EXAMINATION OF ETHIOPIAN SHARE COMPANY LAWS ON RELATED PARTY TRANSACTION IN LIGHT OF THE OECD PRINCIPLES OF CORPORATE GOVERNANCE.

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A Thesis Submitted to the School of Law of Jimma University in Partial Fulfillment of the Requirement of Master Degree in Commercial and Investment law.

BY

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Declaration Statement

Here with, I declare that, this paper prepared for the partial fulfillment of the requirements for LLM Degree in Commercial and Investment Law entitled "Examination of Ethiopian share company laws on Related Party Transaction in light of the OECD principles of corporate governance" is prepared with my own effort. I have made it independently with the close advice and guidance of my advisor.

Boru Ensermu

Signature_____

Date_____

Certification Statement

Here with, I state Boru Ensermu has carried out this research work on the topic entitled "Examination of Ethiopian share company laws on related party transaction in light of the OECD principles of corporate governance" under my supervision. This work is original in nature and has not been presented for a degree in any university and it is sufficient for submission for the partial fulfillment for the award of LL.M degree in Commercial and Investment Law.

Fekadu Petros (Ass.Professor)

Signature _____

Date_____

Abstract

The purpose of this paper was to examine the current Ethiopian Share Company Laws on RPT in light of the OECD principles of corporate governance so as to identify legal gaps and its possible consequences. Moreover, the paper also examined how the laws are implemented in practice and the possible gaps in implementing the laws in selected companies. In order to analyze the practice of Companies, the researcher gathered data by conducting semi-structured interview with key informants. Document analysis was also conducted by using Court cases and selected Company documents through purposive sampling. The data was qualitatively analyzed and continuously interpreted throughout the paper.

Based on the available data and analysis of the Laws, the researcher found out that RPT is not sufficiently regulated in Ethiopia both in law and in practice. Correspondingly, this ineffective regulation of RPT is seriously affecting corporate economic interests, its Shareholders and its Creditors. Therefore, it is recommended that a new comprehensive Ethiopian share Company Law to be enacted by taking in to consideration the OECD principles of Corporate Governance and other developed nation rules and experiences on RPTs. In addition, it is also recommended that Ministry of Trade and Industry should arrange trainings and conduct sustainable follow up mechanisms of implementing the laws in Companies so as to mitigate practical problems on RPT.

Keywords: Related Party Transaction, Related Party, Share Company, Shareholder, OECD.

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List of Acronyms

RPT-	Related Party Transaction
RP-	Related Party
S.C-	Share Company
OECD-	Organization for Economic Cooperation and Development
BA-	Board Approval
RMS-	Remedies for Minority Shareholders
CA-	Corporate Agent
CSD-	Corporate Self-Dealing
CCE-	Commercial Code of Ethiopia
DCC-	The Draft Commercial Code
FP-	Financial Proclamations
NBE-	National Bank of Ethiopia
GMSA-	General Meetings of Shareholders Approval
DS-	Derivative Suits
ASDI-	Anti-Self-Dealing Index
ADRI-	Anti-Director-Rights Index
ESCL-	Ethiopian Share Company Laws.
DNBE-	Directives of National Bank of Ethiopia.
FC-	Financial Companies
NFC-	Nonfinancial Companies.

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CHAPTER ONE

1. Introduction

1.1. Back ground of the Study

Related party transaction (RPT) requires serious attention for it opens opportunity for Corporate-Agents (CA) and /or their related parties (RP) to expropriate assets of the Company to fulfill their individual needs where there is no effective controlling mechanism. This is particularly true in large Companies where there is separation of Control and ownership.[1] As a result of such separation of control and ownership, while the control aspect of companies is vested to persons commonly known as Corporate-Agents, the ownership of Companies is reserved to Shareholders.[2] This scenario potentially gives room for the birth of corporate agency problems particularly that arise out of the relationship between the management of the Company and its Shareholders in general thereby creating situation in which the interests of those persons who are in control of corporate affairs clash with interests of Shareholders as a whole. In this case, the agents divert assets of the Company to fulfill their individual needs than to fulfill the interest of Companies and their Shareholders.[3]

Consequently, this corporate asset diversion immediately affects economic interests of Companies, their Shareholders and Creditors. In order to counteract such harmful consequential effects, legal systems of different countries provide for well articulated legal frame works and actively follow implementation of the laws regularly. In this regard, legislative tools play paramount role in controlling the acts of CA that give room for the birth of RPT in modern corporate business environments. According to, Paul L Davies Cassel's" Core Company law addresses three sets of agency problems which are inherent in the structure of large Companies"[4]

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[1] See Fekadu, P., (2010), Emerging Separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications, Mizan Law Review, vol. 4, no.1, p .2-30.

[2] Ibid, p. 2

[3] Paul L Davies, C. (2001), The Board of Directors: Composition, Structure, Duties and Powers, Stockholm, Sweden, p. 1 Available at Last accessed 5June, 2017

https://www.oecd.org/daf/ca/corporategovernanceprinciples/1857291.pdf

[4] Id.

Needless to say, well articulated Company laws play crucial role in fighting such transactions. This paper took initiatives to analyze the Current Ethiopian Share Company Laws (the Laws) on RPT. In the course of analyzing the laws, the paper primarily used the OECD principles of Corporate Governance as a major guide lines against which the laws were evaluated on RPT.As well the paper used Minority rights Protection Indexes and best experiences of other countries as supplementary guidelines to the principles. Moreover, the paper examined practical application of the laws in Companies besides analyzing the laws.

Based on the analysis of the laws and practices (to some extent), the paper found out that RPT is not sufficiently regulated in Ethiopia both in law and practice. To mention few of the gaps in law, art. 356(1) of the Commercial Code of Ethiopia defined RPT very narrowly by excluding potential persons from its regulatory coverage. Correspondingly, this narrow definition does not apply to the dealing between Company and its dominant Shareholders, Managers, Auditors, and/or their RPs.

This in turn opens golden opportunity to such persons to expropriate assets of the Company. Not only this but also disclosure of information to Shareholders about RPT is not adequately addressed. In addition to these problems, there is also problem of implementing the laws in companies. For example, the law requires RPT approved by Board of directors to be submitted to General meetings of Shareholders for approval; however, in Companies selected for the purpose of this study, the requirement of the law was not applicable practically. To the researcher's best knowledge, these and others gaps of the laws and practices in Companies are causing significant problems in many ways.

Thus, this paper is intended to identify these and other loopholes of the laws and practical problems that are prevalent in companies. Moreover, it is also intended to investigate the consequences of such gaps in companies and to provide possible recommendations on the same.

1.2. Literature Review

Though many research paper and articles have been written on different titles and issues of corporate governance since the enactment of the 1960 Ethiopian commercial code, no single domestic literature directly addressing RPT is available. But, there are few literatures which in one way or another related to the topic of this paper.

LL.M dissertation written by *Gebeyew* is one of such few literatures.[5] He briefly discussed the relevant share Company provisions of the commercial code that deals with the legal and regulatory requirements to form share companies and concluded that the code is apparently unable to create conducive legal and regulatory environments to the smooth running and ongoing operation of public companies. He argued that the legal and regulatory frameworks of the commercial code is not properly articulated and failed to provide comprehensive legislative response to the modern complicated corporate governance issues of public companies. Further, Gebeyew discussed why OECD principles of corporate governance gained International acceptance as bench marks in general and why they are applicable to Ethiopian context in particular.

He identified basic lacunas of the code: absence of disclosure of information to the Shareholders, Problems of insider-dealings and corporate self-dealings as well as absence of derivative suite for minority Shareholders in case one fifth of share capitals of Shareholders vote against the resolution.[6] Finally, based on the critical analysis he made, he reached on the conclusion that the basic governance aspects of share Company law provisions are defective and inadequate. However, Gebeyew didn't address what related party transaction is and who related parties' are. All the same, he never concerned with the way outs to control such RPT.

The other related literature reviewed for the purpose of this paper is article written by *Fekadu Petros*.[7] He indicated the growing separation between ownership and control in Ethiopia by submitting some empirical evidences in this regard. Based on the data and literature on corporate governance, Fekadu showed the deficiency of the Commercial Code in protecting the rights of minority Shareholders in the context of publicly held companies. He further, explained overviews of corporate governance issues relating to disclosure and transparency of corporate

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[5] See Gebeyaw, S. (2011/12), A Critical Analysis of the Ethiopian Commercial Code in Light of OECD Principles of Corporate Governance, Master paper, University of London, available at http://sasspace.sas.ac.uk/4733/1/Gebeyaw_Bekele_LLM_ICGFREL_dissertation.pdf accessed on 19, January 2017

6 Ibid, p 19-30.

[7] Fekadu,Supra note, 1.

information, Corporate governance problems which extends to protection of corporate assets from misuse by managers and block-holders in complex cases.

While addressing corporate governance problems, Fekadu pointed out the danger managers can pose up on corporate assets there by negatively affecting Shareholders interests. By the same token, he also mentioned the possibility whereby block holders can extract benefits, *via* different mechanisms, *inter alia*, through high pay and bonuses for employed family members and associates, inappropriate related party transactions, systematic bias in business decisions and changes in the capital structure through special issuance of shares favoring the controller. Finally, assuming that the protections lacking under the Code are the most important ones that can minimize minority Shareholder exploitation by managers and/or block holders, he argued that the law is inadequate in relation to protection of minority Shareholders right. However, though he tried to raise crucial issues like inappropriate related party transactions on his way, he wasn't address what that inappropriate related party transaction is all about and whether or not such transactions are regulated under the code.

Last but not least, *Hussein*,[8] briefly touched on pertinent provisions of the commercial code part governing share companies and come up with the conclusion that such provisions are inadequate to address issues in modern corporate governance related to board of directors, rights of Shareholders as well as financial reporting, transparency and audit. He examined various approaches available to policy makers to reform the corporate governance in Ethiopia. Further, he reviewed, competing models of corporate governance including Shareholder model of common law and stakeholder model of European civil law; and the regulatory (formal or mandatory) and non-regulatory (informal or voluntary) approaches of corporate governance as well as the suitability of such approaches to an emerging economy like Ethiopia.

Finally, He reached on the conclusion that Ethiopia should carefully examine the entire experience of various countries with a view to look for principles of good corporate governance to be adopted for its local needs. Noting the slogan "one size can't fit all" he recommended the country to carefully determine a system of corporate governance most appropriate to its own

[8] See, Hussein Ahmed Tura,(2014), Reforming Corporate Governance in Ethiopia: Appraisal of Competing Approaches, Oromia Law Journal [vol 3, no. 1], p.161-211.

individual needs and circumstances instead of relying on a Shareholder or stakeholder model approach. Nevertheless, though Hussein comes up with the title reforming corporate governance issues, he wasn't address corporate governance problem relating to related party transactions.

These prior works serve as ground stone for this paper. The aforementioned literatures in one way or another discussed different issue of corporate governance in Ethiopia. For example, Fekadu pointed out that in the presence of corporate governance problems, managers can pose dangerous up on corporate assets which negatively affects Shareholders interests. Gebeyew also identified basic gaps of the code relating to problems of corporate governance in Ethiopia namely absence of disclosure of information to Shareholders, Problems of insider-dealings and corporate self-dealings as well as absence of derivative suit for minority Shareholders in case one fifth of share capitals of Shareholders vote against the resolution.

Based on this, he concluded that the basic governance aspects of share Company law provisions are defective and inadequate. Moreover, Hussein, after discussing different issues of corporate governance among others gave the conclusion that corporate governance is different from corporate management; and share companies are governed by a non-executive board while management is the task of the executive of a Company. Relying on this, he argued that there is inadequacy in the law on the composition and independence of directors.

This paper also intends to contribute to the existing literatures on corporate governance issues in Ethiopia, by pushing forward issues incidentally raised by prior works with specific reference to regulation of related party transaction under the Ethiopian Share Company laws. To the best of the researcher's knowledge, none of the previous works in Ethiopia specifically addressed the topic of this research. Based on this, the researcher argues that Ethiopian share Company laws particularly the code has deficiencies in controlling related party transactions thereby indicating specific defects of the provisions in relation to the title. Moreover, the researcher argues that the newly draft commercial code of Ethiopia fails to address legal gaps on related party transactions even though it tries to define the concepts of related parties. Nonetheless, it says nothing about what related party transaction is all about. Thus, this paper intends to play a gap filling role.

1.3. Statement of the Problem

As mentioned supra, Ethiopian share Company laws hardly addressed issues of RPT. Correspondingly, the laws have a number of legal loopholes that pave the way for fraudulent manager, Dominant Shareholders, Directors etc of Share Company to exploit assets of the Company. This in turn affects the integrity of Share Companies in Ethiopia and prohibits prospective investors to invest in Share Companies. In addition to these possible dangers on Share Companies that emanates from lack of effective regulation of RPT in laws, there are practical problems of RPT encountered by Companies in the course of their operation. The following two practical cases can show how RPT issues are happening in Ethiopian Share Companies.

The first case was entertained by Adama Special High Court.[9] The fact of this case is that the plaintiff, Lome drivers training center PLC requested Barite transport Share Company that owns 80% of the shares in the plaintiff Company to assign car purchasing committee for it. In response to the plaintiff's request, Barite transport Share Company assigned Lema Sime and two other board of directors in Barite transport share Company to be car purchasing committee of the plaintiff.

Then, Lema Sime while being assigned to be car purchasing committee of the plaintiff by Barite Transport share Company, knowingly concluded a contract of sale of defective Car with the plaintiff Company by birr 250,000 concealing the fact that his car was totally damaged. As a result of the sale contract, the plaintiff in which Barite Transport Share Company owns 80% of the total capital lost 250,000 Eth. Birr. Then, the plaintiff brought Court action against the defendants claiming for payment of birr 250,000 and other costs relating to purchase of the car on the ground that the defendant concluded the contract of sale of defective car while knowing the fact that, there was conflict of interest between him and the plaintiff. However, the Court rejected the claim of the plaintiff on the ground that there was no conflict of interest between the buyer Company and the defendant by reasoning out that since the defendant has no role in Lome Drivers training center, there is no conflict of interest between him and the plaintiff even if he is a member of board of directors in Barite Transport Share Company.

[9] See the litigation between Lome Drivers Training Center Plc (plaintiff) Vs.Lema Sime et al (defendants), Adama Special High Court decision, File No . 18517, 25 March, 2016.

The second case was entertained by Jimma Zone High Court.[10] The fact of this case is that while the plaintiffs are Shareholders in Hermata Minch Real Estate Share Company that was established in 2000 and able to own Hibir building which is located in the center of Mercato, Jimma town, the defendants are board of directors of that Company. The plaintiffs brought Court action against the defendants among others claiming invalidation of resolution of Shareholders general meeting that passed a decision to give 4,653,404 (four million, six hundred fifty three thousand) birr to board of directors as rewards by stating that the directors saved the Company from different costs of 38,778,370 (thirty eight million, seven hundred seventy eight thousand and four hundred four birr) that was to be added to the share capital of the directors.

This addition of 4,653,404 birr to the share capital of the board of directors gave the board members another chance of getting seven shops of the Company on rent without any condition. The minorities argued that this in turn affected the rights of other Shareholders to get the shops on rent. However, the Court finally rejected the claim of plaintiffs on the ground that there was no wrong on part of board of directors and the reward is already approved by the general meeting. This in turn, indicates that corporate agents can expropriate assets of the Company via different mechanisms like giving inappropriate rewards to themselves there by affecting economic interest of other Shareholders.

Moreover, interviews held with Company Law Scholars affirmed the fact that RPT is not well Regulated in Ethiopia and this in turn is causing many problems.[11] The scholars further added

[10] See the litigation between Dara Dechasa et al (plaintiffs) Vs. Demissie Ture et al(defendants), Jimma Zone High Court decision , File No.38332,13 February 2017.

