

# The Legal Protection of Minority Shareholders Under Ethiopian Law: Comparative Analysis

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## Abstract

Business organizations are important to operate business activities that demand the involvement of many persons. In these days, therefore, business organizations are getting momentum in every sector of the economy. Business can be run in different forms of business organizations, one of which is a company. This article is to show the deficiencies of legal protection of minority shareholders under Ethiopian company law compared with the England and German company laws. Since Ethiopia commercial law is under the process of revision, this article will have a paramount importance and can be used as input for amendment of commercial code of Ethiopia.

Thus, we tried to analyze specifically, the legal protection of Ethiopian law offers for minority shareholders by comparative perspective. It includes the rights of minority shareholders; the substantive protection of minority shareholders such as the right to call general shareholders meeting, right to propose resolution, right to challenge decision of the company, right to appointment of independent audit, right to access information and voting rights. The article finally ends up with some concluding remarks and the deficiencies of Ethiopian minority shareholders protection, if any, and lessons to be learned from UK and Germany laws would be reflected as recommendation to the Ethiopian commercial code.

**Keywords:** Minority share holders, Protection of Minority share holders, Company law.

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## 1. Introduction

Business organizations are the most essential entities to invest capital. Thus, such organizations have different forms, structures, policy, procedures and rules. Since there are various types of business organizations, investors always select the type of business organization which is suitable for their peculiar interest and scenario.<sup>1</sup> In most jurisdictions, business organizations used to employ different mechanisms while establishing the usage of shareholders' rights. Nevertheless, modern company law recognizes that the norm of majority rule promotes the investment interest of shareholders, balances interests among shareholders, and enhances the efficiency of decision making within the corporation.<sup>2</sup>

Thus, the majority shareholders are in a position to determine everything related to the management of the company. However, such power in the hands of the majority can be misused to exploit the rights of minority shareholders.<sup>3</sup> According to palmer, "a proper balance of the rights of minority shareholders is essential for the smooth functioning of the company." Furthermore, there are many reasons for the importance of protection of minority shareholders. So, direct and indirect policy considerations behind minority shareholders protection can be mentioned. The first one is the social function of a company that secures the minority protection which means pro rata; each person benefits from the company depending on his/her performed functions and ownership. Another economic consideration is encouraging small shareholders and foreign investors to invest.<sup>4</sup>

Indeed, nobody wants to be in a weak and woundable position in a company. Therefore, the only guarantee for small investors is effective protection of the rights of minority shareholders. Company law has to be effective to establish system for protection of the rights of minority shareholders. On one hand, minority shareholders have no effective means to supervise the activities of management and on the other hand, the absolute majority rule leaves minority shareholders unprotected from the oppression by majority shareholders.<sup>5</sup>

Therefore, identifying the effective control mechanisms to strengthen the legal protection of minority shareholders are one of the crucial issues in the regulation of companies.<sup>6</sup> However, due to poor legal

<sup>1</sup> Samuel Asfaw, (2010): The exploration of the legal framework and the practice relating to joint ventures in Ethiopia: a comparative approach, unpublished p.1.

<sup>2</sup>O. Wang (PH.D)(2009), Comparative Study of Exit Remedies in Close Companies, in US, England and China, p.1

<sup>3</sup> D. Jain(2004), Company Law 3rd ed., P.427

<sup>4</sup>M. Daniel(2007) , 'Minority Shareholder Protection Rule in Germany, France and in the UK: a comparative overview', LL.M. thesis (unpublished) , central European university, p.12

<sup>5</sup>H. Weiguo(2013) , Improving the Protection of Minority Shareholders in Chinese Company Law , p. 6

<sup>6</sup> La Porta, et al (2000), Investor Protection and Corporate Governance, p.38.

enforcement, many traditional protection provisions of small investors; for example board independence is not very effective in reducing the inside problems of the company.<sup>1</sup> Because of this, regulators around the world are also showing an increasing willingness to propose regulations that would grant minority shareholders increased control over corporate decisions. This implies that, the importance of legal protection of minority shareholders becomes undeniable in the whole world.<sup>2</sup>

Ethiopia experienced the concept of companies since 1933. The first Private Share Company in Ethiopia was, nevertheless, established in the name of Agricultural and Commercial Development Company of Ethiopia in 1909.<sup>3</sup> The Company was incorporated by Imperial proclamation and the founders who signed the memorandum of association were the Emperor, the empress and other five officials of the emperor. According to the company's articles of association, the duration of the company was 51 years subject to the extension by the decision of the meeting of shareholders. Further, the company was established with the capital of 3,200,000 Maria Theresa Dollars, a quarter of which had to be paid up when the memorandum of association was signed and it was divided in to 40,000 shares with the par value of 80 Maria Theresa Dollars.<sup>4</sup>

The Company law of 1933 was enacted to govern, inter alia, the formation, acquisition of legal personality and administration of the then companies.<sup>5</sup> It provided various forms of business organizations, namely, share companies, joint stock companies, private limited companies, ordinary partnerships, and limited partnerships.<sup>6</sup> In the same token, in 1960, a more comprehensive commercial code was enacted. The Code created a new and comprehensive law of business organizations. As its predecessors, the Company law provisions of the Commercial Code were also suspended during the Derg regime (from 1975-1991) where formation and owning private companies were prohibited by the socialist government. Nonetheless, the company law has become effective and a number of companies have been established since 1991, as the current government is pursuing the free market economic system.<sup>7</sup>

The current legal trend of Ethiopia testifies that there are six forms of business organization. These are namely; general partnership, ordinary partnership, joint venture, limited partnership, private limited company, and Share Company. In a nut shell, Ethiopia like other countries, the legal protection of minority shareholders provisions failed to be incorporated under the 1960 commercial code of Ethiopia in succinct manner.

However, the legal protection of minority shareholders within the domain of corporate activity constitutes one of the most difficult problems in modern company law. Because of this, there is no adequate legal protection of minority shareholders and also there are no clear and single minority protection provisions. Now a day, many countries have enacted the legal protection of minority shareholders regarding their rights harmed by majority shareholders. To this effect, the legal protection of minority shareholders under UK and Germany Companies law are used to analyze comparatively. Therefore, discuss the legal protection of minority shareholders in the following sections.

## 1.2. Meaning of minority shareholders

The IOSCO Technical Committee Task Force on Corporate Governance of the OECD document of report shows that in the majority of jurisdictions, there is no general definition of minority shareholder. However, even in the absence of a specific definition, the concept of minority shareholder is often defined or understood within certain specific contexts. Minority shareholder is frequently understood to mean a shareholder that does not exercise a substantial degree of control or influence over the issuer's affairs. For instance, in Turkey, the term minority shareholder is defined as a shareholder or group of shareholders holding less than 10% of a publicly held joint stock company's capital. In Thailand, small, ordinary shareholders are defined in the shareholder distribution rule to mean ordinary shareholders that do not take part in management.<sup>8</sup>

On the other hand from quasi-legislative document that is supplied by the constitutional court of Ukraine minority shareholder is understood based on the interests of the shareholder who is protected by law.<sup>9</sup> According to such court minority shareholder is an owner of such a few number of shares of a stock company that de facto cannot influence affairs of the company, particularly hence its decision making process. Black's law dictionary goes on to say minority shareholders are those "who hold so few shares in relation to the total outstanding that

<sup>1</sup> Ibid

<sup>2</sup> Ibid

<sup>3</sup> NigusieTadesse (2009), Major Problems Associated with Private Limited Companies in Ethiopia: The law and the practice, Faculty of law A.A.U, p.13.

