals wishing to start a business must meet additional requirements. Specifically, they must, in addition to providing all other required documentation, obtain permission from the Ethiopian Investment Agency to start a company, and obtain foreign investment permits, which must be included in their applications.<sup>48</sup>

#### *ii. Political Contributions*

Pursuant to the Revised Parties Registration Proclamation of September 2008 (PRP),<sup>49</sup> political parties may collect income from “donations or grants by Ethiopian nationals and companies in accordance with the limit to be set by the [National Election] Board on basis of its study.”<sup>50</sup> Foreign persons (natural or legal), however, are not permitted to

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<sup>44</sup> The full list of sectors is set out in Regulation 270/2012, Article 3.

<sup>45</sup> Proclamation on Investment (*PIA*), no. 769/2012, Art. 5, available at [http://www.mot.gov.et/trade-proclamations/-/asset\\_publisher/5ZPPvip9vr0/document/id/1563859](http://www.mot.gov.et/trade-proclamations/-/asset_publisher/5ZPPvip9vr0/document/id/1563859).

<sup>46</sup> Financial Times, *Ethiopia predicts records \$1.5bn overseas direct investment in 2015*, April 26, 2015, available at <http://www.ft.com/intl/cms/s/0/0faa1dac-ea88-11e4-a701-00144feab7de.html#axzz3YcvbNqX1>.

<sup>47</sup> PIA, Art. 11.

<sup>48</sup> CRBP, Art. 32(2)(c), (d), PIA Arts. 12-20. The Ethiopian Investment Agency has provided a flow chart setting out the steps required to start a business as an investor. See [http://www.investethiopia.gov.et/images/pdf/New\\_Investment\\_Permit\\_Application\\_flowchart.pdf](http://www.investethiopia.gov.et/images/pdf/New_Investment_Permit_Application_flowchart.pdf).

<sup>49</sup> Proclamation no. 573/2008, available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/85150/95165/F1884278772/ETH85150.pdf>

<sup>50</sup> PRP, Art. 51(1)(b).

donate money to political parties.<sup>51</sup> Political parties must record and disclose the name of all donors, and the amount that they have contributed.<sup>52</sup> This has the potential to limit the capacity of organizations to donate to opposition parties, given instances of intimidation of political opponents and their supporters by the government during the last parliamentary election.<sup>53</sup>

## **B. Not-for-profit Organizations**

### *i. Foreign Investment and Funding*

Ethiopian law puts significant limitations on the ability of non-profit organizations to accept or employ foreign funding. As noted in section II.B, *supra*, the CSP deems a Charity to be “foreign” if it has any foreign members, or receives more than 10% of its funding from non-Ethiopian sources. So-called “Foreign Charities” face strict limits on their scope of operations, including being barred from advocacy or promotion of human rights and democratization, as well as, in practice, significant repression from the government. Charities based abroad

Amnesty International reports that at least seventeen NGOs in Ethiopia, including two of the four “most prominent” domestic human rights organizations, changed their focus from human rights to development work after the entry into force of the CSP, due to financial concerns.<sup>54</sup> The two prominent organizations to maintain their focus on human rights were forced to cut staff by 85% and 70%, and were also subjected to asset freezes and seizures. The Human Rights Council, Ethiopia’s oldest human rights organization, saw its annual budget decrease by 92.5%, and had 90% of its assets frozen by the CSA.<sup>55</sup>

### *ii. Political Contributions*

The PRP provides that political parties may not accept donations from certain types of association, including a “welfare organization or non-governmental organization,”<sup>56</sup> or a religious organization.<sup>57</sup> Political organizations must return any such donations, or face confiscation, and potential legal liability.

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<sup>51</sup> PRP, Art. 52(1)(a).

<sup>52</sup> PRP, Art. 54.

<sup>53</sup> Freedom House, *Ethiopia Report 2011*, 2011, available at <https://freedomhouse.org/report/freedom-world/2011/ethiopia#.VT-74iFVhBd>.

<sup>54</sup> Amnesty International, *Stifling Human Rights Work: The Impact of Civil Society Litigation in Ethiopia*, March 2012, p. 12, available at <https://www.amnesty.org/en/documents/AFR25/002/2012/en/> (hereinafter AI 2012).

