



**ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE**

**CORPORATE GOVERNANCE IN BRANCHES OF FOREIGN COMPANIES
IN ETHIOPIA: ANY DIFFERENT FROM LOCAL ETHIOPIAN COMPANIES?**

BY: BELAYNEW ASHAGRIE

ADVISOR: ZEKARIAS KENEEA (Associate Professor)

April, 2014

By: Belaynew Ashagrie

**CORPORATE GOVERNANCE IN BRANCHES OF FOREIGN COMPANIES
IN ETHIOPIA: ANY DIFFERENT FROM LOCAL ETHIOPIAN COMPANIES?**

Submitted in partial fulfillment of the requirements for the Masters
Degree of Laws (Business Law)

College of Law and Governance, Addis Ababa University

Addis Ababa, Ethiopia

March, 2014

Letter of Declaration

I, Belaynew Ashagrie, declare that this thesis is my original work and it has never been presented in any other University. All source materials used in this work have been duly acknowledged. It is hereby presented in partial fulfillment of the requirements for the award of LL.M Degree in Business Law.

Candidate: Belaynew Ashagrie

Signature _____

Date _____

Approved by: Zekarias Keneaa (Associate Professor)

Signature _____

Date _____

Approval Sheet by Board of Examiners

**CORPORATE GOVERNANCE IN BRANCHES OF FOREIGN COMPANIES
IN ETHIOPIA: ANY DIFFERENT FROM LOCAL ETHIOPIAN COMPANIES?**

Approved by Board of Examiners

Advisor- Zekarias Keneaa (LL.B, LL.M), Signature _____ Date _____

Examiner- _____ Signature _____ Date _____

Examiner- _____ Signature _____ Date _____

TABLE OF CONTENTS

Acknowledgment	iv
Acronyms	v
Abstract	iv
CHAPTER ONE: GENERAL INTRODUCTION	1
1.1. Background.....	1
1.2. Statement of the Problem.....	4
1.3. Objectives of the Study.....	5
1.4. Scope of the Study.....	6
1.5. Methodology.....	7
1.6. Limitation of the Study.....	7
1.7. Significance of the Study.....	8
Chapter Two: Corporate Governance in General	9
2.1. Meaning of Corporate Governance.....	9
2.2. The Nature of Corporate Governance.....	12
2.3. Evolution and Theories of Corporate Governance.....	14
2.3.1. Evolution of Corporate Governance.....	14
a. The period of familial governance (c.1800-1920)	15
b. The period of managerial governance (1920-1970)	16
c. Post-managerial governance (from 1970)	17
2.3.2. Theories of Corporate Governance.....	19
a. Theory of Agency.....	19
b. Theory of Stewardship.....	21
c. Theory of Stakeholder.....	21
2.4. Principles of Corporate Governance.....	22
2.4.1. Principle 1: Rights of Shareholders.....	24
2.4.2. Principle 2: Board of Directors.....	26
2.4.3. Principle 3: Stakeholders.....	32

2.4.4.	Principle 4: Disclosure and Transparency	34
2.5.	The Need for Corporate Governance	35
2.6.	Contemporary Issues in Corporate Governance.....	36
2.6.1.	Separation of Ownership and Management	36
2.6.2.	Corporate Social Responsibility.....	38
Chapter 3: Overview of Corporate Governance in Ethiopia		40
3.1.	Literature Review on Corporate Governance in Ethiopia.....	40
3.2.	The Legal Regime Governing Corporate Governance in Ethiopia	43
3.2.1.	The Ethiopian Commercial Code of 1960.....	43
3.2.2.	Special Laws.....	45
3.3.	Mechanisms/Principles of Corporate Governance in Ethiopia	49
3.3.1.	Board of Directors.....	49
3.3.2.	Manager.....	53
3.3.3.	Meetings of Shareholders.....	54
3.3.4.	Auditors	55
Chapter 4: Foreign Companies and their Operation in Ethiopia		57
4.1.	Foreign Companies and their Operation in other Countries.....	57
4.1.1.	China.....	57
4.1.2.	Germany.....	58
4.1.3.	France.....	60
4.2.	Foreign Companies Operating in Ethiopia	61
4.3.	Forms and Treatment of Foreign Companies Operating in Ethiopia.....	62
4.3.1.	Forms allowed under Investment Proclamation.....	64
4.4.	Branch Foreign Companies in Ethiopia	67
4.4.1.	What are Branches of Foreign Companies?	67
4.4.2.	Branches of Foreign Companies versus Subsidiary Companies.....	76
4.4.3.	Commercial Registration and Investment Permit of Branch Foreign Companies in Ethiopia.....	79
4.4.4.	Rights and Duties of Branch Foreign Companies.....	82

Chapter 5: Corporate Governance in Branches of Foreign Companies in Ethiopia87

5.1.	The Relationship between a Branch Foreign Company and a Parent Company.....	87
5.1.1.	Governance Matters in Branches of Foreign Companies.....	88
5.1.2.	The Laws and Company Documents Governing the Branch of Foreign Company.....	88
5.1.2.1.	The Law.....	88
5.1.2.2.	Company Documents	89
5.2.	The Power/Autonomy of the Branch Foreign Company.....	92
5.3.	The Governance of Branches of Foreign Companies in Ethiopia.....	94
5.3.1.	Governance Aspects under Branch Foreign Companies.....	94
5.3.1.1.	Management.....	94
5.3.1.2.	Shareholders.....	103
5.3.1.3.	Corporate Disclosure.....	106
5.4.	Governance of Branch Foreign Companies versus Domestic Companies.....	109
5.4.1.	Which ones are Domestic Ethiopian Companies?.....	109
5.4.1.1.	Companies established by Law.....	109
5.4.1.2.	Companies established by Incorporation.....	110
5.4.2.	Generalizations of Corporate Governance of Branch Foreign Companies and Ethiopian Companies.....	110
5.4.3.	Sources of differences.....	113
5.4.3.1.	The Law.....	113
5.4.3.2.	Nature of Companies.....	114
5.4.4.	Differences in Corporate Governance.....	115
	Conclusion and Recommendations.....	117
	Bibliography.....	123

ምስጋና

እሴብሐ ለእግዚአብሔር ዘረድኣኒ። የረዳኝን እግዚአብሔርን አመሰግናለሁ። መዝ 68፥5

ይህ የመመረቂያ ጽሑፍ ዳር እስኪደርስ ድረስ በማማከር እገዛቸው ያልተለየኝ በአዲስ አበባ ዩኒቨርሲቲ የሕግና አስተዳደር ኮሌጅ ተባባሪ ፕሮፌሰር ዘካርያስ ቀነአ ከልቤ አመሰግናቸዋለሁ።

ክብርት ባለቤቴ ወ/ሮ ፍቅርተ ጌትነት በነዚያ አስቸጋሪ የእርግዝና ወራት እና ከወሊድ በኋላ በርታ፣ አትዘናጋ፣ የት ደረስክ? ምን ቀረህ? የሚለው ድምጽሽ ብርታት ሰጥቶኛልና እነሆ ለዚህ በቃሁ። ፍቅሬ ሆይ! ልባዊ ምስጋናዬ ይድረስሽ።

አባቴ አቶ አሻግሬ ምትኩ የአንደኛ ደረጃ እና የከፍተኛ ሁለተኛ ደረጃ ትምህርት ቤት ተማሪ ሳለን ምን ጊዜም ከአንደበትህ የማይለየው አንብቡ፣ ታላቅ ሰው ሁኑ፣ በርቱ፣ እያልክ ለኛ ለልጆችህ ትመክረን የነበረው እነሆ ዛሬም ወደ ፊትም በልቤ ውስጥ ይኖራል። ያ ሁሉ ድካምህ ለዚያን ጊዜ ብቻ መስሎኝ ነበር፤ ለካ ምክርህ እና ተግሳጽህ ዛሬንም የሚሻገር ኑሯል። ይኸው ይህ ሁለተኛው ፍሬዬ ነው። እነሆ ምስጋናዬ ይድረስህ። በፍቅር ያሳደግሽኝ እናቴ ወ/ሮ ሥራ ደሴ ላንቼም ምስጋናዬ ይድረስሽ። ሃሳባችሁ ከኔ ጋር ለሆነው ወንድሞቼ ጋሻው እና አስናቀው፣ እሁቴ አበበች እና የቀራችሁትም አመሰግናችኋለሁ።

ወ/ሮ ሰብለ ጌትነት፣ ባለቤትሽ አቶ ተፈራ መኮንን እና ልጆቻችሁ፣ ድጋፋችሁ፣ የሁልጊዜ ጉትነታችሁ መቼም ቢሆን የሚረሳ አይደለም። ዘመናችሁን ሁሉ እግዚአብሔር ይባርክላችሁ። ኂሩት ጌትነት፣ ያንቼም ድጋፍ እንዲሁ ነውና ምስጋናዬ ይድረስሽ።

የክፍል ጓደኞቼ፡- ወርቅነህ (ወርቅ፣ Gold) ልዩ የሆነ የማይረሳ የሁለት ዓመት ቆይታ ነበረን። ፈጽሞ አልረሳውም! የምሥራቆቼ በሪሁን እና ዲ/ን ዮናስ ጊዜው አጠረ እንጅ የማልረሳውን የደስታና የወንድማማችነት ጊዜ አሳልፈናል። ጄቱ ኢደሳ፣ በዚህ ሥራ ላይ የተለያዩ ሃሳቦችን በማንሳትና በመወያየት ለሰጠሽኝ እገዛ ምስጋናዬ ይድረስህ።

ይህን የመመረቂያ ጽሑፍ ሥራ ለቃለ መጠይቅ ፈቃደኛ በመሆን፣ የተለያዩ መረጃዎችን በመስጠት ጊዜያችሁን ሰውታችሁ የተባበራችሁኝን የግልም ሆነ የመንግሥት መሥሪያ ቤት ሠራተኞች አመሰግናችኋለሁ።

ምንም ነገር አንተባበርህም ብላችሁ ደጃፋችሁን የቆለፋችሁብኝ ሰዎች (የተፈጥሮም ሆነ የሕግ) አይኔን ከፍቼ ወደ ሌላ አማራጭ እንድመለከት፣ ከእናንተ አፍ በላይ እንድሰማ አስችላችሁኛልና ብዙም አልተከፋሁባችሁም። የአንዳንዶቻችሁ ነቀፋ ደግሞ የበለጠ እንድተጋ አድርጎኛልና አመሰግናችኋለሁ።

ACRONYMS

AACCSA: Addis Ababa Chamber of Commerce and Sectoral Associations

ADB: Asian Development Bank

ASX: Australian Securities Exchange

CEO: Chief Executive Officer

SEO: Senior Executive Officer

CSR: Corporate Social Responsibility

EIA: Ethiopian Investment Agency

EICG: Ethiopian Institute of Corporate Governance

FDI: Foreign Direct Investment

FDRE: Federal Democratic Republic of Ethiopia

MFI: Micro Finance Institutions

NBE: National Bank of Ethiopia

OECD: Organization for Economic Cooperation and Development

PLC: Private Limited Company

SOX: Sarbanes-Oxley Act

UNCTAD: United Nations Commission for Trade and Development

UK: United Kingdom

US: United States

DEDICATION

To my first son

Zekaryas /Teklebirhan/ Belaynew

ABSTRACT

Corporate governance is understood as a system of governance of companies. At present, it is becoming an essential component of modern corporations which can determine the success or failure of companies. Due to this, in the age of corporations, countries in the world have started to look seriously the governance of companies which operate in its land.

There are various forms for foreign companies to operate business in Ethiopia. Establishing a branch of foreign company is one of such forms in order to operate business in Ethiopia. In Ethiopia, branches of foreign companies are highly engaged in various business sectors.

The Ethiopian legal regime concerning branches of foreign companies has insufficient provisions on some governance aspects of such companies. With the absence of sufficient laws, there will be multifaceted impacts on those parties or stakeholders having various dealings with branches of foreign companies in Ethiopia. Such stakeholders include, but not limited to, creditors, the government, employees, customers of the branch foreign companies and the public in general.

This thesis is concerned with investigating corporate governance of branches of foreign companies operating in Ethiopia. It tries to identify major problems in the Ethiopian law relating to governance of branches of foreign companies. Such problems would have tremendous negative consequences in the future unless required measures are taken to correct the problems. Hence, the thesis is intended to inform the stakeholders, particularly, the government to make reform of laws and other kinds of measures.

CHAPTER ONE

1. GENERAL INTRODUCTION

1.1. Background

Corporate governance is one of the basic components of the modern company law regime. It has got a wider attention in the contemporary corporatization world.¹ In some cases, it is becoming the determinant of the success or failure of a company. There are conditions where problematic and defective corporate governance system resulted in tremendously negative impacts. The best witnesses for this assertion is the 1997 Asian countries financial crisis, the crises and scandals in American big companies like Enron, WorldCom, Tyco, Royal Aholt and Parmalat² etc, and the 2007/2008 world financial crisis which have began in USA. These crises are attributed to defective corporate governance. Even after the scandals and crises in USA, there were occasions where the United Nations was engaged in the consideration of corporations.³ These harmful historical events overemphasized the consideration and reform of corporate governance.⁴ Further, due to these and other multiple factors, corporate governance has started to get a special emphasis and it has its own paramount importance whether in the developed or developing or emerging economies.

There are emerging literatures and legal regimes concerning corporate governance in every corner of the world. The emergence of the subject matter is in fact the phenomenon of the end of nineteenth century and the beginning of the twentieth century. Abroad, very much is said in literatures about the issue of corporate governance. When we come to Ethiopia, even though there is no bad history of crises of companies like the West and Asia, it is the right time to talk much about it.

There are several reasons for Ethiopia to deal much on corporate governance. In the first place, as it is claimed by the government, the country's business is developing. This is supported by the emergence of companies which are engaged in various trading and investment activities. Next, Ethiopia is on the way to join the World Trade Organization (WTO) which is expected from Ethiopia so many tasks. It has to adjust its corporatization system in order to compete with the

¹ David Larcker and Brian Tayan, *Corporate Governance Matters: A Closer Look at Organizational Choices and their Consequences*, (Pearson Education, Inc.), 2011, p. 1

² Morten House, *Boards, Governance and Value Creation*, (Cambridge University Press, 2007), p. 27; Larcker and Tayan has also written on the scandal of these and other American corporations.

³ *Ibid*, 2007, p. 26

⁴ *Ibid*, p. 26, 28

incoming companies. It is known that there are few companies in Ethiopia despite the legal and institutional frameworks for companies are laid down in the second half of the twentieth century. At present, corporatization in Ethiopia is at its lowest level particularly when it is compared with private limited companies.⁵ The noticeable corporations in Ethiopia are those few financial (bank, insurance and microfinance) corporations, some beer and cement factories, and government owned public enterprises. In the future when the country is joining the global business through WTO, it has to enhance the formation of corporations. This task should be supported by sufficient and clear law regulating the matters concerning corporate governance.

Corporate governance is, in fact, not alien to the Ethiopian laws. It is provided under the Commercial Code of Ethiopia since 1960. Despite it has been given less attention in early periods, at present much emphasis shall be given in order to suit itself with the existing demand.

It is noted that the Ethiopian legal regime on corporate governance is by and large provided under the Commercial Code⁶ of 1960 and some other substantive legislations. Some laws which are concerned with corporate governance are found in some Proclamations⁷ and Banking, Insurance and Microfinance Directives issued by the National Bank of Ethiopia.⁸ The provisions of the Commercial Registration and Business Licensing Proclamation⁹ incorporate few provisions concerning corporate governance matters.

Unlike some other countries which have a separate code of corporate governance, until now Ethiopia lacked to have a separate code of corporate governance.¹⁰ Whether the companies are

⁵ For detail discussion on the emergence of companies in Ethiopia, see Fekadu Petros, 'Emerging Separation of Ownership and Control in Ethiopian Share Companies', *Mizan Law Review*, Vol. 4, No.1, March 2010, p. 13-16

⁶ Book II, Title VI, Chapter 4, Articles 347-428 of the Commercial Code of the Empire of Ethiopia, 1960, Proclamation No 166, Extraordinary, Neg. Gaz. Year 19, N0 3 (Hereinafter the Commercial Code of 1960)

⁷ See Banking Business Proclamation, 2008, Proclamation No. 592, Federal Neg. Gaz. Year 14, No 57 (Hereinafter Banking Business Proclamation No 592/2008); Insurance Business Proclamation, 2012, Proclamation No. 746, Federal Neg. Gaz. Year 18, No. 57 (Hereinafter Insurance Business Proclamation No 746/2012); and Microfinance Business Proclamation, 2009, Proclamation No. 626, Federal Neg. Gaz. Year 13, No 33 (Hereinafter Microfinance Business Proclamation No 626/2009)

⁸ The directives issued by the National Bank of Ethiopia concerning banks, insurance and microfinance business are accessible at www.nbe.gov.et

⁹ Commercial Registration and Business Licensing Proclamation, 2010, Proclamation No. 686, Federal Neg. Gaz. Year 16, No 42 (Hereinafter Commercial Registration and Business Licensing Proclamation No. 686/2010)

¹⁰ At present there are movements for introducing the code of corporate governance in Ethiopia. For this purpose the Addis Ababa Chamber of Commerce and Sectorial Association (AACCSA) has established an Ethiopian Institute of Corporate Governance (EICG) on September of 2013. This institute is charged with preparing the code of corporate governance to Ethiopia.

incorporated in Ethiopia or incorporated abroad but operating in Ethiopia by opening subsidiary or a branch company, the corporate governance matter is non-escapable.

According to the origin or nationality of companies, companies may be either domestic or foreign. The companies which are incorporated in Ethiopia are deemed to be Ethiopian companies irrespective of the place where the company is operating. On the other hand, the companies which are incorporated abroad but having a subsidiary or a branch in Ethiopia are considered as foreign companies.

A foreign person who wishes to do business in Ethiopia may come and invest by passing through registration process. The registration processes are provided by the relevant provisions of the Commercial Code of 1960,¹¹ Commercial Registration and Business Licensing Proclamation No. 686/2010¹² and Investment Proclamation No. 769/2012.¹³

A foreign person may operate business in Ethiopia, basically, in three forms. The first one is through (original) incorporation. The provisions of the above mentioned laws said that a foreign company shall be registered (or as the case may be, obtain investment permit) in order to do business. This is what is commonly known as incorporation. Under this form of doing business the foreign company is originally incorporated in Ethiopia. In other words, there is no prior registration and incorporation in another country.

Another form of doing business in Ethiopia is through opening a subsidiary company. Subsidiaries are separate entities (from the parent company) which are established for expanding the business of the parent company. There are various reasons of establishing a subsidiary company. Under Ethiopian law, there are very few provisions providing for regulation of a foreign subsidiary company operating in Ethiopia. Article 556 of the Commercial Code of 1960 is one provision that gives a space for the operation of foreign subsidiary company in Ethiopia.

The third form for running business in Ethiopia is through opening a branch company. In the case of branch foreign company, similar with a subsidiary company, there is prior registration and incorporation of the parent company in another country. There are certain provisions of the

¹¹ See, for example, Articles 312-324 for Share Companies and Articles 510-520 for Private Limited Companies of the 1960 Commercial Code of Ethiopia

¹² Articles 10-15 of Commercial Registration and Business Licensing Proclamation No 686/2010

¹³ Articles 14-16 of Investment Proclamation, 2012, Proclamation No 769, Federal Neg. Gaz. Year 18, No 63 (Hereinafter Investment Proclamation No 769/2012)

Commercial Code, Investment Proclamation and Commercial Registration and Business Licensing Provisions which governs matters relating to registration of branches of foreign companies in Ethiopia.¹⁴

Branches of foreign companies do not have legal personality in most other countries. For example, in Germany, France and China branches of foreign companies do not have legal personality. In these countries, branches are simply the representatives of the parent company which are doing limited non-business activities. Such branches in those countries are similar with that of the Ethiopian counterpart known as commercial representatives. The Ethiopian law and practice grants legal personality to branches of foreign companies. Out of 402 existing branches of foreign companies in Ethiopia which are registered between September 1996 and July 2013,¹⁵ many of them are registered either as share companies or private limited companies. Quiet surely, the legal personality of branches of foreign companies blurs the distinction between a branch and subsidiary company.

Among the documents required to be presented at the time of registration of branches of foreign companies include memorandum and articles of associations of the parent company.¹⁶ In fact, this is also a common practice in Germany, France and China. This implies that these documents are the governing documents of both the parent company and its branch company in Ethiopia. Therefore, in this thesis, the corporate governance of foreign branch companies in Ethiopia is analyzed in the light of governance of domestic Ethiopian companies.

1.2. Statement of the Problem

This thesis is intended to explore how the corporate governance of the branches of foreign companies in Ethiopia is conducted. In particular, the thesis is conducted by comparing the corporate governance of domestic companies. It attempts to outline the points where the governance of branches of foreign companies is different from the domestic companies. Therefore, this thesis will raise and solve the following issues as much as possible.

¹⁴ See Article 556 of the Commercial Code of 1960, Article 14(1)(e) of the Investment Proclamation No 769/2012 and Article 13 of Commercial Registration and Business Licensing Proclamation No 686/2010

¹⁵ A data obtained from the Ethiopian Investment Agency via email communication on July 29, 2013. In addition, the list of foreign companies operating in Ethiopia are accessible from Ethiopian business directory websites such as www.2merkato.com, www.ethiopiainvestor.com, and www.ethioshoppingdirectory.com

¹⁶ Article 14(1)(e)(1) of Investment Proclamation No 769/2012

1. What are the relevant laws dealing with governance of companies in Ethiopia?
2. What is the scope of application of the 1960 Commercial Code provisions governing corporate governance?
3. What is the relationship of the parent company on the one hand and its branch company on the other hand?
4. What are the laws particularly used to regulate governance of foreign companies in general and branches of foreign companies in particular in Ethiopia?
5. Are the provisions of the 1960 Commercial Code sufficient to cover all corporate governance matters of branch foreign companies operating in Ethiopia?
6. How do Ethiopian institutions regulate the branches of foreign companies in Ethiopia? What major challenges are facing the institutions?

1.3. Objectives of the Study

The operation of foreign companies in the Ethiopian business sphere is increasing from year to year.¹⁷ The amount of capital run by companies, the areas in which companies are operating, the engagement of foreign nationals and the impacts of foreign companies is also showing increase.¹⁸ This in effect has created its own impacts on various legal, institutional and governance matters. Therefore, this thesis is intended to:

- Investigate the provisions of the law governing corporate governance of domestic companies;
- Show the sufficiency or otherwise of the Ethiopian law pertaining to governance aspects of foreign companies in Ethiopia;
- Distinguish the domestic companies from foreign companies; foreign companies having principal place of business or head office in Ethiopia, subsidiaries and branches of foreign companies;
- Explore the status according to which foreign companies are operating in Ethiopia in general; and in particular of branches of foreign companies;

¹⁷ See Table 2 below

¹⁸ See Tables 3 and 4 below

- Identify the relationship between the parent company situated abroad on the one hand and its subsidiaries and branches of foreign company in Ethiopia on the other hand;
- Investigate the relevant laws that are applicable to governance of branches of foreign companies;

1.4. Scope of the Study

This study is concerned with corporate governance in branches of foreign companies in Ethiopia. When we say corporate governance it concerns only companies limited by shares whose basic feature, among other things, is limited liability. This is because in companies limited by shares there exist large number of members whose sum capital is invested in the company. In such kinds of companies there is an interest of all members of the company. In other words, there is public money invested in companies limited by shares.

On the other hand, in private limited companies where there is no participation of large number of the public, public money invested is lower compared with share companies. This is because the maximum number of members of the companies is limited by law.¹⁹ In private limited companies, there are few members, possibly family members who are dormant/silent members. Thus, the money invested in private limited companies is the private property of the members.

Corporate governance is the concern of companies operating in a country irrespective of the nationality of the companies. In other words, corporate governance extends not only to domestic companies but also to foreign companies operating in one country. Out of the forms of doing business in Ethiopia, this thesis intends to explore corporate governance of those foreign companies which are operating by opening a branch company in Ethiopia.

The paper finds itself with the comparison of corporate governance of domestic companies with that of foreign companies, particularly of branches of foreign companies. Therefore, corporate governance of domestic companies will be studied in as much as it is helpful to compare with

¹⁹ The 1960 Commercial Code of Ethiopia says that the maximum number of members of private limited companies should not be more than fifty (50). See Article 510(2) of the Commercial Code. On the other hand, the Commercial Code does not provide the maximum number of the members of share companies. Therefore, a share company in Ethiopia may have even as much as the number of shares issued by the company. Further, the number of members of a share company may increase when the company increases its capital by issuing more shares and offers such shares to the public.

branch foreign companies. In addition, the experiences of foreign companies in other countries, particularly France, German and China will be explored.

Concerning the geographical limit of the study, it will be conducted in Ethiopia, particularly those foreign companies which are situated in Addis Ababa.²⁰ The federal government organs such as Ministry of Trade, the Ethiopian Investment Agency and their officials, will be visited and their officials will be interviewed. The branches of foreign companies which are studied in this thesis are those entering in to Ethiopia between September 1996 and July 2013.

1.5. Methodology of the Study

This thesis uses a range of primary and secondary sources. With respect to primary sources, the thesis is primarily intended to use different domestic, foreign and international legislations. The legislations governing corporate governance, commercial and business registration, investment laws of Ethiopia and some other countries are exploited.

An unstructured interview is conducted with the officials at the Ministry of Trade and Ethiopian Investment Agency. Further, in trying to know about companies, an interview was conducted with country representatives, directors, managers, presidents or other relevant personnel of branch foreign companies operating in Ethiopia.

With respect to secondary sources, different domestic, foreign and international books, journals, reports, guidelines are surveyed.

1.6. Limitation of the Study

The basic limitation of this study was difficulty of obtaining data either from government organs or foreign companies operating in Ethiopia. Since corporate governance requires the disclosure of management, financial and other aspects of companies, especially, the Heads of branch foreign companies may refuse to give information about their company.

In order to overcome these problems, the writer resorted to visit the websites of branches of foreign companies. However, another problem encountered in trying to use this option is the difficulty of

²⁰ The foreign companies which this thesis is emphasizing on are situated in all Regions of Ethiopia including Addis Ababa and Dire Dawa. However, the number of foreign companies operating across Regions in Ethiopia is an uneven.

accessing the websites of some of branch foreign companies. On top of that, some companies do not have websites.

Another option the writer used is to conduct deep interview with the officials at the Ethiopian Investment Agency. Such personnel of the EIA have knowledge of the operation and different governance aspects of branches of foreign companies.

1.7. Significance of the Study

Branches of foreign companies in Ethiopia are treated uniquely compared with some countries experiences. This drives us to give attention to governance of branches of foreign companies in Ethiopia. The paper enables to have a clear understanding of the demarcation between foreign incorporated companies having principal place of business or head office in Ethiopia, subsidiaries and branches of foreign companies. The paper gives a light on branches of foreign companies and their governance aspects in comparison with domestic companies.

The Ethiopian regime on corporate governance is provided by different sets of laws. These laws have not detailed laws on corporate governance matters. The significance of the paper can be looked from the perspective of enabling to understand the adequacy or otherwise and the measures to be taken in this regard.

Finally, as the study is a research on corporate governance of branches of foreign companies, it would open a door for further research concerning governance of foreign companies as a whole.

CHAPTER TWO

2. CORPORATE GOVERNANCE IN GENERAL

2.1. Meaning and Nature of Corporate Governance

There are so many definitions given by different writers and legislations on the subject of corporate governance. However, there is no common definition for the concept of corporate governance. It is also difficult to give a definition that all can agree on despite efforts to come up with such a definition. It is sometimes considered by writers as an “indefinable term, something – like love and happiness – of which we know the essential nature, but for which words do not provide an accurate description.”²¹ However, lack of an agreed-up on definition does not prevent us from looking at the definitions given to corporate governance by different writers, government reports, legislations, or other documents. Almost all texts on the subject matter of corporate governance start with providing definition. In this section, irrespective of many definitions of corporate governance, for the purpose of giving a shade on corporate governance, some of the definitions given by different sources are presented.

A conventional way of definition of term/s is taking the literal meaning of that term. As the term corporate governance is a combination of two words, ‘corporate’ and ‘governance’, defining both words separately and jointly will give us a full-fledged definition though not a single definition. As it is defined by Black’s Law Dictionary, the word ‘corporate’ is referring to corporation especially a business corporation.²² It is a business entity which is established by collecting capital from the public. On the other hand, governance is the act or process of governing.²³ Therefore, the combined reading of the two words, corporate governance, refers to an act or process of governing a business corporation.

The above definition of corporate governance is a conventional way of definition through splitting the words. Let me come back to some official and scholarly definitions given to ‘corporate governance’. The author of the book entitled “Thin on Top” defined ‘corporate governance’ in his

²¹ Jean Jacques du Plessis, Anil Hargovan and Mirko Bagaric, *Principles of Contemporary Corporate Governance*, (Cambridge University Press, 2011), 2nd ed., p. 1

²² Bryan A. Garner, *Black’s Law Dictionary*, (West Group, 2004), 8th ed., p. 364

²³ John L. Colley, Wallace Stettinius, Jacqueline Doyle and George Logan, *What is Corporate Governance?* (McGraw-Hills Companies, Inc., 2005), p.2

words as “the appropriate board structures, processes and values to cope with the rapidly changing demands of both shareholders and stakeholders in and around their enterprises.”²⁴ Another literature on the subject defined it as “corporate governance is the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. It encompasses the mechanisms by which companies, and those in control, are held to account.”²⁵

Corporate governance is also defined as “the system by which organizations are directed and controlled.”²⁶ This is one of the basic definition of corporate governance, which has been widely recognized, which was given in a report by the committee under the chairmanship of Sir Adrian Cadbury titled *The Financial Aspects of Corporate Governance* (the Cadbury Report). Following the definition tendered:

Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the directors include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The Board's actions are subject to laws, regulations and the shareholders in general meeting.²⁷

This definition of corporate governance has been endorsed in various other discourses on the subject, including the 1998 final report of the Committee on Corporate Governance (the Hampel Report) by Sir Ronald Hampel.

²⁴ Bob Garratt, *Thin on Top: Why Corporate Governance Matters and How to Measure and Improve Board Performance*, (Nicholas Brealey Publishing, 2003), p. 12

²⁵ Australian Security Exchange (ASX) Corporate Governance Council, *Corporate Governance Principles and Recommendations*, 2007, 2nd ed., p. 3; See also RCG Corporation Limited: Corporate Governance Principles and Practices, August 2012, p.

1

²⁶ The UK Financial Reporting Council and The London Stock Exchange, *The Committee on the Financial Aspects of Corporate Governance – The Cadbury Report* (May 1991), Chair: Sir Adrian Cadbury. As it is cited by Andrew Rathmell, Stephanie Daman, Kevin O'Brien and Aarti Anhal, in *Engaging the Board Corporate Governance and Information Assurance*, (RAND Corporation, 2004), p. 5

²⁷ The Cadbury Report is a report of the Cadbury Committee on the financial aspects of corporate governance. The committee was set up in May 1991 by the UK's Financial Reporting Council, the London Stock Exchange and the UK accountancy profession specifically to address the financial aspects of corporate governance. (There were different committees set up for the purpose of dealing with corporate governance. The first committee was set up in United States known as the Treadway Committee. It was set up set up to investigate fraudulent financial reporting by Wall Street firms. It preceded the Cadbury Committee.) See Alan Calder, *Corporate Governance: A Practical Guide to the Legal Frameworks and International Codes of Practice*, (Kogan Page Limited, 2008), p. 12

The Organization for Economic Cooperation and Development (OECD)²⁸ provides another perspective in its Principles of Corporate Governance by addressing five areas: (i) the rights and responsibilities of shareholders; (ii) the role of the stakeholders; (iii) the equitable treatment of shareholders; (iv) disclosure and transparency; and (v) the duties and responsibilities of the Board. It defines corporate governance as:

Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as the Board, managers, shareholders and other stakeholders, and spells out the rules and procedure for making decisions on corporate affairs. By doing this, it also provides the structures through which the company objectives are set, and the means of attaining those objectives and monitoring performance.²⁹

The definition given by the OECD is one of the most influential definitions concerning corporate governance not only for the members of the OECD but also for non-OECD member countries. Many countries have adopted the definitions and principles of corporate governance which are provided by the OECD.

So many definitions are given by different writers; however, it is not necessary to state all of them in this paper. At the same time, it is not wise to state all definitions since some writers define corporate governance in accordance with the context they are writing in.

The definitions given above have all tried to address corporate governance in its outer part by showing the general tasks in it. However, there are different issues which are subjects of corporate governance. The definitions of corporate governance do not attempt to go deep in to the specific tasks and issues in the veil of corporate governance. In addition, the definitions tell us that corporate governance is defined differently among scholars and official documents.³⁰

²⁸ The original member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The following countries became members subsequently through accession at the dates indicated hereafter: Japan (28th April 1964), Finland (28th January 1969), Australia (7th June 1971), New Zealand (29th May 1973), Mexico (18th May 1994), the Czech Republic (21st December 1995), Hungary (7th May 1996), Poland (22nd November 1996), Korea (12th December 1996) and the Slovak Republic (14th December 2000). The Commission of the European Communities takes part in the work of the OECD (Article 13 of the OECD Convention). OECD Principles of Corporate Governance, (OECD, 2004), p. 2

²⁹ OECD Principles of Corporate Governance, (OECD, 2004)

³⁰ For the detail discussion see Hussein Ahmed Tura, *Overview of Corporate Governance in Ethiopia: The Role, Composition and Remuneration of Boards of Directors in Share Companies*, Mizan Law Review, Vol. 6 No.1, June 2012, p. 47 (Hereinafter Hussein Ahmed, 2012)

Another distinct definition of corporate governance is the definition given by Morten Huse. He gave four groups of definitions to corporate governance.³¹ These are managerial definition, shareholder definition, stakeholder definition and firm definition. The managerial definition provides that “The board members and external actors are seen simply as instruments for management. From this perspective the accountability of board members is to serve management.” Accordingly, corporate governance “will be to employ or design techniques or systems that can secure the interests and values of the management.” On the other hand, under the shareholder supremacy definition of corporate governance “management and the board members are seen as instruments for the shareholders.” Moreover, in this definition, “the board is considered to be accountable to *all* shareholders; such accountability includes the monitoring of managerial opportunism and the potential exploitation of minority shareholders by majority shareholders.”

