WE, at Mesfin Tafesse and Associates (MTA), have just embarked on an ambitious but challenging and exciting prospect of providing a Monthly Legal Update to our clients and business associates. The main objective of the legal update is to timely inform and alert our clients about changes occurring in the legal landscape with a potential to impact their business. We encourage readers to provide us with their comments on how we can make continued improvements.

MTA is one of the leading law offices in Ethiopia practicing in the areas of Investment/Commercial Law, Merger and Acquisition, Banking and Finance, Mining and Energy, Construction and Manufacturing Industry, Taxation, Civil Society Law, Labour, IT and Telecom providing advisory services including negotiation and drafting of investment/shareholders agreements, preparation of due diligence opinion relating to Merger and Acquisition, corporate title legal opinion, facilitation of local presence, legal consultation in the above areas of practice, research and representation of clients for various purposes including litigation. Please visit our website (www.mt-ethiopianlawoffice.com) if you want to learn more about us.

This issue of our monthly legal update focuses on the following three main developments in the legal environment: the major changes in the new Customs Proclamation, highlights of the amendments of the Investment Proclamation and key features of the Financial Reporting Proclamation.

New Customs Proclamation
The Customs Proclamation No. 622/2009 has been repealed and replaced by a new Proclamation No. 859/2014 effective from the 9th of December 2014.

According to the explanatory note of the draft Proclamation and its Preamble, the reasons initiating the change are:

◊ the need for a modern customs laws and procedures which is aligned with the economic goals set by the Growth and Transformation Plan (GTP), encourage manufacturing industries and investment and compatible with the level of international trade practice;

◊ the need to make a policy shift from customs control to attaining a balance between effective and swift service provision while maintaining customs control;

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The Investment Proclamation No. 769/2012 has been amended by a newly enacted Proclamation No. 849/2014 which entered into force as of 22 July 2014. Similarly, the Regulation on Investment Incentives and Investment Areas Reserved for Domestic Investors has also been amended by Regulation No. 312/2014 which entered into force as of 13th August 2014.

The salient changes introduced by the Proclamation and Regulation relate to institutional status and accountability, administration and development of Industrial Zones and additional incentives.

The specific amendments in the Proclamation are:

◊ The re-establishment of Ethiopian Investment Agency, through regulations, as Ethiopian Investment Commission (EIC) accountable to the Prime Minister;

◊ The re-establishment of Investment Board, through regulations, as Ethiopian Investment Board to be chaired by the Prime Minister and with additional powers to approve the granting of new or additional incentives where necessary; to authorize the opening of investment areas reserved for domestic investors for foreign investors; to administer and supervise industrial zones; to decide on the expansion or reduction of boundaries of Industry development zones, and to issue directives on the overall administration, supervision and construction of Industry development zones, and

◊ The opening of the development of industrial zones to private investors.

Correspondingly the following specific amendments reflecting the changes in the Proclamation and new additions have been made in the Regulation:

◊ Additional income tax incentives for investors investing in Industrial zones 2 years (in Addis Ababa or Special Zone of Oromia surrounding Addis Ababa) or 4 Years (in other areas);

Financial Reporting Proclamation in Force

A new law on financial reporting has been enacted and entered into force as of December 5th, 2014.

Objective: This law was formulated with the objective of establishing a sound, transparent and understandable financial system, enhancing transparency and accountability by centralizing the decentralized financial reporting structure of Ethiopia, ensuring that the provision of financial information meets international standards, and establishing a body that undertakes regulatory responsibilities in financial reporting.

Applicability: The Financial Reporting Proclamation is applicable to all reporting entities both in private and public sectors,
The main purposes prompting the amendments, among others, are the need to create a competitive and conducive investment environment, build a system of investment management competent enough to make quick policy decision, give matters of investment the special attention and support of the highest political leadership, reorganize and build the stature of the Ethiopian Investment Commission as an influential organ representing the investment brand of Ethiopia, open up the development of industrial zones for private developers and revisit the management of the development of industrial zones in a way responsive to developers’ legitimate needs and create a better infrastructure for the development of the manufacturing industry.

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◊ the need for creating a strong system of law enforcement to prevent crimes that negatively affect trade, public security and government revenue, and

◊ the need for the emplacement of contemporary customs laws and procedures as required by the international, continental and regional trade agreement to which Ethiopia is a party.

The new Proclamation No. 859/2014 has made major additions and amendments on the principles of customs operation, customs procedures for outward processing of goods, customs procedure for processing of imported goods for home use under customs control, completion of customs procedure through electronic information exchange system, simplified customs procedures and customs offences and penalties.

Of the major introductions in the Proclamation, the following are important to note:

◊ **Principles of Customs Operation** – require customs operation to promote a self-assessment system whereby
other than public bodies and micro enterprises, established in accordance with Ethiopian laws or operating in Ethiopia and required by law to submit financial reports.

