

**ADDIS ABABA UNIVERSITY FACULTY OF LAW  
SCHOOL OF GRADUATE STUDIES**



**THE LAW AND PRACTICE RELATING TO HOLDING COMPANIES IN  
ETHIOPIA**

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# CHAPTER ONE

## INTRODUCTION

### Background

For any legal system, particularly the business regulation regime, it is extremely important to set out the business sector into categories of business and lay down rules regulating their establishment, operation and dissolution in a principled manner. Accordingly, the Ethiopian legal system has its own organized and considerably consolidated legal framework in the Commercial Code of the Empire of Ethiopia (1960 – the Commercial Code hereinafter), the Commercial Registration and Business Licensing Proclamation (980/2016 along with its amendment – the proclamation hereinafter) and related other statutes. This scheme governs a great deal of the business operation in the legal system by setting out uniquely categorized business types and determining specifically crafted provisions for the operation of each. Therefore, we can speak about a sole proprietorship and shareholding arrangements in the way the traders are classified. Business organizations are allowed to institute themselves into either of a Partnership or companies (Share Company or a Private Limited Company). Here, we have a possibility of institution of holding companies in an affiliate or subsidiary relationship with any existing category.

In as much as one of the indication of growth in the business world is the combining of independent business units in to group or an economic units which have advantages for the business as well as the state following this companies group themselves under various names.<sup>1</sup> Some of these group themselves as ‘holding and subsidiary’ others call themselves as ‘affiliate companies.’ whereas others use the designation ‘group’.<sup>2</sup> In the Ethiopian business arena, we have a widespread intention among traders to be instituted as a holding company or in a related affiliate or subsidiary relationship among sister companies. On the other hand, when we ask if

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<sup>1</sup>Getushiferaw, Saturday 20 august 2016, Ethiopia’s New Business Registration Law Recognizes the Formation of Holding Companies. Available at [www.mehreteableul.com](http://www.mehreteableul.com).

<sup>2</sup>Zekarias Keneaa (Assistant professor), Company Law and Finance,(February 8 ,2019) class lecture note, Addis Ababa University College of Law and Governance Studies School of Law LL.M Program for Business law stream (Unpublished).

there is a matching or corresponding legal framework which provides for these and regulates them, the answer is discouraging. Holding companies are one of the least regulated subject matter in the Ethiopian legal system.

Holding company is a type of business that deals specifically with assets, investments and management, rather than providing goods and services with a view to making a profit from production and sales.<sup>3</sup> It will be limited by shares and its main activities will involve owning assets in another company or many companies.<sup>4</sup> Holding companies may also be responsible for the supervision and management of other companies.<sup>5</sup> Aside from these functions, a holding company will usually conduct no other type of business activity apart from investing on subsidiaries in holding arrangement.<sup>6</sup> The role that holding companies play in backing and supporting operating business companies in their undertaking and maintaining them against risks and loss has a big deal of macroeconomic importance. By spending on their capital, they help starter ups and midlevel operators to gain magnitude and grow their business.

Considering holding companies can be viewed with respect to areas such as competition policy and regulation, concentration of economic power and secret monopoly that eliminate competitors and prevent entry of new firms and result the exploitation of consumers by charging unreasonable price.<sup>7</sup> Added to these, another drawback mentioned can be hyperbolic payments made by them to their board members and governance.<sup>8</sup> With respect to taxation, the holding companies may be used to escape the tax liability by the use transfer of price and to increase its earnings at the expense of the subsidiary companies.<sup>9</sup>

But others say that a holding company's advantage outweighs than the disadvantages, that there is a possibility of the holding company supporting its subsidies and making them stronger and keep them away from bankruptcy. Basically, countries benefit none out of bankruptcy. Countries

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<sup>3</sup>Matt Koppers, (march 21 2016). *Tax Benefits Guide of Having a Company in The United Kingdom Available at <http://www.startupmanufactury.com>)*

<sup>4</sup>*Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> Fred Freedland (1955), *History of Holding Company Legislation in New York State: some doubts as to the <<New Jersey First>> Tradition*, volume 24 *Fordham Law Review* .issue 3 Article 5 .p.369.

<sup>7</sup>Anjali Kumar (1993). *State Holding Companies and Public Enterprises in Transaction*. Page10

<sup>8</sup>Paul M. Green (Mar, 1933) *Preserving the Benefits of the Holding Company*. *The Accounting Review*, Vol. 8, No. 1. pp. 51-57. Published by: American Accounting Association. Available@ URL:

<https://www.jstor.org/stable/238602>

<sup>9</sup>*Ibid*.

benefit from stability of business organizations which have significant effect on the performance of the economy. One feature of a holding company form of organization is strength on spending on capital and overseeing corporate management. Since these do not have other business operation than spending on capital and overseeing management, they have undivided focus on sparing losing subsidiaries and minimizing insolvency. In this regard, we can argue that holding company is a self-strengthening mechanism by the private sector itself in instances of failure and insolvency without requiring government bailouts and public fund give away. For the reason that the holding company form of organization is strong in the above mentioned function, they have the capacity to penetrate to the international market and make a country competitive in a wider arena and can contribute immensely on the economy of a country. Holding company has different advantages like attracting foreign capital, it is very stable form of business organization and it improves the good will of its subsidiary company before public.<sup>10</sup> These separate companies can maintain their separate position under this system.<sup>11</sup> Therefore, proponents say that the above mentioned drawbacks can easily be addressed by a proper regulation of holding companies by the concerned government organ.

In the Ethiopian legal system, we do not see holding companies being properly regulated in as much as other aspects of business are. In this regard, we find some references made to holding and subsidiary companies in few provisions Arts: 344, 360, 370, 379, and 451 of the Commercial Code. But it is not adequately dealt with.<sup>12</sup> Above, we expressed that some Ethiopian traders have demonstrated intention to be instituted as a holding company or with a related feature. Examples may be MIDROC Ethiopia Group, EFFORT, DH Geda Group, Kadisco Group, Dire Group, Kangaroo Business Group, Sunshine Group, Iteam Holding Company etc. Often we hear of a corresponding insurance company being related with some sort of a private commercial bank in Ethiopia.<sup>13</sup> Whether or not these are formally established as such is a point of discussion. Their basis for being tied together could be, common shareholders or cross shareholding.<sup>14</sup>

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<sup>10</sup> *Supra note no 1*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Supra note no 2*

<sup>13</sup> *Ibid*

<sup>14</sup> *MehamedAliyeWaritu (January 2010). Affiliate Companies in Ethiopia: Analysis of Organization, Legal Framework and the Current Practice. Unpublished, Addis Ababa University, Faculty of Law. Page 42.*

## **Statement of the Problem**

The Ethiopian Commercial Code gives recognition to the six forms of business organizations named ordinary partnership, joint venture, general partnership, limited partnership, Share Company and private limited company. The private limited companies (which are the non-financial companies) have so many intense problems over corporate governance and other related matters compared to share companies. Comparatively, the financial companies (which are required to always be incorporated as share companies) because they are regulated by a good regulator i.e., the National bank of Ethiopia. The problems raised on these companies are not like the problems on the other private sector actors because there is here a detailed regulatory legal framework and an active regulating entity. We said above that the holding company form of business organization is an organization that have good organizational structure. That may help to minimize the problems showed in the above mentioned corporates. Then it is better to see that whether our law have the capacity to regulate the holding company. Based on this, I raise the following research questions in this thesis:

1. Are the “holding” companies properly or adequately regulated?
2. Are holding companies practiced in the Ethiopian business sector? If yes in what manner and as per which legal framework?
3. What are the advantages of regulating holding companies and promoting their widespread practice in terms of benefit to the entire economy of the nation?
4. What is the status of *de facto* holding companies operate in Ethiopia?

## **Objectives of the Research**

The objectives of this research will be assessing and indicating the law and the practice relating to holding company in Ethiopia. Holding company has a great role for attracting investors by expanding the business, its controlling behavior is also helpful in relation to auditing, effective use of capital etc. Holding company has a great importance for a country. At a preliminary level, we see some random practices which can serve as a point of research in the market and a brief

scattered legal regime in the field which needs analysis and scrutiny as to sufficiency and justification. Standing from this, the research objectives will be:

- Assessing whether the “holding” companies properly or adequately regulated?
- Assessing whether the holding companies practiced in the Ethiopian business sector, in what manner and as per which legal framework?
- Assessing the advantages of regulating holding companies and promoting their widespread practice in terms of benefit to the entire economy of the nation?
- Assessing the status of de facto holding companies operation in Ethiopia.

### **Significance of the Study**

The Ethiopian business (particularly the private sector) is witnessing a big deal of growth and business and investment is becoming sophisticated as a result of the momentum that the economy gained over the last few decades. As a result the sector is demonstrating many new traits that we did not witness before. Therefore, there is a need to coup up with the changing environment and set out a favorable legal and institutional framework to govern all aspects of the business development. Among this is the need by the private sector to be organized in various different manners of establishment.

Therefore, this thesis focusses on the way one of these dynamic subject matters, i.e., holding companies are being governed and treated by regulators. As a result, it is important to see if we have sufficient or adequate legal rules as well as institutional organization which can deal with this requirement.

As a result,

- The significance of the study will be, by assessing the law and the practice in relation to holding company, the research will add some level of knowledge on the area.
- By describing whether the idea of holding company is workable on the ground or not. The research will come up with the gap filling points.

- The researcher believes that this paper will be a good input for other researchers who are interested and need to work on this area,
- The other significance of the research, based on the solutions brought by the researcher the private companies may use the research as an input.

## Scope

Following tasks will be undertaken as a part of the proposed research;

The research makes analysis of law and practice in Ethiopia. However, we may have a very brief discussion of how holding companies are being practiced in some developed economies with a view to see how they are employed currently. But, this discussion is not intended to provide a comparative analysis because the research is not a comparative study. Discussion of existing law will be done on the above mentioned statutes in Ethiopia. And the practical discussion will be limited on a few number of holding companies registered so far and up to three companies which operate as a *de facto* holding company whose accounts will be analyzed to show the need for regulation of holding companies in Ethiopia.

1. To limit the scope of the research, discussion will be made on how the seemingly “holding” companies are regulated after the coming in to effect of the Commercial Registration and Business Licensing Proclamation No.980/2016 proclamation. With its amendment proclamation no 1150/2019 and commercial registration and licensing council of ministers regulation no.392/2016 with its amendment regulation no 461/2020;
2. In this research we will analyze existing law, which is limited to the above mentioned statutory provisions, with a view to determine if the Ethiopian legal system properly addresses regulatory needs in the area of holding company.
3. From the perspective of competition, we also analyze holding companies or the *de facto* companies as whether they manifest potential issues of market dominance or monopoly, self-dealing and other issues.

## **Methodology**

### **Data sources and sample selection**

The research proposal will have doctrinal aspects because there is a need to have theoretical understanding and knowledge of the principles that the various different kinds of business categories in general and holding companies in specific are governed with. This will help us judge the appropriate legal framework that needs to be in place. The research would also have empirical aspects because there is a need to determine if there are in Ethiopia currently holding companies and the manner of their operations. To some degree, this will also assist us in understanding the scale of the need of legislative action once we have figured out whether the current legal framework is sufficiently crafted to address this dynamism. The objective of the research, which is a legislative and practical analysis of the working of holding companies in Ethiopia, requires a great deal of qualitative discussion than quantitative discussion. Of course, quantitative discussion may be relevant in specific scenarios such as analyzing the data of companies which are holding or *de facto* holding companies. This helps us to show the state of the practice and the sufficiency of the legal framework. We may also employ quantitative discussion in analyzing the understanding and awareness of the business community about holding companies.

