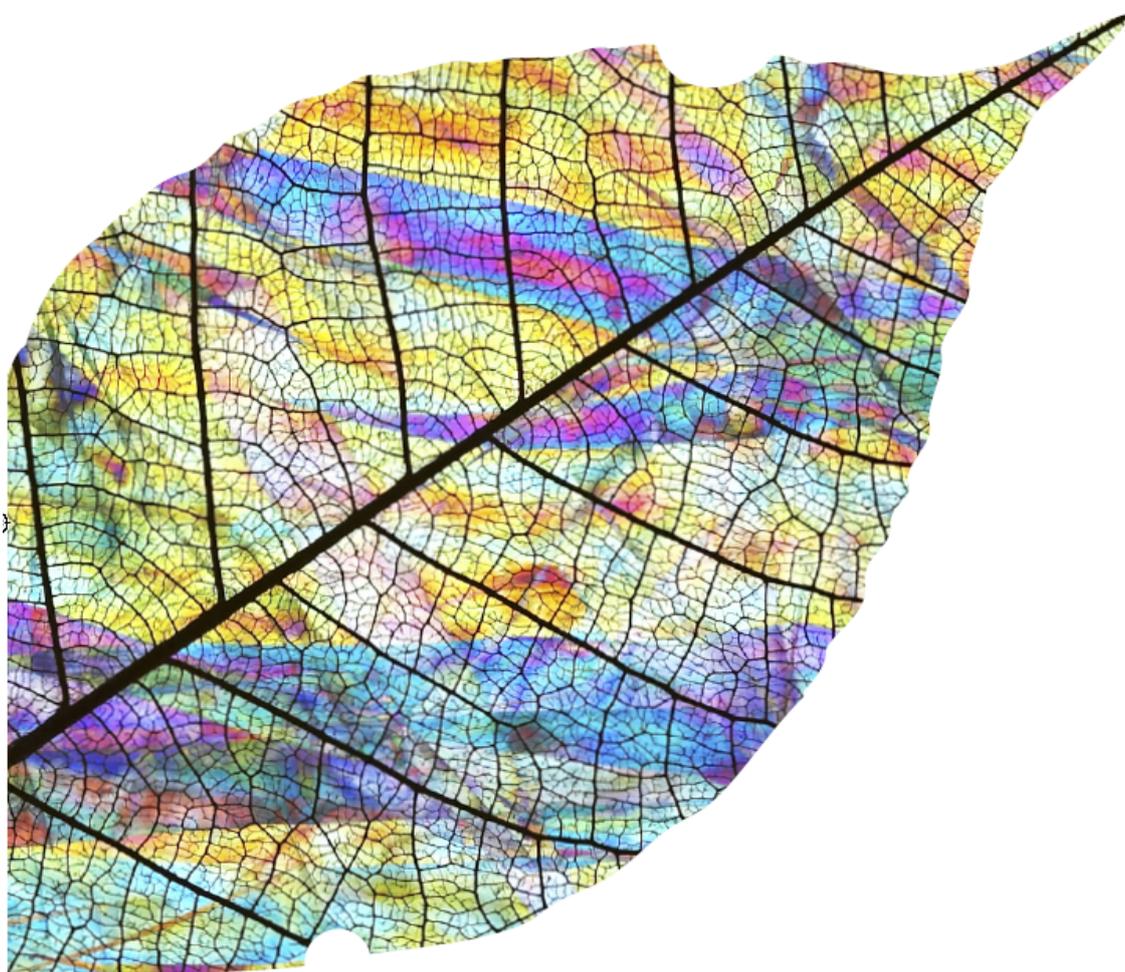


World Universities Comparative Law Project

Legal rating of Ethiopia

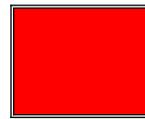
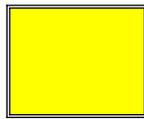
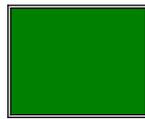
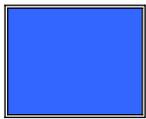
carried out by students at the University of Addis
Ababa

A production of the Allen & Overy Global Law Intelligence Unit



September 2017

World Universities Comparative Law Project
Legal rating of Ethiopia carried out by students at
Addis Ababa University
September 2017



Produced by the Allen & Overy Global Law Intelligence Unit

World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Ethiopia was carried out by students at the Addis Ababa University.

