

THE PROTECTION OF MINORITY SHAREHOLDERS RIGHT UNDER THE ETHIOPIAN COMPANY LAW

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Abstract

Business organizations can be constituted in different forms, company being one. A company, once it acquired its legal personality, enjoys certain attributes, which differentiate it from other forms of business organizations like partnerships. In a company, there may be two types of shareholders. Those are minority shareholders and majority shareholders. The minority shareholders may face dual disadvantages from the managerial power and the majority rule. Minority and majority issue comes if the company ownership is not absolute diffuse or absolute concentrated ownership. The problem exists in between the two. Except financial institutions, there is no share restriction in the company under the company law of Ethiopia. Meaning, so long as minimum member requirements (five for share company and two for private limited company) and minimum capital requirement (50000 Ethiopian Birr for share company and 15000 Ethiopian Birr for private limited company) is fulfilled, it does not put any restriction as to the number of shares a member may hold in the company's total shares. However, for instance, if the company is Bank, no one is allowed to hold more than five percent of a bank's total shares either on his own or jointly with his spouse or with a person who is below the age of 18 related to him by consanguinity to the first degree. Absence of capital limitation in Share Company triggers the existence of majority and minority shareholder, which ultimately causes the manipulation of the right of a minority shareholder in the corporate governance. Hence, this article analysis and examines the strength and the weakness of the commercial code (hereinafter Com. Code or company law) in protecting the rights of minority shareholders in the context of publicly held share companies. It does not address financial institutions like bank and micro finance, despite the fact they are always established in the form of Share Company. The reason is they did not govern by the Com. Code. Instead, they are governed by Proclamation Number (No.) 592/2008 and Proclamation No. 626/2009 respectively.

Keywords: Company Law, Ethiopia, Minority Shareholder, Protection

1. Introduction

The formation of companies in the modern legal structure is a recent phenomenon in Ethiopian history (Getahun, 2010). It was formed mostly by public subscription, which allows the public to contribute and become a shareholder (Ermias and Nega, 2010). Companies often accumulate enormous capital through shareholding. It generates a vast proportion of the world's wealth (Jaint and Marious, 2009). Due to its limited liability, accumulation of enormous capital, and transferability of share, company has become a favorite business organization (Kisch, 1940-1941). Furthermore, it is suitable for running a commercial enterprise and it is the most comfortable way to work together (Jingyi, and Peng, 2009).

Company law deals with all aspects of companies such as membership in companies, management of companies, formation of companies, and other requirements to create companies (GOGNA, 2010). In Ethiopia, the main laws that govern companies are the Com. Code enacted in 1960 and commercial registration and business licensing proclamation enacted in 2010. Company law provisions are part of the Com. Code under the heading of "Business Organizations". The enactment of the company law had triggered the formation of several private companies in Ethiopia until 1974

(Gebeyaw, 2011). However, with the adoption of socialism from 1974-1991 it was utterly suspended due to the nationalization policy of the Dergue, where all incorporated companies had nationalized. After Ethiopian People Democratic Front (EPRDF) comes into power, its function has restored and different business organizations start to form. Currently, Ethiopia is witnessing the explosion of companies, which are offering shares for public subscription (Tikikile, 2011).

In the present day of Ethiopia, the numbers of companies are growing from time to time due to free market economy and privatization policy of the government. Despite the fact, people are interested in share ownership and its investment potential; many do not have a clear understanding of their rights that is enshrined in the Com. Code. Practically, it is quite apparent to hear that a few majority shareholders are manipulating a large number of shareholders in various ways. This article will examine and analyze the Ethiopian company law how it protects the rights of shareholders in general and minority shareholders in particular. In doing that, this article aims to contribute in creating investors' awareness as to the possible consequences of owning shares and participating in this area of investment. The article also aims to contribute towards policy discussions regarding the gaps and weakness

that exists in the Com. Code and how they should be addressed.

2. The Concept of Minority Shareholder

In Ethiopia company law; there is no clear definition of what is meant by a minority shareholder and majority shareholder. However, Black's law dictionary (1999) defines minority shareholders as follows:

Minority shareholders are shareholders who own less than half of the total shares outstanding and thus cannot control the corporation's management or single-handedly elect directors.

