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DISSOLUTION AND WINDING UP OF PLCs UNDER THE ETHIOPIAN LAW

By: Hailemariam Temesgen

Addis Ababa

June, 2017

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Approval Sheet

DISSOLUTION AND WINDING UP OF PLCs UNDER THE ETHIOPIAN LAW

By: Hailemariam Temesgen

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DECLARATION

I, the undersigned, declare that the thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been duly acknowledged.

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Table of Contents **Pages**

Chapter one: Introduction and Proposal of the Study 1

1.1 Introduction 1

1.2 Background of the Study 3

1.3 Statement of the Problem 3

1.4 Objective of the Study 7

1.5 Research Questions 8

1.6 Methodology and Scope of the Study 9

1.7 Significance of the Study 10

Chapter two: General Overview of the Laws on Business Organizations and Company Dissolution 11

2.1 Partnerships and Companies 11

2.1.1 Characteristics of Partnerships 12

2.1.1.1. Simplicity of Establishment 13

2.1.1.2 Mutual Agency and the Duty of Good Faith 14

2.1.1.3 Non-transfer of Partnership Shares 15

2.1.1.4 Tax 15

2.1.2 Characteristics of Companies 16

2.1.2.1 Separate Legal Personality 17

2.1.2.2 Shareholder's Limited Liability 19

2.1.2.3 Transferability of Shareholders Interest 20

2.1.2.4 Delegated Management under a Board Structure 20

2.1.2.5 Investor Ownership 21

2.2 Private Companies and Limited Liability Companies (LLCs) 22

2.2.1 History of Private Companies and LLCs 22

2.2.2 Development and Nature of Private Companies and LLCs 24

2.3 Development of Dissolution and Winding up of Laws 26

2.4 History and Development of Company Law in Ethiopia 27

Chapter three: Comparison of Ethiopian Law and Laws of Foreign Jurisdictions: on Dissolution and Winding up of PLCs 29

3.1 The Law on Dissolution of PLCs 30

3.1.1 Voluntary Dissolution of PLCs 31

3.1.2 Compulsory Dissolution of PLC 35

3.1.3 Withdrawal and Expulsion of members of a PLC 40

3.2 The Law on Winding up of PLCs 44

3.2.1 Appointment and Powers of Liquidators 45

3.2.2 Distribution of Surplus of Assets 48

Chapter Four: the Law and the Practice of Dissolution and Winding up of PLCs 50

4.1 The law on Compulsory Dissolution of PLCs Vis-à-vis Court Decisions 50

4.2 The Law on Voluntary Dissolution of PLCs and the Practice 52

4.3 Winding up of PLCs and the Practice 54

Chapter Five: Conclusions and Recommendations 57

5.1 Conclusions 57

5.2 Recommendations 61

Bibliography 63

Abbreviations and Acronyms

Com. Code	the Commercial Code of Ethiopia
PLC	Ethiopian Private Limited Company
S. Co.	Ethiopian Share Company
Corp	Corporation
LLC	Limited Liability Company
PrC	English Private Company
MSCs	Marketable Share Companies
SA	French Share companies
SARL	French Private Company
GmbHG	Germany’s Limited Liability Companies Act
F.D.R.E	Federal Democratic Republic Ethiopia
DARO	F.D.R.E Documents Authentication and Registration Office

Abstract

Dissolution and winding up of companies comprise the beginning of termination proceedings, liquidation of the company's assets and liabilities and the proceedings for the extinguishment of a company's existence. The terms "dissolution" and "winding up" have different usages and meanings in different legal systems. For the English and the British Commonwealth legal systems, "dissolution" is the final stage in the proceeding of terminating a company's existence that a company is said to be dissolved only if its assets are thoroughly collected, changed into cash and distributed to those entitled persons i.e. creditors and shareholders.

Under the Ethiopian law, a company ceases to exist and losses its legal personality after the Commercial registrar cancels its registration and its cancellation has been published in the Official Commercial Gazette. In every Civil Law legal system, including the Ethiopian legal system, dissolution is the very first act that brings the termination of a company's operations. It is after the completion of the dissolution proceeding, either voluntarily or compulsorily, the winding up of the company is to be carried out that is to mean to liquidate the assets and liabilities of the company. Generally, dissolution and winding up of a company constitutes the initial step or decision to end a company's existence, finding out of its assets and paying off its liabilities, as well as its final extinguishment.

As the principal focus of the study is the dissolution and winding up of PLCs under the Ethiopian law, this study strives to test the adequacy of the Ethiopian law in deliberating and resolving the dissolution and winding up of PLCs; and, in search of model solutions, this study make use of the comparative study of the laws of foreign jurisdictions that have a well developed legal infrastructure which could give us critical guidance to resolve the challenges we face in dealing with the dissolution and winding up of PLCs under our legal system. The writer will also try to uncover what the actual practice looks like from court decisions as well as interviews conducted to practitioners and experts.

Chapter One

Introduction and Proposal of the Study

1.1 Introduction It would be very interesting, I assumed, to deal with meaning of company and company law, the purpose/objective of company law and what it means to dissolve and windup of companies, as a starting point in the introductory part of this study. It is very difficult to find a definition of company and company law that gives us the full picture of what company law is. However, analyzing different definitions of different authors and jurists from different legal systems enable us to have a holistic picture of company law. A company is an association of persons who come together in order to carry on profit oriented business activities even though the promotion of commerce, art, science, religion, charity or any other purpose may also be the purpose of association of persons who incorporate companies.[1] A company may also be defined as organizational structures where different suppliers of resources come together in order to achieve a certain objective usually of a business nature for the purpose of earning profits.[2]

Company law is functionally defined as a body of law that gives rise to an organization with core structural characteristics such as legal personality, limited liability, transferable shares, distinct management, shared ownership based on capital contributions.[3] From the readings of the above definitions, we may conclude that while a company is the association of persons who come together to engage in a certain undertaking mainly for the purpose of earning profits; company law is a set of legal rules in a certain legal system to regulate the behavior of those association of persons (companies) within themselves and of course with third parties including the government. Having in mind the meaning of company and company law, lets briefly discuss the objectives of company law too.

Different legal systems provide several objectives of their company laws. However there are common denominators that factor all legal systems. One of the most common objectives of company law is that to create a framework where entrepreneurs and investors are provided with

[1] Ashok K Bagrial, "Company Law", 12th Revised Edition: 2007, Vikas Publishing House Pvt Lmtd, page 28
[2] Paul Davies, "Introduction to Company Law", 2nd Edition 2010, Oxford University Press, page 2
[3] Andreas Cahn and David C. Donald, "Comparative Company Law: Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA", 2010, Cambridge University Press, page 9

enough incentives so that they can assume commercial risks and create new businesses.[4] The Ethiopian Commercial Code, in its preface, also recognized the promotion of business as a prime objective of the promulgation of the code by stating that, "recognizing the impetus which a modern Code regulating the constitution and activities of all business organizations could give to the further growth of trade and commerce, we directed the codification commission created by the US to prepare a modern Code . . .."[5] The shield of limited liability rule in company law enables investors and entrepreneurs to take a measured risk to create new businesses and to participate in new business initiatives.

Besides the promotion of business, company law also envisions as its objective, controlling fraudulent activities and sharp practices in the course of formation and management of companies.[6] The objective of controlling fraudulent activities presupposes that the limited liability feature of shareholders of a company may adversely affect the interests of creditors if left uncontrolled; and the separation of ownership and management in companies may compromise the interests of shareholders if left unchecked.[7] Since the primary concern of this research is to study the dissolution and winding up of companies, let's briefly discuss what it means to dissolve and wind up of companies and finalize the introductory part of this paper.

Dissolution and winding up of companies comprise the beginning of termination proceedings, liquidation of the company's assets and liabilities and the proceedings for the extinguishment of a company's existence.[8] The terms "dissolution" and "winding up" have different usages and meanings in different legal systems. For the English and the British Commonwealth legal systems, "dissolution" is the final stage in the proceeding of terminating a company's existence that a company is said to be dissolved only if its assets are thoroughly collected, changed into cash and distributed to those entitled persons i.e. creditors and shareholders.[9]

The term "dissolution" in the English legal system has the same usage as cancellation of registration in the Civil Law Legal System including the Ethiopian legal system. Under the

[4] Simon Goulding, "Company Law", 2nd Edition 1999, page 15
[5] The Ethiopian Commercial Code, Proclamation No 166, Addis Ababa 5th May 1960
[6] Simon Goulding, cited above note 4
[7] D.P. Jain, "Company Law", 3rd Revised Edition: 2004, Konark Publishers Pvt Ltd, Delihi, Page 4
[8] Alfred F. Conard, "Business and Private Organizations: Fundamental Changes in Marketable Share Companies", Volume Xlll chapter 6, Oceana Publications INC, New York, page 95
[9] I bid

Ethiopian law, a company ceases to exist and losses its legal personality after the Commercial registrar cancels its registration and its cancellation has been published in the Official Commercial Gazette.[10] In every Civil Law legal system, including the Ethiopian legal system, dissolution is the very first act that brings the termination of a company's operations. It is after the completion of the dissolution proceeding, either voluntarily or compulsorily, the winding up of the company is to be carried out that is to mean to liquidate the assets and liabilities of the company.[11] Generally, dissolution and winding up of a company constitutes the initial step or decision to end a company's existence, finding out of its assets and paying off its liabilities, as well as its final extinguishment.[12]

As the principal focus of the study is the dissolution and winding up of PLCs under the Ethiopian law, this study strives to test the adequacy of the Ethiopian law in deliberating and resolving the dissolution and winding up of PLCs; and, in search of model solutions, this study makes use of the comparative study of the laws of foreign jurisdictions that have a well developed legal infrastructure which could give us critical guidance to resolve the challenges we face in dealing with the dissolution and winding up of PLCs under our legal system. The writer will also try to uncover what the actual practice looks like from court decisions as well as interviews conducted to practitioners and experts.

1.2 Background of the Study: Among the six forms of business organizations recognized by the Ethiopian Commercial Code, private limited companies are the most problem fraught business organization with numerous legal gaps albeit their popularity among the business community and their dominance in the market place. One of the most noticeable areas where apparent legal gaps available is dissolution and winding up of PLCs. Little is written on the subject of dissolution and winding up of PLCs, which necessitated this contribution.

1.3 Statement of the problem: under the Ethiopian Commercial Code, only two provisions, Art 542 and Art 543, are provided in relation to dissolution of PLCs. However, neither of the provisions refers to winding up of PLCs. Accordingly, the provisions of the Code that govern the winding up of PLCs are unsettled matter under the Ethiopian Commercial Code.

[10] Com. Code, Article 226
[11] Com. Code, Article 264
[12] Alfred F. Conard, cited above note 8, page 95

However, by the virtue of the cannons of interpretations of legal rules, we may reasonably say that the provisions of the code that govern the winding up of other business organizations are also applicable to the winding up of PLCs. Hence, the following discussion is not just about the provisions of the code that deal with dissolution of companies but also about winding up of companies. Besides, grounds of dissolution, including dissolution by the court and dissolution at the request of members of a PLC, aren't sufficiently addressed by the Ethiopian Code except a cross reference to grounds of dissolution applicable to all forms of business organizations. As per Article 542(1) of the Ethiopian Commercial Code, "A private limited company may be dissolved on the grounds applicable to all business organizations, including dissolution by the court for good cause and dissolution at the request of any member where the term of the company has not been fixed."[13]

Given the cross reference by the above provision, the possible pools of legal provisions that are available to govern the dissolution and winding up of PLCs are the following provisions of the Commercial Code. The general provisions of business organizations that govern dissolution of business organizations are Article 217 and 218 of the Commercial Code whereas only Article 226 of the Code mentions winding up of business organizations in relation to cancelation of registration. Dissolution and winding up are relatively well addressed in the part of the Code which deals with Ordinary Partnership under Article 258 up to Article 270 of the Code. And other forms of business organizations such as General Partnerships [Article 295 0f the Code] and Limited Partnerships [Article 303 of the Code] cross refer also to the provisions of the Code that govern Ordinary Partnerships. While Article 278 and Article 279 of the Code govern dissolution of Joint Ventures; Article 495 up to 509 of the Code regulates dissolution and winding up of share companies.

Since the provisions of the code that govern the dissolution and winding up of General Partnerships and Limited Partnerships cross refer to the provision of the code that govern Ordinary Partnerships; and since PLCs are to be dissolved and wound up on the grounds applicable to all business organizations, it can be said that the most important provisions of the commercial code that govern the dissolution of PLCs are those provisions of the code that govern Ordinary Partnerships. The problem is that Ordinary Partnerships don't have the

[13] Com. Code, Art. 541(1)

characteristics of commercial business organizations; hence, are not commercial business organizations as per the readings of Article 227 of the Code.[14] Given PLCs are always commercial business organizations as per the readings of Article 510(2) of the commercial code[15], the application of the provisions of the code that govern the non-commercial-business-organization-ordinary partnerships to the always-commercial-business-organization-PLCs is questionable.

Voluntary dissolution and dissolution at the request of members of a business organization are envisioned and entertained by the various provisions of the Ethiopian commercial code. Under Article 217(b) of the Code, any business organization shall be dissolved where the partners agree to dissolution prior to the expiry of the term for which the business organization was formed.[16] And under Article 258(1) of the Code, every partner may bring about its [an ordinary partnership] dissolution by giving six months notice.[17] While Article 278 of the Code, which deals with Joint Ventures, states that a joint venture may be dissolved either by a decision of all partners taken at any time or a request for dissolution by one partner where no fixed term has been specified.[18] And under Article 495(1) of the Code, a share company may be voluntarily dissolved by an extraordinary general meeting.[19] Given the above different forms of voluntary dissolutions, which form of voluntary dissolution is agreeable for PLCs since all the above forms of voluntary dissolution are applicable? Is it unanimous decision by all partners or is it a simple majority decision or is it an extraordinary general meeting decision like share companies?

Does voluntary dissolution agreement need to be registered and approved by the court of the law? Or should it suffice to have the agreement of members of the company recorded in the minutes and registered under the Documents Authentication and Registration Office? How could we protect the interests of third parties and creditors if voluntary dissolution agreements don't need to be registered and approved by the court of the law? What is the practice? Moreover, dissolution at the request of any member where the term of the company has not been fixed is also possible under Article 542(1) of the Code. Do all members of a company can present the

[14] Com. Code, Art. 227
[15] Com. Code, Art. 510(2)
[16] Com. Code, Art. 217(b)
[17] Com. Code, Art. 258(1)
[18] Com. Code, Art. 278
[19] Com. Code, Art. 495(1)

request for dissolution of a company irrespective of their status in the company? Or is it the nature of their request or the magnitude of their stake in the company that determine the legitimacy of their request?

In compulsory dissolutions, "Good Cause" is one of the grounds where the court may order the dissolution of a business organization under Article 218(1), 278(1)(f), 495(1)(e) and Article 542(1) of the code. However, nowhere is "Good Cause" defined neither sufficiently illustrated in the Code. What constitutes "Good Cause" in the Ethiopian law? Who can bring a civil action based on good cause for compulsory dissolution? What is the experience of Ethiopian courts? What about the experiences of other jurisdictions?

In other jurisdictions, there is a concept called interruption of termination proceedings and revival of terminated companies[20]. Is there any way out under the Ethiopian law for interruption of dissolution and winding up of companies and revival of dissolved and wound up companies? Shouldn't there be one, especially, when the reason for initiating the termination proceedings has ceased to exist?

By the virtue of the cross reference under Article 542 of the commercial code, withdrawal of a partner under Article 259 of the Code and expulsion of a partner under Article 261 of the Code are also applicable to dissolution proceedings of PLCs. Does the Ethiopian law provide adequate mechanism for expulsion and withdrawal of a member during dissolution proceedings of business organizations particularly in PLCs? What is the experience of other jurisdictions? What is the difference between withdrawal and expulsion of a partner? To what extent the Ethiopian courts exercise expulsion and withdrawal of partners in the dissolution proceedings of PLCs that can avoid untimely dissolution of companies?