**Key Obligations**: The Proclamation requires reporting entities:

◊ To submit their financial reports to the Accounting and Auditing Board of Ethiopia in accordance with the Standards and the Schedule to be issued and set by the Board;

◊ To ensure that their financial statements are audited as per International Standards for Auditing approved by the Board or in the case of reporting entities constituted or incorporated outside of Ethiopia, pursuant to auditing standards applicable in the country where those reporting entities are incorporated or constituted so long as it is substantially the same with the Proclamation, and

◊ To deliver their financial statements and the consolidated financial statements (if required to prepare) to the Board for registration within 20 working days from the date the financial statement and any consolidated financial statements of the reporting entity (if any), are required to be signed.

The obligation to submit financial report to the Board does not preclude reporting entities from submitting their financial reports to the competent public bodies in accordance with other laws. The financial report to be submitted to the competent public bodies in accordance with other laws is the original copy of the financial report submitted to the Board pursuant to the requirements of the Proclamation.

Furthermore, the law imposes an obligation on directors of reporting entities to ensure that the aforementioned obligations of reporting entities are fulfilled.

**Standards**: The Proclamation specified the applicable financial reporting and auditing standards. The applicable financial reporting standards are international financial reporting standards, international financial reporting standards for small and medium enterprises, international public sector accounting standards applicable to charities and societies issued by the International Accounting Standards Board or its successor or issued by the International Public Sector Accounting Standards Board or its successor as adopted, adapted or amended by the Board. The Auditing standards to be used by auditors in Ethiopia are international standards for auditing issued by the International Federation of Accountants or its successor as adopted, adapted or amended by the Board.

The financial statements of a reporting entity that is incorporated outside Ethiopia is taken to comply with the applicable financial reporting standards of the Proclamation where the Board is satisfied that the financial statements of the reporting entity comply with the requirements of the law in force in the country where the reporting entity is incorporated and the requirements of the country of incorporation are substantially the same as those provided for in the Proclamation.

The Board communicates the standards it approves for implementation in Ethiopia through an official publication called “Public Notice for Financial Reporting and Auditing Standards” to all stakeholders by posting it on its website and by publishing it on not less than two daily newspapers of national circulation, for three consecutive days.

**Regulatory Body**: the Accounting and Auditing Board of Ethiopia, referred above and hereafter as the ‘Board’, accountable to the Ministry of Finance and Economic Development, is established by Council of Ministers Regulation No. 332/2014.

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related to financial reporting and auditing, establish, publish and review code of professional conduct and ethics for certified public accountants and certified auditors, monitor whether financial statements and reports are in compliance with the Proclamation, review the practice of a public auditor (or authorize other qualified regulatory agency or accountability body), accredit organizations as a professional accountability body, suspend and cancel accreditation of such bodies, review and monitor the accuracy and fairness of financial statement to enforce compliance with the reporting standards, facilitate arbitration or conciliation to amicably settle disputes between professionals and their clients, advise the Government on any matter relating to financial reporting, accounting, auditing and corporate governance, represent the accounting and auditing profession in Ethiopia and more as listed under Article 4 of the Proclamation and Article 6 of the Regulation.

Additionally, the Board has the power to set criteria to distinguish reporting entities as either public interest entities or small and medium enterprises and register them accordingly. The Proclamation defined “Public Interest Entity” as a reporting entity that is of significant public relevance as the Board may decide from time to time because of the nature of its business, its size or its number of employees, and includes, in particular, a company whose securities are admitted to trading on a regulated capital market, banks, insurance companies and other financial institutions and public enterprises. Such entities, as the Board may decide, can only be audited by a public auditor, licensed by the Board to act as an auditor for public interest entities.

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importers and exporters present value of goods and pay duties and taxes by themselves, to be based on the principles of risk management, transparency and accountability and to create a conducive environment to provide equitable, expeditious, predictable and reliable service in the exercise of customs control, to promote and support manufacturing industry and economic development, provide clear information to the customers and be based on the use of internationally accepted information technology system, and to prevent illegal practices by promoting self-compliance.

◊ **Customs Procedures for Outward Processing of Goods** – Allows for temporary export of goods for manufacturing or processing abroad upon authorization by the Ethiopian Revenue and Customs Authority in accordance with directive of the Ministry of Finance and Economic Development.

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◊ **Customs Procedure for Processing of Imported Goods for Home Use under Customs Control** – Provides for the procedures in which the Authority may authorize the processing of imported goods, under customs control, before clearance for home use. The Authority will issue a directive which will specify the categories of goods to which such procedure may be applied, the requirements to be fulfilled to grant authorization and the measure constituting the customs control. The products obtained from the processing of the imported goods will be liable for payment of import duties and taxes payable on the imported raw materials as an input for such products and the duties and taxes shall be paid before the sale of the products for domestic consumption. This provision is presumed to encourage investors by enabling them to retain the duties and taxes payable as their working capital when processing imported goods.