This means, a shareholder that holds more than fifty percent of equity in a company considered as majority shareholder and shareholders who hold less than fifty percent of the capital of the company considered as a minority shareholder. Contrary to the Black's law definition, some scholars define minority shareholders without considering the mathematical calculation of shareholding in the company (Belayneh, 2012). Accordingly, minority shareholders are those shareholders irrespective of their shareholding in the company who are not capable of controlling the company's affairs (Timmerman, and Doorman, 2001). This means, regardless of

the equity capital, the shareholder may be minority shareholder as long as the shareholder is unable to control the company because of various reasons, like preferential right, the less capital contributor in the company may manage the company than the majority capital contributor (Hirschman, 1990). In such cases, the majority shareholders are effectively in a minority position with regard to determining a company's affairs. Likewise, the United States Court (Hollis v. Hill, 2000) interpreted the issue of minority or majority shareholder not based on the shareholders capital or share in the company. Rather, the base to determine whether they are minority shareholder or majority shareholder is their controlling power in a business. Here is the interpretation:

The questions of whether the shareholder is 'minority' or 'majority' shareholders should not focus on mathematical calculation but, instead, should focus on whether they have the power to work their will on others and whether they have done so improperly.

When we look at the provisions of the Com. Code in relation to the majority and minority shareholder issue, there is no precise definition as stated before.

However, some provisions give a hint indirectly on the conception of minority and majority shareholder. The company law stipulated that decision pass by simple majority voting (Com. Code, 1960, Article 421 (3)). This means fifty plus something positive vote is enough to pass a binding decision and it stated that every share has got at least one vote (Com. Code, 1960 Article 407 (2)). This indicates that, control of the company determined by the equity share capital that the shareholder owns in the company. A shareholder contributing a significant portion of the capital of the company possesses the majority of the voting right in the general meeting. Accordingly, minority shareholders are those shareholders that own less than fifty percent of the voting right in general meeting.

On the other hand, even if the Com. Code puts a general rule, which says, “Every share carries at least one vote”, (Com. Code, 1960, Article 407(2)) it puts exception. The exception applies if there are preference shares. Hence, there is a possibility by which a shareholder may control the company without holding a significant percentage of the capital. In fact, preference shareholders may conduct their own special meetings, but they cannot control the decision-

making process in the ordinary meetings of shareholders. Therefore, preferential shareholders are minority shareholders, according to the Ethiopian company law.

Most literatures use the phrases ‘non-controlling’ shareholders and ‘minority’ shareholders interchangeably (Paul, 2000). Hence, the writer used those words interchangeably and for this article minority shareholders are those shareholders who contribute less than fifty percent of the company capital regardless of their control power in a company.

3. Minority Shareholder Protection under the Ethiopian Company Law

The problem that a company law faces is trying to strike an acceptable balance between the right of the majority to have their way and the rights of a dissentient minority (Stephen, 2009) and (Walter, 1992).

An adequate protection of minority shareholders is unthinkable without legitimate legal norms (Tanja, 2012). Good corporate governance enhances the confidence of shareholders in general, and minority shareholders in particular ultimately it positively contributes towards the overall business environment (Hussein, 2012).

As far as the protection of the rights of minority shareholder is concerned, several writers believe that among other things, the interest of the

minority shareholders will be protected if they have representation on the board of director (BOD) (Fekadu, 2010). However, when we examine the powers of the BOD their influence is insignificant when we compare with the powers of the shareholders general meeting (Com. Code, 1960, Article 363 cum Article 388). In this regard, the law specifies that the BOD's power is subordinate to the power of the shareholders general meeting and dependent upon a resolution that is adopted by the shareholders meeting. The author is of the opinion that having representation in the board of director alone does not address all the issues that are related to the protection of minority shareholders. Rather, the issue of minority shareholder protection is associated with shareholder voting rights at general meetings since it is a critical way whereby shareholders may exercise their rights in a company (Ataollah, 2007).