[11] The researcher held interviews with Tilahun Teshome (Professor) and Ato Siyoum Yohannis(Ass.Professor) on 23may, 2017 and with Ato Birhanu Beyene(Ass.Professor) on 24 may,2017.Accordingly,the Professor stated that "RPT is not well regulated under the Ethiopian Commercial Code". He further added that, the Draft Commercial Code was also not well drafted in away to address RPT. So, it needs a serious Consideration. Ato Siyoum on his part expressed that unlike the Commercial Code, Directives of the National Bank of Ethiopia started to address RPT though not enough. However, since the code is the major applicable law for non financial Companies, it needs to be revisited so as to sufficiently accommodate issues of RPT. Ato Birhanu, on his part stated that the Commercial Code of Ethiopia defined RPT very narrowly by excluding potential persons from its Coverage. He further added that disclosure requirements in Ethiopia are not clearly regulated. He also raised the fact that the Case of Banks is different from the other Companies for they are well regulated under Bank Corporate Governance Directives,

that insufficient regulation of RPT in law and practice is affecting economic interests of Companies in general and minority Shareholders in particular.

Therefore, based on these indicative facts, the followings are major practical problems faced by Ethiopian share companies on issue of RPT. One, Corporate agents and/or their related parties are causing irreversible damages to Companies' by diverting it's assets to their individual pockets. Two, the interests of Shareholders in general and non-controlling Shareholders in particular are being affected through reducing or banning the profits they acquire from the Company. Three, minority Shareholders are being discouraged from buying shares in companies. Four, Government's economic interest is being affected since RPT reduce or banes income taxes which the government gets from companies.

Thus, in order to minimize or avoid these problems of RPT, it is a must for Ethiopia to look in to the current Share Company laws and their practical implementation. From this perspective, this research takes initiatives to identify legislative and practical problems of RPT and suggests possible way outs for effective control of RPT. If by conducting this research effective mechanism of controlling RPT is not provided, problems of RPT persist to exist. Correspondingly, corporate asset diversion to corporate gents will also continue. As a result, Corporate Economic interests, its Shareholders and creditors will be continuously affected. This in turn discourages future potential investors from investing their capitals in companies for fear of exploitation via RPT. Overall, if problems of RPT are not controlled it will end up in causing serious consequences up on growth and development plan of the government thereby diminishing the role of share companies to support the Economic development of the country.

1.4. Research Questions

Based on the above research problems the following two research questions were identified.

- Is RPT effectively regulated under the Ethiopian share Company laws in away to avoid or minimize exploitation of corporate assets by its agents or its RPs?
- Do the rules of Ethiopian share Company laws adequately protect the interests of party affected by RPT thereby providing effective legal remedies?

No.SSB/62/2015.However,these three scholars expressed in a similar idea the fact that, this ineffective regulation of RPT is causing problems to companies, their Shareholders and Creditors.

1.5. Objectives of the Research

The research has general and specific objectives.

1.5.1. The General Objective

The general objective of this paper is to examine whether or not RPT is effectively regulated under Ethiopian Share Company laws in a way that prevent or reduce expropriation of corporate assets by its agents/ RPs so as to protect economic interests of companies in general, minority rights and creditors rights in particular.

1.5.2. The Specific Objectives of the Research

- To identify whether or not rules of disclosure of information to share holders and board of directors under the Ethiopian share company laws enables shareholders and the boards to control RPT as compared to the OECD and other best experiences.
- To examine whether or not rules of board approval incorporated under the Ethiopian share company laws enables the boards to effectively control RPT as compared to the OECD and other best experiences.
- To examine whether or not rules of Annual General Meetings of Shareholders' Approval enables shareholders to control RPT as compared to the OECD and other best experiences.
- To examine legal remedies available under Ethiopian share Company laws for parties affected by RPT.
- To examine whether or not available remedies effectively protect the interest of parties affected by RPT.
- To recommend possible solutions in controlling RPT based on internationally accepted principles and experiences of other countries

1.6. Significance of the Study

As indicated above the main objective of this paper is to examine rules governing RPT with a view of making legislative recommendation to make Ethiopian share Company laws effectively regulate RPT. So, this paper plays crucial role to strengthen Ethiopian share companies by crafting a developed way of dealing with problem of RPT. If Ethiopian share companies are strengthen, future investors will be attracted to invest in share companies. So, share companies play their main role of contributing to economic growth of the country. If Ethiopian share

companies contribute to the economic growth of the country, the country may attain its GTP goal.

Therefore, the following bodies are possible beneficiaries of this research output:

- Each Shareholder in that particular Company.
- Share Companies.
- Creditors of such Company, for they trusts more the Company whose asset is controlled from exploitation.
- The ministry of Trade and National Bank of Ethiopia will benefit from this paper as it identifies practical problems relating to implementation of the laws in companies.
- Ethiopian Government also benefits from this research output since the paper contributes to the attainment of GTP.
- Finally, the paper benefits the academic world as it may serve for academic references and incites further researches.

1.7. Methodology and Sources of information

In order to achieve objectives of this research, the researcher employed qualitative doctrinal and non doctrinal legal research method as the study analyzed the laws and practice of companies to some extent. Concerning sources of data, both primary and secondary sources were used. Whereas the laws, interviews, Court decisions, inspected board minutes, Shareholders minutes, auditors' reports of selected companies were the primary sources, the books, articles, the OECD principles of corporate governance, anti-self-dealing index, the revised anti-director rights index as well as other literatures were served as secondary sources.

The researcher primarily used the OECD principles of corporate governance as guide lines for this paper because the principles are currently serving as an international benchmark for policy makers, law makers, investors, corporations and other stakeholders in both developing and developed countries across the world for their advocacy of good corporate governance. Anti-self-dealing indexes developed by four author's, S. Djankov, et al. were also used for the index provides a new measure of legal protection for minority Shareholders against expropriation by corporate insiders which contains description of variables collected for 72 countries that in turn bases its sources to the questionnaires sent to lex mundi firms (a well known legal firm in

France) based on the then prevailing laws of 72 countries. The researcher further used Ant-Director-Rights index developed by La Porta, et al.) for it describes important variables collected from 49 transition and non transition economies that basically concerned with addressing basic rights of Shareholders.

Moreover, the researcher considered best practices of France and UK especially concerning protection of minority rights from abuse of corporate agents and/or their related parties. French law was selected for the purpose of this study because the drafter of Ethiopian commercial code Jean Escarra was a French scholar, who tried to take experiences of varies countries including that of his home land. Moreover, the way the code drafted and its organization matches with that of France in many instances. So, it is better to see the gaps of the commercial code in light of the French Company law so as to take best experiences from there.

UK law was selected for the purpose of this paper because most common law countries with the exception of US, model their regulation of self-dealing on it.[12] This implies that, the practice of regulating self-dealing transactions in UK serves as role models for almost all common law legal origins. In additions, related-party transactions in UK is reviewed by independent financial experts and approved by disinterested Shareholders, Extensive disclosure takes place both before and after the transaction is approved.[13] These all attracted the researcher to consider the UK laws for comparison purposes on selected areas. Therefore, by comparing Ethiopian Share Company laws against these developed rules and experiences, the paper identifies the deficiency of the laws in addressing RPT.

In general, the researcher interviewed 6 key informant interviewees, inspected auditor's report, board decisions, and Shareholders minutes in Hermata Minch Real Estate S.C.As well as considered one Cassation Decision of Federal Supreme Court and two Court cases from Jimma Zone high Court and Adama Special High Courts. In all cases of collecting data's, the researcher purposefully selected the targeted group based on convenient sampling techniques by fully observing and caring for ethical considerations. The purposes of the data's were just to indicate how related party transactions occur in practice so as to look at the problem and its magnitude

[12] S. Djankov et al. (2006), the Law and Economics of Self –Dealing, Elsevier Journal of Financial Economics, No. 88 (2008) ,p. 430–465

[13] Ibid, p ,438

from practical point of view. So, data collected through semi-structured interviews and cases were qualitatively analyzed and continuously interpreted throughout the paper. As regards data handling, all the data's with the exception of interviews held with Company law scholars are confined to indicate practical problems in non financial companies. Hence, they can't represent practical problems over related party transactions in financial companies. By the same token, the data's are limited to indicate practical problems in the two non-financial companies selected for the purpose of this paper. Concerning rules of citation, the researcher applied Harvard rules of citation throughout the paper.

1.8. Limitations to the Study

Lack of sufficient information from companies was the main limitations to this study. Companies were not willing to disclose information about them and they are not collaborative. Accessing their documents was very difficult. Even if they allow accessing their documents, they never allow taking copies of their documents. On top of this, getting Shareholders and Board of Directors of Companies to get information was challenging. Moreover, there is no published Cassation Decision on the issue. Only one case on Derivative Suit is published so far. Lack of domestic literature on the topic is another limitation faced by the researcher at the time of conducting the research.

1.9. Scope of the Study .

This research is limited to examining Ethiopian share Company laws on related party transactions. Correspondingly, issues other than related party transaction are not discussed in this paper.Likewise the study doesn't cover issues of RPT in private limited companies because problems of RPT is less probable to occur in such cases for private limited companies are usually formed between/or among persons who have close relationships and there is no separation of control and ownership as such due to the fact that the law limited the maximum number of members to 50.

1.10. Organization of the Paper

This paper is organized in to four chapters. The first chapter covers introduction. As such, it covers background of the study, Literature review, and statement of the problem, research questions, and significance of the study, research method, and scope of the study as well as

organization of the paper. Chapter two covers the Notion of RPT. Accordingly, the chapter deals with definition of RPT, Mechanisms of regulating RPT, the OECD principles of corporate governance, Protection of minority Shareholders indexes and experiences of other countries. Chapter three critically analyzes provisions of Ethiopian share Company laws on related party transaction against the selected standards and identifies gaps in law that needs recommendations in the next chapter. Finally, chapter four concludes the paper by giving some recommendations.

CHAPTER TWO

2. The Notion of Related Party Transaction

2.1. Overviews of the Chapter

This chapter is basically intended to give over views of the Notion of RPT. Accordingly, it covers definition of RPT and RP, general overviews of legal tools (approaches) to related party transactions, and then it goes on discussing the relevant OECD principles of corporate Governance that in turn serves the researcher as a major guideline against which the laws will be analyzed. The chapter also discusses as supplementary guidelines to the OECD principles of Corporate Governance, Minority Shareholders protection indexes. Moreover, the chapter assesses experiences and best practices of other countries with the views of having clear pictures of instruments to fight related party transactions and their application in other jurisdictions.

2.2. Definitions of Related Party Transaction (RPT) and Related Party (RP)

Identifying persons who qualify as related parties and categories of transactions that fall under RPT is the starting point in controlling such transactions. Nonetheless, there is no uniform definition of RPT and RP.The definitions vary from jurisdiction to jurisdiction based on a number of factors of which the level of development of countries could be one. However, there are common denominators around which almost all definitions revolve. Control element is one of such denominators.

Meaning, for a person (either natural or entity) to be called Related party to a given Company, that person must be the one who has some control in the affairs of companies or the one who has capacity to influence the Company or its controllers in making decisions that affect interests of that Company. For instance, while Company directors, general managers, chief executive officers, senior executive officers etc can influence the Company as a result of their power control, their spouses, relatives in the first degree of affinity or consanguinity, influential Shareholders in a given Company, can influence Corporate-Agents in making decisions that affect its interest. Thus, the definitions try to encompass these common elements.

2.2.1 Who are Related Parties?

Identifying entities or persons who can be considered as a related party is the first step in knowing and controlling related party transaction.[14] According to Indian Accounting Standards (AS-18), if one party has the ability to control or significantly influence the other in making financial and/or operating decisions in a particular reporting period that party is said to be related to the other party. The mode of control on a related party may either be exercised directly or indirectly through one or more intermediaries or other entities that are controlled by its key management personnel or their relatives.

On the other hand, As explained by Laura luputi, in some Eastern European countries,[15] legislators have considered two criteria's to define related parties: first, they considered certain categories of persons (legal entities and individuals) qualified by law as 'related parties', second, they inserted general wording to allow any person capable of exercising an influence over another party in the making of decisions to be considered as a related party.[16] In the contexts of those countries national legislations, classes of persons qualified by law as 'related parties' are importantly the following:[17]

(i) Persons qualifying as related parties by virtue of their involvement in the management of a Company;
(ii) Persons qualifying as related parties by virtue of their participation towards the Company's share capital;
(iii) Persons qualifying as related parties in light of the 'control' criterion;
(iv) Persons qualifying as related parties by virtue of family relations;
(v) Persons qualifying by virtue of other existing relations;

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[14] See OECD (2014), Guide on Related Party Transactions in the MENA Region, available at https://www.oecd.org/corporate/GuideonRelatedPartyTransactionsMENA2014.pdf last accessed 19 January,2017

[15] Croatia, Bulgaria, Albania, Romania, Serbia, Macedonia, Bosnia and Montenegro are few of South East European countries considered for the purpose of study of Laura Luputi.

[16] See laura luputi, reporting related party transactions and conflicts of interest, available at http://www.oecd.org/daf/ca/corporategovernanceprinciples/32387391.pdf last accessed 19 January,2017

[17] Id.

(vi) Cross shareholding by virtue of family relations;

(vii) Cross shareholding.

2.2.2. What is Related Party Transaction?

As per the recommendation in the OECD (2013), the definition of a "Related party Transaction" should be sufficiently broad to include the kinds of transactions in the jurisdiction that causes a real risk of potential abuse, that could not be easily avoided and that could be effectively enforced.[18] It seems logical to define RPTs broadly to accommodate any potential transaction that in effect results in exploitation of corporate assets.

In Indian context, Padmini Srinivasan explained related party transaction from the perspective of a Company and its related entities.[19] For him, related party transaction is a transaction between a Company and its related entities namely subsidiaries, associates, joint ventures, or it is a transaction between a Company and its substantial Shareholders, executives, directors and their relatives, or entities owned or controlled by its executives, directors, and their families. A relatively concise definition of related party transaction is given by International Financial Reporting Standard (IFRS) Foundation.[20] The foundation defined the concept as a transfer of resources, services or obligations between a reporting entity and a related party, without being worry for whether a price is charged or not.

Then, how do the Ethiopian Company laws defined RP and RPT? To begin with, the code indirectly defined RPT very narrowly as any direct or indirect dealings between a Company and its director. Consequently, this narrow definition of RPT left the dealing between a Company and other persons than a director which in turn results in affecting economic interests of companies, its Shareholders and other stake holders like creditors. On the other hand, while the code doesn't define who RP is, financial proclamations and directives of the bank don't define RPT.

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[18] OECD (2014), Supra note14.

