



CATERING AND TOURISM TRAINING INSTITUTE

SECTOR: - CULTURE, SPORTS AND TOURISM

SUB SECTOR: - TRAVEL AND TOURS

TOURISM SERVICE LEVEL – IV LEARNING GUIDE # 1

**UNIT OF COMPETENCY: DEVELOP AND UPDATE LEGAL
KNOWLEDGE REQUIRED FOR
BUSINESS COMPLIANCE**

**MODULE TITLE: DEVELOPING AND UPDATING LEGAL
KNOWLEDGE REQUIRED FOR
BUSINESS COMPLIANCE**

LG CODE: CHT TOS4 15 0212

TTLM CODE: CST TOS4 TTLM 0219v1

ADDIS ABABA, ETHIOPIA

INSTRUCTION SHEET

LEARNING GUIDE #1

This learning guide is developed to provide you the necessary information regarding the following content coverage and topics –

- Researching the information required for business compliances
- Ensuring compliances with legal requirements
- Update legal knowledge

This guide will also assist you to attain the learning outcome stated above. Specifically, upon completion of this learning Guide, you will be able to –

- Identify *sources of relevant legal and licensing information* and advice.
- Determine compliance needs for the business by accessing, selecting and analyzing all information on relevant *legal and licensing requirements*.
- Determine risks, penalties and consequences of non-compliance. Assess the need for specialist legal advice and seek assistance where appropriate.
- Record and distribute relevant legal information to colleagues at appropriate times and in suitable formats for the intended audience.
- Organize information updates and training for colleagues and staff where appropriate.
- Establish and monitor *workplace systems and procedures*, including a risk management approach to ensure compliance with legal requirements.
- Identify aspects of operations that may infringe or potentially infringe laws and solicit advice on how to develop and implement modifications.
- Use formal and informal research to update the legal knowledge required for business compliance.
- Share updated knowledge with colleagues and incorporates into workplace planning and operations

Learning Instructions:

1. Read the specific objectives of this Learning Guide.
2. Follow the instructions described in number 3 to 10.
3. Read the information written in the “Information Sheet 1” from page 1-18. Try to

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understand what are being discussed. Ask you teacher for assistance if you have hard time understanding them.

4. Accomplish the “Self Check - 1” in page 19.
5. Ask from your teacher the key to correction (key answers) or you can request your teacher to correct your work for self-check 1.
6. If you earned a satisfactory evaluation proceed to “Information Sheet 2”. However, if your rating is unsatisfactory, see your trainer for further instructions or go back to Learning Activity #1.
7. Read the information written in the “Information Sheet 2” from page 22-31. Try to understand what are being discussed. Ask you teacher for assistance if you have hard time understanding them.
8. Accomplish the “Self Check - 2” in page 32.
9. Ask from your teacher the key to correction (key answers) or you can request your teacher to correct your work for self-check 2.
10. If you earned a satisfactory evaluation proceed to “Information Sheet 3”. However, if your rating is unsatisfactory, see your trainer for further instructions or go back to Learning Activity #2.
11. Read the information written in the “Information Sheet 3” from page 33-38. Try to understand what are being discussed. Ask you teacher for assistance if you have hard time understanding them.
12. Accomplish the “Self Check - 3” in page 39.
13. If you earned a satisfactory evaluation, congratulation you can proceed to next unit of competency. However, if your rating is unsatisfactory, see your trainer for further instructions or go back to Learning Activity #2.
14. If you earned a satisfactory evaluation, congratulation you can proceed to next unit of competency. However, if your rating is unsatisfactory, see your trainer for further instructions or go back to Learning Activity #2.



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INFORMATION SHEET 1

LO1- RESEARCHING THE LEGAL INFORMATION REQUIRED FOR BUSINESS COMPLIANCE

1. SOURCES OF LEGAL INFORMATION AND ADVICE IN PARTICULAR INDUSTRY SECTOR

1.1 LICENSING AND REGISTRATION REQUIREMENTS

Before directly going to discuss on the legal requirements of business registration and licensing, it will be important to look at who a trader is and the business activities recognized in Ethiopian legal system. Thus, the discussion here will begin on article 5 of the commercial code of Ethiopia. Besides, other important general rules will be briefly provided.

Art. 5. Persons to be regarded as, traders

Persons who **professionally** and for **gain** carry on **any of the following activities** shall be deemed to be **traders**:

- (1) Purchase of movables or immovable with a view to reselling them either as they are or after alteration or adaptation;
- (2) Purchase of movables with a view to letting them for hire;
- (3) Warehousing activities as defined in Art. 2806 of the Civil Code;
- (4) Exploitation of mines, including prospecting for and working of mineral oils;
- 5) Exploitation of quarries not by handicraftsmen
- (6) Exploitation of salt pans;
- (7) Conversion and adaptation of chattels, such as foodstuffs, raw materials or semi-finished products not by handicraftsmen;



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- (8) Building, repairing, maintaining, cleaning, painting or dyeing movables not by handicraftsmen;
- (9) Embanking, levelling, trenching or draining carried out for a third party not by handicraftsmen;
- (10) Carriage of goods or persons not by handicraftsmen;
- (11) Printing and engraving and works connected with photography or cinematography not by handicraftsmen;
- (12) Capturing, distributing and supplying water;
- (13) Producing, distributing and supplying electricity, gas, compressed air including heating and cooling;
- (14) Operating places of entertainment or radio or television stations;
- (15) Operating hotels, restaurants, bars, cafes, inns, hairdressing establishments not operated by handicraftsmen and public baths;**
- (16) Publishing in whatever form, and in particular by means of printing, engraving, photography or recording;
- (17) Operating news and information services;
- (18) Operating travel and publicity agencies;
- (19) Operating business as an agent, broker, stock broker or commercial agent;
- (20) Operating a banking and money changing business;
- (21) Operating an insurance business.

Thus, as provided under article 5(15) of the commercial code of Ethiopia, a person who engages in hotels, restaurants, bars, cafes, inns, hairdressing establishments not operated by

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handicraftsmen and public baths is a trader. To establish and run such trading activities, the person is expected to register that business and get license for that business.