Come back to the commercial code provisions which address the issues of minority shareholder protection, Article 352 seems vital since its' heading talks apparently about the protection of minority shareholders. Writers like Hussen (2014) understand Article 352 is applicable to minority shareholders in the same class of shareholders and his concern is the ambiguity of the phrase "legal status", about which the Com. Code gives no definition. However, instead of

protecting the rights of shareholders within the same class, Article 352 protects a particular class of shareholders such as preference shareholders, who are in the minority most of the times, from abuse of ordinary shareholders who are mostly constituted the majority in the shareholding arrangement. The expression "legal status" in this Article addresses the various rights and obligations, these separate classes of shareholders has in the corporate structure. There is no difference in the legal status of shareholders within the same class. Therefore, Article 352 does not have much to do with protection of the rights of minority shareholders from abuse by the majority within the same class.

To point out some of the strength of the Com .Code, it recognizes the right to vote by proxy (Com .Code, 1960, Article 398(1) cum Article 402). Recognizing vote by proxy in the company law is one of the indices in the protection of shareholders, especially minority shareholders (Katharina, 2000). Obviously, due to less voting right attached to minority shareholders, they are reluctant to participate in every vote in person relatively with that of the majority shareholders. The concern of the large capital holder (majority shareholders), is not equal with the concern of the less capital holder (minority shareholders) in a company. Minority shareholders have less interest in attending the meeting in person than

majority shareholders. Had it not for proxy voting right, most probably minority shareholders would have failed to attend the meeting in person. However, proxy voting helps the actual owner can send a representative on behalf of him and exercise his right. Therefore, the recognition of proxy voting by law will have much benefit to the minority shareholders than a majority shareholder to exercise their voting right on proxy and it is a means to protect minority shareholders' right to vote.

Article 391 (2) (Com. Code, 1960) stipulates that the minimum percentage of share capital that entails shareholders to call general meeting is ten percent like that of Organization for Economic Co-operation and Development (OECD, 2004) principles of corporate governance and La-Porta, Lopez, Shleifer, and Vishny (1998) standard. This helps minority shareholders to call a shareholders' meeting as long as they account ten percent of the capital of a company. For instance, if the minority shareholders are not happy the way the company was run and want a change in management, they can call a shareholder meeting and ask for the removal of the directors. This can be mentioned as a one instance of protecting the rights of minority shareholders. Of course, the right to call a shareholders' meeting does not necessarily mean they will be able to get the resolution

passed due to the various requirements in the voting procedure. Still, this provision has a contribution in protecting minority shareholders as it enables them to promote their interests by putting pressure on both the management and majority shareholders.

The other right that is considered as a means of protecting minority shareholders as per La Porta et al (1998) analysis is pre-emptive right of the shareholders to buy newly issued shares. This right is provided in the Com. Code under Article 345(4) cum Article 470(1). However, a closer examination of the right reveals that pre-emptive right may not be as effective as it seems in protecting minority shareholders for the following reason. This right is given to all shareholders in proportion to their capital. This means, minority shareholders have the right to buy fewer newly issued shares as long as the shareholders buy proportionally, resulting no change as to their minority status. Hence, the pre-emptive right of shareholders may not provide the protection to minority shareholders as envisaged both the Com. Code and La Porta et al, (1998) standard.

According to La Porta et al (1998) analysis, shareholders' right to challenge decisions of the general meeting is considered as an instrument to protect minority shareholders and it recognized in the Com. Code (Com. Code,

1960, Article 416(2-5)). However, it is allowed in an exceptional situation with rigorous conditions. Looking at the principles, different writers conclude that Ethiopia does not recognize the shareholders' right to challenge decisions of the general meeting under its company law (Fekadu, 2004). However, this is a clear misreading of the law because the shareholder's right to challenge decisions of the general meeting is provided under Ethiopian company law, though it is in exceptional circumstance. Whenever the resolution of the meeting is against the law, article of association or memorandum of association, the shareholders can challenge it within three months from the resolution (Com. Code, 1960, Article 416(2)). Since the most important powers are found in the hands of the shareholders' meeting, most of the time minority shareholders' right may be abused by the decision of majority shareholders. Therefore, shareholders' right to challenge the decisions of the general meeting is the best mechanisms of protecting minority shareholders.

