Financial market development, policy and regulation: the international experience and Ethiopia’s need for further reform
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The International Experience and Ethiopia’s Need for Further Reform

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Solomon Abay Yimer
28 February 2011
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Acronyms and Abbreviations

AACC = Addis Ababa Chamber of Commerce.
AIB = Awash International Bank S. C.
BA = Bank of Abyssinia.
BCBS = Basel Committee on Banking Supervision.
BIS = Bank for International Settlement.
CBE = Commercial Bank of Ethiopia.
CPSS = BIS Committee on Payment Settlement Systems
CSA = Central Statistical Authority (of Ethiopia) renamed later as Central Statistical Agency (of Ethiopia).
EC = European Community.
ECSW = Ethiopian Council of Social Welfare.
EIC1 = Ethiopian Insurance Corporation.
EIC2 = Ethiopian Investment Commission (renamed later as Ethiopian Investment Agency).
EPA = Ethiopian Privatisation Agency.
EPRDF = Ethiopian Peoples Revolutionary Democratic Front.
Eth. C. = Ethiopian Calendar.
Eth. C. Y. = Ethiopian Calendar Year.
Eth. F. Y. = Ethiopian Fiscal Year.
FATF = Financial Action Task Force on Money Laundering (G-7).
FDRE = Federal Democratic Republic Of Ethiopia.
FDRE(MOI) = Federal Democratic Republic of Ethiopia, Ministry of Information.
FSF = Financial Stability Forum (G-7).
FXD = Foreign Exchange Directive.
G. C. = Gregorian calendar.
GATS = General Agreement on Trade in Services (WTO).
GCGF = Global Corporate Governance Forum.
IAIS = International Association of Insurance Supervisors.
IASC = International Accounting Standards Committee (renamed as International Accounting Standards Board).
IBFEM = Inter-Bank Foreign Exchange Market.
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>IBM</td>
<td>Inter-Bank Money Market.</td>
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<tr>
<td>ICN</td>
<td>International Competition Network.</td>
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<tr>
<td>ICGN</td>
<td>International Corporate Governance Network.</td>
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<td>IFAC</td>
<td>International Federation of Accountants.</td>
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<td>IGE</td>
<td>Imperial Government of Ethiopia.</td>
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<tr>
<td>IGE-MF</td>
<td>Imperial Government of Ethiopia, Ministry of Finance.</td>
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<tr>
<td>IGE-MI</td>
<td>Imperial Government of Ethiopia, Ministry of Information.</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund.</td>
</tr>
<tr>
<td>IOPS</td>
<td>International Organisation of Pension Supervisors.</td>
</tr>
<tr>
<td>IOSCO</td>
<td>International Organization of Securities Commissions.</td>
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<tr>
<td>ISSA</td>
<td>International Social Security Association.</td>
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<tr>
<td>JLSRI</td>
<td>Justice and Legal System Research Institute (of Ethiopia).</td>
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<tr>
<td>MOR</td>
<td>Ministry of Revenues of Ethiopia.</td>
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<tr>
<td>NBE</td>
<td>National Bank of Ethiopia.</td>
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<tr>
<td>NBE-ERD</td>
<td>Economic Research Department of the National Bank of Ethiopia.</td>
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<tr>
<td>OECD</td>
<td>Organization of Economic Cooperation and Development.</td>
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<tr>
<td>OECD SGCG</td>
<td>OECD Steering Group on Corporate Governance.</td>
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<tr>
<td>OTC</td>
<td>Over-the-Counter market.</td>
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<tr>
<td>PDTCE</td>
<td>Peaceful and Democratic Transitional Conference of Ethiopia.</td>
</tr>
<tr>
<td>PMGE</td>
<td>Provisional Military Government of Ethiopia.</td>
</tr>
<tr>
<td>PPESA (PPFD)</td>
<td>Privatisation and Public Enterprises Supervisory Agency of Ethiopia, Post-Privatisation and Follow-Up Department.</td>
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<tr>
<td>REL</td>
<td>Registration of External Loan.</td>
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<tr>
<td>SBB</td>
<td>Supervision of Banking Business.</td>
</tr>
<tr>
<td>SIB</td>
<td>Supervision of Insurance Business.</td>
</tr>
<tr>
<td>SNNP</td>
<td>Southern Nations, Nationalities and Peoples.</td>
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<tr>
<td>SRO</td>
<td>Self Regulatory Organization.</td>
</tr>
<tr>
<td>SSA (PERD)</td>
<td>Social Security Agency (of Ethiopia), Public and External Relations Department.</td>
</tr>
<tr>
<td>SSA</td>
<td>Social Security Agency (of Ethiopia).</td>
</tr>
<tr>
<td>TGE</td>
<td>Transitional Government of Ethiopia.</td>
</tr>
<tr>
<td>UNIDO</td>
<td>United Nations Industrial Development Organization.</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development.</td>
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<tr>
<td>WSBI</td>
<td>World Savings Banks Institute.</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization.</td>
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</table>
1. Region or Regional state refers to the constituent states of the Ethiopian federation.

2. Proclamation is an act of parliament of the Ethiopian State. It is published in a law publisher gazette called Negarit Gazeta.

3. Regulation is a law issued by the Council of Ministers of the government of Ethiopia under powers given by proclamation. It is published in the law publisher gazette called Negarit Gazeta.

4. Directive is a set of rules issued by an administrative agency or market regulator in Ethiopia under powers given by proclamation or regulation. It is not published in the law publisher gazette called Negarit Gazeta. It is binding by reason of the delegation of powers under proclamation or regulation. The rules issued by the National Bank of Ethiopia under the monetary, banking, insurance and micro-finance proclamations are directives.

5. The terms ‘transition and emerging market country (economy)’ are coined by the World Bank Group to refer to the countries of Eastern Europe, Asia, Latin America and Africa that have been developing their markets since the late 1980s. The transition countries (economies) are the ones that have fully or partly reformed their economic policies from the socialist central planning to the free market approach. The emerging market countries (economies) are the ones that were not socialist in the past but have made reforms to build the institutions of free market. The terms are used in this study in these senses.

6. The Ethiopian Fiscal Year (which the financial institutions use to close their accounts and make annual reports) starts on July 01 of the calendar year (July 08 in the Gregorian calendar) and ends on June 30 of the following year (July 07 in the Gregorian calendar). The data in the tables are, accordingly, based on the June 30 (July 07 in the Gregorian calendar) positions of the indicated years.
Ethiopië had in de jaren ’50 en ’60 een marktgeoriënteerd economisch beleid. De financiële markt bestond in die tijd uit overheidsbanken, private banken en verzekeraars, een beginnende markt voor effecten van ondernemingen en van de overheid, en een overheidspensioenstelsel. Het beleid en de regulering ten aanzien van de financiële markt was in die tijd gericht op dezelfde doelen als in vrijemarkteconomieën. Alle marktpartijen uit die tijd, met inbegrip van die op de financiële markt, werden echter genationaliseerd na de socialiste revolutie van 1974. Toetreding tot de markt werd toen verboden. De beginnende effectenmarkt werd ook gesloten en de bank- en de verzekeringsector werden gedwongen nationale plannen uit te voeren.

De Ethiopische regering van na 1991 heeft opnieuw een marktgeoriënteerd economisch beleid ingevoerd en heeft het ontstaan en de groei van private banken, verzekeraars en microkredietinstellingen mogelijk gemaakt. Er is echter nog geen volwassen effectenmarkt gecreëerd. Het Ethiopische pensioensysteem is ondernemings- en overheidsgerelateerd gebleven.

Het beleid ten aanzien van de Ethiopische financiële markt en de ontwikkeling en de regulering van deze markt zijn een voorwerp van voortdurende aandacht geweest sinds de vrijmarktbenedering werd aanvaard en private investeringen werden toegestaan. Twee verbonden vragen zijn aan de orde: de vraag naar de verdere diversificatie van de financiële markt (een ontwikkelingsvraag) en de vraag naar een passend regulatoir regime (een reguleringsvraag). Deze studie is toegespitst op aspecten van deze vragen. Zij wil bijdragen aan de kennis van de ontwikkeling van markten en regulering in Ethiopië en deze ontwikkeling als zodanig bevorderen. In dat verband komen de volgende onderzoeks vragen aan de orde:

1. Hoe zien de structuur, de werking, het beleid en de regulering van de financiële markten in Ethiopië er thans uit en welke hervormingen waren er in het verleden?
2. a. Is er behoefte aan verdere hervorming van de structuur, het beleid en de regulering van de financiële markten in het land, en, zo ja, hoe zou die hervorming er dan moeten uitzien?
2. b. Welke lessen kunnen in dit verband worden getrokken uit de internationale ervaring en aanbevelingen?

Het onderzoek wordt uitgevoerd door lessen te trekken uit zowel de internationale ervaringen en aanbevelingen als uit de nationale situatie in Ethiopië. De ontwikkelingsvraag wordt besproken in het licht van de noodzaak om de Ethiopische financiële markt te hervormen van een markt die: wordt gedomineerd door korte termijn bankfinanciering; die alleen de informele uitgifte van en handel in effecten kent; waar financiële instrumenten niet adequaat worden verspreid, gediversifieerd en
gemoderniseerd; en waar verwaarloosbare verzekeringstekening en pensioendekking bestaat, in een markt waar de uitgifte van en handel in effecten formeel geïnstitutionaliseerd en gereguleerd is; het verstrekken van lange termijn bankkrediet wordt gefaciliteerd; de dekking, de typen en de moderniteit van bankdiensten, verzekeringdiensten en microkredietdiensten worden verbeterd; financiering met vreemd en met eigen vermogen wedijveren; en waar private pensioenen handelen als institutionele spaarders en investeerders. De reguleringsvraag wordt besproken in het licht van de noodzaak om het beleid en het reguleringsstelsel van de bestaande markt voor bankdiensten, verzekeringen en microkrediet te verbeteren en een nieuw beleidsstelsel en regulatorisysteem te ontwerpen voor de toekomstige markten en instituties op het gebied van effecten en pensioenen in Ethiopië. Hoofdstuk 2 is daarom toegepast op de verdere ontwikkeling van de bestaande markten en instituties voor bankdiensten, verzekeringen en microkredieten in Ethiopië en op het beleid voor en de reguleringsvraag van deze markten. De hoofdstukken 3 en 4 zijn toegepast op de ontwikkeling van de toekomstige markten voor effecten en private pensioenen en op het beleid voor en de reguleringsvraag van deze markten. Hoofdstuk 5 is toegepast op de regulatorische handhavingsmechanismen voor zowel de huidige als de toekomstige markten.

De landen met ontwikkelde markten hebben eind jaren '80 in een “big bang” hun financiële markten gedereguleerd. Zij hebben erkenning gegeven aan: de cross-sectorale integratie van hun bank-, verzekering- en andere instellingen; de incorporatie en ontvlechting van de eigendom van beurzen in plaats van de beurs-als-publicatie marktbenadering uit het verleden; de privatisering (en regulering als gekapitaliseerde financiële ondernemingen in plaats van de omslagbenadering uit het verleden) van hun pensioenen; en aan de elektronische handel en toegenomen mededinging op en internationalisering van de financiële markten en instellingen in die periode. Zij hebben in deze periode ook de bevoegdheden en functies van de toezichthouders op hun financiële markten vergroot en geïntegreerd. De landen met transitiemarkten of opkomende markten hebben deze trend in die periode ook gevolgd nadat zij voor hun nieuwe, op de vrije markt gebaseerde, economische beleid hadden gekozen.

De regulering van beide groepen landen omvatte prudentiële regels en andere regels over markttotegang, lopend toezicht en het verlaten van de markt, die gericht waren op het bevorderen van de ontwikkeling van markten en mededinging; het verzekeren van financiële gezondheid, stabilité en efficiency; de bescherming van beleggers, consumenten en het publiek; en andere doelstellingen van sociaal beleid. De prioritering en de specifieke inhoud van deze doelstellingen en de reguleringsinstrumenten verschillen echter naar gelang de verschillende typen financiële markten en landen en hing af van de aard van de markten en het ontwikkelingsniveau en de behoeften van de landen.
De internationale samenwerking nam eveneens toe en de meeste internationale en regionale organisaties op het terrein van de regulering van financiële markten en mededelinging werden in deze periode het leven geroepen om regulaire convergentie te bevorderen.

De financiële en economische crisis van 2008 heeft de noodzaak vergroot om het doel van regulering toe te spitsen op het voorkomen en beheersen van systeemfalen en het beschermen van consumenten en beleggers; om te komen tot versterking van de verschillende reguleringsinstrumenten om deze doelen te bereiken; om de regulering uit te breiden tot voorheen ongereguleerde financiële markten; en om de internationale samenwerking in het ontwerpen en handhaven van regulering te bevorderen.


De toezichtswetten op het monetaire, bancaire en verzekeringsterrein van het land en de regulatoire richtlijnen van de NBE specificeren en prioriteren hun doelstellingen evenmin. De doeleinden van regulering worden in de praktijk afgeleid uit de bevoegdheden en de doelstellingen van de NBE als centrale bank, het monetaire beleidsraamwerk van de NBE, de algemene economische politiek van het land, en de beginselen begrepen in de mededingings- en andere regels van het land. In hoofdstuk 2 is deze beperking aan de orde gekomen; aldaar is betoogd dat het land de specifieke doelstellingen van de bepalingen van zijn toezichtsregelgeving duidelijk moet aanwijzen en moet specificeren, en dat de NBE haar regulatoire maatregelen en richtlijnen moet verbinden aan specifieke doelstellingen, opdat het land in overeenstemming handelt met de internationale ervaringen en aanbevelingen, voorkomen wordt dat regels over het hoofd worden gezien of worden misbruikt bij de handhaving, en bereikt wordt dat financiële ondernemingen, consumenten en belanghebbenden de redenen en doelstellingen van de financiële toezichtsregelgeving duidelijk kunnen kennen, beseffen dat deze belangrijk is en legaal is, en bijdragen aan de handhaving van de regelgeving. Betoogd is dat de definitie de doelstellingen moet omvatten van het verspreiden en diversifiëren van financiële diensten; het bevorderen van mededinging in en van efficiëntie van het financiële stelsel; het handhaven van de gezondheid en stabiliteit van financiële markten; het voorkomen van systeemfalen;
het beschermen van consumenten; het verbeteren van openbaarheid en van prudente besluitvorming; het bereiken van de doelstellingen van monetair beleid en het bereiken van de doelstellingen van sociale en economische politiek die bijdragen aan de ontwikkeling van het land en de overgang naar een vrije markt, onder het voorbehoud dat de laatstgenoemde doelstellingen gehandhaafd zullen worden via de instrumenten van financiële marktregulering door ze buiten het bereik van monetaire en financiële politiek te plaatsen, en alleen voorzover zij gecoördineerd kunnen worden met de andere doelstellingen van financiële regulering.

In hoofdstuk 2 is ook gebleken dat de regulatoire instrumenten van de bancaire markt, de verzekeringenmarkt en de markt voor microkrediet van het land op verschillende onderdelen overeenstemmen met de internationale ervaring en dat zij zich door de tijd heen in het land ontwikkeld hebben. Met hoofdstuk 5 heeft het hoofdstuk aangetoond dat een aantal instrumenten verbeterd dient te worden omdat zij onvolledig zijn, te restrictief of niet geschikt voor de nationale situatie en de behoeften van Ethiopië, en dat zij niet aansluiten bij de jongste aanbevelingen van internationale organisaties (waaronder het Bazels Comité voor Banktoezichthouders (BCBS) en de International Association of Insurance Supervisors (IAIS) Bazels Comité en de IAIS) zowel wat betreft inhoud als handhaving.

Hoofdstuk 3 heeft betoogd dat het in het leven roepen van een effectenmarkt in Ethiopië gerechtvaardigd is in het licht van de volgende functies in het land en de internationale trend:

- het verschaffen van langetermijnfinanciering die banken niet verschaffen;
- het voldoen aan de groeiende nationale behoefte om middelen te kunnen investeren;
- het verschaffen van een marktplaats en het daarbij vergroten van overdraagbaarheid, liquiditeit en waarde van bestaande effecten;
- het verhelpen van de excessieve reserve- en liquiditeitspositie van banken;
- het bewerkstelligen dat de NBE monetaire en financiële beleidsdoelstellingen kan handhaven door indirecte en openmarktinstrumenten;
- het aanmoedigen van het ontstaan van institutionele spaarders en beleggers en het diversifiëren van de financiële markt en het vergroten van mededinging;
- het motiveren van bedrijven om naar de beurs te gaan en hun eigenaarsbasis te verbreiden;
- het bevorderen van de informatiestroom en van ondernemingsbestuur en accounting en control;
- het helpen van individuen, huishoudens, ondernemingen en financiële ondernemingen om hun inkomen en beleggingsportefeuilles te diversifiëren; en
- het vergemakkelijken van toekomstige privatisering.

Het hoofdstuk heeft laten zien dat het creëren van een effectenbeurs in het land vermoedelijk op diverse beperkingen en uitdagingen zal stuiten die echter niet
rechtvaardigen dat van het instellen van de beurs wordt afgezien, omdat dit ook in de internationale ervaring het geval was. Het heeft ook betoogd dat het land geen vrees heeft te hebben voor de veronderstelde problemen van regulatoire beperking, druk om snel te liberaliseren, en economische crises als gevolg van de snelle in- en uitstroom van kapitaal, aangezien de regulatoire capaciteit zal meegroeien met de ontwikkeling van de markt en de andere problemen in de eerste plaats vermoedelijk niet zullen rijzen en in de tweede plaats door regulering beheerst kunnen worden. Het heeft ook betoogd dat het land het ontstaan van een markt voor bedrijfsobligaties geen voorwaarde behoeft te maken voor het in het leven roepen van een volwaardige effectenbeurs omdat er op dit moment in het land geen bedrijfsobligaties zijn uitgegeven en circuleren terwijl er veel aandelen zijn die op een volwaardige effectenbeurs verhandeld kunnen worden. Het heeft geconcludeerd dat het land de markt en de regulering moet ontwerpen op basis van een principiële keuze voor de beurs-als-onderneming-benadering, maar dat het de beurs-als-een-publiekemarktplaats-benadering en marktfuncties als grond voor regulering moet behouden om alleen het in het leven roepen van één nationale beurs in de hoofdstad toe te staan en een beperkt aantal concurrerende regionale beurzen te laten ontstaan als de regulatoire capaciteit en de effecten- en investeringsbedrijvigheid groeit, en dat het de potentiële schade moet reguleren die kan ontstaan door het winstmotief in een beurs-als-ondernemingsbenadering. Het heeft ook geconcludeerd dat de effectenbeurs georganiseerd moet worden als een naamloze vennootschap met regulering die haar bestaan verzekerd onafhankelijk van andere delen van de financiële markt; dat het ondernemingsrecht van Ethiopië vollediger gemaakt moet worden dan het nu is en dat het land effectenwetgeving moet invoeren die onder meer het volgende bewerkstelligt:

1. Zorgen dat het bevorderen van mededinging, de ontwikkeling van de markt, de bescherming van consumenten en beleggers, het verminderen van systeemrisico en de vergroting van marktefficiëntie, - integriteit en - transparantie de belangrijkste doelen zijn van regulering;

2. Een mengvorm bereiken tussen regulering op basis van kwaliteit en op basis van transparantie;

3. Het reguleren van de modaliteiten van de publieke uitgifte van en handel in effecten zonder uit te sluiten dat effecten anders dan door publieke uitgifte geïntroduceerd worden; en

4. Het verlangen dat de effectenmarkt en haar tussenpersonen voldoen aan vergunningsvoorwaarden (waaronder rechtspersoonlijkheid, initieel kapitaal, professionele deskundigheid en integriteit, spreiding van eigendom en kwaliteit van governance) en lopende toezichtseisen van financiële en niet-financiële aard (waaronder solvabiliteit, reservebeleid, boekhouding, controle, rapportage, transparantie en bijdragen aan het garantiefonds van de bedrijfstak).
Het hoofdstuk heeft ook geconcludeerd dat de automatisering van de effectenmarkt een kwestie is van toegankelijkheid van de technologie, waaraan het land moet werken, en dat het land moet zorgen voor een centrale effectenbewaarinstelling en clearing- en settlement-diensten als het begin met het verbeteren van het huidige Cheque Clearing Kantoor bij de NBE. Het heeft ook geconcludeerd dat het land in het begin de overheidsregulering van de effectenmarkt tot uitgangspunt moet nemen en de mogelijkheid van zelfregulering onder ogen moet zien als de voorwaarden hiervoor rijpen, daar zelfregulering een zaak is van voorzichtigheid, capaciteit en de ethiek van de toekomstige marktdeelnemers.

Hoofdstuk vier heeft betoogd dat Ethiopië private pensioenen moet laten ontstaan en daarvoor een regulatoir regime moet ontwerpen dat zowel pensioendekking vergroot als twee functies vervult die belangrijk zijn voor de ontwikkeling van de financiële markt: i) het afdwingen van sparen en ii) het inzetten van sparen om te investeren. Het heeft betoogd dat de hervorming van het pensioenstelsel onderdeel dient te zijn van een strategie van armoedebestrijding en van het landelijke beleid gericht op het bevorderen van sparen en beleggen en van de ontwikkeling van de financiële markten, dat de werkgevers en werknemers in de formeel-private-sector gedwongen moeten worden om deel te nemen aan het private pensioenstelsel, zoals dat gedaan is voor overheids Pensioenen, en dat pensioenwetgeving moet worden ingevoerd voor de private sector. Het heeft geconcludeerd dat de private pensioenen georganiseerd dienen te worden als naamloze vennootschappen met een bestaan onafhankelijk van de bestaande instellingen voor overheids pensioenen en financiële instellingen en dat een stelsel van verplichte bijdrage dient te worden aanvaard met mechanismen waardoor individuen worden beschermd tegen de risicoverplaatsing die daarvan het gevolg is (zoals minimumloon, fondsgaranties en vergelijkbare regulatoire maatregelen). Het heeft ook geconcludeerd dat de private pensioenen behandeld en gereguleerd moeten worden als concurrerende instellingen omdat het stelsel van beschermde monopolies in de pensioensector internationaal verouderd is vanwege zijn verstoringen en zwakheden, en dat de pensioenregulering voor onder meer het volgende dient te zorgen:

1. De onmiddellijke doelstellingen van regulering dienen te zijn het uitbreiden van dekking, het verminderen van pensioneringsarmoede, het bevorderen van sparen en het bijdragen van de pensioenen aan de ontwikkeling van de financiële markten (inclusief de toekomstige effectenmarkt);

2. De langetermijndoelstellingen van regulering dienen te zijn het verhogen van de toereikendheid, de duurzaamheid, de concurrentiekracht en de zekerheid van de pensioenen; het verzekeren van de bescherming van consumenten en het wegnemen van de informatie-asymmetrie en van de problemen van moreel risico die met pensioenregels verbonden kunnen zijn; en
3. Zorgen dat de inhoud van de regulering gerelateerd is aan de activa en passiva en het bestuur van de pensioenen met als doel om de bekostiging, de portefeuillesamenstelling, de aanspraken op een surplus, de verzekering, de definitieve vaststelling en de overdraagbaarheid van de pensioenen te reguleren door vergunningverlening, lopend toezicht en regels voor toezicht achteraf die onder meer betrekking moeten hebben op i) kwalificatie, rechtsvorm, initieel en voortdurend kapitaal, reserves, minimumgarantie, verzekering, vermogensscheiding, investeringen, de bewaarder, actuariële waardebepaling, externe accountantcontrolo, risicobestrijding, rapportage, transparantie, en andere overheidsseisen; en ii) de handhaving van deze eisen door proactieve en reactieve maatregelen van de toezichthouder.

Het heeft ook aangetoond dat de overheid het pensioenannuïteitenbedrijf van de verzekerders moet bevorderen en verdere maatregelen moet nemen om de informele spaarinstellingen van de gemeenschap en de spaar- en kredietcoöperaties in de arbeidsmarkt te veranderen in formele onderlinge maatschappijen, dat zij een wettelijk minimumloon moet vaststellen en dat zij het agentchap voor overheidscontributieniet aan de bank van de overheid moet worden overgedragen en moet onderwerpen aan de toekomstige pensioenregulering met het oogmerk om pensioendekking, privaat sparen en mededinging te bevorderen, en daardoor de ontwikkeling van het pensioensysteem.

Hoofdstuk 5 heeft betoogd dat het land diverse aspecten van zijn regulatoire en mededingingsgerelateerde handhavingssystemen moet verbeteren (waarbij onder meer aan de orde zijn de bevoegdheden, functies, coördinatie, funding, kwaliteiten van de medewerkers, financiële en operationele onafhankelijkheid, en de verantwoordelijkheid van de toezichthouder op de financiële markt en de organisaties verantwoordelijk voor mededingingstoezicht, en de regulatoire sancties en het regime van rechtsbescherming). Het heeft betoogd dat de toekomstige toezichthouders op de effectenmarkt en de pensioensector moeten worden bekleed met volledige bevoegdheden en functies (dat wil zeggen bevoegdheden en functies op het terrein van regelgeving, onderzoek, rechtspraak en overige bevoegdheden) en dat er een duidelijke vaststelling moet zijn van hun financiële en operationele onafhankelijkheid (van de regering) en verantwoordelijkheid (jegens het parlement en het publiek). Het heeft ook betoogd dat de argumenten om de toezichthouders op de financiële markten te reguleren buiten de centrale bank (de NBE) bezien moeten worden wanneer de toekomstige toezichthouders op het terrein van de effectenmarkt en het pensioensysteem moeten worden ingesteld, opdat de NBE niet verstikt zal worden in functies die niets te maken hebben met haar kernzaak als centrale bank. Het heeft ook betoogd dat het land zijn regulering en zijn handhavingssysteem, ook op het terrein van de mededinging, dient te verbeteren door de huidige en toekomstige toezichthouders op het terrein van financiële markten en van mededinging te laten samenwerken met internationale organisaties op deze terreinen (zoals het Bazels Comité voor Banktoezichthouders (BCBS), de International Association of Insurance Supervisors (IAIS),

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De volgende algemene conclusies worden uit de hoofdstukken getrokken. Ethiopië wordt aangeraden er acht op te slaan bij het hervormen van het toezicht op de financiële markten:

1. De ontwikkeling en de regulering van het financiële stelsel is een kwestie van beleidsbepaling en -coördinatie (en veronderstelt dus het bestaan van een duidelijke visie op de doelen, een heldere definitie en prioritering van de doelstellingen, een duidelijke link tussen de doelstellingen en de instrumenten van regulering, holistische actie en een sterke vastberadenheid in het uitvoeren van hervormingen);

2. De aanwezigheid van gediversifieerde financiële markten, instellingen, instrumenten en diensten (die de interactie toestaan van financiering door zowel vreemd als eigen vermogen en de ontwikkeling bevorderen van institutionele spaarders zoals pensioenen) is belangrijk voor een land, hoe klein zijn economie ook is;

3. Een land waarvan de instroom van buit enlands kapitaal op een heel laag niveau staat, moet de diversificatie van zijn financiële markten, instellingen, instrumenten en diensten en het creëren van een effectenbeurs en van private pensioenen primair zien als een middel om op nationaal niveau het sparen te bevorderen en zo nationale middelen te mobiliseren voor langetermijnfinanciering en gerelateerde functies en secundair als een middel om buitenlandse investeringen te vergemakkelijken;

4. Een land behoeft niet te verwachten dat zijn regulatoire capaciteit ten aanzien van een bepaalde markt volwaardig is voordat die markt zelf operationeel is, aangezien regulatoire capaciteit en marktcapaciteit zaken zijn die elkaar over en weer beïnvloeden en die door de tijd samen groeien (en aangezien regionale en internationale samenwerking belangrijk is om regulatoire capaciteit en handhaving op te bouwen); en

5. De ontwikkeling, diversificatie en regulering van de financiële markten, instellingen en diensten moet ook verbeterd worden door het belastingregime niet-discriminatoir te maken en te laten bijdragen aan ontwikkeling.
Chapter 1
Introduction

1.1 Background

Ethiopia had market led economic policy in the 1950s and 60s although the direct role of the government in the economy was not minimal. The private sector and business organizations of the time were considered as crucial elements for economic growth. The government was acting as development agent and market regulator. It enacted a commercial code and other legislation to facilitate the operations of the private sector. Business organizations, including public companies, were flourishing. The policy and regulation of the financial market in the country was also guided by objectives similar to those in the free market economies. The financial market of the time consisted of government and private banks and insurers, an infant market for company and government securities, and a governmental pension system. It was dominated by bank finance. The formal securities market was only born under the auspice of the State Bank of Ethiopia, and latter by the National Bank of Ethiopia (NBE), to facilitate the formation, equity financing and governance of public companies and trading in securities.

The Ethiopian government, however, shifted from being market regulator into being owner and planner of the economy by a socialist revolution in 1974. The policy change was followed by nationalization of private sector entities and prohibition of formation of private business organizations. All the market institutions of the time including those in the financial market were nationalized and new entry into the market was banned. The infant securities market was also closed and the banking and insurance markets were forced to serve national plans.

The post 1991 government of the country has re-introduced market led economic policy and implemented reform measures that have encouraged the creation of private companies in both the financial and the non-financial sectors of the country. It has enabled the birth and growth of private banking, insurance and microfinance institutions. It has also allowed the development of inter-bank money and foreign exchange markets and created an agricultural commodity market which is operated outside the financial sector. It has also reformed the pension system through time. A fully fledged securities market is not, however, created yet. The pension system of the country has also remained to be occupational and governmental.

1.2 The Research Problem and Questions

The ‘development, policy and regulation’ of the Ethiopian financial market has been ongoing concern after the free market approach was adopted and private investment allowed in 1991. Both the services of the banks, insurers and microfinance institutions and the policy and regulatory regimes for the financial market are discussed for being underdeveloped although the country is in its second decade since introduction of the new policy. There has also been discussion in the business community, the academia and some of the government
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institutions about creation of a securities market and institutional savers. The government has not, however, enabled these and its reforms have remained to be partial. The absence of formal securities market and institutional savers is also discussed for having led to problems, including the issuance and trading of securities through informal arrangements and weaknesses in the ownership base, financing and governance of companies. The rules in the commercial code, and elsewhere, of the country on formation, financing and governance of companies have also been discussed for being incomplete from time to time.

Hence, two interconnected questions are at stake in the country, namely, a question of further diversification of the financial market (a development question) and a question of designing appropriate regulatory regime for it (a regulation question). This study focuses on the issues surrounding these in order to contribute to the market and regulatory development in the country. It, accordingly, focuses on the following research questions:

1. What do the current structure, operation, policy and regulation of the financial market in the country and the reforms in the past look like?

2. a. Is there need for further reform of the structure, policy and regulation of the financial market in the country and what should the reform be, if any?
   b. What are the lessons that can be drawn from the international experience and recommendations in this respect?

1.3 The Research Objective and Significance

The research is not triggered by the 2008 financial and economic crisis. None of the financial institutions in Ethiopia has failed because of the crisis. It is justified only by the need to know about the financial market, policy and regulation of the country and the ways for further development. It, accordingly, aims at achieving two equally important objectives. First, it aims at contributing to knowledge about the financial market, policy and regulation of the country. Second, it, in light of the research background, problems and questions indicated above, aims at indicating the need, areas and nature of further action by the country in order to further develop its financial market, policy and regulation. The research is, accordingly, useful to both the pursuit of knowledge and the identification of the reform measures for Ethiopia.

1.4 The State of Literature and Research Methodology

Unlike the wealth of literature in respect of the financial market regulatory systems outside Ethiopia, not much is written in connection with the system in Ethiopia. Only some articles are published in journals, proceedings, magazines and newsletters that focus on aspects of the existing financial market of the country and tip on some reforms without treating the policy, regulation and development of the market in a holistic way. This study takes advantage of the gap and is conducted through the following:
- Review of the studies available in Ethiopia;
- Analysis of the existing policies and laws of the financial market in the country;
- Use of data from official reports and unpublished records of the financial institutions, the regulators and related institutions in the country, including the banks, insurers and microfinance institutions, the National Bank of Ethiopia (NBE), the Ministry of Trade and Industry, the Trade Practice Commission, the Ethiopian Investment Agency, the Privatisation and Public Enterprises Supervisory Agency, the Social Security Agency, the Ministry of Finance and Economic Development, the Ministry of Revenues, the Ministry of Information, the Central Statistics Agency, the Addis Ababa Chamber of Commerce, the Justice and Legal System Research Institute, and the Ethiopian Press Agency;
- Field study of the financial market practices in the country (through visits and discussions with appropriate personnel);
- Use of own work experience as former employee in the financial market of the country;
- Literature study and consultation of the laws and regulatory practices of countries outside Ethiopia;
- Consultation of the principles, standards and works of the international organizations, including the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), the International Organization of Securities Commissions (IOSCO), the International Organisation of Pension Supervisors (IOPS), the International Social Security Association (ISSA), the Bank for International Settlement (BIS), the Organization of Economic Co-operation and Development (OECD), the International Corporate Governance Network (ICGN), the Global Corporate Governance Forum (GCGF), the International Accounting Standards Committee (IASC) (renamed as International Accounting Standards Board), the International Federation of Accountants (IFAC), the BIS Committee on Payment Settlement Systems (CPSS), the G-7 Financial Action Task Force on Money Laundering (FATF), the G-7 Financial Stability Forum (FSF), the World Trade Organization (WTO), the International Monetary Fund (IMF), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO), the International Competition Network (ICN), and the G-20;
- Comparison of the Ethiopian policies, laws and practices with the policies, laws, practices and recommendations in the international experience; and
- Assessment of the current financial market regulatory and supervisory laws and practices in Ethiopia against the core principles of the Basel Committee on Banking Supervision (BCBS) and the International Association of Insurance Supervisors (IAIS).

The study also uses quantitative data to substantiate conclusions. It is, however, fundamentally qualitative, focusing on the legal policy and regulatory issues. It also draws the major lessons from the systems and practices across countries and the
international recommendations in view of the increased internationalisation and convergence of the financial market regulations around the world, the still persistence of difference in the specific regulatory solutions of countries, and the use of international experience for reflection and benchmarking. The assessment of Ethiopia’s regulation against the internationally accepted principles of the BCBS and IAIS is also done for purpose of reflection on the state of development of the country’s current regime. The use of the IOSCO and IOPS principles by the country is, however, only anticipated.

The approach taken is, therefore, to draw lessons from both the international regulatory experience and recommendations and the domestic situation of the country and to contribute to the further development of the structure, policy and regulation of the financial market in the country.

1.5 The Scope of Research

The research focuses on the development, policy and regulation of the existing formal banking, insurance and microfinance markets in Ethiopia and the future securities and pension markets and institutions of the country. It does not include study of the modalities for formalization, development and regulation of the informal savings, currency exchange, insurance and social security schemes in the country although the importance of formalizing and regulating these institutions is indicated in connection with the main study. The question of development (indicated above) is also discussed in view of the need for transforming the Ethiopian financial market from a market where short term bank finance dominates; securities are issued and traded only informally; financial instruments and services are not disseminated, diversified and modernized adequately; and negligible insurance and pension coverage exists into a market where the issuance and trading of securities is formally institutionalised and regulated; the generation of long-term finance is facilitated; the coverage, type and modernity of the banking, insurance and microfinance services are enhanced; debt and equity finances compete; and private pensions operate as institutional savers and investors. It is discussed along with the question of regulation (i.e. the question of improving the policy and regulatory system of the existing banking, insurance and microfinance markets and designing new policy and regulatory system for the future securities and pension markets and institutions of the country). Much of the study, however, focuses on the policy and regulatory thinking necessary for the markets.

1.6 The Chapters

All the chapters are structured in a way that they will address both the international experience and the Ethiopian situation. The second chapter focuses on the organization, development and regulation of the existing banking, insurance and microfinance markets and institutions in the country. It discusses the history, current state, structure, policy and regulation of the markets and institutions and indicates the measures that need to be taken for the future
development of these in light of both the international experience and the domestic situation of the country. The third chapter focuses on the future development and regulation of securities market in the country. It discusses the history, current state, potential functions, and need for development of the market and the policy and measures that need to be taken by the country in designing its structure and regulation in light of both the international experience and the domestic situation. The fourth chapter focuses on the future development and regulation of private pensions in the country as institutional savers and investors. It discusses the history, current state, potential functions, and need for development of these institutions and the policy and measures that need to be taken by the country in designing their structure and regulation in light of both the international experience and the domestic situation. The fifth chapter focuses on the mechanism of regulatory enforcement. It discusses the identity, powers, functions and coordination of the regulatory enforcement organs, the sanctions behind regulation, the judicial and non-judicial legal protections against regulatory flaws, the political and non-political backings of regulatory enforcement, and the international cooperation and use of international standards for regulatory enforcement and indicates the measures for further action by the country in respect of these in light of both the international experience and the domestic situation. The sixth chapter summarizes the study and conclusions and indicates the measures that need to be taken by the country.
Chapter 2
The Development, Policy and Regulation of the Banking, Insurance and Microfinance Markets

2.1 History and Current State

i. The International History in Brief

Banks have come into existence as a result of commerce in Babylon, in Rome and in other cities of Italy.¹ The banking and credit services were mostly extended by private individuals until institutionalized banks, the most ancient of which was the Bank of Venice of 1157, were established to serve the finance needs of governments and facilitate commerce.²

Insurance also dates back to around 2000 B.C.³ It served as risk pooling arrangement between two partners during the Venetian and pre-Venetian times and as means of promoting social stability and economic progress by encouraging specialization and enhancing risk management and business security as societies became modern.⁴ It developed in two lines: in one line, it developed as cooperative, not-for-profit self-insurance scheme when the medieval mutual protection guilds evolved into the mutual or cooperative insurance companies of the modern times; and in the second line, it developed as commercial, for-profit insurance when the marine insurance of Venice and Genoa of the 14th century expanded to include fire and liability insurance in the 17th century and evolved into the joint stock insurance companies that managed life and mass risks during the 18th century and thereafter.⁵

Microfinance has also lived as mutual saving and self-help arrangement among merchants, craftsmen, factory workers and friends in Western Europe and Northern America until it vanished from the regions as of the late 19th century due to rise of large cooperative and savings banks, commercial insurance companies and government social insurance schemes.⁶ It has grown in Asia, Latin America and Africa as of the mid-20th century because of the inability of the conventional banks and insurers to serve small clients.⁷ It has also become

¹ Shekhar, 1995, at pp.1-5.
² Ibid.
⁴ Thimm, 1999, at pp. 105-106 & 120.
⁷ It has grown as government subsidized credit from the 1950s up to the 1970s, as donor sponsored targeted credit from the 1980s up to the mid 1990s, and as regulated commercial microfinance after the mid 1990s. Its function has also begun as micro-credit provision and then widened to cover small amount financial products and services, including savings accounts, micro-insurance services, money transfer and payments services, and business entrepreneurship advice. Copestake, et al., (eds.), 2005; Berger, et al., (eds.), 2006; Swaan and Linden, (eds.), 2006; WSBI/ESBG, 2009, at pp. 13-19 & 37-113; and Degefe Duressa Obo, 2009, at pp. 1 & 16-24.
common among immigrant circles in Western Europe and Northern America in recent times in forms of small scale rotating savings and credit associations.  

The regulation of banking has also four historical roots. First, banks and credit institutions were found at the behest of the ruler or the state, usually for purpose of facilitating state borrowing, beginning from the time of Venice, Genoa and Florence. Secondly, banks and credit institutions were considered as most important sectors of the economy and subjected to strict licensing despite the general idea of freedom of trade that gathered momentum in the period after the French Revolution and most countries had to develop specialized banks and credit institutions that had limited tasks unlike the universal banking system of Germany, Austria and Switzerland. Thirdly, the issuance of bank notes was considered as function within the sphere of state monetary sovereignty and the central banks had to take it over from the commercial banks since the late 19th century. Fourthly, several countries had to supervise credit as prerequisite for smooth functioning of their markets because of economic crises, bank crashes and abuses in the 19th and the 20th centuries. Most countries have, accordingly, shared a common legislative idea that banks and credit institutions must be subject to special public control. They have, as a result, put their banks and credit institutions under heavier regulation than other institutions as of early times.

The systemic regulation of insurance has started in form of provision of corporation charter when insurance corporations appeared in the 18th century. This was followed by enactment of general corporation codes and substantive controls on the insurers by specialized agencies in the 19th century. Separate statutes have then appeared in Europe and elsewhere as of the early 20th century to regulate the terms and conditions of insurance contracts. The regulations have ranged between comprehensive substantive regulation and liberal approach. At one extreme, some such as Germany, Austria, Italy, Belgium, Portugal, Luxembourg, Switzerland, USA, Canada and Japan have depended on comprehensive substantive regulation. They have followed a system of substantive regulation that imposed legal, financial and technical controls on market entry and tight rules for determination of products, premiums and policy conditions. At another extreme, some like UK, the Netherlands and New Zealand had liberal regimes that promoted competition and self-regulation and were limited to ensuring the financial stability of the insurers and the provision of

References:
8 Ibid
12 Ibid.
13 The private side of insurance was left to general contract law until the statutes were introduced. Nemeth, 2001, at p. 10; and Pfennigstor, 1996, at p. 9.
15 Ibid.
Information to consumers. Others had requirements that addressed the licensing, contracting conditions, service accessibility, premiums and taxation of the insurers in between the two extremes.

The majority of the countries have also separated between the non-life and life insurance services and regulated the life insurance services more heavily than the non-life. Most of them have also imposed lesser control on commercial insurance and re-insurance than on personal line and mass risk related insurance. They have subjected the insurers which covered risks outside their territory and the risks of their owners to the least control. The insurance regulation in many of the countries was also traditionally targeted at the insurers and secondarily at the qualification and conduct of their intermediaries (especially brokers).

Most of the developed market countries have, however, started the internationalization of banking with the rise of Eurocurrency and Eurobond markets in the 1960’s and 70’s and furthered their reforms in the banking and insurance markets in the 1980s and thereafter. They have conducted big bangs and chores of bangs as of the late 1980s (i.e. 1988/9) and the reforms have led to the following:

- deregulation and internationalization of the banking and insurance markets,
- diversification of the banking and insurance products,
- increase of competition among the banks and insurers,
- development of electronic services,
- development of institutions that can combine the provision and marketing of different kinds of financial products in form of banc-assurance (all-finanz), and
- increase of the need for new regulatory approaches that can meet the demands of the developments.

18 Rietbergen, 1999, at pp. 41-42; Merkin and Rodger, 1997, at p. 3; and Nemeth, 2001, at pp. 23 & 41.
19 Pfennigstorf, 1996, at p. 27.
20 Ibid.
21 The countries have increased their attention on regulation of intermediaries and providers of ancillary services only recently due to rise of interest among the insurers to delegate central tasks and responsibilities to non-insurers and interest among regulators to monitor competition. Pfennigstorf, 1996, at p. 28.
The countries that relied much on self regulation of insurance (i.e. UK, the Netherlands and New Zealand) have also increased their governmental regulations in the period with a view to controlling illicit activities and abuses.24

Europe has also encouraged the integration, harmonization and liberalization of the banking and insurance markets and regulations of its member states through enactment of the following and subsequent directives and measures:

- the re-insurance directive (February 1964);
- the first generation directives on re-insurance (1964), non-life insurance (1973) and life insurance (1979);
- the second generation directives on large risks (1988), motor insurance (1990) and passive life insurance (1990); and
- the third generation directives of 1992.25

It has also furthered the widening of the banking and insurance markets through the following and subsequent actions:

- the European Economic Area (EEA) Agreement (signed on the second of May 1992);
- the EC-Switzerland Agreement on direct non-life insurance (signed in October 1989 and entered into force on the first of January 1993);
- the accession applications of the EFTA states to join the EC (beginning early February 1993); and
- the Maastricht Treaty (which covered issues of economic, monetary and political union and the creation of single currency) (agreed on the 11th of December 1991 and signed on the 7th of February 1992).26

The transition and emerging market countries of Latin America, Eastern Europe, Asia and Africa have also reformed their banking and insurance market as of the late 1980's and in the 1990’s to raise domestic saving, increase investment, and improve resource allocation.27 The East European, Asian and Latin American countries have opened up their markets for domestic and foreign private investment as they started their reforms in the late 1980s.28 The African countries


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have focused on balance sheet restructuring and re-capitalization of their state owned banks and insurers in their initial reforms and attempted at privatizing these banks and insurers, opening up the financial markets for domestic and foreign private investment, and improving the financial regulations as of the 1990s.\(^29\) Both groups of countries have designed the contents of their regulatory systems based on the ideas and patterns of the regulations in their trading partners (usually the US, Western Europe and Japan) although they have also made their reforms according to the demands of their transitions to market economy.\(^30\) They have also introduced and strengthened their microfinance regulations in more or less the same fashion as the banking and insurance regulations as the microfinance operations have increasingly become part of the financial markets.\(^31\)

The evolution and content of the banking, insurance and microfinance regulations in both the developed and the transition and emerging market countries have also been influenced by:

- the general philosophies of the countries on the economic roles of their governments;
- the constitutional systems, economic developments, and economic and social policies of the countries;
- the historical compositions, structures and performances of the banking, insurance and microfinance markets of the countries; and
- the incidence of inefficiencies, scandals and failures in the markets.\(^32\)

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31 Copestake, et al., (eds.), 2005; Berger, et al., (eds.), 2006; Swaan & Linden, (eds.), 2006; WSBI/ESBG, 2009; and Degefe Duressa Obo, 2009, at pp. 15-24 & 46-52. The microfinance regulations are fashioned like the banking and insurance regulations with differences from the latter on technicalities and strength of regulation due to the special characteristics of the microfinance operations and institutions (Ibid.). The majority consensus in the literature has also become that the microfinance operations and institutions need to be regulated as the other financial operations and institutions by taking into account their special characteristics as they have come to be part of the financial system (Degefe Duressa Obo, 2009, at pp. 46-52).

The general trend has, however, been towards lessening of the use of heavy direct government regulation as the countries have promoted competition and tried to justify their regulations by specifically defined objectives that can not be achieved by the competition process alone. The BCBS and IAIS have also encouraged countries to rely on indirect instruments of banking and insurance regulation (that may be available to them) as opposed to direct controls. The aftermath of the 2008 financial and economic crisis has, however, also raised the interest of countries to expand and strengthen the regulations of their financial markets for the reason that unregulated markets are prone to systemic failure. The continuing innovation in the banking and insurance markets has also increased the need for further reform of regulation. The recent advice in the field of microfinance regulation is also towards development of a less restrictive regulatory regime that can enable the further development of microfinance.

ii. The History in Ethiopia

Ethiopia felt the need for having formal banking only after establishment of Addis Ababa as its permanent capital in 1886. It started it by establishing the Bank of Abyssinia on February 16 1906 in partnership with the British owned National Bank of Egypt after a 50-years-concession agreement was signed in 1905 between Emperor Minelik II and Mr. M. Gillivray (who represented the National Bank of Egypt). It established this bank with powers of issuing bank notes and monitoring the legal tender as a central bank. It also required the deposit of all government and public funds in the bank and the making of all payments by the bank to be in cheque. The bank was, however, liquidated for replacement by the Bank of Ethiopia in 1931. The latter bank was established in August 1931 with

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34 BCBS, 1997; BCBS, 2006; BCBS, 2006a; and IAIS, 2003.
35 The international organizations, including the World Bank, the IMF, the WTO and the G-20, have also supported the move towards strengthening the regulation of financial markets across countries (without protectionism) in the aftermath of the crisis. The US has done this by adopting its financial market regulatory overhaul bill on the 21st of July 2010. The other countries cooperating under the G-20 are also considering the ways for strengthening their regulations. Synder, 2007; Gert Wehinger, 2008; Stephen, 2008; McIlroy, 2008; Van Berkel, 2008; Adrian Blundell-Wignall, et al., 2008a; Adrian Blundell-Wignall, et al., 2009; Adrian Blundell-Wignall, et al., 2009a; Gert Wehinger, 2009; Gert Wehinger, 2009a; Hall, 2009; Ayadi and Behr, 2009; Vaughan, 2009; Coope, 2009; Christoph Ohler, 2009; J. Balvin Hannibalsson, 2009; World Bank, 2009b; IMF, 2009; WTO, 2009; G-20, 2009; Jönsson, 2009; Andrew and Mark, 2009; Andrew and Mark, 2009a; Michael and Harold, 2009; Martinez-Diaz, 2009; Goodhart, 2009; Chambers, 2010; Thorsten, 2010; Johnson and Kwak, 2010; and the news AP, 2009; AP, 2009a; AP, 2009b; AP, 2009c; AP, 2009d; AP, 2009f; AP, 2010a; Financial Post, 2010; Bloomberg, 2009a; and Bloomberg, 2010.
39 Ibid
40 The management of the bank was left to the Egyptian National Bank. Ibid
41 Ibid
42 It was blamed for being purely profit motivated, inefficient and ignorant of the credit needs of the country. Bahru Zewde, 2002, at p. 103; and NBE, 2001.
ownership of sixty percent of its capital by the government. It operated only until invasion of the country by Italy in 1935. The Italians then established branches of the Banca d’Italia, Banco di Roma, Banco di Napoli and Banca Nazionale del lavoro and started operation in the main towns of Ethiopia as of that year. The Barclays Bank also organized banking services in Addis Ababa beginning 1941. All the branches other than those of the Banco di Roma, the Banco di Napoli and the Barclays Bank, however, ceased operation following the liberation of the country in 1941. The branches of Banco di Roma and Banco di Napoli remained in Asmara and the Barclays Bank withdrew from the country in 1943. The country then established the State Bank of Ethiopia which went operational on the 15th of April 1943. It created it as central and principal commercial bank with powers to issue bank notes and coins as agent of the Ministry of Finance of the time and to engage in all commercial banking activities. It conferred it with the powers of issuing national currency and dealing in foreign exchange in 1945 and 1949, respectively, and allowed it to operate until its dissolution in 1963. It also established the Development Bank of Ethiopia by Imperial Charter of 1951.

It separated the central and commercial banking functions of its banks for the first time by enacting a Monetary and Banking Proclamation and a National Bank of Ethiopia Charter Order, and thereby dissolving the State Bank of Ethiopia and creating the National Bank of Ethiopia as central bank and the Commercial Bank of Ethiopia Share Company as commercial bank, in 1963. It also allowed the formation of private domestic banks and the entry of foreign banks through joint ventures with maximum foreign ownership of forty nine percent; re-licensed the Banco di Roma and Banco di Napoli Share Companies as foreign banks; and registered the Addis Ababa Bank Share Company as the first fully privately owned domestic bank under those laws. It also established specialized institutions (including the Imperial Savings and Home Ownership Public Association, the Savings and Mortgage Corporation of Ethiopia, and the Agricultural Bank) in the 1960s and early 1970s. The banking market of the country was, therefore, composed of the following by 1970:

- the National Bank of Ethiopia (with six branches),
- the Commercial Bank of Ethiopia (with sixty five branches),
- the Addis Ababa Bank Share Company (with nine branches),
- the Development Bank of Ethiopia (with nine branches),

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44  Ibid.
45  Ibid.
47  Ibid.
48  It operated through twenty one branches (including a branch in Khartoum and a transit office in Djibouti) until it was dissolved in that year. Ibid.
49  IGE-MI, 1960, at p. 36.
50  IGE, 1963d; and IGE, 1963e.
52  IGE, 1970a; NBE, 2001; and IGE-MI, 1970, at p. 94.
- the Agricultural and Industrial Development Bank Share Company (with five branches),
- the Banco de Roma Share Company (with one branch),
- the Banco de Napoli Share Company (with six branches),
- the Mortgage Company of Ethiopia (with one branch), and
- the Imperial Savings and Home Ownership Public Association (with two branches).\(^{53}\)

Modern insurance was also introduced in the country as far back as 1906 when the Bank of Abyssinia transacted fire and marine insurance as agent of a European insurance company.\(^{54}\) There were nine insurance companies in the country in 1954 which were either branches or agents of foreign companies except for the Imperial Insurance Company of Ethiopia that was established in 1951.\(^{55}\) The number of insurance companies grew to thirty three in 1960 and thirty two of them were branches or agents of British, American, Egyptian, Italian, Swiss, French, Indian and New Zealand companies.\(^{56}\) The insurance companies and their businesses were subject to the Commercial and Maritime Codes of the country of the time.\(^{57}\) The required minimum subscribed and paid-up capitals for an insurance company were, accordingly, fifty thousand and twelve thousand five hundred Ethiopian Birr, respectively, and there was no restriction on the extent of foreign ownership of the insurers.\(^{58}\) The country, however, enacted a new proclamation in 1970 and required the insurers to be domestic companies with fully subscribed share capital of not less than four hundred thousand Ethiopian Birr (for a general insurance business), six hundred thousand Ethiopian Birr (for a long-term insurance business) and one million Birr (for both types of businesses).\(^{59}\) The proclamation did not prohibit foreigners from engaging in insurance business but required them to locate their head offices inside the country and to make at least fifty one percent of their paid-up capitals (when they intended to engage in general insurance business) and at least thirty percent of same (when they intended to engage in life insurance business) owned by Ethiopian nationals or by companies of Ethiopian nationals.\(^{60}\) Fifteen domestic insurance companies, thirty six agents, seven brokers, three actuaries and eleven loss assessors were then licensed under the proclamation.\(^{61}\)

The country did not also have comprehensive monetary, banking and insurance regulation prior to enactment of the Monetary and Banking Proclamation and the National Bank Charter Order in 1963 and the Insurance Proclamation in 1970.\(^{62}\) Only the enactment of those proclamations launched comprehensive regulation. The Monetary and Banking Proclamation and the National Bank Charter Order

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55 Ibid.
58 IGE, 1960, at arts. 306 & 312(1)(b); and NBE, 2001.
59 IGE, 1970b, at art. 6.
60 Id. at arts. 2(7), 2(11) & 43(3)-(5).
defined the national monetary system, entrusted the central banking function to
the National Bank of Ethiopia, left commercial banking to the other banks, and
authorized the National Bank of Ethiopia to control and regulate the monetary,
credit and banking systems of the country.\textsuperscript{63} The National Bank of Ethiopia also
launched its banking regulation in that year and adjusted the scope and modalities
of its regulation according to the changes in economic policy in the subsequent
years.\textsuperscript{64} The insurance proclamation also entrusted the power of regulating
insurance to an Insurance Council and an Insurance Controller’s Office.\textsuperscript{65}

The country, however, pursued a socialist policy of banking and insurance after
1974. The military government nationalized the foreign and private equity
participations in the Addis Ababa Bank, the Banco di Roma, and the Banco di
Napoli in 1975 and merged them to form the second largest bank in the country
(next to the Commercial Bank of Ethiopia S.C.) called the Addis Bank in 1976.\textsuperscript{66}
It merged the Savings and Mortgage Corporation S.C. and the Imperial Savings
and Home Ownership Public Association to form the Housing and Savings Bank
in 1975.\textsuperscript{67} It also made the Imperial Agricultural and Industrial Development
Bank under trusteeship of the National Bank of Ethiopia in 1976 and re-
established it as a separate bank in 1979 with the task of financing the agricultural
and industrial sectors of the country with short, medium and long-term credits.\textsuperscript{68}
It then merged the Addis Bank with the Commercial Bank of Ethiopia S.C. in
1980 and made the latter continue as the only commercial bank.\textsuperscript{69} It also
nationalized and merged all the private insurers and formed the single Ethiopian
Insurance Corporation in 1975.\textsuperscript{70} It also changed the guidance of the National
Bank of Ethiopia by enacting a new Monetary and Banking Proclamation in
1976.\textsuperscript{71} The financial market of the country was, therefore, composed of only the
National Bank of Ethiopia as the central bank, the Commercial Bank of Ethiopia
as the commercial bank, the Housing and Savings and the Agricultural and
Industrial Development Banks as specialized banks, and the Ethiopian Insurance
Corporation as the commercial insurer until 1994.

The country has reformed its financial sector following the economic policy
change in 1991. It has re-established the National Bank of Ethiopia (NBE) as
central bank and financial market regulator and opened the banking and insurance
sectors for domestic private investment by enacting Monetary and Banking,
Licensing and Supervision of Banking Business and Licensing and Supervision of
Insurance Business Proclamations in 1994.\textsuperscript{72} It has introduced a regulatory regime for microfinance institutions for the first time in its history and required their formal establishment as financial companies under supervision of the NBE to cater for the credit needs of small scale producers, service providers and peasant farmers by enacting a microfinance institutions supervision law on the 5\textsuperscript{th} of July 1996.\textsuperscript{73} It has also required the NBE to encourage the participation of banks, insurers and other financial institutions in the provision of microfinance services and to promote the development of traditional savings institutions of the Ethiopian society along with the microfinance institutions by the microfinance supervision laws.\textsuperscript{74} It has also authorized the banks to directly engage in microfinance business without need for obtaining separate microfinance business license by its recent microfinance business law.\textsuperscript{75} It has also, through the reforms, subjected the banks, insurers and microfinance institutions to supervision laws that are similarly fashioned and complementary to one another although it has pursued heavier regulation on the banks than the insurers and on the insurers than the microfinance institutions in practice.\textsuperscript{76}

The NBE has, accordingly, licensed twelve private banks, eleven private insurers, thirty microfinance institutions and more than one thousand insurance auxiliaries along with the hitherto existing government owned three banks and one insurer until June 2010.\textsuperscript{77}

\textsuperscript{72} TGE, 1994; TGE, 1994a; and TGE, 1994b. The Monetary and Banking and Licensing and Supervision of Banking Business Proclamations are amended in 2008 (FDRE, 2008a; and FDRE, 2008b).

\textsuperscript{73} Formal microcredit was begun in the country by NGOs in the 1980s (Degefe Duressa Obo, 2009, at p. 83). The country has, however, required the formal establishment of all microfinance operations as microfinance share companies (institutions) within the financial sector as of July 1996 and authorized them to i) accept saving, demand and time deposits from their members and micro-operators; ii) extend loans to micro-operators; iii) develop income generating projects for micro-operators; iv) provide managerial, technical, marketing and counselling services to micro-operators; v) acquire, buy and sell negotiable financial instruments; vi) draw and accept locally payable drafts; and vii) acquire and dispose of movable and immovable properties in their own names (FDRE, 1996g, at the preamble and arts. 3 & 26). It has also enacted a new microfinance business law in 2009 and authorized them further to undertake micro-insurance, micro-financial leasing and micro-fund management businesses for the benefit of the peasant farmers and micro and small scale entrepreneurs (FDRE, 2009, at art. 3).

\textsuperscript{74} FDRE, 1996g, at art. 12(3). Several informal saving, finance and self-help mechanisms have lived in the urban and rural parts of the country for long, the most popular of which are the Equb and Edir (See Degefe Duressa Obo, 2009, at pp. 77-83). There are also several multipurpose savings and credit cooperatives in the country that are regulated under a separate cooperative societies regime (See Degefe Duressa Obo, 2009, at p. 84 and the Year Books of the country cited as FDRE(MOI), 2003/2004; FDRE(MOI), 2004/2005; and FDRE(MOI), 2005/2006, at pp. 141-159, 162-181 & 83-86, respectively. Note also the discussion under the securities market chapter below). The microfinance supervision laws are intended to empower the NBE to encourage the development of these and other institutions of the society along with the microfinance institutions and to link them with the formal financial institutions for the benefit of the low income sections of the society.

\textsuperscript{75} FDRE, 2009, at art. 4(1).

\textsuperscript{76} TGE, 1994a, at art. 34; TGE, 1994b, at art. 44; FDRE, 1996g, at art. 24; FDRE, 2009, at arts. 19(3) & 28; the Directives of the NBE; and the discussion under the ‘areas and instruments of regulation’ subtitle below.

\textsuperscript{77} Tables 1(Chap. 2); 9(Chap. 2) & 10(Chap. 2); the registers of the banking, insurance and microfinance supervision departments of the NBE; and the annual and quarterly reports of the banks, insurers and the NBE for 1996 up to 2010. Some banks are also in process of formation.
The country has not, however, achieved desirable level of banking, insurance and microfinance services. All the services are at their beginning stage of development and a substantial size of the Ethiopian population still lives without them.\textsuperscript{78} The banks, insurers and microfinance institutions are also weak in their fixed capitals, service types, governance and competitiveness.\textsuperscript{79} They have not diversified, modernized, automated and networked their services.\textsuperscript{80} The banks, other than the Development Bank of Ethiopia, also concentrate on short and medium term trade finance while the insurers concentrate on short term general insurance making the total long-term insurance less than six percent of the total insurance business in the country.\textsuperscript{81} The microfinance institutions also concentrate on short-term deposit taking and lending with very small section of the society despite their extensive authorization to stimulate the development of micro and small scale operations.\textsuperscript{82} The payments system of the country has also remained largely to be based on the cash mode of payment.\textsuperscript{83} The country has, therefore, still to face the challenges of enhancing the capacity and increasing the coverage, diversity and modernity of the banking, insurance and microfinance institutions and services.

\section*{2.2 The Objectives of Regulation}

\textbf{i. The International Experience}

The banking, insurance and credit market regulations in the developed market countries have been used to pursue the following five groups of objectives:\textsuperscript{84}

1. They have been used to achieve monetary policy objectives. The governments and central banks in the countries have often formulated monetary policy as one of their major economic policies and transmitted it through the instruments of financial regulation.\textsuperscript{85} Hence, the central banks have often contracted and expanded the money supply through the reserving, interest, premium and foreign exchange rules to control inflation, maintain price stability and balance of payments equilibrium, and achieve the goals of economic efficiency, growth and employment.
2. They have been used to ensure the health, stability and efficiency of the financial markets. The banks, insurers and other financial institutions have been at the heart of the economic system because of their risk sharing, liquidity provision, information processing, and payments facilitation services. The importance of these service to the economy, the exposure of the financial institutions to varieties of risks, the need for consumer protection from loss of savings, and the need for avoidance of public panic about the financial institutions have, accordingly, justified the regulation of these institutions.

Hence, the financial regulators in the countries have often relied on the capital adequacy, reserving, accounting, balance sheet, valuation, liquidity, solvency, functional separation, risk diversification, risk transferring, information exchange, fund guarantee, insider dealing, governance, auditing, interest, premium, foreign exchange, liquidity support and lender of last resort rules of financial regulation to meet the indicated objectives.

3. They have been used to promote competition. The competition mechanism has been useful to:

- avoid the dominance of few financial institutions over the economy;
- control the loss of impartiality in the allocation of resources;
- stimulate economic restructuring;
- increase resource mobility, flexibility, efficiency and innovativness;
- cut cost;
- control destructive behaviour and governance problems; and
- increase consumer welfare.

The financial regulators have, therefore, often employed the rules of the general competition laws and the specific instruments of financial regulation (including the market entry and exit, functional separation, product distribution, information disclosure, contracting term, insider trading and market manipulation rules) to promote competition. The international economic organizations, including the World Bank, the IMF and the WTO, have also appreciated the need for strengthening competition in the financial sector and reducing regulations that weaken this.