<sup>4</sup> Ibid

<sup>5</sup> Ibid,p.14

<sup>6</sup> NigusieTadesse (2009), Major Problems Associated with Private Limited Companies in Ethiopia: The law and the practice, Faculty of law A.A.U, p.13

<sup>7</sup> Ibid p.14

<sup>8</sup> Protection of Minority Shareholders in Listed Issuers Final Report Technical Committee of the International Organization of Securities Commissions in Consultation with the OECD, 2009,p.6

<sup>9</sup> The Decision of the constitutional court of Ukraine in care on interest protected by law

they are unable to control the management of the corporation or to elect directors.”<sup>1</sup> Nevertheless, such definitions have no exact parameter to determine what a minority shareholder is in a business environment of business. Thus, there is no demarcation of value and number of shares to determine such pro rata in company law.<sup>2</sup>

In Ukrainian Law of Company, there is a provision saying that a shareholder who is an owner of shares more than 10% company's shares has rights to appoint representatives for controlling process of management of shareholders for taking part in general meeting (Art.41), to make proposals of agenda for general meeting of which mandatory (Art.43).<sup>3</sup> Concededly, it is a position that less than 10% shares of the company's holders are minority shareholders. This indicates that less than 10% of shareholders have no right according to the above article.<sup>4</sup> However, in Germany Companies Act there is a division of all shareholders have groups due to the size of its shares' package and accordingly in which their rights towards the corporation. Thus, shareholders who owns 1/12 or more of the share capital; 1/100 of the share capital or more of the share capital; less than 1/100 of the share capital, representatives of the first group have rights to demand calling of shareholders' meeting and publication of its agenda as per paragraph 122 of the Act. Those shareholders who are in second group can apply to court with motion to appoint person for assertion to claim for damages on behalf of the corporation. However, the third category group has no any rights that mentioned supra.<sup>5</sup>

In a nutshell, there are two angles of definitions so far provided by scholars in Germany Company Law. These are , the broad one is that they have no right to control the company affairs are minority shareholders, whereas, the narrow definition provided that minority shareholders is that the holder of a few shares of the stock company which de facto cannot participate in managing affairs of the company. Due to this narrow definition, minority shareholders are those who hold below 1% of shares of the total capital of the company.<sup>6</sup>

## **2.1. The legal protection of minority shareholders under German company law**

### **2.1.1. Substantive statutory protection of minority shareholders**

In day-to day operations of the company, there is a need to take resolutions. The most important decision of the corporation is given by majority shareholders or the management in shareholder general meeting, supervisory board or the directors of the corporation. These resolutions may violate the rights of minority shareholders.<sup>7</sup> This section focuses on substantive legal protection of minority shareholders' involvement in to the decision-making structures of the company for the purpose of protection of minority shareholder rights oppressed by the majority shareholders or managers.

The majority rule has given more power to the managers of the company or the majority shareholders. In this case, the decision of the company more favors to the majority shareholders but against the interests of the minority shareholders. Hence, there are exceptions of majority rule and instruments which provide the representation of the minority shareholders' interest against the majority's will.<sup>8</sup> Therefore, under German company law there were different substantive legal protection provisions provided for the protection of minority shareholders rights oppressed by the majority or managers of the companies. These provisions are briefly discussed as follows.

### **2.1.2. The right to convene general shareholders' meeting**

The right to convene general shareholders meeting is one mechanisms of substantive legal protection of minority shareholders involving in to the decision making procedure of the German Company<sup>9</sup>. It is a great advantageous to minority shareholders to protect their rights from illegal decision passed by the general shareholders meeting because of minority shareholders participate on the meeting and discuss on the general meeting regarding their rights. In this case the resolution may not be against the interests of minority shareholders. However, in Germany simply granting the right to call general shareholders meeting does not protect minority shareholders from illegal decisions of the company. In this case, the right to calling general shareholders meeting cooperation with other rights such as unanimity voting, right to propose a resolution.<sup>10</sup>

In the case of private limited company, the shareholders who have holding 10% of shares of the company capital have the right to ask the management or directors of the company to call general shareholders meeting. In

<sup>1</sup>A.Garner(1999), (ed), Black's Law Dictionary , (7th ed.)

<sup>2</sup>T. Naumari (2005), 'Let's Us Protect Minority Shareholder's Rights'p.12.

<sup>3</sup>The Law of Ukrainian on Business Association art 43&45

<sup>4</sup> Olga Iviyeva(2008) Protection of minority shareholders' voting rights in stock companies: Comparative studies between Germany and Ukraine, p. 7

<sup>5</sup> German Stock Corporation Act

<sup>6</sup> Supra note 19 p.8

<sup>7</sup> Daniel Szentkuti(2007): minority shareholders protection rules in Germany, France and in the UK, master thesis, central European university, p.28

<sup>8</sup>Annotations to the OECD(2004) principle of corporate Governance p. 29

<sup>9</sup> Ibid p.28

<sup>10</sup> Ibid p.29

this time, the shareholder has an obligation to show the importance and reason of calling general shareholders meeting. However, if for the above reasons the company management refuses the requisition for calling the meeting, the minority shareholders can call the meeting themselves.<sup>1</sup> In case of public company/Joint stock corporation (Aktiengesellschaft) the article of association can prescribe a smaller minority than which is determined under the law.<sup>2</sup> Thus the minority shareholder has the right to request the management or directors of the company calling the general meeting. However, if the management or directors of the company does not accept the requisition to calling the general meeting, the minority shareholder has the right to bring the requisition to the court for calling the general shareholders meeting. The court has right to call the general shareholders meeting, it is important for protection of minority shareholders when the directors of the company reject the request of the minority shareholders to calling shareholders meeting.<sup>3</sup>

In Joint Stock Company the minimum requirement for calling a general meeting of the shareholders must be held at least 5%<sup>4</sup> of shares among the total company capital, and then the shareholders can request the directors of the company for calling the general meeting and to show the reasons of calling.<sup>5</sup> Furthermore, shareholders holding at least 5 per cent of the share capital or to the proportional amount in the share capital of at least €500,000 may request that the management board gives notice of additional matters for resolution in the general meeting.<sup>6</sup> Thus, the minimum requirement for calling general meeting, the shareholders should have been held at least five percent of the total value of the company capital.

### **2.1.3. The right to propose or amend the agenda of shareholders' meeting**

In Germany, the convening of the general meeting must be published in the Federal Bulletin at least one month before the general meeting. Where a majority of 5% at least requires so, 10 days after the convening of the general meeting the additional items should be published. The consequence of not - publishing additional items required by minority shareholders is that the general meeting cannot make a resolution on them.<sup>7</sup> This solution jeopardizes the interests of the minority shareholders because the negligence of the management basically is born by minority shareholders.

Moreover, the right of a shareholder to make a proposal means that a shareholder is entitled to submit to the corporation any questions that must be raised at the general meeting.<sup>8</sup> The German Private Limited Companies Act in Paragraph 50 stipulates that a number of members, the aggregate amount of whose shares is not less than a tenth of the company's capital, have a right to demand that a particular matter should be placed on the agenda for a meeting.<sup>9</sup> As can be seen, German law gives this right only to the majority with no less than 10% of the company's capital.

### **2.1.4. The right to challenge resolutions adopted at the general meeting**

Resolutions at general meetings are adopted by majority vote and bind the minority. The laws give minority shareholders ways to challenge such a resolution in certain situations. In cases where resolutions of the general meeting or of the Board violate shareholders' rights under provisions of law, the Regulations on Corporate Governance empowers shareholders to request that such resolutions not be acted upon.<sup>10</sup> Moreover, if the resolutions cause damages to the company, the shareholders have the right to request compensation. However, there are no procedures laid down by which shareholders can exercise these rights.

### **2.1.5. The right to independent audit**

In Germany, in case of private limited companies, statutory provisions do not provide minority shareholders with any such rights; however, they may be included in the articles of association. In case of AG (German Stock Corporation Act) shareholder can, with a simple majority, minority shareholders with a 1/10% of share capital may request the court to order the special audit. Additionally, minority shareholders with 1/20% of share capital can request the court to order a special audit when there are grounds to assume that certain items are not insignificantly undervalued in the year-end balance sheet or that an appendix to the annual report does not contain all or some of the required information.<sup>11</sup>

In German joint stock company, a minority of shareholders whose shares in aggregate amount to at least 1 per cent of the share capital or to the pro rata amount in the share capital of at least €100,000 can require a

<sup>1</sup> Ibid p 29

<sup>2</sup> German stock Corporation Act sec 122(1)

<sup>3</sup> Supra note 22 p.30

<sup>4</sup> Aktiengesetz 1965 [AktG] [Company Law], art. 122 para.1

<sup>5</sup> German corporate laws on joint stock companies(2010) Norton Rose LLP, [www.nortonrose.com](http://www.nortonrose.com) p.9

<sup>6</sup> Ibid

<sup>7</sup> Theodor Baums(1999): Germany In shareholder voting rights and practices in Europe and the United states, Editors T. Baums and E. Wymeersch, Kluwer law International p.120; Aktiengesetz( German stock corporation act) 124(4)

<sup>8</sup> Iushchenko Igor sergiiovych(2012): protecting minority shareholders in civil and common law systems: Canadian, Ukrainian and German Examples, master thesis p.73

<sup>9</sup> The Private Limited Companies Act (Gesetz betreffend die Gesellschaften mit beschränkter Haftung), online: German Federal Ministry of Justice <[http://www.archive.org/stream/germancommercial00germuoft/germancommercial00germuoft\\_djvu.txt](http://www.archive.org/stream/germancommercial00germuoft/germancommercial00germuoft_djvu.txt)>. paragraph 50

<sup>10</sup> Regulations on Corporate Governance, article 3

<sup>11</sup> Petri Mantysaari (2005), Comparative Corporate Governance, Springer Berlin Heidelberg Publisher p.92

special audit conducted by special auditors, which are appointed by the competent local court, concerning acts in relation to the formation of the AG or any management acts within the past five years.<sup>1</sup>

#### **2.1.6. The right to access information**

From the minority protection aspect, the aim of this right is to provide the shareholder with the necessary information to exercise its minority status-related right. Right to information can be exercised in written or in oral form, during a personal meeting with a management or at the shareholders' meeting.