[19] Padmini Srinivasan,(2013), An Analysis of Related-Party Transactions in India, Indian Institute of Management, ,Bangalore,workingpaper,no:402,available at https://www.iimb.ernet.in/research/sites/default/files/WP%20No.%20402_0.pdf last accessed 19 January,2017

[20] See International Financial Reporting Standards(IFRS) Foundation(2011),available at http://www.ifrs.org/Documents/IAS24.pdf last accessed 19 January,2017

Interestingly, though its application only limited to banks, the Bank corporate governance directives No.SBB/62/2015 defined RP under article 2.11 sufficiently. It defined RP from the perspective of natural persons who in one way or another controls affairs of the Company, entities controlled by such persons or persons who can influence them in making decision that affects corporate interests either by virtue of their relationships or by the fact of having shares in such companies. As per this directive, Related party means:-

(i) An influential Shareholder, a director, chief executive officer, senior executive officer of a bank and /or, the spouse or relatives in the first degree of affinity or consanguinity of such influential Shareholder, a director, chief executive officer or senior executive officer; or

(ii) An entity in which an influential Shareholder, a director, chief executive officer, senior executive officer of a bank and /or, the spouse or relatives in the first degree of affinity or consanguinity of such influential Shareholder, a director, chief executive officer or senior executive officer;

a) Owns 10% or more interest as Shareholder; or

b) Serves as a director, chief executive officer, senior executive officer

Therefore, by taking in to considerations the common elements of various definitions in other jurisdictions and the definition incorporated under the bank corporate governance directives No.SBB/62/2015, the following working definitions that are supposed to be applicable in all companies are preferred. Accordingly:-

1) Related party can be defined as:

- An influential Shareholder, a director, an auditor, a lawyer, general manager, chief executive officer, senior executive officer of a Company and /or, the spouse or relatives in the first degree of affinity or consanguinity of such influential Shareholder, a director, an auditor, a lawyer ,chief executive officer or senior executive officer; or
- Any entity in which an influential Shareholder, a director, a lawyer, an auditor, general manager, chief executive officer, senior executive officer of a Company and /or, the spouse or relatives in the first degree of affinity or consanguinity of such influential Shareholder, a director, an auditor, a lawyer, general manager, chief executive officer or senior executive officer;

I. Owns 10% or more interest as Shareholder; or

II. Serves as a director, a lawyer, an auditor, general manager chief executive officer, senior executive officer.

2) Related party Transaction can be defined as:

- Any direct or indirect dealing/transaction between Company and any of its related parties indicated under No.1

2.3. Mechanisms of Regulating Related Party Transaction

2.3.1. Introductory Remarks

Realizing that, unregulated RPT severely affects economic interests of the Company that in effect affects economic interests of non-controlling Shareholders', countries across a glob are actively interacting to regulate such transactions at least to mitigate the outcomes of RPT via adopting different regulatory instruments based on their individual realities. Accordingly, Self-dealing regulation can be understood generally as an attempt to prevent unfair self-dealing transactions from taking place. To achieve this end, legal systems while trying to regulate self-dealing transactions must balance two conflicting views: the need to deter self-dealing transactions on one hand and the need to avoid the risk of preventing rules having overkill effects on the other.[21] From this point of view, to answer the underlying question what should be the role of the law in addressing corporate self-dealing? Three mechanisms of regulating related party transactions across the world are observable:[22]

- Prohibition of RPTs
- Private Enforcement mechanisms
- Public enforcement mechanisms

2.3.2. Prohibition of RPT

As per this mechanism, all dealings between a corporation and its controllers – or any other entity these controllers also control – could be banned by law either totally or selectively.[23] While the former kind of prohibition is technically called total ban on self-dealing, the latter is

[21] Luca, E. (2000), the Law on Company Directors' Self-Dealing: A Comparative Analysis, International and comparative corporate law journal, Vol.2 issue 3, Kluwer Law International,p.297-333, p ,300

[22] See Simeon, D., et,al (2006) ,The Law and Economics of Self-Dealing, EDHEC working paper, p 3

[23] S. Djankov et al Supra note12, p 431

referred to as selective prohibition. In principle, absolute ban advocates for prohibition of any self-dealing transaction, irrespective of whether it is fair[24] or not which in effect produces its own pros and cons.[25]

Despite the fact that absolute prohibition eliminates the costs associated with fairness review, such as those generated by the expense of litigation on fairness issues, Owing to the fact that it Prevents value-increasing transactions from taking place, as well as due to the fact that the director might have a product which is uniquely valuable to the Company, a rule prohibiting self-dealing per se is not practicable as such.[26] Instead, selective prohibitions are gaining momentum in both countries that adheres to civil and common law legal systems. For instance, credit transactions in favor of directors are prohibited, with different exceptions and qualifications, in countries like France, Italy and the UK[27] owing to the fact that in a credit transaction in favor of a director, the Company, by definition, transfers its own assets to the director, in exchange for a promise of repayment at a future date. This in effect affects economic interests of the Company as it diverts value from the Company to its controllers.

2.3.3. Private Enforcement Mechanisms

It is one of the three mechanisms meant to regulate self-dealing transactions across jurisdictions. This mechanism is commonly practicable in almost all jurisdictions however with various degrees of applicability. As per this, the government actively regulates the contracting framework by leaving its enforcement to private parties.[28] This regulatory mechanism specifically concerned with specific regulatory approaches viz. disclosure, approval procedures

[24] Self-dealing transactions are not necessarily cause damages to the Company in principle. They however, cause such damages to the Company when they are un fair. Self-dealing transactions are in fact considered as unfair when 'the[ir] outcome … is less advantageous [to the Company] than the outcome would have been if the transaction had been agreed to, on [the Company's] behalf, by a rational, well-informed decision maker who was independent and loyal, that is, not affected by a conflict of interest.

[25] Luca, Supra note21, p ,303

[26] Ibid, p ,305

[27] Ibid, p ,306

[28] Simeon. D, Supra note 22.

for transactions, and facilitation of private litigation when self-dealing is suspected[29] and these specific regulatory mechanisms are the subject of focus under this section.

2.3.3.1 Disclosure Requirements

The duty to disclose any adverse interest if any is the point up on which conventionally agreed on in the modern corporate Environments. As noted by Berle and Means, concealing the existence of conflict of interest in a given Company by a person who represents adverse interest creates potential scenario for that person to expropriate investors.[30] This highlights importance of disclosure as a means of addressing the problem of managerial opportunism through self-dealing. This disclosure can be made through various forms and methods of presentation that includes information provided in the commercial register, information maintained on Company registers, written reports delivered at the general meeting or personally to each Shareholder.[31]

The disclosure process that encompasses different participants accommodates both top-down and bottom-up information sharing so that directors and managers deliver and receive information.[32] At times, there are arguments for and against introduction of mandatory disclosure to that of voluntary disclosures. While prevention of fraud, investor protection, corporate governance and accountability of managers for the Shareholders social benefits are some of the perceived advantages arising from disclosure as per arguments in favor of disclosure, complexity, overload, cost of providing and of interpreting information, potential threat to confidentiality, lack of relevance, lack of interest on the part of the Shareholders, misleading and incomplete information are among the perceived and observed problems of mandatory disclosure as forwarded by those who promotes argument against introduction of mandatory disclosure.[33]

This in effect implies, the decision whether to introduce mandatory disclosure requirement or not is the one that has to be considered taking in to account the perceived advantages and disadvantages relating to the issue. The point that deserves special attention in relation to disclosure requirement is identifying and answering questions: Who has duty to disclose and to whom? What type of information is to be disclosed? At what point of time it has to be disclosed?

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[29] Id.

[30] Luca, Supra note21, p 307

[31] Charlotte, V. (2006), Corporate Reporting and Company Law, New York, Cambridge University Press,p ,14

[32] Ibid, p 15.

[33] Charlotte ,Supra note 31, p 16

What are the legal consequences of non-compliance with duties of disclosure? Need specific answers.

2.3.3.2 Approval Requirements

One critical way through which the law regulates RPTs is by requiring compliance with approval process though determining who has the power to approve RPTs defers from country to country. In additions, the law of some countries may further require a review by independent third parties such as financial experts who are responsible to make a report on the transaction and supposed to act as a check on the opportunism of the insiders before the transaction is approved.[34] The Idea here is that, any RPT must secure prior board authorization before taking place and finally must be approved by Shareholders meetings.

2.3.3.3. Facilitation of private litigation when self-dealing is suspected

It is generally recognized principle that countries belongs to different legal systems impose general duty of loyalty up on directors.[35] However, the difference that can be observed among different countries lies on the consequences they attach to violation of the generic duty of loyalty up on directors.[36] In this regard, while the violation of duty of loyalty such as failure to disclose conflict of interest by director entitles the Company to damages for the resulting violations in countries like France that belongs to continental legal origins, the remedy of forfeiting benefits in additions to damages is available in common law origin countries like UK.[37] The issue discussion worth is who is the right plaintiff to bring claims against the director who breaches his duty? To this end, a brief overview of the remedy available to the Company and / or minority Shareholders as well as the right party to challenge acts of director(s) in self-dealing transactions in UK and France is examined under this section.

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[34] For example, in UK even if a transaction is approved by boards, it must be reviewed by independent financial experts before it is presented to Shareholders meeting for final approval. The French uses statutory auditors instead of relying on independent financial experts.

[35] Luca, Supra note21, p. 302-303

[36] Ibid, p. 303

[37] Id.

2.3.4. Public Enforcement mechanisms

Public enforcement approach is the third and least applicable tool of controlling self-dealing transactions. It includes fines and prison terms to regulate self-dealing transactions.[38] Different countries rely on this approach to various degrees. For example, in France, sections 437(3) and (4) of Law No. 66-537 imposes Criminal liability (imprisonment up to five years and/or a fine up to FFr2, 500,000)134 on directors who use in bad faith either their powers or the Company's assets, for a personal purpose, contrary to the Company's interest.[39] This in effect implies that criminal sanction is more available legal remedy for regulation of self-dealing transactions than civil remedies in France. Punishing a director with a fine for failing to disclose to the board his interest in a self-dealing transaction is also common in UK.[40]

2.4. Experiences of other countries, the OECD principles of corporate Governance and Minority Rights Protection Indexes on RPTs.

2.4.1. Experiences of other countries

Under this section experience of developed nation that adequately addressed problems of RPT are dealt with. Among developed nations rules on RPT the researcher has chosen the experience of UK and France for reasons stated under the methodology section.

2.4.1.1. UK Experience

Corporate governance debates that was in place since 1990s resulted in producing broader disclosure of information requirements than being limited to a Company's financial conditions in UK.[41] There, Company promoters and Company directors are under duties of disclosure owing to their positions as agents and fiduciaries of the Company.[42] Directors are under duty to disclose two things in the notes to the annual accounts: any credit transactions covered by section 330 and transactions entered into by the Company or a subsidiary in which directors have, directly or

[38] Simeon. D, Supra note 22.

[39] Luca, Supra note 21, p. 320

[40] Ibid, p. 309

[41] Charlotte, Supra note 31,p. 13

[42] Ibid, p 14

indirectly, a material interest.[43] Here, the duty to disclose any conflicting-interest at the meetings of board of directors is specifically imposed on interested director in the contract or proposed contract with the Company as per section 317 of the Company's act of 1985. In relation to the question what is to be disclosed, materiality test is adopted. In order to determine, whether the interest in a given contract or proposed contract with a Company is material or not, the power is vested to the board.[44] However, if the board doesn't consider the transaction, the question of materiality is subject to Court review.

As far as the requirement of approval is concerned, the country follows double approval requirements both by disinterested directors and disinterested Shareholders.[45] In additions to the approval requirements of RPT by independent directors, such transactions must be reviewed by independent financial experts before the transaction is finally approved by disinterested Shareholders. The requirement of Shareholders approval in UK doesn't depend on the fairness or otherwise of the transactions, instead all self-dealing transactions require Shareholders approval even if they appear to be fair.[46] In other words, neither Shareholder approval require showing an actual conflict of interest between the Company and the director (a potential for conflict was enough), nor does it require to show that the conflict had an impact on the terms of the transaction.

In relation to approval requirement in U.K the generally recognized principles is that modern regulation of self-dealing evolved from the common law equitable rule that directors, being subject to fiduciary duties, could not enter into engagements with their Company when they had or could have a conflicting personal interest or a conflict with the interests of those they were bound to protect.[47] However, it has to be noticed that, this general principle is subject to exceptions and limitations. The exceptions are when such transactions are properly disclosed and approved by the organ in charge of discharging such duties.

In relation to facilitation of private litigation when self-dealing transactions are suspected, generally directors' liability for self-dealing transactions emanates from his general duty of good

[43] Luca, Supra note 21, p .309
[44] Id.
[45] Simeon, D. Supra note12, p , 439
[46] Id
[47] Id.

faith and to act in the best interest of the Company. These general obligations of directors are further accompanied by the rule that prohibits directors not to be benefited from his position if not specifically authorized to this effect.[48] In such cases, apart from directors' liability, self-dealing transactions may be voided or ratified by stockholders following full disclosure.

Meaning, the option to hill or kill self-dealing transaction entered in to without complying with formality requirements is purely that of a Company. Instead of preventing stockholders to vote in a transaction in which they do have conflicting interests with a Company, the UK gives special attention to the outcomes of the ratified self-dealing transactions. In other words, if stockholder ratification of the self-dealing transaction amounts to an unfair prejudice to the interests of stockholders, these may be protected by such order as the Court 'thinks fit by giving relief in respect of the matters complained of' such as an 'authorization of civil proceedings to be brought in the name and on behalf of the Company' by the complaining stockholder.[49]

The next issue that deserve worth discussion is determining the right plaintiff to challenge acts of directors before the Court for self-dealing transactions in which a director has conflicting interest with a Company. Owing to the fact that companies have independent legal personality from its Shareholders, in principle, it is a Company that can sue a director who is in breach of his duties to the Company for redress.[50] However, corporate personality causes problems in such a way that if the majority of the shares in a Company are held by those controlling that Company, those controllers can perpetrate all kinds of wrongdoing to the detriment of the minority and then vote that the Company should not take legal action to gain compensation.[51] Then, what can minority Shareholders in such Company do?

In relation to this point, while emphasizing on importance of corporate governance in protecting minority Shareholders right, La Porta et al, states that "corporate governance is, to a large extent, is a set of mechanisms through which outside investors protect themselves against expropriation

[48] Luca, Supra note 21, p. 323-324

[49] Ibid, p 326

[50] See, Janet, D. (2001), Company Law, 4th Edition, New York, Palgrave.

51 Id.

by the insiders."[52] La Porta et al, further states that systems which protect minorities have more valuable stock markets because when investors are protected from expropriation they will pay more for stock.[53] This in effect indicates how protections of minority rights contribute to the developments of sound financial markets. In general, interests of the Company can be protected via direct and derivative actions.[54] While a derivative action is concerned with recovering damages, property or funds which belong to the Company for wrongs done to it for serious breach of director's duty, direct' Shareholder actions comes in to picture when the plaintiff minority Shareholder, or a group of such, seeks personal redress against the Company for what amounts to a breach of the constitution or an infringement of Shareholders' individual rights (or class right).[55]

A member could bring this derivative action against those doing wrong to the Company, in their own name, but ultimately on the Company's behalf only in exceptional circumstances. Such right is only available if the Company was not in a position to protect its own interests because the wrongdoers were in elective control.[56] The point that must be focused here is that not any wrong committed by a director entitles Shareholders to take derivative action. Such a wrong must be related to a substantial breach of duty and/or a fraud against the Company.[57]

Thus to bring a derivative action the minority Shareholder is obliged to establish both a wrong against the Company and that the wrongdoers were in such control of the Company as to prevent any legal action by the Company. Moreover, an individual plaintiff who institutes a derivative action to enforce a right belonging to the Company, must specifically allege in his pleadings, and be prepared to prove, that those in control of the Company would prevent the Company from suing in its own name.[58] The reason why such action is termed 'derivative' is because the right that the plaintiff seeks to have enforced is not his own: it 'derives' from the Company. Over all

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[52] See Talbot, L. (2008), Critical Company law, UK, Rout ledge-Cavendish., p ,193

[53] Ibid, L, p 194

[54] See Barry, R.(ed)**, (**(2004), Minority Shareholders remedies, UK, Cambridge University press ,p,24-60

[55] Ibid, p.24-25.

[56] Talbot, Supra note 52, p 199.

[57] Id.

[58] Janet, Supra note 55, p 272.

derivative action in UK is available in exceptional circumstances subject to compliance with defined obligations.

2.4.1.2. French Experience

French listed companies have duty to follow special procedures for approval of regulated RPTs which applies to "direct or indirect agreements" involving non-recurring operations and/or those reached under abnormal conditions between a Company and its CEO, a designee of the CEO, board members or a Shareholder with more than 10 per cent of voting rights in the Company, or with the Company controlling that Shareholder".[59]

In this case, the interested party has legal duty to inform the chair person of board of directors about the transaction and required to abstain from participating and voting at the board and Shareholders meetings for transactions falling under these definitions. The Chair person is in turn under legal duty to issue the list of regulated RPTs to be considered by the board and transmitted in the auditor's special report to Shareholders.[60] However, an interested director is immunized from duty of disclosure in two circumstances namely incase of agreements involving recurring operations and/or those reached under normal conditions between a director and the Company as incorporated under the French commercial code.[61] This implies that, not every transaction is required to be disclosed under the French Company law probably because those transactions are less likely to affect the Company's economic interest.