The stakeholder definition of corporate governance, also known as the triangulation or interaction definition “is an action-centered institutional approach. It explains firm-level corporate governance practices in terms of institutional factors that shape how actors’ interests are defined and represented. Corporate governance, according to this approach, is, ultimately, the outcome of interactions between multiple stakeholders or actors.” Finally, under the firm definition, “The firm is focused on in this definition, bearing in mind that corporate governance is not only about the distribution of value to various actors but also about creating values throughout the whole value chain. The double independence notion is important in this definition and requires that the board members do what is best for the company, and act impartially when representing all stakeholders. The accountability of the board members from this perspective is thus to do what is best for the corporation.”

2.2. The Nature of Corporate Governance

Corporate governance is an important tool in the present world which is required by all companies whether large or medium. It has an ability to determine the success or failure of a particular company. A company with effective corporate governance will sustain and become successful. On the contrary, those companies that do not have an effective system of corporate governance are on

³¹ Morten Huse, *Boards, Governance and Value Creation*, (Cambridge University Press, 2007), pp. 18-23

the edge of failure.³² This can be openly understood from the recent experience of the world's big companies which have failed owing to defective corporate governance.³³

It is after the failure and crises of corporations that the world started reconsidering its system of governance of companies. This may be proved by someone looking at the measures taken in different parts of the world. The UK Cadbury Report of 1992, the Sarbanes-Oxley Act of 2002 in the United States, corporate codes of East Asian countries in the post 1997 Asian financial crisis are the measures taken after big corporate scandals and crises. Presently, almost all countries across the world have taken a big lesson from bad corporate scandals and crises of world's big companies. As a result, corporate governance has become one of the contemporary matters given recognition by legislations and literatures.

In order to regulate corporate governance, countries follow different models. There is, however, no uniform model of corporate governance. Countries adopt different models and principles of corporate governance.³⁴ In fact, concerning principles of corporate governance, there are common principles adopted by different countries legislations.

The concept of corporate governance is the subject of various disciplines apart from law. Other disciplines such as economics, management, business, (and accounting) are also highly interested in corporate governance.³⁵ Many scholars in these disciplines have given meanings and explanations to corporate governance.³⁶ Therefore, it is an interdisciplinary area of law of companies. Further to its interdisciplinary nature, there are different theories of corporate governance by different disciplines as they will be well addressed below. This is, in fact, owing to the fact that corporate governance could be understood differently from the perspective of different disciplines.

³² Alan Calder, *Corporate Governance: A Practical Guide to the Legal Frameworks and International Codes of Practice*, (Kogan Page Limited), 2008, p. 1

³³ See a book exploring the history of the US financial institutions scandals by Jerry W. Markham, *A Financial History of Modern US Corporate Scandals From Enron to Reform*, (M.E. Sharpe, Inc.), 2006

³⁴ For example, Germany followed a two tier board system. See Fred R. Kaen, *A Blueprint for Corporate Governance: Strategy, Accountability, and the Preservation of Shareholder Value*, American Management Association, 2003, pp. 187-198. Other Western countries such as United States and UK follow one tier board system. See *Ibid.* In addition, different principles of corporate governance are adopted by different legislation save as common principles. See *infra* Section 1.4.

³⁵ Petri Mäntysaari, *Organizing the Firm: Theories of Commercial Law, Corporate Governance and Corporate Law*, (Springer, 2012), p. 75

³⁶ For example, so many issues of the Journal of Business Ethics are strictly concerned with corporate governance and explored the corporate governance regime of different countries across the world. Pierre-Yves and Korine explored the relation of corporate governance with that of economics and history.

The structure according to which corporate governance is regulated is different across different countries. In some countries, it is found in the form of (legislative) code; in some other countries, it is incorporated as a separate code of conduct and practices (as is shown in the table below); still in other countries it is derived out of the provisions of the law governing corporation/companies.³⁷ Yet, some other countries enacted separate principles of corporate governance.³⁸ The following table shows the structure of the corporate governance in some Asian countries.

Country	Title of code	Year issued
Republic of Korea	Code of Best Practice for Corporate Governance	1999
Malaysia	Code on Corporate Governance	2000
Thailand	Best Practice Guidelines for Audit Committee/ The Code of Best Practice for Directors of Listed Companies	2000
Indonesia	Code for Good Corporate Governance	2001
Singapore	Code of Corporate Governance	2001
Pakistan	Code of Corporate Governance	2002
People's Republic of China	Guidelines for Governance of Listed Companies	2002

Table 1: List of corporate governance documents in Asian countries

Source: Asian Development Bank, *Corporate Governance in Asia*, 2004, p. 4

2.3. Evolution and Theories of Corporate Governance

2.3.1. Evolution of Corporate Governance

³⁷ In Ethiopia, for example, there is no *separate* code governing corporate governance. It is rather, incorporated in to the company law provisions of the 1960 Commercial Code and some other special legislations. There are, of course, movements by Addis Ababa Chamber of Commerce and Sectoral Associations to bring to Ethiopia a code of corporate governance. An Ethiopian Institute of Corporate Governance was set up by AACCSA in September 2013. Visit http://www.ethiopiainvestor.com/index.php?option=com_content&task=view&id=1164, <http://www.2merkato.com/news/alerts/2499-ethiopia-aacsa-to-establish-a-corporate-governance-institute>

³⁸ See the 1999 OECD Principles of Corporate Governance

As it is noted before, the concept of corporate governance is given attention in the 1980s. At present it has got a momentous concern owing to lessons from the crisis of different companies around the Western world. This, however, does not mean that corporate governance was not known earlier. This sub-section is engaged in tracing the development of corporate governance. Pierre-Yves Gomez and Harry Korine in their wonderful book entitled “Entrepreneurs and Democracy: A Political Theory of Corporate Governance” described the evolution of corporate governance in to three main stages as it will be elaborated below.

a. The period of familial governance (c.1800-1920)³⁹

This is, according to Gomez and Korine, the first stage in the evolution of corporate governance. This stage is a period during which the modern society and capitalism emerged.⁴⁰ Prior to the emergence of the modern society the traditional society structure was prevalent until the thirteenth century.⁴¹ The traditional society structure was based on interdependence between different members of the society like the lord, the tenant, the worker and others.⁴² This period was characterized by its property rights, which are the basis of any type of governance system, was distributed among the members of the society.⁴³ For example, the right to own property, the right to use property and the right to dispose or sell property owned was distributed among the members of the society.⁴⁴ In other words, the social status and the right over the property were completely different.⁴⁵ In the traditional society the social status determines the property of a man.⁴⁶ This kind of structure was gradually replaced by another system which gave birth to the modern society.⁴⁷

The traditional society was no longer accepted owing to the development of commerce, international trade and ascendance of cities. Then the emphasis was given to the man who is able to

³⁹ The discussion of this topic will refer extensively the book written by Pierre-Yves Gomez and Harry Korine, *Entrepreneurs and Democracy: A Political Theory of Corporate Governance*, (Cambridge University Press, 2008). In fact, the authors of this book themselves, writing on the topic “period of familial governance (c. 1800-1920)” have refer extensively P. Mathias and M. Postan (eds.), *The Cambridge Economic History of Europe*, Vol. VII, Part 1, (Cambridge: Cambridge University Press, 1974), pp. 180–230, and K. Polanyi, *The Great Transformation*, (New York: Rinehart and Co.), 1944.

⁴⁰ Pierre-Yves Gomez and Harry Korine, *Entrepreneurs and Democracy: A Political Theory of Corporate Governance*, (Cambridge University Press, 2008), p. 64

⁴¹ *Ibid*, p. 67

⁴² *Ibid*, pp. 65-67

⁴³ *Ibid*

⁴⁴ *Ibid*

⁴⁵ *Ibid*

⁴⁶ *Ibid*

⁴⁷ *Ibid*

work by himself to produce private property. It reached the period where the property of the man determines his social status. This marked the emergence of modern society in which one has to do in order to produce his own private property.

Parallel to the emergence of modern society, the corporations are being emerged and transferred from mere private holdings to institutions which have their own personality. This implies that a person's work and the tools he used for work belongs to another person. In the traditional society, the property, e.g. land, belonged to the land lord; however, the tools to farm and develop the land belonged to the tenant. On the other hand, the emergence of corporations as a separate entity showed that the tools to do a work are belonged to the corporation. This is so because the corporations are treated as private entities which are separated from private property.⁴⁸

In the mean time, the owner of the corporation becomes the sole owner of that corporation which endowed him a complete right in it. This period gave the individual/or the owner to have a discretionary power over the corporation.⁴⁹

b. The period of managerial governance (c.1920-1970)

The demise of the familial model of corporate governance resulted in the introduction of new form of corporate governance, i.e. the period of managerial governance. This is a period where Berle and Means introduced the concept of separation of ownership and control to corporations.⁵⁰ This period is what is commonly regarded by writers as 'managerial revolution' or 'managerialism'.⁵¹ There are various factors for the demise of the familial model of corporate governance. The increase in the market size in Europe and America is one external factor for its demise.⁵² On the other hand, challenges to liberalism and the corporations as a private space are internal factors for the fall of familial model of corporate governance. In particular, the fact that liberalism is challenged among the public, questioning the exclusively private nature of corporations and the fragmentation of the

⁴⁸ *Ibid*, p. 72

⁴⁹ *Ibid*, p. 65

⁵⁰ Adolf Berle and Gardiner Means introduced the concept of 'modern corporation' in their book "*Modern Corporation and Private Property*" published in 1932. In this book the separation of the owners of a company, the shareholders, and the managing body, the controller of the company, is introduced. This is seemed to have been the pioneer work with regard to the principle of separation of ownership and control. See also Petri Mäntysaari, *Organizing the Firm: Theories of Commercial Law, Corporate Governance and Corporate Law*, (Springer, 2012), p. 78; Pierre-Yves and Harry Korine, 2008, pp. 99-135

⁵¹ See Jean Jacques du Plessis *et al*, *Principles of Contemporary Corporate Governance*, 2nd ed., (Cambridge University Press, 2011), p. 6; Petri Mäntysaari, *Organizing the Firm: Theories of Commercial Law, Corporate Governance and Corporate Law*, (Springer, 2012), p. 78

⁵² Pierre-Yves and Korine; see also the discussion by Berle and Means, 1932

role of the family in the modern liberal society are considered as internal factors for the fall of familial model of corporate governance.

The managerial model of governance has been emerging since 1920s with the notion of separation of powers between the owners of the company and the management of the company. The owners are the shareholders of the company. The managerial model of corporate governance asserts that there should be a clear separation of powers between the shareholders and the management of the company.

c. Post-managerial governance (from c. 1970)

The managerial model of corporate governance was replaced by the post-managerial or public model of corporate governance. As it is stated by Pierre-Yves and Korine, of course, the managerial model is not yet fully replaced by the public corporate governance and there is a possibility of reversal.⁵³ The legitimacy of managerial governance is eroded due to several reasons such as globalization and the new financing of corporations. Globalization led to trade without border such that corporations got members across different places. This resulted in increase in the number of shareholders a corporation would have. Especially in the period after the 1970s the number of shareholders in corporations was increasing in an unprecedented manner.⁵⁴ In addition, the increasing distance between the shareholders and the corporation is another reason for the erosion of the managerial governance.

The demise of the managerial governance marked the beginning of the new model of corporate governance, which is known among scholars as “public corporate governance.” As the managerial governance is not fully replaced, there is no complete transition to the public governance of corporations as yet.

The mass ownership and the great distance between the owners and the corporation in the post-managerial governance are among the fundamental reasons which helped the development of the public model of governance. Under this model, there are two important groups whose study is paramount to elaborate public governance. These are investors and shareowners of corporations. In the post-managerial period, these two groups are at the heart of corporations and corporate governance. Owing to the fact that the public governance model is still being developed, there is

⁵³ *Ibid*

⁵⁴ *Ibid*

usually confusion between investor and the shareowners in the mass shareholding corporation. Pierre-Yves and Korine, who are engaged in elaborating the public governance model, as Berle and Means did for managerial governance model, stipulate the distinction among the two as:

“...whereas the investor is focused on the value of a *portfolio of investments* and trades shares to optimize this portfolio, the shareowner’s focus is on the *individual corporation*, as an owner. For the investor, a shareholding represents one means, among others, of generating wealth; for the shareowner, a shareholding represents the means whereby he/she can exercise influence over a particular corporation. The philosophy of the two actors and hence also their behaviors differ in clearly definable ways. Whereas the investor cares little about the fate of any individual corporation, the shareowner is tied to the individual corporation, either as a long-term owner (i.e. family, large pension fund), as an employee owner, or as a partner.”⁵⁵

Unlike the managerial model of corporate governance which is based on separation of ownership and control, the public model of corporate governance is based on the distinction of the two shareholders; the investor and shareowner shareholders.

Pierre-Yves and Korine seemed to say that the managerial corporate governance which is based on the separation of ownership and control is now being wiped out gradually. The literatures on corporate governance, however, did not seem to support this thought. Rather, until now the literatures give a greater emphasis for the separation of ownership and control of corporations.⁵⁶ There are growing literatures which make the separation of ownership and control, i.e. the managerial model of governance, the heart of corporations in general and corporate governance in particular.

In all these developments and parallel to the development of the public governance, the issue of corporate governance in company law is becoming hot in the period after 1970s. It was in 1984 that the first connotation of ‘corporate governance’ is used by Robert Tricker in the modern literatures.⁵⁷ The present notion of corporate governance is getting a more attention owing to several factors. The economic crises in late twentieth century in Asia and America, the corporate scandals of the early twenty-first century overemphasized the concept of corporate governance.

⁵⁵ Pierre-Yves and Korine, p. 156

⁵⁶ For example, Stephen M. Bainbridge, *The New Corporate Governance in Theory and Practice*, 2008, p. 4; Fekadu Petros, *Emerging Separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications*, Mizan Law Review, 2010, Vol. 4, No. 1

⁵⁷ According to Professor Andrew Chambers (2003) *Tottel’s Corporate Governance Handbook*, Tottel Publishing, Haywards Heath

2.3.2. Theories of Corporate Governance

There are diverse classifications of theories of corporate governance. Scholars in different disciplines put different theories of corporate governance from the perspective of their own discipline. For example, Alan Calder said that there are three essential theories of corporate governance; the agency theory, the stewardship theory and the market theory.⁵⁸ A. C. Fernando had adopted four theories: the stewardship theory, the agency theory, the stakeholder theory, and the sociological theory.⁵⁹ Another theorist discussed micro and macro theories of corporate governance.⁶⁰ One can find so many theories of corporate governance as diverse as the disciplines which claim to be concerned with corporate governance. One possible ground for the existence of diverse theories of corporate governance is its nature. This is to mean that corporate governance is the subject of and studied by different disciplines.⁶¹

There are no mainstream theories of corporate governance. However, economic and corporation/legal are theories of corporate governance seemed to be the mainstream approaches.⁶² However, there is no dividing line between the economic and legal theories of corporate governance.⁶³ As a result of this, the theories which will be elaborated below are based on the ability of theories to give answer to the fundamental issues of corporate governance.⁶⁴ In fact, the theories are common among legal and economic theories of corporate governance.

a. Theory of Agency

The agency theory, also known as agency cost theory, is rooted back to Adam Smith. The agency theory is the foundation of corporate governance. The agency theory is customarily considered as the basis of modern corporate governance.⁶⁵ Initially, the agency theory was emerged as a solution for the problem in separation of ownership and control in companies.⁶⁶ The shareholders are the

⁵⁸ Alan Calder, *Corporate Governance: A Practical Guide to the Legal Frameworks and International Codes of Practice*, 2008, p. 10-11

⁵⁹ A. C. Fernando, *Corporate Governance: Principles, Policies and Practices*, 2006, pp. 46-51

⁶⁰ See A. Naciri (ed.), *Corporate Governance Around the World*, (Routledge, Taylor & Francis Group, 2008), pp. 17-73

⁶¹ See Petri Mäntysaari, *Organizing the Firm: Theories of Commercial Law, Corporate Governance and Corporate Law*, 2012, p. 75

⁶² *Ibid*

⁶³ *Ibid*

⁶⁴ According to Petri, a theory of corporate governance should give answer to fundamental questions. These are: (1) why is the legal entity with its characteristic governance model chosen in the first place? (2) Whose interests should the people acting as or on behalf of the legal entity further? (3) Why does a legal entity have a board? (4) Why does a legal entity have shareholders? See *ibid* pp. 75-76

⁶⁵ *Ibid*, p. 84

⁶⁶ Morten Huse, *Boards, Governance and Value Creation*, 2007, p. 20; See also Alan Calder, p. 11

owners of the company, becoming the principals; whereas the managers of the company are the agents of the shareholders. The managers are supposed to functions that help to increase the wealth of the owners. This is an essential task that owners of the company are expecting from the managers. However, irrespective of the expectations of the owners, what is witnessed in most cases is that the managers act outside of the expectations of the owners/shareholders of the company.⁶⁷ The shareholders, however, are not able to challenge the managers due to inadequate disclosure of the acts of the managers. Such inconsistency in the expectations of the shareholders on the one hand and acts of managers on the other hand is dubbed as agency problem and the cost incurred owing to this is known as agency cost. The core of corporate governance, thus, becomes alleviating this problem through disclosures, monitoring, oversight and corrective systems that can align the objectives of the two sets of players as closely as possible and, hence, minimize the agency cost.⁶⁸

There are criticisms against the agency theory.⁶⁹ Initially, there is a limitation in achieving the objective of this theory, i.e. shareholders checking of the *abuse* of trade-off by the agents is less likely to be successful. Further, though shareholders have a right to adequate information for effective control (of the company), equity investors rarely get the information. They also have less opportunity to have sanctions over boards of directors.

Fernando stated two mechanisms for the above mentioned problems in the agency theory. These are fair and accurate financial disclosure, and efficient and independent board of directors.⁷⁰ In respect of the first solution there are various examples that can be mentioned such that financial disclosure by companies becomes mandatory. For instance, the Sarbanes-Oxley Act (SOX), adopted by United States in 2002, mandatorily imposes on the companies to disclose their financial reports the non-compliance of which will lead to severe civil and criminal sanctions.⁷¹

⁶⁷ See Alan Calder, p. 11

⁶⁸ See also David Larcker and Brian Tayan, *Corporate Governance Matters: A Closer Look at Organizational Choices and Their Consequences*, (Pearson Education, Inc., 2011), p. 4 (Hereinafter David Larcker and Brian Tayan, 2011)

⁶⁹ *Ibid*, p. 46; See also the discussion by Spyros G. Stavrakis, Christian Harm, David T. Llewellyn, Bridget Gandy, Peter Shaw, Peter Tebbutt and Mark Young, *Corporate Governance in Financial Institutions*, (SUERF Studies, Vienna, 2007), pp. 26-28

⁷⁰ *Ibid*, p. 47

⁷¹ Alan Calder, p. 17

b. Theory of Stewardship

The stewardship theory is another theoretical foundation of corporate governance accepted by many writers. The theory presupposes that “the managers are trustworthy and attach significant value to their own personal reputation.”⁷² Reputation of managers is the primary mechanism to control behavior and reputable managers are offered with higher compensation. Though there are other means of mechanism such as financial reporting, auditing and corporate disclosure, the presumption of the theory is that these mechanisms shall comport with the trustworthiness inherent in managers.

There are similarities between the stewardship theory and the agency theory. On the other hand, there are also significant differences. A. C. Fernando adapted the basic differences of the two theories from the work of Dr. Alfonso Vargas Sanchez. The distinction between the agency theory and the stewardship theory of corporate governance, as are adapted by Fernando, is reproduced as follows:

“The agency theory assumes that managers act as agents of the owners of the company, while under the stewardship theory they act as stewards. The approach to governance is materialistic under the agency theory while it is sociological and psychological under the other. The behavioral pattern is individualistic, opportunistic and self-serving under the agency theory while it is collectivist, pro-organizational and trustworthy in the other. There is a vast difference between the managers and the principals with regard to their interests in the organization; they are divergent in the first theory, while they converge in the latter. Managers are motivated purely by their own objectives in the first case whereas they are guided by the principal’s objectives in the latter case. Besides, managers’ roles in organizations is to monitor and control them in the agency theory, while in the latter it is more to facilitate and empower them. Owners’ attitude in organizations of agency theory is to avoid risk rather than taking it and managing it as it is in the second one. The principal-manager relationship in such organizations is merely based on control while it is relationship based in the latter.”⁷³

c. Theory of Stakeholder

The stakeholder theory, which dates back to 1930s, is a synthesis of economics, behavioral science, business ethics and the stakeholder concept.⁷⁴ According to Fernando, “The theory considers the firm as an input-output model by explicitly adding all interest groups, i.e. employers, customers,

⁷² *Ibid*, See also Alan Calder, p. 10

⁷³ *Ibid*, pp. 48-49

⁷⁴ *Ibid*, p. 50

dealers, government and the society at large, to the corporate mix.”⁷⁵ He further states that the theory is grounded on normative theories such as ethics of care, the ethics of fiduciary relationships, social contract theory, theory of property rights, theory of stakeholders as investors, communitarian ethics, critical theory and others.⁷⁶

This theory is, in the first place, not applicable in practice by corporations. Next, it is criticized in that it is less possible to establish any link/relationship between stakeholder concept and corporate governance. The concept is also difficult to define.

2.4. Principles of Corporate Governance

The subject of corporate governance has its own principles. Different states and institutions set down the major principles of corporate governance. The documents providing the principles show a little variance on the number of the principles. For example, (originally issued in June 1999) the 2004 OECD Principles of Corporate Governance provides for six principles.⁷⁷ Similarly, a Consultative Document of Basel Committee on Banking Supervision provides six principles of corporate governance.⁷⁸ The Australian Security Exchange (ASX) provides eight principles of corporate governance.⁷⁹ Ghana Securities and Exchange Commission set up five principles of corporate governance.⁸⁰ On the other hand, the Malaysian Code on Corporate Governance of March 2000 provides four basic principles of corporate governance.⁸¹ According to a document issued by the Asian Development Bank (ADB)⁸² the principles of corporate governance are ten.⁸³

⁷⁵ *Ibid*

⁷⁶ *Ibid*

⁷⁷ *Ibid*, p. 17-24

⁷⁸ Basel Committee on Banking Supervision, *Principles for Enhancing Corporate Governance*, (Bank for International Settlements, 2010)

⁷⁹ Australian Securities Exchange (ASX) Council, *Corporate Governance Principles and Recommendations with 2010 Amendments* (ASX Corporate Governance Council, 2007), 2nd ed., 2007

⁸⁰ Ghanaian Securities and Exchange Commission, *Corporate Governance: Guidelines on Best Practices*

⁸¹ Finance Committee on Corporate Governance, *Malaysian Code on Corporate Governance*, (Finance Committee on Corporate Governance, 2000), p. 7-8

⁸² The Asian Development Bank (ADB) is a multilateral development financial institution dedicated to reducing poverty in Asia and the Pacific. Established in 1966, it is now owned by 61 member governments. It is rated triple-A by all the major rating agencies. ADB extends loans to eligible governments in the Asia-Pacific region and in Central Asia. In addition, ADB extends loans to, and invests equity capital in, private sector enterprises. ADB strives to promote entrepreneurship, the quality of governance, and environmental and social development in its borrowing member countries.

⁸³ Asian Development Bank, 2003, available on <http://www.adb.org/publications>

Among these documents containing the principles of corporate governance, the OECD principles are so influential which are endorsed by many other nations. For instance, it has been used as a benchmark for a number of corporate governance codes in transition and developing economies.⁸⁴ The World Bank has published more than 40 studies on corporate governance in various countries that use the OECD principles as a template.⁸⁵ Furthermore, in the post- Asian crisis (i.e., after 1997), many Asian countries implicitly or explicitly endorsed the OECD principles of corporate governance.⁸⁶ Most of the representatives of banks in Basel Committee which provides for the principles of corporate governance concerning banks are coming from the countries which are the members of the OECD.⁸⁷

However, irrespective of the variation in recognition (of the number) of the principles of corporate governance, there are common principles where all the documents provide. The first of the common principles in all documents is the part with respect to board of directors. The documents providing for the principles of corporate governance set out the composition, the function and the responsibilities of the board of directors. Another common principle in relation to board of directors is their remuneration. The second area covered by the principles relates to shareholders. Shareholders are the owners of the company; as such, corporate governance principles which excludes the rights of shareholders as one principle lacks completeness. The rights and duties of the shareholders are provided by the documents of corporate governance which sets the principles. The third commonality in the documents of principles is in relation to stakeholders. There are multiple stakeholders of a certain company having a transaction or some kind of relation with it. Thus, the principle relating to stakeholders is provided in documents which set down principles of corporate governance. In the fourth place, the principles of transparency (disclosure) and accountability are covered. The activities of the board of directors shall be transparent to different bodies and naturally followed by accountability.

⁸⁴ Robert W. McGee (ed.), *Corporate Governance in Developing Economies: Country Studies of Africa, Asia and Latin America*, (Springer, 2009), p. 5

⁸⁵ *Ibid*, p. 10

⁸⁶ ADB, p. 2

⁸⁷ The Basel Committee's representatives are from banks in Belgium, China, France, Germany, Italy, Japan, Luxembourg, Netherlands, Russian Federation, Spain, Saudi Arabia, Sweden, Switzerland, United Kingdom, and United States. The European Commission, the OECD, the Financial Stability Institute are also represented in the Committee.

Under this sub-section, the principles which are provided in each of the documents will not be discussed separately. There are certain principles which are provided commonly by all documents providing for corporate governance principles. In such cases, since it is not important to discuss the same principle, the principle in one of the documents will be discussed. On the other hand, there are some principles which are covered in one document but not covered by another document.

2.4.1. Principle 1: Rights of Shareholders

Shareholders are the owners of a company.⁸⁸ The Chinese Code of Corporate Governance put this in a firm statement as “shareholders shall enjoy the legal rights stipulated by laws, administrative regulations and the company's articles of association.”⁸⁹ This tells us that there are three sources from which the rights of shareholders emerge. The first one is that the law governing corporations may provide for the rights of shareholders in general terms. In the second place, administrative organs may pass laws relating to companies which in turn may stipulate rights of shareholders. The articles of association, the internal rule of corporations, may list any specific shareholders’ rights that are not covered by the law and any administrative regulations as long as it is not contrary to the law.

The rights of shareholders is one of the basic element corporate governance should contain. Different documents dealing with the principles of corporate governance contain provisions relating to shareholders rights. For example, Principle 2 and Principle 3 of the 2004 OECD Principles of Corporate Governance, Principle 6 of the ASX Corporate Governance Council, the 2000 Malaysian Code on Corporate Governance and Chapters 1 and 2 of the 2001 Code of Corporate Governance for Listed Companies in China provides the rights of shareholders. Among these examples, the principles embodied under OECD and the Chinese code envisaged detail rights of shareholders.

In particular the rights of shareholders include the right to: 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant and material information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5)

⁸⁸ Shareholders can be an individual, institution, firm, or other entity. See Christine Mallin, *Corporate Governance*, (Oxford, Oxford University Press, 2007), 2nd ed., p. 49. Cited by Jean Jacques du Plessis *et al*, p. 25

⁸⁹ Code of Corporate Governance for Listed Companies in China, Chapter 1, January 2001, Available at www.csrc.gov.cn

elect and remove members of the board; and 6) share in the profits of the corporation;⁹⁰ 7) participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes.⁹¹

The close study of these documents with respect to the rights of shareholders can be summed as follows: The documents provide, in general terms, the rights of shareholders as they are the owners of the company. The rights of shareholders regarding the right to participate is so well incorporated which can be exercised before, during and after general meetings. The right to participate along with following every proceeding of shareholders' meetings and the reciprocal duty of the board of directors is well articulated. Apart from this, the right of shareholders during the shareholder meeting, as is provided by Principle 6 of the ASX Corporate Governance Council and the 2000 Malaysian Code is one vital way of communicating the shareholders which in effect empower their information about the company.⁹²

The disclosure of any structure and procedure in a company is another matter fall under the rights of shareholders. On this point, the United Nations Commission on Trade and Development (UNCTAD), which repeatedly referred to the OECD Principles, provides that:

The beneficiary ownership structure should be fully disclosed to all interested parties. Changes in the shareholdings of substantial investors should be disclosed to the market as soon as a company becomes aware of them. Disclosure should be made of the control structure and of how shareholders or other members of the organization can exercise their control rights through voting or other means. Any arrangement under which some shareholders may have a degree of control disproportionate to their equity ownership, whether through differential voting rights, appointment of directors or other mechanisms, should be disclosed. Any specific structures or procedures which are in place to protect the interests of minority shareholders should be disclosed.⁹³

Another principle in relation to shareholders is the equal treatment of shareholders. The equal treatment clause is found separately treated by the OECD (i.e., Principle 3). On the other hand, under the Chinese Code of Corporate Governance for Listed Companies, it is found under Chapter

⁹⁰ 2004 OECD Principles of Corporate Governance, Principle 2(A)

⁹¹ 2004 OECD Principles of Corporate Governance, Principle 2(B)

⁹² In relation to shareholders communication policy, See also Enerji Limited, *Corporate Governance: Principles and Practice Manual*, p. 50

⁹³ UNCTAD, *Guidance on Good Practices in Corporate Governance Disclosure*, (New York and Geneva, 2006), p. 8 (Hereinafter UNCTAD, 2006)

1, sub-article (1)(2).⁹⁴ Both documents provide that the corporate governance framework shall ensure the equal and fair treatment of all shareholders in a company. The minority and foreign shareholders are given a high attention and this right equally goes to these groups in a company.⁹⁵

2.4.2. Principle 2: Board of directors

The board of directors is one of the basic organs in companies. As it is asserted by the agency theory of corporate governance, it is one of the causes for the emergence of corporate governance.⁹⁶ Fernando calls the board of directors as “a powerful instrument in governance.”⁹⁷ The board is the senior body which supervises the overall functioning of company. The board of directors, which is directly represented by the owners/shareholders, is a clear manifestation of the separation of ownership and control in companies.⁹⁸ The board of directors is just one of several governance mechanisms; other governance mechanisms include markets for control, auditors, laws and regulations.⁹⁹

The emergence of board of directors seems to be related to the emergence of separation of ownership and control. As Pierre-Yves and Korine noted in their book managerialism has started after the 1920s. Managerialism is characterized by the existence of a body which is charged with management of the company. This body is what is known by company law as board (of directors). However, Stephen M. Bainbridge said that the board of directors is an old institution whose age precedes that of the emergence of managerialism.¹⁰⁰ According to Stephen the 1811 statute in New York gives management power to the board of trustee.¹⁰¹

Throughout the development of board of directors, two models of board of directors are adopted across the world; the one-tier and the two-tier model of board of directors. Western countries like the USA, UK and Canada adopted one-tier board system.¹⁰² On the other hand, Germany adopted

⁹⁴ The OECD Principles says “Equitable Treatment of Shareholders”; the Chinese Code, on the other hand, says “fair treatment.”

⁹⁵

⁹⁶ A.C. Fernando, 2006, p. 46

⁹⁷ *Ibid*, p. 187

⁹⁸ *Ibid*

⁹⁹ Morten Huse, *Boards, Governance and Value Creation: The Human Side of Corporate Governance*, (Cambridge University Press, 2007), p. 17

¹⁰⁰ Stephen M. Bainbridge, *The New Corporate Governance in Theory and Practice*, (Oxford University Press, Inc., 2008), p. 157

¹⁰¹ *Ibid*

¹⁰² Jean Jacques du Plessis *et al*, 2011, pp. 297-336

the two-tier board system.¹⁰³ The Japanese model, on the other hand is considered as third model.¹⁰⁴ In one-tier board system there is only one board of directors which exercise all management and supervision matters. In the two-tier board system there is supervisory board and management board (*Aufsichtsrat* and *Vorstand* respectively in Germany). In the two-tier board system the supervisory board is the upper board which is empowered to supervise and oversee the functions of the lower board, i.e. the management board.¹⁰⁵ The management board is the executive organ that manages the company.

Much is written about board of directors;¹⁰⁶ many laws and codes on corporate governance do not miss regulating matters related to board of directors.¹⁰⁷ Much of the literatures and statutes deal with issues such as the selection of the members of the board of directors, their composition, their power, the duties and responsibilities/functions of the board of directors, the rules and procedure up on which the board governs itself, the decision making processes, the liabilities of the board of directors, the remuneration of directors, etc. In the following few pages specific matters will be explored one after the other in the light various codes and principles and available literatures.