The members of the Faculty of Law at the Addis Ababa University who assisted the students were:

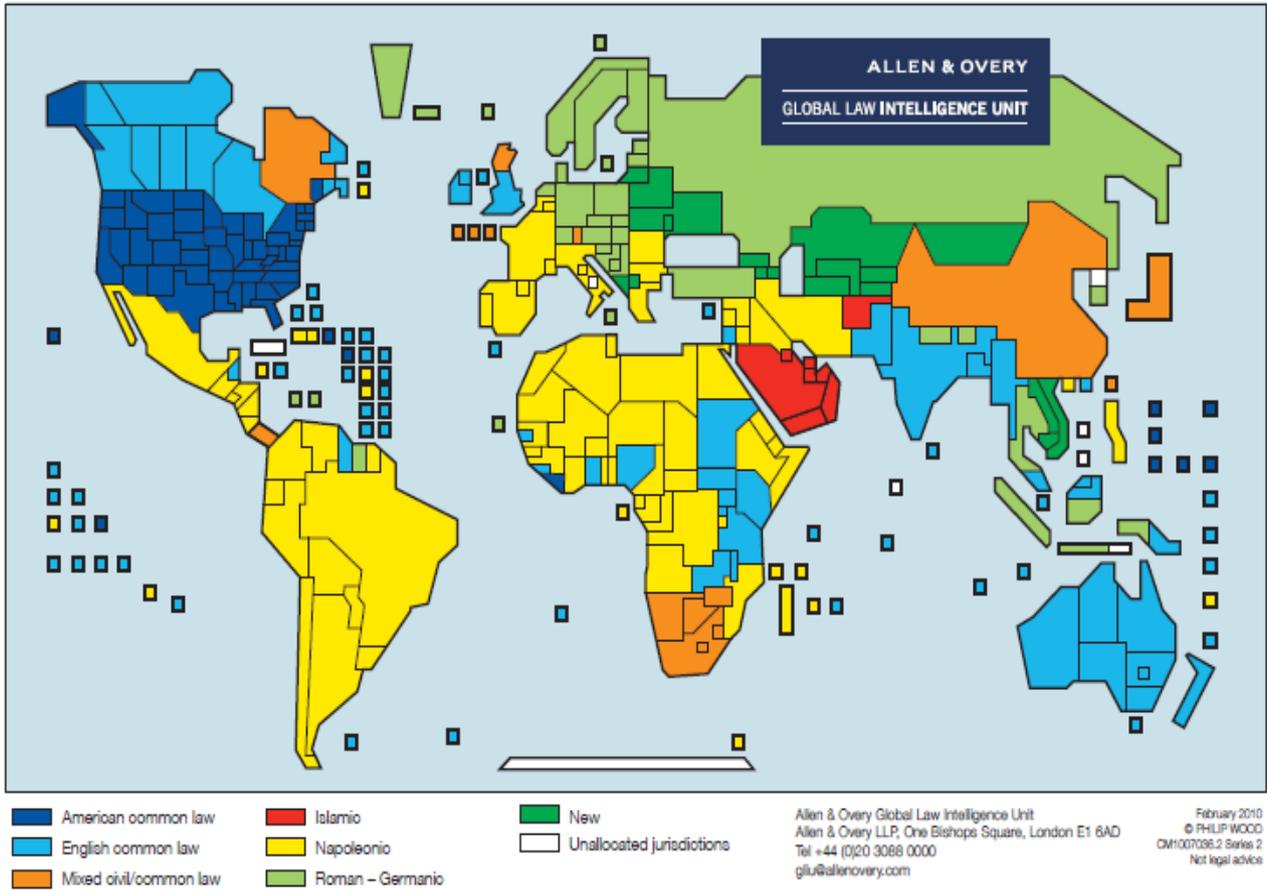
Dr. Yonas Bermeta (Head of the School of Law)

Mr. Tewdros Meheret (Professor of Law at this university and practicing lawyer)

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Description of the legal rating method

Introduction

This paper assesses aspects of the law in [Addis Ababa] with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

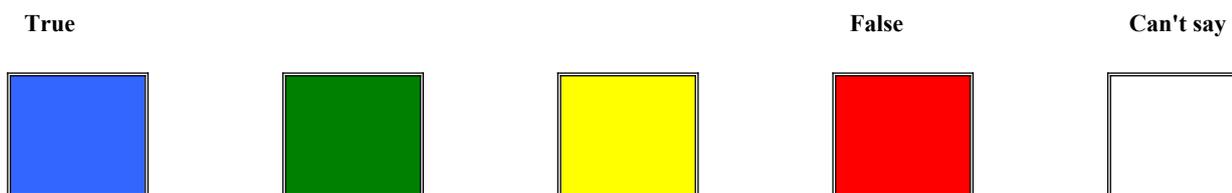
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at [Addis Ababa] University. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of [Addis Ababa] University, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of [Ethiopia]. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- Personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations

as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

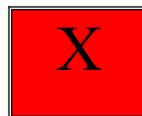
Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Ethiopia, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True



False



Can't say



Comment:

Therefore, in the absence of clear provision which allows the set off of mutual debts in case of bankruptcy, it is considered most doubtful that set-off on bankruptcy is allowed except possibly in the case of closely connected debts.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods

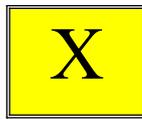
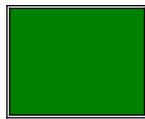
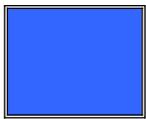
and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

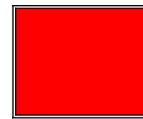
The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Ethiopia, the law offers a security interest which is highly protective of the secured creditor.

