A Critical Analysis of the Revised Ethiopian Commercial Code in Light of OECD's Principles of Corporate Governance with Emphasis on Roles and Responsibilities of the Board of Directors of Share Companies

By Million Alemu Seboka

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Advisor: Dr. Mengistu Bogale

Addis Ababa University

School of Commerce

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STATEMENT OF DECLARATION

I, the undersigned, hereby declare that the work contained in this thesis is my original work.

Signature: ______________________________ Date: __________________

STATEMENT OF CERTIFICATION AND APPROVAL

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This is to certify and approve that the thesis on "*A Critical Analysis of the Revised Ethiopian Commercial Code in Light of OECD's Principles* *of Corporate Governance with Emphasis on the Roles and Responsibilities of Board of Directors of Share Companies*" is submitted by Million Alemu Seboka in partial fulfillment of the requirements for the Degree of Master of Arts of Business Leadership complies with all regulations and standards of the Addis Ababa University.

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Examiner: ___________________ Signature: ___________________ Date: _______

Advisor: ____________________ Signature: ___________________Date: _______

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Chair of Department of Graduate Program Coordinator

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ACRONYMS

AACCSA: Addis Ababa Chamber of Commerce and Sectoral Associations;

APRM: African Peer Review Mechanism;

AoA: Articles of Association;

BoD: Board of Directors;

CEO: Chief Executive Officer;

EAGO: Ethiopian Attorney General Office [*currently renamed as the Ministry of Justice*];

EICG: Ethiopian Institute of Corporate Governance;

EMCA: European Model Company Act;

ETB: the Ethiopian Birr;

FDRE: the Federal Democratic Republic of Ethiopia;

MoA: Memorandum of Association;

MoTRI: Ministry of Trade and Regional Integration (formerly known as the Ministry of Trade and Industry);

NBE: National Bank of Ethiopia;

OECD: the Organisation for Economic Co-operation and Development;

OECD's *Principles*: G20/OECD Principles of Corporate Governance, as revised in 2015;

PLC: Private Limited Company;

RCC: Revised Commercial Code;

SC: Share Company;

SCs: Share Companies;

ABSTRACT

The aim of this study is to critically analyze the roles and responsibilities of BoDs of SCs as contained in RCC and Banks' Corporate Governance vis-à-*vis the Principles that are included as in OECD's* Principles, *which are accepted as the international best practice to be emulated. The study has utilized a qualitative research approach and exploratory research design. The theoretical and empirical reviews of the pertinent literature, as well as the interview conducted, have revealed that RCC has gone leaps and bounds in embodying what is expected by the sixth principle of OECD. Yet, there are still observable lacunae like failing to require ethical standards from BoDs, failing to mandate BoDs to decide on remuneration issues, and failing to put a requirement in place that ensures disclosure and communication mechanism. All of these and other deficiencies of RCC relating to corporate governance call for promulgation of a Code of Corporate Governance by the Ethiopian Council of Ministers that obliges all financial and non-financial SCs and a Directive by MoTRI the ensures the effective implementation of the Regulation to be passed by the Council of Ministers. An autonomous government organ that oversees the effective implementation of the Code of Corporate Governance should also be established.*

Keywords: Corporate Governance, OECD's *Principles*, RCC, and Roles and Responsibilities of BoDs

CHAPTER ONE
INTRODUCTION

This Chapter of the study dealt with its background, the statement of the problem, the general and specific objectives of the study, the research questions, the significance, the scope, and limitations of the study.

1.1 BACKGROUND OF THE STUDY

The term corporate governance has been used in many different ways and the boundaries of this subject matter vary widely. As per the shareholder's model, corporate governance often describes senior management's formal system of accountability to shareholders. As per the stakeholder's model, corporate governance can be used to describe the network of formal and informal relations involving the corporation: Maria, M. and Thomas, A. (2020).

For this study, the definition that reflects both the narrower and the broader perspective, as adopted in the works of Ahmed (2012), will be used as a working definition. Accordingly, he has defined it as "a system of rules and institutions that determine the control and direction of a company and that define relationship among the company's primary participants including the board of directors, managers, shareholders, and other stakeholders".

The concept of corporate governance is said to go as back as the 18th century. Adam Smith (1776), as cited in Mekonen (2015), wrote that "The directors of companies, being managers of other people's money than their own, it cannot well be expected to watch over it with the same anxious vigilance with which partners in a private copartnery frequently watch over their own".

Negash (2008) argued by saying "as compared to the rest of the world, corporate governance is a new issue in Ethiopia". While, Belete (2022) counter-argued argued that the *Fetha Nagast* (The Law of the Kings), which was ordered to be implemented by King of Kings Atse Zerayakob (1444-1468 E.C) is the initial source of Ethiopian corporate governance. According to him, until the enactment of the Commercial Code of 1960 (hereinafter referred to as the Partially Repealed Commercial Code), the *Fetha Nagast* has served as one of the basis for notion of corporate governance in the Ethiopian legal system. The review of the *Fetha Nagast* by the writer of this study also revealed the fact that this document is one of the oldest legal books of Ethiopia and it contains provisions relating to wealth (**ስለ ሀብት**), money related partnerships, and all related works (**በገንዘብ ሽርክ ስለ መሆንና ይህንንም ስለሚመስለው ሥራ ሁሉ**) under its Part II which deals with earthly works and administration (**ስለ ዓለማውያን ሥራና አስተዳደር**).

Ethiopia enacted its first Bankruptcy and Company Law, which is its pioneering codified company law, in 1933 [which was enacted on 12th July 1933]. Yet, as it was found to be insufficient to regulate the then rapidly growing flow of foreign investment, this law was repealed and the Partially Repealed Commercial Code was promulgated: Negash, M. (2008). As the Commercial Code of 1960 itself was found to be inept to regulate contemporary business relationships, it is now partly repealed and is replaced by the Commercial Code of 2021, which came into effect as of 12th April 2021 (hereinafter referred to as RCC).

For Mallin (2010), as cited in Mekonen (2015), corporate governance has been attracting wide attention in the last decades due to "the corporate scandals and financial crises of the recent times". Corporate governance has also become a relevant point of discussion as "…in the contemporary world, the existences of appropriate and effective legal, regulatory and institutional underpinnings are backbones for a given country's sound corporate governance framework": Simachew, G. (2012).

As anywhere in the world, the concept of corporate governance has been garnering recent attention in Ethiopia, due to the mushrooming of SCs. The corporate governance climate in Ethiopia is changing with the emergence of newer SCs with several thousand shareholders who have no control over the company. It is a well-known fact that publicly held SCs give rise to a host of complex corporate governance issues: Petros, F. (2008 E.C).

BoDs plays the lion's share in directing and managing the business affairs of SCs. That is also why RCC and other laws of Ethiopia consider BoD as one of the major governing bodies of SCs. BoD which consists of a group of persons elected by shareholders is responsible for "strategically directing the company, overseeing of the management and stewardship towards the shareholders and the company": Simachew, G. (2012).

The Organisation for Economic Co-operation and Development (OECD), as stated in its website, is an international organisation whose current member countries are more than 38 and which works with more than 100 countries "to build better policies for better lives". Its goal is shaping "policies that foster prosperity, equality, opportunity, and well-being for all". One of the prominent works of OECD is the G20/OECD Principles of Corporate Governance, as revised in 2015, (hereinafter referred to as 'OECD's *Principles'*), which have been serving as an international benchmark for evaluating the corporate governance regime of countries.

OECD's *Principles* are presented in six different chapters: 1) Ensuring the basis for an effective corporate governance framework; 2) The rights and equitable treatment of shareholders and key ownership functions; 3) Institutional investors, stock markets, and other intermediaries; 4) The role of stakeholders; 5) Disclosure and transparency, and; 6) The responsibilities of the board. Each of these six *Principles* is followed by several supporting sub-principles.

Simachew (2012), one of the few writers, who has researched the Ethiopian corporate governance regime from the perspective of OECD's *Principles*, argued by saying OEC*D's Princi*ples, are relevant to the Ethiopian corporate governance context due to the following three reasons. *First*, OECD's *Principles* obtained international acknowledgment as minimum standards and best practices for a sound corporate governance framework. *Second,* OECD's *Principles* are mainly developed to assist policymakers of both OECD and non-OECD member countries to formulate and ameliorate their legal, regulatory and institutional framework for proper corporate governance by taking into account their national economic, social, and business practices. *Third*, OECD's *Principles* are not only non-prescriptive and outcomes-oriented but also comprise common elements of all legal traditions and cultural circumstances of OECD and non-OECD members. OECD's *Principles* are applicable no matter how varied are the economic developments and company ownership structures of countries. Thus, these *Principles* have relevance to improving the corporate governance of SCs in Ethiopia.

This study critically analyzes the roles and responsibilities of the BoD of SCs as included in RCC, using one of the six key minimum standards of OECD's *Principles*, i.e., *the Principle of Responsibilities of the Board*, as a benchmark. NBE's Directive on Corporate Governance is also taken into account as a basis to see how far it has accommodated these *Principles*.

1.2 STATEMENT OF THE PROBLEM

In the contemporary world, the existences of appropriate and effective legal, regulatory and institutional foundations are pillars for a given country's comprehensive corporate governance framework. This in turn develops market integrity, improves economic efficiency and growth as well as builds the investors' confidence: Aboma, T. and Gudeta, L. (2021).

Ethiopia has also enacted its RCC by taking into account the changes that are prevailing in the contemporary world. In the document titled "***ረቂቅ የንግድ ሕግ አጭር ማብራሪያ*** "/ "*Brief on the Draft Commercial Code*"/, that contains the *raison d'etre* that necessitated the enactment of RCC and which is issued by EAGO (2012 E.C) has stated that examining and making the required amendments to RCC was required to "…*take into account the laws, practices, and changes occurring in the rest of the world"* and *"…to ensure the international competitiveness of Ethiopia"*.

Concerning corporate governance, the above-cited *raison d'etre* of EAGO (2012 E.C) states that RCC intends to resolve the problems that were seen during the implementation of the Partially Repealed Commercial Code which include: *"the absence of provisions in the [Partially Repealed] Commercial Code that protects the interests of minority shareholders of companies",* and *"the existence of gaps in the control system which is put in place for investors to have control over the management of their companies".*

The above-cited *raison d'etre* of EAGO (2012 E.C) also explained the fact that RCC is modeled on the Commercial Code of French (March 20, 2006), Company Law of Germany (December 9, 2010), European Model Company Act (2017), Uniform Act on Commercial Companies and The Economic Interest Group (January 2014), UK's Company Law (2006), Indian Company Law (August 29, 2013), Turkish Commercial Code (July 1, 2012), Chinese Company Law (October 27, 2005), South Korean Commercial Code (2009) and the World Bank's Guidelines for the Protection of Minority Shareholders.

Of the countries whose laws are used as models for RCC, France, Germany, the UK, Turkey, and South Korea are OECD's member countries, which, *inter alia*, have adhered to the *Principles of the Corporate Governance of OECD*. Thus, it can be assumed, that this fact indirectly shows that RCC must have taken into account some of the OECD's *Principles of Corporate Governance.* This study assessed if this is the case. This is the first reason that necessitated this study.

Although researches that analyzed the laws and regulations relating to the Ethiopian corporate governance regime is relatively available (for instance, Deyuu, T and Dr.

Pasricha, J.S (2017), Negash, M. (2008), Aregay, A. (2015), Mekonen, T. (2015) and Ahmed, H. (2011, 2012, 2014 and 2016), the writer of this study has only managed to get very few theses and articles that investigated the SCs' laws of Ethiopia from the perspective of OECD's *Principles*.

Among these, the thesis and the blog written by Simachew (2012 and 2015), assessed the Ethiopian corporate governance regime from the perspective of the OECD's *Principles*. Yet, these studies are based on the corporate governance principles as included in the Partially Repealed Commercial Code and the studies also encompass all six *Principles* of OECD.

The corporate governance study that is conducted by ACCA-KPMG (2017) whose principal aim was "to examine corporate governance requirements in terms of clarity and completeness of the content, degree of enforceability and prevalence, about OECD's *Principles* of Corporate Governance", had given its least ranking to the corporate governance of Ethiopia by comparing it with other 25 African countries. But the assessments and the rankings of ACCA-KPGM were made based on the provisions of the Partially Repealed Commercial Code and its assessment covers all six *Principles* of OECD.

Aboma and Gudeta (2021), have written a thesis that critically analysis the Ethiopian SC's governance concerning the OECD's *Principles* and EMCA's general principles; yet, their study was also based on the Partially Repealed Commercial Code and was just published before the enactment of RCC.

Thus, this also shows there is a need for a study that critically assesses the roles and responsibilities of the BoD of Ethiopian SCs as included in RCC only from the perspective of one of the six *Principles* of OECD, i.e., the *Principle of Responsibilities of the Board*. This is the second reason that this study.

1.3 RESEARCH QUESTIONS

The research questions of this study are:

1. What are the roles of the BoD of SCs as provided under RCC?
2. What are the responsibilities of the BoD of SCs as provided under RCC?
3. What are the *Principles of Responsibilities of the Board* as included in the OECD's *Principles*? and

4. What are the gaps and limitations that can be seen when the roles and responsibilities of the BoD of SCs of Ethiopia are critically revisited from the perspectives of the *Principles of Responsibilities of the Board* as included in the OECD's *Principles*?

1.4 OBJECTIVES OF THE STUDY

1.4.1 General Objectives

The overall objective of the study was to critically assess the provisions of RCC relating to the roles and responsibilities of the BoD of SCs in light of OECD's *Principles of Responsibilities of the Board*.

1.4.2. Specific Objectives

The specific objectives of the study were:

1. To assess and carefully examine the roles and responsibilities of the BoD of SCs as enshrined in RCC;
2. To examine whether the roles and responsibilities of the BoD of SCs as contained in RCC and Bank's Corporate Governance meet the requirements of the OECD's *Principles of Responsibilities of the Board*; and
3. To critically analyze the gaps and lessons that can be drawn from this international yardstick as well as from the Bank's Corporate Governance and EICG's Code of Corporate Governance;

1.5 SIGNIFICANCE OF THE STUDY

The study is significant from a practical point of view as it contributes much to the understanding of the management organs and stakeholders of SCs who are keen to understand about the roles and responsibilities of BoDs. In particular, it contributes to the understanding of the members of BoD's of SCs so that they will realize their respective roles and responsibilities and effectively discharge them. For policymakers and legislatures, it enables them to identify the gaps in RCC and Bank' Corporate Governance that require further amendments and revisions. For academics, it serves as reference material. For researchers, it calls the attention of those who want to conduct further research in the field. Finally, the study also augments the understanding of the business and legal communities.

1.6 SCOPE OF THE STUDY

The whole study focused on the roles and responsibilities of BoDs of SCs as stipulated in RCC. Bank's Corporate Governance is also taken as reference as it is mandatory legal document to regulate Ethiopian banks who are playing significant economic roles. The study critically assessed the roles and responsibilities of BoDs only from one of the perspectives of OECD's *Principles of Responsibilities of Board* and had tried to propose solutions to the research questions of the study.

1.7 LIMITATIONS OF THE STUDY

This study is no exception and has certain basic limitations. RCC just came to effect a year ago. Since there is almost no previous research conducted based on this RCC and the issue at hand, it was difficult to get materials, especially materials directly related to the topic. It can be said that there are no published books and articles that directly deal with this topic.

Thus, the dearth of studies made on the roles and responsibilities of BoDs of SCs, in general, and that compares them with OECD's *Principles of Corporate Governance*, in particular, had negatively impacted the study and obliged the writer to concentrate on theoretical concepts. Therefore, the study is mainly based on critically analyzing the roles and responsibilities of the BoD, as included in RCC and Bank's Corporate Governance vis-à-vis OECD's *Principles of Responsibilities of Board* only from theoretical perspectives and based on empirical studies.

1.8 ORGANIZATION OF THE STUDY

The subsequent four chapters of the study are organized as follows:

Chapter Two: dealt with the theoretical and empirical parts of the study and it also reviewed the related literature that comprises a description, summary, and critical evaluation of works that are appropriate for the research issues under discussion.

Chapter Three: addressed the research methodology used for the study. In this Chapter how the study was designed and undertaken is addressed.

Chapter Four: dealt with the analysis and findings of the study. In this Chapter the roles and responsibilities of BoD of SCs as provided in RCC vis-à-vis the OECD'S *Principles of Responsibilities of the Board* are compared, contrasted, and critically analyzed. Bank's Corporate Governance is also used as a reference to enhance the comparison, contrast and analysis. The results obtained from the interview conducted for this study are also summarized. Finally, the findings of the study are dealt with in the last part of this Chapter.

Chapter Five: the conclusions and recommendations of the study are presented by this Chapter.

1.9 DEFINITION OF TERMS

1.9.1 Conceptual Definition of Terms

Bank's Corporate Governance is the Directive enacted on the 18th day of June 2019 by the National Bank of Ethiopia, published as NBE Directive No. SBB/71/2019.

OECD's Principles are G20/OECD *Principles* of Corporate Governance of the Organisation for Economic Co-operation and Development as revised in 2015.

Revised Commercial Code refers to the Commercial Code that is decreed by FDRE, and published as Proclamation No. 1243/2021 on the Extra-Ordinary issue of the *Federal Negarit Gazette*.

1.9.2 Operational Definition of Terms

BoD is a group of persons elected as members of BoD of SCs and performs the functions of a directorship and whose number shall not be less than three or more than thirteen. Members of the BoD can be non-shareholders and the board members can also be executives or non-executives. The term BoD also pertains to the supervisory board [Articles 245, 296, and 331 of RCC].

Corporate Governance is a system of rules and institutions that determine the control and direction of a company and that define relation among all of the company's stakeholders. Corporate governance in this sense is considered as a system of rules and institutions which determine the control and direction of a company.

SC is one of the seven types of business organizations recognized by RCC, with its own legal personality, whose capital is fixed in advance and divided into shares and whose liabilities are met only by its assets. Its members are liable only to the extent of the contributions pledged to the company but not effectively made [Articles 172, 174, and 245 of RCC].

CHAPTER TWO

REVIEW OF RELATED LITERATURE

In the first part of this Chapter Two of the study, the literature that contains the theories, the principles, and the definitions that underpin the subject matter at hand are extensively reviewed. In the final part of the Chapter, the empirical studies that are conducted relating to the subject matter and done on the roles and responsibilities of the Ethiopian SCs and those assessing these roles and responsibilities of BoDs from the perspectives of the OECD's *Principles* are summarized.

2.1. THEORETICAL REVIEW

2.1.1. Introduction

Gulshan (2007), as quoted in Zeleke (2017), has stated "business is as old as civilization itself. It has a great contribution to the world since no development could have taken place in the absence of business. The business provides to the society the things it needs to survive, enjoy life, and improve its material and social wellbeing".

When we say business, it is an institution organized and operated and that is regularly carried out to provide goods and services to the society in financial, commercial, or industrial aspects with the objectives of earning profit and acquiring wealth, advantage, or livelihoods: Yismaw, A. (2014). RCC under Article 106 has defined business as "*an incorporeal movable consisting of all movable property brought together and organized to carry out any of the commercial activities [listed] in Article 5 of this Code*".

The classical business units or enterprises were carried out, owned, and controlled by the same person or persons: Alamiraw, D. (2004). In doing so, merchants have been encountering several challenges or problems. Some of the challenges related to capital, management, and liability of traders during business failure, etc. To solve these and other problems that face them, businessmen started to join up to do business in an organized form: Taddese, N. (2009). That is how the concept of business organizations came to the forefront.

RCC under Article 172 (2) has defined a business organization as "*an association established through a MoA by persons who bring together contributions for undertaking an economic activity in cooperation and of participating in the profit made*". Article 174 of RCC has recognized seven types of business organizations: general partnership, limited partnership, limited liability partnership, joint venture, SC, private limited company, and a one-person PLC. If we look at them from the perspective of their characteristics, the first four can be categorized as "partnerships" while the last three can be classified as "companies." This study focused only on SCs.

