

Ethiopian Capital Market Administrative Tribunal: establishment, power and duties –A brief overview

It is undeniable fact that establishing a capital market system is one of primary and major steps taken by the Ethiopian government on the macro-economic sector recently, and it is among the financial and economic sector reforms that are being implemented. After extensive study and preparatory work Ethiopia's capital market was formally established under Proclamation No. 1248/2021 on July 16, 2021.

The Ethiopian Capital Market Authority (ECMA) has been entrusted with

numerous responsibilities connected to its objectives, power and duties under the capital market proclamation, the commercial code, and other relevant legal frame works of the country. To carry out these functions and responsibilities, it is structured with board, a director general, a deputy director general, and other necessary staffs.

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The regulatory decisions made by the ECMA on market participants are not

flawless. In this regard the proclamation has set an appellate adjudicatory framework. Any person who is aggrieved by the regulatory decisions of ECMA can lodge an appeal to a judicial body, separate from the regular courts, to hear and determine appeals lodged by persons aggrieved by decisions of ECMA .Under part seven, Article 64 of proclamation no 1248/2013, an administrative tribunal with its own legal personality, titled "Ethiopian capital Market Administrative Tribunal (ECMAT)"has been established..

Complaints on the decisions of ECMA are reviewed by an adjudicatory framework, which is distinct from the regular court and litigation process, tailored to the specific characteristics of the capital market, by a panel of judges

composed from professionals with expertise in law, commerce, finance, accounting, and securities.

Article 65 of the proclamation stipulates that ECMAT has jurisdiction to hear and determine on appeals submitted against a decision passed by the ECMA or by a person executing the Authority's functions and powers. From this provision it can be understood that ECMA may delegate its power to the other bodies as necessary. As per Article 16 of the Proclamation, the Authority can delegate any of its powers and functions to a recognized self-Regulatory Organization (SRO), or to individuals. Therefore, any party who is aggrieved by decisions of the Authority, as well as those decisions made by the bodies to which the Authority's functions and

powers are delegated, may appeal to the Administrative Tribunal.

The litigation process begins with an appeal lodged by the appellant to the Administrative Tribunal within twenty-eight (28) working days of receiving the decision passed by ECMA or persons who exercised the functions and powers of ECMA. The appeal together with all supporting documents shall be duly served to the Authority, and the Authority then submits its reply on the matter, attaching the evidence that served as the basis for its decision. ECMAT shall in accordance with its mandate, undertake a comprehensive examination of the matter, duly considering the submitted evidence, raising pertinent inquiries, and, where necessary, receiving expert testimony deemed.

Based upon such due process law, the Administrative Tribunal shall render its decision.

According to Article 71(4) of the proclamation, the Authority must send a copy of the documents related to the appealed matter to the Administrative Tribunal within seven (7) working days of receiving the notice of appeal. As an experience of administrative tribunals in Ethiopia and foreign countries, the capital market authority, designed as the respondent in the Administrative Tribunal, will present its factual and legal arguments, supported by evidence, on the appropriateness of the decision it passed against the complaint. The administrative Tribunal will hear the appeal as stipulated under article 73, in the presence of representatives for both

the appellate and the respondent authority. As an appellate body, ECMAT role in summoning all litigant parties and giving the opportunity to be heard is essential to provide fair and proper judgment.

The capital market establishment proclamation shows improvement in expediting the decision-making process of ECMAT. Article 73(2) of the Proclamation expressly obliges the Tribunal to issue its decision within 60 working days from the date the appeal is filed. This requirement enhances the efficiency of administrative adjudication by significantly shortening the timeframe for resolving disputes thereby saving litigants time, cost and effort. It also helps reduce the burden and backlog on parties in disputes before ordinary and

other administrative courts, particularly where cases might otherwise remain unresolved indefinitely.

As principle rendering decision in 60 days is an explicit responsibility imposed on ECMAT by the proclamation. To implement this, ECMAT structurally organized its management, appointed judges, and staffs to efficiently perform its mandate.

Article 73(3) of the Proclamation provides that for proper administration of justice, in exceptional circumstances and having due regard to the complexity of the case, the chairperson of ECMAT may extend the time limit for rendering a decision for a further period not exceeding thirty (30) working days. In such instances, the parties to the dispute

shall be notified in writing about the extension of time.