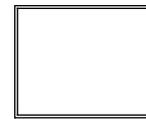
True



False



Can't say



Comment:

The secured creditors are favoured perpetually under relevant Ethiopian laws. The law states that even the future debt can be secured. As for the properties eligible for security interest, it provides broadly so as to include chattels, totality of effects or even claims and of course buildings. That being said, the secured creditors who have an encumbrance enjoy priority in the case of default or bankruptcy. Banks for example have a general entitlement of foreclosure which empowers them to sale the asset encumbered (they have the right of foreclosure which is a privilege to them). In the case of bankruptcy too, the secured creditors even retain the right to bring an unlike unsecured (ordinary ones). In both ordinary default and bankruptcy, unsecured creditors will only be remembered after the secured creditors' claims have been satisfied.

Under Ethiopian law of secured transactions the creation, perfection and enforcement mechanisms of the security interest are pro-creditor. Securities under Ethiopian law are categorized as mortgage, pledge, antichresis, and personal guarantee depending on the nature of the collateral or their perfection mechanisms. Mortgage is created by a written agreement on immovable properties, businesses or ships, and perfected by registration at the register of immovable properties, business licensing offices, or register of ships respectively. Pledge is a possessory security created by written contract on movable properties, intangible properties and rights, and perfected by the transfer of possession of the pledge to the creditor or to a person designated by agreement of both parties. Antichresis is a type of mortgage which obliges the debtor/mortgagor to transfer the possession/occupation of the immovable property until the debt is fully paid. The creation and perfection mechanism of antichresis contract is the same as of mortgage contract. Personal guarantee is a type of security agreement which is provided by legal or physical persons in order to guarantee the performance of obligations by the debtor.

NB. Ethiopian laws have no provision for independent guarantees. Rather it provides for the dependence of guarantee obligation on the existence or validity of the underlying obligation. However, banks use international rules of practices like UCP 600 in order to provide independent guarantee service, especially for foreign clients.

Universal trusts

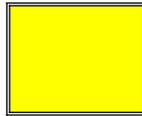
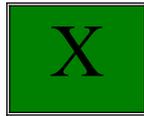
Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

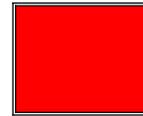
All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Ethiopia has a universal trust for all assets.

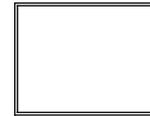
True



False



Can't say



Comment:

Trusts are allowed by articles 516 to 544 of the Ethiopian Civil Code of 1960 but may be limited to donations or wills (article 517). Conditions of the trustee have no right whatsoever on the property forming the object of the trust: article 536.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

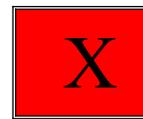
There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Ethiopia the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

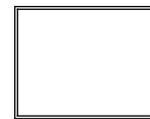
True



False



Can't say



Comment:

Maybe if I can refer to the specific relevant provision of the Ethiopian commercial Code, Art. 362(1(g)) provides that directors are responsible for applying to the court where the company stops payment with a view to composition or winding up of the company. Should they fail to do, Art. 364 of the same Code clearly state that these directors are jointly and severally liable for any damage that is caused by their failure. Thus, it imposes a liability for failing to file for insolvency. The funny part is that the law shifts the burden of proof to these directors in case they want to avail themselves of care and diligence they have made. They have to proof that they have indeed exercised the necessary care and diligence.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 Ethiopia permits a company to grant financial assistance for the purchase of its own shares.

True



False



Can't say



Comment:

Relevant Ethiopian Laws provide in a kind of general manner that granting financial assistance so that its own shares are purchased is prohibited. The law prohibits companies from giving loans for acquisition of their own shares. It generally posits that a company shall not grant advances on its own shares, nor make loans to enable third parties to acquire shares. It seems that no exception is made. However, the currently applicable commercial code is being revised which I could not access. Only time would tell us the revisions!!!

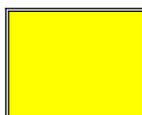
Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Ethiopia is open and has few restrictions.

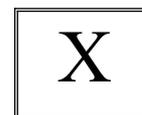
True



False



Can't say



Comment:

I am afraid!!!

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to

quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

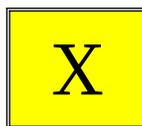
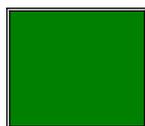
The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

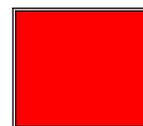
Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Ethiopia, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True



False



Can't say



Comment:

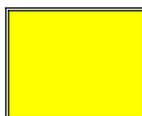
Ethiopian laws, and indeed the court practices seem to implicate that the current position is more or less in between the two extremes. To begin with, commercial contracts are contract and to that extent subject to the provisions governing interpretation of contract provisions which are to be found under the civil code. On one hand, it capitalises on the privity and sanctity of contracts by binding the commercial parties to the terms stated in the contract. Thus, terms stipulated in the contract are to be as good as law (Art 1731 of the Civil Code). At some other time it also posits that In making its decision, the court shall have regard to the interests of the parties and the requirements of good faith (Art. 1785 of the Code) and that contracts shall be interpreted in accordance with good faith having regard to the loyalty and confidence which should exist between parties according to business practice (Art. 1732 of the Code)