86 Hubbard, 1997, at pp. 21-24 & 52; and Pfennigstorf, 1996, at pp. 16-17.
88 World Bank and OECD, 1999, at p. v; Möschel, 1991, at pp. 17 & 20-22; Pfennigstorf, 1996, at pp. 18-20; and the discussion under the ‘competition regulation’ subtitle below.
89 Note the discussion under the ‘instruments of regulation’ subtitle below.
91 They have seen the need for promoting competition in the interest of flexibility, efficiency and innovation; enforcing regulation in the interest of security, stability and consumer welfare; and balancing between the two in the interest of compatibility. Ibid.
4. They have been used to protect investors, consumers, the public and the economy from the dangers of market failure. Social and economic policy has required that investors, consumers, the public and the economy have to be protected from misunderstanding, fraud, information asymmetry, bounded rationality, transaction cost, monopoly, cartelization, and lose of saving due to failure of the financial institutions.\(^2\) They have required that:

- the failures of the financial institutions should not lead to social and economic disturbances;
- the financial institutions should give accurate and timely information to the users of their services;
- all the participants in the financial markets should have access to information;
- all financial decisions should be made prudently; and
- the financial regulations should ensure the materialisation of these.\(^3\)

Hence, the regulators in the countries have also often used the insider dealing, market manipulation, product distribution and contracting rules; the reasonableness, non-discrimination, equity, fairness, transparency and information disclosure requirements; and the fund guarantee schemes of financial regulation to protect consumers, the public and the economy from the risks of financial market failure.\(^4\)

5. They have been used to promote miscellaneous economic and social policy objectives, including the following:

- protecting small businesses from rigorous competition,
- preventing foreign ownership and competition,
- enforcing government and sectoral financing,
- assuring financial service availability and affordability,
- protecting financial market structure and reputation,
- increasing employment,
- distributing social risk, and
- pursuing constitutional principles, such as democracy, due process and federalism.\(^5\)

Hence, the regulators have also used the market entry and exit, (service, investment and geographic) diversification, interest, premium, and financial reserving requirements of financial regulation and the general requirements of

\(^2\) Möschel, 1991, at pp. 18-19; Pfennigstorf, 1996, at pp. 18-25 & 29-33; Thimm, 1999, at pp. 121-136; and Finsinger, Hammond and Tapp, 1985, at pp. 11-13. The OECD has also shown that the financial understanding and awareness of consumers have often been low due to the increased sophistication of the financial markets and services and hence that the financial regulators and competition authorities need to put the necessary attention on the objectives of consumer protection and building consumer awareness (OECD, 2005b; and OECD, 2008h).

\(^3\) Hubbard, 1997, at p. 51.

\(^4\) Cartwright, 1999, at pp. 3-279 (for detailed discussion of the objective and mechanisms of consumer protection in financial services).

adherence to constitutional and administrative principles of good administration to enforce these types of objectives.

The reconciliation and prioritization of the aforementioned objectives has, however, been variable across the countries as a matter of economic, social, political and constitutional philosophy. The countries have passed through cycles of regulation and deregulation to enforce the objectives, solve specific problems, and respond to lobbies for and against regulation. They have, however, also generally recognized the incompatibility between regulation and free competition and continuously strived towards making sure that the contents and practices of the former do not violate the latter. They have also often tried to balance between the objectives of promoting profitability and ensuring financial stability and health. They have also considered the fifth set of objectives as matters outside the realm of monetary and financial policy as a matter of principle and pursued them through the instrumentality of financial regulation only when the policy and law makers have framed them outside this policy (i.e. in the realms of trade, fiscal and other policies) and the financial regulators could coordinate them with the objectives and instruments of financial regulation. The use of financial regulation to pursue this set of objectives has, however, also diminished through time.

The regulations in the transition and emerging market countries of Eastern Europe, Asia, Latin America and Africa have also been guided by the new free market policies of the countries and the dynamics of their transitions to free market. The free market principle has required the countries to create freely competitive financial markets and to regulate the latter to meet the other objectives without detriment to the free competition objective. The governments of the countries have, however, also appreciated the need for government regulation for sake of ensuring economic development and prudence (among others) and tended, in practice, to consider the achievement of unencumbered competition alone secondary at best. They have tended to take into account the experience in the developed market countries in this regard and to reprioritise the objectives of regulation according to the perceived demands of their transitions. They have, therefore, used their banking, insurance and credit market policies and regulations to meet the objectives of developing the markets, expanding the financial services, promoting competition, ensuring efficiency and

97 Ibid.
98 Thimm, 1999, at pp. 160-161; and Finsinger, Hammond and Tapp, 1985, at p. 16.
103 Ibid.
safety, preventing and correcting financial crises, encouraging information flow, achieving monetary policy goals, protecting investors and consumers, creating the conditions for economic development, and enforcing general economic and social policy objectives that are contributory to their development and transition to free market although they have differed in the prioritisations of the objectives and the degrees of their successes.\textsuperscript{104} They have also targeted their microfinance regulations at formalizing and expanding the microfinance services, enhancing the financial inclusion of the poor, preventing failure and creating the conditions for economic development.\textsuperscript{105}

The BCBS, IAIS and OECD have also emphasized on the need for defining regulatory objectives according to domestic problems and encouraged both the developed and the developing market countries to prioritise between objectives that are more or less like the five groups of objectives indicated above and to enforce them according to the preconditions for effective enforcement that can be available in their domestic situations.\textsuperscript{106} The 2008 financial and economic crisis has also made the prevention of systemic failure and protection of investors and consumers among the top priorities of financial market regulation.\textsuperscript{107} The recent recommendation regarding microfinance regulation is also towards further balancing between the objectives of expanding availability and increasing the benefits of microfinance, on the one hand, and promoting the commercial business approach (i.e. competition), enhancing sustainability, preventing failure, and protecting consumers, on the other.\textsuperscript{108}

ii. The Case of Ethiopia

Ethiopia did not define the reasons and objectives of its banking and insurance laws prior to enactment of the Monetary and Banking Proclamation of 1963, the NBE Charter Order of 1963, and the Insurance Proclamation of 1970. Only these


\textsuperscript{106} BCBS, 1997; BCBS, 2006; BCBS, 2006a; IAIS, 2003; and OECD, 2009f. The recent OECD framework for effective and efficient financial regulation has in particular emphasised on the need for understanding the financial landscape, identifying the underlying problems, defining the regulatory objectives according to the problems, and matching the regulatory instruments with the defined regulatory objectives (OECD, 2009f). The domestic regulation rule of the GATS also follows similar approach by setting a ‘necessity test’ which requires that regulatory instruments should not be more burdensome than necessary to meet their objectives (GATS, at art. VI(4-5)).

\textsuperscript{107} It has shown the need for balancing between the objectives of preserving the safety and soundness of the financial system and protecting investors and consumers, on the one hand, and the objectives of promoting competition, innovation and efficiency, on the other. Walker, 2007; Marcelo, et al., 2008; Quagliariello, 2008; Christoph Ohler, 2009; J. Balvin Hannibalsson, 2009; Stephen, 2009; Goodhart, 2009; Thorsten, 2010; World Bank, 2009b; IMF, 2009; WTO, 2009; G-20, 2009; OECD, 2009f; AP, 2009; AP, 2009a; AP, 2009b; AP, 2009c; AP, 2010a; and Bloomberg, 2010.

\textsuperscript{108} Berger, et al., (eds.), 2006; WSBI/ESBG, 2009, at pp. 19 & 27-34; and Degefe Duressa Obo, 2009, at pp. 15-24 & 46-52. The consultative document of the Basel Committee on ‘Microfinance Activities and the Core Principles for Effective Banking Supervision’ has also recommended the effective adaptation of the objectives of banking supervision to the microfinance sector (BCBS, 2010).
laws included objectives. The Monetary and Banking Proclamation and the Charter Order made it clear that the purpose of the NBE was fostering monetary stability and credit and exchange conditions that are conducive to the balanced growth of the economy of the country.\textsuperscript{109} The Insurance Proclamation also made it clear that the Insurance Council was to issue policies that would promote and regulate sound insurance and that the Insurance Controller’s office was to implement the policies of the Council.\textsuperscript{110}

The country’s attention in the post-revolution period was to meet the government’s annual, medium and long-term plans.\textsuperscript{111} The NBE was required to accelerate the balanced economic development of the country, to encourage and promote the development of the country’s productive forces, and to promote production, employment and income according to national plan.\textsuperscript{112} Both the banking and insurance policies and operations were, accordingly, guided by national objectives that were decided by the then National Office of Central Planning and directly administered by the government.\textsuperscript{113}

The country has conducted financial and economic policy reforms in the post-1991 period. It has focused on the functions of restructuring and increasing autonomy of the government owned financial institutions, expanding the credit and savings facilities to the private sector, enhancing the prudence of the money supply and the exchange rate of the Ethiopian birr, and balancing the state budget by its transitional period economic policy.\textsuperscript{114} It has focused on the following in pursuing the financial reform during and after the transitional period:

- developing the financial system,
- controlling inflation,
- mobilizing domestic saving,
- promoting private sector investment,
- enhancing competition,
- reducing deficit financing by bank borrowing,
- improving financial efficiency,
- preventing financial crisis,
- encouraging transparency,
- eliminating credit control,
- improving the environment for the financial institutions,
- smoothing the operational relationship between the financial institutions,
- encouraging the financial institutions to provide medium and long-term credits,
- expanding the financial services to small and micro enterprises,

\textsuperscript{109} IGE, 1963d; and IGE, 1963e, at arts. 3, 5 & 7.
\textsuperscript{110} IGE, 1970b, at arts. 5 & 4(2).
\textsuperscript{111} Itana Ayanna, 1994, at pp. 241-243.
\textsuperscript{112} PMGE, 1976i, at arts. 3 & 6.
\textsuperscript{114} TGE, 1991, at pp. 34-36. The transitional period economic policy was effective from 1991 up to 1995.
- developing inter-bank money and foreign exchange markets,
- widening the participation in the treasury bills market,
- increasing the international reserve,
- deregulating the international current account,
- reducing the control on foreign exchange supply,
- increasing the market determination of interest, premium and foreign exchange rates,
- standardizing the reporting system of the financial institutions, and
- enhancing the regulatory capacity of the NBE.115

It has also focused on the following in pursuing the general economic policy reform:

- reducing fiscal deficit,
- maintaining macroeconomic and price stability,
- liberalizing investment,
- increasing privatisation,
- promoting private sector development,
- enhancing public and private sector capacities,
- increasing economic growth,
- increasing international competitiveness, and
- implementing development programs (such as in agriculture, infrastructure, education, health, population and foreign trade).116

It has also authorized the NBE to promote the objectives of maintaining price and exchange rate stability, fostering healthy financial system, and creating the conditions for rapid economic development by its establishing laws.117

It does not, however, expressly define and prioritize the specific objectives of its banking, insurance and microfinance regulations in the banking, insurance and microfinance supervision laws, and indicates only generally that the NBE has to be guided by the aforementioned objectives in carrying out its functions as central bank.118 It does not also have comprehensive financial regulatory policy that defines the specific purposes of its regulations.119 The NBE does not also indicate

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116 Ibid.
117 TGE, 1994, at art. 6; and FDRE, 2008a, at art. 4.
118 TGE, 1994a; TGE, 1994b; FDRE, 1996g; FDRE, 2008b; and FDRE, 2009.
119 There are only some general statements in the rural and industrial development policies and strategies of the country which indicate that the country's financial market has to develop and mobilize resources in a way that it will support the development and rural finance needs of the country and that this has to be done by diversifying the financial market, modernizing the financial services, increasing the competitiveness of the financial institutions, streamlining the financial services to productive and developmental ventures, linking between the operations of the banks, microfinance institutions, rural cooperative societies and the farmers, and not liberalising the financial market in the short run (FDRE, 2001b, at pp. 186-202; and FDRE, 2002g, at pp. 96-124).
the specific objectives of its regulations in its directives consistently.\textsuperscript{120} It only claims in its reports that it focuses on the objectives of controlling inflation, maintaining price and exchange rate stability, encouraging financial market development and competition, and creating the environment for economic growth.\textsuperscript{121} It has also refrained in practice from directly regulating credit and implementing the general economic and social policy objectives (that are usually outside the realm of monetary and financial policy) through the instruments of the banking, insurance and microfinance regulations.\textsuperscript{122} The specific objectives of the banking, insurance and microfinance regulations of the country are, therefore, only inferred in practice from the powers and objectives of the NBE as central bank, the monetary policy framework of the NBE, the country's general economic policy, and the pieces of principles included in the competition and other laws of the country.

The country needs to expressly define and prioritize the specific objectives of its banking, insurance and microfinance regulations in the respective supervision laws and the NBE needs to link its directives and regulatory measures to the specific objectives consistently so that the objectives of regulation will not be overlooked and the regulatory power abused during enforcement. This will also enable the financial institutions, consumers and stakeholders to clearly know about the reasons and objectives of financial regulation, appreciate the importance and legality of the instruments used, and contribute to the enforcement of regulation.

The economic transition in the country implies that it needs to take into account the experience of the regulations in both the developed and the transition and emerging market countries, make the objectives of its banking, insurance and microfinance regulations like the ones in the latter, and thereby manage the dynamics of its transition towards free market. Hence, the country also needs to focus on the following in defining the specific objectives:

- developing the markets;
- disseminating, diversifying and modernizing the financial services;
- promoting competition, efficiency and innovativeness in the financial system;

The 2009 monetary policy framework of the country does not also deal with the specific objectives of the banking, insurance and microfinance regulations as its focus is on monetary policy (NBE, 2009).


\textsuperscript{121} Note the Governors' notes to the annual reports of the NBE for 1995 up to 2009.

\textsuperscript{122} The government has also shifted its domestic borrowing from the commercial banks to the central bank. FDRE, 1996g; FDRE, 2009, at arts. 3, 4 & 21; FDRE, 1996i, at arts. 33-45 & 59; FDRE, 1997c, at arts. 50-57 (with focus on arts. 50(3), 50(4) & 75); TGE, 1994a, at art. 17(4) & the preamble; FDRE, 2008b, at art. 22; TGE, 1994, at arts. 25(1)(e), 25(3), 26, 27 & the preamble; FDRE, 2008a, at arts. 12(6) & 13; FDRE, 2001b, at pp. 186-202; EPRDF, 2000, at pp. 81-105; NBE, 1999/2000, at sections 5.2.2, 5.3, 7.3 & 7.4; NBE, 2000/2001, at section VII; NBE, 2001/2002, at sections 5.3.2, 5.4, 7.1 & 7.4; NBE, 2002/2003, at sections 5.3.2, 5.4. & 7.5; NBE, 2003/2004, at sections 5.3., 5.4.1 & 7.4; and Befekadu Degefe and Berhanu Nega, (eds.), 1999/2000, at pp. 371-377.
- maintaining financial market health, stability and security;
- preventing systemic failure;
- protecting consumers, the public and the economy from abuse and financial failure;
- increasing information disclosure and prudential decision making;
- meeting the monetary policy objectives; and
- achieving economic and social policy objectives contributory to its development and transition to free market.

It, however, also needs to learn from the international experience and enforce the last set of objectives through the instruments of financial market regulation by formulating them outside the realm of monetary and financial policy and to the extent that they can be coordinated with the other objectives of financial regulation. It also needs to enhance the competition regime for the financial markets and enforce the other objectives of regulation without endangering the competition objective.

The monetary policy of the country also needs to continue to focus on the objectives of controlling inflation, influencing the cost and availability of financial services, maintaining price and exchange rate stability, and achieving balance of payments equilibrium since these are ongoing problems in the country.

2.3 The Areas and Instruments of Regulation
2.3.1 Prudential Regulation
2.3.1.1 Market Entry and Exit Requirements

A. Introduction

Most countries subject their banks and insurers to market entry and exit requirements. They often impose number, nationality, location, legal form, initial capital, ownership spreading (and quality), business plan, organizational structure, and management quality related requirements for licensing. The international organizations on financial regulation also recommend the adoption of licensing regimes that include many of the aforementioned requirements. Ethiopia also includes many of these requirements in its banking, insurance and microfinance regulations. The following sections discuss these requirements and the rules on granting and termination of licence.

125 BCBS, 2006, at Principle 3 and its explanatory note; and the IAIS, 2003, at Principles 6-10 & 16 with the explanatory notes to them.
126 TGE, 1994a, at arts. 3-5, 7-9, 10(e), 26, 27(2) (a-b) & 27(3); FDRE, 2008b, at arts. 3-9, 11, 14-17 & 50; TGE, 1994b, at arts. 6-8, 25, 39, 40, 41 & 44; FDRE, 1996g, at arts. 4-8, 10, 12-14 & 17-18; and FDRE, 2009, at art. 4-8, 25 & 28.
B. The Requirements
   a. Number and Nationality

   i. The International Experience

A number of the developed market countries had rules which prohibited or
restricted the foreign ownership of their financial institutions and the admission of
foreign institutions into their markets.\textsuperscript{127} They had absolute limits, quotas, needs
tastes and ceilings.\textsuperscript{128} They had the belief that their domestic markets and the
monetary controls of their central banks would be threatened if foreigners were to
be allowed into their markets.\textsuperscript{129} The majority of them also had rules which
prohibited the cross-sectoral penetration and convergence of their financial
institutions, activities and products.\textsuperscript{130} Many of them have, however, removed
these restrictions, allowed the internationalization of the financial institutions,
opened up their financial markets for foreign entry, recognized the creation of
financial conglomerates and moved towards full participation in international
trade as innovation, competition and movement of capital grew and the financial
institutions became increasingly international in the 1980s and thereafter.\textsuperscript{131}

Most of the transition and emerging market countries of Eastern Europe, Asia
and Latin America and some of the countries in Africa have also removed these
types of restrictions and opened up their financial markets for foreign investment
after the reforms of the late 1980s and the 1990s.\textsuperscript{132}

The international economic institutions (including the WTO, the World Bank and
the IMF) have also generally promoted global financial sector liberalization and
market integration.\textsuperscript{133} They have felt that limitation to openness will diminish
economic growth (and welfare) and hence that an economic system looking
forward to market forces and competition at its core has to gradually move
towards opening up of its financial markets to foreign investment.\textsuperscript{134}

\textsuperscript{127} Möschel, 1991, at pp. 22 & 51-52; World Bank, 2000, at p. 162; Pfennigstorf, 1996, at pp. 66 & 75-
77; and Laboul, 1992, at pp. 10 & 38-41.
\textsuperscript{128} Many of the developing countries and some like Canada still have varieties of these restrictions. World
Bank, 2000, at p. 162; and Pfennigstorf, 1996.
\textsuperscript{129} Möschel, 1991, at p. 133; and Pfennigstorf, 1996, at pp. 66 & 75-77.
\textsuperscript{130} Laboul, 1992, at pp. 10 & 38-41.
18, 22, 25-26, 95-122 & 149; Lemaire, 1997, at p. 52; Meier, 1988, at pp. 6-7, 14, 17 & 47-48; Nemeth, 2001, at pp. 45-46; and Gkoutzinis, 2006, at pp. 1-318. Note also the discussion under the ‘history and current state’ subtitle above.
\textsuperscript{132} Zonis and Semler, 1992, at pp. 18-26, 88-95, 161-168, 232-240, 303-310 & 371-380; World Bank,
2000, at pp. 161-162; Bokros, 2001; World Bank, 2000a; Feldstein, 2003. Note also the discussion under the ‘history and current state’ subtitle above.
\textsuperscript{133} Bokros, 2001; World Bank, 2000, at pp. 164-169; World Bank, 2000b; and Urrutia, 1988. The WTO
has played the leading role through the GATS (See the GATS, at the preamble, arts. IV, V, XIV up
to XXI & the annexes on financial services; and WTO, 2003)
\textsuperscript{134} All of them have transformed their views from considering the state as engine of economic growth
to a neo-liberal approach that markets and market friendly states should operate in an internationally
liberalized market (GATS; Rietbergen, 1999, at p. 30; World Bank, 2000, at pp. 164-169; Paloni and Zanadari, 2006; and Quareshi, 1999).
The foreign banks and insurers, once admitted into the domestic market, have, however, also been included in the domestic regulatory system because of the economic sovereignty of the state. The concerns that have often followed the liberalization measure were also the problems of foreign decision, the regulatory treatment of the foreign and domestic institutions, and the need for reciprocity. The making of choice from national or differential treatment has also been a core question. The regulatory solutions and practices have, however, varied from country to country with most of them favouring the national treatment principle.

The consensus in the aftermath of the 2008 financial and economic crisis has also been towards, not protectionism, but the strengthening of liberalization policies, risk prevention and failure resolution capabilities, and international cooperation.

**ii. The Case of Ethiopia**

Ethiopia does not currently have limits on the number of banks, insurers and microfinance institutions that have to be licensed. Its aim is to expand the provision of these services. It, however, prohibits the ownership of these institutions by foreign natural and foreign owned juridical persons. It needs to

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135 Möschel, 1991, at pp. 133-134; Quareshi, 1999, at pp. 34-45, 53-59 & 69-71; and the schedules of commitments of the countries that have acceded to WTO from the WTO website. The processes of deregulation, competition, economic integration and internationalization of businesses in the 1980s and the 1990s have, of course, led to the questioning of the meaning of the nation-state and made the notion of national sovereignty relative. The global situation has also shifted in the last few decades from one where the determinants of economic activity were ‘nationally defined political and economic parameters’ into one where the determinants are international competition and international design or adjustment of institutional frameworks by international organizations (Thimm, 1999, at pp. 1-3 & 10-36). The economic sovereignty of the state is not, however, thrown away. Even the EU has proceeded with the help of ‘mutual recognition’ principle that maintained the regulatory roles of its member states. The principles of harmonization and mutual recognition have led to regulatory transformation and not necessarily to the diminishment of the roles of the national governments. They have led to multi-level governance system where markets are made open for international competition, minimum regulations are made by directives and regulations of the EU at the supra-national level and enforced by laws and administrative rules of the national governments at the national level, and the residue regulation is left to the national governments (Thimm, 1999, at pp. 2, 3-9 & 20-35; Chance, 1993, at p. 2; Nemeth, 2001, at pp. 20-21, 42-59 & 62-83; and Quaglia, 2010). The WTO does not also prescribe, but recognizes, the domestic regulation of the liberalized services markets and institutions as long as the regulatory requirements are administered reasonably, objectively and impartially (GATS, at article VI; and Panourgias, 2006).

136 Möschel, 1991, at pp. 136-140; Pfennigstorf, 1996, at pp. 66 & 75-79; World Bank, 2000, at p. 162; and the schedules of commitments of the countries that have acceded to WTO from the WTO website.

137 WTO, 2009; World Bank, 2009; World Bank, 2009b; IMF, 2009; IMF & FSB, 2009; and G-20, 2009. Several researches have also argued that the internationalization of the financial markets should not be taken as the real cause of the 2008 financial and economic crisis although it might have contributed to its contiguity (Andrew and Mark, 2009; Andrew and Mark, 2009a; Michael and Harold, 2009; Enrique and Vincenzo, 2009; Goodhart, 2009, at pp. 9-29; Chorafas, 2009, at pp. 3-33 & 61-179; and Liedtke, (ed.), 2010, at pp. 5-66).

138 Note the preambles to the laws: TGE, 1994a; FDRE, 2008b; TGE, 1994b; FDRE, 1996g; and FDRE, 2009.

139 TGE, 1994a, at art. 4(2); FDRE, 2008b, at arts. 4(1)(d), 2(5) & 9; TGE, 1994b, at arts. 2(3) & 4(1)(a); FDRE, 1996g, at arts. 2(2) & 4(1)(b); FDRE, 2009, at art. 25; FDRE, 1996c, at art. 6(1)(a); and FDRE, 2003a, at art. 3 and Schedule 2(1). The NBE also imposes the nationality requirement
trade off between the short-term harms and the long-term benefits of opening up of its financial market for foreign investment given the merits and demerits of the latter. The underdevelopment of regulatory capacity, weakness of international competitiveness of the domestic financial institutions and non-liberalization of the foreign exchange regime of the country justify gradualism. Rapid financial market liberalization can be followed by crisis unless adequate macroeconomic performance and regulatory infrastructure is put in place.\textsuperscript{140} Liberalization can also help to meet the objectives of raising national savings, increasing investment, and improving resource allocation only when it is done with deep commitment, careful sequencing and effective regulation.\textsuperscript{141} It can, therefore, be argued that the macroeconomic conditions, the regulatory capacity and the financial institutions need to grow well before Ethiopia attempts at liberalizing its financial market.\textsuperscript{142} However, long delay of opening up of the financial market for these reasons can not also be justified as it is also through the simulation of international exposure that both regulatory and market capacities can be built. It will not also be compatible with the country's accession to the WTO as the latter does not favour the undue delay of services liberalization despite its acceptance of the principle of progressive liberalization.\textsuperscript{143} The prohibition of foreign ownership of the financial on insurance auxiliaries. It however, also recognizes the provision of services by foreign actuaries, loss assessors and loss adjustors (TGE, 1994b, at art. 25; and Directives No. SIB/11/1996; and SIB/12/1996). The insurers of the country have also acquired actuarial services from non-Ethiopian actuaries (usually Kenyans) upon recognition of the NBE (See annual reports of the long-term insurers). The underdevelopment of regulatory capacity, weakness of international competitiveness of the domestic financial institutions and non-liberalization of the foreign exchange regime of the country are the reasons stated in policy for the prohibition of foreign ownership of the banks, insurers and microfinance institutions (FDRE, 2002g, at pp. 109-114).

\textsuperscript{140} Many of the failures that followed the financial market liberalization in Asia and Latin America in the 1990s were caused by instability of capital flow and rapid liberalization in the absence of adequate macroeconomic performance and regulatory supervision (Urrutia, 1988; Sikorski, 1996; Dickie, 1997, at pp. 35-45; Djivandono, 1997, at pp. 57-69; Helleiner, 1998, at pp. 1-219; Stiglitz, 2000; Haggard, 2000, at pp. 130-144; Alberto, et al., 2000, at pp. 1031-1055; Sharma, 2000, at pp. 47-51; Tsurumi, 2001; Stallings and Studart, 2002, at pp. 1-20; Gray, 2003; and Feldstein, 2003, at pp. 1-512). Ethiopia has to learn from that.

\textsuperscript{141} Ibid.

\textsuperscript{142} Many support this approach for Ethiopia. Alemayehu Geda, 2000; Eyob Tesfaye, 1999; and NBE-ERD, 1998.

\textsuperscript{143} Ethiopia is already in the process of accession to WTO (See Melaku Geboye Desta, 2009 and website of the WTO for the general story). The GATS does not force acceding countries to commit their financial services for foreign investment at once. It only requires the progressive liberalization of the services markets through negotiation of commitments and recognizes the making of market access limits and domestic regulation (GATS, at the preamble, articles VI, XIX(1), XVI, XX; and the annexes on financial services forming part of it). It also encourages the recognition of the special situation of least developed countries and the facilitation of their increased participation in world trade (and membership in WTO) by requiring the member countries to refrain from demanding much commitment by the least developed countries during the accession and negotiation processes (See the GATS, at the preamble and articles IV & XIX (2); the 'Modalities for Special Treatment of LDC Members' of the WTO Council for Trade in Services of September 05 2003; and the 'Guidelines for Accession of Least-Developed Countries' of the WTO General Council of 10 December 2002). Given these, however, it is unlikely that a country will succeed with its accession negotiations or continue in its WTO membership with total exclusion of the liberalization of its financial services markets. The recent accessions to the GATS and the July 2008 services 'Signalling' Ministerial Conference of the WTO for the Doha round negotiations have already shown that there are grown interests for greater commitment towards liberalization of the financial and other services markets (See the WTO data base on the accession commitments from its website; the 2009 WTO annual report (WTO, 2009), at pp. 19ff; and the WTO news on services
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Institutions has also already resulted in distortion of the ownership and governance of the microfinance institutions of the country. Both rapid reform and long delay of liberalization are not, accordingly, justified for the country as the former can lead to crisis unless followed by strong regulation while the latter will mean unduly postponing the potential benefits of international competition and inflow of finance to the country. The country needs to strike balance between the two interests. It needs to work both to build its regulatory and market capacities and to open up its markets for international investment without much delay if it has to experience the benefits of international competition and inflow of finance. It may have to start by inducing its financial institutions to open and operate branches outside the country, on top of the correspondence businesses they currently engage in, so that they will experience international competition and then proceed to allow the entry of foreign financial institutions into its market and/or the foreign ownership of its institutions. It, however, needs to implement the liberalization measure gradually and in a way that will not necessitate capital account liberalization until it becomes able to absorb international risks. It is also recommended internationally that a developing country needs to control its capital account at the initial stages of its reform and follow a reform sequence of: first, develop fiscal and monetary control (i.e. limit government spending, have broad based tax system, reduce tax rates, control inflation, and stabilize prices); second, enhance banking, insurance and microfinance regulation and develop domestic capital market (with institutional investors and the necessary regulation); third, liberalize the banking and capital markets without opening up the international capital account; and fourth, open up the international capital account and allow the free convertibility of foreign exchange. Ethiopia needs to work on the first two steps currently and head towards the third and fourth through time.

144 The microfinance institutions have obtained donated capitals from external sources which are substantially higher than their subscribed capitals and these are represented by pseudo shareholding structures that have led to governance problems (Tables 9(Chap. 2) & 10(Chap. 2); the record of the microfinance supervision department of the NBE; and Degefe Duressa Obo, 2009, at pp. 6, 87-164, 179-190, 213-218 & 223-227).

145 The international experience has also shown that both rapid reform and long delay of liberalization (with too much domestic regulation) can not meet the objectives of raising saving, increasing investment and improving resource allocation although strict regulation is found desirable in particular at the initial stages of financial adjustment and liberalization (Urrutia, 1988, at pp. 3-6).

146 The 2008 financial and economic crisis has, of course, slowed down the international flow of finance to developing countries (Reuters, 2009; WTO, 2009; World Bank, 2008a; World Bank, 2009; World Bank, 2009b; World Bank, 2010b; World Bank, 2010c; and IMF, 2010g). One can, however, be optimistic about the future and advice Ethiopia to work towards the indicated measures. The government banks and insurer are also big enough to compete with foreign banks if they enhance their services, working styles, human capacities and technologies. The country needs to work in both directions.

147 Dickie, 1997, at pp. 38-45; Helleiner, 1998, at pp. 1-219; Sharma, 2000, at pp. 62-70; and Alberto, et al., 2000, at pp. 1051-1055. The 2008 financial and economic crisis has also shown that international openness of financial accounts, strong cross-border financial linkage and strong dependence on foreign capital inflow will increase exposure to crisis unless adequately regulated. The case of Iceland is example (EC, 2009; J. Balvin Hannibalsson, 2009; and Jónsson, 2009).
The country also needs to take care of the factors that influence the international expansion of financial companies and the way international companies expand if it has to attract one. The choice of location and form of penetration of the international services companies are often influenced by the history and size of their established businesses; the market size in the host countries; the economic interaction between the home and host countries; the physical and cultural distance between the home and host countries; the number of entry barriers in the host countries (more specifically the government regulations and the distribution methods); and the competitive advantages in comparison to the potential competitors in the host countries.\textsuperscript{148} The market potential, the productivity of capital and labour, the presence of important customers who establish offices abroad, the potential for high growth rates, the lowness of concentration and competition, the potential for spreading risks, the highness of economic interaction with the home country, the smallness of the geographical and cultural distance between the home and host countries, and the potential for long-term and stable market relationship are also said to be major deriving factors in raising the interests of service companies for foreign penetration.\textsuperscript{149} The international financial institutions are also said to have expanded by type of business, type of product and type of distribution channel in the past.\textsuperscript{150} Their international investment has also been affected by a 'follow-the-client' motive.\textsuperscript{151} Hence, Ethiopia needs to take into account the direction of its foreign trade and incoming foreign investment, try to open up its financial market to the financial institutions of its major trading partners, and enhance its financial market and regulatory capacities until it joins the WTO and fully liberalizes the market.\textsuperscript{152}

The country also needs to take note of the experience it had with the foreign owned banks and insurers in the 1930s up to the 1970s. Some of the institutions like the Bank of Ethiopia and the Addis Ababa Bank S.C. had more value for development objectives of the country than their profit motives while the many others which operated as branches of the foreign banks and insurers were more profit motivated than being developmental.\textsuperscript{153} The Imperial Government of the time had only to entertain both groups of institutions for reason of their importance to disseminate financial services in the country. That being history, the country currently needs to:

- give attention to the roles the foreign financial institutions can play in the enhancement of competition and the development of the quality and types of its financial services, and

\textsuperscript{148} Rietbergen, 1999 at pp. 19-23 & 65-93.
\textsuperscript{149} Id., at pp. 27-28 & 95-122.
\textsuperscript{150} The most common forms of their expansion are said to be opening of a branch or a subsidiary in a foreign market, acquisition of or merger with a foreign company, exporting and selling of services through strategic alliances, and international cooperation through networking and joint venture. Id., at pp. 21, 28-30, 32 & 65-93.
\textsuperscript{151} Id., at pp. 27-28 & 95-122.
\textsuperscript{152} See Table 23(Chap. 2); quarterly reports of the NBE for 2008, 2009 and 2010; and records of the Ethiopian Investment Agency for 2008, 2009 and 2010 for the direction of Ethiopia's external trade and incoming foreign investment during the last one and a half decades.
\textsuperscript{153} Note the discussion under the ‘history and current state’ subtitle above.
- design a regulatory system that can discourage the potential problem of hit and run and encourage the contribution of the foreign financial institutions to the development of its financial system.

It also needs to cooperate with the home country regulators of the financial institutions in this respect.

b. Location and Registration

i. The International Experience

Many of the countries used to have geographic and branching limits to facilitate supervision, ensure financial and managerial capacity, prevent the contiguity of risk, promote division of labour, and/or reflect tradition of federalism and decentralization. They have removed these types of limits from their modern regulations although they still have registration requirements as elements of their licensing regimes.

ii. The Case of Ethiopia

Ethiopia has not decentralized the formation and regulation of its financial institutions. It establishes the government banks and insurer by laws of the Federal Government. It requires the private banks, insurers and microfinance institutions to meet formation requirements under the federal laws and get their licenses from the NBE. It requires them to register principally in the federal commercial register at the Ministry of Trade and Industry and to operate under supervision of the NBE. It requires the banks and insurers to get branching permit from the NBE and the microfinance institutions to notify their branching to the latter. It requires all of them to disclose the addresses of their principal offices and branches to the NBE and the commercial registers of the places where their branches are located and strictly prohibits them from changing or closing...
their places of businesses without written consent of the NBE. It does not, however, limit the branching and geographic areas available for the banks, insurers and microfinance institutions. These rules are justified by the interest of the country to disseminate the banking, insurance and microfinance services. They are not also inconsistent with the international experience.

The country, however, needs to use its licensing and branching regulation to balance between two interests. On one hand, the need for balanced economic growth across regions of the country necessitates increasing the size of the financial institutions and decentralizing them. Hence, the geographic and branching regulations need to be liberal and facilitative of formation and growth of the financial institutions across the regions. On the other hand, the need for making the financial institutions prudent and beneficial to the economy necessitates that they should not simply flourish in number and grow in size but also be able and competitive. This requires that the country needs to have tight geographic and branching regulation. Hence, the country needs to enforce four types of measures.

First, it needs to remove the licensing and prior permission requirements for branching and change of place of business. These need not be permitted or licensed by the NBE, but must be notified to it. The feasibility of branching can be left to each financial institution and the effect of branching can be regulated at the level of overall operation of the financial institutions. The NBE also needs to focus on regulating the overall health of the financial institutions instead of on each branching step. It, however, needs to regulate the closing of branches to ensure service stability. The measures the country has taken regarding the microfinance institutions in these regards are commendable and the banking and insurance branching regulations need to follow them.

Secondly, it needs to fix maximum number of branching or branching ratio in the law to restrain the further expansion of the largest banks, insurers and

160 TGE, 1994a, at arts. 5(1)(a) & 5(4); FDRE, 2008b, at art. 3(3)(a); TGE, 1994b, at art. 44; FDRE, 1996g, at art. 14; FDRE, 2009, at arts. 5(1)(a), 5(2) & 17(5); and Directive No. MFI/07/96. It used to require them to obtain operational permits from the regional governments and to undergo summary registrations in the trade bureaus of the latter for their branches once they have obtained the branching permit from the NBE (FDRE, 1997a, at art. 5(4); and FDRE, 1997c, at art. 13(1)). It has eased these requirements by its recent commercial registration and business licensing law. The latter law imposes only duty to notify the branching to the commercial registers of the places where the branches are to be located (FDRE, 2010a, at arts. 6(2-4) & 31(3)).

161 Decentralization of banking and insurance is crucial in facilitating balanced economic growth particularly in a transition economy. The World Bank also recommends it. World Bank, 2000, at pp. 49 & 166-167.

162 The NBE used to consider branching authorization as one means of assuring the health, stability and legality of banks and insurers. Its banking and insurance supervision departments have, however, become convinced by the view that branch authorization requirement is unnecessary intervention as branching is a business decision to be left to the banks and insurers while the overall financial position of the institutions can be supervised on an ongoing basis and the NBE can prohibit branching at any time it feels necessary to discipline the institutions. NBE BSD, 2005, at pp. 31-32; and NBE ISD, 2005, at pp. 62-64.
microfinance institutions. This will do two things: it, on one hand, will make the large banks, insurers and microfinance institutions concentrate more on efficiency and competitiveness than on size and, on the other, correct and prevent market dominance so that new entry and competition may not be discouraged. The number or ratio can be fixed by taking into account the size disparity between the private and government owned institutions.

Thirdly, it needs to promote geographic diversification of branching. The banking, insurance and microfinance services are concentrated in Addis Ababa and few towns (and regions) to which the banks, insurers and microfinance institutions tend to affiliate themselves. The country needs to motivate the institutions to branch out and expand their services across cities and towns of all the regional states of the country.

Fourthly, it needs to decentralize the formation of banks, insurers and microfinance institutions to the regions and retain the making of regulation by the NBE from the centre. The formation of the banks and insurers need not be limited to the federal level. They also need to be formed through principal registration in the regions where their head offices may be situated as it is the case with the microfinance institutions. The NBE also needs to exercise one-stop-shop service and make it available at the regional state level in order to facilitate the process of formation of the banks and insurers at that level. The one-stop-shop service will also be meaningful if the NBE registers the applicant by itself on behalf of the principal commercial register (wherever this may be) and transfers a copy of the registration to that register as well as to the federal commercial register at the Ministry of Trade and Industry for the national record purpose.

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163 This won’t be incompatible with the GATS even if the country accedes to WTO as the GATS does not outlaw domestic regulations (and the making of limitations on market access) for domestic policy reasons as long as the measures are not discriminatory and the necessary specification is made in the schedule of commitment of the country.

164 The governmental banks and insurer still dominate the Ethiopian financial market although the market share of the private banks and insurers is growing steadily (Tables 19(Chap. 2); 20(Chap. 2); and the annual and quarterly reports of the NBE for 2008, 2009 and 2010). The government owned microfinance institutions also dominate the microfinance sector in terms of branch size, asset, capital and operational outreach (Table 10(Chap. 2); and Degefe Duressa Obo, 2009, at pp. 87-105 & 220-222).

165 Note the size disparity between the institutions from Tables 2(Chap. 2); 4(Chap. 2); 10(Chap. 2); 19(Chap. 2); 20(Chap. 2); and the annual and quarterly reports of the NBE for 2008, 2009 and 2010. The banks, insurers and microfinance institutions are concentrated in Addis Ababa, Dire Dawa and four out of nine regions of the country, namely Tigray, Amhara, Oromia, and SNNPR (Southern Nations, Nationalities and Peoples Region). Those outside Addis Ababa and Dire Dawa are further concentrated in six towns of the regions, namely Nathreth, Jimma, Awassa, Bahir Dar, Gonder and Mekele.

166 The opening up of financial institutions in the towns can also have the effect of modernizing the towns although the institutions may have to face operational challenges at the start. The diversification requirement has also to be applied regarding the regulation of product distribution (note the discussion under the ‘regulation of product distribution’ subtitle below).

167 The microfinance institutions are being licensed by the NBE with principal registration and head offices not necessarily located in Addis Ababa.
The country should not, however, decentralize the regulatory and supervision functions of the NBE for two reasons. Firstly, the regions lack the capacity to regulate financial institutions. Secondly, the objectives of financial regulation (in particular the objectives of managing the national monetary system and achieving financial security and stability) can be addressed best if coordination and regulation is made from the centre even when the regions possess that capacity. The regional governments need, accordingly, to be in charge of only conducting registration of the financial institutions and their branches in the commercial registers.

The decentralization measure need not also limit the discretion of the financial institutions to locate their branches on business profitability grounds. It needs to be enforced through techniques that will balance between the objectives of decentralization and business profitability (such as by using incentives for the financial institutions and implementing reforms that will enhance the operational situations in the regions).

c. Legal Form

i. The International Experience

Most of the countries exclude individual traders from being bankers and insurers and require incorporation of the banks and insurers as public companies with minimum number of founding members. They justify this by the need to impose fixed capital, limited liability, defined governance structure and strong regulation on the banks and insurers and the use of the public company form to facilitate these. The microfinance regulations of many of the countries do not, however, insist on the public company form of incorporation although they promote the commercial business approach.

ii. The Case of Ethiopia

Ethiopia allows only share companies (besides the government enterprises) to undertake the banking, insurance and microfinance businesses. The requirement is justified by reasons similar to the ones invoked in the other countries. The country needs to continue with it as it is the share company form that can facilitate financial regulation by fixing capital, limiting liability, separating ownership and control, allowing ownership flexibility, and imposing strong capital and governance structures under the current business organization law of the country.

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171 TGE, 1994a, at arts. 2(6), 3 & 11; FDRE, 2008b, at arts. 2(5), 4(1)(d) & 60(3); TGE, 1994b, at arts. 6, 4(2), 4(3) & 44; FDRE, 2009, at art. 2(3) & 1(c-d). The share companies are publicly tradable commercial companies to be formed under the Commercial Code of the country (IGE, 1960, at arts. 304ff; and FDRE, 2010a).
d. Initial Capital

i. The International Experience

All legal systems impose minimum capital requirement to allow the carrying out of financial businesses. They either fix the required capital by law or leave it to determination by the concerned supervisory authority.\(^{172}\) They also require that the required minimum capital has to be paid fully within a defined period of time during the foundation stage of the company.\(^{173}\) They also require that the legal form, number of branches, size of market, and type, volume, and risk of business of the company has to be considered in the determination of the initial capital requirement.\(^{174}\)

ii. The Case of Ethiopia

Ethiopia requires the banking, insurance and microfinance companies to have fully subscribed and partly paid up share capital before commencement of business and to maintain unimpaired minimum capital throughout their life after commencement of business.\(^{175}\) It requires them to deposit a portion of their subscribed capital, which is equal to an amount fixed by law or the NBE, in blocked bank account before commencement of business and to collect the balance within a period of five years.\(^{176}\) It requires them to collect the full payment of all contributions in kind before commencement of business.\(^{177}\) It requires the insurance companies to meet minimum capitals fixed in the insurance supervision law by type of business and the banks and microfinance institutions to meet and keep amounts to be determined by directives of the NBE.\(^{178}\) It leaves full discretion to the NBE to fix the minimum initial capitals to be met by the

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\(^{175}\) TGE, 1994a, at arts. 3, 12 & 13(1); FDRE, 2008b, at arts. 4(e), 4(f) & 18; TGE, 1994b, at arts. 4 & 7(1)(a); FDRE, 1996g, at arts. 4(1)(c) & 12(1); and FDRE, 2009, at arts. 5(1)(d-e), 14(1), 14(2)(b), 14(3) & 17(3).

\(^{176}\) FDRE, 2008b, at arts. 4(1)(c) & (f); TGE, 1994b, at art. 4(1)(c); FDRE, 1996g, at arts. 4(1)(c) & 12(1); FDRE, 2009, at art. 5(1)(d-e). The general share company law of the country also requires the payment of balances of all subscriptions within a period of five years from the date of registration of the company (IGE, 1960, at art. 338).

\(^{177}\) IGE, 1960, at art. 339.

\(^{178}\) TGE, 1994a, at art. 13(1); FDRE, 2008b, at arts. 4(1)(f) & 18(1); TGE, 1994b, at art. 4(1)(b) & (c); FDRE, 1996g, at arts. 4(1)(c) & 12(1); and FDRE, 2009, at arts. 5(1)(e), 14(1) & 14(3). The insurance supervision law fixes three million Birr for the companies that apply to undertake general insurance business, four million Birr for those applying to undertake long-term insurance business, and seven million Birr for those applying to undertake both businesses (TGE, 1994b, at art. 4(1)(b)). The 2009 microfinance business law also authorizes the NBE to fix different capital requirements for the different microfinance institutions based on their risk profiles (FDRE, 2009, at art. 14(3)).
banks and microfinance institutions. It also authorizes the microfinance institutions to obtain assistance and concession credits from foreign sources for purpose of their capitalizations (and lending businesses).

The NBE has required the applicants for bank licence to meet a non-risk weighted capital requirement without making distinction between the initial and ongoing adequacy requirements of the law until the 21st of August 1995. It has required them to commence their businesses with the minimum capital of ten million Birr which was indicated in the law as the ongoing adequacy requirement. It has introduced rules on computation of risk-weighted assets and required the banks to maintain a capital adequacy ratio of not less than eight percent of their risk-weighted assets as of the 21st of August 1995. It has then fixed a minimum capital requirement of seventy five million Birr and required all the existing and new banks to meet this amount starting from the 1st of June 1999. It currently requires all the applicants for banking license to meet the seventy five million Birr requirement and the applicants for microfinance business license to meet a minimum paid up capital of two hundred thousand Birr.

The government banks and insurer are required to have authorized capitals allocated by the government, twenty five percents of which are to be paid by the government at the times of their establishments and the balances of which are to be paid within a period of five years from the dates of their establishments. They are subject to the banking (insurance) and public enterprises laws and to supervision by the NBE and a Financial Public Enterprises Agency established under the Council of Ministers of the country. The public enterprises laws establish them with the capitals allocated by the government and regulate their governance structures while the banking and insurance supervision laws require

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179 FDRE, 2008b, at arts. 4(1)(f) & 18; FDRE, 1996g, at arts. 4(1)(c) & 12(1); and FDRE, 2009, at arts. 5(1)(e), 14(1) & 14(3). The 1994 banking supervision law of the country authorized the NBE to set the minimum unimpaired capital to be maintained by the banks in accordance with internationally accepted guidelines provided that such minimum shall in no case be less than the greater of Birr ten million or eight percent of the bank’s risk weighted assets in terms of the most recent annual balance sheets of the banks (TGE, 1994a, at art. 13(1)). The 2008 law leaves only the discretion to the NBE (FDRE, 2008b, at arts. 4(1)(f) & 18). The country does not require the insurance companies to risk weight their initial capitals. The insurance supervision department of the NBE does not also check the capitals of the companies for this as the companies have only to meet the capital requirements fixed in the law according to the lines of their businesses (NBE ISD, 2005, at pp. 28-29, 30-31 & 35).

180 FDRE, 1996g, at art. 11(2-3); and FDRE, 2009, at art. 22. The 1996 law allowed this subject to prior approval by the Ministry of Finance of the country (same citation). The microfinance institutions have also, in practice, obtained donated capitals from external sources which are substantially higher than their subscribed capitals (Table 9(Chap. 2)).

181 TGE, 1994a, at art. 13(1).


183 It has required the existing banks to make their adjustments within a period of three years (i.e. until the end of June 2002) and to continue, in the meantime, to maintain the minimum capital level of not less than eight percent of their risk-weighted assets (Directive No. SBB/24/99).

184 Directives No. SBB/24/99; and MFI/01/96.

185 TGE, 1992b, at arts. 19 & 20. The authorized capital has to be reduced to the extent it is paid if the payment of the balance is not completed within the five years period. Ibid.

186 TGE, 1994e, at art. 2(2); TGE, 1994f, at art. 2(2); TGE, 1994g, at art. 2(2); FDRE, 2002b, at arts. 3 & 5; FDRE, 2003, at art. 2(2); and FDRE, 2004aa.
them to meet the minimum capital requirements that are set by the NBE from time to time.\textsuperscript{187} They are expected to meet the greater of the two requirements.\textsuperscript{188}

The effect of capital related requirements depends on the amount the market renders necessary.\textsuperscript{189} It is also important that the regulator assesses the impact of the requirements on new entry, competition and the prudential and other objectives of regulation.\textsuperscript{190} It is also important that the entry and ongoing requirements are set separately. The use of same fixed capital requirement for entry and ongoing adequacy and the frequent adjustment of this requirement in order to make the capitals of the new entrants equivalent to the adequacy levels of the existing actors can bar new entry into the market and cripple competition.\textsuperscript{191}

The use of separately fixed entry and ongoing requirements can, on the contrary, accommodate the capacity differences between new entrants and existing actors and allow competition without endangering prudence. The capital related regimes of Ethiopia for the insurance and microfinance businesses tend to be in line with this although the former lacks capital adequacy requirements as such and the latter leaves both the initial capital and the ongoing requirements to discretion of the regulator (i.e. the NBE).\textsuperscript{192} The capital regime for banking, however, fails to distinguish between the initial and the ongoing requirements due to the indistinctive use of the fixed capital requirement by the NBE.

The country, therefore, needs to make changes on the capital regimes. First, distinction needs to be made between the initial and the ongoing capital requirements in the banking and microfinance supervision laws and enforcement. Secondly, the initial capital requirements on the banks and microfinance institutions need to be fixed in the law (as it is the case with the insurers) and the ongoing capital requirements need to be left to decision of the regulator (i.e. the NBE). Thirdly, the ongoing capital requirements on the banks, the insurers and

\begin{itemize}
  \item \textsuperscript{187} TGE, 1994a, at art. 11; FDRE, 2008b, at arts. 18(1) & 60(3); TGE, 1994b, at arts. 4(2) & (3).
  \item \textsuperscript{188} In practice, they are established with authorized and paid up capitals greater than the minimum the NBE required (TGE, 1994d, at art. 6; TGE, 1994e, at art. 6; TGE, 1994f, at art. 6; TGE, 1994g, at art. 6; FDRE, 2003; FDRE, 2005a; and FDRE, 2007c).
  \item \textsuperscript{189} Möschel, 1991, at p. 57; and Pfennigstorf, 1996, at pp. 72 & 93.
  \item \textsuperscript{190} This type of assessment is important in Ethiopia as the formation of new financial institutions in the country is slowed down. Only four private banks (namely, the Cooperative Bank of Oromia S.C., the Lion International Bank S.C., the Zemen Bank S.C. and the Oromia International Bank S.C.) are established after the June 1999 increment of the entry capital for banks. Also only three insurers (namely, the Nib Insurance Company S.C., the Lion Insurance S.C., and the Ethio-Life Insurance S.C.) are established during the period while the number of microfinance institutions has reached and stagnated at thirty. (Tables 1(Chap. 2) & 9(Chap. 2); the annual report of the NBE for 2008; and the records of the banking, insurance and microfinance supervision departments of the NBE for 2009).
  \item \textsuperscript{191} This is likely to happen when the entry requirement becomes large suddenly as it was the case in Ethiopia when the NBE increased the capital requirement on the banks from ten to seventy five million birr at once. The importance of differentiating between initial and ongoing capital requirements is also seen in other systems (Pfennigstorf, 1996, at pp. 72 & 93).
  \item \textsuperscript{192} The insurance supervision law fixes the initial capital requirements in figures and sets solvency requirements as risk-based percentages (TGE, 1994b, at arts. 4 & 20). The microfinance business law differentiates between the initial and operational requirements and leaves both to determination by the NBE (FDRE, 1996g, at arts. 4(1)(c), 12(1) & 16; and FDRE, 2009, at arts. 5(1)(e), 14(1), 14(2)(b) & 14(3)). The NBE directives for the microfinance institutions also follow this differentiation in practice (Directives No. MFI/01/96, at art. 2; and MFI/16/2002).
\end{itemize}
the microfinance institutions need always to be related to risk. These measures will enable the regulatory system to accommodate the capacity differences between new and existing institutions, ease market entry, allow competition, and ensure prudence at the same time.

e. Ownership Spreading

i. The International Experience

Many of the countries ensure widespread share ownership so that there will be no danger of self-dealing between principal shareholders and the financial institutions. They do this by imposing limitations on the individual shareholding levels in the financial institutions.193

ii. The Case of Ethiopia

Ethiopia spreads the shareholding in the banking, insurance and microfinance institutions by prohibiting all persons from holding more than five percent (more than twenty percent in the case of the insurers) of the total shares of the institutions on their own as well as jointly with their spouses and persons below the age of eighteen years who are related to them by consanguinity in the first degree.194 It also prohibits the influential shareholders of the banks (i.e. those who hold two percent or more of the total subscribed capitals of the banks directly or indirectly) from acquiring shares in other banks.195 These restrictions are justified by the need to prevent undue dominance of the institutions by few shareholders and are consistent with the international experience despite difference in detail. The country needs to pursue them to enhance the health of governance of the financial institutions. The country, however, also needs to make sure that the restrictions are not too much to limit investment choice. The levels imposed on the banks and microfinance institutions are highly restrictive while these institutions have high need of capital.196 They need to be relaxed.

f. Business Plan, Organizational Structure and Disclosure

i. The International Experience

The regulators in almost all countries require the applicants for banking, insurance and microfinance license to submit their business plans and information on their legal forms, head offices, organizations, branches, intended businesses, capitals, and names, nationalities and qualifications of their founders and initial

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194 FDRE, 2008b, at art. 11(1); TGE, 1994b, at art. 5(1); FDRE, 2009, at arts. 10(1) & 28(1); and SBB/47/2010. It exempts the federal and regional governments from this limit (See same citation).

195 FDRE, 2008b, at arts. 2(11) & 11(4). The 2009 microfinance business law also extends the application of this rule to the microfinance institutions (FDRE, 2009, at art. 28(1)).

196 Note the annual reports of the NBE for assessment of their capital needs.
managers. Some of the regulators also require the submission of profitability forecasts. The requirements are imposed to supply the regulators with information on the future prudence and growth potentials of the applicants.

**ii. The Case of Ethiopia**

Ethiopia requires the applicants for banking, insurance and microfinance business license to provide the NBE with information on their formation costs and liabilities, feasibility studies, projected financial statements (for the first three years of operation for the banks and insurers and one year of operation for the microfinance institutions), proposed organizational structures and functions, curriculum vitae (of chief executive(s), founders and directors), ownership certificates (and/or lease agreements) (for their buildings, vaults, equipments and fixtures); and evidences (for their paid up capitals, valuations of contributions in kind and insurance coverages, if any). It also requires the founders of the banks under formation to publish 'notice of intention to engage in banking business' to the public through widely circulating newspapers. It also requires the banks and insurers that apply for branching permit to supply the NBE with the feasibility studies for the branches and the title deeds (and/or rental agreements) for the premises of the branches. The supervision departments of the NBE do not, however, sufficiently appraise the feasibility studies of the applicants in practice. They do not also require the applicants to present and defend their feasibility studies.

The aforementioned requirements of Ethiopia are justified by reasons similar to the ones invoked in the other countries, i.e. the need to ensure the future prudence and growth potentials of the applicants. The country needs to retain and strengthen them. The supervision departments of the NBE, however, also need to...
exercise pre-business commencement examination so that they will make sure that the disclosures made by the applicants are appropriate and practical.\textsuperscript{204}

g. Management and Ownership Quality

i. The International Experience

Many of the legal systems require major owners and senior managers of the financial institutions to be qualified, competent and reliable.\textsuperscript{205} They assess the good reputation, reliability, professional qualification, and managerial and entrepreneurial capability of the owners and managers not just based on their specific career training or education but also by considering their past personal and business performances.\textsuperscript{206} They also either limit the engagement of key personnel of the banks and insurers in outside managerial activity or require the notification of external activities and sometimes of shareholding in other enterprises to the regulators in order to ensure undivided attention of the personnel to the banks and insurers they are in charge.\textsuperscript{207} A number of the countries also require management by at least two managers with the hope that it will improve internal control of the financial institutions and limit the detrimental effects of erroneous assessments of the regulators.\textsuperscript{208} Some of them also used to require members of the bank management to be nationals or to have permanent residence at the banking centre in order to increase the personal responsibility of the managers, make the managers familiar with the legal and extra-legal environments of the banks, and follow up the day-to-day performances of the banks and the managers.\textsuperscript{209}

\textsuperscript{204} The microfinance supervision department is empowered to check that the microfinance institutions have put in place the necessary assets, policies, manuals and licensing conditions before commencement of their operation (Directive No. MFI/04/96). The banking and insurance supervision departments are not expressly empowered to do this. The initiative with the microfinance supervision department needs to lead to development of a general system where all the supervision departments can conduct pre-business commencement examination on the banks, insurers and microfinance institutions.

\textsuperscript{205} Möschel, 1991, at pp. 58-59; Lovett, 1992, at p. 121; Pfennigstorf, 1996, at pp. 66-67; IAIS, 2005b, at pp. 17-18; Copestake, et al., (eds.), 2005; Berger, et al., (eds.), 2006; Swaan & Linden, (eds.), 2006; and WSBI/ESBG, 2009. Some like Ireland also require members of the supervisory boards to possess these qualities. Others like United Kingdom, Switzerland, Australia, Luxembourg and the EU also extend the requirements to the shareholders who are in position of qualified ownership or control of the company. The recent advice is to impose the requirements also on members of the boards of directors (Bob Garratt, 2006).

\textsuperscript{206} Ibid.

\textsuperscript{207} Belgium, France, Canada and the United States used to limit such external engagement while Germany required notification. Others like the Netherlands, Switzerland and Luxembourg did not set limitations of this type at all. The severity of the limitations has also varied from country to country and exceptions were sometimes made. IAIS, 2005b, at pp. 59-60; and Lovett, 1992, at p. 121.

\textsuperscript{208} The rule in most of the countries is to have managers who head lines of functions and account to a chief executive and the boards of directors of the financial institutions. Möschel, 1991, at p. 59; and IAIS, 2005b, at pp. 59-60.

\textsuperscript{209} The use of this rule has diminished through time because of the internationalization trend. Möschel, 1991, at pp. 59-60; and IAIS, 2005b, at pp. 59-60.
ii. The Case of Ethiopia

Ethiopia authorizes the NBE to enact qualification, fitness and propriety criteria for influential shareholders of the banks and the directors and chief executives of the banks, insurers and microfinance institutions. It bars persons declared bankrupt or making a composition with creditors and persons convicted of an offence involving dishonesty or fraud from managing the banks, insurers and microfinance institutions without prior written approval of the NBE. It requires the directors and chief executive officers of the banks and microfinance institutions to cease their functions when they or the companies in which they are directors or executive officers are declared bankrupt or convicted for liability. It requires the persons who were directors, managers and principal officers or otherwise concerned directly or indirectly with the management of any financial institution that has been wound up, whether in Ethiopia or abroad, to get prior written approval of the NBE when they want to be directors, managers or principal officers of the banks, insurers and microfinance institutions or to engage directly in the management of these institutions in any other capacity. It authorizes the NBE to enact directives on the appointment and tenures of directors of the banks and microfinance institutions and prohibits the directors and chief executives of the financial institutions (and the business entities in which these persons hold more than ten percent equity interest) from being directors of a bank and the employees of a bank from being directors of another bank at the same time. It also authorizes the NBE to issue directives on duties, responsibilities and good corporate governance of the boards of directors of the microfinance institutions.

The NBE also requires, in practice, that all the directors of the banks, insurers and microfinance institutions shall be at least thirty years of age (for the banks and insurers, twenty five years for the microfinance institutions) and have minimum of high school education with ability to read and grasp financial statements (and reports) and adequate managerial experience in business and similar organization. It requires that the chief executives shall be at least thirty five years of age (for the banks and insurers, thirty years for the microfinance institutions) and have minimum of first degree or equivalent in relevant field and reputable managerial experience of minimum of (ten years for the banks and insurers, three years for the microfinance institutions) in a financial or related
institution. It also prefers that they are married or responsible to a family. It also prohibits the members of the boards of directors of the banks from being members in the boards of other financial institutions and from acting as chief executives of the same bank. It also limits the office terms of the members of the boards of directors of the banks to maximum of six consecutive years with a possibility that up to one-third of the outgoing directors can be retained for an extra one term and that the resigned members can be re-appointed after lapse of six years.

The country does not, however, have rules that bar criminals and unreliable persons (other than those convicted for an offence involving dishonesty or fraud) from participating in the banks, insurers and microfinance institutions. It does not also require multiplicity of chief executives, residence at a banking or financial centre and particular nationality of the chief executives of the financial institutions. It does not also prohibit foreigners from being chief executives of the financial institutions provided that they obtain work permit from the appropriate authorities. The limits on board tenure and outside managerial engagement are also partial and confined to membership of the boards of directors and executives of the banks and microfinance institutions. The NBE does not also evaluate the competence and integrity of the shareholders, directors and chief executive officers of the banks, insurers and microfinance institutions and enforce the rules that bar the persons convicted of dishonesty or fraud from managing the banks, insurers and microfinance institutions in practice because of poor level of the country’s data base. The government banks and insurer are also managed by a management board appointed by the government under advice of the Financial Public Enterprises Agency, a general manager (or president) and several deputy general managers (or presidents) appointed by the government under advice of the management board, and several officials who are appointed by the general and deputy managers (or presidents).

The Ethiopian rules on management and ownership quality are justified by reasons similar to the ones invoked in the other legal systems. They, however, need to be improved due to the domestic situation of the country.

First, a number of the financial institutions are affected by unqualified and inexperienced officers and the requirements on managerial profession and

217 Directives No. SBB/1/1994, at art. 4 (as amended by SBB/39/2006); SIB/1/1994, at art. 4; & MFI/03/96, at art. 5.
218 Ibid.
220 Id., at art. 5.1.5.
221 They can not, however, be board members since these have to be shareholders of the financial institutions and foreigners are prohibited from this.
222 They do not limit the extent to which the management and key personnel of the banks, insurers and microfinance institutions can engage in outside managerial activities. The directors and executives of the insurers are not also subject to them except that they are not allowed to be directors of an insurer and a bank at the same time by virtue of the banking business law (FDRE, 2008b, at art. 15(3)).
223 NBE BSD, 2005, at pp. 15-16 & 24; and NBE ISD, 2005, at pp. 29-30 & 33-34.
224 TGE, 1992b, at arts. 10-16; and FDRE, 2004aa.
experience need to be more stringent than they have been so far and be applicable on the managers other than the chief executives of all the financial institutions.\textsuperscript{225} Emphasis must not be put on possession of degree and length of service, but on the presence of managerial and entrepreneurial capability and quality in the leadership of financial institutions. Capacity building programs and a national testing or certification centre, which will examine the competence of existing and future leaders of the financial institutions and check the continuity of these, need also to be organized so that the managerial quality requirements can be enforced adequately.\textsuperscript{226} Both the programs and the requirements need also to apply to all managers of the financial institutions so that there will be governance efficiency across the financial sector.

Secondly, many of the board members, executives and managers of the private banks and insurers are retirees of the financial and non-financial institutions of the government whose managerial and entrepreneurial capability is limited. Maximum age limits need to be set along with the minimum age limits and the capacity building programs to curb the problem.\textsuperscript{227}

Thirdly, the limits on outside managerial engagement need to be applied on all members of the boards of directors, executives and managers of all the financial institutions so that there will be no problem of divided attention and conflict of interest in the leadership and management of the institutions.

Fourthly, the country needs to strengthen its financial criminal tracing mechanism and bar all criminals and unreliable persons not only from managing but also from owning the financial institutions. These persons are always likely to influence the management of the financial institutions even if the NBE may attempt to supervise it.\textsuperscript{228}

Finally, the supervision departments of the NBE need to consider the legality, need and feasibility of the instruments they use whenever they implement requirements on the shareholding and leadership of the financial institutions. Some of the measures already taken, such as the restriction on the office terms of members of the boards of directors of the banks, are not necessary as long as the perceived problems behind them can be controlled through the rules on transactions between related parties and the institutions can be stimulated to raise

\textsuperscript{225} The banking and insurance supervision departments of the NBE have already found that the qualification and related requirements on the directors of the banks and insurers are insufficient. They have found that a number of the banks and insurers are managed by officers who have no experience of managing a financial institution at all and hence, that there is need for checking the competence and integrity of all the officers other than the chief executives. Studies have also already shown that several of the microfinance institutions are managed by unqualified board members, executives and officers. NBE BSD, 2005, at pp. 15-16 & 24; NBE ISD, 2005, at pp. 21-26, 29-30 & 33-34; and Degefe Duressa Obo, 2009, at pp. 6, 87-164, 179-190, 213-218 & 223-227.