The Nature, Election, Appointment and the Composition of Directors: The Indian companies act provides that “A director is any person occupying the position of director by whatever name called. The important factor to determine whether a person is a director or not is to refer to the nature of the office and its duties. It does not matter by what name he is called.”¹⁰⁸ A director can be

¹⁰³ *Ibid*, pp. 337-415; See also Petri Mäntysaari, *Comparative Corporate Governance: Shareholders as a Rule-maker*, (Springer, 2005), pp. 250-271; Alan Dignam and Michael Galanis, *The Globalization of Corporate Governance*, (Ashgate Publishing Limited, 2009), pp. 183-420; Jonathan Charkham, *Keeping Better Company: Corporate Governance Ten Years On*, (Oxford University Press, Inc., 2005), 2nd ed., pp. 28-177, 227-371

¹⁰⁴ Tewodros Meheret, *Governance of Share Companies in Ethiopia*, Ethiopian Business Law Series, Vol. IV (Addis Ababa University, School of Law, 2011), p. 86

¹⁰⁵ *Ibid*

¹⁰⁶ For example, see the following books; Morten Huse, *Boards, Governance and Value Creation: The Human Side of Corporate Governance*, (Cambridge University Press, 2007); Spyros G. Stavrinakis *et al*, *Corporate Governance in Financial Institutions*, 2007; Mario Calderini *et al* (eds.), *Corporate Governance, Market Structure and Innovation*, (Edward Elgar Publishing, Inc., 2003), (pp. 19-26); D. Hugh Whittaker and Simon Deakin (eds.), *Corporate Governance and Managerial Reform in Japan*, 2009; Robert W. McGee (ed.), *Corporate Governance in Developing Economies: Country Studies of Africa, Asia and Latin America*, 2009, pp. 49-56; David Larcker and Brian Tayan, *Corporate Governance Matters*, 2011, pp. 67-168; Jonathan p. Charkham, *Keeping Better Company Corporate Governance Ten Years On*, 2005, pp. 44-62, 131-139, 221-226; John L. Colley *et al*, *What is Corporate Governance?*, 2005, pp. 7-78; A. C. Fernando, 2006, pp. 187-218; Fekadu Petros, *Ethiopian Company Law*, (Far East Trading PLC, 2012), pp. 118-259

¹⁰⁷ For example, Principle 6 of the 2004 OECD Principles, Chapter 3 of the Code of Corporate Governance for Listed Companies in China, Principle 1 of the ASX Corporate Governance Council, Principle 8 of the ADB Principles, Principle 1-5 of the Basel Committee, Principle 1 of the 2000 Malaysian Code of Corporate Governance and many other documents regulate the board of directors.

¹⁰⁸ See Section 2(13) of Indian Companies Act, cited by A. C. Fernando, 2006, p.189.

either a physical or a legal person. Directors are collectively referred to as “board of directors” or simply the “board.”¹⁰⁹

With respect to the election procedure of directors, the Code of Corporate Governance for Listed Companies in China under Chapter 2, Article 1 provides that a company shall establish a standardized and transparent procedure for director election in its articles of association, so as to ensure the openness, fairness, impartiality and independence of the election. In addition, the Chinese Code of Corporate Governance requires further that detailed information regarding the candidates for directorship shall be disclosed prior to the convening of the shareholders' meeting to ensure adequate understanding of the candidates by the shareholders at the time of voting. Furthermore, candidates for directorship shall give written undertakings to accept their nomination to warrant the truthfulness and completeness of the candidate's information that has been publicly disclosed and to promise to earnestly perform their duties once elected.

As it can be discerned from the above paragraph, the Chinese Code of Corporate Governance provides for the election of a director who will be a member of the board of directors. The companies are usually required to include a provision in the articles of association concerning the election process and other related matters. The question that will be raised here is who will appoint and who is appointed as a director. Morten Huse doubts that there is selection of a [board] of directors rather than an election.¹¹⁰ He justified this in such a way that even though there should be a formal election process, more often than not there is only one candidate. It is very unusual for there to be more than one candidate presented at a shareholder meeting, and thus no real election takes place.¹¹¹

In most companies, the board of directors is elected by shareholders on a “one-share, one-vote” basis.¹¹² For example, if there are nine seats on a board, a shareholder with 100 shares can cast 100 votes for each of the nine people nominated.¹¹³ The minimum votes a director should require in order to win an election may be provided by an article of association. The “one-share, one-vote”

¹⁰⁹ *Ibid*

¹¹⁰ Morten Huse, 2007, p. 69

¹¹¹ *Ibid*

¹¹² David Larcker and Brian Tayan, *Corporate Governance Matters*, 2011, p. 77

¹¹³ *Ibid*

approach is advocated by a number of international statements.¹¹⁴ The international Corporate Governance Network, among others, is a strong supporter of this approach.¹¹⁵

The qualification and competence of the board members is a concern in corporate governance. There are certain qualifications which the board members are expected to satisfy. Morten Huse enumerated seven competencies and knowledge expected from the board members. These are firm-specific knowledge, general business and functional knowledge, board process knowledge, relational knowledge, competence related to personality, negotiation and ownership skills.¹¹⁶ The writer of the book elaborates these sets of competencies as follows:

The number of members of the board is another point under this sub-section. This is a question that is raised in various codes of practice as well as in research into boards and governance. The general conclusion is that boards should not be excessively large: seven or eight board members is often considered to be the ideal number.¹¹⁷ Some companies, for instance, Toshiba Corporation, has up to fourteen board members.¹¹⁸ In Chinese ZTE Corporation, the number of board of directors is also fourteen.¹¹⁹ However, only an odd number of people can lead a corporation.¹²⁰

¹¹⁴ UNCTAD, 2006, p. 9

¹¹⁵ *Ibid*

¹¹⁶ Morten Huse, 2007, p. 74. Elaborating these requirements, Huse said that "...Firm-specific knowledge is knowledge about the company such as its main function, the weak points in the firm and in its products and services; the development of the firm's customers, markets, products and services; the bargaining power of suppliers and customers; etc. ... Function-oriented competency includes the knowledge of different subjects like finance, accounting, law, marketing, human resources, organizational behavior and design, strategy or just general management experience. ... Process-oriented competence may include knowledge about how to run a board. ... Relational competence is the 'sum of actual and potential resources embedded within, available through and derived from the network of relationships possessed by an individual or social unit.' The personalities and personal characteristics of the directors may be the ability to think creatively, to think analytically, to think critically, etc. ... The competence of the negotiation skill is competence to control and monitor the management to make sure that the management and the board make decisions according to the objectives of the external principals. ... The ownership competence is considered by many to be the ultimate qualification for being a board member. In most firms the shareholders want to be board members themselves. The main qualification will thus be ownership." (pp. 74-77)

¹¹⁷ *Ibid*, p. 82

¹¹⁸ Hisayoshi Fuwa, *Management Innovation at Toshiba: The Introduction of the Company with Committees System*, in D. Hugh Whittaker and Simon Deakin (eds.), *Corporate Governance and Managerial Reform in Japan*, (Oxford University Press, Inc. 2009), p. 255

¹¹⁹ Article 159 of Articles of Association of ZTE Corporation, available at <http://www.zte.com.cn>

¹²⁰ Morten Huse, 2007, p. 69

Duties and Responsibilities of Board of Directors: The duties and responsibilities of the board of directors are enormous which imposes large bundle of tasks.¹²¹ Since the board is considered as the powerful organ in a certain company, it is apparently supposed to do multiple tasks. Building on this the OECD principle asserts 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.”¹²² This statement of vision of the OECD Principles requires the board of directors to provide two basic functions; *advisory* and *oversight* functions.¹²³ In an *advisory* capacity, the board consults with management regarding the strategic and operational direction of the company; on the other hand, in its *oversight* capacity, the board is expected to monitor management and ensure that it is acting diligently in the interests of shareholders.¹²⁴

The whole of these responsibilities of the board of directors listed under the 2004 OECD Principles can be grouped in to different bundles. For example, Morten Huse categorizes the typology of board tasks in to five; board output control tasks; board internal control tasks; board advisory tasks; board decision control tasks; and board collaboration and mentoring tasks.¹²⁵ On the other hand, the first responsibility of the board of directors, in the words of A. C. Fernando, is the so-called “fiduciary duties.”¹²⁶ Accordingly, the fiduciary duty includes the duty to care, the duty of loyalty and the duty of candor. The duty to care requires that a director make decisions with due deliberation; the duty of loyalty addresses conflicts of interest; the duty of candor requires that management and the board inform shareholders of all information that is important to their evaluation of the company and its management.¹²⁷ Under the duty to candor, the company’s management is required in the first instance to provide accurate and timely information to shareholders, and the board is expected to oversee this process.¹²⁸ Another categorization of responsibilities of the board of directors, in USA, summarizes it in to five; the fiduciary duty, the duty of loyalty and the duty of fair

¹²¹ See, for example, Principle 6 of the 2004 OECD Principles and Chapter 3, Article 2 of the 2001 Code of Corporate Governance for Listed Companies in China.

¹²² Principle 6 of the 2004 OECD Principles of Corporate Governance. For detail list of the principles on the board’s responsibilities, see the 2004 OECD principles.

¹²³ Larcker and Tayan, 2011, pp. 67-78

¹²⁴ *Ibid*

¹²⁵ Morten Huse, 2007, p. 33

¹²⁶ A. C. Fernando, 2006, p. 190; See also Larcker and Tayan, 2011, pp. 80-81. Larcker and Tayan said the fiduciary duty of the board includes three components, i.e., duty to care, duty to loyalty and duty to candor.

¹²⁷ *Ibid*

¹²⁸ *Ibid*

dealing, the duty of care, the duty not to entrench and the duty of supervision.¹²⁹ Yet, the English Companies Act of 2006 categorizes duties of board of directors in to two; duty to care and skill and fiduciary duty.¹³⁰

An important point that should be clear here is that directors' responsibilities are distinct from the responsibilities of the management. Larcker and Tayan in distinguishing the responsibilities of directors and management wrote "Directors are expected to advise on corporate strategy but do not develop the strategy. They are expected to ensure the integrity of the financial statements but do not prepare the statements themselves. The board is not an extension of management. The board is a governing body elected to represent the interests of shareholders."¹³¹ The management (the executive organ) is the lower organ next to the board of directors which is usually appointed by the board members. It performs the tasks entrusted to it by the board of directors.

Directors may also establish different committees for the effective running of its functions. The auditing committee, the compensation committee, governance committee, nominating committee, executive committee, or any other committee can be established by the board.¹³²

Directors Liabilities: Different countries legislations on companies clearly provide for the liability of directors. Directors' liability may be towards third parties and the company.¹³³ A. C. Fernando, writing over the Indian Companies Act, said directors may be liable to *third parties*; and there is also *personal* liability on the grounds provided under the Act. Furthermore, directors are also liable to the *company* for *ultra vires* acts, negligence, breach of trust and misfeasance/willful misconduct/.

Remuneration of Directors: The issue of remuneration of directors is found in some documents under the separate principle.¹³⁴ On the other hand, other documents incorporated it under the

¹²⁹ John L. Colley *et al*, *What is Corporate Governance?* 2005, pp. 10-13

¹³⁰ Part 10, Chapter 2, Articles 170-181 of the 2006 UK Companies Act. Accessed from <http://www.legislation.gov.uk/ukpga/2006/46/contents/enacted> last accessed on September 10, 2013; See also Janet Dine, *Company Law*, (4th ed.), 2001, pp. 212-218

¹³¹ Larcker and Tayan, 2011, p. 68

¹³² See Larcker and Tayan, 2011, pp. 72-74; A. C. Fernando, 2006, p. 209; John L. Colley *et al*, 2005, pp. 37-40

¹³³ Fernando, 2006, pp. 193-195

¹³⁴ For example, the ASX Corporate Governance Council and the Malaysian Code of Corporate Governance incorporated the principle of directors' remuneration under Principle 8 and Principle 2 respectively.

provision regulating directors.¹³⁵ In relation to remuneration of directors ASX provides that “Companies should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear.”¹³⁶

It is stated hereinabove that directors are the agents of the owners/shareholders of the company who do to the level of their capacity in order to make the company effective. Therefore, the amount of remuneration for directors shall be attractive in order to attract qualified directors.¹³⁷ However, traditionally compensation paid to external board members has been fairly low; the argument being that board remuneration should be low so that board members are not dependent on receiving this income.¹³⁸ Most board members earn the major parts of their income from other sources, and being a board member is often considered to be a sign of status.¹³⁹

The remuneration paid to the directors raises several issues from the perspectives of its amount, the justification of remuneration, determination of remuneration, identification of the tasks of the directors which is worth remuneration and other issues.¹⁴⁰ There is a good outlet for these multiple issues, i.e., the committee established by the board itself, the compensation committee, is used to determine the remuneration of directors.¹⁴¹

2.4.3. Principle 3: Stakeholders

There are various definitions of stakeholders given by writers. The definitions tried to enumerate which group or individual are considered as stakeholders. Due to this, there are narrow and wider definitions about who are stakeholders.¹⁴² Accordingly a narrow definition of stakeholders includes “*only* actors who have a *legitimate* stake in the corporation.” Another definition of the same says stakeholders include “*only* those who have *contributed* something that is at risk with the firm.” On the

¹³⁵ The example here is the 2004 OECD Principles of Corporate Governance; it governs board remuneration under the Principle governing the responsibility of board of directors, i.e. under OECD Principle 6, (E) (1).

¹³⁶ ASX, Principle 8

¹³⁷ Larcker and Tayan, 2011, p. 108

¹³⁸ Morten Huse, 2007, pp. 78-79

¹³⁹ *Ibid*

¹⁴⁰ *Ibid*, pp. 77-81; See also Larcker and Tayan, 2011, pp. 108-113

¹⁴¹ Larcker and Tayan, 2011, p. 73; John L. Colley *et al*, 2005, p. 39

¹⁴² Morten Huse, 2007, pp. 15-16

other extreme, a wide stakeholder definition says that stakeholder generally include “*all* the actors who may be *influenced* by or who may *influence* a corporation.”¹⁴³

Another perspective on stakeholders suggests that there are ‘internal’ and ‘external’ stakeholders.¹⁴⁴ Accordingly, ‘internal’ stakeholders include employees, managers and owners. On the other hand, ‘external’ stakeholders include customers, suppliers, competitors and ‘special interest’ groups – with each relationship constrained by formal and informal rules.¹⁴⁵ At present, by stakeholders the corporate governance literature adopted the wider definition of stakeholder. The term “stakeholder” has come to refer to a host of different interest groups intimately linked to the development of a corporation other than its management, its board and its shareholders.¹⁴⁶ In particular, stakeholders include creditors, employees, consumers, suppliers, the community and other stakeholders.

Many countries have long recognized the importance of stakeholders in their corporate governance systems, in various ways. Germany, Netherlands, Belgium and Austria provide for seats in their supervisory boards for employee representatives.¹⁴⁷ In Japan, the supply chain is intimately linked through cross shareholdings, the backbone of the *keiretsu* system. In the US, employees are the beneficiaries of Employee Stock Ownership Plans (ESOPs), which might wield considerable corporate power and in some cases even control the corporations.¹⁴⁸

The OECD has given a separate regulation for stakeholders under Principle 4. It calls on businesses to recognize and safeguard stakeholders’ rights, including legitimate interests and information needs.¹⁴⁹ The chapeau of the Principle states that “The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.”

¹⁴³ *Ibid*; See also Christine Mallin, *Corporate Governance*, (Oxford, Oxford University Press, Inc., 2007), 2nd ed., p. 49, Cited by Jean Jacques du Plessis *et al*, pp. 22-23

¹⁴⁴ R. E. Freeman and W. M. Reed, ‘Corporate Governance: A Stakeholder Interpretation’, *Journal of Behavioural Economics*, Vol. 19, 1990, p. 337. Cited by Jean Jacques du Plessis *et al*, pp. 23-24

¹⁴⁵ *Ibid*

¹⁴⁶ Stilpon Nestor and John K. Thompson, *Corporate Governance Patterns in OECD Economies: Is Convergence Underway?*, p. 18

¹⁴⁷ *Ibid*

¹⁴⁸ *Ibid*

¹⁴⁹ U.N. Global Compact and the International Finance Corporation, *Corporate Governance: The Foundation for Corporate Citizenship and Sustainable Businesses*, 2009, p. 3

In describing the foundation of the recognition of the role of the stakeholders in corporate governance, the OECD document provides that “...the competitiveness and ultimate success of a corporation is the result of teamwork that embodies contributions from a range of different resource providers including investors, employees, creditors, and suppliers...” The OECD strongly begs that corporations should give due regard to various internal and external stakeholders which determines its success or failure.¹⁵⁰

Furthermore, apart from this, the OECD Principles provides some details about stakeholders. Accordingly, it envisages that the rights of stakeholders shall be respected. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights. The legal framework and process should be transparent and should not impede the ability of stakeholders to communicate and to obtain redress for the violation of rights. This right of stakeholders is also envisaged under the Code of Corporate Governance for Listed Companies in China under Chapter 7. Under the same code, special rules for banks and other creditors is provided such that a company shall provide necessary information to banks and other creditors to enable them to make judgments and decisions about the company's operating and financial situation.

2.4.4. Principle 4: Disclosure and Transparency

The principle of disclosure and transparency is at the heart of any company and organization. It is the means by which the activities of a certain entity are made known to third parties. The incorporation of the principle in all of corporate codes discussed in this Section is a clear evidence of the inevitable importance of the principle to corporate governance.¹⁵¹ The disclosure requirement is an important aspect of corporate governance regime of any state.¹⁵²

¹⁵⁰ OECD, 2004, p. 46

¹⁵¹ Principle 5 of the OECD; Principle 3 of the ADB; Principle 5 of the ASX; Chapter 7 of the Chinese Corporate Governance Code; Principle 4 of the Malaysian Code and Principle 4 of the Basel Committee on Banking Supervision incorporated the principle of disclosure and transparency.

¹⁵² See the assessment of disclosure and transparency of financial institutions in different countries by Spyros G. Stavrinakis *et al*, *Corporate Governance in Financial Institutions*, 2007, pp. 108-14. Note that the studies included in this book, as it is referred in each section of the book, are conducted by the World Bank in 40 developing economies.

For instance, the OECD Principles under Principle 4 provides that “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.” In particular, the OECD Principles requires that the disclosure should include, but not limited to material information on the activities of the company, the objectives of the company, governance matters, its shareholders, board of directors, and stakeholders. Another important point that should be mentioned in relation to disclosure and transparency is that the disclosure shall be accurate, timely and complete on all matters that need to be disclosed.¹⁵³

On the other hand, Chapter 7 of the Code of Corporate Governance for Listed Companies in China provides three sets of disclosures: listed companies' ongoing information disclosure, disclosure of information regarding corporate governance, and disclosure of controlling shareholder's interests.

If we go across all the statutes that are referred hereinabove, it can be possible to categorize the elements of the principle of disclosure and transparency. These are, according to Robert W. McGee, (1) timely and accurate disclosure of all material matters, (2) standards of preparation, audit, and disclosure of information, (3) independent audit, and (4) fair, timely, and cost-effective access to information.¹⁵⁴

2.5. The Need for Corporate Governance

The importance of corporate governance attracted attention in the developed countries in the late 1900s.¹⁵⁵ Corporate governance has a tremendous advantage for corporations/companies found in one country. It is becoming an inevitably integral part of corporations/companies. Different writers noted the need to have corporate governance for a healthy running of business by companies. The importance of corporate governance is understood more in developing economies after the 2007/08 financial crisis. However, as it is noted by one writer “corporate governance has been a central issue in developing countries long before the recent spate of corporate scandals in advanced economies

¹⁵³ Christine A. Mallin (ed.), *Handbook on International Corporate Governance: Country Analyses*, (Edward Elgar Publishing, Inc., 2006), p. 125

¹⁵⁴ Robert W. McGee, 2009, pp. 43-47

¹⁵⁵ Ghana Securities and Exchange Commission, *Corporate Governance: Guidelines on Best Practices*, p. 3

made headlines.”¹⁵⁶ It is also paramount to countries with developed economies. In general terms the need to have corporate governance has a multidirectional importance. The following points are among the few points dealing with the importance of corporate governance.

Firstly, corporate governance is important for ensuring strong financial system.¹⁵⁷ The financial sector is one of the economic sectors which is more susceptible to scandals and abuses. The 1997 Asian financial crisis was a result of poor transparency and corporate governance system.¹⁵⁸ If we see the recent past crisis of 2007/08 world financial crises it was started from the financial institutions of the West countries, particularly of the US America.¹⁵⁹ The importance of corporate governance is noted more in relation to financial institutions especially in banks than any other corporations.¹⁶⁰

In addition, corporate governance has importance in increasing investment, ensuring better resource allocation, removing mistrust between different stakeholders, reducing legal costs and improving social and labor relationships and external economies like environmental protection.¹⁶¹

2.6. Contemporary Issues in Corporate Governance

Corporate governance at present is becoming an essentially debatable issue. As it was noted herein before multiple disciplines are interested in corporate governance. It is becoming one of the most important aspects of modern corporations. Various principles and theories of corporate governance are developed by theorists from various disciplines and different legal regimes. In the course of all these developments new developments are emerging. Some of the early principles are newly propagated.

2.6.1. Separation of Ownership and Management

The separation of ownership and management/control is one important attribute, otherwise the heart, of corporate governance that could not be escaped.¹⁶² The first theorists who had introduced concept of separation of ownership and control are Berle and Means in their excellent work in the

¹⁵⁶ Rajesh Chakrabarti, *Corporate Governance in India – Evolution and Challenges*, College of Management, Georgia Tech, p. 3

¹⁵⁷ The financial sector includes banking, insurance and micro financing institutions.

¹⁵⁸ See *supra* note 157, p. 4

¹⁵⁹ *Ibid*

¹⁶⁰ *Ibid*, p. 21

¹⁶¹ *Ibid*

¹⁶² Stephen M. Bainbridge, *The New Corporate Governance in Theory and Practice*, 2008, p. 4

early 1930s.¹⁶³ In fact, currently it is also the most controversial but an important issue in corporate governance.¹⁶⁴

The separation of ownership and management said that the owners of the company, the shareholders, and the body which undertakes the management of the company are different. This is, according to Berle and Means, the manifestation of the modern corporation. Stephen M. Bainbridge in describing ownership and control said:

... Under all corporation statutes, the key players in the formal decision-making structure are the members of the board of directors who are empowered to make or delegate to employees most decisions affecting the business and affairs of the corporation. Shareholders have essentially no power to initiate corporate action and, indeed, are entitled to approve or disapprove only a very few board actions. The vote thus confers neither decision-making nor even oversight rights on shareholders in any meaningful sense...¹⁶⁵

The separation of ownership and control asserts that the shareholders are the owners of the company; however, the right naturally stemming from this right, i.e. the right to control, goes to another party. The body which is entrusted to control the company is usually the board (of directors). The board is a key role player in decision making which is empowered to make or delegate to employees decisions affecting the company and its business. The fall of the control of the company other than by the owners/shareholders has an effect of “rendering every shareholder a minority”.¹⁶⁶

There are cases where there exists partial and full separation of ownership.¹⁶⁷ In corporations where there is majority and minority controlled corporations, they exhibit partial separation of ownership and control, while in managerial controlled corporations it exhibited a full separation of ownership and control.¹⁶⁸

¹⁶³ Berle and Means, 1932; See also Pierre-Yves and Korine

¹⁶⁴ *Ibid*

¹⁶⁵ Stephen M. Bainbridge, *The New Corporate Governance in Theory and Practice*, 2008, p. 4

¹⁶⁶ Fekadu Petros, *Emerging Separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications*, Mizan Law Review, 2010, Vol. 4, No. 1, p. 3. (Hereinafter Fekadu Petros, 2010)

¹⁶⁷ Adolf Berle and Grindler Means, *The Modern Corporation and Private Property*, 1932. Cited by Stephen M. Bainbridge, 2008, p. 5

¹⁶⁸ *Ibid*

2.6.2. Corporate Social Responsibility

Businesses have various dimensions apart from its basic motive. Its inherent motive is just to obtain profit. This is considered as the conventional motive for which business is undertaken. This has been propagated since the human kind started to do businesses. However, apart from obtaining profit, the doing of business has other dimensions toward the society. In particular, it has an impact on the society, its working place, consumers, environment, and others.¹⁶⁹ This influence of business is more exacerbated by the emergence of big companies and multinational corporations.¹⁷⁰ This resulted in the rise of the movement of what is commonly known as ‘corporate social responsibility (CSR).’

The question ‘what is corporate responsibility?’ and ‘to whom are corporations responsible?’ have been debatable since long time ago. One extreme of corporate responsibility says that corporations are primarily responsible to its shareholders.¹⁷¹ In the words of Milton Friedman this is argued as ‘There is one and only one social responsibility of business -- to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud.’¹⁷² In his later work, M. Friedman overemphasized his belief that the social responsibilities of business is to increase profit.¹⁷³

The concept of CSR is at present ‘dynamic and contestable concept that is embedded in each social, political, economic and institutional context.’¹⁷⁴ The concept of CSR, though businesses are involved in it long time ago, it is new but emerging among Europeans.¹⁷⁵ However, in America the debate whether businesses have inherent social responsibility or not has arisen since 1930s.¹⁷⁶

¹⁶⁹ Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law*, (Cambridge University Press, 2006), p. 2

¹⁷⁰ *Ibid*

¹⁷¹ *Ibid*, p. 16

¹⁷² Milton Friedman, *Capitalism and Freedom*, (Chicago: University of Chicago Press, 1962), p. 133; cited by Jennifer A. Zerk, p. 62

¹⁷³ Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, in Walther Ch. Zimmerli, Klaus Richter, and Markus Holzinger (eds.) *Corporate Ethics and Corporate Governance*, (Springer-Verlag Berlin Heidelberg, 2007), pp. 173-178

¹⁷⁴ Dirk Matten and Jeremy Moon, *Pan-European Approach: A Conceptual Framework for Understanding CSR*, in Walther Ch. Zimmerli, Klaus Richter, and Markus Holzinger (eds.), *Corporate Ethics and Corporate Governance*, (Springer-Verlag Berlin Heidelberg, 2007), pp. 179-200

¹⁷⁵ *Ibid*

¹⁷⁶ Jenifer A. Zerk, p. 45

Corporate social responsibility deals with whether corporations should have responsibility towards the society. There are various definitions of CSR in various literatures that have been written in the last three decades. Jenifer A. Zerk rewrote the UK government definition on CSR that:

Essentially it is about how business takes account of its economic, social and environmental impacts in the way it operates -- maximizing the benefits and minimizing the downsides. *Specifically we see CSR as the voluntary actions that business can take, over and above compliance with minimum legal requirements*, to address both its own competitive interests and the interests of wider society.¹⁷⁷ (Emphasis added)

This definition by UK government asserts that CSR is a voluntary action. The European Commission also considers the CSR as a voluntary action plus compliance with the law as part and parcel of being socially responsible.¹⁷⁸ The European Commission definition differs from the UK definition in that it considers compliance with the law as an additional requirement beyond complying with the law.¹⁷⁹ On the other hand, D. Matten and J. Moon said that the most widely definition of CSR is that which explains four different areas of business-society relations.¹⁸⁰ These are economic, legal, ethical and philanthropic responsibilities.¹⁸¹ The last two responsibilities, ethical and philanthropic, are considered as voluntary initiatives which constituted the core debate in CSR. The first two, on the other hand are taken as the discretion of the corporations to live up to them.¹⁸²

The acceptance of CSR in America and Europe, as noted before, are somewhat different. The Americans precedes the Europeans in relation to recognizing CSR in their corporations. The Europeans until now does not have a common and clear position as concerning CSR. There is a wide difference between the American and the European positions toward CSR.¹⁸³ As Dirk Matten and Jeremy Moon concluded 'CSR as a policy of voluntary engagement to meet the corporation's obligations towards society has not been an overt feature of European economies.'¹⁸⁴

¹⁷⁷ *Ibid*, p. 30

¹⁷⁸ *Ibid*

¹⁷⁹ *Ibid*

¹⁸⁰ Dirk Matten and Jeremy Moon, p. 181

¹⁸¹ *Ibid*

¹⁸² *Ibid*

¹⁸³ For particular comparison of the two regions, See *ibid* at 183

¹⁸⁴ *Ibid*, p. 185

CHAPTER THREE

3. OVERVIEW OF CORPORATE GOVERNANCE IN ETHIOPIA

3.1. Literature Review on Corporate Governance in Ethiopia

There are domestic literatures on the subject matter that are emerging recently. As a multi-disciplinary concept the legal, economics, business, accounting and management spheres have tried to write about different issues of corporate governance in Ethiopia. It is, however, difficult to say that there are extensive works on corporate governance. Among the researches thus undertaken various issue of corporate governance around the financial sectors are noticeable. However, there is no comprehensive work on corporate governance in Ethiopia. Some of these literatures from different disciplines will be reviewed in the following few paragraphs.

The study by Minga Negash is one mentionable study on the general concept of corporate governance and its condition in Ethiopia. He investigates corporate governance in Ethiopia in the light of four key areas of corporate governance which he finally finds that its practice in Ethiopia is “disappointing.”¹⁸⁵ He critically examined the condition of corporate governance in Ethiopia by looking at the nature of corporations, legislations, and matters relating to ownership. Like Minga, another writer summarized his work by stating that corporate governance is “inefficient and ineffective” in Ethiopia.¹⁸⁶

Fekadu has examined the status of separation of ownership and control in present day Ethiopian companies. As it is boldly noted in the preceding chapter, this principle is the basis for the modern corporation from which the agency theory is emanated. Fekadu finds that the separation of ownership and control in present day Ethiopia is “emerging.”¹⁸⁷ Like the previous writers Fekadu has also identified a defect in Ethiopian law regarding separation of ownership and control and its impact. In particular, he strongly claims that the law should be reviewed in order to protect the

¹⁸⁵ Minga Negash, *Rethinking Corporate Governance in Ethiopia*, University of the Witwatersrand, September, 2008

¹⁸⁶ *Ibid*, p. 2; See also Abraham Gebregiorgis, *Internal Audit Function and Corporate Governance in Commercial Banks*, 2011, AAU, School of Business and Public Administration, Department of Accounting and Finance, (Unpublished MSc Thesis), p. 10

¹⁸⁷ Fekadu Petros Gebremeskel, *Emerging Separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications*, Mizan Law Review, 2010, Vol. 4, No. 1, pp. 1-30

rights of (minority) shareholders. Furthermore, he said that the board of directors needs to be divided in to supervisory and executive directors.¹⁸⁸

Tewodros Meheret has explored the general aspects of corporate governance of share companies in Ethiopia.¹⁸⁹ He tried to survey the provisions of the Commercial Code dealing with corporate governance aspects such as management organs of companies, i.e. board of directors, managers, shareholders' and auditors. He included stakeholders as one of the organs of companies.¹⁹⁰ In his article, Tewodros gave wider place to various issues relating to board of directors such as its structure, composition, appointment and removal, qualification, powers, duties and responsibilities, remuneration, working methods and controlling the board.¹⁹¹

One noticeable contribution of Tewodros worth mentioning is “standards of corporate governance” in Ethiopia. He said that “the Ethiopian legal system has two sets of standards of corporate governance applicable to companies.”¹⁹² He said this statement because there are provisions of the Commercial Code which have a general application for all companies on the one hand and special laws containing governance matters which are applicable only for financial companies on the other hand.¹⁹³

In surveying the Code's provisions dealing with corporate governance, Tewodros emphasized that there are loopholes and are not sufficient to address the changing needs and problems of emerging corporations.¹⁹⁴ He loudly said that “an essential factor for the success of companies is effectiveness and efficiency of their corporate governance system”¹⁹⁵ and, finally, suggested for legal reform.

Hussein worked on corporate governance in Ethiopia by emphasizing on the role, composition, and remuneration of board of directors of share companies, particularly, banks. He examined the Ethiopian law in relation to the issues of roles, composition and remuneration of directors of share

¹⁸⁸ *Ibid*

¹⁸⁹ Tewodros Meheret, *Governance of Share Companies in Ethiopia*, Ethiopian Business Law Series, Vol. IV (Addis Ababa University, School of Law), 2011, pp. 53-111

¹⁹⁰ *Ibid*, p. 84-85

¹⁹¹ *Ibid*, pp. 85-109

¹⁹² *Ibid*, p. 72

¹⁹³ In fact, for such comparison, Tewodros considers only companies engaged in banking business vis-à-vis other companies governed by the provisions of the Commercial Code of 1960.

¹⁹⁴ *Ibid*, p. 110

¹⁹⁵ *Ibid*

companies the outcome of which revealed that the law is not sufficient. He strongly recommended that management board and supervisory board need to be separated (this has also been asserted by Fekadu); that the qualification for directorship be prescribed; and that the remuneration (and its quantity) to directors need to be regulated by law.¹⁹⁶

There are other works by non-legal disciplines such as accounting, business and management on corporate governance in Ethiopia. Most of these researches put their focus on the financial sector and not on companies and corporate governance in general. Abraham has worked on an internal audit function (IAF) and corporate governance in private commercial banks in Ethiopia.¹⁹⁷ He said that “a quality IAF plays a critical role in corporate governance effectiveness which conforms to the concept that IAF plays an active role in effective governance and control.”¹⁹⁸ The overall conclusion that Abraham reached is that IAF is insufficiently used by the public sector which in effect is not much helpful to assess the effectiveness of corporate governance in the sector.¹⁹⁹

Alem, in her research, seemingly on the overall aspects of corporate governance in banks in Ethiopia, has surveyed the application of the principles of corporate governance in the Ethiopian private commercial banks.²⁰⁰ In fact, she studied only the case of one private commercial bank. She found that there is good culture of corporate governance in the bank according to her study. However, she also explored some problems concerning the efficiency and effectiveness of the board and disclosure of material information in that bank.²⁰¹

Wolday has done an extensive work on corporate governance in the Micro Financial Institutions (MFI) in Ethiopia.²⁰² According to Wolday, the MFIs in Ethiopia have paid “very little attention” to

¹⁹⁶ Hussein Ahmed Tura, *Overview of Corporate Governance in Ethiopia: The Role, Composition and Remuneration of Boards of Directors in Share Companies*, Mizan Law Review, Vol. 6, No.1, June 2012

¹⁹⁷ Abraham Gebregiorgis, *Internal Audit Function and Corporate Governance in Commercial Banks*, 2011, AAU, School of Business and Public Administration, Department of Accounting and Finance, (Unpublished MSc Thesis)

¹⁹⁸ *Ibid*

¹⁹⁹ *Ibid*

²⁰⁰ Alem Gebremedhin, *A Study on The Application of Corporate Governance Principles in the Ethiopian Private Commercial Banks: The Case of Lion International Bank*, AAU, College of Management, Information and Economic Science, 2011, (Unpublished MA Thesis)

²⁰¹ *Ibid*

²⁰² Wolday Amha, *Corporate Governance of the Deposit Taking Microfinance Institutions (MFIs) in Ethiopia*, available from www.afraca.org, last accessed on November 6, 2013; See also Frezer Ayalew, *Governance Practices of Ethiopian Microfinance Institutions: A Study of Selected Units*, AAU, Faculty of Business and Economics, 2007, (Unpublished MBA Thesis)

corporate governance matters.²⁰³ He further noted that the governance of MFIs in Ethiopia is widely different from that of governance of banks owing to various internal and external factors. His findings called for an immediate response from the regulators of MFI (and the shareholders too) to give solutions to the host of good governance problems identified by the researcher.²⁰⁴

The review of literatures may be concluded by stating that there are various researches which are emerging at present regarding corporate governance in Ethiopia. Many of the researches that are reviewed by this Section and others that are not included here are in fact concerned with different areas of corporate governance around the financial sectors particularly of banks. In the absence of a comprehensive study on corporate governance in Ethiopia these works are essential for future studies. Apparently, the development of laws on the subject is rather slow. This does not go at par with the growing need of corporations and governance in Ethiopia. Most of the researches showed multiple corporate governance problems across various types of corporations. This needs the country to address the growing problems of governance that will cope up with new developments in the field.