Thus, the following laws and articles are important sources on the registration and license:

- The commercial code of Ethiopia ,
- Commercial Registration and Business Licensing Proclamation No. 686/2010
- Commercial Registration and Business Licensing (Amendment)Proclamation No. 731/2012

The commercial code also deals with Right to Act as a Trader.(see articles 22-27)

Art. 22. *Freedom to carry on trade*

Subject to such prohibitions or lawful restrictions regarding unfair competition as may be prescribed, any, person or business organization has the right to carryon any trade in accordance with the provisions regulating such trade.

Art. 23. *Legal prohibitions or restrictions*

(1) Particular persons may be restricted or prevented from acting as traders or from carrying on a particular trade by legal provisions setting up prohibitions or incompatibilities.

(2) Specific requirements as to **age, qualifications, sex, nationality** or **license** may be imposed by law in respect of particular trades.

Art. 24. *Effect of prohibitions and restrictions*

(1) Persons who carry on a trade subject to prohibition or restriction or without having the prescribed qualifications shall be liable to the penalties provided by law.

(2) Persons who carry on a trade subject to prohibition or restriction may not revoke the said prohibition or restriction to free themselves from liabilities incurred in carrying on a trade subject to prohibition or restriction. They may not hold themselves out to be traders parties but they shall be liable as though they were traders.

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26. - Business organizations carrying on trade

No business organization shall carry on a trade which it is not permitted to carry on or which is subject to specific requirements with which the said business organization has not complied.

By the way, **do you think that any person (including foreigners) who want to engage in Hotel, bars and restaurants business in Ethiopia is allowed legally?** Hint, Please read a book by Dawit Tesfaye: “**Quick Guides to: Setting up a business in Ethiopia, Exporting and Importing goods from and into Ethiopia, Ethiopian tax types, rates and Practical applications....**” on pages 9-13 and 25-57 on **Commercial Registration and Business Licensing in Ethiopia.**

Generally speaking, **the three basic steps to establish a business are:**

- 1. Get investment Permit**
- 2. Get Commercial Registration**
- 3. Get Business License.**

Getting Investment Permit

It is generally provided that domestic investors, excluding foreign nationals who do not have Ethiopian origin, have the right to invest without an investment permit, in line with the existing relevant laws of Ethiopia, but, after commercial registration and obtaining business license, if they engage in areas not eligible for incentives or waiving their rights of entitlements in those areas eligible for incentives (Dawit Tesfaye, 2016:9). See also article 10(3) of Proclamation No.686/2010. But, the main concern in this chapter is on legal requirements of Commercial Registration and Business License as provided under the relevant Ethiopian Laws mainly the commercial Code and Commercial Registration and Business Licensing Proclamation No. 686/2010 and Commercial Registration and Business Licensing (Amendment) Proclamation No. 731/2012. Before going to the detailed discussions on commercial registration and business licensing, what is the purpose of such requirements? Hint- please read the preamble and article 3 of Commercial Registration and Business Licensing Proclamation No. 686/2010. The preamble reads:

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- Whereas it is necessary to create conducive environment in every field of commercial activity in line with the free market economic policy;
- Whereas it is necessary to improve the commercial registration implementation and business licensing issuance systems in a way that will promote free market economy, and that the systems will enable to attain economic development, and to follow up the elimination of impediments that befall the lawfully engaged business community, to expedite the delivery of service it is supposed to get and that it has been necessary to improve the service delivery so that it begets economic development;
- Whereas it has been necessary to support commercial registration activities and the issuance of business licenses with modern technology, in order to make them suitable for data management and to install a system of follow up to tackle illegal activities by employing international business classifications and by putting the necessary criteria in place;

I. Commercial Code Provisions

THE COMMERCIAL REGISTER

A. Organization of the Commercial Register(articles 86-93 of commercial code and article 5 of proclamation No. 686/2010)-self -reading assignments

B. Entries in the Commercial Register(94—99)- self- reading assignments

C. Registration(100-107)

Art. 100. - *Persons to be registered*

(1) **Any Ethiopian or foreign person or business organization** carrying out **commercial activities** within the Empire of **Ethiopia** shall be **registered**.

(2) The provisions of sub-art. (1) shall apply in particular:

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- (a) to **any Ethiopian or foreign person** who is a **trader** within the meaning of **Art. 5** of this Code;
- (b) to **any Ethiopian or foreign business organization** which is a **commercial business organization** within the meaning of **Art. 10** of this Code;
- (c) to any foreign public undertaking carrying out commercial activities and to any commercial representatives or agents of foreign States, public institutions or undertakings.
- (3) Special regulations applicable to undertakings under sub-art. (2) , (c) shall be prescribed.

Art. 101. - *Application for registration compulsory.*

- (1) A person shall not be registered as a trader unless an **application** to this effect is made by the **said person or his attorney**.
- (2) The application shall be made **within two months** from the day on which the **trader began to carry on his trade**.
- (3) The power of attorney shall be annexed to an application made by an attorney.

Art. 102. – *Cancellation of registration of former trader.*

Where an existing business is sold or let out for hire, the purchaser or lessee shall not be registered for so long as the registration of the former trader has not been cancelled in the register.

Art. 103. - *Place of registration*

- (1) The application for registration shall be made at the registry of the Taklay Guezat within whose jurisdiction the person seeking registration carries on his trade. Where the applicant carries on several trades, ,he shall make the application at the registry in the Taklay Guezat within whose jurisdiction **the principal place of business is situate**.

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(2) Where the **head office of the business is abroad**, the trader shall make the application at the registry in the Taklay Guezat within whose jurisdiction the **principal branch or agency is situate**.

Art. 104. - Summary registration.

(1) No trader shall be principally registered in more than one local register nor shall he be registered under more than one registration number in one register.

(2) Where a trader carries on a trade or is in charge of branches or agencies at places other than the place where he is principally registered, he shall make an application to be summarily registered in those places and a reference shall be made to the principal place of registration.

Art. 105. - Particulars in respect of principal registration.