\textsuperscript{226} Studies have also recommended for the introduction of these types of requirements to enhance board performance (Bob Garratt, 2006; Itana Ayanna, et al., 2003; and Degefe Duressa Obo, 2009, at pp. 6, 87-164, 179-190, 213-218 & 223-227).

\textsuperscript{227} This is necessary until the country enacts a retirement law for the private sector (note the discussion under the ‘rationale and direction of reform’ subtitle of the pension chapter below).

\textsuperscript{228} It is unlikely that the NBE controls all the connections between the shareholders and managers.
their leadership capacities through the forces of competition and indirect intervention (indicated above).

C. The Rules on Granting and Termination of License

i. The International Experience

Most countries make obtaining license or branching permit a legal right to applicants as long as legally specified preconditions are fulfilled. They also subject the decision of the regulator to principles of administrative law and judicial review to ensure that the right is respected. Some enumerate the grounds for denial (or permit) clearly and restrictively. Others recognize discretionary decision by the regulator on different grounds. Some also recognize third party participation in the decision making process such as associations of the financial institutions. The licensing procedure is also one stop process in most countries. The regulators in most of the countries are also obliged to enter the licensed banks and insurers in special registers either as condition for effectiveness of the licenses or for declaratory and informational purpose.

License can also be revoked in many of the countries by application of the general rules of administrative law, special rules meant for the financial licenses, or combination of the two. The most common grounds considered for license revocation by the regulator are the following:

- failure to use the license,
- improper obtaining of the license, such as through misrepresentation, threat or bribery,
- failure to sustain the preconditions of reliability and professional qualification,
- serious infringement of existing regulation despite warning, and
- use of the revocation measure by the regulator as part of crisis management.

Some of the countries also enforce rules according to which license will terminate by force of law when business is not commenced within a specified period.

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229 Möschel, 1991, at pp. 65-66; Pfennigstorf, 1996, at pp. 72-75; and IAIS, 2005b, at pp. 16-17.
230 Ibid. Note also the discussion under the means of enforcement chapter below.
231 Germany has, for instance, been doing this. Möschel, 1991, at pp. 65-66; and Pfennigstorf, 1996, at pp. 72-75; and IAIS, 2005b, at pp. 16-17.
232 The US, for instance, reserves discretion to the regulators regarding both domestic and external applications. The granting of license for domestic applications, however, looks like a duty in practice. The EU reserves discretion to the regulators regarding the licensing of applicants from non-member states. Ibid.
233 USA, Germany and France are examples. Ibid.
235 Belgium, France, Ireland, Italy, the Netherlands, Switzerland and Hong Kong are examples. Ibid.
236 Germany is example of the practice that combined the two. Möschel, 1991, at p. 66; Pfennigstorf, 1996, at p. 138; and IAIS, 2005b, at pp. 16-17.
238 Möschel, 1991, at p. 67; and IAIS, 2005b, at pp. 16-17.
ii. The Case of Ethiopia

The National Bank of Ethiopia is required by law to issue and renew the banking, insurance and microfinance licenses on annual basis.\(^{239}\) It has to respond to the applicants for license and for branching permit within a period of ninety (sixty for microfinance) and thirty days, respectively, from the date of its receipt of the applications.\(^{240}\) The granting of license or branching permit is, however, left to discretion of the NBE.\(^{241}\) The laws do not also expressly regulate the procedure for licensing (and branch permitting) and the grounds for refusal.\(^{242}\) Both the initial issuance and renewal of licenses and the permitting of branching have also been multi-step and slow processes in practice.\(^{243}\) The NBE has, accordingly, been re-engineering its working systems.\(^{244}\)

The banking, insurance and microfinance licenses issued in Ethiopia can be revoked by the NBE only on grounds indicated by law.\(^{245}\) They do not lapse by force of law although they are issued on annual basis.\(^{246}\) The current grounds for license revocation are i) failure to commence operation within a period of twelve months following the grant of license; and ii) licensing of the institution based on false or wrong information.\(^{247}\) The country also requires the NBE to publish its revocation decision in a newspaper of wide circulation at the place where the head office of the concerned bank, insurer or microfinance institution is located and entitles the concerned bank, insurer or microfinance institution to petition to the federal high court within thirty days from effective date of the revocation.\(^{248}\)

The country also prohibits the banks, insurers and microfinance institutions and the insurance auxiliaries from closing, changing (and/or disposing of) the businesses to which they are licensed and from restructuring their capitals unless

\(^{239}\) TGE, 1994a, at art. 5(8); FDRE, 2008b, at arts. 3 & 7; TGE, 1994b, at arts. 6(3), 25(3) & 44; FDRE, 1996g, at art. 6(5); and FDRE, 2009, at arts. 7 & 28(1). The licenses for insurance auxiliaries are also issued by the NBE on annual basis (TGE, 1994b, at art. 25; and Directives No. SIB/3/1994; SIB/4/1994; SIB/10/1996; SIB/11/1996; SIB/12/1996; SIB/13/1996; SIB/15/1997; SIB/18/1998; SIB/21/2001; SIB/22/2002; SIB/29/2007; & SIB/30/2007). The general commercial registration and business licensing laws of the country also require annual renewal of licenses (and registrations) (FDRE, 2010a, at arts. 18 & 36).

\(^{240}\) TGE, 1994a, at art. 5(5); FDRE, 2008b, at art. 5(1); TGE, 1994b, at art. 44; FDRE, 1996g, at art. 24; FDRE, 2009, at art. 6(1); and Directive No. SIB/8/1995, at art. 4.

\(^{241}\) TGE, 1994a, at arts. 3-5; FDRE, 2008b, at arts. 3-5; TGE, 1994b, at arts. 6 & 44; FDRE, 1996g, at arts. 6 & 24; and FDRE, 2009, at arts. 4-6.

\(^{242}\) They do not also require the NBE to give reasons for its refusal (Ibid).

\(^{243}\) NBE BSD, 2005, at pp. 18-33; and NBE ISD, 2005, at pp. 16, 31-39 & 63.

\(^{244}\) NBE BSD, 2005, at pp. 34 & 67; and NBE ISD, 2005, at p. 108.

\(^{245}\) TGE, 1994a, at arts. 4-5 & 10(1); FDRE, 2008b, at art. 32; TGE, 1994b, at arts. 6, 7(1), 26(4)(b) & 44; FDRE, 1996g, at art. 9; and FDRE, 2009, at art. 8.

\(^{246}\) The NBE has to renew them unless it has grounds for revocation (Ibid). The insurance auxiliary licenses, however, lapse annually and the country authorizes the NBE to renew them only upon satisfaction that the requirements for new license issuance are met by the auxiliaries (TGE, 1994b, at art. 25(3)).

\(^{247}\) FDRE, 2008b, at art. 32; TGE, 1994b, at arts. 7(1), 26(4)(b) & 44; and FDRE, 2009, at art. 8.

\(^{248}\) FDRE, 2008b, at arts. 32(2)-(5); TGE, 1994b, at art. 44; FDRE, 1996g, at arts. 9 & 24; and FDRE, 2009, at arts. 8(2, 3 & 5).
authorized by the NBE. It makes the violation of these rules ground for receivership (which may lead to license revocation and dissolution).

The banking, insurance and microfinance licensing laws of the country need to be improved in light of both the aforementioned international experience and the country’s domestic situation. First, they need to list the grounds for license refusal and expressly make the obtaining of license a legal right as long as the conditions of licensing are met. The decision should not be left to complete discretion of the NBE. Secondly, they need to require the NBE to adhere to principles of administrative law including the conduct of hearing, the reasoning of decisions, the making of decisions transparent, and the proper handling of complaints. Thirdly, they need to require the NBE to keep a register of licensees in which it has to record the particulars about the licensees that are useful for the conduct of prudential supervision.

The grounds for license revocation also need to be refined further for the following reasons. First, the supervision laws of the country need to make participation of the financial institutions in corrupt and illicit financing practice among the grounds for license revocation so that the laws will be in line with the country’s effort to fight against these crimes. Secondly, the laws need to make the most serious regulatory violations among the grounds for so that the NBE will sanction the violations irrespective of the measure of receivership. Thirdly, the measure of license revocation needs to be preceded by warning for correction and hearing as enforcement of regulation by persuasion is often more useful to solve problems than immediate sanction. Fourthly, the laws need to allow the

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249 TGE, 1994a, at arts. 5(3), 5(4) & 27(2)(d); FDRE, 2008b, at art. 3(3)(b) & (d); TGE, 1994b, at arts. 35 & 44; FDRE, 1996g, at arts. 4, 6, 17(4) & 24; and FDRE, 2009, at art. 17(5) & 28(1). It also prohibits the banks from introducing new services unless authorized by the NBE (FDRE, 2008b, at art. 3(3)(b)).

250 It subjects the restructuring, amalgamation, bankruptcy, dissolution and liquidation of the banks and microfinance institutions to the rules of the banking and microfinance business laws and the general commercial code and those of the insurers to the rules of the general commercial code; and authorizes the NBE to put the banks and microfinance institutions under receivership when the indicated prohibitions are violated, the institutions are on the eve of failure and/or the measure of receivership is requested by resolutions of their shareholders. It allows the enforcement of the bankruptcy, dissolution and liquidation processes on the insurers by the regular courts upon application by the NBE, the concerned insurer and/or interested party. TGE, 1994a, at arts. 26 & 27; TGE, 1994b, at arts. 35, 39, 40 & 44; FDRE, 2008b, at arts. 3(3)(b)-(h) & 33-48; FDRE, 1996g, at arts. 4, 6, 13, 17 & 24; FDRE, 2009, at arts. 17, 19 & 28(1); and IGE 1960, at arts. 217-218, 495-509, 544-554 & 968-1170.

251 The 1994 banking supervision law of the country had a rule that allowed the NBE to revoke the licenses of the banks (and the insurers and microfinance institutions by its extended application) on the ground of regulatory violation (TGE, 1994a, at art. 20(3)(b); TGE, 1994b, at arts. 7(1), 26(4)(h) & 44; and FDRE, 1996g, at art. 9). The 2008 banking business law makes the regulatory violations ground for receivership while the 2009 microfinance business law makes them ground for both license revocation and receivership (FDRE, 2008b, at arts. 31(8) & 33(1)(e); and FDRE, 2009, at arts. 18(7)(h) & 19(1)(a)).

252 The 1994 banking supervision law of the country had rule that required the conduct of hearing by the NBE before making its decision on revocation of license and this has been applicable to the insurers and the microfinance institutions by extension (TGE, 1994a, at art. 10(2); TGE, 1994b, at art. 44; and FDRE, 1996g, at arts. 9 & 24). The 2008 banking business law does not have this rule while the 2009 microfinance business law has it (FDRE, 2008b, at art. 32; and FDRE, 2009, at art. 18(5)).
making of petition to the regular courts only after exhaustion of re-hearing and internal complaint process within the regulator. License related disputes are usually technical and re-hearing and internal complaint processes are more expeditious and appropriate means for resolving them than court decisions.253

The annual license renewal requirement of the country is also hardly useful to the financial market. First, it is unlikely that the NBE can refuse to renew license and interrupt the financial institutions annually. This measure will be against the objective of maintaining financial stability. The NBE needs to revoke licenses only as last resort measure during serious forbearance. Secondly, the license renewal requirement on the financial institutions can not be justified by the country’s established practice for licensing other businesses and the use of the requirement to generate public money. The practice of licensing the financial institutions need not parallel the practice in the other businesses as the financial market requires stability more than the others. Public money can also be raised through means other than the requirement of license renewal in the financial market. Thirdly, imposing the license renewal requirement on the private financial institutions discriminates between them and the government owned financial institutions. It subjects them to licensing costs while the government financial institutions live without these once they are established by law. This type of discrimination need not be sustained so that the private and government institutions can be in level playing field. The country, therefore, needs to remove the annual license (and registration) renewal requirement from the financial regulatory regime and the NBE needs to focus on the use of the license revocation and other instruments for its prudential regulation.

2.3.1.2 Capital Adequacy, Reserving and Provisioning Requirements

i. The International Experience

Almost all countries subject the banks to risk based capital requirements that tie in some or all of the banks' transactions to their capitals and allow the expansion of their transactions only with adequate increase of capital.254 They also require the insurers to have margins of safety to cover their liabilities through requirements of risk-based surplus ratio and solvency margin.255

The countries often define the concept of 'capital' for purpose of the capital adequacy and solvency requirements with consideration of liquidity, risk and valuation.256 They often define it as the aggregate of assets and liabilities of the

253 Note also the discussion under the means of enforcement chapter below.
255 Pfennigstorf, 1996, at pp. 72 & 84-94; IAIS, 2005b, at pp. 27-30; Sandström, 2006; Ayadi, 2007; Eling and Holzmüller, 2008; Sproule, 2009; and Cummins, 2009. The US states rely on premium-based 'surplus ratios' for the ongoing insurers while the EU relies on risk-based 'solvency margin' requirements (Note same citation and the discussion under the 'liquidity and solvency requirements' subtitle below).
Institutions that have to be weighted by risk factors for the capital adequacy requirement and by risk or valuation factors for the surplus ratio or solvency requirement. They include the paid up capitals and reserves of the institutions into the concept of capital. Most of them also require strict valuation of the institutions’ assets and liabilities that form the capital requirement. Some of the countries also make distinctions such as between primary and secondary capital, between base primary capital and limited primary capital and between core capital and supplementary capital in defining the assets and liabilities that form the capital.257

The countries also refer by the concept of adequacy, surplus or margin to the relationship that should exist between the financial institution’s capital or asset and the reference factors. They usually put the requirement in any of the following four ways:

- they fix minimum (with some attempt to differentiate between the risks associated with various financial activities);
- they fix standard (based on risk-weighting requirements);
- they prescribe individualized ratios per type of financial institution (based on historical development and nature of the latter); or
- they consider the capital ratios as one amongst a number of other evaluation requirements.258

Almost all the countries also require the banks, insurers and credit institutions to keep reserves and provisions that are necessary to supplement their capitals.259 They often define the requirements in their banking and insurance regulations and supplement them through the general commercial and other laws.260 They also apply special supervisory requirements on financial groups to avoid the problem of double counting of capital when the financial institutions own interests in legally independent subsidiaries.261 They follow a deduction and/or consolidation procedure to avoid the double counting of capital.262

The 2008 financial and economic crisis has also increased the need for strengthening the level and risk-prevention-orientation of the capital adequacy,
reserving and provisioning requirements on banks, insurers and other financial institutions.263

ii. The Case of Ethiopia

Ethiopia considers the capital adequacy requirement as important instrument of only the banking and microfinance regulations and subjects the insurers to solvency as opposed to capital adequacy requirements as it is the case in the international experience.264 It requires the banks and microfinance institutions to maintain capital adequacy (i.e. unimpaired minimum capital) that shall not be less than a minimum amount that will be determined by the NBE.265 It authorizes the NBE to determine the minimum requirements, the methods of computation of the required capital, and the kinds of assets and liabilities that may be considered during computation.266 It also authorizes the NBE to prescribe different capital requirements that may be maintained by different banks and microfinance institutions depending on their risk profiles.267 It also prohibits the banks, insurers and microfinance institutions from redeeming their shares and reducing their capitals voluntarily without prior written approval of the NBE.268 It does not, however, set qualitative distinctions such as between primary and secondary capital, between base primary capital and limited primary capital, and between core capital and supplementary capital for purpose of determination of the capital adequacy requirement.

The NBE also guides the determination of the capital adequacy ratios from the banks and microfinance institutions by directives on contributions in kind and computation of risk weighted assets.269 It defines the capital adequacy ratios as percentages of the total capitals of the concerned institutions to their total risk weighted assets; sets rules that govern computation of the total capitals and risk weights of the asset of the institutions; and requires the banks and microfinance institutions to maintain capital adequacy ratios of not less than eight and twelve percents of the risk weighted assets, respectively.270 It limits the capital adequacy requirement on the microfinance institutions to the institutions that are re-

263 Campbell, 2007; Christoph Ohler, 2009, at pp. 25-28; Goodhart, 2009, at pp. 47-58 & 95-112; Chorafas, 2009, at pp. 183-234; and Thorsten, 2010. The recent global discussion in respect of the banks includes the setting of rules which will require them to have strong capital reserves that can prevent them from future failure (Note the proposals made to the G-20 in 2010).

264 Note the discussion under the ‘liquidity and solvency requirements’ subtitle below.

265 It also prohibits them from declaring and paying dividends from their annual profits until they correct deficiencies that may occur in the minimum capital. TGE, 1994a, at arts. 12(1) (a) & 13(1); FDRE, 2008b, at art. 18; FDRE, 1996g, at arts. 12(1) & 24; and FDRE, 2009, at arts. 14(1, 2(b), 2(c) & 3) & 18(7)(f).

266 TGE, 1994a, at art. 12(1)(b); FDRE, 1996g, at arts. 12(1) & 24; FDRE, 2008, at art. 18; and FDRE, 2009, at art. 14.

267 FDRE, 2008b, at art. 18(2); and FDRE, 2009, at art. 14(3).

268 TGE, 1994a, at art. 27(2)(c); FDRE, 2008b, at art. 3(3)(f); TGE, 1994b, at art. 44; FDRE, 1996g, at art. 24; and FDRE, 2009, at art. 17(3) & 28(1).

269 Directives No. SBB/3/95; SBB/9/95; MFI/02/96; and MFI/16/2002. The first two directives entered into effect on the 21st of August 1995 and the latter two on the 21st of October 1996 and the 1st of May 2002, respectively.

270 Directives No. SBB/9/95; and MFI/16/2002.
registered with it (i.e. that have mobilized a deposit level of more than one million Birr). It requires the total capitals of the banks and microfinance institutions to be determined by adding their paid up equity and donated capitals and legal and other reserves that are acceptable to it. It requires the exclusion of all contributions in kind (such as built in vaults, buildings and vehicles) from the adequacy requirements and sets a rule that they can be accepted as capital contributions in excess of the required minimum capital by the banks and microfinance institutions only up to twenty five percent of the paid up capitals of the banks and ten percent of the paid up capitals of the microfinance institutions provided that they are valued by professional assessors acceptable to the NBE. It requires the banks and microfinance institutions to calculate the total risk weighted assets according to tables that have set the assets, weights and formula to be followed. It also avoids the problem of double counting of capital by the banks by requiring them to calculate the minimum capital adequacy requirement on a consolidated basis. It also controls the double counting of capital between the banks and insurers that have cross-ownership by requiring them to net out their capitals during determination of their capital adequacy and solvency ratios. It does not, however, see the need for having these types of rules for the microfinance institutions.

The country also requires the banks and insurers to keep legal reserves, statutory deposits and reserves that may be required by law and the NBE from time to time and the banks, insurers and microfinance institutions to make provisions to the satisfaction of the NBE in respect of items identified by law and directives of the NBE. It requires the banks to transfer annually a sum not less than twenty five percent of their net profits to legal reserve accounts in the NBE until the balances of these accounts equal their capitals and to maintain cash reserve balances with the NBE as the NBE may prescribe. It requires the insurers to deposit statutory amounts equal to fifteen percent of their paid up capitals with the NBE in respect of each of the classes of insurance business they undertake and to transfer ten percent of their annual net profits to legal reserve accounts in the NBE until the balances of the reserve accounts equal their capitals. It authorises the NBE to

272 Directives No. SBB/9/95, at art. 2.1; and MFI/16/2002, at art. 2.3.
273 Directives No. SBB/3/95, at arts. 2.1, 2.2 & 2.3; and MFI/02/96, at art. 2.
274 Directives No. SBB/9/95, at art. 3; MFI/16/2002, at art. 2.5; and Table 13(Chap. 2).
275 Directive No. SBB/9/95, at art. 2.2.
276 Directive No. SBB/9/95, at art. 2.2.
277 NBE BSD, 2005, at pp. 72-73.
278 TGE, 1994a, at art. 12(2), 16(5), 13(1), & 13(4); FDRE, 2008b, at arts. 19, 20(3) & 21(1)-(2); TGE, 1994b, at arts. 9-12; and FDRE, 2009, at art. 14(2)(a). The microfinance institutions are not subject to special reserve requirements by the NBE. They are subject only to the general reserving requirements under the commercial code of the country (FDRE, 1996g; FDRE, 2009, at art. 14; and IGE, 1960, at arts. 453-455).
279 TGE, 1994a, at arts. 12(2)(a), 13(4) & 14; FDRE, 2008b, at arts. 19(1) & 20(3). The country also empowers the NBE to determine the sum to be transferred to the legal reserve account after the indicated balance is maintained (TGE, 1994a, at art. 13(4); and FDRE, 2008b, at art. 19(2)). The 1994 law of the country required the banks to maintain statutory balance (i.e. cash reserve) with the NBE as percentage of their total deposit liabilities (TGE, 1994a, at art. 16(5)).
279 The insurers are not required to continue to the transfer once that balance is attained. The NBE may, however, require them to maintain other reserves. TGE, 1994b, at art. 12.
determine the forms and methods of computation of the legal and other reserve accounts and the percentages of the cash balances the banks should keep with it.\textsuperscript{280} It also prohibits the reduction of the balances of the legal reserve accounts of both the banks and the insurers except for the purposes and under the circumstances the NBE may prescribe by directives.\textsuperscript{281} It authorizes the NBE to take measures and impose sanctions as it may consider necessary to rectify deficiencies in the reserve accounts.\textsuperscript{282} It considers the reserve balances and statutory deposits of the banks and insurers at the NBE as part of the usable assets of the banks and insurers provided that the NBE will permit the use of the deposits subject to quick rectification requirement.\textsuperscript{283} It requires the banks to:

- provide for their loans, advances, bad or doubtful receivables, assets pledged to secure loans (when the values of such assets are not included in the calculation made to ascertain the banks' compliance with capital and reserve requirements and the effect of pledge is that such assets are not available for purpose of meeting the liabilities of the banks to the public), and other items as the NBE may prescribe;
- depreciate their fixed assets in accordance with law;
- amortize their capitalized expenditures in five years; and
- fully cover their operating and accumulated losses from their annual net profits before paying dividends to their shareholders.\textsuperscript{284}

It requires the insurers to provide for uncollected premiums whose contract duration has expired, outstanding claims (from the insurers) that are not paid, liabilities incurred under the insurance contract that are not claimed, and items the NBE may identify for provisioning from time to time.\textsuperscript{285} It leaves discretion to the NBE for the items that have to be provided by the microfinance institutions.\textsuperscript{286}

In practice, the NBE requires the banks to maintain statutory (cash) reserve as percent of their total demand, saving and time deposit liabilities and sanctions the deficiencies in the reserve at a rate twice the average rate of interest on loans and advances charged by the banks.\textsuperscript{287} It requires the commercial banks to:

\textsuperscript{280} FDRE, 2008b, at arts. 18(1), 19(1) & 20(3). The 1994 banking supervision law used to require the NBE to take into account the methods employed by the Ministry of Finance and Economic Development in determining the methods of computation and the forms of the legal and other reserve accounts. It also used to authorize the NBE to prescribe different percentage requirements in respect of the demand, saving and time deposits of the banks without exceeding a legal limit of twenty percent. TGE, 1994a, at arts. 12(2)(b) & 16(5).

\textsuperscript{281} TGE, 1994a, at art. 12(2)(c)(1) & (2); FDRE, 2008b, at art. 19(3); and TGE, 1994b, at art. 44.

\textsuperscript{282} TGE, 1994a, at art. 13(3); FDRE, 2008b, at art. 20(4); and TGE, 1994b, at arts. 26(4) (c) & 44.

\textsuperscript{283} TGE, 1994a, at art. 16(5); FDRE, 2008b, at art. 19(3); TGE, 1994b, at arts. 9-11.

\textsuperscript{284} FDRE, 2008b, at art. 21(1)-(6). It also authorizes the NBE to i) issue directives on the amount and calculation of the provisions and ii) follow up the adequacy of the provisions, depreciations and amortizations of the banks (FDRE, 2008b, at art. 21(2) & (6)).

\textsuperscript{285} TGE, 1994b, at art. 16.

\textsuperscript{286} FDRE, 1996g, at art. 16; and FDRE, 2009, at art. 14(2)(a).

\textsuperscript{287} It required them to maintain a reserve balance of five percent of their total demand, saving and time deposits until the 20th of July 2007 and raised this to ten and fifteen percent as of the 20th of July 2007 and the 7th of April 2008, respectively, to curb the inflation problems the country faced in those years (Directives No. SBB/4/1995; SBB/6/1995; SBB/14/1996; SBB/37/2004; SBB/42/2007; and SBB/45/2008).
- classify and provide for their loans and advances quarterly;
- provide for their operating and accumulated losses from their annual net profits until they fully cover the losses;
- provide fully for the values of the assets pledged to them to secure liability;
- amortize their formation expenses (i.e. the expenses they incurred to organize, extend or purchase business, good will and share underwriting services during formation) in a period of five years;
- write off or provide for their non-collectable claims (other than their loans and advances);
- provide for depreciation of their fixed assets;
- establish loan review system by which they will follow up the health and adequacy of their loans and provisions; and
- submit quarterly reports on their loan classifications and provisioning to the bank supervision department of the NBE.  

It requires them to:

- classify their loans and advances into pass, special mention, substandard, doubtful and loss loans;
- consider the loans and advances that are fully protected by the current financial and paying capacity of the borrower and are not subject to criticism as pass loans, the loans and advances overdue for thirty up to ninety days as special mention loans, the loans and advances overdue for ninety up to one hundred eighty days as substandard loans, the loans and advances overdue for one hundred eighty up to three hundred sixty days as doubtful loans, and the loans and advances overdue for three hundred sixty and more days as loss loans; and
- provide for one hundred and a minimum of fifty, twenty, three and one percent of the total outstanding principal balances of the loss, doubtful, substandard, special mention and pass loans, respectively.  

It requires the development finance institutions to classify and provide for their loans, assets, losses and claims in similar fashion as the commercial banks with difference in technicalities due to the medium and long term nature of their lending.

288  Directives No. SBB/18/96; SBB/28/2002; SBB/32/2002; and SBB/43/2007. The provisions of the government banks were regulated under a Regulation and Coordination of Public Financial Operations Proclamation No. 163/1979 until this law was repealed in 1992 (PMGE, 1979; and TGE, 1992b, at art. 3(2)(a)). The country has then subjected the government and private banks to same provisioning requirement beginning 1994 (TGE, 1994a, at art. 15(1); and FDRE, 2008b, at arts. 21(1) & 60(3)).

289  It also requires the banks to limit the total balances of their overdraft facilities to maximum of twenty five percent of their total loans and advances (Directives No. SBB/18/96; SBB/28/2002; SBB/32/2002; and SBB/43/2007).

290  Directive No. SBB/48/2010. The directive defines ‘development finance institution’ to mean ‘an institution which is engaged mainly in medium and long term project finance business, with the purpose of promoting development in the industrial, agricultural, construction, services, commercial or other economic sectors’.
It requires the insurers to meet the statutory reserve requirements fixed by law and to provide for the overdue premium claims in their general insurance businesses. It requires them to provide for a minimum of twenty five percent for the claims that are overdue from ninety up to one hundred eighty days from the effective date of the insurance policy, a minimum of fifty percent for the claims that are overdue from one hundred eighty up to three hundred sixty days and a minimum of seventy five percent for the claims that are overdue for over three hundred sixty days.

It requires the microfinance institutions to:

- limit their loan repayment periods to maximum of five years;
- classify their loans to substandard, doubtful and loss loans (i.e. to loans overdue from ninety one up to one hundred eighty days, from one hundred eighty one up to three hundred sixty five days, and for over three hundred sixty five days, respectively); and
- provide for the substandard, doubtful and loss loans up to twenty five, fifty and one hundred percents, respectively.

It also requires them to provide for depreciation of their fixed assets according to law and for their operating and accumulated losses until they recover them fully.

The banks have also capital adequacy, reserve and provision levels in excess of the requirements of the NBE in practice while the insurers often adhere to the levels the law and the NBE require from time to time. The microfinance institutions often fail to comply with the requirements of both the law and the NBE.

The reserves and statutory (cash) deposits of the banks, insurers and microfinance institutions are meant to serve the purposes of maintaining the integrity of their capitals and guaranteeing their liabilities. They are usually included in the determination of the capital adequacy and solvency positions of the banks,

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293 MFI/18/2006, at arts. 4.3, 6 & 7. It used to differentiate between the re-registered and non-re-registered microfinance institutions to require the re-registered institutions to meet the aforementioned requirements and the non-re-registered institutions to limit the durations of their loan repayment periods to twenty four months; classify their loans into bad and doubtful loans (i.e. into loans that are overdue for more than one year and six months, respectively); and provide for the bad and doubtful loans fully and up to fifty percent, respectively (Directives No. MFI/05/96, at arts. 4 & 5; and MFI/17/2002, at art. 3.3, 3.4, 5 & 6). It removed the differentiation between the two groups of institutions and required all the microfinance institutions to adhere to the aforementioned uniform requirement as of 06 December 2006 (MFI/18/2006, at arts. 4.3, 6, 7 & 10).
294 FDRE, 2009, at arts. 14(2)(a) & 28; FDRE, 2008b, at arts. 21(3) & (5); and Directives No. MFI/05/96, at art. 5; MFI/17/2002; and MFI/18/2006.
295 Tables 14(Chap. 2); 15(Chap. 2); 16(Chap. 2); the annual and quarterly reports of the NBE for 2008, 2009 and 2010 for the banks; and the registers of the insurance supervision departments of the NBE for 2008, 2009 and 2010 for the insurers and microfinance institutions.
296 Muluneh Alemu, 2008, at pp. 11-12; and Degefe Duressa Obo, 2009, at pp. 6, 87-164, 179-190, 213-218 & 223-227.
The Ethiopian capital adequacy, reserving and provisioning regulation is acceptable in light of the operational challenges the banks, insurers and microfinance institutions face in the country. The country, however, needs to consider four areas of improvement for the following reasons.

First, both the banking supervision law and the practice of the NBE do not, as it is discussed above, distinguish between the start-up and the ongoing capital requirements on the banks and this has slowed down the market entry and development of the banking sector in the country. The country needs to distinguish between the two requirements, fix the start-up requirement in the law, leave the ongoing requirement to decision of the NBE, and thereby encourage market entry, prudence and competition. The NBE only needs to continue to set the ongoing requirements in respect of the banks and the microfinance institutions as percentages of their risk weighted assets so that each bank and microfinance institution can meet the requirements according to its operational level and risk exposure once it has entered into the market.

Secondly, Ethiopia's exclusion of the insurers from a capital adequacy requirement to let them only to the reserving and solvency requirements does not make the insurance companies keep the integrity of their capital continuously although it is in line with the international practice. Large liabilities are likely to pierce the capital and reserve bases of the insurers unless the insurers increase these through time. Most of the insurers in the country also have subsistent capital and that is likely to expose them to shock even if they comply with the initial capital and ongoing reserving and solvency requirements. The solvency requirement does not also guarantee the continued integrity of capital as it is not a supplement to capital by itself but an operational margin to be kept. It is also dependent on the quality of asset valuation in respect of which the Ethiopian insurers are weak. The reserving requirements are also less helpful as they require only the maintenance of reserves as percentages of the small capital bases of the insurers. The country, therefore, needs to require the insurers to maintain a risk weighted capital adequacy level in the fashion this is done for the banks and the microfinance institutions.

297 TGE, 1994a, at arts. 12(1) (a) & 13(1); FDRE, 2008b, at art. 21(6); FDRE, 2009, at arts. 14(1) & 14(2)(b); TGE, 1994b, at art. 20; and Directives No. SBB/3/95; SBB/9/95; SIB/26/2004; and MFI/16/2002.
298 TGE, 1994a, at art. 15(1); FDRE, 2008b, at art. 21(6); TGE, 1994b, at arts. 16 & 12; FDRE, 2009, at art. 14(1); and Directive No. MFI/16/2002.
299 The insurance supervision department of the NBE also feels that the solvency test and reserve requirements are not enough to check the prudence of insurers (NBE ISD, 2005, at pp. 104 & 106).
300 Note the capital sizes of the insurers from annual reports of the NBE.
301 The insurance supervision department of the NBE also recommends that the statutory deposit requirement needs to be linked to the premium writing levels of the insurers.
institutions and thereby ensure the continued growth of the risk absorption capacity, competitiveness and stability of the insurers. This measure will also make the country’s insurance regulation consistent with the international recommendations as the maintenance of risk weighted capital level is also implicit in the capital and solvency definitions of the IAIS Core Principles and Methodology for insurance supervision.\textsuperscript{302}

Thirdly, the capital adequacy requirement in the banking and microfinance regulations is not in line with the latest international recommendation.\textsuperscript{303} It is more in line with the 1988 Basel Capital Accord than the 2004 Capital Adequacy Framework. The country needs to improve on it.

Fourthly, the banks and insurers often complain against the reserving and provisioning requirements of the NBE although they comply with them while the microfinance institutions usually fail to comply with the requirements of both the law and the NBE.\textsuperscript{304} The NBE needs to take into account the compliance situations of the banks, insurers and microfinance institutions in setting the requirements.

\subsection*{2.3.1.3 Accounting, Balance Sheet and Valuation Rules}

\textbf{i. The International Experience}

Regulations governing balance sheet and valuation are of great importance for determining the true financial position of a financial institution. Many countries impose strict valuation, write-off, compulsory disclosure and similar requirements to fortify the disguising potential of hidden reserves that may be created by undervaluing assets and overvaluing liabilities.\textsuperscript{305} The international trend also seems to be towards use of compulsory disclosure requirements that compel the financial institutions to give information in their reports that enable the making of inference on the formation and correction of hidden reserves.\textsuperscript{306} Almost all countries also distinguish between accounting for purpose of company law and accounting for purpose of regulation.\textsuperscript{307} They require the financial institutions to prepare two separate sets of financial reports, i.e. annual reports under company law (including their balance sheet and profit and loss accounts) and regulatory reports as prescribed by regulation. They require the company law reports for use by shareholders (and the public) and the regulatory reports for use by the regulators. They also require the regulatory reports to be more detailed than the company law reports. They have also developed a ‘mark-to-market’ accounting

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\begin{itemize}
\item[302] IAIS, 2003, at Principle 23; and Table 4(Chap. 5).
\item[303] Note the discussion under the ‘use of international principles’ subtitle of the means of enforcement chapter below; and Table 3(Chap. 5).
\item[304] Note annual reports of the banks and insurers; Muluneh Alemu, 2008, at pp. 11-12; and Degefu Duressa Obbo, 2009, at pp. 6, 87-164, 179-190, 213-218 & 223-227.
\item[306] Ibid.
\end{itemize}
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and valuation principle through time. The 2008 financial and economic crisis has also increased the need for strengthening the accounting, asset valuation and compulsory disclosure requirements on banks, insurers and other financial institutions.

ii. The Case of Ethiopia

Ethiopia requires the banks, insurers and microfinance institutions to keep books of accounts following generally accepted accounting principles; to have all their assets, whether forming part of their capital or not, valued by experts acceptable or approved by the government; to have their books of accounts audited by independent auditors to be appointed under approval of the NBE and their supervising bodies; and to report the state of their financial activities and affairs to the NBE and to the bodies responsible to supervise them. It requires the banks and microfinance institutions to record their activities and keep documents for each type of transaction in a form and with entry as the NBE may prescribe. It requires the insurers to keep a register of policies (in which they shall record the policies they issued, the names and addresses of the policy-holders and the transfer or assignment of the policies) and a register of claims (in which they shall record the claims lodged with them, the names and addresses of the claimants, the date and amount of the claims, the discharge of the claims with the amount of discharge and the rejection of the claims with the date and ground of rejection). It requires the long-term insurers to have their financial condition and liability investigated by a licensed actuary annually for the first five years following their commencement of business and at least every three years thereafter. It requires the insurers undertaking both long-term and general insurance businesses to administer and use the two businesses separately and to keep separate accounts and funds for them. It also authorizes the NBE to require the banks, insurers

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309 Campbell, 2007; Close, 2007; Frolov, 2007; Lanam, 2007; Cude, 2007; Wroblewski, 2007; Greenwald, 2007; McIlroy, 2008; Hall, 2009; Goodhart, 2009, at pp. 53-55; Liedtke, (ed.), 2010, at pp. 107-149; IASB, 2010c; IASB, 2010d; IASB, 2010f; IFAC, 2010a; IFAC, 2010b; and IFAC, 2010c.
310 TGE, 1994a, at arts. 12, 13, 15, 18 & 19; FDRE, 2008b, at arts. 23-28; TGE, 1994b, at arts. 17, 18 & 44; TGE, 1992b, at arts. 5, 19-22, 27-28 & 32-34; IGE, 1960, at arts. 63-85 & 368-387; FDRE, 1996g, at arts. 12(2)(c) & 22; FDRE, 2009, at art. 15(1a, 2, 3); and Directives No. SBB/19/96 & MFI/08/96. The insurance and microfinance supervision laws and the commercial code of the country refer to generally accepted accounting principles while the banking supervision law refers to internationally accepted accounting standards. The country has not, however, officially adopted any of these principles. The private banks and insurers are, in practice, audited by Ethiopian and non-Ethiopian Chartered Accountants/Auditors/ who got their certification from London while the government insurer and banks are audited by the Audit Service Corporation of the Government (See annual reports of the banks and insurers).
311 TGE, 1994a, at art. 19; FDRE, 2008b, at art. 23(3); FDRE, 1996g, at art. 24; and FDRE, 2009, at art. 15(1)(b-c).
312 TGE, 1994b, at art. 21.
313 TGE, 1994b, at arts. 19 & 25.
314 TGE, 1994b, at arts. 15(1)(b-c)). It also authorizes the NBE to prescribe requirements for separate keeping and administration of accounts and funds for particular sub-classes of the long-term and general insurance businesses (Id., at art. 15(2)). The NBE has, however, classified the businesses so far only for purpose of financial reporting (Directive No. SIB/17/1998).
and microfinance institutions to revaluate and/or re-audit their financial positions when it feels that their reports are defective or inadequate.\textsuperscript{315}

The aforementioned rules of Ethiopia imply that valuations have to be as realistic as possible and, hence, that the creation of hidden reserves by undervaluing assets and overvaluing liabilities is prohibited. The country also authorizes the NBE to check compliance to this prohibition through compulsory reporting and inspection requirements.\textsuperscript{316} However, the rules are framed generally to indicate bookkeeping and reporting duties and one can see the prohibition of hidden reserves from them only by interpretation. The country needs to expressly prohibit the creation of such reserves and the NBE needs to closely enforce the prohibition so that the financial capacities of the institutions will be strengthened. Instances of violation are already seen in practice when some of the banks inflated the net recoverable values (NRV) of their collaterals to reduce provisions.\textsuperscript{317} The adoption of clear prohibition of hidden reserves will also make the Ethiopian regulation in line with the international experience. The country also needs to standardize and enact the accounting principles which the banks, insurers and microfinance institutions have to follow instead of making general reference to internationally accepted accounting principles. The search for such principles has led the banks, insurers and microfinance institutions to divergent accounting practices and this needs to be corrected.\textsuperscript{318}

\subsection*{2.3.1.4 Liquidity and Solvency Requirements}

\subsubsection*{i. The International Experience}

Both liquidity deficiency and excess are not healthy for financial institutions. Liquidity deficiency makes them unable to meet the liquidity demands of their clients while liquidity excess is likely to cripple their incomes and increase their liabilities. Banks usually face liquidity deficiency when they engage in large maturity transformation (i.e. in large transformation of short-term deposits into long-term loans). They face liquidity excess when their lending business is thin. Microfinance institutions face liquidity deficiency when they have loan collection problems and weak deposits and financial resources due to poor financial basis of their clients. Insurers face liquidity deficiency when they face large mismatch between premiums and claims, with the latter growing in greater disproportion to the former. They also face liquidity problems due to internal and external factors, internally by their own rating, reserve valuation, risk selection, re-insurance, investment and sale related decisions and externally by inflation, regulatory

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\textsuperscript{315} TGE, 1994a, at arts. 18(7) & 20(3)(c); FDRE, 2008b, at art. 27(3); TGE, 1994b, at arts. 30 & 31; and FDRE, 2009, at arts. 13(2) & 28(1).  \\
\textsuperscript{316} TGE, 1994a, at arts. 19; FDRE, 2008b, at arts. 28-31; TGE, 1994b, at arts. 17(2), 19(2-4), 30 & 31; and FDRE, 2009, at arts. 15(2-4) & 18.  \\
\textsuperscript{317} NBE BSD, 2005, at pp. 55 & 64.  \\
\textsuperscript{318} See annual reports of the banks, insurers and microfinance institutions.
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changes on structure of insurance, and developments in the underwriting and investment markets.\textsuperscript{319}

Hence, liquidity requirements need to balance between profit and liquidity deficiency (and excess) levels since both of these are desirable for a financial institution.\textsuperscript{320} Varieties of liquidity theories are developed on how to do this for the banks.\textsuperscript{321} The "golden rule of banking" insists on absolute matching of the amount and maturity dates of the assets and liabilities of banks. The sediment theory insists on the determination of the potential for long-term lending by maturity of deposits depending on the type of depositors and the general economic circumstance. The shiftability theory advises the accumulation of assets which can be sold in the market without delay and significant loss as alternative sources of liquidity. The maximum load theory links the concept of liquidity with the wider concept of solvency and requires that the capital of a bank must always be sufficiently large to cover the total losses that might be incurred. Most countries require the banks to meet liquidity requirements that frequently incorporate elements of the various theories instead of sticking into one of the theories.\textsuperscript{322} They have moved away from the golden rule theory to elements of the sediment and shiftability theories.\textsuperscript{323}

Most countries also believe in the need for imposing surplus and solvency requirements on insurers because of:

- the exposure of insurers to internal and external risks (and the need for avoidance of panic),
- emphasis on the relevance of insurance for the financial and other sectors of the economy; and
- need for consumer protection from loss of life-time savings and retirement benefits.\textsuperscript{324}

They often set legal minimums which are expressed by solvency margin (i.e. the surplus of assets over liabilities) or solvency ratio (i.e. a ratio of the solvency margin to the net premium incomes of the insurers).\textsuperscript{325} They include the concept of liquidity in the solvency requirement by requiring that the assets of an insurer should be adequate and disposable at any time to pay its claims.\textsuperscript{326} They also rely on portfolio (risk/asset) diversification requirements to control the risk compositions of the assets of the insurers.\textsuperscript{327} They consider all these requirements

\footnotesize{\textsuperscript{319} Thimm, 1999, at p. 122; Finsinger, Hammond and Tapp, 1985, at p. 12; and Merkin and Rodger, 1997, at p. 2. 
\textsuperscript{320} Möschel, 1991, at pp. 77-78. 
\textsuperscript{321} Id., at p. 78. 
\textsuperscript{322} Ibid. 
\textsuperscript{323} Id., at pp. 78-79. 
\textsuperscript{324} Thimm, 1999, at pp. 121 & 126-127; Finsinger, Hammond and Tapp, 1985, at pp. 6-8 & 12; and Pfennigstorf, 1996, at pp. 85-92. 
\textsuperscript{325} The EU solvency control regime followed the latter approach. Thimm, 1999, at pp. 122-126 & 160; and Sandström, 2006. 
\textsuperscript{327} Thimm, 1999, at pp. 160-161.}
as early warning means, as guarantee for continued existence of the insurers, and as safeguard to consumer protection.\textsuperscript{328}

The main resources to which the financial institutions resort to avoid the liquidity deficiency problem also often include:

- cash and similar deposits within the central bank;
- assets which can be sold in the market (or returned to the central bank for money) quickly and without large loss; and
- borrowing.\textsuperscript{329}

The 2008 financial and economic crisis has also increased the need for strengthening the liquidity and solvency requirements on banks, insurers and other financial institutions and the mechanism for providing liquidity and solvency.\textsuperscript{330} The solvency regimes are also undergoing reform (in both USA and Europe).\textsuperscript{331}

\textit{ii. The Case of Ethiopia}

Ethiopia requires the banks and microfinance institutions to meet liquidity requirements as the NBE may require from time to time.\textsuperscript{332} It defines the 'liquid assets' of the banks by law and authorizes the NBE to require them to keep their liquidity in those assets and as it may direct from time to time.\textsuperscript{333} The NBE currently requires the banks to maintain a liquidity position of not less than twenty five percent of their total current liabilities (i.e. sum of the current, saving and time deposits and similar liabilities with less than one month maturity period).\textsuperscript{334} It requires them to keep the twenty percent liquidity in the primary liquid assets and the other five percent in the secondary liquid assets as defined by the 1994 law.\textsuperscript{335} It requires them to submit weekly liquidity position reports by showing the end-

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\textsuperscript{328} Thimm, 1999, at pp. 127-131; Finsinger, Hammond and Tapp, 1985, at p. 15; and Sandström, 2006.
\textsuperscript{329} Thimm, 1999, at pp. 121-160; and Pfennigstorf, 1996, at pp. 85-90.
\textsuperscript{330} BCBS, 2008; BCBS, 2009; OECD, 2008g; Eling and Holzmüller, 2008; Christoph Ohler, 2009, at p. 26; Sproule, 2009; Cummins, 2009; Sebastian Schich, 2009b; Goodhart, 2009, at pp. 47-53, 55-57 & 59-92; Chorafas, 2009, at pp. 183-234; Thorsten, 2010; and Liedtke, (ed.), 2010, at pp. 107-149.
\textsuperscript{331} Ayadi, 2007; Sproule, 2009; Cummins, 2009; and Liedtke, (ed.), 2010, at pp. 135-140.
\textsuperscript{332} TGE, 1994a, at art. 16(1)(a); FDRE, 2008b, at art. 20(1); FDRE, 1996g, at arts. 16 & 24; and FDRE, 2009, at art. 14(2)(b).
\textsuperscript{333} Both the 1994 and 2008 banking supervision laws have defined the concept of 'liquid asset'. The 1994 law has made distinction between primary and secondary liquid assets while the 2008 law does not (TGE, 1994a, at arts. 16(1)(b) & 16(2); and FDRE, 2008b, at art. 20(2)). The 2009 microfinance business law leaves the definition of liquid assets of the microfinance institutions to full discretion of the NBE (FDRE, 2009, at art. 14(2)(b)).
\textsuperscript{334} It required them to maintain a liquidity position of not less than fifteen percent of their total current liabilities until 07 April 2008 and raised the requirement to twenty five percent as of that date to influence the inflation pressure the country faced in the year (Directives No. SBB/15/96; and SBB/44/08).
\textsuperscript{335} It used to require them to keep at least five percent of the required liquidity in the primary liquid assets and up to the other ten percent in the secondary liquid assets until this was changed on 07 April 2008 (Directives No. SBB/15/96; and SBB/44/08). The NBE has also expanded the legal definition of secondary liquid assets to include i) deposits held in the OECD currencies that are payable by banks of the OECD countries; ii) securities of 31, 180 and 370 days tenure issued by the OECD countries; and iii) deposits held in the non-OECD currencies as it may approve from time to time (Directives No. SBB/15/96 & SBB/44/08; and TGE, 1994a, at arts. 16(1)(b) & 16(2)).
\end{flushleft}
of-week balance of each Wednesday. It also requires them to show the values of each liquid asset, deposit and similar liability in respect of which the liquidity is fixed. It requires the re-registered microfinance institutions (and the institutions whose total deposit is more than one million Birr) to maintain a liquidity position of not less than twenty percent of their total deposits. It requires them to keep the required liquidity in cash, treasury bills, and deposits with banks and other microfinance institutions. It has also introduced an inter-bank money market on the 30th of September 1998 to facilitate the management of liquidity problems.

The country also requires the insurers to meet a solvency margin fixed by law according to the type of business they undertake. It requires the general insurers to maintain a solvency margin of not less than the greater of their statutory deposits or fifteen percent of the net premium they wrote in the last preceding financial year. It requires the long-term insurers to maintain a solvency margin of not less than the greater of their statutory deposits or ten percent of their mathematical reserves as may be determined by an actuary. It requires the insurers that carry on general and long-term insurance business to maintain the solvency margins required by law in respect of each business separately. It also authorizes the NBE to prescribe the method of computation and the kinds of assets and liabilities that shall be considered for purpose of computing the solvency requirements. The NBE also, in practice, requires the insurers to consider all their assets (with the exclusion of only some items) and liabilities in making the calculation.

In practice, the banks of the country also often keep liquidity levels which are substantially higher than the amount the law requires while the insurers and the microfinance institutions often comply with the solvency and liquidity requirements of the law and the NBE.

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336 Directives No. SBB/15/96; and SBB/44/08.
337 The bank supervision department of the NBE assesses liquidity only historically because of lack of data to predict the future. NBE BSD, 2005, at p. 40.
339 Ibid.
340 The market is regulated by a directive and a Code of Conduct of the NBE and only the banks have participated in it so far (Directives No. IBM/02/98 & NBE, 1998b; and quarterly and annual reports of the NBE from 1998 up to 2010).
341 TGE, 1994b, at art. 20 (1) & (2); and Directive No. SIB/26/2004, at art. 2.4. The concept of solvency margin in the law refers to the excess of assets over liabilities to be kept by the insurers.
342 It requires them to meet this requirement after two years (or more as the NBE may fix) have expired from the date of commencement of their business (TGE, 1994b, at art. 20(1)). All the insurers are required to keep statutory deposits equal to fifteen percent of their paid up capitals in respect of each of the class of business they undertake (TGE, 1994b, at art. 9(1)). The net premium is the gross premium written during the year less the re-insurance premium ceded thereon (TGE, 1994b, at arts. 2(18) & 20(1)).
343 TGE, 1994b, at art. 20(2).
344 TGE, 1994b, art 20(3).
345 The NBE has to take into account the method of computation employed by the Ministry of Finance of the country in making the prescription. TGE, 1994b, at art. 12(1) (b).
347 Tables 15(Chap. 2); the annual and quarterly reports of the NBE for 2008, 2009 and 2010; and the registers of the insurance and microfinance supervision departments of the NBE.
The bank and microfinance liquidity regulations of the country are pragmatic as they permit the NBE to respond to liquidity problems without sticking to single theory. They take care of both the asset to liability ratio, hence debt paying ability, of the banks and microfinance institutions and the convertibility of their assets into cash. They are justified from these points of view. The country, however, also needs to have indirect liquidity requirements that focus on the methods of financing of loans. These types of requirements have proved their worth in the international experience. They are found to be more effective than the direct ratios as they address the most important financial sources of the banks and microfinance institutions. They also facilitate the implementation of diversification measures.

The insurance solvency requirement of the country, however, fails to make the insurers maintain sufficient liquidity. It is not also in line with the IAIS Core Principles and Methodology for insurance supervision which includes the maintenance of liquidity in the solvency definition. It is also only when the insurers keep the solvency levels with the necessary liquidity that they can be able to meet their obligations in true terms. Imposing liquidity requirements on them is important for these reasons. Hence, the country also needs to classify the assets of the insurers in terms of their convertibility to cash and require them to meet liquidity levels along with the solvency requirements.

2.3.1.5 Functional and Ownership Separation Requirements

i. The International Experience

The majority of both the OECD and other countries used to assign the production and marketing of banking, insurance and other financial services to different institutions and to prohibit or restrict integration. They used either to prohibit financial intra and inter-sectoral integration in principle or to allow these through:

- establishment of subsidiaries, holding companies and/or joint ventures;
- acquisition of controlling shareholding through cross-sectoral investments; or
- creation of financial conglomerates (i.e. groups that bring together legally independent entities whose activities fall in at least two different sectors under a more or less centralized management).

They also used to separate between commercial banking and investment banking, between banking and other commercial activities, between long-term and short-term banking, between insurance and other businesses, and between life and non-
life insurance businesses. They also used to limit the cross ownerships between the financial institutions and the shareholdings in them that might have the effect of diluting the separation of functions. They did all these with a view to enhancing competition, curbing the contiguity of risk, controlling double counting of capital, reducing managerial influence, ensuring consumer protection, and addressing the economic, technical, operational, staff and risk characteristics of the different services separately.

Many of both the OECD and other countries have, however, experienced an ever increasing functional and ownership linkage between the insurance, banking and other financial services through cross-sectoral financial and business deals, operational arrangements, investments and product expansions after the late 1980s. The separation between non-life and life insurance services has also become meaningless as more and more companies combined life and non-life insurance services. The integration has increased the flexibility of insurance contracts and investments, the competitiveness and risk taking behaviours of insurers, and the expansion of insurance products. It has also resulted in the creation of financial conglomerates called all-finanz or banc-assurance. Many of the countries have also been considering the need for adjusting their regulatory systems (which were based on the separation principle) in order to deal with the situation of conglomerate.

353 They used to impose more serious regulations on the production of the financial services than on their marketing and distribution (Laboul, 1992, at pp. 9-10 & 17-34; Pfennigstorf, 1996, at pp. 67-72; Möschel, 1991, at pp. 70-75; and Lovett, 1992, at pp. 163-169 & 190-196). The US also used to separate among the life, health, property and casualty insurance services due to the consumer movements of the 1970s which emphasized on the availability of policy choice to consumers while the many other countries also used to separate between the life and non-life insurance businesses due to their historical reasons (Meier, 1988, at pp. 2-17; Caddy, 1986, at pp. 58-82 & 209-216; Chance, 1993, at p. 5; Pfennigstorf, 1996, at p. 70; and note the discussion under the 'history and current state' subtitle above).


357 Rietbergen, 1999, at p. 16.


359 The forms of bank conglomerate have ranged from the model of universal banking to a model of non-operating holding company. The universal banking model has become common in Europe to permit banks to carry out investment banking, securities dealing and other non-bank activities. The holding company model has originated in the United States and spread to other countries in either of three forms. In its first form, banks have established insurance, securities dealers and other non-bank financial institutions as subsidiaries. In, its second form, insurance or securities dealers have penetrated the savings components of banks and formed other financial institutions as their subsidiaries. In, its third form, different financial services have been offered through subsidiaries of a non-operating holding company. The all-finanz or banc-assurance model has then become common when banks and the other financial savings institutions entered into each others’ business (and customer base) to sale their products. Its impetus has come from banks that needed to protect their shrinking market as a result of development of the savings and pension products of insurers. It was then enhanced by insurers that wanted to integrate with the banks and other financial institutions. Chance, 1993, at p. 72.

360 They have focused on a number of regulatory issues including the anti-competitive concentration the linkage creates; the accumulation and transfer of risks that may lead to systemic failure; the exercise of internal fund transfers and internal credits that may be non-prudential; the transfer of
The 2008 financial and economic crisis has, however, also re-triggered discussion on the desirability of the conglomeration of financial institutions. Many have argued that the conglomeration of these institutions has increased the contiguity of the crisis and, hence, that it needs to be re-considered. The latest recommendation is towards overhauling of failure resolution schemes and continuation of the non-restrictive regulatory approach with development of a fire-walled business structure (i.e. the separation of businesses of the financial institutions, in particular of the banks, under a non-operating holding company structure (NOHC) which should be subjected to group leverage ratios for its capital).

ii. The Case of Ethiopia

Ethiopia expressly separates the banking businesses from non-banking and other commercial activities and the insurance businesses from non-insurance activities in principle. It allows the banks, insurers and other financial institutions to engage in microfinance businesses (by virtue of their banking licenses for the banks and subject to authorization by the NBE for the insurers and others). It requires the banks to obtain prior authorization by the NBE whenever they want to engage in non-banking businesses other than the microfinance business. It requires the government banks to specialize by type of the credit they extend and

profits and external loans within the group that may endanger the rights of third parties; the centralization of management of the sectors that may lead to inefficiency and anti-competitiveness; the transfer of data and information between the sectors that may lead to confusion between the sectors and to third parties; the potential conflict of interest that may exist between the group members; and the conflict of competence that may exist between the regulatory authorities which used to specialize in the sectors. They have not, however, come up with comprehensive laws that deal with all aspects of the linkage. Laboul, 1992, at pp. 11-12, 41-42, 31-35, 43-90 & 115-149; Chance, 1993, at p. 73; Pfennigstorf, 1996, at pp. 67-72; and IAIS, 2005b, at p. 16.

The US, which has originated the crisis, has also passed through the debate. It had introduced the principle of separation of functions for commercial banks by the Glass-Steagall Act and followed it from the 1930s up to 1999. The President Bill Clinton administration had then abolished the principle and allowed the commercial banks to engage in investment banking and other non-commercial-banking functions as of 1999. The President B. Obama administration has supported the return to the separation principle in the aftermath of the 2008 financial and economic crisis. The 2010 financial regulatory overhauling bill of the country has then restricted the commercial banks’ ability to engage in the non-commercial banking businesses by ceilings and related regulations on their investments to control their undertaking of excessive risks. Research has also emphasized on the need for breaking down the concentrated banking structure of the country in order to prevent the advent of future crisis. (AP, 2010a; Financial Post, 2010; Bloomberg, 2010; and Johnson and Kwak, 2010). Some have also, of course, argued that the continuation of universal banking is more useful than the functional banking approach (Aguirre, et al., 2008).

The debate is not finished.

The law also authorizes the NBE to issue directives that may regulate the undertaking of banking businesses related to non-interest bearing deposit mobilization and fund utilization (as in the case of Islamic banking) (FDRE, 2008b, at art. 22(2)).
the sector of the economy they finance. It does not require the private banks to specialize by type of business. It only requires them to disclose their projected operations, by including the major categories and sectors of their intended loans, to the NBE during their applications for license and authorizes the NBE to regulate their credit operations. It requires the insurers to obtain prior authorization by the NBE whenever they want to carry out businesses other than insurance business. It also separates the banking and insurance businesses from financial leasing business by subjecting the latter to a separate regulatory regime. It provides for the creation of linkage between the microfinance institutions and the formal banks and insurers and the transformation of the microfinance institutions into bank or other financial institution through re-licensing by the NBE (and provided that the NBE may require the transformed institutions to continue with the microfinance operations). It does not, however, have rules that govern the microfinance institutions when the latter want to carryout activities other than the microfinance operations without being transformed into a bank or another financial institution. It only seems that the NBE may apply the prior authorization requirements of the banking and insurance supervision laws to this case.

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367 It requires the Commercial Bank of Ethiopia to provide short and medium term loans freely and long term loans within a ceiling and to engage in banking activities that are customarily carried out by commercial banks; the Development Bank of Ethiopia to provide short and long term investment loans to development projects and to engage in activities that are customarily carried out by development banks; the Construction and Business Bank S.C. to extend loans to the housing, construction, hotel, tourism, industry and personal sectors and to engage in activities that are customarily carried out by construction and business banks. TGE, 1994f, at art. 5; TGE, 1994d, at art. 5; TGE, 1994g, at art. 5; FDRE, 2003, at art. 6; and FDRE, 2005a.

368 TGE, 1994a, at art. 5(1); SBB/1/1994, at art. 3 (as amended by SBB/39/2006); FDRE, 2008b, at art. 4(1)(a); TGE, 1994, at art. 7(2); and FDRE, 2008a, at art. 15(1)(a)(2). The NBE does not regulate the credit operations of the banks in practice. It only requires them to meet the liquidity and other requirements. The banks, however, tend to follow restrictive credit policies in practice due to weak financial and entrepreneurial capacities. They tend to focus on the extension of short and medium term (one to five years) loans to the export, import, retail and transport sectors and to limit their long term credits. Their annual loan collection to disbursement ratio has also been 89.9% on average during the last one and a half decades showing their strong focus on short term lending. Only the Development Bank of the country has tried to make long-term finance available consistently which is very small. Table 11(Chap. 2); and the annual and quarterly reports of the NBE for 2008, 2009 and 2010.

369 TGE, 1994b, at art. 7(1)(e).

370 FDRE, 1998. It allows the microfinance institutions to engage in financial leasing business at the micro level (FDRE, 2009, at art. 3). The market for financial leasing is not, however, grown well in the country.


372 FDRE, 1996g; and FDRE, 2009, at arts. 17 & 28(1). The definition of ‘microfinance business’ in the 2009 microfinance business law is, however, also extensive enough to allow the microfinance institutions to engage in deposit taking, lending, micro-insurance, asset ownership, financial leasing, fund management, payments facilitation, entrepreneurship, money transfer and other operations at the micro level (FDRE, 2009, at art. 3).

373 The 2009 microfinance business law also rules that the unauthorized undertaking of activities other than the microfinance businesses by the microfinance institutions is good cause for receivership and liquidation by the NBE (FDRE, 2009, at art. 19(1)(d)). The microfinance business laws also authorize the NBE to apply the relevant rules of the banking and insurance supervision laws on the microfinance institutions (FDRE, 1996g, at arts. 16 & 24; and FDRE, 2009, at art. 28(1)). None of the microfinance institutions has, however, also asked the NBE for permission to engage in a non-microfinance business yet.
The country also restricts the equity participations of the commercial banks, insurers and microfinance institutions. It authorizes the NBE to regulate the investment and asset portfolios of the banks, insurers and microfinance institutions and the NBE restricts these. It allows the banks to:

- hold shares in an insurance company only up to 20% (twenty percent) of the latter and without exceeding 10% (ten percent) of their own equity capital;
- hold shares in a single non-banking company only up to 20% (twenty percent) of the company’s share capital and without exceeding 10% (ten percent) of their own net worth;
- have equity participation in other banks upon prior authorization of the NBE and only up to a level the NBE may fix from time to time;
- invest in other securities only up to 10% (ten percent) of their net worth; and
- commit in real estate acquisition and development other than for their own business premises only up to 20% (twenty percent) of their net worth and to obtain the NBE’s prior approval when they want to exceed this limit.

It allows them to engage in securities business through limited liability subsidiary company in which their holding shall not exceed 10% (ten percent) of their equity capitals. It requires them to limit the aggregate sum of all their investments at any one time (excluding their investments in government securities) to 50% (fifty percent) of their net worth.

It prohibits the insurers from issuing financial and unconditional guarantee bonds. It allows them to invest in shares of other companies only up to fifteen percents of their funds. It allows the general insurers to invest in real estate business only up to ten percent of their funds and the long-term insurers to do same only up to twenty five percent. It allows both types of insurers to invest in

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374 TGE, 1994a, at art. 27(3); FDRE, 2008a, at art. 16(1)(a); FDRE, 2008b, at art. 22; TGE, 1994b, at arts. 14, 42(e) & (f); FDRE, 1996g, at art. 24; FDRE, 2009, at arts. 14(2)(d) & 28(1); and Directives No. SBB/12/1996; SIB/23/2002; SIB/24/2004; SIB/25/2004; and MFI/07/96.
376 Id., at art. 8.
377 Directive No. SBB/12/1996. The banks have, in practice, invested only about 19.7, 10.6 and 0.029 percents of their total assets in treasury bills, government bonds and equity shares of other companies (Table 17(Chap. 2); and the annual reports of the banks for 2008 and 2009). The country authorizes the Development Bank and the Commercial Bank of Ethiopia to buy and sell negotiable instruments including company securities and to participate in equity investments and the Construction and Business Bank S.C. to invest and participate in equity investments of real estate development without imposing special limit on the extent of these investments. Only the limits of the NBE seem to govern the aforementioned investments of the banks as the NBE has not exempted them expressly from the rules of its directives.
378 Directives No. SIB/23/2002; and SIB/24/2004. The NBE refers, by the ‘financial guarantee bond’, to the undertaking of an insurance company to pay to a lending bank or any other creditor of an outstanding claim not paid by the principal debtor. It, by the ‘unconditional bond’, refers to the undertakings of an insurer other than the financial guarantee bond that are payable on demand without any precondition. The insurers used to issue both types of instruments until the NBE prohibited them on the 23rd of December 2002.
other fields of investment only up to ten percent of their funds.\textsuperscript{381} It, accordingly, limits much of the businesses of the insurers to the business of insurance proper.\textsuperscript{382}

It also requires the microfinance institutions to limit their total investments in allied activities to ten percent of their equity capitals and their equity investments in any single enterprise to three percent of their own net worth.\textsuperscript{383}

The country does not, however, separate between life and non-life insurance businesses. It only requires the acquisition of separate licenses for the two lines of businesses and allows the acquisition of both types of licenses by one applicant.\textsuperscript{384} It does not also prohibit cross shareholding between the banking, insurance, microfinance and other companies. It only requires each of them not to exceed a holding level of ten percent of the capital of the other by its general commercial law.\textsuperscript{385} It also encourages merger between the microfinance institutions subject to prior approval by the NBE so that they will enhance their capacities.\textsuperscript{386} It also makes the banking, insurance and microfinance supervision laws complementary to one another despite the functional separation between the banks, insurers and microfinance institutions.\textsuperscript{387}

Hence, the Ethiopian position on the relationship between commercial banking, insurance, microfinance and investment is neither unification nor separation. It stands in between as it is based on limits that can be adjusted by the NBE according to circumstances. It enables the NBE to enhance the health of the banks, insurers and microfinance institutions according to circumstances. It also leaves discretion to the NBE so that it will consider future developments towards conglomerate in the country's financial market. The complementary relationship between the banking, insurance and microfinance supervision laws is also useful to pave the way for regulatory integration in case the country adopts a policy of allowing financial conglomerates in the future.