3.2. The Legal Regime Governing Corporate Governance in Ethiopia

The concept of corporate governance, though introduced as early as 1960, is a new issue to Ethiopia even at present. Unlike some other countries which have independent code of corporate governance,²⁰⁵ Ethiopia does not have one. Rather, Ethiopian regime on corporate governance is found in the 1960 Commercial Code and other special laws. The special laws include proclamations relating to banking, insurance and microfinance businesses, commercial registration and business licensing proclamation, investment proclamations, directives of different government organs, and others. The overview of these laws will be addressed here in below.

3.2.1. The Ethiopian Commercial Code of 1960

Corporate governance in Ethiopia emerged following the promulgation of the Commercial Code in 1960. Corporate governance in Ethiopia is regulated by Book II, Chapter 4 (Arts. 347-428) of Title VI of Book II of the Commercial Code (hereinafter “the Code”). In addition to the provisions of

²⁰³ *Ibid*

²⁰⁴ *Ibid*

²⁰⁵ For example, see Table 1 above in Chapter 2

the Commercial Code pertaining to corporate governance, there are also some other provisions in other special legislation like the Banking Proclamation. One thing that should be noted here is that the heading of Chapter 4 of companies limited by shares is captioned as “Directors, Auditors and Shareholders’ meetings.” However, this caption should have been “Corporate Governance”. This is also recommended by the Recommendations and Position Paper of the Business Community on the Revision of the Commercial Code of Ethiopia.²⁰⁶

The Commercial Code provides general rules pertaining to corporate governance in Ethiopia. The Commercial Code of Ethiopia incorporate the three main components of corporate governance; management, auditors and shareholders meetings. The first section of Chapter 4 is titled “Management” which blurred the governance and management aspects of a company. This is because governance/supervision/ and management/executive functions/ are two distinct things in corporate governance. Governance is the general supervisory mechanism of a company whereas management is basically concerned with the day to day activities or executive functions of a company. In addition, the parties engaged in each activity are different. That is, governance is primary the concern of the [board of] directors and management is the task of the general manager (or as is best known in other legal systems the Chief Executive Officer (CEO)).

The second section of the Code provisions providing for corporate governance in Ethiopian company law is concerned with auditors. Auditing of companies is one of the means by which the company’s activities are disclosed. In turn, corporate disclosure is one of essential aspect of corporate governance.²⁰⁷ The nomination, the tasks and other matters related to auditors are dealt with in section 2 of Chapter of share company provisions.

Finally, shareholders’ meetings constituted corporate governance whose aspects are, among other things, the rights and duties of shareholders, the class and conduct of shareholders’ meeting and related matters.

²⁰⁶ Addis Ababa Chamber of Commerce and Sectoral Association (AACCSA), *Recommendations and Position Paper of the Business Community on the Revision of the Commercial Code of Ethiopia*, July 2008, p. 23

²⁰⁷ Fekadu Petros, 2012, pp. 242-259

3.2.2. Special Laws

Apart from the provisions of the Commercial Code of Ethiopia pertaining to corporate governance, there are also various provisions in special laws that are directly concerned with corporate governance. The special laws provide for some details and new developments that were not covered and anticipated by the Commercial Code of 1960. The special laws are particularly applied over the companies specified by such laws. In fact most of the new laws are concerned with the financial sector; of banking, insurance and microfinance institutions. In these laws, there are similar provisions on similar matters. An overview is given below.

A. Banking Business Proclamations No. 592/2008: the Banking Proclamation and its directives issued by the National Bank of Ethiopia (NBE) have contained provisions on some corporate governance matters relating to shareholders, directors, employees and auditors.

Shareholders' meetings are essential instruments through which the owners of a company are able to exercise their powers over a company. The proclamation has rules on shareholders' meetings, the limitation by the NBE of some of the shareholders' rights of voting.²⁰⁸ These rules are in addition to the provisions of the Commercial Code relating to shareholders' rights. Since the Banking Proclamation is a special law in this regard, on banking matters concerning shareholders meetings and limitation of rights of shareholders to vote, it prevails over the Commercial Code provisions. To sum, the provisions of the special law provides additional rules to the Code's provisions.

Further, the Proclamation has provisions on the appointment, qualification, competence of directors, minimum number of directors in a board, the term of office of directors, duties and responsibilities of directors, and other specific matters.²⁰⁹ Appointment of Chief Executive Officer (CEO) and Senior Executive Officers (SEOs) are also provided under Article 14 of the Proclamation. There are also prohibitions to be appointed on some posts like becoming director or an employee as it is clearly stipulated under Article 15. The

²⁰⁸ Articles 12 and 13 of Banking Business Proclamation No. 592/2008

²⁰⁹ Article 14 of the Proclamation No. 592/2008; See also NBE Directive No. SBB/39/2006 relating to Approval of Directors and CEO; Directive No SBB/49/2011 relating to Limits on Board Remuneration and Number of Employees who Sit on Bank Board.

cessation of management functions, the suspension and removal of directors, CEOs or SEOs by the NBE are also provided for there under.

Another essential principle of corporate governance, i.e. disclosure and transparency of financial matters and other bank-related information are provided for under Part VI and VII, i.e. Articles 23-31 of the Proclamation. According to the Proclamation's provisions, banks shall prepare financial records and shall appoint external auditors. NBE Directive No SBB/19/1996 and Directive No SBB/21/1996 are important in that they contain specific rules on approval of an appointment of external auditor, and provide for manner of reporting financial statements respectively.

B. Microfinance Institutions Proclamation No. 626/2009: the Microfinance Proclamation, along with its directives issued by the NBE has governance matters which are analogous to Banking Proclamation. The Proclamation, among other things, contains provisions concerning persons who may be engaged in management functions like directors, CEOs and SEOs. The tenure and cessation of exercising the power of directors are further provided for under the Proclamation.²¹⁰ The qualification and competence of directors and CEOs is provided for by the NBE Directive No. MFI/03/1996.

The appointment of external auditors, their qualification, tenure, duties and reports, are provided for by the Proclamation. Moreover, disclosure and transparency, being important for good corporate governance are enshrined under the proclamation. According to the Proclamation, the disclosure of financial and other information is included as a part of governance of Microfinance Institutions.²¹¹ The matter of financial records and reports is regulated by NBE Directive No MFI/08/1996.

C. Insurance Business Proclamation No. 746/2012: the Insurance Proclamation and the directives issued by the NBE, as the earlier on discussed Proclamations do, have provisions governing shareholders, directors, CEOs, SEOs, auditors, employees, and some other corporate governance matters.

²¹⁰ See Article 11 of Proclamation No. 626/2009

²¹¹ *Ibid*, Article 15

Shareholders' meetings are essential instruments through which the owners of a company are able to exercise their powers over a company. The Proclamation has rules on shareholders' meetings, the limitation by the NBE of some of the shareholders' rights of voting.²¹² These rules are in addition to the provisions of the Commercial Code relating to shareholders' rights. Since the Insurance Proclamation is a special law in this regard, on insurance matters concerning shareholders meetings and limitation of rights of shareholders to vote, it prevails over the Commercial Code provisions. To sum, the provisions of the special law provides additional rules to the Code's provisions

Further, the Proclamation has provisions on the appointment, qualification and competence of directors, minimum number of directors in a board, the term of office of directors, duties and responsibilities, the maximum remuneration to directors and other specific matters. Appointment of Chief Executive Officers (CEOs) and Senior Executive Officers (SEOs) are also provided for under Article 15 of the Proclamation. There are also prohibitions to be appointed on some posts like becoming director or an employee as it is stipulated under Article 16. The cessation of management functions, the suspension and removal of directors, CEOs or SEOs by the NBE are also provided for there under.

Another essential principle of corporate governance, i.e. disclosure and transparency of financial matters and other insurance-related information are provided for under Part VI and VII, i.e. Articles 26-36 of the Proclamation. According to the Proclamation's provisions, insurance companies shall prepare financial records and shall appoint external auditors. NBE Directive No SIB/17/1998 is important in that it contains specific rules on the manner of reporting financial statements by insurance companies.

In addition to those ones on the financial sector laws, there are other laws which provide some matters related to corporate governance. For instance, the Commercial Registration and Business Licensing Proclamation No. 686/2010 has some provisions on managers and the duty of disclosure and transparency. According to Article 12(2) of this Proclamation, the manger of a share company shall not be a manager in more than one any business organization at the same time. This is a rule

²¹² See Articles 13 and 14 of Insurance Business Proclamation No. 746/2012

applicable to all share companies irrespective of the business they undertake. Further, Articles 43 and 44 provide for the duty of disclosure of information and inspection of the company. A company shall give information to the appropriate government organ, and shall be inspected in order to ensure the observance of the conditions subject to which any business license is issued. These are all governance matters of a company which all shall comply.

To conclude this part, the Ethiopian legal regime governing corporate governance is basically incorporated under the Commercial Code and special laws discussed above. Apart from these legislations, other laws such as the investment law, business registration law, are also highly importance in this field.

One important emerging effort by Addis Ababa Chamber of Commerce and Sectoral Association (AACCSA) should be noted here. The AACCSA has already established an Ethiopian Institute of Corporate Governance (EICG).²¹³ The origin of EICG dates back to 2001.²¹⁴ This year, the Institute is already established under AACCSA. The Institute is deemed to be non-governmental, private, and with voluntary membership organization. It is established based in the following objectives:

- To develop, publish and maintain the Ethiopian Corporate Governance Code (ECGC) for the guidance of all private, state and community-owned corporate business in Ethiopia;
- To create awareness and promote good corporate governance in the business community in line with the ECGC;
- To serve its members and affiliates with up-to-date knowledge of framework and best practices for governance and management of corporate businesses;
- To establish and maintain regional and international relations with institutions and networks that promote good corporate governance;
- To serve as focal point for business leaders, government officials, researchers and academics, and facilitate exchange of experiences and joint learning about business excellence; and

²¹³ <http://www.thereporterethiopia.com/index.php/news-headlines/item/955-addis-chamber-to-launch-corporate-governance-institute>, last accessed on 6 November, 2013

²¹⁴ <http://www.addischamber.com/news&articles/newsDE.php?nid=250&tname=Editorial>, last accessed on 6 November, 2013

- To stimulate the business community, investigate and publish the state of its compliance with the ECGC.

The Institute comes up with broad views in relation to corporate governance in Ethiopia. However, since the Institute is established recently, it is difficult to say much about its functions, successes or failures.

3.3.Mechanisms/Principles of Corporate Governance in Ethiopia

The relevant laws in Ethiopia governing corporate governance are briefly stated in the preceding discussion. It is now time to investigate each of the corporate governance aspects separately under this Section.

3.3.1. Board of Directors

The rules governing the board of directors, having twenty-one provisions is covered by the Commercial Code from Article 347 through Article 367. These provisions deal with, among other things, the appointment, the remuneration, the removal, the duties and responsibilities, the liability of board of directors and the protection of minority shareholders.

Members of the board of directors, as per Article 347 (1), are elected from among the members of a share company. To use the words of Hussein, the board is the “ultimate” managing body of companies in Ethiopia.²¹⁵ It is a non-executive organ of the company which manages/governs the company.²¹⁶ It is distinguished from the executive body of the company that performs the day to day activities of the company.²¹⁷

The provisions in the Commercial Code and those over in other laws on the role of board of directors are inadequate especially when compared to international documents dealing with the role of directors like the OECD principles.²¹⁸

The composition of directors is one point when ‘board of directors’ is discussed. The Commercial Code and other relevant laws do not require share companies to have independent non-executive

²¹⁵ Hussein Ahmed, 2012, p. 57

²¹⁶ *Ibid*, p. 51

²¹⁷ *Ibid*

²¹⁸ *Ibid*, p. 62

directors. The law does not define the independence of board of directors. In fact, the Code provides under Article 348 (4) that “the general manager may not be a director.” In relation to this article there is a discrepancy between the Amharic and English version of the Code.²¹⁹ Though Article 347 (1) of the Commercial Code stipulates that only members of the company may manage, this stipulation seems outdated.²²⁰

The financial sector has special rules on the composition of directors. Banking Business Proclamation No 592/2008 under Article 15(3) and NBE Directive No SBB/49/2011 prohibit general manager/s or CEOs from concurrently holding the positions of CEO and membership in the board of directors.²²¹ The new NBE Directive (i.e., No.SBB/49/2011) specifically prohibits any (permanent or contractual) employee of banks to serve as a member in the board of directors of any bank.

The qualification of directors is another issue deserving to be discussed when dealing with board of directors. On this issue, the Code does not set down any qualifications to be met to which would be elected directors should satisfy. This creates a room for the election of an incompetent person to become a director.²²² However, it should have been better if the elected directors have “financial, technical or legal knowledge and specialization in the area of operation of the company.”²²³ However, in relation to banks, insurance companies and microfinance institutions, the NBE has issued a directive dealing with the appointment and selection criterion for membership in the board of directors. The Directives set selection criteria such as education, employment, age, financial soundness and etc.²²⁴

²¹⁹ See *Ibid* at 63-64. See also Fekadu Petros, *Ethiopian Company Law*, 2012, pp. 144-145 (Hereinafter, Fekadu Petros, 2012). Hussein tends to argue, based on the rules of interpretation and the practice in non-financial share companies, that the Amharic version of the Code shall be given effect. On contrary, Fekadu showed that Art. 348 (4) is translated into Amharic defectively and thus the English version of the Code shall be given effect.

²²⁰ Hussein Ahmed, 2012, p. 64

²²¹ NBE Directive No.SBB/49/2011 on “Limits on Board Remuneration and Number of Employees Who Sit on Bank Board”

²²² Hussein Ahmed, 2012, p. 65, cited from Advisory Group on Corporate Governance in India, Corporate Governance in India: Current Status, & Recommendations, Annexure-I, available at <http://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/20024.pdf>

²²³ *Ibid*

²²⁴ See NBE Directives No.SBB/39/2006, Article 5.

Keeping these things in mind, the Commercial Code has provisions on the appointment of directors' under Article 350. Accordingly, the appointment of directors can be made under the memorandum of association. Directors who are appointed thus, however, need to be approved by the meeting of subscribers. In case where the meeting of subscribers rejected the appointees under the memorandum of association, the directors shall be appointed by the general meeting.²²⁵ Apart from these, the same article (Article 350(2)) provides the term of office of directors' to be three years.

Directors' duties and responsibilities, and their powers are provided under Articles 362 and 363 respectively. The duties of directors as provided under Art. 362 are so wide for which there is no need to restate here. The power of directors is emanates from the law, memorandum or articles of association and the resolutions of shareholders' meetings as clearly provided for under Article 363(1) of the Commercial Code.

Directors' remuneration is one of the important and sometimes controversial issues in corporate governance. The OECD and other international and national instruments have provided for the remuneration owed to directors. In Ethiopia, Article 353 of the Commercial Code regulates the matter. Hussein raises two potentially controversial issues in relation to remuneration of directors.²²⁶ The first one is that whether the remuneration provided by the Code is mandatory in cases where the articles of association are silent. The second controversy is the amount of remuneration set by the law (i.e., 5-10% share of annual profit), Article 353(4), and its application in financial share companies.²²⁷

²²⁵ Article 350(2) of the Commercial Code

²²⁶ Hussein Ahmed, 2012, p. 68.

²²⁷ The survey conducted by the NBE considers that the remuneration paid to the directors of banks is excessive and causing conflict of interests among shareholders. As a result, on January 6, 2011 the NBE has issued Directives No.SBB/49/2011 in accordance with Article 14(4) (e) of the Banking Business Proclamation No.592/2008 which authorizes it to issue directives on the maximum remuneration of a director of a bank, to address disputes and create industry peace and good corporate governance among financial institutions. The directives limit the remuneration of individual private bank directors to Birr 50,000.00 (Fifty Thousand) in one operating year, and a monthly allowance of Birr 2,000.00 (Two Thousand). Banks are also prohibited from paying directors any benefits, in cash or in kind, in addition to the set annual amount. The failure to implement the directives could earn a non-complying bank a penalty of 10,000 Birr and make it liable for criminal and civil suits." See *ibid*, pp. 70-71. See also the discussion of the issue by Fekadu Petros, 2012, pp. 145-149

Both Fekadu and Hussein strongly criticized the Directive issued by the NBE on the remuneration of directors of banks. Hussein suggested that the remuneration of the directors of banks shall be in compliance with the internationally accepted practices.

Conflict of interest between directors and a company is dealt with in three articles of the Commercial Code, i.e. Articles 355-357. The Code prohibits any conflict of interest between the directors and a company and for that reason puts strict provisions. Under Art. 355 of the Commercial Code, the law imposes a restriction on directors by stating that they may not be partners with joint and several liability in rival companies nor compete against their companies either on their own behalf or on behalf of third parties. In the second place, the dealing between directors and companies is subject to the provisions of Article 356. Accordingly, “any dealings made directly or indirectly between a company and a director shall receive the prior approval of the board of directors and notice shall be given to the auditors.” Lastly, Article 357 (1) provides that directors may not contract loans with the company. In addition, directors may not obtain an overdraft in current account or have any obligation guaranteed in respect of business transacted with third parties.

Some of these provisions are not found in laws of some other countries and are not consistent with the current international business practices. For instance, the restriction on director to conduct private trade according to Article 355 is not expressly prohibited in England, India and the countries following their systems.²²⁸ Articles 356 and 357 are also not free from criticisms.²²⁹

The Commercial Code also contains provisions governing the liability of directors. Directors’ liability is the responsibility of directors for the failure of performing the duty imposed by law, memorandum or articles of association, for *ultra vires* and for using their powers for self interest.²³⁰ Basically, directors have liability towards the *company* (Articles 364 and 365) and the *creditors* of the company (Article 366). The basis of the liability of the directors of the company for the company itself and the creditors are different.²³¹

²²⁸ Fekadu Petros, 2012, p. 142

²²⁹ USAID, *Ethiopia Commercial Law and Institutional Reform and Trade Diagnostic*, January 2007, p. 20

²³⁰ Article 364 of the Commercial Code

²³¹ *Ibid*

According to Fekadu, directors' liability to companies emerges from the theory of agency. This means that directors are the agents of the company and their liability emerges from the principle that the agent is liable towards the principal.²³² Directors are liable to their companies jointly and severally.²³³ On the other hand, the liability of directors to the creditors of a company stems from the obligation of bailment.²³⁴ Under the contract of bailment, the bailee receives the property of the bailor; in the case of companies, the company is the bailee and the creditors of the company are the bailors.²³⁵ The nature of liability of directors for the creditors of the company is based on strict liability.²³⁶

3.3.2. Manager

Managers are one of organs of governance of companies.²³⁷ Managers may be known in different names.²³⁸ The basic task of a manager is to perform day to day functions of a company.²³⁹ The Commercial Code and other special laws such as proclamations for financial companies, commercial registration and investment laws all contain provisions governing manager of companies. The provisions under banking, insurance and microfinance business proclamations are specifically applicable for managers²⁴⁰ appointed respectively for banking, insurance and microfinance companies. There are issues posed in connection with manager of companies such as appointment, qualifications, powers and functions, and responsibilities of a manager.

On the appointment of a manager, the Commercial Code has one clear provision. According to Article 348 (3), "a general manager is appointed by the board (of directors)." Such provision is clear having a binding affect on all other special laws dealing with appointment of manager. Further, all the provisions of financial companies Proclamations and Commercial Registration and Business Licensing Proclamation and Investment Proclamations provide that a manager is appointed by the board of directors of that particular company.

²³² See Art. 2208 *et seq.* of the Ethiopian Civil Code of 1960

²³³ Article 364(2) of the Commercial Code

²³⁴ Fekadu Petros, 2012, p. 156

²³⁵ See Articles 2779 *et seq.* of the Ethiopian Civil Code of 1960

²³⁶ Fekadu Petros, 2012, p. 162

²³⁷ Tewodros Meheret, 2011, pp. 79-82

²³⁸ *Infra*, note 389

²³⁹ Article 2 (4) of Banking Business Proclamation No 592/2008, Article 2(2) of Micro Financing Proclamation No 626/2009 and Article 2 (6) of Insurance Business Proclamation No 746/2012

²⁴⁰ Banking, Insurance and Micro financing Proclamations did not use the term "manager." Rather, these Proclamations use the term "chief executive officer."

The manager thus appointed by the board is an employee of the company. Article 348(4) of the Commercial Code says in clear words that “The general manager is an employee of the company...” The same kind of provision is found under Article 2(7) of Banking Business Proclamation No 592/2008 and Article 2(11) of Insurance Business Proclamation No 746/2012. The point that can be raised here is “can a manager (chief executive officer) be a director or shareholders in a company?”

On the qualifications of a manager there are no clear provisions under the Commercial Code. However, there is one sort of qualification under Commercial Registration and Business Licensing Proclamation No 686/2010. According to Article 12(2) of this Proclamation “The manager of a share company shall not be a manager in more than one any business organization at the same time.”²⁴¹ Similar type of prohibition is also found under Article 15(3) of Banking Business Proclamation No 592/2008 and Article 16(2) of Insurance Business Proclamation No 746/2012.

Apart from the provisions of Proclamation No 686/2010, there are detailed rules about qualifications of chief executive officer (or a general manager) in Banking, Insurance and Micro Financing Proclamations and Directives issued by NBE thereto.²⁴² In such companies, the appointment of chief executive officer at the time of licensing or at any time shall be approved by the NBE.²⁴³

3.3.3. Shareholders Meetings

Shareholders are the third and the last of the organs of corporate governance in Ethiopian Commercial Code. Matters pertaining to shareholders covers the widest provisions of corporate governance, i.e., from Article 388-428 of the Code. This Section of the Code’s corporate governance is the one which is found in many of international and national legislation as the rights of shareholders. Shareholders meetings are the fora through which shareholders exercise and

²⁴¹ See Article 12(2) of Commercial Registration and Business Licensing Proclamation No 686/2010. The same prohibition is applicable over a manager of a business organization other than a share company. (See Article 11(2))

²⁴² See Article 15 of Banking Business Proclamation No 592/2008, Article 16 of Insurance Business Proclamation No 746/2012. See also NBE Directive No SBB/39/2006 for Banking Business, NBE Directive No MFI/03/96 for Micro Financing Business

²⁴³ Article 14 (2) of Banking Business Proclamation No 592/2008, Article 11(1) of Micro Financing Proclamation No 626/2009 and Article 15 (2) of Insurance Business Proclamation No 746/2012

demonstrate their ownership right. The provisions of shareholders' meetings deal with the rights of the shareholders, the types and the conduct of shareholders meetings, the manner of passing decisions in meetings and other related matters.

Article 389 of the code incorporates the inherent rights of shareholders. These rights of shareholders, in particular, includes the right to be a member of board of directors, the right to participate in meetings²⁴⁴, the right to vote, the right to challenge the decisions of the company, the rights to receive dividends and a share in a winding-up of company. Furthermore, any shareholder has the right to inspect the documents as is provided under Articles 406, 417 and 422. This right to inspect documents is among the critical and important right that is given to shareholders.

There are two classes of meetings of shareholders; general and special meetings. The general meetings may be ordinary or extraordinary which comprises of all shareholders. Shareholders' meetings are the highest organs in share companies.²⁴⁵ In fact, it has the power to decide over essential issues relating to change of nationality of a company, increasing the investment of a company and change of its firm name. In addition, shareholders' meetings have power to approve the tasks performed by the company, passing resolution on different matters, appointment of directors and auditors and their remuneration. The query here is how far the shareholders' meetings used these powers. This is determined by the number and composition of shareholders and their level and knowledge of the law.²⁴⁶

3.1.1. Auditors

Auditors are other components of the corporate governance in the Ethiopian Commercial Code which is provided for under Arts. 368-387. There are two types of auditors; internal and external auditors. The Commercial Code provisions under this Section deal with external auditors.²⁴⁷ The Commercial Code pertaining to auditors, among other things, deals with the appointment, removal, remuneration, powers and duties and liability of auditors. Auditing is one mechanism of disclosure

²⁴⁴ This right is not the exclusive right of shareholders. Auditors not only have a power but they do have also an obligation to take part in shareholders meetings. See Article 378 of the Commercial Code. See also Fekadu Petros, 2012, pp. 203-204.

²⁴⁵ This assertion, however, does not seem correct practically. See Fekadu Petros, 2012, p. 191.

²⁴⁶ *Ibid*

²⁴⁷ *Ibid*, p. 176

and transparency under the principles of corporate governance.²⁴⁸ The traditional notion of auditing is considered to be financial auditing. However, auditing has three categories; operational auditing, compliance auditing and financial auditing.²⁴⁹

Article 368(1) and Article 369 of the Commercial Code stipulates that the appointment of auditors is conducted by the general meeting of shareholders. This provision is more general which lack some clarity.²⁵⁰ In the first place, by whom and how the auditors are to be nominated is not addressed by this article. Next, the provisions are mandatory which makes it difficult to take other ways/options. The practice, however, shows that auditors are appointed by the general meetings up on the nomination of directors.²⁵¹

The duties of auditors under the Commercial Code includes the duty: (a) to audit the books and securities of the company; (b) to verify the Correctness and accuracy of the inventories, balance sheets and profit and loss accounts; (c) to certify that the report of the board of directors reflects the correct state of the company's affairs; (d) to carry out such special duties as may be assigned to them.²⁵² This article talks only about financial auditing. Subsequent provisions of the Code also impose other duties on auditors. In particular, such duties include the duty to report the carrying out of their duties to the general meeting; the duty to inform directors about irregularities or breach legal or statutory requirements, and in case of grave irregularities to the general meeting; and, finally, calling of general meeting when directors failed to correct their irregularities.²⁵³ The duties of the auditors under Article 376 go far beyond financial auditing and regulate other aspects of auditing.²⁵⁴

The powers of auditors are also enumerated under Article 378. Accordingly, “The auditors may at any time make on the spot such audits and checks as they think necessary and may call for any information, agreements, books, accounts, minute books and such other documents as may be required for the proper execution of their duties.”

²⁴⁸ *Ibid*, p. 175

²⁴⁹ *Ibid*

²⁵⁰ *Ibid*, pp. 177-178

²⁵¹ *Ibid*

²⁵² Commercial Code, Article 374

²⁵³ *Ibid*, Art. 375-377

²⁵⁴ Fekadu Petros, 2012, p. 184

CHAPTER FOUR

4. FOREIGN COMPANIES AND THEIR OPERATION IN ETHIOPIA

4.1. Foreign Companies and Their Operation in Other Countries

Under this Section of the Chapter, the operation of foreign companies in general and branch companies in particular are examined by taking the experience of other countries. The legal regimes of countries which have built big economy and whose regimes can be exemplary to Ethiopia are studied below.

4.1.1. China

The 2005 Revised Company Law of Peoples' Republic of China provides the forms of operating business by the foreign investor. Accordingly, there are five forms of doing business. These are by opening: (i) a representative office; (ii) equity joint venture; (iii) cooperative joint venture; (iv) wholly foreign owned enterprise; and (v) holding company. In particular, Chapter XI, Articles 192-198 of the China Company Law provides for the regulation of branches of foreign companies in China.

In order to operate business in China, the branch foreign company shall pass through two main stages. Firstly, the branch foreign company wishing to operate shall apply for such establishment to the competent authority. Next, up on examination of the application it has to be registered before the registering authority.²⁵⁵ The completion of registration implies the opening of the branch company.

Once the foreign company opened a branch company in China, it must appoint a representative or an agent in the territory of China which shall take charge of the affairs of the branch, shall allocate to the branch corresponding funds for the business activities it is engaged in.²⁵⁶ In China, the representative of branch of a foreign company has no legal personality.²⁵⁷ The branch of foreign company has the functions of understanding the Chinese market, promote the products and services, develop new contacts and examine the feasibility of an investment project. The Chinese

²⁵⁵ Article 193 of the 2005 Chinese Revised Company Law, accessed from <http://english.wzj.saic.gov.cn/laws/061027085055-0.htm>, last accessed on September 10, 2013

²⁵⁶ *Ibid*, Article 194

²⁵⁷ *Ibid*, Article 196

model of representative or agent of branch of foreign company is similar to that of commercial representative in Ethiopia.²⁵⁸

Another peculiar feature of the branch of foreign company in China is concerning liability. To use directly the words of the law “The *foreign company* shall bear civil liabilities for the business operation of its branches undertaken within the territory of China.”²⁵⁹ (Emphasis added) When the law says “...foreign company...” under this article, it is to mean the parent company of the branch company. The *accontrario* reading of this provision also entitles the parent company to enjoy the rights enjoyed by the branch company in China.²⁶⁰

4.1.2. Germany

There are three forms in which a foreign company may operate business in Germany. These are: 1) through permanent establishment of foreign company (*Betriebsstätten*); 2) by opening branch (*Zweigniederlassungen*); and 3) by opening a subsidiary of foreign company (*Gesellschaft mit beschränkter Haftung or GmbH*).²⁶¹ A branch of foreign company can do significant transactions covered by the head company’s business object, not merely preliminary or auxiliary tasks.²⁶² On the other hand, foreign companies with permanent establishments are considered as a subordinate unit of foreign company.²⁶³ The subsidiaries operating in German are allowed to do independent business operations of its own.²⁶⁴

In relation to organizational terms, branch foreign company in Germany does business which is independent from the parent company. However, in relation to legal terms, the branch is dependent in civil law terms. Similar to permanent foreign company establishments, the branch in Germany has

²⁵⁸ Articles 39-43 of the 1960 Commercial Code of Ethiopia; see also Article 15 and Art. 45 *et seq.* of Commercial Registration and Business Licensing Proclamation No 686/2012

²⁵⁹ Article 196 of the Revised Chinese Company Law of 2005

²⁶⁰ See *ibid*, Article 197

²⁶¹ See the 2009 German Foreign Investment Act; See also Florian Stork, ‘A Practical Approach to the New German Foreign Investment Regime – Lessons to be Learned from Merger Control’, *German Law Journal*, Vol. 11 No. 02, 2011, pp. 260-264; Holmes Roberts and Owen, *The HRO-Guide to Doing Business in Germany*, 3rd ed., (Holme Roberts & Owen Germany LLP 2009), pp. 2-5 (available at www.hro.com, last accessed on November 10, 2013)

²⁶² Foreign Investors Help Desk, 2008, available from www.germantaxes.info, last accessed on September 14, 2013

²⁶³ *Ibid*

²⁶⁴ *Ibid*

no legal personality of its own.²⁶⁵ In addition, the legal transactions which are done by the branch company obligate the parent company. Further, the branch company has its own business assets, its own bank account, and keeps separate accounts.²⁶⁶

The branch foreign company has to be registered in the register of companies in the branch's local government area. Particulars have to be provided depending on the legal structure of the foreign parent company.²⁶⁷ In relation to trade name, the branch company may have its own name, but it must include the head (parent) company's trade name (including suffix indicating the legal structure).

The manager of the branch is authorized to represent the company and to do legal transactions; full or limited commercial powers may be granted. On the other hand, concerning subsidiary companies, its own managerial agent is authorized to do legal transactions.²⁶⁸

The liability of the parent company for the branch company in Germany is unlimited.²⁶⁹ This happens to be the same as that of permanent establishment companies (*Betriebsstätten*) in Germany. On the other hand, with respect to subsidiaries, the parent company has limited liability for its subsidiaries in Germany.²⁷⁰ The subsidiary of foreign company in Germany is liable for all of its actions. This is due to the fact that the subsidiary has its own legal personality unlike that of branches and permanent establishments.

The branch company has further duties that it has to fulfill. For example, it has to comply with the publication of its annual accounts if and only if the head (parent) company is based in European Union member state or a country belonging to the EEA.²⁷¹ Concerning accounting obligation, the branch has such duty both under the German commercial and tax laws. These obligations are similarly applicable to subsidiary companies in Germany. Another obligation of the branch is

²⁶⁵ Klaus Rutow, Dr. Dirk Lange, Annette Lionnet and Michael Wagner, *Doing Business in Germany: A Guide for Foreign Investors*, 2007, p. 6. Available online at http://www.fr-lawfirm.de/fileadmin/user_upload/Aufsaeetze/Doin_Business_in_Germany.pdf (Last accessed on 10 November, 2013)

²⁶⁶ Foreign Investors Help Desk, 2008, available from www.germantaxes.info, last accessed on September 14, 2013

²⁶⁷ Germany Commercial Code, Section 13d

²⁶⁸ Foreign Investors Help Desk, 2008, available from www.germantaxes.info, last accessed on September 14, 2013

²⁶⁹ *Ibid*

²⁷⁰ *Ibid*

²⁷¹ Germany Commercial Code, Section 325a

payment of tax.²⁷² Being an entity doing business, the branch company has to pay tax. The branch company has limited corporation tax and trade tax liability.²⁷³ Contrarily, the subsidiary company has unlimited corporation tax and trade tax liability.²⁷⁴

4.1.3. France

Similar with Germany and China, in France, a foreigner can do business through establishing a permanent establishment, a branch office or a subsidiary office.²⁷⁵ A branch or subsidiary of a foreign company in France may conduct manufacturing or sales operation. A branch is one of the foothold to enter to do business in the land of France.