The researcher uses primary and secondary data. As a result interviews, books, journals, magazine, newspaper, court decisions, organizational documents, and website will be used as may be necessary.

Among some *seemingly* or *de facto* holding companies, by using purposive sample selection, the researcher will make an interview on 1/3 of the *defacto* holding company managers and the newly registered holding company managers.

Often, we see companies which control many subsidiary companies under their name, and these companies even if they are not registered as a holding company, they show us some features which we normally expect from holding companies. So the researcher believes that these companies are good inputs for the research to show the practice as whether we have holding

companies in Ethiopia or not, or even whether we have companies which are actually holding companies but never claim to be so nor are incorporated as such.

Interview will be conducted on holding companies and some companies which manifest the features of these. The same will also be made on the business community, and government bodies and officials. Judges, practitioners, managers are selected on the criteria that they are working in relation to holding company, and relatively stay longer in the practice. The Responsible government bodies like Ministry of Trade and Industry, Ministry of Revenues, Federal Documents Authentication and Registration Agency and other concerned government body officials and officers are potential interviewees.

The experience of other countries, which are the United States, India, Netherlands and Germanys are discussed to show the current use of holding companies. These countries are selected for the reason that they represent different legal system and the idea of holding companies are well known on these selected countries. Thus, in addition to the theoretical discussion the experience of the countries helps us judged the *de facto* holding companies in Ethiopia whether they qualify conventional features of holding companies.

## **Limitations**

Holding companies are one of the least practiced businesses in Ethiopia if not unpracticed at all. The limited number of statutory provisions scattered across the legal system are some of the most unimplemented sections of the law. Consequently, there is limited amount of scholarship such as books, journals and reviews as well as court decisions etc. and explanatory material on the field in Ethiopia. To this effect, this research may be one of only few attempts at the subject matter. In this regard, we endeavor to make the best use of the scholarship made abroad with appropriate considerations of the Ethiopian legal system and business environment.

Apart from this, the research was undertaken during a period where the global incident of the Coronavirus 2019 pandemic due to which much of business and government exercises took unprecedented course. This complicated information gathering and visiting of court registrars by the researcher. To address this problem, the best available information and input are used from complementary and supplementary information sources in instances where access to court

registrars, the archives of business organizations and similar sources are not possible. The good thing is that much of institutional data and information are being made available through cloud storage and internet access.

## CHAPTER TWO

### 2. An Overview of Holding Company Legal Arrangements

#### 2.1. Concept, Meaning and Nature of Holding Company

As per Black's Law Dictionary Holding company defines as "a company that usually confines its activities to owning stock in, and supervising management of, other companies. A holding company usually owns a controlling interest in the companies whose stock it holds. In order for a corporation to gain the benefits of tax consolidation, including tax free dividends and the ability to share operating losses, the holding company must own 80% or more of the voting stock of the corporation.<sup>15</sup>The dictionary defines holding company that established usually for owning stock not to engage on day to day business activities and for the purpose of supervising the management of other companies.

Elsewhere in other legal systems we find other definitions provided by laws. For example, under the India companies Act section 4(4) 1956, a company is known as the holding company of another company if it has control over the other company.<sup>16</sup>Therefore, a company is deemed to be the holding company of another if, but only if that other is its subsidiary.<sup>17</sup>A company may become a holding company of another company in any of the following three ways:-

- a) By holding more than fifty per cent of the nominal value of issued equity capital of the company; or
- b) By holding more than fifty per cent of its voting rights; or
- c) By securing to itself the right to appoint, the majority of the directors of the other company, directly or indirectly.<sup>18</sup>

Here, the provision gives us two keys to determine whether a company shall be called a holding company or not. These are equity holding percentage and the right to appoint majority number of

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<sup>15</sup> Black, Henry Campbell, *Black's Law Dictionary*, 6<sup>th</sup> ed. Paul Minn. West publishing Co.1991 available @ [https://www.Blacks\\_law.enacademic.com](https://www.Blacks_law.enacademic.com)

<sup>16</sup> *The Republic of India Companies Act no.1 of 1956*[18th January,1956 )SEC4

<sup>17</sup> *ibid*

<sup>18</sup> *Supra note no 16*

Board of directors of other company(the other company in such a case is known as a “Subsidiary company”). Here, we can ignore sub-article (b) basically, because it follows that if one retains a 50 percent plus holding on the equity, it also retains vote rights to that extent in the company.<sup>19</sup>

In United States of America Holding Company means any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting...<sup>20</sup>A holding company in USA is a company (usually a corporation and financial institution) that owns a controlling interest in another company, called a subsidiary.<sup>21</sup>In the U.S 80% and more of voting stock must be owned before tax consolidation benefits such as tax free dividends can be claimed.<sup>22</sup>

In the United Kingdom holding company is broadly defined as, company that doesn't have any operations, activities, or other active business itself instead, the holding company owns assets.<sup>23</sup>Holding company is a type of business that deals specifically with assets, investments and management, rather than providing goods services with a view to making a profit from production and sales. It will be limited by shares and its main activities will involve owning assets in another company or many companies.<sup>24</sup>

In a free market economy, business organizations are a familiar part of everyday life.<sup>25</sup> Business organizations, from a legal viewpoint, are undertakings either more than one member, having assets distinct from the private assets of the members and a formal system of management, which

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<sup>19</sup>J. P. Goodrich. *The Public Welfare and the Holding Company*. *The Annals of the American Academy of Political and Social Science*, Vol. 57, *Proceedings of the Conference of American Mayors on Public Policies as to Municipal Utilities (Jan., 1915)*, pp. 323-334. Published by: Sage Publications, Inc. in association with the American Academy of Political and Social Science. Available @ URL: <https://www.jstor.org/stable/1013296>

<sup>20</sup> *United states of American public utility holding company act of 1935 section 2(a)7*).

<sup>21</sup>David Gibbs 15 march 2018 UK Available at <http://www.alliots.com>.

<sup>22</sup> Wikimedia foundation 2010 available at <http://www.enacademic.com>

<sup>23</sup>Matt Koppers, march 21 2016. *tax benefits guide of having a company in the united kingdom* Available at <http://www.startupmanufactory.com>

<sup>24</sup> *Ibid*

<sup>25</sup>Alemayehu Fentaw & Kefene Gurm (2009), *Law of Trades and Business Organizations, Teaching Material Prepared under the Sponsorship of the Justice and Legal System Research Institute*.

may or may not include members of the organization.<sup>26</sup> Business organizations are can be classified as partnerships on the one hand and companies on the other.<sup>27</sup> On one hand, Partnership is an aggregate or collection of individuals (the main importance on partnership is the personality of the individuals) that is so, the incapacity, death or serious disagreement between the partners may result in dissolution of the firm.<sup>28</sup> The partners are jointly and severally liable for the liability of each partner to third parties is unlimited.<sup>29</sup> A partner cannot transfer or assign his interest without the consent of all other partners.<sup>30</sup> On the other hand, Companies are an aggregate or collection of shares or capital.<sup>31</sup> As a result, of capital importance is legal personality of the company.<sup>32</sup> Thus, the company may own property, make contract, and sue and be sued under its name.<sup>33</sup> Also, it is entirely distinct from its members.<sup>34</sup> The company has perpetual succession.<sup>35</sup> As a result, death or insolvency of a shareholder does not affect its existence.<sup>36</sup> With respect to transfer of shares, share in a company are freely transferable unless the company's articles of association otherwise provides.<sup>37</sup> Thus, a shareholder can transfer his share and ordinarily the transferee becomes a member.<sup>38</sup> Members of a company are not entitled to take part directly in the management of the company unless they become directors.<sup>39</sup> That is to say, a shareholder of a company acting in his individual capacity can not bind the firm by his acts.<sup>40</sup> A company is managed by a board of directors, general manager, shareholders meetings and auditors.<sup>41</sup>

There are six legal forms of business organizations provided under article 212 of the Ethiopian Commercial Code: ordinary partnership, joint venture, general partnership, limited partnership, Share Company and private limited company. Here, we have a possibility of institution of

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<sup>26</sup> *Supra note no 25, page 42*

<sup>27</sup> *Supra note no 25, page 43*

<sup>28</sup> *Supra note no 25 ,page46*

<sup>29</sup> *Ibid*

<sup>30</sup> *Supra note 25, page 47*

<sup>31</sup> *Supra note no 25 page 46*

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*

<sup>35</sup> *Supra note no 25 page 46*

<sup>36</sup> *Ibid*

<sup>37</sup> *Supra note no 25 page 47*

<sup>38</sup> *Ibid*

<sup>39</sup> *Ibid*

<sup>40</sup> *Supra note no 25, page 47*

<sup>41</sup> *Ibid*

holding companies. The Ethiopian Commercial Code has define these business organizations. But the code does not have any provision that defines holding company.

The concept of Holding companies are not recent creation. Before 1888 there was no state law clearly authorized the creation of corporations as a general.<sup>42</sup> Such\_ownership was prohibited.<sup>43</sup> The existence of holding company is associated with the human nature of the business man to form the organization with concern of common control.<sup>44</sup> In 1888 followed by the revision of the New Jersey laws organizing of corporations are allowed for the purpose of owning the stocks and securities of other corporations and based on the enactment of these laws we can trace the origin of holding company.<sup>45</sup>

Holding company could be mentioned as one of the achievement of “diversified growth” throughout the world.<sup>46</sup> The growth of holding company associated with the growth of large business organizations that led by the industrial revolution of the world.<sup>47</sup> With this many companies go through the process of internal restructuring and reorganization for being holding company.<sup>48</sup> The encouraging factors for the restructuring and reorganization of the multinational corporation (that requires big investment and involved on high risk) results from the structure of holding company. Today, a holding company is considered as a means for spreading stockholders risk and as achievement of greater stability of earnings.<sup>49</sup>

The Ethiopian commercial registration and licensing proclamation No. 980/2016 define holding company under its Article 2(40) a holding company means a company incorporating two or more limited liability companies and issued with a special registration certificate and managed by the holder. When we compare with the above definitions, the proclamations definitions focused to permit for the limited liability companies to establishment holding company rather than defining it. It does not define that how much percent holding on the equity share required for the

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<sup>42</sup> *Supra note no 19 page 333.*

<sup>43</sup> *ibid*

<sup>44</sup> *James M. Daley (1979). Holding Companies, Common Carriers, Public Policy. Transportation Journal, Vol. 19, No. 2, pp. 67-73. Published by: Penn State University Press. Available@ <https://www.jstor.org/stable/20712560>*

<sup>45</sup> *Supra note no 19. P.333*

<sup>46</sup> *Supra note no 44, page 69.*

<sup>47</sup> *Anjali Kumar (1993). State Holding Companies and Public Enterprises in Transaction. Page 10*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

establishment of holding company. What is the main function of holding company to supervise the subsidiary companies and in any case can not engage on active business are not stated at all.