Where a trader makes an application for principal registration, he shall state:

(a) His **name**;

(b) His **date and place of birth**;

(c) His **nationality**;

(d) His **private address**;

(e) Where he is a **minor**, the **date** on which he was **authorized** to carry on trade by the family council;

(f) Where he is **married**, the **place and date of the marriage** and whether or not a marriage settlement was made and the date and the place where or person with whom such settlement was deposited, if any;

(g) The objects of the trade;

(h) Whether he created the business or acquired or leased it and in the latter cases, the name of the former trade and all necessary information regarding the registration of the former trader;



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- (i) The trade-name;
- (j) The special designation under which he trades, if any;
- (k) The address of the business;
- (l) The address of other businesses, branches or agencies, if any, which the trader operates either at the place of registration or in any other places;
- (m) The **names of the managers**, if any, and whether their powers are limited to the management of a branch;
- (n) The **date** on which the **license** for carrying on the trade was granted, if any.

Art. 106. – Particulars in respect of summary registration.

Where a trader makes an application for summary registration, he shall state:

- (a) His name;
- (b) His nationality;
- (c) His private address;
- (d) The trade name of the business, branch or agency;
- (e) The address of the business, branch or agency;
- (f) The objects of the trade;
- (g) The name of the manager and whether his powers are limited to the management of a branch;
- (h) The date on which the license for carrying on the trade was granted, if any;
- (I) The reference to the principal registration, the place where it was made and the registration number.

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Art. 107. - *Commercial business organizations.*

The relevant provisions of Book II of this Code shall apply to registration of commercial business organizations.

What is the legal consequence of commercial registration and business license? The commercial code of Ethiopia under its article 117 has the answer and is provided for you below to read.

Art. 117. *Effect of registration*

(1) All registered persons or business organizations shall be deemed to be traders, unless the contrary is proved.

2) Registered persons or business organizations shall not be permitted to prove that they are not traders and shall incur all liabilities which the status of trader entails.

By the way, **what do think will happen if the above commercial registration requirements are not observed?** The law under its commercial code provides the answer and read it below.

Sanctions/punishments-criminal and civil (see articles 115-122)

1. Penal Provisions

Art. 115. - *Failure to register*

Whosoever fails to register or to cause an entry to be made in the register in accordance with the provisions of this Code shall be **guilty of an offence** and shall **on conviction** be liable to the penalties provided in Art. **428** of the Penal Code (**previous**).

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Art. 428. - Infraction of the Rules Compulsory for Registration.

(1) Whosoever **intentionally fails** within the time-limits fixed by law to make to the competent authorities a declaration required to ensure the due entry in the official registers of marriage or deaths, of property or of **commercial or other transactions** ions, of facts and certified statements relating to the status of individuals, to real estate transactions, to the establishment or operation of companies or to any other like obligation, is **punishable with fine**, without prejudice to the **invalidation of the act** not duly entered in the register where such formalities are material to its validity.

(2) Where the failure to make such declaration is **habitual or repeated** or is **in defiance** of an order or summons issued by the competent authority, the **Court** may pass sentence of **simple imprisonment not exceeding three months**.

(3) Nothing in this article shall affect the special provisions regarding the failure to register the birth of an infant (Art. 623).

Art. 116. - Inaccurate statements

Whosoever intentionally makes inaccurate statements in relation to registration shall be **guilty of an offence** and shall **on conviction be liable** to the penalties provided in Art. **387** of the Penal Code(**previous**).

Art. 387. - Forgery of Public or Military Documents

(1) Where the forgery whether material or intangible or the use of forged instruments, concerns:

(a) A **public register**, an official act, a government bond or a public loan certificate;

(b) A genuine deed or a holographic will; or

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(c) An instrument or document concerning national defense or the armed forces, or their organization, duties or affairs, the **punishment is rigorous imprisonment not exceeding ten years.**

(2) Where the offence is committed by a **public servant officially entrusted** with the drawing up, filling, keeping or delivery of extracts from the registers, instruments, deeds or documents in question, the **punishment is rigorous imprisonment from three to fifteen years.**

2. Civil Sanctions

117. Effect of registration

(1) All registered persons or business organizations shall be deemed to be traders, unless the contrary is proved.

(2) Registered persons or business organizations shall not be permitted to prove that they are not traders and shall incur all liabilities which the status of trader entails.

Art. 118. - *Effect of failure to register.*

(1) Any person who fails to register in accordance with the provisions of this Code may not hold himself out to be a trader to third parties, but he shall be liable as though he were a trader.

(2) The relevant provisions of Book II of this Code shall apply to business organizations.

Art. 119. - *Effect of failure to cancel entries.*

Any registered person who assigns his business or lets it out for hire shall, until his registration is cancelled, be jointly and severally liable for all debts incurred by the assignee or lessee.

Art. 120. - *Effect of entries*

(1) Any person who caused an entry to be made in the register shall not be permitted to show that such entry is inaccurate unless an application is made for such entry to be altered.

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(2) Third parties shall not be permitted to prove that they did not know of a fact entered in the commercial register.

II. Commercial Registration and Business Licensing Proclamation No. 686/2010 and Commercial Registration and Business Licensing (Amendment) Proclamation No. 731/2012

Part i. Commercial Registration (articles 5-21)

Note that the Commercial Registration and Business Licensing (Amendment) Proclamation No. 731/2012 **only adds** sub-article (6) of Article 6 of the Commercial Registration and Business Licensing Proclamation No. 686/2010 and reads: "**provided, however, that the Ministry may, where it finds it necessary, extend by one year the time limit for such registration.**" So, the discussion on commercial registration and business license will be made on proclamation No. 686/2010.

Article 3- Objectives

This Proclamation shall have the objectives:

- 1/ strengthening the situations where the trade sector can be supportive of the economic development of the country;
- 2/ protecting the trade sector from detrimental and unfair activities by appropriately organizing the systems of commercial registration and business licensing;
- 3/ facilitating the keeping of data regarding the trade sector by the government;
- 4/ creating conducive situations for commercial activities.

Article 4-Scope of Application

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The provisions of this Proclamation relating to business licenses shall apply to any person engaged in any commercial activity other than those specified under Article 30 sub article (1) of this Proclamation. Please read article 30(1) of the same proclamation.

