

## SPECIAL ADMINISTRATIVE MEASURES AGAINST FOREIGN INVESTORS UNDER THE ETHIOPIAN INVESTMENT LAW. A COMPARATIVE ANALYSIS WITH THE CHINESE FOREIGN INVESTMENT NEGATIVE LIST CATALOGUE

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### *Abstract*

*In the era of globalization states are always in competition in attracting foreign investments. They adopt different legal frameworks with incentives as a means to attract more foreign direct investments to their country. Currently developing countries have come to employ a negative list approach in dealing with foreign investments. Items listed in the negative list are mostly the ones that are totally prohibited to invest by foreign investors or they are very restricted that require further preconditions. These prohibitions and restrictions mainly basis on national security and public concern. Therefore; states which want to attract foreign in investment usually list out certain items that are excluded from foreign investment and open more areas of investment opportunities for foreign companies. In this paper the writer attempted to analyze the common features and disparities among the Chinese and Ethiopian Negative List Catalogue (NLC) by comparing the legal frameworks that governs the issue at hand in both countries. Hence, comparative study of both countries legal regime governing negative list has been made. In addition, pertinent literatures that conforms to the issue has been also reviewed by the writer. Finally, the writer had identified that both states have certain similarities in either prohibiting or restricting foreign investments. At the same time there are also many differences among the negative list catalogue of china and Ethiopia with regard to publication, internet news transmission, cultural protection, education and research related investment areas. The analysis indicates that differences in catalogue outweighs the similarities.*

**Keywords:** *Negative List Catalogue, Foreign Direct Investment, Special Administrative Measures, Ethiopia, China*

### **INTRODUCTION**

The Ethiopian domestic investors are constrained by shortage of capital, technology, and marketing knowledge to penetrate international markets.<sup>1</sup> Thus, the country need foreign direct investment to play a significant role in bridging these gaps among domestic investor and to help build their capacity to fill their gaps.<sup>2</sup>

China also need foreign investment to accelerate its economy.<sup>3</sup> Both countries have the same policy towards Foreign Direct Investment (hereafter FDI). Both have developed a legal frameworks that can have the potential to attract foreign investment to their respective countries.

The legal regime governing investment issues are classified based on areas of investment that can be invested by domestic investors, foreign investors, joint ventures with governments and/or domestic

<sup>1</sup> *Foreign direct investment in Ethiopia, Opportunities and Challenges, 2017, p,12-15*

<sup>2</sup> *Ibid*

<sup>3</sup> *Jakubczak, J. (2020). China's Foreign Investment Encouraged Catalogue and Negative Lists as a Tool of Foreign Direct Investment Attraction, Annales Universitatis Mariae Curie-Skłodowska, sectio H – Oeconomia, Vol. 54, No. 2, p, 22-23*

investors as encouraged , restricted and prohibited ones.<sup>4</sup>

Under both jurisdictions legal frameworks governing the issue of foreign investments have been revised and came to evolve to attract more foreign investments. Both countries have gradually come to open more sectors and items for foreign investments.

In this paper the writer attempt to identify both similarities and differences among the Chinese and Ethiopian negative list catalogue governing foreign investments. Therefore; the core focus of this work is to identify the basic common features and disparities of the two states with regard to negative list catalogue.

### OVERVIEW OF THE CHINESE NEGATIVE LIST CATALOGUE

Since China joined the WTO in 2001, the Catalogue for the Guidance of Foreign Investment Industries was published in 2001 and has been under continuous revision.<sup>5</sup> The national negative list has been under constant revision.<sup>6</sup> **China has been revising it every year and finally amended the 2020<sup>7</sup> negative list catalogue in 2021.<sup>8</sup>**

The 2021 National Negative List has removed two restricted items from its 2020 content and decreased it from 33 to 31<sup>9</sup>, while the new 2021 FTZ Negative List removed three items, cutting it down to 27 from 30.<sup>10</sup>