Among the legal rules that constitute the pool of legal provisions to govern dissolution and winding up PLCs are Article 278 and Article 279 of the Code, which govern dissolution of Joint Ventures. Under Article 279 of the Code, expulsion of a partner is an option the court may exercise in order to prevent dissolution of the partnership. This may also be applicable in the course of court proceedings for dissolution of a PLC since the legal rules applicable for dissolution of all business organizations are also applicable for dissolution of PLCs as per Article

[20] Alfred F. Conard, cited above note 8, page 103

542(1) of the Code. Is there any difference between expulsion of a partner in joint ventures under Article 279 and expulsion of a partner in an ordinary partnership under Article 261 of the Code? If there is any difference, which form of expulsion is suitable to dissolution proceedings of PLCs since both provisions are applicable by the virtue of the cross reference under Article 542 of the Code?

The other provisions of the Code that constitute the pool of the legal provisions which govern dissolution and winding up of PLCs are the legal provisions of share companies beginning from Article 495 up to 509 of the Code. What is the relevance of public/share company law provisions for the dissolution and winding up of PLCs? What makes these provisions different from other provisions of the code that govern dissolution and winding up of partnerships? Which of the two categories are more agreeable to the dissolution and winding up of PLCs? Some instances of serious disparities between the two categories can be demonstrated as the follows.

Under Article 265, unless otherwise provided in the partnership agreement or by law, the liquidators shall have the same duties and responsibilities as managers; whereas, under Article 499, unless otherwise provided by law or the articles of association, the liquidators shall have the same duties and liabilities as directors. Which role liquidators in winding up of PLCs do assume? Do they have power like directors or managers? What is the implication of "full power of liquidators" under Article 500 of the code vis-à-vis Article 267 of the code which also states powers of liquidators? How a surplus of a liquidated company is to be distributed among partners? Is it based on Article 270 of the Code without a period of grace or is it under article 505 of the code where the distribution of the surplus is suspended for one year? Is it possible to distribute assets of the company to its members in kind? Who can be appointed a liquidator and who are excluded from appointment as liquidator under the Ethiopian law?

1.4 Objective of the Study: The objective of this study is to test the adequacy of the Ethiopian law in the deliberation and resolution of the dissolution and winding up of PLCs. This study will also identify the legal gaps and practical challenges that exist in the Ethiopian law of dissolution and winding up of PLCs. On top of testing the adequacy of the Ethiopian law and identifying the legal gaps, this study will also strive to contribute its fair share to provide legal solutions to the problems faced in the course of dissolving and winding up of PLCs.

1.5 Research Questions

Here in under I present the research questions which I will deliberate and strive to resolve under this study.

- Given different forms of voluntary dissolutions stated under the statement of the problem, which form of voluntary dissolution is agreeable for PLCs? Is it unanimous decision by all partners or is it a simple majority decision or is it an extraordinary general meeting decision like share companies?
- Do voluntary dissolution agreements need to be registered and approved by the court of the law? Or should it suffice to have the agreement of members of the company recorded in the minutes and registered under the Documents Authentication and Registration Office?
- How could we protect the interests of third parties and creditors if voluntary dissolution agreements don't need to be registered and approved by the court of the law? What is the practice?
- What constitutes "Good Cause" in the Ethiopian law? Who can bring a civil action based on good cause for compulsory dissolution? What is the experience of Ethiopian courts? What about the experiences of other jurisdictions?
- Do all members of a company can present the request for dissolution of a company irrespective of their status in the company? Or is it the nature of their request or the magnitude of their stake in the company that determine the legitimacy of their request?
- Does the Ethiopian law provide adequate mechanism for expulsion and withdrawal of a member during dissolution proceedings of business organizations particularly in PLCs? What is the difference between withdrawal and expulsion of a partner?
- Is there any difference between expulsion of a partner in joint ventures under Article 279 of the Code and expulsion of a partner in an ordinary partnership under Article 261 of the Code?

- If there is any difference, which form of expulsion is suitable to dissolution proceedings of PLCs since both provisions are applicable by the virtue of the cross reference under Article 542 of the Code?
- What is the relevance of public/share company law provisions for the dissolution and winding up of PLCs? What makes these provisions different from other provisions of the code that govern dissolution and winding up of partnerships? Which of the two categories are more agreeable to the dissolution and winding up of PLCs?
- Which role liquidators in winding up of PLCs do assume? Do they have power like directors or managers? What is the implication of "full power of liquidators" under Article 500 of the code vis-à-vis Article 267 of the code which also states powers of liquidators?
- How a surplus of a liquidated company is to be distributed among partners? Is it based on Article 270 of the Code without a period of grace or is it under article 505 of the code where the distribution of the surplus is suspended for one year?

1.6 Methodology and Scope of the Study: the writer will make use of a hybrid of doctrinal and empirical methodology in addressing the problems framed under this study. Literatures on the subject matter will be consulted and court cases regarding dissolution and winding up of PLCs will also be discussed as part of the doctrinal legal research. The experiences of other legal systems closer to the Ethiopian legal system and their approach to the problems posed under the study will also be discussed as part of a comparative study. Federal Courts Judges and practitioners based in Addis Ababa will also be interviewed in order to assess how the practice deals with the legal gaps and to collect primary data as part of the empirical methodology. The scope of the study is limited to the legal problems regarding the dissolution and winding up of PLCs; however, in dealing with such problems cross reference and discussions will be made to the dissolution and winding up of other forms of business organizations.

1.5 Significance of the study: Dissolution and winding up of PLCs is one of the most frequent cases that come to the attention of the Ethiopian courts among commercial litigations. Therefore, the contributions of this study can be used as an input to the deliberation of court cases regarding dissolution and winding up of PLCs. The contributions of this study may also be used as an input for legislative amendment as well as further studies on the subject by the academic community.

Chapter two

General Overview of the Laws on Business Organizations and Company Dissolution

Introduction: This chapter is sub divided in to four sections. In the pursuit of better understanding of private limited companies, the first section of the chapter provides an overview of the basic characteristics of partnerships and public companies. History and development of partnerships and companies are also part of the discussion in the first section. The second section of the chapter addresses the history, nature and development of private companies in different legal jurisdictions. Private companies, limited liability companies and close corporations which are closer in form and substance to the Ethiopian private limited company will be overviewed under the second section. While the third section of the chapter will provide an overview of the development of dissolution and winding up laws in different countries; the fourth section of the chapter deals with the history and development of company law in Ethiopia.

2.1 Partnerships and Companies

In order to understand the nature of limited liability companies it is very important to distinguish the differences and to study the similarities between companies and partnerships. Even though the current legal development has narrowed the gap between partnerships and companies due to the proliferation of different forms of business organizations, there are clear differences between a company and a partnership.[21] Proliferation of business organizations is the expansion of the form and structure of business organizations different from the traditional forms of business entities.

Unlike the Ethiopian federal system, which gives exclusive authority to the Federal government to enact a commercial code[22], some federal systems allow regional governments to enact their own commercial codes which lead to a proliferation of business entities. In the United States, every State has the authority and enormous discretionary power over a form of business

[21] Andreas Cahn and David C. Donald, cited above note 3, page 55
[22] Constitution of the FDRE, Proclamation No 1/1995, Art 55(4), Neg Gaz, year 1, no 1

organization incorporated within that particular State, which resulted in different tax, liability, and qualification rules to a particular form of business entity when operating in different States.[23] For instance, limited liability companies are required to pay franchise tax in Texas State; Whereas, in Pennsylvania the limited liability companies need only to pay Pennsylvania State income tax.[24]

While general partnerships, limited partnerships and corporations are considered as the traditional forms of business organizations, other forms of business organizations such as limited liability companies ("LLCs") have been developed in recent times.[25] The study of business forms characterizes real policy based differences and nominal variations among forms of business organizations, which is instrumental for the purpose of merger and conversion of business entities in search of tax advantages, flexibilities of the firm, or financing opportunities.[26] For the consumption of this part of discussion, the writer will briefly discuss the history and nature of ordinary partnerships and companies having reserved the discussion of private companies and limited liability companies in the next part of the paper. Given partnerships are what give a way for the development of companies, let's first discuss the history and nature of partnerships.

2.1.1 Characteristics of Partnerships

Partnership law traces back its origins to the historic institutions of the Roman Societas, the mediaeval commend and the Lex Mercatoria leading to the codification of general partnership and its prototype of limited partnership as well as civil partnership in Civil law countries.[27] And the firm partnership is virtually a contractual entity originated from the contracting parties' intent contrary to the corporation which is often considered as a creature of the state.[28] A partnership is a form of business organization where people mingle their assets and talents in order to achieve a

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[23] Robert W. Hamilton, 'Entity Proliferation', <http://suffolklawreview.org/wp-content/uploads/2004/04/Hamilton.pdf accessed 2/21/2017>

[24] I bid

[25] Thomas Geu and Robert Keatinge, 'The Proposed Model Inter-Entity Transaction Act: A Proposal to Rationalize Changes in Forms of Business Organizations' < http://www.uniformlaws.org/shared/docs/entity_transactions/geu-keating.pdf accessed 2/21/17>

[26] I bid

[27] Erik P.M. Vermeulen, 'Network Effects and Regulatory Competition: An Introduction to the Expectations and Challenges of Partnership Law Reform', < https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=821885 accessed 2/22/17>

[28] Larry E. Ribstein, 'The Evolving Partnership' https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=940653 accessed 2/23/2017

common goal by acting as mutual agents and principals to one another with no structural distinction between ownership and management of the firm; whereas, companies are legal entities separated from their shareholders which leads to the concept of limited liability where the rights and liabilities of the shareholders are separated from the company.[29]

Virtually, partnerships are associations of persons different from companies which are associations of capital. As they are association of persons, the personal elements of the partners are very important that the formation, the operation and dissolution of a partnership is directly affected by the personal status of its partners.[30] Since the share of a partner, in principle, is not transferable to an outsider, change of a partner's status due to death or bankruptcy leads to dissolution of the partnership.[31] Personal elements of the partners also strongly affect the relationship between the partnership and its creditors due to the fact that the partners are personally liable to the obligations of the partnership.[32] Simplicity of establishment, mutual agency of partners, the duty of good faith, non-transfer of partnership shares and tax mainly characterize partnerships.

2.1.1.1 Simplicity of Establishment

A partnership results from an agreement of contracting parties. Essentially partnerships come in to existence because of the agreement of partners. Whether the agreement is put on a written deed or failing a requirement registration, if any, partnerships can still operate de facto even if they fail to meet the state sponsored requirements.[33] As long as partnerships follow the law of the country where they are established and work, they have few restrictions to encounter. The opportunity of informal establishment of partnerships is one of the most important points that differentiate them from corporations.

Corporations would have to go through cumbersome, time-taking, complex, costly formation and operation requirements which require tremendous legal expertise and professional services to the

[29] Andreas Cahn and David C. Donald, cited above note 3, page 25
[30] J.P. Le Gall, "French Company Law", 1974 Oyez Publishing Limited, page 15

[31] I bid
[32] Andreas Cahn and David C. Donald, cited above note 3, page 25
[33] I bid, page 78

disadvantage of choosing the form of corporations.[34] For instance, in Continental Europe corporations must, among many other requirements, meet a requirement of minimum capital, must use lawyers, and must do the statutory audit and publication of annual accounts which the entrepreneurs consider as draconian.[35] Easy entry in to the market and simpler regulatory restrictions to operate make partnerships different from other forms of business organizations which have to go through costly and complex bureaucracy to establish and to operate in the market.

2.1.1.2 Mutual Agency and the Duty of Good Faith

The other distinct characteristic of partnerships is that the existence of mutual agency and duty of good faith between/among the partners. Usually partners in an ordinary/traditional partnership firm have an equal power to manage the partnership and profit is equally distributed among the partners; hence, every partner is presumed to be 'a co-principal and an agent in a principal agent relationship'.[36] As a co-principal, the obligation of the firm and the liabilities of other partners can be directly claimed from any other partner; and as an agent, the actions of a partner with in the scopes of her agency may oblige the partnership and any other partner.[37] This is one of the most important features of partnerships that differentiate them from corporations where management and ownership are clearly separated.

As 'a co-principal and an agent in a principal agent relationship'[38], partners owe each other the utmost duty of good faith in dealing with the business of the partnership. It is the trust and confidence they have on each other that brings the partnership in to existence. Such trust and confidence establishes the fiduciary relationship between/among the partners. On top of providing true accounts and full information of all matters concerning the partnership, due to the fiduciary relationship of partners, a partner is duty bound to be honest towards her co-partners about her dealings with third parties and about any profit reaped from any transaction in relation

[34] Eric P.M. Vermeulen, cited above note 27
[35] I bid
[36] Larry E. Ribstein, cited above note 28
[37] I bid

[38] I bid

to the partnership or from the use of the partnership asset.[39] Not just profits from the assets of the partnership but also profits acquired from the same business of which nature is like the partnership, carried out without the consent of the co-partners, must be disclosed and accounted to the partnership.[40] The fiduciary relationship of partners is the other characteristic of partnerships that puts them on the other end of the scale vis-à-vis corporations where such duty of good faith among the shareholders is not required and unheard.

2.1.1.3 Non-transfer of Partnership Shares

Non - transfer of shares is also one of the most important characteristics of partnerships that differentiate them from corporations. As co-principals, every partner has a veto power in crucial decisions concerning the partnership such as change of the partnership agreement and entry of new partners; consequently, partnership rights cannot be freely assigned without the consent of the partners who are the co-managers of the partnership.[41] The underlying reason behind the non-transferability of partnership shares is that management powers and personal liability is inseparable from the partnership shares. Partnership shares might be freely assigned when management rights and personal liability are clearly separated from the partnership shares in such a case such as a limited partnership shares.[42] This is a clear contrast to corporations where shareholders can freely transfer their rights.