Article 6. Registration in the Commercial Register

1/ No person shall engage in any commercial activity which requires business license without being registered in the commercial register.

2/ Any person shall be registered in the commercial register, at the place where the head office of his business is situated.

3/ Any person shall register in the commercial register only once, even though he carries on different commercial activities in different regions.

4/ Any person who opens branch offices in many places shall inform the registering office where his branch office is situated, the address of the branch office and his special identification number of registration by completing the appropriate application form and attaching photocopies of his commercial registration certificate and business license before commencing operation.

5/ As provided for under Article 105 of the Commercial Code, when any person is being registered in the commercial register, the trade name shall be included in the commercial registration by verifying that it is unlikely to create conflict with the interest of another business person.

6/ Any person, who is not registered in the commercial register in accordance with the laws which were in force prior to the coming into force of this Proclamation, but who has been carrying on a commercial activity under a license from any authorized government body, shall be registered pursuant to this Proclamation within 12 months from the effective date of this Proclamation.

7/ Founders or members of a business organization shall sign their memorandum and articles of association at the Documents Authentication and Registration Office, according to standardized

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samples of memorandum and articles of association sent to the same office by the registering office, before applying for commercial registration, except any amendments to these signed and registered memorandum and articles of association.

8/ Before signing their memorandum and article of association, founders or members of a business organization shall get the verification of the registering office that another business person has not occupied the name of the business organization.

9/ Where the successors and the spouse of a sole business person who was engaged in transport business, do not want to form a business organization to resume the business, one of the successors or the spouse can be registered in the commercial register according to the power of attorney given to him by the other successors and/or the spouse.

10/ The agreement of founders or members of a business organization on the valuation of contribution in kind shall be stipulated in the memorandum of association or in the amendment of the memorandum of association.

Article7. Application for Registration and Decision

1/ Any Application to register in the commercial register shall be submitted to the registering office by a person who wants to engage in a commercial activity by completing the application form and attaching the documents stipulated in this Proclamation at least one month before he starts operation.

2/ Where any application to register in the commercial register that has been submitted to the registering office is found acceptable, the registering office shall register the applicant and issue to him a certificate of registration upon payment of the prescribed fee in the regulation.

3/ When the registering office rejects the application for registration submitted to it pursuant to sub article (1) and (2) of this Article, it shall notify the applicant in writing the reasons thereof.

4/ The Ministry shall prepare forms that shall be used for registration purposes.

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5/ The Ministry shall determine the number of photographs and copies of documents that shall be attached with the application for registration.

6/ The registering office shall verify the accuracy of details stated in the application form and documents attached thereto.

7/ Copies of memorandum and article of association to be submitted in accordance with this Proclamation shall be original copies and authenticated.

8/ The registering office shall enter in the trade register, the taxpayer's identification number of the applying individual business person or the business organization issued by the tax collecting office, as special identification number of registration. The registering office shall use the finger print registered by the tax collecting office for individual business person.

9/ The registering office shall request the tax collecting office, in writing, to give the business organization applying for registration a taxpayer's identification number, before registering it.

The tax collecting office shall inform the registering office, in writing of the taxpayer's identification number it has issued to the business organization which is under formation.

10/ Foreign investors to be engaged in the mining sector, federal public enterprises, commercial representatives, branches of foreign companies, foreign traders that come to operate in Ethiopia by winning international bids, organizations that are permitted to engage in commercial activity and foreign investors intending to buy an existing enterprise in order to operate it as it stands shall be registered with the Ministry.

11/ Regional public enterprises shall be registered with the bureaus.

12/ Foreign investors shall be registered only with the Ministry or the Ethiopian Investment Agency.

13/ Without prejudice to the provision of Article 6 sub article (2) of this Proclamation, those business persons who engage in commercial activities for which license is issued by the

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Ministry may directly apply to the Ministry for registration.

14/ An objection submitted in accordance with the law against the registration of a person or a business organization in the commercial register, may, result in prevention from being registered.

Article8. Forwarding of Information and Documents Relating to Registration

1/ The bureau or the Ethiopian Investment Agency, which has made commercial registration under this Proclamation, shall forward to the Ministry the particulars of the registration in a form designed for this purpose.

2/ The Ministry shall register in the central register information forwarded to it pursuant to sub article (1) of this Article and those registered by itself, pursuant to Article 5 sub article (1) of this Proclamation.

N.B. To have a better understanding on articles 10-12 of this proclamation, please refer to the commercial code(**articles 210-212, 227-324**) on the different business organizations.

Article9. Legal Personality of Business Organizations

1/ Business organizations shall acquire legal personality by registering in the commercial register without being publicized in a newspaper as provided for under Article 87, 219, 220, 223 and 224 of the Commercial Code for their establishment or amendments to their memorandum of association.

2/ The commercial register of business organizations shall be made open for the reference of third parties.

Article10. Commercial Registration of Sole Business Persons

Where the applicant is a sole business person he shall submit the following documents together with his application format:

1/ passport size photographs of the applicant taken within six months time,

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- 2/ photocopies of the kebele identification card or copies of valid passport of the applicant,
- 3/ where the applicant is a foreign investor his investment permit,
- 4/ where the applicant is a foreigner considered as a domestic investor, a document issued by Ethiopian Investment Agency to testify this,
- 5/ a document which testifies that he has attained the age of 18,
- 6/ the exact address of the head office and branch offices of his business if any, and
- 7/ if the office of his business is his own a title deed or if it is a leased one an authenticated contract of lease and a verification issued by kebele administration as to the address of the office.