The 2021 Foreign Investment Negative List includes twelve categories. These are: Agriculture, forestry, animal husbandry, and fishing; Mining; Manufacturing; Electric power, heat, gas, and water generation and supply; Wholesale trade and retail trade; Transportation, warehousing, and postal service; Information transmission, software, and information technology service; Leasing and commercial services; Scientific research and technical services; Education; Human health and social work activities; and Culture, sports, and entertainment.<sup>11</sup>

### OVERVIEW OF THE ETHIOPIAN NEGATIVE LIST CATALOGUE

Unfortunately likewise china, Ethiopia has also recently revised its investment law that has come up with additional sectors for foreign investments.<sup>12</sup> This law has also states areas of investment that can be invested by foreigners, domestic investors and in joint venture either with government or domestic investors.<sup>13</sup> Hence, it is possible to regard that both states are similar with having a recent special

<sup>4</sup> Xianjun Feng and Chuanhui Wang, *China's Foreign Investment: Moving Toward Greater Liberalization?* 10 PENN. ST. J.L. & INTL AFF. 115, 2022

<sup>5</sup> *Supra* note at 4

<sup>6</sup> *Supra* note 3, p,24

<sup>7</sup> <https://www.china-briefing.com/news/2021-china-negative-lists-update-widen-market-access-for-foreign-investment>. (Accessed on December 26)

<sup>8</sup> <https://cms.law/en/chn/publication/what-is-new-in>. (Accessed on December 27)

<sup>9</sup> <https://www.china-briefing.com/news/2021-china-negative-lists-update-widen-market-access-for-foreign-investment>. (Accessed on December 23)

<sup>10</sup> *Ibid*

<sup>11</sup> <https://www.china-briefing.com/news/chinas-foreign>. (Accessed on December 28)

<sup>12</sup> *Federal Democratic Republic of Ethiopian Investment Proclamation Number 1180/2020, Addis Ababa 2<sup>nd</sup> April,2020*( here after EIP)

<sup>13</sup> *Ibid*, See also *Ethiopian Investment Regulation number 484/2020*(here after EIR), *Ethiopian investment regulation 270/2012*. See also, Kenichi Ohno, *Ethiopia FDI Policy Report 2022*, GRIPS Development Forum January 27, 2022

management measures for foreign investments.

In similar way, though the pace of revision is not like the case of china Ethiopia has been revising the areas of investments to foreign investments from time to time. The recent proclamation number 1180 that was enacted in 2020 has increased the number areas on which foreign investors can engage in by their own.<sup>14</sup>

Ethiopia has also come to follow the negative list approach by governing only certain sectors that are either exclusively invested by the government in the form of joint ventures with foreigners or domestic investors, Only reserved for domestic investors and joint venture with foreign investors and left other sectors open for foreign investments.

Furthermore; there are also areas of investments opened for foreign investments to engage either in the form of joint venture with the government or with domestic investors. The same is also true in the case of china that domestic investors can also work with foreign investors in certain item that are allowed by the law.

Having said this much about the overall legal frameworks of china and Ethiopia with regard to foreign direct investments, the basic similarities and differences among the negative list of foreign direct investments in both countries will be discussed in the next two sub-topics.

#### **BASIC SIMILARITIES AMONG CHINA'S AND ETHIOPIA'S NEGATIVE LIST CATALOGUE**

**Under the Chinese foreign investment NLC of 2021 version it is forbidden for foreign investors to invest in the calcination of Chinese herbal medicines, and other products of proprietary of Chinese medicines. It is totally prohibited for foreign investors.<sup>15</sup> The Ethiopian investment law regulation has also provides that engagement in making indigenous traditional medicines businesses are reserved for domestic investors.<sup>16</sup> The Regulation provides that foreign investors cannot engage in making Ethiopian indigenous medicines. Hence, both china and Ethiopia have similar negative list with regard to making herbal and indigenous medicines in prohibiting foreign investors. The Ethiopian law forbids foreign investors to engage in creating legal firms or Attorney and legal consultancy services to work in Ethiopia.<sup>17</sup>**

Likewise, Investment in Chinese legal matters shall be prohibited and a foreign investor shall not be appointed as a partner of a domestic law firm.<sup>18</sup> China prohibits foreign investment in various levels of radio stations, television stations, radio and television channels radio and television transmission network shall be prohibited. <sup>19</sup> It is also prohibited to engage in the business of video broadcasting by order of radio and TV.<sup>20</sup> Ethiopian law forbids foreigners to engage in media service business investments.<sup>21</sup> Thus, both china and Ethiopia do not allow for foreign investors to engage in media service investments that aims to avoid and control for the flow confidential information.