◊ **Completion of Customs Procedure through Electronic Information Exchange System** – the new Proclamation introduced an electronic information exchange system between a registered person and the Authority which includes processing and submitting of reports on the arrival or departure of a means of transport or travellers taken on board or goods loaded, completing customs formalities, effecting payment and receiving order of release of goods. A registered person will be allowed to communicate with the Authority by paper only if a failure to the electronic system has been occasioned. The Proclamation also has clearly indicated that digital or electronic evidences shall be admissible before the court of law. With the introduction of these provisions a person can submit electronic copies of documents. The repealed Proclamation partly covered electronics information exchange system for declaration of goods by a directive.

◊ **Simplified Customs Procedures** – introduces a simplified procedure for goods in relation to Declaration and Clearance of goods. The different forms of simple procedures introduced for Declaration of goods are:

* releasing goods with the provision of minimum information necessary to identify the goods and permit for the subsequent provision of the declaration;
* allowing of making a consolidated declaration of goods in a given period of time for frequent importers and exporters, and
* allowing the lodgement of declaration of goods by means of an entry in the records of the authorized person to be supported by declaration of foods to be made subsequently.

The procedure for clearance of goods allows the clearance of goods at the declarant’s business premise or another place to be authorized by the Authority. The application of the simplified procedure is allowed on selected and registered persons upon continued on page 7
fullfilling certain criteria specified by the Authority. The Proclamation gives favourable treatment to exporters and manufacturers as it obliges the Authority to give a special consideration to them in setting the criteria for the selection of authorized persons. In the repealed Proclamation, this simplified procedure was addressed by a directive.

◊ **Customs Offences and Penalties** – This chapter categorized customs offences and penalties into two chapters: the first as customs offences punishable with administrative penalties (fine) and the second as customs criminal offences punishable with imprisonment and/or fine depending on the gravity of the case.

Customs offences punishable with administrative penalties are failure to comply with restrictions on import and export of goods, causing evasion or understatement of duties and taxes, opening of parcels and removal of marks, failure to return samples, failure to comply with obligations of carrier, failure to comply with warehouse permit conditions, failure to observe customs transit procedures, misuse of duty free goods and misuse of temporarily imported goods. These offenses are punishable with a minimum monetary fine of ETB 5000 and payment of the percentage/whole/double of duties/taxes payable, as the case may be. In the previous customs proclamation, some of these offences used to be considered as criminal offences resulting in criminal sanctions with imprisonment and fine.

The second category, customs criminal offences, are obstruction of customs control, falsifying and counterfeiting documents and symbols, contraband, crime of fraudulent acts, crimes committed by opening of parcels and removal of marks (committed with the intent of procuring undue advantage or cause any damage), criminal offenses by carrier, and unauthorized use of electronic information exchange system. These offenses are punishable by simple imprisonment not less than six months up to a rigorous imprisonment not exceeding 15 years and with a fine not exceeding ETB 200,000, depending on the type of offense and its gravity.

◊ **Corporate Liability:** The new Proclamation makes legal persons liable when they participate in the commission of all the mentioned Customs Criminal Offences. And further provided that the punishment imposed for such Criminal Offences shall be in accordance with Article 90 of the Criminal Code of Ethiopia, which imposes the equivalent fine in monetary terms for Offences punishable in imprisonment. The repealed Proclamation, however, penalizes legal persons in relation to the commission of only two offences: fraudulent acts committed under the cover of legally declared goods and other fraudulent acts (Article 92 and 93 of the Customs Proclamation No. 622/2009).
In addition to the introduction of changes discussed above, the Proclamation has made amendments relating to the following areas:

- procedures to secure movement of transiting goods which provided provisions in relation to customs seal and procedures en route;
- procedures for clearance of goods;
- procedures for travellers;
- customs warehouse;
- post clearance audit and the period for refund over overcharges of duties and taxes;
- the maximum period for retaining information supplied to the Authority during processing customs formalities, and
- penalties or elimination of penalties for customs offences.

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Enforcement: The law penalizes non-compliance with the provisions of the Proclamation, Regulation and Directives to be issued by the Board by reporting entities, their directors, public auditors, certified auditors and accountants with fine or imprisonment or both, depending on the circumstances of the case.

Effective Date: The Proclamation entered into force on the 5th of December, 2014. However, the transition period for reporting entities to comply with the provisions of the Proclamation is to be prescribed by the Board taking into consideration the capacity and preparedness of reporting entities, provided, however, that this time frame in no event exceeds five years.

Therefore, it is important for reporting entities to enlighten themselves with the requirements of this Proclamation, prepare and build their capacity to comply with the provisions and adhere to the standards and directives to be issued by the Board and abide by therewith.