When one opens a branch company in France, it is necessary to have a representative.²⁷⁶ The representative heads the branch whose function is like that of an agent who is required to report to the parent company established abroad.²⁷⁷ The French law does not put a restriction on the branch of foreign companies on their decision making power.²⁷⁸

A branch company of foreign investor in France has no legal personality.²⁷⁹ This makes its legal existence similar with its Chinese and Germany counterparts. However, there is one big feature of the branch office in France. The branch company in France “may carry out all the operations of an industrial or commercial company, but are not separate legal entities and the parent companies are responsible for their initiatives.”²⁸⁰ The French law makes the parent company situated abroad to be liable in cases where the branch company in France is encountered with financial problems.

A branch foreign company in France has to be registered by bringing the documents relevant for registration. The documents such as articles of association and memorandum of association of the parent company, the registration certificate of the parent company, address, the name of the

²⁷² Foreign Investors Help Desk, 2008, available from www.germantaxes.info, last accessed on September 14, 2013

²⁷³ Foreign Investors Help Desk, 2008, available from www.germantaxes.info, last accessed on September 14, 2013

²⁷⁴ *Ibid*

²⁷⁵ Invest in France Agency, *Doing Business in France*, January 2013, p. 10, Available online at www.investinfrance.org (Last accessed on November 10, 2013)

²⁷⁶ *Ibid*

²⁷⁷ *Ibid*

²⁷⁸ *Ibid*

²⁷⁹ *Ibid*

²⁸⁰ *Ibid*

representative are required at the time of registration of the branch company in France. If we look at these matters it is more or less similar to its Ethiopian counterpart.²⁸¹

Another basic feature of branches in France is that they are considered as permanent establishments for the purpose of tax laws.²⁸² As a result, any branch company in France must pay corporate tax and value added tax (VAT).²⁸³ The subsequent conversion of a branch into a separately incorporated subsidiary is possible, but must comply with rules governing the sale and transfer of a business, and is subject to taxation.²⁸⁴

4.2. Foreign Companies Operating in Ethiopia

Foreign companies may operate in Ethiopia in accordance with Ethiopian law. Ethiopia is determined to attract any foreign company to work/invest in it.²⁸⁵ Attracting foreign companies is an essential part of building an economy. This has been practiced for long period of time. It is continued until now and will continue too in the future.²⁸⁶ The existence of various foreign companies which are engaged in multiple activities in Ethiopia is a clear manifestation of this broad objective.

Ethiopia arranged to have the requisite policy, legal and institutional framework for attracting foreign business.²⁸⁷ At present, Ethiopia has adopted foreign, trade, investment, industry and other relevant policies for this purpose. The country has also proclaimed several trade, investment, industry, business, tax and market related legislations to enhance the feasibility of its policies.²⁸⁸ In

²⁸¹ Compare it with Ethiopian Investment Proclamation No 769/2012, Article 14(1)(e)

²⁸² Invest in France Agency, *Doing Business in France*, January 2013, p. 10, Available online at www.investinfrance.org (Last accessed on November 10, 2013)

²⁸³ *Ibid*

²⁸⁴ *Ibid*

²⁸⁵ Ethiopian Investment Agency, *An Investment Guide to Ethiopia: Opportunities and Conditions*, 2013, available at www.eia.gov.et

²⁸⁶ *Ibid*

²⁸⁷ See the Federal Democratic Republic of Ethiopia Industrial Policy, Ministry of Information, 2002; Foreign Affairs and National Security Policy, Ministry of Information, 2002

²⁸⁸ For example, see the 1960 Commercial Code and Maritime Code, Trade Practice and Consumer Protection Proclamation No 685/2010, Investment Proclamation No 769/2012, Commercial Registration and Business Licensing Proclamation No 686/2010, Mining Operations Proclamation No 678/2012, Labor Proclamation No 377/2003 and its amendments, Urban Land Lease Proclamation No 721/2011, Rural Land Administration and Land Use Proclamation No 456/2005, Immigration Proclamation No 354/2003, Nationality Proclamation No 378/2003, various tax proclamations (such as Value Added Tax Proclamation, Excise tax Proclamation, Customs Duty Proclamation, Turn Over Tax Proclamation, Stamp Duty Proclamation) and their respective Regulations.

addition, it has reviewed several of its laws in order to make them cope up with the new developments.²⁸⁹ Setting institutional framework is another task that Ethiopia should do. In fact, it has established institutions that are designed to serve the growing foreign businesses in Ethiopia. Since this research is revolving around one aspect of foreign companies, the sufficient availability or not of these matters relating to governance will be investigated below in depth.

Accordingly, Ethiopia is presently becoming the home of foreign companies coming from different corners of the world. Pursuant to the data obtained from the Ministry of Trade, at present, there are more than 1500 of foreign companies operating in Ethiopia which are registered by the Ministry of Trade.²⁹⁰ The Ethiopian Investment Agency (EIA) is also engaged in registering foreign and domestic investors. It has kept the profiles of foreign branch companies it registers. Accordingly, there are 402 branches of foreign companies between 1996 and July 2013 which are the focus areas of this research.²⁹¹

4.3. Forms and Treatment of Foreign Companies Operating in Ethiopia

In order to investigate the form according to which foreign companies are operating in Ethiopia, it is important to see in what form foreign companies are coming. In accordance with the Ethiopian legislation, anyone can come to Ethiopia in order to do, subject to limitations by law, any kind of business or investment. Here the law governing the foreign companies is important to be noticed.

Since the Ethiopian law is applicable to every business person in Ethiopia, it is also applicable over all business men doing any trading activity. The trading activities are those mentioned under the Commercial Code and other activities recognized as trading activities by other legislations. A person who is doing the activities under Article 5 of the Commercial Code is treated as a trader. In other words, a person who is considered as a trader, i.e., whether a sole trader or any of the business organizations, may undertake business activities listed under Article 5 of the Commercial Code. In addition, there are other trading activities which are recognized by other legislations. The investment

²⁸⁹ The Trade Practice and Consumer Protection Proclamation No 685/2010, Commercial Registration and Business Licensing Proclamation No 686/2010, Investment Proclamation No 769/2012 and various tax proclamations are revised recently in order to accommodate new developments.

²⁹⁰ A data obtained from Ministry of Trade, July 2013

²⁹¹ An email communication with the Ethiopian Investment Agency, July 29, 2013

law is one typical regime in which the activities there under are treated as trading activities. The investment regime governs both domestic and foreign investors which are allowed to do any activity specified in accordance with the form [of business organization] provided for therein.

The activities under Article 5 of the Commercial Code are open to domestic or foreign trader. Therefore, there are domestic traders which are doing as a sole proprietorship or by forming any of the business organizations under the Commercial Code. Likewise, any foreigner can do business in Ethiopia either as a sole proprietor or by forming any of the business organizations recognized by the Commercial Code. Further, a foreign trader/investor may do business by forming a public enterprise in accordance with the relevant law.²⁹² Forming cooperatives is also another option to the foreigner to do business in Ethiopia.²⁹³

When a foreigner comes to Ethiopia, there are various forms of entities to do business. It can be possible to establish a *new* business, or to open a *branch*. A foreign investor can open a branch in Ethiopia as long as it has a parent company abroad. Another opportunity to do business in Ethiopia is to have a *subsidiary* while a parent company is abroad. The law in Ethiopia, however, does not seem to have a clear demarcation between branch and subsidiary foreign companies.

In the first case, i.e. in the case of foreign company incorporated in Ethiopia, the foreigner incorporated his business activity originally in Ethiopia in accordance with the relevant commercial registration or investment law.²⁹⁴ Further, a foreigner may be incorporated abroad but having the head office or principal place of business in Ethiopia.²⁹⁵ In the second case, i.e. branch foreign company, the foreign company is incorporated abroad but opening a branch company in Ethiopia.²⁹⁶ In this case, it is not necessary to be incorporated in Ethiopia. In the third case, i.e. subsidiary company, the foreign company is incorporated abroad but having a separate company having its own legal personality and autonomy in Ethiopia.²⁹⁷ In this case a separate incorporation, from the parent company, in Ethiopia is required.

²⁹² See Investment Proclamation No 769/2012, Article 10 (1) (c)

²⁹³ *Ibid*, Article 10 (1) (d)

²⁹⁴ *Ibid*, Article 10 (1) (b)

²⁹⁵ See Article 555 of the 1960 Commercial Code of Ethiopia

²⁹⁶ *Ibid*, Article 556

²⁹⁷ *Ibid*

Companies which are established either under Article 555 or 556 are commonly known as wholly foreign owned companies. This is because as its name indicates, they are owned and controlled wholly by foreigners. In fact, there is no definition under Ethiopian law as to what wholly foreign owned company means.²⁹⁸ There is no distinction with regard to foreign branch companies, foreign companies incorporated in Ethiopia or abroad as long as the source of capital, national origin of the investor or company is wholly foreign. All of these opportunities are done in a way what is commonly known as foreign direct investment (FDI). What makes common all of these types of arrangements is that the owner of a company is a foreigner.

Furthermore, a foreign business can be operated in Ethiopia through portfolio investment. Portfolio investment requires the foreigner to invest his money without the need to be incorporated in Ethiopia. Further, portfolio investment does not require opening a branch or subsidiary office in Ethiopia. In addition, it is not necessary to have a commercial representative. Portfolio investment is simply doing business through buying debt securities such as bonds and shares from private or public sector business.²⁹⁹ Investing through portfolio investment is seemingly to refer to the condition where foreign interest is represented as it is clearly provided by Article 560 of the 1960 Commercial Code of Ethiopia.

The foreign investor has another opportunity of doing business in Ethiopia as it is recognized by the law. A foreign investor can jointly invest with the government. This is possible for those activities which are delimited by law to be carried out in joint investment with the government. Particularly, manufacturing of weapons and ammunitions and telecom services can be carried out jointly with the government.³⁰⁰

4.3.1. Forms Allowed under the Investment Proclamation

As it is tried to note in the preceding Section there are different forms for the operation of foreign companies in Ethiopia. So, why the investment law is given an emphasis here? The writer of this research believes that foreign companies typically do business as investors. While they are coming in

²⁹⁸ The new Investment Proclamation No. 769/2012 under Articles 2(6), 2(9) and 4(1)(a), however, used the phrase "...wholly [foreign] owned..." For example, 'wholly owned by the government' is to mean a company which is exclusively owned by the government; 'wholly foreign owned' is to mean a company whose owners or their nationality are non-Ethiopians.

²⁹⁹ Getahun Seifu, "Regulatory Space" in the Treatment of Foreign Investment in Ethiopian Investment Laws, *The Journal of World Investment and Trade*, 2008, pp. 1-22, electronic copy available at: <http://ssrn.com/abstract=1586888>

³⁰⁰ Art. 6(2) of Investment Proclamation No. 769/2012

such status, the investment law cannot be separated from this condition. This is due to the fact that the investment law is inherently the governing law for such kinds of persons or companies coming as investors.

Article 10 (1) of Investment Proclamation Number 769/2012 provides for the forms according to which a foreign investor would engage in Ethiopia.³⁰¹ In fact, the Proclamation is also used for domestic investors. It should, however, be reminded that the Commercial Code should be seen along with the investment law. This is because sometimes it is necessary to refer to the Commercial Code. Thus, according to Article 10(1) of Investment Proclamation No. 769/2012 (*to use the wording of the Proclamation*) the “forms” for investors to do business in Ethiopia are the following.

A. Sole (Individual) Proprietorship

According to Article 10(1) (a) of Proclamation No 769/2012, a foreigner can operate business as a sole proprietorship in Ethiopia. Sole proprietorship is a business in which only one individual owns all the assets, and operates the business in his/her personal capacity. It is the simplest and the most common form of business organization in some countries like France, Germany and China. In a country where there is no one-man company like Ethiopia, sole proprietorship is an option to carry out business individually.

Business through sole proprietorship can be operated by being registered originally in Ethiopia or by opening a branch. Since a foreign investor needs more protection and security for his investment, he does not seem to invest in a country if he is not sure to get protections and guarantees. Practically, the data available in government offices like the Ministry of Trade and Ethiopian Investment Agency shows that the possibility of foreign sole proprietor is lower.

B. Business Organizations

The Ethiopian Commercial Code recognizes six forms of business organization under Article 212(1). These are ordinary partnership, joint venture, general partnership, limited partnership, share company and private limited company. Out of these available forms of business organizations,

³⁰¹ The forms according to which foreign investors are doing business in Ethiopia, i.e. either as a sole business person or business organization is the reinterpretation of the forms recognized under Articles 555-560 of Title IX of Book II of the Commercial Code. One way or the other, the forms of doing business in Ethiopia by foreign investors is recognized under the Commercial Code are found under the Investment Proclamation.

partnerships and joint ventures are hardly used by foreign investors. The reason is clear in that these types of business organizations in Ethiopia do not grant limited liability to any businessman/investor. Rather, as the data obtained from Ministry of Trade and Ethiopian Investment Agency shows, most of the foreign companies are registered in the form of share company and private limited company.

When a foreigner invests in Ethiopia by forming either a share company or private limited company, it is after either being incorporated in Ethiopia originally, or by opening a branch or setting a subsidiary company.³⁰² All of these opportunities are the ways in which a foreign share company or private limited company is operating in Ethiopia. In fact, many other countries such as France, Germany and China have adopted this kind of arrangement in order to host a foreign company.

C. Public Enterprises

A public enterprise in Ethiopia is a body which is established by law and owned wholly by the state or jointly with any person.³⁰³ There are so many public enterprises in Ethiopia which are under the ownership of the state engaging in different activities including, but not limited to, agriculture, industry, manufacturing, service, etc. Some of these public enterprises are wholly owned by the government.³⁰⁴ In some areas of business, the government monopolizes and prohibited participation of the private investors.³⁰⁵ The investment law also provides that some public enterprises can be held jointly by private investors and the government in the form of joint investment.³⁰⁶

³⁰² In fact, if a foreign investor wished to establish a partnership or joint venture in Ethiopia, nothing prohibits him. Further, as it is the same as that of share companies and private limited companies, it can be operated through original incorporation, by opening a branch or subsidiary organization.

³⁰³ In fact, if someone looks at Public Enterprises Proclamation No. 25/92, the parent law of public enterprises, under Art. 2(1), the word “enterprise” is defined as “a wholly state owned public enterprise established pursuant to this Proclamation to carry on for gain manufacturing, distribution, service rendering or other economic and related activities.” Against this provision currently there are enterprises which are jointly owned by the government and private investor especially during privatization. For example, Ethio Telecom (Previously Ethiopian Telecommunication Corporation) is currently held jointly by the Ethiopian government and a foreign investor from France. This is done in accordance with Article 6(2) (b) of Investment Proclamation No. 769/2012. In order to balance the interpretation of the two provisions, it is better to say that the latter is an exception to the prior law.

³⁰⁴ For instance, public enterprises such as the Commercial Bank of Ethiopia, Ethiopian Air Lines, Ethiopian Electric Power Corporation and Ethiopian Insurance Corporation are wholly owned by the government.

³⁰⁵ The areas of business which are monopolized by the government are provided under Art. 6(1)(a)-(c) of the Investment Proclamation No. 769/2012. These are transmission and distribution of electrical energy through the integrated national grid system, postal services with the exception of courier services and air transport services using aircraft with a seating capacity of more than fifty passengers.

³⁰⁶ Article 6(2)(a) and (b) of Investment Proclamation No. 769/2012. It includes manufacturing of weapons and ammunitions and telecom services.

The point that should be raised here is how a foreigner is going to do investment activity through public enterprises. A definition of enterprise under Public Enterprise Proclamation No. 25/92 literally seemed to prevent private companies (owned by domestic or foreign investor) to establish an enterprise. Of course, the term public enterprise is directly referring to ownership by the government. However, there is a room for any (foreigner) individual or company to engage in public enterprises. This is implying the possibility of investing jointly with the government in accordance with investment law. Accordingly, a foreign investor can jointly do investment activity with the government on the areas of telecom services and manufacturing of weapons and ammunitions.³⁰⁷

4.4. Branch Foreign Companies in Ethiopia

4.4.1. What are Branches of Foreign Companies?

The 1960 Commercial Code of Ethiopia under Article 556 provides for branch of foreign companies in Ethiopia. The article is stipulated under Title IX of Book II of the Code.³⁰⁸ In particular, this Title provides for companies which are incorporated in foreign countries and operating in Ethiopia; and vice versa. This section of the Commercial Code implies that a company incorporated in Ethiopia may operate abroad and that a company incorporated abroad may operate in Ethiopia. As it is noted above, a company which is incorporated abroad may also operate in Ethiopia by a branch company. As it will be explained later it is also possible to open a subsidiary in Ethiopia where the parent company is incorporated abroad.

As any business person or business organizations may have, any foreign company in general and a branch foreign company in particular may have auxiliaries or agents in Ethiopia. This is confirmed by Article 556(2) of the Commercial Code which provides that the branch or subsidiary of foreign company shall publish the names of persons permanently representing them in Ethiopia. These persons, either physical or juridical, who are supposed to represent a foreign company, are usually known as auxiliaries or agents.³⁰⁹ Having an agent or representative is a common practice through which branches of foreign companies operate in host countries.

³⁰⁷ *Ibid*

³⁰⁸ The provisions of Title IX, Book II are directly taken from the Italian Civil Code. See Peter Winship (editor and translator), *Background Documents of the Ethiopian Commercial Code of 1960*, (Haile Sellassie I University, Faculty of Law, 1974), p. 71

³⁰⁹ Auxiliaries or agents include commercial employees, managers, commercial traveler, commercial representative, commercial agent, commercial broker or a commission agent. The first four are not traders, where as the rest are traders. See Title II of Book I of the 1960 Commercial Code of Ethiopia.

According to the statistics given by EIA, between September 1996 and July 2013, there are about 402 branch foreign companies which are registered in Ethiopia. As it can be seen from this data most of the branch companies are share companies and private limited companies. These business organizations are registered and given permit by the Ethiopian Investment Agency. The following tables show the branch foreign companies by the years they registered in Ethiopia, the investment query, the amount of capital they run, and finally their place of operation.

The above tables show the different aspects of branches of foreign companies in Ethiopia. As it can be observed from the tables, the registered branches of foreign companies are engaged in agriculture, manufacturing, mining, health, education, consultancy services, construction, hotels, tour operation, transport and communication, real estate and rental of equipments. Most of the branches are engaged in the activities of real estate, machinery and equipment rental and consultancy services. (See Table 3 above) It is followed by construction, manufacturing and agricultural activities respectively. (See Table 3 above)

In terms of capital, the branches of foreign companies in Ethiopia run a total of 87, 296, 924, 000.00 (eighty seven billion two hundred ninety six million nine hundred and twenty four thousand birr) in seventeen years. In terms of number of branches of foreign companies operating in Ethiopia, they are increasing from year to year. The number of branches of foreign companies was 1 in the year 1996; ... 80 in 2012; and 35 up until mid 2013. (See Table 2 above) The total branches of foreign companies in Ethiopia at the time when the data is obtained reached 402. This sum is the result of increasing incoming branches of foreign companies which increases from one year to another year.

On the other hand, there are foreign companies which are registered and given permit by the Ministry of Trade. A data obtained from the Ministry showed that there are a total of 1552 foreign companies at the time when the data was obtained, i.e. July 2013. These foreign companies constituted auxiliaries and agents, including business organizations such as share companies and private limited companies. Some of these are branches of foreign companies incorporated abroad. The branches of foreign companies registered by the Ministry of Trade are registered as commercial representatives.

Commercial Representatives are governed by Book I, Title II, Chapter 3, Articles 38-43 of the Commercial Code. According to Article 38 of the Code, a Commercial Representative is defined as “a person, not domiciled at the place where the head office of the business is situate and hound to a trader by a contract of employment, who is entrusted by the trader with visiting clients in a specified area [and offering to them goods or services in the name and on behalf of the trader.]” Article 2(8) of Commercial Registration and Business Licensing Proclamation No. 686/2010 has also adopted the same definition for Commercial Representative. However, there is one big departure of the Proclamation from the Commercial Code regarding to this definition. The Code allowed the Commercial Representative to offer goods and services in the name and on behalf of the trader/the

principal. On the contrary, Proclamation No. 686/2010 under Article 45(2) prohibited them to offer goods and services for sale or enter in to contract with clients in the name of the principal.

Since Commercial Representatives are not traders, they are not allowed to do any kind of business in Ethiopia. The activities they can undertake are delimited under Art. 47 of Proclamation No. 686/2010 including to promote the products and services of the principal in Ethiopia, to study projects that will enable the principal to make investments in Ethiopia and to promote export products of Ethiopia in the country of the principal. However, in no way can they undertake any trading activity. They are rather bodies which are clearing the road for the fertile operation of the principal which is incorporated abroad. They are the bridges between the principal's business and its way in the domestic (Ethiopian) market.

While dealing with the branch of a foreign company, the inference is that there is a parent company. However, does this assertion have a legal basis? Is that always true? In order to answer these queries one has to closely observe the provisions of the law. One of the requirements for the registration of the branch of a foreign company is to present the resolution of the authorized body of the *parent* company to open a branch in Ethiopia.³¹⁰ It is well understood that the existence of the parent company abroad is becoming a necessary requirement. The issue is what if there is no parent company abroad but when the owner(s) of the company have business in other countries including their home country? There are circumstances where there exist companies engaged in different activities but with no principal place of registration. In such cases the companies are incorporated in different places; as a result there will not be parent company.³¹¹ The law, however, does not seem to consider these types of companies as branches of foreign companies. This is because it does not satisfy the requirements of having a parent company incorporated abroad. They are rather considered as foreign companies which are incorporated in Ethiopia.

One basic fact in relation to branch foreign companies is that the parent company is incorporated abroad. The branches are the extensions of the parent company. Branch foreign companies are established with the motive of expanding the business of the parent company. If the parent

³¹⁰ Art. 14(1)(e)(3) of Investment Proclamation No. 769/2012

³¹¹ For example, an Italian branch company in Ethiopia named *Fri-Elgreen Power S.R.L* has no principal business place. However, the owners of the company have different businesses in nine countries including one in Italy. None of the companies is, however, the parent company. (An interview with Ato Tsegaye Woldetinsae, Country Representative of *Fri-Elgreen Power S.R.L*, interviewed on November 29, 2013)

company is a business organization, it involves the decision of the parent company to establish a branch in another jurisdiction. This can be understood from the requirements for an application to obtain commercial registration and investment permit of branch foreign company.³¹² Accordingly, one of the requirements for its registration and investment permit is to produce a document which shows that the authorized body of the parent company is decided to open a branch of its company.

Since the branch foreign company is the extension of the parent company which is situated abroad, all of its transactions are deemed to be done by the parent company. The parent company bears liabilities and enjoys the rights flowing from its branch. However, the treatment of branches, its relation with the parent company, the law governing branches, their form, operation, and other matters may differ across countries.

Another important question that should not be missed here is that whether or not a sole business person registered abroad can establish a branch in Ethiopia. In other words, will there be a branch of foreign sole proprietorship in Ethiopia? If we go across the provisions of the Commercial Code, the Commercial Registration and Business Licensing Proclamation or the Investment Proclamation all provided for the recognition, operation or registration of branch of foreign company or business organization incorporated abroad. For example, the Commercial Code used the word “incorporated” to denote branch foreign company.³¹³ Incorporation is the term used for companies/business organizations than sole proprietorships. The Commercial Registration and Business Licensing Proclamation states that “registration of branches of foreign business organizations” which is still referring to a company than a sole proprietorship.³¹⁴ Further, the Investment Proclamation also states that “branch of foreign business organization incorporated abroad”³¹⁵ whose message is similar to the above two laws. Therefore, does the combination of these laws mean that a foreign sole proprietor cannot establish a branch in Ethiopia?

One contrary provision that will possibly defy this assertion is the one under the Investment Proclamation. As it is noted before, the forms by which a foreigner may operate business Ethiopia

³¹² See Article 13(1) of Commercial Registration and Business Licensing Proclamation No. 686/2010 and Art. 14(1)(e) (3) of Investment Proclamation No. 769/2012

³¹³ Article 556 of the Commercial Code

³¹⁴ Article 13 of Commercial Registration and Business Licensing Proclamation No. 686/2010

³¹⁵ Article 14(1)(e) of Investment Proclamation No. 769/2012

are sole proprietorship, any business organization, or a public enterprise.³¹⁶ Furthermore, these forms of doing business can be operated, among other things, through (i) by being incorporated in Ethiopia, (ii) by opening a branch company, or (iii) by establishing a subsidiary office. Therefore, the cumulative reading tells us that it is possible for the sole proprietor to open a branch in Ethiopia.³¹⁷ This is true irrespective of the fact that most of the branches of foreign companies in Ethiopia are set up either as a share company or a private limited company.

The legal personality of branches of foreign companies is an essential issue worth discussion. Branches of foreign companies in most other jurisdictions have no legal personality. For example, in Germany, Switzerland, China France branches of foreign companies do not have a legal existence.³¹⁸ Branch foreign companies in these countries are rather satellite offices used to represent the parent company. In Ethiopia, the issue of legal personality of branches of foreign companies is not clearly determined by law.

The law requires registration of branches of foreign companies which is an essential requirement in order to obtain legal personality. This is because registration gives legal personality to a business organization. Apart from this, the law in Ethiopia requires registration as a prerequisite for the operation of any foreign business organization, public enterprise. The foreign company which comes to Ethiopia has to be registered irrespective of its status. Above all, the practice is a living witness to assert that branches of foreign companies in Ethiopia have legal personality.

The argument that *registration* gives legal personality for branches of foreign companies in Ethiopia may be defeated by closer consideration of the purpose of registration. One typical example here is the registration of Commercial Representatives. According to Article 45 of Commercial Registration and Business Licensing Proclamation No. 686/2010, anyone who wished to be a commercial representative shall be registered with the Ministry of Trade. The essential issue posed here is that

³¹⁶ See *supra* the discussion under Section 4.3.1; or to particularize, see Article 10(1)(a) of Investment Proclamation No. 769/2012

³¹⁷ However, it should be noted that the provisions of the Commercial Registration and Business Licensing Proclamation and Investment Proclamation governing branches of foreign companies should not be applicable to a branch opened by sole business person.

³¹⁸ See *supra* the discussion under Section 4.1

irrespective of the registration of Commercial Representatives, it does not have legal personality.³¹⁹ The purpose of registration of commercial representatives is not for granting legal personality. It can be concluded that registration does not necessarily give legal personality for the registered body. Likewise, one can argue that though branches of foreign companies need to be registered, the registration may not grant it legal personality.

Let us see once again the status of branches of foreign companies from another direction. The data obtained from the Ethiopian Investment Agency shows that most of the branch foreign companies it registers are private limited companies or share companies. This shows the practice which proved to settle the argument that a branch of foreign company has legal personality.

4.4.2. Branches of Foreign Companies versus Subsidiary Companies

The legal personality of branches of foreign companies in Ethiopia and in other jurisdictions is elaborated above. Ethiopian law requires branches of foreign companies to be registered in the commercial register. As a result, branch foreign companies obtain legal personality up on registration. Similarly the subsidiary in Ethiopia shall be registered in the commercial register.³²⁰ In principle, the subsidiary has separate legal existence from the parent company which is incorporated abroad.

Similar to any foreign company, subsidiary companies are registered in Ethiopia in accordance with the relevant commercial registration or investment law. Up on registration by the relevant authority, it will obtain legal personality. Therefore, one can draw a similar feature of both subsidiary and branch foreign companies that both have legal personality in Ethiopia. However, this is not always true in other countries since it is only subsidiaries which have legal personality.

Then the implication of having legal personality is the autonomy of the companies to carry out any activity by themselves. The autonomy of branches of subsidiaries of foreign companies allowed them to enjoy rights and bear duties and liabilities. However, the autonomy of such companies does

³¹⁹ A sole business person or an individual trader is similarly required to be registered by the Ministry of Trade. However, the registration of sole business person does not owe it legal personality. See Article 10 of Proclamation No 686/2010.

³²⁰ Note here that unlike provisions governing registration of branches of foreign companies there is no provision in any of Ethiopian laws concerning the registration of subsidiary companies operating in Ethiopia. They are rather treated as a foreign company incorporated in Ethiopia, if they got registered. Therefore, the provisions specifically applicable to the registration of foreign companies other than the provisions governing branches will be applicable for the registration of subsidiary companies in Ethiopia.

not eliminate other parent-subsiary or parent-branch company relationships. Let us take one scenario in order to understand the issue better.

Ayka Textile, established in 1988 in Turkey, has a subsidiary company in Ethiopia known as Ayka Addis Textile and Investment Group PLC.³²¹ The parent company based in Turkey, Ayka Textile, is owned by two individuals.³²² On the other hand, the subsidiary in Ethiopia is owned by three persons; 70% by the parent company, Ayka Textile, and the remaining 30% is equally hold by two of the shareholders of the parent company.³²³ It should be noted that the subsidiary company in Ethiopia has a separate legal existence from the parent company in Turkey. The subsidiary company is autonomous in its activities in Ethiopia which allowed it to enjoy rights and bear duties and liabilities. However, the separate existence of the subsidiary company in Ethiopia does not eliminate its relation with the parent company. This is due to the fact that the parent company and its shareholders have a direct interest in the subsidiary company in Ethiopia.

Under Ethiopian law, Article 556 of the Commercial Code of 1960 has a single provision for both subsidiary and branches of foreign companies. The literal interpretation of this provision does not provide any difference between the two. Further, no other provision of the Code has put a clear distinction between branches and subsidiaries of foreign companies. In addition, neither the Commercial Registration and Business Licensing Proclamation nor the Investment Proclamation have provided the definition of the two terms.³²⁴ There is no law other than the Commercial Code that provides anything about subsidiaries of foreign companies.³²⁵

On the other hand, there are provisions relating to the registration of branches of foreign companies both under the Commercial Registration and Business Licensing Proclamation and the Investment Proclamation.³²⁶ The provisions under these laws, in the first place, show that branches are the

³²¹ <http://www.aykatextile.com/ref/CompanyProfile.pdf>, last accessed on December 4, 2014

³²² *Ibid*

³²³ Interview with Ato Andualem Mengesha, Project Manager at Ayka Addis Textile and Investment Group PLC, Interviewed on December 1, 2013

³²⁴ The French Commercial Code provides for the definition of subsidiary company. Accordingly, “when a company owns more than half of the capital of another company, the second company shall be regarded, in order to apply this chapter, as a subsidiary of the first company.” See Article L233-1 of the French Commercial Code

³²⁵ There are, however, indications of subsidiaries under the provisions of Arts. 370(1)(a), 370(2), 384, and 451(1) and (4) of the Commercial Code. The provisions under Article 370 provide prohibitions on auditors. Further, the latter provisions of the Code did not allow to have a clear understanding of subsidiaries.

³²⁶ See Article 13 of Commercial Registration and Business Licensing Proclamation No. 686/2012 and Article 14(1)(e) of Investment Proclamation No. 769/2012; see also *infra* at Section 4.4.3. of this Chapter

extensions of the parent company incorporated abroad.³²⁷ In addition, such provisions imply that there is a parent company incorporated abroad which has a direct interest in the branch company.

Two important issues are worth discussion at this juncture. The first issue is answering the question whether the absence of sufficient law regarding subsidiaries mean that subsidiary companies do not exist in Ethiopia. The answer for this question is that it is absolutely NOT! There are a lot of subsidiary companies in Ethiopia whose parent companies are incorporated abroad. If there are subsidiary companies, what are the underlying similarities and differences between subsidiaries and branches of foreign companies in Ethiopia?

In other jurisdictions, however, there is a wide difference between branches and subsidiaries of foreign companies. One essential difference of subsidiary and branch companies is related to form, i.e. both subsidiary and branch companies are different forms of legal structure.³²⁸ Branch foreign company is one form of legal structure in which the branch company is directly responsible to the parent company.³²⁹ In addition, branches companies lacked to have legal personality. Branch companies are usually engaged in selling of the products and rendering of services of the parent company, promotion of the parent company and other related tasks.³³⁰ This kind of form of foreign company structure is similar to that of commercial representatives in Ethiopia.³³¹

The second most important question is though the law does not seem to provide the differences between branches and subsidiaries of foreign companies, what is the reality and the practice on the ground. Does the absence of clear demarcation by law between branches and subsidiaries in Ethiopia mean that there is no difference? In order to give answer to these questions one has to refer and ascertain the general practice in other jurisdictions.

³²⁷ The requirement of bringing “the minutes of resolution of the authorized organ of the parent company authorizing for establishment of a branch in Ethiopia” at the time of application for the investment permit under Article 14(1)(e)(3) of Investment Proclamation No. 769/2012 shows that it is an extension of the parent company.

³²⁸ Walter W. Brudno, *Tax Considerations in Selecting a Form of Foreign Business Organization*, Vanderbilt Law Review, 1959, pp. 151-183

³²⁹ *Ibid*, pp. 156-157

³³⁰ *Ibid*

³³¹ Articles 39-43 of the 1960 Commercial Code of Ethiopia; see also Article 15 and Article 45 *et seq.* of Commercial Registration and Business Licensing Proclamation No 686/2010. However, it should be reminded that commercial representatives cannot operate any kind of business activity.

In most other jurisdictions, subsidiary companies are usually used by parent companies in order to expand their businesses.³³² Even though subsidiary companies are used as expansion instruments of the parent company,³³³ they may also be used by parent companies in order to avoid liability arising out of the subsidiary company. Parent companies deliberately used subsidiary companies to escape liabilities, if there are, since the subsidiary company has separate legal existence.³³⁴ This is because separate legal existence of the subsidiary company from the parent company also separates liability arising out of the subsidiary company.³³⁵ This emerges from what is commonly known as “corporate separation.”³³⁶ However, there are exceptional circumstances where the parent company could not escape the liability which is incurred by the subsidiary company.³³⁷

4.4.3. Commercial Registration and Investment Permit of Branch Foreign Companies in Ethiopia

Foreign companies in general and branches of foreign companies in particular need to be registered before the relevant government body in order to operate in Ethiopia.³³⁸ The commercial registration, business license and investment permit of foreign companies of any kind is provided for by the Commercial Code, Commercial Registration and Business Licensing Proclamation No. 686/2010 and Investment Proclamation No. 769/2012. However, emphasis will be given on registration and license/or permit of branches of foreign companies. The Commercial Registration and Business Licensing Proclamation provides for the commercial registration; whereas the Investment Proclamation has detailed provisions about the process of investment permit of branches of foreign companies.