\textsuperscript{381} Ibid.
\textsuperscript{382} The insurers have also invested only about 5.6, 0 and 8.4 percents of their total assets in treasury bills, government bonds and shares of other companies in practice (Table 18(Chap. 2); and the annual reports of the insurers for 2008 and 2009).
\textsuperscript{383} The NBE considers the banking and non-banking financial services and all agricultural input, warehousing and transportation services as allied activities to the microfinance institutions. Directive No. MFI/07/96.
\textsuperscript{384} TGE, 1994b, at art. 6(1) & 8.
\textsuperscript{385} The general commercial law requires that if one of the companies holds more than the ten percent limit, the other must not reciprocally own; and that if both companies own reciprocally and the holding level of one or both of the companies exceeds the ten percent limit, the situation has to be declared to the NBE and to the Ministry of Trade and Industry and either both companies should reduce their holdings to an amount below the ten percent limit or one of the companies should dispose of its holdings (IGE, 1960, at art. 344). The 2008 banking business law also authorizes the NBE to issue directives that will regulate the relationship between the banking and insurance companies (FDRE, 2008b, at art. 54(2)).
\textsuperscript{386} FDRE, 1996g, at art. 13; and FDRE, 2009, at art. 17(1).
\textsuperscript{387} TGE, 1994a, at art. 34; FDRE, 2008b, at art. 60; TGE, 1994b, at art. 44; FDRE, 1996g, at art. 24; and FDRE, 2009, at arts. 28 & 19(3).
The country, however, needs to separate between the banking, insurance, microfinance, securities, pension and other markets in the short run. First, it is likely that the integration will make the markets dependent on one another and prone to risk and contagion. This is not healthy in a country where both markets are growing from the scratch and have many future challenges. Secondly, the banks and insurers have failed to contribute to the creation and development of the microfinance and securities markets and pension institutions although they have the authorization to play roles in these regards and this failure justifies the separate treatment of the indicated markets and institutions. Thirdly, the country needs to enhance competition between the different markets and institutions in order to make them attract different pools of investment, capital and talent; enhance efficiency; and serve the public with alternative sources of finance. This requires that the existing banks and insurers do not dominate the markets but concentrate on the development of their own fields. Fourthly, the NBE lacks capacity to regulate financial conglomerates and needs to build its regulatory capacity before the different markets are integrated. Hence, the country needs to have clear rules that separate between the indicated markets and institutions in the short run. There should not also be rules that tend to allow merger between the markets and institutions such as the rule of the NBE which invites the banks to have subsidiary companies for securities trade.

The country need not, however, separate between the short and long-term credit businesses of the banks since the current financial capacities of the banks do not allow them to concentrate on the long-term business alone. The banks need to engage in the short, medium and long-term credit businesses flexibly to minimize the risks of long-term credit and to grow before they specialize in a long term business. Most of the banks do, however, also limit their credit businesses to short and medium term loans making the country lack dependable long-term finance as indicated above. They need to balance between the short, medium and long term businesses and increase the provision of long-term finance to the different sectors. The country, therefore, also needs to impose diversification requirements that will make the banks meet this.

The country also needs to continue to regulate the reciprocal ownership between the financial institutions since this is useful to enhance the control of excessive risk exposure, double counting of capital, and conflict of interest in the management of the institutions.

### 2.3.1.6 Risk Diversification Requirements

**i. The International Experience**

Banks need to diversify loan risks. They need to distribute the sum total of their loan funds amongst a number of borrowers and make large-scale default less probable. The banking regulators around the world impose diversification requirements for this reason.\(^{388}\) They usually impose the diversification

\(^{388}\) Möschel, 1991, at pp. 81-84.
requirements as large-scale credit regulation or single borrower limits. They usually take the economic unit of the individual borrower, the geographical location, legal form and size of the borrower, the nature of trade or industry to be financed, and the kind of assistance envisaged as criteria for diversification. They rely on three common yardsticks, namely the banks' own capital, the volume of all loans, and the sum total of all liabilities. Some countries also require resolution by the management or supervisory boards of the banks for granting large loans. Some also require the banks to diversify their liabilities to depositors. Regional and sectoral diversification requirements are also imposed sometimes to control damage to a bank due to economic decline of a region or sector.

Many countries have also reformed their insurance portfolio regulations when insurers internationalised their businesses and faced increased competition. The EU and its member countries have relaxed their portfolio regimes for the insurers and emphasised on the regulation of investments of their technical reserves. The US has enhanced the investment flexibility and financial transparency of its insurers by changing its bond rating system, imposing risk-based capital requirements, and increasing the roles of its rating agencies. Many of the other countries have also appreciated the need for introducing portfolio diversification requirements in their insurance markets so that the institutions in the markets will limit their risks and enhance their health as the markets become increasingly internationalised.

**ii. The Case of Ethiopia**

Ethiopia requires the banks and microfinance institutions to diversify their borrowers by adhering to maximum single borrower limits as the NBE may fix from time to time. The NBE requires the banks to limit the total liabilities of

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389 Id., at pp. 81-82.
390 Ibid.
391 The banks' own capital is the most predominant yardstick. Liabilities are least used as yardstick. Ibid.
392 Ibid.
393 Id., at p. 84. The usefulness of this requirement is, however, disputed as one large deposit does not normally mean any particular risk to a bank unlike a single large loan. The regulation of maturity transformation is, accordingly, considered to be a more sensible instrument than the use of quantitative controls on the deposits themselves as it is usually when maturity is transformed from the short-term deposits to long-term loans that the risks arise. Ibid.
394 Ibid.
399 The laws authorize the NBE to regulate the credit facilities of the banks and microfinance institutions and the NBE has set single borrower limits by using this authority (TGE, 1994, at art. 7(2); FDRE, 2008a, at art. 15(1)(a)(2); TGE, 1994a, at art. 17; FDRE, 2008b, at art. 22(1); FDRE, 1996g, at art. 24; FDRE, 2009, at arts. 3(1), 14(2)(a, d) & 16; and Directives No. SBB/16/96;
any single borrower to twenty five percent of their total capitals.\footnote{400} It requires the microfinance institutions to limit their total loans to any single borrower and the total loans to any group of borrowers under group guarantee to maximum of one and four percent of their total capitals, respectively.\footnote{401} The banks and microfinance institutions also diversify their borrowers in practice.\footnote{402}

The country also requires the insurers to diversify their investments in the manner the NBE prescribes from time to time.\footnote{403} The NBE also requires the general insurers to invest not less than sixty five percent of their funds in treasury bills and bank deposits and the long term insurers to invest not less than fifty percent of their funds in same.\footnote{404} It requires the general insurers to limit their real estate investments to ten percent of their funds and the long term insurers to twenty five percent.\footnote{405} It requires both of them to limit their equity investments in company shares to fifteen percent of their funds and the aggregate of their bank deposits in any one bank to maximum of twenty five percent.\footnote{406} It allows them to make other investments of their choice only up to ten percent of their funds.\footnote{407}

The country does not, however, impose regional and sectoral business diversification requirements on the banks, insurers and microfinance institutions. It does not also impose borrower and deposit diversification requirements on the banks.

The single borrower limits of the NBE are justified by the underdevelopment of the banks and microfinance institutions in the country. They will promote their health by helping them to diversify their risks. The rules of the NBE on

\footnote{400}{Directive No. SBB/29/2002. The limit used to be 15% under directive no. SBB/16/96. The directives have defined the term "total capital" to include the paid up capital, legal reserve and other unencumbered reserves held by a bank. They have also defined the term "single borrower" to refer to individuals, enterprises, and business organizations which act individually (and in combination) and further defined what constitutes a combination and an "extension of credit".}

\footnote{401}{MFI/18/2006, at arts. 4.1, 4.2 & 5. It used to differentiate between the re-registered and non-re-registered microfinance institutions to require the non-re-registered institutions to limit their single borrower loans to maximum of five thousand Birr and the re-registered institutions (and the institutions whose total deposit was more than one million Birr) to limit their single borrower loans to maximum of one percent of their total capitals (Directives No. MFI/05/96, at art. 3; and MFI/17/2002, at art. 3.2). It also used to require the re-registered microfinance institutions (and the institutions whose total deposit was more than one million Birr) to limit the aggregate amount of their loans in any one year to maximum of twenty percent of their total disbursement in the preceding year (Directive No. MFI/17/2002, at art. 3.1). It has removed this differentiation and subjected all the microfinance institutions to the aforementioned uniform requirement as of 06 December 2006 (MFI/18/2006, at arts. 4.1, 4.2, 5 & 10).}

\footnote{402}{They tend to disburse their loan funds to borrowers who apply for relatively small sums.}

\footnote{403}{TGE, 1994b, at arts. 14, 42(e) & 42(f).}

\footnote{404}{Directive No. SIB/25/2004. The insurers have invested only up to 5.6 percent of their total assets in treasury bills and none in government bonds in practice (See their annual reports).}

\footnote{405}{Ibid.}

\footnote{406}{Ibid. The insurers have invested only about 8.4 percent of their total assets in equity shares of other companies in practice. They have also kept a sum of money amounting to about 52.5 percent of their total assets in bank accounts subject to the one bank - twenty five percent limit of the NBE. Table 18(Chap. 2) and annual reports of the insurers.}

\footnote{407}{Ibid.}
investments of the insurers are, however, restrictive. They dictate and limit the investment choices of the insurers and cripple their growth. The NBE needs to leave sufficient flexibility to the insurers and indicate only the diversification requirements they need to respect. The country also needs to introduce regional, sectoral and deposit diversification requirements in order to enhance both the diversification of risks and the dissemination of services of the financial institutions.408

2.3.1.7 Risk Transferring Requirements

i. The International Experience

Banking risk can be transferred through mechanisms of risk sharing, insurance and risk shifting to customers. Many countries have encouraged their banks to share risk through credit and underwriting syndicates by exempting the syndicates from their antitrust laws.409 Many have also recognized the debtor default, exchange rate, interest rate, and price change risks of banks as insurable risks and allowed or required the banks to insure them.410 They have also relied on deposit insurance and state assumption of particular types of risk, such as in relation to the financing of foreign trade, to distribute risks.411 The banking and credit laws of many countries also require the shifting of risk to customers through requirement and realization of collaterals for loans.412 They prescribe upper ratios for loans and uniform procedures for valuation of collaterals, standardize the assessment of proceeds from the sale of collaterals, and require the banks and credit institutions to receive collaterals for the different types of their credits up to defined levels.413 The regulators of the countries also use the capital adequacy and liquidity instruments to make sure that the banks’ loans and collaterals are backed by allowances for possible losses.414 Many of the countries also allow the insurers to transfer their liabilities to others, and thereby to avoid the risk of sudden insolvency due to large claims, through the mechanism of re-insurance.415 They also regulate the re-insurance business to prevent the complete transfer of the insurance business from one insurer to another and to avoid ruin on the solidity of the insurers.416 The 2008 financial and economic crisis has also increased the need for strengthening these types of regulations, in particular the regulation of the lending businesses and non-performing loans of the banks, along with the other measures.417

408 The bank supervision department of the NBE also believes that large depositor reporting requirements will help it to assess the stability of depositors of the banks. NBE BSD, 2005, at pp. 40 & 43.
410 Ibid.
411 Möschel, 1991, at p. 80; and Lovett, 1992, at pp. 130-138. The 2008 financial and economic crisis has also increased the need for using deposit insurance and state assumption of risk as instruments of crisis regulation (Note the discussion under the ‘fund guarantee requirements’ subtitle below).
413 Ibid.
414 Ibid.
416 Ibid.
ii. The Case of Ethiopia

Ethiopia does not have rules for risk sharing by credit and underwriting syndicates although its banks sometimes try to syndicate loans. It only uses its mortgage and pledge laws to resolve the credit relationships between the banks that participate in the syndicates. It does not also require the banks and microfinance institutions to adhere to particular collateral threshold. It only encourages the microfinance institutions to extend their loans on group guarantee and property collateral bases.\(^\text{418}\) It does not also require insurance of the banking, insurance and microfinance business risks. It only foresees the establishment of deposit insurance system by the NBE and requires the banks, insurers and microfinance institutions to insure the losses that may follow the negligence or dishonesty of their directors, managers, officers and employees when they have not maintained special reserves for these losses.\(^\text{419}\) Nor does it force the insurers to buy re-insurance cover by law.\(^\text{420}\) It only considers the banking, insurance and microfinance business risks as insurable risks when they meet the definition of risk in its general insurance law.\(^\text{421}\) The country also leaves the terms of collateral and re-insurance contracts of the banks, insurers and microfinance institutions to discretion of the parties. Neither the law nor the NBE prescribes the types, conditions and margins of the collaterals that shall be submitted to the banks and the extent and terms of re-insurance the insurers should buy. The terms relating to collaterals usually form part of the credit policies of the banks while the terms of re-insurance are usually imposed by the re-insurers.\(^\text{422}\) The NBE also deals with collaterals of the banks only indirectly, i.e. when it inspects the credit policies of the banks and enforces the capital adequacy, liquidity and provisioning requirements on them. It does not also regulate the business of re-insurance but tries to deal with its terms when it assesses the overall financial health of the insurers.\(^\text{423}\)

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\(^\text{418}\) FDRE, 1996g, at arts. 15 & 2(6); and FDRE, 2009, at art. 16. The NBE used to require the microfinance institutions to make their credit facilities available predominantly under the group guarantee scheme. It also used to require them to limit the size of the credit facilities they make available on the property collateral basis (without, however, fixing particular threshold for this). (Directives No. MFI/17/2002, at art. 4; and MFI/18/2006, at art. 5). The 2009 law has left discretion to the microfinance institutions (FDRE, 2009, at art. 16).

\(^\text{419}\) FDRE, 2008a, at arts. 5(18) & 25; TGE, 1994a, at art. 28; FDRE, 2008b, at art. 21(7); and TGE, 1994b, at art. 44(a). It does not expressly impose these requirements on the microfinance institutions. One can only expect this through the extended application of the banking business law on the institutions (FDRE, 1996g, at art. 24; and FDRE, 2009, at art. 28(1)).

\(^\text{420}\) TGE, 1994b.

\(^\text{421}\) The general insurance law of the country considers losses arising out of unforeseen events or from negligence of the would be beneficiary of an insurance arrangement and losses or damages due to the fault of persons for whom such a beneficiary is vicariously responsible as insurable risks. It does not consider losses arising out of intentional default of the beneficiary as insurable risks. (IGE, 1960, at art. 663). These rules apply to the banking, insurance and microfinance business related risks in the absence of special law for these (FDRE, 2008a, at arts. 5(18) & 25; TGE, 1994a, at arts. 28 & 32; FDRE, 2008b, at art. 21(7); TGE, 1994b, art. 44(b); and FDRE, 2009, at art. 28(1)).

\(^\text{422}\) In practice, the banks accept securities usually at a value higher than the amount of the loan and insist on full insurance coverage of the securities while the insurers take the rates of the re-insurers.

\(^\text{423}\) The country empowers the NBE to regulate the manner of undertaking re-insurance business (TGE, 1994b, at art. 37). The NBE does not, however, do this.
In practice, the banks, insurers and microfinance institutions try to reduce their risks by transferring them to their customers and business partners. The banks and microfinance institutions require their customers to produce sufficient collateral before they are given credit facilities. The insurers buy re-insurance to cover their liabilities and shift risk to the insured by undervaluing the properties they insure. The NBE also requires the applicants for banking and insurance license to buy insurance for their properties and liabilities so that they will distribute their risks as of the time they start their businesses. Both the banks and the insurers also often buy:

- motor and liability insurance for their vehicles;
- fire, burglary and house breaking insurance for their furniture, equipment and premises;
- money and currency transport insurance for money deposited with or being transported by them; and
- fidelity insurance for losses that may arise due to negligence or dishonesty of their directors, managers, officers and employees.

They also require their customers to insure the properties they propose as collateral. All these are done, however, at free discretion of the banks and insurers.

The country needs to enforce three major changes on its risk transferring regime for the following reasons and purposes.

First, it needs to require the commercial banks and microfinance institutions to insure themselves against the insurable risks associated with their operations. This will enhance protection of both the institutions and their customers against potential institutional run. The risks to be insured should not be limited to bank deposits and the losses that may arise from the negligence or dishonesty of their directors, officers or employees. They need to include the other risks that are common in banking and credit businesses. The insurance requirement should not also be made alternative to maintenance of special reserve account (as in the

424 The banks usually prefer property to personal security and rarely extend clean credit facility while the microfinance institutions often stick to the group and property guarantee schemes.
425 Both the government and private insurers buy their re-insurance covers from foreign re-insurers (See their annual reports).
426 Directives No. SBB/1/1994; SBB/39/2006, at art. 3; and SIB/1/1994 (with TGE, 1994a, at art. 5(12); FDRE, 2008b, at arts. 4(1)(a) & 4(3); and TGE, 1994b, at art. 6(2)). The NBE does not impose this insurance requirement on the microfinance institutions (FDRE, 1996g; FDRE, 2009; and the microfinance directives of the NBE).
427 Most of them buy the insurance from the Ethiopian Insurance Corporation. Only some of the insurers have bought these from the private insurance companies such as the National Insurance Company (S.C.), the Awash Insurance Company (S.C.), the United Insurance Company (S.C.), the Africa Insurance Company (S.C.), the Nile Insurance Company (S.C.) and the Global Insurance Company (S.C.).
428 All the banks have rules in their credit policies that favour this.
429 The most common risks in banking are solvency risk, security risk, credit default risk, discount risk, interest rate risk, currency risk, financial assets price risk, and entrepreneurial risk (Möschel, 1991, at pp. 67-68).
case of the fidelity insurance the country has introduced). It needs to stand on its own as the banks and microfinance institutions may not always make profit to create the reserves. It need not also be left to discretion of the banks and microfinance institutions since it is useful not only for the protection of the banks and microfinance institutions but also for their customers and the economy as a whole. It also needs to be introduced with techniques to reduce moral hazard as insurance protection may be incentive for irresponsible behaviour.

Secondly, it needs to regulate the terms and conditions of collaterals of the banks and microfinance institutions in order to prevent abuse and enhance prudence of the institutions. Leaving the terms to discretion of the banks and microfinance institutions has resulted in valuation abuses in the past. The country needs to introduce rules that define collateral value-to-loan ratios, require both the banks and microfinance institutions to diversify the guarantees they receive, standardize the procedure for valuation of collaterals, and subject all these requirements to strict supervision by the NBE. The measures will both strengthen the prudence of the banking and microfinance institutions in the country and make the country's banking and microfinance systems in line with the international experience.

Thirdly, the country needs to require the insurers to re-insure a defined threshold of their liabilities, promote and regulate the undertaking of domestic re-insurance business, and reduce dependence on foreign re-insurance in order to enhance both the protection of consumers and domestic capacity. It needs to do this by enhancing the current re-insurance business of the Ethiopian Insurance Corporation and encouraging the private insurers to engage in the business. These measures are also useful to diversify the financial market and services in the country.

2.3.1.8 Information Acquisition and Exchange Requirements

i. The International Experience

Information exchange is important for banks and credit institutions to control over-indebtedness of borrowers. It is also useful for insurers to control over-insurance of risks. Many countries prohibit banks and credit institutions from making loans until the financial circumstances of their clients are revealed to them. They facilitate the disclosure of information by using credit recording centres (credit information exchange or control risk bureaus) that inform the banks and credit institutions about the total indebtedness of their clients or by requiring the exchange of information through the regulators. Many countries, however, lack information exchange requirements between insurers although they also make the acquisition of over-insurance illegal. They often rely on their insurance contract laws, insurer reporting requirements, and voluntary

430 Möschel, 1991, at p. 68.
431 Id., at p. 69.
cooperation between their regulators and insurers to address the problem of over-insurance.432

ii. The Case of Ethiopia

Ethiopia does not generally require the banks and microfinance institutions to refuse lending to a client until the financial circumstances of the latter are fully disclosed to them. It only authorizes the NBE to establish a credit-information-sharing system for the banks and to issue a know-your-customer standard for the banks and the microfinance institutions.433 It also only encourages the microfinance institutions to lend on group guarantee basis among others so that they can know and control the indebtedness of their clients in group.434

The NBE has also created a credit recording and information exchange centre and issued a know-your-customer standard for the banks and required them to:

- inform the indebtedness of their borrowers to the centre,
- get information from the centre before making credit facilities to their clients, and
- review the audited financial statements (for the latest financial year) of their clients when they are about to lend them ten million birr and above.435

These measures of the country are commendable since they enhance the health of the banks and microfinance institutions. They are also consistent with the international experience. The country, however, needs to consider three additional measures in order to enhance the borrower information retrieval system and strengthen the performance of the banks, insurers and microfinance institutions.

First, it does not require and empower the credit recording and information exchange centre at the NBE to collect, record, analyse and disseminate information on the general financial circumstances of borrowers on top of the indebtedness reports from the banks. It needs to require and empower the centre to engage in the indicated tasks since retrieval of full information about the overall financial situation of clients is critical to the banks.

432 Pfennigstorf, 1996, at pp. 38-42.
433 FDRE, 2008b, at arts. 53 & 57; and FDRE, 2009, at art. 24.
434 FDRE, 2009, at art. 16; FDRE, 1996g, at art. 15; and Directives No. MFI/17/2002, art. 4; and MFI/18/2006, at art. 5.
435 Directives No. SBB/36/2004; and SBB/46/2010. It has created the credit recording and information exchange centre and required all the banks to be members to it as of 2004 (Directive No. SBB/36/2004). The centre has then got legal recognition when the 2008 banking business law was enacted on the 25th of August 2008 (FDRE, 2008b, at art. 57). The search for information about borrowers was left to each bank until creation of the centre in 2004 and the lack of information sharing system used to affect the credit business of the banks seriously. The Commercial Bank of Ethiopia, for instance, was reported to have lost up to 49.7% of its loans by 1995 due to its inability to collect information (EPressA, 1995). The banks were then in discussion to create a self-regulated information exchange system to curb the information problem in the years before creation of the credit recording centre at the NBE. They also had the intention to establish pooled rating system to assess the creditworthiness of their clients in the years between 1996 and 2000. The NBE was also optimist about these. The intention has not, however, materialized.
Secondly, the insurers and microfinance institutions are excluded from membership to the centre.\textsuperscript{436} The country needs to make them members to the centre so that they can retrieve information about their clients through it and enhance their health. The measures will also strengthen the linkage and cooperation between the banks, insurers and microfinance institutions as the country's microfinance regulation aspires.\textsuperscript{437}

Thirdly, the country needs to introduce accounting and auditing requirements on the non-financial sector businesses as part of its effort to formalize and regulate them and require the banks and microfinance institutions to review the financial statements of all the businesses before they extend credit facilities of any size to them so that the banks and microfinance institutions will cater for their credit risks.\textsuperscript{438}

2.3.1.9 Fund Guarantee Requirements

i. The International Experience

Many countries often rely on deposit insurance systems to protect depositors against bank failures. Some introduced these systems in the first half of the nineteenth century while most others developed them in the 1970’s.\textsuperscript{439} Most countries pursue them to protect depositors against bank failures and to cure ailing banks.\textsuperscript{440} The countries often arrange and run the deposit insurance systems under direct responsibility of their governments and only sometimes by the banking industry or jointly by the banking industry and the governments.\textsuperscript{441} They often compel their banks to be members to the insurance system and limit the exceptions.\textsuperscript{442}

The deposit insurance coverage has, as a rule, been enforced based on territoriality principle to cover all domestic banks and domestic branches and subsidiaries of foreign banks.\textsuperscript{443} Hence, many of the countries require the insurance of all resident and non-resident deposits in their banks and exclude deposits in foreign

\textsuperscript{436} The banking business law also focuses only on creation of a credit-information-sharing system among the banks (FDRE, 2008b, at art. 57).

\textsuperscript{437} FDRE, 1996g, at art. 12(3); and FDRE, 2009, at arts. 3, 4(1) & 21.

\textsuperscript{438} The majority of the enterprises in the non-financial sector do not follow formal accounting (See Census Report of the Central Statistical Agency of Ethiopia (CSA, 2005a) and note the discussion under the ‘potential functions and need for development of the market’ subtitle of the securities market chapter below). The recent tax laws have already imposed accounting and auditing obligations on them and this needs to be strengthened by the regulatory laws (FDRE, 2002d; FDRE, 2002e; FDRE, 2002f; FDRE, 2002i; FDRE, 2002j; FDRE, 2002k; and the amendments in 2008 and 2009).

\textsuperscript{439} The earlier deposit insurance systems were established in New York (in 1829), in India (between 1834 and 1865) and in Czechoslovakia (in 1924). The US also created the Federal Deposit Insurance Corporation (FDIC) in 1933. Möschel, 1991, at p. 93; and Lovett, 1992, at p. 133.

\textsuperscript{440} Hubbard, 1997, at pp. 416, 418 & 422; Möschel, 1991, at pp. 93-94; and Hall, 2003, at pp. 52-54 & 49.

\textsuperscript{441} Möschel, 1991, at pp. 94; and Lovett, 1992, at pp. 133-137.

\textsuperscript{442} The banks have usually been insured on voluntary basis even when exceptions were recognized. Non-membership has usually been rare. Möschel, 1991, at p. 94.

\textsuperscript{443} Id., at p. 94.
branches of their banks, foreign currency deposits, inter-bank deposits, secured deposits, deposits with a maturity of over five years and certificates of deposit from their insurance requirements. Some also exempt the branches of foreign banks and the deposits made in foreign banks from their insurance requirements when they consider that these institutions enjoy protection under a foreign deposit insurance system. Most of the countries do not also require full insurance coverage but coverage up to a ceiling per depositor per institution. They require the financing of the deposit insurance scheme by periodic contributions, levy made when the need arises, or both. They also allow fund raising by borrowing. They often require the contributions to be made at rates related to the total volume of the insured deposit, at percentages of the bank's own capital, at graduated scales, or based on fixed lower and upper ceilings. Most of the countries also confer legal right on the depositors that face bank default which will enable them to get automatic payment from the deposit insurance money.

Many countries also protect the insurers from failure, and the insurance policyholders from insurer insolvency, by

- private solvency guarantee funds to which the insurers should contribute from their premiums, and
- state guarantee funds by which the state compensates the victims of insurance failure from its own funds.

They have introduced the solvency guarantee and policyholder protection funds as of the late 1970s in order to prevent the economic hardships the insurers and their clients face due to catastrophes and the increasing challenges of competition.
Both the bank deposit insurance and insurer fund guarantee schemes have, however, reasons and problems.\textsuperscript{453} They are often justified by the concerns of averting institutional run and contagion, creating equal condition of competition between small and large institutions, and assuring consumer protection.\textsuperscript{454} They are, however, prone to moral hazard problem as the conducts of both the market participants and the regulators are often modified when the arrangements are put in place.\textsuperscript{455} They are also affected by problems of design as they involve a number of questions including the following:

- the source of funding (whether it should be private or public);
- the timing of funding (whether it should be pre or post-insolvency);
- the basis of contribution (whether it should be flat or risk-based);
- the exposure base (whether it should be the volume of assets, liabilities or premiums);
- the number of funds (whether there should be one fund for all lines of business or separate funds for each line of business);
- the depositor and policyholder coverage (whether the fund should cover all depositors and policyholders or some of them);
- the geographic coverage (whether resident depositors and policyholders of a foreign bank or insurer and foreign depositors and policyholders of a domestic bank or insurer should be covered);
- the integration between the insured deposit or insurance policy and the fund (whether the fund should give first coverage, deductible coverage or co-payment coverage in relation to the deposit or insurance policy and whether the fund coverage should be limited by the deposit or policy coverage or by its own limit); and
- the supply of information to consumers (whether depositors and policyholders should be made aware of the fund coverage).\textsuperscript{456}

Hence, countries are often advised to design the schemes with techniques of solving these problems.\textsuperscript{457}

The 2008 financial and economic crisis has also shown the importance of strengthening the use of deposit insurance and fund guarantee schemes to protect consumers and investors and enhancing the effectiveness of these schemes by controlling the moral hazard, anti-competitiveness, abusive use and other side

\textsuperscript{453} Möschel, 1991, at p. 96; Lemaire, 1997, at pp. 57-59; Hall, 2003, at p. 54; and Pfennigstorf, 1996, at p. 143.

\textsuperscript{454} Ibid. Many of the countries have also justified the guarantee schemes by the information imperfection their policyholders face. They have often felt that the imperfection of information and the long-term nature of insurance contracts (in particular life insurance) disable the policyholders from effectively evaluating the probabilities and costs of future insolvencies even if information at the time of contract is perfect. They also take information imperfection as one of the key justifications for solvency regulation. Lemaire, 1997, at pp. 48 & 53-57; Pfennigstorf, 1996, at pp. 142-144; and IAIS, 2005b, at p. 50.

\textsuperscript{455} Ibid.

\textsuperscript{456} Lemaire, 1997, at pp. 60-63; and Pfennigstorf, 1996, at pp. 143-144;

\textsuperscript{457} Ibid.
effects that may follow them along with the strengthening of other measures to control the taking of risk by the financial institutions.458

ii. The Case of Ethiopia

Ethiopia does not currently impose deposit insurance and fund guarantee requirements on its banks, insurers and microfinance institutions. It only foresees the establishment of a deposit insurance system by the NBE and requires the banks, insurers and microfinance institutions to insure the losses that may follow the negligence or dishonesty of their directors, managers, officers and employees when they have not maintained special reserves for these losses.459 It does not also force the insurers to buy re-insurance cover by law. The NBE also requires the applicants for banking and insurance licenses to buy only property and liability insurance while the banks (and insurers) also often buy only:

- motor and liability insurance for their vehicles;
- fire, burglary and house breaking insurance for their furniture, equipment and premises;
- fidelity insurance for losses that may arise due to negligence or dishonesty of their directors, managers, officers and employees; and
- money and currency transport insurance for the money being transported between their safes and strong rooms.460

The country needs to impose the guarantee schemes on the banks, insurers and microfinance institutions so that both the institutions and their clients will be protected against future runs.461 It also needs to determine and regulate the scope and nature of the schemes by taking into account the international experience. It, accordingly, needs to define the risks to be covered by the schemes in the law; make the membership to the schemes compulsory for all the financial institutions; require arrangement of the schemes with the domestic insurers based, as a rule, on the territoriality principle; encourage the coverage of all domestic deposits; require the financing of the schemes by risk-based periodic contributions of the member institutions; authorize the financing of the schemes by levy and loan as the need for these arises; and allow only partial payment from the schemes to limit the moral hazard problem that may follow from them.

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458 Su, 2007; LaBrosse, 2007; Kaufman, 2007; Blair, et al., 2007; Campbell and LaBrosse, 2007; Campbell, 2007; Sebastian Schich, 2008; Sebastian Schich, 2008a; LaBrosse, 2008; Cariboni, et al., 2008; Sebastian Schich, 2009; Sebastian Schich, 2009a; Christoph Ohler, 2009; Gert Wehinger, 2009a; Milne and Wood, 2009; BCBS-IADI, 2009; Goodhart, 2009, at pp. 42-44, 45-47 & 93-94; Aviram Levy and Sebastian Schich, 2010; Ayadi and Lastra, 2010; Cariboni, et al., 2010; and Thorsten, 2010. Note also the discussion under the ‘lender of last resort’ subtitle below.

459 Note the discussion under the ‘risk transferring requirements’ subtitle above.

460 Ibid.

461 The banking and insurance supervision departments of the NBE have also seen the importance of creating the deposit insurance and fund guarantee schemes for all the financial institutions (NBE BSD, 2005, at p. 74; and NBE ISD, 2005, at p. 107).
2.3.2  Competition Regulation

2.3.2.1  The General Adoption of Competition Regulation

i. The International Experience

Competition regulation was often attacked by three arguments.\textsuperscript{462} First, Harberger argued as early as 1954 that the economic inefficiency resulting from monopoly is too small to justify the need for competition policy and regulation. Secondly, Bhagwati argued as early as 1965 that the behaviour of existing firms is disciplined if barriers to international trade are relaxed and the domestic economy trades with a competitive world market. Thirdly, the theory of contestable markets, advocated by Baumol as early as 1982, argued that firms in the market will not abuse their powers as long as the market is contestable through free entry (and exist) of firms. Many, including the Chicago School of Law and Economics, also argued that the competition process will protect itself better than a government intervention can do, hence, that the best way to protect competition is to leave it to the market, not to subject it to law.\textsuperscript{463}

The adoption of competition policy and laws has, however, increased across the globe through time despite difference in the technicalities of the laws.\textsuperscript{464} It is felt that sound competition and competition policies and laws aiming at identifying and controlling anticompetitive actions and behaviours are essential features of a successful market economy.\textsuperscript{465} Competition is taken to be useful to decentralize decision-making; promote innovation and technology change; increase economic efficiency; enhance economic restructuring, development and internationalisation; and ensure consumer welfare.\textsuperscript{466} Each of the three arguments against competition policy has also been criticized. First, it has been argued that Harberger underestimated the economic welfare losses associated with monopoly and imperfection of competition.\textsuperscript{467} Secondly, it has been shown that trade policy can not be substitute for competition policy as Bhagwati argued since dangers to competition also come from trade itself.\textsuperscript{468} Thirdly, the theory of contestable markets has been challenged through two sets of questions.\textsuperscript{469} The first set asked if the theory is a competition or deregulation theory since it was also argued that the theory was designed to justify the presence of firms that escape regulation in the market under the guise of market openness. The second set asked if market power and its abuse can be resolved merely by making the market contestable since it was also found true that market power and its abuse can persist despite ease of entry and exit.

\textsuperscript{462} Bahaa Ali El Dean and Mahmoud Mohieldin, 2001, at pp. 5-6.
\textsuperscript{463} Gerber, 2001, at p. 12; and Cseres, 2005, at pp. 23-25.
\textsuperscript{466} Ibid.
\textsuperscript{467} Bahaa Ali El Dean and Mahmoud Mohieldin, 2001, at p. 6.
\textsuperscript{468} Id., at p. 7.
The developed market countries have, accordingly, started to introduce competition policies and laws as early as 1889. The transition and emerging market countries have also seen the importance of having sound competition regimes following the free market reforms after the late 1980s. Their deregulations have necessitated the existence of competition regimes although they have also needed government regulation due to their development goals and the high level of imperfection in their markets. The majority of them (more than one hundred countries by now) have, therefore, introduced competition policies and laws in the 1990s and thereafter while a number of others have continued to appreciate the need for having such a regime in the subsequent years.

The different systems of competition policy and law have often addressed different concerns because of difference in the economic development and in the reasons for adoption of the policies and laws in the different countries. They are, however, often used to achieve the following four major types of objectives:

- to create, maintain and promote effective competition by preventing abuse of economic power and anticompetitive private action;
- to eliminate anticompetitive government intervention that lessens competition in the market, leads to inefficient use of resources and reduces consumer welfare;
- to achieve economic efficiency and dynamism; and

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470 Canada and USA, for instance, enacted their competition laws in 1889 and 1890, respectively; Australia in 1906; New Zealand in 1908; Germany in 1923; Japan in 1947; and Israel and most European countries in 1957. Austria also saw the first competition law proposals in the 1890s. World Bank, 2002, at p. 139; Pradeep S. Mehta, 2002/2003; at pp. 80 & 86; and Gerber, 2001, at pp. 6, 7 & 43-141.
472 Ibid.
473 Few of them have introduced their competition laws in the years before 1990: Lebanon in 1967; India in 1969; Pakistan in 1970; Thailand in 1979; Republic of Korea in 1980; Sri Lanka in 1987; and Cyprus in 1989. Some others have introduced them in the 1990s: Poland and Hungary in 1990; Russia, Kazakhstan, Czech Republic, Taiwan, Tunisia, Venezuela and Peru in 1991; Belarus, Lithuania, Uzbekistan, Bulgaria, Mexico and Fiji in 1992; Slovenia, Estonia, Tajikistan, Mongolia, China, Jamaica and Ivory Coast in 1993; Kyrgyzstan, Zambia, Slovak Republic, Turkey and Brazil in 1994; Georgia in 1996; and Indonesia in 1999. Most others have introduced them in 2000 and thereafter. Bahaa Ali El Dean and Mahmoud Mohieldin, 2001, at p. 22; Pradeep S. Mehta, 2002/2003, at pp. 80 & 86; World Bank, 2002, at p. 139; and Ewing, 2006, at pp. 1-17.
474 World Bank, 2002, at p. 139; Ewing, 2006, at pp. 1-74; and Naim and Tulchin, 1999, at pp. 1-275. Many of the countries have introduced their competition regimes because of anticompetitive behaviour of firms, economic crisis or international pressure. The United States, Sweden, Denmark, the Netherlands and Norway have introduced or reformed their regimes due to the anticompetitive behaviour of their firms (monopoly in USA and cartel abuse in the others). France, Indonesia and Romania have adopted their regimes because of economic crisis. Japan, Germany and most countries of Central and Eastern Europe, Asia, Latin America and Africa have introduced their regimes due to pressure of the international development towards free market. Ibid.
- to enhance consumer welfare.\textsuperscript{478}

They are also used to achieve the following five types of additional objectives:

- to create or preserve economic freedom and free enterprise system;
- to disperse economic power, redistribute resource, maintain economic equity, and strengthen the notions of individual freedom of choice, economic opportunity and democracy;
- to allocate economic decision making power between the government and the market and maintain pluralism;
- to protect small businesses; and
- to achieve trade and development policy objectives.\textsuperscript{479}

The prioritisation of the aforementioned objectives and the scope and design of competition policy and law is, however, also variable.\textsuperscript{480} The solution is largely determined by country specific factors and choices and the decision involves synchronizing between legal, economic, social and political objectives and principles.\textsuperscript{481}

Hence, the policy makers in the developed market countries of Europe and Northern America have, in practice, used the competition laws to protect competition from non-governmental and governmental restraints and to achieve goals as diverse as economic freedom, economic efficiency, consumer welfare, political stability, economic growth and economic integration.\textsuperscript{482} They have used them to influence private economic decision, structure economic and political relationships, and create a liberal society which is concerned with economic freedom, consumer welfare and social justice.\textsuperscript{483} Influenced by this experience, the transition and emerging market countries have also tried to use their competition policies and laws to create and maintain competitive market with the ultimate aim of meeting the objectives that were targeted by the advanced competition policies and laws.\textsuperscript{484}

\begin{thebibliography}{99}
\bibitem{483} Ibid.
\bibitem{484} Bahaa Ali El Dean and Mahmoud Mohieldin, 2001, at p. 10; and Naim and Tulchin, 1999, at pp. 1-275. Some researchers have also favoured the harmonization of competition laws towards those objectives (Ewing, 2006, at pp. 1-361).
\end{thebibliography}
ii. The Case of Ethiopia

Ethiopia recognized the need for regulating anti-competitive practices when it enacted the commercial code of May 1960. It took lesson from the 1900 Paris Convention for the protection of Industrial Property (as amended in Lisbon in 1958) and prohibited unfair competition by the code with a major objective of protecting the good will and preserving the businesses of traders. It strengthened the competition regime by repealing its price control laws and enacting an Unfair Trade Practices Decree in 1963. It tried to use both the unfair competition rules of the code and the Unfair Trade Practices Decree to promote business stability and commerce. The value of these laws was, however, lost with the advent of socialism in the country in 1974.

The country currently enforces a competition law that aims at:

- preventing and eliminating anti-competitive and unfair governmental and non-governmental trade practices;
- safeguarding the interests of consumers; and
- maximizing economic efficiency and social welfare (in the supply and distribution of goods and services).

It prohibits all agreements, dominant positions and unilateral practices that will harm competition by this law and controls the exercise of unilateral acts and practices that can harm good will and business by the 1960 commercial code.

2.3.2.2 Treatment of the Financial Markets

i. The International Experience

A number of the countries in the globe have moved from general acceptance to general prohibition of restraints to competition in their financial markets. They used to exempt their banks, insurers and credit institutions from the general competition requirements and to allow cooperation among them. The European competition regime in the Treaty of Rome was originally developed for trade in goods and generally considered inapplicable to financial and other services.

485 IGE, 1960, at the preface.
486 IGE, 1960, at arts. 130-134, 30, 40, 47, 55, 144, 158, 159, 204 & 205; and Winship, 1974, at pp. 52-53.
487 IGE, 1963g, at arts. 3(b) & 5.
488 IGE, 1960, at the preface; and IGE, 1963g, at the preamble.
489 FDRE, 2003c, at the preamble & art. 3.
490 FDRE, 2003c, at arts. 4, 6, 10 & 11; and IGE, 1960, at arts. 130-134. The competition law foresees the exemption, from its application, of only the following: i) the commercial activities exclusively reserved by law for government, ii) the developmental enterprises that may have to be encouraged by government, and iii) the basic goods and services that may have to be subject to price regulation by government (FDRE, 2003c, at arts. 4 & 5).
until the European Court of Justice invoked it in the 1980s to invalidate price fixing agreements between insurers.\textsuperscript{493} The McCarran-Ferguson Act of the US also generally exempted banking and insurance businesses from its application but for two exceptions: one that makes the Sherman, Clayton, and the Federal Trade Commission Acts applicable to banking and insurance businesses when there is no specific federal or state regulation and another that recognizes the applicability of the Sherman Act to agreements or acts of 'boycott, coercion or intimidation' between banks or insurers.\textsuperscript{494} Germany, Austria, UK and France also used to exempt banks, insurers and credit institutions from their competition laws while Canada used to include only price-fixing agreements of these institutions in its competition law and Italy and Switzerland did not prohibit the restraint of competition by these institutions at all.\textsuperscript{495}

Many of the countries also used to recognize the imposition of restraints to competition by government and the banks, insurers and credit institutions themselves.\textsuperscript{496} The governmental restraints to competition often included fixed, minimum and maximum interest and premium rates that had to be determined by the governments based on changes in economic circumstances; ceilings imposed by the governments on lending for reason of monetary policy or credit quota; and rules for prevention of advertising that were often designed to avoid excessive competition or protect profitability.\textsuperscript{497} The restraints of competition within the private autonomy of the banks, insurers and credit institutions were usually made by voluntary arrangements between them to lay down parameters (that leave the involved institutions with less substantial scope for action) with or without notice to and express approval of a governmental authority.\textsuperscript{498} The concerted actions were sometimes brought about by associations of the financial institutions and rate advisors and the actual effects of the restraints of competition were sometimes achieved through the mechanisms of conscious parallelism, rule of conduct and change of market structure.\textsuperscript{499}

The growing importance of competition between the financial institutions and the prevalence of the free market idea have, however, led many of the countries to replace the traditional general exemption of banks, insurers and credit institutions from their competition regimes by narrowly defined exemptions for purpose of cooperation or regulation.\textsuperscript{500} Most of them have, accordingly, come to subject the institutions to their competition regimes as a matter of principle and to allow regulation only for purpose of controlling financial soundness, meeting monetary policy objectives, supplying information to consumers, and achieving other

\textsuperscript{493} Merkin and Rodger, 1997, at pp. 173-178; and Nemeth, 2001, at pp. 57-58.
\textsuperscript{494} Pfennigstorf, 1996, at p. 21.
\textsuperscript{495} Möschel, 1991, at pp. 92-93; and Pfennigstorf, 1996, at pp. 22-23.
\textsuperscript{497} Ibid.
\textsuperscript{499} Ibid.
\textsuperscript{500} Bröker, 1989, at pp. 77-100; Pfennigstorf, 1996, at pp. 18-21; Möschel, 1991, at pp. 91-92; and Rosa Greaves, 1992, at pp. 3-98.
defined objectives. They have made free competition a key policy objective and taken the position that regulation should not be detrimental to the level of performance and competitiveness of the financial institutions whatsoever its objective may be. They have believed that competition with adequate safeguard against failure can promote efficiency and serve customers in the long run more than strict regulations that may aim at these. They have, accordingly, criticized and deregulated all forms of restraint to competition in their banking, insurance and credit markets. They have ceased or reduced the issuance of interest and premium rate regulations and credit quotas and made the self restraints of the banks, insurers and credit institutions under the realm of their competition laws. They have also subjected the changing of ownership and the merger of their banks, insurers and credit institutions to one of three types of measures:

- continuation of existing licenses subject to notification of the new situation to the regulators;
- treatment of the existing licenses as not covering the new situation and requirement of the obtaining of new licenses; or
- control of the ownership change or transfer process itself under special rules meant for the banks, insurers and credit institutions or the general competition law meant for all ownership transfers and mergers.

Hence, the EU has already subjected all agreements between the financial institutions that may restrain competition in the European market to scrutiny of the European commission and the competition authorities of the member states under the general competition regime of the Union. Germany has moved from complete to partial exemption of the banking, insurance and credit businesses from competition law and submitted them finally to the no exemption regime of the European Court of Justice. UK has moved from complete exemption to restricted exemption of the financial institutions from its competition regime as its regime was harmonized with the EU. The Italian law of 1990 and the French Ordinance of 1986 have adhered to the EU rules while Switzerland did not have

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per se prohibition of anti-competitive agreements. The US Supreme Court has also narrowed the exemption of banks, insurers and credit institutions from the competition regime gradually by restricting its interpretation of the exceptions from the Sherman, Clayton and the Federal Trade Commission Acts and expanding the applicability of the Sherman Act to agreements and acts of the banks, insurers and credit institutions. Canada has also applied the general rules against restraint of competition on the banks, insurers and credit institutions gradually. Japan has also subjected the financial institutions to the Antimonopoly law of 1947.

ii. The Case of Ethiopia

Ethiopia tries to ensure competition between the banks, insurers and microfinance institutions under its general competition law and the interest, premium and foreign exchange rules. The general competition law does not exempt the banks, insurers and microfinance institutions from its rules.

The NBE used to fix interest rates of the banks directly until 1995. It used to set minimum and maximum interest rate ceilings on the deposit and lending businesses of the banks and microfinance institutions until January and June 1998, respectively. It also used to regulate the supply of domestic credit and foreign exchange under administratively determined quota until May 1993. It currently requires the banks and microfinance institutions to adhere to minimum ceilings on their saving and time deposit rates and authorizes them to freely determine their lending, penalty and demand deposit rates. It does not also subject the credit and foreign exchange allocations to administrative quota requirements. It does not also impose ceilings on the premium rates of the insurers although it is authorized by law to regulate these.

The country also controls the anti-competitive use of advertisement through the rules of the general competition law on anti-competitive trade acts and practices. It also subjects the transfer of ownership and merger of the private banking, insurance and microfinance companies to prior written approval and supervision of the NBE (which shall act under the commercial code rules) and the merger and transfer of ownership of the government banks and insurer to

510 Pfennigstorf, 1996, at pp. 21-22; Meier, 1988, at pp. 6-7, 14, 17 & 49-84; and Caddy, 1986, at pp. 28-31 & 32-57.
511 Möschel, 1991, at pp. 92-93.
513 FDRE, 2003c.
514 Table 12(Chap. 2).
515 Table 12(Chap. 2); Directives No. MFI/09/96 & MFI/10/98; and Itana Ayanna, 1994, at pp. 240-244.
516 Public Notice of the NBE (NBE, 1993).
518 Note the discussions on these under the ‘objectives of regulation’ subtitle above and the ‘interest, foreign exchange and premium regulations’ and ‘regulation of product distribution’ subtitles below.
519 TGE, 1994b, at art. 36.
520 FDRE, 2003c, at art. 10.
decisions and regulations of the Council of Ministers of the Federal Government of the country (which shall act under the public enterprises laws and the commercial code of the country). 521

The banks, insurers and microfinance institutions do not also expressly agree to restrain competition and to set parameters that may restrain trade in practice. They do not act in concert for these purposes through their associations and otherwise. They are not also reported for having abused their market positions.

The aforementioned position of Ethiopia is justified in light of the need to promote competition in the banking, insurance and microfinance markets and the international trend on the treatment of competition between financial institutions. The country, however, also needs to address the following five problems.

First, the existence of the minimum ceiling on deposit interest rates has anti-competitive effect despite its uses as means of monetary policy intervention and pacesetter of the interest rate determinations by the banks and microfinance institutions. 522 It disables the banks and microfinance institutions from unilaterally adjusting their rates in favour of cheap money policy according to market demands. 523 The removal of interest rate ceilings needs to be furthered to fully enable the making of market based interest rates by the banks and microfinance institutions although the NBE has also to continue with its responsibility to make sure and regulate that the interest rate policies and rules of the banks and microfinance institutions do always have positive effect on the country’s economy.

Secondly, the banks and insurers avoid competition through conscious parallelism although they do not agree expressly to restrain competition or to set parameters that restrain trade practice. 524 The microfinance institutions also avoid competition by dividing the geographic areas of their businesses passively. 525 Any passive or active restraint to competition to be adopted within the private autonomy of the banks, insurers and microfinance institutions is not commended

521 TGE, 1994a, at arts. 27(2)(a) & 10(1)(c); FDRE, 2008b, at arts. 3(3)(c) & (d); TGE, 1994b, at arts. 7(d), 40 & 44; FDRE, 1996g, at arts. 17(1-2) & 24; and FDRE, 2009, at art. 17(1-2) & 28(1). The public enterprises law leaves the merger and transfer of ownership of the government banks and insurer to discretion of the government, i.e. the Council of Ministers (TGE, 1992b, at arts. 35-37, 47(2) & 47(3)). The microfinance supervision law encourages merger between the microfinance institutions (FDRE, 1996g, at art. 13; and FDRE, 2009, at art. 17(1-2) & 28(1)).

522 Note the discussion under the 'interest, foreign exchange and premium regulation' subtitle below.

523 The NBE currently fixes the minimum ceiling for the banks and the microfinance institutions at 5 percent per annum (Note the NBE news cited as NBE, 2010a; and Directive No. MFI/19/2007). It used to fix it at 12, 11, 10, 7, 6, 4, 3 and 4.5 percents per annum in that succession in the past (See Table 12(Chap. 2) at the second row; and Directives No. NBE/INT/10/2007 (as amended by practice); MFI/09/96 up to MFI/13/2002; and MFI/19/2007).

524 They have almost avoided competition in the types and prices of their services (Note the similarity of their services from Tables 6(Chap. 2) and 7(Chap. 2) and the similarities of their interest and premium rates from the annual reports and records of the NBE).

525 They do not agree expressly for market division. They have, however, affiliated their formation and operations to particular regions and areas. Note the records of the microfinance supervision department of the NBE and Tables 9(Chap. 2) and 10(Chap. 2).
in light of the country's objective to promote competition. Specific measures need to be taken against the behaviour of conscious parallelism among the banks and insurers and the market division tendencies of the microfinance institutions since the general competition law of the country does not address these matters clearly.\textsuperscript{526} The banks, insurers and microfinance institutions and their associations need also to aim at promoting competition. The control of avoidance of competition is not, of course, something that can be accomplished by prohibitive rules alone although these may assist in the effort. The country needs to address the problem through indirect methods that can stimulate competition such as by imposing diversification requirements; making the banking, insurance and microfinance markets contestable; permitting entry of foreign competitors in the markets; enforcing codes of conduct; and providing incentives for the geographic diversification and competitively desirable behaviours.

Thirdly, the dominant position of the government banks and insurer has the effect of reducing competition although instances of abuse of dominance are not reported yet. The country has, of course, prohibited the creation of dominant position in trade by its general competition law.\textsuperscript{527} It does not, however, implement the prohibition in practice and the government banks and insurer have continued to dominate the banking and insurance businesses, and to leave marginal opportunity for the private banks and insurers.\textsuperscript{528} The country needs to enforce the rule strictly and take measures that will correct the market dominance already created. It needs to take measures that will restrain the government banks and insurer from increasing their market dominance, enable the private banks and insurers to raise their market shares, and thereby enhance competition.

Fourthly, the general competition law of the country suffers from several shortcomings. It does not, for instance, define the undesirable market share for control of market dominance, regulate merger, choose between the per se and rule-of-reason approaches of competition law, and make the competition law enforcement proactive. The commercial code, banking, insurance and microfinance supervision, and government enterprises laws do not also target the control of anti-competitive merger, acquisition or transfer of ownership although they require the prior authorization of these by the NBE or the Council of Ministers (in case of the government banks and insurer).\textsuperscript{529} Both the NBE and the Council of Ministers do not also have defined procedures for handling the authorization of the mergers, acquisitions and transfers of ownerships of the banks, insurers and microfinance institutions.\textsuperscript{530} The country needs to remove

\textsuperscript{526} FDRE, 2003c, at arts. 6, 10 & 11.
\textsuperscript{527} FDRE, 2003c, at art. 11(1).
\textsuperscript{528} Note the market shares in Tables 19(Chap. 2) & 20(Chap. 2); and the annual and quarterly reports of the NBE for 2008, 2009 and 2010.
\textsuperscript{529} They do not require the NBE and the government explicitly to look into the anti-competitive effects of the proposed merger, acquisition or transfer of ownership (IGE, 1960, at arts. 544-554; TGE, 1994a, at arts. 27(2)(a) & 10(1)(e); FDRE, 2008b, at arts. 3(3)(c) & (d); TGE, 1994b, at arts. 7(d), 40 & 44; FDRE, 1996g, at arts. 13, 17(1-2) & 24; and FDRE, 2009, at arts. 17(1-2) & 28(1)).
\textsuperscript{530} The NBE has approved one merger (between the Lion Insurance S.C. and the United Insurance Company S.C. to increase the capital of the United Insurance Company S.C.) on the 5th of
these shortcomings. It needs either to re-enact the competition law to remove them or adopt specific rules for the financial market. The latter can be done by the Council of Ministers of the government or the NBE under authority of the competition law.\footnote{531}

2.3.3 Market Conduct Regulation

2.3.3.1 Regulation of Insider Dealing and Market Manipulation

i. The International Experience

Most countries have regulations of insider loan and market manipulation to control the granting of credit to persons who may influence the lending process to the detriment of a bank or credit institution.\footnote{532} They determine the scope of their regulations based on the group of potential borrowers who are suspected by their banking regulators for being in a position to influence the lending and its terms. Hence, they usually regulate the loans of a bank or credit institution to its directors, influential shareholders, senior officials and family members of these and to enterprises linked with the bank or credit institution through shareholding, management or business correspondence.\footnote{533} They do not, however, regulate the problems of insider dealing and market manipulation in insurance directly.\footnote{534} They tend to control these through their product, contract and premium regulations.\footnote{535}

ii. The Case of Ethiopia

Ethiopia prohibits the making of all kinds of direct and indirect dealings between companies and directors of the companies and between the companies and other concerns in which directors of the companies participate as owners, partners, agents, directors or managers without prior approval of the boards of directors of the companies and notice to their auditors.\footnote{536} It authorizes the NBE to determine the conditions and limitations on the loans, advances, credit facilities, financial guarantees and other contracts to be made, directly or indirectly, between the banks and persons related to them and requires the making of all loans and transactions between the banks and insurers to be on terms and conditions similar to the ones between the banks and other persons and as the NBE may direct.\footnote{537} It prohibits the insurers from granting loans, advances, financial guarantees and

\footnote{531} The competition law authorizes the Council of Ministers to issue regulations and notices (FDRE, 2003c, at art. 29). The NBE can also shoulder the responsibility of making and enforcing competition rules under the general competition law as long as promotion of competition can be considered as one of the major objectives of financial market regulation.

\footnote{532} Möschel, 1991, at pp. 76-77; and Lovett, 1992, at pp. 159-160.

\footnote{533} Ibid.


\footnote{535} Ibid.

\footnote{536} The auditors have to submit special report to the general meeting of the shareholders of the company and the latter may approve or disapprove the dealings. Disapproval by the general meeting of shareholders of the company does not, however, nullify the dealings but make the directors liable. IGE, 1960, at art. 356 (3)-(5).

\footnote{537} TGE, 1994a, at art. 17; and FDRE, 2008b, at arts. 22(1) & 54.
other credits to their shareholders, directors, managers, auditors, actuaries, officers and auxiliaries and to any person connected with these persons.\textsuperscript{538} It prohibits both the banks and the insurers from extending credits to all persons against the security of their own shares.\textsuperscript{539} It also makes the rules in its banking supervision law and the insider dealing and market manipulation rules in its commercial code applicable on the microfinance institutions to control the occurrence of these types of problems.\textsuperscript{540}

The NBE has also issued directives dealing with limitations on bank loans to related parties in general and on accommodations to directors and persons for whom the directors are guarantors in particular with a view to controlling abuses and impermissible gains to the directors and the related persons that will unduly affect the banks.\textsuperscript{541} One of the directives regulates the accommodations granted to directors of a bank, jointly or severally or with any other person and to persons to whom the bank or one or more directors of the bank are guarantors.\textsuperscript{542} It requires the banks to secure prior written approval of the NBE when they want to grant, or to permit to be outstanding, directly or indirectly, unsecured loans, advances or credit facilities of an aggregate amount in excess of thirty thousand Birr to their directors, whether severally or jointly with any other physical person, or to any physical person for whom they or any one or more of their directors are guarantors. The other directives limit the amount of business loan to be granted to one related party and the maximum aggregate sum to be granted to all related parties to percentages of the total capital of the lending bank.\textsuperscript{543} They exclude loans fully secured by deposits held in the lending bank, loans secured by central government securities and loans fully secured by cash substitutes (including securities other than those issued by the Federal Government) from the limits.\textsuperscript{544}

The country's authorization of the NBE to regulate the insider transactions between banks and the persons related to them and to define the concept of 'related party' (instead of defining this by law) is useful to address the technical expertise that will be necessary to determine the scope of insider regulation (as this is not a job for a body like parliament but for a regulator) and to enable the NBE to cater for the behaviour of the related parties from time to time. The NBE, however, needs to refine the insider dealing and market manipulation regulation for the following reasons.

\textsuperscript{538} The prohibition does not include the granting of loans on security of life policies. The country allows the insurers to extend loans under security, and up to the surrender values, of their life policies. TGE, 1994b, at art. 29(1).
\textsuperscript{539} TGE, 1994a, at art. 32; FDRE, 2008b, at art. 60(3); and TGE, 1994b, at art. 29(2).
\textsuperscript{540} FDRE, 1996g, at art. 24; and FDRE, 2009, at art. 28(1).
\textsuperscript{541} Directives No. SBB/11/96; SBB/17/96; SBB/30/2002; and SBB/10/95. The NBE has not issued insider dealing directives in relation to the insurers and the microfinance institutions.
\textsuperscript{542} Directive No. SBB/10/95.
\textsuperscript{543} Directives No. SBB/11/96; SBB/17/96; and SBB/30/2002. Directive No. SBB/30/2002 fixes the percentage requirements for one related party and the maximum aggregate sum at fifteen and thirty-five percents, respectively.
\textsuperscript{544} Directives No. SBB/30/2002; and SBB/17/96.
First, the NBE regulates the loan contracts between the banks and their directors more seriously than the contracts with other related parties. It makes all the contracts between the banks and their directors above the defined threshold void unless prior approval is obtained from it and subjects the loans of the banks to their directors and to persons for whom the directors stand as guarantors to double rule.\textsuperscript{545} The rules seem to be based on suspicion that directors influence bank lending and its terms more than any other related party. Whether other related parties are less influential than directors is, however, doubtful as a number of other related parties including significant shareholders and senior officials of the banks are also influential in practice. Similar treatment of all the insider transactions is commendable.

Secondly, the NBE has focused only on unsecured loans in enforcing the insider loan regulation. Secured loans are, however, also prone to the problem of insider dealing since the lending decision on them and their terms and collaterals are also open to negotiation. The NBE needs to expand the scope of its insider regulation to cover both types of loans.

Thirdly, the NBE needs to aim at balancing between the interests of controlling abuse and promoting competition in the design and enforcement of its insider dealing and market manipulation rules since both are desirable objectives of financial regulation. It needs to enact and enforce the insider dealing and market manipulation rules to control abuse. It need not, however, use them broadly so as to include prohibitions of any type of preferential treatment since this will lead to creation of uniform market conduct to the determinative of competition. It needs to enact and enforce them based on existence of real threat that lending decisions are no longer made impartially. It needs to study the sources of insider influence from time to time and make the insider dealing rules based on real threat as opposed to suspicion. Preventive measures such as reporting requirements and structural limits by reference to fractions of the bank's own capital (such as the single borrower limit) are also preferable.

The country also needs to make the insider and market manipulation rules in respect of the insurers and microfinance institutions similar to the rules in respect of the banks so that the NBE will control abuses and promote competition in respect of all the financial institutions alike.

\textsuperscript{545} It subjects them to the structural limit in Directive no. SBB/30/2002 and to the prior approval requirement in Directive no. SBB/10/95.
2.3.3.2 Regulation of Contract Terms

i. The International Experience

Banking contracts are usually brief and simple. Many countries leave them to the parties provided that the latter adhere to the substantive rules of the applicable contract laws. Only few instances of regulatory intervention exist in connection with loan securities that aim at minimizing the risk of debt failure.\(^\text{546}\) Insurance contract is, on the contrary, usually linguistically complex and prone to problems related to the abstract and inter-temporal nature of its product, advance payment of premium, mismatch between the premium payment and the insurance benefit, transaction cost to the parties, uncertainty about the future, and inability of the ordinary person to evaluate the implications of entering into it (and to influence it when he or she can evaluate the implications).\(^\text{547}\) It is, therefore, prone to adverse selection and moral hazard problems and these features make it a special kind of contract that needs special regulation on top of the normal rules of applicable contract laws.\(^\text{548}\) The forms of regulation in experience include control of unfair terms, requirements for inclusion of compulsory clauses, requirements of standardization, and ex-ante controls and ex-post supervision of the insurance contract.\(^\text{549}\) They usually exist as strong, limited and middle control systems.\(^\text{550}\) The regulators in all the systems are also expected to weigh and balance between the interests of consumer protection and competition (and innovation) in their design and enforcement of the contract regulations.\(^\text{551}\) The use of standardized contracts is widespread in practice in many countries in the area of mass risks as opposed to large risks.\(^\text{552}\) The standard terms are usually used to reduce variation and cost on the premium income.\(^\text{553}\) They often assume a ‘normal policyholder with average diligence and intelligence’ and make the insurer responsible only for unclear terms.\(^\text{554}\) The use of standardized contracts is, however, also criticized everywhere due to complexity and lack of transparency of clauses of the contracts.\(^\text{555}\) The regimes for protection of policyholders are also criticized for

\(^{546}\) Note the discussion under the ‘risk transferring requirements’ subtitle above.

\(^{547}\) Thimm, 1999, at pp. 179-183. The transaction costs in insurance include the search and information costs to the insured, the screening costs to the insurer, and the contracting and enforcement costs to both the insurer and the insured.

\(^{548}\) Pfennigstorf, 1996, at pp. 111-112; Merkin and Rodger, 1997, at pp. 45-50; Clarke, 2005; Clarke, et al., 2009; and Reichert-Facilides, 2009.

\(^{549}\) Thimm, 1999, at pp. 183-186; Pfennigstorf, 1996, at pp. 117-121; and IAIS, 2005b, at pp. 18-21.