Following proper disclosure of RPTs, board authorization and ex-post Shareholders approval is the general principle recognized under the French commercial code. This means double approval requirement is a principle. However, this general principle is subject to limitations as Company executives do have legal authority to enter into RPTs before the board authorizes them.[62] In this case, such transaction must be approved by the board and Shareholders in order to be valid. However, such agreements can be nullified by Court action provided that the board or Shareholders vote against such transactions. In France, audit committees do not have statutory

[59] See ECD (2012), related party transaction and minority Shareholders right, available at http://www.bing.com/search?q=OECD%20guidelines%20on%20related%20party%20transaction&pc=cosp&ptag=N1D042716AA794BFC089 accessed on 27/11/2008, p63.

[60] Ibid, p 64.

[61] Id.

[62] Id.

role in reviewing or making recommendations to RPTs that is subject to board review. Instead, the country relies up on the external auditor who is responsible to prepare a special report setting out relevant information about these agreements to be considered for annual Shareholder approval.[63]

The process of disclosure and approval requirement in France involves different individuals and /or organs. While it is the legal responsibility of the individuals involved in RPTs to inform the Chair who has the duty to issue the list of regulated RPTs to be considered by the board and transmitted in the auditor's special report to Shareholders, it is the duty of the board chairman to inform the external auditor of the board's decisions on the list of regulated RPTs. Once informed by the board, the auditor is required to prepare a special report setting out all such RPTs for a vote by disinterested Shareholders at the annual general meeting.[64]

However, non-ratification of the transaction by majority of disinterested Shareholders doesn't automatically result in invalidating the transaction. Rather, it gives the opportunity to revisit its decision for the board. At the same time, it should also be noticed that there are also scenarios where by Self-dealing transactions are voidable provided that they were not subject to a vote by the board of directors and they have a detrimental effect on the Company, or if the interested Shareholder or director voted at the board of directors' meeting authorizing such transactions.[65]

On the other hand, French law attaches consequences for failure to comply with disclosure and approval requirements. Accordingly, section 105 of Law No.66-537 stipulates the general principle that self-dealing transactions which have not been authorized may be voided provided that they have had harmful consequences for the Company.[66] This takes place if self-dealing transactions were not subject to a vote by the board of directors and they have a detrimental effect on the Company, or if the interested Shareholder or director voted at the board of

[63] O ECD (2012, supra note 59, p 64

[64] Ibid, p 64

[65] Ibid, p.64-65.

[66] Luca, Supra note 21,p 319

directors' meeting authorizing them.[67] Void transactions can be challenged either by the Company or by its stockholders.[68]

In France, class action suits are not allowed for abuse of corporate assets. Instead, a minority Shareholder may act derivatively in the name of the Company to initiate a criminal prosecution by filing a criminal complaint against the board or individual board members.[69] This indicates that, the main enforcement tool available to Shareholders is a criminal law provision against abuse of corporate assets. However, this is not the only legal remedy for Shareholders. Even during a criminal process, Shareholders may also seek civil damages on behalf of the Company recognizing that the burden of proof remains with the party filing the action to demonstrate that the director(s) subject to the action were at fault, except in the case where a criminal penalty has already been decided, in which case the burden of proof in the civil case is simplified.[70]

Besides this, Shareholders either acting individually or collectively are entitled to file a "social action" against board members to repair prejudice suffered by the Company, including award of damages and an interest.[71] However, the application of this right is not for granted, as it depends on fulfillment of certain conditions applying to related party transactions. In this case, since the plaintiff in a case does not have discovery powers, he must apply to the Court seeking an order from the judge to furnish documents relevant to the case.[72] This in turn makes the coast of litigation unbearable. In nutshell, the French legal system relies much on criminal sanctions than on civil remedies for punishing non complying directors to the rules of self-dealing-transactions. However, this doesn't mean criminal sanction is the only remedy. There are also civil remedies like filing social action against board members to make good damages caused to the Company.

2.4.2.The OECD principles of Corporate Governance

The OECD was formed following the signing of the 1960 Paris convention. Since the endorsement of the OECD principles of corporate governance by the OECD Ministers in 1999

[67] OECD(2012),Supra note 59, p65

[68] Luca, Supra note 21,p 320

[69] OECD(2012),Supra note 59, p 72

[70] Ibid, p ,66.

[71] Id.

[72] OECD(2012),Supra note 59, p .67

the principles have been designated as one of the12 basic standards for sound financial systems by the Financial Stability Forum. Since then the principles serve as an international benchmark for policy makers, investors, corporations and other stakeholders worldwide. In 2004, the principles were reviewed to take account of recent developments and experiences in both the OECD and non-OECD member countries. Currently, the principles reflect world consensus concerning the critical importance of good corporate governance in contributing to the economic vitality and stability. Therefore, taking in to account the fact that the principles are proven to be effective in contributing to the economic vitality and stability, considering the principles will benefit the country. Based on this, the principles are discussed below.

There are six minimum OECD guiding Principles of Corporate Governance: namely[73]

1. Ensuring the Basis for an Effective Corporate Governance Framework
2. The Rights of Shareholders and Key Ownership Function
3. The Equitable Treatment of Shareholders
4. The Role of Stakeholders in Corporate Governance
5. Disclosure and Transparency
6. The Responsibilities of the Board.

However, only four of the six OECD Principles of Corporate Governance are considered for the purpose of this paper. Accordingly, principles I and IV are not considered due to their non relevancy to the topic of the paper.

2.4.2.1 The Rights of Shareholders and Key Ownership Functions (principle II)

This basic principle holds two basic rights vis-à-vis the rights of Shareholders and key ownership functions. Correspondingly, the first right advocates for a good corporate governance rules to protect basic Shareholders rights which basically includes but not limited to: the right to information, the right to influence the corporation (voice right), exit right (the right to transfer or

[73] See, OECD (2004), Principles of Corporate Governance, available at https://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdfaccessedon 1/12/2008,p ,9

sale shares) and economic rights (the right to participate in the profits or earning of the corporation).[74]

On the other hand, principle II.A advocates for protection of basic Shareholders right that includes among many other rights, Shareholders right to obtain relevant and material information on the corporation on a timely and regular basis. To make informed decision, investors must be provided with sufficient and material information on timely and regular basis concerning over all activities of the corporation. In line with this, the principle obliges the Company to make relevant and material information available directly to Shareholders or their representatives via different mechanisms including through web sites to reach those for whom they have no address.

Principle II.B supplements this principle by stating that Shareholders should have the right to have sufficient information and participate in decisions which includes but not limited to extraordinary transactions, including the transfer of all or substantially all assets that in effect result in the sale of the Company.[75] This principle entitles Shareholders to participate in extraordinary transactions that in effect results in diverting assets of the Company to individual controllers. By virtue of this principle, material information about the proposed transaction must be provided to Shareholders sufficiently prior to the meeting for the sake of permitting Shareholders to make informed decisions.

2.4.2.2. The Equitable Treatment of Shareholders (principle III)

This grand principle puts a corner stone for equal treatment of all Shareholders of the same series of a class in a given Company irrespective of nationality or other factors. The principle not only promotes equality treatment between foreigners and nationals so long as both are Shareholders in a given Company, but also it advocates for avoidance of discrimination between minority and majority Shareholders. Specifically, principle III.A.2 advocates for stronger protection of minority Shareholders right from abusive actions by, or in the interest of, controlling Shareholders acting either directly or indirectly.

[74] Ibid, principle II.A. p. 9

[75] Id.

In case of violation of the rights of minority Shareholders by abusive actions of controlling Shareholders, the principle allows minority Shareholders to have effective means of redress.[76] This principle is important to ensure protection of minority Shareholder's rights including protection of ex-ante and ex-post rights. While Ex-ante rights of Shareholders includes pre-emptive rights and qualified majorities for certain decisions, Ex-post rights permit Shareholders to seek redress once rights have been violated.[77] More importantly, principle III.B stresses on protecting minority Shareholders' interests by prohibiting insider trading and abusive self-dealings.[78]

Abusive self-dealing and insider trading are the most challenging instruments of operation via which persons who control affairs of a given Company could exploit non controlling Shareholders. So, by prohibiting these acts, the principle is intended to ensure fair competition not only among the insiders and the external investors but also between the insiders themselves. Abusive self-dealings can be created in scenarios in which persons having close relationships with Company use those relationships to the detriment of the Company and investors.[79] Unreasonable managerial perquisites, loans from the Company on non-market terms and abusive related party transactions are few examples of abusive self-dealings.

Principle III. C. which is basically intended to regulate conflict of interest between the Company and its controllers complements the other principles under this section by imposing obligations on members of the board and key executives to disclose to the board if they have a material interest in any transaction or matter directly affecting the corporation either acting personally or through the channel of third party.[80] By virtue of this principle, the duty to disclose conflicting interest to the board is not only imposed in respect of material interest in any transaction but also it is required in any matter that have tendency to affect the corporation.

2.4.2.3 Disclosure and Transparency (Principle V)

According to this principle, the corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the

[76] OECD (2004, Supra note 73, p 41
[77] Ibid, principle III.A.2 , p 40
[78] Ibid, principle III.B. p ,44
[79] Id.
[80] OECD (2004), Cited at note 73, principle III.C. p 45

financial situation, performance, ownership, and governance of the Company. By virtue of this principle, related party transaction is one of the material matters subject to the duty of disclosure and transparency.[81]

Ensuring disclosure of related party transaction in turn enables the market to know whether the Company is being run with due regard to the interests of all its Shareholders. The principle further provides indicative lists of those that need Disclosure requirements, of which the nature of the relationship where control exists and the nature and amount of transactions with related parties can be mentioned. This basic principle states that corporate governance framework requires timely, comprehensive and public disclosure of related party transactions. It also explains what timely and comprehensive disclosure comprises[82]:

(a) in respect of transactions that should be subject to Shareholder approval requirements, disclosure provided in sufficient time to enable minority Shareholders to make an informed decision;
(b) in respect of proposed related party transactions that would likely have a material impact on the price or value of the Company‘s shares but do not require Shareholder approval, in sufficient detail to enable minority Shareholders to express concerns to management, authorities and the Courts before the transaction is implemented; and
(c) in respect of routine and/or less significant transactions, there should be at least annual disclosure (e.g. in financial statements or annual reports)”.There are timely and effective Mechanisms for enforcing such disclosure standards, effective remedial mechanisms for those who are harmed by inadequate disclosure, and there is widespread implementation of such disclosure standards.

2.4.2.4 The responsibility of the Board (principle VI)

This principle provides that “The corporate governance framework should ensure the strategic guidance of the Company, the effective monitoring of management by the board, and the board‘s accountability to the Company and the Shareholders”. The principle advocates for three basic

[81] Ibid, principle V.A.5.p 52

[82] See OECD(2007), methodology for assessing the implementation of the OECD principles of corporate governance, principle V.A.5, available at https://www.oecd.org/corporate/ca/corporategovernanceprinciples/37776417.pd accessed on 13/12/2008,p ,89

pillars that has to be ensured by the corporate governance frame work. While the first task of corporate governance frame work is all about ascertaining the strategy that guides over all activities of the Company, the second task is concerned with how the board discharges their duty of controlling over all activities of management effectively.

This principle further stresses on the responsibility of boards by providing that "Board members should act on a fully informed basis, in good faith, with due diligence and care and in the best interests of the Company and its Shareholders".[83] Amore specific duty of the board such as monitoring and managing potential Conflicts of interest of management, board members and Shareholders, including misuse of Corporate assets and abuse in related party transactions is speculated under principle VI.D.6. This principle is very much allied with what provided under principle III particularly prohibition of insider trading and abusive self-dealings. In fact, activities recognized as duty of the boards under this principle is very much crucial in shielding minority Shareholders from abusive acts of corporate controllers.

With the aim of enabling the boards to discharge their obligation fruitfully, Principle VI.E.1: further states that "Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest." In fact, designating ample number of non interested board members to tasks in which potential conflict of interest exist is important in maintaining over all corporate interests and its Shareholders.

2.4.2.5 Why the principles are relevant to Ethiopia?

They provide basic guidance for policy makers, regulators and market participants in improving the legal, institutional and regulatory framework.[84] As can be noticed from the objectives of the OECD, its principles are too crucial not only for OECD economies but also to non-OECD ones.[85] The principles promote good corporate governance which in turn plays a pivotal role to bridge the gap between the interests of those that run a Company and the interest of the

[83] OECD (2004), Supra note73, principle VI.A.,p ,59

[84] See Fianna, J., and Grant K.,(2005), the revised OECD principles of corporate governance and their relevance to non-OECD countries, "Corporate Governance: an International Review" available at https://scholar.google.nl/scholar?q p ,2

[85] Ibid, p ,4

Company itself. With the aim of supporting corporate governance reform throughout the globe, the OECD in collaboration with the World Bank groups, established the regional corporate governance round tables in five regions namely: Asia, Russia, Latin America, Eurasia and South East Europe.

Thus, given the fact that the principles advocate for good corporate governance, they had better been considered by the law and policy makers in order to incorporate the principles in the draft commercial code to be enacted by taking in to consideration our own realities too. On the other hand, since we don't have our own guiding principles to be referred to, considering the OECD principles of corporate governance with the aim of solving corporate governance problems that emanates from non-sufficiency of corporate governance rules in the country is highly important.

According to Gebeyew's[86] justification on relevancy of the principles to Ethiopia, examining the commercial code provisions of share companies and updating in line with the principles helps the country for two reasons: to comply with World Bank/IMF standards and to facilitate grounds for application acceptance to WTO accession. He, further, gave three main reasons why the principles should be applied to Ethiopia.[87] To sum up, since the principles advocate for effective and efficient legal, regulatory and institutional frame works that can accommodate the contemporary corporate governance issues, Ethiopia should better consult the principles with the view of improving the existing legal, regulatory and institutional gaps.

2.5. Minority Rights Protection Indexes

2.5.1. Anti-Self-Dealing Index

This index is a new measure of legal protection of minority Shareholders right against expropriation by corporate insiders.[88] It is calculated by adding the average sum of ex-ante and ex-post private control of self-dealing. While ex-ante private control of self-dealing is equal to average of approval by disinterested Shareholders and ex-ante-disclosure, index of ex-post control over self- dealing- transactions is equal to average of disclosure in periodic filings and ease of proving wrong doings that ranges from 0 to1.In general, as the score of countries for each

[86] Gebeyew, supra note 5, p ,15.
[87] Ibid, p ,7
[88] S. Djankov et al Supra note 22.

variables in the table equals or approaches to one, the more minority Shareholders right in such countries are protected.

Conversely, as the score of countries for each variable in the table becomes zero or decreases from 1 to 0, the less in those countries legal system protection of minority rights is. In short, the table below summarizes description of variables collected for 72 countries in the 2006 study of Simeon Djankov, Rafael La Porta, and Florencio Lopez-de-Silanes. The sources of the variables were the questionnaires sent to lex-Mundi firms. However, the variables are taken selectively for the purpose of this study. As such, disclosure by buyers from ex-ante private control of self-dealing and disclosure in periodic filings from ex-post private control of self-dealing are excluded from the scope of this study due to their lack of clarity in calculating the results of the variables.