One thing that needs to be ascertained first is what requirements are there in order to be registered in commercial register in Ethiopia. What are the requirements that need to be satisfied by branch of foreign company to obtain business permit? Which one precedes? The commercial registration or

³³² The scenario given above about Ayka Textile and Investment Group PLC, a subsidiary company in Ethiopia, is a simple example showing that subsidiaries are used to expand the business of the parent company.

³³³ Ballatine, Henry W., *Separate Entity of Parent and Subsidiary Corporations*, Virginia Law Register, Vol. 12, No 3, 1926, pp. 152-163

³³⁴ *Ibid*

³³⁵ *Ibid*

³³⁶ *Ibid*

³³⁷ See _____ *Parent and Subsidiary Corporations*, Alabama Law Review, Vol. 2, No 2, 1932, pp. 34-41

³³⁸ Article 6(1) of Commercial Registration and Business Licensing Proclamation No 686/2010 cum Article 30 (2) of Investment Proclamation No 769/2012

investment permit? Let us closely consider Proclamation No. 686/2010 and Proclamation No. 769/2012 on this matter.

According to Commercial Registration and Business Licensing Proclamation Article 13, registration of a branch of foreign company requires:

- An application form duly filled and signed by the agent of the business organization;
- Minutes of the parent company passed by an authorized body for the establishment of a branch company in Ethiopia, authenticated by the public notary, or a letter written by the owner in case of a one-man company; Art. 13(1)
- Certificate of incorporation of business organization; Art. 13(2)
- Authenticated photocopy of the power of attorney of the representative of the company, and photocopies of the pages relevant of the representative's valid passport or identity card in case the representative is an Ethiopian national; Art. 13(3)
- A copy of the memorandum and articles of associations, or equivalent document of the parent company; Art. 13(4)
- The exact address of the head office and branch offices of the business, if any; and (Art. 13(5) cum Art. 10(6))
- If the office of his business is his own, a title deed; or if it is a leased one, an authenticated contract of lease and a verification issued by Kebele administration as to the address of the office. Art. 13(5) cum Art. 10(7)

On the other hand, according to Article 14 (1) (e) of the Investment Proclamation, an application for investment permit by a branch of a foreign business organization or company incorporated abroad requires:

- An application form duly filled and signed by the agent of the business organization;
- A copy of the memorandum and articles of associations, or equivalent document of the parent company; (Art. 14(1)(e) (1))
- A photocopy of a document ascertaining the legal personality of the business organization (i.e. *commercial registration certificate*); (Art. 14(1)(e) (2))

- Minutes of the parent company passed by an authorized body for the establishment of a branch company in Ethiopia, authenticated by the public notary, or a letter written by the owner in case of a one-man company; and (Art. 14(1)(e) (3))
- Authenticated photocopy of the power of attorney of the representative of the company, and photocopies of the pages relevant of the representative's valid passport or identity card in case the representative is an Ethiopian national. (Art. 14(1)(e) (2))

If we look at the third requirement for investment permit, it says that the applicant shall produce commercial registration. On the other hand, the commercial registration³³⁹ of sole business person³⁴⁰ and business organization other than a share company³⁴¹ requires presentation of an investment permit.³⁴² What if the branch foreign company is a sole business person or business organization other than a share company? Should it first obtain the commercial registration or the investment permit? In these cases the requirements under the two separate laws overlap. The question that comes here is which one precedes which? The commercial registration or investment permit?

Presently, this problem is not becoming the concern neither for the institutions undertaking the respective tasks nor to the investor nor to the law. The Ethiopian Investment Agency (EIA) is currently giving a one-stop-shop service in which it can undertake several tasks by itself.³⁴³ Accordingly, the EIA can issue both the investment permit and the commercial registration of a branch of foreign company.³⁴⁴

It is necessary that the name of a branch of foreign company is required in order to do business in Ethiopia. With regard to the name of branches of foreign companies, it retains the name of its parent company.³⁴⁵ Accordingly, for example, if the parent company's name is "ABC Co." its branch

³³⁹ The Commercial Registration and Business Licensing Proclamation provides for the registration of (i) sole business person, (ii) business organizations other than share company, (iii) share company, and (iv) branches of foreign companies. See Articles 10-13 of the Proclamation respectively.

³⁴⁰ *Ibid*, Article 10(3)

³⁴¹ *Ibid*, Article 11(1)(c)

³⁴² This is when the applicant in the first case is a foreign national and in the second case when there is a foreign national as a member of the company.

³⁴³ See Article 4 and 30 of Investment Proclamation No. 769/2012

³⁴⁴ *Ibid*, Article 30(2)(d). In addition to this the EIA is empowered to give services that have been given by the Ministry of Trade, Ethiopian Revenue and Customs Authority, Ministry of Works and Urban Development. See *ibid*, Art. 30(2)(a-i)

³⁴⁵ Interview with Ato Wondimnew Fentahun, Ethiopian Investment Agency, Licensing and Registration Directorate, Interviewed on January 30, 2014

company in Ethiopia retains this name, i.e. ABC Co., followed by the word “Ethiopian Branch”.³⁴⁶ However, neither the Investment Proclamation nor Business Licensing and Commercial Registration Proclamation provide that the name of branch of foreign company is followed by “Ethiopian Branch”. In Germany, the law may require that the word “branch office” may be added to the name of the branch office of foreign company.³⁴⁷

One matter that is worth to be discussed is that the Investment Proclamation does not have any provision in relation to the requirements for the commercial registration of foreign company. It contains the requirements for obtaining investment permit. Requirements for commercial registration are rather found in Commercial Registration and Business Licensing Proclamation. In fact the requirements for the two services have no fundamental difference under the two separate laws. Therefore, one can say that the requirements for obtaining investment permit will be *mutantis mutandis* applicable for obtaining commercial registration by a branch of foreign company.³⁴⁸

Once the matters of registration and investment permit are completed the next issue will be how branch foreign companies operate business in Ethiopia. This naturally gives rise to successive queries. What is the necessity or justification behind requiring the branch foreign business organizations to produce memorandum and articles of association, certificate of incorporation abroad, and other documents at the time of registration in Ethiopia?

The legal provisions are largely concerned with regulating the entries of foreign branch companies. Are foreign branch companies operating in Ethiopia required to have legal personality? Who shall be fully responsible for everything done or omitted by the foreign branch company in Ethiopia? Who is responsible for the operation of such branch company?

4.4.4. Rights and Duties of Branch Foreign Companies

As any foreign or domestic business organization existing in Ethiopia, branches of foreign companies enjoy rights and bear liabilities. The extent of the rights, duties and privileges may

³⁴⁶ *Ibid*

³⁴⁷ Klaus Rutow, Dr. Dirk Lange, Annette Lionnet and Michael Wagner, *Doing Business in Germany: A Guide for Foreign Investors*, 2007, p. 6. Available online at http://www.fr-lawfirm.de/fileadmin/user_upload/Aufsaeetze/Doin_Business_in_Germany.pdf (Last accessed on 10 November, 2013)

³⁴⁸ See also Ethiopian Investment Agency, *An Investment Guide to Ethiopia: Opportunities and Conditions 2013*, July 2013, p. 27 (Available at www.eia.gov.et, last accessed on 12 November, 2013)

however vary based on their nationality, their form and type of business they engaged in. The Commercial Code, the Commercial Registration and Business Licensing Proclamation, Investment Proclamation and other related laws provide for the rights, duties and privileges of the branch of foreign company in Ethiopia. A separate account of the rights, duties and privileges of branches of foreign companies are elaborated herein below.

A. Rights

There are a bundle of rights that a branch foreign company may enjoy. Laws such as the Commercial Code and the Investment Proclamation have ensured some rights to companies in general. Any company has the right to acquire all the services rendered by the government offices. Obtaining information about the business environment, doing business activity permitted by law, obtaining commercial registration, business license, investment permit, renewal of licenses and permit, expansion of business, cancellation of investment permit and business license, are among the services rendered by government offices. Such services are equally served to every business person. In addition, there are other sets of particular rights.

Firstly, foreign investors in general and branches foreign companies in particular are entitled to the ownership of immovable property.³⁴⁹ Ownership of immovable properties which are requisite for investment is allowed for foreign companies.³⁵⁰ In the second place, the investment law ensured protection against expropriation and nationalization.³⁵¹ The property of foreign investors is protected against expropriation and nationalization except for the conditions and prerequisites provided for by the investment proclamation.

Thirdly, the right to repatriate the profits of the investment is recognized.³⁵² A foreign investor has an inherent right of remitting the profits he derived out of his business and which are recognized by the law.³⁵³ Remittance of fund is one of the biggest rights that any foreign investor wishes and should get. This is because without such right being ensured, no foreign investment will be mobilized.

³⁴⁹ Article 24 of Investment Proclamation No. 769/2012

³⁵⁰ It is allowed for foreign investor or foreign nationals who wished to be treated as a domestic investor. It is also similarly extended to other foreign investors which came to Ethiopia prior to the promulgation of Investment Proclamation No. 769/2012

³⁵¹ *Ibid*, Article 25

³⁵² *Ibid*, Article 26

³⁵³ See Article 26(1)(a)-(g)

There are also other rights extended to branches of foreign that stems from the investment regime.³⁵⁴ Such rights are under the Investment Proclamation are found in the form of investment incentives.³⁵⁵ The investment incentives the law granted are related to exemptions from paying customs duty (importation of duty free) on some specified items listed by the EIA's Directives.³⁵⁶ Another incentive is an exemption from paying tax based on the type of business they engage in and the place/region they are investing in.³⁵⁷

B. Duties/Responsibilities

As a business person in general and business organization in particular there are duties that naturally follow branches of foreign companies. The conventional duties expected from the branch foreign company in particular and foreign companies in general as are provided by the law, *inter alia*, include keeping of books and accounts (Art. 63 of the Commercial Code), to undertake commercial registration (Art. 6 of Proclamation No. 686/2010), renewal of business registration (Art. 18 of Proclamation No. 686/2010), obtaining business license (Art. Art. 30 of Proclamation No. 686/2010), investment permit (Art. 12 of Proclamation No. 769/2012), payment of tax in accordance with the relevant tax law.

The Commercial Code has also set down some obligations on branches of foreign companies shall comply with under Art. 556. In fact some of the duties relating to the requirement of publication are removed by the recent Commercial Registration and Business Licensing Proclamation. Other obligations include the deposition of the memorandum and articles of associations, have a person representing them in Ethiopia, and other duties imposed by special legislation as are enumerated under the above paragraph.³⁵⁸

There are also emerging and contemporary responsibilities any business person should comply with. A typical responsibility of such kind is what is known as corporate social responsibility. As it is well elaborated in Chapter 1 this concept is an emerging and one of the most controversial issues at present. Corporate social responsibility is related to observance of some legal standards like the environment, labor, and human right; giving some forms of philanthropic services to the society, etc.

³⁵⁴ *Ibid*, Part VI

³⁵⁵ *Ibid*, Article 23

³⁵⁶ See Investment Regulation No. 270/2012, Art. 13-15; and EIA Directive No. 1/2001E.C, Directive No. 3/2003E.C, Directive No. 5/2003E.C

³⁵⁷ Articles 5-11 of Investment Regulation No. 270/2012

³⁵⁸ Article 556(1)-(3) of the Commercial Code of Ethiopia

It is based on the premise that companies should not be limited to generating profit for their members. Rather, they shall exercise activities beyond earning profit to the society.

In Ethiopia, there are matters that are related to any business activity in which any business person should consider. Legally speaking the commercial and investment regime of the country is highly attached to other laws such as environmental law, mining law, labor law, land law, immigration and nationality law, and business law. Any investor running business in Ethiopia is required to observe the country's laws in carrying out his business activities. This is firmly provided for under Article 38 of Investment Proclamation No. 769/2012. Particularly, this Article emphasizes the observance of environmental laws.³⁵⁹

Disclosure and transparency is one of the essential duties of any business entity at present. This duty requires the disclosure of the activities of the business in relation to its financial and non-financial aspects, its operation, shareholders/members. Disclosure and transparency was not so much known at the time when corporations emerged in the world.³⁶⁰ At that time the principle was business secrecy. This was due to the fact that the business then was controlled and owned by family members.³⁶¹ On the contrary, at present where companies are becoming more and more public than familial, the basic principle is disclosure and release of information.³⁶² As it is the age of information; companies are required to disclose their activities to the public. That is why most of the national and international laws require companies to perform auditing activities through external auditors.³⁶³

As a result of this principle, companies at present shall disclose their financial status to shareholders, their governments, and the public at large. Shareholders have a right to inspect the documents of the company such as financial reports, minutes and resolutions of the company, attendance sheets, and reports of directors and auditors which are submitted to general meetings.³⁶⁴ The investment law has also clearly provided rules on disclosure and transparency. Accordingly, the investor shall “submit progress reports on the implementation of his project to the appropriate investment organ at the

³⁵⁹ Environmental related laws includes, among other things, Biosafety Proclamation No. 655/2009; Ethiopian Water Resources Management Proclamation No. 197/2000; Water Resources Development Fund Establish Proclamation No. 268/2002; Environmental Impact Assessment Proclamation No. 299/2002; Environmental Pollution Control Proclamation No. 300/2002;

³⁶⁰ Pierre-Yves Gomez and Harry Korine, *Entrepreneurs and Democracy: A Political Theory of Corporate Governance*, (Cambridge University Press, 2008), p. 179-182

³⁶¹ *Ibid*

³⁶² *Ibid*

³⁶³ For example, consider Principle V of the 2004 OECD Code of Corporate Governance; Articles 368-387 of the 1960 Commercial Code of Ethiopia governing external auditors of companies limited by shares.

³⁶⁴ Article 406 (1) of the Commercial Code of Ethiopia

end of every three months; and provide information concerning his investment activities whenever required by the appropriate investment organ.”³⁶⁵

³⁶⁵ Article 20 (1) and (2) of Proclamation No. 769/2012

CHAPTER FIVE

5. CORPORATE GOVERNANCE IN BRANCHES OF FOREIGN COMPANIES IN ETHIOPIA

The nature of branches of foreign companies and their operation in Ethiopia was discussed in the immediately preceding chapter. In particular, the branches of foreign companies and their status in Ethiopia is investigated in the light of the Ethiopian laws relevant to trade and investment. Further, in Chapter Four, the status of branches of foreign companies is elaborated in comparison with the operation of foreign companies in other countries.

In this Chapter, various issues will be raised and discussed in relation to the governance of the branches of foreign companies in Ethiopia. Under the umbrella of corporate governance, issues such as the nationality of companies and its impact, the laws governing the companies, matters pertaining to who has the power to control foreign companies, the relation of foreign branch companies operating in Ethiopia with that of the parent company, will be raised. Corporate governance of branch foreign companies in Ethiopia will be dealt widely. Finally, a comparison of the corporate governance of branches of foreign companies and companies incorporated in Ethiopia will be made. This helps us understand the underlying similarities and difference between branches of foreign companies operating in Ethiopia and domestic companies.

5.1. The Relationship Between a Branch of Foreign Company and a Parent Company

Branches of foreign companies are considered as extensions of a parent company which is situated in foreign country. Thus there is a vertical relationship between a branch of foreign company and a parent company. The branch of foreign company is inherently connected to the parent company in various matters. The question that needs to be addressed thus is how the relationship between the branch of foreign company and its parent company looks. The matters which interconnect both the branch and the parent company includes, among other things, governance matters and the governing laws and documents.

5.1.1. Governance Matters in Branches of Foreign Companies

When it is said that there is a governance relationship between the branch of foreign company and its parent company, it means that matters relating to management of the branch company, disclosure of the branch company's activities to the parent and the rights of the parent company over the branch company. Various matters pertaining to the organs which take control of governance activities of branches, i.e. the board of directors and the managers/chief executive officer, exercise of rights of shareholders and corporate disclosure are presented below under Section 5.2.

Accordingly, it will be shown that the manager of branch foreign company is directly appointed by the board of directors of the parent company. The nationality, membership to the company or not, qualifications and appointment, powers and functions of the manager will be explored there. Since the branch of foreign company is a part of its parent company, the shareholders of the parent company, i.e. the owners, are directly interested in the branch company. The activities of the branch company, its financial status, are sent to the parent company through reports and auditing. Therefore, once again the branch company is inherently related to the parent company.

5.1.2. The Law and Company Documents Governing the Branch

5.1.2.1. The Law

Companies are regulated and governed by various laws of the place in which it is incorporated. Different types of laws are involved in order to regulate different aspects of a company. In particular, a company is required to comply with laws such as the commercial registration law, company law, investment laws, tax laws, foreign trade laws, labor laws, etc. Depending up on the legal system, the available legislations, the business activity run by the company, the company is required to adhere to laws. For instance, a company operating a business in the country having laws of securities market is supposed to comply with security laws of that country. In the case of the branch of foreign company, it is required to comply with such laws of the host country. In Ethiopia, for example, the investment law requires foreign companies operating in Ethiopia to comply with other laws of the country.³⁶⁶

The law which provides according to which companies are established, i.e. company law, is one type of law used to govern companies. Such law, in particular, provides for requirements and procedures

³⁶⁶ See Article 38 of the Ethiopian Investment Proclamation No 769/2012

of incorporation, the governance of companies, matters related to the operation of companies, expansion and up-grading of companies, opening of branches and subsidiaries ... and finally the dissolution of companies. The law is also used as a default rule in cases where the memorandum or articles of association of a company are silent. In other words, matters which are not covered by a company's documents are regulated by the provisions of the law.

At this juncture, one thing has to be explained. The laws governing the branches of foreign companies are one possible sources of doubt in parent-branch company relationship.

It is noted that, the law governing the parent and its branch company in another country is one potential factor which relates the branch and the parent company. The parent company is subject to the laws of the place where it is incorporated. Whether the law under which the parent company is incorporated extends to govern its branch company in another country is dependent up on that law. In fact, the general practice of laws of many countries is that the branch company is the extension of the parent company. Therefore, the law governing the parent company also governs the branch company.

On the other hand, the branch of foreign company is subject to the law of the place where it is operating. Unlike in the subsidiary-parent company relationship, in parent-branch company relationship the parent company is liable for the activities/or liabilities of the branch. The law of the place where the branch is operating makes the parent company to be liable for the activities of the branch company. Thus, save as the extent of the applicability of the law according to which the parent company is incorporated, its branch company is subject to the law of the place where it is operating. Similarly, the parent company is subject to the laws of the place where its branch operates.³⁶⁷

5.1.2.2. Company Documents

The documents governing a company includes memorandum of association, which is considered as the external constitution of the company,³⁶⁸ and articles of association which contains the internal rules and regulations of the company. Both documents are required to be presented to the relevant government authority in order to get registered and obtain legal personality.

³⁶⁷ This assertion is based on the principle that the parent company is liable to the activities of its branches; this is because the branch is the extension of the parent in the foreign land.

³⁶⁸ Nicholas Bourne, *Principles of Company Law*, (Cavendish Publishing Ltd, London, 1998), 3rd ed., p. 47

The memorandum of association is the document which provides for particulars such as the name of the company, place of the company, statement of object of the company, the capital of the company, a statement of the limitation of liability of the company.³⁶⁹ The memorandum of association is what is considered by the Commercial Code as a partnership agreement.³⁷⁰ As such it is a contractual document in which two or more persons agree to do a business activity together. The memorandum of association regulates the relationship of the company with the outside world.

The articles of association, which is sometimes known as the internal constitution of the company³⁷¹ is another document which regulates the internal relationship among shareholders, board of directors, managers and between shareholders and the company.³⁷² The articles of association contains detail provisions regulating matters including, among other things, the rights and obligation of shareholders, acquisition and transfer of shares, meetings, employees of the company, appointment of directors and the secretary, auditors, dissolution of the company, etc.³⁷³ In Ethiopian share companies, the articles of association have to be drawn up by the founders of the companies.³⁷⁴

Both of the above-noted company documents, i.e. memorandum and articles of association, have to be presented to the registering authority in order to complete the process of formation of the company.³⁷⁵ Both are essential documents which no company should lack. The two documents are considered as the governing documents of the company. This is because the documents are contractual documents of the company which are approved by its founders/shareholders. The operation of the company does not go beyond what is provided for and agreed up on in the two documents. If a company is found to act outside of the memorandum and articles of association, the act is considered as *ultra vires* act which entails legal sanctions.³⁷⁶

In fact, laws and documents of companies which are stated in the above paragraphs are not the only instruments used to govern companies. Apart from the law and memorandum and articles of

³⁶⁹ *Ibid.* The memorandum of association for a company to be incorporated in Ethiopia shall contain the particulars under Article 313 (1)-(13) of the 1960 Commercial Code

³⁷⁰ Article 211 of the Commercial Code of 1960

³⁷¹ *Ibid*

³⁷² *Ibid*, p. 67; See also Article 314 of the 1960 Commercial Code of Ethiopia

³⁷³ *Ibid*

³⁷⁴ Article 314 (1) of the Ethiopian Commercial Code

³⁷⁵ Articles of associations is considered as a part of the memorandum of association which has to be attached to it at the time of registration of the company. See Article 314 (3) of the Ethiopian Commercial Code

³⁷⁶ *Supra* note 372, pp. 56-58

association, another instrument used to govern companies is the resolution of shareholders' meetings. There are meetings which are required to be undertaken by shareholders.³⁷⁷ The resolutions of such meetings, in so far as they are adopted pursuant to the law, memorandum and articles of association, bind a company and its shareholders.³⁷⁸

As it is clearly stipulated under the Investment Proclamation, when branches of foreign companies come to Ethiopia, they are required to bring a copy of both the memorandum and articles of association of their parent companies.³⁷⁹ The law stipulates that in order to obtain investment permit, such documents need to be authenticated by the relevant body/notary in the home country and here in Ethiopia.³⁸⁰

The fact that such documents are brought in by a branch of foreign company means that it is also governing the branch company in Ethiopia as well. It should be remembered that the same documents are also the governing documents of the parent company. Both parents and branch companies are governed by the same memorandum and articles of association. Since the two documents are the governing documents of the branch of foreign company and its parent company, doing to the expectations of company documents is another factor that relates both a branch of foreign company and its parent company.

The controlling power of the parent company against its branch company which operates in another country is another area of bridge in which both are able to connect. It is the parent company's decision which is an immediate reason to create the branch in the foreign land.³⁸¹ The parent company uses its establishing and governing documents in order to set up its branch in another country. Then the host country authenticates the documents followed by registration and permit of the branch of the parent company to operate within its territory.

³⁷⁷ For example the Ethiopian Commercial Code of 1960 provides for two types of meetings; general and special meetings. General meetings are sub-divided in to ordinary and extraordinary meetings. See Article 390 of the Commercial Code.

³⁷⁸ *Ibid*, Article 416(1)

³⁷⁹ Investment Proclamation No 769/2012, Article 14(1)(e)(1).

³⁸⁰ See Article 14(2) of Investment Proclamation No 769/2012. All documents originated from abroad, i.e. Memorandum of Association and Articles of Association, should be authenticated by the concerned notary office and the Ethiopian Embassy in the home country and authentication and registration of the same by the Ministry of Foreign Affairs and Document Registration and Authentication Office of Ethiopia respectively are also required. See http://www.eia.gov.et/english/articles/read_more/21, last visited on January 29, 2014

³⁸¹ At the time of registration of branch of foreign company in Ethiopia, the law requires presentation of the resolution of the authorized body of the parent company. See Article 14(1)(e)(3) of Investment Proclamation No 769/2012.

Due to the fact that the company documents of the parent company are similarly the governing documents of its branch of foreign company, it is operating under the supervision and direction of the parent company. Every activities operated by the branch company are made known to the parent company through various means. Reporting the financial and non-financial activities of the branches including auditing is among the means to make the activities of the branch known to the parent company.

5.2.The Power/Autonomy of the Branch Foreign Company

In order to examine the power or the autonomy of the branch of a foreign company, it is necessary, primarily, to investigate the status of the branch company. The status of the branch of a foreign company determines the power or autonomy it exercises in the host country. In addition, the status of the branch company is helpful in order to understand the extent of application of the domestic law and the foreign law governing its parent company.

On the status of a branch of foreign company, it is noted earlier that a branch of foreign company is, in principle, an extension of the parent company which is established up on the decision of the authorized body of the parent company. It is equipped with the memorandum and articles of association of the parent company in order to be registered and operate in the host country. Subject to the (special) laws of the host country, the branch of foreign company will undertake formal processes of registration or incorporation. Despite the fact that the branch foreign company is subject to the law of the host country, its status may vary among different countries. Some countries do not give legal personality to branches of foreign companies; whereas others do recognize them as persons.³⁸²

As it is addressed in the Chapter Four, in Ethiopia, a branch of foreign company is substantially distinguished from commercial representatives. Commercial representatives may be established in accordance with the provisions of the Commercial Code and Commercial Registration and Business Licensing Proclamation. A branch of foreign company in Ethiopia is an entity having its own legal personality. It is usually registered either in the form of a share company or a private limited company.

³⁸² See the discussion above in Chapter 4, Section 4.1

This means that, in Ethiopia, a branch of foreign company is a “separate entity” existing separately from the parent company. However, this does not always mean that the law of the parent company treats its branch company operating in another country as the same as that of the Ethiopian law. In other countries, branches of foreign companies may not be treated by its home law as a “separate entity” distinguished from the parent company.³⁸³

Once the status of the branch of foreign company is determined, let us pass to the powers and/or autonomy of the branch of foreign company. The branch of foreign company is expected to act within the limits of the activities which are undertaken by the parent company. This looks similar to that of principal-agent relationship. However, it does not mean that parent-branch company relationship is principal-agent relationship.

In general, the branch of foreign company cannot do anything beyond memorandum and articles of association by itself except if the parent company made any kind of changes to its company documents.³⁸⁴ For example, the branch company cannot amend any provisions either in the memorandum or articles of association by itself. Since the [parent] company cannot act beyond its memorandum or articles of association, similarly, the branch company cannot do anything beyond what such documents provide. It is the decision of the parent company that affects the branch not the vice versa. However, the liability affecting the branch of foreign company may affect the parent company.

³⁸³ In the parent-branch company relationship, most countries, either the home country of the parent company or the host country of the branch, do not give the status of separate entity to the branch of the parent company. This is, however, quite different in case of parent-subsidiary company relationship. In such cases, the subsidiary is treated as a separate legal entity. See Ballantine, Henry W., *Separate Entity of Parent and Subsidiary Corporations*, Virginia Law Register, Vol. 12, No 3, 1926, pp. 152-163; _____ *Parent and Subsidiary Corporations*, Alabama Law Review, Vol. 2, No 2, 1932, pp. 34-41

³⁸⁴ A company cannot act beyond what is provided in the two company documents. If it acted beyond its memorandum or articles of association, it is considered as *ultra vires* which is followed by legal sanctions. Any kind of changes/or amendments to it needs the decision of the owners of the company, i.e. shareholders, through meetings. This change/amendment needs meeting(s) of shareholders. For example, see Articles 425 of the 1960 Commercial Code of Ethiopia. In such cases, the (extraordinary) meeting of shareholders is required in order to approve the changes. This is similar to that of making an amendment of the memorandum or articles of association. (See Articles 462-494 of the Commercial Code.) In both cases, the branch of the parent company operating abroad is required to follow this procedure in order to adopt any kind of changes.

5.3. The Governance of Branches of Foreign Companies in Ethiopia

5.3.1. Governance Aspects under Branches of Foreign Companies

Since corporate governance is a system of governance of a company, its aspects are broadly related to issues such as the management, shareholders and disclosure of company's activities and achievements. In relation to management, organs of governance, board of directors, the manager (chief executive officer) are essential. In particular, matters such as composition of the board, functions, appointment, remuneration, and removal of directors, the qualification, appointment, powers and functions, removal of manager, will be considered.

On the other hand, under the rights of shareholders issues such as attending meetings, voting in the meetings, accessing the company's documents, collecting the dividends, the protection of minority shareholders, are also considered in governance of a company. The disclosure of the company's activities through internal and external auditors, the transparency of the activities of the company are also taken as matters of corporate governance. Below is given an analysis of corporate governance matters in branches of foreign companies in Ethiopia one after another.

5.3.1.1. Management

The management aspect of corporate governance relates to the organs of management particularly board of directors and manager(s).³⁸⁵ Above the board of directors is the general meeting of shareholders which is the supreme body of the company. Below the board of directors are different types of directors such as executive directors, independent directors, senior executive officers, and employees³⁸⁶. There are also various types of committees organized under the board of directors which are formed in order to perform specific tasks such as auditing committee, compensation committee, governance committee, nominating committee, executive committee.³⁸⁷ Such types of committees may be established by the board.³⁸⁸ In a two-tier board system there is another board

³⁸⁵ Managers may be known in different names such as *general manager* (Article 348(3) of the 1960 Ethiopian Commercial Code), or *chief executive officer* (Article 2(4) of Banking Business Proclamation No 592/2008, Article 2(6) of Insurance Business Proclamation No 746/2012, Article 2(2) of Micro-Financing Business Proclamation No 626/2009), or *president* (for example, Chapter 12, Articles 179-188 of Articles of Association of ZTE Corporation (2013), available online at http://www.zte.com.cn/en/about/investor_relations/company/; the manager of North Holding Investment Inc, a branch of foreign company in Ethiopia, is called by a name "president"). See also Tewodros Meheret, 2011, p. 79

³⁸⁶ Employees are those personnel of different functions and educational experience who are hired by the company. They are employed in order to do various tasks in the company. As a result, employees of the company do not constitute organs of the management of the company.

³⁸⁷ *Supra* note 133

³⁸⁸ *Ibid*

which is considered as supervisory board. Further, there are various stakeholders but which does not constitute the organs of management of the company.

a. Board of Directors

The board of directors or simply “the board” is the governing body of the company. Every company, irrespective of the name according to which it is called³⁸⁹, is governed by the board of directors. In some countries, such as in Ethiopia, even state owned enterprises, whether wholly owned by the state or jointly by the government and another investor, are governed by board of directors. As Tewodros clearly said the board of directors, appointed by the general meeting of shareholders, is “a bridge between the shareholders and the executive members of the company.”³⁹⁰ In general, board of directors is an essential organ of a company whose works determines the failure or success of the company.

There are various issues that are raised in relation to board of directors such as how the board of directors is constituted, the number of members of the board, their qualification, powers and functions of the board, term of office, the remuneration, removal and other related matters. Several domestic and international legislations, corporate governance codes, company documents, memorandum and articles of association, strive to address multiple issues in board of directors. Governments are also becoming highly interested about the corporate governance of companies. The growing literatures, both nationally and internationally, dealing with corporate governance also pay great roles to attract our attention to it.

It is noted that in Ethiopia share companies have to be governed by the board of directors. Companies which are managed by the board are companies incorporated in Ethiopia, or companies incorporated in another country but operating in Ethiopia. Companies which are incorporated abroad but operating or having their head office in Ethiopia are subject to the provisions of the Commercial Code.³⁹¹ As a result, such companies should be managed by the board of directors.

³⁸⁹ Companies may bear different names in different jurisdictions. For example, in Ethiopia, a type of business organization which has to be managed by the board of directors is a *share company*. In China, *limited liability companies* and *companies limited by shares* are governed by board of directors (The 2005 Company Law of Peoples’ Republic of China). In USA, *Corporations* are governed by board of directors. In United Kingdom, both *private* and *public* companies need to have board of directors (Article 154 of the 2006 UK Companies Act). In France, *public limited companies* are governed by the board of directors (Articles L225- 17 to L225-42-1 of the French Commercial Code).

³⁹⁰ Tewodros Meheret, 2011, p. 97

³⁹¹ Article 555 of the 1960 Commercial Code of Ethiopia

In such cases where companies are incorporated abroad but operating in Ethiopia or are having their head office in Ethiopia, corporate governance matters are governed by the Commercial Code provisions. As a result, it entails that matters pertaining to board of directors, managers, shareholders and their rights, auditing and disclosure are subject to the Ethiopian Commercial Code. In particular, the provision of Article 555 of the Commercial Code takes away any doubts concerning the law governing the corporate governance of such types of companies.

However, the provisions of Article 555 are not applicable to the companies which are operating in Ethiopia through opening a branch company. It is rather Article 556 of the 1960 Commercial Code of Ethiopia that sets the ground for introduction of branch of foreign companies. On the issue of ascertaining the governance of branches of foreign companies, Article 556 is not as straightforward as Article 555. In particular, the provisions of the Investment Proclamation which incorporates additional rules for branches of foreign companies, creates a susceptible issue worth discussion.

Note that in Ethiopia, branches of foreign companies are registered either as private limited companies or share companies. However, though branches of foreign companies are registered as share companies and are having legal personality, they do not have their own boards of directors. That is one feature of the Ethiopian legal regime on this point. The Ethiopian legal regime and the implementation of relevant laws do not require the branches of foreign companies which are registered as share companies to have boards of directors. In fact, if branches are registered as private limited companies, they do not need to have boards of directors.³⁹²

If it is ascertained that branches of foreign companies have no board of directors, the next question that follows is which body is going to manage the branches. In order to investigate this issue, it is important to survey the practice in Ethiopia by consulting the experts at Ethiopian Investment Agency. According to Wondimnew Fentahun, who is a Senior Expert of Licensing and Registration Directorate, the body governing branches is rather that of the board of directors of the parent companies.³⁹³

³⁹² Note that corporate governance is not the concern for private limited companies. This is because in private limited companies there is no public money invested which attracts regulation of the PLC. The money invested in PLCs is not as much as the money invested by the public to form a share company. However, this does not mean that no issues of corporate governance are dealt in PLCs. Corporate governance is, rather, the concern of public companies where so many individuals invest their capital in the company.