\(^{550}\) The regulators in the strong control system prescribe prior approval requirements to make sure that the insurance contracts include certain terms and conditions that are felt essential to protect policyholders. Those in the limited control system leave the determination of insurance terms and conditions to the market and set strong regulation of agents and brokers to ensure the professional marketing of products. Those in the middle control system require the inclusion of certain terms and conditions for sake of consumer protection through revision of the instruments without prior approval requirements. Ibid.

\(^{551}\) Thimm, 1999, at pp. 183-186; and Finsinger, Hammond and Tapp, 1985, at p. 16.


\(^{553}\) Ibid.

\(^{554}\) Id., at pp. 55-56.

\(^{555}\) Id., at p. 56.
failure to protect them effectively in practice. Some have, accordingly, called for the re-design and harmonization of the regulation of insurance contracts across both Europe and other countries.

ii. The Case of Ethiopia

Ethiopia leaves the banking and microfinance contracts to negotiation of the parties within the framework of its general contract law. These contracts are usually brief and the country seems to have excluded their general regulation by the NBE for this reason. It regulates only the credit, interest rate, and insider trade terms of the contracts as part of its general lending, interest rate and insider dealing regulations. The country, however, foresees the complexity problem in the insurance contracts and expressly authorizes the NBE to control the terms of these contracts. It authorizes it to:

- examine the insurance terms and conditions of the insurers at any time it may feel necessary;
- ensure that the terms of all insurance contracts do not violate the rights of the policyholders under the laws of the country; and
- require the revision of illegal and unsound terms and conditions that may be included in the insurance contracts.

It also authorizes it to examine and order the revision of the long-term insurance contracts and conditions based on reports of actuaries. The NBE also requires the insurers to report the terms and conditions of their policies, proposal forms and endorsements to it in practice although it hardly examines their legality and soundness.

The current position of the country does not contradict with the international experience. It, however, needs to be improved for the following reasons.

First, the country seems to be worried more by the terms and conditions of the long-term insurance than by those of the general insurance. This is legitimate in light of the duration involved in long-term insurance. However, the terms and conditions of the general insurance are equally complex and disastrous to the ordinary consumer in the current context of the country. They are more litigated in the courts of the country in practice than the terms and conditions of the long-term insurance. They also affect a large portion of the consumer population in the country given the large size of general insurance compared to the long-term

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556 Id., at pp. 67-81.
557 Ibid.
558 TGE, 1994a; FDRE, 2008b; FDRE, 1996g; and FDRE, 2009.
559 TGE, 1994, at arts. 7(2), 28(1)(b) & 30; FDRE, 2008a, at arts. 5(4) & 15(1)(2); TGE, 1994a, at art. 17; FDRE, 2008b, at arts. 22 & 54; FDRE, 1996g, at arts. 12(2)(a-b) & (c-f); and FDRE, 2009, at arts. 3(1), 14(2)(a) & 28(1).
560 TGE, 1994b, at art. 36.
561 NBE ISD, 2005, at pp. 17, 18, 29 & 33.
insurance in the country.  The country needs to give attention to the soundness of both the general and long-term insurance terms and conditions and the NBE needs to examine the soundness of these terms and conditions more actively than it used to do so in order to ensure the protection of all consumers.

Secondly, the banking and microfinance contracts in the country are based on adhesive (i.e. take it or leave it) offers of the financial institutions and much of the population of the country lacks the bargaining power and necessary information to influence the terms and conditions of the financial institutions. The country needs to authorize the NBE and the NBE needs to monitor the bad effects these contracts may have on consumers despite their briefness.

### 2.3.3.3 Regulation of Product Distribution

#### i. The International Experience

The distribution of financial services often involves the use of varied modes and networks ranging from direct writing and use of salaried workers to the use of networks of branches, subsidiaries, independent agents and brokers (who are not employees of the parties and whose market share may vary from market to market and between differing lines of businesses). The internationalisation of financial services has also increased the importance of access to effective distribution networks and the choice of the distribution channels has evolved from the use of independent brokers to the use of direct marketing techniques, tied agents, employed sellers and all-finanz or banc-assurance arrangements. All these mechanisms need to be regulated to:

- achieve a marketing combination that will economize production and transaction costs,
- protect consumers by enabling information supply and rational decision making, and
- make the financial markets effective, efficient and safe.

Much of the regulation in the area of product distribution, however, relates to the distribution mechanisms of insurance products. Hence, many of the countries tend to emphasize on regulation of the structure and conduct of the

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562 The general insurance business is about 94% of the total insurance business in the country (Table 8(Chap. 2); and the records and annual reports of the insurers for 2008 and 2009).
563 The NBE should examine the policies, proposals and endorsements of all the insurers for this purpose.
564 Note the information asymmetry problem discussed in the ‘regulation of information disclosure’ subtitle below.
565 Thimm, 1999, at pp. 188-197; and Merkin and Rodger, 1997, at pp. 76-83.
566 Chance, 1993, at pp. 71-72; and Rietbergen, 1999, at pp. 56-59. The desirability of the financial conglomerate is, however, under discussion in the aftermath of the 2008 financial and economic crisis for the reason that it has increased the contiguity of the crisis (Note the discussion under the ‘functional and ownership separation requirements’ subtitle above).
568 Id., at pp. 189 & 194-196.
intermediaries of insurance distribution. The use of diverse distribution channels has, however, also become common in banking as networks have come to exist with forms of e-banking and other innovations and the latest recommendation is that these also need to be regulated.

Many of the countries also hardly regulate the product types and sectoral and regional distribution of the financial services since they often consider these types of regulations as incompatible with the free market idea. These types of requirements are often found in the transition and emerging market countries to achieve development objectives.

ii. The Case of Ethiopia

Ethiopia requires the insurers to employ only auxiliaries that are licensed by the NBE and authorizes the latter to license all the insurance auxiliaries on annual basis. The NBE also requires - i) Ethiopian nationality, - ii) completion of secondary level education, - iii) possession of sufficient experience and training, - iv) cleanliness from court conviction for a crime of dishonesty, and - v) possession of sufficient professional indemnity insurance, property guarantee and/or cash deposit with it to licence the auxiliaries. It requires:

- i) the applicants for insurance agency license to:
  - have at least secondary level of education,
  - prove minimum of five years of work experience in the underwriting or claims department of an insurance company or have sufficient training in insurance sales agency by an institution acceptable to the NBE, and
  - maintain professional indemnity insurance or deposit for a minimum of twenty thousand Birr per the lines of agency they want to be licensed;

- ii) the applicants for insurance broking license to:
  - have at least diploma in insurance or business related field from a higher education institution acceptable to the NBE;

569 Finsinger, Hammond and Tapp, 1985, at pp. 30-36; Chance, 1993, at pp. 73-75; Merkin and Rodger, 1997, at pp. 86-88 & 90-94; Thimm, 1999, at pp. 196-199; Nemeth, 2001, at pp. 80-81; and IAIS, 2005b, at pp. 18-21 & 54-56. The US has had regulations for for main types of distribution channels: an independent agency system, an exclusive (tied) agency system, a direct selling system, and a broking system (Meier, 1988, at pp. 45 & 164-166; and Lemaire, 1997, at p. 33).


573 TGE, 1994b, at arts. 2 & 25.

- meet minimum of eight years reputable managerial experience in the head office of an insurance company with responsibility to oversee the operations of underwriting and claims, and
- maintain professional indemnity insurance for a minimum of one million Birr or three times the annual general commission earned by the broker in the last accounting period prior to the making or renewal of the indemnity insurance policy whichever is greater;

- iii) the applicants for loss assessor or loss adjuster license to:
  - have at least diploma in their fields from a higher education institution acceptable to the NBE, and
  - maintain professional indemnity insurance or property guarantee for a minimum of one hundred thousand Birr; and

- iii) the applicants for insurance surveyor or actuarial license to:
  - have at least diploma in their fields from a higher education institution acceptable to the NBE,
  - meet minimum of seven years of work experience in insurance underwriting and claims handling or have diploma in insurance from a higher education institution acceptable to the NBE on top of the qualification in their fields,
  - maintain professional indemnity insurance or property guarantee for a minimum of fifty thousand Birr (for insurance surveyor license), and
  - maintain professional indemnity insurance or property guarantee for a minimum of one hundred thousand Birr (for actuarial license).

It requires the applicants for insurance surveyor license to have diploma from a polytechnic or similar institute and the applicants for actuarial license to have this from the Institute of Actuaries (London), the Faculty of Actuaries (Scotland), the Society of Actuaries (USA) or other institute with similar status to license actuaries.

It requires all the juridical person applicants to be owned fully by Ethiopian nationals and be organized under the commercial code of the country with unlimited liability.575 It requires them to have Chief Executives who meet the qualification, experience and integrity requirements, and to maintain the indemnity insurance, property guarantee or bank deposit, imposed on the physical person applicants. It also requires the applicants for broker license and the spouses and relatives of these persons in the first degree consanguinity not to own equity in any insurance company and loss adjusting firm; and the applicants for insurance surveyor license not to own same in any insurance company and loss adjusting,

loss assessing or broking firm. It has also issued codes of conduct for the brokers and required them to:

- conduct their businesses with good faith, professional skill and integrity,
- place the interests of their clients above all other considerations, and
- refrain from misleading and extravagant advertisements.

It has also required them, by the code, to:

- extend objective and independent advice to their clients;
- provide their clients with sufficient information about the insurers they represent and their products;
- inform their clients about the amount of commissions they receive from the insurers and the premiums and other charges the clients have to pay;
- clarify their responsibilities to the clients in completing the insurance proposals, claims and other material documents;
- refrain from withholding any evidence or document relating to the insurance bought by their clients without disclosing adequate reason to the clients;
- refrain from disclosing any information about their clients obtained in the course of their businesses except upon consent of the client or a court order;
- respect the wishes of their clients to terminate their relationship with them;
- disclose their identities, occupations and purposes during advertisement;
- use the broker title only for the broking business; and
- inform the codes of conduct to the public and their employees with a statement that the public can make complaint to the NBE.

The NBE does not, however, indicate the risks and liabilities to be covered by the indemnity insurance, property guarantee or deposit to be kept by the insurance auxiliaries except for the insurance brokers. It does not also have rules on the issuance of multiple licenses to a single applicant who can meet the criteria for more than one type of auxiliary business and on the use of independent and exclusive (tied) agents. It has, in practice, often issued exclusive agency licenses (that tie an insurance agent to a single insurer at a time) and licensed the agents as life, non-life and both by depending on the level of their expertise.

The country does not also impose service diversification and regional and sectoral service distribution requirements on the banks, insurers and microfinance institutions. It does not also require them to submit product distribution reports as it leaves the matters to the discretion of the institutions. The

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578 Ibid.
580 It has, of course, authorized the NBE to regulate the credit businesses of the banks and microfinance institutions within the free market principle. The NBE has not, however, regulated the credit businesses of the institutions directly after 1991. TGE, 1994, at arts. 7(2), 28(1)(b) & 30; FDRE, 2008a, at arts. 5(4) & 15(1)(a)(2); FDRE, 2008b, at arts. 3(3)(b), 22 & 54; FDRE, 1996g, at arts. 12(2) & 15; and FDRE, 2009, at arts. 3(1), 14(2)(a) & 28(1).
institutions also determine their credit and operational policies freely although they have to notify them to the NBE. The country, however, prohibits the banks from introducing new services without prior written authorization of the NBE.\textsuperscript{581}

The NBE has not also adopted standards on the basis of which it may assess the qualification and competence of the auxiliaries.\textsuperscript{582} The actuarial reports submitted to it have also come from an actuary whom the NBE did not license but with whom the Ethiopian insurers worked and the NBE recognized.\textsuperscript{583} The licensing of the other auxiliaries was also slow and cumbersome.\textsuperscript{584}

The current regulation of Ethiopia is commendable in light of the free market principle of the country. The stringent regulation of brokers by the NBE is also justified by the degree of their responsibility.\textsuperscript{585} The country, however, needs to implement three sets of improvement for the following reasons.

First, the country is only partially consistent with the insurance core principles of the IAIS which recommend that insurance supervisors should set requirements, directly or through the insurers, that regulate the conduct of intermediaries.\textsuperscript{586} The country needs, according to this principle, to regulate the operations of not only brokers but also of the other auxiliaries.

Secondly, the requirement of prior authorization for introduction of new services by the banks deters the innovativeness, flexibility and service diversification of the banks.\textsuperscript{587} The country needs to remove it.

Thirdly, the current laws and practices of the banks, insurers and microfinance institutions have failed to diversify the types of services and the sectors and regions they serve. The services of the institutions are concentrated by type, sector and region and neither the NBE rules nor the credit and operational policies of

\textsuperscript{581} FDRE, 2008b, at art. 3(3)(b). This rule also holds for the microfinance institutions under the 2009 microfinance business law (FDRE, 2009, at arts. 17(5) & 28(1)).
\textsuperscript{582} It relies much on documentary proof of the qualification and experience requirements imposed on them (NBE ISD, 2005, at p. 58).
\textsuperscript{583} The long term insurers were valued by a Kenyan actuary (See annual reports of the Ethiopian Insurance Corporation, the Awash insurance S.C., the Africa Insurance S.C, the United Insurance S.C., the Nile Insurance S.C. and the Nyala Insurance S.C.).
\textsuperscript{584} NBE ISD, 2005, at pp. 44-60.
\textsuperscript{585} The Ethiopian brokers often tend to negotiate premiums, draft policies, provide risk management advice, handle claims, and represent both the insurers and the consumers besides their normal task of placing the insurers and consumers in business. Most of them also tend to bargain with the insurers on the placing of customers and the commissions the insurers pay to them. The insurance supervision department of the NBE also believes that the current regulation of brokers, in particular the qualification criteria and the minimum ceiling of the professional indemnity insurance, are not enough in view of the multiple functions the brokers engage in, the extent of the risk they place on the public, and the professional competence and reputation the works of the brokers demand. Its supervision reports show that the insurance brokers licensed so far are extending inadequate professional services. NBE ISD, 2005, at pp. 48 & 50-52.
\textsuperscript{586} IAIS, 2003, at ICP 24.
\textsuperscript{587} The licensing of a new bank called Zemen Bank S.C. (which went operational in 2008/2009) was, for instance, protracted because of proposal of the bank to be fully electronic bank without physical branches and opposition of the NBE to the idea.
the institutions focus on the economic and social policy objectives and priorities of the country. The services of the institutions are not also automated and networked yet. The country needs to introduce product diversification, automation and networking and sectoral and regional service distribution requirements to curb the failure. The NBE also needs to coordinate between the fundamental objectives of its financial regulation and the economic and social policy objectives of the country and try to introduce the diversification, automation, networking and distribution requirements according to the dynamics of the transition in the country. These measures should not, however, imply the direction of financial services by the NBE in the way this has been done in the centrally planned (socialist) systems. The NBE only needs to set the diversification, automation, networking and distribution requirements and stimulate the banks, insurers and microfinance institutions to comply with them in cooperation with the government (such as by tax and regulatory incentives) so that the free market principle will not also be defeated.

2.3.3.4 Regulation of Governance and Auditing

i. The International Experience

Improvement in the internal decision making process of financial institutions such as introduction of high-quality data recording; expansion of internal avenues of communication; installation of high-quality information processing, planning and performance systems; introduction of special documentation systems; division of work systems into decision-making components and agencies; and implementation of control measures play important role in risk avoidance.
These are, however, often considered to be under the domain of management of the financial institutions and excluded from regulation.\textsuperscript{593} The regulators in many countries also use only indirect mechanisms such as the requirements of reliability, professional qualification, double management, and management incompatibility rules to address the objective.\textsuperscript{594} The governance and auditing of the financial institutions are, therefore, largely left to the general company law regimes of the countries and influenced by the different theories on company management and organizational design that affect the general company law regimes.

The theories of the company and its management have evolved from a more traditional classical model that emphasized on notions of individualism to increased influence of managerial principles in the 1930s and then to the market testing of different national models and concepts in the subsequent periods.\textsuperscript{595} The need for corporate governance and controlling mechanisms has also rose in practice as the management and ownership of the modern corporation separated increasingly and the traditional assumption that corporate managers will act in the interest of shareholders by maximizing profit (or wealth) failed to hold, leading to the modern principal-agent problem (that corporate managers do not always act in the interest of shareholders).\textsuperscript{596} Arguments have also existed that recognise the exposure of the modern company to conflict of interest problems between management, shareholders and other stakeholders and, hence, that propose solution to the problem of control.\textsuperscript{597} The extent to which corporate managers may depart from the shareholders’ and stakeholders' interests is also said to be a matter of organizational structure and the influence of the latter is often explained in terms of theories of agency and transactions costs.\textsuperscript{598} Equity-based and debt-based mechanisms of corporate governance and control are also developed through time to include the following:

- market control via equity (i.e. the takeover mechanism);
- market control via debt (i.e. the prevention of inappropriate use of retained earnings by reduction of the internal resources at the disposal of managers through high indebtedness);
- direct control via equity (i.e. the control of firms by institutional shareholders that act directly or through boards); and
- direct control via debt (i.e. the control of firms through relationship banking).\textsuperscript{599}

\textsuperscript{593} Ibid.
\textsuperscript{594} Möschel, 1991, at p. 70; Pfennigstorf, 1996, at pp. 66-67; and IAIS, 2005b, at pp. 17-18.
\textsuperscript{598} Davis, 1995, at pp. 185-186; Kraakman, et al., 2004, at pp. 1-214; and Plessis, et al., 2005, at pp. 1-386.
\textsuperscript{599} The first three control mechanisms were prominent in the Anglo-Saxon countries which used to emphasize on the liquidity of shareholding and disclosure of financial information while the fourth was most common in Germany and Japan which used to emphasize on the information closely held.
The modern company laws and concepts have, however, recognized the limits of all the aforementioned theories, arguments and approaches as they believe in the existence of a large number of managerial and non-managerial agents in the public company, in the divergence of interests of the shareholders, stakeholders and managers of the company, in the virtual impossibility of bargaining in between the shareholders, the stakeholders and the managers of the company, and in the inefficiency of markets to check managers fully. They have often tended to set mandatory structural, disclosure, related party, and fair dealing rules for the company that are designed to protect shareholders, investors, creditors and other stakeholders despite variations on detail from country to country. Accordingly, the company laws of most countries recognize the institutions of shareholders meetings, board of directors, company management and internal and external auditors in designing the management and organizational structure of the public company while some like Germany and China (following the German model) also add a supervisory board that oversees the board of directors. A number of the European countries (including Germany and England) and China also recognize the participation of employees or representation of their interests in the company governance. Many of the countries also have indirect mechanisms of ensuring accountability and safeguarding against malfeasance of management including ex ante controls on abuse of power, disqualification of directors, control through stock market, control by public agencies, and enforcement of civil and criminal sanctions against violations of corporate obligations.

Most countries also require the financial institutions to have auditors (and actuaries for the insurers) who will verify all the information relating to the financial conditions of the institutions and check compliance of the operations of the latter with regulatory requirements. The researchers in the field of financial market regulation have also confirmed the inability of markets alone to discipline the management of financial institutions and the need to twin these control mechanisms with the use of effective government regulation.

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601 Ibid.
603 Blanpain and Barbagelata, 1992; ONG and Baxter, 1999, at pp. 112-115; Plessis, et al., 2005, at pp. 301-315; and Grossfeld, 2006, at pp. 135-140.
604 The strictness of these measures has, however, differed from country to country due to ideological differences. Followers of the capitalist ideology, including UK, have refrained from imposing strict and heavy punishments for fear that these may discourage entrepreneurial spirit and individualism while others like China have believed that strict measures will promote the ideology of collectivism. ONG and Baxter, 1999, at pp. 102-103 & 116-122; Plessis, et al., 2005, at pp. 258-319; IAIS, 2005b, at pp. 17-18 & 22-26.
The making of accounting, auditing, disclosure and corporate governance reforms is also generally considered to be important matter that has to be addressed continuously both in the context of financial market regulation and outside as governance inefficiencies, scandals and financial crimes are still alive everywhere.\textsuperscript{607} The effort in most countries (both developed and developing) has, accordingly, been (and seems to continue to be) towards advancing the systems by shifting increasingly from a regulatory system that relies on quantitative controls only to a system that complements the quantitative controls by qualitative prudential and governance requirements, such as by defining the mechanisms for management of risks and specifying the valuation and auditing functions, board and management tasks (and responsibilities), and shareholders rights.\textsuperscript{608} The Global Corporate Governance Forum, the OECD, the International Accounting Standards Committee, the International Federation of Accountants, the International Corporate Governance Network and many national institutions have also been assisting the reforms.\textsuperscript{609} The OECD Principles of Corporate Governance have also, in particular, been useful to benchmark the corporate governance regimes and practices of both the OECD and the Non-OECD countries.\textsuperscript{610} The 2008 financial and economic crisis has also increased the need for controlling corporate abuses, enhancing corporate governance mechanisms, and further revising the OECD corporate governance principles.\textsuperscript{611} The latest recommendation, as drawn from the experiences of private equity and venture capital funds and the general discussion on corporate governance systems in some countries like Germany, is also towards development of a governance system that will incorporate the relationships among all the stakeholders of the corporation (i.e. the owners, the lenders, the managers, the employees and other social groups).\textsuperscript{612}

\section*{ii. The Case of Ethiopia}

Ethiopia leaves the improvement of internal decision-making process to the banks, insurers and microfinance institutions like the practice else where. It:

\begin{itemize}
\item \textsuperscript{607} Lubrano, 2003, at p. 459; OECD, 2004b; OECD, 2004c; Kraakman, et al., 2004, at pp. 1-214; Plessis, et al., 2005, at pp. 1-386; Campbell, 2007; Close, 2007; Frolov, 2007; Lanam, 2007; Cude, 2007; Wroblewski, 2007; Greenwald, 2007; McIlroy, 2008; Hall, 2009; Bloomberg, 2009a; IASB, 2010c; IASB, 2010d; IASB, 2010f; IFAC, 2010a; IFAC, 2010b; and IFAC, 2010e.
\item \textsuperscript{608} Rocha, Hinz and Gutierrez, 2001, at pp. 172-177. Recent studies have also pointed out the usefulness of board professionalism and shareholder empowerment in both financial and non-financial companies to enhance the performance and control of company governance (Adrian Blundell-Wignall, 2007, at pp. 55-87; OECD SGCG, 2007, at pp. 88-110; Bob Garratt, 2006, at pp. 1-224; Plessis, et al., 2005, at pp. 320-386; and Kraakman, et al., 2004, at pp. 1-214).
\item \textsuperscript{609} Lubrano, 2003, at p. 459; OECD, 2004b; OECD, 2004c; OECD, 2006b; OECD, 2009; OECD, 2009a; OECD, 2009b; OECD, 2009c; OECD, 2009d; OECD, 2010; OECD, 2010a; IASB, 2010; IASB, 2010a; IASB, 2010b; IFAC, 2010; IFAC, 2010a; IFAC, 2010b; IFAC, 2010c; and IFAC, 2010d.
\item \textsuperscript{610} OECD, 2004b; OECD, 2004c; OECD, 2006b; and the country related works of the OECD under the Principles.
\item \textsuperscript{611} Grant Kirkpatrick, 2009; Haynes, 2009; Bloomberg, 2009a; OECD, 2006b; OECD, 2009; OECD, 2009a; OECD, 2009b; OECD, 2009c; OECD, 2009d; OECD, 2010; and OECD, 2010a.
\item \textsuperscript{612} Schwartz, 2010; and Grossfeld, 2006, at pp. 135-141.
\end{itemize}
- defines the composition and responsibilities of the shareholders' meetings, boards of directors and auditors of the institutions;

- requires the banks to have information management, internal control, human resource organization and risk management systems, policies and procedures before commencement of business as the NBE may prescribe;

- authorizes the NBE to:
  - regulate the appointment and tenures of the directors and executives of the banks;
  - enact qualification, fitness and propriety criteria for the influential shareholders of the banks and the directors and chief (and senior) executives of the banks, insurers and microfinance institutions;
  - fix the number of employees who may participate in the boards of directors of the banks; and
  - call and participate in the shareholders' meetings of the banks;

- prohibits the directors and chief executives of the financial institutions (and the business entities in which these persons hold more than ten percent equity interest) from being directors of a bank and the employees of a bank from being board chairpersons of same bank and directors of another bank;

- bars persons declared bankrupt or making a composition with creditors, persons convicted of an offence involving dishonesty or fraud and persons who were directors, managers or principal officers or otherwise concerned directly or indirectly in the management of any financial institution that has been wound up in Ethiopia or abroad from managing the banking, insurance and microfinance institutions without written approval of the NBE; and

- requires the directors and executive officers of the banks to cease their functions when they or the companies in which they are directors or executive officers are declared bankrupt or convicted for bank liability.\footnote{IGE, 1960, at arts. 347-428; TGE, 1994a, at arts. 5(1) & 30(1) & (2); FDRE, 2008b, at arts. 4(1)(g), 4(1)(h), 6, 12, 14-17 & 24-27; TGE, 1994b, at arts. 6(2), 35, 43(1)-(2) & 44; FDRE, 1996g, at arts. 5, 6, 18 & 24; and FDRE, 2009, at arts. 11, 14(2)(c) & 28(1).}

The NBE also intervenes to regulate the governance of the banks, insurers and microfinance institutions and their internal decision making processes indirectly through the personal licensing and disclosure requirements.\footnote{Directives No. SBB/1/ 1994; SBB/39/2006; SIB/1/1994; MFI/01/96; MFI/02/96; & MFI/04/96. Note also the discussions under the 'market entry and exit requirements' subtitle above and the 'regulation of information disclosure' subtitle below.} It requires the banks, insurers and microfinance institutions to disclose the qualities of their management and the organizational structures, risk management policies and
working manuals they adopt to itself and to the public.\textsuperscript{615} It imposes age, qualification and integrity requirements on the chief executives and members of the boards of directors of the banking, insurance and microfinance companies and requires their appointment upon its approval.\textsuperscript{616} It prohibits members of the boards of directors of the banks from being members in the boards of other financial institutions and from acting as chief executives of the same bank to ensure the existence of undivided attention in the leadership of the banks and eliminate the exercise of abuse by the directors.\textsuperscript{617} It also limits the office terms of the members of the boards of directors of the banks to maximum of six consecutive years (subject to possibilities of retention of up to one-third of the outgoing members for extra one term and re-appointment of the members after lapse of six years of leave) to rotate the directorship roles of the shareholders and control the possible influences and abuses the directors may exert on the management and businesses of the banks.\textsuperscript{618}

The country also requires the banks, insurers and microfinance institutions to appoint independent auditors under approval of the NBE (and the government for the government banks and insurer) and to have their books of accounts audited annually by these auditors.\textsuperscript{619} It requires the long-term insurers to have their financial conditions and liabilities investigated by licensed actuaries annually for the first five years from commencement of their businesses and at least every three years thereafter.\textsuperscript{620} It authorizes the NBE to appoint auditors for the banks, insurer and microfinance institutions when they fail to make the appointment by themselves and to require them to re-audit their financial positions or re-appoint new auditors when it feels that their audit reports are defective or inadequate.\textsuperscript{621} It also authorizes the NBE to lay down the minimum auditing standards including the tenures of auditors, the scope and depth of audit, and the making of reports and valuations of assets and liabilities by the banks, insurers and microfinance institutions.\textsuperscript{622} The NBE has not issued directives on the matter, however. It has only issued a directive that regulates the requirements and procedures for approval of the auditors to be appointed by the banks.\textsuperscript{623} It has also neither defined the

\textsuperscript{615} Ibid. It requires the licensed banks and microfinance institutions to adopt risk management policies and operational manuals before commencement of operation. It does not impose these requirements on the insurers. Directives No. SBB/39/2006, at art. 9.1; and MFI/04/96, at art. 2.

\textsuperscript{616} Directives No. SBB/1/1994; SBB/39/2006, at arts. 4 & 5; SIB/1/1994; and MFI/03/96.

\textsuperscript{617} SBB/39/2006, at art. 5.1.4. The purposes of prohibition are not stated by the bank. They are only implied from the spirit of the directive. The NBE does not impose similar prohibitions on directors of the insurers and microfinance institutions.

\textsuperscript{618} SBB/39/2006, at art. 5.1.5. It does not impose similar requirements on the insurers and microfinance institutions.

\textsuperscript{619} It requires the approval of the auditors of the private banks, insurers and microfinance institutions by the NBE and the approval of the auditors of the government owned banks and insurer by the government. TGE, 1994a, at art. 18; FDRE, 2008b, at arts. 24-27; TGE, 1994b, at art. 18; FDRE, 1996g, at arts. 12(2)(d) & 22; and FDRE, 2009, at arts. 12-13.

\textsuperscript{620} TGE, 1994b, at art. 19 & 25.

\textsuperscript{621} TGE, 1994a, at art. 18(2), (3), (7) & 20(3)(c); FDRE, 2008b, at arts. 24(4) & 27(3); TGE, 1994b, at arts. 30, 31 & 44; FDRE, 1996g, at art. 24; and FDRE, 2009, at arts. 12(2) & 13(2).

\textsuperscript{622} TGE, 1994a, at art. 18 (5); FDRE, 2008b, at arts. 24(3), 26(1) & (2); TGE, 1994b, at art. 44; FDRE, 1996g, at art. 24; and FDRE, 2009, at art. 12(3).

\textsuperscript{623} Directive No. SBB/19/96. It has not issued similar directives for the insurance and microfinance auditors.
roles of the external auditors nor demarcated their roles from the roles of its examiners. The auditors are, therefore, only subject to the general powers and responsibilities put on all auditors in the general commercial law of the country and the general indications in the banking and microfinance business laws. They are, accordingly, subject to the general duty to verify the proper drawing, truth, fairness and legality of the balance sheets and profit and loss accounts of the banks, insurers and microfinance institutions and to report on the state of financial activities and affairs of the institutions to the management bodies of the institutions and the NBE.

The government banks and insurers in the country are audited in practice by the government owned Auditor General Office while the private banks, insurers and microfinance institutions are audited by independent private auditors whom they appoint annually upon approval of the NBE. The long term insurers, including the government insurer, are also appraised by foreign actuaries recognized by the NBE.

The banks, insurers and microfinance institutions in the country have generally been weak in their data recording, documentation, communication, information processing, planning, decision making, auditing, governance and risk management. None of them has developed adequate corporate governance structures and risk management mechanisms because of inexperience and little appreciation of the problem. Their operational policies and procedures are not well developed, either. A number of board members of the banks, insurers and microfinance institutions also engage in outside management and board membership. The boards of some of the banks, insurers and microfinance institutions are also sometimes chaired by representatives of their institutional

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624 The banking and microfinance business laws require the auditors to make the audits and to report the findings and conclusions to the shareholders of the banks and the microfinance institutions and to the NBE: according to internationally accepted auditing standards. TGE, 1994a, at arts. 18, 32 & 34; FDRE, 2008b, at arts. 26(1)-(2) & 60(3); TGE, 1994b, at art. 18(1); FDRE, 1996g, at art. 24; FDRE, 2009, at arts. 13 & 28(1); and IGE, 1960.

625 TGE, 1994a, at arts. 18(1), 18(6), 32 & 34; FDRE, 2008b, at arts. 26(1)-(2), 27 & 60(3); TGE, 1994b, at art. 18(1) & (2); FDRE, 1996g, at art. 24; FDRE, 2009, at arts. 13 & 28(1); TGE, 1992b, at arts. 5, 19-22, 27-28 & 32-34; and IGE, 1960, at arts. 63-85 & 368-387. The external auditors have also, in practice, limited their verifications and reports to the financial operations (i.e. the balance sheets and income and cash flow statements) of the audited banks, insurers and microfinance institutions. Only the banking supervision department of the NBE has intended to require them to include managerial assessment reports (NBE BSD, 2005, at p. 38). The 2009 microfinance business law requires the external auditors of the microfinance institutions to do the latter (FDRE, 2009, at art. 13(1) second clause).

626 See annual reports of the institutions. Some of the microfinance institutions have failed to audit their operations and the NBE was insisting on them to do this (Wolday Amha, 2006, at p. 66).

627 See annual reports of the insurers.

628 NBE, 2010; NBE BSD, 2005, at p. 53; NBE ISD, 2005, at pp. 83-86; Itana Ayanna, et al., 2003; Wolday Amha, 2006, at pp. 60 & 66; Degefe Duressa Obo, 2009, at pp. 6, 87-164, 179-190, 213-218 & 223-227; and annual reports of the banks, insurers and microfinance institutions.

629 They have only intended to improve on these limitations. Ibid.

630 Ibid.

631 Ibid and note the practice.
shareholders contrary to the company law of the country.\textsuperscript{632} The auditing profession in the country is also at rudimentary stage.\textsuperscript{633} The NBE has not also taken any measure to correct the aforementioned for the simple reason that it has not seen problems of mismanagement yet.\textsuperscript{634} The measures the NBE took so far are also either partial solutions to the aforementioned problems or inappropriate interventions.\textsuperscript{635} The country does not also have mechanisms for stakeholder participation in the governance of the financial institutions.

The NBE needs to follow a proactive as opposed to reactive approach of regulation to make the banks, insurers and microfinance institutions improve on their managerial limitations and control the potential problems of mismanagement and conflict of interest in the management of the banks, insurers and microfinance institutions. It needs to learn from the international developments, set minimum standards and principles on governance (including the data recording, documentation, communication, information processing, planning, decision-making, reporting and auditing) of the institutions by way of enforcing its responsibilities to promote the soundness of banking, insurance and microfinance, and require the banks, insurers, microfinance institutions and their auditors to have systems by which they will ensure meeting the standards. It needs to ensure undivided attention (and control the advent of conflict of interest problems and abuses) in the leadership and management of the banks, insurers and microfinance institutions by expanding the application of the current limits on outside managerial engagement of the boards of directors of the banks to the boards of directors of both the insurers and the microfinance institutions and imposing similar limits on the outside managerial engagement of the chief executives of the banks, insurers and microfinance institutions. It also needs to assist the microfinance institutions to build their governance structures and management capacities by way of carrying out its responsibility to extend technical assistance to them.\textsuperscript{636}

\begin{itemize}
\item \textsuperscript{632} The company law of the country (included in the commercial code) allows board membership of the institutional shareholders of a company. It, however, requires chairmanship of the boards by physical person shareholders only. IGE, 1960, at art. 347(4).
\item \textsuperscript{633} NBE BSD, 2005, at p. 52; and NBE, 2010. The Federal Auditor General of the country has ordered all the auditors in the country to adhere to the auditing standards and techniques employed by the International Federation of Accountants beginning July 01 2003 (Rose Mestika, 2003). The profession is not, however, well grown yet (NBE, 2010).
\item \textsuperscript{634} NBE BSD, 2005, at p. 73; and SBB/39/2006. Its banking supervision department has only conducted risk management survey on the banks and recommended that the NBE needs to enhance the risk management capabilities of the banks and move towards risk based supervision (NBE, 2010).
\item \textsuperscript{635} The disclosure requirements (on organizational structures, risk management policies, working manuals, and quality of management of the banks, insurers and microfinance institutions) and the prohibitions (on multiplicity of board membership of the bank directors) are only partial. The restrictions on office terms of directors of the banks are inappropriate.
\item \textsuperscript{636} The 1996 microfinance business law used to expressly impose this responsibility on the NBE (FDRE, 1996g, at art. 11(1)). The 2009 law is silent about it. It only authorizes the NBE to issue directives on the duties, responsibilities and good governance of the boards of directors, the management information and internal control systems, and related governance matters of the microfinance institutions (FDRE, 2009, at arts. 11(4) & 14(2)(c)). The NBE is, however, expected to continue with the responsibility to assist the microfinance institutions since the latter are only at their infant stage of development (Note the study reports of the Association of Microfinance...
It also needs to avoid interventions through requirements that are likely to have negative effect in the quality of management of the banks, insurers and microfinance institutions such as the restriction on the office terms of members of the boards of the banks. This bars the accumulation of leadership experience which is important given that the financial institutions have short history. The NBE needs to control the undesirable influences of the directors and executives of the banks, insurers and microfinance institutions indirectly, such as through the insider dealing rules, and promote competition to stimulate continuous improvement in the leadership quality of the banks, insurers and microfinance institutions. It also needs to ensure competence in the leadership of the institutions through indirect intervention, such as by training and testing. It also needs to recognize the right of membership of the shareholders of the banks, insurers and microfinance institutions in the boards of the institutions and balance between the enforcement of this right and its regulations. Its supervision departments also need to consider the legality, need and feasibility of the instruments they use whenever they want to implement stringent requirements on the directorship and shareholding of the financial institutions.

The country also needs to devise mechanisms for stakeholder participation in the governance of the financial institutions.

2.3.3.5 Regulation of Information Disclosure

i. The International Experience

Regulation of information disclosure is important partly because it is a form of regulation with less interference and partly because imperfections justify it. It is justified by the fact that financial products and markets are information sensitive and prone to problems of information asymmetry, power differential and bounded rationality.

Almost all countries require their financial institutions to disclose information to the regulators, customers and the public. The duties of disclosure to the regulators usually include:

- annual balance sheet and profit and loss accounts;
- semi-annual, quarterly and weekly financial reports;
- personal data reports (such as appointment and dismissal of chief executives, interests of chief executives in other enterprises and outside employment of senior staff);

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Institutions of the country and Degefe Duressa Obo, 2009, at pp. 6, 87-164, 179-190, 213-218 & 223-227).

637 Thimm, 1999, at p. 147.


- organizational fact reports (such as changes in the articles, memorandum of association and name of the financial institution and the establishment, transfer and closure of branches);
- transaction reports of high-risk content (such as on insider credit, large-scale credit and foreign currency commitment of certain magnitude);
- failure to fulfil obligations (such as losses exceeding certain amount and facts which jeopardize the position of creditors);
- country risk reports (for international operations); and
- all information the regulators may need (and require) to be submitted for the exercise of their supervisory function.\(^{640}\)

The disclosure to the customers and the general public usually goes less far than the disclosure to the regulators due to consideration that financial institutions have legitimate interest in a degree of secrecy when it is a matter of disclosure of information to bodies other than the regulators.\(^{641}\) Hence, the disclosure laws of most countries do not require the financial institutions to reveal the details of their transactions to the public in order to balance between the public interest for information disclosure and the privacy interests of the financial institutions and their customers.\(^{642}\)

Some countries also assist the disclosure of information by information processing and rating agencies. The US is well known for this.\(^{643}\) A number of the transition and emerging market countries have also assisted the development of their financial markets and regulations through the use of newly introduced rating agencies.\(^{644}\)

The 2008 financial and economic crisis has also increased the need for strengthening mandatory disclosure requirements in order to increase the protection of consumers as well as enhance the health of the financial sector.\(^{645}\) It has, however, also triggered discussion on the desirability and regulation of the rating agencies.\(^{646}\)

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\(^{643}\) Lemaire, 1997, at pp. 35-51; and Marc, et al., 2009.

\(^{644}\) Petersen, 2004, at p. 120.

\(^{645}\) Frolov, 2007; Lanam, 2007; Cade, 2007; Wroblewski, 2007; Greenwald, 2007; and Grant Kirkpatrick, 2009.

\(^{646}\) The agencies were invented decades ago to assist the disclosure of information through their coordination roles and neutrality. They have, however, contributed to the contiguity of the 2008 financial and economic crisis by compromising their neutrality, inflating their ratings and igniting investor (and public) panic. These problems have led to need for balancing between the use and the side-effects of the agencies. The question has been on whether the solution should be made by eliminating the agencies or by strengthening the regulations on them and their use by the investors. The 2010 US financial regulatory overhauling bill has not eliminated them; it has only increased the regulatory requirements on them. Arnoud and Todd, 2002; Weber and Darbellay, 2008; Coskun, 2008; Marc, et al., 2009; Marco and Paolo, 2009; Patrick, et al., 2009; Goodhart, 2009, at pp. 113-140; Chapman, 2010, at pp. 182-192; AP, 2010a; and Bloomberg, 2010.
ii. The Case of Ethiopia

Ethiopia requires the banks, insurers and microfinance institutions under formation to disclose information relating to their formation and licensing to the NBE, the trade registrar and the public.\footnote{IGE, 1960, at arts. 312-324, 210, 211, 214, 219-225, 462, 87 & 123(g); TGE, 1994a, at arts. 5(1) & 5(3); FDRE, 2008b, at art. 4(1)(c); TGE, 1994b, at arts. 6(2) & 44; FDRE, 1997, at arts. 5, 6(1), (2), 8, 9, 14, 17, 22 & 34; FDRE, 1997b, at arts. 6, 12, 16, 18, Schedule B-Forms 2, 4, 6 & Schedule C-Form 1; FDRE, 1997c, at arts. 7, 12, 14, 21, Schedule B-Forms 3, 5, 6 & Schedule C-Form 1; FDRE, 2003b, at art. 2(8); FDRE, 1996g, at art. 6; FDRE, 2009, at arts. 5(1)(a) & (c), 5(2) & 28(1); and Directives No. SBB/1/1994; SBB/39/2006; SIB/1/1994; and MFI/01/96.} It requires them to disclose information about their capitals, shares, contributions, founders, directors, managers, auditors, business plans, principal offices, prospective branches, projected financial statements, and memoranda and articles of association to the NBE. It requires them to deposit their memoranda and articles of association in the federal commercial register at the Ministry of Trade and Industry and confers right on the public to inspect the entries in the register.\footnote{It used to require the private banks and insurers to publish information about their formation, capitals, intended businesses, shareholding, management, auditors and durations of establishment in newspapers of country wide circulation by its general commercial registration and licensing laws and the banks and insurers used to adhere to that until the requirement was abolished on the 13th of November 2003 (FDRE, 1997a; FDRE, 1997b; FDRE, 1997c; FDRE, 1999a; FDRE, 2003b; FDRE, 2003d; FDRE, 2003f, at arts. 2(2) & 2(3); and FDRE, 2010a, at art. 9). The particulars about the government banks and insurer are usually disclosed through publication of their establishing laws by including information about the missions, purposes, capitals, liabilities, management and durations of their establishments (See the establishing laws of the government banks and insurer).} It also requires the founders of the banks under formation to publish notice of intention to the public in widely circulating newspapers for a period of four consecutive weeks from the date of formation application of the banks.\footnote{FDRE, 2008b, at art. 4(1)(c). It does not impose this on the insurers and microfinance institutions (TGE, 1994b, at arts. 3, 4 & 6; and FDRE, 2009, at art. 5).}

It requires the operational banks, insurers and microfinance institutions to record and report their operations to the NBE, their customers and the general public at regular intervals.\footnote{TGE, 1994, at arts. 56 & 58; FDRE, 2008a, at art. 22; TGE, 1994a, at arts. 5(3), 17, 19(1), 3-5 & 7-9; FDRE, 2008b, at arts. 23 & 28; TGE, 1994b, at arts. 17(2), 18, 19, 22 & 23; FDRE, 1996g, at art. 12(2)(c); FDRE, 2009, at art. 15; and Directives No. SBB/10/95, SBB/17/96, SIB/17/1998, and MFI/08/96.} It requires the banks and microfinance institutions to record (and keep documents for) each type of deposit and transaction and to report the latter to the NBE as it occurs.\footnote{The laws also authorize the NBE to prescribe the forms and entries of the records. TGE, 1994a, at arts. 19(1-5), (8) & (9); FDRE, 2008b, at art. 23; FDRE, 1996g, at art. 12(2)(c); FDRE, 2009, at arts. 15(1-3) & 28(1); and Directive No. MFI/08/96.} It requires the banks to register their external loans (and credit facilities) to an investor in the NBE when these occur.\footnote{FDRE, 1996c, at art. 19(1); FDRE, 2002c, at art. 19(1); and Directives No. REL/001/97; REL/002/1997; REL/003/98; REL/004/1998; and REL/005/2002.} It requires the insurers to submit their audited balance sheets, profit and loss accounts, actuarial investigation reports, shareholder reports and minutes of general meetings of shareholders to the NBE annually.\footnote{TGE, 1994b, at arts. 18, 19, 22 & 23. The actuarial valuation requirements are applied to long-term insurers only (Ibid.).} It requires the banks and insurers to submit: \footnote{TGE, 1994b, at arts. 18, 19, 22 & 23. The actuarial valuation requirements are applied to long-term insurers only (Ibid.).}
- personal data reports (such as on appointment and dismissal of their chief executives and auxiliaries, interests of their chief executives in other enterprises), and outside employment of their senior staffs;
- organizational fact reports (such as on changes in the articles and memorandum of association and/or names of the companies and on the establishment, transfer and closure of their branches);
- risk content reports (such as on insider credit, large-scale credit and foreign currency commitment); and
- business failure reports (such as on losses and facts which jeopardize the position of creditors) to the NBE as these occur.654

It requires all the institutions to make financial and operational reports to the NBE periodically, as the NBE may request, and in the manner the NBE may prescribe from time to time.655 It requires all of them to exhibit their audited annual balance sheets and profit and loss accounts in respect of all their operations at conspicuous places of their businesses and branches throughout every accounting year and the banks and insurers to publish same (with the notes to them) in newspaper of wide circulation.656 It also authorizes the NBE to publish the list of licensed institutions, the general data about them, the discount and credit transactions it may have with them and the appointment of receiver (for the banks and the microfinance institutions) provided that it may refuse the disclosure of reports of the banks, insurers and microfinance institutions that relate to their business particulars, investments and re-insurance arrangements.657

In practice, the banks submit daily open foreign currency position reports; weekly reserve and liquidity reports; monthly balance sheets and credit exposure reports; quarterly income, expense, capital adequacy, loan classification and provisioning reports; and annual financial and audit reports to the NBE while the insurers and microfinance institutions submit only quarterly and annual financial and audit reports as the NBE requires.658 All of them submit the reports to the NBE in hard copies and the supervision departments of the NBE enter them in excel

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654 TGE, 1994, at arts. 56 & 58; FDRE, 2008a, at art. 22; TGE, 1994a, at arts. 5(1), (3), (4), 19, 27(2) & 29; FDRE, 2008b, at arts. 14(2) & 28(5); and TGE, 1994b, at arts. 6(2), 17(2), 19, 22, 23, 35 & 44.
655 It requires the banks to make the reports monthly, semi-annually and annually; and the insurers and microfinance institutions to make them quarterly, annually and as the need arises (TGE, 1994a, at art. 19(3)-(9); FDRE, 2008b, at art. 28(4); TGE, 1994b, at arts. 17(2), 18, 19, 22, 23, 35 & 44; FDRE, 1996g, at art. 12(2)(c) & 24; FDRE, 2009, at art. 15(2-3); and Directives No. SIB/17/1998; and MFI/08/96). The NBE has also prescribed the miscellaneous reporting forms which the banks, insurers and microfinance institutions have to follow in making their reports (Directives No. SBB/14/1996; SBB/15/1996; SBB/21/1996; SBB/23/1997; SBB/27/2001; SBB/29/2002; SBB/30/2002; SBB/32/2002; SBB/33/2002; SBB/43/2007; SBB/44/2008; SBB/48/2010; SIB/17/1998; MFI/08/1996; and MFI/18/2006).
656 TGE, 1994a, at art. 19(6); FDRE, 2008b, at art. 28(2)-(3); TGE, 1994b, at art. 18(3)); and FDRE, 2009, at art. 15(2)(b). It does not impose the newspaper publication requirement on the microfinance institutions (FDRE, 1996g; and FDRE, 2009, at arts. 15 & 20).
657 The laws, therefore, seem to make the disclosure of information a principle and the protection of privacy of the financial institutions and their customers an exception. TGE, 1994a, at art. 31; FDRE, 2008b, at arts. 8, 15(2), 28(4), 33(2) & 55; TGE, 1994b, at art. 24(1-2); and FDRE, 2009, at arts. 15(4), 19(3) & 20.
spreadsheets. The financial statements and reports of the institutions, however, tend to be deficient and untimely. The banks do not account for depreciation allowances, taxes, loan loss provisions and other non-cash expenses to the level of detail the NBE expects and sometimes overstate their reports while the insurers and microfinance institutions sometimes submit reports and accounts that are inadequate, inaccurate or inconsistent with their true situations. The banks, insurers and microfinance institutions also usually fail to report to the NBE on time while some of the banks refuse to report on their large borrowers. The banks, insurers and microfinance institutions do not also exhibit their audited annual balance sheets and profit and loss accounts to the public as the law requires; nor do they publish sufficient information on their operations, reserves, liquidity, capital adequacy, solvency and asset quality to the public. The banks and insurers publish their annual balance sheets and profit and loss statements in the Ethiopian Herald only occasionally and without the notes to the accounts while the microfinance institutions do not do this at all. They include the details of their balance sheets, profit and loss accounts and annual operations in their annual reports and distribute the reports to the NBE, to the government organs whom they think have stake in them, to investors to whom they want to advertise and to their shareholders, directors, managers and staff. They usually distribute the reports (other than the ones they make to the NBE and their shareholders) selectively as part of their business promotion and public relation works. They also disclose information on their capitals, branching and services through advertisement brochures which are distributed only occasionally. They are hardly concerned with the idea of public information disclosure as a matter of principle. The NBE also pays little attention to the public disclosure requirement. It neither publishes its supervisory reports to the public in full and on time nor discusses them with the individual banks, insurers and microfinance institutions. Both the NBE and the financial institutions also make the off-site and on-site examination reports and documents confidential under the guise of privacy and the laws seem

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659 The country has not automated the financial reporting and off-site report preparation and submission processes (Note the business re-engineering reports of the NBE).

660 NBE BSD, 2005, at pp. 37 & 41; NBE ISD, 2005, at p. 103; Degefu Duressa Obo, 2009, at pp. 209, 6, 87-164, 179-190, 213-218 & 223-227; and annual reports of the banks, insurers and microfinance institutions.

661 NBE BSD, 2005, at pp. 46, 47 & 50; and Wolday Amha, 2006, at p. 65. These problems are particularly true with the government banks and insurer which often invoke the non-automation of their works, the delay of their audits by the government auditor, and the protection of privacy of their customers as excuse. Ibid.

662 The Ethiopian Herald is newspaper of countrywide circulation published by a government enterprise called Berhanena Selam Printing Enterprise. Note that the problem of 'publishing accounts without the notes to them’ is also seen in other countries (IAIS, 2005b, at p. 32).

663 They also distribute them to researchers only subject to support letters.

664 The NBE, of course, publishes list of the licensed financial institutions and some major developments in the banking, insurance and microfinance markets in its quarterly and annual reports. It does not, however, publish full supervision reports about the markets and institutions in respect of its instruments of regulation and achievements. Its publications also focus more on the banks than the insurers and the microfinance institutions. The release of its quarterly and annual reports is also always delayed by more than a quarter and a year, respectively. Its supervision departments do not also discuss their inspection and off-site reports with the management of the banks, insurers and microfinance institutions as the law requires. Note the quarterly and annual reports of the NBE; TGE, 1994a, at art. 20(2)(c); FDRE, 2008b, at art. 30; FDRE, 2009, at arts. 15 & 20; NBE BSD, 2005, at pp. 40-42; and NBE ISD, 2005, at pp. 96 & 103-104.
to back this.\textsuperscript{665} They often reverse the disclosure principle and privacy exception and this is aggravated by vagueness of the privacy exception in the laws.\textsuperscript{666} The country also lacks public and private information processing and rating agencies that can assist in the public disclosure of information by the financial institutions. All this has adversely affected the regulatory efficiency of the NBE and the making of prudential financial decision by the public. The NBE is hardly making fully informed decision in regulating the financial institutions while a large section of the public knows little about the financial and operational positions of the banks, insurers and microfinance institutions.

The NBE, therefore, needs to require the banks, insurers and microfinance institutions to make sufficient, reliable and timely reporting and disclosure of all information not restricted by law. It also needs to publish its own supervisory reports to the public on time by excluding only the information that may be expressly restricted by law for the privacy reason. It needs to follow up and enforce the reporting and public disclosure requirements so that it will enhance the enforcement of its regulation and the making of prudential financial decision by the public. The supervision laws also need to define clearly and narrowly the information that should be restricted for reason of privacy or public interest and require the reporting and public disclosure of all other information as a matter of principle. They need to require the financial institutions and the NBE to disclose information that relate to the capitals, reserves, investments, branches, service types, business diversities, asset qualities, liabilities, earnings, liquidities, capital adequacy levels, provisions and annual performances, among others, both timely and with sufficient detail.\textsuperscript{667} They need to require timely publication of all the unrestricted information in newspapers of countrywide circulation and through websites of the institutions (and the NBE) and continuous deposit of it in the registers of the financial institutions and the NBE for public consultation in order to enhance dissemination.\textsuperscript{668} They also need to require the NBE and the financial institutions to automate their off-site reporting processes. The country also needs to encourage the creation of information processing and rating agencies that may assist in the public disclosure of information with the necessary regulation.

\begin{itemize}
\item \textsuperscript{665} TGE, 1994a, at art. 20(2)(c); FDRE, 2008b, at art. 30(2); TGE, 1994b, at art. 24; FDRE, 1996g, at art. 24; NBE BSD, 2005, at pp. 40-42; and NBE ISD, 2005, at pp. 96 & 103-104.
\item \textsuperscript{666} The supervision laws set the privacy exception without clearly specifying the information that should be kept secret for the reason of privacy (TGE, 1994a, at art. 31; FDRE, 2008b, at arts. 28(4) & 55; TGE, 1994b, at art. 24; FDRE, 1996g, at art. 24; and FDRE, 2009, at arts. 15(4) & 18(6)(b)).
\item \textsuperscript{667} The banking supervision department of the NBE has already shown intention to prescribe the information the banks should publish to the public (NBE BSD, 2005, at p. 43). This has to be backed by law so that it will get full force.
\item \textsuperscript{668} These measures may, of course, imply cost to the financial institutions. The question is, however, whether to give more value for public information than the cost it may imply or the vice versa. The country needs to favour the provision of information (and look for ways of addressing the cost) since the public disclosure of information is critical to enhancing the making of prudential financial decision.
\end{itemize}
2.3.4 Systemic Stability Regulation
2.3.4.1 Regulation of Interest, Foreign Exchange and Premium

i. The International Experience

The regulators in many of the developed market countries follow liberal approach in the regulation of interest, foreign exchange and premium. They set ceilings or fully allow the determination of interest rates by the market. They follow floating foreign exchange systems that make the exchange rate risks remain largely within the banking system or fixed systems that make the risks absorbed by their central banks. They also either apply file and use or use and file procedures to enable the approval of premium rates by their regulators or fully recognize the determination of these rates by competition in the market. The European countries used to require:

- compliance to official rates or maximum and minimum ceilings;
- prior submission of premiums to the regulators for approval;
- proof of certain loss experience as basis for premium calculation to the regulators; and
- use of statistics, defined risk categories, and official inputs (such as official mortality tables in life insurance) in the past.

They have followed liberal approach when the European Commission prohibited the use of ex-ante controls of premium rates and contract conditions except as part of a general price control system.

Most of the US states also used to require approval of the rates of property and casualty insurance and any adjustment on them by the insurance commissioner (or a rate-setting board) or to require justification of the rates and the changes on them by loss experience and sound actuarial valuation before they are put into use. Some of them currently follow a ‘file and use’ or a ‘use and file’ system (to enable the insurance companies to operate with their rates after approval of the regulators in the former case or without waiting for response of the regulators in the latter case) while the others make the rates open to competition and impose solvency and financial reporting requirements to control the risk of destructive risk-taking under expectation that the force of competition will keep the rates at reasonable levels. A number of the states also vary their regulations between lines of property and casualty insurance (such as between automobile insurance, workers’ compensation insurance, homeowners’ insurance, commercial insurance,

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672 Pfennigstorf, 1996, at pp. 121-125.
674 Ibid.
general liability insurance, ocean marine insurance, surety insurance and reinsurance) and tend to regulate the rates of workers’ compensation schemes more heavily than the other lines of insurance. Most of them also make the life insurers free from direct price regulation by requiring them to adhere only to mortality tables and reserve requirements that are meant to guarantee the payment of future claims. The Insurance Service Office (ISO) and the National Council on Compensation Insurance (NCCI) of the country also used to provide rate advising and trended data publication services to the life and non-life insurers of the country until they stopped the rate advising services in 1989 and 1990, respectively, to continue only with the data publication service for fear that the insurers were using the rate advices for price fixing.

Most of the transition and emerging market countries, however, tend to impose direct interest, exchange and premium regulations and the usual advice is to reduce the extent of direct regulation in the interest of competition and to adopt indirect instruments of regulation that can balance between the benefits and dangers of risk taking.

ii. The Case of Ethiopia

Ethiopia had heavy regulation of interest and foreign exchange as of the beginning of its foreign exchange regime in 1942. It started to control trade in foreign currency (and negotiable instruments denominated in foreign currency) by the Currency Proclamation No. 31 of 1942 and established its foreign exchange control system by the Currency (Amendment) Legal Notice No. 127 of 1949. It made the function of interest rate regulation part of the central banking function of the State Bank of Ethiopia when it established it in 1943. It dissolved the State Bank and transferred both functions to the National Bank of Ethiopia in 1963. It controlled all transactions in foreign exchange and the use of foreign currency directly (through the NBE) until 1994.

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678 Ibid.
680 Some liberalization was introduced only in 1953 to freely allocate foreign exchange (Luther, 1961, at pp. 111-114).
681 IGE, 1942b; and IGE, 1949.
682 Luther, 1961, at pp. 111-114.
683 IGE, 1963d; IGE, 1963e; and IGE, 1965f.
684 It issued several foreign exchange control rules (in forms of regulations, amendments, notices and directives) as of 1977. The first comprehensive enactment was the Foreign Exchange Regulations - National Bank Of Ethiopia Notice No. 1/1997 (NBE, 1977), issued by the NBE on January 5, 1977 pursuant to an authority vested in it by article 61(3), 65, 67, and 73 of the Monetary and Banking Proclamation No. 99 of 1976 (PMGE, 1976i). The notice had full force until it was reformed under the Monetary and Banking Proclamation no. 83 of 1994 (See TGE, 1994 with the post-1994 foreign exchange directives of the NBE discussed below).
It has reformed the system and allowed the NBE to authorize the financial institutions to engage in foreign exchange transactions as of 1994.\textsuperscript{686} It currently authorizes the NBE to:

- regulate the supply of money and interest rates of the financial institutions;
- regulate the use of foreign currency, the carrying out of foreign exchange transactions, and the exchange rates of the financial institutions; and
- prescribe the conditions, limitations and circumstances under which residents of the country and the financial institutions can hold foreign currency and instruments of payment in foreign currency.\textsuperscript{687}

It also requires and authorizes the NBE to control the premiums of both the long-term and general insurers.\textsuperscript{688} It requires it to ensure that the long-term insurance premiums are workable and sound to both the insurers and the insured and authorizes it to require examination of the rates by actuaries at any time when it suspects their soundness. It authorizes it to control the premiums and contract terms of the general insurers in order to safeguard the rights of the policyholders.\textsuperscript{689}

The NBE has also reformed the interest rate and foreign exchange rules gradually. It fixed the interest rates of the banks directly until 1995.\textsuperscript{690} It started to allow both the banks and the microfinance institutions to determine their deposit and lending rates within minimum and maximum ceilings in 1995 and 1996, respectively.\textsuperscript{691} It continued to fix the minimum rates on savings and time deposits and the lending rates on its own credit and discount facilities and authorized the banks and microfinance institutions to fix their lending rates freely in January and June 1998, respectively.\textsuperscript{692} It also amended the saving and time deposit rates of the banks and microfinance institutions separately until they became equal in 2002 and were merged in 2007.\textsuperscript{693} It currently allows the banks and microfinance institutions to freely determine their lending, penalty and deposit rates provided that they make their saving and time deposit rates above the minimum it fixes.\textsuperscript{694} It authorizes the boards of the banks and microfinance institutions to set the rates

\begin{itemize}
\item \textsuperscript{686} TGE, 1994, at arts. 39 & 51-57.
\item \textsuperscript{687} TGE, 1994, at arts. 39, 40 & 51-57; FDRE, 2008a, at arts. 5(4), 5(5)-(6), 5(9)-(10) & 19-21; FDRE, 1996g, at art. 12(2)(f); and FDRE, 2009, at art. 28(1).
\item \textsuperscript{688} TGE, 1994b, at art. 36.
\item \textsuperscript{689} Ibid. The law does not authorize the NBE to control the premium and commission rates of the general insurers directly. It only requires and authorizes the NBE to supervise the terms of the insurance contracts to safeguard the rights of policyholders. TGE, 1994b, at art. 36(2).
\item \textsuperscript{690} Table 12(Chap. 2).
\item \textsuperscript{691} Table 12(Chap. 2) for the banks; and Directives No. MFI/09/96 & MFI/10/98 for the microfinance institutions. The NBE used to require the microfinance institutions to make their lending rates lower than 2% above the maximum lending rate of the normal banks and to make their saving and time deposit rates higher than 1% above the minimum saving and time deposits of the banks by the former directive. It increased the ceiling of the lending rates of the microfinance institutions to 15.5 percent per annum by the latter directive.
\item \textsuperscript{692} Table 12(Chap. 2) for the banks; and Directive No. MFI/11/98 for the microfinance institutions.
\item \textsuperscript{693} Table 12(Chap. 2) for the banks; and Directives No. MFI/09/98 up to MFI/13/2002 & MFI/19/2007 for the microfinance institutions.
\item \textsuperscript{694} Last column of Table 12(Chap. 2) for the banks; and Directive MFI/19/2007 for the microfinance institutions.
\end{itemize}
based on explicit and clear criteria to be reported to the NBE.\textsuperscript{695} It also allows the banks to negotiate on their inter-bank lending rates.\textsuperscript{696}

It has also authorized the commercial banks to engage in foreign exchange transaction through units called foreign exchange bureaux as of 1996 and allowed the foreign exchange bureaux of the commercial banks to operate at their own rates through time.\textsuperscript{697}

It allocated foreign exchange directly based on administratively determined (official) rates until the introduction of auction regime in May 1993.\textsuperscript{698} It enforced the administrative and auction regimes in parallel in the period between May 1993 and July 1995.\textsuperscript{699} It introduced a weighted average rate system in February 1995 to facilitate the financing of imports between auction dates.\textsuperscript{700} It unified the regimes in July 1995 and allowed application of the marginal rates computed from each foreign exchange auction to all foreign exchange transactions to be undertaken between auction dates.\textsuperscript{701} It administered the exchange auctions bi-weekly until August 03, 1996 and weekly as of that date.\textsuperscript{702} It subjected the auctions to a number of restrictive rules in the early years of the reform.\textsuperscript{703} It allowed exporters and recipients of inward remittances to retain their foreign currencies in forex retention accounts to be opened in the commercial banks as of 1996.\textsuperscript{704}

It delegated its foreign exchange functions to the commercial banks by introducing a transitional weekly wholesale foreign exchange auction system, and requiring the banks to meet open foreign currency positions, as of August 1998.\textsuperscript{705} It authorized the banks to intermediate between exporters and importers without prior transaction-by-transaction approval of the NBE and to administer the financing of all imports and exports other than coffee as of the same year.\textsuperscript{706} It allowed them to open forex retention accounts for resident government organizations, companies, institutions (other than diplomatic missions) and individuals in the same year so that the latter can keep their inward remittances in the accounts.\textsuperscript{707} It also authorized the banks to retain foreign currencies in foreign accounts with their correspondents and to utilize the balances from the accounts for their intermediation functions subject to daily and monthly reports and ex-
post examinations by the NBE.\textsuperscript{708} It allowed service providers of the country to accept and pay credit cards, foreign currency cash notes and travellers Cheques denominated in foreign currency as of that year.\textsuperscript{709} It also introduced an inter-bank foreign exchange market in September 1998 to enable the commercial banks to deal in their foreign exchanges and satisfy their unmet demands in between the weekly wholesale auctions.\textsuperscript{710} It also allowed them to freely transact in foreign exchange with their clients, to respect the open foreign currency position requirement and to make daily operational reports as of that year.\textsuperscript{711}

It phased out the transitional weekly wholesale foreign exchange auction market and replaced it by a daily inter-bank foreign exchange market in October 2001.\textsuperscript{712} It allowed the banks to deal in foreign currencies other than the US Dollar in that year as long as they meet the open foreign currency position requirement and make transaction-by-transaction and daily reports.\textsuperscript{713} It also a\textsuperscript{714} It allowed the banks to open time deposit and current accounts in US dollar, Pound Sterling, Euro and Yen for non-resident Ethiopians and non-resident foreign nationals of Ethiopia origin as of 2004, with a view to encouraging the inflow of foreign direct investment and growth of the foreign exchange reserves of the country.\textsuperscript{715} It currently regulates the level of foreign exchange holdings of the residents of the country under a directive issued in 2007.\textsuperscript{716}

The NBE does not, however, regulate premiums of the insurers. Its insurance supervision department also does not evaluate the premium and commission rate proposals of the long-term insurers for lack of expertise although it receives these proposals from the insurers with actuarial certificates.\textsuperscript{717} The Ethiopian insurers, therefore, seem to follow a file and use approach in practice although the law requires the prior approval of their rates and contract terms by the NBE.\textsuperscript{718}

The interest and foreign exchange rules of Ethiopia are commendable since they enable prevention of the interest and foreign exchange risks of the banks and microfinance institutions and encourage credit. They make the banks and microfinance institutions less prone to rate change and foreign currency risks. Both the NBE and the boards of the banks and microfinance institutions avoid

\begin{itemize}
\item \textsuperscript{708} Ibid.
\item \textsuperscript{709} Directives No. FXD/06/98; FXD/21/2003; and FXD/23/2004.
\item \textsuperscript{710} Directive No. IBM/01/1998. It also enacted a code of conduct for the market (NBE, 1998b).
\item \textsuperscript{711} Notice of NBE (NBE, 1998a); and Directive No. FXD/11/1998.
\item \textsuperscript{712} Directive No. IBFEM/02/2001.
\item \textsuperscript{713} Directives No. IBFEM/02/2001; SBB/23/97; and SBB/27/2001.
\item \textsuperscript{714} National Bank of Ethiopia, Letter of May 4 2001- Ref: IBOD/162/01, 4 May 2001 (NBE/ 2001).
\item \textsuperscript{715} Directives No. FXD/24/2004; and FXD/25/2004.
\item \textsuperscript{716} Directive No. FXD/34/2007.
\item \textsuperscript{717} NBE ISD, 2005, at pp. 19-21.
\item \textsuperscript{718} TGE, 1994b, at art. 36.
\end{itemize}
the disturbance of existing transactions by applying their interest rate rules in prospect (i.e. as of the dates of their enactment). The banks also square their excess long foreign currency positions as strictly as the NBE requires them to do so. The NBE also intervenes in the inter-bank foreign exchange market actively to control undesirable rate changes and the banks follow orders of the NBE during enforcement of their exchange rates. The banks are also allowed to offset the potential risks of rate change by selling their foreign exchanges to the public at freely negotiable rates. The NBE also applies its minimum deposit rate ceilings as pacesetter of the interest rate determinations of the banks and microfinance institutions, hence, as means for its monetary and financial policy intervention to stabilize the markets. It also adjusts the minimum ceilings from time to time.