Article11. Commercial Registration of a Business Organization Other than a Share Company

1/ Where the applicant is a business organization other than a share company, under formation; the founders or their attorney shall submit the following documents as may be appropriate, together with the application format:

- a) where the application is signed by an attorney; a power of attorney given by all of the founders, photocopies of kebele identification card or valid passport of the attorney and the manager and the passport size photographs of the manager taken within six months time,
- b) original copies of memorandum and articles of association,
- c) where there are foreign nationals as members of the business organization; documents evidencing that the foreign nationals are considered as domestic investors or their investment permits and photocopies of pages of their valid passports,
- d) where there is a foreign juridical person involved in the business organization under formation; its certificate of incorporation, originals and authenticated copies of its memorandum and article of association or similar document, a notarized minutes of resolution passed by the

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authorized organ of the juridical person to join the business organization and an investment permit where the juridical person is a foreign business organization,

e) documents prescribed under sub-article (6) and (7) of Article 10 of this Proclamation, and

f) documents mentioned from paragraph (a) to (d) of this sub-article shall be submitted after authentication by appropriate bodies in Ethiopia.

2/ The manager of a business organization other than a share company shall not be a manager in more than one any business organization at the same time.

3/ Before the registration of a business organization other than a share company in the commercial register, there shall be submitted a bank statement that the capital of the business organization to be contributed in cash has been deposited and all appropriate documents relating to contribution in kind.

4/ The registering office shall write a letter to the bank for the capital to be contributed in cash of the business organization other than a share company, under formation, to be deposited in a blocked bank account.

5/ After a business organization other than a share company has entered commercial register and obtained legal personality, testimonials issued by appropriate government office, which show all contributions in kind have been transferred to the newly formed business organization, shall be submitted to the registering office

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+SELF-CHECK 1

WRITTEN TEST

Answer the following questions.

1. Discuss the legal requirements in Ethiopia to form each type of business organizations

Note: Satisfactory rating -5points Unsatisfactory – below 5 points

☞ You can ask you teacher for the copy of the correct answers.



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**INFORMATION
SHEET 2**

**LO – 2 ENSURING COMPLIANCE WITH LEGAL
REQUIREMENTS**

COMMERCIAL REGISTRATION OF A SHARE COMPANY

1) Where the applicant is a share company; under formation, the founders or their attorney shall submit the following documents as may be appropriate, together with the application:

a) where the application is signed by an attorney, the original copy of power of attorney given by all the founders, photocopies of kebele identification card or passport of the attorney and the manager and the passport size photographs of the manager taken within six months' time,

b) a bank statement showing that at least one fourth of the par value of the subscribed shares of the company is deposited in a blocked account,

c) Original copies of minutes of resolution of the subscribers of the company and such other documents as may be associated with the resolution,

d) Original copies of memorandum and articles of association of the company,

e) Documents stipulated under sub article (1)(c) and (d) of Article 11 of this Proclamation, if necessary,

f) Information and documents prescribed under sub article (6) and (7) of Article 10 of this Proclamation;

g) Documents mentioned from paragraph (a) to (e) of this sub-article shall be submitted after authentication by appropriate bodies in Ethiopia.

2) The manger of a share company shall not be a manager in more than one any business organization at the same time.

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3) The registering office shall write a letter to the bank, for a quarter of the capital of the share company under formation as mentioned in sub article (1) (b) of this Article to be deposited in the bank in a blocked account.

4) The provisions of sub article (3), (5) and (6) of Article 15 of this Proclamation shall apply to commercial registration of a share company.

5) The founders of a share company to be established by public subscription as provided for under Articles 317 to 322 of the Commercial Code, in order to start the formation of the company, shall in advance obtain the written permission of the registering office.

Article13. Commercial Registration of Branch of a Foreign Business Organization

Where the applicant is a branch of a foreign incorporated business organization the attorney shall submit the following documents for registration after being authenticated by appropriate bodies in Ethiopia together with the application:

1) Notarized minutes of resolution passed by the authorized organ of the foreign business organization evidencing a decision to open a branch in Ethiopia and investment permit,

2) Certificate of incorporation of the business organization,

3) Original copy of the power of attorney of the permanent agent of the company in Ethiopia and photocopies of his kebele identity card or pages of valid passport,

4) Original copies of memorandum and article of association or similar documents of the business organization, and

5) Information and documents prescribed under sub article (6) and (7) of Article 10 of this Proclamation.

Article14. Commercial Registration of a Federal Public Enterprise or Regional Public Enterprise

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Where applicant is a public enterprise established by the federal government or a public enterprise established by a regional state:

- 1) The law of its establishment,
 - 2) The letter of appointment of the manager and the passport size photographs of the manager taken within six months' time,
 - 3) Where the application is signed by an agent, document of agency issued by head of the enterprise and copy of the agent's kebele identity card or passport,
 - 4) Documents prescribed under sub article (6) and
- (7) Of Article 10 of this Proclamation, shall be submitted together with the application for registration.

Article 15. Commercial Registration of a Commercial Representative

Where the applicant is a commercial representative of a foreign-based business organization or sole business person:

- 1) Authenticated documents by appropriate bodies in Ethiopia:
 - a) Proof of registration and juridical existence of the principal business organization in the country of its registration or in the country where the principal business person operates,
 - b) Where the principal is a business organization its original copies of memorandum and article of association or similar documents;
- 2) A bank confirmation for having brought into the country a minimum of USD 100,000 (One Hundred Thousands United States Dollar) for office operation and salary expenditure for the budget year,

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- 3) An authenticated proof of appointment of the representative by the principal business person as its commercial representative and photocopies of his kebele identity card or passport,
- 4) Documents prescribed under sub article (6) and (7) of Article 10 of this Proclamation, shall be submitted to the Ministry together with the application.

Article 16. Alteration and Amendment of Commercial Registration

- 1) Any alteration or amendment of a commercial register shall be submitted by completing the appropriate application form within two months from the date the alteration or amendment has been made.
- 2) For the implementation of sub article (1) of this Article the applicant shall submit the following documents together with the application:
 - a) Where the alteration or amendment is to the registration of a business organization, minutes of resolution of the share holders of the business organization to make the alteration or the amendment,
 - b) where the alteration or amendment is to admit a new foreign national individual, document evidencing that the individual is considered as a domestic investor or his investment permit or the permit given by the Ministry to buy the shares of an existing company and photocopies of pages of his passport, and
 - c) where the new member is a juridical person its original copies of memorandum and article of association, certificate of incorporation or similar document, a notarized minutes of resolution or letter of its decision to join the business organization as passed by its authorized organ, if it is a foreign company, an investment permit or a permit given by the Ministry to buy the shares of an existing company.
- 3) The registering office shall give verification, for the submission and acceptance of alteration or amendment of commercial registration and shall notify the applicant and the concerned bodies in writing by citing the details of the date of acceptance and the entry of alteration or amendment

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of the commercial register. Without this written verification, the alteration or amendment of the registration shall not be considered to have been entered in the commercial register.