In Germany, the management is obliged to provide information in accordance with the principles conscientious and loyal account.<sup>2</sup> As Bauns notes, it must be complete and correct, the management has very limited grounds to excuse itself. Of course, in case of complex issues, there is a time which the shareholders should give to the management to elaborate the answer. According to section 132 of the German stock corporation act (Aktiengesetz), this right is enforceable before courts.

Iushchenko Igor Sergiiovich (2012) states that right to information was one of the mechanisms of protecting minority shareholders in Germany.<sup>3</sup> According to this, in Germany shareholders' right to information is the main tools for minority shareholders to request the right to convene a general meeting. Every shareholder has enough and accurate information about the company's operations, then shareholders have the right to evaluate effectively the company activities at the general shareholders meeting. In Germany, every company activities such as the year's balance sheet and annual report approved by the general meeting.<sup>4</sup>

Thus, in Germany, the right to information was very necessary mechanisms of protecting the rights of minority shareholders before decision of general meeting they have to know the relevant information about the operation of the company. This mechanism has a great advantage to protect the rights of minority shareholders before the harm decisions occurred at the general meeting. Therefore, accessing all relevant information equally is an important mechanism to protect the rights of minority shareholders.

#### **2.1.7. Voting rights**

Shareholders have the right to vote at the general meeting of the company. In this time, the shareholders have the right to exercise their voting rights on general shareholders meeting, and this right is a very essential mechanism to protect minority shareholders under the general shareholders meeting.<sup>5</sup>

Voting rights have significantly challenge the unfair prejudice decision passed by the general meeting of the company or evaluate the decision of the general meeting to adopt a decision. The article of association basically determines how many votes does a shareholder could have as a maximum or which class of shares do not entitle their owner to vote. Moreover, certain sorts of shares could allow their owner or the representative of the owner for multiplied voting or for a veto right in some matters.<sup>6</sup> However, German company law recognized "one share-one vote" principle.<sup>7</sup> There are certain exceptions of this principle under German stock corporation act. It includes in case of non-voting shares which provide privileged dividends, conflicts of interest, lack of formalities or non-execution of an obligation.<sup>8</sup>

Germany law allows shareholders to exercise their voting rights in direct and proxy voting system. Nevertheless, both ways are not good enough for effective protection of minority shareholders' rights. Basically, direct voting presupposes the fact that the shareholder should be personally present on the general meeting. As a rule, those meetings should be held in the domicile of the company. If the minority shareholders live in another city or another county, getting to the place of the general meeting will take time and financial problems. Thus, in a majority of cases the shareholder made a decision that attendance of such meeting was not equivalent to all shareholders, especially minority shareholders. However, the current German stock corporations act under article 134(2) given the solution for the above problem (direct voting system). This provision, among the other things, means that the articles of association might contain a possibility for the shareholders to vote directly without presence on the general meeting, for instance, voting by mail or through the internet. Thus, the direct voting without presence on the general meeting will become a real possibility for shareholders of every German company. This way to enhance economy development and saving of time will undoubtedly increase level of the minority shareholders' activity in the direct voting purposes. In Germany, multiple voting rights were unacceptable. However, specific approval is necessary from the secretary of commerce in order to grant these rights.<sup>9</sup> Today, under certain circumstances, preferred stock without voting rights may be issued and on the other

<sup>1</sup>Supra note 30, p.10

<sup>2</sup> German Stock Corporation Act(2009) sec.131(2)

<sup>3</sup> Supra note,33 p.76

<sup>4</sup> Ibid, p.78

<sup>5</sup> Ibid, p.68

<sup>6</sup> Supra note 22, p.36

<sup>7</sup> German stock corporation act Supra note 179 sec. 122(1)

<sup>8</sup> Yves Guyon(1999): France in shareholder voting rights and practices in Europe and the United states, Editors T. Baums and E. Wymeersch, Kluwer law international,p.104

<sup>9</sup>Theodor baums(1999): Germany in shareholder voting rights and practices in Europe and the united states, Editors T. Baums and E.wymeersch, kuler law international p.125; Aktiengesetz(Germany stock corporation act) 124(4)



side, with the mentioned approval, multiple voting rights are permitted, but their practical significance is irrelevant.<sup>1</sup>

Many countries foresee cumulative voting as a compulsory type of voting when electing directors. As Kevin McGuinness explains, “Cumulative voting is a system of voting under which each elector has a number of votes determined by reference to the number of officers that are to be filled by election, with the elector being free to distribute those votes among such number of persons or concentrate those votes on any one person, as the elector may see fit”<sup>2</sup>. In German cumulative voting system does not prohibited when election of board of directors but the system does not recognized under the German Stock corporation act and private limited act.<sup>3</sup> Thus, by-laws may provide for compulsory cumulative voting in some cases. Therefore, cumulative voting system has several advantageous to minority shareholders such as shareholders carry out their voting rights at general meeting, the right to convene the meeting and to make proposals to meeting agendas is important and related voting rights and also to enhance minority shareholders election of board directors.

## **2.2. The legal protection of minority shareholders in UK company law**

The UK was one of the first nations to establish rules for the operation of companies. Today, the system of company law and corporate governance, setting out the legal basis on which companies are formed and run, is a vital part of the legal framework within which business is conducted. As the business environment evolves, there is a risk that the legal framework can become gradually divorced from the needs of companies, in particular the needs of smaller private businesses, creating obstacles to ways that companies want and need to operate.<sup>4</sup> It is one of the most advanced company law jurisdiction that has been transplanted to several jurisdictions. It is also one of the jurisdictions that have developed comprehensive minority shareholder protection in closely held companies.<sup>5</sup> Therefore, in the following section to analyze briefly the substantive and procedural protection of minority shareholders in UK company law.

### **2.2.1. Substantive protection of minority shareholders.**

In UK, like German company law, there are certain provision recognized and incorporated the preventative or substantive protection of minority shareholders. This mechanism is very important to minority shareholders because to prevent before any damages occurred by minority shareholders from oppressive decision of majority shareholders or directors of the company. Therefore, there are several substantive or preventative mechanisms of minority shareholders protection among these mechanisms a someone analyzing in the following section.

### **2.2.2. The right to convene general shareholders’ meeting**

The 1985 companies act in the UK establishes certain conditions for those who intended to convene a meeting on a new resolution.<sup>6</sup> The petitioners must represent not less than 1/20th of the total voting, or be at least 100 members on whose shares an average of at least 100 pounds per member has been paid up. However, there are additional conditions to fulfill not less than six weeks before the meeting a copy of the proposed resolution signed by petitioners should be deposited in the company’s registered office. This act creates an obligation for the company to circulate and notice the shareholders on the proposed resolution. The meeting requisites should be held not less than six weeks from the notice. This timing requirement puts a major burden on Mino state its grounds for requesting an EGM.<sup>7</sup>The request must be accompanied by documents and evidence of any such breaches of the board of management and their seriousness of such breaches, or on the decision which falls outside its authority shareholders’ right to call a meeting.<sup>8</sup>

As to the AGM, the directors or the chairman of the board of management have a general power to call all general meetings.<sup>9</sup> In a situation in which the management harms the company or the shareholders at any time between the regular/annual shareholders meetings, the most powerful mechanisms of the minority shareholders for addressing such harms would be the two convening of an EGM where they could vote against the harmful actions or vote to remove the defaulting directors.<sup>10</sup> The directors must also convene an extraordinary general meeting at the request of shareholders holding not less than one-tenth of the share capital carrying voting right.<sup>11</sup> In the UK, if the directors fail to convene an EGM on request, the shareholders making the request (or any of

<sup>1</sup> Matthias W. Stecher(1997): Germany in protection of minority shareholders, series editor: AIJA, volume editor: Matthias W. Stecher, Kluwer law international,London- the hugue-baston, first published in , p.90

<sup>2</sup> Kevin P McGuinness(2007), Canadian Business Corporation Law, 2nd ed (Markham, Ontario: LexisNexis Canada Inc) p. 771

<sup>3</sup>Supra note 33,p.71

<sup>4</sup> companies act 2006, explanatory notes, p.1

<sup>5</sup>DagnawGetahunWalelgn(2012): Exit rights of minority shareholders in closely held corporations: a comparative study of English, Germany and Ethiopian laws, master thesis in Kyushu University, p.16&17

<sup>6</sup>UK company act, section 366,367 and 377

<sup>7</sup>Petri Mantysaari(2005),comparative corporate Governance,springer Berlin Heidelberg publisher, p 118

<sup>8</sup>Andrew p. Johnston(1997): United kingdom in protection of minority shareholders, series editor: AIJA, volume editor: Matthias W. stecher, Kluwer law international, London- The Hague- Boston, first published in 1997, p.245

<sup>9</sup>The UK company act (2006) section 366

<sup>10</sup> Supra note 5 p. 14

<sup>11</sup> UK company act(2006), section 368

them representing more than one-half of the voting rights of all of them) may themselves call a meeting.<sup>1</sup> As for the procedure, the shareholders who make the request must state its grounds for requesting an EGM.<sup>2</sup> The request must be accompanied by documents and evidence of any such breaches of the board of management and their seriousness of such breaches, or on the decision which falls outside its authority.