The NBE, however, needs to build its risk absorption capacities, urge the banks and microfinance institutions to build these capacities, and continue to shift its roles from direct to indirect control of the interest and foreign exchange markets in order to both enhance competition and ensure the health of the institutions. It also needs to pursue cheap money (i.e. low interest) policy with appropriate regulation in order to maximize the advantages of this policy. A cheap money policy is said to have the advantages of making credit cheap and encouraging investment. It may, of course, also have the disadvantages of discouraging saving, encouraging speculative borrowing and increasing inflation if it is not followed by policies that discriminate between productive and unproductive loans and stabilize prices. The NBE needs to take care of both the advantages and disadvantages and encourage the banks and microfinance institutions to minimize the disadvantages by discriminating between productive and unproductive credits.

The NBE also leaves the premium rates and terms of both the general and long term insurers to discretion of the insurers in practice and both the consumers and the NBE hardly know about the grounds of the rates and terms of the insurers. Nor do the insurance auxiliaries play a role in the determination of the premium rates and terms as the insurers often tend to offer the rates and terms on a take-it-

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720 NBE BSD, 2005, at p. 47.
722 Second row of Table 12(Chap. 2) for the banks; and Directives No. MFI/09/98 up to MFI/13/2002 & MFI/19/2007 for the microfinance institutions.
723 Both the NBE and the banks also lack the capacity to supply foreign exchange to banks that may fall in short position and this has to be improved (NBE BSD, 2005, at p. 47; and Andualem Berhanu, 2000).
724 Jhingan, 2002, at pp. 343-344. A cheap money policy is also used as one of the means for recovery from the 2008 financial and economic crisis (AP, 2010; and Ricardo, 2010 for the US experience).
725 Ibid.
726 The commercial banks are in favour of making discrimination between categories of depositors and borrowers and diversifying their rates - they sometimes declare this in their annual reports. They, however, do little of the discrimination in practice. Their interest rates hardly discriminate between groups of borrowers and depositors. They only differentiate between the types of accounts and usually follow (or make little difference from) the recommended rates of the NBE. They also tend to avoid competition by maintaining similar margin rates. Note Table 12(Chap. 2) and the interest rates of the banks in the annual reports of the NBE.
The insurers also compete destructively in the determination of their premium rates and terms.\textsuperscript{727} The NBE needs to regulate the premiums of the insurers and check their fairness more actively. It needs to require them to adopt clear premium rate and valuation rules and policies and to disclose these rules and the grounds for their premium rates to itself and the public.

The insurance supervision law of the country also seems to be more concerned with regulation of the premiums of the long-term insurers than the premiums of the general insurers.\textsuperscript{728} The country needs to give equal attention to regulation of the premiums of both the general and the long term insurers as the size of the problem due to the general insurers is also high given the large size of the general insurance business in the country.\textsuperscript{729} The NBE also needs to enforce the regulation through the prior approval approach since the file and use approach has not been useful in practice so far.

There is also informal foreign currency exchange market in the country which is often known as black or parallel market and whose exact size is not known.\textsuperscript{730} The country needs to formalize and regulate it in order to avoid market distortion.

2.3.4.2 Payments and Settlement Systems Oversight

i. The International Experience

Most countries consider the existence of efficient payments and settlement system and regulation of the medium of exchange as significant public policy concern.\textsuperscript{731} They have, accordingly, allowed the evolution of their mediums of exchange from precious metals to currency and then to commercial instruments and authorized their central banks and financial market regulators to enhance the medium of exchange and to oversee the payments and settlement systems for the fundamental reason that increase in the efficiency of these systems will reduce the cost of transactions, ease and speed up payments, and enhance the efficiency of their economies. The developed market countries have gone further to:

- reform their payments systems as of the mid-1980s,
- allow electronic payments and fund transfers in the 1980s and 1990s, and
- integrate and internationalise their payments and settlement systems and enhance the roles of their central banks and financial market regulators to oversee their payments and settlement systems in the post 1990s period.\textsuperscript{732}

\textsuperscript{727} Note annual reports of the insurers for the complaints; and NBE ISD, 2005, at pp. 19, 29 & 33.
\textsuperscript{728} TGE, 1994b, at art. 36.
\textsuperscript{729} The size of the general insurance business in the country is nearly 94% of the total insurance business (Table 8(Chap. 2); and the records and annual reports of the insurers for 2008 and 2009).
\textsuperscript{730} Note the reference to this market in the annual reports of the NBE.
\textsuperscript{731} Hubbard, 1997, at pp. 21-24; and Massimo Cirasino, et al., 2007, at pp. 1-3 & 5-12.
\textsuperscript{732} Benjamin, 2000, at pp. 20-30 & 189-221; and Massimo Cirasino, et al., 2007, at pp. 1-3, 5-12 & 18-19.
Many of the transition and emerging market countries have also exerted effort to integrate and modernize their payments and settlement systems in recent times in cooperation with the World Bank and the IMF.\textsuperscript{733} The reforms have focused on enhancing the existing payments and settlement systems, defining and increasing the oversight roles of the central banks, adopting electronic payments systems, and enhancing international cooperation.\textsuperscript{734} The G10 Payments and Settlement Systems Committee and the Financial Action Task Force on Money Laundering have also issued guidelines for the development and supervision of national payments systems which should be based on well defined and transparent legal system among others.\textsuperscript{735}

\textit{ii. The Case of Ethiopia}

Ethiopia started to modernize its medium of exchange and payments system in the 1940s. It authorized the Bank of Abyssinia to facilitate the making of payments (by cheque) and regulate the medium of exchange when it created and authorized it to act as both commercial and central bank as early as February 1906.\textsuperscript{736} It developed its medium of exchange from use of precious metals to currency between 1942 and 1949.\textsuperscript{737} It recognized the use of the Maria Theresa Dollar and the East African Shilling as legal tenders in 1942.\textsuperscript{738} It made the Ethiopian Birr its official currency and authorized the State Bank of Ethiopia to print it, and to receive deposits in both the Birr and the East African Shilling, as of May 1945.\textsuperscript{739} It required the Bank to convert the East African Shilling into the Birr as of July 1945 and ended the use of Maria Theresa as legal tender (by recognizing its tradability as valuable metal) as of November 1946.\textsuperscript{740} It transferred the functions of facilitating the payments system and regulating the medium of exchange from the Bank of Abyssinia to the Bank of Ethiopia in 1931, to the State Bank of Ethiopia in 1943 and to the National Bank of Ethiopia in 1963.\textsuperscript{741} It allowed the use of different commercial instruments, including bills of exchange, promissory notes and cheques, by the banks and the public as it codified its commercial code in 1960.\textsuperscript{742} It authorized the NBE to continue to regulate the medium of exchange and the financial system when it re-established it in 1976.\textsuperscript{743}

It has also authorized the NBE to regulate the medium of exchange and the financial system when it re-established it in 1994.\textsuperscript{744} The NBE has also established...

\textsuperscript{733} Massimo Cirasino, et al., 2007, at pp. 1-4, 5-12, 27-103 & 185-220.
\textsuperscript{734} Ibid.
\textsuperscript{735} Massimo Cirasino, et al., 2007, at pp. 253-259; FATF, 1996; FATF, 2004; and FATF, 2004a.
\textsuperscript{737} IGE, 1942c; IGE, 1945b; IGE, 1945c; IGE, 1946a; and IGE, 1949g.
\textsuperscript{738} The exchange rate between the two currencies was to be determined by the Ministry of Finance of the time. IGE, 1942c.
\textsuperscript{739} IGE, 1945b; and IGE, 1945c.
\textsuperscript{740} IGE, 1945b; IGE, 1946a; and IGE, 1949g.
\textsuperscript{741} NBE, 2001; IGE-MI, 1960, at p. 35; IGE, 1963d; and IGE, 1963c.
\textsuperscript{742} IGE, 1960, at arts. 715-895; and Winship, 1974, at pp. 24-25 & 84-99.
\textsuperscript{743} PMGE, 1976i; PMGE, 1985; and PMGE, 1988.
\textsuperscript{744} TGE, 1994.
the Addis Ababa Clearing Office since 1995 to facilitate the issuance, payment and clearing of payment instruments drawn against the banks (including Cheques, Drafts and Casher’s Payment Orders).\textsuperscript{745} It has also allowed service providers to accept and pay credit cards, foreign currency cash notes and travellers Cheques denominated in foreign currency as of 1998.\textsuperscript{746}

The country currently requires the NBE to regulate the medium of exchange, provide payment and clearing services to the banks and other financial institutions, and establish, modernize and regulate the national payments, clearing and settlement systems.\textsuperscript{747} The NBE has also established special office that studies the ways for transformation of the country’s payments and settlement systems.\textsuperscript{748}

The supervision departments of the NBE do not, however, actively oversee the country’s payments and settlement systems partly because they consider this function as being outside the scope of their supervisory functions and partly because they consider their interventions unnecessary for a reason that the current payments and settlement systems of the country are not sophisticated enough to call for regulation.\textsuperscript{749} The country’s payments and settlement systems have also stagnated with the cash mode of payment. Most transactions are settled in cash (making the use of Cheques and other payment instruments only occasional) and the use of electronic payment systems is only in the beginning.\textsuperscript{750} The use of bills of exchange and promissory notes is not also known to the public in the country.\textsuperscript{751}

The NBE needs to actively engage in the development and regulation of the payments and settlement systems of the country and its supervision departments need to intervene proactively to cooperate with the banks and the other financial

\textsuperscript{745} NBE, 1995c.
\textsuperscript{746} Directives No. FXD/06/98; FXD/21/2003; and FXD/23/2004.
\textsuperscript{747} FDRE, 2008a, at arts. 5(1-2, 15), 16(1)(c) & 17-18.
\textsuperscript{748} It has also included the development of national payments and settlement systems in its most recent financial sector capacity building project (which is designed for implementation in cooperation with the International Development Association (IDA) of the World Bank) (See website of the NBE, accessed on the 20th of September 2007). It is also working on a draft national payments system proclamation. The consultants to the NBE on modernization of the national payments system have also issued study reports and proposed vision and strategic framework (NBE, 2010b).
\textsuperscript{749} The banking supervision department only circulates the list of delinquent current account holders and cheque issuers among the banks (NBE BSD, 2005, at pp. 4-5 & 74).
\textsuperscript{750} Only the Commercial Bank of Ethiopia, the Dashen Bank S.C., the Abyssinia Bank S.C. and the Zemen Bank S.C. have started to facilitate the withdrawal of deposits and making of payments through Automated Teller Machines and electronic cards while few hotels and some of the oil companies accept the credit cards of the Dashen and Abyssinia Banks and the Travellers’ Cheques of tourists (Table 6(Chap. 2); Simeneh Teklu, 2005; and annual reports of the banks for 2008 and 2009).
\textsuperscript{751} The country had recognized the use of varieties of commercial instruments including bills of exchange and promissory notes when it enacted its commercial code in 1960. The banks and the public had also started to use bank Cheques during the Imperial time. The Military Government, however, discouraged the use of all these instruments and introduced only Casher’s Payment Orders to facilitate the making of payments between government institutions, the banks and individuals. The post 1991 reforms have revived the commercial code regime for all the varieties of commercial instruments recognized in the code. The public has not, however, started to use the bills of exchanges and promissory notes yet.
institutions in order to transform the country's payments and settlement systems as many of the central banks and the financial market regulators around the world have done this so. The NBE also needs to require and encourage the banks, insurers and microfinance institutions to plan and work on modernization of the country's payments and settlement systems more actively than they have done so far. It needs to require and encourage them to disseminate the use of commercial instruments, pursue the introduction of electronic payments systems, and expand their services to the wider public. It also needs to upgrade the Addis Ababa Cheque Clearing Office to a National Clearing Office to facilitate the use and clearing of all commercial instruments across the financial institutions of the country as long as these instruments continue to be important.752

2.3.4.3 Emergency Liquidity Support, Lender of Last Resort and State Ownership

i. The International Experience

Many countries use public fund to support financial institutions in one of three forms.753 In the first form, the state owns the banks, insurers and other financial institutions and bears a *de jure* obligation to guarantee their obligations. In a second form, central banks, large domestic banks or the supervisory authorities overcome temporary liquidity bottlenecks that solvent financial institutions may occasionally experience or a decision maker (who is assumed to be in possession of better insight and information about the market than the financial institutions) arranges long-term correcting measures for the financial institutions in problem. In a third form, public fund (mostly arranged by central banks and sometimes by the government, the central banks, the deposit insurers, and/or the large commercial banks) is used as lender of last resort to enable the recovery of financial institutions from true insolvency.754

The state ownership approach has declined in a number of countries through time. The developed market countries used to have it for a number of reasons four of which were dominant:

- to promote the development of home-grown banks (and counter the power of strong private banks at the early stage of economic development);
- to ensure consistency of economic growth with national objectives;
- to ensure credit to underdeveloped groups or sectors such as agriculture and small businesses; and
- to manage financial crises.755

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752 The NBE has already indicated intention to do this in its strategic plan of 2004/2005 although the intention has not materialized yet (Simeneh Teklu, 2005, at p. 10). It is important that the NBE implements the intention.


All of them (to the exception of Germany and USA where one finds some state owned or sponsored institutions) have, however, privatised and almost eliminated the state ownership of financial institutions as of the late 20th century. The state ownership approach has existed in the transition and emerging market countries for reasons similar to the aforementioned and more so for political reasons. Some of these countries have, however, also privatised, closed or shrank the size of their state owned banks as the economic reasons for and the efficiency of the state owned institutions are questioned in the post 1990s period. Many of the others have also agreed on the weak performance of the state owned financial institutions although they have resisted to the privatisation idea.

The lender of last resort measure has become increasingly important and is often implemented by the regulators in many countries with rehabilitation measures short of liquidation to prevent credit crunch and bank run and to ensure integrity of the payments and inter-bank funding systems. The rehabilitation measures are usually graduated according to the level of failure of the financial institutions. The basic operating principles of the lender of last resort measure are also changed in practice. It served originally as short-term measure at the discretion of the central bank to prevent temporarily illiquid, but solvent, financial institutions from failing and creating systemic and contagious crisis. It was then applied to true insolvency, rather than temporary illiquidity, situations. It currently serves as one of the steps of the regulator to recover a truly insolvent financial institution during crisis situation. Many of the countries have also introduced the most common method of financing temporary illiquidity of the financial institutions from the funds of a central bank which is known as repo-transaction.

The internationalization and interdependence of the financial markets across the world in the post 1980s has also triggered discussion on the role of the IMF as international lender of last resort while the 2008 financial and economic crisis has also shown the use of public fund as lender of last resort (and the state takeover of the financial institutions in some cases) to assist the recovery of the financial institutions from systemic crisis and re-triggered the discussion on the use of national and international lenders of last resort during crisis situation.

756 Ibid. The OECD has also reported that the sale of financial institutions (including banks) has been the second largest area of privatisation activity next to the telecom industry in the major OECD countries (including those in central and eastern Europe) until 2001 (OECD, 2002b, at p. 51).
759 Ibid.
761 Ibid.
763 Ibid.
764 Ibid.
765 This is transaction between the central bank and the financial institutions that enables the temporary selling of claims to the central bank with promise to repurchase. Valdez, 1993, at pp.101-102.
766 The discussion has focused on the need for i) enhancing the effectiveness of the public safety net, deposit insurance and other failure resolution mechanisms; ii) addressing the moral hazard, anti-
discussions have not, however, resulted in the creation of international lender of last resort institution yet and the aftermath of the 2008 financial and economic crisis has only been towards strengthening the risk monitoring, official lending and financial stability roles of the IMF and the failure resolution regimes and capabilities of the national regulators.\textsuperscript{767} The EU has also been considering the legality of the lender of last resort role of the European Central Bank and the use of state fund to assist the recovery of the financial institutions in crisis under the rules of state aid.\textsuperscript{768} Its 27 member states have established a European Financial Stability Facility (EFSF) as of May 09 2010 which may issue bonds and other debt instruments on the market (on its own as well as in combination with the EU Financial Stabilization Mechanism and the IMF facilities) to raise funds that may be needed to provide loans to the 16 Euro area countries that may face financial trouble.\textsuperscript{769} The Euro area countries are, accordingly, using the lending facilities of the EFSF, the EU and the IMF to cure the twin problems of fiscal (debt) and financial market (banking) crises in the absence of international lender of last

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\textsuperscript{769} The EFSF is created as temporary facility to live for three years (i.e. up to 30 June 2013) and until its last obligation is fully repaid. It is headquartered in Luxembourg. It gets treasury management services and administrative support from the European Investment Bank. It is supposed to issue the bonds and other debt instruments on the market with the support of the German Debt Management Office. The bonds and debt instruments it may issue are backed by guarantees of up to €440 billion given by the 16 Euro area member states in proportion to their shares in the paid-up capital of the European Central Bank. It may also be combined with loans of up to €60 billion from the European Financial Stabilization Mechanism of the EU (which relies on funds raised by the European Commission using the EU budget as collateral) and up to €250 billion from the IMF to raise a total financial safety net of up to €750 billion. It acts when a Euro area member state is unable to borrow from the markets at acceptable rates, a support request is made to it by the member state, a country programme is negotiated by the member state with the European Commission and the IMF, the country programme is accepted unanimously by the Euro area finance ministers, and a memorandum of understanding is signed. (AP, 2010b; and Wikipedia, 2010). The transformation of the EFSF into permanent financial stability mechanism is also being discussed (Note the 2011 news from the BBC and Euronews).
Bilateral loans from the non-Euro area countries such as UK, Sweden and Denmark are also being used for the purpose.771

ii. The Case of Ethiopia

Ethiopia authorizes the NBE to engage in credit and discount transaction with the financial institutions that are solvent in principle but may face temporary liquidity problems.772 It also authorizes the NBE to put the banks, insurers and microfinance institutions under receivership process or to takeover their management temporarily when that is necessary to rehabilitate them from a crisis situation.773 It does not, however, authorize the NBE to be lender of last resort in the modern sense of the concept, i.e. to extend credit to a bank, insurer or microfinance institution that encountered true insolvency or systemic crisis situation. It does not also empower and require it to assume or create a fund (except for the deposit insurance fund for the banks) which can assume the loss of the financial institutions during the true insolvency or crisis situation.774 The federal and regional governments of the country also bear de jure obligations only to guarantee the obligations of the banks and insurers and the microfinance institutions which they own or in which they participate to the extent of the capitals they have allocated.775 The country does not also accept the system of repo-transaction known elsewhere to curb temporary non-liquidity problems of the financial institutions.776 It has, instead, introduced the inter-bank money and foreign exchange markets to make the commercial banks engage in lending businesses to finance their liquidity shortages without involvement of the NBE.777 The NBE has also introduced a discount window facility from its funds to curb the temporary non-liquidity problems of the banks in their domestic operations and a foreign exchange lending facility from its reserves to protect them from...
similar problem in their international banking operations. It has also created an export credit guarantee scheme to assist the banks in the absorption of losses that may arise in their export financing businesses. It, however, seems in practice that Ethiopia pays little attention to the merits of indirect use of public fund and puts high value on direct ownership and involvement of the government in the conduct of the financial businesses.

Adoption of the free market principle in the country justifies no state ownership of the financial institutions. Private ownership, competition and innovation are necessary for improvement in the financial system. Competition laws may also be adopted to correct competition as the latter may not always work. The transitory nature of the country’s economy and the inadequacy of the financial institutions to meet the financing needs of the country, however, also justify direct government intervention. Such intervention is not, however, also justified in the long run as long as its objectives can be achieved through adoption of the competition mechanism and regulation. Government ownership can only be justified in such cases by ideological consideration, by need to raise public fund or by need to use the government banks, insurers and microfinance institutions as pacesetters of the operation in the financial market. Government ownership is also meaningless when it harms competition through market dominance, allows political interference in the operation of the financial institutions, puts the government in conflict of interest as owner and regulator of the financial businesses, and sustains under-performing government institutions (as this has been true in both Ethiopia and the many other developing countries). It is desirable for these reasons that both the federal and the regional governments of Ethiopia withdraw from owning the banks, insurer and microfinance institutions in the long run and focus on other forms of intervention. The country needs to shift its emphasis from state ownership, hence de jure obligation of the state, into use of forms of regulation that can equally promote the objectives that are to be promoted by state ownership of the financial institutions. The withdrawal, however, needs to be gradual to enable the building of both market and regulatory capacities since both

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778 NBE BSD, 2005, at p. 72; NBE, 2005/2006 (1), at p. 51; and the annual reports of the NBE for 2006 and thereafter.

779 The NBE has started the scheme by carrying out both the guarantee and the regulation functions by itself. It has transferred the guarantee function to the Development Bank of Ethiopia (and retained the regulation function) as of the 1st of February 2007. Directives No. ERD/001/99; ERD/002/2000; ERD/003/2001; SBB/33/2002; and SBB/41/2007.

780 Note the market dominance of the government institutions from Tables 10(Chap. 2), 19(Chap. 2) & 20(Chap. 2); and the records and annual reports of the banks, insurers, microfinance institutions and the NBE.

781 Tables 10(Chap. 2), 19(Chap. 2), 20(Chap. 2), 21(Chap. 2) & 22(Chap. 2) and the records and annual and quarterly reports of the banks, insurers, microfinance institutions and the NBE for 2008, 2009 and 2010 for comparison of the market shares and performances of the banks, insurers and microfinance institutions in Ethiopia; and Caprio, et al., 2004, at pp. 1-371 for general assessment of the situation in the other developing countries.

782 The federal government had started to process privatization of the Construction and Business Bank of Ethiopia S.C. through the Ethiopian Privatization Agency (EPressA, 2003a). The process currently seems to be aborted. Both the federal and the regional governments have not also shown interest to privatize the other banks, the insurer and the microfinance institutions they own. They seem to be determined to sustain their ownerships.
the financial institutions and the NBE currently suffer from weak capacities.\textsuperscript{783} It may flow from de-monopolisation, to contracting out of management, to lease or affermage, and finally to divestiture.\textsuperscript{784} The country also needs to enhance the inter-bank money market and aim at controlling the risk of financial failure through the lender of last resort mechanism along with the aforementioned and other regulatory measures.\textsuperscript{785} It needs to enable and require the NBE expressly to exercise the role of lender of last resort during both crisis and non-crisis situations.

The use of public fund as lender of last resort has also advantages and disadvantages.\textsuperscript{786} It can be used to minimize the direct private costs of the banks and insurers as well as the social costs involved in the loss of confidence in the banking and insurance markets. But, knowing the existence of lender of last resort may have moral hazard effect like the deposit insurance and other fund guarantee schemes. It may stimulate the banks, insurers and other participants to engage in risk-affected conduct and this tendency needs to be restrained, such as by charging punitive rate of interest, threatening that the shareholders may also lose in the event of catastrophe, and introducing a loss sharing system between the banks, insurers and creditors. The regulator should also be made responsible for the careful use of the lender of last resort measure. The operation of the means of lender of last resort can also be effective if the lender of last resort fulfils three conditions: i) the existence of capacity to assess the emergency situation and conduct a cost-benefit analysis of intervention, ii) the existence of ability to exercise control over the risk-affected conduct, and iii) the existence of necessary resource for disposal.\textsuperscript{787} The country needs to take care of all the aforementioned in developing the lender of last resort scheme and require the NBE to cautiously regulate the adverse effects of the use of lender of last resort and fund guarantee services.\textsuperscript{788}

\textsuperscript{783} Note the discussion under the means of enforcement chapter below.

\textsuperscript{784} De-monopolisation is a process of forcing public enterprises to compete with private firms. Contracting out is a process of allowing management of the government enterprises by domestic or foreign private firms which do not take the commercial risks. Lease or affermage is a scheme where a private firm manages public assets and accepts commercial risks that are associated with operation and maintenance, not investment. Divestiture is a process of selling public assets to the private sector. The country has already started to de-monopolize the financial market by allowing the government banks and insurer to compete with the private banks and insurers and increasing the market shares of the latter although the government banks and insurer still dominate. The government and the NBE have also generally welcomed the contracting out of management of both the private and public banks to improve their performances. These need to be enhanced. See Tables 19(Chap. 2) & 20(Chap. 2); EPRDF, 2000, at pp. 196 & 208; EPressA, 2003a; and the annual and quarterly reports of the NBE for 2008, 2009 and 2010 for the developments.

\textsuperscript{785} It may also consider the use of open market instruments such as the repo-transaction as its financial market grows to include a securities market.


\textsuperscript{787} Lastra, 1999, at pp. 341-346 & 352-354; and Möschel, 1991, at p. 89.

\textsuperscript{788} The NBE has also used the punitive interest and loss sharing techniques to discourage the rise of moral hazard in the export credit guarantee scheme (Directives No. ERD/001/99; ERD/002/2000; ERD/003/2001; and SBB/33/2002). These can be extended to the lender of last resort scheme along with the other measures.
The current methods of loss absorption (i.e. the discount window and foreign exchange lending services of the NBE and the export credit guarantee scheme of the Development Bank of Ethiopia) can also only serve as solutions to temporary liquidity problems of the banks during non-crisis situation. The country needs to develop mechanisms of controlling liquidity problems during crisis situation. It also needs to expand the scope of the inter-bank money market and encourage participation of the insurers and microfinance institutions in it. The microfinance institutions can build their capacities and relationships with the banks and insurers and participate in the market both as borrowers and lenders through time. The insurers can also participate in the market both as borrowers and lenders if one considers these functions as forms of financing insurance business and investing insurance fund. The NBE needs to allow these and focus on regulation of the risk exposure of the financial institutions. The measures can also enable the NBE to encourage participation of the banks and insurers in the provision and development of microfinance and pave the way for development of a bancassurance business in the country.

The country also needs to build the problem resolution capacity of the NBE. The NBE has not conducted a problem resolution process so far as none of the banks, insurers and microfinance institutions has become insolvent. Only the bank supervision department of the NBE has been thinking about the need for preparing for this. The country needs to encourage this and to make all the supervision departments of the NBE ready for curing problems of the future that may arise when the competition between the financial institutions grows to be fierce and the country liberalizes its financial market. A good regulatory system should also include the following four stages of development which Ethiopia needs to take into account in developing its regulatory system:

i) a stage of developing the regulator’s capacity to enforce compliance with existing regulations;
ii) a stage of developing the regulator’s capacity to resolve problems;
iii) a stage of developing the regulated institutions’ capacity to manage risk; and
iv) a stage of developing the market’s capacity to share supervisory burdens.

789 None of them has also failed by reason of the 2008 financial and economic crisis. The crisis has affected only the availability of foreign currency in the financial services sector and the price (and supply) of goods and services in the non-financial services sectors of the country (See annual and quarterly reports of the NBE, the banks, the insurers and the microfinance institutions for 2006 up to 2010).

790 NBE BSD, 2005, at pp. 13 & 73-74 as revised.

791 The non-liberalization of the financial market and the absence of fierce competition among the financial institutions of the country seem to have contributed to the current well-being of the institutions. The country’s accession to WTO and the rise of the number of financial institutions in the country may, however, result in fierce national and international competition in the future and this may make financial institution insolvency inevitable.

3.1 History and Current State

i. The International History in Brief

The first of the formal securities markets, namely the Amsterdam Stock Exchange, was created in 1611 following the creation of joint stock companies in the late 16th and early 17th centuries. Germany, France, UK, Ireland, Portugal and New York have created the Frankfurt, Paris, London, Irish, Lisbon and New York exchanges in the 17th and 18th centuries while Belgium, Italy, Switzerland, Sweden, Greece, USA, Canada, Australia, Japan, Egypt, Tunisia, South Africa, Zimbabwe, Kenya, Namibia, Nigeria, Hong Kong, New Zealand, Sri Lanka, the Philippines, Singapore, India, Pakistan, Argentina, Brazil, Peru, Mexico, Colombia, Venezuela, Chile, El Salvador and Uruguay have created and developed their exchanges in the 19th and early 20th centuries. Most of the other countries have created their exchanges in the post late 1980s when economic policies changed and the free market principle became dominant. The transition and emerging market countries have also engaged in first and second generation reforms to create and deepen their securities markets in the post late 1980s period.

A number of the securities markets, particularly those in the developed world, have also expanded their trades in non-domestic securities beginning the late 1980s as they underwent Big Bangs, investment regimes were liberalized, multinational companies sought listing on foreign securities, and institutional investors including insurance and pension funds rose with investment in domestic and international securities markets. The rise of international concern in the regulation of securities markets has also led to establishment of an international

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796 They have engaged i) in first generation reforms in the late 1980s and the 1990s to create the securities markets and introduce the legal (and regulatory) frameworks and economic (and infrastructure) foundations for them; and ii) in second generation reforms in the post 1990s period to deepen them. Carmichael and Pomerleau, 2002; Dowers, Gomez-Acebo and Masci, 2003, at pp. 4-5; Aggarwal, 2003, at p. 40; Dowers, Lee and Vives, 2003, at p. 488; Torre and Schmukler, 2007; and Eric Gonnard, et al., 2008.
association of securities market regulators called the International Organization of Securities Commissions (IOSCO) in April 1983.798

The further implementation of macroeconomic changes, rise of institutional investors, advancement of technology, and continuation of internationalization have also affected the development and regulation of the securities markets in both the developed and the transition and emerging market countries in this millennium.799 The 2008 financial and economic crisis has also increased the need for strengthening and expanding the application of regulation of the securities markets along with the strengthening of regulation in the other wings of the financial market.800

ii. The History in Ethiopia

Ethiopia had formal securities market only as short phenomenon during the Imperial Regime.801 The Imperial Government encouraged private sector development and the private ownership of business organizations through a Law of Loans (of 1924/25), a Decree on Commercial Registration (of 25 August 1928), a Company law (of 12 July 1933), a (draft) Bankruptcy law (of 12 July 1933) and the Commercial Code of 1960.802 It enacted a Business Enterprises Registration Decree No. 27 of 1957, an Unfair Trade Practice Decree No 50 of 1963, an Investment Decree No. 51 of 1963, a Domestic Trade Proclamation No. 294 of 1971, a Domestic Trade License Regulation No. 413 of 1971, and a Regulation of Trade and Price Proclamation No. 301 of 1972 to further facilitate the development of trade and investment in the country.803 It also enacted laws on government bonds in 1961 and 1969 to facilitate the financing of development projects of the government and stimulate the development of the securities market of the time.804 A number of business organizations had, accordingly, to register with the Imperial Ethiopian Ministry of Commerce and Industry before and following enactment of the Commercial Code.805 Three share companies, namely the Sabean Utility Corporation S.C., the Ras Hotels S.C. and the General Ethiopian Transport S.C. were established in 1942, 1948 and 1950, respectively.

798 IOSCO, 2007; and IOSCO, 2007a.
800 Van Berkel, 2008; McIlroy, 2008; Vries Robbé, 2008, at pp. 405-429; Gert Wehinger, 2009; Hall, 2009; Vaughan, 2009; Ayadi and Behr, 2009; Luigi, 2009; Vries Robbé, 2009; AP, 2010a; and Bloomberg, 2010.
802 IGE, 1960, at the preamble and the preface; and Winship, 1974, at p. 15.
804 IGE, 1961; and IGE, 1969, at their Preambles. Treasury bills were also issued by the State Bank of Ethiopia under the Currency and Legal Tender Proclamation No. 76 of 1945 until a Treasury Bills Proclamation was enacted in 1969 (Luther, 1961, at pp. 106-107; IGE, 1945c; IGE, 1969b, at the preamble and arts. 3(1), 3(2)(ii), 3(2)(iv), 4, 5, 7 & 9; IGE, 1969b, at art. 8; and IGE, 1969c).
805 IGE, 1960, at the preamble; and Von Pischke, 1968.
without floating shares to the public.\textsuperscript{806} Shares were then floated in the country for the first time by the Ethiopian Abattoirs S.C. in 1956 and later by the Bottling Company of Ethiopia in 1957 and by the Indo-Ethiopian Textiles S.C. in 1958.\textsuperscript{807} The public offerings were done in the absence of securities market.

The State Bank of Ethiopia then shouldered the responsibility of organizing a securities market when the HVA Ethiopia (a Dutch sugar company known as Handelsvereenining Amsterdam) appointed it as a subscription agent for floating shares in January and March 1959.\textsuperscript{808} It established a Share Exchange Department in 1960 and the latter listed six companies during the early years of its operation.\textsuperscript{809} The share dealing business of the State Bank passed to the Commercial Bank of Ethiopia and the NBE continued to run a Share Dealing Department as the State Bank of Ethiopia was dissolved to establish the Commercial Bank of Ethiopia and the NBE in 1963.\textsuperscript{810} The market outgrew the Share Dealing Department in the NBE in the following two years as dealings in securities were intensified and competing share dealers were born.\textsuperscript{811} The NBE and the share dealers and financial institutions of the time then created a Share Dealing Group on the 9th of February 1965.\textsuperscript{812} The Group issued rules for the market through the help of a subcommittee created by its second meeting on 16 February 1965.\textsuperscript{813} It listed twenty two companies during its life and served as primary and secondary market place for the shares issued through it.\textsuperscript{814} It also served as market place for government securities by facilitating the issuance of two types of government bonds, namely a five years premium bond and a ten years savings bond.\textsuperscript{815} It was to serve as market place for preference shares, company bonds (debentures) and derivative securities although none of the companies issued these types of securities during the life time of the group.\textsuperscript{816} It traded the ordinary shares and bonds in two ways, i.e. at its weekly meetings and at over-the-counter offices of some of its members (outside the weekly

\begin{thebibliography}{99}
\item \textsuperscript{806} Bahru Zewde, 2002, at pp. 196-201; and Araya Debesay and Tadewos Haregework, 1994, at pp. 231-232.
\item \textsuperscript{807} Von Pischke, 1968, at pp. 5-6 & 9.
\item \textsuperscript{808} The company invited Ethiopians to subscribe and own up to 20% of its capitalization. Id., at p. 6.
\item \textsuperscript{809} It listed the Sociètè du Tedji d'Ethiopiè Saba in April 1961 and May 1963, the Tendaho Plantations in July to October 1961, the National Meet Corporation of Ethiopia in September to December 1962, the HVA Ethiopia (capital increase) in December 1962 and February 1963, the Addis Ababa Bank in September 1963 and March 1964, and the Ethiopian Drug Manufacturing S.C. in December 1963 and February 1964. It increased its listing to eleven until 1964. Id., at pp. 5-6 & 8-9.
\item \textsuperscript{810} IGE, 1963f; IGE, 1963d; IGE, 1963e; and Von Pischke, 1968, at p. 8.
\item \textsuperscript{811} The Addis Ababa Bank and the Investment Bank of Ethiopia (later known as the Ethiopian Investment Corporation) also opened over-the-counter facilities for members of the public who wanted to buy and sell shares of local companies outside the department’s meetings due to the intensification of dealings in shares. Von Pischke, 1968, at pp. 9-10.
\item \textsuperscript{812} Von Pischke, 1968, at pp. 10-12; AACC, 1999, at p. 3; and Araya Debesay and Tadewos Haregework, 1994, at p. 232.
\item \textsuperscript{813} Von Pischke, 1968, at pp. 12-14; and AACC, 1999, at p. 4.
\item \textsuperscript{814} Table 10(Chap. 3); and Von Pischke, 1968, at pp. 61-66.
\item \textsuperscript{816} CBE, 1974, at p. 287.
\end{thebibliography}
meetings). The weekly meetings served as trading sessions for Group members for about an hour once in a week, usually every Tuesday morning. The over the counter offices were run by the Addis Ababa Bank, the Commercial Bank of Ethiopia and the Investment Corporation of Ethiopia to trade with individuals and institutions that were not members to the Group. The Commercial Bank of Ethiopia and the Ethiopian Investment Corporation also extended share registration, transfer agency and underwriting services while other members of the Group extended brokerage services to outsiders.

The securities market, however, came to end due to nationalization of private economic undertakings in 1975. The Military Junta abrogated the Imperial Regime on September 12, 1974 and centralized state power in the Provisional Military Administrative Council (PMAC) (Dergue in Amharic). The latter enacted a Socialist Economic Policy and laws which proclaimed central planning and left only marginal activities to the private sector. The Government Ownership and Control of Means of Production Proclamation anticipated only limited private economic activity and put all the major resources of the country in the hand of the government. The Proclamation on Commercial Activities Undertaken by the Private Sector served as instrument of implementation of the Socialist Economic Policy Declaration and the Government Ownership and Control of Means of Production Proclamation by prohibiting the following:

- the issuance of any kind of business license to a person who had permanent job;
- the issuance of licenses for multiple undertakings by a single person (except when the then Ministry of Commerce and Industry waved this in respect of import and export trades);
- the undertaking of business through branches and business organizations (except for industrial activity that can be undertaken through a general partnership of not more than five persons); and
- the undertaking of retail, wholesale and industrial businesses (other than the wholesale of agricultural products, hides and skins) with a capital greater than two hundred thousand, three hundred thousand and five hundred thousand Birr, respectively.

The Central Planning Commission Establishment Proclamation re-established the Planning Commission of the Imperial Government to make it work under the
socialist lines. The functions of the Commission were then strengthened through establishment of subsequent central planning offices and adoption of laws that were inspired by the socialist economic policy.

The Military Government also halted the issuance and circulation of government bonds and treasury bills in favour of direct bank borrowing. It issued ten years savings bonds on the 10th of March 1975 and amended the Imperial bond law on the 11th of same month. It then diverted its attention from the issuance of bonds and treasury bills to direct advance by the National Bank of Ethiopia. It introduced special bonds only as late as 1988 to curb the constraints it faced to finance the war that concluded its life in 1991.

It enacted a Proclamation on Regulation of Domestic Trade and a Domestic Trade Regulation in 1987 to repeal the 1971 Domestic Trade Proclamation and Domestic Trade License Regulations and the 1972 Regulation of Trade and Price Proclamation with a view to allowing and streamlining the domestic trade activities of the country, and introducing some form of mixed economic system, within the socialist lines. The Proclamation on Regulation of Domestic Trade allowed the carrying out of domestic trade through sole proprietorship and the forms of business organization under the 1960 Commercial Code upon registration in the Commercial Register of the then Ministry of Domestic Trade and publication of the registration in a newspaper of countrywide circulation. It revived the application of the Commercial Code although the Socialist orientation of the economic policy remained untouched. The Domestic Trade Regulation complemented the registration rules of the Proclamation (and the Commercial Code) and required the re-registration of existing businesses within twelve months from the 27th of August 1987 and the registration of new businesses following the new set of rules. The then Ministry of Domestic Trade maintained a Central Commercial Register in Addis Ababa and Local Commercial Registers in the Provinces under the Regulation and started the registration in 1989. The call of the government for private investment and formation of business organizations was also furthered by enactment of eight laws in 1989 and 1990 which purported to encourage the making (and structure the licensing of) foreign and domestic investment in the industry, hotel, tourism and agriculture sectors. The formation of business organizations during the period was, however, discouraged by non-clarity of policy. Only one thousand seven hundred eighteen individual

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826 IGE, 1970; and PMGE, 1977.
827 PMGE, 1978c; and PMGE, 1984.
828 PMGE-MF, 1975; and PMGE, 1975c, at art. 2.
830 PMGE, 1988a.
831 PMGE, 1987c; and PMGE, 1987f.
832 PMGE, 1987c, at arts. 2(4) & 5 and the preamble.
833 Ibid.
834 PMGE, 1987f.
835 PMGE, 1987f and the Registration Files for the Central Commercial Register in Addis Ababa (as they are kept by the Addis Ababa Trade, Industry and Tourism Bureau). The commercial registration task continued in the Ministry until January 1993.
836 PDRE, 1989; PDRE, 1989a; PDRE, 1989b; PDRE, 1990a; PDRE, 1990b; PDRE, 1990c; PDRE, 1990d; and PDRE, 1990c.
traders with declared total capital of 83.2 million Birr and four hundred six business organizations with declared total capital of 834.9 million Birr (of which three hundred twenty nine with the total capital of 576.1 million Birr were private limited companies, forty one with the total capital of 250.3 million Birr were share companies, and thirty six with the total capital of 8.5 million Birr were joint ventures) were registered in the Ministry until June 1991 (i.e. the end of the military government).  

The 1991 Transitional Government then decentralized the state power and took a number of measures to promote investment and trade in the country through sole proprietorship, private business organizations, private cooperatives and governmental enterprises. It launched its measures through adoption of a Transitional Period Charter and a Transitional Period Economic Policy in 1991 and enactment of an Investment Proclamation in 1992.  

It liberalized the investment and trade regimes further by enactment of new Investment Proclamation in 1996. It made the 1960 Commercial Code and the 1987 Proclamation and Regulation of Domestic Trade continue to govern the formation and registration of business organizations within the framework of the new economic policy. It also continued with the publicity principle (i.e. registration, document depositing and publication requirements) adopted in the Commercial Code for formation of business organizations.  

The Ministry of Trade and Regional Trade Bureaus of the transitional government then took over the commercial registration and licensing tasks from the former Ministry of Trade as of January 1993. The Transitional Government also reintroduced the public issuance of treasury bills and implemented measures that would intensify their issuance as of January 1995. It started issuance of the bills by offering 91-days bills on a monthly auction basis with a bid amount of one hundred thousand Birr and diversified them into 28-days, 91-days and 182-days types, reduced the bid amount  

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837 Tables 8(Chap. 3); 9(Chap. 3); and the records of the Ministry of Trade and Industry of Ethiopia for 2008 and 2009. Twenty nine state enterprises having a trader status with a total capital of 692.0 million Birr were also registered by the Ministry (same Tables and the records of the Ministry of Trade and Industry of Ethiopia for 2008 and 2009). The total number of state enterprises owned by the government when privatization started by 1994 (i.e. 1986 Eth. Fiscal Year) was four hundred fifty six including the thirty five enterprises registered by the Ministry between the 1983 and 1986 Fiscal Years (Getachew Belay, 2000, at p. 72; and Tables 8(Chap. 3) & 9(Chap. 3).  

838 PDTCE, 1991; TGE, 1991; and TGE, 1992a. The state power decentralization was gradually strengthened and federalism was finally established by the FDRE constitution of 1995 (TGE, 1992; TGE, 1993; FDRE, 1995; and the various federal and regional executive organ establishment laws, including FDRE, 1995a; FDRE, 1997f; FDRE, 2001a; FDRE, 2004; FDRE, 2005c; FDRE, 2004ad; FDRE, 2005c; FDRE, 2007d; FDRE, 2008c; FDRE, 2009b; and FDRE, 2009c).  

839 FDRE, 1996c.  

840 IGE, 1960; PMGE, 1987e; and PMGE, 1987f.  

841 Hence, the share companies had to finalize their capital subscriptions and share issuances through subscription arrangements at their own discretion. They had to publish their names, principal addresses, subscribed and paid up capitals, business objectives, durations of establishment, share par values and classes, contributions in kind, and names, addresses, powers and functions of their auditors and board members in the Ethiopian Herald, the Addis Zemen, the Addis Lissan (of the Addis Ababa City Government) and the regional news papers. PMGE; 1987; PMGE, 1987f; FDRE, 1997a; FDRE, 1997b; and IGE, 1960, at arts. 214-226 & 312-324.  

842 Note unpublished records of the offices.
from one hundred thousand Birr to fifty thousand (and finally to five thousand) Birr, and made the frequency of the auction bi-weekly through time.\textsuperscript{843}

The Post-1995 Federal Government has enhanced the commercial registration and business licensing regimes of the transitional government by enacting new laws as of the 6\textsuperscript{th} of March 1997.\textsuperscript{844} It has also eased the formation and development of business organizations by removing the publication requirement (on their formation and amendment of instruments) from the general commercial registration laws and retaining only the registration and document depositing requirements (with a right to the public to inspect the entries and deposits in the commercial register) as of the 13\textsuperscript{th} of November 2003.\textsuperscript{845} The Federal Ministry of Trade and Industry and the Regional Trade Bureaus have also taken over the registration and licensing tasks from the transitional government under the 1997 laws.\textsuperscript{846} The Federal Government has also continued with the issuance of treasury bills (which was re-started in January 1995) and revived the issuance of bonds in 1999.\textsuperscript{847} It has issued special bonds to the Ministry of Finance in late 1999, auctioned bonds to the public in November 2000 and January 2001, and continued to issue bonds outside auction until 2004 (due to lack of bidders in the January 2001 auction).\textsuperscript{848} It has also increased the issuance of treasury bills both to enhance the raising of funds to the treasury and use the bills as instruments of monetary policy transmission.\textsuperscript{849} The outstanding indebtedness of the government in respect of the bills and bonds has also grown through the years despite the limited size of new bond issuance.\textsuperscript{850} The defunct formal securities market has not, however, come back into existence.

\textsuperscript{843} Table 11(Chap. 3); Hamelmal Teklehaimanot, 2000, at p. 151; and the annual report of the NBE for 1996 (cited as NBE, 1995/1996), at pp. 22-23.

\textsuperscript{844} FDRE, 1997a; FDRE, 1997b; and FDRE, 1997c (as amended by FDRE, 1999a; FDRE, 2003b; FDRE, 2003ce; and FDRE, 2003ff). The federal laws are currently consolidated into a new commercial registration and business licensing law (FDRE, 2010a).

\textsuperscript{845} FDRE, 2003f, at arts. 2(2-3); and FDRE, 2010a, at art. 9.

\textsuperscript{846} FDRE, 1995; FDRE, 1995a; FDRE, 1997a; and FDRE, 2010a. The commercial register at the Ministry has, accordingly, registered more than 64,312 individual traders and 37 partnerships with a total capital of more than 14,642.1 million Birr (1,665.0 million US$), more than 6,845 private limited companies with a total capital of more than 37,674.9 million Birr (4,284.0 million US$), more than 370 share companies with a total capital of more than 9,515.8 million Birr (1,082.0 million US$), 60 joint ventures with a total capital of 646.8 million Birr (73.6 million US$), and 230 state enterprises with a total capital of 11,343.0 million Birr (12,660.8 million US$) (including the government banks and insurer) until June 2009 (Tables 8(Chap. 3); 9(Chap. 3); and the records of the Ministry of Trade and Industry of Ethiopia for 2008 and 2009).

\textsuperscript{847} Table 11(Chap. 3); and annual report of the NBE for 2000 (cited as NBE, 1999/2000).

\textsuperscript{848} The bonds were issued to transfer the outstanding indebtedness of the Development Bank of Ethiopia (towards the NBE) to the Ministry of Finance, to mop up the excess reserves of the Commercial Bank of Ethiopia, and to cure the bad debts of the former state owned enterprises and projects (Table 11(Chap. 3); and Annual Reports of the National Bank of Ethiopia for the years from 2000 up to 2005 (cited as NBE, 1999/2000; NBE, 2000/2001; NBE, 2001/2002; NBE, 2002/2003; NBE, 2003/2004; and NBE, 2004/2005)).

\textsuperscript{849} Ibid; and Hamelmal Teklehaimanot, 2000, at p. 151.

\textsuperscript{850} Tables 11(Chap. 3); 14(Chap. 3); and the annual and quarterly reports of the NBE for 2008, 2009 and 2010.
3.2 The Interests for and against Development of the Market

The need for creating a securities market in Ethiopia was given attention by the academia, the donor and business communities, the NBE and the government following the economic policy reform in 1991. Members of the academia, the donor community and the practitioners at the NBE saw the importance of having the market in the country as early as 1994 and insisted on its institutionalisation through individual as well as institutional initiatives in the subsequent period.\(^{851}\) The business community (as organized and represented by the Addis Ababa Chamber of Commerce) also looked forward to the launching of the market and set action plan in a workshop held on the 18th of March 1999.\(^{852}\) The Chamber also prepared a ‘Rules and Regulations Manual’ for the future ‘Addis Ababa Stock Exchange’ in May 1999.\(^{853}\) The government also declared its intention to institutionalise a securities market in its economic and financial policy reform paper to the IMF for the period between 1996/97 and 2000/01.\(^{854}\) The NBE and the Justice and Legal System Research Institute of the country (JLSRI) also believed in the importance of creating a securities market in the country as early as 1998 and 2001, respectively.\(^{855}\) The JLSRI also drafted a Securities and Exchange Proclamation in the period between February and December 2001 and invited the NBE and the financial institutions in the country to make comments on the draft proclamation as of the 18th of January 2002.\(^{856}\) The NBE and two of the financial institutions (namely, the Awash International Bank S.C. and the Bank of Abyssinia S.C.) forwarded their comments to the Institute until March 2002 with strong support of the creation of securities market and enactment of the draft law.\(^{857}\) The Institute then redrafted the proclamation by incorporating the comments and submitted the final draft to the Council of Ministers of the Government in 2003.\(^ {858}\)

The government has, however, retreated from enacting the draft proclamation and suspended the moves for creation of the securities market for the reasons that the infrastructure and regulatory conditions for creation of the market are not ripe,

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851 See, for instance, Araya Debesay and Tadewos Haregework, 1994; Feyera Milkesa, 1995; Bekele Wolde Abajifar, 1995; Porter, 1996; Araya Yohannes, 1998; Eyob Tesfaye and Felleke Mamo, 1998; Dawit, 2000; EPA, 2002; and Eyob, 2003 for the individual initiatives; and Mekelle University (FBE), 2000 for the institutional and donor initiatives.

852 AACC, 1999.

853 The manual was prepared by a Global Management Advisory Firm sponsored by the Chamber called ZNA (Note ZNA, 1999).


855 The NBE indicated the need and prospect for having the market and the JLSRI identified the policy issues that needed government decision during the years. Note the study reports and policy proposals of the institutions (cited as NBE, 1998; NBE, 1999a; and JLSRI, 2001).

856 Note the document cited as JLSRI, 2001 with the first and second drafts of the Securities and Exchange Proclamation and the letters of invitation of the JLSRI written on Ttr 10 1994 Eth. C. (18th of January 2002) (which are unpublished but available in the records of the Institute).

857 Note the letters of the banks and the NBE to the Institute written in February and March 2002 (cited as NBE, 2002; AIB, 2002; and BA, 2002 - all unpublished but available in the records of the JLSRI).

858 Note the third draft of the Securities and Exchange Proclamation and the communication of the Institute to the Council of Ministers of the government in 2003 (both unpublished but available in the records of the Institute).
that there will be international pressure for rapid liberalization of the financial market once the securities market is created, and that the country’s economy may be overheated (leading to crises) due to inflow of capital and sudden repatriation in the aftermath of creation of the market (as these have happened in Latin America and Asia in the late 1990s).\textsuperscript{859} It has only created a fully government owned agricultural commodities market to enable the securitization and trading of agricultural products in spot and futures markets and shown belief that the creation of corporate bond market should precede the institutionalization of a fully fledged securities market.\textsuperscript{860} The academia, the business community and the NBE have, however, continued to be in favour of creation of the fully fledged securities market.\textsuperscript{861}

3.3 The Need for Development and Potential Functions of the Market

i. The Theory and International Experience

Researchers have increasingly shown that the level of development and efficient performance of financial markets affect the financing of industries in the non-financial sector and hence economic growth.\textsuperscript{862} Some have shown that a well functioning securities market has two key functions, namely resource allocation and corporate control.\textsuperscript{863} They have shown that it helps to mobilize domestic capital, pool and share risk, facilitate equity capital flow, and avoid excessive reliance on external borrowing through the resource allocation function. They

\textsuperscript{859} Note the Poverty Reduction Strategy Paper of the country (July 31, 2002) (cited as Ethiopia, 2002), at pp. ii, 47, 61, 68, 109, 110-111, 135 & 139-140; the Letter of Intent, Memorandum of Economic and Financial Policies and Technical Memorandum of Understanding of the country to the IMF (July 22, 2003) (cited as Ethiopia, 2003); the annual reports of the country to the IMF for 2002/2003 and 2003/2004 (cited as Ethiopia, 2004; and Ethiopia, 2006, respectively); and the Plan for Accelerated and Sustained Development to End Poverty (PASDEP) of the country for 2005/06-2009/10 (cited as FDRE (MoFED), 2006), at p. 60. The latter two reasons were not declared in the official documents of the government. They were stated during ministerial press conferences and parliamentary hearings.

\textsuperscript{860} Note the agricultural commodities market and authority establishment laws (cited as FDRE, 2007; FDRE, 2007a; FDRE, 2008; and FDRE, 2010) and the Plan for Accelerated and Sustained Development to End Poverty (PASDEP) of the country for 2005/06-2009/10 (cited as FDRE (MoFED), 2006), at p. 60.

\textsuperscript{861} The views and wishes of the academia and the business community are still being aired through articles, workshops and discussions (See, for instance, Neway Gebre Ab, 2007, at pp. 26-31; and Tekle-Birhan G/Michael, 2007-2008, at pp. 23-34). The Addis Ababa Chamber of Commerce has already included the issue of creation of capital /securities/ market in its Private Sector Development Hub (Note the action plans of the Private Sector Development Hub of the Chamber that went into operation in January 2005). The NBE has also included the development of capital (both bond and equity) markets in its most recent Financial Sector Capacity Building Project (which is designed for implementation in cooperation with the International Development Association (IDA) of the World Bank) (Note the information about the Project from website of the NBE, accessed in August 2009).


\textsuperscript{863} Dowers and Masci, 2003, at pp. xv-xvi; Dowers, Gomez-Acebo and Masci, 2003, at pp. 3-4 & 5-7; Aggarwal, 2003, at pp. 37-38; and Benjamin, 2000, at pp. 5-8, 79-84, 93-95, 119-146 & 171-186. See Von Pischke, 1968, at pp. 1-2; and Gebrehiwot Ageba, 2000, at pp. 51-57 for general discussion of these in the context of Ethiopia.
have shown that it encourages the gathering and processing of information, increases contractual efficiency, and enhances corporate monitoring and controlling through the corporate control function. They have also shown that it enables monetary authorities and governments to adopt open market instruments to achieve monetary, financial and fiscal policy objectives. Others have shown that the presence of securities market has been useful to implement privatisation, increase investment choice, facilitate foreign investment, increase competition, and enhance corporate accountability and control in many countries. They have also shown that it has been useful to enable the changing of modalities of international investment from direct to portfolio forms and the management of risk through diversification of investment across countries.

Some have, however, also dissented from the aforementioned uses of a securities market by emphasizing on the volatility and negligible roles and hence on the undesirability of the securities markets in the transition and emerging market countries in practice.

The question of creating securities market has also been subject of debate over bank-based (indirect) and market-based (direct) finance approaches. Some have argued, following the success of bank finance in the post-war Germany and Japan, that the bank-based approach is more useful than the securities market-based approach. They have argued that the bank-based approach provides stronger corporate monitoring properties than the securities market based approach by enabling banks and governments to follow up the non-financial sector companies through relationship banking. Many others have, however, also praised the usefulness of the securities market-based approach to create opportunity for companies to optimise their capital structures by using alternative sources of finance and to add the instrument of market-based corporate control to the instrument of relationship banking. They have also indicated that securities market is a natural element of a rational market-based economy which has to complement bank finance and, hence, that its development should be an important public policy objective even if bank finance can still be important. The global trend in practice has also been towards the securities market-based approach as countries of the world (including both the developed and the transition and emerging market countries) have increasingly become homes of securities markets along with banks. The trend in Germany and Japan has also

864 Ibid.
866 Ibid.
867 See, for instance, Calamanti, 1980; Samuel and Yacout, 1981; and Singh, 1993.
869 Ibid.
been towards this due to understanding that the bank and securities market based approaches are not ones that should displace each other but should complement to one another.872

ii. The Case of Ethiopia

Ethiopia currently faces the following problems and the creation of securities market is justified by its potential to solve these problems.

1. The banks are not providing long term finance.873 They concentrate much on short and medium term (less than five years) loans since their liabilities due to current and saving accounts are much higher than the relatively long term time deposits.874 Most of the private companies in the country also suffer from large leverage, i.e. debt-to-equity ratio since they have to finance their operations more through the short and medium term loans of the banks than through equity capital.875 The short and medium term loans of the banks have also been less accessible as the banks have often required large collaterals due to high levels of their non-performing loans.876 The total investment projects in the country that have gone operational are also only about 11.4 percent of the total approved projects by number (7.7 percent by capital) due to reasons including the absence of long-term capital.877 The securities market can fill the gap by allowing the direct formation of equity and debt capital.878

2. Foreign capital has small share in the country’s total investment and the need for domestic resource mobilization to finance investment is high. The share of foreign capital out of the total operational and approved investment projects has been 30.8 and 32.9 percents, respectively, during the last two decades.879 The participation of foreign investors in the purchase of privatised state enterprises and equity ownership of business organizations has also been limited compared to

872  Ibid.
873  The Development Bank of Ethiopia is the only exception. The long term loans of this bank are, however, also negligible (Tables 11(Chap. 2); and 21(Chap. 2).
874  Tables 11(Chap. 2); and 13(Chap. 3).
875  Only those incorporated in public (share) company form (which were about 0.5% of the total traders and 5.1% of the total business organizations by number) have attempted to raise capital through public issuance of securities. They have generated up to about 5.5% of the total capital of the traders registered in the country (less than 18.5% of the total capital registered by the private business organizations) through the public issuance of securities. Tables 8(Chap. 3); and 9(Chap. 3).
876  Yishak Mengesha, 2000, at pp. 7-9.
877  Tables 1(Chap. 3); and 2(Chap. 3).
878  Of course, the presence of an active securities market is only one among other factors that affect investment in least developed countries like Ethiopia since the supply/availability/ of foreign and domestic capital, the nature of government policy (and political risk), the entrepreneurs’ assessment of future return (on their investments) and a number of other factors can also affect the making of investment in such countries. The question of having an active securities market in such countries is also a question of shifting the ‘mind set’ of all the actors in investment from direct to portfolio forms of investment and enhancing the attractiveness of the rates of return from securities. Rietbergen, 1999 at pp. 19-23 & 65-93.
879  Tables 1(Chap. 3); and 2(Chap. 3).
the domestic (Ethiopian) participation. The securities market can facilitate the mobilization of domestic resources to meet the need.

3. Both the government and a fairly large number of private companies have already issued securities to the public and these have lacked market for secondary trading. The number of share companies that have issued shares to the public and the total capitalization of the shares they have issued have grown from 59 and 548.4 million Birr (109.5 million US$), respectively, in 1993 to more than 370 and 9.52 billion Birr (1.08 billion US$), respectively, by 2009 while the government and its enterprises have already issued bonds the total outstanding value of which has grown from 5.07 billion Birr (1.01 billion US$) in 1993 to more than 14.32 billion Birr (1.63 billion US$) by 2009. The number and capitalization of private limited companies, state owned share companies and cooperative societies whose securities can be candidates for public trading have also grown to more than 6,845 and 37.68 billion Birr (4.28 billion US$), 47 and 3.79 billion Birr (i.e. 435.74 million US$), and 19,427 and 474.01 million Birr (54.79 million US$), respectively, by 2009. The shares of the state share companies, the private limited companies and the cooperative societies are not, of course, freely transferable securities under the current legal regime of the country. The state share companies are, however, subject to future privatization while the private limited companies have the potential to be converted into public share company and/or to increase the tradability of their shares. The government has also allowed the participation of the cooperative societies in trade and foreseen the potential for the tradability of their shares under new laws. The cooperative societies are also investing their funds in the share companies. The issuance, transferability, liquidity and proprietary value of all these securities has, however, become severely weak due to

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880 Tables 5(Chap. 3), 6(Chap. 3), 7(Chap. 3), 8(Chap. 3) & 9(Chap. 3); and Census Report of the Central Statistics Agency of Ethiopia on Economic Establishments (cited as CSA, 2005a).
881 Tables 8(Chap. 3), 9(Chap. 3) & 11(Chap. 3) (with the notes); the records of the Ministry of Trade and Industry of the country for 2008 and 2009; and the annual and quarterly reports of the NBE for 2008, 2009 and 2010. The latest quarterly report of the NBE also indicates that the total outstanding bond value has grown to 24.6 billion birr (1.87 billion US$ at the average weighted exchange rate of the quarter) by end of March 2010 (See the sixth note to Table 11(Chap. 3); and the Quarterly Report of the NBE cited as NBE, 2009/2010 (3)).
882 Tables 8(Chap. 3), 9(Chap. 3) & 11(Chap. 3); PPESA, 2006, at pp. 20 & 27-28; FDRE(MOI), 2004/2005, at pp. 171 & 173-181; FDRE(MOI), 2005/2006, at pp. 83, 349, 373, 395-396, 431-432, 472, 509, 521-523, 553, 571, 587 & 598; and the records of PPESA, the Ministry of Trade and Industry and the year books of the country for the years from 2007 to 2009.
883 FDRE, 1998f, at arts. 8(2), 10, 16, 17(3), 19 & 32-33; IGE, 1960, at arts. 510(3) & 523 and the records of PPESA. All the state share companies are fully owned currently by the Ministry of Finance of the country on behalf of the government.
884 FDRE, 2004ab, at arts. 2(1) '6', 2(2) '1-7' & 2(4) '1-3'; and FDRE, 2004ac.
885 The formation of the Cooperative Bank of Oromia S.C. with ownership of its shares by nine hundred seventeen cooperative societies (out of a total of one thousand fifty three members during its establishment), the rise of the number of cooperatives holding shares in this bank to one thousand two hundred as the total number of shareholders of the bank rose to three thousand two hundred fourteen by mid 2005/2006, and the participation of several cooperative societies in the formation of the Addis Ababa Cooperatives Bank S.C. (which was under formation in 2008/2009) illustrate this (Note the records of the Cooperative Bank of Oromia S.C. and the banking supervision department of the National Bank of Ethiopia).
absence of securities market. The creation of the market is necessary to curb the problem.