2.1.1.4 Tax

The other basic feature of partnerships is that partnerships are subjected to tax only once while corporations are taxed twice. Partners pay scheduler income tax on the profits of the partnership at an individual level because profits of the partnership are considered profits of the partners; whereas, corporation tax is levied on the profits of the company and then after dividend tax is to be paid by the members of the company when the profits of the company is distributed.[43] In other words, the profits of a corporation is taxed in the hands of the company as a corporation tax and

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[39] The Law Commission and The Scottish Law Commission, 'Partnership Law: Report on a Reference Under section 3(1)(e) of the Commissions Act 1965', https://www.scotlawcom.gov.uk/files/3812/7989/6640/rep192.pdf accessed 2/26/217

[40] I bid

[41] Larry E. Ribstein, cited above note 28

[42] Andreas Cahn and David C. Donald, cited above note 3, page 49

[43] Nicholas Bourne, 'Principles of Company Law', 3rd-edition 1998, Cavendish Publishing Limited, page 2

in the hands of the shareholders as dividend tax; whereas, the profits of a partnership is taxed only once in the hands of the partners.[44] This is because partnerships are assumed to be association of persons that the rights and obligations of its partners is not different from the rights and obligations of the partnership; whereas, the rights and obligations of corporations are different from its shareholders' rights and obligations having acquired distinct legal personality.[45]

2.1.2 Characteristics of Companies

The origin and history of companies dates back to the 17th C in the UK where Chartered Joint Stock Companies were formed by a Royal Charter such as the East India Company, the Massachusetts Bay Company and Hudson's Bay driven mainly by the expansion of world shipping trade.[46] The Chartered Joint Stock Companies used to have a separate legal identity and a limited liability status consisted of an association of members who contributed capital for a particular trade venture usually privileged by the Charter with a monopolistic right in that particular trade venture.[47] Following the collapse of the South Sea Company, the popularity of corporate form as a trading medium had been in constant decline up until the beginning of the 19th C when individual Act of Parliament started to create large trading companies which were known as statutory companies.[48]

Every statutory company used to be established by a separate Act of Parliament and those companies were involved in building public utilities such as gas and water as well as canal and railway construction projects.[49] Incorporating every company by a separate Act of parliament had become hugely burdensome given the time was a period of massive economic activities which necessitated the creation of another form of company called the registered company with the enactment of the Joint Companies Act 1844.[50] The advent of the Joint Stock Companies Act 1844 enabled incorporation of a company by registration unlike the old days of incorporation by a Royal charter or a separate Act of parliament as long as the company is composed of more than

[44] Andreas Cahn and David C. Donald, cited above note 3, page 26
[45] I bid
[46] Stephen Griffin, 'Company Law: Fundamental Principles', 4th edition: 2006, Pearson Education Limited, page 3
[47] I bid
[48] I bid
[49] Nicholas Bourn, cited above note 43, page 4
[50] I bid

25 members and registered under the Registrar of companies which also was established by the 1844 Act.[51] However, the 1844 Act didn't provide the privilege of limited liability on the membership of the registered company because it was considered as detrimental for the investing public and the creditors.[52]

We have seen that how the modern corporations had been evolved starting from incorporation by Royal charter to incorporation by individual Act of parliament and then after to incorporation by registration. The term 'corporation' and 'company' are being used interchangeably depending on the kind of jurisdiction one deals with. Some jurisdictions use the term 'company' and some other jurisdictions use the term 'corporation'. In some jurisdictions, such as Ethiopia, the term 'company' and 'corporation' are being used interchangeably. In the United States, the term 'corporate' law is the norm; whereas, in the UK and in the English-language versions of EU legislation, the term 'company' law is the regular term to denote a body of law which enables the creation of a business organization with five core structural characteristics.[53]

Across various national jurisdictions, corporations share a fundamentally similar set of legal characteristics and legal problems albeit the existence of real differences.[54] Legal personality, limited liability, transferable shares, delegated management under a board structure and investor ownership are the five core characteristics of corporations, which every corporate law have to provide necessitated by the economic demands of corporate enterprises.[55] One or more of the above characteristics may not exist in some other forms of business entities; however, nearly all big business entities take a legal form that exhibits all the above five core characteristics.[56] For a better understanding of corporations, let's discuss the five core characteristics separately.

2.1.2.1 Separate Legal Personality

One of the most important features of companies is their status of legal personality. Once registered as a company, a business will be transformed in to an entity with its own legal rights

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[51] Stephen Griffin, cited above note 46, page 5
[52] I bid
[53] Andreas Cahn and David C. Donald, cited above note 3, page 9 (note 29)
[54] Henry Hansmann and Reinier Kraakman, 'What is Corporate Law?' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=568623 accessed 3/13/17
[55] I bid
[56] I bid

and obligations distinct from the rights and obligations of its members.[57] The registration of a business as an incorporated company results in an entity with a distinct legal personality, which is known as the doctrine of corporate personality.[58] According to the doctrine of corporate personality, the assets and liabilities of the company are distinct from the assets and liabilities of its owners. And the company is entitled to assume civil rights such as ownership rights. Under the law, the company is deemed to be a person possessing rights and obligations like a natural person that it has a property right to acquire and dispose assets as well as to enter into contractual relationships and the capacity to sue and to be sued in its own name even though it lacks fundamental rights which natural persons do enjoy.[59]

The other consequence of the status of legal personality is that the creditors of the company can only claim their money from the assets of the company and the company itself; while the company is protected from the individual liabilities of its shareholders.[60] The demarcation between a company's pool of assets and the individual members' pool of assets is also known as 'separate patrimony' which endows the company ownership right over its designated assets to use, to dispose and avail them for attachment.[61] The main purpose of the separate patrimony is providing protection for the company's assets from the creditors of individual members, which is called 'entity shielding'.[62] Entity shielding is composed of the legal rules of 'priority rule' and 'liquidation protection'.[63] Having excluded the personal creditors of the individual members of the company, priority rule provides protection for the creditors of the company; whereas, liquidation protection puts a limitation on an arbitrary withdrawal of shares by shareholders as well as foreclosure of a shareholder's firm assets by the personal creditors of the members of the company thereby preventing partial or full liquidation of the company.[64]

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[57] Le Talbot, 'Critical Company Law', 1st edition: 2008, page 23
[58] I bid
[59] 'Meaning, characteristics of and Types of a Company', <http://www.ddegjust.ac.in/studymaterial/bba/bba-201.pdf accessed 3/3/2017>
[60] I bid
[61] Jhon Armour, Henry Hansmann, Reinier Kraakman, 'The Essential Elements of Corporate law: What is Corporate Law?' <http://www.law.harvard.edu/programs/olin_center/papers/pdf/Kraakman_643.pdf accessed 3/3/2017>
[62] I bid
[63] I bid
[64] I bid

2.1.2.2 Shareholders' Limited Liability

The principle of limited liability is the other characteristic of company law. We have said that a company is a legal person separated from its owners. While legal personality is about the company, limited liability is just about the individual members of the company. Limited liability is a principle which relieves members of an insolvent company from being obliged to pay the unsettled debts of the company.[65] It is the liability of members of the company that it is limited. The liability of the company is unlimited that the assets of a company in an insolvent liquidation are unlimitedly available for the creditors of the company until all the assets of the company are exhausted.[66] The liability of a shareholder for the debts of the company is limited to the extent of her contribution including the nominal value of the shares signed and not paid by the shareholder.[67] That means a member of a company in an insolvent liquidation can only be called to pay if the shareholder owes the company due to the unsettled payment of the value of subscribed shares.[68]

As 'Entity Shielding' is the main constituting part of legal personality of companies, limited liability is a formidable scheme of 'Owner Shielding' for members of the company.[69] While legal personality provides entity shielding to protect the assets of the company from the claims of the personal creditors of the individual members of the company; limited liability provides owner shielding to protect the assets of individual members of the company from the claims of the company's creditors.[70] Both entity shielding and owner shielding of limited liability constitute 'asset partitioning' by which the personal assets of members of a company are reserved for the personal creditors of the shareholders; whereas, the assets of the company are pledged as a guarantee to the creditors of the company.[71]

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[65] Ben Pettet, 'Company Law', 2nd edition: 2005, Pearson Education Limited, page 31
[66] I bid
[67] The Institute of Company Secretaries of India, 'Company Law: study Material', https://www.icsi.edu/Docs/Webmodules/Publications/1.%20Company%20Law-Executive.pdf accessed 3/3/2017
[68] I bid
[69] Jhon Armour, Henry Hansmann, Reinier Kraakman, note 61
[70] I bid
[71] I bid

2.1.2.3 Transferability of Shareholder Interests

Simplicity in the transferability of shareholder interests is one of the most important and distinct features of incorporated companies. As a company's capital is a sum of divided parts known as shares, a stake of every shareholder is considered to be a movable property.[72] As a result, shareholders are not indispensably attached to a company and the shares are freely transferable subject to some restrictions.[73] In an incorporated company, shareholders have a statutory right to freely transfer their shares and cannot be prohibited by articles of association even though some reasonable restrictions might be prescribed.[74]

Investment strategy justifies a free transfer of shares because a shareholder can easily program her investment portfolio in order to coup up market dynamism by transferring her investments in to another company that operates in a different industry.[75] The free transfer of shares is also advantageous for the governance of the company since unhappy shareholder can withdraw her investments without destabilizing the smooth functioning of the company's governance.[76] Most importantly, it is the free transfer of shareholder interests that keeps the perpetual existence of the company. A company survives the death of one or all members because the shares can easily be transferred to the heirs of a deceased member their by sustaining perpetual existence of the company.[77] The same can be said for an insolvent or bankrupt shareholder since his shares can easily be transferred to his creditors not affecting the going concern of the company.

2.1.2.4 Delegated Management under a Board Structure

Due to efficiency reasons, namely expertise, cost and speed, the management of corporations is not entrusted to owners of the company rather to a small group of people known as board of directors.[78] It would be costly and time taking to convene a general meeting to run the day today activities of a company not mentioning the required skill and expertise at managing the firm.[79] Incorporated companies usually have large number of shareholders who cannot participate in the

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[72] Cited above, note 67
[73] I bid
[74] Cited above, note 59
[75] Paul Davies, cited above note 2, page 19
[76] I bid
[77] Simon Goulding, cited above note 4, page 8
[78] Paul Davies, cited above note 2, page 12
[79] I bid

day to day managerial affairs of the company except their role in electing their representatives known as board directors who take care and monitor the daily operations of the company.[80] Generally speaking, management of a company follows democratic governance structure since the policy of the company is determined by the general meeting of shareholders by way of majority voting system.[81]

To elaborate more, incorporated companies are characterized by a governance structure of board of directors which is entrusted to make the most fundamental decisions and have four distinct features.[82] The four distinct features are: first, given most incorporated companies are two-tier board structures, the board of directors are different from the company's operational managers who are hired officers of the firm; secondly, the board of directors are elected representatives of shareholders so that the board to be continuously loyal to the interests of the owners of the company; thirdly, even though the board of directors are elected by and representatives of the shareholders, the board is separate from the owners of the company and is not required to be dictated by the instructions of the owners even in deliberating the most fundamental decisions of the company; and lastly, the board is usually composed of several members which promotes collective monitoring and collective decision making.[83] Given the above description, it can be summarized that the governance of an incorporated company resembles a government structure of a parliamentarian democratic state where the pubic votes for the law making body which in turn establishes the executive, managers of the government.

2.1.2.5 Investor ownership

As owners of the company, shareholders are considered to control the firm. However, the manners through which shareholders control their company is different from the manners through which ordinary property owners control their assets. Hence, allocation of control rights to shareholders over the company is a characteristic of the modern corporate law. It is said that there are three main avenues through which shareholders control their firm i.e. control over the firm's constitution; control over managers of the firm; and, control over the proceeds of the

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[80] Cited above note 59
[81] I bid
[82] Jhon Armour, Henry Hansmann, Reinier Kraakman, cited above note 61
[83] I bid

firm.[84] Save mandatory rules of company laws, articles of associations are decisive instruments for control of the company by the owners including the demarcation of power division between the owners and the board.[85] In proportion to the amount of capital paid to the company, shareholders also have the right to control the firm by way of voting in the election of the board and voting rights to endorse strategic decisions as well as their right to share the proceeds and residual earnings of the company.[86]

2.2 Private Companies and Limited Liability Companies (LLCs)

In the above section of the discussion, I have reviewed the basic characteristics of the ordinary partnership and the standard public companies. As the principal subject of this study is the Ethiopian business organization of Private Limited Companies (PLCs), it would have a paramount importance to give a fair share of review to those forms of companies that are closest in form and substance parallel to the Ethiopian version of PLCs. In the well developed legal systems, private companies, close corporations and limited liability companies are the closest form of business organizations that match the Ethiopian PLCs; hence, I will briefly discuss the history, nature and development of those forms of companies in their respective countries.

2.2.1 History of Private Companies and LLCs

While the British Private Company (PrC) was first developed through practice to be recognized later by the law maker; in Germany, Limited Liability Companies (LLCs) had their origin in legislation and the development of both companies were highly linked to the legislative regulation of Marketable Share Companies (MSCs).[87] In Great Britain and Germany, in the late 19th C, some rules of corporate law were regarded as superfluous and burdensome for those kinds of companies of which members were small in number and close acquaintances as they were required supervision, auditing and disclosure.[88] That prompted the need to create another kind of company which still keeps the limited liability status of members while reducing

[84] Paul Davis, cited above note 2, page 14
[85] I bid
[86] Jhon Armour, Henry Hansmann, Reinier Kraakman , cited above note 61
[87] Marcus Lutter, 'International Encyclopedia of Comparative Law: Limited Liability Companies and Private Companies', Volume XIII, Chapter 2, Martnus Nijhoff Publishers: 1998, page 7
[88] I bid, page 4

legislative restrictions.[89] The new form of the company, like the old one, had become limited by shares with limited liability of members except public subscription of the shares was prohibited, which avoided the need to apply corporate law rules that were designed for the protection of the investing public.[90] The Private Limited Liability Company was also introduced in France in 1995 by the name of SARL.[91]

In the United States, because of the federal system which resulted in the overlapping of state and federal regulation, it is problematic to deal with private companies in a comprehensive way.[92] Prior to the acceptance of Limited Liability Company, close corporations were adopted by several law makers of the States.[93] Close corporations are characterized by lack of market for the shares of the firm, significant shareholder involvement in corporate management and a small number of shareholders associated by family and personal bonds.[94] The shareholder in a close corporation may also be an employee or a manger of the corporation in addition to her right to share the profits of the corporation.[95] In the US, besides the close corporation there is also another form of a private company which is known as Limited Liability Company.

Compared to the UK and Germany, the history of limited liability companies in the United States is a recent phenomenon. The corporation and the general partnership used to be the most regular contract forms available in most States of the United States until the 1990s when most States started to adopt the Limited Liability Company form.[96] The 1998 historic decision of the Federal Revenues Service to categorize Limited Liability Companies as a partnership, for the purpose of federal tax, changed the situation drastically.[97] Limited Liability Companies had grown popular as they become a preferred business structure for most closed held enterprises because it provided limited liability for members of the firm with the advantage of partnership tax treatment

[89] I bid
[90] I bid
[91] Ron Harris, 'The Private Origins of the Private Company: Britain 1862-1907', https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1613206 accessed 3/7/2017
[92] Marcus Lutter, cited above note 87, page 16
[93] I bid, page 10
[94] Douglas K. Moll, 'Minority Oppression and Limited Liability Company: Learning (or not) from Close Corporation History', <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=869310 accessed 3/7/2017>
[95] I bid
[96] Stephen M. Bainbridge, 'Limited Liability Companies: A primer on Value Creation through Choice of Form', https://papers.ssrn.com/sol3/papers.cfm?abstract_id=250164 accessed 3/7/2017
[97] I bid

and broader freedom to organize the business.[98] In the United States, only during 1992 – 1996 periods, new registrations for LLCs had risen by more than 2,300% while registrations for corporations and limited partnerships had grown just with 13% and 15% respectively.[99]

2.2.2 Development and Nature of Private Companies and LLCs

Limited Liability Companies and Private Companies have some common features to share. Unlike the public companies, the shares of LLCs and Private companies are not traded publicly; and unlike partnerships, the liability of members of LLCs and Private companies are not unlimited.[100] And the common driving force behind their creation is that both companies aspire to operate as much autonomous as it can be from the burdensome rules that govern public companies.[101] In the following discussion, I will discuss private companies and Limited Liability companies in different jurisdictions.

Like private companies in other jurisdictions, the French private company, which is known as SARL, is a hybrid of the characteristics of partnerships and corporations.[102] As in the case of a partnership, personal relationship of members of the company is crucial; and, as in the case of corporations, members' liability to the debts and liabilities of the company is limited to the extent of their agreed subscription to the capital of the company.[103] Shying away the complications of share companies (SA) and defying capital-raising from the mass, intimate businessmen who would like to avoid personal responsibility for the debts of the company beyond their contribution, has vastly used the private company form (SARL) for commercial undertakings.[104]

Likewise in Britain, the 1907 Companies Act defined a 'private company' as an entity of which article of association limits share transferability, a cap on the number of members to 50, and

[98] Douglas K. Moll, cited above note 94

[99] I bid
[100] Markus Lutter, cited above note 87, page 13
[101] I bid
[102] J.P. Le Gall, cited above note 30, page 43
[103] I bid
[104] I bid

barring and criminalizing public offer and sell of its shares and debentures.[105] With the intention of relieving private companies from the strict regime of public companies, the English law set no minimum capital requirement, no need to have more than one director, no requirements of qualification, requisite knowledge and experience imposed on the company secretary to undertake her responsibilities in addition to the less strict rules in regard to the preparation, keeping and presentation of the accounts of the company.[106] Such liberalized regulation of private companies resulted in the proliferation of private companies that among 1.2 million registered companies that exist in England, Wales, and Scotland, only 12,000 are public companies of which just 2,450 accounted to the Stock Exchange Market.[107]

As in other jurisdictions, the British private company is built on the mutual trust and confidence of the shareholders who are usually involved in the management of the company.[108] The private company status enables the shareholders to exercise control and influence on the future of the company even if the company gets bigger and more successful rather than changing its status in to public company, which may cost the shareholders control over the destiny of the company.[109] The case of the United States is different from other jurisdictions when it comes to the development of private companies. As I have discussed at the beginning of this part of discussion, after the development of the close corporation of which form and content resembles more of the above private companies, another form of private company by the name of Limited Liability Company has developed.