Table I. Represents Anti-Self-Dealing Index

Variables	Descriptions
1. Ex-ante-private control of self-dealing	Equals to the average of the infra-mentioned 3 variables
1.1. Disclosure by interested director	Index of disclosure that an interested director must be made before the transaction may be approved ranges from 0 to 1. It is 0 if no disclosure is required,1/2 if only the existence of conflict of interest must be disclosed without details. The result will be 1 if all material facts must be disclosed.
1.2. Independent review	Equals 1 if positive review is required before the transaction may be approved (ex. by financial expert or independent auditor),and 0 otherwise
1.3. Approval by disinterested Shareholders	Equals 1 if the transaction must be approved by disinterested Shareholders , and 0 otherwise.
2. Ex-post-private control of self-dealing	Equals to ease in proving wrong doing which in effect equals to the average o f infra-mentioned 5 variables.
2.1. Standing to sue	Equals 1 if 10% Shareholder may sue derivatively an interested director in a transaction or the approving bodies or both for damages that the firm suffered as a result of the transaction, and zero otherwise
2.2. Rescission	Index of ease in rescinding the transaction ranges from 0 to1. It is equals to 0 when rescission is un available or only available in case of bad faith or when the transaction is unreasonable or causes disproportionate damages. It will be ½ when rescission is available when the transaction is oppressive or prejudicial. It will be 1 when rescission is available when the transaction is unfair or entails conflict of interest.
2.3. Index of Ease for holding an interested director liable for civil damages	It ranges from 0 to 1. It will be zero when interested director is either not liable or liable only in case of bad faith, intent or gross negligent. It will be ½ when the interested director is liable if he either influenced the approval or negligent. It will be 1 provided that the interested director will be held liable if the transaction is unfair, oppressive or prejudicial
2.4. The ease in holding members of the approving body liable for civil damages	It ranges from 0 to 1. It will be zero when members of the approving body are either not liable or liable only in case of bad faith, intent or gross negligent. It will be ½ when members of the approving body are acted negligently. It will be 1 provided that the approving body will be held liable if the transaction is unfair, oppressive or prejudicial.
2.5 Access to evidence	Index of access to evidence Ranges from Zero to one. One quarter point for each of the following four rights will be given.1, a Shareholder holding at least 10% of the shares can request that the Court can appoint an inspector to investigate buyer's affairs;(2) a plaintiff can request any document relevant to the case from the defendant (without specifying which ones);(3) the plaintiff may examine the defendant without the Court approving the question in advance and (4) the plaintiff may examine non-parties without the Court approving the questions in advance. One-eight point for each of the following two points will be given: (1) the plaintiff may examine the defendant but questions require prior Court approval and (2) the plaintiff may directly examine non-parties but questions require prior Court approval.
Thus, Anti-self-dealing Index	Equals to average of ex-ante and ex-post private control of self-dealing Transactions.

Source:- S.Djankov et al. (2006), the law and economics of self –dealing, Elsevier Journal of Financial Economics, No. 88(2008) p. 434-435

2.5.2 .The Revised Anti-Director Rights Index

This is another index by which protection of minority right is measured. The main difference between the two indexes is that while the first index is specifically designed to protect minority Shareholders from expropriation by corporate agents, the second is generally meant to protect minority Shareholders interests from oppressive acts of corporate agents. The index is calculated by adding an aggregate index of all Shareholder rights. Meaning, it is formed by summing vote by mail, shares not blocked or deposited, cumulative voting, oppressed minority, pre-emptive rights and capital to call meetings. Accordingly, those countries whose score for each point in the table approaches one, the more minority Shareholders rights are protected under their laws. The converse is true for countries that score 0 or almost approaches to 0 for each variable in the table. Thus, the table well explains this.

Table II represents descriptions of The Revised Anti-Director Rights Index

Variables	Descriptions
Anti-director rights index	Is formed by adding the results of the following 6 variables.
1 Vote by mail	Equals one if the law explicitly mandates or sets as a default rule that: (a) proxy solicitations paid by the Company include a proxy for allowing Shareholders to vote on the items on the agenda, or (b)a proxy form to vote on the items on the agenda accompanies notice to the meeting: or (c) Shareholders vote by mails on the items on the agenda(i.e. postal ballot);and zero otherwise.
2 Shares not deposited	Equals one if the law doesn't require, nor explicitly permit companies to require Shareholders to deposit with the Company or another firm any of their shares prior to a general Shareholders meeting.
3 Cumulative voting	Equals one if the law explicitly mandates or sets as default rule that Shareholders owning 10%or less of the capital may cast all their votes for one board of directors or supervisory board candidate(cumulative voting)or if the law explicitly mandates or sets as a default rule a mechanisms of proportional representation in the board of directors or supervisory board by which Shareholdersowning10% or less of the capital stock may name a proportional number of directors to the board; and zero otherwise.
4 Oppressed minority	Index of the difficulty faced by (minority Shareholders) owning 10% or less of the capital stock in challenging (i.e. by either seeking damages or having the transaction rescinded) resolution that benefits controlling Shareholders and damage the Company. The result will be 1 if the minority Shareholders may challenge resolution of both the Shareholders and the board (of directors and if available, of supervisors) if it is unfair, prejudicial, oppressive or abusive; equals one -half if Shareholders are able to challenge either a resolution of Shareholders or of the board (of directors and if available, of supervisors) if it is unfair, oppressive or prejudicial; and zero(0) otherwise.
5 Pre-emptive rights	Equals one if the law or listing rule sets as a default rule that a Shareholder holds the first opportunity to buy a new issues of stock; equals zero otherwise
6 Capital to call a meeting	The minimum percentage of share capital (voting power) that the law mandates or sets a default rule as entitling a single Shareholder to call a Shareholders' meeting(directly or indirectly through Court) define capital to be equal to one when capital to call a meeting is less than or equal to 10%; and zero otherwise.

Source:- S.Djankov et al. (2006), the law and economics of self –dealing, EDHEC working paper, p. 39

CHAPTER THREE

3. Analysis of Ethiopian Share Company Laws on Related Party Transactions.

3.1 General Overviews of the Chapter

This chapter basically analyzes regulation of related party transactions under the Ethiopian Share Company laws. It also examines remedies available to companies in general and minority Shareholders affected by related party transactions in particular. Accordingly, the provisions of Ethiopian Share Company laws meant to manage related party transaction and its controlling mechanisms are examined briefly. Moreover, the part of the draft commercial code that deals with RPT is also emphasized for the sake of indicating whether the gaps in law in relation to the topic of the research are paid due attention under the forthcoming draft commercial code. Overall, the chapter is devoted to make a deep analysis of Ethiopian share Company provisions in lines of the OECD principles of corporate governance, anti-self- dealing indexes, anti-director rights index and experiences and best practices of other countries.

In appropriate places, practical issues of RPT in selected companies are included to show how the laws dealing with RPT are implemented within the companies. In order to do so, the researcher has analyzed cases and interviews held with selected members of companies in light of share Company laws. Finally, having made critical analysis of the provisions of the laws, the paper clearly indicates the loopholes of the laws that need to be considered and corrected in a draft commercial code to be enacted by the government. And also it clearly indicates possible solutions for practical problems arising out of implementation of the laws in companies.

3.2 .Mechanisms of regulating RPT under the Ethiopian share Company laws

The scrutiny in to the Ethiopian share Company laws particularly the commercial code provisions of Share Companies' indicates that there are two mechanisms of controlling RPT[89]:

1. Prohibited dealings or total banning
2. Regulated related party transaction or providing certain rules of law for validity of RPTs.

[89] See Commercial code of the Empire of Ethiopia, Proclamation No.166 of 1960, Negarit Gazetta,19th year, extra ordinary issue No.3, Addis abeba,5th may 1960.

3.2.1 Prohibited Dealings

Prohibitive dealing is nothing but the law bans the dealing between the Company and its directors on selected transactions. For instance, "The director is neither allowed to borrow money from the Company in which he manages….or/nor he is allowed to have any obligation guaranteed in respect of business transacted with third parties."[90] However, this prohibition under article 357(1) is qualified under sub-article 2 of the same provision. That is if the day to day business of the Company is giving banking service. In fact this exception seems to be justified. The reason for the prevention seems clear because if a director of the Company is allowed to do any of the acts prevented under this provision in his day to day activities, there is a great probability for conflict of interest to be created between a director and the Company in which such director manages.

This in turn gives a golden opportunity for directors to misuse assets of the Company. In fact, conflict of interest between director and the Company can be created in a number of ways only few of which is discussed and regulated under the commercial code.[91] Similar prohibition which is meant to regulate conflict of interest between a Company and those who manages affairs of that Company is also regulated under the Banking Business proclamation No.592/2008.This can be observed from the reading of article 15 (3) of the proclamation that states A director or chief executive officer of a financial institution may not, at the same time, serve as a director of a bank. The proclamation further prohibits, a business entity or a Company in which such director or chief executive officer has ten percent or more equity interest from serving as a director of a bank. Thus, the rule incorporated under this article is total banning of RPT.

Dealings prohibited under this provision seems to comply with principle III.B of the OECD principles of corporate governance that totally banes insider-trading and abusive self-dealings. Nevertheless, two basic short comings of article 357(1) can be observed. For one thing, it only prohibited the dealing between the Company and its director with respect to specified dealings. Meaning, the dealing between a Company and its general manager, and its controlling Shareholder seems to be allowed as per this provision. But, allowing general manager of a

[90] Ibid, art. 357(1).

[91] See Fekadu, P. (2008), Ethiopian Company law, 2nd Edition, Addis Ababa, Far East Trading PLC printing press. P. 148-151

Company who runs day to day activities of the latter to engage in any of the activities specified above, while restricting a director seems not to be justified.

Likewise, if after all the purpose of restriction is to prevent abusive self-dealings that has great potential to divert assets of the Company, excluding controlling Shareholders from the prevention is not tenable. Because they too causes equal treat to assets of a Company that in effect affects interest of others particularly of minority Shareholders right. On the other hand, potential harmful transactions are excluded from the coverage of this provision. For instance, a Credit transaction which has the effects of transferring assets of the Company in consideration for a promise to pay in the feature is not regulated under the Ethiopian Company laws which are not the case in other jurisdictions. For instance, Credit transaction in favor of directors is prohibited in countries like UK, France and Italy subject to different exceptions and qualifications. Overall, for whatever reason the prohibition may be, once it is prohibited neither ex ante board authorization nor ex post general meetings of Shareholder approval legitimatize the dealings between a Company and its directors.

3.2.2 Regulated RPT

Regulated related party transaction is another mechanism of controlling RPT.As per this mechanism, the law prescribes certain legal requirements that must be complied with. It encompasses specific tools for combating RPT: Disclosure, board Approval and General Meetings of Shareholders approval which are discussed subsequently.

3.2.2.1 The Requirements of Disclosure

For the purpose of this paper, disclosure of RPT can be understood simply as disclosure of information to the board of directors and Shareholders. However, no where the requirement of disclosure of related party transaction is specifically regulated under the Ethiopian commercial code rules of share companies. One could only understand from the converse reading of article 356(1) of the code that a director interested in the dealing has obligation to disclose information to non interested board of directors. It enables organs who administer a Company and Shareholders to take timely and informed decisions which in effect at least reduces corporate-agency problem that may result in reducing economic value of the Company. In this regard, as

per the response of one interviewed on this point, disclosure requirements are not clear in Ethiopia.[92]

Therefore, it can be deducted that this provision is defective in serving its purpose as it doesn't require the general manager, controlling Shareholders, the CEO, spouse of any of such persons as well as their children to disclose information about related party transaction. Concerning disclosure of information about RPT to Shareholders, article 356(3) of the code imposes on auditor(s) duty to prepare and submit special reports to the general meetings of Shareholders. But, it is not clearly regulated under the code as to who has the duty to disclose information to the auditors as it simply says notice shall be given to auditors. Is it an interested director in a transaction or the board of director that has obligation to give notice to the auditors? In my opinion, once an interested director in a proposed transaction discloses his interest, the duty to give notice to the auditors must be that of board of directors.

The researcher tried to look at this point from practical point of view by holding interviews with selected companies' directors and General Manager as well as examined such companies' auditor's report, board decisions and Shareholders minutes so as to know how RPT is governed in such companies practically.[93] Accordingly, what is going on in these companies totally negates what is provided by the law. For example, board of directors of Hermata Minch Real state, authorized the Company to purchase ceramic materials required for construction of Hibir building from Baron private limited Company that is dominantly owned by Ato Yidnekachew Tesema who is also a member of board of director in Hermata Minch real state. The total purchase price of ceramic material is one million seventeen thousand and one birr (1,017,001).[94]

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[92] An interview held with Ato Berhanu Beyene (ass.prof), Former legal director in Jimma University and currently manager of legal research department of Abyssinia Bank, on May 24, 2017.

[93] The researcher purposively selected Barite Transport and Hermata Minch real state share companies for this paper and made an interview with a chair man of board of director of the former Company on may 20, 2017 and with General Manager as well as one member of board of directors in the latter Company on may 19, 2017.While the researcher accessed to and inspected the latter Company's board of directors' minute, auditors' report, Shareholders minute and other specific letters, he couldn't succeed in getting and inspecting documents of the former Company as the Company itself is to be dissolved by now.

[94] See Hermata Minch Real state board of directors' minutes dated 23/01/2006 E.C together with minutes of purchasing committee of the Company dated 25/5/2007 E.C.

In this case, there was exactly RPT between the Company and Baron plc that was dominantly owned by the person who was also member of board of director in the Company. Despite the fact that article 356(2) of the code imposes duty to prepare special reports on such dealings on auditors and submit to the general meetings of Shareholders for approval, the fact wasn't included in the Company's auditor's report.[95] As a result, the transaction wasn't approved by general meetings of Shareholders and become a source of conflict between member of board of directors in the Company and its minority Shareholders.[96]

In addition, the researcher held an interview with chair man of Barite Transport Share Company on disclosure of approved RPT to Shareholders.[97] The chairman of this Company's board of director expressed by supporting with practical evidence the fact that auditor's report doesn't include approved RPT.[98] He also added that the role of auditor's is only to check receipts paid and taken by the Company for tax purposes but the Company doesn't allow auditors to check legality or other wise of RPT. The chairperson further added that, approved RPT is only brought to the attention of General Meetings of Shareholders provided that there is a problem relating to the transaction and the board fails to settle such problem.[99]

What can be observed from the practice of these companies on RPT is that, formal disclosure of information to Shareholders is totally absent. This in turn, hinders Shareholders not to control the acts of Corporate-Agents and/or persons connected to them because of information asymmetries.

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[95] The researcher examined auditor reports of the Company dated june 30, 2007 and 2008 E.C. However, none of these reports included about the approved purchase of ceramic material from the person who owns the entity from which the ceramic was bought and at the same time a member of board of director in the Company.

[96] Jimma zone high Court decision, Supra note,10

[97] An interview held with Ato Hussein Ahimed, a chair man of board of director of Barite Transport share Company on may 20, 2017.

[98] The chair person expressed that a member of board of director of Barite transport Share Company concluded a contract of sale of car in the year 2005 E.C, with Lome drivers' training center plc 80% of the share capital of which was held by Barite Transport Share Company following approval of the transaction by majority of the members of board of director of the Company. The seller of the Car was Ato Lema Sime who was also a member of board of director of Barite Transport Share Company. However, the Car was found defective after it was bought. Nevertheless, this fact wasn't included in auditor's report.

[99] Hussen Ahimed, Supra note 97.

This gives good opportunity for persons who control the Company to expropriate assets of the Company which affects Shareholders economic interests in these particular companies.

Coming to the law, though article 406(1)(b) of the code gives the right to inspect Company's documents to Shareholders, it can't help Shareholders in getting sufficient information about RPT for two main reasons. For one thing, the document Shareholders are entitled to inspect is not the current one as it says *….auditor's report for the last three financial years.* Correspondingly, it gives no information about the current RPT to the Shareholders as it talks about the past report only. For the other thing, it is coasty and time consuming, as it requires Shareholders to go to head office in order to get copies of auditor's report. In additions, article 417 of the code, allows Shareholders to inspect documents that consist of auditor's report to be submitted to the annual general meetings of Shareholders only during the 15th days preceding the meeting. However, it is difficult to get relevant and enough information by only inspecting documents and taking copies of the same at head office within 15 days which in effect prohibits Shareholders from effectively taking timely and informed decisions.