2.1.2. Overview of the Definition, Features, Formation, and Organs of Governance of Ethiopian SCs

2.1.2.1. Definition and Features of SCs

As per Article 245 (1) of RCC, SC is "*a company whose capital is fixed in advance and divided into shares and whose liabilities are met only by the assets of the company.*" The provision of Article 245 (2) of RCC buttresses this definition by saying "*The obligation of the shareholders shall be limited to making the contribution they pledged to make to the company*".

It is worthwhile to consider the salient features of SCs as provided in the above definition as it facilitates our understanding of corporate governance, which is the main subject matter of this study. Zeleke (2017) has identified seven distinguishing characteristics (attributes) of SCs and has elaborated on them. He argued "…a business person or investor who is interested to form a company needs to consider these distinguishing features of a company". These features of SCs are *incorporated association*, *artificial legal personality*, *separate legal entity*, *limited liability*, *perpetual succession*, *transferable shares*, and *separation of management from ownership*.

Yohannes (2008), on the other hand, lists the following seven attributes of SCs: *legal personality, limited liability, capital, and its protection, requirements of formation of a SC* (*minimum of 5 members, minimum initial capital, full subscription of the capital, payment of quarter of the par value of cash shares and lawfulness of the contribution in kind*), *adoption of MoA and AoA* and *registration and publicity*.

Although the two writers have based their identification of the attributes of SCs on the provisions of the Partially Repealed Commercial Code, these features are also fully applicable to SCs as included in RCC, as the essence of SCs remained the same, except removing the importance of AoA. From these fundamental attributes, we will consider incorporation (formation) of SCs and separation of management and ownership (organs of SCs) in sub-sections 2.1.2.2 and 2.1.2.3, respectively. Hereunder, let us briefly consider the other features.

SCs are created with the sanction and whim of the law and are not themselves human beings and hence called "artificial" and are called "person" since they are clothed with certain rights and obligations": Zeleke, S. (2017). As legal entities with their own separate legal personality from that of their members, SCs make arrangements to govern their own activities, sue and be sued, purchase, hold and dispose of assets in their own name, hire staff, agents and contractors and enter into commercial contracts in their own corporate names: Giday, K. (2014).

SCs also have transferable shares, which can be partially or fully transferred by one shareholder to another transferee without affecting the existence of the SC. Thus, SCs have legal existence which is independent of their shareholders. So, their survival "…is not dependent on the continuing life of those of their shareholders", i.e., SCs have perpetual succession as opposed to that of their members. Finally, SCs have a limited liability "…so that the shareholders have no direct liability in respect of the actions of the corporation, its debts, its contracts or the outcomes of its actions": Giday, K. (2014).

It should be noted that, for this study, the writer used the word 'company' and 'corporation' interchangeably. In addition, it should be noted that in this study, when we refer to SC or SCs, we are referring to companies whose shares are held by the public at large and it has excluded SCs whose shares are solely held by the government (i.e., public enterprises), which are regulated by other specific laws, like Public Enterprises Law Proclamation No. 25/1992.

2.1.2.2. Formation of SCs

Yohannes (2008) argued that "a SC does not spring into being spontaneously". According to him, they are the results of planning and other preliminary arrangements of the founders and he classified these promotional activities of the founders into three categories. The first is discovery, which consists of finding the business idea to be exploited. The second category, which is investigation, relates to research and analysis to determine whether or not economic feasibility of the proposed business idea. The third category is assembly. It includes the processes of bringing together the necessary personnel, property, and money to set the business in motion and involves the secondary details of completing the formalities required to set up the company.

A company is said to be formed, when we see it from a legal perspective, after passing through all of the above three phases and where it is registered or incorporated as per the law of the country. Incorporation is one of the mandatory legal requirements for the existence of a SC. For SCs the date mentioned on its principal registration certificate is considered as the date of its incorporation, which takes place when "it fulfills the minimum conditions put under the company law of a country based on the type of company": Zeleke, S. (2017).

As per RCC, SC can be formed in two ways with different legal consequences. The first one is among the founders whereby the law requires them to fully subscribe to the fixed capital, to show in MoA that all the shares have been allocated and a quarter of the sums have been deposited in a bank in the name and to the account of the company under formation, attached the valuation report of the contribution in kind, if any, and they have put in place all the required administrative organs [Articles 254 (1) (a) (b), 255 and 257 of RCC]. Giday (2014) argued by asserting that "it is conceivable that if the SC is to be formed among the founders it is a business which requires relatively less capital."

The second is through public subscription whereby the founders invite the public at large, through prospectus, an offer to subscribers to raise the pre-fixed capital of the company, to which applicants of shares must subscribe to acquire these shares. Other formalities that are required for formation by subscription are auditing the formation procedures of the SC and conducting subscribers' meetings [Articles 258 to 264 of RCC].

Besides, there are common requirements that are applicable for the formation of SCs, irrespective of the manner of their formation, i.e., whether SC is formed among the founders or by public subscription. These are: having a company name, a minimum capital of ETB 50,000 (fifty thousand), the par value of the shares shall not be less than ETB 100 (one hundred), its members shall not be less than 5 (five), which shall be formed by a MoA and that shall be registered in the commercial register by fulfilling all of the mandatory legal requirements (Articles 246, 247, 255, and 265 of RCC). Upon fulfilling all of these the company will obtain its legal personality. On the content of MoA, it should be stressed that it encompasses elements of corporate governance that each organs in the corporate governance structure should legally observe.

It should also be noted that the minimum capital requirements for financial SCs differ from that of non-financial SCs. On top of this, even where the company is entered into the commercial register without complying with all the legal requirements, it will have legal personality unless and until any interested person applies to the court and the court orders the dissolution of such SC, where corrective measures are not swiftly taken and where such application to court is made within one year from the date of entry of the company in the commercial register (Article 266 of RCC).

2.1.2.3. Organs of Corporate Governance of SCs

As explained while highlighting the features of SCs, one of its attributes is the separation of ownership and management. Shareholders are sometimes termed as the "owners" of the company or the principals, while BoDs and the managers are termed as the "agents" of the company. Ordinarily, the number of shareholders particularly in public companies is large, and hence, all of them or most of them cannot participate in the day-to-day management of their companies. To solve the issues of dispersed ownership and owners' management, the law mandates BoDs, who are appointed by the general meetings of shareholders (i.e., by the owners), to administer and govern the affairs of the companies. However, this seemingly divorce of ownership from the actual management of the company often causes misgovernance of the company: Zeleke, S. (2017).

In sole proprietorship, the right to ownership and control over its properties reside with one person. However, in the case of companies whose shares are held by the public, the persons who own the company are precluded from controlling it. This is due to the fact that as the number of shareholders rises, control is delegated to managers, and shareholders are limited to ineffective control through shareholder meetings: Petros, F. (2010). This attribute of SC signifying the separation of ownership and control shows that the highest governing body of SCs is the shareholders' general meeting.

To this effect Article 362(1) of RCC has stated "*A general meeting of shareholders is the highest decision-making organ in a company in which all shareholders take part*" and as per Article 365 of RCC general meetings can be either ordinary or extra-ordinary and these meetings comprise shareholders of all classes. The remaining two "principal organs of management" of SCs that are recognized by the Partially Repealed as well by RCC are BoDs and the auditors: Aboma, T. and Gudeta, L. (2021). However, it should be noted that writers like Yismaw (2014) include managers of SCs as the fourth organ of governance of SCs.

Article 394 (2) of RCC bestowed unto the ordinary shareholders meeting of SCs the power to "*appoint or remove directors, members of the supervisory board or auditors as appropriate and decide the amount of their remuneration*". This study dwelled on BoDs, which is considered as "…the most powerful managerial body in the ladder of corporate governance": Belete, M. (2022).

2.1.3. BoDs under RCC: Types, Definition, Composition, Qualification, and Remuneration

2.1.3.1. Definition of Board and BoD

RCC has regulated the number, the types of BoDs, the qualifications that need to be fulfilled by its members, their composition, their appointment, the removal, the powers and duties of BoD and it also has stated the types of remuneration and the mode of its payment (Articles 296 to 298, 303 to 305 of RCC). Yet, both the Partially Repealed and RCC, do not define neither "board" nor "BoD". Thus, this calls for a search for definition.

Fernando (2006), as quoted by Ahmed (2012), has defined a "director" as "a person having control over the direction, conduct, management or superintendence of the affairs of the company." Giday (2014), on the other hand, have argued that "though it is difficult to give a unanimously accepted and a precise definition of who a director is, the term may be perceived by its clinical features and roles played by the person given the title" and he concluded by saying "organizations around the world use the term 'director' to denote a member of their governing board-the person with ultimate accountability and liability for the performance and behaviors of the whole organization." Then, he goes on and explains BoD as "a group of individuals which is responsible to strategically direct a company, overseeing of management and stewardship towards the shareholders and a company in particular as well as society and environment in general."

According to Belete (2022), "BoD is a body of elected or appointed members who jointly oversee the activities of a company". For him, "persons by whom a business of the company is carried out are termed as directors, while a group of directors as an institution is termed as a BoD".

2.1.3.2. Types, Compositions and Qualifications of Members of BoDs as per RCC

As opposed to its predecessor, which had empowered only members (shareholders) of SCs to be the ultimate 'managing' body of the company, RCC under Article 296 allowed persons who are not shareholders of SC to be elected as members of BoDs. However, this provision has limited the number of non-shareholder directors to be maximum of one-third of the total membership of BoDs. In addition, this same provision of RCC allowed up to one-third of members of BoDs to play a role in the day-to-day management of the affairs of the company (i.e., to be management directors) and limits the remaining two-thirds of members of BoDs not to play a role in the day-to-day management of the affairs of the company (i.e., to be non-management directors). Additionally, Article 299 of the same Code obliged the appointment of a member of BoDs from each class of shares where a company has issued different classes of shares.

From the readings of the provisions of Article 296 (1) of RCC, it can be noted that the directors who are the members of the BoD can be shareholders or non-shareholders. RCC in a total departure from the Partially Repealed Commercial Code which required directors to be shareholders of the company, allowed SCs to appoint non-shareholders as their directors and yet "the number of non-shareholder directors may not exceed one-third of the total membership of the BoD" [Article 296 (2) of RCC]. Finally, Article 296 (3) of RCC obliged SCs to specify the number of BoD in their MoA, and where they fail to do so, the subscribers' meeting of SC is required to decide on it.

In doing so, RCC has adopted both the 'Stockholder's approach, in which case only shareholders of a company can be a member of the BoD and the 'Stakeholder's approach, where a non-shareholder stakeholder can be a member of the BoD. This change enables "to bring an outside perspective and a more objective viewpoint to the company": Belete, M. (2022).

Just to say a few words on this commendable departure by RCC in introducing the two-tier board structure, "in two-tier boards, executive directors (i.e., both the management and non-management BoDs) are responsible for the daily operations of the company while non-executive directors (i.e., the supervisory boards) are responsible for the supervision and monitoring of executive directors"; "by introducing this option, policymakers have conceded that shareholders choose the structure of the company that best suits them" and "RCC takes a commendable step in limiting their number to a maximum of five members, as a smaller board will be more likely to have effective discussions to reach a consensus and arrive at sound decisions from their deliberations": Tamiru, Y. (2021).

The composition of BoD refers to the number and type of directors that participate in the work of the board. A company may have managers or whole-time directors who are in charge of the day-to-day conduct of the affairs of a company, and they are together with other team members collectively known as 'management' of the company. A company may also have part-time non-executive directors who have nothing to do with the day-to-day management of the company. They may attend board meetings and meetings of committees of the board in which they are members: Ahmed, H. (2012).

As opposed to its precursor, RCC under Article 297 listed the requirements that should be fulfilled by a person to qualify for board membership. These are: of the minimum age as specified by MoA or law, if any, be of good moral character, no record of conviction for breach of trust, theft, robbery, or other similar criminal offenses while serving as a promoter, director, manager, member of the supervisory board or auditor or holding any other managerial position or under any other circumstance and be compliant with other requirements set by MoA or another law, if any.

Finally, it should be noted that the size and the composition of the BoD as well as the additional knowledge, experience, and age requirements that should be fulfilled by the directors serving in the financial SCs are determined by the respective directives issued by NBE. For instance, the knowledge, experience, and age that a person who can serve in the BoD of banks is determined by Bank's Corporate Governance and Directive No. SBB/79/2021.

2.1.3.3. Remuneration of BoD

There are divergent views on the remuneration that should be paid to directors. Some experts argued by saying directors are generally paid less by considering the onerous responsibilities they shoulder. They argued that the amount of the remuneration of BoD should be commensurate to their constructive roles and responsibilities. On the other hand, critics argued against the hefty fees directors receive for attending meetings, millions of dollars paid as severance payments, huge payouts: Ahmed, H. (2012). Ahmed (2016 and 2012) contended by saying that "the role of effective directors' remuneration as a tool of good corporate governance in SCs should not be underestimated."

RCC deals with the remuneration of directors under Article 304. Like its predecessor, RCC also recognizes three types of remuneration schemes for BoDs of SCs. These are fixed annual remuneration, a share in annual net profits, and mixed remuneration schemes. RCC provides directors shall receive an annual remuneration the amount of which shall be fixed by a general meeting and charged against general expenses. The ordinary general meeting of the company may also decide to give to the directors a specified share in the net profits of a financial year. Furthermore, the amount of the share in the net profits that the directors may receive shall not exceed 10% of the amount that may be distributed as a dividend in that fiscal year and the director's share in the net profits may only be paid where the dividend has been distributed to the shareholders in that year.

Remuneration fixed for the directors is to be made in a lump sum and the board shall distribute the sum to the directors as it deems fit. Article 304 (6) of RCC gives MoTRI the mandate of ordering the reduction of the remuneration to be paid to directors, where it deems it is excessive, by taking into account the particular situation of the company under consideration. Finally, it should be noted that the remuneration to be paid to the directors serving in the financial SCs is determined by the respective directives issued by NBE. For instance, the quantum of the remuneration payable to the BoD of banks is determined by Directive No. SBB/67/2018.

2.1.4. Profile of the Current Ethiopian SCs

As per the information obtained from MoTRI, for the period that ended on Sene 30, 2013 E.C (July 7th, 2021), there were 338 actively registered SCs at the federal government level. As can be seen from NBE's *Birritu Magazine* published in April 2022 and NBE's Second Quarter Bulletin (2020/21), the number of private banks, which are established as SCs has increased from 7 in 2003/2004 to 19 in 2020/2021, and the total capital of the banking system increased by ETB 46.2 billion and reached to ETB 167.1 billion of which state-owned banks accounted for 48.8% and private banks takes the remaining share. From NBE's website, as of May 8th, 2022, 24 (2 government-owned and 22 privately owned) banks had commenced operations and 3 banks are under establishment process as SCs.

The number of private insurance companies, which are established as SCs has increased from 8 in 2003/2004 to 19 in 2020/2021, and the total capital of the insurance companies reached ETB 11.9 billion from ETB 10.2 billion a year ago. Private insurance companies accounted for 73.2% of the total capital of the insurance sector. The number of private microfinance institutions, which are established as SCs has increased from 22 in 2003/2004 to 42 in 2020/2021: NBE's *Birritu Magazine* (April 2022) and Second Quarter Bulletin (2021/22). From the computation made on the Financial Reports of just the 17 private banks, the total profit before tax for the year 2020/2021 has reached more than ETB 20.4022 billion.

All of these figures testify to the roles SCs play in the Ethiopian economy. The significant number of shareholders who hold shares in these companies also makes it a worthwhile to study their corporate governance and the roles and responsibilities of their BoDs who are at the apex of the corporate governance structure of SCs.

2.1.5. Overview of Corporate Governance of SCs and its Landscape in Ethiopia

Since the first usage of the term "corporate governance" by Robert Tricker in his book titled "International Corporate Governance," published in 1984, it has gained prominence. The issues addressed under the "corporate governance" label are, however, nearly as old as company law itself, although the notion has not been static in terms of content: Petros, F. (2010).

Corporate governance has succeeded in attracting a good deal of public interest, due to its importance for the economic health of corporations and society,: Paul, C.N, (2009). Corporate governance, i.e., the system by which companies are directed and controlled, has become a key topic for legislation, practice, and academia in all modern industrial states as well as it has received wide attention in recent years both in practice and in academic research: Batra, G.S and Ayalew, B. (2016).

Despite such growing interest in the subject matter of corporate governance, there is no universally agreed-upon definition of the term though the various extant definitions reflect the same basic idea: Mekonen, T. (2015). Thus, it is compelling to further explore the concept and definition of corporate governance.

2.1.5.1. The Concept and Definition of Corporate Governance

The concept of corporate governance is defined in numerous ways because it potentially covers a large number of distinct economic phenomena. As a result, different people have come up with different definitions depending on the viewpoint of the policymaker, practitioner, researcher, or theorist: Paul, C.N (2009).

In defining corporate governance, some take a narrower view whereas others expand its scope. Those adopting the narrower view opt to see corporate governance as restricted to the relationship between a company and its shareholders while those who see it from the broader perspective view it as a web of relationships, not only between a company and its owners (shareholders) but also between a company and a broad range of other 'stakeholders': employees, customers, suppliers, and bondholders: Paul, C.N (2009).

The widely cited definition of corporate governance as quoted in the United Kingdom's Cadbury Report of 1992 has narrowly defined corporate governance as "the system by which businesses are directed and controlled." This definition almost exclusively emphasis on the internal structure and operation of the corporation's decision-making processes: Ahmed, H. (2012).

Fernando (2006), as quoted by Ahmed (2012), is mentioned as adopting the broader definition of corporate governance. For him "corporate governance is not just corporate management. It is something much broader. It includes a fair, efficient, and transparent administration to meet certain well-defined objectives". It enables the company's stakeholders to comply with the legal and regulatory requirements, apart from meeting environmental and local community needs".

Definition of 'corporate governance' is nowhere provided under the Ethiopian company law and nowhere in RCC, these words are used. However, Article 2.3 of Bank's Corporate Governance, relating to banking business has defined it from the wider perspective "as the process and structure used to direct and manage the business and affairs of a bank towards enhancing business prosperity and corporate accountability with ultimate objectives of realizing long term shareholders' value, as well as customers' and other stakeholders' interest".

Similarly, the OECD's *Principles* (2015) have defined corporate governance as involving "…a set of relationships between a company's management, its board, its shareholders and other stakeholders". As per these *Principles*, "corporate governance provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined".

As stated in Chapter One, for this study, the definition of corporate governance that embodies both the narrower and broader perspectives is used. Thus, corporate governance is defined as “a system of rules and institutions that determine the control and direction of a company and that define relationships among the company’s stakeholders”. Hence, corporate governance is a system of rules and institutions that determine the control and direction of a company and it gives the due attention both to the shareholders and other stakeholders of the company.

2.1.5.2.The Significance of Corporate Governance

2.1.5.2.1. General

Corporate governance occupies a central role in the modern economy, in both developed and emerging nations, as a large proportion of economic activity is undertaken by firms organized as corporations. Corporations are formed by interested citizens who demand protection. This is made possible through different mechanisms of corporate governance: Mekonen, T. (2015). Corporate governance mechanism are dealt with under Section 2.1.6.

As stated in the preface of the OECD’s *Principles* (2015), corporate governance enables to build an environment of trust, transparency, and accountability necessary for fostering long-term investment, financial stability, and business integrity, thereby supporting stronger growth and more inclusive societies. As cited by Mohamad (2004), Gregory and Simms (1999), pinpointed to the importance of corporate governance since it has a direct impact on:

a. *The efficiency with which a corporation employs assets*: effective corporate governance ensures the optimal use of resources. With effective systems of corporate governance, debt and equity capital will go to those corporations capable of investing most efficiently for the production of highly demanded goods and services as well as those with the highest rate of return.

b. *Its ability to attract low-cost capital*: an effective corporate governance also assists to lower the cost of capital *by* improving the confidence of both foreign and domestic investors that their assets will be used for the intended purposes.

c. *Its ability to meet the expectations of society*: for long-term success, corporations must comply with the laws, regulations, and expectations of societies where they operate. Many corporations take their role as corporate citizens seriously; thus, contributing to civil society.

d. *Its overall performance*: an effective corporate governance, provides managers with oversight. It holds boards and managers accountable in their management of corporate assets. Effective corporate governance also leads managers focus on improving firm performance and are replaced when they fail to do so.