The Limited Liability Company is an unincorporated entity which enables members of the company to enjoy a pass through tax treatment, limited liability and an opportunity for a direct involvement of the company in one package.[110] Moreover, though previous legislations required two or more members to establish a LLC, recent statues allow single member LLCs.[111] The driving force behind the creation and boom of LLCs as a mainstream business form was brought about by a fundamental difference between a corporation and a partnership in relation to the tax

[105] Simon Goulding, cited above note 4, page 3
[106] I bid, page 3 and 4
[107] I bid, page 4
[108] Stephen Griffin, cited above note 46, page 76
[109] I bid, page 76 and 77
[110] Stephen M. Bainbridge, cited above note 96
[111] I bid

regime.[112] Besides several advantages such as flexible allocation of loss and profits, partnership tax provisions levy tax only at owner level.[113] Following the recognition by the Internal Revenue service(IRS) in 1998 as partnerships for tax purposes, LLCs become very popular and all the fifty States of the U.S including the District of Colombia had adopted LLCs within a couple of years.[114]

While LLCs and close corporations could be grouped under private companies, they have some serious differences. Close corporations are subjected to double taxation that the share holders and the company may have to pay tax on corporate earnings; whereas, in LLCs, only members of the company are obliged to pay tax as the company is considered as a partnership for the purpose of the tax.[115] In close corporations, share transfer is not allowed except on the terms and conditions provided in the articles of association; whereas, in LLCs, a rule of 'non-transferable interest' governs that a member of the company cannot transfer her voting interest without the consent of all the members of the company.[116] And the other most important features of LLCs different from close corporations is that there is no cap on the number of members and it provides professionals to associate themselves as a limited liability company unless the governing licensure legislation prohibits.[117]

2.3 Development of Dissolution and Winding up Laws

One of the oldest legislations in regard to dissolution and winding up of companies are found in Britain. In UK, the history and development of the law of winding up and dissolution of companies dates back to the very decision of the 1844 the Joint Stock Companies Act of the parliament that introduced the creation of companies by registration with the Registrar of companies.[118] The same year witnessed an enactment of a legislation for 'Winding up the Affairs of Joint Stock Companies unable to meet their Pecuniary Engagements' and many more

[112] Susan Pace Hamil, 'The Origins Behind the Limited Liability Company', https://kb.osu.edu/dspace/bitstream/handle/1811/65040/OSLJ_V59N5_1459.pdf accessed 3/10/2017

[113] I bid

[114] I bid

[115] 'The Choice is Yours', <https://soswy.state.wy.us/Forms/Publications/ChoiceIsYours.pdf accessed 3/9/2017>

[116] I bid

[117] I bid

[118] Ben Pettet, cited above note 65, page 403

legislations concerning corporate insolvency law had passed in between until the 1862 Companies Act which also provided voluntary winding up of companies and appointment of a liquidator by the members of the company.[119] And the 1929 Company Act introduced a different kind of voluntary winding up known as a 'Creditors' voluntary winding up' which put the creditors in control of the liquidation including appointment of a liquidator when the company was anticipated to fail to pay its liabilities in full.[120]

In one of the Continental legal systems, Italy introduced the first comprehensive bankruptcy law when its 1982 Code was approved even though the tradition of applying punitive commercial legislations didn't fade away soon after the introduction of the Code.[121] With the purpose of harmonizing the needs of creditors and the importance of encouraging entrepreneurship risk-taking, the 1980's Italian legislators pursued lenient set of instruments though the compromise failed to produce results that bankruptcy law continued to be pro-creditors and strict in their nature.[122] After the attempts of several instruments, the mid 1930's Italy saw deeply revised and comprehensive instruments of bankruptcy law which also handed over management of procedure to the public institution.[123]

2.4 History and Development of Company Law in Ethiopia

The history and development of companies and company law in Ethiopia started during the reign of Emperor Menilik ll. Even though several companies such as the Railway Company and Bank of Abyssinia were established earlier, it was the establishment of Agricultural and Commercial Development Company of Ethiopia, which was incorporated by the Emperor's proclamation that heralded the beginning of Ethiopian company law.[124] The establishment of the Agricultural and Commercial Development Company of Ethiopia was an important event that its principles were used as fermentation for the subsequent company laws of the country.[125] Later in 1933, the

[119] I bid
[120] I bid
[121] Paolo Di Martino, 'The Historical Evolution of Bankruptcy Law in England, the US, and Italy up to 1939: Determinants of Institutional Change and Structural Differences', http://www.helsinki.fi/iehc2006/papers2/Martino.pdf accessed 3/13/2017
[122] I bid
[123] I bid
[124] Endaweke Tsegaw, 'The Legal Status of State-owned Share Companies in Ethiopia', http://file.scirp.org/pdf/BLR_2016030109380130.pdf accessed 3/13/2017
[125] I bid

Bankruptcy Law and Company Law was promulgated by the Imperial government introducing the first codified company law for the country.[126]

Due to the new changes in the economy and a growing influx of foreign capital in to the country, it became necessary to promulgate a new code.[127] Consequently in 1960, Ethiopia saw a new Commercial Code which introduced a comprehensive law of business organizations for the nation.[128] To this day, the 1960's Commercial Code serves the country as the principal company law. Besides the Code the present day Ethiopian company law constitutes numerous proclamations and directives such as Commercial Registration and Business Licensing Proclamation No 980/2016 and sector specific proclamations such as Banking Business Proclamation No 592/2008 including the many Directives issued by the National Bank of Ethiopia.

[126] Assefa Aregay Sefera, 'Corporate Governance Rules in Ethiopia and Germany: A comparative Analysis', Central European University: 2015, page 8

[127] Getahun Seifu, 'Revisiting Company Law with the Advent of Ethiopian Commodity Exchange (ECX): An Overview', https://opendocs.ids.ac.uk/opendocs/handle/123456789/8719 accessed 3/15/2017

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Chapter Three

Comparison of Ethiopian Law and Laws of Foreign Jurisdictions: on Dissolution and Winding up of PLCs

Introduction

As I deploy a hybrid of doctrinal and empirical methodology to address the problems framed under this study, comparative study of the law is a critical component of the thesis. 'Comparative law' can be defined as an intellectual exercise with law as its subject through the process of comparing various legal jurisdictions of the world.[129] Comparative study of the law can be classified as macrocomparison and microcomparison; while the former involves the study of legal materials, dispute resolution procedures and the roles of legal institutions such as techniques of legislation, the authority of precedents as well as the role of attorneys and judges; the later deals with particular legal institutions or problems such as determining liability of the manufacturer in the event of defective goods or establishing appropriate rules for the determination of custody rights over children.[130] Given the above classification, the writer makes use of a microcomparison study of the law since I make a comparison of the rules of various legal systems to the Ethiopian counterpart in relation to the particular legal problems of dissolution and winding up of the Ethiopian Private Limited Company.

Comparative study of law refreshes and enriches the study of one's national law since one can have an access to the principles for doctrinal elements beyond interpreting plain texts of the national laws.[131] Moreover, beyond the study of facilities to interpret texts, principles, rules and standards of a legal jurisdiction, the study of law as a legal science strives to discover best schemes and solutions to deter and resolve social conflicts.[132] Comparative study of law provides tremendous opportunity to access model solutions from the different legal systems of the world

[129] Konard Zweigert and Hein Kotz, 'Introduction to Comparative Law', 3rd Revised edition, Clarendon Press – Oxford, page 2
[130] I bid, page 4 and 5
[131] I bid, page 4
[132] I bid, page 15

as it's famously said that comparative law is 'ecole de verite' i.e. a supply of solutions.[133] Given the Ethiopian Commercial Code is adopted from a foreign jurisdiction, comparative study has a paramount importance in resolving problems raised under this study. This chapter is subdivided in to two major sections. The first section deals with the law on dissolution of PLCs which in turn is composed of three sub sections i.e. voluntary dissolutions, compulsory dissolutions and the withdrawal and expulsion of members of a PLC. The second section deals with the law on winding up of PLCs which in turn is composed of two sub sections i.e. appointment and power of liquidators as well as distribution of surplus of assets.

3.1The Law on Dissolution of PLCs

As I have discussed in the literature review part of the thesis, private companies are a hybrid of the characteristics of public companies and partnerships. Consequently, we may reasonably analogies that the Ethiopian Private Limited Company is a hybrid of the characteristics of ordinary partnerships and share companies. This analogy makes more sense when we see the cross reference of Article 542(1) of the commercial code to the provisions of the code that govern the dissolution of all forms of business organizations under the code including the ordinary partnership and the share company to regulate the dissolution of PLCs. Hence, we may infer that the provisions of the code that govern the dissolution of ordinary partnerships and share companies are equally relevant in analyzing the legal rules that govern the dissolution of PLCs by the virtue of the cross reference.

Therefore, when making comparisons to foreign jurisdictions, the writer may refer to a provision of the code that governs the dissolution of share companies or ordinary partnerships. Rules of foreign jurisdictions that govern the dissolution of the German Limited Liability Company, the French private company (SARL), the English private company (PrC) and the American close corporation and LLCs will be compared to the rules of the Ethiopian commercial code that govern the dissolution of PLCs. Under the Ethiopian law, a private limited company may be dissolved on the grounds applicable to all business organizations, including dissolution by the court for good cause and dissolution at the request of any member where the term of the

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company has not been fixed.[134] Dissolution of PLCs could come about through the agreement of all members of the PLC voluntarily or through the order of a court compulsorily. Let me first discuss voluntary dissolution of PLCs by the agreement of all members of the company.

3.1.1 Voluntary Dissolution of PLCs

As I have discussed in the thesis part of the proposal study, voluntary dissolution of PLCs is envisioned by the various provisions of the Code. Under Article 217(b) of the Code, any business organization shall be dissolved where the partners agree to dissolution prior to the expiry of the term for which the business organization was formed.[135] While Article 278(1)(d) of the Code, which deals with Joint Ventures, states that a joint venture may be dissolved by a decision of all partners taken at any time.[136] And under Article 495(1)(d) of the Code, a share company may be voluntarily dissolved by an extraordinary general meeting.[137] The above provisions provide different forms of voluntary dissolutions. There is no a clear legal provision in the Code as to determine what constitutes voluntary dissolution of PLCs whether it is an unanimous decision, a simple majority decision or an extraordinary general meeting decision.

In order to determine which form of voluntary dissolution of PLCs suits the Ethiopian legal system, let's comparatively study voluntary dissolution of limited liability companies under the laws of foreign jurisdictions. The German company law provides several grounds for the dissolution of private limited company; among which dissolution by the decision of the shareholders is one of the grounds. Limited Liability Companies Act (GmbHG) Section 60(1) states that the limited liability company shall be wound up: 1. upon the expiry of the period specified in the articles of association; 2. by the resolution of the shareholders; unless otherwise provided in the articles of association, such a resolution shall require a majority of three quarters of the votes cast.[138]

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[134] Com. Code, Article 542(1)
[135] Com. Code, Article 217(b)
[136] Com. Code, Article 278(1)(d)
[137] Com. Code, 495(1)(d)
[138] Limited Liability Companies Act (GmbHG), as last amended by Articles of the Act of 10 May 2016, Section 60, the Federal Law Gazette lll, Index No 4123- 1, <http://www.gesetze-im-internet.de/englisch_gmbhg/englisch_gmbhg.pdf accessed 3/21/2017>

Voluntary dissolution of close corporation, which is a form of a private company in the US, is also envisioned by one of the US states statutory code i.e. the Delaware Code. Section 355 of the Delaware Code Title 8 of Corporations provides stockholders' option to dissolve the close corporation;[139]

(a) The certificate of incorporation[140] of any close corporation may include a provision granting to any stockholder, or to the holders of any class of stock, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the stockholders exercising such option shall give written notice thereof to all other stockholders. After the expiration of 30 days following the sending of such notice, the dissolution of the corporation shall proceed as if the required number of stockholders having voting power had consented in writing to dissolution of the corporation as provided by § 228 of this title.

(b) If the certificate of incorporation as originally filed doesn't contain a provision authorized by subsection (a) of this section, the certificate may be amended to include such provision if adopted by the affirmative vote of the holders of all the outstanding stock, whether or not entitled to vote, unless the certificate of incorporation specifically authorizes such an amendment by a vote which shall be not less than 2/3 of all the outstanding stock whether or not entitled to vote.

The Delaware Code of Commerce and Trade Title 6 also provides for the voluntary dissolution of limited liability companies. Section 18- 801 of the Delaware Code of Commerce and Trade Title 6 states that; (a) a limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following: (1) at the time specified in the limited liability agreement. . . . . ; (2) upon the happening of events specified in the limited liability agreement; (3) unless otherwise provided in a limited liability company agreement, upon the vote or consent

[139] The State of Delaware Statutory Code, Title 8 Corporations, section 355, http://delcode.delaware.gov/title8/title8.pdf accessed 3/21/2017

[140] A certificate of incorporation is like an article of association that determines the name of the corporation, the purpose of the business, the number and nature of shares, the powers and duties of stockholders and directors and etc, which are enumerated under section 102 of the Delaware Code Title 8.

of members who own more than 2/3 of the then- current percentage or other interest in the profits of limited liability company owned by all the members.[141]

We have seen, in the above, the provisions of the German Limited Liability Companies Act and the US's Delaware Codes that regulate voluntary dissolution of private companies. The Germany's LLCs Act and The US's Delaware Codes have more in common than their differences when regulating the voluntary dissolution of private companies. Under the Germany's LLCs Act, a dissolution of LLC can be effected if ¾ of the votes casted support the dissolution of the company not counting abstentions; even though, the company's articles of association may set forth a smaller or larger than the ¾ majority requirement.[142] Though the German law seems to be stricter by requiring ¾ majority vote to dissolve the company, the provision of discretionary power to the owners of the company either to minimize or maximize the requirement in their company's article of association makes the law flexible enough to be adjusted to the needs of the shareholders. However, the German LLCs Act didn't specify the requirement of quorum that needs to be met in the course of the resolution.

The default rule of the German LLCs Act that requires the approval of ¾ majority vote to dissolve the LLC gives a shield to investors against the threat of untimely dissolution of the firm with an implicit probability of sever minority oppression.[143] Given the rule is a default provision, members of the company may agree to a different rule that favors less risk of minority oppression trading off greater threat of untimely dissolution.[144] A threat of untimely dissolution is inherent in partnerships since a death of a partner or a partner's wish to withdraw from the partnership results in an untimely dissolution of the firm while minority oppressions are prevalent in corporations because of the rule of the majority.[145] Limited liability companies strive to balance the two conflicting interests of businessmen that are a threat of untimely dissolution of a company and a risk of sever minority oppression of shareholders.