Therefore, the nature of holding company as other companies the liability is limited. As a result, the holding company consists of Limited Liability Company, which is the holding company has separate legal entity and limited liability related to its subsidiaries.<sup>50</sup> Holding company is a company that owns enough voting stock in another company so that it can control that company's policies and oversee its management decisions.<sup>51</sup> Perpetual succession is another nature of holding company. That is the holding company will not be dissolved by the death or incapacity of its subsidiaries. It is an entity with a perpetual succession that ensures stability and continuity. Its life is not measured by the life of any members. Holding company have Technical expertise and come up with the forms of managerial skill that control the subsidiary companies policies and oversee their management decisions.<sup>52</sup> The other nature of holding company that differs from the other forms of business organizations is a company that does not conduct any operations, ventures, or other active tasks for itself. Instead, it exists for the purpose of owning assets.<sup>53</sup> In other words, the company does not engage in the buying and selling of any products and services.

## **2.2. Structure and Function of Holding Company**

There are two main ways through which corporations can become holding companies. One is by acquiring enough voting stock or shares in another company; hence giving it the power to control its activities.<sup>54</sup> The second way is by creating a new corporation from the ground up, and then retaining all or part of the new corporation's shares.<sup>55</sup> Owning more than 50% of voting stock of another firm guarantees greater control, which it helps to control the decision making process.<sup>56</sup>

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<sup>50</sup> Lowell M. Greenlaw. (May, 1930) *The Regulation of Holding Companies. Proceedings of the Academy of Political Science*, Vol. 14, No. 1, *Public Control of Power*, pp. 108-131. Published by, *The Academy of Political Science*. available @: <https://www.jstor.org/stable/1172688>)

<sup>51</sup> *Ibid*

<sup>52</sup> *Supra note 44, page 69*

<sup>53</sup> *Supra note no 50 page 115*

<sup>54</sup> *Global corporate finance society (accessed on August 23/2020), holding company available @ <http://www.Corporatefinanceinstitute.com>*

<sup>55</sup> *Ibid*

<sup>56</sup> *Supra note no 54*

The relationship between the holding and that of the subsidiary they control is called a holding-sub subsidiary relationship.<sup>57</sup> In such a case, the holding company is known as the holding company while the organization being acquired is called subsidiary.<sup>58</sup> If the holding company controls all the voting stock of the other form, that organization is called a wholly-owned subsidiary of the holding company.<sup>59</sup>

### **2.2.1. The Function of Holding Company**

As a general Companies has the following merits; one is financial resource, only company (private limited and share company) forms of organizations can mobilize huge funds, required by big business.<sup>60</sup> This is possible mainly because of large number of members and that a share company can collect money from numerous small investors by issuing securities (share and debentures).<sup>61</sup> Thus a share company and private limited company are much more capable of raising large capital than any of the other business organizations mentioned above section 2.1.1 of this thesis. Secondly, limited liability, company become more popular with investors this days it is largely because of its limited liability clause.<sup>62</sup> The shareholders are not liable to pay anything more than the face value of the shares held by them.<sup>63</sup> Third, scope of growth, unlike the partnership and sole proprietorship forms of business organization, the life of which is limited by the life of the partner or the proprietor companies are perpetual existence. With perpetual existence comes the possibility of endless growth and expansion. With a large no of investors and perpetual existence the company form of organization need not suffer for lack of financial resources with a huge capital at its disposal, collected from investors spread all over the country and even abroad also, the company can grow and expand at a rapid pace and reach the break-even point faster than expected.<sup>64</sup> Fourthly, professional management, in order to achieve the targeted rates of growth and expansion of a company, competent and professional management of the company is no less important than the availability of adequate finance.<sup>65</sup> One

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<sup>57</sup> *Supra note no 50 page 109*

<sup>58</sup> *Ibid*

<sup>59</sup> *Ibid*

<sup>60</sup> *Supra note no 25 Page 93*

<sup>61</sup> *Ibid*

<sup>62</sup> *Ibid*

<sup>63</sup> *Ibid*

<sup>64</sup> *Supra note no 25 page 94*

<sup>65</sup> *Supra note no 25, page 94*

great advantage of company form of organization is that it allows for insulation of management from ownership.<sup>66</sup> The management of the company can be left to a group of professionals who, with their competence, specialized knowledge or skills, qualifications of training, can show better results in production or marketing etc.<sup>67</sup> The overall performance of the company and the profitability of the business venture can greatly improve with professional management of the company.<sup>68</sup> Fifth, stability of the company, for the success of any business venture, continuity and stability of business are equally important.<sup>69</sup> With its perpetual succession of ownership theory, only the company form can ensure both continuity and stability whereas the partnership or sole proprietorship form may have to close the shop due to the death of sole trader, a partner or die to any other reason including the internal quarrels amongst the partners it is mainly because of these twin factors (continuity and stability) that the company enjoys the confidence and support of a large number of investors and creditors who look forward to a fruitful association with the company for a pretty long period.<sup>70</sup> Sixth, positive social benefits, a company is beneficial not only to its members, creditors and employees but also to the public at large.<sup>71</sup> It supplies goods and services at a competitive rates by introducing new and sophisticated technologies and by exploiting the natural resources in a most efficient and economic manner.<sup>72</sup> That part, it provides employment opportunities both direct and indirect to the needy and competent persons in the society.<sup>73</sup> It also helps to connect the small savings of people in to productive investments there by serving the twin objectives of diffusing the business risks and democratizing or socializing the business ownership.<sup>74</sup> It contributes to the exchequers also handsomely by way of direct and indirect taxes and duties.<sup>75</sup> These social benefits make the company form far more desirable than the partnership and sole proprietorship form of business organization. Having a company which is the holding company will increase the necessity of the

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<sup>66</sup> *Ibid*

<sup>67</sup> *ibid*

<sup>68</sup> *ibid*

<sup>69</sup> *Supra note no 25, page 94*

<sup>70</sup> *Ibid*

<sup>71</sup> *Ibid*

<sup>72</sup> *Ibid*

<sup>73</sup> *Supra note no 25 page 94*

<sup>74</sup> *Supra note no 25, page 95*

<sup>75</sup> *Ibid*

company form of organizations.<sup>76</sup> Holding company as one of company form of business organization, it shares the above mentioned issues.

Though the above advantages apply generally for company forms, a holding company is an arrangement that is used to maximize the benefits of company forms. Therefore, specifically, holding companies have so many advantages or benefits, among, great control for a smaller investment that gives the holding company owner a controlling interest in another without having to invest much.<sup>77</sup> When the holding company purchases 51% or more of the subsidiary, it automatically gains control of the acquired firm.<sup>78</sup> By not purchasing 100% of each subsidiary, a small business owner gains control of multiple entities using a very small investment.<sup>79</sup> Which is a pyramid organizational structure. A pyramid organizational structure functions following the shape it's named for, with one leader at the top, a small executive leadership team below, and tiers of managers leading down to the bottom team of employees. Each tier of managers manages the tier below, which distributes the responsibility more evenly.<sup>80</sup>

The other benefit is independent entities, if a holding company exercises control over several companies, each of the subsidiaries is considered an independent legal entity.<sup>81</sup> This means that if one of the subsidiaries were to face a lawsuit, the plaintiffs have no right to claim the assets of the other subsidiaries.<sup>82</sup> In fact, if the subsidiary being sued acted independently, then it's highly unlikely that the holding company will be held liable.<sup>83</sup>

Management continuity is the other benefit, whenever a holding company acquires other subsidiaries, it almost always retains the management.<sup>84</sup> The holding firm will not be involved in

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<sup>76</sup> *Supra note no 25 page 96*

<sup>77</sup> *Supra note no 25 page 120*

<sup>78</sup> *Ibid, page 121*

<sup>79</sup> *ibid*

<sup>80</sup> *Stephanie Faris (March, 16, 2019). Pyramid Organizational Structure. Available @<https://smallbusiness.chron.com>*

<sup>81</sup> *Supra note no 25 page 122*

<sup>82</sup> *Ibid page 124*

<sup>83</sup> *Ibid page 126*

<sup>84</sup> *John H. Pardee (Jan., 1926). The Holding Company in Public Utilities: Its Advantages and Dangers: Proceedings of the Academy of Political Science in the City of New York, Vol. 11, No. 4, Trade Associations and Business Combinations, pp. 147-155. Published by: The Academy of Political Science. Available @ URL: <https://www.jstor.org/stable/1180341>*

the activities of the subsidiary except when it comes to strategic decisions and monitoring the subsidiary's performance.<sup>85</sup>

Tax effects is other benefit of holding company, holding companies that own 80% or more of every subsidiary can reap tax benefits by filing consolidated tax returns.<sup>86</sup> A consolidated tax return is one that combines the financial records of all the acquired firms together with that of the holding company.<sup>87</sup> In such a case, should one of the subsidiaries encounter losses, they will be offset by the profits of the other subsidiaries. In addition, the net effect of filing a consolidated return is a reduced tax liability.<sup>88</sup>

### **2.2.2. Structure and Organization of Holding Company**

Nowadays, economically strong and successful companies are holding structures.<sup>89</sup> They during, a long evolutionary path, have integrated largely in to the developed world. Creating holding structures and their functioning has several advantages over the stand-alone companies.<sup>90</sup> This is primarily due to the fact that the holding company can help to create closed technological chain from raw material up to the manufacture of the final product and bringing it to the consumer.<sup>91</sup> Secondly, it helps to save on marketing, sales, and other services.<sup>92</sup> Thirdly, the company, which comes in to the holding is not only interested in the efficient operation of the enterprise, but also in other companies included in to the holding company.<sup>93</sup>

In its turn, the occurrence of holdings means changing a form of the enterprise and, as a consequence, there is a need in changing approaches in this structure.<sup>94</sup> There are different types

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<sup>85</sup> *Supra note no 50 page 110*

<sup>86</sup> *William H. Hodge (Jan., 1932). A Defense of the Holding Company. The Annals of the American Academy of Political and Social Science, Vol. 159, Part1: Power and the Public, pp. 7-14. Published by: Sage Publications, Inc. In association with the American Academy of Political and Social Science. Available@ <https://www.jstor.org/stable/1018880>*

<sup>87</sup> *Ibid*

<sup>88</sup> *Ibid*

<sup>89</sup> *Supra note no 84 page 149*

<sup>90</sup> *Ibid*

<sup>91</sup> *Ibid*

<sup>92</sup> *Ibid*

<sup>93</sup> *Supra note no 84 page 151*

<sup>94</sup> *KotikEvgenyIvanovich , the role of a holding company and management structure in it, institute of humanities, social sciences and technologies of TPU, page no 1 available@ <https://core.ac.uk> accessed on August 28/2020*

of holdings under which it builds a suitable organizational structure of management.<sup>95</sup> Due to the diversity of types and scope of the holding a model that reflects the way of management structure formation in a particular type of holding was made the meaning and characteristics of these three integrations are; vertical integration is the amalgamation of several successful stages in the production of the product.<sup>96</sup> This allows the company to reduce transaction costs and speed up the production process.<sup>97</sup> Horizontal integration is the process of association of firms that reduce the same product, which in turn can reduce costs through economies of scale and eliminate competitors or reduce the impact of competition, which will strengthen the firms control over the market.<sup>98</sup> A diversified integration – the process of combining business that are not connected directly to any commercial or industrial relations that is the holding company structure.<sup>99</sup> This is a structure that combines divisional modified matrix network management organizational structure and, were functional departments of subsidiaries are directly subordinate to the head of this subsidiary.<sup>100</sup>