Fernando (2006), as cited by Ahmed (2012), argued by saying that corporate governance is important for society because:

- It improves strategic thinking by enabling the onboarding of independent directors, who bring in a wealth of experience and a host of new ideas;
- It limits the liability of the top management and directors by carefully articulating the decision-making process;
- It ensures the integrity of financial reports; and
- It helps to provide a degree of confidence that is necessary for the proper funding of the market economy.

In conclusion to this sub-section let us see the quotation from the writings of James D. Wolfensohn, who had served as the President of the World Bank (1995 to 2005), and succinctly made the following observations about the significance of corporate governance: "the proper governance of the corporation is now as important in the world economy as the government of countries": Mohamad, S. (2004). Mohamad (2004), said this testifies the important position corporations have come to play in the economic and social lives of human beings as well as their global reach and political power, which often exceed the reach and power of governments.

2.1.5.3. Significance of Corporate Governance to Ethiopia's Economy

Economic development, which is a key prerequisite for reducing poverty and creating wealth, presupposes the fundamental requirements of an effective regulatory framework and good corporate governance. To this end, corporate governance, *inter alia*, facilitates access to capital through the banking system and other financial institutions by making company performance visible and reliable. Corporate governance may also lower the costs of capital by reducing the 'risk premium' normally added by creditors to borrowing. Application of good standards to a company's affairs improves the control of business transactions and increases efficiency: Ahmed, H. (2012).

Ethiopia's developmental and poverty alleviation pursuits require stronger enterprises that can generate and increase employment opportunities, produce goods and services, and create profit for the investors. This envisages continuous investment of capital and human resources as well as consumer satisfaction and public confidence in the enterprises. To achieve these objectives, companies must have a good and effective system of corporate governance and must also be perceived to be properly managed: Ahmed, H. (2012).

Ethiopia, like other developing countries, has recognized that having good corporate governance is an essential instrument for attracting domestic as well as foreign investors, and international capital to achieve sustainable economic and financial development, prosperity, and growth: Zeleke, S. (2017).

The government has articulated the need for a good corporate governance system under its policy document of the second fifth-year Growth and Transformation Plan (GTP II) as a key instrument to eradicate poverty in the country and achieve the country’s vision to become a lower-middle-income country by 2025. Ethiopia also adopted the Homegrown Economic Reform Program in 2019, which is aimed at “transitioning the country’s economy and improving the country’s Ease of Doing Business ranking”: Zeleke, S. (2017).

Though the simple recognition of the importance of corporate governance and inserting it in a document is not enough to benefit from it, this may be taken as a one step forward. The country, to benefit from having good corporate governance, should take appropriate measures and needs commitments from its government branches: Zeleke, S. (2017).

2.1.6. Corporate Governance Mechanisms

Corporate governance mechanisms, relates to both the market and non-market processes, that are aimed at tackling two corporate governance problems, i.e., the vertical governance problem that arises between shareholders and managers, and the horizontal governance problem occurring between shareholders themselves: Urban, J. (2019). Common corporate governance mechanisms include BoD, internal controls (policies, guidelines, and procedures), balancing power, market forces, and compensation: Mekonen, T. (2015).

When we concentrate on BoD, which is the main subject matter of this study, Mekonen (2015) argued by saying, “BoDs are, voted in by shareholders, used to ensure wealth maximization and other interests of the owners. BoD as an internal governance mechanism has the responsibility to shape the governance of an organization given its direct access to management and shareholders. Moreover, the burden of leadership rests on BoDs and they are central to corporate forms of business where ownership and management are separated. The shareholders use them to bridge the gap between themselves and the management. This group is considered to be a major driving force of governance in a corporation".

The second corporate governance mechanism is internal controls in the form of instituting policies, procedures, and guidelines that are used to manage the activities and behaviors of the corporation: Tricker, B. (2009). MoA of SCs plays a major role in putting in place the policies and procedures that enable the company to have an effective internal control mechanism.

The third mechanism is balancing power. This is a common practice of corporate governance mechanisms as it deals with demarcating and defining duties between the board and the management and between different levels of management. A market force for corporate control is the fourth type of control mechanism that influences the executive body to pursue shareholders' interests instead of theirs': Tricker, B. (2009). The fifth mechanism refers to compensation which is a performance-based type of management structure. Compensation as a corporate governance mechanism ties managerial compensation to firm's performance to align the interests of management and shareholders. This aims at improving performance by motivating managers and individuals to work hard and reap the benefit from it: Tricker, B. (2009).

2.1.7. Genesis of Corporate Governance in Ethiopia

2.1.7.1. General Background

The fact that the development of corporate governance cannot be separated from the development of corporations is not an exception in Ethiopia: Fekadu, Z. (2016). Thus, it is imperative to have look at the history of companies in Ethiopia by classifying it into three epochs.

a) Corporate Governance Before 1974

Pankhurst (1963), as cited by Tsegaw (2016), wrote "Business in organized form has its beginning in Ethiopia during Emperor Menelik II's reign. However, these firms were in the hands of foreigners. For instance, in 1894 Emperor Menelik II granted a concession to his Swiss advisor, Alfred Ilg, authorizing him to establish a company to build a railway from Djibouti to the White Nile through Harar and Entoto. The Bank of Abyssinia followed the suit, which was established in 1905 at Addis Ababa as a branch of the National Bank of Egypt, which was, in turn, an English company".

W/Meskel (1942), as cited by Tsegaw (2016), wrote "In 1909, a private SC was established under the name of Agricultural and Commercial Development Company of Ethiopia. It was incorporated by the Proclamation enacted by Emperor Menelik II. The founding shareholders of this Company, who had signed on its MoA, were the Emperor, the Empress, and other five officials of the Emperor".

For W/Meskel (1942), as cited by Tsegaw (2016), this company was notable as it was the first of its kind to be established in Ethiopia and the principles enshrined in it were incorporated in the Bankruptcy and Company Law of 1933 and later in the Partially Repealed Commercial Code. Several foreign companies were authorized to do business in Ethiopia, towards the end of and after the reign of Emperor Menelik II. For Pankhurst (1963), as cited by Tsegaw (2016), "The first Ethiopian Company [Bankruptcy and Company] law was introduced in 1933 and the 1909 AoA [of Agricultural and Commercial Development Company of Ethiopia] had delivered significant contribution for the development this company law".

The Bankruptcy and Company Law of 1933 was promulgated to regulate these and other companies. After 1933, what was little progress could have been soon interrupted by the Italian invasion and occupation of Ethiopia: Bekele, S. (1966). Following the second Italian-Ethiopian war and the return of Emperor Haile Selassie from exile after the victory of the allied forces, the British's influence in Ethiopia increased. Between 1960 and 1973, the establishment of SCs (*aksion mehaber*) became routine, and stockbroking firms (trading firms) started to emerge. The two key legal instruments, the Partially Repealed Commercial Code of 1960 and the Civil Code of 1960 [herein after referred to as the Civil Code], were the major legal developments: Negash, M. (2008).

As stated by Von (1968), who is cited by Tessema (2003), the Ethiopian stock market pre-1974 was moderately successful in its pioneering efforts to provide an organized market for companies whose shares were relatively widely held despite limited participation of the public and investors to invest in stocks and noted that though market capitalization remained small and did not have much impact on the economy, workable share trading environment had been developed. From 1956 to 1963 E.C.

nine SCs were established by floating their shares to the public at large and there were more than 6,000 shareholders in the then bourgeoning SCs: Petros, F. (2008 E.C).

During this epoch "the corporate business operation, as well as regulatory framework, was in good starting and operations. Most of the activities performed at that time were showing a good start for the development of good corporate governance practices and corporate business operations": Legesse, T. (2012).

b) Corporate Governance from 1974 to 1991

However, the 1974 revolution brought down the Imperial Palace hard-liners and made the Partially Repealed Commercial Code effectively nonoperational. Several provisions of the Partially Repealed Commercial Code and the Civil Code were either formally repealed, or suppressed by a series of Proclamations and Decrees. The revolutionary transformation which started in 1974 from a once feudal-capitalist society to a socialist society brought massive (by country's standards) private companies and share enterprises together with the land into public ownership. 72 companies were nationalized and in 29 firms the government became the majority holder of equity. The nationalization process was initially sudden but later became gradual and planned: Negash, M. (2008).

According to the Ethiopian Investment Authority's profile on private investment in Ethiopia, as cited by Tsegaw (2016), after the 1974 "socialist revolution", the private sector and particularly foreign investors from that time onwards were viewed as exploiters of the labor power, raw material and financial resources of the country. Privately-owned companies were nationalized and where made government owned public enterprises. The investment climate in Ethiopia was completely depressed. Hence, one can hardly think of companies, *per se*, in the first 15 years of the *Dergue* regime: Petros, F (2014 E.C). Nonetheless, in approaching the end of its regime, because of the international political changes and to cope with the needs of the people, the *Dergue* realized that the inefficiency of its economic policy and declared mixed economic policy: Tsegaw, E. (2016). Despite this last-ditch effort by the *Dergue*, in the opinion of this writer, it is difficult to say there was a proper corporate governance regime as we understand it today during this epoch due to the limited number of privately owned SCs.

c) Corporate Governance from 1991 to the Present

The majority of the government corporations during the *Dergue* government were poorly performing financially and in their productivity. Their growth and risk indicators were also poorly performing and hence, this made privatization the most favorable option for the post-military government of Ethiopia: Negash, M. (2008). Jesiah, Meenakshi, and Iyappan, as cited by Negash (2008), using data compiled for the period between 1994/95 to 2002/03, had concluded that the net effect of Ethiopia's privatization program was "robustly negative".

Also, the state and political party ownership dominance, which still exists, impaired the governance practices. The lack of adequate legislative provisions on governance issues related to the separation of supervision and management responsibilities, as well as its failure to deal with the composition, independence, and remuneration due to BoD of SCs made the status of corporate governance in Ethiopia disappointing. Similarly, the Partially Repealed Commercial Code does not provide for adequate legislative response to the complex governance issues: Batra, G.S and Ayalew, B. (2016). Hence, it was found necessary to partially repeal and replace it by RCC.

2.1.7.2. Overview of the Current Laws Regulating Corporate Governance in Ethiopia

As enunciated in Chapter One, due to the gaps and insufficiencies in the Partially Repealed Commercial Code to cope with the fast-pacing contemporary changes, Ethiopia has promulgated RCC that came into effect on the 12^{th} of April 2021. As stated in the Preface of this Code, "Revising the law to strike the right balance between the interests of investors, traders and other stakeholders that are directly affected by it is necessary to bolster commerce and improve the standard of living of citizens and ensuring the global competitiveness of Ethiopia too requires modernizing the Commercial Code". Currently, RCC is the principal legislation for governing corporate governance issues of all types of Ethiopian SCs and the other types of business organizations.

Besides, there are other Proclamations and Directives which directly and indirectly deal with corporate governance issues of Ethiopian SCs. To name a few of them, the Commercial Registration and Licensing Proclamation No. 980/2016 (as amended by Proclamation No. 1159/2019) and the Commercial Registration and Licensing

Council of Ministers Regulation No. 392/2016 regulate the formation and running of all types of SCs and the other types of business organizations.

There are also Proclamations and Directives regulating corporate governance on a sector-by-sector basis. For instance, Banking Business Proclamation No. 592/2008 (as amended by Proclamation No. 1159/2019), Insurance Business Proclamation No. 746/2012 (as amended by Proclamation No. 1163/2019), Microfinance Business Proclamation No. 626/2009 (as amended by Proclamation No. 1164/2019) and Capital Goods Leasing Business Proclamation No. 103/1998 (as amended by Proclamation No. 807/2013) regulates corporate governance issues of SCs in their respective areas.

There are also specific Directives issued by NBE based on these Proclamations and which regulate corporate governance of SCs operating within the respective sectors. Bank's Corporate Governance, Directives No. SIB/32/2012 (Requirements for Persons with Significant Influence in an Insurer), Directives No. MFI/21/2012 (Requirements for Persons with Significant Influence in a Microfinance) and Directives No. CGFB/02/2013 (Requirements for Licensing of Capital Goods Finance Business) regulates part of corporate governance issues of banks, insurance, microfinance, and capital goods finance companies, respectively. Similarly, MoTRI has issued Trade Registration, Licensing, and Post-licensing Inspection Directives No. 010/2009 E.C. These Directives of MoTRI has put forward compulsory corporate governance policies and practices that these financial and non-financial SCs should observe.

Concerning non-financial SCs, there is no compulsory code for corporate governance. Yet, the EICG, which is launched in 2013 to operate under the auspices of the AACCSA has resolved to adopt the Ethiopian Code for Corporate Governance for SCs, which voluntarily applies to both financial and non-financial SCs. This Code which is acclaimed as one of the achievements of AACCSA was launched on April 18, 2019. It covers issues related to the overall activities of SCs and it can be used as a guideline for SCs to form their corporate governance code. EICG, so far has enlisted 24 public and private businesses as members, [of these 16 are non-financial SCs while 8 of them are financial SCs]. As per the response for the interview conducted by the writer with the senior expert of EICG, this principle-based corporate governance seeks to regulate the conduct of businesses toward the evolution of a dynamic, ethical and responsible business community.

This writer of this study has reviewed the content of EICG's Code and he has noted that it is bilingual and it contained 10 clauses which deal with *the principles and basic values of corporate governance, compliance with the code of corporate governance, rights of shareholders, BoDs, the relation between BoDs and management, accounting, auditing and disclosure of information, risk management, stakeholders and social responsibility*.

Regarding BoDs, it requires them to act with integrity, ethically, in good faith, with diligence and care, and to offer strategic guidance. On the appointment of BoDs, it has stated that the procedure for their appointment shall be formal and transparent; and their composition should not be biased towards the representation of dominating shareholders. It also provided so that the position of chairperson and CEO should not be held by the same person. BoDs are also required to regularly meet and receive full and timely information regarding all matters on the agenda. BoDs are also obligated to refrain from any act that entails conflict of interest and to disclose their interest. BoDs are also expected to conduct a formal evaluation of its effectiveness. Lastly, BoDs should propose to the shareholders', remuneration packages for the directors and the executive management which shall align with the long-term interests of the company and its shareholders, and yet, performance or equity-based remuneration shall be decided by the shareholders of the company. I have got confirmation from EICG that its Code on Corporate Governance, which is not so far reviewed, is under revision. The revision is planned to take into account the new concepts that are introduced by RCC.

Just recently the Capital Market Proclamation No. 1248/2021, came into effect as of 23rd July 2021. This Proclamation has established the Ethiopian Capital Market Authority, which is empowered by Article 6 (24) of this Proclamation to "prescribe notices or guidelines on *corporate governance* of a company whose securities have been issued to the public or a section of the public." Article 29 (2) (a) of this Proclamation also obliged, self-regulatory organizations established as per this Proclamation to "submit a report on the *corporate governance* policy and practices of the self-regulatory organization." Lastly, the Proclamation expects any person acting as a collective investment scheme operator to meet minimum requirements for licensing including putting in place its *corporate governance*. The provision of Articles 2 (13) cum 32 of this Proclamation required all companies that intend to operate non-government owned securities exchange, derivatives exchange, or over the counter-trading platforms should be SCs that are established as per RCC.

Thus, the Capital Market Proclamation is of the first of its kind at the level of Proclamation to use the concept of corporate governance and it further ushers the concept of corporate governance into Ethiopia and requires SCs that are amenable to this Proclamation to observe and adhere to the policies and practices of corporate governance. The details of these will be seen when the Ethiopian Capital Market Authority, as per the power vested unto it by Article 108 of the Proclamation, issues directives, notices, and guidelines relating to the corporate governance of SCs that falls under its jurisdiction. The prospective directive is expected to deal with licensing of the different market operators, listing and delisting of securities exchanges, and disclosure about securities transactions. In the words of Petros (2014 E.C), this Proclamation will have much more impact than that are brought by the corporate governance regulating banks and hence, this Proclamation will bolster the corporate governance regime of Ethiopia.

In nutshell, the current laws and directives regulating the corporate governance of Ethiopian SCs are dispersed. However, RCC is at the summit of them as it regulates the corporate governance aspects of both financial and non-financial SCs. RCC under its Title Six contains Articles 245 to 424 that govern SCs. Some of these provisions deal with how SCs should be managed. The shareholders' meeting, the board of directors, and the auditors are accepted as organs of management of SCs. Articles 296 to 336 of RCC exclusively deal with the "Board of Directors and Supervisory Board" of SCs, and the majority of these provisions deal with the corporate governance issues as well as with the roles and responsibilities of BoDs of SCs. This later part will be the main thesis of Chapter Four of this study.

2.1.7.3. Current Regulatory Bodies of Corporate Governance in Ethiopia

The regulatory bodies that are entrusted with the function of regulating the corporate governance regime of Ethiopian SCs are also dispersed like the laws and regulations that govern corporate governance. MoTRI, for instance, is empowered by Article 304 (6) of RCC to order the reduction of the remuneration to be paid to directors, where it deems it is excessive. This same Ministry is empowered to conduct an investigation and report on whether the management of SC has been conducted in a manner that jeopardizes the interest of minority shareholders or that of SC and call meetings of shareholders [Articles 355-357 and 361 cum 366 of RCC]. The senior experts who is working in the Share Companies and Trade Sectoral Associations Affairs Directorate of MoTRI whom the writer have interviewed, also confirmed that mediating between aggrieved shareholders and members of the board, obliging members of the board to convene meetings where they are not willing to do so, observing shareholders' meetings and discharging other duties are some of legal mandates given to MoTRI by RCC.

About ensuring the observance of corporate governance policies and practices of financial institutions, which are required to be established as SCs, NBE is the principal regulatory body. Among the operators of the capital market, the Ethiopian Capital Market Authority is the major regulator and yet, it has not been so far made operational. Finally, it should be remarked that some laws and directives that regulates corporate governance of wholly government-owned SCs (i.e., public enterprises) as well as their regulators are different from that of privately owned SCs, and these SCs are not within the ambit of this study.

2.1.8. Overview of OECD and its Corporate Governance **Principles**

2.1.8.1. General

As it can be seen from their website, first published in 1999, the OECD's *Principles* signify the first initiative by an inter-governmental organization to develop the core elements of good corporate governance. These *Principles* have since become an international benchmark for policymakers, investors, corporations, and other stakeholders worldwide.

These *Principles* have been revised twice, in 2004 and 2015. The currently prevailing version of these *Principles* is the one that is adopted by the OECD's Council on 8 July 2015 and they were endorsed by the G20 Leaders' Summit as "G20/OECD *Principles* of Corporate Governance". As stated in their introductory part, these reviewed *Principles* are intended "to help policymakers evaluate and improve the legal, regulatory, and institutional framework for corporate governance, to support economic efficiency, sustainable growth, and financial stability". This is intended to be achieved by "providing shareholders, board members, and executives as well as financial intermediaries and service providers with the right incentives to perform their roles within a framework of checks and balances".

2.1.8.2. OECD's Six Principles of Corporate Governance

In general, the OECD's *Principles* has incorporated six main core areas of good corporate governance. Subsequently, we will briefly see these minimum standards of good corporate governance principles, based on the explanations that are provided in the annotations to each of these *Principles* and their supporting sub-principles.

2.1.8.2.1.Ensuring the Basis for an Effective Corporate Governance Framework

This *Principle* focuses on establishing appropriate and effective laws, regulations, self-regulatory arrangements, voluntary commitments, and business practices on which all market participants can rely in establishing their private contractual relations. As per this *Principle*, the corporate governance framework should "promote transparent and fair markets and the efficient allocation of resources. It should be consistent with the rule of law and support effective supervision and enforcement".

This *Principle* recommends that a country, to have a good corporate governance system, the legislative body, and the policymakers need to formulate adequate and comprehensive laws, regulations, and policy documents. Such formulated laws would entail overall economic impact and foster market integrity, attract domestic as well as foreign investors and create incentives for different market actors: Zeleke, S. (2017).