<sup>55</sup> *Id.*, 13-17.

<sup>56</sup> PRP, Art. 52(1)(c).

<sup>57</sup> PRP, Art. 52(1)(d).

## C. Comparison

It is significantly easier for business organizations to attract and employ foreign investment funds than it is for Charities and Societies to do the same. Although foreign investors must receive permission from the Ethiopian government to invest and meet certain other requirements, this permission appears to be fairly easy to obtain, and there are significant incentives for investment.

Non-profits, on the other hand, face severe restrictions on the use of foreign capital and the involvement of foreign individuals in their operations. In addition, charities that have opted to accept such funding have been subject to extensive harassment by the government. It appears that the reason for this disparate treatment is to reduce the impact of foreign citizens and Ethiopians resident abroad in the Ethiopian civil society and political environments.

## V. AUDITING AND REPORTING REQUIREMENTS

### A. For-Profit Organizations

Under the 1960 Commercial Code, each company offering shares must appoint at least one auditor and one assistant auditor.<sup>58</sup> The Auditors may not be directors or officers of the company; their obligation is to audit the books of the company, inform shareholders of the company's condition, and monitor the directors and officers to ensure that they are not engaging in misconduct. However, annual financial statements need not be reviewed by external auditors, and audit reports need not be disclosed to the public.<sup>59</sup> The Ministry of Commerce and Industry may also appoint inspectors to investigate a company where it has good reason to believe that a company has committed fraud on creditors or shareholders, or other illegal activities.<sup>60</sup>

In 2007, the World Bank's Report on the Observance of Standards and Codes for Ethiopia noted a lack of accounting expertise, oversight, training, and certification in the country.<sup>61</sup> As of 2014, accounting requirements for public and private companies are set and overseen by the National Accounting and Audit Board.<sup>62</sup>

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<sup>58</sup> CC, Art. 368, *et seq.*

<sup>59</sup> World Bank Group, *Doing Business in Ethiopia*, 2014, p. 55, available at <http://www.doingbusiness.org/data/exploreeconomies/~media/giawb/doing%20business/documents/profiles/country/ETH.pdf>

<sup>60</sup> CC, Art. 383.

<sup>61</sup> World Bank Group, *Report on the Observance of Standards and Codes (ROSC) Ethiopia: Accounting and Auditing*, November 2007, available at [http://www.worldbank.org/ifa/rosc\\_aa\\_ethiopia.pdf](http://www.worldbank.org/ifa/rosc_aa_ethiopia.pdf).

<sup>62</sup> KPMG, *Ethiopia: Country Profile*, 2012/2013, available at <https://www.kpmg.com/Africa/en/KPMG-in-Africa/Documents/2012-2013%20Country%20Profiles/Ethiopia%20Country%20Profile%202012-2013.pdf>

## B. Not-for-Profit Organizations

Under the Charities and Societies Proclamation, non-profits are obligated to keep records showing all revenues and expenditures; donations must be tracked, and anonymous donations are not permitted.<sup>63</sup> Each Charity and Society with revenues of over 50,000 ETB must prepare a public annual statement of accounts, which must also be examined by a certified internal auditor or an external auditor designated by the CSA if the organization's revenues are over 100,000 ETB.<sup>64</sup> The CSA is also entitled to reports about the state of the organization's bank account annually and upon request.<sup>65</sup>

The CSA also has broad discretion to investigate and impose extraordinary reporting and audit requirements on non-profit organizations.<sup>66</sup> The power granted to the CSA include: the right to demand the production of any documents in the possession of a charity at any time without other legal process;<sup>67</sup> the authority to remove and replace officers of charities if they have been convicted of a crime or have moved out of the country;<sup>68</sup> and the power to dissolve an organization where it has been used "for purposes prejudicial to public peace, welfare or security."<sup>69</sup>

Organizations are prohibited from spending more than 30% of their annual budgets on "administrative costs," which are not defined in the statute.<sup>70</sup> Failure to abide by this rule can lead to steep fines for both the organization and its employees, or even incarceration.<sup>71</sup> In light of this ambiguity, organizations are forced to take an expansive view of what may constitute an administrative cost. Amnesty International notes that a broad swathe of expenses could theoretically be classified as "administrative" under the statutory definition, and that organizations have engaged in "self-censorship" to avoid falling afoul of it.<sup>72</sup>

## C. Comparison

Non-profit organizations face a very high regulatory burden in terms of compliance with auditing and reporting requirements, particularly when compared with the requirements imposed upon for-profit enterprises, which appear to be fairly lax, by international

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<sup>63</sup> CSP, Art. 77.