<sup>14</sup> Art. 4(2) of EIP. See also Art 7 of EIR.

<sup>15</sup> Item Number 6 of the Chinese Negative list catalogue (here after NLC)

<sup>16</sup> Article 4(15) of the EIR

<sup>17</sup> Item 31 of NLC

<sup>18</sup> Item 6 of NLC, See also <https://www.china-briefing.com/news/2021-china-negative-lists-update-widen-market>.

<sup>19</sup> Item 27 of NLC. <https://www.registrationchina.com/articles/china-negative-list-2021>.

<sup>20</sup> Item 28 of NLC See also <http://english.mofcom.gov.cn/>

<sup>21</sup> Article 4(22) of the Reg. See also Regulation 270/2012 of Ethiopia

The other similarity among the two states will be with regard to medical service institutions. Under Chinese negative list catalogue medical institutions are limited to the form of equity joint venture.<sup>22</sup> In the case of Ethiopia primary and middle level health services are only reserved for domestic investors.<sup>23</sup> Even though in the Chinese case all medical institutions are limited to equity joint venture in Ethiopia for higher medical institutions are open for foreign investments. Thus; though there is difference in both laws of these states it is possible to argue that there is a room for foreign investments.

The Chinese recent negative list catalogue provides that the construction and operation of nuclear power plants will be under the controlling stake of Chinese Party.<sup>24</sup> The Ethiopian also stipulates that transmission and distribution of electrical energy through integrated national grid system is reserved for domestic investors only.<sup>25</sup>

Chinese telecommunications companies are subject to the provisions of China's WTO commitments.<sup>26</sup> Ethiopia's telecommunication sector has been under the total control of the government. But now it is partially owned by foreign investments (Safaricom) Therefore; it is possible to argue that both systems have similar approach that has a room for foreign investment in the telecommunication sector. Like in case of China, the mining sector is under the control of government and foreigner companies can only invest in the form of joint venture with the government. In the next sub-section a brief analysis of divergence among the negative list of two countries will be discussed.

#### **DIFFERENCES AMONG NEGATIVE LIST CATALOGUES OF CHINA'S AND ETHIOPIA'S FOREIGN INVESTMENT**

In china domestic water transport companies must be controlled by the Chinese Party whereas, there is no legal framework that govern domestic water transport.<sup>27</sup> Ethiopia has also largest rivers lakes and islands that can serve for domestic transportation and it is allowed for FDI.<sup>28</sup> That is to say, in Ethiopia foreigners are allowed to engage in domestic water transportation where it is restricted to investment on similar areas. Hence, this can be cited as one the basic difference among two countries negative list catalogue with regard to foreign investments.

Concerning transport investment in china; the controlling stake of public air transport companies shall be held by the Chinese Party.<sup>29</sup> However, In the Ethiopian case however; construction and drilling services of Grade I and above are open for foreign investment. In addition; International Air Transport services are also open to invest in the form joint venture with the Ethiopian government.<sup>30</sup>

Under the Ethiopian foreign investment negative list Postal Service investments are open for foreign investment in the form Joint Venture with the Ethiopian government whereas; it is forbidden for foreign investors to invest in postal service and domestic express delivery for letters.<sup>31</sup> Of course, the Ethiopian law also prohibit foreigners to engage in courier services that does not include investments related with

<sup>22</sup> Number 24 of NLC

<sup>23</sup> Article 4(3) of the EIR

<sup>24</sup> Item 8 of NLC

<sup>25</sup> Art. 4(2) of EIR

<sup>26</sup> <https://cms.law/en/chn/publication/what-is-new-in>

<sup>27</sup> Item number 12 of NLC

<sup>28</sup> Article 6(3) of the proclamation 1180/2020, See also Article Art. 6 of the EIR

<sup>29</sup> See item number 13 of NLC

<sup>30</sup> Article 4(3) and 5(8) of the EIR

<sup>31</sup> See art. 3(5) of the regulation, see also item 11 of 2021 NLC

secret information and urgent services.