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Ethiopia, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True



False



Can't say



Comment:

Unfortunately we don't have many companies that would be labeled as 'sophisticated companies' here in Ethiopia as such. Being a developing country, not to say underdeveloped, country, these companies are yet to exist. However, to the best of my knowledge and of appreciation of the Ethiopian laws, there is no such deferential and preferential treatment for these companies. For instance had it been individuals, they could stipulate certain event occurrence of which brings the contract to an end. Conditional contract of these types is generally upheld in Ethiopia. The governing rule on the interpretation of the contract (Art 1733 of the Civil Code) dictates that where the provisions of a contract are clear, the court may not depart from them and determine by way of interpretation the intention of the parties. Therefore, regardless of the triviality or otherwise of the condition set, it is to be given an effect and I think it also applies to these companies we have here. Parties to a contract are free to determine on which condition their agreement will be terminated. The law doesn't care about the weight of the conditions of termination; rather the concern would be whether the parties to the contract are freely given their consent to the termination

Exclusion clauses

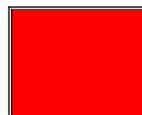
Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Ethiopia, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

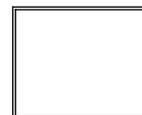
True



False



Can't say



Comment:

Here too, similar to the reasoning given above. But generally, exclusion of liability is not encouraged under Ethiopian law of contract. There are also liabilities that parties may not exclude by agreement.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

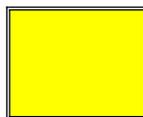
The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

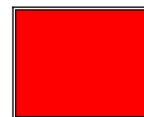
Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Ethiopian courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Ethiopian public policy and mandatory statutes.

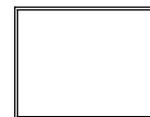
True



False



Can't say



Comment:

Indeed it seems that it is the question of private international law, i.e., cases pertaining to the disputes between two companies involving foreign element. Admittedly, Ethiopia does not have a working rule on that as the Draft Private International Law Proclamation is yet to be blessed by the parliament. So far, courts do give effect to those applicable laws as agreed by the parties. But under the current draft proclamation, the parties' agreement is subjected to qualifications. For instance, Art 33 of this draft, after setting the principle as "Unless otherwise provided in this Proclamation, the law significantly connected to the case shall apply to both international and inter-state conflict of laws" went on and stated that an application of foreign law shall be excluded if the outcome is incompatible with Ethiopian public policy or to fundamental principles of justice and fairness and to such principles as are laid down in international human rights legislations (Art 37 of the Draft). Moreover, Art 38 has stated a Mandatory Applicable Ethiopian Laws. Therefore, the general reference to the foreign laws is not as liberal as one may think.

Generally therefore, Ethiopia has no law which regulates the private international law issue, by which the choice of law may be regulated. There is no law which allows or prohibits the choice of non-state law in the

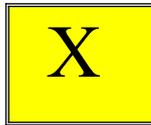
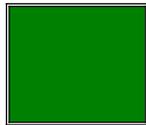
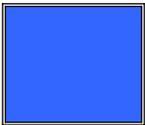
country. The draft proclamation of private international law provides that the choice of law must be supported by connecting factors such as citizenship, residence, or the place of the transaction.

Foreign jurisdiction clauses

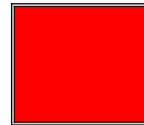
Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Ethiopian courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

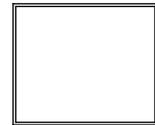
True



False



Can't say



Comment:

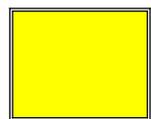
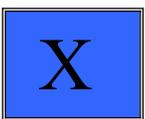
This too has something to do with the treatment of private international law under Ethiopian law. My reference is the draft Proclamation for this question as well. The Draft endows domestic courts with general jurisdiction. It then lists the basis such as the Nature of the Matter, Nature of the Action, Marital Rights and Duties, Filiation, and etc. For these Companies it implicates that conferring a jurisdiction up on a foreign court that does not have connection with the contract is possible if the agreement is undertaken after the dispute is arisen

Arbitration recognition

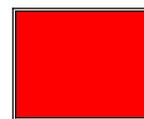
Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In **Ethiopia**, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Ethiopian courts.

True



False



Can't say



Comment:

Though courts have a general and compulsory jurisdiction, parties may oust its jurisdiction by agreeing to submit their case to arbitral tribunal rather. For that however, both of the parties to the dispute should agree to the proposal. If they agreed to submit their dispute to the tribunal, courts would simply give meaning to their agreement; thus giving a green light to go ahead. Along with this is the fact that parties may not be allowed to submit to some tribunals (special tribunals) which are treaty-based and to which Ethiopia is not a party. They may not take their case for instance to the International Center for the Settlement of Investment

Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, though they may make use of Additional Facility Rules if either of the disputants is party to the convention alternatively.