4) The registering offices shall strikeout alteration or amendment of registration that it believes is unduly altered or amended and inform details of the rejection to the applicant.

5) Where it is appropriate, criteria set in this Proclamation for commercial registration shall be applicable to alteration or amendment of commercial registration.

6) Amendments or alteration of memorandum and articles of association to be submitted pursuant to this Proclamation shall be in original copies and authenticated.

Article 17. Cancellation of Registration

1) Without prejudice to the provision of Article 112, 113 and 226 of the Commercial Code, the registering office shall decide to cancel the registration upon his being aware of the fact that either the business person has ceased to operate his business or there is a lawful decision prohibiting him from carrying on his business or has violated this Proclamation or where his registration has not been renewed or the business person has submitted false information or documents for registration.

2) The registering office shall, before making its decision pursuant to sub article (1) of this Article, require the business person to submit his opinion, except where the business person ceased to operate his business or has requested the cancellation of his commercial registration or has failed to get his registration renewed. If, however, the business person cannot be contacted at his registered address, the registering office shall make its decision on the basis of the available information.

3) The business person whose registration is cancelled shall get upon his request a certificate of cancellation of registration on payment of the fee prescribed by the regulation.

4) Cancellation of the registration of business organizations shall be effective from the date of publication of a notice of cancellation in a newspaper at the expense of the applicant. Any other

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cancellations of commercial registration shall be effective from the date of the entry of the cancellation in the register.

5) The provisions of Article 8 of this Proclamation shall apply to the forwarding of documents relating to the cancellation of registration.

6) A business person who has been cancelled from a commercial register, because of his violation of this Proclamation or the regulation, can be registered again a year after the cancellation of his registration, unless there is a legal or an administrative reason, which prevents him from being registered again.

Article20. Effective Date of Registration

Any commercial registration shall be effective from the date of the registration of the applicant in the commercial register.

Part ii- BUSINESS LICENCE

Article30. Power to Issue Business License

1/ Notwithstanding the provisions of other relevant laws, the appropriate authority shall issue licenses as may be appropriate, except those licenses issued by other relevant government institutions for the following commercial activities:

- a) Prospecting and mining of minerals;
- b) Various water works services, excluding water works construction services;
- c) Banking, insurance and micro finance services;
- d) Air transport services and other aviation services;
- e) Commercial activities involving the use of radioactive materials and radiation emitting equipment;

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- f) Telecommunication services;
 - g) The business of generating or transmitting or distributing or selling electricity;
 - h) Repairing and maintaining of arms and firearms and sale of explosives;
 - i) Sea and inland water ways transportation services;
 - j) Multimodal transport services;
 - k) The business of warehouse receipt system; and
 - l) Trade in tobacco and tobacco products.
- 2/ Without prejudice to the generality of sub article (1) of this Article, the list of commercial activities for which the Ministry or the bureau issue business licenses shall be determined by the Ministry based on international commodity or services or industrial classifications.
- 3/ The requirements of professional competence to be satisfied for licenses to be issued for commercial activities covered by this Proclamation shall be defined in the respective directives issued by the relevant sectoral government institutions.
- 4/ The appropriate authority may set requirements for professional competence, in collaboration with other appropriate organs, for businesses it issues licenses and for which requirements of professional competence are not set by other government offices.
- 5/ When the Ministry issues a business license of export or import pursuant to sub article (2) of this Article the license cannot be validly used unless the good is clearly indicated in the license.
- 6/ Those government bodies which issue business licenses for businesses mentioned under sub article (1) of this Article, shall, when renewing the business licenses, request the license holder to submit clearance statements for the payment of taxes and other revenues due to be paid to the government pursuant to sub article (8) (a) of Article 36 of this Proclamation.

Article 31. Obtaining Business License

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- 1/ No person shall carry on a commercial activity without obtaining a valid business license.
- 2/ Without prejudice to the provisions of Article 42 and 60(1) of this Proclamation, the appropriate authority may order the closure of the business of the person who is found engaged in a commercial activity without a valid business license.
- 3/ A business person, who has registered the address of his branch office pursuant to Article 6 sub article (4) of this Proclamation, shall not be required to obtain another business license for the same commercial activity for which he opened a branch.
- 4/ Where any business person violates the provisions of this Proclamation in a region where he registered and operates his branch office, the bureau of the region in which the branch office is registered may take appropriate measures pursuant to this Proclamation or may remind the appropriate authority which has issued the license to take measures.
- 5/ Any violation of the provisions of this Proclamation committed by the branch office shall be considered to have been committed by the head office or at the place of the issuance of the business license.
- 6/ The bureau shall inform in writing, the measure it has taken, to the appropriate authority that has issued the business license to the business person, in one-month time.

Article 32. Application for Business License

- 1/ Any person desiring to engage in a commercial activity shall submit to the appropriate authority application for business license by completing an application form.
- 2/ The applicant, shall together with his application pursuant to sub article (1) of this Article, submit:
 - a) a newly issued or renewed commercial registration certificate,
 - b) his or his manager's passport size photographs taken within six months time,
 - c) if he is a foreign investor his investment and residence permits,

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d) if he is a foreign citizen desiring to be considered as a domestic investor, a document issued by the Ethiopian Investment Agency evidencing the same and his residence permit,

e) where the application is submitted by an attorney, an authenticated power of attorney and photocopies of the attorney's kebele identity card or passport,

f) a document evidencing the capital allocated for the commercial activity, and

g) a recommendation given by concerned government office, which testifies that the business premise in which the business is to be conducted is suitable for the intended business.

3/ Any applicant requesting for the issuance of a business license, shall supply the documents prescribed under sub article (6) and (7) of Article 10 of this Proclamation.