The holding company sets specific targets and develops the general direction of development and functioning of the entire holding.<sup>101</sup> It also sets the means, forms and methods that will ensure the achievement of its goals.<sup>102</sup> A holding company controls the process of achieving the goals and makes adjustments as necessary.<sup>103</sup> The main purpose of the holding company is to ensure coherence and synergies between its subsidiaries, which together constitute a single whole.<sup>104</sup> Therefore, the holding company must have exceptional features, which would include only its competence.<sup>105</sup> Very important functions of holding company are: strategic management of all parts of the organization; uninterrupted supply and cash flow management; fundraising; personnel management by and implementing company standards; development of management

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<sup>95</sup> *Ibid*

<sup>96</sup> *Supra note no 94 page 1*

<sup>97</sup> Masahiro Shimotani (December 2007) *Holding Company or Outright Merger?—Alternatives for Corporate Integration: The Kyoto Economic Review*, Vol. 76, No. 2 (161), pp. 181-191. Published by: Kyoto University. Available @<https://www.jstor.org/stable/43213354>

<sup>98</sup> *Supra note no 97 page 187*

<sup>99</sup> *Ibid page 2*

<sup>100</sup> *Ibid*

<sup>101</sup> *Supra note 86 page 10*

<sup>102</sup> *Ibid*

<sup>103</sup> *Ibid*

<sup>104</sup> *ibid*

<sup>105</sup> *Supra note no 86 page 11*

and employee motivation.<sup>106</sup> Through this technic holding can improve efficiency in the management and operation of the entire combination as a whole.<sup>107</sup> The holding company is the sole owner of the entire association, which obliges it to maintain a single strategic management, because for suppliers, buyers, lenders and investors credibility of the company, its financial stability and solvency are important.<sup>108</sup> As a result, the holding structure may serve as a protection in cases of insolvency of the subsidiary, which enhances asset protection. Therefore it is impossible to maintain an isolated financial management between the subsidiaries, otherwise it will undermine the financial viability of the holding as a whole and damage the company's image.<sup>109</sup> From this we can conclude that good reputation is very important because for holding it applies to all subsidiaries in general.<sup>110</sup>

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<sup>106</sup> *Ibid*

<sup>107</sup> *Ibid*

<sup>108</sup> *Supra note no 86 page 12*

<sup>109</sup> *Supra note no 86 page 13*

<sup>110</sup> *Ibid*

## CHAPTER THREE

### 3. The Experience of other Countries in Relation to Holding Company

As already stated on the above chapters holding company structures are economically strong and successful companies. As a result, they have integrated largely in to developed world. The economically developed countries promote holding company through their country. Under this chapter the experience of some countries are briefly discussed to show the current use of holding companies. This, in addition to the theoretical discussion, helps us judged the *de facto* holding companies in Ethiopia whether they qualify conventional features of holding companies. As a result two countries chosen from common law legal system (USA, India,) and as Ethiopia has transplanted most of its modern legal codes including the Commercial Code from the then continental European legal countries, one country chosen. That is the Netherlands. These countries are selected based on having long history on the area, based on having detailed law related to holding company or based on their success or because of they have a good practice.

#### 3.1. United states of America

United States law is a type of common law which is the legal system of the United States has several layers more possibly than in most other countries, and is due in part to the division between federal and state law.<sup>111</sup> US law draws its authority from four sources: constitutional law, statutory law, administrative regulations and case law.<sup>112</sup> Constitutional law is based on the US constitution and serves as the supreme federal law.<sup>113</sup> Taken together with those of the state constitution, these documents outline the general structure of the federal and state governments and provide the rules and limits of power.<sup>114</sup> US statutory law is legislation enacted by the US congress and is codified in the United States code.<sup>115</sup> The state legislatures have similar authority to enact state statutes. Administrative law is the authority delegated to federal and state executive

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<sup>111</sup> <https://www.indexmundi.com> accessed on September 8/2020 10:22pm

<sup>112</sup> Prof. Dr. Frank Emmert, LL.M. and Professor Toni M. Fine, JD (January 2006) *Introduction to American Legal System*. Page 104-128 Available @ [www.researchgate.net](http://www.researchgate.net)

<sup>113</sup> *Introduction to American legal system , Legal Reasoning, Writing, and Other Lawyering Skills chapter two page 16 available @ [www.law.northwestern.edu](http://www.law.northwestern.edu)*

<sup>114</sup> *Ibid*

<sup>115</sup> *Ibid page 17*

agencies.<sup>116</sup> Case law also referred to as common law, covers areas where constitutional or statutory law is lacking.<sup>117</sup> Case law is a collection of judicial decisions, customs, and general principles that began in England centuries ago, that were adopted in America at the time of revolution and that continue to develop today.<sup>118</sup>

United States of America, as one of the most developed countries on the world and have practiced holding companies for many years.<sup>119</sup> As a result America has somany large holding companiesthat have so many subsidiary companies under their control.<sup>120</sup> Among them there are lots of utility holding companies.<sup>121</sup>Most of the holding companies of US are engaged on the utility industry like electric, railroad and so on.<sup>122</sup> Theholding-company system is not restricted on utility industry, it has expanded into every industry of the country;<sup>123</sup>for instance holding company system has expanded through their banking, insurance, industriesand factories.<sup>124</sup>In America there is no prohibition for the non-financial holding company to have insurance subsidiary company.<sup>125</sup>The holding company in the sphere of insurance has begun in the first half of 1968.<sup>126</sup> The main reason for the existence of holding company in America is the economic reason.<sup>127</sup> That is the holding company were serve as a medium for the reduction of corporate risks.<sup>128</sup> Through its good management and corporate planningmakes the corporate most successful and play a great role for the economy of the country.<sup>129</sup>

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<sup>116</sup>Supra note 112 page 17

<sup>117</sup> ibid

<sup>118</sup> Ibid

<sup>119</sup> (. John T. Flynn(Jan., 1932), *Pyramiding of Holding Companies The Annals of the American Academy of Political and Social Science*, Vol. 159, Part1: Power and the Public pp. 16 Published by: Sage Publications, Inc. in association with the American Academy of Political and Social Science. Available@ URL: <https://www.jstor.org/stable/1018881>)

<sup>120</sup> Ibid

<sup>121</sup> Ibid

<sup>122</sup> Ibid page 17

<sup>123</sup> ibid

<sup>124</sup>Supra note no 119 page 18

<sup>125</sup> Ibid

<sup>126</sup> (Daniel P. Kedzie (Mar., 1969), *Corporate Planning and the Holding Company. The Journal of Risk and Insurance*, Vol. 36, No.1 pp. 88. Published by: American Risk and Insurance Association. Available @: <https://www.jstor.org/stable/251142>)

<sup>127</sup> Wendell.L. Willkie (Aug. 1935 ) *The Future of Holding Company, The Journal of Land and Public Utility economics*, vol.11, no.3, pp.237. Published by: University of Wisconsin Press. Available:@:<https://www.jstor.org/stable/3158152>

<sup>128</sup> Ibid

<sup>129</sup> Ibid

The American's believe that the holding companies are best way for the protection of community interest than single utility company.<sup>130</sup> The holding companies discharge the responsibility of safeguarding the interest of community and had a great role on the economy.<sup>131</sup> Which is the holding company has unique feature that itsundivided focus is on the management of its subsidiaries and it keeps them away from business risks.The government also did not need the public utility companies get in to risks rather it needs their success. So the governmentpromote the area by appreciating the coming togetherof the public utility companies under effective control of holding company.<sup>132</sup>TheAmerican public utility holding company Act of 1935 under section 2 stated clearly that the controlling influence has to be with in the consideration of the public interest.<sup>133</sup> Which is in anywaythe controlling influence over the management or policies of subsidiary companies' has to be for the best interest of the public; then the company will be exempted.<sup>134</sup>Checking and control of whether the companies are engaged on the area for the purpose of tax exemption or not will be the responsibility of the government body (The American Securities and Exchange Commission) that allow to have exemption.<sup>135</sup>Thecourts of America give meaning for the controlling influence; By stating things that shows there is a controlling influence by the holding company whenthere is close and deep relation between the management of the subsidiary and the holding company, when the report or recommendation given by the holding companyetc.<sup>136</sup> By the way all areas are not allowed to holding companies Under the regulation of public utility holding companies specifically stated that there are areas that are not allowed to holding companies. The regulation lists the areas that are not allowed to holding companies.<sup>137</sup>

In short, the holding company plays a great role on the advancement on the public utility in America. Which means the advancement of the public utility field that brought a great

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<sup>130</sup> *Supra note no 84 page 152*

<sup>131</sup> *Ibid*

<sup>132</sup> *Ibid*

<sup>133</sup> *Supra note no 20, section 2.*

<sup>134</sup> *SEC Interpretation of "Holding Company" and "Affiliate" under the Public Utility Holding Company Act. The Yale Law Journal, Vol. 51, No. 6 (Apr., 1942), pp. 1022.* Published by: The Yale Law Journal Company, Inc. Stable URL: <https://www.jstor.org/stable/792474>

<sup>135</sup> *Ibid*

<sup>136</sup> *ibid*

<sup>137</sup> *(Rule (C. Emery Troxel (July 1936), Regulation of Public Utility Holding Companies. : Social Science, Vol. 11, No. 3 pp. 268-275.* Published by: Pi Gamma Mu, International Honor Society in Social Sciences. Stable URL: <https://www.jstor.org/stable/41882908>.

development to the country is backed by the holding company's effective management.<sup>138</sup> So to justify the holding companies are best it is enough to see the American's economic and financial structure.<sup>139</sup> As a result, some of the American writers suggests that holding companies should have to be permitted to proceed with this great work in the free mannery.<sup>140</sup>

### 3.2. India

India has a common law legal system whose infrastructure bears the influence of British colonial rule.<sup>141</sup> The republic of India is a constitutional democracy.<sup>142</sup> It is a federation made up of 29 states and seven union and national territories.<sup>143</sup> Holding company in India is the company which plays a great role over the reform of the private enterprise system.<sup>144</sup> Holding company under the company act 2013 of India defines, a company Controls the composition of the Board of Directors; or Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.<sup>145</sup> The company Act of India has a detail law about holding company. The law stated that the main function of holding companies are to control and oversees the composition of the board of directors of its subsidiaries through holding one half of the total share capital of the subsidiary companies. Then the holding company works for the success of its subsidiaries. In addition to defining the holding company this company act of India has detail law about how holding companies are established, operate and so on.<sup>146</sup> The establishment of the holding company has to be done by the memorandum and articles of association.<sup>147</sup> This Indian company act also has detail about the related party transaction, statement and account of the company, auditor and auditing standard.<sup>148</sup> This company Act has been amended to exempt related party transactions between a holding company and its wholly

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<sup>138</sup> *Supra note no 86 page 9*

<sup>139</sup> *Supra note no 127 page 239*

<sup>140</sup> *Ibid*

<sup>141</sup> *Indian research law guide: introduction to the Indian legal system and Indian legal research. The university of Melbourne, last updated Aug.13,2020, 1:51 pm available @URL: <https://unimelb.libguides.com/indian law>.*

<sup>142</sup> *Ibid*

<sup>143</sup> *Ibid*

<sup>144</sup> *Sebastian Morris (Nov. 30, 1991) Holding Companies, Performance Contracts and Task Orientation in Public Sector. Published by Economic and Political Weekly, Vol. 26, No. 48, pp. M137-M144. Available@:*

*<https://www.jstor.org/stable/4398367>*

<sup>145</sup> *(Companies Act, 2013, Act No. 18 of 2013 [29th August, 2013.]*

<sup>146</sup> *Ibid chapter 2 section 7 and 19.*

<sup>147</sup> *Ibid chapter 2 section 19.*

<sup>148</sup> *Ibid*

owned subsidiary.<sup>149</sup> These amendment also says that the holding company can provide loan to its subsidiary companies.<sup>150</sup> This provision shows that the holding company will support to its subsidiary companies to protect them from risks.