Pursuant to Article 73(8) of the Proclamation, the decision of the Administrative Tribunal shall clearly state the reasons for the determination, the findings reached on the issues raised, and the evidentiary references or other material facts upon which those findings are based.

According to the proclamation, after examining the appeal submitted, ECMAT may,

- ✓ A, affirm, modify, or set aside the original order or decision;
- ✓ B, return the case to ECMA for reconsideration in accordance with the manner the Administrative Tribunal deems appropriate; or

✓ C, Issue any other order or decision.

Any party aggrieved by the Administrative Tribunal's decision may appeal to the Federal High Court on basis of an error of law. According to Article 74 of the proclamation titled "Appeal to the Federal High Court," said that a party who is dissatisfied by the Administrative Tribunal's decision may appeal to the federal high court on a matter of law only within thirty (30) working days of becoming aware of the decision.

In this context, it is important to consider the outcome when a decision of the Administrative Tribunal on appeal is brought before the Federal High Court. According to the Proclamation, the Administrative Tribunal has the

power to render final decisions on matters of fact. Such factual determinations are not subject to further appeal, are binding on the parties, and are consistently applied in cases adjudicated by the Administrative Tribunal.

Under this Proclamation, Article 74 provides that a party who alleges a legal error in a decision of the Administrative Tribunal may appeal to the Federal High Court. The Federal High Court has the power to affirm, set aside, modify or return the case to the Administrative Tribunal. The structure and intent of the Proclamation make it clear that a decision of the Federal High Court is final and cannot be appealed to the Supreme Court.

However, this does not mean that a decision of the Federal High Court can be subject to cassation before the Federal Supreme Court.

Under Article 80(3) (c) of the Federal Democratic Republic of Ethiopia Constitution, the Federal Supreme Court has the power to review any final decision of Courts based on a fundamental error of law through cassation. Accordingly, any party to the dispute has the constitutional right to file an appeal to the cassation bench before the Federal Supreme Court.

Since cases involving a fundamental error of law are subject to the prerequisites established under Federal Courts Proclamation No. 1234/2021, a party seeking to file a cassation appeal, claiming that a fundamental error of

law has been committed by any lower Court decision in a capital market case, may do so only after confirming that they comply with the requirements outlined in this proclamation.

In accordance with Article 71(1) of the Proclamation, a complaint against a decision of the ECMA shall be filed within twenty-eight working days from the date on which such decision is notified to the concerned party. Issues relating to the manner of service or notification of decisions of the Administrative Tribunal upon parties, adjudication fees payable by the Tribunal,, the number of judges constituting a bench, and other related procedural matters shall be governed by the Administrative Tribunal" Rules of Procedure " (currently under

preparation) where necessary, by the Civil Procedure Code.

Under Article 72 of the Proclamation, the Administrative Tribunal shall possess the same power as regular courts under the Civil Procedure Code to execute its decisions, rulings, orders, and the conduct of its proceedings. This provision eliminates the controversy regarding the manner, in which decisions rendered by administrative tribunals may be executed, a matter that had previously caused confusion among stakeholders and led to divergent interpretations among legal professionals following the issuance of decisions by various administrative tribunals, and may be cited as an illustrative exemplary legal framework.

With respect to execution, this provision empowers the Administrative Tribunal to practically execute its own decisions in accordance with the Civil Procedure Code, as outlined in the Seventh Book concerning execution of judgments. This means that the Administrative Tribunal may enforce its own decisions, either on its own initiative or at the request of a party, as well as enforce decisions of the Federal High Court and Supreme Court arising from appeals of its decisions, with the necessary execution mechanisms provided under the Civil Procedure Code.

To resolve potential disputes that may arise between the ECMA and other parties concerning the capital market and securities, the law provides for the

appointment of experienced and expert judges.

Following ECMA and the Ethiopian Securities Exchange having completed structuring their organization and moved into the implementation phase, ECMAT likewise completed its institutional setup to receive and adjudicate appeals in capital market disputes, and render proper judgments.