Furthermore, in respect of what type of transaction/dealing information is required to be disclosed, the code requires any dealing/transaction between the Company and its director to be disclosed without adopting minimum disclosure requirements. On the other hand, if we look at financial proclamations particularly Banking Business Proclamation No.592/2008 article 28, it states about disclosure of information in its caption. However, this provision covers only disclosure of information that has to exist between the National Bank of Ethiopia and other Banks. It is neither concerned with disclosure of information relating to RPT, nor does it cover duty to disclose information to the board as well as to the Shareholders.

Thus, the requirements of disclosure incorporated under the laws don't comply with the OECD principles of corporate governance principle III, C, experience and best practices of other countries and index of minority rights protection. The OECD principle of corporate governance, principle III.C imposes obligation to disclose information on members of the board and key executives. From this, one can understand that not only members of the board but also key executives have similar duty to disclose information relating to related party transaction. With respect to the transaction/dealing that has to be disclosed, the principles incorporated material interest test, however without further, defining what constitutes material interest test. This in

fact, calls for application of subjective standards to judge what constitutes material or immaterial which could differ based on a number of factors.

Nonetheless, it should also be noticed that disclosure is required, if and only if the dealing directly affects interests of the Company. By the same token, in France too not every dealing/transaction is required to be disclosed. Accordingly, there is an instance where by an interested director is relieved from duty to disclose information in two circumstances: incase of agreements involving recurring operations and/or those reached under normal conditions between a director and the Company. Likewise, it is only material conflict-of interest that needs to be disclosed by founders and the directors in UK. The power to determine whether the interest in a given contract or proposed contract with a Company is material or not is vested on the board.

However, there is a different scenario for financial companies engaged in giving banking services. In such cases, Bank corporate governance directives No.SBB/62/2015 well addressed the requirements of disclosure under article 12.This provision among many other things imposed minimum disclosure duty on banks. Accordingly:

- Any bank has duty to submit to the national bank of Ethiopia a report on:-
  - -Related party Loan transactions
  - -Related party foreign currency transactions
  - -Bank's fixed assets and technology transfer transactions of material nature with in fifteen days from the date of the transaction by specifying the name, type of transaction and the amount involved
- Any bank has the duty to report status of such transactions to the national bank of Ethiopia at least once in a month through attestation by the board that such transactions have been carried out at an arm's –length in compliance with the regulatory requirements, the banks own policies and procedures.

In additions, the directive under its article 10.4.15 specifically imposed on directors, the duty to establish clear policies for Shareholders with a bank which in turn plays paramount role in helping Shareholders to exercise their basic rights based on pre established clear policies. Therefore, based on these facts, this paper argues that Ethiopian share Company laws with the

exception of Bank corporate governance directives No.SBB/62/2015 which only regulate banks, apparently fails to effectively regulate disclosure of information on RPTs especially to Shareholders. This in turn, may have the effects of preventing Shareholders from taking timely and informed decisions which creates cultivated environment for Corporate-Agents to misuse assets of the Company. Over all, disclosure of information about RPT requires serious consideration from the perspectives of the laws and practice.

3.2.2.2 Board Approval (BA)

Board approval (authorization) is one of the mechanisms of regulating related party transaction specifically recognized under the commercial code of Ethiopia.[100] The very purpose of the requirement of disclosure of related party transaction is to inform the concerned organ about the transaction and the parties involved with the view of helping the former to take appropriate decision. In this regard, *the law*[101] stipulates that any direct or indirect dealing between the Company and a director to secure prior board approval. This requirement is mandatory one which must be complied with irrespective of the type of dealing involved.

However, article 356(2) of the code itself seems to deviate from the mandatory requirement of board approval stipulated under sub-article 1 of the same provision when the dealing is between the Company and other persons/organs than those mentioned under it. For example, what if a controlling Shareholder in one Company is at the same time owner in another organization? Moreover, this provision apparently fails to answer the questions: what will be the fate of dealings in which all of directors of a Company are interested? Given the fact that the number of board of directors in a given share Company could be three indicates that as a number of board of directors become less and less, the probability for all board members to be interested in a given transaction/dealing becomes high. In such cases, even there is a high probability for board members to influence each other. Second, What if an interested director vote for a transaction in which he is interested? Third, what will be the fate of the dealing that takes place between a Company and its director without securing prior board approval?

[100] Commercial code of Ethiopia Supra note 89, art. 356(1).
[101] Commercial code of Ethiopia Supra note 89, art. 356(1).

As regards the first issue, it can be seen from two perspectives. First, if the transaction in which all board members interested affects economic interests of the Company unless denied effect, recognition should not be given to those transactions at all. Hence, the potential board members who want to engage in similar businesses with a Company will be abstained from such acts. Second, if the dealing is the one that can take place as per the Company's normal business condition and the conclusion of such dealings doesn't affect economic interests of that Company, the dealing must be submitted to the general meetings of Shareholders for approval.

Concerning the second question, a look at articles 409(3) and 364(2) may be helpful. While the former prohibits directors not to vote on resolutions concerning their duties and liabilities, the latter talks about liability of director to pay compensation to the Company for damage caused to it emanating from failure to carry out their duties. In this case, not only the interested director but also other directors are liable to pay compensation to the Company up on successful proof of the fact that they failed to take all steps within their power to prevent or to mitigate acts prejudicial to the Company which are within their knowledge.[102]

Nevertheless, the validity of the transaction should not be affected in such cases too. However, the issue is more problematic in practice. For example, as per the responses of one interviewed for this paper, a director who has conflict of interest with a Company in which he serves as a member of board of director can participate in board decisions to approve or other wise of RPT in which such director is an interested party.[103]

This person strongly argues that a director should participate in board decision in which such director has a conflicting interest with a Company. He supported his argument by stating that the presence of such a director is important to explain about the alleged transaction to the other board members. He also added the fact that he too participated in Hermata Minch Real State share Company's board decision on purchase of Ceramic material from Baron PLC in which he own majority share of the entity. However, in such cases, it is illogical to allow a director who has conflicting interest with Company, to participate in board decisions since it is difficult to expect independent and free judgment in such cases.

[102] Commercial code of Ethiopia, Supra note 89, art. 364(4).

[103] An interview held with Ato Yidnekachew Tesema, A Member of Board of Director of Hermata Minch Real State Share Company, on 19 May 2017.

As regards the third issue, the validity of the dealing should not be affected but the concerned director should be held liable to pay compensation to the Company. This is because as stipulated under art.356 (5) even those dealings not approved by the general meetings of Shareholders remains valid. This implicates that the validity of dealings not secured prior board approval should not be affected for stronger reason. This is true because, no legal consequence is attached to dealings undertaken without getting prior board authorization unless for the sake of paying compensation provided that the interest of the Company is affected by such non observance of stipulated rules.

The Draft commercial code on this issue come up with the new concept known as **ተቆጣጣሪ ቦርድ** which is equivalent to supervisory board (translation is mine).As per this draft law, once RPT is approved by board of directors, notice to this effect must be given to either the supervisory board or auditors as deems necessary.[104] But, who determines to whom notice is to be given and based on what condition is the issue that needs answer. However, one clear point inculcated under the draft code is that, it is the supervisory board which is to prepare and submit special report regarding RPTs to the general meetings of Shareholders. Only in the absence of supervisory board that auditor is required to prepare and submit report on RPTs.[105]

In my opinion, giving power to prepare and submit special report to the general meetings of Shareholders to the controlling board by itself don't help Shareholders unless supported by other means of ensuring effective communication of RPT to Shareholders. These effective means of communications can be via releasing through companies web address, serving individuals via their personal addresses. These are the common means of communicating information to Shareholder in other developed jurisdictions.

In nutshell, when one examines rules of board authorization in light of international best practices and experiences of other countries, the code has deficiencies that need to be rectified. To begin with, principle VI.A of the OECD principles of corporate governance among many other things provides that board members should act on fully informed basis. This means board of directors must have access to information regarding the issues they have to decide. In this

[104] See the draft commercial code of Ethiopia, art. 356(1).

[105] Ibid, art. 356(2)

regard, article 356(1) has deficiencies because it only states that any dealing between Company and its director must secure prior board approval. Apart from this, it provides nothing as to the manner in which information has to be given to it i.e. whether formally or informally, orally or in writing. Even to whom information is to be disclosed: to individual board members or to the chair person of board of directors is not regulated specifically.

Such gaps in laws are also opens a room for information asymmetries in practice. For example, in the case of Barite Transport Share Company the board passed a decision to purchase a defective car without having full information about that car only by trusting the seller of the car who was also a member of board of director in the Company. However, a director who has personal information about the car strongly opposed the approval of the transaction. From this we can understand that had other members of the board have full information about the defective car, they would have not allow the transaction to be carried out. As a result of lack of sufficient information about transaction by the boards companies are suffering economic losses.

Furthermore, this provision fails to meet the criteria set under Principle VI.E.1 of the OECD principles of corporate governance which states that *Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest*. As per this principle, non-executive board members who are capable of exercising independent judgment in tasks where there are potential for conflict of interest is required to be assigned. From this perspective, it is clear that there is a unitary board structure in Ethiopian share companies in which case there is no separation of function between management board and supervisory boards.[106] This in turn, creates problem in exercising independent judgments in tasks where there are potential for conflict of interest.

On the other hand, if we compare board approval requirement under the Ethiopian share Company laws to that of UK and French counterparts, board approval requirements in the latter countries are more stringent than that of Ethiopia's. For instance, in UK, RPTs must be approved by disinterested board members. This means any interested director is precluded from

[106] Hussein, A.(2012), Overview of Corporate Governance in Ethiopia: The Role, Composition and Remuneration of Boards of Directors in Share Companies, Mizan Law Review Vol. 6, No.1, p 46-76

participating in corporate decision that concerns him. Even those transactions approved by disinterested board members needs to be reviewed by independent financial experts before they submitted to Shareholders' general meetings for final approval. However, this is not the case under the Ethiopian share Company laws which simply require board approval.

When we come to the French counterpart, non-approval of RPTs by disinterested Shareholders doesn't automatically render the transaction effect less. Rather, it gives the opportunity to revisit its decision to the board. Moreover, French relies on External auditors to prepare special report to the general meetings of Shareholders concerning RPTs. However, the report on RPTs to be prepared and submitted to Shareholders by external auditors is not the requirement in Ethiopia. This in turn, casts doubt on reliability of reports prepared by auditor who is employee of a given Company in which case there might be high probability to be influenced by controllers of the Company.

Putting the requirement that those approved RPTs by board must be reviewed by independent financial experts and report be prepared and submitted on the same by external auditors plays much more role in at least reducing economic loss that might be suffered by the Company in RPT than it would have not been subject to such stringent requirements which is totally missed under the Ethiopian share Company laws. For example, in the litigation between members of board of directors and minority Shareholders of Hermata Minch Real State Share Company, one of the claim of the minorities were that the boards bought non quality Ceramic material from the member of board of director of the Company with the intention of benefiting the one from which the material was bought.

However, the Court rejected this claim on the ground that the claim wasn't supported by evidence.[107] In this case, had such transactions been required to be reviewed by independent financial experts, such controversies would have not been created or at least the severe consequences of such transactions would have been mitigated. Therefore, it can be said that the requirement of board approval for RPT incorporated under the Ethiopian share Company Laws is ineffective in serving its purposes in practice and law.

[107] Jimma Zone high Court, Supra note 10.

3.2.2.3 General Meetings of Shareholders Approval (GMSHA)

General meeting of Shareholder is the highest body to make decisions concerning the affairs of companies. As regards managing and controlling related party transaction, the ultimate decision making power is vested on the meeting.[108] The meeting has power either to approve or not to approve dealings between a Company and its director though prior board authorization is secured.[109] However, whether Shareholders can effectively exercise their power is much questionable in practice. For instance, Ato Hussein Ahimed, the chairman of Board of directors of Barite Transport Share Company, in his response to interview questions expressed that approved RPT is only disclosed to Shareholders and submitted to Shareholders General Meetings if there is problem that is not yet solved by board of directors. In additions to this, Hermata Minch Real State's auditor's report included nothing about approved purchase of ceramic material despite there was RPT. Based on this, it can be said that, the practice of approving RPT by General meetings of Shareholders in these companies is almost absent. Correspondingly, power of the General meetings of Shareholders' in controlling the boards' power in these companies is in question. In this scenario, the main obstacle to Shareholders in exercising their power during the meeting is lack of access to information on timely and regular basis. The board of directors is not legally obliged to disclose information to the Shareholders. They have only legal obligation to give notice to auditors concerning the existence of dealing between Company and its directors.[110] Due to this, Shareholders can't play decisive role in controlling related party transaction unlike what is supposed to be done.

In relation to this, the draft commercial code tries to come up with the new concept known as **የኩባኒያ ጸሐፊ** which is equivalent to secretary of the Company (translation is mine). As clearly indicated under the caption *powers and responsibilities of secretary of the Company*, the main function of the secretary of the Company is to organize and give information regarding overall activities of the Company. Accordingly, one of the specific duties of the secretary of the Company is to give information to Shareholders and third parties.[111] Since no specific limitation is put to the word information as enshrined under the draft code, certainly it includes giving

[108] Commercial code of Ethiopia, Supra note 89, art. 356(3).

[109] Commercial code of Ethiopia, Supra note 89, art. 356(3).

116 Ibid. art. 356 (1).

[111] Draft commercial code, Supra note 104, art. 163(3),

information on RPTs to Shareholders and third parties which is a new inclusion and very important in providing relevant information to Shareholders that enables them take timely and informed decisions.

By way of summary, it can be firmly said that rules of the Ethiopian Company laws particularly that of the commercial code dealing with General meetings of Shareholders approval of RPT is said to be inadequate in serving their purpose compared to international best practices of the OECD principles of corporate governance particularly principle II.B and V.A.5 as well as experiences and best practices of countries like France and UK. Correspondingly, the gap in law and practice hinders Shareholders not to play a decisive role in controlling RPT.

3.3 Remedies for Party(s) affected by RPT under the Ethiopian Share Company Laws.

Devising different mechanisms of controlling RPT doesn't mean that such mechanisms totally avoid problems of RPT. Thus, it is usual for companies and non-controlling Shareholders to suffer loss of economic benefit steaming from ineffective regulation of RPTs. In order to counteract such prejudicial effects, different countries provide different remedies for those affected by RPTs especially non-controlling Shareholders/minority rights. Accordingly, the kind of remedies (if any) available to minority Shareholders as well as their adequacy or otherwise in serving their purposes is examined under this section in light of minority rights protection indexes, international best practices and experiences of other countries. For the sake of convenience, the remedies (if any) are discussed as per the subsequent sub-headings.

3.3.1 Right to Claim Invalidation of RPT contracts and Damages

Right to claim invalidation of contracts relating to RPTs and damages is rarely available remedy for companies affected by RPT under the Ethiopian commercial code viz. only up on successful proof of the existence of fraud. Besides, the availability of such remedy is also depends on whether self-dealing transaction is approved or not by the general meetings of Shareholders. Accordingly, the discovery of fraud after the transaction is approved by the general meetings of Shareholders entitles the Company to challenge validity of the approved transaction.[112] However,

[112] Commercial code of Ethiopia, Supra note 89, art. 356(4).

the stand of the Ethiopian commercial code seems unclear as to what the ultimate results of challenging the validity of approved RPTs is.

Nevertheless, it can be argued that like any other contract that is subject to invalidation when its essence is affected by vitiated consents, the validity of approved RPTs affected by fraud can be challenged and invalidation of the contract that involves RPs can be sought by the Company. In this case, provisions of the Ethiopian civil code dealing with invalidation of contracts and their effects will be applicable.[113] Meaning, up on successful proof by the Company the fact that had it not been for the fraud the dealing would have not been approved, the contract that gives rise to RPTs will be invalidated and the parties will be entitled to reinstated to their former position (the position before the conclusion of the contract).[114] In this scenario, damages are only available as alternative if and only if reinstatement is impossible.[115] In effect, this situation doesn't automatically entitle companies to claim payment of damages. On the other hand, the validity of the dealings not approved by the general meetings of Shareholders remains unaffected even if non approval emanates from commission of fraud by the concerned director(s).[116] In this case, the Company is automatically entitled to payments of compensation against the fraudulent director(s).