The other attractive area on the amendment of Indian Act is, tax exemption on the transactions done among the related companies that is the holding and wholly owned subsidiary transaction.<sup>151</sup> This provision shows that the government promotes holding company through exemption. From this country experience, Ethiopia can get the experience to have a detailed law related to the formation, registration or issues related to tax specific to holding company.

### 3.3. Netherlands

The most widespread type of legal system in the world is Civil law (European continental law) legal system.<sup>152</sup> The major features of civil law systems is that the laws are organized in to systematic written codes.<sup>153</sup> Netherlands has civil law legal system and their laws are written. Corporate law in the Netherlands, also called company Act, which is a major source of statutory regulations and rules for company incorporation and management.<sup>154</sup> The law lists the different types of companies that can be incorporated in the Netherlands and the rules pertinent to the procedure of establishment.<sup>155</sup> Companies in the Netherlands generally can be classified in to two that is companies with a separate legal personality and companies without legal personality companies with a separate legal personality are the private limited-liability company (*beslotenvennootschap*), public limited company (*naamlozevennootschap*), foundation (*stichting*), cooperative (*cooperatie*), mutual insurance association (*onderlingewaarborgmaatschappij*) and association (*verenigingen*).<sup>156</sup> The companies without separate legal personality are the general partnership, limited partnership and sole trader.

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<sup>149</sup> *The gazette of India extraordinary. The companies (amendment) Act 2015 (25<sup>th</sup> may, 2015). Published by ministry of law and justice.*

<sup>150</sup> *ibid*

<sup>151</sup> *Supra note no 149*

<sup>152</sup> *Stephanie Ter Brake (2017), The Netherlands. International Liability of Corporate Directors- Second Edition, Juris publishing, available @ [www.jurispub.com](http://www.jurispub.com)*

<sup>153</sup> *Ibid*

<sup>154</sup> *Ibid*

<sup>155</sup> *Dutch legal system available @ <https://libguids.bodleian.ox.ac.uk/law-nether> accessed on September 7/2020*

<sup>156</sup> *Corporate Law in the Netherlands available @ [www.intercompanysolutions.com](http://www.intercompanysolutions.com) accessed on September 7/2020*

Netherlands has a favorable legal framework for the holding company.<sup>157</sup> A holding company can be set up in the Netherlands with the purpose of owning shares in other companies called subsidiaries, can manage and control<sup>158</sup> A holding company can be registered as a private limited liability company or cooperative in the Netherlands.<sup>159</sup> Both legal forms provide extensive benefits to the shareholders of the Dutch holding company.<sup>160</sup> A holding company incorporated as the private limited liability company form has benefits of low taxation, low cost of incorporation, low yearly maintenance.<sup>161</sup> When the companies are incorporated as cooperatives are considered zero tax holding companies as they are eligible for the participation exemption.<sup>162</sup> In order for this exemption to apply, the holding company must own at least 5% of the nominal share capital of the subsidiary and the activity must qualify as passive investment activities and so on.<sup>163</sup> Additionally, in both cases the holding companies are not required to hire employees because, they are serviced by trusts. Simple incorporation procedures are the other benefits.<sup>164</sup> For instance, Dutch holding company benefits from some of the most favorable registration conditions, as it requires no minimum share capital to be incorporated.<sup>165</sup> The management of holding company also must be ensured by a board of directors, no matter if it is created as a Dutch corporate or non-corporate entity in order to register.<sup>166</sup> The shareholders in the Dutch holding companies obtain withholding exemptions in the Netherlands.<sup>167</sup> In short many incentives offered by the government.

### 3.4. Germany

The legal system of Germany is civil law which is originated from Roman law.<sup>168</sup> During the first half of the nineteenth century, Germany reformed and amended its company law so many

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<sup>157</sup> *Dutch holding company-company formation in Netherlands (April 2020 ) available@ [www.companyformationnetherlands.com](http://www.companyformationnetherlands.com) accessed on September 9/2020*

<sup>158</sup> *Ibid*

<sup>159</sup> *ibid*

<sup>160</sup> *Supra note no 156*

<sup>161</sup> *Ibid*

<sup>162</sup> *Ibid*

<sup>163</sup> *ibid*

<sup>164</sup> *Supra note no 155*

<sup>165</sup> *Ibid*

<sup>166</sup> *Supra note no 155*

<sup>167</sup> *Ibid*

<sup>168</sup> *KPMG's international business representatives in Germany (2016) Investment in Germany. A Practical Investor Guide to the Tax and Regulatory Landscape in Germany, page 13. Available @[www.kpmg.de](http://www.kpmg.de)*

times.<sup>169</sup> Among the reason for the reforms were the collapse of large corporations because of failures in the corporate governance system used in their companies.<sup>170</sup>The German corporate law can be divided in to two which are the stock corporation (*aktiengesellschaft* or AG) and private limited company (*Gesellschaft mit beschränkter Haftung* or GmbH).<sup>171</sup>Holding companies can be formed as either of the two.<sup>172</sup>The most employed types of German companies are the limited liability company because it does not require a large amount of money invested and have less strict formalities.<sup>173</sup>For instance one man can establish GmbH and the minimum requirement set for this form of company is 25,000 euros and both types of corporations provide limited liability for their members. <sup>174</sup>The AG form of company mainly used by large corporations whose shares are publicly held and traded on stock exchange; for the formation of this type of company two or more members are required.<sup>175</sup>

The legal regime of corporate governance in Germany is composed of varies legislations such as the stock corporation Act of the 1965 with its amendments, the Commercial Code, the co-determination Act of 1976 and other statutory materials.<sup>176</sup> To note here the Germany will most likely enact a comprehensive package of tax regulations before the end of 2016.<sup>177</sup> German tax law includes a wide array of regulations to counter international profit shifting. These regulations, however, compromise the attractiveness of Germany as a location for holding companies.<sup>178</sup>

The management structure and organization of Germans stock corporations has three corporate bodies: the management board, the supervisory board and the shareholders acting in general meetings.<sup>179</sup> The management board is authorized to manage the day-to-day business. The task

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<sup>169</sup> Theodor Baums, (April 2003) *Company Law Reform in Germany*. *Journal of corporate Law studies*3, page 181-190. (page 181)

<sup>170</sup> *Ibid*

<sup>171</sup> [www.lawyersgermany.com](http://www.lawyersgermany.com) Accessed on September 22 /2020, 10:40 pm

<sup>172</sup> *Ibid*

<sup>173</sup> Hogan Lovells. *Doing business in germany. The different legal entities and tax law issues. Brochure-doing business in Germany*. Page 1-20 available @ [www.hoganlovells.com](http://www.hoganlovells.com)

<sup>174</sup> *Ibid*

<sup>175</sup> *Ibid*

<sup>176</sup> Safari p.7

<sup>177</sup> Stephan Kudert and Christian Kahlenberg (April 20/2017). *Recent Developments Regarding Holding Companies in Germany*. *Bulletin for International Taxation*. Page 272. Available @ [www.ibfd.org](http://www.ibfd.org)

<sup>178</sup> *Ibid*

<sup>179</sup> Don Berger (1970), *Shareholders Rights Under the German Stock Corporation Law of 1965*, *Fordham L.Review*Vol 38 , Issue 4, page 691.available @ <https://ir.lawnet.fordham.edu/flr>

of the management board can be split among the individual board member like CEO. The supervisory board is a controlling corporate body that supervises the management of the company. The general meeting is the forum in which the shareholders exercise their rights. This makes the structure a two tier board.

In the German group of company regulatory scheme, for instance under its article 15 of German stock corporation Act it gives recognition to the affiliate enterprises by stating that the legally separate enterprises that with respect to each other are subsidiary and parent enterprise, controlled or controlling enterprises, members of a group, enterprises with cross-shareholdings, or parties to an enterprise agreement shall constitute affiliated enterprises.<sup>180</sup> Which is the interest of the group as a whole is recognized to the extent that the controlling company can compensate the controlled company.<sup>181</sup> The controlled company right to compensation is also protection mechanism for member companies. In addition to this the law of Germany recognize and gives protection to external shareholders and creditors.<sup>182</sup>

The Germany in addition to having legal framework, there are court decisions, which are particularly relevant in connection with holding companies in Germany.<sup>183</sup> For instance, Germany grant tax exemption on the basis of the relevant tax treaty. In these cases, this resulted in the risk of double non-taxation.<sup>184</sup> Consequently, the German tax authorities denied exemption in respect of the income, in relying on relevant provision and the court cases that opposed the application of this provision were successful.<sup>185</sup>

The countries practice mentioned above shows that the countries have detail legal framework related to holding company and promoted by their governments. This will contribute something for the paper with the view to see how the other countries are employed currently. Then under the following chapter the legal framework of Ethiopia, what it says about holding company, how about the practice and what are the problems arise from the law and the practice will going to made discussion on it.

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<sup>180</sup> *German Stock Corporation Act of 1965*

<sup>181</sup> *Supra note no 14 page 31*

<sup>182</sup> *ibid*

<sup>183</sup> *Supra note no 177 page 271*

<sup>184</sup> *Ibid*

<sup>185</sup> *Supra note no 177 page 271*

## CHAPTER FOUR

### 4. The Law and Practice Relating to Holding Companies In Ethiopia.

In 1960, Ethiopia had its major legal codes including the Commercial Code.<sup>186</sup> The codes transplanted mainly from the continental European legal codes.<sup>187</sup> In Ethiopia the general rules are governed by the Commercial Code and there are several other complementing or sector specific proclamations and directives.<sup>188</sup> The Commercial Code book two title six and seven deals with companies limited by shares and private limited companies.<sup>189</sup> The development of companies and company law practices in Ethiopia is a very recent phenomenon which is following with the market economy experienced after the 1991 regime change, there area number of companies become established. Most of the companies formed at that time were the private limited companies<sup>190</sup>

The two forms of companies recognized by the Commercial Code have different requirements of formation, minimum capital, organs, structures of management, issue and transfer of shares etc. The private limited companies are the most widely used form of companies in Ethiopia; with their simple governance structure and limited liability.<sup>191</sup> The law prohibits private limited companies from undertaking banking, insurance or any business of similar nature.<sup>192</sup> The rules in the formation and governance of public share companies are strict and more complex than those rules governing private limited company.<sup>193</sup> The general company law rules found under the Commercial Code are often overruled by special rules of the same code or other separate proclamation and directives.<sup>194</sup> For example the commercial registration and business licensing proclamation governs the matters on registration and business licensing of companies, related to financial share companies which is the banking business proclamation no 592/2008 and insurance

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<sup>186</sup> *Assefaaregaysefara (March 27, 2015). Corporate Governance Rules in Ethiopia and Germany: A Comparative Analysis. LL.M Short Thesis, Central European University. Page 8*

<sup>187</sup> *Ibid, page 9*

<sup>188</sup> *Ibid, page 10*

<sup>189</sup> *The Commercial Code of the Empire of Ethiopia, NegaritGazzete Extraordinary Issue, Proclamation No.166, May 5, 1960 (here in under stated shortly as Com. C)*

<sup>190</sup> *Feqadu Petros, Emerging Separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications, Mizan Law Journal, Vol-4, No-1, 2010 P.13*

<sup>191</sup> *Supra note no 169, page 9*

<sup>192</sup> *Com. C art 513*

<sup>193</sup> *Supra note no 169, page 9*

<sup>194</sup> *Ibid, page 10*

business proclamation no 764/2012 govern banks and insurance companies respectively and the micro finance institutions are governed by proclamation no 629/2009 etc.