2.1.8.2.2.The Rights and Equitable Treatment of Shareholders and Key Ownership Functions

As per this second *Principle*, the corporate governance framework should "protect and facilitate the exercise of shareholders' rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders" and "all shareholders should have the opportunity to obtain effective redress for violation of their rights".

This *Principle* is based on the assumption that shareholders, as investors in the company, do have certain inherent rights. So, the corporate governance system should protect and facilitate the inherent rights of shareholders include secured ownership registration, free transfer of shares, obtaining all material and reliable information timely and regularly, participating and voting at shareholders' meetings, and participating in the share of the profits of the corporations, etc. The shareholders should also have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings.

2.1.8.2.3.Institutional Investors, Stock Markets, and Other Intermediaries

This third *Principles* recommend that institutional investors disclose their policies concerning corporate governance. Voting at shareholder meetings is, however, only one channel for shareholder engagement. Direct contact and dialogue with the board and management, represent other forms of shareholder engagement that are frequently used. To be effective, the legal and regulatory framework for corporate governance must be developed having in mind the economic reality in which it is to be implemented.

2.1.8.2.4.The Role of Stakeholders in Corporate Governance

This *Principle*, surmise that the rights of stakeholders that are established by law or through mutual agreements should be respected. Accordingly, where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights and there has to be a mechanism as per which employees participate in corporate governance. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient, and reliable information on a timely and regular basis.

2.1.8.2.5.Disclosure and Transparency

As per this fifth *Principle*, the corporate governance framework should "ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company".

Disclosure should include, but not be limited to, material information on, the financial and operating results of the company; the company's objectives and non-financial information; major share ownership, including beneficial owners, and voting rights; remuneration of members of the board and key executives; information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.

2.1.8.2.6.The Responsibilities of the Board

This sixth sub-supporting *Principle*, which is used as a litmus paper to assess the roles and responsibilities of the board of directors has provided that a corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

This *Principle,* which is further analyzed in detail in Chapter Four of this study, calls for boards to strategically direct the company, effectively supervise management, and make them accountable to shareholders and the company. It is designed to apply to all board structures. It orders boards should discharge their responsibilities "on a fully informed basis, in good faith, with due diligence and care, in the best interest of the company and its shareholders, and it also to give due regard to the interest of other stakeholders".

2.1.9. OECD's Principles as Best Practices and its Relevance for Non-OECD Countries like Ethiopia

According to the International Financial Corporation's *Corporate Governance Manual* (2010) "Numerous codes of best practices and corporate governance principles have been developed over the last 10 years. Worldwide, more than 200 codes have been written in some 72 countries and regions. Most of these codes focus on the role of the Supervisory Board or BoDs in a company. Very few are international in their scope. Among these, only the OECD's *Principles* address both policymakers and businesses and focus on the entire governance framework (shareholder rights, stakeholders, disclosure, and board practices). The OECD *Principles* have gained worldwide acceptance as a framework and reference point for corporate governance and they were developed to provide principle-based guidance on good governance". Simpson and Taylor (2013) have also contended that OECD has managed to produce principles of corporate governance that have gained worldwide recognition as an international standard for good corporate governance.

As stated in its Preface, the reviewed version of OECD's *Principles* reflects the concern and experiences of both the OECD and non-OECD members including developing countries. The G20/OECD *Principles,* are currently recognized as the leading and globally accepted standard to guide policymakers and regulators in devising effective institutional, legal, and regulatory frameworks for the corporate governance of companies: Celik, S. and Blume, D. (2021).

The OECD's *Principles* are highly relevant to non-OECD economies. The experiences of economic transition and financial crises in developing and emerging economies have confirmed that a weak institutional framework for corporate governance is incompatible with sustainable financial market development and growth. Good corporate governance helps to bridge the gap between the interests of those that run the company, including a major shareholder, and the shareholders more generally, increasing investor confidence and lowering the cost of capital for the company. Good corporate governance also helps ensure that a company honors its legal commitments, and forms value-creating relations with its stakeholders: Jesover, F. and Kirkpatrick, G. (2005).

These *Principles* are nonbinding standards, principle-based, and outcome-oriented. As result, they can be benchmarked and adapted whether or not a given country's legal framework is a common or civil law system and irrespective of the company's structures and level of economic development. All these make these *Principles* internationally accepted benchmarks and best practices for sound corporate governance. Though these *Principles* stress on companies whose shares are traded publicly, they might also be a useful tool to improve corporate governance in companies whose shares are not publicly traded. So, these *Principles* have relevance to improving SCs' corporate governance in Ethiopia: Simachew, G. (2012).

2.2. EMPIRICAL STUDIES

In this sub-section Chapter Two of the study, the literature that directly deals with the roles and responsibilities of BoDs of SC from the perspective of RCC and OECD's *Principles* will be briefly reviewed.

Gurmu (2005) is one of those who wrote one of the earlier thesis on the powers, duties, and liabilities of BoDs from the perspective of the Partially Repealed Commercial Code. He had argued that BoD as the highest organ in the management of SC, it is endowed with powers to run the company and these powers have emanated from the law and shareholders. He had also extensively dealt with the liabilities that follow in the cases where BoDs failed to properly discharge their powers and duties. He had concluded by saying that the Partially Repealed Commercial Code lacks clarity and it is incomprehensive in addressing the roles and responsibilities of BoDs of SCs. Yet, this thesis has not analyzed the powers, duties, and liabilities of BoDs from the perspective of international benchmarks like OECD's *Principles*.

Ahmed (2011), who is one of the prominent researchers on corporate governance and BoDs from the perspectives of Ethiopian laws and international best practices, in one of his early thesis on these subject matters, posits that the separation between ownership and control is growing in Ethiopia, the Partially Repealed Commercial

Code and other pertinent Proclamations and Directives are deficient in addressing current issues in corporate governance related to BoDs, protection of rights of minority shareholders and issues regarding financial reporting, transparency and audit. He had concluded by saying that “The analysis of the relevant laws shows that the overall standard of corporate governance in Ethiopia is disappointing” and he had offered detailed recommendations based on internationally recognized best principles and practices of corporate governance as they are expected to address the specific needs of Ethiopian SCs. In this work, Ahmed (2011), had analyzed the roles of BoDs of SCs from the perspective of the then prevailing OECD’s Principles of Corporate Governance of 2004.

Ahmed (2012) also wrote an often-cited article on corporate governance in Ethiopia, in general, and in particular relating to the role, composition, and remuneration of BODs in SCs. His article has examined Ethiopia’s company law with specific reference to the powers, composition, and remuneration of BoDs in light of internationally recognized best practices and principles of corporate governance. He had also argued by saying that there is a need to distinguish between corporate governance and corporate management in Ethiopian company law and that the board should be preferably composed of non-executive and truly independent members who should be professionally competent. Besides, he had pointed out, that directors’ remuneration should be incentive-oriented based on the company’s and individual’s best performance, subject to the caveat against excessive amounts of remuneration that go beyond the achievement of the intended purpose. Although the main thesis of his article revolves around financial SCs, its findings and recommendations are also relevant for non-financial SCs as its analysis is based on the prevailing OECD’s *Principles* that apply to all types of SCs.

Simachew (2012), in his thesis, had analyzed the Ethiopian SC law, as included in the Partially Repealed Commercial Code, vis-à-vis the six key *Principles* of OECD’s of corporate governance as a model. His study demonstrated how the legal and regulatory framework of SC law provisions apparently has failed to create incentives for market players and also failed in promoting a transparent and efficient market. He had recommended, that in the case where Ethiopia wants to smoothen the progress of new investment and provide adequate investors’ protection, it should revisit its law that regulates SCs in light of OECD’s *Principles*.

Simachew (2015), in his article which is written as a follow-up to his above-cited thesis, had organized and analyzed the Ethiopian SC law provisions corresponding it with each of OECD's *Principles*. His writings had identified and demonstrated the loopholes and drawbacks of SC law as included in the Partially Repealed Commercial Code. Yet, both of his studies are based on the corporate governance principles as included in the Partially Repealed Commercial Code and his study has encompassed all six *Principles* of OECD.

Petros (2008 E.C), while writing his Amharic book about the Ethiopian Company Law, as included in the Partially Repealed Commercial Code, had dealt with the concept of corporate governance, and the roles and responsibilities of BoDs as separate sub-section and a chapter. He had briefly tried to analyze these roles and responsibilities of BoDs from the perspective of international best practices including OECD's *Principles* of 2004. Petros (2014), who was one of those who have participated in the drafting of RCC, has published the third edition of the above cited book in Amharic. He has made additions aimed at accommodating the new concepts included in RCC. In this third edition, he has tried to deal with roles and responsibilities of BoDs and yet, he has not addressed them from the perspective of the prevailing OECD's *Principles*.

The study that is conducted by ACCA-KPMG (2017) whose principal aim was "to examine corporate governance requirements in terms of clarity and completeness of the content, degree of enforceability and prevalence, about OECD's *Principles* of Corporate Governance", had given its least ranking to the corporate governance of Ethiopia by comparing it with other 25 African countries. But the assessment and the ranking made by ACCA-KPGM were made based on the provisions of the Partially Repealed Commercial Code and its assessment covers all six *Principles* of OECD.

Aboma and Gudeta (2021), wrote an article in which they have argued by saying that there is a fusion of power in the governance of SCs, concerning BoD of SCs as the Partially Repealed Commercial Code allows the same person to hold the post of member of BoDs, chairperson of the board, and chairperson of the meeting. They have argued to this effect by citing OECD and other best practices prohibiting "the concentration of power on the hand of a single individual" and to ease this problem they recommended for the introduction of the two-tier board system. Like the other literature, this study is also written based on the provisions of the Partially Repealed Commercial Code and by taking into account all of the six *Principles* of OECD.

Belete (2022), in one of the few, latest and pertinent articles on the subject matter at hand, elaborated on the lacunae that necessitated the revision of the Partially Repealed Commercial Code. He said the "…the lack of up-to-date legal research and expert commentaries has remained a major challenge to adapt for practice and the judicial sector" relating to his study and to use his words, in his article he had attempted "…to uncover and assess the power, duties, and liabilities of the BoDs of companies", which he said is "…the most powerful managerial body in the ladder of corporate governance".

To recap the essence of the review of the above-referenced literature, the themes of these studies and researches are to assess the roles and responsibilities of BoDs based on the provisions of the Partially Repealed Commercial Code and by taking into account all of the six *Principles* of OECD. The ones that are based on the provisions of RCC are not specific to the roles and responsibilities of the BoDs as included in RCC but rather are aimed at introducing the overall additions made by RCC. Thus, it is very essential and timely for a study that analyzes the roles and responsibilities of BoDs as included in RCC vis-à-vis the relevant OECD's sixth *Principle*. Chapter Four of this study is aimed to achieve this goal.

CHAPTER THREE
RESEARCH METHODOLOGY

This Chapter has covered the research approach, design, data collection techniques, instruments used to acquire the essential data, the sampling procedures, data analysis and presentation methods that are carried out by this study. In addition, the validity, reliability, and ethical considerations of the study are briefly assessed.

3.1 RESEARCH APPROACH

This study espouses a constructivist philosophical idea (worldview). Philosophical ideas (worldviews) are "the basic set of beliefs that guide action and worldviews as a general philosophical orientation about the world and the nature of research that a researcher brings to a study" and the goal of research that espouses constructivist worldview rely "…as much as possible on the participants' views of the situation being studied": Cassell, C. and Symon, G. (eds) (1994).

This study attempted to understand the roles and responsibilities of BoDs of SCs as included in RCC vis-à-vis OECD's *Principles*. To this end, various theoretical and empirical studies are reviewed and consulted with the intention of understanding the views of various researchers and writers on the issues being studied. Broad and open-ended interview questions are also employed to solicit the respondents' unrestricted views on the subject matter of the study.

As a result of the writer's adopting a constructivist perspective, this study's research approach is qualitative. The study employed qualitative research approach as the nature of the study demands acquiring a deep knowledge of the subject matter and requires deep legislative analysis to assess the roles and responsibilities of BoDs in corporate governance of SCs of Ethiopia. The study is also qualitative in the sense that it gives emphasis to logical reasoning, opinions, justifications, or logical arguments on legal provisions and business principles.

So, this study utilizes purely a qualitative research approach as it solely based on the assessment of the existing legal and business instruments and principles relating to the roles and responsibilities of BoDs of Ethiopian SCs as included in RCC and as it compared and contrasted them with what is included in OECD's *Principles* and Bank's Corporate Governance.

3.2 RESEARCH DESIGN

Research designs are types of inquiry within qualitative, quantitative, and mixed methods approaches. Research design provide specific direction for procedures to be followed for the research. The research designs in the case of qualitative research approaches includes explanatory, exploratory or descriptive: Cassell, C. and Symon, G. (1994).

The research design of this study is exploratory. It has explored and analyzed business and legal doctrines, principles, reasons, justifications, and logical arguments that relate to the subject matter of this study. It looked into the law and business concepts and principles relating to corporate governance of SCs in general and in particular relating to the roles and responsibilities of BoDs of Ethiopian SCs. It analyzed legal doctrine and principles as well as how they were developed and applied and as the study sought to find the answers to certain legal issues or questions that are aimed to be addressed by the study.

The research design is also exploratory as it uses comparative and analytical approaches. The study has tried to explore, analyze and explain the roles and responsibilities of BoDs as included in RCC vis-à-vis OECD's *Principles* and Bank's Corporate Governance. These documents are also used as yardsticks to identify the inadequacies and deficiencies of the corporate governance regime relating to the roles and responsibilities of BoDs as included in RCC.

3.3 SOURCES OF DATA

Data was collected from both primary and secondary sources. Primary data was obtained from interviews conducted with those persons whose response are thought contributes to the study. In addition, the applicable Proclamations, Regulations and Directives as well as international best practices that pertains to the subject matter of the study are used as primary sources.

The secondary sources for the study are documents obtained from the library, and domestic and foreign literature related to the study that can be assessed online. The secondary data is collected from sources like published reports, lists maintained by government offices, books, prior research, theses, dissertations, journal articles, commentaries, the Internet, etc.

3.4 PROCEDURES FOR DATA COLLECTION

The primary data was gathered by employing interview questions, whose number ranges from 5 to 11, and which are tailor-made for each category of respondents. The interview questions, which are used as research instrument for this study, are broad and open-ended in nature. The interview questions were shared with each respondents before the interview sessions. Then the interview was conducted as per the preset scheduled with the respondents. The interview questions were conducted physically with those who were available for face-to-face interview, while voice and email interviews were employed with those who are not in the country and unable to attend the physical interview. The responses of each respondents that they provided for each of the questions were hand transcribed by the writer. The interview questions are attached to this study as Annex I.

The other set of the primary data that are used as input for the study was gathered from the analysis and exploration of RCC, the relevant Proclamations, Regulations, Directives and international best practices.

Secondary data is obtained from the review and consultation of the various legislations, international best practices, published reports, publicly available lists and that are maintained by government offices, books, prior research, theses, dissertations, journal articles, commentaries, the Internet, etc..

3.5 TARGET POPULATION AND SAMPLING

As per the information obtained from MoTRI, for the period that has ended on Sene 30, 2013 E.C (July 7th, 2021), there were 338 actively registered SCs by the federal government. These include both financial and non-financial SCs. So, all of these are targets for this study.

For conducting the interview, 8 category of persons were identified as target for the interview. These are those who participated in the drafting of RCC, those who works in the Banks' Supervision Directorate of NBE, who works in MoTRI's SCs and Trade Sectoral Associations Affairs Directorate, who works in the Directorate of EICG, board members of SCs, heads of legal service department of banks, academicians and legal consultant and attorney-at-laws. The interview questions is conducted with 7 of the 8 targets of the study, who were willing to respond to these questions. These 7 persons were made to answer the interview questions that were tailor-made for each of them.

3.6 METHOD OF DATA ANALYSIS

The response given by each of the respondents were hand transcribed and those responses given for similar questions are thematically analyzed and categorized. The responses given by the respondents to the interview questions are summarized under sub-section 4.5 of this study.

The method of the analysis of the documents that contained the primary and secondary data emphasized on the investigation of the roles and responsibilities of BoDs of SCs as included in RCC and with what is included in OECD's *Principles*, which for the purpose of this study is used as the main benchmark and Bank's Corporate Governance, which is used as subsidiary comparing and contrasting legislation.

3.7 VALIDITY AND RELIABILITY

For a qualitative research "validity" refers to "the integrity and application of the methods undertaken and the precision in which the findings accurately reflect the data, while reliability describes consistency within the employed analytical procedures": Long, T. and Johnson, M., (2000).

In this study, the research methods employed for the study are properly applied by the writer and the findings are accurately depicted. The analytical rigor that is used for the study is consistently applied throughout the study. Meticulous attention is also given by the writer to maintain the validity and reliability of the study. The use of open-ended interview questions also believed to enhance the triangulation of the research which in turn "increase confidence in the findings": Heale, R., & Forbes, D. (2013).

3.8 ETHICAL CONSIDERATIONS

For this study ethical obligations that are expected in any research are observed by the writer. Before conducting the interview, consent of all respondents were sought and obtained on whether they are willing to participate in the study as respondent or not. In addition, the writer has assured the respondents that their response will only be used for academic purposes and their names would be kept anonymous. Finally, information obtained from the respondents are presented without any deviation from the responses given by them.

CHAPTER FOUR
ANALYSIS AND FINDINGS

This Chapter of the study assessed the roles, responsibilities, duties, and powers of BoDs of SCs as contained in RCC, next it has briefly dealt with the sixth *Principle* of OECD, which relates to the responsibilities of BoDs. Then, the roles and responsibilities of the BoDs of SCs as enshrined in RCC, Bank's Corporate Governance vis-à-vis the contents of OECD's sixth *Principle* are critically analyzed, using a comparative tabulation. The last part of this Chapter pinpointed the findings.

4.1 THE ROLES, RESPONSIBILITIES, DUTIES, AND POWERS OF BoDS OF SCs AS PROVIDED IN RCC

4.1.1 Roles of BoDs of SCs as per RCC

Corporations have increased in size and complication and they require more multipart organizational structures and a more varied workforce possessing several levels and areas of expertise. As a result, the existence of BoDs is becoming a crucial axis in the governance structure by performing various roles and activities and functioning as a highly professional body of a company: Tariku, D. (2020). Tariku (2020) had classified these roles of BoDs into three. These are:

a. The Decision-making Roles: it is based on the idea that BoD is the cornerstone of all legal power and authority in the corporation. Although shareholders in the general meeting have the ultimate control of the company, they do not intervene in the management of the company, and their functions and rights are exercised only occasionally. Then, the idea is that the shareholders have given the board the main responsibilities relating to the strategy and functioning of the company. This level of authority makes the corporation's boards the most vital decision-making body within the company.

b. The Supervisory Roles: deliberates that the board is a group-decision-making body in which all the members (directors) have the same responsibilities and purposes. Besides, decisions are made by the group under certain requirements and formalities. So, individuals by themselves do not have the power to act but as a group. As a result, it is also possible to find that the main objective is to avoid conduct like self-dealing, negligence, and lack of professionalism on the part of the management of the company. In this manner, BoDs oversee the activities of officers and they are responsible for providing the right incentives in the best interest of the company.

c. **The Relational Roles:** contemplates that in recent years the business community has absorbed having more diverse boards. The idea is that the board is an instrument that provides a set of interlinking systems and advice for the benefit of the company. Under this approach, the company reduces reservations about the resources (credit, workforce, clients) needed to operate and increases the chances of existence through board membership. Board membership is used as a bridging strategy to link the company with the stakeholders of the company and its social environment.

Article 315 of RCC has provided instances of decision making, supervisory and relational roles of BoDs. On ***decision-making roles of BoDs***, Article 315 (1)-(3) and (5) of RCC provides that "Directors shall be responsible for exercising duties imposed on them by law, MoA, and resolutions of general meetings of shareholders" and then it enumerates instances of its decision making roles by stating that "without prejudice to the generality of the foregoing", the BoDs shall "manage the company's finances to ensure that the company has adequate capital and liquidity to meet its liabilities promptly, ensure that the company´s governance arrangements are such as to ensure the proper monitoring of the company's financial statements and positions; make certain that sufficient procedures for risk management and internal control are established and prevent damage to the company; or where prevention is not possible, mitigate the adverse impact of acts which are prejudicial to the company".