4/ Where the applicant is a foreign investor and requests for a business license desiring to buy and run an enterprise in its existing situation; shall, in addition to the documents provided for under sub article (2) of this Article, submit to the Ministry photocopies of his passport and document evidencing the sale of the enterprise from the Privatization and Public Enterprises Supervising Agency or where the purchase is from private, an authenticated document evidencing the conclusion of the sale, as may be appropriate.

5/ Where the applicant is a business organization, it shall together with the application submit the following documents to the appropriate authority:

a) Commercial registration certificate,

b) authenticated original copies of memorandum and article of association of the business organization,

c) passport size photographs of the manager taken within six months' time,

d) where the application is submitted by an attorney, an authenticated power of attorney and photocopies of kebele identification card or passport of the attorney, and

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e) Documents prescribed under sub article (2) (c), (d), (f) and (g) of this Article. 6/ Where the applicant is a federal public enterprise or a regional public enterprise, it shall together with the application submit the following documents to the appropriate authority:

a) Commercial registration certificate,

b) The law of its establishment,

c) The appointment letter of the manager and his passport size photographs taken within six months time,

d) where the application is submitted by an attorney, an authenticated power of attorney and photocopies of the attorney's kebele identification card or passport, and

e) documents prescribed under sub article (2) (g) of this Article.

7/ When an alteration or amendment is made to a business license, passport size photographs of the license holder or of the general manger shall be attached to the original and copy of the business license.

8/ There shall be submitted a certificate of professional competence in testimony of the fulfillment of the requirements set by the relevant government office in a directive, for the business a business license has been requested, and a statement signed by the applicant. The appropriate authority shall inform the concerned government office about the implementation of the directive.

9/ Without prejudice to the provision sub article (8) of this Article government offices which issue certificates of professional competence or certificate of ownership, for commercial activities require certificate of competence, may remind the appropriate authority to demand the submission of the certificates before issuing business license.

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33. Issuance of Business License

1/ Where an application for business license is submitted to the appropriate authority pursuant to Article 32 of this Proclamation, it shall issue a business license to the applicant upon payment of the appropriate fee by ascertaining that the condition set by this Proclamation are fulfilled and that the commercial activity intended to be carried on by the applicant is not prohibited by law.

2/ Where the appropriate authority ascertains that the application for business license pursuant to Article 32 of this Proclamation is not acceptable, it shall notify the applicant in writing of the reasons for rejecting the application.

3/ Where the successors and the spouse of a sole business person who was engaged in transport business do not want to form a business organization, a business license can be issued in the name of one of the successors or the spouse in accordance with the power of attorney given to him by the other successors and/or the spouse after being registered in the commercial register pursuant to sub article (9) of Article 6 of this Proclamation.

Main Questions:1. What are the purposes of commercial registration and business licenses? Do they have the same or different purposes? 2. What are their legal consequences of respecting and violating such requirements? 3. Are there substantial differences between the commercial code and Proclamation No. 686/2010 with regard to both commercial registration and business license?

2. Contracts in General

- **Definition of Contract**
- **Elements for valid Contract Formation**
 - A. **Capacity of parties**
 - B. **Consent**
 - C. **Object-meaning; legality, morality, possibility of performance**
 - D. **Form-special form when required by law or parties**

3. Some Special Contracts

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A. Contract of Employment

- (E.g. Pension/Superannuation),
- Equal Employment Opportunity (EEO) and anti-discrimination (Equal pay for equal work)

B. Contract of Service

E.g. Hotel and Restaurants

C. Insurance Contracts

E.g. Social Health Insurance

4. Trade Practice and Consumers' Protection

- General Introduction
- Discussions on Some Ethiopian Trade Practice and Consumers' Protection
Proclamation No. 685/2010, focus on Consumers Protection



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SELF-CHECK2

WRITTEN EXAM

Answer the following questions

1. Discuss the different types of business organizations recognized in Ethiopia.
2. Discuss also their basic differences among them

Note: Satisfactory rating -20 points Unsatisfactory – below 20 points

☞ You can ask you teacher for the copy of the correct answers.



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INFORMATION SHEET 3

LO – 3 UPDATING LEGAL KNOWLEDGE

TITLE V of the Commercial Code of the Empire of Ethiopia deals on Business. The discussion in this title begins with the definition of business under its article 124. Under this chapter, the discussion will mainly cover the definition of business and the basic elements of business as provided in the commercial code of Ethiopia.

3.1. Definition of Business

For the sake of clarity, efforts will be made to provide the ordinary and technical definitions of business as provided below.

A. Ordinary/Dictionary Definitions of Business

Business means an occupation, profession, or trade. That is, a person's regular occupation, profession, or trade. Some also define it as the purchase and sale of goods in an attempt to make a profit. It is also explained as a person, partnership, or corporation engaged in commerce, manufacturing, or a service; profit seeking enterprise or concern. Besides, the definition of business includes a building or site where commercial work is carried on, as a factory, store, or office; place of work. Similarly, others define business as that with which a person is principally and seriously concerned or something with which a person is rightfully concerned.

B. Legal /Technical Definition of Business (Commercial Code)

Art. 124. - Definition

A business is an incorporeal movable consisting of all movable property brought together and organized for the purpose of carrying out any of the commercial activities specified in Article 5 of this Code.

Thus, it will also be relevant to see what article 5 provides for who a trader is.