## **4.1. Laws Relating to Holding Company In Ethiopia**

### **4.1.1. The Ethiopian Commercial Code**

When it is comes to the legal framework of Ethiopia, we can begin from the Commercial Code. As a principle the code employs the single corporate entity.<sup>195</sup> Exceptionallywe find some references made to holding and subsidiary companies. OnArts: 344(rules of joint holding),Art 370(persons not competent for being auditors), Art 379(auditing the accounts of holding company), Art 360(1) and Art 451(rules on consolidated account), Art 384(investigation of holding and subsidiary companies by Ministry).The research paper try tomakea brief discussion on these selected articles made reference to the holding company.

Article 344 of the Ethiopian Commercial Code states that

- 1. Where ten per cent or more of the capital of one company is held by a second company, the first company may not hold shares in the second company.*
- 2. Where two companies each have a capital holding in the other company and one of such holdings is ten per cent or more of the capital, the companies shall declare their holdings to the Ministry of Commerce and Industry which shall require the companies by agreement to reduce their holdings so as to confirm to the provision of sub-art(1). If the companies fail to agree, the ministry of commerce and industry shall order the company possessing the smaller holding to dispose of that holding.*
- 3. Where the respective holdings are equal, and failing one company disposing of its shares in the other, each company shall reduce it's holding to less than ten per cent of the capital of the other.*

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<sup>195</sup>*BerihunGezahegn (march 2014) The Unregulated Status of Corporate Groups and Competition Issues in Ethiopia: Abuse of Market Dominance and Anticompetitive Agreements. The thesis submitted in partial fulfilment of the requirements of the LLM Degree(business law). School of law Addis Ababa University, college of law and governance. Page 37*

*4. The companies shall furnish to the Ministry of Commerce and Industry a sworn statement that they have complied with either sub-art. (2) or sub-art. (3) of this Article.*

This article shows that the Ethiopian Commercial Code permits cross holding within the legal limit.<sup>196</sup> Companies could also form group companies by holding each other's share to the extent of 10%. The extent of the holding of the share has not be equal to 10% or more than 10%.<sup>197</sup> It restrict the joint holding among companies. The other implication of the article is one company by owning the share of other company to the extent of majority ownership without wholly owning it.<sup>198</sup> So this article implies that holding company is lawful and there is a possibility of creating holding- subsidiary relationship.

*Art. 451. - Accounts of holding companies.*

*(1) Where a company is a holding company, the accounts of its subsidiaries shall be submitted to the annual general meeting at the same time and in the same manner as its own accounts.*

*(2) A consolidated balance sheet and profit and loss account shall be prepared in respect of the holding company and its subsidiaries.*

*(3) The provisions of sub-art. (2) shall not apply where, the directors are of opinion that the drawing up of such balance sheet would be impracticable or too onerous, or of little concern to the shareholders on account of the small financial interests involved.*

*(4) The provision of sub-art. (2) shall not apply if the Ministry of Commerce and Industry approves, where the directors of the holding company are of opinion that the drawing up of such balance sheet could prejudice the company or its subsidiaries, or that the company and its subsidiaries carry out business of such a differing nature that they may not reasonably be deemed to form a single enterprise.*

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<sup>196</sup> *Com. C article 344*

<sup>197</sup> *Supra note no 14 page 51*

<sup>198</sup> *Ibid*

Article 451 of the Commercial Code that is rules on consolidated account requires for the preparation and reporting of financial information of holding and subsidiary company jointly and that of the disclosure of information that are related to company transparency.<sup>199</sup>

Company transparency can be expressed through rules on powers duties and liabilities of directors, the board of directors possess the power to act in all circumstances on behalf of the company which is subject to the limit of the company business purpose and to the powers which are expressly reserved by law or meetings of shareholders.<sup>200</sup> Also expressed through Limiting or restricting of the powers of the board directors merely enables the company or to its shareholders to claim damage against a director without affecting third party in good faith.<sup>201</sup>

The basic purpose of regulation provided under article 356 is to ensure full disclosure of potentially conflicting relationship between a director and entities with which the company is doing business and to ensure that the other directors have the power to approve.<sup>202</sup> This provision can be taken as a provision that forbid self-dealing and as a provision that remove conflict of interest .The other expression of rules related to directors may render themselves liable to the company and to the third party. Directors specifically are jointly and severally responsible when they fail to take appropriate measure with in their knowledge to prevent or mitigate damage that may happen to the company in relation to general management.<sup>203</sup> In addition, in cases of some share companies that are tied together by the common shareholders, the bankruptcy of the company could extend to the individual manager. And because of the Companies are more related through inter corporeal transaction, the bankruptcy of one company could extend to the other company.<sup>204</sup> It is not mentioned that whether this article can applicable to the holding company situations.<sup>205</sup> But by way of interpretation this rule becomes important as inter corporate liability rule in holding company situation.<sup>206</sup>

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<sup>199</sup> *Supra note no 14 page 55*

<sup>200</sup> *Article 363(1) Com. C*

<sup>201</sup> *Article 363(3) Com. C*

<sup>202</sup> *Article 356 Com. C*

<sup>203</sup> *Article Com. C 364(4)*

<sup>204</sup> *Supra note no 14 page 67*

<sup>205</sup> *Ibid*

<sup>206</sup> *Supra note no 14 page 63*

When we comes to the appointment of auditors, auditors are appointed by shareholders and are entrusted with the external control of the company.<sup>207</sup> Their main functions are to audit the accounts of the company, certify certain information provided to the shareholders, and prepare reports which must be submitted to the shareholders.<sup>208</sup> Therefore under article 379 of the Commercial Code on auditors can audit the consolidated accounts of the holding companies.<sup>209</sup> Article 384 of the Commercial Code also state that the investigation made by the ministry of commerce and industry (become Ministry of Trade and Industry) may extend in to the affairs of holding and the subsidiary company.

As stated under article 370 of the code founders, blood relatives etc. are prohibited from being auditors. In addition to this, the article prohibits auditors not to be appointed as a directors or managers of the company which they audit, nor of one of its subsidiaries of its holding company with in three years from the date of the termination of their function.

In addition to these articles, article 360 of the Commercial Code mention holding and subsidiary with relation to registration of shares and debentures held by the directors. By stating that every company shall keep at its head office a register showing the number and value of shares or debentures held by each directors in company; in subsidiary companies; in any holding company of which the company is a subsidiary.

To sum up, the rules motioned above on the Commercial Code are not directly made for the holding company itself. Rather, the rules that are stated above are stated under the Commercial Code title six. That is the rules stated on the Commercial Code are stated under the rules that are designated for companies limited by share (Share Company). Which does not include for the companies formed as a private limited companies or for the holding company. As a result, the applications of the rules will be for the share companies only. The Commercial Code does not have direct rules for holding companies that is the code does not have detail, clear and comprehensive rules related to holding company. For instance, we can not find the definition of holding company under the Commercial Code. So in this situations, it is difficult to apply the above mentioned rules as it is.

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<sup>207</sup> *Supra note no 25 page 128*

<sup>208</sup> *Ibid*

<sup>209</sup> *Article 379 Com. C*

### **4.1.2. The Commercial Registration and Licensing Proclamation**

Proclamation no 980/2016 with its amendment proclamation no 1150/2019 and regulation no 392/2016 with its amendment regulation no 461/2020 constitute the commercial registration and licensing regime of Ethiopia. The Commercial Registration and Licensing Proclamation come in to effect for the purpose of closing the legal and procedural gaps in relation to registration and business licensing of business organizations. Among the goals specified under the proclamation is providing the expected service to the business community by making the commercial system fair, modern, fast and accessible. Then by connecting the commercial registration and licensing activity with technology, the proclamation tries to contribute on combating the illegality raised in relation to the business and commerce. Coming with this goals, the law tries to contribute to the overall economic change of the country.

Proclamation no 980/2016 has given recognition to holding company. The proclamation under its definitional part article 2(40) defines holding company. The proclamation stated holding company as “a company incorporating two or more limited liability companies and issued with a special registration certificate and managed by the holder.” The proclamation stated that holding company means a company which incorporate two or more limited liability (it could be private limited or share company). With the authority to manage the incorporated companies and have a special registration certificate.

Under article 34(1) of the proclamation no 980/2016 strengthen the idea that is stated under its definition part. By clearly stated that Private limited companies intending to establish holding company shall do so in a manner that it would not disturb competition and shall be registered with the Ministry. These proclamation with this article come up with the solution for those companies are formed as a private limited companies practically and intending to establish holding company without prejudicing the competition rule. On this research paper it is found necessary to see Ethiopian law related to competition law.

### 4.1.3. Ethiopian Trade Competition and Consumers Protection Proclamation No.813/2013

A dynamic and competitive environment, underpinned by sound competition law and policy, is an essential characteristics of a successful market economy.<sup>210</sup>The benefit of competition includes increased economic efficiency, innovation, and consumer welfare. Effective enforcement of competition law and active competition advocacy are most important things for the successful economy.<sup>211</sup> This results flexibility and mobility of resources which are critical elements for the competitiveness of firms and industries across nation.<sup>212</sup> Competition forces firms to become efficient and to offer a greater choice of products and services at lower prices.<sup>213</sup>

The rationale for competition policy could be the global move from administrative state type to competition and regulator state type and the rationale for competition law is, the use of competition law to correct market failure/imperfection, to control market abuses and to shape business culture.<sup>214</sup>

The objectives of competition policy and law can be seen by dividing in to two. The usual objectives or the primary objectives are prevention of abuse of economic power, increase of efficiency and innovation, Assurance of consumer welfare, Elimination of governmental and private policies and actions that lessen competition.<sup>215</sup> The related objectives are decentralization of decision making, preservation of the free enterprise system (Freedom of individual action, access to market, freedom of trade, and freedom of choice), maintenance of economic pluralism, and moderation of economic instability, control of community breakdown due to anticompetitive actions and protection of small businesses.<sup>216</sup>

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<sup>210</sup>*The world bank Washington D.C. and Organization for Economic Co-operation and Development (OECD) paris (1999)A Framework for the Design and Implementation of Competition Law and Policy.(p.1 and ff*

<sup>211</sup> *Ibid*

<sup>212</sup> *Ibid*

<sup>213</sup> *Ibid*

<sup>214</sup>*Dr. Solomon Abay(PhD,(November 2019)(lecture note ) Theories and Principles of Economic Law ,Addis Ababa University School of Law – LLM Program in Business Law.*

<sup>215</sup>*ibid*

<sup>216</sup> *ibid*

The World Bank and OECD summarizes anticompetitive acts or usual areas of interest for Competition Policy and Law in to four major categories:1, anti-competitive agreements, the agreements could be Horizontal agreements which is done between potential competitors. E.g. Output-restricting, price-fixing, bid-rigging, market division, customer allocation, boycotting agreements. It could be the Vertical agreements done between suppliers and recipients in the trade chain. E.g. Resale price maintenance, exclusive distribution, exclusive dealing, product tie-in and quantity forcing agreements. 2,Anti-competitive mergers.3,Abuse of market dominance. 4, Anti-competitive unilateral actions • E.g. attack to good will; hoarding; refusal to deal with.