However, if the director concerned fails to discharge its obligation for the Company, the Company has right to resort against board of directors for payments of compensation.[117] Nonetheless, challenging the validity of the transaction approved by the general meetings of Shareholders to the extent of invalidating the transactions seems far from the reality though the message incorporated under article 356(4) seems to convey the contrary one. This proposition can be supported by the fact that dealings not approved by the general meeting of Shareholders remain unaffected. If this is the case, for stronger reason, the validity of dealings not approved by the general meetings of Shareholders should not be invalidated by the Company. In either of the

[113] See Civil Code of the Empire of Ethiopia, Proclamation No.165 of 1960, Negaritgazetta, 19th year, extra ordinary issue no.2, Addis Abeba, 5th may 1960, art.s(1808-1818)

[114] Ibid, art. 1815(1).

[115] Ibid, art. 1817(2).

[116] Commercial code of Ethiopia, Supra note 89, art. 356(5).

[117] Id.

two cases, however, the Company's right to claim compensation for fraudulent acts of the director concerned is for granted up on fulfilling the required criteria.

When one compares these remedies in light of minority Shareholders right protection indexes particularly anti-self-dealing indexes, they are inadequate. For instance, index of ease in revoking or cancelling the transaction is said to have exist when Shareholders are entitled to challenge the validity of the transaction which are unfair or entails conflict of interest. Moreover, index of Ease for holding an interested director liable for civil damages is said to be very exceptionally available remedy. Index of Ease for holding an interested director liable for civil damages stipulates that the interested director will be held liable if the transaction is unfair, oppressive or prejudicial. However, no liability of directors is recognized under the commercial code if the transaction is unfair, oppressive or prejudicial. Moreover, the ease in holding members of the approving body liable for civil damages is also not recognized under the code. Basically, this index is said to have exist if the approving body will be held liable provided that the transaction is unfair, oppressive or prejudicial. Thus, right to claim invalidation of RPTs and damages literally recognized under the commercial code is far lagging behind compared to indexes of minority right protection particularly of ease in revoking or cancelling the transaction, index of Ease for holding an interested director liable for civil damages and the ease in holding members of the approving body liable for civil damages.

3.3.2 Derivative Suits

The Ethiopian commercial code doesn't expressly define the meaning of derivative suits. However, as incorporated under the code itself, derivative suit is nothing but Shareholders right to bring a class action against director(s) on behalf of the Company for violation of director(s) duty subject to certain defined conditions.[118] Accordingly, the conditions for bringing derivative suits are: there must be resolution of Shareholders general meetings authorizing the same, Shareholders representing at least one fifth of the capital of the Company must vote in favor of the resolution, the Company must fail to exercise the right to institute proceedings against the fraudulent director(s) within three months from the date of resolution and finally the right is only

[118] Commercial code, supranote,89, art. 365(4).

available for Shareholders who jointly vote in favor of the resolution to institute proceedings.[119] In this case, a derivative suit is a joint right of Shareholders who vote in favor of instituting proceedings against the fraudulent director(s).

However, whether the meaning of derivative suit is the one enshrined under the code or otherwise is controversial. For example, the meaning of derivative suits as defined by Peter Win ship refers to "The action which can be brought by each Shareholder in the case where the fault of the directors has prejudiced the Company's property as well as his own property." [120] That is why he stated in his Exposé des Motifs that articles 364-367 is designed to "regulate the liability of directors and the procedure for enforcing this liability by individual or class action."[121] From this perspective, the right to initiate a claim against the directors where the fault of the directors has prejudiced the Company's property by individual Shareholder is totally unregulated under the commercial code. On the other hand, while right to institute class action derivatively on behalf of the Company is governed under article 365 of the code, individual right to institute a claim against directors is governed under article 367 of the code though proving the fact that the claimant sustained injury by fault or fraud of the director concerned is tough in the latter case.

In this case, the requirements to initiate derivative suits incorporated under the commercial code don't corresponds to the one provided by index of minority Shareholders protection. For example, as per anti-self-dealing index, right to sue derivatively an interested director in a transaction or the approving bodies or both for damages that the firm suffered as a result of the transaction is said to exist when Shareholders constituting 10% of the total capital of the Company are entitled to initiate proceedings against the concerned organs.

In line with this, even derivative suits recognized under the commercial code for Shareholders collectively is said to be not comply with right to initiate proceedings derivatively as recognized under anti-self- dealing index. This is because for Shareholders to initiate proceedings against directors derivatively, it is a must to have at least one fifth of the shares from the total capital of the Company. Even the draft commercial code of Ethiopia improved nothing on this issue. It too

[119] Ibid, art. 365(4).

[120] Peter Win ship, (1974), Background Documents of the Ethiopian Commercial Code of 1960, (Addis Ababa, Faculty of Law, Haile Sellassie I University) p.64.

[121] Id.

adopted the same stringent requirement to initiate proceedings against directors derivatively i.e. such right is only available for Shareholders holding at least 20% of the total capital of the Company.

Be the ambiguity in the theory as it is, looking the issue from the practical point of view adds complexity to the issue. In the litigation between Amanuel Tsega commercial shops S.C. vs Bahiru Abreham(12 persons)[122] the Federal cassation division bench reasoned out that:

> **(…….ሆኖም የበታች ፍ/ቤት ክሱን ውድቅ ለማድረግ መሠረት ያደረገው የሕግ አንቀጽ የንግድ ሕጉ ቁጥር 365 ቅድመ ሁኔታዎች አልተሟሉም የሚል ነው። ሆኖም በዚህ አንቀጽ ድንጋጌ የተመለከቱት ማንበሩ አስተዳዳሪዎችን ለመክሰስ ሲፈልግ ሊያሟላቸው የሚገቡ ቅድመ ሁኔታዎችን እንጂ የተወሰኑ የአክሲዮን ማኅበሩ ባለድርሻዎች የሚያቀርቡትን ክስ አያጠቃልልም።**

Which is equivalent to mean the lower Court rejected the claims on the ground that the preconditions set under article 365 of the commercial code are not fulfilled. However, such preconditions are not applicable to proceedings that can be instituted by certain Shareholders in a given Company; they are only applicable if the Company wants to initiate proceedings against directors.(Translation is mine)

However, even though the decisions of the cassation bench is binding up on the lower Courts and could be said to constitute the practice, it clearly deviated from the clear wordings of article 365 of the commercial code. This is because unlike the interpretation of the Court, the right to initiate proceedings against the directors is inherently belongs to the Company as recognized under the code. Thus, the preconditions are not only applicable to the proceedings in which the companies are interested to initiate against the directors but also applicable to Shareholders eligible to initiate class actions against the directors concerned derivatively.

Over all, the status of derivative suits as recognized under the Ethiopian commercial code and as observed under the cassation decision currently in force is somewhat controversial. While the code only recognized joint right of Shareholders to initiate proceedings against directors

[122] See case between Amanuel Tsega commercial shops S.C. (plaintiff) vs .Bahiru Abreham et al (defendants), Federal Supreme Court Cassation Decision, file No.23389, volume 5, p 281.

derivatively, the cassation decision clearly indicated that certain Shareholders in a given Share Company can institute proceedings against directors when they are directly affected by the act of directors.

3.3.3 Right to Have Minority Representation in Board of Directors/Cumulative Voting Right

Right to have minority representation in the board and cumulative voting rights are the most important mechanisms of protecting minority rights. As explained by *Fekadu Petros,* cumulative voting and minority representation in the board are alternative mechanisms of minority right protection. He further emphasized the meaning of cumulative voting by stating 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."[123]

Accordingly, cumulative voting enables minority Shareholders to have representatives in the board which would have not been possible had it not been by adding votes cast by the contenders during board election. In relation to this, there is only one provision in the commercial code of Ethiopia viz. article 352 which captioned as rights of a minority but fails to achieve its purpose due to ambiguity of the contents of the provision. As per Anti-director-rights index, cumulative voting is said to exist if the law explicitly mandates or sets as default rule that Shareholders owning 10% or less of the capital may cast all their votes for one board of directors or supervisory board candidate (cumulative voting) or if the law explicitly mandates or sets as a default rule a mechanisms of proportional representation in the board of directors or supervisory board by which Shareholders owning 10% or less of the capital stock may name a proportional number of directors to the board.

Seen from this perspective, minority Shareholders rights to have their own representative in board of directors don't comply with Principle III.A.2 of the OECD principles of corporate governance and anti-directors-right index of minority right protection. Due to this, it can be said

[123] Fekadu, Supra note 1, p 19.

that the provision is not serving its purposes as it stands today. On the other hand, the draft commercial code though comes up with the concepts of Supervisory boards the number of which ranges from 3-5, nothing is provided about right of minorities to be represented in such boards.

Therefore, the researcher argues that though the concepts of minority rights protection is literally included under article 352 of the commercial code, it is far from achieving the very purpose for which it is designed to serve compared to international experiences and best practices of the OECD principles of corporate governance. However, Bank corporate governance directives No.SBB/62/2015 introduced mechanisms of mandatory minority representation in board of directors under its article 5(3 and 4) interestingly. Accordingly, it stipulates that:

- The board shall comprise of non-influential Shareholders whose number is not less than 1/3rd of the total board members where such non-influential Shareholders own 30% or more of the total capital of the bank.
- The board shall comprise of non-influential Shareholders whose number is not less than 1/4th of the total board members where such non-influential Shareholders own less than 30% of the total capital of the bank.

Thus, with respect to banks, this directive introduced mandatory minority representation in board of directors though owning 30% or more of the total capital of a bank is a little bit stringent for minority Shareholders. However, the good part of this directive is that it ensured rights of minority to have their own representative in boards the number of which is not less than1/4th of the total number of boards irrespective of the amount of share capital held by minority Shareholders in banks. Hence, this directive is said to comply with principle III.A.2 of the OECD principles of corporate governance and anti-director-rights index.

3.3.4 Shareholders Right to Challenge Decisions of General Meetings of Shareholders, Boards and Exit right

Shareholders in a given share Company has a number of economic and non-economic rights subjects to defined conditions by the law, articles or memorandum of associations. By the same token, it should also be noticed that available non-economic rights of Shareholders are primarily meant to facilitate economic rights of Shareholders which is the very purpose for having shares in a given share Company. At times, Shareholders economic rights are affected by the decisions

of those person who manages and directs a given share Company. In such cases, exploration of the possible available remedies for oppressed minorities comes in to pictures. One available remedy in such scenario is to give right to challenge board decisions and resolutions of Shareholders general meetings.

As per anti-director rights index, the right to challenge resolution of both the Shareholders and the board (of directors and if available, of supervisors) is said to exist if the minority Shareholders owning 10% or less of the capital of the Company is entitled to exercise such rights provided that the resolutions or decisions is unfair, prejudicial or oppressive. While the right of Shareholders to challenge board decisions is not specifically recognized under the commercial code, the right to challenge resolutions of Shareholders meetings is recognized under the code.[124]

However, only those resolutions adopted contrary to the law, articles or memorandum of association that can be challenged up on application to the Court by the claimant. The problem is that the code doesn't answer who the claimant could be.[125] Thus, who can challenge resolutions of Shareholders meetings is controversial as recognized under the commercial code of Ethiopia. In my opinion, since the resolution of Shareholders meetings are binding up on all Shareholders, the right to challenge such resolutions and who can challenge such resolutions has to be seen exceptionally. Accordingly, those Shareholders whose economic interest is adversely affected by the resolutions of Shareholders meetings could be a claimant. However, such right should only available to those Shareholders who were not either present or represented or dissented during the passing of resolution that gave rise to challenge.

This is because giving the right to challenge resolutions of Shareholders for those who were present/ represented during the resolution of the meetings and voted in favor of the resolution that gave rise to challenge is not tenable. Nonetheless, the right should also be extended to those who were present/represented and voted in favor of the resolution during the meetings exceptionally. For example, if a Shareholder gave vote for resolution to be adopted, however, without having sufficient information about the agenda of the meeting, the right to challenge

[124] Commercial code, Supra note 89, art. 416.
[125] Ibid, art. 416(1) and (3).

resolution of such meetings must be given to Shareholder who can successfully prove the alleged facts.

Article 416(2) of the Draft commercial code tries to clarify the ambiguity of the issue under the commercial code by clearly saying:

> **በሕጉና በኩባንያዉ መመስረቻ ጽሁፍ የተመለከቱ ድንጋጌዎች በመቃረን የሚተላለፍ ውሳኔን ዉሳኔዉ ከተላለፈበት ወይም በንግድ መዝገብ ተመዝግቦ ከሆነ ከተመዘገበበት ቀን አንስቶ በ3 ወራት ጊዜ ወስጥ ማነኛዉም በዉሳኔዉ ጥቅሙ የተጎዳ ሰዉ ዉሳኔዉ ዉድቅ እንዲደረግለት ለፍርድ ቤት ለማመልከት ይችላል።**

Which is equivalent to mean (…..any person whose interest is affected by the resolution can challenge such resolution by applying to the Court in order for such resolution to be set aside (translation is mine).

This indicates that, either the Company or individual Shareholders can petition the Court in order to set aside the resolution that affected interests of the applicant. In fact, the wording of the draft commercial code on the issue is sound able than the one incorporated under the provision of the existing commercial code. As far as Shareholders right to challenge board decision is concerned, it is not clearly governed under the code. However, the phrase incorporated under article 389(2) of the code casts doubt as to the inclusion or otherwise of such rights. Right to challenge a decision of the Company is provided as rights inherent to Shareholders under that very provision. Nevertheless, what constitutes decision of a Company is not defined under the code.

For that matter, it can be argued that any decision of board of directors and resolutions of general meetings of Shareholders constitutes decision of the Company. Thus, the researcher argues that Shareholders right to challenge decision of the Company recognized as one inherent right of individual Shareholders under article 389(2) of the code should be understood to include Shareholders right to challenge board decisions.

Exit right is another minority Shareholder remedy recognized under the commercial code.[126] However, this right is only available under very exceptional circumstances i.e. it is only available for Shareholders who dissent in resolutions concerning any change in the object or nature of the

[126] Ibid, art. 463

Company or the transfer of head office to abroad.[127] Accordingly, with the exception of change in the object or nature of the Company and that of transfer of the head office to abroad, no exit right is recognized under the commercial code of Ethiopia. Exactly the same wording is also followed under article 463 of the draft commercial code. Nevertheless, this is problematic because especially denying exit right those Shareholders whose economic right is adversely affected by controlling Shareholders in a given share Company via unregulated RPT amounts to forcing oppressed minorities to stay under the oppressive acts of controlling Shareholders. This in turn, discourages minorities to invest in companies.

On top of gaps in laws, practical challenges to exercise even the rights recognized by the laws are not an easy task for minority Shareholders in companies. Such practical challenges among many other things includes, securing litigation costs to challenge resolutions of Shareholders meeting, affording Court fee, lawyers fee and difficulty in getting documentary evidences can be raised. For instance, in the litigation between Dera Dechasa et al Vs. Demissie Ture et al, the plaintiffs among many other things requested the Court to invalidate resolutions of Shareholders general meetings that passed a decision to give 4,653,404 (four million six hundred fifty three thousand) birr to board of directors as rewards by stating that the directors saved the Company from different costs of 38,778,370 (thirty eight million seven hundred seventy eight thousand and four hundred four birr).[128] However, the Company's auditor report dated 30 June, 2008 E.C indicates that, the Company sustained a net loss of 103,204 birr. This implies that the report presented to the meeting by stating the directors' saved the Company from the total coast of 38,778,370 birr, while in reality the Company registers a net loss is not reliable.

Nonetheless, the Court rejected their claim based on the fact that it was not supported by evidence. In this case, though the one who alleges the fact has duty to proof the existence of alleged fact, it is not an easy task for minority Shareholders to present the necessary documents in Court of law primarily because the directors are in control of such documents. This at least indicates, practical challenges relating to bringing Court action against fraudulent directors by minority Shareholders.