### **2.2.3. The right to propose or amend the agenda of shareholders' meeting**

In the UK, the responsibility for determining the contents of the agenda rests with the board or with its chairman. The policy is clear in this country; the chairman is entitled to reject amendments and alternative proposals, enhancing the position of the directors and management. Another remark describing very adequately this philosophy is that the objection of those proposing an amendment or alternative resolution can be expressed by a vote against the proposed resolution.<sup>3</sup> Section 376 of company act empowers shareholders holding at least 5% of the voting power or not fewer than 100 shareholders holding shares on which at least 100 pounds has been paid up to require directors to circulate to the shareholders in advance of an annual meeting any resolution's text which may be decided on the meeting.<sup>4</sup>

Weiguo He (2004) explained that the UK company law, the manner by which minority shareholders can propose resolutions gives rise to issue because it is hard to achieve a balance between protection for minority shareholders and the prevention of frivolous use of such protection.<sup>5</sup> In the Company Law of UK, "...the current statutory law, as we have seen, operates largely in terms of 'shareholder resolutions or the distribution of circulars in respond to the board's resolutions and ignores the potential value of a statutory right to ask questions'"<sup>6</sup>

Therefore, under section 376 CA 1985 which allows them to challenge the fact that all questions to be voted or have been presented by the Board. Any number of shareholders representing not less than one twentieth of the total voting rights of all the members; or not less than 100 members holding shares in the company on which the average paid up sum, per member, is not less than £100 may, at their expense, mount a campaign against the board by giving notice of a resolution to be moved at a forthcoming AGM. Thus, the minority shareholders in UK have, in theory, the opportunity to propose resolutions at an AGM.

### **2.2.4. The right to challenge resolutions adopted at the general meeting**

Resolutions at general meetings are adopted by majority vote and bind the minority shareholders. The resolution may be violated the rights of minority shareholders. So, the company law should have been provide the mechanisms of these resolution challenged by the rights oppressed shareholders especially, minority shareholders. UK company law has another approach regarding the right of shareholders to challenge resolutions. Minority shareholders have the right to apply to the court to cancel a resolution in the following cases:

First, the statement of the company's objects in the memorandum of association may be altered by special resolution. The holders of not less than 15 per cent in nominal value of the issued share capital, who must not have consented to or voted in favour of the resolution, have the right to apply to the court, within 21 days after the passing of the resolution, for a cancellation of such a resolution.<sup>7</sup> The court receiving the application, they have unlimited power to decide on the application. In this case, the court can order on the application that there be no change, or confirm the alteration in whole or in part and enforce terms and conditions. Moreover, the court has a power to suspend the application to allow the parties to reach an agreement as to the purchase of the shares of the dissenting members, and the power to order the purchase of the shares of any members and the consequent reduction of the company's capital.<sup>8</sup>

Second, as to resolutions varying the rights attached to any class of shares<sup>9</sup>, they may be challenged in court by the holders of not less than 15 per cent of the shares of the class in question if they did not consent to or vote in favor of the change.<sup>10</sup> The application must be made within 21 days after the resolution passing the variation. In this case, the court may determine either to disallow or confirm the variation, depending on whether such variation would unfairly prejudice the shareholders of the class or not. However, there is no provision for the purchase of the disagreement shareholders' shares.<sup>11</sup>

<sup>1</sup>Protection of Minority shareholders in Listed Issuers Final report Technical committee of the international organization of securities commissions in consultation with the OECD,2009 p. 21

<sup>2</sup> Supra note 23 p 118

<sup>3</sup>Paul L. Davies: the United Kingdom in shareholder voting rights and practices in Europe and the United States, Editors T. Baums and E. Wymeersch, Kluwer law International, 1999. P.346

<sup>4</sup> UK company act (2006)Supra note 252 sec. 376

<sup>5</sup>Weiguo He (2004), Improving the Protection of Minority Shareholders in Chinese Company Law, Master thesis, Tsinghua University, p.37

<sup>6</sup> Ibid

<sup>7</sup>The Law Commission, Shareholder Remedies, Law Commission Consultation Paper 142 (1996), <http://www.lawcom.gov.uk/docs/cp142.pdf>, accessed on 20 November, 2008. P.17

<sup>8</sup> Supra note 55 p.27

<sup>9</sup>Such rights may be attached by the memorandum, the articles, the terms of issue or the resolution authorizing the issue of shares,45 and may be varied in accordance with section 125 of the 1985 of CA

<sup>10</sup>The 1985 of company act section 127

<sup>11</sup> Supra note 63, P.20

Third, the situation in which the court has similar powers to those under section 5 CA 1985 is when a shareholder challenges a special resolution passed by a public company to be re-registered as a private company. The holders of not less than 5 per cent of the company's issued share capital have 28 days from the passing of the resolution to apply for its cancellation. The shareholders may appoint one of their numbers to make the application on their behalf. The court can either confirm the resolution or order to be cancelled and additionally may adjourn proceedings for the parties to come to an arrangement for the purchase of the dissenting members' shares or order the purchase of the shares by the company.<sup>1</sup>

### **2.2.5. Right to access information**

Right to access information is an important condition for protecting minority shareholders is the guarantee of a high degree of transparency. It is obvious that financial transparency and adequate information disclosure are of ultimate importance in all countries. This is helpful for shareholders to monitor the company, to make their investment decision, and to exercise their control over the company through other means.<sup>2</sup> Minority shareholders do not have these advantages. So, in order to develop a strong stock market, the laws and related institutions of a country must ensure that minority shareholders receive "good information about the value of a company's business" and that they can have "confidence that the company's insiders...won't cheat investors out of most the value of their investment".<sup>3</sup> From a minority protection aspect, the aim of this right is to provide the shareholder with the information necessary to exercise its minority status-related right. Right to information can be exercised in written or in oral form, during a personal meeting with a management or at the shareholders' meeting.

In the UK, shareholders may obtain a copy of the memorandum and articles on request to the company after payment of the relevant fee. They are also entitled to free inspection of the register of members and index of members' names and on payment of a fee to require a copy of the register, and these rights may also be enforced by the court. Under section 713, shareholders can apply to the court for an order requiring the company to make good a default in complying with any provision of the CA 1985. Section 212 of CA 1985 provides that holders of not less than 10 per cent of paid up capital may require the company to exercise the power to make shareholders obtain information relating to interests of their shares, provided they specify the manner in which the power is to be exercised and give reasonable grounds for their request. Any report prepared in response to such a request and any register of interests in shares must be open to inspection by all persons without charge.<sup>4</sup>

In addition, in UK, shareholders have no general right to ask questions at the general meeting, especially questions outside of the scope of the business. Nevertheless, a fairly common practice has evolved at companies general meetings: a session of general questions and answers is held when the annual report and accounts come up for discussion.<sup>5</sup> The right to information is also very limited in British common and statutory law. There is no general right to access the books and an account of the company and in exceptional cases of proof of proper purpose is still necessary. Only a partial functional substitute exists which provides access to the registrar of companies for public officials and members of the company. Here ordinary and extraordinary resolutions can be examined and copied, but there is no access to managerial information or directors' decision. Thus, the main statutory remedy for failure to provide information is section 459 of the CA 1985.

