

Directive No. FXD /61/2019
Directive for Regulation of External Loan In Kind

WHEREAS, the National Bank of Ethiopia is vested by its establishment proclamation no. 591/2008 to determine the terms and conditions for the export or import of valuable goods or the transfer of other valuable goods across the customs boundaries or frontiers of Ethiopia in any manner;

WHEREAS, accordingly it has found necessary to create an enabling regulatory environment for the establishment of alternative sources of external loan in kind to fill the existing gap which is not addressed by the existing external loan directives;

WHEREAS, an investor who acquires an external loan in kind shall have obliged to register such a loan with the National Bank of Ethiopia in accordance with the directives of the National Bank of Ethiopia;

NOW, THEREFORE, in accordance with Article 20(3) and Article 27(2) of the National Bank of Ethiopia Establishment (as amended) Proclamation No. 591/2008, it is hereby issued the following directive:

Article 1: Short Title

These directives may be cited as “External Loan in Kind Directive No. FXD/61/2019.

Article 2: Definitions

In this Directive, unless the context requires otherwise:

- 2.1 “All-in-cost ceiling”** means rate of interest, other fees and expenses in foreign currency excluding commitment fee and pre-payment fee.
- 2.2 “Capital Goods”** means any equipment or machine that may be used to produce products or to provide services and includes accessories;
- 2.3 “Exporter”** A person that sells goods or services that generate foreign currency;

- 2.4**“External loan in kind” means acquisition of capital goods from an eligible foreign lender in the form of sale with differed payments, lease agreement or any other legal arrangement that may be approved by the National Bank of Ethiopia;
- 2.5** “**Foreign capital**” means paid up capital obtained from foreign sources, and includes the re-invested profits and dividends of a foreign investor and registered by pertinent government body;
- 2.6** “**Foreign Investor**” means a foreigner or an enterprise wholly owned by foreign nationals, having invested foreign capital in Ethiopia or a foreigner or an Ethiopian incorporated enterprise owned by foreign nationals jointly investing with domestic investor, and includes an Ethiopian permanently residing abroad and preferring treatment as a foreign investor;
- 2.7** “**Guarantee**” means any signed undertaking, however named or described, providing for payment on presentation of a complying demand;
- 2.8** “**Hire-purchase**” means a type of leasing by which a foreign lessor provides a lessee with the use of a specified capital goods, against payment of mutually agreed installments over a specified period under which, with each lease payment, an equal percentage of the ownership is transferred to the lessee and, upon effecting of the last payment, the ownership of the capital goods shall automatically be transferred to the lessee;
- 2.9** “**Investor**” means a domestic or a foreign investor having invested in Ethiopia;
- 2.10** “**Lease agreement**” means hire-purchase agreement as regulated by pertinent lease law;
- 2.11** “**Lessee**” means a person who, under a lease agreement, obtains capital goods from a lessor and has the right to use the capital goods, against payment of rent for an agreed period of time;
- 2.12**“**Domestic investor**” means an Ethiopian national or a foreign national treated as a domestic investor as per the relevant law, and includes the government, public enterprises as well as cooperative societies established as per the relevant law;
- 2.13**“**lessor**” means a foreign person who, under a lease agreement is eligible by law to provide to a lessee the right to use the capital goods in return for rent payments for an agreed period of time;

2.14“Bank “means a company licensed by the National Bank of Ethiopia to undertake banking business or a bank owned by the Government;

2.15“Repayment Method” means the settlement of principal, interest, rent, and other charges accepted by National Bank of Ethiopia to be paid in cash and/or in kind.

2.16“Sale with differed payments” means a loan arrangement in which the buyer is allowed to start making payments at some specified time in the future after the delivery of the capital goods to the buyer by the seller;

2.17“Person” means any natural or juridical person.

Article 3: General

3.1 External loan in kind guaranteed by Federal Government of Ethiopia shall be registered by the National Bank of Ethiopia by presenting the agreement and the guarantee issued there to.

3.2 An eligible borrower except stated under article 3.1 shall first get approval from the National Bank of Ethiopia before entering to external loan in kind agreement with the lender.

3.3 An eligible borrower shall register the foreign loan in kind by producing the necessary documents.

3.4 No repayment in convertible foreign currency may be allowed for the purpose of repayment of external loan in kind unless registered by the National Bank of Ethiopia.