<sup>64</sup> CSP, Arts. 78–79.

<sup>65</sup> CSP, Art. 83.

<sup>66</sup> CSP, Arts. 84–94.

<sup>67</sup> CSP, Art. 85.

<sup>68</sup> CSP, Art. 91. This is particularly important because many human rights activists have been forced to flee the country following threats. See Human Rights Watch, *World Report 2011: Ethiopia*, 2011, available at <http://www.hrw.org/world-report-2011/world-report-2011-ethiopia>.

<sup>69</sup> CSP, Art. 92(2)(b).

<sup>70</sup> CSP, Art. 88.

<sup>71</sup> CSP, Art. 102.

<sup>72</sup> AI 2012, 7–8.

standards. This indicates that the Ethiopian government may be attempting to use regulatory and reporting requirements to both monitor individuals who are donating to civil society organizations. In addition, the existence of a highly complicated and poorly-defined set of requirements, combined with the possibility of significant penalties for relatively minor violations, may cause a chilling effect, in terms of anti-governmental speech or activity.

## **VI. PENALTIES FOR NON-COMPLIANCE**

### **A. For-Profit Organizations**

Non-compliance with the requirements of the business regulatory scheme can lead to a wide variety of penalties. Failure to fulfill registration requirements or dishonesty in the registration process can lead to denial or subsequent revocation of a business license, while non-payment of taxes, can lead to prosecution and incarceration.<sup>73</sup>

Specific penalties set out in the CRBP for violating its provisions include a fine of 150,000 – 300,000 ETB and imprisonment from seven to 15 years for engaging in commercial activity without a license, a fine of 60,000 – 150,000 ETB and 7 – 12 years’ imprisonment for procuring a license or registration by false pretenses, and a 30,000 – 60,000 ETB fine and 3 – 5 years’ imprisonment for a violation of any other provision.<sup>74</sup>

### **B. Not-for-Profit Organizations**

The penalties for non-compliance with the CSP are set out in Article 102 thereof. Violation of the Proclamation, unless otherwise provided for, is deemed to be a criminal offense, and “punishable in accordance with the provisions of the criminal code.”<sup>75</sup> Specific sanctions provided for in the CSP include fines of 20,000 – 50,000 ETB for failure to keep proper books and accounts regarding donations, 10,000 – 20,000 ETB for failure to submit to the CSA an annual statement of financial records, 50,000 – 100,000 ETB for failure to report, on request, details about its bank accounts, and 5000 – 10,000 ETB for allocating more than 30% of its expenditures to administration.<sup>76</sup> The Article also provides that, for individuals for participate in violations of the CSP, in addition to incarceration provided for by the Criminal Code, supplementary fines of 10,000 – 20,000 ETB may be assessed under that Proclamation.<sup>77</sup> Note that all of these penalties must be assessed by a court.

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<sup>73</sup> Ethiopian Criminal Code, Art. 349(1) (“Whoever . . . refuses to pay, though able so to do, taxes . . . is punishable . . . with simple imprisonment for not less than one year and fine”), *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf>.

<sup>74</sup> CRBP, Art. 60.

<sup>75</sup> CSP, Art. 102(1).

<sup>76</sup> CSP, Art. 102(2).

<sup>77</sup> CSP, Art. 102(3).