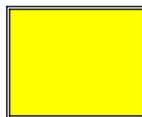
Generally therefore, submission of contract disputes to international arbitral tribunal is possible in Ethiopia. However, there are cases which are non-arbitrable, exclusively given to domestic courts, those which require prior exhaustion of all domestic remedies. Therefore, depending on the nature of the agreement the parties may refer their case to international arbitral institutions, the decision of which is also enforceable in Ethiopia. However, Ethiopia is not a member to a New York convention of 1958 as I have indicated above.

Class actions

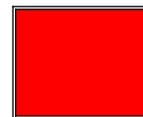
Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In, Ethiopia class actions where the class is bound if they do not opt out are generally not allowed.

True



False



Can't say



Comment:

Generally the rules on class action are to be found under the Civil Procedure Code of 1960(I believe under revision). The substantial provisions of the code are said to have been transplanted from the Indian Civil procedure code (common law). Article 35 of Ethiopia's Civil Procedure Code stated that all persons in whom any right to relief in respect of or arising from the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, may be joined in one action as plaintiffs where, if such persons brought separate actions any common question of law or fact would arise. This is rather about joinder of plaintiff if their claim consists of the same questions of law or fact. With regard to class action, Article 38(1) of the same Code provided that where several persons have the same interest in a suit, one *or* more of such persons may sue or be sued or may be authorized by the court to defend on behalf or for the benefit of all persons so interested on satisfying the court that all persons so interested agree to be so represented. However, the court has to give an authorization to that end. What is more, any one on whose behalf or for whose benefit a suit is instituted or defended under sub-art. (1) may apply to the court to be made a party to such suit pursuant to sub article 2 of the same provision of the Code.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

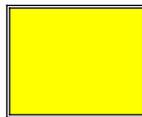
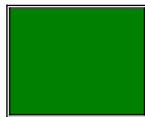
Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if

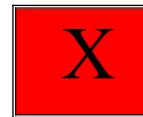
citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Ethiopia nationals and local corporations are entitled to own land absolutely.

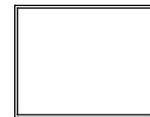
True



False



Can't say



Comment:

The issue of ownership of land is the most unsettled aspect of Ethiopian legal regime. The Derg regime (socialist regime that ruled Ethiopia from 1974-1991) unambiguously, and justifiably, declared that land belongs to the government. When it was replaced by the current ruling party, it echoed more or less the same thing. Today, individual citizens and corporations cannot own land in Ethiopia. Article 40(1) of the Country's constitution (which is the supreme law of the land) declared that the right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange. Though it seems that the State and the concerned people are to be seen a joint owners of the land and hence, may not individually sale or donate the land, practically, it is only the state (the government) that is acting alone. Whatever the government said would be done, regardless.

In Ethiopia land belongs to the people and the government collectively. There is no individual ownership of land in the country. Individuals have only use right on the land, which will be renewed from time to time based on fixed term of use.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

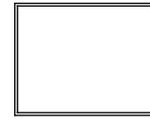
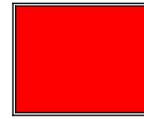
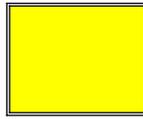
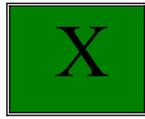
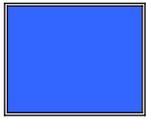
Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Ethiopia is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True

False

Can't say



Comment:

True enough, the Civil Code of 1960 Article 1723 provides that any negotiations related to immovable such as contract creating or assigning rights in ownership or bare ownership on an immovable or an usufruct, servitude or mortgage of an immovable, any contract by which an immovable is divided and compromise relating to an immovable shall be in writing and registered with a court or notary. Thus, previously, when the land was owned by the individuals (when the code was issued) ownership of land, mortgages, and leases were registered. But now, since the land is state-owned and citizens do have merely a right to possess they cannot claim to have ownership over it. Major rights over land are generally registered. Though one can acquire absolute title deed to land in Ethiopia, the registration and issuance of certificate of use right take place in the country, which may be urban land lease right certificate or rural land use right certificate depending on the location of the land.

Land development restrictions

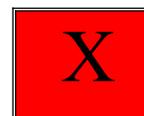
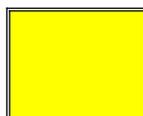
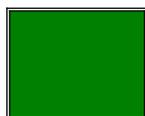
Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Ethiopia, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True

False

Can't say



Comment:

The control of commercial development and any change in use of land is strict and has to be preceded by prior notification to the relevant Ethiopian authority. Failing to notify to the relevant authority may result in revocation or suspension of investment permit pursuant to Article 19 of the Investment Proclamation 769/2012. Thus, though commercial developments are welcomed and very much welcomed, corroborated usually with attracting incentive packages, the change in use of land must be notified to the government authority typically the Ethiopian investment Commission. Purpose of the land use is highly regulated by the government. Especially in urban lands or lands obtained for investment, change of use purpose is punishable up to the confiscation of the land. However, the government may allow change of use purpose for good cause up on the application of the user.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

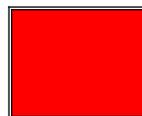
Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Ethiopia, there are few controls on hiring and firing employees or on the terms of employment.