Article 4: Eligible Borrowers and Requirements

4.1 Exporter

4.1.1 An exporter is eligible to acquire capital good through an external loan in kind arrangement; provided that the capital good is going to be utilized in export oriented investment that generates foreign currency.

4.1.2 A domestic investor who is engaged in projects that generate foreign currency is also eligible to use the external loan in kind arrangement to acquire capital goods.

4.1.3 The following requirements shall be fulfilled for approval of external loan in kind to be acquired by an exporter:

- a) Application letter;
- b) Valid export license given by pertinent licensing authority;

- c) The draft loan in kind agreement with detailed terms showing the type of agreement, interest rates and applicable charges, repayment method and schedule, borrower-lender relationship, purpose of the loan and other particulars as may be deemed necessary by the National Bank of Ethiopia;
- d) Proforma Invoice;
- e) The document justifying the capacity to repay the loan; and
- f) Supporting letter from relevant government body to attest the capital goods shall have used for the initial intended purpose of acquiring external loan in kind.

4.2 Foreign Investor

4.2.1 A foreign investor is also eligible to use the external loan in kind arrangement to acquire capital goods when it fulfills all requirements of article 4.2.3 of this directive.

4.2.2 The debt to equity ratio may not exceed 60:40 of the foreign capital.

4.2.3 The following requirements shall be fulfilled for approval of external loan in kind to be acquired by foreign investor:

- a) Application letter;
- b) Valid investment or any other valid business license given by pertinent licensing authority as the case may be applicable;
- c) Foreign capital registration certificate issued by pertinent government body;
- d) The draft loan agreement with detailed terms showing the type of agreement, interest rates and applicable charges, repayment method and schedule, borrower-lender relationship, purpose of the loan and other particulars as may be deemed necessary by the National Bank of Ethiopia;
- e) Proforma Invoice; and
- f) Supporting letter from relevant government body to attest the capital goods shall have used for the initial intended purpose of acquiring external loan in kind.

Article 5: Approval and Registration of External Loan in Kind

5.1.The National Bank of Ethiopia shall issue approval letter for external loan in kind if all the requirements are fulfilled under article 4.1 and 4.2 of this directive.

5.2.The National Bank of Ethiopia shall register up on presentation of the following documents:

- a) Application letter;
- b) Customs declaration and all relevant shipping documents; and
- c) Copy of external loan in kind approval letters.

5.3.In registering the external loan in kind when the National Bank of Ethiopia has found a discrepancy of price for the capital good as recorded between the external loan in kind approval letters and the customs declaration and all relevant shipping documents, it shall register the lesser prices of the capital good as external loan in kind.

5.4.Notwithstanding the provision of sub-article 5.2 of this article, if the external loan in kind was acquired through lease agreement, the National Bank of Ethiopia shall support or cause to be registered the lease agreement at relevant registering organ of the government.

Article 6: All- in- Cost Ceilings

6.1. The all-in-cost ceilings for external loan in kind shall be:

Average Maturity Period	All-in-cost Ceilings
Up to three years	six month LIBOR or Equivalent in EURIBOR Plus 2%
More than three years and up to five years	six month LIBOR or Equivalent in EURIBOR Plus 3%
More than five years	six month LIBOR or Equivalent in EURIBOR Plus 5%

6.2. When a changing international market requires, the National Bank of Ethiopia may vary the all in cost ceiling stated here in above.

Article 7: Guarantees

Any form of guarantee may not be issued by government and bank for private loan in kind.

Article 8: Repayment of External Loan in Kind

8.1.The National Bank of Ethiopia shall approve repayment of external loan in kind provided that the repayment request is as per the conditions mentioned in article 5 of this Directive.

8.2.The following documents should be presented to the National Bank of Ethiopia for approval of an external loan in kind repayment:

- a) Application letter;
- b) Copy of external loan in kind registration letter; and
- c) Loan repayment schedule showing the computation of principal, interest, and other charges in accordance with approved arrangement and as may deemed necessary by the National Bank of Ethiopia.

Article 9: Applicability of other Laws

When the external loan in kind shall acquire through lease agreement, the relevant provisions of the Capital Goods Leasing Business Proclamation No. 103/1998 as amended by the Capital-Goods Leasing Business (Amendment) Proclamation No. 807/2013 and any other relevant Council of Ministers Regulation shall, mutatis mutandis, be applicable with respect to matters not covered by this directive.

Article 10: Effective Date

This Directive shall enter into force as of May 31, 2019.