Generally, Ethiopian Charities or Societies can appeal sanctions imposed by the CSA to the Director General of the Agency and then to either to the Board of the Agency or to a Federal High Court. Ethiopian Resident and Foreign Charities, on the other hand, may appeal decisions only to the Director General and the Board of the CSA.<sup>78</sup>

### C. Comparison

The potential penalties for violations of the relevant laws in the context of for-profit and non-profit organizations appear to be similar. However, there may have been selective targeting and prosecution of civil society groups, especially those charitable organizations that focus on the promotion of democracy and human rights. For example, as noted in sections IV.B.i and V.B, *supra*, the Ethiopian government appears to have used the legal system to wage a campaign of harassment and intimidation against charities that have continued to operate in these areas, threatening members with prosecution, instituting asset freezes, and otherwise disrupting the ability of these organizations to function. The Ethiopian government has also been accused of using its anti-terrorism and libel laws to attempt to silence journalists who are critical of the government or who report on opposition parties.<sup>79</sup> The UN High Commissioner for Human Rights reports that numerous journalists have been subjected to detention on the basis of their public speech, a situation it calls “unacceptable.”<sup>80</sup>

## VII. CONCLUSION

A comparison of the regulations applicable to for-profit and non-profit organizations provides some indication that the government of Ethiopia has intentionally constructed a framework that will allow it to exert tight control over non-governmental organizations, and strictly limit the capacity of political civil society groups to operate, while employing a relatively lighter (although still bureaucratic) touch towards groups that are more purely charitable or commercial in nature. This is achieved by setting up a series of standards which are, while generally facially neutral, subject to a high potential for arbitrary enforcement on the part of government officials.

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<sup>78</sup> CSP, Art. 104(3).

<sup>79</sup> Human Rights Watch, *Ethiopia: Drop Case Against Bloggers, Journalists*, July 19, 2014, available at <http://www.hrw.org/news/2014/07/19/ethiopia-drop-case-against-bloggers-journalists>.

<sup>80</sup> UN OHCHR, *Continued detention of Ethiopian journalists unacceptable – UN human rights experts*, April 24, 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15890&LangID=E>.

## VIII. SUMMARY CHART

| Issue                           | For-Profit Organizations  | Not-for-profit Organizations  | Similarities  |
|---------------------------------|---|---|---|
| Registration Procedures         | <ul style="list-style-type: none"> <li>• Six types of organizations</li> <li>• Application must be authenticated before submitting</li> <li>• Total cost ~20,000 ETB, 15 days.</li> <li>• 168/189 countries on ease of starting business</li> </ul> | <ul style="list-style-type: none"> <li>• Two types of organizations</li> <li>• Total cost 500-700 ETB</li> <li>• Significant restrictions on activities of foreign groups</li> </ul>      | <ul style="list-style-type: none"> <li>• Foreign groups require government permission</li> <li>• Application includes document describing purpose and internal rules of organization</li> </ul> |
| Tax Laws                        | <ul style="list-style-type: none"> <li>• 30% income tax rate</li> <li>• 30 different payments</li> <li>• ~300 hours to complete</li> </ul>  | <ul style="list-style-type: none"> <li>• Income from dues, grants and donations not taxable</li> <li>• Donations not tax-deductible to donors</li> </ul>                                  | <ul style="list-style-type: none"> <li>• Requirement to pay income tax on commercial activities</li> </ul>  |
| Financial Transaction Laws      | <ul style="list-style-type: none"> <li>• Sectoral limitations for foreign operations, otherwise foreign capital ok</li> <li>• Minimum capital requirement, \$200,000 (US)</li> <li>• Political donations ok</li> </ul>                              | <ul style="list-style-type: none"> <li>• Significant limitations on foreign fundraising</li> <li>• Limitations on political donations from certain types of organizations</li> </ul>      | <ul style="list-style-type: none"> <li>• Some limitations on use of foreign money</li> </ul>  |
| Auditing/Reporting Requirements | <ul style="list-style-type: none"> <li>• Audit reports normally not made public</li> <li>• Government audit only if reason to believe fraud or illegality</li> </ul>  | <ul style="list-style-type: none"> <li>• Heavy involvement from CSA in reviewing and regulating finances</li> <li>• Limits on allocation of expenditures</li> </ul>                       | <ul style="list-style-type: none"> <li>• Internal audit required (for charities, only if over certain income)</li> </ul>  |
| Penalties                       | <ul style="list-style-type: none"> <li>• Variety of sanctions possible</li> </ul>   | <ul style="list-style-type: none"> <li>• Fines in CSP, in addition to Criminal Code sanctions</li> <li>• Appearance of selective enforcement against politically-active groups</li> </ul> | <ul style="list-style-type: none"> <li>• Criminalization of fraud, falsification of financial information</li> </ul>  |