On ***supervisory roles of BoDs***, Article 315 (6) of RCC listed out "keeping regular records of the meetings of BoDs and shareholders, accounts and books, registers of shareholders and directors, and other necessary documents; setting up the reserve funds required by the Code or MoA or the resolution of the general meeting of shareholders and where the company's ability to meet its financial obligations diminishes or where it suspends payment of debt applying, as appropriate, for preventive restructuring, reorganization or bankruptcy".

On ***relational roles of BoDs***, Article 315 (4) and (6) (b) (c) and (d) of RCC has mandated BoDs "to provide to the supervisory board, if any, all information needed for the performance of the duties of the supervisory board promptly; to ensure the submission of accounts and books to Auditors when required; to submit an annual report of the company's operations including a financial statement to the general meetings of shareholders, and to convene meetings as provided in RCC or MoA and where ¾ (three quarters) of the capital is lost due to loss".

4.1.2 Responsibilities of BoDs of SCs as per RCC

RCC contained other provisions which empowered BoDs to undertake basic responsibilities in the management of SC. Simachew (2015) argued that "boards have been given three broad responsibilities in the governance of the company. They are responsible for strategically directing the company, overseeing managements and stewardship towards the shareholders and the company". In the next section, attempts have been made to analyze some of these important responsibilities of BoDs as included in RCC.

4.1.2.1 Calling of Shareholders' Meeting and Setting its Agenda

The provision of Article 362 (1) of RCC conferred unto the general meeting of shareholders with the highest decision making organ status in SC and in such meetings all shareholders take part in person or by electronic means or where all shareholders agree on a decision may be taken by asking the shareholders to state their position on a text of resolutions in writing or through electronic means without calling a meeting.

For meetings of shareholders, BoDs have dual responsibilities. The first one is that BoDs must call for a shareholder's meeting (Article 366 (1) of RCC). Accordingly, general meetings are called by the directors, supervisory board, if any, the Auditors, the liquidators, or, where appropriate, by the court. Therefore, BoDs are mandated to call the shareholder's meeting. This mandate of BoDs may sometimes be compulsory (Article 315 (6) (d) and (e) of RCC). As per this provision, BoDs shall convene a general meeting where convening of the meeting is provided by MoA or by RCC and such obligation becomes obligatory where $3/4^{th}$ of the capital is lost. Therefore, BoDs have the mandate and the responsibility to convene general meetings as per these provisions of RCC.

Secondly, the board has the responsibility to set the agenda for the meeting of the shareholders. This responsibility is provided under Article 372 (1) of RCC, which has stated the general meetings' agenda shall be prepared by the person calling the meeting. As we have seen hereinabove, BoDs has the mandate to call shareholders' meetings. As a corollary to this mandate, Article 372 dictates BoDs to set agendas for the general meetings. Concerning this, BoDs are required to keep records of such meetings. So, BoDs are required to record the agenda of the meeting and the decisions rendered thereof. This responsibility of BoDs can be seen in Article 387 of RCC.

About the accountability of BoDs to the shareholders' meeting RCC contained several provisions. BoDs are responsible to submit annual reports to the general meeting by Article 315 (6) (c) of RCC. Based on this report, the acts and undertakings of the board will be evaluated in light of its obligations as well as standards of duty of care and diligence as provided under Article 318 of RCC. Moreover, the auditors of the company will review those reports (Articles 348 (6) (c) and 350 of RCC). Therefore, the accountability of the board towards the shareholders' meeting will be channeled through this reporting system: Tariku, D. (2020).

4.1.2.2 Appointing and Dismissing the Chairperson or Deputy Chairperson of the Board, and the General Manager of SCs

As it can be seen from the above discussions, in the hierarchy of the organs of SC, BoD is the highest organ next to the shareholders' meeting. Due to this, it can be concluded that BoD is the highest management body in SCs. This ultimate management authority of BoDs gives it the mandate to appoint and dismiss the chairperson and deputy chairperson of BoD and the CEO of SCs.

Accordingly, Article 300 (2) of RCC gave the board the right to elect the chairperson or the deputy chairperson from among its members where no chairperson or deputy chairperson has been elected by the subscribers' meeting. However, Article 300 (1) puts precondition that "Only a director who is a shareholder may become the chairperson of BoDs" and according to this provision a director who takes part in the company's day-to-day management shall not become the chairperson of the BoD.

In addition, the board of SCs has also been given the power to dismiss the chairperson and the deputy chairperson it has appointed. As per Article 300 (3) of RCC, the board may revoke at any time the appointment of a chairperson or deputy chairperson who is elected by the board. Thus, it can be seen that RCC has authorized BoDs to appoint and revoke the chairperson or deputy chairperson who are elected by the board.

Article 337 (1) of RCC has provided that "a company shall have a general manager appointed by BoDs. The general manager shall be accountable to the board of directors". As a corollary to this right, sub-article 2 of Article 337 entitled the board to revoke the appointment of the general manager, and in such case, "the general manager shall have no right to be reinstated as a general manager even where he has been dismissed without good cause; however, the board may reappoint him". About the manager of SCs, Article 337 (3) has stated that "the general manager is an employee of the company; he may be a member of the board of directors" and yet, he/she cannot be the chairperson of the board. Thus, BoDs of SCs are empowered to appoint and revoke, even without good reason, the general manager of SC, who himself can be a member of the board but cannot be its chairperson. Consequently, it can be seen that the provision of Article 300 (1) and Article 337 (3) of RCC has prohibited the fusion of board chairmanship and CEO of the company on the same person.

4.1.2.3 Supervision of the Management

As repeatedly reiterated, BoDs is the ultimate body in the management of the SCs. In addition, as we have seen hereinabove, BoDs are empowered to appoint and remove the general manager of the company, who in the words of Article 339 (1) of RCC is "…is responsible for the general day-to-day management of the company". This manager is directly accountable for BoDs and hence, the board has the mandate to supervise the acts performed by the manager and his/her team.

That is why Article 338 (2) (c) and (d) of RCC has obliged the general manager to "…discharge responsibilities entrusted to him by the board of directors and implement the decisions of BoDs" and, "…prepare an annual work plan and budget of the company and implementing the same upon approval by BoDs", respectively. As a result of these provisions, BoDs have the power to supervise the management and are entitled to check on whether the management has discharged its responsibilities as entrusted to it by MoA of the company and by the decisions of BoDs.

4.1.2.4 Determination of the Annual Accounts and Reports its Action

These two important obligations of BoDs are provided under Article 315 (6) (b) and (c) of RCC. Accordingly, BoDs are responsible for "ensuring the submission of accounts and books to the Auditors when required" and "for submitting an annual report of the company's operations including a financial statement to the general meetings of shareholders".

From these provisions, it can be easily seen that BoDs are empowered to determine the annual accounts of SC to be submitted to the shareholders' meeting for approval in line with Article 394 (1) of RCC. However, this mandate of the board is under the strict supervision of the auditors of the company. Although, BoDs have the power to determine the annual accounts of SCs, the reports of the board are controlled and supervised by the auditors of SC (Articles 348 (6) and 350 of RCC). In relation to this, BoDs has also the responsibility to submit a report about its activities to the shareholders' meeting in its annual reporting (Article 315 (6) (c) of RCC).

4.1.3 Duties of BoDs of SCs as per RCC

RCC, as opposed to the Partially Repealed Commercial Code, has introduced the following duties that a member of BoDs, as an individual and as a group, should observe. Let us see the duties that are imposed on BoD and were non-existent in the Partially Repealed Commercial Code.

4.1.3.1 Duty of Loyalty

Article 316 of RCC, imposed this novice duty of loyalty on BoDs of SCs and it has stated "directors shall act in the way they consider, in good faith, would be most likely to promote the success of the company", BoDs are also expected to "act for the benefit of shareholders of the company as a whole" and this provision requires a director who is discharging this obligation to "….have regard to the long-term interests of the company, the interests of the company's employees, the interest of company's creditors and the impact of the company's operations on the community and the environment".

4.1.3.2 Duty to Exercise Independent Judgement

Article 317 of RCC obliged BoDs of SCs to "exercise independent judgement in the exercise of their responsibilities" and has enumerated examples which are considered as non-infringements of this duty. A director will not be considered as infringing this duty where he/she/it acts "… by an agreement duly entered into by the company that restricts the future exercise of discretion by its directors" or "…in a way authorized by the company's MoA or by the resolution of the general meeting of shareholders".

4.1.3.3 Duty of Care and Diligence

Article 318 of RCC forced "A director of a company to discharge his responsibility with care, skill, and diligence" and has imposed liability on the director who caused damages to the company and shareholders due to lack of care or diligence. Then, Article 318 (2) postulated "The responsibility of the director is to be measured in terms of care and skill that a director of a company must exercise as well as diligence that may reasonably be expected of a person carrying out the functions of a director of the company".

4.1.3.4 Restraints on Private Trade and on Obtaining Benefits from Third Parties

The restriction on private trade was also included in the Partially Repealed Commercial Code and yet, the prohibition of obtaining benefits from third parties is a new phenomenon that is introduced by RCC. Article 319 of RCC, similar to Article 355 of the Partially Repealed Commercial Code, has articulated "Unless authorized by a general meeting, directors may not be partner in rival business entities nor compete against the company either on their behalf or on behalf of third parties".

Article 322 of RCC on driving of benefits from third parties prohibited "A director of a company may not without the consent of the non-beneficiary directors or the shareholders accept a gift or another type of benefit from a third party conferred because of his or her being a director" and this restriction, that continues after the director ceases to be a member of BoD would "…not apply where accepting the gift or the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest".

4.1.3.5 Avoiding Conflict of Interest and Duty to Disclose Conflict of Interest

Article 320 of RCC has introduced another new concept and duty on BoDs of SCs and it has stated "… a director of a company should avoid a situation in which he has a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company" and in fact this prohibition applies "… to the exploitation of any property, information or business opportunity regardless of whether the company could take advantage of the property, information or opportunity".

Article 320 (3) and (4) of RCC has provided that this duty continues on the member of BoD even after he/she/it ceases to be a director and yet, this prohibition does not apply to a conflict of interest that might arise out of contract of employment with the company. Finally, Article 320 (5) of RCC exonerated a member of BoD from such duty where the matter has been authorized by BoDs or the general meeting of shareholders under the relevant provisions of RCC.

Article 321 (1) of RCC imposed on each director the duty to "… inform the BoDs of any situation that may involve a conflict of interest between his own and the company's interest" and Article 321 (2) prescribed where a director of a company is in any way, directly or indirectly, interested in a proposed transaction, he shall declare the nature and extent of that interest to the other directors and as provided under Article 321 (3), the member of the board shall make the disclosure "…as soon as the existence of a situation that could give rise to a conflict of interest is known".

Article 323 of RCC disqualifies a director from voting at a board meeting on any matter regarding conflict of interest issues and matters about a contract between the company and a third party or any other person if the director is to derive an essential benefit from the matter.

4.1.3.6 Dealings between SCs and its BoDs

Article 306 of RCC limits the rights of BoDs of SCs (including persons related to them by affinity or by consanguinity) not to undertake any dealings with the company unless the same is preapproved by BoDs and directors having a conflict of interest shall not vote regarding the approval of such transaction and notice of dealings made with prior approval of BoDs shall be given immediately to the Auditors of the company, which in turn should submit the same for the approval of the general meeting of the shareholders, which is empowered to approve or reject such transaction. However, Article 306 (5) has confined the applicability of this duty "… not to apply to routine dealings between a company and persons affiliated with such company [which includes BoDs], conducted in the same manner as normal dealings between the company and its clients".

Article 307 of RCC, in accord with the provision that limits dealings between a member of BoD and the company which he/she/it manages, prohibited the company not to "…make a loan to a director of the company or of its holding company, or give a guarantee or provide security in connection with a loan made by any person to such a director, unless the transaction has been approved in advance by a resolution of a general meeting of the company" and the same is required to be submitted with detailed report form an external auditor for the approval or rejection of the general meetings of the shareholders.

4.1.4 Powers of BoDs of SCs as per RCC

Article 324 of RCC empowered BoDs with "..such powers as are given to it by law, MoA and resolutions passed at general meetings of shareholders" and goes on to say "MoA shall specify whether the directors are jointly responsible as managers and agents of the company or whether one only of the directors is responsible for this purpose".

From this provision, it can be understood that the sources of powers of BoDs can be categorized into two: the one that originates from the shareholders and the other is vested unto them by the law. The powers that are conferred unto BoDs by MoA and resolutions of the general meetings come from the shareholders while the power given to BoDs by the law principally comes from the provisions of RCC and other relevant laws like the Civil Code, which regulates the relationship between the principal (SC) and the agent (BoDs). On MoA of SC, Article 255 (10) of RCC mandatorily dictated so as it contains, *inter alia*, "the number of directors and managers of the company and their powers." So, that is why it is said that this by-law of SC is one of the source of the powers of BoDs.

Concerning the principal-agency relationship, Article 324 (3) of RCC considers BoDs as agents of SCs and permitted them to have an agency power and has concluded by saying "Any restriction on their powers shall not affect third parties acting in good faith". Yet, this agency power conferred on BoDs shall be interpreted in light of the provisions of the Civil Code. Accordingly, Article 2211 requires the agent (BoDs) to exercise its obligation in the same diligence as a *bonus pater familias* in carrying out the agency power conferred unto it. *Bonus pater familias*, a legal concept that came from the Roman law and it literally means "good family father" and refers to "a standard of care that is required from a good father of a family". Thus, it can be said, BoDs are given fettered agency powers to act on behalf of but in the best interest of the company.

4.2 APPOINTMENT, ROLES, POWERS, AND DUTIES OF SUPERVISORY BoDS OF SCs AS PER RCC

4.2.1 Appointment of Supervisory BoDs

RCC has introduced a supervisory board as one type of BoD and in doing so has introduced a "two-tier board structure". Articles 331 (2), (3), (4), and (10) gave the general meeting of shareholders of SC a discretionary power to appoint a supervisory board whose members shall not be less than three or more than five. Only shareholders of SC who are not already members of the BoD can be appointed as members of the supervisory board. The general meeting of SCs is mandated not only to appoint a supervisory board but also to revoke their appointment at any time and to decide on the remuneration to be paid to them.

On this Tamiru (2021) argued, RCC has come at a time when the country is seeing its economy open up. Allowing a two-tier board structure is one among many efforts that will help corporations become more accountable and effective. This move enables the private sector to steer the economy. With the presence of a supervisory board, the option to oversee the activities of the board of directors and make them accountable to shareholders is now widening.

4.2.2 Roles, Powers, and Duties of Supervisory BoDs

As can be seen from Articles 331 (5) and (6) of RCC, the supervisory board will participate neither in the management affairs of the company nor as members of BoDs and it will be accountable to the general shareholders' meeting. As stated in Article 332 of RCC, the supervisory board has two main roles in corporate governance: monitoring and evaluating functions in filling the gap between the unaware shareholders and the well-informed executive managers: Tamiru, Y. (2021).

The supervisory board governs and monitors the activities of BoDs. In this respect, RCC under its Article 332 (3), (5), (6), and (7) has mandated the supervisory boards, *inter alia*, to take part and give opinions in the meeting of BoDs without voting, to undertake supervision to ensure that directors and other members of the management are discharging their responsibilities properly. When the supervisory board ascertains that the BoDs have committed an act that jeopardizes the interests of the company, can demand so as BoD takes corrective measures. The supervisory board also has the power to recommend, as appropriate, to BoDs or general meetings of the company, for the removal of those BoD members who have failed to discharge their responsibilities properly and as well as initiate the examination of the financial affairs of the company.

The supervisory board is also given the right to evaluate or ratify some of the activities of BoDs. Article 332 (4) of RCC has mandated the supervisory board, among others, to institute proceedings against the culprit where it knows or has reason to suspect that an act that injures the company's interest is committed. Where there is no board to do so, the supervisory board is also empowered to call general meetings of shareholders. The supervisory board also have a non-voting seat on the BoD: Solomon, T. (2021). The supervisory board is also mandated to "…elect a chairperson from among its members and to dismiss the chairperson at any time" and the supervisory board is obliged to "…keep a record of its minutes and other necessary documents" (Article 331 (7) and (9) of RCC).

4.3 LIABILITIES OF BoDS OF SCs AS PER RCC

4.3.1 General

Dealing with the subject matter of roles, responsibilities, duties, and powers of BoDs would be incomplete without briefly dealing with the liabilities of BoDs. The term liability denotes legal responsibility to another and is of two types: civil and criminal liabilities. Criminal liability is committed by commission or omission while civil liabilities are committed when one causes damage to another's property or morals. There are two sources of civil liabilities: that stems from contractual liability and non-contractual liability. The contractual liability applies to contracting parties while non-contractual liability is applied to all persons: Gurmu, K. (2005).

BoDs, while exercising their powers, may render themselves liable to civil matters. Directors may enter into a contract on behalf of the company. They may breach some duties and bring damage to the company. Directors also may contract with a third party on behalf of the company. They are not liable when they are doing within the scope of their powers, but if they exceed their powers, they may be liable to the third party like any ordinary agent: Gurmu, K. (2005).

4.3.2 Liabilities of BoDs to the Company as per RCC

RCC like its predecessor imposes heavy liabilities on members of BoDs. Article 325 has stated "Directors shall be jointly and severally liable to the company for damages caused by failure to carry out their duties", and it shifts the burden of proof to the directors who are required to show "…that they have exercised due care and diligence" and Article 326 makes any agreements shielding BoDs from liabilities of no effect. Yet, Article 326 (4) and (5) allowed SC to "…maintain an indemnity insurance for board members from liability" and "…provide funds for the legal defense of board members in an action against them by government administrative bodies, creditors or shareholders subject to refund in case they lose the case".

Article 327 of RCC has listed the defenses that exempt BoDs from liabilities to the company. Accordingly, "a member of BoD who made a business judgement in good faith shall not be liable for damages to the company where: the subject of the business judgement did not involve a conflict of interest with that of the director; or where he was informed concerning the subject of the business judgement to the extent that the director reasonably believed to be appropriate under the circumstances; or where he reasonably believed that the decision was in the best interests of the company". In addition, "a director may not be liable where he has dissented from the action which is taken by the board and has notified the external Auditor of the decision as soon as possible" and " a director may not be liable for damages to the company where the decision was taken based on a resolution of the general meeting of shareholders, provisions of MoA or the law".

Per Article 296 (4) and (5) of RCC, an organization or institution conferred with legal personality by law can be appointed as a director and in such case, the institutional director shall appoint a permanent representative who represents it and "although the permanent representative is not personally a director of the company, he is subject to the same obligations including civil and criminal liability as if he were a director in his name, without prejudice to the joint liability of the legal entity that he represents".

4.3.3 Liabilities of BoDs to Shareholders of the Company as per RCC

The members of the board of directors shall be liable to shareholders of the company for damages they caused to shareholder(s), who are granted the right to institute proceedings against board members (Article 333 of RCC). Here, the law does not set out whether shareholders can bring legal action based on joint and several liabilities of directors. However, as it can be inferred from Article 325(1) of RCC, which makes directors jointly and severally liable to the company, the intention of the legislature seems it gives the shareholders the right to do so: Belete, M (2022).

4.3.4 Liabilities of BoDs to Creditors of the Company as per RCC

Article 329 (1) of RCC made directors liable for damage caused to creditors where "…the company continues its business after the time when the directors knew or ought to have concluded that there was no reasonable prospect of the company being able to pay its creditors". In addition, as per Article 329 (2) "directors who fail to preserve intact the company's assets shall be liable to the company's creditors to the extent of the reduction in the company's assets they caused where the company's assets are not sufficient to pay creditors".

4.3.5 Liabilities of the Supervisory Board as per RCC

The provision of Article 334 of RCC has stipulated "Notwithstanding a contrary provision, members of the supervisory board shall be liable jointly and severally for damages that may be caused to the company, shareholders or third parties as a result of failure to discharge their responsibility under the law, MoA or resolution of the general meeting."