True



False



Can't say



Comment:

The current working labor proclamation proc. 377/2003(as amended) provides detailed rules on hiring and firing employees. Admittedly, the issue of employer-employee relationship has to trigger the concern of any government as they are fundamentally unequal bargainers. The question would only be are those controls justified or not and not the existence of the control as such. The proclamation's rules on this regard I believe is justified both from employers and employees perspective, generally. The Ethiopian labor law is pro-employee and it restricts the grounds for termination of contract of employment. It provides employee benefit oriented minimum conditions on maximum work hours, leaves, and rest days. Equal pay for equal work is also a constitutionally guaranteed right. However, there is no law which regulates high minimum wages in the country, and it is left for the negotiation between the employer and the employee. However, there are some aspects with which the employees union and employers union are not at concord currently. Be that as it may, since the proclamation is being amended again (I hope it will come out after few months) it will solve their conflict of interest.

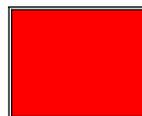
Environmental restrictions

Q18 In Ethiopia the rules governing the environment and liability for clean-up are very light and relaxed.

True



False



Can't say



Comment:

Indeed globally the issue of environmental protection is getting a momentum. It is one of the concerns to the international community as result of its ramifications. I am making these statements because the case of Ethiopia cannot be an exception to this global dynamics. We did not have clear rules on environment and liability for cleaning up until very recently. Today we have clear rules on environmental protections. Environmental Impact Assessment Proclamation, proc. 299/2002 and the Environmental Pollution Control

Proclamation, Proc. 300/2002 came up with rules to that end. The polluter pays principle is envisaged under these proclamations. These rules are a kind of rules that one may not dare to call them exceptionally strict, nor are they light as such. One very important introduction with regard to environmental protection is the introduction of the so-called public interest litigation which is introduced by the proclamation I just mentioned, which entitles anyone without showing any vested interest to take environmental pollution to tribunal. Generally however, there is tendency to be very much kind to the foreign investors with regards to the usual environmental and labor standards, though the relevant Investment proclamation and Labor Proclamation impose the duty to observe environmental protection standards.

Generally, Ethiopia has environmental protection laws which provide for prior environmental impact assessment requirements of industries and environmental pollution control. In addition to this the country has signed several environmental protection treaties which are applicable as domestic laws. The question of leniency may raise on practical applicability of laws, not on laws themselves.

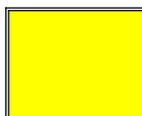
Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In Ethiopia foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

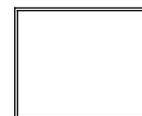
True



False



Can't say



Comment:

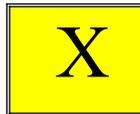
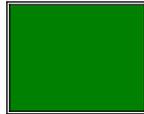
Indeed the Investment Proclamation (769/2012) and Regulation (270/2012) has excluded certain areas from the reach of foreign investors. These excluded areas are not limited to the ones mentioned above. Areas such as banking, insurance, micro credit and saving services, packaging, forwarding and shipping agency service, broadcasting services, mass media service, attorney and legal consultancy service, preparation of indigenous traditional medicine, advertisement, promotion and translation works, air transport services with the seat capacity up to 50 passengers are reserved for Ethiopian nationals. Thus foreigners may not invest on these areas. There are areas, even from those allowed to foreigners, in which the foreign investor must work jointly with the government. Generally my view is that a foreigner investor is free to come to Ethiopia and investors save for those areas exclusively reserved for domestic investors and nationals.

Indeed foreigners may invest on all areas of investment except those areas which are exclusively given to domestic investors or to the government by the law. Foreign nationals of Ethiopian origins have a privilege to invest in areas of investment which are exclusively given to domestic investors by the law, except banking business.

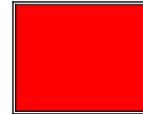
Exchange controls

Q20 In Ethiopia, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True



False



Can't say



Comment:

Generally financial sector is the most closely regulated sector in Ethiopia. Furthermore, no foreigner may even engage in banking and insurance business as it is reserved for Ethiopian nationals. The exchange control is extremely restricted. However, the investment proclamation endows foreign investors with the right to remit their funds out of Ethiopia. For instance Article 26 of the currently applicable Investment Proclamation (Proc. 679/2012) states that any foreign investor shall have the right, in respect of his 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 the investment; b) principal and interest payments on external loans; c) payments related to a technology transfer agreement registered in accordance with Article 21 of this Proclamation payments related to a collaboration agreement registered in accordance with Article 22 of this Proclamation; e) proceeds from the transfer of shares or of partial ownership of the enterprise to a domestic investor; f) proceeds from the sale or liquidation of the enterprise; and g) compensation paid to an investor pursuant to Article 25(2) of this Proclamation. Then it goes on and provides that expatriates employed in an enterprise may remit, in convertible foreign currency, salaries and other payments accruing from their employment in accordance with the foreign exchange laws of the country.