4. The reserve and liquidity positions of the banks have already become excessively high. The total excess reserve of the banks has reached about four folds of the total regulatory requirement (on average) while their total liquidity position has exceeded the total regulatory requirement by about 30.0% (on average). The presence of large reserve and liquidity is, of course, useful in crisis situation. It will, however, mean keeping large idle (i.e. un-invested) money when it is excessive during non-crisis situation. The banks and the banking regulator need to mop up and manage it during this situation. Creation of the securities market can help the banks and the NBE to do this.

5. The use of indirect and open market instruments to transmit monetary and financial policy objectives by the NBE is severely limited due to the hardship in the issuance and circulation of securities in the absence of formal market. Creation of the market can solve the problem by facilitating the issuance and circulation of both government and private securities and assisting the use of the indirect instruments of banking, insurance and microfinance regulation.

6. The country’s financial market is already limited to few banks, insurers, microfinance institutions and one governmental pension institution. It lacks investment banks, mutual funds, private pensions, and venture capital companies that can pool and share risk and offer alternative channels for saving and investment as institutional savers and investors. The 'Egub', 'Edir' and other forms of saving and self-help in the country have also remained to be informal and piecemeal while the insurance companies do not engage in meaningful long term saving (life insurance and pension) business and in sponsoring the creation of separate private pensions despite the country's inclusion of these functions in the definition of long term insurance business. Creation of the securities market can change this situation by allowing the birth of new institutions and enhancing competition.

886 The share issuance by the private companies was more difficult as it had to be backed by aggressive solicitation through friends in the absence of formal securities market. Only five companies have relied on the share dealing agency services of the Commercial Nominees Private Limited Company of Ethiopia (Table 12(Chap. 3)). The issuance of the government securities has also been problematic due to the absence of formal securities market (Hamelmal Teklehaimanot, 2000, at pp. 150-151).

887 Table 15(Chap. 2).

888 Note the discussions in the banking, insurance and microfinance chapter above and the pension chapter below.

889 Table 18(Chap. 3); Degefe Duressa Obo, 2009, at pp. 77-83; CSA, 1998; CSA, 2000; CSA, 2001; CSA, 2006; CSA, 2007; and TGE, 1994b, at art. 2(16). The total size of the long term insurance business of the insurers is less than 6% of the total size of their insurance businesses (Table 8(Chap. 2)). Only the Ethiopian Insurance Corporation has attempted at running pension business as part of its long term insurance businesses. The pension business of the corporation has, however, also remained to be small (Tables 7(Chap. 2) & 8(Chap. 2); and annual reports of the Corporation for 2008 and 2009).
7. Most of the business organizations in the country suffer from narrow ownership base and inability or lack of motivation to go public. About 94.9 percent of the business organizations registered in the commercial register (at the Ministry of Trade and Industry of the country) are partnerships, private limited companies and joint ventures owned by family members, friends and institutional partners while only about 5.1 percent are publicly owned share companies.\(^{890}\) The average numbers of owners of the private limited companies, partnerships and joint ventures, as counted by the Central Statistics Agency of the country in 2004, were also only 7, 3 and 4 persons respectively while the average for the share companies was 42 persons.\(^{891}\) The number of Ethiopian owners of the business organizations was also 0.05 percent of the total population of the country for the partnerships, 0.01 percent for the private limited companies, 0.00015 percent for the joint ventures, and 0.03 percent for the share companies showing the extreme narrowness of the shareholding base in the country.\(^{892}\) This is not improved much until 2009.\(^{893}\) The majority of the business organizations have also suffered from non-separation of ownership and management as a result of their narrow ownership base and inability or lack of motivation to go public.\(^{894}\) Creation of the market can curb the problem by encouraging the business organizations to go public and stimulating competition.

8. The flow of information and corporate management, accounting and control is severely limited. Most business firms do not keep operational reports and formal books of accounts. About seventy five point seven (75.7) percent of the total enterprises counted by the Central Statistics Agency of the country in 2004 were informal enterprises with no account at all while only 5.6 percent of the formal enterprises (i.e. only one point four (1.4) percent of the total enterprises) were reported to have kept formal accounts.\(^{895}\) Even those which kept accounts did not publish and report their operational and financial situations regularly. It was mostly the companies in the financial market of the country that did these because of the relatively strong disclosure regulation imposed on them by the financial market supervision laws.\(^{896}\) The situation is not changed much until 2009 although there are some improvements.\(^{897}\) Creation of the securities market can change the

\(^{890}\) Table 8(Chap. 3); and Census Report of the Central Statistical Agency of Ethiopia on Economic Establishments (cited as CSA, 2005a).


\(^{892}\) Ibid. This is too negligible to be contrasted with the shareholding level in the developed market countries (Poser, 1991, at pp. 75-76 & 427; and Isabelle Ynesta, 2008 for the latter).

\(^{893}\) Note records of the Ministry of Trade and Industry of the country for 2004 up to 2009.

\(^{894}\) Only the share companies try to separate their management from shareholding through the ‘shareholder meeting - board - manager’ structure imposed by the commercial code of the country. The management of most of the other business organizations is often in the hand of a single major shareholder or partner.


\(^{896}\) Note the discussion under the banking, insurance and microfinance chapter above.

\(^{897}\) The tax laws of the country have imposed accounting and auditing obligations on the enterprises and this has resulted in some improvement (FDRE, 2002d; FDRE, 2002e; FDRE, 2002f; FDRE, 2002g; FDRE, 2002h; FDRE, 2002i; and the amendments in 2008 and 2009).
situation by stimulating competition and increasing the need for enhancement of corporate governance by at least those which want to raise finance through it.

9. The individuals, households, business firms and financial institutions in the country have lacked means to diversify their income and investment portfolios. Most individuals and households in the country do, in the absence of a securities market, obtain much of their income from sources other than securities, spend much of their incomes for personal consumption purposes, and make their non-consumption expenditures and savings through informal outlets including cash at house, ’Equis’, private loans, ’Edir’ contributions, foreign currencies, precious metals, vehicles, and other physical assets including building, livestock and household equipments. They have, according to Surveys of the Central Statistics Agency of the country, obtained about 99.98% of their annual incomes on average from sources other than dividends from company securities (i.e. only about 0.02% on average from the latter); and spent about 89.75% of their total expenditures on average on food and non-food consumption (and the remaining 10.25% in informal non-consumption expenditures of which household investment amounted to 1.57% on average). 898 Most of the trading firms and individuals also either keep their savings in bank deposits and foreign currencies or invest them in physical assets on land, in vehicles and in miscellaneous assets other than company securities. 899 The insurers, banks, microfinance institutions and the social security agency also keep much of their savings in bank accounts and few government and equity securities while the provident funds keep all their savings in bank account. 900 The cooperatives, Equis and Edirs also keep their savings in house or bank account. 901 The securities market can assist the country to curb the problem by serving as alternative investment channel. Solving the problem will also be in line with the poverty reduction goal of the country.

10. The privatization process in the country has been less successful due to factors including the absence of securities market. The country has already privatized two hundred seventy three enterprises between 1994 and 2009 and made about sixty

898 Table 16(Chap. 3); CSA, 1998; CSA, 2001; and CSA, 2007.
899 Tables 13(Chap. 3) & 14(Chap. 3); and CSA, 2005a.
900 The insurers have invested only up to 8.4 percent of their total assets in equity securities. They have invested up to 5.6 percent in treasury bills and none in bonds. The banks have invested only up to 0.029 percent of their total assets in equity securities, up to 10.6 percent in government bonds and up to 19.7 percent in treasury bills. The microfinance institutions have largely kept their surpluses in bank accounts. The social security agency has invested up to 37.7 percent in government bonds, 30.1 percent in treasury bills, and 0.2 percent in inactive equity securities. (Tables 17(Chap. 2); 18(Chap. 2); 5(Chap. 4); and the annual reports of the banks, insurers and microfinance institutions). Specific data is not available for the provident funds other than those being managed by the Commercial Nominees Private Limited Company (Table 7(Chap. 4). It is, however, widely known fact among the employer-employee community that these funds are kept in (saving or time deposit) bank accounts in the names of the beneficiary employees under supervision of the sponsoring employers.
901 Note the Year Books of Ethiopia for 2004, 2005 and 2006 (cited as FDRE(MOI), 2003/2004; FDRE(MOI), 2004/2005; and FDRE(MOI), 2005/2006) at pp. 141-159, 162-181 & 83-86, respectively, for the financial activities of the cooperatives. The Equis and Edirs are informal institutions for which data is not available.
six enterprises ready for privatisation in the post 2009 period. It has made all the privatization through modalities of direct, as opposed to portfolio, sale to an individual buyer (person or institution) although some of the enterprises were converted into share companies as one of the pre-privatisation steps. The process is, however, assessed to be less successful due to several reasons and the absence of securities market through which equities can be sold has contributed to the problem. Creation of the market is necessary to facilitate future privatization.

### 3.4 The Constraints and Measures to Develop the Market

i. The International Experience

The earliest market in Amsterdam started life at a time when the joint stock company form of business organization was not widely known while the securities markets of the 17th, 18th and 19th centuries of the other countries were made operational with very few listings (mostly less than 500 shares or 300 companies). Many of the securities markets in Eastern Europe and the Post-Communist Asia have also become operational in the 1990s without large numbers of securities in the domestic markets but following the advent of changes in economic policies which led to the privatization of state enterprises, birth of new private companies, issuance of fixed income securities, rise of
institutional savers, and introduction of new macro-economic conditions and incentives by governments.\textsuperscript{906} They had to face policy and operational challenges that were instigated by:

- newness of the markets in the regions,
- short track history of the companies,
- little activity of the companies to raise money outside banks,
- little supply of capital,
- little interest of investors to invest in the new markets,
- little supply of securities to the securities markets,
- high volatility of stock prices,
- low liquidity and weak returns of securities,
- weak organization of the securities markets,
- absence of institutional savers,
- inadequacy of regulatory and operational infrastructure,
- weak information disclosure, and
- weak investor protection.\textsuperscript{907}

The markets in the rest of Asia and the Pacific (including the ones that had relatively long history of existence) had also to suffer from:

- small size and trading volume,
- weak market infrastructure,
- insufficient number, staffing and sophistication of operators,
- inadequate operational facilities including clearing and settlement systems,
- absence of access for small and medium sized companies,
- reluctance of companies to go public,
- complicated and fragmented regulatory structures,
- strong government control of interests,
- weak protection of investors,
- weak investor confidence,
- strong tax disincentives, and
- weak regional cooperation and internationalisation.\textsuperscript{908}

\textsuperscript{906} Zonis and Semler, 1992; Lindsay, 1992; Lampe, 1992; Li Ruogu, 1997, at p. 50; Petersen, 2004, at pp. 122-123 & 125-126; Moscow MICEX, 2007-10; and Shanghai SE, 2007-10. The rise of institutional investors and the issuance and trading of fixed income securities (including bonds and others) were also more important than the issuance and trading of equity shares in the creation and development of most of both the developed and the transition and emerging market exchanges although the issuance and trading of corporate bonds was limited compared to the government bonds in the transition and emerging market countries (Valdez, 1993, at pp. 173-175; Poser, 1991, at pp. 176-184; Basch and Kybal, 1970, at pp. 66-72, 73-76, 107-110, 118-121, 127-130, 135-137, 144-146 & 152-156; Lindsay, 1992, at pp. 3-7, 31-32, 72-73, 103-106, 135, 214 & 252-253; OECD, 1993, at pp. 9-246; Li Ruogu, 1997, at p. 50; Tuckman, 2002, at pp. 1-512; Petersen, 2004, at pp. 113-114; Yohane Khamfula, 2005, at pp. 515-516; UNIDO, 1991, at pp. 50-65; Blommestein and Hornman, 2007, at pp. 241-273; and Eric Gonnard, et al., 2008.


\textsuperscript{908} UNIDO, 1991, at pp. 49-70, 77-79 & 94-96; Ky Cao, 1996, at pp. 1-201; OECD, 2007c; and John K. Thompson, 2009. See Table 20(Chap. 3) for comparison of the sizes by the late 1980s which was the time for beginning of reforms.
The markets in Latin America had also to suffer from the following:

- weak macroeconomic conditions,
- lack of investor knowledge about, and confidence in, the uses of the securities (in particular the equities) markets,
- weak supply of securities (in particular corporate equities and bonds),
- low level of individual, corporate and government savings,
- lack of saving culture,
- absence of strong institutional savers,
- high reluctance of companies to open their capitals to the public,
- small size of companies listed on the exchanges,
- de-listing of companies from the exchanges due to mergers and acquisitions by foreign firms,
- small trading volumes and high trading costs,
- strong culture of informal trade in securities (i.e. in parallel markets outside the organized exchanges),
- inadequate market liquidity,
- weak risk absorption capacity,
- high instability of securities prices, and
- weak regulatory infrastructure.909

The markets of both Latin America and Asia have also experienced the crises that hit the financial markets of the regions at different times such as in 1994-95 (for Latin America), 1997-98 (for Asia), and 1998 (for Russia) while the markets in Northern America, Western Europe and Japan have experienced the economic difficulties and financial crises of 1987 (for the West in general) and 1992-1993 (for Western Europe).910

Most of the African securities markets had also to exist with listings of less than one hundred companies per market and small capitalization (compared to the rest of the world) until the early years of this millennium.911 Most of them are retarded because of:


911 The continent had only the stock exchanges of South Africa, Egypt, Kenya, Nigeria, Tunisia, Morocco, Ivory Cost, Botswana, Ghana, Mauritius, Morocco and Zimbabwe (out of the current twenty) in the years before 1990 and created the rest of the exchanges in the 1990s as a result of economic policy adjustments and rise of interest to mobilize domestic resources and attract foreign investment. Only the exchanges of Egypt, South Africa and Nigeria had relatively large listings and capitalizations during the period. Calamanti, 1983, at pp. 93-208; UNDP, 2003, at pp. 1 & 4; Yohane Khamfula, 2005, at p. 516; and Charles A. Yartey and Charles K. Adjasi, 2007. See Table 22(Chap. 3) (A and B); and websites of the exchanges for specific comparison.
- smallness and weak track record of the listed companies,
- limited number of market brokers,
- limited number and variety of tradable securities,
- limited presence of institutional savers (like insurance and pension funds),
- limited participation of individual savers and investors,
- relative absence of international investors,
- small trading volume,
- low liquidity, high volatility, cheap price, and weak earning,
- insufficient information gathering and dissemination,
- absence of automation,
- lack of skilled financial experts,
- weak accounting and disclosure standards,
- tax discrimination,
- absence of training institutions,
- inadequacy of regulations,
- inappropriateness of macroeconomic policies and government interventions,
- dominance of family owned companies,
- negligibility of international and regional co-operations,
- high variation of regulations, and
- high political instability.912

The countries that have faced the aforementioned problems and challenges have not, however, retreated from having a securities market in practice for reason of the problems and challenges but corrected the mistakes and deficiencies in their markets and developed them due to consideration of a securities market as inevitable segment of the financial system that can contribute to economic growth.913 The development of efficient and effectively regulated national securities markets that can enhance domestic resource mobilization is also considered as one of the ways for protecting countries from the market turbulence and contagion effects of international capital flow.914 Hence, many of the transition and emerging market countries of Eastern Europe, Asia, Latin America and a dozen of African countries have exerted, and were advised to exert, efforts to develop securities markets with the necessary macroeconomic and regulatory conditions.915

912 They have, however, been free from financial market collapse of the type triggered in the rest of the world due largely to their little integration with the international markets and the inflow of only marginal foreign funds to their markets. Charles A. Yartey and Charles K. Adjasi, 2007; Yohane Khamfula, 2005, at pp. 511-513 & 516-520; UNDP, 2003, at pp. 1, 4 & 16-21; Manuel, 2003, at pp. 2-6; Kansteiner, 2003, at pp. 7-16; Tom Lawless, 2003, at pp. 7-14; Chinya, 2003, at pp. 15-17; Tadewos Harege-Work, 2000, at pp. 47-48; and Calamanti, 1983, at pp. 93-208.


The economic and financial market crises of the 1990s have also taught the world that the adjustment of financial markets needs to lead to strong and diversified domestic financial markets and that the international liberalization of financial markets has to be done gradually and with careful sequencing after creation of adequate macroeconomic and regulatory structures necessary to control the turbulence effect of international capital flows. The securities markets of the regions have also continued to exist amidst the 2008 financial and economic crises with the lesson that countries need to cooperate and strengthen the regulation of these markets with a view to controlling corporate abuses, protecting investors, and preventing systemic failures along with the strengthening of the regulations in the other wings of the financial market.

ii. The Case of Ethiopia

The institutionalisation and development of securities market is also likely to face a number of constraints in Ethiopia. Firstly, most of the share companies in the country are too young to show long track record of profitability and to attract buyers for their securities. Secondly, a number of the companies are reluctant to go public and to freely float their securities either because they feel that they are doing well or because their shareholders have strong tendency to restrict their shareholding. Thirdly, there is strong link between the shareholders and the management of most of the share companies in the country and this has made the separation between their management and ownership difficult. Fourthly, most


917 Van Berkel, 2008; Ayadi and Behr, 2009; Luigi, 2009; IMF & FSB, 2009; AP, 2009a; AP, 2010a; and Bloomberg, 2010.

918 More than sixty eight point six (68.6) percent of the companies have a track record of less than ten years (Table 8(Chap. 3); and the records of the Ministry of Trade and Industry of the country for 2008 and 2009).

919 The culture of floating shares between circles is high in the country due to both the absence of the securities market and the strong control, business secrecy, dividend payout, tax avoidance, kinship and intimacy interests of the existing shareholders. Most shareholders also seem to consider their equity holdings as capital assets for life instead of assets to trade (and profit) with due to either the lack of market for, and hence the non-liquidity of, their securities or the aforementioned interests. Getachew Belay, 2000, at p. 77; Tadewos Harege-Work, 2000, at p. 45; and Gebrehiwot Ageba, 2000, at p. 59 for similar finding.

920 The commercial code of the country requires a "shareholder meeting - external auditor - board of directors - management office" structure for the companies to separate the day to day management of the companies from the ownership and policy making functions of their shareholders and the companies usually respect this structure (IGE, 1960, at arts. 347-428). The management of most of them that are outside the financial sector is, however, either controlled or highly influenced by few
members of the business community in the country are financially inexperienced and affected by conservative attitudes towards money. Ninetyninthly, many of the persons who attempt to manage companies in the country are little experienced in corporate portfolio management due to lack of exposure and the accounting and auditing professions are repeatedly indicated to be at rudimentary stage. Sixthly, the existing investment regime and practice in the country gives more attention to direct investment than portfolio investment (through company securities) although it recognizes public companies as one of the forms of investment. Seventhly, the practice of most of the public companies, including the banking, insurance and microfinance companies that can take the lead in the issuance and trading of securities, is limited to the issuance of ordinary shares. Eighthly, the level of income and saving capacity of most individuals and households is reportedly low to establish dependable demand for securities. Ninthly, the macro and political situation in the country frequently happens to be less conducive to attract investment and enable sufficient supply and demand for securities.

921 They lack sufficient knowledge about the uses of securities and often prefer to hoard or keep their money in assets other than securities. Getachew Belay, 2000, at p. 78; and Felleke Mammo, 2000, at p. 106.

922 Felleke Mammo, 2000, at p. 107; and Mosaad El-Sharkawy, 1994, at pp. 3-25, 29-155 & 234-235. Most members of the business community including the companies also lack the culture of supplying information to outsiders.

923 The high attention given to direct investment is reflected in the very definition of investor (and the investment incentive structure) in the investment laws and the privatization process of the country (FDRE, 1996c, at arts. 2(4), 2(5), 2(6) & 4-14; FDRE, 1996f; FDRE, 1996h; FDRE, 1998a; FDRE, 1998b; FDRE, 1998c; FDRE, 1999; FDRE, 2002c, at arts. 2(4), 2(5), 2(6), 5-9, 10-11, 12(2) & 13; FDRE, 2003a; and FDRE, 2003ej for the investment regime; and Table 5(Chap. 3) and the records of the Privatization and Public Enterprises Supervising Agency of the country for 2008 and 2009 for the modalities of privatization experienced so far). More than 94.4% of the privatization was conducted through direct sale while the remaining was done through modalities of public-private partnership. Sale of equity shares has accounted only about 2.4% of the total privatization.

924 The NBE also prohibits the banking, insurance and microfinance companies from issuing shares other than ordinary shares and both these and the other companies hardly issue debt securities. TGE, 1994a, at art. 13(2); FDRE, 2008b, at art. 10(1); TGE, 1994b, at art. 5(1); FDRE, 1996g, at art. 24; and FDRE, 2009, at art. 28(1). The NBE has also severely limited the choice of the banks, insurers and microfinance institutions to invest in non-financial company securities (Directives no. SBB/12/1996; SIB/25/2004; and MFI/06/1996 - note also the discussion under the ‘functional and ownership separation requirements’ subtitle of the banking, insurance and microfinance chapter above). The National Bank Re-establishment law has also authorized the NBE to determine the asset profiles of the banks, insurers, microfinance institutions and other financial institutions (FDRE, 2008a, at art. 16(1)(a)).

925 More than 96.2 percent of the households in the country (on average) were reported to have earned income or spent less than 12,599 Birr (equivalent to 1,770.89 US$) per annum which is less than 1,050.00 Birr (147.57 US$) per month during the last one and a half decades while only the remaining few have earned or spent more than the indicated amount. They are, accordingly, reported to have saved only up to 4.3 percent of their annual earnings on average (Tables 15(Chap. 3) up to 19(Chap. 3); CSA, 1998; CSA, 2001; and CSA, 2007)).

926 Note the frequent conflict between the political party in government (EPRDF) and the opposition political parties and the public rides and riots against the political party in government that happened in the past in and outside Addis Ababa.
this is not totally impossible to come by. 927 And finally, the current tax regime of the country does not encourage the creation of securities market as it subjects the capital gains from sale of shares to an exorbitant tax rate of thirty percent while exempting or allowing the deductibility of many of the existing financial services and transactions from taxation. 928 It does not also rule on the taxability of the interest incomes from debt securities (bonds and debentures) of the private companies while it expressly exempts the incomes from government bonds and treasury bills from taxation.929

These constraints do not, however, make the institutionalisation and development of a securities market in the country absolutely impossible since a number of them are either due to absence of the market itself or correctable through policy measures. The international experience, as it is discussed above, also shows that a securities market can succeed in the presence of challenges and risks as long as appropriate reform measures are implemented. The assertion of linkage between economic growth and financial market development, the global trend towards adoption of the securities market based finance system, the potential uses and limitations of a securities market in Ethiopia (as discussed above and in the preceding section), and the international experience on the constraints and measures relating to creation of securities market also indicate, not the need for retreat from having the market, but the magnitude of the challenges and measures the country has to face.930 They indicate that the country should have strong policy determination (i.e. government will and commitment) to create the market and take a number of measures, including the following:

- creation of stable and conducive macro environment;
- introduction of appropriate market infrastructure and regulatory regime;
- building of regulatory, managerial, accounting and auditing capacities;
- promotion of professionalism, commitment and integrity in business and finance;
- creation of public awareness about the uses of securities and operations of a securities market;
- removal of habits, limits and burdens that inhibit or discourage the issuance and circulation of securities;

927 Note the discussions under the ‘funding’ and ‘skill base’ subtitles of the means of enforcement chapter below. Note also NBE BSD, 2005, at pp. 1, 6, 40, 54, 59 & 64; and NBE ISD, 2005, at pp. 8, 88 & 106-107.

928 FDRE, 2002c, at arts. 37(1)(b), 9, 21(1)(c), 21(3), 25, 26 & 36; FDRE, 2002f, at arts. 8(3), 10 & 15; FDRE, 2002d, at art. 8(2)(b-c); FDRE, 2002i, at arts. 20(2)-(5), 20(15)-(17), 20(19)-(21) & 21; FDRE, 2002k, at arts. 7(1)(b)-(c); FDRE, 1996g, at art. 19; FDRE, 2009, at art. 23; and Wolday Amha, 2006, at p. 66.

929 IGE, 1961, at art. 6; IGE, 1969, at art. 7; IGE, 1969b; IGE, 1969c; IGE, 1957a; FDRE, 2002c, at art. 30(1)(c); FDRE, 2002f; FDRE, 2002d; and FDRE, 2002k.

930 Almost all those who attempted to study the opportunities and challenges to the institutionalization of the market in the country have seen the potential for its success provided that a number of measures are taken, including the development of appropriate policy, infrastructure and regulatory environment. Eyob, 2003; JLSRI, 2001; Mekelle University (FBE), 2000; Dawit, 2000; AACC, 1999; NBE, 1998; Araya Yohannes, 1998; Eyob Tesfaye and Felleke Mamo, 1998; Yeneneh Desta, 1998; Porter, 1996; Feyera Milkesa, 1995; Abu Girma, 1994; Araya Debesay and Tadewos Haregework, 1994; and others.
- introduction of incentives and requirements that can encourage the issuance and trading of varieties of securities; and
- re-enactment of the tax regime to encourage these.

The experience of the country in the 1960s also indicates that securities markets can grow in the presence of constraints as long as there is policy determination to have them. The securities market of the time was institutionalised in the presence of only few public companies and absence of adequate demand for the market by investors.\textsuperscript{931} The formation of public companies and the public offering of securities was known in the country only for about four years when the market was institutionalised and most of the companies that existed in the country during the time were financed by the Ministry of Finance, the financial institutions and agencies that were largely government owned, few foreign direct investors, and small groups of insiders.\textsuperscript{932} The market has, accordingly, faced a number of constraints, including the following:

- lack of enough supply of securities and capital;
- lack of interest to attract equity or loan capital from broad range of sources;
- little appreciation of securities holding compared to the traditional ways of investment;
- tradition of secrecy in business;
- desire to maintain impersonal link between ownership, management and entrepreneurship; and
- preference for the closely held company form of investment to limit liability and provide for family and friendship investment or inheritance.\textsuperscript{933}

It has, however, grown as popular knowledge and interest in it and government support grew.\textsuperscript{934}

The country need not also be in fear of the perceived problems of regulatory incapacity, international pressure for rapid liberalization, and financial market crisis due to huge foreign capital inflow, overheating and sudden repatriation. These are unlikely to be problems for several reasons:

1. The country has already privatised its banking, insurance and microfinance markets at times when it did not have enough regulatory capacity (and allowed the latter to grow along with the markets) and this has to give lesson that the securities market and its regulation can also grow in parallel.\textsuperscript{935}

\textsuperscript{931} Von Pischke, 1968, at p. 3; and Table 10(Chap. 3) Continued (1 of 1) for the number of companies that were issuing securities in the market.
\textsuperscript{932} Von Pischke, 1968, at pp. 3 & 5-6.
\textsuperscript{933} Id., at p. 4.
\textsuperscript{934} Id., at pp. 3 & 5-8. Note also the Government Bonds Proclamation No 172/1961 (IGE, 1961) that was enacted to enhance the development of the capital/securities market in the country.
\textsuperscript{935} The banking and insurance supervision departments of the National Bank of Ethiopia were not present when the licensing and supervision of banking and insurance laws were enacted and the task of licensing was launched in 1994 and 1995, respectively. The microfinance supervision department of same was also created after formal creation of the microfinance market through enactment of the microfinance supervision law of 1996.
experience has also mostly been that the securities markets were born in the absence of complete regulation and regulatory capacity (and even based on self-regulation) and that regulatory capacities have grown along with the growth of the markets.936

2. The international community has somehow retreated from pressurizing the emerging and developing market countries to speed up the liberalization of their financial markets and recognized the need for gradual and orderly liberalization after the rapid liberalizations of financial markets in Latin America and Asia (in the absence of adequate macroeconomic condition and regulatory structures) have resulted in the financial crises of 1994-95 and 1997-1998, respectively, and Ethiopia can take this as opportunity.937

3. The data on international flow of finance to developing countries in the past two decades show that private portfolio equity investments to the securities markets of these countries are marginal compared to the official, bank loan and private direct investment flows.938 Studies have also shown that the making of direct international investment is influenced more by selection of the right country in which to invest than by choice of the particular industry or company in which to invest.939

4. The experience with the securities markets in Africa during the last few decades shows that only few international investors are interested in portfolio equity investment in the continent despite the opening up of the securities markets for international investment with elimination of exchange controls, removal of restrictions on foreign participation and institutionalisation of custodian services.940

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936 Securities regulation has usually grown as reaction to market developments although proactive regulations were also useful historically when governments took the initiative to stimulate growth of their markets (Ky Cao, 1996, at pp. 1-201; and Neal, 1993).

937 Note the discussions in Urrutia, 1988; Sikorski, 1996; Dickie, 1997, at pp. 35-45; Djividjandono, 1997, at pp. 57-69; Stiglitz, 2000; Haggard, 2000, at pp. 130-144; Tsurumi, 2001; Stallings and Studart, 2002, at pp. 1-20; Gray, 2003; Feldstein, 2003a, at pp. 10-29; Wilson, 2004, at pp. 156-180; and Irwin, et al., 2004, at pp. 181-206. Proposals of reforming the roles of the international institutions including the IMF and the World Bank were even made and discussed following the occurrence of the crises (Sharma, 2000, at pp. 52-70; Alberto, et al., 2000, at pp. 1051-1055; Yılmaz Akyüz, 2002; Vines and Gilbert, 2004, at pp. 156-180 & 181-206; Feldstein, 2003, at pp. 1-512; and Paloni and Zandari, 2006, at pp. 115-141). It has also been recommended that the developing countries need to follow a sequence of: 1st, develop fiscal control (i.e. limit government spending, have broad based tax system, reduce tax rates, control inflation, and stabilize prices); 2nd, enhance banking regulation and develop domestic capital markets; 3rd, liberalize the banking and capital markets without opening up the international capital account; and 4th, open up the international capital account and allow free foreign exchange convertibility (Dickie, 1997, at pp. 38-45). The 2008 financial and economic crisis has also shown that the international openness of financial accounts, creation of international financial linkages and permission of foreign capital inflow need to be supported by adequate regulatory regime so that they will not increase exposure to crisis (EC, 2009).


940 The continent has generally taken the least investment inflow despite the measures while the shares of the Latin American and Asian regions have grown from time to time in the decades. Gentry,
5. The investment inflow into Ethiopia in the last two decades has already shown that the interest of foreign investors to make investment in the country is weaker than the interest of domestic investors despite removal of the restrictions on repatriation of funds and it is unlikely that this behaviour will change suddenly as the country institutionalizes the securities market.941

6. The international experience has already shown that the international investors that show interest to diversify their international portfolios through investment in the transition and emerging market countries often tend:

- to use interests in derivative securities (usually in forms of American, European and Global Depository Receipts (Certificates) and emerging market Collateralized Loan Obligations (CLOs)) that are issued by international depositories, custodians or intermediaries to be tradable in the US and European markets by representing interests in the debt and equity securities of the transition and emerging markets, and
- to rely on services of the depositories, custodians or intermediaries for the safekeeping and settlement of their interests, instead of directly purchasing and engaging in the safekeeping or management of the underlying securities in the emerging markets.942

7. The international community has, after the repeated financial crises across the world, become cognizant of the need for controlling the potential problems of huge capital inflow, overheating, sudden repatriation and crisis through prudential regulatory requirements and capital controls until full capital account liberalization is viable and Ethiopia can do same as it creates the securities market.943

8. The 2008 financial and economic crisis has slowed down the flow of international capital to the transition and emerging market countries and it is...
unlikely that market crisis will arise in Ethiopia due to huge capital inflow (and sudden repatriation) in the near future.\footnote{Reuters, 2009; WTO, 2009; World Bank, 2008a; World Bank, 2009; World Bank, 2009b; World Bank, 2010b; World Bank, 2010c; and IMF, 2010g.}

Hence, the country needs to create the market primarily to facilitate domestic saving and investment and secondarily to encourage foreign portfolio investment.\footnote{It also needs to consider creation of the market not as guarantee for economic development by itself but as means to end, i.e. as means to complement the existing bank based finance system, to facilitate the financing of companies with varieties of debt and equity capitals, to achieve the various functions indicated in the preceding section and, thereby, to enable economic efficiency and growth. The countries of Latin America, Asia and Africa with the oldest stock exchanges in the world would not be different from the US, Japan or Europe had it been true that creation of the market would guarantee economic development by itself. It is only means to facilitate finance and, hence economic growth according to surrounding factors.} It should not also make the creation of corporate bond market condition precedent to the creation of fully fledged securities market. This is not valid given that there are no corporate bonds issued and circulated in the country while there are lots of equity shares and outstanding government bonds that can be circulated in a fully fledged securities market.\footnote{Note the discussion under the ‘need and potential functions’ subtitle above. Note also that the transition and emerging market countries have developed equity and government bond markets initially and moved to corporate bond markets only gradually (Petersen, 2004, at pp. 113-114; Dowers, Gomez-Acebo and Masci, 2003, at pp. 4-5; Aggarwal, 2003, at p. 40; Dowers, Lee and Vives, 2003, at p. 488; and Carmichael and Pomerleano, 2002).}

3.5 Modelling the Market Structure and Its Regulation

3.5.1 Modelling the Structure and Regulation of Initial Issuance of Securities

3.5.1.1 Modelling the Company Law Regime

i. The International Experience

Almost all countries distinguish between the partnership and private and public company forms of business organization through their business organization (commercial, company or civil) laws despite variation in the labelling of the organizations.\footnote{Dorresteijn, et al., 1994; Maitland-Walker, 1997; Lucas and Maltsev, 1996; ONG and Baxter, 1999; Zonis and Semler, 1992; Boris Martor, et al., 2002; and Conard and Vagts, 2006, chapters 1-3 & 10.} They consider the partnership forms of business organization as associations of persons with unlimited (or only partly limited) liability and the company forms as associations of capital with limited liability.\footnote{Dorresteijn, et al., 1994; Maitland-Walker, 1997; ONG and Baxter, 1999, at pp. 90-103 & 122-126; Lucas and Maltsev, 1996, at pp. 372-391; Zonis and Semler, 1992, at pp. 18-26, 88-95, 161-168, 232-240, 303-310 & 371-380; Boris Martor, et al., 2002, at pp. 62-151; Kraakman, et al., 2004; and Conard and Vagts, 2006, chapters 1-5 & 10.} They, then, allow the public issuance of securities only by the publicly incorporated companies.\footnote{Ibid.}

The constitution of capital and issuance of securities are, however, concerns for both company law and securities market regulation, which often fall in different
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spheres of law, namely the private and the public spheres, respectively. Countries often tend to distinguish between the two laws by making:

- the incorporation (i.e. formation and registration), capital constitution (i.e. fixing, securitization and amendment of capital), and governance, dissolution and conversion of the companies in the sphere of company law, and
- the issuance, trading, custodian, and clearing and settlement of securities of the companies, and the organization and management of the securities markets in the sphere of securities regulation.

The borderline between the two laws is not, however, often clear cut as the two laws usually complement to one another.

Once the aforementioned distinctions are made, countries of the civil law legal system require full subscription of a minimum equity capital, representation of that capital through equity shares, declaration of the capital and the shares in a memorandum or article of association and payment of certain portion of the shares, hence of the capital, during formation of a public company through their company laws. They do this partly to protect creditors and partly to preserve the public company form for certain types of investment. Countries of the Anglo-American legal system, on the contrary, do not require the subscription of a statutory minimum capital or issuance of shares but a statement of authorized capital for incorporation of a public company. The inconvenience with absence of fixed capital to third parties is alleviated in the countries by piercing the corporate veil and imposing severe personal liabilities on those who conduct economic activities without sufficient financial resource.

Both groups of countries, however, also ensure the existence and integrity of capital to the company by regulating the issuance and payment of shares. Almost all of them require that the equity shares have par value representing the equity capital. They recognize the issuance, with or without warrant, of varieties of shares including registered, bearer, ordinary and preferred shares and shares with reduced rights (like employee and amortized shares) and make the securities freely transferable in principle. The civil law countries prohibit the issuance of equity shares of the company for prices lower than their par or stated value and require


951 UNIDO, 1991, at pp. 94-96; Dorresteijn, et al., 1994; Maitland-Walker, 1997; Ferrarini, 1998, at pp. 73-111; Boris Martor, et al., 2002, at pp. 62-151; Conard and Vagts, 2006, chapters 3-7 & 10; and the securities market laws enforced by the securities regulators of the various countries which are reviewed in Table 25(Chap. 3).

952 Ibid.


954 Ommeslaghe, 1990, at pp. 3-5; and Ommeslaghe, 2006, at pp. 3-5.

955 Ommeslaghe, 1990, at pp. 3-5 & 8-9; and Ommeslaghe, 2006, at pp. 3-9.

956 Ibid.


the payment of subscribed shares in cash or property that forms real counterpart to the capital while the Anglo-American countries prohibit the issuance of watered stock (i.e. stock for a value less than its nominal value) and stock without consideration.959 They control the overvaluation of contributions in kind through verification by independent experts; requirement of specific consent of the founders (and the shareholders during increase of capital); detailed description and public disclosure of the contributions in kind; sanction of the promoters for forgery; restriction of the transferability of shares paid in kind; and post-incorporation audit or review of the payments in kind.960 They also either fix the timing of payment of shares or leave it to determination by the company’s constitutive instrument or management after requiring the payment of minimum initial amount.961

Both groups of countries extend the application of the rules on initial issuance and subscription of shares to the issuance of new shares and the increase of the par or stated value of existing shares that follow increase of capital.962 They also recognize pre-emptive rights to existing shareholders in respect of cash shares and encourage the issuance of shares to outsiders at premiums to avoid dilution of the interests of existing shareholders.963 The difference between the Civil Law and the Anglo-American countries lies with their notions of capital. The civil law countries base on the idea of fixed capital by denying the freedom of increasing capital from the boards of the companies and require all increase of capital to meet complex formalities, including decision in extraordinary meeting of shareholders, vote by affected classes of shareholders, amendment of constitutive instrument of the company, and registration of the capital increase by the authorities.964 The Anglo-American countries, on the contrary, base on the idea of authorized or nominal capital and leave the freedom of increasing capital to the boards of directors of the company.965 The EEC Second Company Law Directive follows the Civil Law rules on capital increase and recognizes only the limited flexibility recognized in the civil law concept of authorized capital.966

The countries also protect the capital from reduction and indirect attack through repurchase by the company of its own shares, distribution of capital of the company in form of dividend, and reciprocal share subscriptions between companies. The reduction of capital in the Civil Law countries requires appraisal of the company’s solvency by auditors, resolution for the reduction by shareholders’ meetings, vote by the classes of shareholders whose interest is in danger, adherence to a principle of proportional equality between shareholders, respect to objection of creditors, amendment of the constitutive instruments of

966 Ommeslaghe, 1990, at p. 25; and Ommeslaghe, 2006, at p. 25.
the company, respect to statutory minimum, and registration of the reduction (and amendments of instruments) in the appropriate register.967 The English Companies Act of 1985 requires special resolution of the shareholders of the company and the courts' approval on reduction of capital except when the reduction is made pursuant to a redemption clause of shares or by way of replacing one category of shares by another without reorganization of the company.968 Many of the state laws in USA require decision by the board of directors of the company, approval by the shareholders' meeting, vote by the classes of shareholders, respect to objections and, in some states, approval of the shareholders' decision by a court.969 Both the Civil Law and Anglo-American countries and the EEC Second Company Law Directive also protect the company's capital and its shareholders and creditors through rules designed to restrict the repurchase of the company's shares, amortization (reimbursement) of the company's capital to the shareholders, and reduction of the par or stated value of the company's shares to cancel indebtedness.970 They also disfavour reciprocal holdings and share subscriptions between companies to avoid i) evasion of capital requirements (through double counting of capital), ii) indirect redistribution of capital contributions, and iii) reduction of the controlling power of shareholders.971 They control such holdings and subscriptions when a relationship of dominance is created between the companies or a reciprocal subscription occurs above statutory limits.972

A number of the Anglo-American and Continental countries also recognize scrip issues and the splitting of shares as long as the regimes for protection of the company's capital and its shareholders and creditors are not affected.973

Both groups of countries also regulate the constitution of loan capital and issuance of debt securities.974 They usually allow issuance of the securities as fixed income negotiable securities representing aliquot parts of a total long-term loan.975 They consider them as negotiable instruments normally with par value and right to repayment of the principal sum they represent at fixed date (or on demand) and to periodic fixed interest payments irrespective of the existence of profit to the

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967 Ommeslaghe, 1990, at pp. 52-54; and Ommeslaghe, 2006, at pp. 52-54.
968 Ommeslaghe, 1990, at p. 58; and Ommeslaghe, 2006, at p. 58.
969 Ommeslaghe, 1990, at p. 60; and Ommeslaghe, 2006, at p. 60.
971 Ommeslaghe, 1990, at pp. 47-50; and Ommeslaghe, 2006, at pp. 47-50.
972 Ommeslaghe, 1990, at pp. 47-51; and Ommeslaghe, 2006, at pp. 47-51.
973 The Scrip issues occur when companies want to take money from their reserves and offer free shares to shareholders in proportion to the shares they own (say one free share for every share owned) without changing the par value of the shares. The splitting of shares occurs when companies want to split shares (say to replace one share by two, each having half par value) as profits and dividends over the years increase the market price of the shares to a very high level that makes their trading difficult and the companies want either to make the price affordable to small investors or to create the investor psychology necessary to increase the tradability (hence, liquidity) of their shares [Investors are said to be happier with large number of shares of small par value (say 100 shares at $50) than few shares with high par value (say 10 shares with $500)]. Valdez, 1993, at pp. 196-197.
974 The debt securities are known in USA as bonds, in France as obligations, and in UK (and most Continental countries) as debentures.
975 Ryn, 1990, at pp. 111-112; and Ryn, 2006, at pp. 111-112.
company. 976 They do not normally allow them to bear participation rights in the profits, meetings and management of the companies but authorize the securities holders to act in group to protect their common rights. 977 They recognize the issuance of bearer and registered securities which may carry varieties of securities called contingent interest securities, premium and lottery securities, convertibles, exchangeables, warrants, and securities with subscription rights. 978 They use the latter securities as sweeteners of the issuance (and marketability) of ordinary (debt and equity) securities and means of deferred and low cost financing. 979 Both groups of countries often entrust the power to borrow and issue debt securities to the organ of the company that can bind it contractually (usually the board or the shareholders meeting). 980 They also subject issuance of the securities to some restrictions and government approval requirements that are designed for shareholder protection and/or achievement of economic and monetary policy. 981

Many of the developed markets have also developed tradable instruments known as credit derivatives, options, futures, forward rate agreements, swaps, caps, floors, collars, depository receipts or certificates (DRs), and collateralized loan and bond obligations (known as CLOs, CDOs and CBOs). 982 They have developed the depository receipts (DRs) and collateralized bond obligations (CBOs) to confer investors with indirect rights to participate in the equity and loan capitals of companies. 983 They have developed the credit derivatives, options, futures, forward rate agreements, swaps, caps, floors, collars, and collateralized loan and debt obligations (CLOs and CDOs) to manage the financial and credit risks that follow volatility in currency, interest, equity and bond rates and indices. 984

The countries, however, leave the choice of capital structure and securities issuance to the managerial finance function of the companies once they set the legal regimes for formation of capital and issuance of securities and let the

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976 Ryn, 1990, at pp. 111-117; and Ryn, 2006, at pp. 111-117.
977 Only the laws in some US states and the articles of the companies in UK sometimes allow participation in the companies' meetings. Ibid.
978 Ryn, 1990, at pp. 117-119 & 120; and Ryn, 2006, at pp. 117-119 & 120.
980 Ryn, 1990, at p. 113; and Ryn, 2006, at p. 113.
981 Ryn, 1990, at pp. 113-114; and Ryn, 2006, at pp. 113-114.
983 The instruments allow the subscription of a company's equity and debt securities by a holding company so that the holding company i) can issue and circulate bearer certificates (that represent the original equity and debt securities) to the public and ii) exercise the rights of a shareholder on behalf of the certificate holders. Their use has originated in the United States and spread to France, Germany, Switzerland, Belgium, and the Netherlands. It has then expanded to the rest of the world through the international securities markets. Ryn, 1990, at pp. 122-124; Benjamin, 2000, at pp. xvii, 19-30, 189-202, 223-247 & 251-299; and Ryn, 2006, at pp. 122-124.
984 Valdez, 1993, at pp. 206-254; Scott, 2008, at pp. 421-443; Empel, (ed.), 2008, at pp. 17-20; and Vries Robbé, 2008, at pp. 97-329. The practice of issuing government bonds, securitizing assets, and using derivatives to sweeten debt and equity instruments has also grown in the debt and equity markets, and increased the need for strengthening both the markets and the regulations of the instruments, in both the developed and the transition and emerging market countries in the aftermath of the 2008 financial and economic crisis (OECD, 2008e; Vries Robbé, 2008, at pp. 97-329 & 405-429; Hans Blommestein, 2009; Hans Blommestein and Arzu Gok, 2009; and Vries Robbé, 2009).
companies go operational with the required initial capitals. Four sets of managerial finance functions are, accordingly, developed in the running of a business company, namely i) a financing or capital-mix decision, ii) a liquidity or short-term asset mix decision, iii) an investment or long-term asset mix decision, and iv) a dividend or profit allocation decision. The making of rational decision on these functions, and hence the choice of the securities to be issued, has also often been subject to two approaches, namely a profit maximization approach and a wealth maximization approach. The right decision also depends on the surrounding factors of the company and the company has to carefully plan and target its capital structure as of the time of its formation.

ii. The Case of Ethiopia

Ethiopia has also distinguished between the company law and the law that should regulate the securities market. The makers of its Commercial Code have excluded the securities market law and included only the company law in the code by observing that the market was not well developed during enactment of the code in 1960. No securities market law was also enacted when the market grew in the 1960s and 70s. The country does not have securities market law currently. It has only the company law in the commercial code.

The company law sets rules that are like the rules in the civil law countries. It requires full subscription of a minimum equity capital, representation of that capital through equity shares, declaration of the capital and the shares in memorandum of association and payment of certain portion of the shares, hence of the capital, during formation of a public company for the same purposes as those recognized in the civil law countries. It recognizes the issuance of varieties of shares including registered, bearer, ordinary, preferred and amortized (dividend) shares with or without temporary warrants by all companies other than the banking, insurance and microfinance companies. It recognizes freedom of choice to the companies and the subscribers on the types of shares to issue and subscribe, respectively. It prohibits the issuance of shares for prices below par.

986 Pandey, 1994, at pp. 5-9; and Horne, 2002, at pp. 6-8.
988 Ibid.
990 Von Pischke, 1968.
991 IGE, 1960, at arts. 304, 306, 312, 313 & 316-321. It requires the subscription of at least fifty thousand Birr by at least five persons and payment of at least one-fourth of this except when a special law requires higher capital, subscription and payment as in the case of the banking, insurance and microfinance regulatory laws (Id., at arts. 304, 306 & 312; and note the discussions on the capitals of the banking, insurance and microfinance companies in the banking, insurance and microfinance chapter above).
992 IGE, 1960, at arts. 325, 328, 335-337, 343 & 483. The banking, insurance and microfinance supervision laws prohibit the banks, insurers and microfinance companies from issuing shares other than registered ordinary shares (TGE, 1994a, at art. 13(2); FDRE, 2008b, at art. 10(1); TGE, 1994b, at art. 5; FDRE, 1996g, at art. 24; and FDRE, 2009, at art. 28(1)).
993 IGE, 1960, at arts. 335, 336 & 343.
value and the issuance of no par value shares and shares not representing equity capital (such as founders' shares). It allows payment of the subscribed shares in cash and in kind with rules that are meant to ensure solidity of the capital when payment is made in kind. It requires the initial payment of at least one-fourth of the values of the shares subscribed in cash and leaves discretion for scheduling of the balance by the company's memorandum of association. It requires expert valuation and full payment of the contributions in kind and the verification of these through subscribers' meetings before registration of the company in the commercial register. It does not specify the types of properties to be contributed, but only indicates the possibility of i) paying in cash and kind, and ii) contributing businesses to a business organization. One can only argue based on the background source of the Commercial Code rules on contributions in kind (and the rule of the Code for full payment of contributions in kind before the date of registration of a company) that the contribution should include all kinds of tangible and intangible properties of real economic value to the company to the exclusion of future services and properties.

The company law also recognizes payment of the increased value of existing shares and the full or partial value of new shares subscribed after increase of capital through four modes, i.e. i) capitalization of reserves and disposable funds of the company, ii) conversion of debentures into shares, iii) set-off of claims against the company, and iv) cash payment. It prohibits the acquisition by a company of its own shares as payment in kind for shares. It also recognizes the pre-emptive rights of existing shareholders in respect of cash shares and encourages the issuance of shares at premium for reason of protection of existing shareholders.

It also requires the officials in charge of the commercial and other registers to examine the fulfilment of the aforementioned requirements prior to registration of the formation or capital increase of the companies. It also makes the founders

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994 IGE, 1960, at arts. 304(1), 306, 310(3) & 326. It allows the founders of a company to preserve some benefit from the profits of the company for themselves without issuing founders shares. IGE, 1960, at art. 310.

995 IGE, 1960, at arts. 312(1), 338, 339 & 342. It requires the companies to schedule the payment of the balance in not more than five years (IGE, 1960, at arts. 315, 321(3), 338 & 339).

996 IGE, 1960, at arts. 206-209, 338 & 339. The NBE regulates the contributions in kind to the banking, insurance and microfinance companies (note the discussions under the ‘market entry and exit’ and ‘capital adequacy’ requirements subtitles of the banking, insurance and microfinance chapter above).

997 The drafter of the Code has referred to the Italian Civil Code when designing the rules and the Italian Code of the time had taken this position. Winship, 1974, at pp. 62 & 74.

998 IGE, 1960, at arts. 464, 474 & 478-482. It recognizes the increase of capital when there is decision by the existing shareholders meetings and the execution of the capital increase by the borad of directors when there is delegation of power by the shareholders meetings along the idea of authorized capital in the Civil Law countries (Id., at arts. 462, 464-466 & 425-426).

1000 Id., at art. 332.

1001 Id., at arts. 470-472, 326 & 455.

1002 IGE, 1960, at art. 222(2); FDRE, 1995a, at arts. 14(7), 15(4), 17(3) & 18(4); FDRE, 1997a, at arts. 4-11, 20, 24 & 43; FDRE, 2001a, at arts. 7, 9, 20 & 22; FDRE, 2002c, at arts. 23 & 24; FDRE, 2003f, at arts. 2(1-10); and FDRE, 2010a, at arts. 6-8, 12, 16, 30 & 44.
and directors of the companies jointly and severally liable to the company, the shareholders, and third parties for irregularities in connection with the formation and capital increase of the companies.\textsuperscript{1003}

It provides for free transferability of the company shares, bars the transfer of shares representing contributions in kind for two years from registration of the company, and requires the treatment of all shares as registered shares until they are fully paid.\textsuperscript{1004} It also authorizes the companies to limit the free transferability of their shares through their instruments of association and extraordinary shareholders meetings.\textsuperscript{1005}

It protects the company's capital from reduction through requirements similar to the ones imposed in the Civil Law countries. It requires:

- appraisal of the proposed reduction by auditors;
- resolution by the extraordinary general meeting of the shareholders (and the regulator in the case of the banking, insurance and microfinance companies);
- vote by the classes of shareholders whose interests are in danger;
- adherence to the principle of proportional equality of all the shareholders;
- respect to the objections of creditors when lodged with the courts;
- amendment of the memorandum of association of the concerned companies; and
- registration of the reduction in the appropriate commercial register.\textsuperscript{1006}

It allows the execution of involuntary reduction of capital through reduction of the par value of existing shares or the exchange of existing shares for a lesser number of new shares and the voluntary reduction of same as the extraordinary meeting of shareholders of the company may decide subject to the principles of proportional equality of the shareholders and protection of creditors.\textsuperscript{1007} It prohibits the reduction of capital below a statutory minimum and the making of capital reduction through amortization of capital (i.e. redemption of shares).\textsuperscript{1008}

It protects the company's capital from indirect attack through repurchase by the company of its own shares, distribution of capital of the company in form of dividend, and reciprocal share subscriptions between companies. It prohibits acquisition by a company of its own shares unless the shares are fully paid shares and the company pays for that purchase from its net profits (or the purchase is exercised as means for capital reduction) under authorization of the general

\textsuperscript{1003} IGE, 1960, at arts. 308-309, 462-482, 479 & 364.
\textsuperscript{1004} Id., at arts. 338(1) & 339(2).
\textsuperscript{1005} Id., at art. 333.
\textsuperscript{1006} Id., at arts. 484-485, 462, 426, 488-489 & 493; and FDRE, 2003f, at art 2(2)"8(1)". The banking, insurance and microfinance supervision laws also prohibit the redemption of shares and voluntary reduction of capital by the banks, insurers and microfinance institutions without prior written approval of the NBE (TGE, 1994a, at art. 27(2)(c); FDRE, 2008b, at art. 3(3)(f); TGE, 1994b, at art. 44; FDRE, 1996g, at art. 24; and FDRE, 2009, at arts. 17(3) & 28(1)).
\textsuperscript{1007} IGE, 1960, at arts. 486-490 & 491-494. Involuntary reduction of capital occurs when the company incurs loss. The law considers all cases of capital reduction not motivated by loss as voluntary.
\textsuperscript{1008} Ibid.
meeting of its shareholders.\textsuperscript{1009} It also prohibits the granting by a company of advances on security of its own shares and loans meant to enable others to acquire its shares.\textsuperscript{1010} It allows the redemption of shares through issuance of dividend shares without reduction of capital provided that the dividend shares are paid from the reserve funds or profits of the company.\textsuperscript{1011} It sets statutory limit on the reciprocal share holdings and subscriptions between companies (irrespective of the presence of dominant relationship between them) by prohibiting all companies from holding shares in another company that holds more than ten percent of their capital.\textsuperscript{1012}

It also recognizes the constitution of loan capital and issuance of debentures by the share companies.\textsuperscript{1013} It recognizes the debentures as negotiable instruments with par value that:

- should not be issued below their par values unless special law allows;
- entitle to repayment of the principal sum they represent at fixed date or upon demand and to periodic fixed interest irrespective of profit to the company;
- do not normally bear participation rights in the management, meetings and profits of the company (other than action through meetings to protect common interests); and
- may or may not be converted into shares.\textsuperscript{1014}

It regulates the form, character, issuance and transfer of the debentures in the same way as it regulates the form, character, issuance and transfer of equity shares.\textsuperscript{1015} It, accordingly, recognizes both bearer and registered types of debentures with the possibility of issuing them as ordinary, preferred and convertible securities with warrants.\textsuperscript{1016} It also recognizes the possibility of issuing secured and unsecured debentures.\textsuperscript{1017} It also allows the debenture holders to act in group to protect their common rights.\textsuperscript{1018} It entrusts the power to borrow and issue debentures to the extraordinary general meetings of shareholders of the company when the debentures to be issued are convertible debentures and to the

\begin{itemize}
\item 1009 Id., at art. 332.
\item 1010 Id., at art. 334.
\item 1011 Id. at art. 337.
\item 1012 Id., at art. 344. The reciprocal holding between the banking, insurance and microfinance companies is also subject to regulation by the National Bank of Ethiopia (Note the discussions under the ‘functional and ownership separation’ and ‘capital adequacy’ requirements subtitles of the banking, insurance and microfinance chapter above).
\item 1013 Id., at arts. 429-444.
\item 1014 Id., at arts. 432-433.
\item 1015 Id., at art. 434.
\item 1016 Id., at arts. 325, 328, 335, 336, 343, 433(h) & 434. It does not, however, regulate the issuance and circulation of the varieties of securities in detail as it leaves this to the memoranda of the companies and their shareholders meetings (Id., at arts. 335, 336, 343 & 434). It also leaves the terms of redemption and conversion of the debentures to determination by the company, hence, allowing the issuance of debentures to be redeemable at fixed time or upon demand (as in the Civil Law countries) or to be perpetual (as in the Anglo-American countries). Id., at arts. 433(e) & (h).
\item 1017 Id., at arts. 433(f) & 430.
\item 1018 Id., at arts. 435-444.
\end{itemize}
ordinary general meetings of the shareholders when they are other debentures.\textsuperscript{1019} It allows the issuance of debentures only by companies whose capital is fully paid and have operated at least for one financial year.\textsuperscript{1020} It also allows the companies to issue the debentures without exceeding their paid up capitals except when i) the companies' immovable properties are mortgaged to secure the loans and the debentures issued do not exceed two-thirds of the values of the mortgages, or ii) the excesses are guaranteed by registered securities, by securities issued or guaranteed by the government with maturity not shorter than the maturity of the debentures, or by government annuities kept in bank deposit until the debentures are paid.\textsuperscript{1021} It also requires registration of the decisions of the companies to issue debentures in the commercial registers that have registered their formation principally.\textsuperscript{1022}

The country needs to continue with the aforementioned rules as they are in line with the international experience. It, however, lacks detailed legal regime that regulates the varieties of securities that can be issued by the companies. It does not also have rules that regulate the making of scrip issues and split shares. The companies do not, of course, issue securities other than ordinary shares currently. They do not also offer scrip issues and split shares. They may, however, do these in the future when the securities market is created. The corporate governance, accounting and auditing rules of the company law are also incomplete. They do not, for instance, define the specific principles and standards the corporate managers, accountants and auditors have to follow. They do not also provide for mechanisms for employee and stakeholder participation while these are recommended internationally.\textsuperscript{1023} The country needs to legislate on all these and make the company law more complete than it is now.

3.5.1.2 Modelling the Market for and Regulation of Initial Issuance

i. The International Experience

Securities markets, as they have grown in many countries, often comprise primary and secondary markets.\textsuperscript{1024} The primary markets exit as wings where new securities (often known as IPOs) are issued and sold for the first time to mobilize financial resources for capital formation.\textsuperscript{1025} The secondary markets exist as wings for resale of, and trade in, the securities issued in the primary markets.\textsuperscript{1026}

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\textsuperscript{1019} Id., at arts. 474, 419(2) & 433(d). It does not regulate the borrowing powers of the company other than through debenture issuance.
\textsuperscript{1020} Id., at art. 429.
\textsuperscript{1021} Id., at art. 430.
\textsuperscript{1022} Id., at art. 433(d).
\textsuperscript{1023} Note the discussions under the ‘ongoing regulation’ subtitle below and the ‘regulation of governance and auditing’ subtitle of the banking, insurance and microfinance chapter above.
\textsuperscript{1024} Basch and Kybal, 1970, at p. 65; UNIDO, 1991, at pp. 50-54; Benjamin, 2000, at pp. 8-19; and Vagts, 2006, at pp. 6-10.
\end{flushleft}
national and international primary securities markets in the developed market countries also often involve varieties of financial intermediaries that underwrite the public offerings of securities and assure both to the issuing companies and the subscribers that the subscription process will be completed smoothly and promptly while the primary markets in most of the transition and emerging market countries lack or have only few underwriters.1027

The companies in many countries do also exercise several methods of issuing and placing securities in the primary securities markets.1028 They rely on private placing for small scale issuance and on rights issue, open offer, public placing and public offer methods for large scale issuance.1029 The private placing method is exercised when securities are subscribed by an investor as a result of private negotiation between him and the company with or without the assistance of an intermediary.1030 The rights issue method is exercised when the company invites its existing securities holders to subscribe further capital.1031 It is exercised as means to materialize the pre-emptive rights of existing equity holders and the rights of convertible security holders to subscribe equity securities.1032 The open offer method confines the invitation to the existing securities holders like the rights issue method.1033 It differs from the latter only by not limiting the number of securities that can be allotted to existing securities holders.1034 The public placing method is used to sell securities for which a stock exchange listing is sought through issuing houses and market makers.1035 The company, under the method, agrees to allot the whole issue of securities to an issuing house, a stockbroker or a dealer at an agreed price and the latter agrees to sell the securities, pay the issue price to the company whether or not the sale succeeds, and retain the difference between the issue and the sell prices (less the expenses of sale) as profit when the sale succeeds. The public offer method is used to call the general public to subscribe to securities of a company through a prospectus.1036 It is done in one of two ways: the company either i) allots the whole issue of securities, through the traditional underwriting mechanism, to an issuing house, stockbroker or dealer that will issue a prospectus inviting the public to buy the securities, or ii) issues a prospectus directly that will supply information about its
identity (and prospects) and invites the public to subscribe to its securities on terms set out in the prospectus.\textsuperscript{1037}

Many of the countries also require compulsory registration (in the regulators) of the securities to be issued in the official primary markets and regulate the selling of the securities through listing and disclosure requirements designed to protect investors and the public at large against misrepresentation, fraud, insider trading and collusion.\textsuperscript{1038} Most of them distinguish between the public and private issuance methods and exempt the latter from the registration, listing and disclosure requirements when the buyers are not to resell the securities to the public.\textsuperscript{1039} The majority of the transition and emerging market countries also require the permission and registration of all public offerings by their regulators; the listing of all registered securities on recognized exchanges; and the disclosure of information to their regulators (and the public) by the issuers.\textsuperscript{1040}

Many of the countries also require (through their general disclosure, prospectus and registration requirements) that the companies that make the issue or the concerned exchanges shall disclose full information to the public on details of the shareholders, directors, managers, business plans, financial histories, assets, liabilities, securities, preferences, remunera tions, audits, invitations and dividends of the companies among others.\textsuperscript{1041} Rating agencies also exist in some of the countries to promote investor protection (and the development of the securities markets) by evaluating the default risks associated with issuance of securities.\textsuperscript{1042}

The main question behind the regulation of initial issuance of securities has generally been on how to control the “promoter’s problem” (i.e. the risk that securities issuers may sell bad securities to the public) and many have found that the use of laws that facilitate private enforcement through disclosure and liability rules (i.e. laws that structure and ease the costs of private contracting and litigation through extensive disclosure requirements and simple procedures to facilitate investor recovery of losses) are useful to control this problem and enhance the development of securities markets.\textsuperscript{1043} The adoption of good transparency and

\begin{footnotes}
\item[1037] Pennigton, 1979, at pp. 219-222; Poser, 1991, at p. 307; and Horne, 2002, at pp. 565-568. The US and Israel have also facilitated the issuance of securities by the company itself through a procedure called shelf registration (See Ibid and the Securities Law no. 5728-1968 of Israel, at art. 23A).
\item[1038] Note the laws referred in Table 25(Chap. 3) (A and B); Horne, 2002, at pp. 529-533 & 568-570; and Vagts, 2006, at pp. 3-6 & 11-32.
\item[1039] Wellons, 1999, at pp. 94-97; and Vagts, 2006, at pp. 3-6 & 11-32.
\item[1040] Tables 25(Chap. 3); and 25(Chap. 3) Continued (1 of 3). They either reject the making of exception in favour of the private issues or do not address the question of making exception (Wellons, 1999, at pp. 98-101).
\item[1041] See the laws referred in Table 25(Chap. 3); Pennigton, 1979, at pp. 220ff; Wellons, 1999, at pp. 98-101; Petersen, 2004, at pp. 120 & 129-137; and Vagts, 2006, at pp. 3-6 & 11-32. Some countries like UK, Kenya and Philippines have also encouraged the public issuance and disclosure of securities through a system called listing by introduction (See Ibid; the Capital Markets Authority Act and the Capital Markets Public Offers, Listing and Disclosure Regulations of 2002 of Kenya (as Amended in April 2007); and the Philippine SE, 2007-10).
\item[1043] La Porta, et al., 2003, at pp. 3-23; Mahoney, 1995, at pp. 1047-1112; and Vagts, 2006, at pp. 3-6 & 11-32.
\end{footnotes}
disclosure requirements, the standardization of and flexibility between the securities issuance methods, the adoption of information systems that enable investors to evaluate the condition of a company that issues securities, the securitization of assets, the introduction of mechanisms that can enable small and medium companies to get access to and grow with the securities (capital) markets (including the introduction of venture finances and tiered listing and initial offering requirements), and the implementation of international best practices in regulation are also found to be important measures to be taken during the development of market for initial issuance of securities in the transition and emerging market countries.  