³⁹³ Interview with Ato Wondimnew Fentahun, Ethiopian Investment Agency, Licensing and Registration Directorate Senior Expert, interviewed on January 30, 2014

One may ask why the law and the practice do not require branches to have board of directors. The justifications may be multifaceted. The first justification seems that there will not be two boards of directors having the same power and function within one company.³⁹⁴ Therefore, in accordance with the law and the practice, we cannot talk about the board of directors of branch of foreign companies in Ethiopia. However, the issue does not stop at this stage.

The second justification for absence of the board of directors in branch foreign companies might be related to the (wrong) assumption of the nature of branches of foreign companies. As it is well articulated in other countries, branch companies operate without having legal personality. In most cases, branches of foreign companies in other countries are more or less similar to its Ethiopian counterpart, i.e. commercial representative. Quiet inexplicably, in Ethiopia, commercial representatives and branch foreign companies are different.³⁹⁵ A commercial representative in Ethiopia has neither legal personality nor does it has board of directors. Commercial representatives are basically required and legally delimited to do only promotional activities.³⁹⁶ Further, according to the Commercial Registration and Business Licensing Proclamation No 686/2010, they are not allowed to enter in to any business dealings.³⁹⁷

The case of branches of foreign companies in Ethiopia is the inverse of commercial representatives. As it will be explained later, unlike commercial representatives, currently branches of foreign companies in Ethiopia are engaged in big business activities. In doing business activities, branches of foreign companies in Ethiopia may enter in to contractual relationships with various bodies including the government. The nature of branches of foreign companies in other countries and in Ethiopia is absolutely different in that branches of foreign companies in Ethiopia can do business activities. Therefore, the issue of board and branch foreign companies needs further exploration.

³⁹⁴ However, this should not be misunderstood with that of two-tier board system. In the two-tier board system (for example in Germany) there are two levels of boards; supervisory and management board. (*Supra* note 104) In such cases, the two boards have quiet different roles and functions. However, in the case at hand, there is one company having one or more branch companies which may operate in different countries. The parent company and its branches are governed by the board of directors established by the parent company. The fact that branch foreign companies in Ethiopia have their legal personality does not grant them to establish another board of directors.

³⁹⁵ See *supra* the discussion under Section 4.4.1

³⁹⁶ Article 47 of Commercial Registration and Business Licensing Proclamation No 686/2010

³⁹⁷ *Ibid*

Thirdly, Ethiopian law seems to presume that the board of directors of the parent company is the governing body of its branch in Ethiopia. The query that follows would be “are there any mechanism(s) to ascertain this assumption?” One possible answer for this might be to refer to documents which have to be produced during registration of the branch of foreign company, i.e. memorandum and articles of association, resolution of the parent company (which allowed establishing branch in Ethiopia). However, these documents by themselves do not assure the board of the parent is managing its branch in Ethiopia. This is because it is asserted that strong regulatory body which is empowered to regulate branches of foreign companies lacks in Ethiopia as that of NBE which regulates financial businesses.

Board of directors is an essential and necessary body of companies. The need to have it, its functions, and other matters relating to it has been deal in the preceding sections. If someone looks at the activities of branches, the transactions they engage in, the business activities they carry out ...the question of governance in relation to board of directors is inescapable. Could one say that “since the money or capital by which branches of foreign companies are run originated abroad, Ethiopia has no interest?” The answer for this query is in the negative. Governance of companies is not simply the question of protecting the interests of the public. It has also rationales other than protection of the public interest.³⁹⁸ If governance of companies is simply based on the justification of protection of the interest of the public, there would not have been claims that board of directors are necessary for private limited companies.

It is clear that branches of foreign companies in Ethiopia run huge amount of capital. The data obtained from EIA shows that the total amount of capital run by branches between 1996 and 2012 is 87, 296, 924, 000.469 ETB (Eighty seven billion two hundred ninety six million nine hundred and twenty four thousand Ethiopian birr). In addition, branches are engaged in various economic activities in Ethiopia such as agriculture, manufacturing, consultancy, engineering, construction, telecommunications, etc. The country’s key economic sectors are being built by foreign companies through their branches in Ethiopia. For example, ZTE Corporation (Chinese) is dominant in telecommunications sector; Salini Costruttori (Italian) is engaged in constructing and developing Ethiopian hydroelectric plants; ERC, CCC, (both Chinese), Keangnam (South Korean) are engaged in construction of road projects.

³⁹⁸ See the discussion above under Section 2.5. See also Tewodros Meheret, 2011, pp. 61-66

Thus, the issues with respect to the managing body of branches of foreign companies require a solution in order to give clear understanding of the governance of branches of foreign companies in Ethiopia. Furthermore, the law has to be clear and should accommodate provisions regarding the managing body of the branches, in particular the board of directors.

b. General Manager

The branches of foreign companies in Ethiopia should have manager(s) which act(s) as either a country representative or country manager. The manager acts as the representative of the branch whose duties are representing the foreign company in Ethiopia, performing the day-to-day activities of the company, and doing other duties imposed on manager(s) of the company. Such rights and duties of the manager may be imposed by law, memorandum and articles of association or resolution of the company.

The Commercial Code under Article 556 (2) stipulates that “Such firms (branch and subsidiaries of foreign companies) shall publish the names of *persons representing* them permanently in Ethiopia, and shall furnish their signatures.” (Emphasis added) Further, Article 14(1)(e)(2) of Investment Proclamation No 769/2012 provides that an application for investment permit by a branch company requires “...a document attesting the appointment of the *branch manager*...”³⁹⁹ (Emphasis added) The wordings of both the Code and the Proclamation saying “...persons representing...” and “...branch manager...” respectively are referring to the same thing, i.e. the branch manager. Among the two laws, the Proclamation makes a clear reference to ‘branch manager’. Further, the wordings of both the Code and the Proclamation confirm that foreign parent companies have to appoint manager(s) for their branches.

The (general) manager of the branch is appointed by the foreign parent company. It is provided in the Investment Proclamation that when a foreign company wants to establish a branch in Ethiopia, it has to satisfy the requirements stated under Article 14(1)(e)(1-3). Accordingly, along with the

³⁹⁹ The registration of the company requires bringing the “photocopy of the power of attorney of the representative of the company.” See Article 14(1)(e)(2) of Investment Proclamation No 769/2012. Such person is, to use the words of the Proclamation, the *branch manager*. The person who is acting as the branch manager should have a power of attorney of representative of the company. That is, the same person who is acting as the manager of the company shall have a power of attorney representing the company. Interview with Ato Wondimnew Fentahun, Ethiopian Investment Agency, Licensing and Registration Directorate, Interviewed on January 30, 2014.

documents to be produced, the parent company has to appoint a branch manager.⁴⁰⁰ Such manager, which is appointed by the parent company, is a person who is authorized to represent the foreign company and having a power of attorney.

However, neither the Commercial Code nor the Investment Proclamation has a clear reference with regard to the nationality of the manager. In addition, both laws do not clearly provide as to whether the manager should be a shareholder of the parent company or not. Here it becomes worthwhile to discuss issues relating to both the nationality and membership of the manager of the branch foreign company. Investigation of these issues need a close understanding of the provisions of the laws as well as appreciating how it is done practically.

The close understanding of the Investment Proclamation reveals that the manager should have the nationality of the parent company. The document attesting the appointment of the manager is to be produced along with other documents. This shows that the manager is appointed when it is decided by the parent company (in its place of incorporation) to establish branch company. Secondly, appointment of a manager falls within the power of board of directors which is seated in the parent company. These two evidences make it clear that a manager is appointed from the place of the parent company, i.e. s/he will be the national of the country in which the parent company has nationality.

Practically, the branches in Ethiopia have no uniformity on the nationality of the manager to be appointed for the branch company. For instance, some branches of foreign companies in Ethiopia have Ethiopian managers.⁴⁰¹ On the other hand, some other branch companies have managers having the nationality of the parent company.⁴⁰²

Whether a manager should be a shareholder or not is also one of the controversial issues. The manager of a company is an executive who is responsible for the day to day activities of the company. There are diverse views on this score. The first view said that a manger is an employee of the company though he is a shareholder in such company. Of course, this view is accepted by

⁴⁰⁰ Article 14(1)(e)(2) of Investment Proclamation No 769/2012

⁴⁰¹ For example, Fri-Elgreen Power S.R.L, North Holding Investment Inc., Fairfax Global Equity Investment PLC (all are Ethiopian Branches) have an Ethiopian manager.

⁴⁰² ZTE, East Africa Bottling SC, have their manager Chinese and American nationals respectively.

various legislations.⁴⁰³ Another view is that a manger should be appointed from among the directors of the company.⁴⁰⁴ However, it can be concluded that the manager may be appointed outside the company members or from among the company members including the directors.⁴⁰⁵

The next issue that needs to be posed is “how is a manager of the branch company appointed?” This issue is related to the qualification of the manager of the branch. Qualification of a director or a manger may be regulated either by the articles of association of a company or by the law. When we say the law, it is not to mean that the Ethiopian law will regulate the qualification criterion of appointment of the manager of the branch of a foreign company.

Rather, the law regulating qualifications and appointment of the manager of the branch is the law according to which the parent company is incorporated. This is so because when the parent company decided to open a branch company in Ethiopia through its resolution, it has to appoint the manager of the company. The parent company may use either memorandum or articles of association or the law of its land in order to appoint the manager of the branch. Apart from this, the Ethiopian law, either the Commercial Code or other legislation(s) have insufficient provisions on the appointment and qualifications of a manager.⁴⁰⁶

However, with respect to such qualifications, irrespective of the nature of the business undertaken by the branch, certain qualification criterion as are adopted by the law or company documents governing the parent companies may be set.

In most cases, the qualifications of commitment, honesty, ability to keep the interest of the parent company, fidelity, having the required knowledge and skill relevant to the business of the company...are criterion of appointment. These qualifications are expected from the manager irrespective of the type of business operated by the company. In addition, there may be special qualifications which are required to be satisfied by a person to be appointed as a general manager.

⁴⁰³ For instance, see Article 348(4) of the 1960 Commercial Code of Ethiopia. Article 182 of ZTE Corporation has also a reference that the “President of the Company shall attend meetings of the Board of Directors; the president shall have no voting rights at the board meetings *unless he is also a director.*” (Emphasis added) The last phrase saying “...unless he is also a director” shows that there is a possibility that a director may be appointed as a manager of the company.

⁴⁰⁴ See Tewodros Meheret, 2011, p. 79-82

⁴⁰⁵ *Ibid*

⁴⁰⁶ *Ibid*

Such qualifications, for example, may be related to educational level and background and the marital status of the manager.⁴⁰⁷ In the Ethiopian financial business sector, for instance, there are certain special qualifications which are expected from the general manager (or to use the words of Banking, Insurance and Micro Financing Proclamations “chief executive officer”). In fact, since there is no opportunity for the foreign companies to open a branch company engaged in financial business sector, such special qualifications of general manager are not the concerns of branches of foreign companies in Ethiopia.

On those matters where Ethiopian law supplies rules for the appointment and qualification of the manager, such law will be applicable. However, the question here is can we apply Ethiopian law in cases where a manager is appointed for branch of foreign companies? Subject to the choice of the parent company regarding the nationality of the manager, if he is to be appointed from Ethiopia, Ethiopian law will be applicable. If the manager is appointed from the company’s place of incorporation, that will avoid the application of Ethiopian law.

The appointment of the manager is followed by defining the powers and functions of the manager. Since appointment without powers and function is nothing, discussing the powers and function of the manager would be of paramount importance. As it is noted in clear words by Tewodros, “an attempt to draw the exact boundary between the powers of the board and that of the manager of a share company is a difficult exercise.”⁴⁰⁸ In spite of this, let us investigate the powers and functions of the manager of the branch of foreign companies.

The powers and functions of the manager of a branch can be defined by the law, memorandum and articles of association or resolutions of shareholders’ meetings. For example, under the Ethiopian Commercial Code of 1960, there are only two provisions which regulate managers.⁴⁰⁹ Those two provisions do not clearly show the powers and functions of the manager.⁴¹⁰ The manager is a person representing the company in its dealing with third parties. The manager acts as a representative of the company in accordance with the power conferred to his/her.

⁴⁰⁷ For example, in the financial sector, particularly in banking sector, the chief executive officer (general manager) has to satisfy certain requirements such as age, marital status, level of education, age, financial status, employment, business experience etc which are provided by the law. See Article 15 of Banking Business Proclamation No 592/2008 and NBE Directive No SBB/39/2006 on Amendment for New Bank Licensing and Approval of Directors and CEO.

⁴⁰⁸ Tewodros Meheret, 2011, p. 80

⁴⁰⁹ See Article 348 (3) and (4)

⁴¹⁰ See Tewodros Meheret, 2011, pp. 80-82

Thus, the first power of the manager of the branch company is to represent the branch company. The fact that the branch company had to bring, among other things, photocopy of the power of attorney of the representative of the company⁴¹¹ at the time of registration shows that the manager has a power of representing the branch company in Ethiopia. Thus, the manager of the branch company is acting as representative of the company as well.⁴¹² This power is true for the manager, as the case may be, whether he is director, shareholder of the company or an employee of the company. Further, the duties and liabilities of the manager follow his power of representation of the company.

With regard to the functions to be performed by the manager of the branch company, such functions may be allotted to him by law governing the parent company, the articles of association or the resolution of the company. In case of branches of foreign companies, the manager's powers are obvious. The manager, among other things, acts as a policy maker for that particular branch; he calls meetings on the activities of the branch; he follows up reports of the branch; sends the report to the parent company; he receives any orders and directions from the parent company.⁴¹³

5.3.1.2. Shareholders

Shareholders, whether they are natural or legal persons, are key personalities who constitute one important organ of a company.⁴¹⁴ It should be noted that corporate governance principles should have to incorporate rules for the protection of shareholders' rights. Shareholders are the owners of the company who are directly benefited or adversely affected by the successes and failures of the company. The law, memorandum and articles of association, and company resolutions have to protect the interest of shareholders.

Any actions which are taken by the company are deemed to be the decisions of the shareholders. Shareholders exercise their rights and decide matters concerning the company through shareholders' meetings. Such meetings, save meetings of a specific class of shareholders, should let all shareholders of the company participate in them. This is the manifestation of good corporate governance which is commonly known as "equality of shareholders." Conducting shareholders'

⁴¹¹ Visit http://www.eia.gov.et/english/articles/read_more/21, last visited on January 29, 2014

⁴¹² See *supra* note 405

⁴¹³ For ZTE Corporation, see Article 181 of ZTE Articles of Association 2013, accessed online at http://www.zte.com.cn/en/about/investor_relations/company/; Interview with Ato Temesgen Mehari, President (General Manager) of North Holding Investment Inc, (Ethiopian Branch) Interviewed on November 27, 2013

⁴¹⁴ Tewodros Meheret, 2011, pp. 74-79

meetings is an essential phenomenon of companies to decide on company's affairs. Participating in meetings and voting in meetings is one of inherent rights of being a shareholder.⁴¹⁵

In general, companies incorporated abroad and branches of foreign companies have as their shareholders, those of the parent company. This is because in case of companies, it is after subscription of shares in the place where it is incorporated that a company is formed. After a company is incorporated there will not be acceptance of other shareholders. In fact, there are some exceptional circumstances, for instance, at the time of increasing the capital of the company, a company may accept other shareholder(s) after its formation.

The shareholders of the branch company are those shareholders of the parent company. Due to this, the rights of shareholders of the parent company are similarly protected in the branch company. The fact that the shareholders of the branch company are the same shareholders in the parent company shows the relation of the parent and the branch company. The decisions of the parent company are directly implemented by the branch company. This is because both the parent and the branch companies are owned by the same shareholders.

One possible controversy here is whether there is a possibility that branches of foreign companies may have Ethiopian nationals as shareholders. This is, of course, an important issue that needs to be explained. Leaving particulars to the company law of the parent company, an acceptance of new shareholders requires offering of the shares of the company for subscription. Subscription to shares and becoming a shareholder involves, firstly, offer for sale of shares by the parent company. Unless otherwise a person obtains share(s) in the company there is no way to become a shareholder in a particular company.

However, when we come to branch foreign companies in Ethiopia, there is no opportunity for offering of shares for sale. When a foreign company establishes a branch in Ethiopia, it is not required to pass through the processes of offering shares or any other subsequent process of incorporation.⁴¹⁶ Rather, the branch company comes up with all the requirements under the Article 14(1)(e)(1-3) of Investment Proclamation No 769/2012. Up on investigation for the satisfaction of the requirements, it will get registered and licensed to do its business in Ethiopia. Therefore, there is no offering of shares by the branch company in Ethiopia. This tells us that there is no possibility of

⁴¹⁵ See, for example, Article 389(2) of the 1960 Commercial Code of Ethiopia

⁴¹⁶ Interview with Ato Wondimnew Fentahun, Ethiopian Investment Agency, Licensing and Registration Directorate Senior Expert, interviewed on January 30, 2014

any person, natural or legal, Ethiopian or any foreigner residing in Ethiopia, to become a shareholder of a foreign branch company.

Apart from this, offer of shares may be announced by the company in cases when the company wishes to increase its capital. The decision of increasing the capital of the company is an issue which needs the resolution of the shareholders of the company. This is a question of amendment of memorandum and articles of association which involves meeting of shareholders. The branch company cannot do this task, i.e. amendment of memorandum or articles of association by itself. Thus, it can be concluded that the branch company may not by itself offer shares to attract new shareholders. Such generalization strengthens the assertion that there will not be person(s) in Ethiopia to become shareholders of the branch company.

Nor does the branch company by itself become a shareholder of another company in Ethiopia. In the first place, a branch cannot do anything other than the business objective(s) stated in the memorandum of association of by the parent. Further, it cannot do any business activity other than those provided for in the memorandum of association. Engaging in any activity other than those provided in its business objective is against the law. In the second place, if it became a shareholder in another company, its status will be changed in to joint investment.⁴¹⁷ If its status is changed to joint investment, it will be treated under separate provisions of investment law.⁴¹⁸

It needs to be emphasized that shareholders meetings are one of essential organs of the company. Irrespective of the amount of individual contributions of shareholders, or their extent of control of the company, or the distance shareholders live away from the company, or the motive for which shareholders subscribe to the shares of the company, they are the owners of the company. Even in the case of shareholders of the type explained by Pierre-Yves Gomez and Harry Korine⁴¹⁹ the rights conferred on shareholders is exercisable anywhere and anytime.

⁴¹⁷ Interview with Ato Wondimnew Fentahun, Ethiopian Investment Agency, Licensing and Registration Directorate Senior Expert, Interviewed on January 30, 2014

⁴¹⁸ See Article 14(1)(f) of Investment Proclamation No 769/2012

⁴¹⁹ Pierre-Yves Gomez and Harry Korine, in their book, *Entrepreneurs and Democracy: A Political Theory of Corporate Governance* developed a theory of public governance. This theory, according to them, is emerging to replace managerial governance system. According to public governance theory, they classified shareholders in to two; *investor shareholders* and *shareowners*. (p. 156) Both of them have shareholders status in the corporation. (*Ibid*) The first types of shareholders are far from the company in terms of geographical distance or interest in the function of the company. (p. 143) However, the fact that they are far from the company does not deny them the rights that are acquired by being a shareholder.

In general, activities that are undertaken by the branch company are the results of the decision taken by shareholders of the parent company. The internal and external constitutions of the company are those approved by shareholders of the parent company. The concept of corporate governance has, by itself, strong attachment to shareholders. Shareholders have a critical role in the company which is usually exercised through shareholders' meetings.

Therefore, the role and influence of the shareholders of the company also follows the branch company. Since the branch company does not have its own shareholders, it is laid against the shareholders of the parent company. It does all those activities to the expectations of the parent company. As its legal personality does not bestow on it to organize board of directors, similarly the law does not require it to have its own shareholders. As it is managed by the board of directors of the parent company, similarly, the owners of the parent company are the owners of the branch company.

5.3.1.3. Corporate Disclosure

Corporate disclosure is a means by which the financial and non-financial activities of companies are made known to the company's shareholders, investors, stakeholders, creditors, the government and the society at large.⁴²⁰ The activities of the branch foreign company should be made known to the parent company. The branch company does the activities which are undertaken by the parent company and should be known to the parent company. But, what does disclosure mean? What is the standard of corporate disclosure of a company?

Corporate disclosure is one of the essential components of modern corporate governance.⁴²¹ The 2004 OECD Principles of Corporate Governance has listed the matters (standards) that are included in corporate disclosure.⁴²² It is one of the basic principles of corporate governance which has to be adopted by every company and every corporate governance regime.

Corporate disclosure is sometimes related to the level of corporate governance achieved by a company in particular and the country's development in general. As it is stated in Chapter Two,

⁴²⁰ Tewodros Meheret, 2011, pp. 101-103

⁴²¹ See the discussion under Section 2.4.4. Principle 5 of OECD Principles of Corporate Governance provides that "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." (Emphasis added) OECD Principles of Corporate Governance, OECD, 2004, Principle 5 (Accessed online at <http://www.oecd.org/daf/ca/oecdprinciplesofcorporategovernance.html>)

⁴²² *Ibid*

there are three stages in which corporate governance have emerged. These are familial, managerial and public governance. One of the main characteristics of familial governance was that there was no corporate disclosure. To the reverse, then, it was corporate non-disclosure which has been the principle.⁴²³

On the contrary, at the stage of managerial governance (1920s-1970s) and post-managerial corporate governance system, the principle has been that of corporate disclosure.⁴²⁴ The principle at this stage of governance is that the overall function of the company has to be disclosed to every stakeholder, particularly investors. The same type of disclosure standard is maintained at the stage of public governance.⁴²⁵

In Ethiopia, the development of corporate governance in general and corporate disclosure in particular is at its initial stage of development both in terms of law and practice. Even there is doubt as to whether corporate governance is a legal matter or non-legal matter.⁴²⁶

So many researchers and stakeholders, including the writer of this thesis, have been having hard times in approaching companies in Ethiopia.⁴²⁷ Shareholders of companies have heard their grievance on the disclosure of company's activities, documents, progresses, reports, etc.⁴²⁸ While disclosure is the corporate obligation of companies, it is apparently the right of its own shareholders and stakeholders. Fekadu has explained the (standard of) disclosure of share companies in Ethiopia in clear words as "rudimentary".⁴²⁹

The stage of corporate governance in Ethiopia looks that of familial governance where corporate disclosure is not known. One possible defence that can be mentioned against the assertion that corporate governance is familial in Ethiopia is the article written by Fekadu. He claimed that the Ethiopian share companies are "emerging" with separation of ownership and management. As it

⁴²³ Pierre-Yves Gomez and Harry Korine, pp. 179-182

⁴²⁴ *Ibid*

⁴²⁵ *Ibid*

⁴²⁶ Tewodros Meheret, *Governance of Share Companies in Ethiopia*, Ethiopian Business Law Series, Vol. IV, (Addis Ababa University, School of Law, 2011), p. 110

⁴²⁷ For example, see Foot Note 1 in Fekadu Petros, 'Emerging separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications', *Mizan Law Review*, Vol. 4 No.1, March 2010, p. 1-30. Fekadu loudly speak to us his grievances against disclosure by both the government institutions, particularly, NBE and Ministry of Trade, and private banks.

⁴²⁸ The shareholders have grievances on the disclosure of company documents and reports of directors. Apparently, the Commercial Code said that shareholders have the right to inspect company documents before attending meetings. See Articles 406, 417, 422 and 427 of the Commercial Code.

⁴²⁹ *Ibid*

was confirmed in the early 1930s by A. Berle and G. Means, separation of ownership and management is a feature of the emergence of corporatization. Such emergence was an indication of managerial governance. Further, Pierre-Yves Gomez and Harry Korine said that managerialism is characterized by disclosure of the corporation and its activities.

Though Fekadu claimed that separation of ownership and control is “emerging”, which is one feature of managerial governance, the standard of disclosure is still at its infant stage. Fekadu himself criticizes the level of disclosure of companies. Both separation of ownership and control on the one hand and corporate disclosure on the other, should go parallel. The emergence of the former should have brought about the emergence of the latter. In spite of this expectation, the standard of disclosure in Ethiopian share companies is still the standard that was adopted during the stage of familial governance.

When we look at corporate disclosure of companies in branches of foreign companies in Ethiopia, it is the same as that of local Ethiopian companies. Such companies may have come from countries where the system of corporate governance has reached the highest level.⁴³⁰ This, however, does not seem to have followed their branches in Ethiopia. As it has been tried repeatedly by the writer of this thesis, let alone having access to company documents, it is even more difficult to get any kind of information from such companies.

One possible way of checking disclosure of the companies is by looking at their websites.⁴³¹ In the websites of such companies, one can freely get financial status, the number and location of branches, the services the branch renders or items it produces, etc. However, the information acquired in this way has promotional value than disclosure required by the law. Surprisingly, most of the companies do not have websites; and accessibility to the websites, if it exists, is another problem.

Auditing of companies is an intrinsic element of corporate disclosure. Having their documents audited is a non-escapable obligation all companies owe. Auditing is a necessary evil that cannot be

⁴³⁰ Out of the 402 branches of foreign companies between 1996 and 2012, more than 25% of them came from Western countries such as USA, UK, France, Germany, Italy, Netherlands, Austria and others. More than 32% came from countries having emerging economies such as China, India, Turkey, Russia, South Korea, Turkey and others. The remaining came from African countries like Sudan, Egypt, South Africa, Kenya; and some others from Asia.

⁴³¹ For example, the writer has visited the website of East Africa Bottling SC and ZTE Corporation. The former company’s website has limited information about its plant in Ethiopia. Such information have a promotional value than giving substantive information about the company. In the later case, I visited the website of the parent company. Its branch in Ethiopia does not have a website. However, the website of the parent company disclosed relatively detailed information about the company. Its standard of disclosure can be an exemplary to other companies.

set aside either by law or by agreement. Almost all domestic and international legal instruments as well as memoranda of associations⁴³² of companies have provisions about auditing. Therefore, there is no doubt that branches of foreign companies have to have their financial and non-financial activities audited.

5.4. Governance of Branch Foreign Companies versus Domestic Companies

The corporate governance of Ethiopian companies and branches of foreign companies was dealt with separately under Chapter Three and Chapter Five respectively. Now it is the time to draw the comparison of the corporate governance of branches of foreign companies in Ethiopia and local Ethiopian companies. In addition, such comparison involves appreciating the similarities and differences between governance of domestic Ethiopian companies and branches of foreign companies.

5.4.1. Which ones are Domestic Ethiopian Companies?

Before rushing in to comparison of the governance of both categories of companies, let us have a quick look at which are Ethiopian companies. A company acquires Ethiopian nationality by being incorporated in accordance with Ethiopian law or by being established as such by law.

5.4.1.1. Companies established by Law

There are certain companies which are established by government regulation. Such companies, having names followed by terms like “corporation”, “enterprise”, “agency”, are government companies.⁴³³ They are public enterprises which are owned by the government. Government enterprises may be wholly owned by the state like Ethiopian Air Lines, Commercial Bank of Ethiopia, Ethiopian Insurance Corporation and others. In addition, there are public enterprises which are jointly owned by the Ethiopian government and a foreign or domestic investor also. Such companies qualify to be referred to as “public enterprises.”

⁴³² For example, see model memorandum of association for share companies prepared by Ethiopian Investment Agency. Accessible at http://www.eia.gov.et/english/articles/read_more/23/en/Model_Memo_and_Article, last visited on January 20, 2014)

⁴³³ For example, see Regulation No 197/2010 providing for Sugar Corporation, Regulation No 185/2010 Providing for Defense Construction Enterprise, Regulation No 183/2010 Providing for Metals and Engineering Corporation, Regulation No 147/2008 Providing for Ethiopian Airlines Enterprises.

Public enterprises are established by government regulations enacted by the Council of Ministers. Accordingly, there are several public enterprises which are established and engaged in different activities ranging from agriculture to manufacturing, construction, telecommunication services, transportation, energy, financial services, etc.

5.4.1.2. Companies established by Incorporation

Most of private businesses which are established by a group of persons become Ethiopian companies through registration. These are companies which are established and registered in accordance with the Ethiopian law. A company becomes an Ethiopian if its place of registration is in Ethiopia irrespective of the place of its operation. For Ethiopian companies operating abroad, the provisions of Ethiopian laws governing companies will be applicable irrespective of the place of operation.⁴³⁴ This means that if a company is registered in Ethiopia, but is operated in another country, the provisions of the Commercial Code of Ethiopia are applicable to the business operated by such company.

Out of the two ways of establishment of domestic companies, the focus of this paper is that of private businesses (or companies) which are established by incorporation before the relevant authority and are operating in Ethiopia.

5.4.2. Generalizations of Corporate Governance of Branch Foreign Companies and Ethiopian Companies

The corporate governance matters of branches of foreign companies operating in Ethiopia, as are discussed in the immediately preceding section may be generalized as follows.

Firstly, the *dominant* governing law of corporate governance of branches of foreign companies in Ethiopia is the laws of the place of incorporation of the parent company. In addition, company documents, i.e. memorandum and articles of association, which govern both the parent company and its branch company in Ethiopia, are another instruments used to governance of companies.

Secondly, Ethiopian law affects the branch of foreign companies on matters relating to registration, operation of the branch, conducting the business, rights and duties of branch foreign companies etc. The central elements of corporate governance, i.e. management (organs), shareholders' rights,

⁴³⁴ Article 559 of the Ethiopian Commercial Code of 1960

disclosure requirements, are more or less governed by the company documents of the branch. This naturally prevents Ethiopian law from interfering in the governance aspects of the branches of foreign companies.

Thirdly, the responsibilities of a branch of foreign company toward the Ethiopian law is basically related to the obligations imposed by the Commercial Code, Investment Law, Commercial Registration and Business Licensing Law and other legal instruments of the country. In all of these, the *dominant* governance aspects of foreign branch companies fall outside of the domestic laws of Ethiopia.

Fourthly, concerning the power of foreign branch companies, since they are bound by company documents and the resolutions of the parent companies, they are nothing to do with taking any kind of action outside of the will of the parent companies. The fact that branches are treated as separate entities having their own legal personalities in Ethiopia may not cause their separation from the parent companies (under the parents' laws). This is created because of the unique treatment by Ethiopian law granting legal personality to branches of foreign companies.

On the other hand, corporate governance of domestic Ethiopian companies can be summarized as follows.

In the first place, the corporate governance of local Ethiopian companies is entirely governed by the relevant laws of Ethiopia. Irrespective of the corporate governance regime, as it was classified by Tewodros,⁴³⁵ there is no problem of identifying the regime governing corporate governance. Accordingly, the provisions of the Commercial Code, Commercial Registration and Business Licensing Proclamation, Investment Proclamation and other related laws governing companies which are engaged in non-financial activity are applicable. In the second category of companies, i.e. financial companies, corporate governance is regulated by banking, insurance and micro financing proclamations adopted and consecutive directives passed by National Bank of Ethiopia.

Due to the existence of separate laws governing financial and non-financial companies in Ethiopia, there are various standards, qualifications, requirements, and methods that are applicable to such

⁴³⁵ Tewodros said that the corporate governance regime of Ethiopian companies can be grouped in to two; the regime that is applicable for banks (and other financial institutions) and companies which are engaged in non-financial activities. Tewodros Meheret, 2011, pp. 72-74

companies. In itself, this causes different companies to be subjected to various laws in one country solely based on the business they are engaged in.

Since the Commercial Code, Commercial Registration and Business Licensing and Investment Proclamations are general laws, on those matters that are not covered by financial sector legislations, the provisions of these laws will be applicable.⁴³⁶ However, in spite of the fact that there are a set of laws here and there on corporate governance, the Ethiopian legal regime has so many gaps and loopholes.⁴³⁷

Since Ethiopian laws are applicable to all companies incorporated in Ethiopia, processes of incorporation, operation of the companies, corporate governance of the companies...are governed by Ethiopian laws. It should be noted that apart from the law, memoranda and articles of associations, resolutions of meetings of shareholders are additional important instruments to regulate the governance of companies.

Company documents are important in providing rules for the qualification, appointment, powers and functions, remuneration of directors, removal of board of directors; organization of the company; various committees of the company (if any), the internal relationship among the directors, shareholders and the company; the qualifications, appointment, removal of manager of companies; the rights and duties of shareholders of companies; the relation of the company with the outside world and other specific matters.

Thus, though there exist separate laws governing financial and non-financial companies, in domestic companies there is no controversy about the law governing different aspects of corporate governance. Unfortunately, there are provisions of the laws that are commonly applicable to both categories of companies.

In the case of Ethiopian companies, there are regulatory bodies that are authorized to follow their activities and take measure(s) in the case of default. There are several matters, such as taxation, environmental control, customs, registration and license, document authentication, legal proceedings...that create relations between companies and government regulatory bodies.

⁴³⁶ For example, see also Article 60(3) of Banking Business Proclamation No 592/2008

⁴³⁷ See Tewodros Meheret, 2011

5.4.3. Sources of Differences

Now it is the turn to amplify the differences and/or similarities between governance of branches of foreign companies and domestic companies in Ethiopia. There are, at least, two sources that are used to identify why there is difference of corporate governance between the two blocs of companies.

5.4.3.1. The Law

The first essential difference of the corporate governance of branches of foreign companies and domestic companies in Ethiopia springs from the law governing the two. The law governs various aspects of companies from the pre-incorporation process until the post-dissolution time. The pre-incorporation requirements in the law of one country may vary from the requirements under the law of another country. Further, the law provides different procedures for incorporation, running business, governance and management of businesses. The law may also be different as regards the way companies would be doing business outside of its territorial application. The scope of application of one country's law might vary compared to the scope application of the other country's laws.

Not only this, there may also be various laws in order to regulate different types of companies in one country. This is clearly seen in Ethiopia where there are separate laws in order to regulate companies engaged in financial and non-financial activity.