Ethiopia has strong foreign exchange control which is undertaken by the national bank of the country. Opening a foreign currency account, borrowing from foreign sources and repatriation of profits or wages are allowed under some conditions.

Alien ownership of land

Q21 In Ethiopia, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True



False



Can't say



Comment:

This is pretty much related to what I have said in relation to the question no. 15. No one (not even nationals) can own land in Ethiopia as it is jointly owned by state and the people. In fact we have separate rules as far as the rights of foreigners have under Ethiopian legal system is concerned under the Civil Code of Ethiopia from Art.390-393. The Civil Code prohibits foreigners from owning an immovable property in Ethiopia be it through purchase or through succession. If a foreign national happens to own an immovable property in

Ethiopia, the Civil Code obliged him/ her to sell the property to an Ethiopian within six months. If the foreign national fails to transfer the property, the appropriate authority will seize and sell the property. The foreign national will only be entitled 80% of the proceeds of the sale or 90% if the foreign national owns the immovable property through succession. By way of an exception and as an incentive for foreign investors, the Investment Proclamation No.769/2012 has granted foreign investors the right to own residential and to some extent immovables necessary for his/her undertaking.

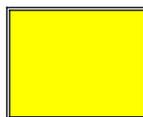
Foreign investors are required to have an investment permit in order to undertake their investment in the country. Acquiring land for investment is also required to be preceded by the obtainment of an investment permit.

Application of the law

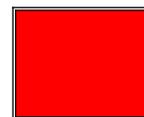
Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Ethiopia, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

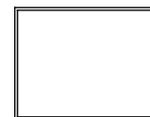
True



False



Can't say



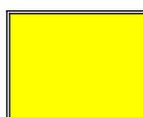
Comment:

This is the question on which I am least qualified to respond to because it requires court exposure as a practitioner. Being the student of law, all I can say is that so long as they are before it with justiciable matters, I am not of opinion that the courts would treat big companies differently merely on grounds of nationality. That is my positive and constructive understanding of the situation though the practice would say otherwise. As it is publicly accessible under the publications of decisions by the Federal Supreme Court Cassation Bench, court decisions which involve foreign investors or nationals are as fair as those involving only domestic parties.

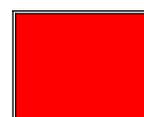
Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Ethiopia are not considered materially greater than in other comparable countries.

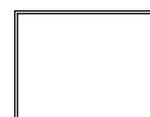
True



False



Can't say



Comment:

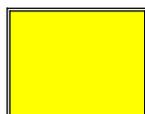
Courts are becoming speedier in handing down disputes generally. Expediency of court procedure has a problem as of any other comparable jurisdictions, but the legal system is under continuous reform by enabling the actors of the legal system both in terms of quality and quantity.

Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True



False



**Can't
say**



Profile

This survey was undertaken by Student Hirko Alemu

I am a 4th year (graduating next year) law student of Addis Ababa University Law School. I have so far been recorded as the *First Class Honor Student* in the record of the School of law for the whole semesters, currently holding the CGPA of 3.90. Beside my accomplishment in this academic career, my extra-curricular activity ranges from Volunteering and also taking part in different ad-hoc meetings to serving as a board member both at Oesis Legum (the principal Law student Club in the school) and at Ethiopian Christian Lawyers Association (*Advocates Ethiopian*), participating and also coordinating moot court competitions. Moreover, I have also been an Extern at the African Union Commission for the last eight (8) months. I have also conducted different researches with different organizations and individuals. I have for instance participated in the research related to “Land Dispute Settlement in Ethiopia” under the auspices of East African Land Administration Network. I have also taken part in the 2015 Lex Lead essay competition for which I am certified. I have recently completed one case commentary Article to be published soon. I have attended different training programs with advanced certificates apart from honorary certificates from different institutions.

I am also learning an additional BA degree (in distance, Business Management from Bahirdar University, the next best university in the country).

Currently I am working at two places (as it is summer time). The first is *Mesfin and Associates Law Office* (one of the Best Law offices in the Country and a member of the African Legal Network). I started working there as of July 11/2017. Secondly, I am also working at the Ethiopian Lawyers Association. I am assigned to the latter through African Civic Leadership Initiative (ACLI) (a USA based New Initiative).

I hope I will do my Master’s Degree in the few years to come (God willing) and be one of the best business lawyers. I am very much passionate about commercial and business laws in general. Lastly, let me use this opportunity to thank Allen and Overy for this wonderful job!!!

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Mr. Tilahun Jambo

Tilahun Jambo Anjulo(LLB.LLM Candidate in Business Law School of Law of Addis Ababa University(AAU). Having graduated with distinction from School of Law of AAU in July 2015 I am serving as Assistant Lecturer at School of Law of Mizan-Tepi University since September 2015.