In addition, the Com.Code (1960) with rigorous conditions and in exceptional scenario recognizes oppressed minority mechanisms, which ensures the protection of the interest of minority shareholders' in the company (Com. Code, 1960, Article 463(1)). The notion of oppressed minority mechanisms is the right that

is given to dissent shareholders, to withdraw from the company by selling their shares either to the company or to majority shareholders (Udo, 2006). The company or the controlling shareholders are duty bound to redeem the share of the dissent shareholders if their interest is affected by the resolution. Com. Code, (1960) Article 463 (1) stipulates oppressed minority mechanisms as follows:

Shareholders who dissent from resolutions concerning any change in the objects or nature of the company or the transfer of the head office abroad may withdraw from the company and have their shares redeemed, at the average price on the stock exchange over the last six months. Where the shares are not quoted on the stock exchange, they shall be redeemed at a price proportionate to the company's assets as shown in the balance sheet for the last financial year.

The ground to exercise oppressed minority mechanisms is exhaustively listed in the above provision. A shareholder who does not agree with the decision of the meeting and believe that the change in the objects or nature of the company or the transfer of the head office abroad affects their rights, they can request the company to purchase their shares. This provision helps to protect minority shareholders

from abuse by majority shareholders and it is considered as one means of protection mechanism as the La Porta et al (1998) findings. The other strength of the Com. Code is the recognition of an absolute majority vote and absolute majority presence of directors in person or by representation to pass binding decision in the BODs (Com. Code, 1960, Article 358(1)). An absolute majority vote is not only for BODs decision, but also it is required for a resolution to be adopted at an extraordinary meeting (Com. Code, 1960, Article 425(1-2)). Meaning, simple majority vote is not enough to pass binding decision in the BODs and extraordinary meetings. In an extraordinary meeting, an absolute majority vote requires if the resolutions focus on the issue of change of the nationality of the company; or require shareholders to increase their investments in the company. The requirement of an absolute majority resolution vote helps to protect minority shareholders than a simple majority requirement. The issues that require absolute majority requirement is exhaustively listed under Article 425(3), which says other resolution can be adopted by simple majority requirement. Minority shareholders can affect the decision of the majority shareholders so long as they count more than twenty-five percent vote by pooling their voting right. Hence, to some extent it secures the interest of dissent shareholders. However, an absolute

vote is exception of simple majority vote.

The Com. Code also provides the rule of “one share one vote” principle (Com. Code, 1960, Article 407(2)). It stipulates a mandatory rule, which states, “Every share carries at least one vote”. It is a compulsory provision, from which no suspension is allowed by the resolution of the general meeting. Regardless of their capital, shareholders have a voting right. It is the inherent right of the minority shareholders despite the fact; this right has equally benefited majority shareholders. Had it been non-mandatory, majority shareholders would have been adopted other types of voting system or they would have been suspended the voting right of the minority shareholders as long as it promotes their interest. However, exceptionally the memorandum of association of the company may restrict the voting right of preference shareholders (Com. Code, 1960, Article 336(3)). In such scenario, the preference shareholders are dissenting shareholders and their inherent right is suspended. Generally, one share one vote rule is vital to protect the intrinsic right of minority shareholders from being suspended by the majority shareholder resolutions or by a company’s article of association.

Also to the above method of protecting minority shareholders, there is a possibility of instituting proceedings against the directors if the

resolution is adopted by the vote of shareholders representing at least one-fifth of the capital to do so (Com. Code, 1960, Article 365(2-4)). Once the resolution to institute proceedings is adopted by shareholders with one-fifth of the capital holder, directors may be removed from their posts and others may replace them (Com. Code, 1960, Article 365 (2-4)). If a company fails from instituting proceeding against the directors, the shareholders who corroborate the resolution can initiate action by themselves (Com. Code, 1960, Article 365(2-4)). However, the right to institute action is not given to the individual shareholder. Had it been given to the individual shareholder, it would have been much better protection to minority shareholders. By pooling their capital, minority shareholders may force the company to institute proceeding against the directors and undoubtedly, it contributes in protecting minority shareholders even though this right does not give to individual shareholders.

4. The Commercial Code and Its Gaps in the Protection of Minority Shareholders

The fact that the Com. Code provides different methods for protection of minority shareholders like proxy voting, one share one vote mandatory rule, pre-emptive right, oppressed minority mechanisms, and the right to challenge

decisions of the general meeting yet there are gaps that have to be discussed.