4.3.6 Criminal Liability of Members of the Board of Directors

In addition to their civil liability, company directors are criminally liable for their failure to adhere to responsibility or for acting in a way that harms the interests of the corporation. As per Article 702(1) of the Criminal Code of FDRE, a person who is legally or contractually bound to watch over or to manage the property rights of another and intentionally causes prejudice to such property interest by misusing their powers or by failing in their duties is punishable with simple imprisonment or fine. The fine, or simple imprisonment will not exceed 6 (six) months, where the crime is committed negligently. Where the crime is committed with intent to obtain for themselves or to procure for another a benefit in property, the punishment shall be simple imprisonment for not less than 1 (one) year, and a fine not exceeding ETB 30,000 (Thirty Thousand). The penalty may be higher depending on the circumstances: Belete, M (2022).

4.4 OECD'S *PRINCIPLES* ON RESPONSIBILITIES OF BOARD

The sixth OECD's *Principle*, which deals with *Responsibilities of the Board*, is dealt with hereunder by taking into account the related sub-principles and the explanations given under each of these sub-principles by substantiating them from the annotations given to each of them by OECD and taken verbatim from the Publication OECD's *Principles* (2015).

General

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders: The *Principles* of Responsibilities of the Board are intended to apply to whatever board structure is charged with the functions of governing the enterprise and monitoring management. As per this *Principle*, the board is responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the corporation. For boards to effectively fulfill their responsibilities, they must be able to exercise objective and independent judgement. Another vital responsibility of the board is to oversee the risk management system and systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, health, and safety laws.

The board is not only accountable to the company and its shareholders but also must act in their best interests. In addition, boards are expected to take due regard for and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers, and local communities. Observance of environmental and social standards is relevant in this context.

A. **Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders:** this sub-principle requires the board to work towards the best interest of the company and its shareholders. This sub-principle has stated the two key elements of the fiduciary duty of board members: the duty of care and the duty of loyalty. The duty of care requires board members to act on a fully informed basis, in good faith, with due diligence and care. The duty of care does not extend to errors of business judgement so long as board members are not grossly negligent and a decision is made with due diligence, etc. The principle calls for board members to act on a fully informed basis.

   The duty of loyalty is of critical importance since it underpins the effective implementation of other principles relating to, for example, the equitable treatment of shareholders, monitoring of related party transactions, and the establishment of the remuneration policy for key executives and board members. It is also a key principle for board members who are working within the structure of a group of companies: even though a company might be controlled by another enterprise, the duty of loyalty for a board member relates to the company and all its shareholders and not to the controlling company of the group.

B. **Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly:** In carrying out its duties, the board should not be viewed, or act, as an assembly of individual representatives for various constituencies. While specific board members may indeed be nominated or elected by certain shareholders (and sometimes contested by others) it is an important feature of the board's work that board members when they assume their responsibilities carry out their duties in an even-handed manner concerning all shareholders.

C. **The board should apply high ethical standards. It should take into account the interests of stakeholders:** The board has a key role in setting the ethical tone of a company, not only by its actions but also in appointing and overseeing key executives and consequently the management in general. High ethical standards are in the long-term interests of the company as a means to make it credible and trustworthy, not only in day-to-day operations but also concerning longer-term commitments. To make the objectives of the board clear and operational, many companies have found it useful to develop company codes of conduct based on, *inter alia*, professional standards and sometimes broader codes of behaviour, and to communicate them throughout the organisation. Company-wide codes serve as a standard for conduct by both the board and key executives, setting the framework for the exercise of judgement in dealing with varying and often conflicting constituencies.

D. **The board should fulfill certain key functions, including:**

1. *Reviewing and guiding corporate strategy, major plans of action, risk management policies and procedures, annual budgets, and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures;*
2. *Monitoring the effectiveness of the company's governance practices and making changes as needed;*
3. *Selecting, compensating, monitoring, and, when necessary, replacing key executives and overseeing succession planning;*
4. *Aligning key executive and board remuneration with the longer-term interests of the company and its shareholders;*
5. *Ensuring a formal and transparent board nomination and election process;*
6. *Monitoring and managing potential conflicts of interest of management, board members, and shareholders, including misuse of corporate assets and abuse in related party transactions;*
7. *Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards;* and

8. *Overseeing the process of disclosure and communications;*

E. **The board should be able to exercise objective independent judgement on corporate affairs:** To exercise its duties of monitoring managerial performance, preventing conflicts of interest, and balancing competing demands on the corporation, the board must be able to exercise objective judgement. In the first instance, this will mean independence and objectivity to management with important implications for the composition and structure of the board. Board independence in these circumstances usually requires that a sufficient number of board members will need to be independent of management. To achieve this goal:

1. *Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, the nomination of board members and key executives, and board remuneration;*
2. *Boards should consider setting up specialised committees to support the full board in performing its functions, particularly concerning audit, and, depending upon the company's size and risk profile, also concerning risk management and remuneration. When committees of the board are established, their mandate, composition, and working procedures should be well defined and disclosed by the board;*
3. *Board members should be able to commit themselves effectively to their responsibilities;* and
4. *Boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competencies.*

F. **To fulfill their responsibilities, board members should have access to accurate, relevant, and timely information:** Board members require relevant information on a timely basis to support their decision-making. Non-executive board members do not typically have the same access to information as key managers within the company. The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company. Where companies rely on complex risk management models, BoD members should be made aware of the possible shortcomings.

G. **When employee representation on the board is mandated, mechanisms should be developed to facilitate access to information and training for employee representatives, so that this representation is exercised effectively and best contributes to the enhancement of board skills, information, and independence:** When employee representation on boards is mandated by the law or collective agreements or adopted voluntarily, it should be applied in a way that maximises its contribution to the board's independence, competence, and information. Employee representatives should have the same duties and responsibilities as all other board members and should act in the best interest of the company.

4.5 SUMMARY OF THE INTERVIEW RESULTS

In this sub-section of the study, the responses given by each of the seven respondents are categorized and summarized.

4.5.1 On the Major Reasons that Necessitated the Revision of the Partially Repealed Commercial Code

Respondent A, who participated in the drafting of RCC, believed that many reasons pushed Ethiopia to partially repeal its 62 years old Commercial Code. For him, the major once that are central to the issue of corporate governance are: (a) the Partially Repealed Commercial Code does not provide much protection to minority investors; (b) the Partially Repealed Commercial Code does not take into account the possibility of using modern technology, for instance, to conduct meetings of shareholders and BoDs through electronic means; (c) the Partially Repealed Commercial Code does not ensure sufficient transparency on matters of corporate governance; (d) that the accounting rules that are embodied in the Partially Repealed Commercial Code are obsolete and incomplete; (e) that the Partially Repealed Commercial Code is silent about the possibility of having BoDs in a PLC's context, and (f) that the Partially Repealed Commercial Code does envisage only one type of corporate board structure and does not recognize a supervisory board.

Respondent A argued that some of the problems that were seen during the implementation of the Partially Repealed Commercial Code can be resolved by the provisions included in RCC, although, in his words, “One may dispute whether specific solutions provided in RCC are optimal or not”.

Respondent G, who used to be a judge at the Federal First Instance Court and who participated in the drafting process of RCC said, the Partially Repealed Commercial Code has its loopholes, it was well-drafted and speculative of the future. But the fast-pacing globalization, the unrelenting international competitive business environment, and the Partially Repealed Commercial Code’s various defects in properly regulating corporate governance issues were what necessitated its amendment.

4.5.2 On the Sources of Law for RCC

According to Respondent A, the French Commercial Code, OHADA[1] Rules, English Corporations Act of 2006, German Law of Merchant, Indian Law on Partnerships and one Person Company and various Model Laws and Guidelines including the World Banks Doing Business Review requirements were used as source of law for the different parts of RCC.

On whether OECD’s *Principles* were considered as one of the best practices for RCC, Respondent A, answered it in the affirmative. He said that these *Principles* were discussed with the view of ensuring transparency in governance structure of companies and the equitable treatment of shareholders etc. As an instance he mentioned due to the use of these *Principles* many provisions have been introduced to ensure the protection of the interests of minority shareholders.

Respondent B, who is senior legal expert at NBE also concurred with the fact that OECD’s *Principles* were taken into account while drafting Bank’s Corporate Governance as well as during the review of RCC. However, he argued that as Ethiopia is a member of APRM and as corporate governance is one of the four pillars of APRM, the corporate governance principles that are included in APRM were given much attention. He said APRM’s Country Review of 2014 was explicit on the fact that the Partially Repealed Commercial Code needs revisions.

Respondent G, who said he had participated in various meetings and workshops during the review of the Partially Repealed Commercial Code, confirmed that the German and French Company laws were consulted during the drafting of RCC and he also iterated that OECD’s *Principles* were also given the due attention.

[1] OHADA is the French acronym for "*Organisation pour l'Harmonisation en Afrique du Droit des Affaires*", which translates into English as "Organisation for the Harmonization of Business Law in Africa". It was created on October 17, 1993, in Port Louis, Mauritius.

4.5.3 On the Changes Introduced by RCC

According to Respondent A, RCC has introduced many new concepts. He mentioned the following instances: the option to have a second type of board, i.e., supervisory board, the option to have a board of directors in a PLC, conducting of meetings by electronic means, the introduction of the office of the secretary in the context of SC, the detailed rules regarding the calling and conducting of shareholders' meetings, and how, who signs the minutes, etc.

Respondent G, making non-shareholder (any third party) to be a board member of BoD, setting the requirements to be a member of BoD, allowing meetings to be conducted electronically, introducing of compulsory company website and making obligatory the posting of the agenda item on such website, setting out the requirements to be an auditor of the company, and the introduction of the two-tiered board structure are the major changes that are introduced by RCC relating to SCs.

Respondent C, who is a senior experts and who is working in the Share Companies and Trade Sectoral Associations Affairs Directorate of MoTRI pinpointed the elongation of the days for notice of shareholders' meeting from 15 to 24 days, introduction of supervisory board, the increase of the maximum number of members of board from 12 to 13, the possibility of appointing non-shareholders as members of board, and the removal of the mandatory requirement of having AoA of company for its formation as some of the major changes.

4.5.4 On the Importance of the Roles and Responsibilities of BoDs of SCs

Respondent G asserted that BoDs play a very pivotal roles. For him BoDs play a very important role in ensuring good corporate governance. According to him, the roles and responsibilities given to BoDs by law and by the bylaws of the company make them "the soul of the company" as they implement the ideas of the shareholder's meeting and as they also give feedback and recommendations to the shareholders' meeting which is usually endorsed by the shareholders as it is. For him where the company have good corporate governance, it will enable good management, and where there is good management, the company will achieve its business objectives, and this in turn will have an overall positive impact on a country level. For him the failure or success of a company depends on whether it has good corporate governance or not; and hence, BoDs plays a very pivotal roles.

Respondent B also BoDs play very pivotal roles, especially, in SCs that are engaged in financial sectors. He said, BoDs are the bridges between the shareholders and the management of the company and when the corporate governance of BoDs is sick, the financial institution will also be sick. He cited instances of Cooperative Bank of Oromia, NIB and Zemen Banks where there were disputes among BoDs members which led to illness in the banking sector as whole; while in the case of Awash, Dashen, and Abyssinia Banks the fact that their BoDs were operating in synergy led to surge in their performance.

Respondent F, who works in the Legal Services Department of Dashen Bank, also agreed that BoDs play a very pivotal role in the corporate governance structure of SCs. For him BoDs, which is appointed by the general assembly of the shareholders, is the highest decision-making organ in any SC, who obtains its source of power from MoA and AoA of the Company as well as from RCC.

Respondent E who is one of the board members of Nisir Microfinance affirmed the importance of the roles and responsibilities of BoDs by saying that its members have experience and exposure in different fields of study and sectors and which when combined, contributes to the healthy governance structure of the company. He argued by saying that the effectiveness of BoD impacts the performance of the company in many respects. For him, the more effective the board is, the better it is as it can motivate, support, and monitor the company's performance. An effective board can provide better strategic guidance to the management on the company's direction, growth, and sustainability. When the BoD is effective, it can better build a good relationship with management and staff which in turn translate into improved performance in all aspects of the company. When the BoD is effective, the shareholders will have more confidence and trust in the BoD, which will further enhances the company's reputation and goodwill. When the BoD is active, it can better understand the company and the people that work there and become more informed and educated to make useful decisions that benefits the company.

4.5.5 On the Roles and Responsibilities of BoDs of SCs

According to Respondent G, BoDs of SCs directly or indirectly set the company's policies, they follow up on them; and even sometimes they might involve in the day-to-day functioning of the company, they set operational system of the company; they follow each activity of the company; they direct, control and manage the affairs of the company; they set long-term and short-term strategies; they set and monitor vision of the company, they follow up the management of the company; they ensure the proper management of the financial situation of the company and on whether the management is operating by observing rules and procedures; they follow up its implementation and gives direction. He summarized his response on this point by saying "as it is well known in dispersed companies, BoDs are agents of the company; they oversee the overall activities of the company; they have a say on how the company should be managed".

Respondent B listed oversight over the management, supervision of the strategic direction, and in exceptional situations supporting the management as some of the roles and responsibilities of BoDs.

For Respondent F BoDs represents the interest of shareholders /i.e., the investors/. Moreover, BoDs are expected to check and control the works of the management by taking into account the interest of shareholders, depositors, and other stakeholders. He listed the roles and responsibilities of BoDs as: offering strategic guidance, control, and supervision; taking appropriate measures, without transcending the decision of the general assembly of the shareholders; selecting and appointing the general manager of the company; approving the organizational set up, salary scales, strategic plan, and annual budget and reviewing and approving policies of the company.

According to Respondent E, BoD is responsible to provide strategic guidance to the management of the company which determines the course and direction of the company. BoD is also responsible for approving work plans and budgets as well as several manuals (like HR, Code of Conduct, Procurement, Finance, etc.) that shape and structure the company. Besides, BoD plays a key role in motivating and guiding the senior managements to achieve the objectives set for the company; in providing policy guidance and decisions for the management of the company; in initiating and approving policies; in reviewing and endorsing the plan and discussing issues relevant to the growth of the company and in serving as ambassadors for the company.

Respondent C also concurred with others on the importance BoDs plays in SCs and she said BoDs are given various roles and responsibilities by the law and MoA of the company, which includes calling of shareholders' meetings, recommending the auditor to be appointed by the shareholders and proposing the profits to be distributed.

But in her opinion, although most of BoDs discharge these roles and responsibilities effectively, some failed to live up to the expectations.

4.5.6 On Bank's Corporate Governance and Financial SCs

Respondent B said NBE took an active part in the revision process during its last phase. He said as there were many provisions that affect the financial sector, NBE's involvement was very crucial. As there was no consensus on the scope of the revision, NBE's recommendation was accepted so as the part of the Partially Repealed Commercial Code that deals with insurance and banking business to remain as it is for the time being and be accommodated by the Financial Services Code, whose drafting is differed for the future. He elaborated on why SCs are the preferred form of business organizations for financial sectors by saying that it is due to the fact financial sector involves public money, to avoid capital flight and to ensure effective corporate governance.

Respondent B said Bank's Corporate Governance sets out the minimum standards that should be followed by banks. He said, NBE encourages financial institutions to adopt principle-based corporate governance, on top of its rule-based corporate governance. Respondent D also affirmed that out of the 24 SCs that have endorsed EICG's Code of Corporate Governance, 16 are financial SCs.

RCC as opposed to Bank's Corporate Governance on banks, allows an employee of a SC to be a member of BoD. On this contradiction, Respondent B, contended that NBE does not agree on this permission. He believed that it is not good for an employee of a SC to be a member of BoD as it is tantamount to allowing that employee to approve the activities done by him/her. He also does not believe that the prohibition by Bank's Corporate Governance so as an employee shall not be a member of board conflicts with the provision of RCC that allows an employee to be a member of BoD. This is so because, NBE is given the mandate to enact the Directive that regulates the number of shareholders that can participate as a member of BoD by the Banking Business Proclamation. He has concluded by saying, "zero is also a number and hence, prohibiting an employee not to be a member of a bank is acceptable". For him the validity of the prohibition by NBE's Directive of an employee of the financial institution not to be a member of a BoD might be challenged based on the newly enacted Federal Administrative Procedure Proclamation No. 1183/2020. But this is to be seen in the future.

Respondent B, does not think individuals were eager to be a member of BoD of financial institutions due to the amount of remuneration payable to them; but rather a member of BoD of a Bank wants to be a member of board as that enables them to involve in the daily activities of the financial institutions including deciding who should get a loan or not. Although he believed that NBE should regulate the amount of remuneration payable to a member of BoD of financial institutions, he does not agree on its amount taking into account the onerous level of risk the members of BoD of banks takes and the level of profit they generate for the financial institutions.

Finally, Respondent B, said there is no intention to review Bank's Corporate Governance but rather the intention of NBE is to give explanations and assistances on it for the end-user in line with the contents of the provisions of RCC.

Both Respondent E and Respondent F confirmed that their financial institution had code of conduct that regulates the operations of their respective BoDs. Respondent E said the code of conduct of their microfinance has regulated the roles and responsibilities of the board, the board's composition, its structure and procedure, including the procedure for the board's meetings, and the board's developmental and oversight responsibilities. Respondent F, on his part said, the content of the code of conduct of their BoD includes issues like duty of care, confidentiality, and compliance.

Finally, Respondent E on the introduction of the two-tier board structure and non-shareholder board structure as envisaged by RCC said, given the uniqueness of their microfinance, for being flexible, adaptable, and open to change, will easily enable them to adapt and align these board structures. Respondent F, on his part said, it is within the power of the general assembly of the shareholders' whether to implement these board structures or to continue with the current practice. Both of them confirmed that, this is not yet discussed.

4.6 THE ROLES AND RESPONSIBILITIES OF THE BoD OF SCs UNDER RCC COMPARED WITH THE OECD'S *PRINCIPLES*

Below, the roles and responsibilities of BoDs as included in RCC are critically examined vis-à-vis OECD's responsibilities of boards. The roles and responsibilities of BoDs as included in BCG is also used to elaborate and explain the comparison as Ethiopian banks are legally required to be established as SCs and as banks are highly regulated by NBE and play very pivotal role in the economic activities of any country.