It is noted so many times that companies are governed not only by state laws but also by their memoranda and articles of associations and the resolutions passed by their shareholders' meetings. Such company documents may not violate the imperative provisions of the law. That law may be adopted in different countries with significant differences. In addition, the resolutions of shareholders' meetings need to be in accordance with the memoranda or articles of associations or the law. Yet, such references might vary across countries. Such relativity is, of course, the nature of law.

5.4.3.2. Nature of Companies

The second important source which can be taken as the root of difference between corporate governance in branches of foreign companies and domestic companies in Ethiopia emerges from the *nature of the companies*.

Branches of foreign companies and domestic companies are quite different in their nature. In the first place, branch foreign companies are subject to their parent company in various ways. Branches have to be engaged in business activities done by their parents and have to report to their parents. In the second place, though branch foreign companies operate in Ethiopia, their place of incorporation is in another country. Thirdly, branch companies have no *full* autonomy by themselves. This is due to the fact that they are under the direct supervision and direction of the parent companies. As a result, they cannot form boards of directors for themselves and cannot conduct shareholders' meetings. Fourthly, the treatment as regards the status of branches of foreign companies in the home country and in Ethiopia is different. For example, in China, France, and Germany branches of foreign companies have no legal personality. On the contrary, in Ethiopia, branches of foreign companies acquire legal personality.

Fifthly, the function/task branches of foreign companies are allowed to do vary from one place to another. In the countries mentioned before, branches of foreign companies are not allowed to do business activities. They are, rather, allowed to do promotional activities. However, in Ethiopia, branches of foreign companies are allowed to do any business activity that is provided for under their memorandum and articles of associations. Sixthly, branches of foreign companies are subject to both the law according to which it is established and Ethiopian laws.

The case of domestic Ethiopian companies is quite different from branches of foreign companies. Firstly, unlike that of branches of foreign companies which are subject to the parent company, domestic companies are not subject to any other company.⁴³⁸ In the second place, Ethiopian companies are autonomous within Ethiopian jurisdiction. As a result, in so far as local Ethiopian companies conform to the law, memorandum or articles of associations, or resolutions of meetings of shareholders, it can take any action by itself. There is no other body to which domestic companies are expected to conform. Further, it is mandatory that it should have board of directors

⁴³⁸ It should note here that in the case of parent-subsidiary company, the subsidiary has a sort of being subject to the parent company. In the case of the holding company too, one company may be subject to the other company. This happens to be based on the relationship as is agreed between the companies.

and conduct shareholders' meetings. These are manifestation of domestic Ethiopian companies. However, branches of foreign companies lack to have board of directors and do not conduct shareholders meetings.

Thirdly, Ethiopian companies are registered, incorporated and operate fully in accordance with the Ethiopia law. As such, irrespective of the type of business for which Ethiopian companies are incorporated for, they are fully subject to Ethiopian laws.

5.4.4. Differences in Corporate Governance

The corporate governance of branches of foreign companies and Ethiopian companies is broadly dealt with in the preceding sections through analyzing various legal regimes. The governance of branches is, in particular, analyzed by taking the example of certain branch companies operating in Ethiopia. Therefore, here it is not necessary to sort each and every difference of the aspects of corporate governance in branches of foreign companies and in local Ethiopian companies.

The first difference between the governance of the two companies is the involvement and autonomy of the board of directors. It is noted that branches of foreign companies operating in Ethiopia have no board of directors separated from the board of the parent company. Rather, the board of directors of the parent company is the governing body of the branch company. The absence of a separate board of directors in the branch foreign companies is elaborated above.⁴³⁹

Next to absence of separate board of directors is the absence of shareholders' meetings in case of branches of foreign companies. It is noted that the shareholders of the parent company are the owners and shareholders of the branch company. Thus, there is nothing other than shareholders of the parent company who could decide on the branch company. Even when the branch wanted to invite other shareholders, it can do so if the parent company has adopted the necessary changes in its memorandum of association and decides over the matter.

One major similarity in corporate governance of branches of foreign companies and Ethiopian companies is the presence of a manager. In both cases, the law obliges that companies should have a manager (despite known in different names) who is empowered to follow the day to day activities of the company. The appointment, qualifications, remuneration, removal, term of office of the

⁴³⁹ See *Supra*, Section 5.3.1.1.

manager, however, may be different owing to the differences in company documents or the law governing them.

Disclosure is a standard expected from all companies irrespective of the place where they are incorporated. Corporate disclosure is one of the contemporary and essential aspects of corporate governance in every company. It is now becoming the standard that is accepted and should be followed by every company. The same is true for branches of foreign companies and domestic Ethiopian companies.

The law which both branch foreign companies and Ethiopian companies should comply with is another point of similarity. Indirectly, this refers to the imperative provisions of Ethiopian law. Branches of foreign companies are required to conform to the Ethiopian law relating to their business activities and other laws which are required to be observed. In particular, observance of environmental, taxation, commercial laws are required to be observed by branches of foreign companies. Similarly, domestic Ethiopian companies are required to comply with such laws on the same footing as that of branch companies.

CONCLUSION AND RECOMMENDATIONS

Conclusion

Corporate governance at present is becoming an essential component of modern corporations. The past and recent experiences revealed that it has a potential to determine the failure or success of a company. If a particular company has good corporate governance conduct it will be blessed with successes. On the other hand, if a company lacks to have good corporate governance conduct it is racing to failure.

Corporate governance has passed through various stages. In addition to this, there are various theories that are developed in order to deal with corporate governance. The development and emergence of corporations is one of the big reasons for the development of the concept of corporate governance. With the proliferation and complexity of the operations of corporations, the scope and application of corporate governance becomes wider. It is now becoming a global concern that every country and every business undertaking wishes to deal about it.

In order to tackle the problems and intricacies of corporate governance, there have been various national and international efforts. Concerning legislative measures, countries have adopted laws and codes of conduct in order to deal with corporate governance. Internationally, though there is no uniform law yet, there are regional instruments. The OECD Principles of Corporate Governance is noticeable document on the subject which is serving as a model for many countries. In addition, there are corporate governance documents which are designed to provide for principles for specific types of business. For example, the Basel Committee for Supervision of Banks has provided principles of corporate governance applicable for banking business. The principles there under are used as a model of corporate governance for many countries.

Along with adoption of legislative measures, there are also literatures on the subject of corporate governance which have been emerging since the early 1970s.

The concept of corporate governance has so many principles in it. However, the number of principles adopted varies from one country to another. Though countries did not uniformly adopted principles of corporate governance, there are principles which are commonly adopted by many

countries. In particular, principles regarding the managing body of companies, i.e. board of directors, managers, the protection of rights of shareholders, corporate disclosure are found in every corporate governance instruments. Such principles are broadly studied in this thesis.

In Ethiopia, it is under the 1960 Commercial Code that the principles of corporate governance are firstly introduced. As a legal term, it is stated for the first time under Article 14(4)(c) of Banking Business Proclamation No 592/2008.⁴⁴⁰ Literatures on the subject are not as much developed as the age of introduction of principles of corporate governance via the 1960 Commercial Code. However, there are emerging literatures in the fields of law, accounting, management and business. Corporate governance in Ethiopia has got the attention of these disciplines both academically as well as practically.

The thesis has briefly studied the Ethiopian legal regime governing corporate governance. As it is firmly said in the words of Tewodros, there are two “standards of corporate governance applicable to companies” in Ethiopia depending on the type of business they undertake.⁴⁴¹ On the one wing there are provisions of the Commercial Code which are used for governance of companies in general. On the other wing, there are a series of legislations and directives that are used to govern the financial business sector separately. That is why Tewodros said companies in Ethiopia may be treated in two regimes solely based on the type of business undertaken.

Irrespective of the existence of legislations on corporate governance in Ethiopia since 1960, there are yet problems of corporate governance. The sufficiency or not of corporate governance regime in Ethiopia is investigated in this study.

The extent of application of the principles of corporate governance in companies is another area examined under this study. It is provided in clear words that the provisions of the Commercial Code are applicable for companies incorporated in Ethiopia irrespective of the place of their operation. One of the questions posed under this study is how is the corporate governance of branches of foreign companies is undertaken in Ethiopia.

⁴⁴⁰ Tewodros Meheret, 2011, p. 64

⁴⁴¹ *Ibid*, p. 72

The present Investment Proclamation provides that foreign companies can operate in Ethiopia through various forms. Such forms of operation of foreign company in Ethiopia includes, among other things, sole proprietorship, business organizations, or joint investment. While the foreign company wishes to operate in Ethiopia, it can undertake, in the first place, through establishing its principal place of business or head office in Ethiopia. Secondly, a foreign business person can establish branches of foreign companies or a subsidiary of foreign company in Ethiopia.

Out of such forms, this study is emphasized on corporate governance of branches of foreign companies in Ethiopia. This is because, in the first place, there are a lot of branches of foreign companies which are engaged in essential economic sectors of the country. In the second place, they run big amount of business which allowed them to have business transactions with multiple governmental, non-governmental, private and other institutions. In general, such companies are becoming influential in the Ethiopian business sector.

Branches of foreign companies in Ethiopia have their own features that distinguish them from branches of foreign companies operating in other countries. One of these unique features is that, unlike in other countries, branches of foreign companies in Ethiopia have legal personality. The legal personality of branches of foreign companies is proved both legally and practically. Next, branches of foreign companies in Ethiopia can do any business activity in so far as it is not given exclusively to the government or to domestic investors.

Therefore, studying the corporate governance of branches of foreign companies has its own paramount advantage. In this study, the most essential aspects of corporate governance of branches of foreign companies are explored. Corporate governance aspects relating to management, rights of shareholders and corporate disclosure of branch companies is investigated.

In the process of investigating the governance of branches of foreign companies, it is found out that there are some problems with regard to their governance matters. This stems from the tension appeared in the Ethiopian law. The tension looks like this. On the one hand, the law (and practice) grants legal personality or requires branch foreign companies to be registered either as a share company or private limited company. Further, the law allowed branch foreign companies to engage in any business activity delimited by law. On the other hand, the law fails to provide sufficient laws

or sufficient references (like Articles 555 and 559 of the Commercial Code) about governance of branch foreign companies. This study investigated how corporate governance of foreign companies is conducted in Ethiopia.

The study revealed that there are no sufficient legal provisions which govern some of governance aspects of such companies. The available laws are not directly applicable to branches of foreign companies. Unlike foreign companies governed by Article 555 of the Commercial Code, i.e. foreign companies having principal place of business or head office in Ethiopia, the Ethiopian law is not directly to be applied on branch foreign companies. This will force Ethiopian laws to limit their territorial reach (within its jurisdiction) and surrender such jurisdiction to foreign laws and company documents of the branch of foreign company.

On the same footing, irrespective of personality of branches of foreign companies, there is no board of directors for the branch. In addition, the branch does not undertake shareholders' meetings since the shareholders of the parent and branch company are the same. Apparently, shareholders' meeting is a critical issue in corporate governance since it is a way to control the activities of governing body of the company. Further, it is outlined that matters related to the appointment, qualifications, term of duration, powers and function of the general manager of branch foreign company are ill-defined under the Ethiopian law. In such cases, it is seen that the home countries laws are being applied. These actions repudiate the application of the Ethiopian law.

Corporate disclosure of branch foreign companies is another area studied. It is concluded that corporate disclosure in Ethiopia is at its initial stage of development. This is, in fact, not owing to the absence of rules for corporate disclosure in Ethiopian laws. The understanding and practice of disclosure is lower both in companies and government institutions. The same is found to be true in branches of foreign companies.

Recommendations

In accordance with the above conclusions, the writer suggests the following recommendations.

- ❖ Branches of foreign companies in Ethiopia have salient features compared with branches of foreign companies operating in other countries. One of the salient features is that they have legal personality. Another salient feature is that they are allowed to undertake any kind of business activity delimited by law. However, there is a vacuum with regard to governance matters of branches of foreign companies. Therefore, the law has to harmonize the unique features of branches of foreign companies in Ethiopia on the one hand and the absence of sufficient regime on their governance on the other.
- ❖ Granting legal personality is not by itself a problem. Nor is it a source of problem. The problem rather appeared in the way branch foreign companies are treated in Ethiopia. Their personality blurs the demarcation among branches of foreign companies, subsidiary companies, and foreign companies having principal place of business or head office in Ethiopia. In the latter two cases, by and large, the law governing them is clear. This in turn created an illusion regarding the law governing branches of foreign companies. Therefore, the law has to make a clear demarcation among these three entities.
- ❖ The law should be clear regarding how the branch of foreign company is to be managed. In particular, matters pertaining to members of board of directors, such as their identity, profile, composition, their qualification, manner of appointment, powers and functions, remuneration, term of office, and their removal have to be clear.
- ❖ The manager of the branch, his nationality, qualifications, manner of his appointment, powers and functions, and ...has to be clear. The law should try to address or furnish mechanism in order to ensure such matters.
- ❖ The ownership and control of branches of foreign companies have to be yet clear. The identity of owners (shareholders) of a company, the way shareholders control the branch company, the way to protect the rights of shareholders in a branch company are similarly not clear. One can possibly say that how Ethiopia is concerned with a company whose owners are non-Ethiopians. The thing that has to be emphasized is the impacts of disregarding such

aspects of branches of foreign companies. There is an interest of various stakeholders in the dealing and activities of branches of foreign companies. Therefore, there shall be a framework that enables the Ethiopian authorities to follow the ownership and control of branches of foreign companies.

- ❖ Disclosure is an essential and necessary element of modern corporations. In fact, the Ethiopian law has included provisions regarding corporate disclosure. However, as it is repeatedly said and known by researchers, the standard of disclosure is a problem both in domestic and foreign companies. The same problem happens to be true in branches of foreign companies. The standard of disclosure of branches of foreign companies may not be as equal as that of domestic Ethiopian companies. Therefore, the duty of disclosure and its standard has to be set.
- ❖ Branches of foreign companies have a direct and inherent relationship with the parent company in various manners. If the activities of the branch companies are not so much regulated and non-disclosed, that may bear danger to Ethiopia. The parent-branch company relationship shall be clear in order to avoid potential danger in the future.
- ❖ Institutional issues have to be emphasized in this regard. Which body of the government organ is looking for branches of foreign companies? The Ethiopian Investment Agency? Ministry of Trade? The relevant government body may be concerned with various activities of branches of foreign companies. However, which body is caring about the governance aspects of such companies? As a result, there shall be a body responsible for follow-up of the governance aspects of branch foreign companies in Ethiopia.

BIBLIOGRAPHY

A. Books

1. Addis Ababa Chamber of Commerce and Sectoral Association (AACCSA), *Recommendations and Position Paper of the Business Community on the Revision of the Commercial Code of Ethiopia*, July 2008
2. Adolf Berle and Grindler Means, *The Modern Corporation and Private Property*, (New York, Macmillan), 1933
3. Alan Calder, *Corporate Governance: A Practical Guide to the Legal Frameworks and International Codes of Practice*, (Kogan Page Limited), 2008
4. Alan Dignam and Michael Galanis, *The Globalization of Corporate Governance*, (Ashgate Publishing Limited), 2009
5. Andrew Rathmell *et al* in *Engaging the Board Corporate Governance and Information Assurance*, (RAND Corporation), 2004
6. A. C. Fernando, *Corporate Governance: Principles, Policies and Practices*, 2006
7. A. Naciri (ed.), *Corporate Governance around the World*, (Routledge, Taylor & Francis Group), 2008
8. Bob Garratt, *Thin on Top: Why Corporate Governance Matters and How to Measure and Improve Board Performance*, (Nicholas Brealey Publishing), 2003
9. Bryan A. Garner, *Black's Law Dictionary*, (West Group), 8th ed., 2004
10. Christine Mallin, *Corporate Governance*, (Oxford, Oxford University Press), 2nd ed., 2007
11. Christine A. Mallin (ed.), *Handbook on International Corporate Governance: Country Analyses*, (Edward Elgar Publishing, Inc.), 2006
12. David Larcker and Brian Tayan, *Corporate Governance Matters*, (Pearson Education, Inc.), 2011
13. D. Hugh Whittaker and Simon Deakin (eds.), *Corporate Governance and Managerial Reform in Japan*, (Oxford University Press, Inc.), 2009
14. Fekadu Petros, *Ethiopian Company Law*, (Far East Trading PLC), 2012 (Amharic)
15. Fred R. Kaen, *A Blueprint for Corporate Governance: Strategy, Accountability, and the Preservation of Shareholder Value*, American Management Association, 2003
16. Janet Dine, *Company Law*, 4th ed., 2001
17. Jean Jacques du Plessis *et al*, *Principles of Contemporary Corporate Governance*, (Cambridge University Press), 2nd ed., 2011

18. Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law*, (Cambridge University Press), 2006
19. Jerry W. Markham, *A Financial History of Modern US Corporate Scandals From Enron to Reform*, (M.E. Sharpe, Inc.), 2006
20. John L. Colley *et al*, *What is Corporate Governance?* (McGraw-Hills Companies, Inc.), 2005
21. Jonathan P. Charkham, *Keeping Better Company Corporate Governance Ten Years On*, (Oxford University Press, Inc.), 2005
22. Mario Calderini *et al* (eds.), *Corporate Governance, Market Structure and Innovation*, (Edward Elgar Publishing, Inc.), 2003
23. Morten Huse, *Boards, Governance and Value Creation: The Human Side of Corporate Governance*, (Cambridge University Press), 2007
24. Nicholas Bourne, *Principles of Company Law*, (Cavendish Publishing Ltd, London), 3rd ed., 1998
25. Peter Winship (editor and translator), *Background Documents of the Ethiopian Commercial Code of 1960*, (Haile Sellassie I University, Faculty of Law), 1974
26. Petri Mäntysaari, *Organizing the Firm: Theories of Commercial Law, Corporate Governance and Corporate Law*, (Springer), 2012
27. Pierre-Yves Gomez and Harry Korine, *Entrepreneurs and Democracy: A Political Theory of Corporate Governance*, (Cambridge University Press) 2008
28. Robert W. McGee (ed.), *Corporate Governance in Developing Economies: Country Studies of Africa, Asia and Latin America*, (Springer), 2009
29. Spyros G. Stavrinakis *et al*, *Corporate Governance in Financial Institutions*, (SUERF Studies, Vienna), 2007
30. Stephen M. Bainbridge, *The New Corporate Governance in Theory and Practice*, (Oxford University Press, Inc.), 2008
31. USAID, *Ethiopia Commercial Law and Institutional Reform and Trade Diagnostic*, 2007
32. Walther Ch. Zimmerli *et al*, (eds.) *Corporate Ethics and Corporate Governance*, (Springer-Verlag Berlin Heidelberg), 2007

B. Journal Articles

1. Ballatine, Henry W., *Separate Entity of Parent and Subsidiary Corporations*, Virginia Law Register, 1926, Vol. 12, No 3

2. Fekadu Petros Gebremeskel, *Emerging Separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications*, Mizan Law Review, 2010, Vol. 4, No. 1
3. Florian Stork, *A Practical Approach to the New German Foreign Investment Regime – Lessons to be Learned from Merger Control*, German Law Journal, 2011, Vol. 11 No. 02
4. Getahun Seifu, *Revisiting Ethiopian Company Law with the Advent of Ethiopian Commodity Exchange (ECX): An Overview*, Mizan Law Review, 2010, Vol. 4. No.1
5. Getahun Seifu, “Regulatory Space” in the Treatment of Foreign Investment in Ethiopian Investment Laws, *The Journal of World Investment and Trade*, 2008
6. Hisayoshi Fuwa, *Management Innovation at Toshiba: The Introduction of the Company with Committees System*, 2010
7. Hussien Ahmed Tura, *Overview of Corporate Governance in Ethiopia: The Role, Composition and Remuneration of Boards of Directors in Share Companies*, Mizan Law Review, 2012, Vol. 6., No. 1
8. Minga Negash, *Rethinking Corporate Governance in Ethiopia*, University of Witwatersrand, 2008
9. Rajesh Chakrabarti, *Corporate Governance in India – Evolution and Challenges*, College of Management, Georgia Tech
10. Tewodros Meheret, *Governance of Share Companies in Ethiopia*, Business Law Series, Addis Ababa University, School of Law, 2011, Vol. IV
11. Stilpon Nestor and John K. Thompson, *Corporate Governance Patterns in OECD Economies: Is Convergence Underway?*
12. Walter W. Brudno, *Tax Considerations in Selecting a Form of Foreign Business Organization*, Vanderbilt Law Review, 1959
13. _____ *Parent and Subsidiary Corporations*, Alabama Law Review, Vol. 2, No 2, 1932

C. Legislations

a. Domestic Legislations

1. The Commercial Code of the Empire of Ethiopia, 1960, Proclamation No 166, Neg. Gaz. (*Extraordinary Gazette*) Year 19, No 3
2. The Civil Code of the Empire of Ethiopia, 1960, Proclamation No 165, Neg. Gaz. (*Extraordinary Gazette*) Year 19, No 2
3. Public Enterprises Proclamation No. 25/92
4. Cooperative Societies Proclamation, 1998, Proclamation No. 147, Federal Neg. Gaz. Year 5, No 27

5. National Bank of Ethiopia Establishment Proclamation, 2008, Proclamation No 591, Federal Neg. Gaz. Year 14, No 50
6. Banking Business Proclamation, 2008, Proclamation No. 592, Federal Neg. Gaz. Year 14, No 57
7. Microfinance Business Proclamation, 2009, Proclamation No. 626, Federal Neg. Gaz. Year 13, No 33
8. Commercial Registration and Business Licensing Proclamation, 2010, Proclamation No. 686, Federal Neg. Gaz. Year 16, No 42
9. Insurance Business Proclamation, 2012, Proclamation No. 746, Federal Neg. Gaz. Year 18, No. 57
10. Proclamation on Investment, 2012, Proclamation No 769, Federal Neg. Gaz. Year 18, No 63
11. Biosafety Proclamation, 2009, Proclamation No. 655, Federal Neg. Gaz. Year 15, No 63
12. Ethiopian Water Resources Management Proclamation, 2000, Proclamation No. 197, Federal Neg. Gaz. Year 6, No 25
13. Water Resources Development Fund Establishment Proclamation, 2002, Proclamation No 268, Federal Neg. Gaz. Year 8, No 15
14. Environmental Impact Assessment Proclamation, 2002, Proclamation No 299, Federal Neg. Gaz. Year 9, No 11
15. Environmental Pollution Control Proclamation, 2002, Proclamation No 300, Federal Neg. Gaz. Year 9, No 12
16. Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulation, 2012, Regulation No. 270, Federal Neg. Gaz. Year 19, No 4
17. Ethiopian Investment Board Directive Issued to Define and Identify ICT Areas Eligible for Income Tax and Duty Free Incentives and Duty Free Importation of Technological Equipment, Directive No. 1/2001E.C
18. Ethiopian Investment Board Revised Directive Issued to Determine the Duty Free Importation of the Type and Number of Motor Vehicles for Investment Projects, Directive No. 3/2003E.C
19. Ethiopian Investment Board Directive Issued to Implement the Council of Ministers Regulation No 84/2003 (as amended) Article 9 Sub-article (1)(b) Providing for Duty Free Importation of Buses used for Tour Operation Service, Directive No. 5/2003E.C

20. NBE Directive on Criteria for Selection of Officers and Directors, Directive No. MFI/03/1996
21. NBE Directive on Financial Records and Information, Directive No. MFI/08/1996
22. NBE Directive on Manner of Reporting Financial Information, Directive No. SIB/17/1998
23. NBE Directive on Approval of Appointment of an Independent Auditor, Directive No. SBB/19/1996
24. NBE Directive on Manner of Reporting Financial Information, Directive No. SBB/21/1996
25. NBE Directive on Amendment for New Bank Licensing and Approval of Directors and CEO, Directive No. SBB/39/2006
26. NBE Directive on Limits on Board Remuneration and Number of Employees Who Sit on a Bank Board, Directive No. SBB/49/2011

b. Foreign and International Legislations

1. The 2006 UK Companies Act
2. French Commercial Code
3. German Commercial Code
4. The 2005 Revised Chinese Company Law
5. OECD Principles of Corporate Governance, 1999
6. Revised OECD Principles of Corporate Governance, 2004
7. Code of Corporate Governance for Listed Companies in China, January, 2001
8. Basel Committee on Banking Supervision, *Principles for Enhancing Corporate Governance*, March 2010
9. Australian Securities Exchange (ASX) Council, *Corporate Governance Principles and Recommendations with 2010 Amendments* (2nd ed.), 2007
10. Ghanaian Securities and Exchange Commission, *Corporate Governance: Guidelines on Best Practices*
11. Finance Committee on Corporate Governance, *Malaysian Code on Corporate Governance*, 2000, Asian Development Bank, 2003
12. Finance Committee on Corporate Governance, *Malaysian Code on Corporate Governance*, Finance Committee on Corporate Governance, 2000

D. FDRE Policy Documents

1. FDRE Industrial Policy, Ministry of Information, 2002
2. FDRE Foreign Affairs and National Security Policy, Ministry of Information, 2002

E. Unpublished Thesis and Materials

1. Abraham Gebregiorgis, *Internal Audit Function and Corporate Governance in Commercial Banks*, 2011, AAU, School of Business and Public Administration, Department of Accounting and Finance, (Unpublished MSc Thesis)
2. Alem Gebremedhin, *A Study on The Application of Corporate Governance Principles in the Ethiopian Private Commercial Banks: The Case of Lion International Bank*, AAU, College of Management, Information and Economic Science, 2011, (Unpublished MA Thesis)
3. Frezer Ayalew, *Governance Practices of Ethiopian Microfinance Institutions: A Study of Selected Units*, AAU, Faculty of Business and Economics, 2007, (Unpublished MBA Thesis)
4. Wolday Amha, *Corporate Governance of the Deposit Taking Microfinance Institutions (MFIs) in Ethiopia*, available from www.africa.org

F. Others

1. The UK Cadbury Report of 1992
2. The US Sarbanes-Oxley Act of 2002
3. Enerji Limited, *Corporate Governance: Principles and Practice Manual*
4. UNCTAD, *Guidance On Good Practices In Corporate Governance Disclosure*, New York and Geneva, 2006
5. U.N. Global Compact and the International Finance Corporation, *Corporate Governance: The Foundation for Corporate Citizenship and Sustainable Businesses*, 2009
6. Invest in France Agency, *Doing Business in France*, January 2013
7. Klaus Rutow, et al, *Doing Business in Germany: A Guide for Foreign Investors*, 2007
8. Holmes Roberts and Owen, *The HRO-Guide to Doing Business in Germany*, (Holme Roberts & Owen Germany LLP) 3rd ed., 2009
9. Ethiopian Investment Agency, *An Investment Guide to Ethiopia: Opportunities and Conditions*, 2013

G. Interviews

1. Ato Wondimnew Fentahun, Ethiopian Investment Agency, Licensing and Registration Directorate Senior Expert
2. Ato Temesgen Mehari, President, North-Holding Investmetn Inc. (Ethiopian Branch)
3. Ato Tsegaye Woldetinsae, Country Representative, Fri-El Green Power S.R.L
4. Ato Andualem Mengesha, Project Manager, Ayka Addis Textile and Investmetn Group PLC

H. Websites

1. www.eia.gov.et
2. www.nbe.gov.et
3. www.2merkato.com
4. <http://www.thereporterethiopia.com>
5. www.addischamber.com
6. www.ethiopiainvestor.com
7. www.ethioshoppingdirectory.com
8. www.adb.org
9. <http://wwwen.zte.com.cn>
10. <http://www.legislation.gov.uk/ukpga/2006/46/contents/enacted>
11. www.afraca.org
12. <http://english.wzj.saic.gov.cn>
13. www.hro.com
14. www.germantaxes.info
15. www.investinfrance.org
16. www.oecd.org
17. www.csrc.gov.cn

Table 2

**Summary of Licensed Ethiopian Branch foreign Investment projects
By Year and Status
Since September 12, 1996 - July 12, 2013 G.C**

Year	Implementation				Operation				Pre-Implementation				Total			
	No of Projs	Capital in '000' birr	Perm Empl.	Temp Empl.	No of Projs	Capital in '000' birr	Perm Empl.	Temp Empl.	No of Projs	Capital in '000' birr	Perm Empl.	Temp Empl.	No of Projs	Capital in '000' birr	Perm Empl.	Temp Empl.
1996					1	3847.4	73	0					1	3847.4	73	0
1997					1	1777.4	22	0					1	1777.4	22	0
1998									1	4047.8	24	0	1	4047.8	24	0
1999					2	38717.2	64	40					2	38717.2	64	40
2001	1	2550	19	0					1	572223.5	11	0	2	574773.5	30	0
2002	1	154720.7	217	0	2	198031.7	706	1250					3	352752.4	923	1250
2003	1	14350.45	128	0	1	33291.35	25	8					2	47641.8	153	8
2004					4	415600	228	2335	2	6714.74	3	8	6	422314.74	231	2343
2005					10	10287	116	499	4	107882.182	248	315	14	118169.182	364	814
2006	3	12294025.54	767	700	4	40812.5	310	325	9	313969.98	2104	12572	16	12648808.02	3181	13597
2007	1	3362.5	500	100	9	64877.5	157	478	12	276821	1157	3252	22	345061	1814	3830
2008	10	990100.2	236	371	18	514500	3798	6137	21	12034854.75	11204	16243	49	13539454.95	15238	22751
2009	3	92509.083	94	37	23	966233.088	667	2152	37	11767174	2380	11537	63	12825916.17	3141	13726
2010	6	8807121.167	2334	5305	10	129280.331	481	785	34	2672070.469	1480	20752	50	11608471.97	4295	26842
2011	8	4731472	1191	2263	12	158311.59	503	342	35	15492746.97	4448	7965	55	20382530.56	6142	10570
2012					8	42120.799	85	111	72	10896790.28	4571	5744	80	10938911.08	4656	5855
2013									35	3443729.297	5135	7676	35	3443729.297	5135	7676
Grand Total	34	27090211.64	5486	8776	105	2617687.858	7235	14462	263	57589024.97	32765	86064	402	87296924.47	45486	109302

Source: Ethiopian Investment Agency, 2013

Table 3
Summary of Licensed Ethiopian Branch foreign Investment projects
By Sector and Status
Since September 12, 1996 - July 12, 2013 G.C

Sector	Implementation				Operation				Pre-Implementation				Total			
	No of Proj s	Capital in '000' birr	Perm Emp l.	Temp Emp l.	No of Proj s	Capital in '000' birr	Perm Emp l.	Temp Emp l.	No of Proj s	Capital in '000' birr	Perm Emp l.	Temp Emp l.	No of Proj s	Capital in '000' birr	Perm Emp l.	Temp Emp l.
Agriculture	3	3778,582	388	25	2	7,771	236	300	43	9768,788	13,102	54,318	48	13555,141	13,726	54,643
Manufacturing	14	20564,163	4,541	7,169	11	416,731	1,786	1,321	50	12927,182	7,730	8,660	75	33908,076	14,057	17,150
Mining									2	23,000	190	50	2	23,000	190	50
Education									5	15,046	75	45	5	15,046	75	45
Health	2	293,046	37	10					5	522,014	294	42	7	815,059	331	52
Hotels (Including Resort Hotels, Motels and Lodges) and Restaurants	1	1,000	10	15	1	1,145	19	3	7	5062,714	653	1,170	9	5064,859	682	1,188
Tour Operation, Transport and Communication					2	3,000	11	15	5	14,678	70	610	7	17,678	81	625
Real estate, Machinery and <i>Equipment</i> Rental and Consultancy Service	9	2136,271	320	347	63	279,131	907	930	76	2379,831	1,263	2,432	148	4795,233	2,490	3,709
Construction Contracting Including Water Well Drilling	5	317,150	190	1,210	24	1875,719	4,246	11,880	67	26783,697	9,213	18,697	96	28976,566	13,649	31,787
Others*					2	34,191	30	13	3	92,076	175	40	5	126,267	205	53
Grand Total	34	27090,212	5,486	8,776	105	2617,688	7,235	14,462	263	57589,025	32,765	86,064	402	87296,924	45,486	109,302

Source: Ethiopian Investment Agency, 2013

Table 4

**Summary of Licensed Ethiopian Branch foreign Investment projects
By Region and Status
Since September 12, 1996 - July 12, 2013 G.C**

Region	Implementation				Operation				Pre-Implementation				Total			
	No of Projs	Capital in '000' birr	Perm Empl.	Temp Empl.	No of Projs	Capital in '000' birr	Perm Empl.	Temp Empl.	No of Projs	Capital in '000' birr	Perm Empl.	Temp Empl.	No of Projs	Capital in '000' birr	Perm Empl.	Temp Empl.
Addis Ababa	13	2455,021	381	379	84	1121,890	5,054	9,545	159	33975,089	14,374	19,277	256	37551,999	19,809	29,201
Afar	1	43,500	15	35	1	39,374	20	60	4	876,347	734	16,328	6	959,221	769	16,423
Amhara	4	14000,929	1,319	820	3	33,155	730	75	5	68,853	260	378	12	14102,938	2,309	1,273
B.Gumze									3	137,100	241	1,350	3	137,100	241	1,350
Dire Dawa	1	164,000	20	150					2	473,000	500	4,100	3	637,000	520	4,250
Gambella	2	3294,853	2,140	5,900	1	750,000	75	1,100	2	256,000	230	2,058	5	4300,853	2,445	9,058
Harari					1	2,500	5	5	1	60,300	500	2,000	2	62,800	505	2,005
Multiregional	2	721,046	97	120	6	77,641	276	829	21	11586,071	3,512	22,349	29	12384,758	3,885	23,298
Oromia	10	2649,632	1,304	1,372	4	75,394	30	48	57	8520,335	9,164	14,888	71	11245,360	10,498	16,308
SNNPR	1	3761,232	210		4	512,963	825	2,700	8	1596,595	1,750	2,836	13	5870,789	2,785	5,536
Tigray					1	4,771	220	100	1	39,336	1,500	500	2	44,107	1,720	600
Grand Total	34	27090,212	5,486	8,776	105	2617,688	7,235	14,462	263	57589,025	32,765	86,064	402	87296,924	45,486	109,302

Source: Ethiopian Investment Agency, 2013