The general meeting of the shareholder has very broad powers in the Com. Code. Accordingly, it has not only met to decide on such ordinary matters such as the election, replacement, and remuneration of the members of the board of directors, or the approval of final statements, but also they meet to amend the memorandum of association and/or article of association, change the nationality of the company and require shareholders to increase their investments in the company (Com. Code, 1960, Articles 419, 423 cum 425) and (Christoph, 2005). This indicates, the company law gives high and ultimate powers to the shareholders general meeting. As a rule, the company law follows simple majority rule in the general meeting and it makes the position of minority shareholders weak when faced with that of majority shareholders. Following the simple majority as a rule, to pass a binding resolution is a significant challenge to minority shareholders to challenge the resolutions. No apparent right is stipulated which enables them to challenge the decision of majority shareholders. Exceptionally, resolutions of the general meeting can be challenged pursuant to Article 416 (2). It reads,

Resolutions adopted contrary to the law, the memorandum or articles of association 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.

Meaning, the one who would like to challenge the vote should prove the fulfillment of those cumbersome conditions. The condition is less likely to be met and challenge the vote. Undoubtedly, an absolute majority rule helps to protect minority shareholders than simple majority rule (Aparajita, 2012). However, it is adopted as an exceptional scenario in the Com. Code.

At the time when a board of director commits a fault on the company or on any shareholders, to remove or to replace that board of director, the approval of the majority shareholders is needed. From this, we can say that, the board directors may not be quitted from the office, even if they commit certain abuses on minority shareholders as long as their action benefit majority shareholders due to the fact there action has a high possibility of support and approval by majority shareholders. There are no viable rules that allow minority shareholders to bring action against the board of directors when the latter commit wrongs that affect the interest of minority shareholders. The company law does not provide specific procedures for minority

shareholders to exercise their rights or to seek for remedies when directors commit certain wrongs.

On top of that, the shareholders' right to vote mainly exercised at shareholders' meetings that are lawfully convened according to the company law rules. If not, the "resolutions" passed by the meeting would not be lawful, and binding on the company, the management or any other shareholders. Although the Com. Code requires that within four months at the end of each financial year, the directors shall call an ordinary annual general meeting, in their article of association, they may extend up to the maximum of six months since the law gives discretion to extend (Com. Code, 1960, Article 418(1) cum (2)). In fact, meeting before four months of the end of each financial year is not prohibited as long as it is necessary. As provided under Article 391 (2) minimum percentage of share capital that entails to call general meeting is ten percent. However, as a normal course of things, the board of directors as a rule shall convene the shareholders' meeting (Com. Code, 1960, Articles 362(d) 391(1) and 418(1)). If the directors fail to do so for different reasons, the auditors shall convene the shareholders meeting and they are considered as part of the management. If still the auditors fail to call the meeting, the liquidators can call at the time the company is in dissolution only.

Lastly, the court can call a meeting of the shareholders if it is necessary (Com. Code, 1960, Articles 377(1) cum 391(1)). Hence, as a rule, the power to call the shareholders' meetings falls in the hands of the management (directors and auditors). This shows that, the possibility to call a general meeting out of the management of the company in the normal course of things is almost impossible. There is an exceptional way for minority shareholders to participate in the power of calling the shareholders meeting by applying to the court. If an urgent meeting before the four months of the end of the financial year is needed, it is difficult to call a shareholders' meeting if the management is not willing to do so. This puts minority shareholders in a disadvantaged position.

Once the shareholders' general meeting is convened, the next issue that would be raised the right to provoke motions, or preparing the agenda. The Com. Code gives the mandate to prepare the agenda of the meeting to the caller of the meeting (Com.Code, 1960, Articles 391(1) cum 397(1)). Thus, the minority shareholders may not have the right to raise and prepare the agenda of the meetings since they do not have a chance to convene the meeting. Rather, they can only "request" the court of the place where the head office of the company resides to convene the meeting if they hold one-tenth of the share

capital of the company (Com. Code, 1960, Article 391(2)). Most probably, management of the company calls the meeting and they may not prepare an agenda that matters related to their faults. This indicates that, since agenda of the general meeting prepared by management of the company, most of the time the fault of the management towards minority shareholders may not be prepared as an agenda so long as the majority shareholders are the beneficiary. Therefore, under the Com. Code of Ethiopia, minority shareholders cannot stop the harmful acts of management (who are often controlled by the majority shareholders) with the convention of the shareholders' meetings. Therefore, a company law is not capable to protect them and it opens loophole minority shareholders to be abused by management of the company and controlling shareholders.