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[141] The State of Delaware statutory Code of Commerce and Trade Title 6, section 8- 801, http://delcode.delaware.gov/title6/title6.pdf accessed 3/21/2017

[142] Ruster, Bernd(Ed), "Business Transactions in Germany", Looseleaf, 1st –published: 1983, New York, page 146

[143] Timothy Guinnane, Ron Harris, Naomi R. Lamoreaux and Jean-Laurent Rosenthal, 'Business Organization in the Long Run: Private Limited Companies Rule!', http://www.helsinki.fi/iehc2006/papers2/Guinnane.pdf accessed 3/23/2017

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The Delaware Code of Commerce and Trade sets a default rule of 2/3 majority vote for a voluntary dissolution of a limited liability company having reserved the right of members to agree on a different rule in the company agreement. Whereas, the Delaware Code of Corporations provides a stricter default rule. In order to amend a certificate of incorporation as to allow a stockholder or a class of stock to dissolve the close corporation at will or at the occurrence of any specific contingency, the Delaware Code of corporations requires an unanimous consent of all stockholders whether or not entitled to vote or a not less than 2/3 majority vote when the certificate of incorporation specifically authorizes such an amendment. However, the Delaware code of corporations provides more discretionary power to the stockholders to the extent the stockholders may agree in the certificate of incorporation to grant any stock holder or any class of stock to dissolve the close corporation at will or at the occurrence of a particular contingency. As in the case of the German Limited Liability Companies Act (GmbHG), the Delaware Code of corporations and Code of Commerce and Trade, in their own fashion, provide a balance between threats of untimely dissolution of the company and sever minority oppression of members and stock holders of limited liability companies and close corporations respectively.

We have seen that the above two foreign jurisdictions provide a delicate balance between the threats of untimely dissolution and a risk of sever minority oppression by setting default rules with permissive rules that allow the organizers of the private limited company to agree on different rules as to the voluntary dissolution of their company. The provisions of Ethiopian commercial code that govern the voluntary dissolution of private limited companies lack such clear default rules on top of providing competing legal rules that cannot reconcile with each other. Given the cross reference under article 542(1) of the Commercial Code, the relevant provisions of the Code that are applicable to voluntary dissolution of PLCs are article 217(b), article 278(1)(d) and article 495(1)(d) of the Code. While article 217(b) and article 278(1)(d) require an unanimous decision of all partners, article 495(1)(d) requires an extraordinary general meeting of shareholders to the effect of voluntary dissolution of the share company.

If we apply article 217(b) and article 278(1)(d) of Commercial Code, a voluntary dissolution of PLCs require an unanimous decision of all members of the company; and if we apply article 495(1)(d) of the Code, a voluntary dissolution of PLCs require an extraordinary general meeting

resolution. Under article 425 of the commercial code, not less than a two-thirds majority is required for a resolution to be adopted in an extraordinary meeting, abstentions and blank ballots being disregarded with a requirement of not less than one half of the holders of all shares having voting rights are present or represented at a first meeting.[146] Consequently, under the current Ethiopian commercial code, one has to settle for either for the requirement of unanimous decision or a resolution of extraordinary meeting when determining a voluntary dissolution of the Ethiopian private limited companies.

We have seen in the above discussion that the two foreign jurisdictions, the German LLCs Act and the Delaware Codes, not just provide a default rule of ¾ and 2/3 majority vote requirements but also they supplement the default rules with shareholders' discretionary power to determine the required number of votes and conditions that brings about a voluntary dissolution of the company. By the same token, the Ethiopian law should follow suit too that it needs to provide a clear and sufficient default rules which works in the absence of agreed terms in the articles of association of the PLC on top of providing permissive rules that allow members of the company to determine the required number of votes that can bring about a voluntary dissolution of private limited companies.

3.1.2 Compulsory Dissolution of PLCs

Compulsory dissolution of PLCs under the Ethiopian law comprises two scenarios i.e. dissolution by the court for good cause and dissolution at the request of any member where the term of the company has not been fixed.[147] As I have discussed in the thesis part of the proposal study, in Compulsory dissolutions, "Good Cause" is one of the grounds where the court may order the dissolution of a business organization under Article 218(1), 278(1)(f), 495(1)(e) and Article 542(1) of the Ethiopian commercial code. However, nowhere is "Good Cause" defined neither sufficiently illustrated in the Code. In this part of the study, Components of "Good Cause" under the Ethiopian law vis-à-vis the experiences of other jurisdictions will be discussed. Dissolution at the request of any member where the term of the private limited company has not been fixed is also possible under Article 542(1) of the Code. Whether it is relevant to weigh the

[146] Com. Code, Article 425
[147] Com. Code, Article 542(1)

nature of the request or the magnitude of a member's stake in the company will also to be discussed in light of the laws of foreign jurisdictions.

The German Limited Liability Companies Act provides the grounds upon which dissolution of a company by court judgment is rendered and determines the people who can bring the civil action for dissolution of the company. Section 61 of the German LLCs Act states;

(1) The company may be wound up by the court judgment if it becomes impossible to achieve the company's purpose or if there are other important grounds for winding up the company which are rooted in the company's circumstances.

(2) The action to obtain judicial dissolution shall be brought against the company. It may be brought only by shareholders whose shares together amount to at least one tenth of the share capital.[148]

Judicial dissolution of a limited liability company is also addressed by the Delaware Code of Commerce and Trade. Section 18-802 of the Code states that on application by or for a member or manager the court of chancery may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.[149] In the UK, a judicial winding up of companies can be obtained based on the principle of 'just and equitable'. Section 122(1)(g) of the Insolvency Act 1986 states that a company may be wound up by the court if it is just and equitable that the company should be wound up.[150]

'Important grounds' in the German LLCs Act, 'A not reasonably practicable' in the Delaware Code and 'Just and equitable' in the UK insolvency Act 1986, are the anchor concepts parallel to the Ethiopian Commercial Code's 'Good Cause'. Under the German law, important grounds rooted in the company's circumstances, comparable to a ground like unattainable purpose of the company, justify the dissolution of the company by a court judgment. Neither unattainable company's purpose nor the existence of other important grounds, rooted in the circumstances of the company, justify judicial dissolution of the company by themselves. First, only members of

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[148] GmbHG, Section 61

[149] Cited above note 141, Section 18-802

[150] Insolvency Act 1986, Section 122(1)(g), http://www.legislation.gov.uk/ukpga/1986/45/pdfs/ukpga_19860045_en.pdf accessed 3/22/2017

the company can institute a civil action against the company for the judicial dissolution. And not any member of the company can institute the civil action for judicial dissolution except the ones who own not less than one tenth of the company's share capital. The Delaware Code of Commerce and Trade allows managers, in addition to members of the limited liability company, to make an application for a judicial dissolution whenever it is not reasonably practicable to carry on the business in conformity of the company's agreement. Unlike the German law which sets stricter testes to require judicial dissolution, the Delaware code is lenient enough that it just requires to prove carrying on the business fails to meet the company agreement.

The UK insolvency Act 1986 doesn't illustrate well, unlike the German Act, as to what constitutes 'just and equitable' ground to obtain judicial winding up of a company. However, there is a well developed case law to demonstrate as to what constitutes the 'just and equitable' principle. From the various case laws the following categories are identified i.e. exclusion from management, destruction of the substratum of the company, deadlock, lack of probity of the directors and breakdown of trust and confidence, which justify a judicial winding up based on just and equitable ground.[151]

Exclusion from management, which is also be considered as breakdown of trust and confidence, may qualify as a just and equitable ground to grant judicial dissolution when a shareholder, who contributed a significant capital to the company, is excluded from management after being promised participation; whereas, destruction of the substratum of the company may serve as a ground for a just and equitable winding up if the principal objective of the company becomes unattainable due to the main purpose ,which necessitated the formation of the company, is destroyed.[152] Deadlock qualify as a just and equitable ground to wind up a company when there is an equal split of shares and when the shareholders couldn't agree as to the management of the company in the absence of alternative provisions for resolving the problem; whereas, lack of probity of directors justify a winding up of a company based on a just and equitable ground when directors mange a company with a complete disregard of shareholders' interests.[153]

[151] Nicholas Bourn, cited above note 43, page 179 and 180
[152] I bid
[153] I bid

The only place where 'good cause' is illustrated under the Ethiopian commercial code is under article 218(2) of the code, which states that there shall be good cause in particular where a partner seriously fails in his duties or becomes through infirmity or permanent illness or any other reason incapable of carrying out his duties or where serious disagreement exists between the partners.[154] A member's failure in his duties, infirmity, permanent illness or any other incapacity to carry out one's duties are excluded to constitute good cause for the purpose of PLCs by the virtue of the legal personality vested upon PLCs distinct from the status of its members. Moreover, Article 542(3) of the commercial code specifically excludes such grounds to constitute causes of a company's dissolution unless otherwise expressly provided in the articles of association.

Therefore, we may deduct that the only ground that illustrates court dissolution of PLCs based on good cause is the last clause of article 218(2) of the code i.e. 'where serious disagreement exists between partners'. Given the experiences of the foreign jurisdictions like Germany and UK which I have discussed in the above, the Ethiopian law provides a very limited space for court intervention to dissolve PLCs on the grounds of good cause. Though not part of the good cause ground, the Ethiopian commercial code under article 217(1)(a), 278(1)(c), and 495(1)(c) enlists failure of the purpose or impossibility of performance as grounds for dissolution of business organizations including PLCs, which parallels 'destruction of the substratum of the company' under the UK's just and equitable principle and 'impossible to achieve the company's purpose' under the Germany's LLCs Act.

Serious disagreements of members of a company under the Ethiopian law is not a sole component of good cause as the list of judicial dissolution grounds under article 218(2) of the code is illustrative. So what are the other grounds that constitute good cause besides serious disagreement of members of a company? At this point, we may have to look in to the UK's experience of just and equitable principle such as exclusion from management, deadlock, lack of probity of directors and breakdown of trust and confidence among members of the company; as well as Germany's approach to the problem which gives greater freedom to the courts as they exercise judicial dissolution power whenever they are convinced that the ground up on which

[154] Com. Code, article 218(2)

dissolution is requested is important enough and rotted in the company's circumstances to justify the winding up of the company.

And deadlock in the UK and other common wealth countries may parallel to the Ethiopian counter part of serious disagreement of members of a company even though serious disagreement of members of a company may constitute more than the elements embedded in the concept of deadlock. In South Africa, deadlock qualify as a just and equitable ground to wind up a company when there is an equal split or close to equal split of shares that resulted in a serious and persistent disagreements leading to paralysis of the normal operations of the company and when there are no alternative good remedies.[155] The South African interpretation of deadlock could be a model for the Ethiopian courts when interpreting and applying serious disagreements of members of a company. However, under the Ethiopian law, serious disagreements don't need to be between members, who have equal or close to equal shares in the company, in order to justify judicial dissolution.

We have discussed good cause as aground of judicial dissolution. Now, let's briefly discuss who can request judicial dissolution based on good cause. Under the Ethiopian commercial code article 218(1), 278(1)(f), 495(1)(e) and 542(1), in all forms of business organizations consistently allow any member of the company to ask for a judicial dissolution on the ground of good cause. Such broad gate for any member of a PLC to ask judicial dissolution based on good cause results in untimely dissolution of companies and unnecessary litigation costs on both parties. We have seen that under the German LLCs Act section 61(2) only shareholders whose shares together amount not less than one tenth of the share capital bring an action to obtain judicial dissolution of a limited liability company. Such experiences of other jurisdictions that minimize untimely dissolution of PLCs and unnecessary litigations should be adopted by the Ethiopian company law and other remedies such as withdrawal and expulsion of members of a PLC should be provided for minority stakeholders rather than dissolution of the company.

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[155] TC Maloka and S Muthugulu-Ugoda, 'The Deadlock Principle as a ground for the Just and Equitable Winding Up of a Solvent Company: Thunder Cats Investments 92(pty) Ltd V Nkonjane Economic Prospecting Investments (pty) Ltd 20145 SA 1 (SCA), https://www.ajol.info/index.php/pelj/article/viewFile/145048/134654 accessed 4/3/2017

3.1.3 Withdrawal and Expulsion of members of a PLC

By the virtue of the cross reference under Article 542 of the commercial code, withdrawal of a partner under Article 259 of the Code and expulsion of a partner under Article 261 of the Code are also applicable to dissolution proceedings of PLCs. Under this part of discussion, I will address the remedies of withdrawal and expulsion of members of a PLC as an exit right of members of the company as well as an instrument of preventing untimely dissolution of PLCs. In so doing the adequacy of the Ethiopian law in providing withdrawal and expulsion remedies will be discussed vis-à-vis the laws of foreign jurisdictions.

Dissolution and winding up of a company due to a breach of confidence of one member can be considered as a last option and the worst form of intervention available.[156] While expulsion is a legal instrument to discontinue membership of a partner who no longer fulfils her obligations without a destruction of the firm subject to a protection of the rights of the expelled member; withdrawal is a mechanism a partner uses to discontinue her membership when her interests are no longer served by membership of a company.[157]

Italian, Portuguese, and Brazilian law entitles a member to withdraw from the company if the member voted against an amendment of the articles and the withdrawing member will have the right to claim her share of company's assets as shown in the latest financial statements of the company.[158] And in Germany, a shareholder may request withdrawal for a cause when the shareholder cannot reasonably be expected to sustain her membership of a company and her relationship to other members of the company is strained for reasons of the circumstances of the company and the person or conduct of other shareholders who may repeatedly and seriously abuse majority rule or in the condition of the withdrawing member herself.[159]

In the United States, several jurisdictions provide the doctrine of shareholder oppression to protect minority investors from the abuses of majority control in close corporations.[160] Lack of exit rights, the norm of majority rule, and the deference of the business judgment rule as well as

[156] Marcus Lutter, cited above note 87, page 95
[157] I bid, page 94
[158] I bid, page 96
[159] Ruster, Bernd(ed), cited above note 142, page 145
[160] Douglas K. Moll, cited above note 94

the absence of advance planning are the factors that give rise to the oppression problem which has gone through an evolutionary process starting from a legislative ground for mandatory dissolution to a legislative ground for a wide variety of remedies.[161] Expulsion from employment, removal from management and exclusion from the profits of the venture are some of the oppressions the majority exercises over the minority.[162] Later, when limited liability companies were introduced through legislations, most statues incorporated withdrawal and dissolution provisions that guarantee exit rights with compensation of fair value of ownership interests as well as a buyout right upon withdrawal for a minority member, if dissolution is avoided.[163]

Expulsion or exclusion of a member can be exercised either on an account of failure to contribute or on the bases of a rule in the articles or for good cause. Naturally, only legal systems that don't oblige full payment for all shares at the time of company establishment use exclusion of a member on account of failure to contribute.[164] Germany is one of such systems. The German Limited Liability Companies Act Section 21 reads as:

(1) In the event of delayed payment, the defaulting shareholder may be issued with a renewed request to make the payment within a specified grace period under penalty of his her exclusion along with the share for which the payment is to be made. The request shall be sent by registered letter. The grace period must be no less than one month.