Ethiopian Trade Competition and Consumers Protection Proclamation No.813/2013 come up with the objective of protecting the business community from anti-competitive and unfair practice and by creating a competitive and free market that at the same time safeguards the interests of consumers. In addition to safeguarding the consumers from misleading market conduct, it ensures the goods and services that the consumers get are safe and fair in terms of prices. The proclamation applies to any commercial activity or transaction in goods or services conducted in Ethiopia or having effect with in Ethiopia. The law contain prohibited activities, namely, abuse of dominance, anticompetitive agreements, merger that cause a significant adverse effect on trade competition and acts of unfair competition. To note here, berihungezahegn's research paper has more detail issues on previous competition proclamations related to corporate governance.

Abuse of market dominance(article 5): it prohibits every business persons that may have a dominant position in the market either by himself or acting together with others from, for instance, limiting production, hording and selling at price lower than the cost of production to harm the competitors.<sup>217</sup> It also prohibits directly or indirectly imposing unfair prices, and refusing to deal with others unjustifiably.<sup>218</sup>it regards as abuse of dominance conduct like imposing restrictions on the manufacture or distribution of competing goods or services, and limiting 'where to whom, or in what conditions or quantities, or at what prices the goods or

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<sup>217</sup>*Trade Competition and Consumers Protection Proclamation No.813/2013 article 5(here in after competition proclamation)*

<sup>218</sup> *Ibid*

services shall be resold or exported without justifiable economic reason.<sup>219</sup> The law prohibits anti-competitive agreements, concerted practices and decisions by business persons and associations in a horizontal relationship.<sup>220</sup> The outlawed acts include directly or indirectly fixing prices, collusive tendering, dividing markets by allocating customers, suppliers, territories or specific types of goods or services.<sup>221</sup> In a vertical agreements that have the effect of preventing or significantly lessening competition or that involve the setting of minimum resale price are prohibited. These are permissible if they are justified by technology or other competitive gains that outweigh their anti-competitive effect.<sup>222</sup> The authority prohibit merger is likely to have significant adverse effect on competition.<sup>223</sup> The Authority does not automatically prohibit mergers just because the merger is likely to have significant adverse effect on competition.<sup>224</sup> It will consider any remedial measures that may be taken to eliminate the adverse impact of the merger on competition.<sup>225</sup> The authority may approve a merger proposal where the merger is likely to result in technological, efficiency or other pro-competitive gain that outweigh the significant adverse effects of the merger on competition, and such gain may not otherwise be obtained if the merger prohibited.<sup>226</sup>

The trade competition and consumer protection authority to discharge its responsibility issued merger directive No.1/2016 that aims at putting in place the criteria for the assessment of merger, procedures to be followed and the time frame which decision on merger notification is made.<sup>227</sup> Issuing this directive has good impact to bring coherent, consistent, uniform, cost effective, predictable and efficient application of the competition proclamation regarding merger control.<sup>228</sup>

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<sup>219</sup> Seyoum Yohannes (May 2019), *Competition and Consumer Protection Laws of Ethiopia: a Bird's eye view the new wave of privatization in Ethiopia a legal perspective*. Available @ <https://gateslaw.com>

<sup>220</sup> Art 7(3)(c) competition proc.

<sup>221</sup> Article 7(1) (b) competition proc.

<sup>222</sup> Article 7(2) and (3) competition proc.

<sup>223</sup> Article 11(1) (b) competition proc.

<sup>224</sup> *Supra* note no 211

<sup>225</sup> *Ibid*

<sup>226</sup> Article 11(2) completion proc.

<sup>227</sup> *Supra* note 212

<sup>228</sup> *Ibid*

Generally there are tensions that are related to trade competition and consumer protection proclamation no 813/2013. Among them, 1, the scope of application did not specifically list which organizations are covered and which organizations are excluded. Because there is no regulation for these competition proclamation.<sup>229</sup> Institutions like Telecommunication Corporation that owned by the Ethiopian government and maintains a monopoly over all telecommunication services in Ethiopia are exposed for the competition proclamation.<sup>230</sup> Based on the above scenario, if there is no clear scope of application of the proclamation clear scope of application, holding company may covered by the proclamation.

In addition to the scope, there is no clear provision that mention holding company under the trade competition and consumer protection proclamation or other detail law related to its application, like the merger directives. In fact, holding companies are not companies that are engaged on active business its only focus is on controlling, overseeing and management of its subsidiaries to make them successful. As a result, holding company is a form of company that promotes efficiency by its strong decision making power. Holding company through keeping its subsidiary companies from risk and by making them competent, it can promote competition. It also has technological gain. So we can conclude that the holding company advantages greatly outweigh its effects on competition and it is not against competition. Rather by bringing technology and promoting efficiency on its management it has to be considered as pro competition. So without prejudiced the provisions under the competition proclamation, limited companies that are stated under proclamation 980/2016 can establish holding company form of organization.

When we come back to proclamation no 980/2016 in addition to defining holding company it talks about registration and liability related to holding company. Articles 34(5) and (6), regulation no 37 talks about the requirements for the registration of holding company. The registration will be undertaken by the ministry of trade and industry. Article 34(2) of the commercial registration and licensing proclamation talks about the liability related to holding company by stating that the holder company is jointly and severally liable with its member companies to the claims of third parties. In addition to this the proclamation stated under its article 34(3) related to the

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<sup>229</sup> *Supra note 207*

<sup>230</sup> *Ibid*

responsibility on keeping annual financial records and other information. Other articles 37,38,39,40 and 41 of regulation no 392/2016 talks about the renewal, substitute, amendment and cancellation of the special certificate of registration of holding companies. To note here the amendment done by regulation no 461/2020 is only on article 41 of the previous regulation which is on the cancellation of the special certificate of registration.

To sum up, even though the proclamation give recognition to the holding company but it did not have detail provisions related to its establishment, operation or dissolution. As a result even if the proclamation proclaimed before four years it's not applicable as expected.

#### **4.1.4. The Status of Holding Company on The Draft Commercial Code**

The Ethiopian government has taken up the agenda of reforming the Commercial Code for many years. The drafter of the code considered it revolutionary for its time as the political social and economic context in which it was introduced was far behind from the modern economy that it had targeted to regulate. And the draft code sets out the general rationale for reviewing the existing code. One, it is to update the code in light of the current global economic environment, technological advancement and the Ethiopia's development goals.<sup>231</sup> Two, to put in place an easier, more productive and cost effective process of establishing and operating business.<sup>232</sup> Three, to strike a balance between administrative powers of managers and the rights and benefits of stakeholders.<sup>233</sup> Four, to give opportunities to individuals with know-how lacking capital to participate in organized commercial activities, and to maintain transparency and accountability in the commercial community.<sup>234</sup> The draft code has introduced several amendments. Some of these amendments are significant for the research paper and are discussed below.

The draft Commercial Code stated that companies are related when they are formed as a group or when they created holding subsidiary relationship.<sup>235</sup> The companies relate themselves through

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<sup>231</sup> *Atkilt Bekele and Natnael Melaku (January 2017) An overview of the proposed key changes to the Commercial Code in light of Ethiopia's current economic climate and its development goals. Available @ <http://www.Simmons-simmons.com>*

<sup>232</sup> *ibid*

<sup>233</sup> *Supra note page 224*

<sup>234</sup> *Supra note page 224*

<sup>235</sup> *Ministry of Justice, Commercial Code of Ethiopia (draft), unpublished, article 552 (here in after called draft Commercial Code)*

holding share of one company from the other or through holding share each other.<sup>236</sup> Under the draft code group means the one that contains the holding and subsidiary or subsidiaries.<sup>237</sup> Subsidiary means the company that is directly or indirectly controlled by some other company.<sup>238</sup>

The draft code also give meaning to control. Control means the authority to oversee the subsidiaries management decisions, finance and company policies by the holding company alone or with other shareholders.<sup>239</sup> Under the same article it stated that the conditions that shows there is control over the subsidiary company. The draft commercial code also gives meaning to wholly owned subsidiary company.<sup>240</sup>

Under the draft Commercial Code article 555 and the following articles it has provisions that regulate issues like transfer of share, management, related to creditors protection, related to the rights responsibility and accountability of shareholders, related to accountability of dominant share holders for the debt of the company, related to the holding company responsibility and accountability on the subsidiary company and so on. As a result, the draft Commercial Code has regulating provisions on rights responsibility, accountability and liability which is related to holding and subsidiary company.

To sum up, as it is discussed on the above laws of Ethiopia, research paper tries to show whether the holding companies are properly regulated under the legal framework of Ethiopia briefly. As a result we can conclude that holding company is not properly regulated related to its establishment, operation and dissolution. Relatively, the status of the holding company on the draft Commercial Code is well recognized. That is the draft Commercial Code has clear detail and coherent provisions that regulates holding company. As such the draft Commercial Code is still draft and we can not apply as it is. So it has to come up to force as soon as possible to.

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<sup>236</sup> *Ibid*

<sup>237</sup> *Article 554(1) draft Com. C*

<sup>238</sup> *Article 554(2) draft Com. C*

<sup>239</sup> *Article 554(3) draft Com. C*

<sup>240</sup> *Article 554(5) draft Com. C*

## 4.2. The Practice Relating to Holding Company in Ethiopia

Under the above sub title the researcher tries to show the laws that are recognized the holding company in our country and this sub title tries to show the practice and problems related to holding company in Ethiopia. As we already seen on the above sub titles, holding company has get recognition that is mentioned by the Commercial Code of Ethiopia and by the proclamation but the laws are not adequate to properly regulate holding company. Hopefully, the draft Commercial Code relatively have the tendency to regulate the holding company properly in the future. But we can not apply the draft code right now because it is still draft. Generally, the legal framework is not adequate so in the absence of adequate legal framework other than the few provisions mentioned above, and after the proclamation proclaimed, how come the federal government lets the *de facto* holding companies operate under the name they use?