With Regard to communications, investment in Internet news service, internet publishing service, Internet audio-visual program service, cyber culture operation and Internet information dissemination services are listed out under the negative catalogue.<sup>32</sup> However; the Ethiopian law simply provides that media services are reserved for domestic investors and does not list out these areas as exclusions.

Henceforth, it is possible to put that the Ethiopian law allows open internet news dissemination for foreign investment. Similarly, in Ethiopia audiovisual services; motion picture and video recording, production and distribution are open for foreign investments. Foreign investors can engage in such investments by forming joint venture with the Ethiopian government.<sup>33</sup> Therefore; regarding this there are differences among the two states.

Under the Chinese investment catalogue list foreigners are not allowed to engage in market research and it is totally prohibited. Conversely; the Ethiopian law does not prohibit foreigners to engage in market research. As far as social survey is concerned, the Ethiopian law does not prohibit foreigners to invest in the areas of social survey. But the Chinese law on negative list totally prohibit and forbid foreigners to engage in social survey research.

Furthermore; foreigners are not allowed to engage in construction of air ports in china. Nonetheless the Ethiopian law allows for foreigners to engage in different types of construction works except for construction works that require below grade one license.

Investment in editing, publishing, and production of books, newspapers, periodicals, audio-visual products, and electronic publications are totally prohibited in the Chinese catalogue list. But, these areas of investments are not prohibited in Ethiopia. Therefore, foreigners can engage in similar activities in Ethiopia while they cannot invest on similar items under the Chinese investment laws.<sup>34</sup>

Concerning publications and printing, the Ethiopian law allows investing in areas of editing books newspapers and periodicals to foreigners. To the contrary, these activities are totally forbidden for foreign investment under the Chinese investment Law. In similar way foreigners cannot engage on areas of investment related with auction companies for heritage auctions, heritage stores, and state-owned heritage museums under the Chinese Law. However, it is possible in the case of Ethiopia.<sup>35</sup>

Other areas of divergence rests with cultural shows and performance, medical service, education, research, scientific application of stem cell and diagnosis. Foreigners cannot engage in cultural groups or performances in china while it is allowed in Ethiopia. Medical institutions can be owned in the form of joint venture in china whereas, it is allowed to invest in higher medical institutions in the case Ethiopia. Again will not allow foreigners to engage in pre education, compulsory education and religious education. Though, it is not prohibited and foreign investors can invest on similar areas in Ethiopia. Above all, it is forbidden by the Chinese Catalogue to invest in geodetic surveying, marine surveying and mapping, and other surveys by foreigners.<sup>36</sup> Yet; the Ethiopian counterpart law does not prohibit foreigners to invest in these areas.

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<sup>32</sup> *Item 15 of NLC*

<sup>33</sup> *Art. 4(2) (f) of EIR*

<sup>34</sup> *Item 26 of NLC*

<sup>35</sup> *Item 30 of NLC*

<sup>36</sup> *Item 21 NLC*



In similar way, it is prohibited to invest in the development and application of human stem cells and gene diagnosis and treatment technologies by foreigners in china.<sup>37</sup> But it is not prohibited in Ethiopia. China prohibit to invest in humanities and social science research institutions whereas it allowed in Ethiopia.<sup>38</sup> Selection of new wheat varieties and seed production shall be hold no less than 34% of the shares, and the selection of new corn varieties and seed production must be controlled by the Chinese Party. To the contrary the Ethiopian negative list does indicate any restrictions with this regard.<sup>39</sup>