(2) After fruitless expiry of this period the defaulting shareholder shall be declared to have forfeited his share and any partial payments made to the company. The declaration shall be made by registered letter.
(3) A shareholder who has been excluded shall remain liable for any loss the company incurs on account of the defaulted amount or the amounts of the original capital share called in against the share at a later point in time.[165]

As in provided in the above provision, under the German law a company may expel a member on account of failure to contribute. Expulsion of a member for good cause is also recognized under

[161] I bid
[162] I bid
[163] I bid
[164] Marcus Lutter, cited above note 87, page 97 and 98
[165] GmbHG, Section 21

the German law where it is more reasonable to expel a member than to dissolve a company when the member's person and conduct produce good cause to dissolve the company; hence, protecting the interests of the remaining members as well as the employees of the company there by promoting the public good.[166] Expulsion on the basis of a rule in the articles may also be carried out where the articles provide to expel a member on specific conditions if the remaining members or majority of them vote in favor of the expulsion; however, expulsion of the member cannot be exercised arbitrarily that the articles may not provide the majority to exercise such power at will and for no specific reason.[167]

We have seen in the above discussion that various jurisdictions provide withdrawal and expulsion rules on several grounds as an alternative remedy to dissolution of a company. The Ethiopian law that governs PLCs is in short of such exit right remedies alternative to dissolution of PLCs. The only default rule under the Ethiopian law that governs withdrawal right is provided under Article 259 of the code where partners may prevent dissolution of a partnership by paying out a partner who has given notice to dissolve the partnership.[168] This rule is provided in consideration of article 258 of the code, which deals with partnerships entered into for undefined period or for the life of one of the partners, or where the power to dissolve on notice is provided in the agreement.[169] Withdrawal of a member on the basis of a rule in the articles is also provided under the Ethiopian law. As per article 542(2) of the code, provision may be included in the articles of association permitting redemption of the members' shares for a fixed sum.[170] This is a withdrawal provision than an expulsion one since the redemption is to be done in the interest of the member as clearly stated in the Amharic version of the code i.e. 'ለማህበርተኛው ጥቅም በተወሰነ ዋጋ'።

As we have seen in other jurisdictions, withdrawal remedies are provided in such scenarios where amendment of the articles were proposed disregarding minority interests as well as repeated and serious abuses of majority rule at the expense of minority owners such as exclusion from the profits of the venture and refusal to participate the minority in the decision making process. The Ethiopian law doesn't address such concerns of minority members of a PLC and

[166] Marcus Lutter, cited above note 87, page 99
[167] I bid, page 98
[168] Com. Code, Art. 259
[169] Com. Code, Art. 258
[170] Com. Code, Article 542(2)

Article 259 of the commercial code provides withdrawal remedy only for those members who agreed and planned in advance to dissolve the company on notice; so does, article 542(2) of the code which guarantees redemption of a member's share only if the member plans in advance in the articles. Consequently, exit rights of a member of a PLC under the Ethiopian law as a matter of default right is non-existent unless a minority member succeeds negotiating withdrawal rights in advance in the articles or triumphs to bring a compulsory dissolution of the company based on good cause by the order of the court.

Under the Ethiopian law, expulsion of a member of a company is exercised on the basis of good cause, fault or on the basis of a rule in the articles. Article 261 of the code states that the court may order the expulsion of a partner for good cause and the partnership shall continue as between the remaining partners.[171] Ethiopian courts may also order expulsion of a member on the basis of fault. Expulsion may also be carried out on the basis of a rule in the articles when it is provided in advance. Article 279(1) is read as,

(1) Where dissolution is requested for reasons attributable to one partner, the court may, on the application of other partners, order the expulsion of the partner at fault in lieu of dissolution.

(2) The memorandum of association may provide for expulsion.

(3) A partner who is expelled shall be paid what is due to him on the day of expulsion.[172]

The difference between expulsion under article 261 of the code and expulsion under article 279 lies not on the nature of expulsion rather on the grounds which cause expulsion of a member from a company. Accordingly, a court may order expulsion of a member on the basis of good cause under 261 of the code; whereas, a court may order expulsion of a member on the ground of fault under article 279 of the code. Even though the Ethiopian law doesn't provide illustrations as to what constitutes good cause and fault that can justify expulsion of a member, the foreign jurisdictions I have discussed in the above give us some kind of guidance as to how an Ethiopian court could interpret and apply good cause and fault as a ground of expulsion of a member.

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[171] Com. Code, Article 261

[172] Com. Code, Article 279(1)

As I have discussed in the above, referring to the German law, expulsion of a member on account of good cause is justified where it become more reasonable to expel a member than to dissolve a company if a member's person or conduct would result in dissolution of the company. The Ethiopian courts may use such standards that whether a member's person or conduct would result in dissolution of the company before the courts order expulsion of a member on account of good cause. Thus expulsion on the bases of good cause could constitute a member's person or conduct that would result in dissolution of the company.

Now let's discuss what should constitute expulsion on the basis of fault under the Ethiopian law. I have discussed foreign jurisdictions, particularly the German law, that expels a member of a company on the bases of failure to contribute. Though the Ethiopian law requires the memorandum of association of a PLC to show a statement that the capital is fully paid,[173] a member of a PLC may not fully pay her contribution at the time of the memorandum of association is signed. If a member of a company doesn't fully pay her contribution within a reasonable period of time having refused a request by the company, her act should qualify a fault under article 279 of the code that can justify expulsion of a member in lieu of dissolution of the company. Therefore, expulsion on account of fault could be established based on a member's failure to pay her contributions in full even though some other faults may also be classified under this category.

3.2 The Law on Winding up of PLCs

After a declaration of dissolution, the next stage is liquidation of the company. Liquidation of a company consists of gathering and realizing the assets of the company, paying its liabilities, paying back its capital to the owners of the company, distribution of surplus of assets of the company to its members if available, and any other activity necessary to put an end to the operations of the company.[174] A company under liquidation continues to retain its legal personality even though the status of the legal personality is only exercised to finalize ongoing transactions and to enter in to new transactions necessary to winding up of the company.[175] Under the Ethiopian law, no provision is provided for the winding up of PLCs; consequently, the

[173] Com. Code, Article 517(g)
[174] J.P. Le Dall, cited above note 30, page 214
[175] I bid, page 215

provisions of the commercial code that govern liquidation of other forms of business organizations such as partnerships and share companies are the rules that govern the winding up of PLCs.

In applying the rules of the code that govern partnerships and share companies to liquidate and wind up the affairs of PLCs, the following issues could be framed. In ordinary partnerships, unless otherwise provided in the partnership agreement or by law, the liquidators shall have the same duties and responsibilities as managers;[176] whereas, in share companies, unless otherwise provided by law or the articles of association, the liquidators shall have the same duties and liabilities as directors.[177] Given the powers of liquidators in partnerships and share companies are characterized differently, liquidators' power of a dissolved PLC needs to be characterized either as managers or directors. Powers of liquidators in the winding up of PLCs and the appointment of liquidators of a dissolved PLC are to be addressed under this part of the study. A surplus of a liquidated PLC and its distribution among members of the company in relation to suspension of payment is also the subject of this part of the study. As a comparative study, the discussion is to be deliberated in comparison of the laws of foreign jurisdictions.

3.2.1 Appointment and Powers of Liquidators

Under the German law, except in the event of insolvency proceedings being opened against the company, directors of the company are liquidators of the company unless the task of winding up of the limited liability company is assigned to other persons in the articles of association or by a resolution passed by the shareholders.[178] Hence, in principle, directors of the LLC are liquidators of the company too. Section 71(4) of the GmbHG also provides that the liquidators shall have the rights and duties of directors. The German LLCs Act Section 70 states duties of the liquidators as, 'The liquidators shall complete the company's ongoing business, fulfill the obligations of the dissolved company, collect its receivables and transform the company's assets into money; they shall represent the company in and out of court. The liquidators may also enter into new business transactions in order to complete pending transactions.'[179]

[176] Com. Code, Article 265(1)
[177] Com. Code, Article 499(1)
[178] GmbHG, Section 66(1)
[179] GmbHG, Section 70

Under the French law, liquidators of a private company (SARL) are appointed by members of the company, who own more than half of the company's capital having reserved the power of the Commercial court to appoint liquidators in the absence of members' appointment of a liquidator.[180] A liquidator of a company is empowered to exercise the fullest powers necessary to execute the liquidation such as selling the assets of the company by private deal or public auction, represent the company in litigations and compromises, recover payments owed to the company, and collecting unsettled capital payments on shares owned by the members of the company.[181] However, the liquidator needs authorization by the court or by the resolution of members of the company in order to finalize ongoing transactions at the date of dissolution or to enter in to new transactions to continue the company's business.[182]

In the UK, depending upon the mode of winding up, liquidators are appointed by the general meeting of members or creditors of the company or by the court for the purpose of winding up the company's affairs and distributing its assets.[183] Powers and duties of liquidators are also listed under section 165 and the following provisions of the Insolvency Act 1986. A liquidator may exercise wide powers such as payment of debts and compromise of claims with the sanction of an extraordinary resolution of the company or of the court or of the liquidation committee or of a meeting of the company's creditors depending on the mode of winding up; whereas, institution and defense of proceedings as well as carrying on the business of the company are carried out without any sanction.[184] It is also the power of the liquidator to take in to his custody of all the property of the company, to dispose of perishable goods and to do all such other things as may be necessary for the protection of the company's assets.[185]

We have seen in the above discussion that liquidators under the laws of foreign jurisdictions have the widest possible power that can enable them to finalize the winding up of dissolved companies. We have discussed that in the German LLCs Act and in the French company law as well in the UK's Insolvency Act, powers of the liquidators in the winding up of private companies are similar though the UK's Insolvency Act governs all forms of companies. The

[180] J.P. Le gall, cited above note 30, page 219
[181] I bid, page 220
[182] I bid
[183] Insolvency Act 1986, Section 91, Section 100 and Section 140
[184] Insolvency Act 1986, Section 165
[185] Insolvency Act 1986, Section 166

following discussion will also demonstrate that the Ethiopian winding up law doesn't differ much from the foreign jurisdictions I have discussed in the above even though the Ethiopian law doesn't provide specific rules for the winding up of PLCs unlike that of Germany and France.

I have previously said that the Ethiopian law provided not a single rule specific to the needs of the winding up of private limited companies that the rules governing partnerships and share companies regulate the winding up of PLCs. Under the Ethiopian law, liquidators of share companies are appointed by the general meeting which resolved dissolution unless their appointment is provided in the articles of association.[186] The liquidators of share companies have full power to sell the property of the company as whole, compromise, arbitrate and represent the company in legal proceedings subject to any limitations imposed by the articles of association or by the meeting appointing them.[187] Hence, the Ethiopian law also provides the widest possible power to the liquidators of share companies as much power as it provides to directors of the company.

Liquidators of ordinary partnerships are appointed under the partnership agreement or by all the partners having reserved the power of the court in the absence of agreement.[188] Unlike the share company which appoints liquidators by two thirds of majority vote of an extraordinary meeting which dissolves the company, unanimous decision of all partners is required to appoint liquidators of the partnership. Even though liquidators of partnerships are said to have the same duties and responsibilities as partnership managers who may only carry out acts of management, article 267 of the code provides a widest possible power more than acts of management. Accordingly, the liquidators can take all the steps necessary to complete the winding up of the partnership including selling the property of the partnership, representing the partnership in legal proceedings and may compromise or refer to arbitration any matters in issue while they may not undertake new businesses except finalizing ongoing businesses.[189]

Under the Ethiopian law, even though no specific rules are provided for the winding up of PLCs, the rules that govern ordinary partnerships and share companies do govern also the winding up of PLCs. I have discussed that the rules in both categories in respect to the powers of liquidators

[186] Com. Code, Article 496(1)
[187] Com. Code, Article 500
[188] Com. Code Article 264
[189] Com. Code Article 267

are inherently similar with no significant difference. Hence, in liquidation proceedings of PLCs, one may refer to either of the rules that govern the partnerships or share companies. Essentially, characterizations of liquidators as mangers in partnership liquidations and as directors in share company liquidations don't have a meaningful difference under the Ethiopian law as I have demonstrated in the above discussion.

The difference lies in the rules that govern the appointment of liquidators. In voluntary liquidation of partnerships, all partners must agree on the appointment of liquidators; whereas, in share companies, the general meeting which resolved the dissolution appoints the liquidators. As shareholders' dissolution comes through extraordinary general meeting which requires two thirds majority, appointments of liquidators in share companies and partnerships have basic difference. The problem is that we don't have clear rules as to which form of voting requirement is applicable to appointment of liquidators by members of PLCs. Given the experience of the French company law where liquidators of a private company (SARL) are appointed by the members who own more than half of the company's capital, the two third majority requirements of share companies is more reasonable to apply for the appointment of liquidators by members of PLCs than the unanimous agreement requirement of partnerships.

3.2.2 Distribution of Surplus of Assets

Under the German law, a liquidated limited liability company's assets are distributed amongst the shareholders in proportion to their shares even though the articles may stipulate another form of ratio to the distribution.[190] However, an immediate distribution of surplus of assets is prohibited as a matter of principle. Accordingly, the distribution may not be effected before the company's debts have been discharged or indemnified and not until the end of one year from that day on which the creditors were requested through the company's designated publications to contact the company.[191] Similar provision is provided under the Ethiopian law for a liquidated share company.

In the UK, the powers of a liquidator of a company, being wound up by the court, include securing the assets of the company, realizing and distributing the assets to the creditors and, if

[190] GmbHG, Section 72
[191] GmbHG, Section 73

there is a surplus, to the persons entitled to it.[192] And the court adjusts the rights of contributories among themselves and distributes any surplus among the persons entitled to it.[193] In the UK, suspension of payment of a surplus of assets is not provided in clear terms. However, the court may at any time order all proceedings in the winding up to be stayed or sisted, on proof to the satisfaction of the court, for a limited time on such terms and conditions as the court thinks fit.[194] Therefore, the court may also suspend payment of a surplus of assets of the wound up company when presented with satisfactory proof by concerned persons.

In Germany's company law, suspension of payment is provided as a matter of principle; whereas, in the UK, it is as one of the remedies that could be sought from the court by one of the concerned persons either by the creditor or the contributory of the company including the liquidator himself. Under the Ethiopian law, Article 505 of the code states that the surplus assets shall not be distributed to the shareholders until one year from the third publication specified in Art 502(3) in the official Commercial gazette: provided that the court may order the distribution of the surplus assets before the expiry of this period when satisfied that the creditors will not suffer.[195] However, in a liquidated partnership, no suspension of distribution surplus assets is imposed. As a result, where there is a surplus after all claims have been met and contributions returned, the surplus shall be distributed among the partners.[196] In dealing with a surplus of a liquidated PLC, one has to choose between either the rules of the code that govern a liquidated partnership or the rules of the code that govern a liquidated share companies which provide better protection for the interests of creditors.

Given members of PLCs enjoy owner shielding limited liability, the application of the rules of the code that provide more protection to creditors of the company is plausible. Moreover, the experience of the German LLCs Act, which I discuss in the above, provides suspension of payment just like that of the Ethiopian code does for a liquidated share company's surplus. Therefore, legal reasoning and comparative study justify the application of the rules of the code that govern a liquidated share company to govern a surplus of a liquidated PLC that is to mean to suspend the distribution of surplus of assets of a liquidated PLC as in provided in the code.

[192] Insolvency Act 1986, Section 143
[193] Insolvency Act 1986, Section 154
[194] Insolvency Act 1986, section 147(1)
[195] Com. Code, Article 505
[196] Com. Code, Article 270

Chapter Four

The Law and the Practice of Dissolution and Winding up of PLCs

Introduction: In order to assess the practice in relation to the dissolution and winding up of PLCs, I will review court cases that have been entertained by the Ethiopian courts. I will also interview legal practitioners as well as experts working in the Ministry of Trade and Documents Authentication and Registration Office (DARO). This chapter is divided in to three sub sections. The first section deals with the compulsory dissolution of PLCs vis-à-vis the court decisions. While the second section addresses the law on voluntary dissolution of PLCs in light of the practice; the third section discusses winding up of PLCs and the practice.

4.1 The Law on Compulsory Dissolutions of PLCs Vis-à-vis Court Decisions

In a matter of compulsory dissolution of PLCs, Cassation Bench of the F.D.R.E Supreme Court seems to introduce a new standard other than the 'Good Cause' which is already established in the Commercial Code. In a civil case known as Yared Sisay Vs Algreen Agro Industry PLC, the Cassation Bench deliberated that a plaintiff can only succeed to bring about judicial dissolution of a PLC if the plaintiff proves to the court the existence of a 'sufficient and legal reason' i.e. in the very words of the ruling 'በቂ እና ህጋዊ ምክንያት'.[197] The Commercial Code consistently uses the term 'Good Cause' of which Amharic equivalent under Article 218(1) is 'ትክክለኛ ምክንያቶች' and under Article 278, 495(1)(e) and 542(1) is 'በቂ በሆኑ ምክንያቶች'፡፡ Nowhere, under the Ethiopian Commercial Code, is provided a standard of 'sufficient and legal reason' as a ground for a judicial dissolution of PLCs. Given the power of the cassation bench to set precedents so as to bind future litigation of any Ethiopian court, we may reasonably conclude that the cassation bench set a new precedent that introduced a new element as a ground for judicial dissolution of PLCs. Consequently, a qualification of 'legality' is added to the 'Good Cause' standard as a ground to bring about dissolution of PLCs by the order of courts.