Globalization and other factors has great impact over the world's economy, politics and social life. The practice and expansion that are related to holding company could be one indication. The companies are one step up from our law. The business community ready for changes and has willingness to go with the technology. As a result the business community with their expanding business they are intending to establish holding company. That has good corporate governance and that can make them competitive in the world. And demanding for the law that fulfills their need. As we know our commercial law related to holding company are a little back behind the technology. But after the coming effect of the 2016 proclamation that permits the establishment of holding company, it gives hope for the business community. The research paper can take an examples of some companies briefly who has clearly show the intention to establish holding company. To note here, even they use the name group or else their intention is to create a controlling body that oversee and control their different and expanded business. They need a company that its function is to control and oversee the active businesses rather than engaging on active business. This is the nature of holding company and that is why the researcher use the *de facto* holding companies. If we ask that whether these companies are legally recognized and operate under the name they use after the proclamation, the answer is no. because till the interview collected from ministry of trade industry for the purpose of the paper, these companies like MIDROC Ethiopia and DH Geda that are well known publicly as a group are registered as a

PLC. On the other side there is one new company found on the Ministry of Trade and Industry called holding company. This three companies are selected for the discussion below.

Example one, MIDROC Ethiopia Investment Group, owned by Sheikh MohammedH.Al-Amoudi, started operation in 1996.<sup>241</sup> It is the leading private investment group engaged in multifaceted investment undertakings that have proved to make significant contributions to the development of the country's economy.<sup>242</sup> MIDROC Ethiopia Investment Group today has about 80 companies operating in agriculture and agro-industry, construction, hotel and tourism, manufacturing, mining, oil and gas distribution, real estate development, transport, trade and commerce, healthcare, and education & training.

The companies under the investment group are classified in to categories of MIDROC Ethiopia investment group, MIDROC group companies and MIDROC Ethiopia technology group. They are divided under different CEO<sup>243</sup>The CEO of each company has operational and financial autonomy, it has also undertake the duty to consult the owner on major strategic decisions and actions.<sup>244</sup>Which is the feature of holding company.The companies retain and develop their own identities and business ideas but can work, cooperate and support each other.<sup>245</sup> MIDROC Ethiopia Investment group companies are those establishments owned by Sheikh Mohammed Hussein Ali Al-Amoudi, chairman of MIDROC Ethiopia.<sup>246</sup> Even if the MIDROC Ethiopia is well known by the name MIDROC Ethiopian group publicly but it is legally registered with the name that MIDROC Ethiopia private limited company<sup>247</sup>. MIDROC companies are structurally organized in the form of PLCs, engaging in entirely different business activities and vertically integrate (with the exception of some horizontally structured companies).<sup>248</sup>

Example two, DH Geda Trade and Industry PLC, DugumaHundegeda the owner and general manager of DH Geda group of companies.<sup>249</sup> DH Geda trade and industry has become one of the

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<sup>241</sup>Website of the MIDROC Ethiopia <https://www.midroc-ethiopia.com.et>

<sup>242</sup> *Ibid*

<sup>243</sup> *Ibid*

<sup>244</sup> *Supra note 188, Page 36*

<sup>245</sup> *Ibid*

<sup>246</sup> *Ibid*

<sup>247</sup> *The file that kept in the Ministry of Trade and Industry. And the Interview with AtoJirataNemeraDisasa branch manager of Held on March 2020*

<sup>248</sup> *Supra note 188, page 34*

<sup>249</sup> [www.2merkato.com](http://www.2merkato.com) 29717-dh-geda accessed on September 13, 3:24 AM

leading establishments in Ethiopia involved in a broad spectrum of industries.<sup>250</sup> It involved in the production and marketing of paints, minerals, blanket, wheat flour acrylic yarn, galvanized sheets.<sup>251</sup> It also runs its commercial center DH Geda tower. That it have more than eight companies e.g. DH Geda G.I.S Factory, Zemilli paint factory, DH Geda blanket factory, DH Geda Dyeing and Bleaching Factory etc.<sup>252</sup> These companies known publicly as DHGeda group but each have their own legal personality.<sup>253</sup>

Thesetwo mentioned group companies have the intention to establish holding company and they were forwarded their intention to the ministry of trade.<sup>254</sup> This shows they have intention to establish holding company and but because of the Ministry of Trade and Industry did not have any detail law related to the establishment and related issues, they can not establish the holding company till the interview held.

Example three, ITEAM holding company is the first company that are registered with the name of holding company in the Ethiopia ministry of trade and industry. The company is established on February 19/2020 with the name of holding company.<sup>255</sup> And have special registration certificate of holding company issued under commercial registration and business license proclamation no. 980/2016. The members of the companies are six and they have their own legal personality.<sup>256</sup> Based on the files attached for the ministry of trade and industry (which is the memorandum and articles of association of the ITEAM holding company), the ITEAM holding company are established based on the commercial code, book 2 articles from 510 to 543 and the members agreed to establish private limited company.<sup>257</sup> On the one hand, even it is registered by the name of holding company, the nature of the company that is stated under the memorandum and articles of association is more of private limited company.<sup>258</sup> For instance, to transfer the

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<sup>250</sup> <http://gis.dhgeda.com> accessed on September 13, 3:42 3:38 AM

<sup>251</sup> *Ibid*

<sup>252</sup> *Ibid*

<sup>253</sup> *ibid*

<sup>254</sup> *Supra note no 234*

<sup>255</sup> *The memorandum and articles of associations of ITEAM holding that is authenticate and registered by the document authentication and registration agency b12/3228 and 3229/4a/12*

<sup>256</sup> *Ibid*

<sup>257</sup> *Supranote 248*

<sup>258</sup> *Supra note 248*

share outside it has to be with in the agreement of the shareholders, the private limited company be registered by fully paid up capital and so on. But it is registered as a holding company

The government bodies which are the legislative, executive and the judiciary have great role on the overall law making, enforcement and interpretation process. The law maker does not properly regulate the area related to holding company. That is, it did not make detail, clear and comprehensive law that helps for the proper application of holding company. As a result, institutions that are concerned on the area like the Ministry of Trade and Industry (MOT&I), Document Authentication and Registration Agency (DARA), face problem practically related to the establishment of holding company.

It is not clear as to what are the requirements for formation of holding companies, what is the liability regime, if any, for the holding company and its management in relation to liabilities of the subsidiary, how and when does the holding company dissolve, and what are the consequences of such dissolution on the subsidiary and third parties, needs to be clearly regulated.

According to the interview made to this institutions, there are question come to the institutions for the establishment and registration of holding company. For the reason that there is no detail law, these institutions face problem to implement the recognized law practically. To note here, there is no legally recognized holding company in Ethiopia before the promulgation of proclamation no 980/2016. Following this there is no tax history related to holding company formed in Ethiopia. And the recently registered by the name of holding company is established by the Commercial Code provisions designated to private limited company. And the Ministry of Trade and Industry registered it as it is. This shows that there is inadequacy of legal framework for the proper regulation of holding company. In addition to the above information and based on the interview I made, we can understand that also, the above government institutions officials are not aware of what holding company as a general. Somehow, the business community have a knowhow to engage on holding company. In addition to forwarding their intention to holding company, through their companies there is an initiation to start research on holding company that helps them to engage on the area. To note here, the researcher made a proper effort to attach case law but could not find any practical court case related to holding company.

When we see the advantages of regulating holding companies and promoting their widespread practice in terms of benefit to the entire economy of the nation is that the holding company form of organization has strength on spending on capital and overseeing corporate management. Since these do not have other business operation than spending on capital and overseeing management, they have undivided focus on sparing losing subsidiaries and minimizing insolvency. In this regard, we can argue that holding company is a self-strengthening mechanism by the private sector itself in instances of failure and insolvency without requiring government bailouts and public fund give away. For the reason that the holding company form of organization is strong in the above mentioned function, they have the capacity to penetrate to the international market and make a country competitive in a wider arena and can contribute immensely on the economy of a country. In addition to this holding company has different advantages like attracting foreign capital, it is very stable form of business organization which have significant effect on the performance of the economy and it improves the good will of its subsidiary company before public. These separate companies can maintain their separate position under this system.

## **Conclusion and Recommendation**

To conclude, holding company has so many advantages for a country development as a whole through bringing efficiency and technology. Holding companies are stable form of companies that are with strong management. The holding subsidiary relationship creates strength for the subsidiary companies. For instance, there are situations that the holding company refunds for its subsidiaries. This situations help to the subsidiaries to increase their credit. Then the operating company securities become more stable with better markets and better investment value. Then the public at large will get benefit too; because there will be mass purchase with reduced price, quality and quantity of the rendered service. The other situation for the stability of the holding company structure are not affected by the shareholders death, illness, or age of dominant shareholders. So that it is stable and passes through generation. If that so the companies' getting strong and strong, then the tendency to get bankrupt will be very less. The stability of business organization is the corner stone for countries economy as a general. So Based on these and other advantages of the holding company, having holding company form of organization has significance for our country economy.

Since having holding company is one way to make the country competitive in the world which leads for the development of the economy of Ethiopia. Having adequate legal framework is a precondition. Which is a need to have a general rule that regulates the holding company is one thing. When we say general rule, the Commercial Code of 1960 comes first. As we already said the Commercial Code indirectly shows that holding company is lawful but it did not have direct provisions related to holding company, so there is a need to have modern and advanced Commercial Code. That contains provisions over the holding company. The other thing is, in addition to having the general rules having specific laws are necessary and it is expected from the drafter. There is a need to have detail laws under the specific laws that contains provisions on the nature of holding company, a detail requirement has to be stipulate for the formation, registration and so on.

For instance it has to be clearly stated formation issues like in what manner is the holding company has to be established. Is that by preparing the memorandum and articles of association, what details are expected from the companies intending to establish holding company, what will be the rights and duties of the shareholders, how will be managed, the relationship of the holding with its subsidiaries and with the third parties has to be clearly stated. In short, the rights, responsibility, obligations, restrictions, reserved areas or prohibition (prohibition like whether the holding company can hold both the financial and non-financial business sectors at the same time has to be stipulated. It has to be clearly stated detail registration requirements also. After we have a detail law then it will be easy to apply.

The other issue that are raised related with the drafter is the draft Commercial Code. As we already stated above the Commercial Code relatively gives hope by having rules on holding company. But the draft Commercial Code is still draft, and it has to come in to force as soon as possible then it will create possibilities for the economic growth and it will contribute for development of Ethiopia by having these rules. The government institutions which are the concerned government bodies are expected to enforce the laws issued from the law maker by having clear information about the law of holding company and its application. Courts also one of the concerned government body that have concern on the proper application of the law. It will expected to entertain the cases that are related to the holding company depend on the laws. As the business organizations have a great impact over the economy and are intending for the

establishment of the holding company, they will have a great role for the promulgation of the law that gives them legal personality over the engagement of holding company and makes them competitive on the world market. They are expected also to make effort for the application of the law.

Finally, in order to promote the development of holding companies in the country, the government should first create the conditions for the functioning of holdings that would help attract investment funds into production, thereby increasing the competitiveness of the enterprises included in the holding company. To solve these problems the government should actively pursue public policies, which would include measures such as the provision of the status of a single taxpayer, the possibility of getting rid of taxes by moving the cash flows within the holding. To my mind, these tasks will promote holdings in the country and attract additional investors, both domestic and foreign.

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