4.1.Absence of Cumulative Voting

The concept of cumulative voting allied with board elections. Fekadu, (2010) states that:

Cumulative voting relates to voting during board elections in which the votes of the contending groups will be multiplied by the number of board seats and calculated for the contenders' nominees in accordance to the proportion of each group's summed up votes. Cumulative voting system helps minority shareholders in the same class to get a

representative on the board as suggested by OECD (2004) principles. However, cumulative voting is not adopted in Ethiopian company law. Rather, it comes up with a different type of the representation system as stated under Article 352 (Com. Code, 1960). Though Article 352 provides representation of minority shareholders in the BOD, it does not state about representation of general minority shareholders in the company rather it states particular class of shareholders like preference shareholder who are minor due to loss of voting right. It has nothing to do with the representation of general minority shareholders through cumulative voting system. If it had been cumulative voting, no matter how much the shareholders invest in the company, by pulling together their vote, minority shareholders in the same class would have gotten representation on the board. Due to this ground, majority shareholders actually retain the power to appoint the directors. Despite the fact, minority shareholders in different class of shareholders have a chance to obtain representation on the board of directors, it is not a cumulative voting method and it is not for general minority shareholders in the same class (Com. Code, 1960, Article 352).

4.2. The Impossibility to Bring Derivative Action

Welling (1991) best describes the notion of the derivative action as follows:

A shareholder derivative suit is a claim asserted by a shareholder on behalf of the corporation. In a shareholder, derivative suit the law recognizes that corporate directors may not be acting in the best interests of the corporation when they refuse to assert the corporations legal right to enforce the directors' fiduciary duty to the corporation. The purpose of the suit is to prevent abuse of authority by the board of directors.

Granting the right to bring derivative action is the crucial mechanism for the protection of minority shareholders. The derivative action only called “claims for fraud on the minority,” it has claimed when majority shareholders or director have done wrong at the company and/or minority shareholders (Przemysław, 2011). Any shareholder can bring a derivative action against the majority shareholders or director on behalf of other shareholders or in the name of the company (Lorenzo, 2006). Generally, it has been a meaningful protective device not only to the minority shareholders but also for the company (Mathias, 2007). However, the Com. Code does

provide a full notation of derivative action. It stipulates that any shareholders who are abused or mismanaged by the directors can bring proceedings on behalf of him, but not in the name of the company or other shareholders (Com. Code, 1960, Article 367). To say derivative action any shareholder can bring proceeding against majority shareholder or director not only on behalf of him, but also on behalf of other shareholders and the company. Had it been incorporated the full notion, in the event of the minority shareholders are unable to bring an action by themselves; the other shareholders would have brought proceedings on behalf of the other shareholders. Hence, our company law fails to incorporate the full sense of derivative action so that it loss the primary protection mechanism of minority shareholders.

4.3. Difficulties to Exit from the Company

Exit from the company is somehow similar to the concept of oppressed minority mechanisms. An oppressed minority mechanism is a scenario, by which a company itself or majority shareholders are forced to buy the applicant's share. The Com. Code recognizes the remedy of oppressed minority mechanism, if there is any change in the objects of a company or the transfer of the head office (Com. Code, 1960, Article 463(1)). It is an opportunity to minority

shareholders to withdraw from the company by selling their shares to the company at the average price on the stock exchange over the last six months if there is any change in the objects of a company or the transfer of the head office abroad and if they are not agreed on the decision (Com. Code, 1960, Article 463(1)). Nevertheless, no stock market in Ethiopia yet and it is difficult to know the average price of the share (Solomon, 2011).

The company law of Ethiopia does not prohibit the free transfer of shares directly. However, the writer believes, one way or another it prohibits free transfer of shares indirectly contrary to OECD (2004) principles of corporate governance. Under Article 333 (1) it reads, "Provisions may be made in the articles of association or by resolution of an extraordinary meeting restricting the free transfer of shares." It allows the shareholders to restrict the free transfer of shares by the articles of association or by resolution of an extraordinary meeting. If the controlling shareholders decide in favor of not to transfer shares, free transfer of share is restricted. If members who are not satisfied with the company's activities would like to exit from the company, they cannot do that as of right. The implication of this provision is, so long as the majority shareholders agreed not transfer share and substitute by new members; they can restrict transfer of share and ultimately the minority

shareholders are bound to live as a member of the company regardless of their interest. This shows that, though shareholders are in need of transfer their share to the outsider, it may be impossible since there is a room of a restriction on transfer of share by majority decision. Therefore, without any doubt, it affects the interest of minority shareholders and it opens a loophole for the majority shareholders to misuse their power.