### **2.2.6. The right to appoint independent audit**

In the UK the department of trade may appoint investigators to investigate the affairs of the company and report on them in the circumstances if an application is made by not less than 200 members or members holding at least 10% of the issued share capital. In practice such an appointment is very rare.<sup>6</sup> The UK company act (2006) provided under section 476 of the act rights of members to require audit. The members of a company may by notice under this section require it to obtain an audit of its accounts for a financial year. The notice must be given by members representing not less in total than 10% in nominal value of the company's issued share capital, or any class of it, or if the company does not have a share capital, not less than 10% in number of the members of the company.<sup>7</sup>

Therefore, at least 10% of shareholders to control or to know the company's annual financial report i.e. the total assets and annual profits of the company and also the function of the director done by legal or illegal. This

<sup>1</sup>UK company act 1985 section 5

<sup>2</sup> Johnson, La Porta, Lopez-de-Silanes, and Shleifer (2000) use the term "tunnelling" to describe the transfer of resources out of firms for the benefits of their controlling shareholders. Much evidence emerging during the Asian financial crisis shows that "tunnelling" is a very serious agency problem in emerging markets. The recent debacles of Enron, WorldCom, and Global Crossing convince people that "tunnelling" is also possible even in developed economies. See Chong-En Bai, Qiao Liu, Joe Lu, Frank M Song, and Junxi Zhang (2004), "Corporate Governance and Market Valuation in China", [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=393440](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=393440), accessed on 10 September 2008.

<sup>3</sup>Bui XuanHai (2007), Corporate Governance in Vietnamese Company Law: A Proposal for Reform, Doctor Thesis, La Trobe University, Australia, p.26 with refer to La Porta, Lopez-de-Silanes, Shleifer, and Vishny, who consider all managers and controlling shareholders of a company as "insiders", while creditors and minority shareholders are "outside investors".p.28

<sup>4</sup> Section 212 of CA 1985

<sup>5</sup>Hugh Scogin(1993), "Withdrawal and Expulsion in Germany: A Comparative Perspective on the "Close Corporation Problem" 15 Mich J Int'l L 127 p.351

<sup>6</sup>Supra note 36, p 92

<sup>7</sup> UK company act(2006) sec. 476



gives to the minority shareholders to protect their rights from the company operation by majority shareholders or directors of the company. So, it is one of the preventative mechanisms of minority shareholders by operation of a director of the company.

### **2.3. The legal protection of minority shareholders under Ethiopia commercial code**

#### **2.3.1. The essence and legal treatment of minority shareholders protection**

Under Ethiopian commercial code, there is no single definition of minority shareholders and there is no provision determines how much percent of shares holders deemed to be a minority shareholder. This is one of the problems to protect minority shareholders effectively under such commercial code. Hence, for the purpose of protecting minority shareholders, it is crucial to know what is minority shareholders and to what extent of share to be considered as a minority shareholder.

As FekaduPetros explained that:

*A single shareholder may always remain a minority. Shareholder that holds more than half of the shares of the company may be considered as a majority shareholder and one having less than half of the shares of the company may be a minority if outvoted by others in corporate decision-making. Generally, however, a shareholder having less than 10% of the shares of the company is considered as a minority shareholder and for the purpose of protecting the minority 20% is considered as minority shareholding.<sup>1</sup>*

However, according to the above explanation, the definition and minimum shareholding requirement is insufficient for the purpose of protecting the rights of minority shareholders. The commercial code of Ethiopia provides in article 306 that the minimum capital of the share company is 50,000.00 ETB and the commercial code also provides in article 512 that the minimum capital of private limited company is not less than 15,000.00 ETB. In addition, both companies according to the above two articles, the minimum value of one share is 10.00 ETB. Hence, the minority shareholders at that time may easily hold 20% of shares from the total capital of the company. However, recently, Share Company or private limited company is formed from huge amount of capital i.e. during the formation of the company, the minimum value of one share may be determined as more than 1,000.00 ETB in private company law and 10,000.00 in share company law. As the result of this, it is very difficult for minority shareholders to hold 20% shares of the total capital of the company. So, it is not fair that 20% shares of the company's capital are considered as minority shareholders because the minimum requirement of shareholding is too high to protect the rights of minority shareholders. Therefore, this definition and minimum requirements of percentage let the protection of minority shareholders to be inadequate and open the doors to unfair prejudice acts of majority shareholders.

Concededly, for the effective protection of minority shareholders, the Ethiopian commercial code should improve the company law provision regarding the definition of minority shareholders and minimum requirements of shareholders that are considered as a minority shareholder in clear provision.

Therefore, the understanding of the definition of minority shareholders and minimum requirements of shareholder is the backbone of the legal protection of minority shareholders. The Ethiopian Commercial Code has adopted two types of mechanisms by which the rights of minority shareholders may be protected. These are substantive (preventive) and procedural (restorative) remedies.<sup>2</sup>

#### **2.3.2. The substantive legal protection of minority shareholders**

The protection of minority shareholders under Ethiopia law is hidden and is not provided clearly in the provision. For instance, if one goes through the Code dealing with companies, whether Share Company or private limited company, there is no single provision where the rights of minority shareholder are explicitly articulated.<sup>3</sup> So, the substantive legal protection of minority shareholders can be found in the commercial code insufficiently. To this effect, the legal protection of minority shareholders under Ethiopian commercial code is inadequately governed.

#### **2.3.3. The right to convene general shareholders' meeting**

The right to convene general shareholders' meeting is one mechanisms of protection of minority shareholders. In general, the general shareholders' meeting called by the directors, the auditors, the liquidators or appropriate by an officer of the court.<sup>4</sup> Shareholders meeting may be general or special.<sup>5</sup> In normal cases, the annual general meeting is the only yearly occasion when the general body of shareholders is given the opportunity to consider, criticize and comment upon important affairs of the company and where shareholders can vote on the directors' recommendation as to dividends, to approve or disapprove the directors' remuneration, and, if thought desirable, to remove and replace all or any of them.<sup>6</sup>

If the directors of the company refuse to convene general shareholders' meeting the members of the

<sup>1</sup>FekaduPetros(2004 E.C) , Ethiopian Company Law (in Amharic), p. 229.

<sup>2</sup> Ibid, 229

<sup>3</sup>Ibid, 230

<sup>4</sup>Ethiopia commercial code, art 391(1)

<sup>5</sup> Ethiopia commercial code art 390(1)

<sup>6</sup> Supra note 36, p.116.

company can request the court to give order for calling general shareholders meeting. This is provided under the Ethiopia commercial code provided under art 391(2) the court of the place where the head-office is situate may appoint an officer of the court to call a meeting and to draw up the agenda for consideration where shareholders representing 1/10 of the share capital show that such an appointment is necessary. This provision helps minority shareholders to protect their rights when violated by majority shareholders or directors.

The Ethiopian commercial code provide for annual general meetings, which are mandatory for each company as well as for extraordinary general meeting in certain special circumstances.<sup>1</sup>The UK Company Act provides as to the AGM, the directors or the chairman of the board of management has a general power to call all general meetings.<sup>2</sup>

In a situation in which the management harms the company or the shareholders at any time between the regular/annual shareholders meetings, the most powerful mechanisms of the minority shareholders for addressing such harms would be to convening of an EGM where they could vote against the harmful actions or vote to remove the defaulting directors. For these reason, the Ethiopia commercial code provides the protection of minority shareholders from the above situations. This protection is provided under the Ethiopia commercial code article 391(2) the court of the place where the head-office is situate may appoint an officer of the court to call a meeting and to draw up the agenda for consideration where shareholders representing 1/10 of the share capital show that such an appointment is necessary.<sup>3</sup>

However, it could be seen that in order to qualify for the right to convene a GM, a shareholder must hold the minimum percentage of shares as provided by law or articles of association. Though it is not feasible to find a percentage that is applicable to shareholders, especially, minority shareholders, the standard threshold of 1/10 of the voting shares would be difficult for minority shareholders to reach, especially in publicly held corporations, where those holding 1/10 of the issued shares can be more reasonably regarded as majority shareholders. So, these provisions could perhaps be regarded as improved protection for minority shareholders.

Besides, the above minimum percentage of shares the articles is not clear for what condition or reason shareholding request the court to calling general meeting. Because the law states that the shareholders show such an appointment is necessary. Moreover, this provision does not state what constitutes an appointment is necessary. This ambiguity definitely leads to controversy and is a further barrier for minority shareholders seeking to convene a GM. In addition, it is difficult to convene general meeting to request the court due to higher shareholding requirement, limited circumstances, and the need to show evidence. In addition, the minority shareholders cannot convene the shareholders general meeting by themselves; the reason is the Ethiopia commercial code do not allowed the right to call shareholders meeting by shareholders.