Mr. Nagasa Tujuba Erba

Email: nagasa.tujuba@yahoo.com or tujubanegese@gmail.com

Business law graduate from Addis Ababa University, College of Law and Governance Studies, Ethiopia (batch of 2016)

Citizenship: Ethiopian.

Place of Birth: SNNP Regional State, Kafa Zone, Gewata Woreda, Doma Kebele

Date of Birth: September 01, 1991 G.C

Languages: Afan Oromo (native), Amharic (fluent), Kafinono (fluent) and English (fluent).

Work Experience

- ♣ Served as assistant researcher at International Law and Policy Institute, Addis Ababa, Ethiopia, from May 25 up to June 10, 2016
- ♣ Served as assistant researcher at Eastern African Land Administration Network, Bahir Dar Ethiopia, from 1st up to 15th January, 2016
- ♣ Worked as an intern at Dr. ZewdinehBeyene Haile Law Office, Addis Ababa, Ethiopia, from 1st April up to 15th June 2016
- ♣ Currently, working at TadesseKiros Law Office, Addis Ababa, Ethiopia, starting from 3rd August 2016. Main tasks at the law office are conducting researches on different legal issues; doing due diligence; consulting clients; drafting different legal documents and reflections on the findings of researches and discussion on different legal issues with colleagues.

Education

- ♣ Addis Ababa University, College of Law and Governance Studies, Addis Ababa, Ethiopia
 - ☞ Bachelors in Law (LLB) awarded with honours, on 9th July 2016
 - ☞ Written a senior thesis on the topic “The Comparison of the Contents and Structures of Selected Proclamations in the Last Hundred Years in Ethiopia” and successfully finished within the time limit and scored excellent grade.*(unpublished)*
- ♣ Jimma Preparatory School (Jimma Comprehensive), Jimma, OromiaRegional State, Jimma town (Preparatory School)
 - ☞ High school leavers’ certificate awarded
- ♣ Daka High School, SNNPR, Kafa Zone, Gesha Woreda, (Grades 9 and 10)
- ♣ Meliyo Primary School, SNNPR, Kafa Zone, Gewata Woreda, (Grades 5 and 8)
- ♣ Cheriko Primary School, Oromia Regional State, Jimma Zone, Gera Woreda (Grades 6 and 7)
- ♣ Doma Primary School, SNNPR, Kafa Zone, GewataWoreda, (Grades 1 up to 4)

Awards

- ♣ Awardee of the Lex-lead essay competition of the 2015 on the topic “How Poor Economic Development Contributes to Health Related Concerns and How the Law Can Regulate these Concerns and Improves Lives?” One of the ten prize winners from the annual international essay competition.
- ♣ A winner of Addis Ababa University Law school free legal aid essay competition on the topic “How the right to Access to Justice is Regulated in Ethiopia? What is the Role of the government and non-governmental organizations to improve this right?” one of the three prize winners.
- ♣ contributed a short essay on the topic “The Vitality of Gender Equality and Gender Just System.” to the Addis Ababa University Gender Office yearly magazine which was published in June, 2016

Publications

- ♣ Published on American Bar Association, African Law Today by the topic, “How Poor Economic Development Contributes to Health Related Concerns and How the Law Can Regulate these Concerns and Improves Lives?” Available at www.lexlead.org or https://gallery.mailchimp.com/fa7d3ffbbb039f45291f49241/files/3904b831-de66-40e0-a51d-9eecf5055595/2015_Erba.pdf

- ♣ Pending Publication on International Bar Association (IBA) Foundation's website, by the same topic.

Volunteer Experience

- ♣ Ambassador (appointed), helped promote the Lex:lead competition at local universities.
- ♣ Worked as a coordinator of vocation and entrepreneurship club, at Addis Ababa University Sidist Kilo (Main) campus, from Sep. 2015 up to June 2016
- ♣ Worked as coordinator and moderator of peace club at Addis Ababa University form 2013/2014 up to 2015/2016 academic year.
- ♣ Participated in voluntary community service during summer break, by cleaning environment and teaching students additional education during summer season which is organized by World Vision Ethiopia, Gewata ADP, every July and August from 2012 up to 2015
- ♣ Active member of Males engagement club in Addis Ababa University, main campus, and certified for the participation for three times, from Sep. 2015 up to June 2016
- ♣ Worked as a coordinator of Inter-ethnic volunteers club at Addis Ababa University main campus, from Sep. 2013 up to June 2016.

Computer Skill

- ♣ Microsoft Office (full proficiency).

References

1. Lex-leag group, www.lexlead.org
2. Mr. FekaduPetros (Assistant Professor of Law at Addis Ababa University, School of Law)
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3. Dr. ZewdinehBeyene Haile, (attorney at law and legal consultant), Addis Ababa, Ethiopia
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Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenoverly.com or Melissa Hunt, melissa.hunt@allenoverly.com.

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Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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