<table>
<tr><th colspan="3">4.6.1. Table I: Comparative Analysis of the Provisions of RCC, Bank's Corporate Governance vis-à-vis the OECD's Principles</th></tr>
<tr><td rowspan="2">Principle VI</td><td colspan="2">The responsibilities of the board: The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.</td></tr>
<tr><td>The OECD's Principles</td><td>The Provisions of RCC and Bank's Corporate Governance</td></tr>
<tr><td rowspan="2">Supporting Sub-Principle of Principle VI</td><td rowspan="2">A. Board member should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.</td><td>Article 316 (1): Directors shall act in the way they consider, in good faith, would be most likely to promote the success of the company; they shall act for the benefit of shareholders of the company as a whole.
Article 316 (2): In the discharge of the duty under Sub-Article (1) of this Article, a director shall have regard to the long-term interests of the company, the interests of the company's employees, the interest of the company's creditors and the impact of the company's operations on the community and the environment.
Article 318 (1): A director of a company shall discharge his responsibility with care, skill, and diligence. The director shall be liable for damages caused to the company and shareholders due to a lack of care or diligence on his part.
Article 318 (2): In this regard, the responsibility of the director shall be measured in terms of care and skill that a director of a company must exercise as well as diligence that may reasonably be expected of a person carrying out the functions of a director of the company.</td></tr>
<tr><td>Bank's Corporate Governance under its Article 10.4.20 call for the board of a bank to adopt a Code of Conduct as per which the board and senior management are to be regulated and which shall cover what is stated in its Annex II, in which "duty of care to the bank" and "duty of care" is defined to refer "to the duty of directors and senior management to act on an informed and prudent basis in decisions concerning the bank". Besides, what</td></tr>
</table>

		is provided under item 4 of its Annex II also demand them to act in the interest of the bank. Yet, the duty of loyalty is not specifically provided by it.
	B. Where board's decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.	The RCC does not have a provision that obliges BoDs to treat all shareholders of SC fairly.
		Item 9 of Annex II which is attached to Bank's Corporate Governance imposed on the board "*the duty to act fairly and impartially*". As per this clause "*directors and senior management should avoid bias, discrimination, caprice or self-interest; they should demonstrate respect for others by acting professionally and courteously*", the word "*others*" cannot be construed as including the different classes of shareholders as Article 10 (1) of the Banking Business Proclamation only recognizes one class of shares.
	C. The board should apply high ethical standards. It should take into account the interests of stakeholders.	The RCC does not have a provision that obliges BoDs to apply high ethical standards. Yet, Article 316 requires acting in good faith, which can be widely construed as applying high ethical standards. BoDs are also demanded to act in good faith by taking into account the interest of stakeholders, which includes, the shareholders, the company, the employees, the creditors, the community and the environment.
		Bank's Corporate Governance does not directly say that the board of a bank should apply high ethical standard. But rather Annex II (Item 2) ordered BoDs to prevent "*unethical actions such as bribery and corruption inside and outside the bank*".
	D. *The board should fulfil certain key functions, including:*	
	1. Reviewing and guiding corporate strategy, major plans of action, risk management policies and procedures, annual budgets, and business plans; setting	Article 315 (1): BoDs of SCs shall manage the company's finances to ensure that the company has adequate capital and liquidity to meet its liabilities promptly. Article 315 (3): BoDs of SCs shall make certain that sufficient procedures for risk management and internal control are established. Article 338 (2) (d): provided as one of the duties of the general

	performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.	manager the preparation of the annual work plan and budget of the company and implementation of the same upon approval by BoDs.
		Article 10.4.17 and 11.1 of Bank's Corporate Governance clamored for BoDs of banks to "*review and approve strategies, policies, systems, annual business plans & budgets*", which are prepared by the CEO. Article 10.4.18 demanded the board to "*monitor the performance*" that is stated under Article 10.4.17 by putting in place the proper Key Performance Indicators that are listed in its Annex I. The board is also required to approve the "*risk management strategies, policies, and risk tolerance limits*", which are to be prepared by its Risk Management and Compliance Sub-Committee. Articles 10.4.7 and 10.5.2 (a) reserved the right to define and approve "*acquisitions and disposals of equity investment, fixed assets, and technology of material nature*" to BoDs of banks.
Supporting Sub-Principle of Principle VI	2. Monitoring the effectiveness of the company's governance practices and making changes as needed.	Article 315 (2): BoDs of SCs shall ensure that the company´s governance arrangements are such as to ensure the proper monitoring of the company's financial statements and positions.
		Bank's Corporate Governance under its Article 10.5.1 (c) and its Annex IV required the board of a bank to put in place corporate governance policy. This can also include the monitoring of the corporate governance that it has put in place.
	3. Selecting, compensating, monitoring, and, when necessary, replacing key executives and overseeing succession planning.	Article 337 (1): A company shall have a general manager appointed by the board of directors. The general manager shall be accountable to the board of directors. Article 337 (2): The board may revoke the appointment of the general manager. The general manager shall have no right to be reinstated as a general manager even where he has been dismissed without good cause; however, the board may reappoint him. Article 332 (5): the supervisory board of SCs is empowered to

		undertake supervision to ensure that directors and other members of the management are discharging their responsibilities properly; where it has been ascertained that they have committed an act that jeopardizes the interests of the company, demand that corrective measures be taken; recommend the removal of those who have failed to discharge their responsibilities properly, as appropriate, to the board of directors or general meeting of shareholders.
		Article 10.4.4. of Bank's Corporate Governance gave to the board of a bank the mandate of "*selecting and appointing CEO and chief internal audit and chief risk management and/or compliance officer, who is qualified and competent with integrity, to administer the affairs of the bank effectively and efficiently, or removing the same where they fail to be fit and proper*" and its Article 10.4.5 has also mandated the board to "*appoint senior executive officer selected by CEO*".
	4. Aligning key executive and board remuneration with the longer-term interests of the company and its shareholders.	RCC does not contain a provision that requires BoDs of SCs to align key executives' and board's remuneration with the longer-term interests of the company and its shareholders.
		Bank's Corporate Governance urged the Human Resource Affairs Sub-Committee to "*recommend and monitor the salaries and benefits for the members of senior management and overall benefits packages (bonus, salary increment, etc.,) of the bank*". This same sub-committee is expected to "*oversee any major changes on the overall benefit structure of the bank*". Bank's Corporate Governance is silent on the issue of remuneration and this might be due to the fact that the decision on the board's remuneration is within the mandate of the shareholders' meeting.
	5. Ensuring a formal and transparent board nomination and election process.	Article 301 (2): BoDs may decide to create committees consisting of directors to review matters as and when it deems that appropriate and recommend a course of action, if need be. It shall determine the composition and powers of the committees

		that it establishes without exceeding powers vested in the board itself.
		Article 10.4.1. of Bank's Corporate Governance expects BoDs of banks to "*develop and submit to the ordinary general meeting of shareholders for approval transparent rules and procedures for the nomination of potential candidates for the board membership taking due consideration to industry standards and the relevant National Bank's directives*".
	6. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions	Article 315 (2): BoDs of SCs shall ensure that the company´s governance arrangements are such as to ensure the proper monitoring of the company's financial statements and positions. Article 320 (1): A director of a company shall avoid a situation in which he has a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. Article 320 (2): The prohibition under Sub-Article (1) of this Article shall apply in particular to the exploitation of any property, information, or business opportunity regardless of whether the company could take advantage of the property, information or opportunity. Article 320 (3): A person who ceases to be a director continues to be subject to the duty to avoid the exploitation of any information or business opportunity of which he became aware because of his position either for his benefit or for the benefit of third parties. Article 320 (5): A director may be exonerated from the prohibition under this Article where the matter has been authorized by the board of directors or the general meeting of shareholders under the relevant provisions of RCC. Article 321 (1): Each director shall inform the board of directors of any situation that may involve a conflict of interest between his or her own and the company's interest. Article 321 (2): Where a director of a company is in any way, directly or indirectly, interested in a proposed transaction, a

		contract entered into or any other relationship with the company, he shall declare the nature and extent of that interest to the other directors. Article 321 (3): Any declaration required by Sub-Articles (1) and (2) of this Article shall be made as soon as the existence of a situation that could give rise to a conflict of interest is known. Article 322 (1): A director of a company may not without the consent of the non-beneficiary directors or the shareholders accept a gift or another type of benefit from a third party conferred because of his or her being a director. Article 322 (2): The prohibition under Sub-Article (1) of this Article shall not apply where accepting the gift or the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. Article 320 (3): A person who ceases to be a director of a company continues to be subject to the duty under Sub-Article (1) of this Article.
		Article 10.4.15. of Bank's Corporate Governance coerced board of banks "t*o prevent conflict of interest in the bank by putting in place sound policies and implementing them*" and the board is also obliged by Article 10.4.20 and Annex II, to put in place a Code of Conduct that shall stipulate the "*duties to avoid conflict of interest*" and as per this stipulation "*directors and senior management should not directly or indirectly engage in any action, transaction and business activities that compete or conflict with the interest of the bank*".
	7. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems	Article 315 (3): BoDs of SCs shall make certain that sufficient procedures for risk management and internal control are established. Article 315 (6) (a): BoDs of SCs shall keep regular records of the meetings of BoDs and shareholders, accounts and books, registers of shareholders and directors, and other necessary documents;

	of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.	Article 315 (6) (b): BoDs of SCs shall ensure submission of accounts and books to Auditors when required; Article 315 (6) (c): BoDs of SCs shall submit an annual report of the company's operations including a financial statement to the general meetings of shareholders; Article 332 (6): Supervisory BoDs of SCs shall supervise as well as cause the Auditing of the financial affairs of the company.
		Article 10.4.24. of Bank's Corporate Governance required board of a bank to "*ensure an effective internal audit system, staffed with qualified personnel to perform internal audit functions (covering at least financial, operational, legal, technology and management audit) is put in place*" and Article 10.4.23. also obliged the board to "*ensure that the bank puts in place comprehensive risk management program*". Bank's Corporate Governance also required the Audit Sub-Committee of the Board to "*check compliance with the policies & rules of the company and proclamations, regulations, directives, guidelines of the National Bank and other relevant laws*".
	8. Overseeing the process of disclosure and communications.	Article 382 (1): Where a shareholder requests, in addition to documents specified under Article 381 and other provisions of RCC, to have access to additional information which is necessary to take a position on the agenda submitted for a general meeting, the board shall give the meeting access to the same. Yet, the board may refuse to provide such information where disclosure of the information is prohibited by law or doing so would in its opinion cause significant damage to the company.
		Article 10.4.20 and Annex IV of Bank's Corporate Governance required the board of a bank to put in place "*disclosure*" and "*communication*" policies and procedure manuals.
	E. The board should be able to exercise objective independent judgement on corporate affairs.	
	1. The board should be able to exercise	Article 296 (1): Two-thirds of members of BoD may not play a role in the day-to-day management of the affairs of the

	objective independent judgement on corporate affairs. Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, the nomination of board members and key executives, and board remuneration.	company. Article 317 (1): A director of a company must exercise independent judgement in the exercise of his responsibilities. Article 317 (2): This duty is not infringed by his acting: a) by an agreement duly entered into by the company that restricts the future exercise of discretion by its directors; or b) in a way authorized by the company's MoA or by the resolution of the general meeting of shareholders.
		Bank's Corporate Governance is silent on the ability of a BoD of a bank on its responsibility to exercise objective and independent judgement on the affairs of the Bank. In addition, Bank's Corporate Governance does not distinguish between members of an executive and non-executive BoDs.
	2. Boards should consider setting up specialised committees to support the full board in performing its functions, particularly with respect to audit, and, depending upon the company's size and risk profile, also with respect to risk management and	Article 301 (1): The BoDs may give one or more of its members a special mandate as regards one or more specific matters including representing the company in a specific transaction. Article 301 (2): The BoDs may decide to create committees consisting of directors to review matters as and when it deems that appropriate and recommend a course of action, if need be. It shall determine the composition and powers of the committees that it establishes without exceeding powers vested in the board itself. Article 301 (3): The board shall establish an audit committee consisting of members of the board alone; a director who takes

	remuneration. When committees of the board are established, their mandate, composition, and working procedures should be well defined and disclosed by the board.	part in the day-to-day management of the affairs of the company may not become a member of the audit committee. Article 315 (3): the BoDs shall make certain that sufficient procedures for risk management and internal control are established.
		Article 10.4.11. of Bank's Corporate Governance mandatorily urged the board to "*establish and ensure the effective functioning of various board committees including, but not limited to, Audit Sub-Committee, Risk Management, and Compliance Sub-Committee and Human Resource Affairs Sub-Committee*". These sub-committees are mandated to oversee the audit function, the risk management system, and the remuneration, respectively, that will be adopted and implemented by the bank. Bank's Corporate Governance also governed the mandates, composition, and working procedures of these sub-committees, whose duties and responsibilities are listed in detail under its Annex III. These sub-committees are required to meet at least once a month and are obliged to report regularly to the full board.
	3. Board members should be able to commit themselves effectively to their responsibilities.	Article 324 (3): Directors authorized to act as agents for the company may exercise in its name their powers as agents. Any restriction on their powers shall not affect third parties acting in good faith.
		Article 10.3.5. of Bank's Corporate Governance provided "*a director shall attend in person at least seventy-five percent (75%) of the board meetings of a bank within a financial year. Failure to do so, unless there is good cause accepted by the ordinary general meeting of shareholders, shall result in automatic cancellation of his seat from the board*" and its Article 10.3.7. dictated the board's remuneration to be paid in proportion to his/her/its attendance of board meetings during the year under consideration.

	4. Boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences.	RCC does not require BoDs of SCs to regularly carry out an evaluation and appraisal of their performance as well as assess their mix of background and competence.
		Article 10.4.12. of Bank's Corporate Governance required the board to "*assess semi-annually the effectiveness of the board, its sub-committees, and individual directors in carrying out their responsibilities and reporting the outcomes to the annual ordinary general meeting of shareholders and the National Bank*".
	F. In order to fulfil their responsibilities, board members *should* have access to accurate, relevant, and timely information.	Article 315 (4) required BoDs of SCs so as they provide to the supervisory board, if any, all information needed for the performance of the duties of the supervisory board in a timely manner. Article 332 (1): The supervisory board shall cause the submission of documents and information necessary to discharge its responsibility, and examine the same.
		Annex III of Bank's Corporate Governance provided "*the Audit Sub-Committee should have full and unrestricted access to information and be able to obtain independent professional advice*".
Supporting Sub-Principle of Principle VI	G. When employee representation on the board is mandated, mechanisms should be developed to facilitate access to information and training for employee representatives so that this representation is exercised effectively and best contributes to the	Article 300 (1): Only a director who is a shareholder may become the chairperson of BoDs. A director who takes part in the day-to-day management of the affairs of the company may not become the chairperson of BoDs. Article 337 (3): The general manager is an employee of the company; he may be a member of the board of directors. He may not be the chairperson of the board. Article 320 (4): The prohibition under this Article does not apply to a conflict of interest arising out of an employment contract with the company. [አንቀፅ 320 (4)፡ በዚህ አንቀፅ የተደነገገው ክልከላ ዳይሬክተሩ ከማኅበሩ ጋር ከሚያደርገው የሥራ ውል ጋር በተያያዘ ሊነሳ የሚችል የጥቅም ግጭትን

	enhancement of board skills, information, and independence	አይመለከትም።]
		As per Article 6.3 of Bank's Corporate Governance, employees of banks are prohibited not to being a member of the Nomination and Election Committee. Besides, Article 5 of Directive No. SBB/67/2018 provides "*no employee of a bank sits on the board of any bank*".

4.7. FINDINGS OF THE STUDY

In this last sub-section of Chapter Four, the findings of the study are identified based on each of the sub-supporting principles as included under OECD's *Principles*. The sixth OECD's *Principles*, which dealt with the responsibilities of board, surmise that "the corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders".

These sixth OECD's *Principles*, include seven sub-supporting principles. Hereunder, the findings of this study on the roles and responsibilities of BoDs as included in RCC and Bank's Corporate Governance vis-à-vis the seven sub-supporting principles of OECD's *Principles* are summarized. Provisions included in EICG's Code of Corporate Governance is also taken into account to further facilitate the comparison.

4.7.1. Findings on Acting by BoD Members on Fully Informed Basis, and Acting with Due Diligence and Care

OECD's *Principle* required board members to act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders. This supporting sub-principle pertained to the fiduciary duty of the board which comprises the duty of care and the duty of loyalty. RCC demanded from BoDs the taking into account of the interests of shareholders, the long term interests of the company, its employees, its creditors and the impact of the company's operations on the community and the environment in discharging their fiduciary duties. They are also expected to act on a fully informed basis. RCC has well accommodated and addressed both of these key elements of fiduciary duties of BoDs, while Bank's Corporate Governance has elaborate provision governing the duty of care while it has fully neglected the duty of loyalty.

4.7.2. Findings on Treating All Shareholders Fairly

OECD's *Principle* has stated that where a board's decisions may affect dissimilar shareholder groups differently, the board should treat all shareholders fairly. Although RCC envisaged the existence of different classes of shares and the possibility of appointment of board members representing different class of shares, there is no provision in RCC that coerces BoDs to fairly treat shareholders of different classes.

Since the Banking Business Proclamation recognizes only one class of shares, Bank's Corporate Governance cannot be expected to provide for a provision that obliges BoDs of banks to treat fairly different classes of shareholders. Yet, Bank's Corporate Governance required BoDs to avoid bias, discrimination, caprice or self-interest and to demonstrate respect for others by acting professionally and courteously.

4.7.3. Findings on Ethical Standard of BoDs in Protecting the Interests of Stakeholders

OECD's *Principle* obliged the board to apply high ethical standards and so as it take into account the interests of stakeholders. It also encouraged companies to develop codes of conduct to regulate ethical standards. RCC and Bank's Corporate Governance are both quiet in addressing these key aspects that are expected of a board in setting the ethical tone of the company in a manner that protects the interests of stakeholders.

However, Dashen Bank and Nisir Microfinance, whose representatives are interviewed for the purpose of this study, have codes of conducts that are aimed at regulating the proper functioning of their respective BoDs. Yet, how far these codes of conducts are exhaustive and enforceable requires further research.

4.7.4. Findings on the Key Functions that the Board Should Fulfil

OECD's *Principle* listed out the key functions that should be fulfilled by BoDs of SCs. The first one stress on "oversight responsibilities of BoDs, relating to the company's risk management". RCC has tried to include most of the points envisaged by this sub-principle, but it is not as exhaustive as Bank's Corporate Governance.

The second key function that OECD's *Principle* expects from BoDs is "monitoring the effectiveness of the company's governance practices and making changes as needed". RCC and Bank's Corporate Governance have fairly addressed this key function.

The third key function that OECD's *Principle* requires from BoDs is "to select, compensate, monitor, and, when necessary, replace key executives and oversee succession planning. RCC gave the mandate to do so to BoDs and the supervisory board". Bank's Corporate Governance also gave the same mandate to BoDs of banks. Yet, there is no provision in RCC and Bank's Corporate Governance that deals with the succession planning of the key executives of the company. In contrast, EICG's Corporate Code of Conduct under its clause 6.2 imposed on BoDs the obligation to "oversee succession planning."

The fourth key function that OECD's *Principle* expects from BoDs is "to align key executive and board remuneration with the longer-term interests of the company and its shareholders". RCC, although envisaged the possibility of establishing a remuneration sub-committee, it is silent on the alignment of remuneration of the company with its long-term interest. RCC should have been explicitly mandated BoDs to decide on the remuneration to be paid to the key executives. Bank's Corporate Governance is relatively exhaustive.

EICG's Corporate Code of Conduct, which is much more advanced than the two legislations, under its clauses 5.13 ordered so as "there should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his her remuneration" while under its clause 5.14 has mandated BoDs to "…propose to the shareholders remuneration packages for the directors and remuneration policy for executive management by aligning remuneration with the longer-term interests of the company and its shareholders. Performance or equity based remuneration should always be subject for decision by the shareholders."

The fifth key function that OECD's *Principle* expected from BoDs is "to ensure a formal and transparent board nomination and election process". Although not specifically mentioned by RCC, Article 301 (2) can be widely construed as enabling BoDs to establish a nomination and election sub-committee that can issue formal and transparent procedures for the election of BoDs. But, RCC should have been very explicit on this important aspect. Conversely, Bank's Corporate Governance has included detailed obligations on BoDs of banks, so that they ensure a formal and transparent board nomination and election procedure is put in place. Similarly, clause

5.3 of EICG's Corporate Code of Conduct calls for so as "there should be a formal and transparent procedure in the appointment of and reappointment of directors."

The sixth key function that OECD's *Principle* expects from BoDs is "to monitor and manage potential conflicts of interest of management, board members and shareholders". RCC compelled BoDs of SCs to make sure that the company's governance arrangement is such that it ensures the proper monitoring of the company's financial statements and positions. RCC also cover issues of conflict of interest and driving benefits from third parties, in a very detailed manner. Furthermore, RCC also deals with monitoring and managing potential conflicts of interest of board members and, yet there is no specific provision that provides for the obligation of BoDs to monitor and manage the conflict of interest that might arise by the management and shareholders. Bank's Corporate Governance is far more explicit.

The seventh key function that OECD's *Principle* expected from BoDs is "to ensure the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards". RCC required BoDs to ensure the appropriate systems of control and in particular, systems for risk management, financial and operational control, and compliance are put in place. The supervisory board is expected to supervise the auditing of the financial affairs of SCs and to submit the required books and accounts to the auditors of the company. Bank's Corporate Governance is more complete and pertinent in addressing these issues.

The final key function that OECD's *Principle* expects from BoDs is to oversee the process of disclosure and communications. There is no specific provision in RCC that obliges BoDs to establish a mechanism that ensures disclosure and communication. Yet, BoDs are mandated to refuse to provide the information required by shareholders where disclosure of the information is prohibited by law or doing so would in its opinion might cause significant damage to the company. Bank's Corporate Governance explicitly requires BoDs to put in place disclosure and communication policies and procedures, which is much more advanced than RCC.