Therefore, while comparing the right to convene general shareholders' meeting under Ethiopian company law with UK and German company law as well as OECD principle, it is inadequate to protect the rights of minority shareholders oppressed by majority shareholders or directors of the company. So, the Ethiopian commercial code has to improve the provision of company law regarding the requirements of calling shareholders' general meeting for the purpose of protection of minority shareholders rights from any abuse.

#### **2.3.4. The right to propose or amend the agenda of shareholders' meeting**

Generally, the issues that will be discussed in the shareholders meeting are proposed by the management or board of directors. Although shareholders have the right to vote in their meetings, they will vote only on the matters set by the board. Unfortunately, the Ethiopian Company Law do not allowed the rights of minority shareholders to propose the agenda to be considered by the general shareholders meeting. The commercial code art 397 gives the agenda to be prepared by the person calling of the meeting. That is the board of directors<sup>4</sup>, but do not elaborate as to the procedures needed by the minority shareholders in order to raise such issues. The result is that the management (or the controlling shareholders) retains the actual power to decide on these issues, while the minority shareholders still have no say in the matter. This is one of the challenges of minority shareholders protected from the oppression of majority shareholders. For the above argumentation, the Ethiopia commercial code is insufficient for protections of minority shareholders to propose or amend the agenda on the shareholders general meeting.

When comparing the right to propose resolution or agenda to minority shareholders under UK, German and Ethiopian company law, both UK and German Company law give the right to propose resolution or agenda to minority shareholders under their company laws but the commercial code of Ethiopia does not grant the rights to minority shareholders to propose resolution or agenda on the general shareholders' meeting.

Therefore, the commercial code of Ethiopia has to learn from both countries and revisit its company law provisions regarding the right of minority shareholders to propose resolution or agenda to protect them.

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<sup>1</sup>Ethiopia commercial code 14, art 418

<sup>2</sup>Section 366 of the UK company act 1985

<sup>3</sup>Ethiopia commercial code, art.391(2)

<sup>4</sup>Ethiopia commercial code 391(1)

### **2.3. 5. The right to challenge the resolutions adopted at the general meeting**

The Ethiopian commercial code gives shareholders ways to challenge such resolutions in certain situations. When the resolution adopted contrary to the law, the memorandum or article of association it may be challenged within three months from the resolution but in no case after three months from the entry of the resolution in the commercial register according to Ethiopia commercial code art 416(2).<sup>1</sup> In this case, shareholders have the right to request a court to consider and cancel a resolution of the general meeting the order and procedure for issuing a resolution and content of the resolution that breach the law, memorandum or article of association.<sup>2</sup> This is supported by the court case (MeleseZergaw 12 persons and Atinet Trading Share Company). The plaintiff brings a lawsuit Hawassa city administration high court. The issue of the case was to challenge or against the company decision passed at the general shareholders meeting according to article 416(2) of the commercial code. The court investigated that the plaintiff complaint and the defendant responding with relevant commercial law provisions. The court finally, gave the decision in favor of plaintiff and ordered the cancellation of the company decision passed at the shareholders general meeting.<sup>3</sup> Besides, the commercial code provided mandatory provision to protect shareholders. These rights are rights inherent in membership and neither directors nor the general assembly can decide on those rights.<sup>4</sup> It is the shareholders have the right to challenge decision of the company, when the resolution passed at the shareholders meeting contrary to law, memorandum or article of association.<sup>5</sup>

However, the Ethiopia commercial code does not incorporated any single provision regarding minority shareholders to against or challenge the company's decision contrary to his/her rights or law, memorandum or article of association. Dagnaw Getahun stated that minority shareholders preventative mechanisms i.e. before any damages occurred and after the damages occurred the remedies mechanisms does not clearly incorporated under the Ethiopian commercial code the issue of minority shareholders oppressed by majority shareholders or directors of the company.<sup>6</sup> In addition, Fekadu Petros states that there is no single provision permitting the minority shareholders to challenge the decision of majority shareholders or directors of the company when these decisions violated the rights of minority and the interests of the company under the 1960 commercial code of Ethiopia.<sup>7</sup> This implies the inadequacy of the Ethiopian commercial code to protect minority shareholders to challenge unfair prejudice decision of majority shareholders or directors of the company.

Therefore, when we compare the UK company law to Ethiopian and German company laws, the ways of minority shareholders protection to challenge unfairly prejudice decision at the general shareholders' meeting, the UK company law clear and contain detail information regarding the situation who and when to request the court to cancel the illegal decision by majority shareholders at the general shareholders' meeting. So, the UK company law has more protection mechanisms to minority shareholders while comparing with Ethiopian and Germany company law. So, the Ethiopian legal system has to learn from the UK company law and amend its commercial code to give right to minority shareholders to challenge in a situation where unfair and prejudice decisions passed by majority shareholders at the general shareholders' meeting.

### **2.3. 6. The right to appoint independent audit**

The Ethiopian law recognized that the right to appoint independent audit for protection of minority shareholders indirectly.<sup>8</sup> The reasons are that the commercial code provided under art 368(2), shareholding representing not less than 20% of the capital may appoint an auditor selected by them. From understanding this provision, the law gives only 20% of shareholders or owners have the right to appoint independent audit but less than 20% shareholders have no right to appoint independent audit. The main problem is that the Ethiopian commercial code did not define minority shareholders and how many shares holder of minority shareholders deemed to be minority shareholders. This indicates that the commercial code does not clearly provide the right to minority shareholders to appoint external audit.

However, Fekadu Petros said in his books, the definition of minority shareholders for protection purpose, 20% shareholders deemed to be minority shareholders. From this definition, the above provision will have a benefit when minority shareholders did not trust the auditor appointed by the directors or majority shareholders.<sup>9</sup> Moreover, the law gives the rights to minority shareholders to protect their right from prejudiced acts of managers or directors if at least 1/10 of shares represented shareholders issued to ask the ministry of trade to

<sup>1</sup>Ethiopia commercial code art 416(2)

<sup>2</sup>Ethiopia commercial code art 416(2)

<sup>3</sup>MeleseZergaw 12 persons vs. Atinet Trading Share Company), Hwassa city administration high court file no. 14589/2006

<sup>4</sup>Supra note 75, p.234&235

<sup>5</sup>Ethiopia commercial code art 389(2)

<sup>6</sup>DagnawGetahunWalelgn(2012): Exit rights of minority shareholders in closely held corporations: a comparative study of English, Germany and Ethiopian laws, master thesis in Kyushu University, p.57

<sup>7</sup>Supra note 75,p. 237

<sup>8</sup>Ethiopia commercial code, art 368(2)

<sup>9</sup>Supra note 75 p.241

appoint one or more qualified auditors to make an investigation and report on the company's state of affairs.<sup>1</sup> The aim of this mechanism is to protect minority shareholders before any damage occurred.

Yet, this provision does not provide adequate for protection to minority shareholders, the 20% of minimum requirement to appoint independent audit is recently too high for the purpose of protection of minority shareholders. Besides, as mentioned earlier, it is difficult to protect minority shareholders without a single provision in our commercial code that provides for definition of minority shareholders and minimum shareholding requirement to be minority shareholders. Due to this, we cannot conclude that less than 20% shareholders are defined as minority shareholders. So, the commercial code of Ethiopia does not adequately protect the rights of minority shareholders.

To compare the above countries legal system regarding the appointment of independent audit to protect minority shareholders, the German stock company protected more than others. Because, the minimum percentage requirement is less than that of Ethiopian and UK company law and also the request of appointment to the court. The court evaluates the requisition whether reasonable or not. If the court accepted the request appear by the shareholders, then to appoint special audit. This granted the minority shareholders to control or prevent function of directors of the company against the interests of company or members of the company.

Therefore, the Ethiopian Company law regarding the appointment of independent audit has to be revisited in the light of German stock company and amend the provision of the commercial code for effective and efficient ways to protect the rights of minority shareholders.

### **2.3.7. The right to access information**

Timely and accurate information of the company regarding activities or decisions made are the most important thing to protect the rights of minority shareholders from unfair and prejudice decisions of majority shareholders or board of directors. However, the ways of disclosure of information to the members of the company provided under the commercial code is insufficient.<sup>2</sup> In terms of cost effectiveness, they are burdensome for the company because the means of accessing company's information provided under the commercial code are expensive for shareholders.<sup>3</sup> Moreover, the content of notice of meetings under the commercial code did not incorporate all the relevant information that has to be disclosed to the members of the company.<sup>4</sup> Even though under commercial code art 396(1) states that notice of meeting shall give the company's name, the nature, capital and head office of the company and the place where and time within which bearer shares (if any) are to be deposited, this provision regarding content of notice did not contain full information like voting procedure, the agenda of the meeting and issue to be decided at the meetings. Specifically, when the board proposes to make any change on the basic structures of the company such as amendments of memorandum or article of association, issuance of additional shares or further transactions of the company's assets, full, accurate and timely disclosure of such information is not clearly incorporated under the commercial code.<sup>5</sup> In the absence of disclosure of full and timely information to the members of the company, there is no adequate protection of minority shareholders under the commercial code.