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[197] ያሬድ ሲሳይ እና አልግሪን አግሮ ኢንዱስትሪ ኃ/የተ/የግ/ማህበር (ፌ/ጠ/ፍርድ ቤት ሰኔ 2004 ዓ.ም) ፣ የፌ/ጠ/ፍርድ ቤት ሰበር ችሎት ውሳኔዎች ፣ ቅጽ - 13 ፣ ገጽ 399

Though not like the decision of the Cassation Bench, a Federal High Court Judge also answered for my interview that 'illegality' along with 'serious disagreements' must be one of the grounds constituting the 'Good Cause' standard.[198] Ato Sentayehu Zeleke said that as 'serious disagreement' is an illustration of 'Good Cause' under Article 218 of the Commercial Code, other scenarios that could constitute 'Good Cause' must also be accepted as a ground to dissolve PLCs. According to the Judge if the purpose of the company is found to be illegal or if the company itself is engaged in illegal activities though its purpose is legal, or if the operations of the company is found to be a threat to a national interest, or if one of the members of the company sold out the business of the company to another company in competition that should constitute the 'Good Cause' standard to justify dissolution of PLCs. Ato Sentayehu said that he dissolved PLCs on some of the aforementioned grounds although he said that he was unable to remember the file numbers.

In relation to compulsory dissolution of PLCs, one issue that can be raised is that whether a plaintiff's pleading to request a dissolution of a PLC based on good cause by the order of the court could be barred by a period of limitation and whether the Commercial Code provides appropriate provisions for such scenarios. In a civil case known as Ato Hassen Mehammed Vs Magi Agro Forestry PLC, the Cassation Bench of the F.D.R.E Supreme Court deliberated that a plaintiff's pleading for a dissolution of a PLC based on good cause could be barred by the general period of limitation provided by Article 1845 of the Civil Code.[199] The ruling of the court's decision can be summarized that a plaintiff's pleading could only be barred by a period of limitation of ten years which counts starting from the happening of the events that constitute the ground upon which the action for dissolution of the company is instituted rather than the day of the formation of the company. Currently the Ethiopian courts have no option except applying the general period of limitation provided for any civil action. Given the peculiar nature of commercial business organizations and the necessity of certainty and predictability for the development of business, there should have been a specific and shorter period of limitation tailored for the needs of PLCs, under the commercial code, that can bar long overdue grounds of dissolution to protect the company.

[198] Interview with Ato Sentayehu Zeleke, Federal High Court Judge, April 21, 2017

[199] ሀሰን መሀመድ እና ማጂ አግሮ ፎረስትሪ ኃ/የተ/የግ/ማህበር (ፌ/ጠ/ፍ/ቤት ህዳር 2007 ዓ.ም)፣ የፌ/ጠ/ፍርድ ቤት ሰበር ችሎት ውሳኔዎች፣ ቅጽ - 17 ፣ ገጽ 322

4.2 The Law on Voluntary Dissolution of PLCs and the Practice

In a matter of voluntary dissolution of PLCs, the practice shows that dissolution of PLCs is mainly carried out by the Documents Authentication and Registration Office. The Federal High Court Judge, Ato Sentayehu Zeleke, said that in a matter of voluntary dissolution of any business organization including PLCs, parties to a litigation have no a cause of action to come to the courts and the courts have no jurisdiction to decide such cases that he always rejects such pleadings based on lack of cause of action.[200] According to the judge, it would be an encumbrance to the exit right of business organizations if the courts are allowed to intervene in the very freedom of contracting parties who willfully resolved to dissolve their business association which comes in to existence from the outset without the intervention of the court. The Judge said that it would be up to the public institutions which are entrusted by the state to register and authenticate contracts to deliberate and decide on such matters.

Though Judge Sentayehu insists that parties to a litigation lack a cause action to come to the courts to seek a voluntary dissolution of a PLC, in an active case still being deliberated by the Federal First Instance Court after a remand of the Cassation bench of the Federal Supreme Court, the cause of action of the Plaintiffs was a voluntary dissolution of a PLC to be recognized and affirmed by the court as well as an appointment of a liquidator by the court. The case is known as Yohannes Atsebahe and Co. Vs Kahesaye Berhe and Co. where the plaintiffs pleaded that all members of the company voluntarily resolved to dissolve Karseko Sheraf shoes Factory PLC on the ground that the company failed to achieve its purpose.[201] Though the court was provided with the minutes that resolved the dissolution of the company, it refused to dissolve the company by stating that the minutes that resolved the dissolution was disqualified without stating the reasons of the disqualification and the plaintiffs failed to produce evidence that would prove the company's failure to achieve its purpose.

The case was full of issues. It was a fact that all members of the company, most of them by their proxies, voluntarily resolved to dissolve the company; however, the defendants alleged that the minuets were not registered and authenticated at the Documents Registration and Authentication

[200] Ato Senatyehu Zeleke, cited above note 198

[201] Yohannes Atsebaha and Co Vs Kahesaye Berhe and Co (Federal Supreme Court Cassation Bench, 2008 E.C, File No 100464) (Unpublished) (Currently being deliberated at the Federal First Instance Court, File No 203608)

Office. The defendants also argued that the proxies on both sides either in the side of the plaintiffs or defendants, who signed the minutes, didn't have the appropriate power of attorney that could enable them to dissolve the company. The defendants also sought the company to be joined as a defendant and argued that the company was striving to achieve its purpose.

The Federal First Instance Court failed to frame and deliberate appropriate issues such as whether the proxies had the special power of attorney to vote for dissolution of the company, whether the minutes that resolved the dissolution of the company was registered and authenticated by Documents Authentication and Registration Office and if the minutes happened to be unregistered by the Office what would be their validity to be presented as an evidence to bring about dissolution of the company and whether the company failed or not to achieve its purpose. The cassation bench having framed the above issues and others, it remanded the case back to the Federal First Instance Court where it is still being deliberated. We have seen that how the courts handle voluntary dissolution of PLCs. Now let's see the practice at the Documents Authentication and Registration Office Head Office (here in after I may refer to as DARO).

Ato Hailemariam Tetemeke, a senior officer at DARO Head Office, answered to my interview that all consensual dissolution of business organizations including PLCs is registered and authenticated by his office without the intervention of courts.[202] According to the officer, in order to register and authenticate consensual dissolution of PLCs, all members of the company or their proxies need to appear in the office and sign the minutes that resolve the dissolution of the company unless the articles of the association authorizes dissolution of the company by a lower number of votes disregarding unanimous decision of members of the company. Ato Melkamu Ogo, a Federal licensed Attorney and Consultant at Law, who handled several dissolution cases of PLCs, answered to my interview that his request to voluntarily dissolve a company by the name of Sunappasmy PLC was accepted by DARO because the articles of association authorized voluntary dissolution of the company by the three fourth vote of members of the company even if all the members of the company didn't consent to dissolve the company.[203]

[202] Interview with Ato Hailemariam Tetemeke, Senior Officer at the F.D.R.E Documents Authentication and Registration Office, April 21, 2017

[203] Interview with Ato Melkamu Ogo, a Federal licensed Attorney and Consultant at Law, April 22, 2017

To my inquiry whether DARO takes necessary precautions to safe guard the interest of third parties and creditors, Ato Hailemariam Tetmeke answered me affirmatively that before the registration and authentication of the minutes of voluntary dissolution, an inquiry is made by DARO whether there is a registered debt of the company and whether there is any injunction given by authorized bodies up on the assets of the company. According to Ato Hailemariam, the inquiry is made not just about the debts and liabilities of the PLC but also about the personal debts and liabilities of each member of the company.

Ato Hailemariam Tetemeke said his office registers and authenticates also minutes of share companies if the two third of shareholders voluntarily resolved to dissolve the company. The paradox is that in order to register and authenticate a voluntary dissolution of a PLC, DARO requires unanimous decision of all members of the company. However, authentication and registration of voluntary dissolution of share companies is carried out with the two third votes of the shareholders. Consequently, it becomes easier to voluntarily dissolve a share company than a PLC. The reason given by Ato Hailemariam was that while the requirement of voluntarily dissolution of share companies is clearly provided under Article 495(1)(d) of the Commercial Code, the Ethiopian law doesn't clearly set the requirements for a voluntary dissolution of PLCs except a cross reference to applicable provisions to all forms of business organizations under Article 542(1) of the Commercial Code. So DARO took the safest but not the most efficient option of a voluntary dissolution of PLCs with a requirement of unanimous decision of all members of the company. Certainly, the requirement of unanimous decision results in an encumbrance to an exit right of PLCs and leads to a costly and time taking compulsory dissolution of PLCs by the order of courts.

4.3 Winding up of PLCs and the Practice

After the dissolution of the company is effected either voluntarily by the agreement of members of the company or compulsorily by the order of the court, the next stage is liquidation of the company and cancelation of registration. Liquidation out of the court and cancelation of registration involves several government offices that are DARO, Ethiopian Revenues and Customs Office and the Ministry of Trade. Ato Hailemariam Tetemeke said that the role of DARO in relation to the liquidation process is only the authentication and registration of appointed liquidators.

In an Interview I conducted to Ato Bisrat Bezabehe, a Tax Auditor at the Ethiopian Revenues and Customs Authority Lideta Sub-City Small Tax Payers Branch Office, he explained to me that a dissolved company's accounts are examined and verified by the external auditor following the report of the internal auditor.[204] The Tax Auditor said that surplus assets of a dissolved PLC is distributed only after the payment of income tax and dividend tax from the capital of the company exempting only the initial capital contributed by the members in the course of formation and capital increment, which culminates by issuing a tax clearance. According to Ato Bisrat, the waiting time to audit a liquidated company depends on the load of the box file and the size of the transactions the liquidated company was engaged in. However, for any size of the company including large tax payers the maximum period of time set for auditing is three months unless exceptional circumstances forced extension of the period, said the Tax Auditor.

W/ro Genet Asemamawe, Team Leader of Counseling and Information Services at the Ministry of Trade Branch No 2, said that cancellation of registration of voluntarily liquidated company is carried out after certain requirements are met while court decisions are required for those companies that are liquidated by the order of the court.[205] W/ro Genete said that the requirements for those voluntarily liquidated companies are minutes authenticated by DARO, tax clearance from the government Revenues Office and an audit report by the liquidator who has to be a licensed auditor. According to W/ro Genete, cancellation of commercial registrations including PLCs is governed by the Commercial Registration and Licensing Council of Ministers Regulation No 392/2016. The minutes of cancellation resolution of the business organization, audit report, proof of a notice of cancellation in a widely circulated newspaper twice within a month interval at the expense of the applicant as well as evidence showing return of previously issued business license and certificate of trade name are among the requirements set by the regulation.[206]

In an interview I conducted to Ato Yelak Alemu, a senior expert of Counseling and Information Services at the Ministry of Trade Branch No 2, he said that the most frequent complaints faced in

[204] Interview with Ato Bisrat Bezabehe, Tax Auditor at the Ethiopian Revenues and Customs Authority Lideta Sub-City Small Tax Payers Branch Office, April 21, 2017

[205] W/ro Genet Asemamawe, Team Leader of Counseling and Information Services at the Ministry of Trade Branch No 2, April 23, 2017

[206] Commercial Registration and Licensing Council of Ministers Regulation, 2016, Article 21, Regulation No 392/2016, Neg Gaz year 2, no 3

the course of cancellation of commercial registrations of PLCs have come from those applicants who refuse to comply with the audit report requirement because of absence of transactions since their establishment; and who claimed to have too little transactions to justify an audit report by a licensed auditor.[207] The expert said that the high cost of hiring a licensed auditor frustrates the applicants and the law, which requires the audit report, doesn't differentiate between those PLCs which have been inactive since their establishment and those PLCs which have significant operations to justify audit report. According to Ato Yelak Alemu, the introduction of regulation no 392/2016 improved the waiting time for cancellation of commercial registrations that before the introduction of the new regulation applicants were used to be required to publish notice of cancellation in a newspaper up to three times. After all the above requirements are met and a twice publication of notice of cancellation by the liquidator is completed, the liquidated company is cancelled from the commercial register said Ato Yelak Alemu.

[207] Ato Yelak Alemu, Senior expert of counseling and information at the Ministry of Trade Branch No 2, April 23, 2017

Chapter Five

Conclusions and Recommendations

Introduction: The core research questions that I have addressed under this study can be classified in to five categories. Those are related to: 1. The voluntary dissolution of PLCs by members of the company; 2. The compulsory dissolution of PLCs by the order of the court; 3. The withdrawal and expulsion of members of a PLC as an exit right of members of the company and as a preservative remedy of untimely dissolution of PLCs; 4. The appointment and powers of liquidators of a dissolved PLC; 5. As well as the distribution of surplus of assets and suspension of payment of a liquidated PLC. Accordingly, the conclusions and recommendations I forward under this part of the study will be presented in line with the research questions I discussed under the thesis.

5.1 Conclusions

Under the Ethiopian law, there is no a clear legal provision that determines as to what constitute voluntary dissolution of PLCs whether it is an unanimous decision, a simple majority decision or an extraordinary general meeting decision of members of the company. I have shown in my comparative study of the Germany's LLC Act and the US's State of Delaware Code, which provide a default rule of ¾ and 2/3 majority vote requirements, respectively, in addition to the discretionary power of shareholders to plan in advance the required number of votes and conditions that bring about a voluntary dissolution of their companies. The provisions of the Ethiopian commercial code that govern voluntary dissolution of PLCs lack such clear default rules on top of providing competing legal rules that cannot reconcile with each other.

Under the current Ethiopian Commercial Code, given the cross reference under article 542(1) of the Code, one has the option to choose between the requirements of unanimous decision that of partnerships and a two thirds majority resolution of extraordinary meeting that of share companies when determining a voluntary dissolution of PLCs. Even though the most practical and efficient option is applying the two thirds majority resolution of members of the company, the practice especially at DARO, as I have discussed in chapter four, opted for the requirement of

unanimous decision of members of the company to authenticate and register a voluntary dissolution of PLCs whereas a two thirds majority resolution of share companies is being authenticated and registered as a voluntary resolution.

Such practices are an encumbrance to the exit right of PLCs, distorts an efficient allocation of resources and leads to a costly and time taking compulsory dissolution of PLCs by the order of courts even when a single member of the company, how much insignificant is her stakes in the company, fails to agree for the dissolution of the company. Given the experiences of the foreign jurisdictions I have discussed and given even the share companies are privileged to dissolve voluntarily short of unanimous decisions, it would be absurd and inefficient to demand unanimous decision of members of a PLC in order to recognize its voluntary dissolution.

Therefore, when working within the existing legal framework, experts at DARO, judges and practitioners have an option to recognize voluntary dissolution of PLCs short of unanimous decisions of members of the company and should opt for the requirement of share companies i.e. the two thirds majority resolution of members of the company since the rules that govern share companies are also applicable to the dissolution of PLCs rather than opting for the rules of the code that govern partnerships of which voluntary dissolution is required to be unanimous decision of members of the company.

Future amendments or revisions of the Ethiopian commercial code needs to take in to account the existing legal gaps of regulating voluntary dissolution of PLCs and needs to provide a clear and sufficient default rules such as the Germany's LLC Act ¾ requirement or the two third majority vote requirement of the Delaware Code of Commerce, which works in the absence of agreed terms in the articles of association of PLCs on top of providing permissible rules that allow members of the company to determine the required number of votes that can bring about a voluntary dissolution of PLCs.