4.7.5. Findings on the Ability of the Board to Exercise Independent Judgement

OECD's *Principle* expect the board to have the ability to exercise objective independent judgement on corporate affairs include four sub-supporting principles under it. The first of these key responsibilities expects BoDs to assign a sufficient number of non-executive board members who are capable of exercising independent judgement where there is a potential for conflict of interest. RCC on top of introducing executive and non-executive BoD members, mandates them so as they assign members of non-executive who shall exercise "…independent judgement to tasks where there is a potential for conflict of interest". Bank's Corporate Governance is silent on this issue.

The second of the sub-supporting principles of OECD's *Principle* urges BoDs to consider setting up specialised committees to support the full board in performing its functions. RCC requires the formation of risk management sub-committees and yet, it does not explicitly provides for the establishment of remuneration sub-committee. It also mandates, BoDs to grant the sub-committees with powers and responsibilities without exceeding the legal mandates given to the BoD itself. Bank's Corporate Governance on Corporate Governance of banks, on the contrary, is very detailed and comprehensive, on the types of sub-committees to be established as well as on the duties and responsibilities of these sub-committees. However, RCC is not explicit on the meeting time and reporting to the full board by the sub-committees.

The third of the sub-supporting principles of OECD's *Principle* obligates BoDs members to have the ability to commit themselves effectively to discharge their responsibilities. RCC behooves the commitment of members of BoDs in an indirect way, i.e., by expecting from them to have diligence expected of a *bonus pater familias*. In contrast, Bank's Corporate Governance demands the commitment of BoD members in discharging their responsibilities. On top of providing for the possibility of loss of board seat, it has attached the remuneration payable to the members of BoDs to their attendance of BoD meetings within that year.

The last of the sub-supporting principles of OECD's *Principle* obliges BoDs to regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences. RCC is missing the inclusion of this most important aspect. However, clause 5.12 of EICG's Corporate Code of Conduct is more relevant by providing "the board should conduct performance evaluation on the effectiveness of the board as a whole, of the committee of the board and that of individual directors". Yet, Bank's Corporate Governance is much more explicit and it can be taken as a reference for non-bank SCs.

4.7.6. *Findings on Access to Accurate, Relevant and Timely Information by the Board*

RCC failed to specifically deal with important aspect of entitling BoDs of SCs to have access to accurate, relevant, and timely information. However, it requires the management BoD so as they provide information as needed by supervisory boards, which is also entitled to ask the management BoDs for submission of documents and information that is necessary for them to discharge their duties. Bank's Corporate Governance requires only the Audit Sub-Committee of BoDs of banks to have access to information. In relation to this sub-supporting principle, EICG's Corporate Code of Conduct under its clause 5.5 has stated "the board should receive full and timely information regarding all items on the agenda."

4.7.7. *Findings on Employee Representation on the Board*

As provided by OECD's *Principle* where it is possible for an employee to sit on the board, mechanisms should be developed to facilitate access to information and training for employee representatives, so that this representation is exercised effectively and best contributes to the enhancement of board skills, information and independence. RCC permitted an employee of SCs to be a member of BoD. Yet, such an employee cannot simultaneously hold the positions of board chairmanship and CEO, which is considered by OECD's *Principle* as indicator of "a good practice" as it "…helps to achieve an appropriate balance of power, increase accountability and improve the board's capacity for decision making independent of management". However, RCC did not provided for access to obtain information and the training related issues for employee who sits in BoDs. On this issue, clause 5.11 of EICG's Corporate Code of Conduct is much more pertinent as it has stated "all directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge". In stark contrast to RCC, Bank's Corporate Governance prohibited an employee's membership in BoD of Banks. From the interview conducted with the Legal Expert of NBE, it can be understood that the central bank staunchly opposes the permissive stand taken by RCC.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

This final Chapter of this study dealt with conclusions and recommendations. The conclusions that are drawn from the study so far conducted are concisely highlighted. Finally, the recommendations that are aimed at suggesting the remedies for the deficiencies identified by the study are put forward.

5.1. CONCLUSIONS

RCC recognized BoDs as the most important and key organ in the management of SCs and it makes BoDs responsible for decision making on the major businesses of the company. It has also mandated them to oversee the general affairs of the company. In addition, to recognizing the two-tiered board structure, and allowing non-shareholders to be a member of the board, RCC have considerably amended the role and responsibilities of BoDs. RCC has come up with an illustrative list of roles and responsibilities of BoDs, in addition to the roles the responsibilities of directors, conferred unto them by the shareholder's general meeting and MoA of the company. RCC also have remedied the possibility of fusion of power in which a member of board holds both the board chairmanship and CEO positions.

RCC has shifted the burden of proof unto the member of BoD, otherwise any damage to the company due to directors will entail on them both civil and criminal liabilities. The civil liability is extended to the extent of affecting the private property of the board member who is found guilty for infringing his/her duties. By including an elaborate listing of roles and responsibilities of BoDs and by imposing sever civil and criminal liabilities on BoDs, RCC has tried to address corporate governance problems which were said to be rampant due to the inefficiencies of the Partially Repealed Commercial Code.

This study has revealed that the roles and responsibilities that are given to BoDs of SCs by RCC are relatively exhaustive as compared to the Commercial Code it has repealed. The literature review as well the interviews conducted for the purpose of this study conclusively showed that OECD’s *Principles*, in general, and the contents of the sixth principle of OECD, which regulated responsibilities of boards, in particular, are taken into account when drafting RCC. When seen from the perspective of the seven sub-supporting principles of the *Principles of Responsibilities of the*

Board as included in the OECD's *Principles*, the findings of this study have revealed that:

5.1.1. On acting on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders, RCC has well accommodated and addressed these key elements, while Bank's Corporate Governance has dealt only with the duty of care while it has neglected the duty of loyalty;

5.1.2. On treating all shareholders fairly, there is no provision in RCC to this end, while Bank's Corporate Governance cannot be expected to address the issue as only one class of shares is recognized for banks;

5.1.3. On applying high ethical standards and taking into account the interests of stakeholders, both RCC and Bank's Corporate Governance are defective in addressing this key role;

5.1.4. From the key functions of BoDs that are listed out by OECD's *Principle*:

5.1.4.1. The first one which relates to oversight over the company's risk management, RCC has tried to include most of the points envisaged by this sub-principle but it is not as exhaustive as that of Bank's Corporate Governance;

5.1.4.2. On the second key function of monitoring the effectiveness of the company's governance practices and making changes as needed, both RCC as well as Bank's Corporate Governance have fairly addressed it;

5.1.4.3. On the third key function of selecting, compensating, monitoring, and, when necessary, replacing key executives and overseeing succession planning, RCC gave such mandate to the management BoDs and to the supervisory board. Bank's Corporate Governance also gave the same mandate to BoDs of banks. However, there is no provision neither in RCC nor in Bank's Corporate Governance that deals with the succession planning of the key executives of the company;

5.1.4.4. On aligning key executive and board remuneration with the longer-term interests of the company and its shareholders, which is fourth key function of BoD, RCC has failed in mandating the BoDs to decide on the remuneration to be paid to the key executives, while Bank's Corporate Governance is relatively exhaustive;

5.1.4.5. On ensuring a formal and transparent board nomination and election procedures, that is the fifth key function of BoD, RCC indirectly enabled BoDs of SCs to establish a nomination and election sub-committee. Bank's Corporate Governance has included detailed obligations on BoDs so that they ensure a formal and transparent board nomination and election procedures;

5.1.4.6. On the key function of monitoring and managing potential conflicts of interest of management, board members and shareholders, RCC compelled BoDs to exercise such function in a very detailed fashion although it has no specific provision that imposes an obligation on BoDs to monitor and manage the conflict of interest that might arise due to the management and shareholders of the company. However, Bank's Corporate Governance is much more explicit;

5.1.4.7. On the seventh key function of ensuring the integrity of the corporation's accounting and financial reporting systems, RCC has exhaustively addressed it. But Bank's Corporate Governance is much more comprehensive and pertinent;

5.1.4.8. On the overseeing the process of disclosure and communications, there is no explicit provision in RCC while Bank's Corporate Governance is explicit.

5.1.5. From the four sub-supporting principles which requires the board to have the ability to exercise objective independent judgement on corporate affairs:

5.1.5.1. On the first one, RCC in addition to introducing executive and non-executive BoD members, it has mandated them to assign members of non-executive board who are empowered to exercise "…independent judgement to tasks where there is a potential for conflict of interest", while Bank's Corporate Governance is silent on the issue of creating committees to cases that might involve conflict of interest;

5.1.5.2. On the second sub-supporting principle dealing with the establishment of sub-committees, RCC required the formation of risk management sub-committees and mandated BoDs to grant to the sub-committees powers and responsibilities that are within their legal mandates. Bank's Corporate Governance, is very detailed and comprehensive, both on the types of sub-committees to be established and on the duties and responsibilities of these sub-committees;

5.1.5.3. On the third sub-supporting principles which compels BoDs members to have the ability to commit themselves effectively to discharge their responsibilities, regrettably RCC does not deal with it directly. Yet, Bank's Corporate Governance demands the commitment of members of BoD in discharging their responsibilities and in addition to envisaging the possibility of removing the lackluster member from the board seat, it has attached the remuneration payable to them to their attendance of meetings;

5.1.5.4. On the last of the sub-supporting principles which obliged BoDs to regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences, RCC has missed this most important aspect. Yet, Bank's Corporate Governance is much more explicit and it can be taken as a benchmark for non-bank SCs;

5.1.6. Both RCC and Bank's Corporate Governance are lacking in dealing with this most important aspect of authorizing BoDs to have access to accurate, relevant, and timely information. However, the BoD is obliged to provide information as needed by supervisory boards, which is also is entitled to ask the BoDs for submission of documents and information that is necessary for them to discharge their duties; and

5.1.7. Although as opposed to Bank's Corporate Governance, RCC has allowed for the participation of employees in board of SCs and in a way it avoids fusion of power, it is lacking in providing for such employee representative to have access to information and obtaining the necessary trainings.

5.2. RECOMMENDATIONS

Having thoroughly scrutinized the roles and responsibilities of BoDs of SCs vis-à-vis OECD's *Principles* and Bank's Corporate Governance, the writer recommends the following:

5.2.1. On top of the existing numerous legislations, Ethiopia has enacted the Capital Market Proclamation, which obliges non-government owned securities exchange, derivatives exchange, or over the counter-trading platforms to be established as SCs. In addition, Ethiopia is on the verge of ushering foreign banks to partner with Ethiopian banks, which are incorporated as SCs. Ethiopia is also under the process to be a member of the World Trade

Organization. All these of these calls Ethiopia, to put in place robust corporate governance scheme that will effectively regulate all types of SCs;

5.2.2. As RCC is enacted just a year ago, it might be too much at this time to ask for its revision. However, RCC under its Articles 4 and 5 had mandated the Council of Ministers and MoTRI to issue Regulations and Directives, respectively, that are necessary for the proper implementation of RCC. The writer of this study recommends so as the Council of Ministers issues Regulations on Code of Corporate Governance that shall be compulsorily applicable to all SCs operating in Ethiopia. MoTRI, on the other hand, shall issue detailed Directive to execute the Regulations on Code of Corporate Governance that is to be enacted by the Council of Ministers;

5.2.3. The Code of Corporate Governance that should be enacted by the Council of Ministers and the Directive by MoTRI should in general address all of the six principles that are included in OECD's Principle. In particular, the Code of Corporate Governance, *inter alia*, should:

5.2.3.1. Establish an autonomous government organ that oversees the effective implementation of the Code of Corporate Governance;

5.2.3.2. Entitle BoDs to act on a fully informed basis;

5.2.3.3. Coerce BoDs of SCs who has different classes of shares to treat all shareholders fairly;

5.2.3.4. Oblige BoDs to apply high ethical standards and to take into account the interests of all stakeholders;

5.2.3.5. Expect from all SCs to develop Code of Conduct on Ethics, which is applicable to all BOD members and key executives and which shall also clearly set out the limits on the pursuit of private interests;

5.2.3.6. Mandate BoDs to establish a formal and transparent board nomination and election process;

5.2.3.7. Calls for BoDs to develop and disclose a remuneration policy statement that covers board members and key executives;

5.2.3.8. Urge BoDs to establish various sub-committees including Audit Sub-Committee, Risk Management and Compliance Sub-Committee, Human Resource Affairs Sub-Committee and Remuneration Sub-Committee and to grant them with the appropriate powers and responsibilities that enables them to effectively discharge their roles and responsibilities;

5.2.3.9. Oblige BoDs to commit themselves to effectively to discharge their roles and responsibilities and attach the remuneration payable to members of BoDs to their commitment to discharge the roles granted and responsibilities imposed on them by law and the by-laws of the company;

5.2.3.10. Coerce BoDs to evaluate and appraise their performance and assess their mix;

5.2.3.11. Entitle both the management and supervisory BoDs of SCs to have access to accurate, relevant and timely information in order to enable them fulfil their roles and responsibilities;

5.2.3.12. Allow the participation of employees of all SCs (both in financial and non-financial SCs) as a member of BoDs but in a way it avoids fusion of power; and

5.2.3.13. Force BoDs to implement mechanism to facilitate access to information and training for all employee representatives in BoDs, so that this representation be exercised effectively and best contributes to the enhancement of the board's skills, information and independence.

5.2.4. Finally, the Code of Corporate Governance to be promulgated by the Council of Ministers, which should bind all share companies that intends to operate in Ethiopia, shall take into account all of the positive aspects of Bank's Corporate Governance and EICG's Code of Corporate Governance that are identified by this study.

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ፈቃዱ ጴጥሮስ ገ/መስቀል (2014 ዓ/ም), *የኢትዮጵያ የኩባንያ ሕግ* ፤ 3ኛ ዕትም (አዲሱ የንግድ ሕግ የተካተተበት), አሳታሚ፡ ፋር ኢስት ትሬዲንግ ኃላ/የተ/የግል ማኅበር።

<table>
<tr><th colspan="2">APPENDIX I: INTERVIEW QUESTIONS</th></tr>
<tr><td colspan="2">These interview questions are prepared for the below-listed respondents to gather information about the roles and responsibilities of BoDs of SCs as included in RCC, Bank's Corporate Governance, and OECD's Corporate Governance Principles. The cooperation of the respondents is highly desirable, and the information provided will be used unanimously and only for academic purposes.</td></tr>
<tr><th>Respondents</th><th>Questions to the Respondents</th></tr>
<tr><td>Respondent A: one of the Experts who participated in the drafting of RCC, email interview conducted on May 22nd 2022, for 30 minutes;</td><td>1. What do you think were the major reasons that necessitated the revision of the Partially Repealed Commercial Code?
2. Do you think the problems that necessitated its revision, can be properly addressed by RCC?
3. The laws of which country and international best practices are taken into account when drafting RCC?
4. Were OECD's corporate governance principles considered one of the best practices?
5. What do you think are the major changes that are brought by RCC regarding the corporate governance of SCs?</td></tr>
<tr><td>Respondent B: Legal Expert of the Legal Service Directorate of NBE, face-to-face interview conducted on May 24th, 2022, for 45 minutes;</td><td>1. What were the roles of NBE in the revision process of RCC?
2. Was OECD's Principles taken into account during the drafting of the Corporate Governance Code of NBE and RCC?
3. Why are SCs the preferred form of business organization for the financial sector as all those who are allowed to operate in this sector are obliged to be SCs?
4. Does NBE encourage companies that are engaged in the financial sector to adopt principle-based corporate governance or does it want its rule-based corporate governance to be followed?
5. Do you think BoDs of SCs play pivotal roles in the corporate governance of SCs? If so, why it is pivotal?
6. What do you think are the roles and responsibilities of BoDs of SCs?
7. Do you think it is appropriate for NBE to limit the remuneration payable to BoDs of financial institutions? Does the meagerness of the remuneration impact the eagerness of a person not to be a member of BoD? Do you think the amount set out is reasonable?</td></tr>
</table>

	8. Does NBE intends to review its Bank's Corporate Governance that regulates banks based on the provisions of RCC? If so, what changes are intended to be introduced? 9. How does NBE sees the fact that RCC allows the participation of the employee of the Company as a member of BoD as opposed to the Bank's Corporate Governance that prohibits such a situation?
Respondent C: Expert in the Share Companies and Trade Sectoral Associations Affairs Directorate of MoTRI, email interview conducted on May 30th 2022, for 20 minutes;	1. What were the roles of MoTRI in the revision process of RCC? 2. What do you think are the major changes that are brought by RCC regarding the corporate governance of SCs? 3. Do you think that the changes included in RCC ensure Ethiopia's global competitiveness as envisaged in its preamble? 4. What mandates are given to MoTRI, as one of the regulators of financial SCs, by RCC about the governance of SCs? 5. How does MoTRI intends to enforce the mandates given to it by RCC? 6. Do you think BoDs of SCs play pivotal roles in the corporate governance of SCs? If so, why is it pivotal? 7. What do you think are the roles and responsibilities of BoDs of SCs? 8. Do you know that RCC allows the introduction of a two-tier board structure? Do you know that RCC allows a non-shareholder as a board member? 9. Does MoTRI intends to come up with a Code of Corporate Governance that regulates SCs? 10. What should be done to make more effective the provisions included in RCC relating to the corporate governance of SCs? 11. What is the current number of actively registered SCs as per your records?
Respondent D: Expert at Ethiopian Institute of Corporate Governance of AACC, email interview conducted on May 23rd and 24th 2022, for 40	1. How many SCs so far have agreed to endorse ECGI's Code of Corporate Governance? 2. How many of these are financial and non-financial SCs? 3. Is there any study conducted by your Institute on how many of the SCs have tried to implement ECGI's Code of Corporate Governance? If so, can you share it with me? 4. Is there any update made to ECGI's Code of Corporate Governance as of 2018? If so, can you share it with me? 5. Do you intend to update ECGI's Code of Corporate Governance based on the

minutes;	provisions of RCC? If so, when? What will you think the update includes? 6. Any information or document that you think is helpful and can share with me is welcome.
Respondent E: Board Member of Nisir Microfinance Institutions SC, email interview conducted on May 26th, 2022, for 25 minutes;	1. Do you think BoDs of SCs play pivotal roles in the corporate governance of your microfinance? If so, why it is pivotal? 2. What do you think are the roles and responsibilities of BoDs of microfinance? 3. How do you intend to implement the two-tier board structure and non-shareholder board structure as envisaged by RCC? 4. Does your microfinance have a code of conduct for its BoDs on how it should operate? If so, what are the issues addressed by it? 5. Do you think that the effectiveness of BoD impacts the performance of your microfinance? If so, in what aspects?
Respondent F: Legal Services Director and Secretary of Dashen Bank SC, face-to-face interview conducted on May 23rd, 2022, for 25 minutes;	1. Do you think BoDs of SCs play pivotal roles in the corporate governance of your bank? If so, why it is pivotal? 2. What do you think are the roles and responsibilities of BoDs of banks? 3. Do you know that RCC allows employees to be members of BoD as opposed to the prohibition by the Corporate Governance Directive of NBE on banks? 4. How do you intend to implement the two-tier board structure and non-shareholder board structure as envisaged by RCC? 5. Does your bank have a code of conduct for its BoDs on how it should operate? If so, what are the issues addressed by it?
Respondent G: former Judge and currently Legal Consultant and Attorney-at-Law, voice interview conducted on May 27th 2022, for 20 minutes;	1. What do you think were the major reasons that necessitated the revision of the Partially Repealed Commercial Code? 2. The laws of which country and international best practices are taken into account when drafting RCC? Do you think, OECD's Corporate Governance Principles are taken into account as one of the best practices? 3. What do you think are the major changes that are brought by RCC concerning the corporate governance of SCs? 4. Do you think BoDs of SCs play pivotal roles in the corporate governance of SCs? If so, why is it pivotal? 5. What do you think are the roles and responsibilities of BoDs of SCs?