To compare the above three legal system regarding information right under their company law, the UK and German company laws' provision protected the rights of minority shareholders more than the Ethiopian commercial code because the UK company act specifically provided minority shareholders to receive company information. That is provided under sec 212 of CA 1985 and stated that holders of not less than 10 per cent of paid up capital may require the company to exercise the power to make shareholders obtain information relating to interests of their shares, provided they specify the manner in which the power is to be exercised and give reasonable grounds for their request; and in the German company law the right of information is an integral part of calling the general meeting.<sup>6</sup> This indicates any shareholders to know all information of company before general meeting. This was advantageous to shareholders if any unfair prejudice acts occurred by the company to against in general shareholders' meeting and also a great advantageous to minority shareholders to protect their rights before oppressed by majority shareholders or directors of the company.

To sum up, the commercial code of Ethiopia has to learn from the UK and Germany companies' laws that the ways of information disclosure to members of the company and amend its commercial code for better protection of minority shareholders and to receive efficient, accurate and timely.

### **2.3.8. Voting rights**

Shareholders voting rights are the main mechanisms for shareholders to challenge the company in the meeting of shareholders.<sup>7</sup> The 1960 Ethiopian commercial code regarding Share Company grants shareholders rights to

<sup>1</sup>Ethiopia commercial code art 381(1)

<sup>2</sup>Ethiopia commercial code art 392

<sup>3</sup>Ethiopia commercial code art 392(3), 406,417, 422 and 427

<sup>4</sup>Ethiopia commercial code art 396(1)

<sup>5</sup>GebeyawSimachewBekelle(2012): A Critical Analysis of the Ethiopian Commercial Code in Light of OECD Principles of Corporate Governance, LLM , p.26

<sup>6</sup>Supra note 33, p.76

<sup>7</sup>Ibid

participate and vote in shareholders meetings. These rights are incorporated under commercial code in different provisions. They are: shareholders have the right to vote in general meeting a resolution passed to modify the rights of a class shareholders to approve or reject the resolution;<sup>1</sup> the right to vote at extraordinary meetings to amend memorandum or article of association;<sup>2</sup> the shareholders have a right to participate and vote at extraordinary meeting to approve or reject the resolution to change the nationality of the company, to require shareholders to increase their investment in the company;<sup>3</sup> the right to participate and vote at ordinary meeting to approve or reject the balance sheet, the profit and loss account, the directors and auditors reports; they vote and take the necessary action on director's direct or indirect business transactions with the company approved by boards;<sup>4</sup> the right to participate and vote to pass the resolution to institute proceedings against the directors;<sup>5</sup> and also appoint or remove directors and auditors, determine the amount of their remunerations by participate and vote on general meetings.<sup>6</sup>

In principle, the voting rights attached to ordinary or dividend shares shall be in proportion to the amount of capital represented.<sup>7</sup> Commercial code article 408(2) states that every share carries at least one vote. This implies that the right of shareholders in company law does not discriminate on the number of shares owned his/ her right to vote on the general meeting. So, the general rule is that all shareholders have right to vote on the meeting of shareholders. However, there are limitations under the commercial code regarding voting right. Memorandum or article of association of the company may limit shareholders voting rights at general meeting;<sup>8</sup> the memorandum of association may provide that shareholders who have been given rights of priority over profits and distribution of capital upon dissolution of the company may vote only on matters which concern extraordinary meetings;<sup>9</sup> shares redeemed by the company carry no voting rights to shareholders;<sup>10</sup> where the interests of a member, acting on his own behalf or on behalf of a third party, conflict with the interests of the company, such member may not exercise his right to vote;<sup>11</sup> and directors may not vote on resolutions relating to their duties and liabilities.<sup>12</sup>

Thus, the voting right under the commercial code of Ethiopia in most general statements is compressed with the other rights such as to call shareholders meeting, participate the meeting and soon. There is no separate right reserved for minority rights protection purpose. Moreover, the commercial code does not incorporate the other basic rights of voting in shareholders meeting. These are allowing shareholders the right to ask questions, to put in place issues in the agendas and with certain limitations propos resolutions in the meetings and to challenge the resolution on general shareholders meeting. It also does not provide rights to shareholders to give voting by emails under commercial code of Ethiopia.<sup>13</sup>

The methods of voting rights are implemented in two ways under the commercial code of Ethiopia. The first one is a direct voting system and the second one is proxy voting system. Direct voting system is owners of the company shares participate at general meeting personally and give their vote on the decision passed by the general meeting.<sup>14</sup> Thus, direct voting right is inherent rights for shareholders of the company to participate and vote on the general meeting. However, this voting system has its own disadvantage. Firstly, all shareholders of the company could not personally participate at the general meeting because the shareholders may be lived in different area. Secondly, personal appearance at the general meeting subjects the shareholder to lose time and money. For the purpose of protecting minority shareholders, direct voting system regarding the election of directors of the company and any decisions passed by the general meeting does not worth anything because the directors of the company are elected by a majority of votes on the general meeting based on a one share one vote principle. Thus, the votes of minority shareholders do nothing.

Proxy voting system is a voting method in which the shareholders appoint representative to participate and vote at the general meeting.<sup>15</sup> It solves the problems of direct voting system of shareholders at the general shareholders meeting. According to the Ethiopian commercial code article 398(1), a shareholder may nominate one proxy only. Nevertheless, the provisions provides by the commercial code under article 398 are vague and unclear because the provision provides that the shareholders appoint one proxy only. But, it did not indicate that

<sup>1</sup>Ethiopia commercial code Supra note 14, art 426

<sup>2</sup>Ethiopia commercial code art 423

<sup>3</sup>Ethiopia commercial code d art 425(2)

<sup>4</sup>Ethiopia commercial code art 419(1)

<sup>5</sup>Ethiopia commercial code art 365(1)

<sup>6</sup>Ethiopia commercial code art 419(2)& 353(1)

<sup>7</sup>Ethiopia commercial code art 407(1)

<sup>8</sup>Ethiopia commercial code art 408

<sup>9</sup>Ethiopia commercial code art 336(3)

<sup>10</sup>Ethiopia commercial code art 400

<sup>11</sup>Ethiopia commercial code art 409(1)

<sup>12</sup>Ethiopia commercial code art 409(3)

<sup>13</sup> Supra note 98, p. 26 and OECD principle II C (3&4)

<sup>14</sup>Ethiopia commercial code, art 398(2)

<sup>15</sup>Ethiopia commercial code, 398(1)



who could be a proxy family, friend, relatives or it can be any person. Moreover, the code did not provide the function of proxy and the solution if the disagreement happened among the shareholder and his representative.

Besides, the commercial code provides in article 352 does not clear for protection of minority shareholders; the minority shareholders have the right to elect at least one representative on the board of directors. This provision does not clearly provided as to which kind of shareholders to elect the representative on the board of directors because the Ethiopia commercial code stipulated several groups of shareholders under the commercial code. Fekadu Petros mentioned the problems of cumulative voting system under article 352 of the commercial code and the importance of cumulative voting system to protect minority shareholders.<sup>1</sup> This was one problems of minority shareholder to protect their rights from majority shareholders decision used by majority vote.

Cumulative voting system is one of the strongest protection tools for the minority shareholders rights from unfair prejudice acts of the majority shareholders or directors of the company.<sup>2</sup> It grants right to minority shareholders to participate in management of the company by electing directors and supervisors by sum up each group of minority shareholders vote.<sup>3</sup> Under the Ethiopian commercial code one-share, one-vote doctrine, majority shareholders can definitely control the company by electing their favorite directors and it is highly unlikely for the minority shareholders to elect their directors because they represent minor shares of the company. Besides, our commercial code doesn't recognize that cumulative voting system was one of the problems to protect minority shareholders. For this reason, majority shareholders oppress minority shareholders by using one share one vote principle. Moreover, the operation of the company is done by majority shareholders or directors of the company. Different decisions regarding the company are passed by the majority vote principle. For this reason, minority shareholders have little shares and cannot challenge the decisions given by majority shareholders because there is no provision of cumulate voting system in our commercial code. Therefore, to protect the rights of minority shareholders from the above mentioned problems regarding the rights of vote, cumulative voting system and other possible solutions should be incorporated in the commercial code of Ethiopia.