"Good Cause" is one of the grounds where a court may order dissolution of PLCs under the Ethiopian law; however, no where it is defined nor sufficiently illustrated under the commercial code. Moreover, the manner and condition in which members of a PLC could seek and request dissolution of their company is not well regulated under the Ethiopian law. The only ground that illustrates good cause is 'serious disagreement' of members of a company. However, 'serious

disagreement' of members of a PLC is not a sole component of 'good cause' as the list of judicial dissolution grounds under article 218(2) of the commercial code is illustrative than exhaustive.

In determining the other components of 'good cause' of the Ethiopian law, good lessons could be learned from the UK's experience of 'just and equitable' principle, which is composed of several components that I have discussed in chapter three, as well as Germany's approach to the problem which gives greater freedom to the courts as they exercise judicial dissolution power whenever they are convinced that the ground upon which dissolution requested is important enough and rooted in the company's circumstances to justify the dissolution of the company. As I have discussed in chapter four, some other grounds such as illegal purposes or illegal operations of a PLC should also be considered as a ground of good cause to justify judicial dissolution of PLCs by the Ethiopian courts.

I have discussed in chapter three that in all forms of business organizations including PLCs, the Ethiopian law consistently allow any member of the company to request for a judicial dissolution on the grounds of good cause. Such a right for any member of a PLC to ask judicial dissolution based on good cause results in untimely dissolution of companies and unnecessary litigation costs on both parties. We have seen that under the German LLCs Act only shareholders whose shares together amount not less than one tenth of the share capital bring an action to obtain judicial dissolution of a limited liability company. Such experiences of other jurisdictions that minimize untimely dissolution of PLCs and unnecessary litigations could be adopted and incorporated by the Ethiopian company law and other remedies such as withdrawal and expulsion of members of a PLC should be provided for minority stakeholders rather than a right to request dissolution of the company.

Withdrawal and expulsion of members of a company are part of the remedies that can be exercised in dissolution proceedings of PLCs. Under the Ethiopian law withdrawal rights are provided only if members of a company planned in advance; so does redemption of a member's share by the company. We have seen that in other jurisdictions withdrawal remedies are provided in order to protect minority interests. In those jurisdictions, serious and repeated abuses of majority rule at the expense of minority members of the company such as exclusion from the profits of the business justify exercise of withdrawal rights. The current Ethiopian law doesn't

address such concerns of minority members of PLCs; and, exit rights as a matter of default rules are non-existent unless a minority member succeeds negotiating withdrawal rights in advance or brings a compulsory dissolution of the company by the order of the court.

Expulsion of a member of the company under the Ethiopian law can be exercised on the grounds of ‘good cause’ and ‘fault’ even though the law doesn’t define nor illustrate as to what constitutes good cause and fault. We have seen that under the German LLCs Act, expulsion of a member of a LLC exercised based on good cause if a member’s person or conduct would result in dissolution of the company; whereas, failure to contribute justifies expulsion of a member on the basis of fault. The German law gives us a critical guidance when interpreting ‘good cause’ and ‘fault’ of the Ethiopian law as grounds of expulsion of members of a PLC. Hence, good cause could be established when a member’s person or conduct, if left unchecked, would result in dissolution of the company; whereas, fault consists of a member’s failure to contribute what she subscribes.

Under the Ethiopian law, because no provision is provided for the winding of PLCs, the rules of the commercial code that govern ordinary partnerships and share companies govern also the winding up of PLCs. In relation to powers of liquidators, the rules of the code in both categories are inherently similar with no significant difference except their difference in the mode of liquidators’ appointment. In voluntary liquidation of partnerships, all partners must agree on the appointment of liquidators; whereas, the extra ordinary general meeting which dissolves the company appoints liquidators in share companies. As shareholders’ dissolution comes through extraordinary general meeting which requires two thirds majority, appointments of liquidators in share companies and partnerships have basic differences.

The problem is that we don’t have clear rules as to which form of voting requirement is applicable to liquidators’ appointment by members of PLCs. Given the experience of the French company law where liquidators of a private company (SARL) are appointed by the members who own more than half of the company’s capital, the two third majority requirements of share companies is more reasonable to apply for the appointment of liquidators by members of PLCs than the unanimous agreement requirement of partnerships. In order to avoid the confusions that would result in from applying rules of the commercial code that governs other forms of business

organizations, the adoption of specific rules by the Ethiopian company law tailored to the needs of the winding up of PLCs resolves the problem.

In regard to distribution of a surplus assets of a liquidated PLC, one has to choose either the rules of the code that govern a liquidated partnership, which doesn't require suspension of distribution of surplus assets, or the rules of the code that govern a liquidated share companies which requires suspension of distribution of surplus assets in order to provide better protection for the interests of creditors. Given members of PLCs enjoy owner shielding limited liability, the application of the rules of the code that provide more protection to creditors of the company is plausible. Moreover, the experience of the German LLCs Act provides suspension of payment just like that of the Ethiopian code does for a liquidated share company's surplus assets. Therefore, legal reasoning and comparative study justify the application of the rules of the code that govern a liquidated share company to govern a surplus assets of a liquidated PLC that is to mean to suspend the distribution of surplus assets of a liquidated PLC.

5.2 Recommendations

- The current practice at the courts and at DARO should recognize voluntary dissolution of PLCs short of unanimous decisions of members of the company and should apply the requirement of share companies i.e. the two thirds majority resolution of members of the company.
- Future amendments or revisions of the Ethiopian commercial code should take in to account the existing legal gaps of regulating voluntary dissolution of PLCs and should provide a clear and sufficient default rules such as the Germany's LLC Act ¾ requirement or the two third majority vote requirement of the Delaware Code of Commerce in the absence of agreed terms in the articles of association.
- 'Good Cause' of the Ethiopian law as a ground of compulsory dissolution of PLCs must be interpreted and applied in a way that can entertain all valid grounds of dissolution such as the UK's 'Just and Equitable' principle and Germany's approach to the problem which gives greater freedom to the courts as they exercise judicial dissolution power whenever they are convinced that the ground upon which dissolution requested is important enough and rooted in the company's circumstances to justify the dissolution of the company.

- A right for any member of a PLC to ask judicial dissolution based on good cause should be removed from the Ethiopian company law and limitations like that of Germany's "a not less than one tenth of the share capital holder" should be introduced; whereas, minority stakeholders should be provided with exit rights.
- This study recommends the adoption of withdrawal rights as a matter of default rules by the Ethiopian company law in order to curb the excesses of a majority rule and to ameliorate minority oppressions in the management of PLCs.
- Adopting Germany's experience, a member's person or conduct that would, if left unchecked, result in dissolution of the company should qualify the Ethiopian company's law 'good cause' to expel a member of a PLC; whereas, failure to contribute should justify expulsion of a member on the basis of 'fault'.
- In order to avoid the confusions that would result in from applying rules of the commercial code, which govern other forms of business organizations, to the winding up of PLCs, this study recommends the adoption of specific rules by the Ethiopian company law tailored to the needs of the winding up of private limited companies.

THE END

Bibliography

Books and E-Books

- Andreas Cahn and Donald, David C., "Comparative Company Law: Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA", 2010, Cambridge University Press
- Bagrial, Ashok K, "Company Law", 12th Revised Edition: 2007, Vikas Publishing House Pvt Lmtd
- Ben Pettet, 'Company Law', 2nd edition: 2005, Pearson Education Limited
- Conard, Alfred F, "Business and Private Organizations: Fundamental Changes in Marketable Share Companies", Volume Xlll chapter 6, Oceana Publications INC, New York
- D.P. Jain, "Company Law", 3rd Revised Edition: 2004, Konark Publishers Pvt Ltd, Delihi
- Gall, J.P. Le, "French Company Law", 1974 Oyez Publishing Limited
- Konard Zweigert and Hein Kotz, 'Introduction to Comparative Law', 3rd Revised edition, Clarendon Press – Oxford
- Le Talbot, 'Critical Company Law', 1st edition: 2008
- Marcus Lutter, 'International Encyclopedia of Comparative Law: Limited Liability Companies and Private Companies', Volume Xlll, Chapter 2, Martnus Nijhoff Publishers: 1998
- Nicholas Bourne, 'Principles of Company Law', 3rd-edition 1998, Cavendish Publishing Limited
- Paul Davies, "Introduction to Company Law", 2nd Edition 2010, Oxford University Press
- Ruster, Bernd(Ed), "Business Transactions in Germany", Looseleaf, 1st –published: 1983, New York
- Simon Goulding, "Company Law", 2nd Edition 1999
- Stephen Griffin, 'Company Law: Fundamental Principles', 4th edition: 2006, Pearson Education Limited

Laws

- The Ethiopian Commercial Code, Proclamation No 166, Addis Ababa 5th May 1960, Negarit Gazeta – Extraordinary Issue No 3
- Constitution of the FDRE, Proclamation No 1/1995, Art 55(4), Neg Gaz, year 1, no 1
- Commercial Registration and Licensing Council of Ministers Regulation, 2016, Article 21, Regulation No 392/2016, Neg Gaz year 2, no 3
- Limited Liability Companies Act (GmbHG), as last amended by Articles of the Act of 10 May 2016, Section 60, the Federal Law Gazette lll, Index No 4123- 1, <http://www.gesetze-im-internet.de/englisch_gmbhg/englisch_gmbhg.pdf accessed 3/21/2017
- The State of Delaware Statutory Code, Title 8 Corporations, section 355, http://delcode.delaware.gov/title8/title8.pdf accessed 3/21/2017
- The State of Delaware statutory Code of Commerce and Trade Title 6, section 8- 801, http://delcode.delaware.gov/title6/title6.pdf accessed 3/21/2017
- Insolvency Act 1986, Section 122(1)(g), http://www.legislation.gov.uk/ukpga/1986/45/pdfs/ukpga_19860045_en.pdf accessed 3/22/2017

Internet Sources

- Robert W. Hamilton, ‘Entity Proliferation’, <http://suffolklawreview.org/wp-content/uploads/2004/04/Hamilton.pdf accessed 2/21/2017>
- Thomas Geu and Robert Keatinge, ‘The Proposed Model Inter-Entity Transaction Act: A Proposal to Rationalize Changes in Forms of Business Organizations’ <http://www.uniformlaws.org/shared/docs/entity_transactions/geu-keating.pdf accessed 2/21/17>
- Erik P.M. Vermeulen, ‘Network Effects and Regulatory Competition: An Introduction to the Expectations and Challenges of Partnership Law Reform’, <https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=821885 accessed 2/22/17>
- Larry E. Ribstein, ‘The Evolving Partnership’ https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=940653 accessed 2/23/2017

- The Law Commission and The Scottish Law Commission, 'Partnership Law: Report on a Reference Under section 3(1)(e) of the Commissions Act 1965', https://www.scotlawcom.gov.uk/files/3812/7989/6640/rep192.pdf accessed 2/26/217
- Henry Hansmann and Reinier Kraakman, 'What is Corporate Law?' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=568623 accessed 3/13/17
- 'Meaning, characteristics of and Types of a Company', <http://www.ddegjust.ac.in/studymaterial/bba/bba-201.pdf accessed 3/3/2017>
- Jhon Armour, Henry Hansmann, Reinier Kraakman, 'The Essential Elements of Corporate law: What is Corporate Law?' <http://www.law.harvard.edu/programs/olin_center/papers/pdf/Kraakman_643.pdf accessed 3/3/2017>
- The Institute of Company Secretaries of India, 'Company Law: study Material', https://www.icsi.edu/Docs/Webmodules/Publications/1.%20Company%20Law-Executive.pdf accessed 3/3/2017
- Ron Harris, 'The Private Origins of the Private Company: Britain 1862-1907', https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1613206 accessed 3/7/2017
- Douglas K. Moll, 'Minority Oppression and Limited Liability Company: Learning (or not) from Close Corporation History', <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=869310 accessed 3/7/2017>
- Stephen M. Bainbridge, 'Limited Liability Companies: A primer on Value Creation through Choice of Form', https://papers.ssrn.com/sol3/papers.cfm?abstract_id=250164 accessed 3/7/2017
- Susan Pace Hamil, 'The Origins Behind the Limited Liability Company', https://kb.osu.edu/dspace/bitstream/handle/1811/65040/OSLJ_V59N5_1459.pdf accessed 3/10/2017
- 'The Choice is Yours', <https://soswy.state.wy.us/Forms/Publications/ChoiceIsYours.pdf accessed 3/9/2017>
- Paolo Di Martino, 'The Historical Evolution of Bankruptcy Law in England, the US, and Italy up to 1939: Determinants of Institutional Change and Structural Differences', http://www.helsinki.fi/iehc2006/papers2/Martino.pdf accessed 3/13/2017

- Endaweke Tsegaw, 'The Legal Status of State-owned Share Companies in Ethiopia', http://file.scirp.org/pdf/BLR_2016030109380130.pdf accessed 3/13/2017
- Getahun Seifu, 'Revisiting Company Law with the Advent of Ethiopian Commodity Exchange (ECX): An Overview', https://opendocs.ids.ac.uk/opendocs/handle/123456789/8719 accessed 3/15/2017
- Timothy Guinnane, Ron Harris, Naomi R. Lamoreaux and Jean-Laurent Rosenthal, 'Business Organization in the Long Run: Private Limited Companies Rule!', http://www.helsinki.fi/iehc2006/papers2/Guinnane.pdf accessed 3/23/2017
- TC Maloka and S Muthugulu-Ugoda, 'The Deadlock Principle as a ground for the Just and Equitable Winding Up of a Solvent Company: Thunder Cats Investments 92(pty) Ltd V Nkonjane Economic Prospecting Investments (pty) Ltd 20145 SA 1 (SCA), https://www.ajol.info/index.php/pelj/article/viewFile/145048/134654 accessed 4/3/2017

Other materials

- Assefa Aregay Sefera, 'Corporate Governance Rules in Ethiopia and Germany: A comparative Analysis', Central European University: 2015

Interviewees

- Interview with Ato Sentayehu Zeleke, Federal High Court Judge, April 21, 2017
- Interview with Ato Hailemariam Tetemeke, Senior Officer at the F.D.R.E Documents Authentication and Registration Office, April 21, 2017
- Interview with Ato Melkamu Ogo, a Federal licensed Attorney and Consultant at Law, April 22, 2017
- Interview with Ato Bisrat Bezabehe, Tax Auditor at the Ethiopian Revenues and Customs Authority Lideta Sub-City Small Tax Payers Branch Office, April 21, 2017
- W/ro Genet Asemamawe, Team Leader of Counseling and Information Services at the Ministry of Trade Branch No 2, April 23, 2017
- Ato Yelak Alemu, Senior expert of counseling and information at the Ministry of Trade Branch No 2, April 23, 2017

Table of Cases

- ያሬድ ሲሳይ እና አልግሪን አግሮ ኢንዱስትሪ ኃ/የተ/የግ/ማህበር (ፌ/ጠ/ፍርድ ቤት ሰኔ 2004 ዓ.ም) ፣ የፌ/ጠ/ፍርድ ቤት ሰበር ችሎት ውሳኔዎች ፣ ቅጽ - 13
- ሀሰን መሀመድ እና ማጂ አግሮ ፎረስትሪ ኃ/የተ/የግ/ማህበር (ፌ/ጠ/ፍ/ቤት ህዳር 2007 ዓ.ም)፣ የፌ/ጠ/ፍርድ ቤት ሰበር ችሎት ውሳኔዎች፣ ቅጽ - 17
- Yohannes Atsebaha and Co Vs Kahesaye Berhe and Co (Federal Supreme Court Cassation Bench, 2008 E.C, File No 100464) (Unpublished) (Currently being deliberated at the Federal First Instance Court, File No 203608)