Furthermore, even if the company's majority shareholders and article of association allows free transfer of share, it is hard to sell shares due to the absence of the stock (security) market in Ethiopia. If someone wants to sell his share and withdraw from the company, there is no market access like any other good. Had it been in USA, shareholders would have sold their shares like any other good to withdraw from the company since there is equity market. Absence of a capital market (stock market) is not only makes the exit system hard, but also it makes the entrance system hard too in Ethiopia. Therefore, absence of stock markets contributes the exit rights of minority shareholders less likely. Moreover, despite the capital gain tax of 30% (Income Tax Proclamation, 2002 Article 37(1b)) is collected only when shares are sold at premium and is computed based on the difference between the par value and the selling price of shares, it does not motivate the transfer of shares.

Thus, this makes much more cumbersome to exit from the company. Hence, the company law of Ethiopia directly or indirectly and other factors restricted the possibility to exit from the company membership.

4.4. Absence of Fiduciary Duty of the Majority Shareholders towards the Minority Shareholders

Despite the fact, the company law has elaborated the legal liabilities of directors and managers for breaches of their legal obligations under different provisions; it has failed to address the idea of the fiduciary duty of the controlling shareholders towards the minority shareholders. Thus, in exercising their rights as majority shareholders, they are virtually free to exercise them in any manner, which they choose (Alessandro, 2015). They do not suppose to consider the general interest of the company and the interest of other shareholders. This would be problematic because the result of their voting as the majority shareholders does not only act for themselves, but also for the corporation and dissent shareholders. Hence, absence of such duty makes the abuse of majority would almost be inevitable (Carol, 2000). The Ethiopian company law imposes the fiduciary duty of directors towards the shareholders but it fails to impose fiduciary duty of majority shareholders towards minority shareholders (Susan, 2001).

5. Conclusion

One of the fears of establishing a company is there is certainly a risk that the majority will take advantage of the minority and that a company will be run at the expense of the minority shareholders. The general purpose of minority protection instruments is to minimize or avoid the abusive power of the major shareholders. Rights of minority shareholders should be protected for development of companies by attracting investors. The confidence of minority shareholders may be enhanced if the legal system provides mechanisms for them to get proper remedy. The government should introduce measures, or enhance existing measures, to provide non-controlling shareholders with adequate protection from exploitation by controlling shareholders and managers. By introducing instruments of minority protection, the law can make a balance between the interests of minority and majority shareholders.

This article tried to examine the defects and the strength of the company law of Ethiopia in the protection of minority shareholders. As strength, the company law provided one share one-vote rule, voting by proxy, the minimum of capital that entails shareholders to call general meeting is ten percent, and the right to challenge the decision of the general meeting exceptionally. Furthermore, oppressed minority mechanism with stringent conditions, possibility of

instituting proceeding against the directors and the pre-emptive right of shareholders to buy newly issued shares in proportion to their shareholding are recognized in the Com. Code.

To mention some of the defects of the Com. Code from the point view of minority shareholder protection, it is mainly characterized by the two facts: first, the inabilities of the company law to protect minority shareholders from dual oppression by both the managerial power and the majority rule and the second one is, it fails to address the proper remedies when the problem materialized. To tackle those deficiencies, the company law of Ethiopia should recognize the rights of minority shareholders to convene the shareholders' general meeting and to propose resolutions. The law should also impose a fiduciary duty on majority shareholders towards minority shareholders. It should evade the right that is given to majority shareholders to restrict free transfer of shares. It should also adopt cumulative voting representation system to general minority shareholders in the BOD as the mechanisms to mitigate the absolute majority rule. Moreover, the law should avail remedies to minority shareholders through lawsuits, including the direct suit, the derivative action, the oppression remedy, the appraisal remedy, the remedy of liquidation and dissolution, and the compliance and restraining order.

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