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Art. 5. Persons to be regarded as, traders

Persons who professionally and for gain carry on any of the following activities shall be deemed to be traders:

- (1) Purchase of movables or immovable with a view to reselling them either as they are or after alteration or adaptation;
- (2) Purchase of movables with a view to letting them for hire;
- (3) Warehousing activities as defined in Art. 2806 of the Civil Code;
- (4) Exploitation of mines, including prospecting for and working of mineral oils;
- 5) Exploitation of quarries not by handicraftsmen
- (6) Exploitation of salt pans;
- (7) Conversion and adaptation of chattels, such as foodstuffs, raw materials or semi-finished products not by handicraftsmen;
- (8) Building, repairing, maintaining, cleaning, painting or dyeing movables not by handicraftsmen;
- (9) Embanking, levelling, trenching or draining carried out for a third party not by handicraftsmen;
- (10) Carriage of goods or persons not by handicraftsmen;
- (11) Printing and engraving and works connected with photography or cinematography not by handicraftsmen;
- (12) Capturing, distributing and supplying water;
- (13) Producing, distributing and supplying electricity, gas, compressed air including heating and cooling;
- (14) Operating places of entertainment or radio or television stations;

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- (15) Operating hotels, restaurants, bars, cafes, inns, hairdressing establishments not operated by handicraftsmen and public baths;
- (16) Publishing in whatever form, and in particular by means of printing, engraving, photography or recording;
- (17) Operating news and information services;
- (18) Operating travel and publicity agencies;
- (19) Operating business as an agent, broker, stock broker or commercial agent;
- (20) Operating a banking and money changing business;
- (21) Operating an insurance business.

Note that Article 125 shows the relationship between trader and a business and is provided below

Art. 125. - *Traders and businesses*

- (1) Every trader operates a business.
- (2) A trader may operate several businesses for the purpose of carrying out various commercial activities.
- (3) A trader may operate a business in the capacity of owner, usufructuary or lessee. Only the person who operates the business shall be deemed to be a trader and the owner or lessor of the business shall not be regarded as a trader.

3.2. Elements of Business

Article 127 of the commercial code makes it clear the elements of business and the elements are mainly goodwill and incorporeal elements.

Art. 127. *Goodwill and incorporeal elements.*

- (1) A business consists mainly goodwill.
- (2) A business may consist of other incorporeal elements such as:

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- (a) The trade name;
- (b) The special designation under which the trade is carried on (trademark);
- (c) The right to lease the premises in which the trade is carried on;
- (d) Patents or copyright;
- (e) Such special rights as attach to the business itself and not to the trader.

Art. 128. - *Corporeal elements.*

A business may consist of corporeal elements such as equipment or goods.

Art. 129. - *Assets and liabilities.*

(1) A business shall normally not include the assets and debts of the trader, with the exception of the right to the lease of the premises.

(2) Nothing in this Article shall affect the special rules provided in Art. 2587 of the Civil Code and in Articles 159 and 673 of this Code.

Goodwill and Unfair Commercial Competition

Art. 130. - *Definition of goodwill*

The goodwill results from the creation and operation of a business and is of a value which may vary according to the probable or possible relations between a trader and third parties who may require from him goods or services.

Art. 131. - *Preservation of goodwill.*

A trader may preserve his goodwill by instituting proceedings for unfair competition or by setting up the legal or contractual prohibitions provided in Articles 30,40, 47, 55, 144,158, 159,204 and 205 of this Code.

Art. 132. - *Unfair commercial Competition.*

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A trader may claim damages under Art. 2057 of the Civil Code from any person who commits an act of competition which amounts to a fault.

Art. 133. - *Cases of unfair competition.*

(1) Any act of competition contrary to honest commercial practice shall constitute a fault.

(2) The following shall be deemed to be acts of unfair competition:

(a) Any acts likely to mislead customers regarding the undertaking, products or commercial activities of a competitor;

(b) Any false statements made in the course of business with a view to discrediting the undertaking, products or commercial activities of a competitor.

Art. 134. - *Effect of unfair competition.*

(1) The court may, in cases of unfair competition:

(a) Order that damages be paid by the unfair competitor; and

(b) Make such orders as are necessary to put an end to the unfair competition.

(2) The court may in particular:

(a) Order the publication, at the costs of the unfair competitor, of notices designed to remove the effect of the misleading acts or statements, of the unfair competitor, in accordance with Art. 2120 of the Civil Code;

(b) Order the unfair competitor to cease his unlawful acts in accordance with Art. 2122 of the Civil Code.

By the way, if you are interested to know the details of fair and unfair trade/commercial competition in Ethiopia, you are advised to read: “Trade Practice and Consumers’ Protection Proclamation No. 685/2010.”

Chapter main Questions:

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1. Are you now able to define what business is and what business consists of?
2. Are you satisfied with the codes definition of goodwill? Why/why not? If not, can you provide other definition of goodwill?
3. How is violation of goodwill preserved/ enforced?
4. What is unfair competition?
5. Discuss the relationship between goodwill and unfair competition?

Please read the following definitions of goodwill if helpful

Goodwill in accounting is defined as an intangible asset that arises when a buyer acquires an existing business. Goodwill represents assets that are not separately identifiable. It is also defined as the assumed value of the attractive force that generates sales revenue in a business, and adds value to its assets. Goodwill is an intangible but saleable asset, almost indestructible except by indiscretion. It is built painstakingly over the years generally with:

- (1) Heavy and continuous expenditure in promotion,
- (2) creation and maintenance of durable customer and supplier relationships,
- (3) high quality of goods and services, and
- (4) High quality and conduct of management and employees.



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SELF-CHECK3

WRITTEN EXAM

Answer the following question

1. Do all business organizations have separate legal personality different/separate from their owners or shareholders? What is the importance of separate legal personality for business organizations?

Note: Satisfactory rating -5points Unsatisfactory – below 5 points

☞ You can ask you teacher for the copy of the correct answers.



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LAP TEST

DEMONSTRATION

Name: _____

Date: _____

Directions: Answer all the questions listed below. Illustrations may be necessary to aid some explanations/answers.

Individual assignments(at least 5 marks)

Submission date: June 20

Maximum pages: 17

1. Read the Ethiopian Tourism Code of Ethics (December, 2011) and Comment on it.
(Hint: on its clarity, weaknesses and strengths, gaps, enforceability, etc)
Discuss also on the importance of this code of conduct.
2. Read the Ethiopian Tourism Development Policy and critically comment on it.
(Hint: on its clarity, weaknesses and strengths, gaps, enforceability, etc)
What is the purpose of this policy?
3. Identify (look your course outline references) Ethiopian laws relevant to hotel and tourism and read them all. Take important notes of each law.

Note: Satisfactory rating -30points Unsatisfactory – below 30 points

☞ You can ask you teacher for the copy of the correct answers.

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