Investment in research and development, cultivation and plantation of Chinese rare and unique precious fine varieties including excellent genes of planting, husbandry, breeding genetically modified varieties of crop seeds, livestock and poultry breeds, fishing and aquatic breeds and aquaculture are prohibited in china. However except for rare earth protection there is no limitation to this in the case of Ethiopia.<sup>40</sup> Investment in wholesale, retail of tobacco, cigarettes, re-dried leaf tobacco, and other tobacco products are prohibited in china.<sup>41</sup> But these are not prohibited in the case of Ethiopia. Investment in film production companies, distribution companies, cinema companies, and film importation businesses shall are prohibited in china where as these investment areas can be invested by foreigners in Ethiopia.<sup>42</sup>

## CONCLUSION

The whole concept of this paper is to analyze legal regimes governing negative list catalogue in case of China and Ethiopia. Both states are taking legal measures in revising their investment law to attract more foreign direct investments. Both of them follow the negative list approach which outlines items that are either excluded or restricted from foreign investments.

Contents wise both countries share some elements as basic common features. However there are also many differences in opening items for foreign investments. In both cases they have common features in terms of investments on production of indigenous medicines, legal firm and consultancy, media service, nuclear planting, telecommunication and mining.

Nevertheless, they also differ with regard to domestic transportations, postal service, and information transmission via internet, conducting market research, social survey, production and editions of books and periodicals, culture, education, health social science research, seed variety production, aqua cultures. As compared to the number of similarities in negative list catalogue the differences among the countries are much higher. The writer has also able to identify the potential loopholes of the Ethiopian investment law that the Chinese robust experience should serve as lesson for Ethiopia.

## REFERENCES

### A. Journals and Articles

1. Jakubczak, J. (2020). China's Foreign Investment Encouraged Catalogue and Negative Lists as a Tool of Foreign Direct Investment Attraction. *Annales Universitatis Mariae Curie-Skłodowska, sectio H – Oeconomia*, Vol. 54, No. 2,

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<sup>37</sup> *Item 19 of NLC*

<sup>38</sup> *Item 20 of NLC*

<sup>39</sup> *Item 1 NLC*

<sup>40</sup> *Item 2 NLC*

<sup>41</sup> *Item 9 of NLC*

<sup>42</sup> *Item 29 of NLC*

2. Kenichi Ohno, Ethiopia FDI Policy Report 2022, GRIPS Development Forum January 27, 2022
3. Xiajun Feng and Chuanhui Wang, China's Foreign Investment: Moving Toward Greater Liberalization? 10 PENN. ST. J.L. & INTL AFF. 115 (2022)
4. Foreign Direct Investment in Ethiopia, Opportunities and Challenges, 2017,

#### **B. Laws**

1. Federal Democratic Republic of Ethiopian Investment Proclamation Number 1180/2020, Addis Ababa 2<sup>nd</sup> April, 2020
2. The Chinese 2021 version of Negative List Catalogue for Foreign Investment Access, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM), December 27, 2021,
3. Ethiopian Investment Regulation number 484/2020, FDRE Council of Ministers, Addis Ababa Ethiopia, 2020
4. Ethiopian Investment Regulation Number 270/2012, FDRE Council of Ministers, Addis Ababa Ethiopia, 2012

#### **C. Internet Links**

1. <https://www.china-briefing.com/news/2021-china-negative-lists-update-widen-market-access-for-foreign-investment>. (Accessed on December 26, 2022)
2. <https://cms.law/en/chn/publication/what-is-new-in>. (Accessed on December 27, 2022)
3. <https://www.china-briefing.com/news/2021-china-negative-lists-update-widen-market-access-for-foreign-investment>. (Accessed on December 23)
4. <https://www.china-briefing.com/news/chinas-foreign>. (Accessed on December 28, 2022)
5. <https://www.china-briefing.com/news/2021-china-negative-lists-update-widen-market>. (Accessed on Dec. 26, 2022)
6. <https://www.registrationchina.com/articles/china-negative-list-2021>. (Accessed on Dec. 25, 2022)
7. <https://cms.law/en/chn/publication/what-is-new-in>. accessed on December 26, 2022)
8. <http://english.mofcom.gov.cn>. Accessed on December 25<sup>th</sup>, 2022)