In comparison, Ethiopian commercial code, particularly the law of company, still now used direct voting without any alternatives. That means the shareholder should be personally present on the general meeting to exercise his/her voting rights. Therefore, the Ethiopia legislator should amend the commercial code regarding direct voting system and the possible solution learnt from German company law i.e. usage of the internet and other modern communication system. This amendment will give to the minority shareholders a possibility to vote without expense.

However, every shareholder in both Ethiopian and Germany public companies can appoint a proxy holder for the latter to vote on his/her behalf. But the Ethiopian share company stated that a shareholder may nominate one proxy only.<sup>4</sup> This indicates that the Ethiopian commercial code did not say anything about the nominee i.e. whether the appointed nominee would be from his/her family, relatives, friends or any other persons. But, we interpret the Ethiopian commercial code by analogy when the appointment of proxy is needed; the shareholders can appoint any person as a proxy.

### 3. CONCLUSION AND RECOMMENDATION

#### 3.1. Conclusion

In this thesis, the legal protection of minority shareholders under Ethiopian legal system was compared with UK and German legal system. It focused on the rights of minority shareholders incorporated under commercial code of Ethiopia were adequately protected or not. It also examined and compared which legal system is protecting minority shareholders more from oppression of majority shareholders or directors of the company.

The legal protections were mainly analyzed and compared in to two areas. First, the fundamental rights of minority shareholders. Second, the substantive or preventive protection of minority shareholders from managerial power mainly including the rights of minority shareholders to convene the shareholders' general meeting, the right to propose resolution or agenda at shareholders' general meeting, the right to challenge the resolution of the shareholders' general meeting, the right to appoint independent audit, the right to access timely and accurate information of the company activities and the right to vote and participate at the general shareholders meeting. In these mechanisms, minority shareholders can protect their rights before unfair prejudice occurred by majority shareholders or directors of the company.

Under the commercial Code of Ethiopia, there is no definition and provision of minority shareholders that determine how much percent of shares holders deemed to be a minority shareholder whereas Germany Company's law provided definition for such legal term in its operation. In Germany corporate governance, it is

<sup>1</sup>Supra note,33, p 19

<sup>2</sup>OECD Principles of Corporate Governance, (2004) Part III A 2, p. 42

<sup>3</sup>FekaduPetros(2010), "Emerging separation of ownership and control in Ethiopian share companies: legal and policy implications, Mizan law review vol. 4 no. 1,p 19

<sup>4</sup> Ethiopia commercial code, art 398(1)

recognized as an internal model because corporate control mainly exists within inside corporations. The UK was one of the first nations to establish rules for the operation of companies.

Today, the system of company law and corporate governance, setting out the legal basis on which companies are formed and run, is a vital part of the legal framework within which business is conducted. It is also one of the jurisdictions that have developed comprehensive minority shareholder protection in closely held companies. The protection of minority shareholders under Ethiopian law is hidden and not a clear provision. For instance, if one goes through the Code dealing with companies, whether Share Company or Private Limited Company, there is no single provision where the rights of minority shareholder are explicitly articulated. However, the substantive legal protection of minority shareholders can be found unclear provision of the commercial code. However, there are clear provisions of substantive rights of minority shareholders under the German Company Law and UK Company Act.

Concededly, the following areas of substantive rights are dealt in detail in Germany and England company laws, inter alia, the right to convene general shareholders' meeting, the right to propose or amend the agenda of shareholders' meeting, the right to challenge the resolutions adopted at the general meeting, the right to appoint independent audit, and the right to information, voting rights. However, in Ethiopia, there are no as such full-fledged rules for such bundles of rights to protect minority benefits in life of companies. For instance, In Ethiopian corporate governance framework context, disclosure and the transparency of companies are neglected and almost impossible at the current situation. The share company law provisions failed to clearly articulate the minimum standards of companies' disclosure of all relevant and reliable financial and non-financial information timely and regularly. In addition, there are no other mandatory or voluntary disclosure standards in the country.

Moreover, the right to calling general shareholders meeting is one mechanism of to protect minority shareholders. If the operation of the company by the directors against the interest of the company, then the shareholders of the company are to request the directors to call the general shareholders meeting. In this meeting, the shareholders have to prevent and challenge illegal decision of the company. However, under the Ethiopian commercial code, the methods and procedures of calling general shareholders' meeting for protection of minority shareholders compared with the selected countries, it protected less or inadequate. Besides, the commercial code of Ethiopia did not incorporate and recognize the right to propose the resolution or agenda at the general meeting for the purpose of protection of minority shareholders' right. But, in UK and Germany Company law, the right to propose resolution or agenda is one of the mechanisms to protect the rights of minority shareholders. The commercial code of Ethiopia did not provide a clear and single provision on the right to challenge unfair decisions of majority shareholders to minority shareholders. But, the UK Company law clearly incorporated the procedure for the purpose of effective protection of minority shareholders' rights violated by illegal decision.

### 3.2. Recommendation

According to the problems found out above, the legal protection of minority shareholders under commercial code is inadequate and unclear. The time when the commercial code enacted and today are too different times. However, until this moment, the 1960's commercial code of Ethiopia has not been amended. Hence, today there is a great complexity among business person compared with earlier time. So, the 1960's commercial code cannot protect the rights of minority shareholders adequately and effectively. Therefore, the writer forwarded the following recommendations:

Based on the above finding about the rights and definition of minority shareholders, the commercial code has to be amended:

- To incorporate the rights and definition of minority shareholders clearly. The reason is the rights and definition of minority shareholders is the backbone to protect minority shareholders from oppressive conduct of directors of the company.
- To reduce 10% requirement of shareholders for the request of the court to call shareholders meeting. The main requirement of such a shareholder is the minimum percentage of shares that the shareholders should hold in order to qualify for the right to be able to convene the general meeting when the directors fail to do so. The commercial code provided under article 391(2) the holders of 10% shares to request the court to calling general meeting when the directors fails to do so. Additionally, the shareholders have another obligation for requesting the calling of general meeting the shareholder to show the meeting appointment is necessary.
- To clearly stipulate the grounds of calling shareholders meeting for the minimum share holders' request. According to the commercial code of Ethiopia, those who hold 10 % of the total share can call for the general meeting. This law does not protect the rights of shareholders who hold below 10% share.
- To incorporate propose of an agenda on the general shareholders' meeting for minority shareholders and to incorporate the minimum requirement of shares that a minority shareholder should hold in order to qualify to proposes a resolution. In Ethiopian commercial code, which places the ultimate power of the corporation into the hands of the majority shareholders, the majority shareholders should be more active in corporate affairs,

and they deserve the protection by the right to propose resolutions at the general meeting. For this reason, minority shareholders' rights are abused by majority shareholders or directors of the company.

- To clearly stipulate the rights of minority shareholders to challenge illegal decision passed by the general shareholder meeting and to specify the minimum requirement of minority shareholders to challenge illegal decision passed by the general shareholder meeting. The reason for this recommendation is the decision passed by the majority vote at the general shareholders' meeting. Majority shareholders may be used their majority vote to grant decisions against the interest of minority shareholders. However, the commercial code of Ethiopia has not incorporated the rights of minority shareholders to challenge the decision of general meeting in single and clear provision. The other reason is that the Ethiopia commercial code has also not stipulated the procedural matters for challenging unfair decision of majority shareholders or directors of the company passed at the general shareholders' meeting.
- To incorporate cumulative voting system of minority shareholders. Cumulative voting system will give all shareholders opportunity to have a voice in corporate governance and protect the interests to some extent. Cumulative voting system is to increase minority shareholders to protect their rights from unfair prejudice decision of majority shareholders or directors of the company. The methods of protections are to encourage minority shareholders to participate in management of the company and contribute their perspectives to maximize the company's interests, to check and balance in corporate governance to prevent directors from abusing powers and to reduce interests of conflict and moral risks and minimize the risk of investments. Hence, the system of cumulative voting can effectively protect minority shareholders. So, the commercial code has to be amended.
- To adopt email or internet voting system because of direct voting presupposes the fact that the shareholder should be personally present on the general meeting. As a rule, those meetings should be held in the domicile of the company. If the minority shareholders live in another city or another county, getting to the place of the general meeting will take time and financial problems. Thus, in a majority of cases the shareholder made a decision that attendance of such meeting was not equivalent to all shareholders, especially minority shareholders. Therefore, the email or internet voting system to solve the above problem.

**Competing Interest:** The authors declare that this research work is original and it has never been published in any other journal. Besides, other people's works and materials we have used have been duly acknowledged.  
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