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[127] Id.

[128] See Resolution dated 5 November,2008 E.C, of the 12th annual general meetings of Shareholders of Hermata Minch Real State Share Company, see also Jimma Zone High Court decision (2009),FileNo.38332.

CHAPTER FOUR

4. Conclusion and Recommendations

4.1. Conclusions

This paper examined Ethiopian share Company laws on related party transactions in light of the OECD principles of corporate governance, protection of minority Shareholders right indexes and experiences of other countries. Based on analysis of the laws, the researcher concludes that the Ethiopian share Company laws except Bank corporate governance directive No.SBB/62/2015 fails to regulate RPT sufficiently. Consequently, these gaps in laws are basically causing many problems to companies, individual Shareholders and creditors of companies.

In situations where there is ineffective control of corporate agents, the proclivity for corporate agents to expropriate corporate assets to their individual benefits is high. This in effect affects corporate economic interests there by reducing their economic gains which in turn seriously affects Shareholders economic interest in companies via reducing or banning profits they acquire from such companies. Moreover, problems emanating from the existence of gaps in laws could be serious threat to the countries development plans in general and in attracting outside potential investors as well as integrities of capital markets in particular. As a result, if such gaps are not paid due attentions and rectified, it will significantly be a bottleneck challenge to the country in attracting potential investors.

The current Ethiopian share Company law regimes that primarily comprises of the 1960 Commercial Code of Ethiopia, different proclamations issued to regulate companies in financial institutions and different directives issued by the National Bank of Ethiopia don't effectively govern related party transactions. To begin with, the old aged 1960 commercial code of Ethiopia which is the basic Company laws especially for non-financial companies apparently fails to address issues of related party transactions in a desired way. First, article 356 of the code which was basically intended to regulate related party transactions with companies is not effectively serving its very purposes.

This is because among many other things it omits to regulate the dealing between Company and its influential Shareholders thereby providing a very narrow definition of RPTs. However, it is pretty important to identify and specifically design an effective controlling mechanism for those

suspected transactions in which related parties (be it natural or legal) to companies have high probability to misuse assets of the Company. In additions to this, identifications of related parties to the Company and giving special attention to suspected transactions that is proposed to be transacted between companies and its related parties are imperative. The starting point in effectively regulating related party transactions in any country is defining those transactions and parties under their laws. From this perspective, the code has apparent gaps from the very outset.

To be specific, when one comes to specific instruments of regulating related party transactions inculcated under the code, it can be observed that the incorporation of some of the controlling instruments to related party transactions is controversial and argumentative, for example, the requirements of disclosure of information to Shareholders. Moreover, even those incorporated under the code are not sufficient enough in addressing complicated nature of related party transactions. In this regard, no single provision of the code imposes on board of directors' duty to give information to Shareholders on transaction which they authorized to be carried out between the Company and its director.

Shareholders get information about related party transaction approved by board of directors primarily through auditor's special report. However, such information which can be accessed only via auditor's report do not enable Shareholders to effectively control corporate agents because of information asymmetries. Thus, as a result of the existence of information gaps between the corporate agents and principals (Company and its Shareholders collectively), Shareholders can't take timely and informed decisions against corporate agents. This in turn, opens golden opportunity for corporate controllers and their related parties to miss appropriate assets of the Company.

Moreover, in relation to the kinds of transactions that has to be disclosed to board of directors for authorization, the code requires any dealing between Company and its director to be disclosed to the board which forces board of directors to waste their times in authorizing even when the dealing is based on arms-length and when such dealings are of minor importance to the Company without requiring minimum disclosure duty. For instance, materiality test is required in other jurisdictions to impose requirements of disclosure of information on the board. The rules of board approval recognized under the code as one controlling instruments to related party transaction seems to be very limited in its scope of application in that it is only applicable when

the dealing is between Company and its directors which in effect over sighted to emphasis when the dealing is between Company and other organs than directors for instance when the dealing is between Company and its general manager, chief executive officer, controlling Shareholders etc. Concerning approved transactions by board of directors, there is no requirement of reviewing such transactions by independent financial experts before it is finally submitted to general meetings of Shareholders for approval. However, reviewing the transaction by independent financial experts is important as it reduces probability of suspected dealings to take place between the Company and its related parties.

Moreover, the effect of challenging approved related party transactions by general meetings of Shareholders upon discovery of fraud is controversial. In fact, this controversy emanates from the wordings of article 356(4) of the code that stipulates dealings approved by the meeting may be set aside up on discovery of fraud. Fraud could be one possible ground for vitiated consents to constitute a ground for invalidation of contracts under the general Ethiopian contract law and the effect of invalidation in principles entitle the parties to be reinstated. By the same token, there is a possibility for approved dealings between the Company and its director to be set aside provided that the essence of that very contract is affected by fraud. On the other hand, when one reads this sub-article in line with sub article 5 of the same provision, one could be placed in dilemma as to whether invalidating the contract that give birth to dealings between the Company and its director was intended by the then law makers.

This is because, as stipulated under the latter sub article, even if the transaction is not approved by the meeting, the validity of such transactions will not be affected however the concerned director will be held liable to pay damages. In this regard, it will be a little bit difficult to answer the question if the validity of dealings not approved by the meeting is not affected, for stronger reason why the validity of dealings approved by the meeting is challenged? Why not damages are not simply awarded to the Company instead of setting aside the transaction? Is the law tenable in giving venue for setting aside approved transactions, while at the same time maintaining validity of dealings not approved? In my opinion the law is not tenable.

On the other hand, as a result of ineffectiveness of the laws in controlling related party transactions, definitely companies in general and non controlling Shareholders in that Company in particular are the immediate victims. From this perspective, no meaning full remedy is neither

available to the victim Company nor to its minority Shareholders. The derivative suits mechanism which is widely recognized means of enforcing minority rights is said to be absent under the Ethiopian Company laws. This is because individual Shareholders are not entitled to initiate derivative suits against fraudulent directors. Only class action derivative suit is recognized under article 365 of the commercial code which in effect does not entitle minorities to enforce their rights against the director concerned by bringing Court action. Even the kind of class action derivative suits recognized under the code is said to be stringent in that it requires among many other things to have at least $1/5^{th}$ of the shares in the total capital of the Company.

On top of this, right to have minority representatives in board of directors that in effect enables minorities to participate in corporate decision makings through their representatives is said to be absent under the Ethiopian Company laws with the exception of minority Shareholders in banking sectors. This is because though article 352 of the code boldly speaks about minority rights under its caption, it remains effect less as it stands today for the fact that the contents of that very article doesn't address about minority rights. Thus, the provision requires clarity in order to give meaning full protection for minority rights. In additions to this, there is no clear provision of the Ethiopian Company laws that entitles Shareholders to challenge decisions of board of directors. However, the incorporation of such right is very important as it enables Shareholders to resist approval of suspected dealings that in effect harms their economic interests.

Moreover, though the code incorporated other non-economic rights of Shareholders principally exit rights, right to call meetings and right to challenge resolution of the meetings, due to one or another reason such rights are not serving their basic purposes. For example, right to call Shareholders meetings is not accessible for minority Shareholders easily for it requires them to have $1/10^{th}$ of shares from the total capital of a Company. On the other hand, challenging resolution of Shareholders meeting is said to be a rarely available remedy if not at all for it requires the one who intends to challenge the resolution to secure costs of litigation.

Finally, exit out right is also available on very limited grounds. As a result, these non-economic rights of Shareholders cannot play a decisive role for minority Shareholders not because such rights are not important but because the very stringent requirements tied to such rights.

On the other hand, House of People's representatives of Ethiopia enacted different proclamations to specifically regulate companies in the financial sectors mainly after the transition period. To be specific, Banking Business Proclamation No. 592/2008, a Proclamation to Provide for Insurance Businesses Proclamation No. 746/2012 and Micro Financing Business Proclamation No.626/2009 are the major governing laws in this respect. Based on the power given to the National Bank of Ethiopia to enact specific directives to regulate specific issues in financial institutions in general and companies in such institutions in particular, the Bank has also enacted enormous directives in this regard.

However, critical examination of proclamations and directives in financial sectors in light of internationally recognized principles of corporate governance, other guiding instruments and best practices of other countries reveals that though there are some sign of beginnings to address some issues relating to regulation of related party transactions, these laws are far from being adequacy in addressing related party transactions. However, though its application is limited to banks only, Bank Directives No.SBB/62/2015 well addressed issues of RPT.

By way of summary, the 1960 commercial code of Ethiopia as well as the specific proclamations enacted to govern financial institutions and directives of national bank of Ethiopia which cumulatively constitutes the current Ethiopian Company law regime do not effectively govern RPT. Moreover, based on the available data, the researcher further argues that, in additions to gaps in laws, there is problem of implementing the laws in practice. Thus, the researcher strongly argues that, related party transaction is not effectively regulated both in laws and practice. As a result of this ineffective regulation of such transaction, the economic interests of companies, Shareholders and its creditors are at stake. Therefore, the gaps in law and practice need immediate way outs.

4.2 Recommendations

The researcher would like to give the following recommendations on gaps in law and practice observed during the study.

4.2.1 Legislative Recommendation

In order to better address related party transaction problems that basically emanates from the existence of gaps in the current Ethiopian Share Company law regimes, the country needs to enact a new and comprehensive Company law. To this end, the House of Peoples Representatives of Ethiopia should take the role of revising the current Company laws on issues of RPT by taking into consideration the above stated best practice of OECD and other specific rules of minority rights protection indexes as well as experiences of other countries. Specially, the new Company law to be enacted must take in to consideration the following points on RPT at minimum:

- Clear Definitions of RP and RPT must be given. However, the definition of such concepts should be neither too broad nor too narrow, it must be sufficient enough to cover the kind of transactions and parties that presents potential threat to the Company and its Shareholders taking in to considerations the country's own realities.
- Duty to disclose information about the approved RPT to Shareholders must be imposed on board of directors in sufficient details in advance of the general meetings of Shareholders.
- The requirement of reviewing approved RPT by independent financial experts before it finally submitted to the general meetings of Shareholders for approval should be incorporated.
- The role of management board and supervisory boards should be differentiated. Correspondingly, approving RPT should be vested on supervisory boards.
- The right to challenge decisions of board of directors on RPT should be specifically given to individual Shareholders subject to defined conditions.
- Right of minority Shareholders to have their own representatives in board of directors must be specifically included.
- Stringent capital requirements provided under the law to bring derivative suit against fraudulent director by Shareholders should be lowered to 10% of the total capital of the Company.

4.3 Recommendations for Gaps in Practice

- In order to solve observed practical problems in companies, Ministry of Trade and Industry should arrange short and long term training for Shareholders, directors, managers, auditors and different committees in companies so that the existing awareness gap in companies will be reasonably minimized
- The Ministry should arrange mechanisms of following up and supervising activities of companies and indentify practical challenges in implementing the laws.
- As is the case in other jurisdictions, the government should establish an independent institution that supports minority Shareholders in companies.

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Annexes

Interview guide questions for Company Law scholars, Board of directors, managers, Shareholders and auditors

Introduction

I, Boru Ensermu, a Masters student in Jimma University, kindly request you to give genuine answer for the following interview questions. This interview guide is prepared for the purpose of gathering information for my Master's paper entitled **" *A Critical Examination of Ethiopian Share Company Laws on Related Party Transactions in Light of the OECD Principles of Corporate Governance***" that I am pursuing in Jimma University, college of Law and Governance, school of law. I am grateful for your kind cooperation and investing your precious time to respond to my interview questions. Affirming that the answer you give to these interview questions purely serves for academic purposes, in case you may not need your identity to be disclosed, the writer will keep your identity confidential.

General information about the respondent

- Age_____
- Sex._____
- Qualification_____
- work experiences _____
- Position _____

Annex1: **Interview guide questions for Company Law scholars**

1. The current share Company laws of Ethiopia don't define related party transactions as well as related parties. Have you observed any practical problems emanating from none defining the concepts?
2. What possible gaps in practice and law had you observe on disclosure of information to Shareholders about related party transactions in Ethiopian share Company laws?
3. Do you think related party transaction is sufficiently regulated under the Ethiopian share Company laws? What possible gap in law would you observe in relation to related party transactions under the Ethiopian share Company laws? If you are of the opinion that, the law has gaps in regulating related party transaction, what is the implication of such problems on Companies, its Shareholders, and creditors and to the country's development plan in general? Which one of such gaps is addressed under the draft commercial code and which of them are left unaddressed under the draft code?
4. Do you think the current share Company laws of Ethiopia provide adequate remedy for minority rights affected by related party transactions?

Annex 2: Interview guide questions for selected Company's directors, general managers, Shareholders and auditor

A. Preliminary questions

1. When was your Company established? _____
2. How many is the number of members of Shareholders in your Company?
3. How many is the number of board of directors in your Company?

B. Specific questions concerning subject matter of the study

1. Have you observed any problems relating to RPTs in your Company?
   - ☞ Yes
   - ☞ No
2. If your answer to question no.1 is yes, what kind of RPT problems occurred in your Company?
   - ➢ Problems relating to purchase of materials for the Company
   - ➢ Problems relating to sale of Company's property
   - ➢ Problems relating to giving credit transactions
   - ➢ Problems relating to employing workers
   - ➢ Problems relating to use of corporate Opportunities
   - ➢ Problems relating to rent of corporate properties
   - ➢ Involving in any other activity that give rise to conflict of interest situation with your Company

_____

_____

3. If you mentioned any RPT problems under question no.2 how frequent such problem is occurring in your Company?
   - ➢ Rarely
   - ➢ At least once in a year.
   - ➢ At least once in two years
   - ➢ At least once in three years
   - ➢ _____ .

4. Between which governance organs in your Company and your Company is RPT problems you indicated under question no. 3 occurred?
   - Between the Company and its director(s)
   - Between the Company and its general manager(chief executive officer)
   - Between the Company and its controlling Shareholders
   - Between the Company and its auditors
   - Between the Company and different committees in the Company
   - Between the Company and its lawyer
   - _____.
5. What do you think is the primary source of problems of related party transactions you observed in your Company?
   - Gap in law
   - Problem of implementation of the law

     _____
6. What is the manner of notifying existence of conflict of interest between the Company and its director in your Company?
   - Formally by writing
   - Informally through oral communication
7. If the one to engage in dealings with your Company is a member of board of directors, is he participate in the decision of the board for authorization or otherwise of such dealing?
   - Yes
   - No
8. If all members of board of directors in your Company has an interest in a proposed transaction with the Company, who notifies and authorizes such transactions?

_____

9. What is the fate of any dealing between an interested party in your Company and the Company that took place without securing prior board authorization?

   _____

10. How could individual Shareholders in your Company get information about the approved transactions in your Company?

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11. Do minority Shareholders in your Company have representatives in your Company's board of directors?
    - Yes
    - No
12. Had your Company brought any Court action against its governing organs on issues of related party transactions?
    - Yes
    - No
13. If your answer to question no.3 is no, what is the reason behind? _____.
14. Can individual Shareholders institute Court action against fraudulent governing organs in your Company derivatively?
    - Yes
    - No
15. In exercising the right to bring Court action on behalf of the Company, what practical problems had you observe?

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16. Can Shareholders in your Company challenge decision of board of director's?
    - Yes
    - N0

Annex 3: List of key Informant Interviewees

Tilahun Teshome (prof.), Addis Abeba University, Interview held on May 23, 2017.

Siyum Yohanis (ass, prof), Addis Abeba University, Interview held on May 23, 2017.

Birhanu Beyene (ass. prof), Former legal director in Jimma University and currently manager of legal research department of Abyssinia Bank, on May 24, 2017.

Ato Hussein Ahimed, a chair man of board of director of Barite Transport S.C. on may 20, 2017.

Ato Mangistu Alemu,General Manager of Hermata Minch Real state S.C. on 19 May 2017.

Ato Yidnekachew Tesema, a Member of Board of Director of Hermata Minch Real State S.C. on 19 May 2017.