The IOSCO also recommends generally that the securities market regulations should require the securities issuers to prepare and disclose their financial results (and all other information that is material to investors’ decisions) fully, timely, accurately and according to internationally accepted accounting and auditing standards. The IOSCO recommendations are also supported by the OECD Principles of Corporate Governance on disclosure and transparency.

ii. The Case of Ethiopia

Ethiopia recognizes the formation of share companies and the increase of their capitals through both private and public subscriptions. It allows them to issue shares through the different methods of public and private issuance subject to the pre-emption rights of existing shareholders during increase of capital unless these rights are set aside by the extraordinary shareholders meetings of the companies. It also allows them to increase their capitals by increasing the par values of their existing shares or by issuance of new shares (provided that the latter has to follow the rules on initial formation of a company unless the new shares are to be paid by set-off of debts of the companies, capitalization of reserves (or funds) of the companies, and conversion of debentures of the companies into equity shares). It requires the publication of prospectus signed by all the promoters of the companies under formation and the representatives (i.e. directors) of the companies that increase capital when the companies intend to make the formation or increase of capital through public subscription of shares. It also regulates the public issuance of debentures in the same way as it regulates the issuance of shares through the public subscription method.

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1044 Dowers, Gomez-Acebo and Masci, 2003, at p. 22; Garcia and Giorgio, 2003, at pp. 110-111 & 114-116; and Takacs and Korcsmaros, 2003, at pp. 390-413. Many of the European and non-European securities markets have also established wings (often known as ‘new’ or ‘growth’ markets) to enable young and innovative small companies to access capital through them following the success stories of NASDAQ (Takacs and Korcsmaros, 2003, at pp. 407-410; note also the discussion under the ‘modelling structure of the market and its intermediation’ subtitle below).

1045 Note the IOSCO principles on issuers with the explanations to them (in the IOSCO Objectives and Principles of Securities Regulation - cited as IOSCO, 2003).

1046 Note the OECD principles and policy brief - cited as OECD, 2004b and OECD, 2004c, respectively.

1047 IGE, 1960, at arts. 316-322.

1048 IGE, 1960, at arts. 470-474, 326, 455 & 549-554.

1049 Id., at arts. 464(2) & 468-482.

1050 IGE, 1960, at arts. 317-322, 468 & 469.

1051 Id., at arts. 318, 319 & 434.
It does not, however, have the formal market for initial issuance of securities. It does not also require the prior registration of prospectuses and the listing of securities (in the commercial registers and the regulators) when the companies prefer public subscription.\textsuperscript{1052} It does not also require the publication of statement in lieu of prospectus when the companies issue securities through the methods other than the method of public subscription.\textsuperscript{1053} It does not also have rules that regulate the public trading of the securities issued under the methods other than the public issuance method. It does not also have rules that regulate the public and private issuance of convertible securities, warrants, exchangeables and other derivatives. It does not also have rules that regulate the initial issuance operations of intermediaries except for one which requires securities brokers to act as commission agent.\textsuperscript{1054}

The Justice and Legal System Research Institute of the country has proposed that the making of initial issuance of company securities should be through either the existing banks or new investment banks and securities dealers (to be licensed in the future).\textsuperscript{1055} It has proposed, through the Securities and Exchange Proclamation it drafted in 2003, that:

- all the company securities to be offered for sale to the public should be registered by a future securities market regulator;
- all share companies and their agents should be prohibited from issuing unregistered company securities to the public;
- only the share companies formed under the Commercial Code of the country should be able to list and de-list securities on the future exchange;
- all the share companies formed under the Commercial Code of the country should be members to the future exchange upon decision by the latter; and that
- information should be submitted to the future securities regulator about the issuing company and the type and character of its securities during registration.\textsuperscript{1056}

It has proposed that the companies should comply with membership and listing conditions to be prescribed by internal regulations of the exchanges; supply information to the exchange as the latter may require; and publish prospectus after issuance of a certificate of registration of the securities by the regulator.\textsuperscript{1057} It has

\textsuperscript{1052} It requires deposit of the prospectuses when the companies register their formation, capital increase or security issuance in the commercial registers after completion of the subscription process. The commercial registrars are also expected to verify the legality of the processes only after the fact. IGE, 1960, at arts. 224(1), 323, 478 & 480; and FDRE, 2010a, at arts. 6-7, 9, 12 & 16.

\textsuperscript{1053} The companies usually exercise the methods of private placing and rights issue for a number of reasons including the pre-empive rights of the existing shareholders, the monopoly interests of most of the shareholders, and the absence of formal securities market in the country. Most of them issue their shares through the private placing and rights issue methods and rely on private solicitations (when they have to resort to the public offering method).

\textsuperscript{1054} IGE, 1960, at art. 62.

\textsuperscript{1055} JLSRI, 2001, at p. 40.

\textsuperscript{1056} JLSRI, 2003, at arts. 12(1), 13, 22, 25, 31 & 32(2).

\textsuperscript{1057} Id., at arts. 12-13, 23, 25 & 26.
also proposed that the listed companies should make contributions to a Guarantee Fund to be established for purpose of safeguarding the compensation of losses to investors which may arise due to criminal actions and violations of the listed companies, brokers and dealers.\textsuperscript{1058} It has recommended that the government securities should be issued without need for registration by the future securities market regulator.\textsuperscript{1059} It has not also ruled out the possibility of issuing securities through the methods of securities issuance other than the public offering method although it did not foresee the regime that should govern the subsequent tradability of these securities.\textsuperscript{1060}

The National Bank of Ethiopia, the Awash International Bank S.C. and the Abyssinia Bank S.C. have also followed the proposals of the Institute by their comments on the draft Securities and Exchange Proclamation of the latter.\textsuperscript{1061}

Having regard to the need to regulate the ‘Promoter’s Problem’ and the international experience in this regard, Ethiopia needs to enact rules that will require:

- the compulsory registration and permission of all public issuance of securities by the securities market regulator;
- the listing and trading of all the registered securities in the recognized exchange; and
- the disclosure of all material information to the regulator, the exchange and the public through reporting and publication of prospectus by all issuers of securities that will use the public issuance method.

It also needs to enact rules that will define the modes of private and public issuance of securities that will be available to the companies and require the separate registration of the public and private issues by the securities market regulator and others. It also needs to enact rules that will make the current rules in its commercial code for public and private issuance more complete than they are now in respect of the issuance of varieties of securities. It also needs to enact rules that will regulate the public trading of the securities issued under the methods other than the public issuance method whenever the concerned companies or securities holders want to recourse to the recognised exchange. It also needs to enact rules that will regulate the initial issuance operations of intermediaries. It need not, however, rule out the possibility of issuing securities through the methods other than the public issuance method. The companies need to be allowed to recourse to them as long as they are useful to raise capital. It also needs

\begin{enumerate}
\item\textsuperscript{1058} Id., at art. 23(5) \& 20.
\item\textsuperscript{1059} Id., at art. 31.
\item\textsuperscript{1060} Id., at arts. 12-32.
\item\textsuperscript{1061} Note the letter of the NBE (to the Institute) of Megabit 27/1994 Eth. C. (Amharic version); the letter of the Awash International Bank S.C. (to the Institute) of February 18 2002 (English version), and the letter of the Abyssinia Bank S.C. (to the Institute) of Megabit 26 1994 Eth. C. (Amharic version).
\end{enumerate}
to ensure separate existence of the future securities markets and the banking, insurance and other markets in the interest of competition.1062

3.5.2 Modelling the Structure and Regulation of Trading in Securities
3.5.2.1 Modelling Structure of the Market and Its Intermediation

i. The International Experience

A. The General Trend: From Public Market to Exchange-as-Firm Approach

The organization of secondary securities markets (i.e. the market places where investors and companies buy and sell financial products after their first issuance) may follow either of two approaches:

- a public market approach, where they are taken as non-profit making market places for trading securities, or
- a competing firm approach, where they are taken as firms that compete and try to maximize profit for their owners.1063

Most of the world's securities markets have originated as public markets (i.e. as non-profit, member managed co-operatives).1064 They have originated in one of four types:

- as government owned exchanges,
- as membership owned exchanges,
- as incorporated investor owned companies, and
- as mixed control exchanges (mixing at least two of the three types of owners, i.e. the members, the government and others).1065

They have also existed as public and private law, concentrated and diverse, and incorporated and unincorporated institutions.1066 Most of them have also existed as floor based open outcry exchanges with official, over-the-counter, and second (or sometimes third tier) markets.1067 The official exchanges have existed to trade in securities of companies that could meet the listing requirements of the

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1062 Note the discussion under the ‘modelling structure of the market and its intermediation’ subtitle below.
1063 Valdez, 1993; Ferrariini, 1998a; Wellons, 1999, at p. 64; Arlman, 2003, at p. 236; and Vagts, 2006, at pp. 6-10.
1064 Ibid; and note the discussion below.
1066 The public law institution approach was justified by interest to organize the exchanges as public market places while the private law institution approach was justified by interest to make them competing firms. The concentrated approach was justified by interest to monopolize the ownership of the exchanges’ businesses while the diverse approach was justified by interest to promote competition. The unincorporated and unlimited liability form was justified by interest to protect the public while the incorporated form with limited liability was justified by interest of protecting the securities market operators and investors. Wellons, 1999, at pp. 65-72.
1067 Valdez, 1993, at p. 198; Poser, 1991, at pp. 376-441; and the discussion below.
exchanges.\textsuperscript{1068} They were characterized by restricted memberships, fixed commissions and open outcry until the Big Bangs of the late 1980s.\textsuperscript{1069} The over-the-counter, second and third tier markets have existed to trade in securities belonging to small companies that could not meet the listing requirements of the exchanges.\textsuperscript{1070} The dealing systems of the markets were also order driven, quote driven or hybrid of the two.\textsuperscript{1071}

Many of the securities markets have, however, undergone structural reforms following the Big Bangs of the late 1980s.\textsuperscript{1072} They (especially those in Europe, Northern America and Eastern Asia) are transformed into demutualized shareholder-owned private companies with a view to enhancing public participation, competition and internationalization.\textsuperscript{1073}

The idea of treating exchanges as competing firms was initiated in UK and accepted in Europe and the rest of the world as of the 1990s.\textsuperscript{1074} The incorporation process was then enforced to re-establish the exchanges as companies with share capitals and limited liabilities while the demutualization process has led to their transformation from the co-operative or mutual business form of organization into a profit-making competing company form whose ownership and management are separated from the trading rights of the exchange members. The London, Amsterdam, Paris, Deutsche, Stockholm, Toronto, Chicago, NASDAC, Australia and New Zealand exchanges have, accordingly, become demutualized companies while many others are considering the trend.\textsuperscript{1075} The EU has also promoted the idea of organizing the European securities markets as competing demutualized companies by enacting the ‘Markets in Financial Instruments Directive’ (MiFID).\textsuperscript{1076}

A number of the securities markets in the transition and emerging market countries have also followed the trend as international competition necessitated

\begin{footnotes}
\item[1068] Kabir, 199, at pp. 28 & 61-62; Poser, 1991, at pp. 376-441; and the discussion below.
\item[1070] France and Belgium used to have 'Second Markets'; UK a USM (Unlisted Securities Market); Germany a second market called 'Geregelter Markt' and a third one called 'Freiverkehr'; and Amsterdam a 'Parallel Market'. The US also has the NASDAQ as its over-the-counter market while Paris used to have the 'Hors Cote'. Valdez, 1993, at p. 198; Poser, 1991, at pp. 379-380, 398, 417-418 & 420; and the discussion below.
\item[1071] Valdez, 1993, at pp. 186-193; Pagano, 1998, at pp. 177ff; and the discussion below.
\item[1073] Ibid; and note the discussion below.
\item[1075] Ibid.
\item[1076] The MiFID stands as cornerstone of the European Commission's Financial Services Action Plan to change the way the EU financial services markets operate. It is enacted to increase competition and consumer protection in the investment services (securities) markets and to further harmonize the EU Member States’ regulations of these markets. It is enacted in April 2004 and implemented as of 01 November 2007. It has replaced the Investment Services Directive and stands currently along with the Prospectus Directive, the Market Abuse Directive and the Transparency Directive (EU, 2004; and EU, 2008).
\end{footnotes}
The Hong Kong, Singapore, Moscow, Philippine, Sri Lanka, India, Karachi and Bogotá Exchanges have, accordingly, become demutualized companies while many others are also incorporated as profit making companies although without the demutualization requirement. Some of the African exchanges, namely the Ghana, Nairobi, Mauritius, Uganda, Dar es Salaam, South African (JSE) and Lusaka exchanges, are also transformed into companies limited by guarantee without strict profit motive. The non-transformed exchanges are also advised to consider their demutualization and incorporation.

Many of the securities markets are also transformed from being national markets requiring physical presence in floors into being electronic markets for domestic and international orders following the development in communication technology in the 1990s and thereafter.

B. The Specific Experiences: The Major Exchanges by Region

Given the aforementioned general direction of development, the countries have differed in the specific organization and governance of the exchanges, the extent and nature of their supervision, and the speed with which they have undertaken the reforms due largely to their domestic contexts. The following discusses the specific experiences in the major exchanges by region.

a. USA and Canada

The United States used to have Stock Exchanges that existed as public market places and enjoyed exemption from antitrust laws until the application of the antitrust laws on them by the court case of City of New York vs. New York Stock Exchange in 1963. The New York Stock Exchange (NYSE) introduced the concept of specialist and implemented a continuous auction floor trading system from 1872 onwards. Its major players used to be specialists, who accepted buy and sell orders from brokers to manage the actual auction, and brokers who, being employed by investment firms, traded either on behalf of their firms' clients or for the firms themselves.

The American Stock Exchange began in the 1800s as an outdoor market place trading in government securities through open outcry of brokers until it moved
indoors in 1921. It merged with the National Association of Securities Dealers Automated Quotations (NASDAQ) in 1998, creating the NASDAQ-AMEX Market Group where each exchange continued to operate separately. It operates as an auction market on a trading floor through brokers and specialists that have similar roles as those in the NYSE and mostly trades in small company stocks, corporate bonds, options and exchange traded funds.

The NASDAQ was developed in 1971 as the first electronic stock exchange in the world for an Over-the-Counter trading of stocks which were unable to meet listing requirements on the exchanges. It existed as a publicly owned company which traded its shares on its own exchange. It was divided into the NASDAQ National Market and the NASDAQ Small-Cap Market when larger companies separated themselves from smaller ones between 1982 and 1986 and merged with the American Stock Exchange in 1998 creating the NASDAQ-AMEX Market Group. It currently serves as market place for shares of varieties of companies and is well known for being high-tech exchange for many new, high growth and volatile stocks. It makes all its trades electronically without a physical trading floor and lives as a dealers' market place where brokers buy and sell stocks through a market maker rather than from each other. It requires the fulfilment of stringent financial criteria for listing stocks at the National Market and less strict criteria for trading in the stocks of small companies at the Small-Cap Market.

The Chicago Mercantile Exchange existed as a public market place for futures and options on interest rates, stock indexes, foreign currencies and agricultural commodities. It became a demutualized for-profit organization in 2000. It runs an open outcry system of trading where all traders gather on the trading floor and call out their bids and offers. It has two main trading floors, one for foreign currency and interest rate derivatives and another for agricultural commodities and stock index derivatives. It also runs a 24 hour electronic trading without physical presence by using an electronic trading system called GLOBEX2.

The New York Stock Exchange and all the principal US exchanges have continued to be 'order-driven' markets led by specialists who match buy and sell

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1086 American SE, 2007-10a.
1087 Ibid.
1088 NASDAQ, 2007-10.
1089 NASDAQ, 2007-10a.
1090 NASDAQ, 2007-10.
1091 NASDAQ, 2007-10a.
1092 Ibid.
1093 It moves the companies from one market to the other as their eligibility changes. Ibid.
1097 Ibid.
orders by acting as brokers for customers or dealers on their own accounts while the American Over-the-Counter market has continued to exist as 'quot-driven' dealer market under the NASDAQ system. All the major exchanges have also become automated gradually and without losing the specialist system as a result of increase in the volume of trading of securities. The NYSE has also become publicly held company (that runs a hybrid system of floor and electronic trading) through merger with the electronic stock exchange Archipelago.

The Toronto Stock Exchange (TSX) also existed as a trading floor throughout most of its history. It started to run electronic trade in the 1990s and closed its trading floor to become a fully electronic exchange in 1997. It has become a for-profit company since 2000 and lived as a TSX Group by acquiring the Canadian Venture Exchange since 2001. It currently exists as a market place for senior equities that have strong historical performance while its Venture Exchange serves as market place for shares of new high growth companies. It, as a TSX Group, allows the companies in the Venture Exchange to move to it when they meet its listing requirements.

b. Western Europe

The exchanges of Western Europe have generally existed as public auction markets until they were transformed into joint stock companies (or a similar form) with electronic trading systems beginning the late 1980s and the 1990s.

The UK securities markets grew from coffeehouses to trading floors between the seventeenth and the nineteenth centuries and from trading floors to electronic systems in the late twentieth century. The London and Irish Stock Exchanges existed together as the International Stock Exchange of Great Britain and Ireland from 1793 until their split in 1995. The combined Exchange operated under a single capacity system where the exchange member could be a jobber or broker for gilts and equities until the times of Big Bang in 1986. It separated between the brokers and jobbers by making the brokers agents to bring buyers (and sellers) to the jobbers and the jobbers responsible to fulfil the market making after the times of Big Bang. It used to be market for gilt-edged (UK government) securities more than for equities. It grew as international financial centre for

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1100 NYSE, 2007-10.
1101 Toronto SE, 2007-10.
1102 Ibid.
1103 Toronto SE, 2007-10; and Toronto SE, 2007-10a.
1104 Ibid.
1105 Ibid.
1109 Poser, 1991, at pp. 18-19. The single capacity system existed since 1947 as a system where an exchange member could be either a jobber/dealer on his account or a broker for account of customers only. Ibid.
1110 Kabir, 1990, at p. 28.
equities due to loss of interest of securities firms in the US markets, hence their choice of London as alternative market place, following the J. F. Kennedy’s Interest Equalization Tax of 1963. The country also developed a Eurobond market as of the 1960s due to rise of need for market for dollar denominated funds outside USA and the market served as international over-the-counter market conducted by telephone, telex and electronic screen. It also removed its foreign exchange controls as of 1979. It did not separate between the banking and securities markets unlike the Glass-Steagall Act of the US. It allowed its firms to invest in overseas securities as of 1979 and this was followed by boom of investment in overseas securities through foreign securities firms. Its exchanges also benefited from self-regulation by industry practitioners and some informal guidance by the Bank of England until the introduction of government regulation under the Financial Services Act of 1986.

It implemented its Big Bang in 1986 due to the accumulated effect of three factors, namely competitive necessity, government pressure and good leadership. The growth of Eurobond market and the boom of investment in overseas securities through foreign securities firms that were more experienced in international investments than the London firms threatened the UK Stock Exchanges for loss of market and called for regulatory changes. The London Eurobond firms formed the International Securities Regulatory Organization (the ISRO) in 1985 in anticipation of the enactment of the Financial Services Act of 1986 to provide for a self-regulatory organization that would defend the interests of the Eurobond market actors. The ISRO then merged with the London and Irish Stock Exchanges in September 1986. The merger terminated the ISRO and the London and Irish Stock Exchanges and created two new bodies, namely, i) a stock exchange in form of a limited liability company called the International Stock Exchange of UK and Ireland (the ISE) and ii) a self-regulatory organization called The Securities Association (the TSA). The ISE continued to serve as the registered exchange for trading of equities, gilts and options while the Association of International Bond Dealers (the AIBD) in Zurich with which the ISRO used to be member continued as the registered exchange for the Eurobonds. The merger also resulted in shift from individual to institutional membership to the exchanges as all voting shares of the ISE were held by corporate members leaving only non-voting shares to individuals. The UK government also pushed the London Stock Exchange to changes as the Director of Fair Trading of UK lodged
law suit against the London Stock Exchange in 1977 for violation of the Restrictive Practices Act of the country of 1976.\textsuperscript{1125} The Department of Trade and Industry of UK also issued a 'White Paper' in January 1985 to provide for rules for licensing of securities firms to do business in the UK by the government as well as the self-regulatory organizations.\textsuperscript{1126} All the changes on the London Stock Exchange had also to be backed by the forward-looking leadership of the Exchange.\textsuperscript{1127} The country's Big Bang also resulted in four accomplishments: i) eliminated the fixed commissions, ii) changed the membership structures of the exchanges by giving access to both the British and Foreign investment and commercial banks, iii) eliminated the single-capacity system; iv) changed the trading systems of the exchanges from floor to screen based trading from members' offices, and v) allowed the representation of the listed companies and the public in the governing councils of the Exchanges.\textsuperscript{1128}

The ISE in London then looked towards the two trading systems of the US exchanges in its endeavour to replace the single-capacity system by a new trading system and opted for the NASDAQ system of the over-the-counter market, as opposed to the specialist system of the New York and the principal exchanges, as its model for its new trading system.\textsuperscript{1129} It put the Stock Exchange Automated Quotations (the SEAQ) in that line as of the Big Bang day of 1986 and enabled its member firms to act in dual capacities as broker for all stocks and as market maker for particular securities for which they register on their own accounts.\textsuperscript{1130} It used to run listed, unlisted and third market and to classify the equities traded in it into alpha, beta, gamma, and delta stocks.\textsuperscript{1131} It allowed its members to conduct floor and screen based trading and abandoned its floor trading system in favour of the screen based trading from members' offices as of early March 1987.\textsuperscript{1132} It, through the SEAQ, enabled the conduct of trade by telephone and telex based on electronically displayed orders and prices and replaced the telephone and telex executions by an electronic execution under a system called SAEF as of 1989.\textsuperscript{1133}

The London Stock Exchange also opened an Alternative Investment Market (AIM) for the trading of small cap companies after its split from the Irish Stock Exchange in 1995.\textsuperscript{1134} It currently runs the Main Market for established companies of high performance and the Alternative Investment Market (AIM) for small-caps and shares of new enterprises with high growth potential.\textsuperscript{1135} It operates as electronic market which allows i) the trading of highly liquid shares under a SETS
automated system that automatically executes orders when buy and sell prices match and ii) the trading of less liquid securities under the SEAQ system where the market makers keep the shares liquid. It also created the EDX London in 2003 for the trading of equity derivatives.\textsuperscript{1136} The Irish Stock Exchange also shut down its trading floor in Dublin on June 6 2000 to replace it with an electronic trading platform called ISE Xetra.\textsuperscript{1137} It added the Irish Enterprise Exchange (IEX) to its regular market in March 2005 to facilitate the trading of securities of small and mid-sized companies.\textsuperscript{1138}

UK also used to issue and regulate the issuance of gilt-edged (UK government) securities through the Bank of England.\textsuperscript{1139} The pre-Big Bang gilt market suffered from high transactions costs and illiquidity due to the system of fixed commissions and the non-competitiveness of the jobbers like the equity market.\textsuperscript{1140} The Bank and the ISE, however, devised a system of issuance and trading of the gilts in a secondary market and called for i) the participation of several gilt market makers in dual capacity, ii) the membership of all the gilt market makers in the ISE, iii) the trading of not more than 25% of the gilts off the exchange, and iv) the daily reporting of trades through electronic reporting system as the Big Bang went on in the equities market.\textsuperscript{1141} The new gilts market looked like the primary US Treasury Bond Market with the difference that it existed as part of the stock exchange while the US Treasury Bond Market existed as an over-the-counter market.\textsuperscript{1142} It relied on the SEAQ system and computerized its back-office work when the equities market underwent the Big Bang in 1986.\textsuperscript{1143} It used to follow a tender method (with bids above a minimum price) for the sale of all gilts until the Bank recognized an auction method (with free bids) in 1987.\textsuperscript{1144} The Bank of England and the ISE have also introduced a Central Gilt Office for the settlement of all gilt transactions.\textsuperscript{1145}

Germany used to have eight exchanges, the largest being the Frankfurt exchange and the others, in order of size, being the Düsseldorf, Munich, Hamburg, Stuttgart, Berlin, Hanover and Bremen exchanges.\textsuperscript{1146} The exchanges used to serve as market places for shares and bonds of foreign and domestic companies.\textsuperscript{1147} They existed as incorporated public law institutions (companies) under a stock exchange Act.\textsuperscript{1148} Their development used to be slow because of the preference of German's investors and institutions to keep their savings in fixed-

\textsuperscript{1136} Ibid.
\textsuperscript{1137} Irish SE, 2007-10.
\textsuperscript{1138} The IEX currently competes with the London’s Alternative Investment Market. Irish SE, 2007-10; and Irish SE, 2007-10.
\textsuperscript{1139} The Bank used to issue the gilts to the jobbers on the stock exchange through a government broker and to regulate their trading under the single capacity system. Poser, 1991, at pp. 62-63.
\textsuperscript{1140} Id., at p. 63.
\textsuperscript{1141} Id., at pp. 64-65.
\textsuperscript{1142} Ibid.
\textsuperscript{1143} Id., at p. 69.
\textsuperscript{1144} Id., at pp. 70-71.
\textsuperscript{1145} Id., at pp. 76-77.
\textsuperscript{1147} Poser, 1991, at pp. 393 & 394-395.
\textsuperscript{1148} Poser, 1991, at p. 401; and Ferrarini, 1998a, at p. 248.
income securities as opposed to shares.\textsuperscript{1149} They introduced changes due to the competitive pressures from New York and London and the European integration as was the case with many of the European exchanges.\textsuperscript{1150} They formed a federation in 1986 to strengthen their competition with the London and New York exchanges.\textsuperscript{1151} Their trading was dominated by the German banks because of the central position of the latter in the business landscape of Germany.\textsuperscript{1152} They used to trade in two hours sessions around noon at standard prices fixed by the \textit{Kursmakler} (an official appointed by the State Minister of Finance of the country) based on the supply and demand for a security as reflected in the buy and sell orders.\textsuperscript{1153} They allowed the consecutive trading of active shares and bonds through open outcry auction on the floors of the exchanges among representatives of the member banks.\textsuperscript{1154} The \textit{Freie Makler} also traded in the listed stocks in the floors of the exchanges as intermediaries between member banks.\textsuperscript{1155} The \textit{Kursmakler} and the \textit{Freie Makler} had to act as intermediaries between the members to the exchanges and could not accept orders from outsiders while the banks could trade on their own as well as on their customers' accounts.\textsuperscript{1156} The exchanges used to suffer from high transactions costs as fixed commissions and securities transfer taxes had to be paid to the banks, the market makers and the government until repeal of the taxes and reformation of the commission rates beginning 1991.\textsuperscript{1157} The country introduced additional securities markets to the official exchanges in 1987 as part of its stock exchange reform program.\textsuperscript{1158} It invested heavily on the technology of its exchanges and introduced the Kurs Information and Service System (the KISS) that could collect and transmit the prices of all shares traded on the Frankfurt Exchange on a real time basis as of 1987 and calculate the index of the thirty most traded shares in Frankfurt (the DAX) as of July 1988.\textsuperscript{1159} Its exchanges and banks established a computerized German Futures Exchange (DTB) after 1987 and enabled the electronic trading of options on stocks, bonds, indexes and financial futures (without a trading floor) as of January 1990.\textsuperscript{1160} Its banks also introduced an Inter Banken Information

\textsuperscript{1149} Poser, 1991, at p. 401.
\textsuperscript{1150} Ibid.
\textsuperscript{1151} The federation became responsible for gradual reform of the exchanges to increase their transparency and efficiency, hence for i) developing new systems and procedures of trading and settlement, ii) collecting and publishing national statistics for all the exchanges, and iii) carrying out of measures that would eliminate duplication costs. Id., at p. 394.
\textsuperscript{1153} Poser, 1991, at p. 396.
\textsuperscript{1154} The banks also traded with German and foreign brokers (and banks) outside the trading hours. Id., at pp. 396-397.
\textsuperscript{1155} Ibid.
\textsuperscript{1156} The \textit{Kursmakler} had to match orders channelled to them by the banks and the \textit{Freie Makler} to trade on the floors of the exchanges. Id., at pp. 395, 397 & 400.
\textsuperscript{1157} Id., at p. 397.
\textsuperscript{1158} It introduced a 'second segment' (that would operate like the unlisted market in London, the Second Marché in Paris, and the American Stock Exchange in New York) to enable the trading of securities of small and medium sized companies that could not meet the admission requirements for official listing and a 'third segment' (known as 'free market') (that would operate with simple trading rules without any legal requirements for admission) to enable trading in the shares of smaller companies. Id., at p. 398.
\textsuperscript{1159} Id., at p. 399.
\textsuperscript{1160} Id., at pp. 398-399.
System (IBIS) in 1991 to enable the electronic dissemination of price information and eventually develop a full-scale electronic trading system that would replace the traditional outcry trading system.\footnote{Poser, 1991, at pp. 399-400; and Pagano, 1998, at pp. 184-185.} The Frankfurt Stock Exchange, which existed as the leading among the eight exchanges, also launched its electronic trading system called \textit{Xetra} (and diminished the importance of its traditional broker-supported floor trading) as of 1997.\footnote{It currently allows the market entry of new comers through Prime, General and Entry Standards. It supervises the companies that go public by the Entry Standard by itself and requires the companies that go public by the Prime and General Standards to be regulated under the EU rules. Frankfurt SE, 2007-10; & Frankfurt SE, 2007-10a.} It also runs the largest range of index funds in Europe.\footnote{Ibid.}

Switzerland used to have three large stock exchanges in Zurich, Geneva and Basel and four small ones in Lausanne, Bern, St. Gall and Neuchâtel.\footnote{Poser, 1991, at p. 403. The Geneva Exchange was the first to be established in 1850. The Zurich and Basel Exchanges were organized about twenty five years later. Ibid.} It used to have two unofficial markets in the Zurich exchange, namely the unofficial list and the OTC market, for the securities of small companies that could not meet the listing requirements of the exchanges.\footnote{Ibid.} The exchanges used to serve as market places for both shares and bonds of domestic and foreign companies.\footnote{Ibid.} They also used to include bank and non-bank members but were dominated by the Swiss banks as in the case of Germany.\footnote{Ibid.} Trading on the floor of the exchanges used to be conducted by representatives of the member banks and firms through open outcry around trading rings where each listed stock used to be called twice during each trading session.\footnote{Id., at p. 404.} The Zurich exchange introduced continuous auction trading in the more active issues as of 1986.\footnote{Ibid.} The exchanges were also affected by antiquated trading methods and restrictions on foreign ownership and control of the Swiss companies until the start of reforms in 1986.\footnote{Id., at pp. 406-407.} The Zurich, Geneva and Basel exchanges established an Association Tripartite Bourses (ATB) in 1986 to pursue modernization plans and the Swiss Options and Financial Futures Exchange (the SOFFEX) was established in the same year.\footnote{Id., at p. 407.} The SOFFEX started operation in 1988 and automated the entire stock market process (including the trading and clearing of transactions) as of that year.\footnote{Ibid.} The ATB invested in the development of automated national exchange system in 1989 to link the three principal exchanges and change the old open outcry method of trading.\footnote{Id., at p. 407.} The Swiss companies also allowed the foreign ownership of their registered shares with Nestlé's initiative in November 1988.\footnote{Id., at p. 406.}
also replaced their fixed commission systems by negotiated commissions as of 1989.\textsuperscript{1175}

Italy used to have eight stock exchanges, the largest in Milan and the rest in Bologna, Florence, Genoa, Naples, Palermo, Rome, Trieste, Turin and Venice.\textsuperscript{1176} The exchanges served as market place for domestic companies only since the country used to prohibit the listing of foreign companies in the exchanges.\textsuperscript{1177} They were modelled like the Paris Bourse to operate through monopoly of government appointed stockbrokers.\textsuperscript{1178} The large banks and other institutions used to trade in securities over the telephone outside the exchanges much more than the official exchanges.\textsuperscript{1179} Most of the listed securities in the exchanges were also owned by insiders hence making the number of tradable shares limited.\textsuperscript{1180} The government bond market between the banks was much more significant than the stock exchanges.\textsuperscript{1181} The official stockbrokers in the exchanges had to be Italian citizens who passed competitive examination by the Ministry of Treasury.\textsuperscript{1182} They had to be individuals with unlimited liability. They could form associations only for sharing office spaces and could act on the exchange floors through maximum of seven representatives who had to work under their own responsibilities.\textsuperscript{1183} They had to act as brokers without taking positions in the trading of securities.\textsuperscript{1184} The banks and commission dealers could not also trade on the floors but only had observation posts.\textsuperscript{1185} The exchanges used to charge fixed commissions at differentiated percentage rates per type of security for transactions in domestic securities and at flat percentage rate for transactions in international securities.\textsuperscript{1186} They did not discount and offer special rates for large orders.\textsuperscript{1187} The shares and bonds traded in the exchanges were also subject to stamp duty at differentiated rates.\textsuperscript{1188} The transactions in the exchanges were settled on a monthly basis (i.e. from mid-month to mid-month).\textsuperscript{1189} The challenges from London and New York that caused the reforms in many of the European Stock Exchanges had, however, also impacts on the Italian Exchanges.\textsuperscript{1190} The first impact was the development of a central securities depository known as Monte Titoli in 1986 to speed up the settlement systems of the exchanges.\textsuperscript{1191} The second impact was the development of an automated system (the BORSAMAT) as of 1985 to enable the routing of orders between the

\begin{thebibliography}{9}
\bibitem{1175} Ibid.
\bibitem{1176} Borsa Italiana, 2007-10; and Poser, 1991, at p. 411.
\bibitem{1177} Poser, 1991, at p. 410.
\bibitem{1178} Id., at pp. 410-411.
\bibitem{1179} Id., at p. 412.
\bibitem{1180} Ibid.
\bibitem{1181} Ibid.
\bibitem{1182} Id., at p. 413.
\bibitem{1183} Ibid.
\bibitem{1184} Ibid.
\bibitem{1185} Ibid.
\bibitem{1186} Id., at p. 414.
\bibitem{1187} Ibid.
\bibitem{1188} Ibid.
\bibitem{1189} Id., at p. 413.
\bibitem{1190} Id., at pp. 411 & 414.
\bibitem{1191} Id., at pp. 411 & 412.
\end{thebibliography}
exchanges from the offices of the banks, brokers and institutional investors with intention to eventually automate and modernize the call system of trading in the exchanges.1192 The third impact was the recognition of creation of stock exchange firms (that could replace the individual brokers and act both as brokers and dealers) by legislation in March 1988.1193 The fourth impact was the transformation of the country’s stock exchanges into regulated businesses to be managed only by share companies by the Italian Decree of 1996.1194

The Milan exchange, which is the largest in the country, used to operate as open outcry market in morning sessions through a 'call system' around nine trading rings where each listed security used to be called in order.1195 It replaced its open outcry system by electronic trading on 18 April 1994.1196 It was operated by the Italian government until it was taken over by the Borsa Italiana S.P.A. (which was owned by member companies of the exchange) in 1998.1197 The Borsa Italiana currently indexes its listed stocks in five different market sectors, namely the MTA/MTAX and Mercato Expandi, the Derivatives (IDEM), the Covered Warrants and Certificates (SeDeX), the Government Bonds and Securities (MOT), and the Exchange-Traded Funds and Index Open-end Funds (MTF).1198 The MTA/MTAX and Mercato Expandi runs four types of lists for different sized companies called Blue Chip, Star, Standard and Mercato Expandi.1199 The Derivatives (IDEM) includes Futures, mini Futures and Options on the S&P Mib index and Futures and Options on individual stocks.1200 The Borsa Italiana also supports off market hours trading and runs five indices called the Mibtel, the Mib30, the S&P Mib, the Midex, and the ALLSTAR.1201

Spain used to have two major stock exchanges in Madrid and Barcelona with a second-tier market in Madrid for trading in shares of smaller companies and two small exchanges in Valencia and Bilbao.1202 The exchanges served the country as markets for domestic government and corporate securities (i.e. shares, debentures

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1192 Ibid.
1193 Id., at p. 415.
1194 Ferrarini, 1998a, at p. 250.
1196 Borsa Italiana, 2007-10; and Poser, 1991, at p. 413.
1197 Ibid.
1198 Borsa Italiana, 2007-10a.
1199 The 'Blue Chip' lists stocks of companies listed under the S&P Mib and Midex and of companies with solid financial structure and market capitalisation of over one billion Euros. The 'Star' lists medium-sized companies that have market capitalisation of between 40 million and one billion Euros and satisfy criteria concerning accountability, high liquidity and company structure. The 'Standard' lists small- and medium-sized companies that have market capitalisation of between 40 million and one billion Euros. The 'Mercato Expandi' lists small companies with a minimum capitalisation of one million Euros. Borsa Italiana, 2007-10a.
1200 Borsa Italiana, 2007-10a.
1201 The Mibtel exists as the principal index covering all shares quoted on the MTA and MTAX with some foreign stocks and is updated every minute. The Mib30 includes the 30 stocks with the highest market capitalisation and trade (and updated every minute). The S&P Mib is managed by S&P Poor's Inc (New York). Its number of stocks varies with the companies leaving and entering the index. The Midex covers the highest liquidity blue chip companies in the S&P Mib index. The ALLSTAR is a weighted Index of all the shares listed in the STAR segment of the MTA and MTAX market. It is also updated every minute. Borsa Italiana, 2007-10a.
and bonds) with little involvement of foreign investors.\textsuperscript{1203} They were, like the French and Italian exchanges, dominated by small number of government appointed individual brokers (known as agents).\textsuperscript{1204} They operated through open outcry systems with the stocks in each sector being traded for ten minutes each day subject to commissions fixed as percentages of the values of transactions regardless of the size of trade.\textsuperscript{1205} The country used to disallow the brokers from affiliating themselves with the banks and securities firms and from trading (or underwriting) on their own account so that they could act as agents of their customers only.\textsuperscript{1206} It used to prohibit the banks from being members of the exchanges and to allow their representatives to trade on the trading floors only in close conjunction with the brokers although the banks used to generate about two-third of the transactions in shares and to substantially dominate the brokers in practice.\textsuperscript{1207} It also used to prohibit individuals from accessing the market directly. The exchanges of the country were also blamed for following antiquated rules and procedures, price manipulation, unreliable information about listed companies and virtual absence of investor protection.\textsuperscript{1208} Most of the companies in the country were also family-owned and reluctant for listing in the exchanges for fear that the disclosure requirements of the latter would infringe their traditional desires for secrecy.

The country enacted a Securities Market Act in July 1988 to mandate the restructuring of the exchanges and authorize the creation of an investor protection system to make its exchanges competitive with European markets.\textsuperscript{1209} The Act:

- called for replacement of the individual agents in the exchanges by government approved brokerage firms;
- allowed the ownership of member firms by both individuals and corporations;
- paved the way for foreign ownership of the firms in four phases (30\% in 1989, 40\% in 1990, 50\% in 1991 and 100\% in 1992); and
- created an independent regulatory commission that had flexible regulatory powers to rely on disclosure, as opposed to substantive, requirements for regulating the public offerings of securities along the lines of the U.S. and the French securities market laws.

\textsuperscript{1203} Id., at pp. 433 & 434.
\textsuperscript{1204} Id., at p. 434.
\textsuperscript{1205} Only the Madrid exchange used to conduct three hours trade session around mid-day and unofficial extra trade session for longer than three hours every day. Id., at pp. 434 & 435.
\textsuperscript{1206} Id., at p. 434.
\textsuperscript{1207} Ibid.
\textsuperscript{1208} Id., at p. 434.
\textsuperscript{1209} Id., at pp. 435-437. The reform was initiated both by the stock exchanges and the government (Ibid).
It brought about two types of securities firms called the *Sociedades* and *agencias*.\(^{1210}\) It also allowed the exchanges to replace their fixed commission systems by freely negotiated rates and required them to reform their open-outcry trading systems and implement nationwide computerization by 1992.\(^{1211}\) The Madrid Stock Exchange, accordingly, introduced computerized trading (based on the "CATS" system of the Toronto Stock Exchange) in April 1989 and worked to eventually replace its open-outcry system by electronic trading in the subsequent years.\(^{1212}\)

The French stock exchanges, including the Paris Bourse and the regional stock exchanges in Lyon, Nancy, Lille, Bordeaux, Marseille and Nants, consisted of agents organized as partnerships before the conduct of Big Bang in 1986.\(^{1213}\) The agents were entrusted with exclusive right to execute transactions on bonds and shares and outsiders including the banks and other financial institutions were not allowed to have ownership interest in their businesses. Trading was conducted through call method where listed securities were called in turn during a two hours session every day.\(^{1214}\) The agents were not allowed to buy and sell securities for their own account like the Brokers in the UK before the Big Bang.\(^{1215}\) They were subject to unlimited liability to their customers and had to receive commissions fixed by law. The business of the agents was also confined to stock brokerage for customers until the reform of this in 1987.\(^{1216}\) The 1987 reform has forced the exchanges and agents to open up their ownerships to outsiders and foreigners.\(^{1217}\) It has also resulted in the membership of the French, American, British and Japanese banks and financial institutions in the French stock exchanges and transformed the traditionally monopolized exchanges (by individual agents) to market places owned by incorporated firms called *société de bourse*.\(^{1218}\) It has also required all transfers of securities other than transfers between natural persons and parent and subsidiary companies to be through the stock exchanges. It has allowed the exchange member firms to trade on their own accounts, to participate in options and future markets, to manage portfolios, and to engage in investment banking on top of their brokerage businesses.\(^{1219}\) The Paris Bourse has also inaugurated its computer assisted trading in 1986.\(^{1220}\) It has replaced its fixed commission rate system by negotiated rates as of July 1989 and grown to international market place by opening trading in futures in 1986 and trading in options, treasury bills and certificates of deposit in 1987.\(^{1221}\)

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1210  The *Sociedades* engaged in varieties of activities including stock broking, fund management, underwriting, stock trading, trading in government securities, margin lending, managing individual portfolios and trading in foreign currency. The *agencias* engaged in the aforementioned activities other than underwriting, trading for own account and margin lending. Ibid.

1211  Ibid.


1214  Ibid.

1215  Ibid.


1218  Ibid.


1220  Ibid.

1221  Id., at pp. 385-386.
Belgium used to run the Brussels exchange as market place where agents had to monopolize trade more or less like the French Bourse.\footnote{Pagano, 1998, at pp. 183-184.} It has introduced a French style société de bourse in 1990 and automated its market beginning 1989.\footnote{Ibid.}

The Lisbon and Porto exchanges of Portugal existed as public market places for business men.\footnote{EuronextL, 2007-10.} They were transformed into non-profit making exchange associations in January and March 1992, respectively. The country also created the Porto Derivatives Exchange on June 20 1996 as a not-for-profit association.\footnote{Ibid.} It has merged and transformed the Lisbon and Porto exchanges into unlimited company called BVLP (Bolsa de Valores de Lisboa e Porto) since December 20 1999.\footnote{Ibid.} It has made the BVLP responsible for the management of the regulated cash and derivatives markets and the unregulated markets beginning February 10 2000.\footnote{Ibid.} It has introduced an Automatic Securities Lending Facility (SEA) beginning October 1999 and launched a BVLP-MEFF link for the derivatives market since March 30 2001.\footnote{Ibid.} The BVLP has also signed Memorandum of Understanding with the Euronext N.V. on 13 June 2001 and merged with the latter eventually.\footnote{Ibid.}

The Netherlands used to run the Amsterdam Stock Exchange (created in 1611 and re-established as Amsterdam Stock Exchange Association (ASE) in 1851), a European Options (and futures) Exchange (EOE) (created in 1978) and an Off-Board (Parallel) Market until it re-incorporated all these as subsidiaries of a holding company called the Amsterdam Exchanges in the late 1990s.\footnote{Poser, 1991, at pp. 418ff; Kabir, 1990, at pp. 61-62; Ferrarini, 1998a, at p. 249; Pagano, 1998, at p. 185; and Wymeersch, 1998, at pp. 11 & 21-23.} The ASE used to have a number of individual members and three categories of corporate members, namely banks, broker firms and hoekmen (jobber) firms.\footnote{Poser, 1991, at p. 418.} The hoekmen stood at its centre like the specialist in the major U.S. stock exchanges.\footnote{Kabir, 1990, at pp. 61-62.} They could not deal with investors directly but could act as intermediaries for floor transactions between other members to the exchange.\footnote{Poser, 1991, at p. 418.} The banks and brokers had to send buy and sell orders of their customers to the hoekmen and the latter had to compete to execute the buy and sell orders of the banks and brokers.\footnote{Id., at p. 419.} They could not own more than five percent interest in the hoekmen firms.\footnote{Ibid.} The hoekmen were also permitted to trade on their own accounts without direct contact with customers.\footnote{Ibid.} They had to set trading prices
by negotiation, to earn fixed commissions for low transactions and negotiated commissions for high transactions, and to collect stamp duties as percentages of the effective values of transactions.1237

The ASE also used to conduct its trading in first-tier market for the listings of large companies and to distinguish between the forty most active shares and others until 1982.1238 It used to run morning sessions (until additional evening sessions were introduced for trading in five active issues, namely the issues of Royal Dutch, Unilever, Philips, Akzo and KLM) and to conduct its trading on the basis of a system of one price fixed after another with or without two rounds of dealing (until continuous quoting was introduced in 1985).1239 It conducted all trading in cash and no forward trading was known to it.1240 It existed for long as auction market with traditional trading floor under the hoekmen.1241 It introduced a second market called parallel market which operated for small and medium sized companies under listing, trading and disclosure rules similar to the official market as of February 1982.1242 It enabled a system of after-hour trade for stocks with traded options and an over-the-counter market (outside supervision of the exchange) for securities not listed officially.1243

It underwent structural adjustment in 1987 and introduced automated information system in 1988 to i) enable electronic trade between its members, ii) provide trading information and business data to stockbrokers, the trading floor and the clearing system on line, and iii) cope with the international competition it faced.1244 It institutionalised the Amsterdam Inter Professional Market System (AIM) in 1987 to i) accommodate block trades, ii) increase the liquidity of securities, and iii) ensure equal treatment of the clients and representatives of the stock exchange quotations.1245 It introduced a Trade Support System (an automated system for data processing and order routing known in Dutch as HOS) in 1988 in collaboration with the Mid-West Stock Exchange of Chicago.1246 It introduced an ‘Open Order Book’ system in December 1989 and increased its trading hours to speed up the execution of large orders.1247 It abolished the fixed fee/commission/ and stamp duty systems and allowed the banks and brokers to

1237 The stamp duties were abolished in 1990 (Poser, 1991, at p. 419; and Kabir, 1990, at p. 62).
1246 The Professional Market system displayed and transmitted screen-based quotation and sale prices without permitting trading on the screen while the Trade Support System (HOS) i) connected brokers, the trading floor and the Exchange’s Clearing System; ii) enabled members of the Exchange to put buy and sell orders from the trading floor and their offices; and iii) transmitted electronic orders from the brokers and the banks to the hoekmen and quotations and sale prices from the trading floors to the brokers and banks. Poser, 1991, at pp. 421-423.
1247 The system enabled i) the brokerage firms to send bid and request for quotations to the hoekmen; ii) the hoekmen to enter the quotations to an order book; and iii) the members of the exchange to access the best bid and offer through special information screen (Id., at p. 423).
trade directly (i.e. without intermediation of the hoekmen) as of July 1990.\textsuperscript{1248} It also introduced a hybrid system in 1994 which enabled i) the channelling of small securities orders through screen based continuous auction system and ii) the conduct of large trades through varieties of ways including direct deals, in-house matching, quote-driven screen-based system (called ASSET), and automatic auction inter-dealer market (called AIDA).\textsuperscript{1249}

The ASE and its parallel market and the EOE were then re-incorporated in 1997 as subsidiaries of a newly created holding company called the Amsterdam Exchanges (AEX).\textsuperscript{1250} The AEX then compiled the AEX and Dutch blue chip indices for Amsterdam and adopted a one-stop shopping service for investors (for securities depository, clearing, settlement and data supply services).\textsuperscript{1251} It reorganized itself and merged with the Brussels and Paris exchanges to form the Euronext N.V. in 2000 which in turn merged with the Portuguese exchange BVLP (Bolsa de Valores de Lisboa e Porto) and the London’s International Financial Futures and Options Exchange (LIFFE) in 2002 to form a larger group of Euronext N.V.\textsuperscript{1252} The latter has merged with the NYSE Group, Inc. (New York) since April 4, 2007 to form the NYSE-Euronext Company which currently i) brings together the New York Stock Exchange Group and six equities exchanges and six derivatives exchanges in five European countries (namely the Netherlands, Belgium, France, Portugal and the United Kingdom), and ii) serves as international electronic market place for the listing and trading of equities, bonds and (equity and interest rate) derivatives.\textsuperscript{1253}

c. Scandinavia and the Baltic

The Stockholm Stock Exchange had two markets, namely the official market for large companies and the OTC and O-list markets for smaller companies.\textsuperscript{1254} It served as market place for shares and bonds along with two other markets for stock (and index) options, i.e. the Stockholm Options Market (OM) and the Sweden Options and Futures Exchange (SOFE), which were operated outside the stock exchanges as of 1985 and 1987, respectively.\textsuperscript{1255} It enjoyed government-
protected monopoly on all organized trading in stocks and bonds in the country as the country prohibited all foreign bankers and brokers from acquiring interest in the Swedish exchange member firms.\textsuperscript{1256} It operated every morning with call method (which allowed the calling of each listed security in turn and the execution of trading in that security immediately after the call) and recognized the trading of listed securities outside the exchange subject to report to the exchange on the next day.\textsuperscript{1257} It suffered from restricted share trading and prohibition of foreign ownership of shares (of the Swedish companies) until the late 1980s.\textsuperscript{1258} It developed an Automated Exchange system called SAX as of 1986 and introduced a Screen-Based Automated Information System in 1988 to provide subscribers with i) real-time price quotations regarding stocks, bonds and options, ii) corporate information regarding companies listed on the exchange, and iii) political and financial news.\textsuperscript{1259} It privatized its ownership, allowed foreign competition and benefited from tax reforms between 1989 and 1990.\textsuperscript{1260} It was incorporated as joint-stock company in 1992 and required to meet rules that were meant to promote its transparency, fairness and internationalization in 1993.\textsuperscript{1261}

The Helsinki Stock Exchange was found in 1984 as company known as HEX plc.\textsuperscript{1262} It acquired the Stockholm Stock Exchange in 1998 and integrated the Helsinki and Copenhagen Stock Exchanges in 2003 and 2004 to become a company called OMX.\textsuperscript{1263} It included all the Baltic Stock Exchanges between 2004 and 2006 and currently operates as a Nordic and Baltic Large Cap Company for about 80\% of the Nordic and Baltic stock markets including the Stockholm, Helsinki, Copenhagen, Tallinn, Riga, Iceland and Vilnius Stock Exchanges.\textsuperscript{1264} It runs its equity trading through an electronic trading system called SAXESS and its derivative trading through a system called CLICK XT.\textsuperscript{1265} It also disseminates information to investors through a system called TARGIN.\textsuperscript{1266}

d. Greece

The Athens Exchange lived as market governed by the Greek Code de Commerce having no brokerage firms and central depository until it opened its membership to brokerage firms and introduced central depository in 1988.\textsuperscript{1267} It became

\textsuperscript{1256} Id., at p. 428.
\textsuperscript{1257} Ibid.
\textsuperscript{1258} It existed as one of the markets with the highest transaction costs in Europe (and lost much of its trading to London and the U.S.) because of high commission and tax rates. The country also used to ban the foreign ownership of its companies except up to one-fourth of their equity capitals and subject to a requirement that the shares to be owned by foreigners would bear lesser voting powers than those to be owned by the Swedes. It used to completely ban the foreign ownership and takeover of its banks. Id., at pp. 429-430.
\textsuperscript{1260} Poser, 1991, at pp. 429-430.
\textsuperscript{1262} OMX SE, 2007-10.
\textsuperscript{1263} Ibid.
\textsuperscript{1264} OMX SE, 2007-10; and OMX SE, 2007-10a.
\textsuperscript{1265} Ibid.
\textsuperscript{1266} Ibid.
\textsuperscript{1267} Athens SE, 2007-10.
limited company to serve as mediator and regulator of its members in 1995.\textsuperscript{1268} It became under the Hellenic Exchanges SA (HELEX) in 2000 and merged with the Athens Derivatives Exchange by the HELEX to form the Athens Exchange SA (ATHEX).\textsuperscript{1269} It has opened its ownership to outsiders since 2002 and is currently operated as hybrid company by a council of seven administrators made up of the chairman and the vice president of the Athens Exchange, one representative of the Athens Chamber of Commerce and Industry, one representative of the investment funds functioning in Greece, one representative of the Bank of Greece, one representative of the listed companies, and one broker representative elected by the brokers' corporation.\textsuperscript{1270}

e. Asia and the Pacific

Japan created the oldest and biggest of its exchanges, the Tokyo Stock Exchange, as public market in 1878.\textsuperscript{1271} It had eleven exchanges, including the Tokyo Stock Exchange, by the time of World War II and combined them in 1943 to form the Japan Securities Exchange which was run partially by government.\textsuperscript{1272} It closed the latter from August to December 1945 due to the war, re-established the exchanges in Tokyo, Osaka and Nagoya in 1949, and created six more exchanges in Kyoto, Kobe, Hiroshima, Fukuoka, Niigata and Sapporo in 1950.\textsuperscript{1273} It merged and closed many of the exchanges and retained its current five exchanges in Tokyo, Osaka, Nagoya, Fukuoka and Sapporo over the years.\textsuperscript{1274} It developed the Tokyo Stock Price Index (TOPIX) in 1969 which calculated and controlled price changes every minute since 1987 and transformed the Tokyo Stock Exchange from trading floor into fully electronic trading system in 1999.\textsuperscript{1275}

The Tokyo Exchange currently assigns the stocks listed on it to one of three markets called the First Section, the Second Section, and the Mothers section.\textsuperscript{1276} It imposes the highest listing criteria in its First Section and makes all the newly listed stocks begin on the Second Section with less strict requirements. It requires the listing of Stocks of high growth emerging companies on its Mothers section and moves the stocks up and down the markets based on the criteria they meet. It also runs a market for derivatives which is about twenty years old and lists futures and options in indexes and Japanese government bonds.\textsuperscript{1277}

\textsuperscript{1268} Ibid.
\textsuperscript{1269} Ibid.
\textsuperscript{1270} Athens SE, 2007-10a.
\textsuperscript{1271} Tokyo SE, 2007-10.
\textsuperscript{1272} Ibid.
\textsuperscript{1273} Ibid.
\textsuperscript{1274} Ibid.
\textsuperscript{1275} The TOPIX currently uses a continuous electronic auction system of trading which allows brokers to place orders online and executes trade automatically when buy and sell prices match. It enables the making of deals between buyers and sellers directly without market makers. It prevents price swings that may lead to market uncertainty or stock crash by using price controls that prevent prices of a stock from rising and falling out of certain points during the day of trade. It stops trading on a particular stock for a specified period of time if major price swing occurs. Tokyo SE, 2007-10; and Tokyo SE, 2007-10a
\textsuperscript{1276} Tokyo SE, 2007-10a.
\textsuperscript{1277} Ibid.
The country had tight regulation of its financial markets under its Ministry of Finance until the 1980s. It loosened its regulation in the 1980s and conducted its Big Bang in 1998 to allow the entry of new actors into its financial markets, the cross-sectoral entry of the actors in its financial markets, the diversification of its financial markets, services and instruments, the intensification of competition in its financial markets, the internationalisation of its financial markets, services and instruments, and the formation of its Financial Services Authority (FSA)). Its securities markets were dominated by the Big Three companies (i.e. Nomura, Daiwa and Nikko), some second tier firms, several small firms and some foreign securities companies (that acted as brokers for commission) until 1999. It restructured its markets in 1999 due to collapse of its securities companies (and as part of its post 1998 financial Big Bang) and the restructuring resulted in the following:

- the formation of equity partnerships between two of the Big Three, namely Nikko and Daiwa, and the foreign and domestic non-securities companies;
- the making of mergers, acquisitions and tie-ups between the second tier and the many small securities firms;
- the opening up of equity brokerage businesses to bank subsidiary companies;
- the selling of life and non-life insurance products through securities firms;
- the improvement of performance of the foreign securities companies in cross-border buying and selling of securities;
- the entrance of new non-financial firms in the securities trading and discounting businesses;
- the intensification of competition in the securities markets;
- the expansion of the securities businesses, services and actors;
- the rise of securitization of assets; and
- the progressive automation and internationalisation of the country's securities trading.

It currently has a number of domestic (and foreign) securities companies and dealers that should, together with the registered financial institutions in the country, be members of an association called Japan's Securities Dealers Association (JSDA). The latter exists as the only securities association authorized by the Prime Minister of the country under its Securities and Exchange Law and aims at protecting investors by ensuring fair and smooth trading in securities (and other transactions) and promoting the implementation of policy measures for the revitalization of the country's securities markets. It acts as:

1279  Id., at pp. 20-28.
1280  The Big Three and their second tier subsidiaries had to dominate the underwriting of new shares and bonds both on the exchanges and the over-the-counter markets. All including the Big Three, the second tier and small firms, and the few foreign companies were active in the brokerage businesses in the secondary markets. Id., at pp. 54-60.
1281  Id., at pp. 59-73, 217-225, 249-251 & 263.
1282  JSDA, 2007-10.
1283  Ibid.
- self-regulatory organization (for regulating the activities of its members, the OTC bond market and the off-exchange trades in listed securities);
- trade association (for capacity building, information dissemination, liaison and mediation between its members); and
- forum for international exchange of information and cooperation (by representing its members).1284

The Shanghai Stock Exchange, re-estab lished in 1990, worked as non-profit institution under supervision of the China Securities Regulatory Commission.1285 It lists two types of shares, namely 'A' shares traded in Yuan and 'B' shares traded in U.S. dollars.1286 It started to trade within the country with the A shares and continued to trade world wide with the A and the B shares. The majority of the shares it currently lists are 'A' shares.1287 It uses four main types of indices called the SSE 50 index, the SSE 180 Index, the SSE Composite Index and the SHSE-SZSE 300 Index.1288

The Hong Kong Stock Exchange merged with the regional exchanges in 1980 and started trading through a computer-assisted system on 2 April 1986.1289 It launched an Automatic Order Matching and Execution System (AMS) in 1993.1290 It launched a Stock Options Market in 1995, a Growth Enterprise Market (GEM) in 1999 and a Growth Enterprise Index (GEI) in 2000.1291 Hong Kong also established a Hong Kong Futures Exchange Ltd. in 1976 and a Hong Kong Securities Clearing Company Ltd. in 1989.1292 The Hong Kong Stock Exchange, the Hong Kong Futures Exchange Ltd and the Hong Kong Securities Clearing Company Ltd have merged to form a unified company called the Hong Kong Exchanges and Clearing Limited (HKEx) since 2000.1293 The latter currently relies on order-driven trading system which operates on two trading platforms of different requirements called the Main Board and the Growth Enterprise Market (GEM).1294 The Main Board serves as market for capital increase by established companies that meet its profit requirements while the Growth Enterprise Market provides fund raising venue for 'high growth, high risk' companies and promotes the development of technology industries and venture capital investments. The HKEx has also developed a trading system called AMS/3 since October 2000 which replaced the 1993 AMS system and consisted of four components from which investors can choose (namely Trading Terminal, Multi-Workstation System ('MWS'), Broker Supplied System ('BSS'), and Order Routing System ('ORS')).1295

1284 Ibid.
1285 Shanghai SE, 2007-10a.
1286 Ibid.
1287 Ibid.
1288 Ibid.
1289 Hong Kong SE, 2007-10.
1290 Ibid.
1291 Ibid.
1292 Ibid.
1293 Ibid.
1294 Hong Kong SE, 2007-10a.
1295 The ORS allows investors to place their requests electronically and the exchange participants to trade through terminals in the Trading Hall as well as from their offices through installed off-floor terminals (Ibid).
It also operates the Hang Seng index (introduced in 1969) for shares traded on it and runs the leading derivatives market in the Asia-Pacific region.\textsuperscript{1296}

The Moscow Inter-bank Currency Exchange Group (MICEX), created in 1992, existed as joint-stock company established and owned by major Russian commercial banks and the Central Bank of the Russian Federation.\textsuperscript{1297} It currently exists as a group of organizations providing trading, settlement, clearing and depository services for Russian and foreign investors and consists of the MICEX Currency Exchange, the MICEX Stock Exchange, the National Mercantile Exchange, the MICEX Settlement House, the National Depositary Centre, the National Clearing Centre, and the regional exchanges.\textsuperscript{1298} It runs a MISEX Equities and Corporate Bonds Index and conducts its trade electronically through a System of Electronic Trading (SELT) using two computing centres that are linked with more than 2000 remote work stations installed in banks and other financial institutions in Russia and abroad.\textsuperscript{1299} It conducts about 70 percent of its securities transactions through the Internet and requires all foreign investors wishing to trade on it to receive access to a GL NET network and then to register with one of the Russian brokers that are connected to the GL NET.\textsuperscript{1300}

The Stock Market of Sri Lanka was run by the Colombo Share Brokers Association from 1896 up to 1985.\textsuperscript{1301} The Colombo Stock Exchange (CSE) took over the Association in 1985 and was established as a non-profit making limited liability company under the Companies Act of Sri Lanka.\textsuperscript{1302} Its current members are corporate bodies which are licensed to act as stock brokers.\textsuperscript{1303} It has introduced a Central Depository System (CDS) and automated its settlement system for share transactions since 1991.\textsuperscript{1304} It has introduced a two-tier trading system since 1996, namely Board "A" for major companies and Board "B" for medium and small companies, and automated its trading through the Automated Screen-Based Trading System (ATS) in 1997.\textsuperscript{1305} It currently runs a fully automated trading platform for equity and debt securities and two indices, namely the All Share Price Index (ASPI) and the Milanka Price Index (MPI).\textsuperscript{1306}

The Philippine Stock Exchange (PSE), which unified the Manila Stock Exchange (1927) and the Makati Stock Exchange (1963) in 1992, operates as the only stock exchange in the Philippines.\textsuperscript{1307} It has introduced a computerized trading system called Stratus Trading System since January 04 1993, adopted a second trading system called MakTrade since June 15 of same year, and linked the two trading

\textsuperscript{1296} Hong Kong SE, 2007-10; and Hong Kong SE, 2007-10a.
\textsuperscript{1297} Moscow MICEX, 2007-10a.
\textsuperscript{1298} Ibid.
\textsuperscript{1299} Ibid.
\textsuperscript{1300} Ibid.
\textsuperscript{1301} Colombo SE, 2007-10.
\textsuperscript{1302} Ibid.
\textsuperscript{1303} Colombo SE, 2007-10a.
\textsuperscript{1304} Colombo SE, 2007-10.
\textsuperscript{1305} Ibid.
\textsuperscript{1306} Colombo SE, 2007-10a.
\textsuperscript{1307} Philippine SE, 2007-10; and Philippine SE, 2007-10a.
systems since March 25 1994. It has unified the trading systems under the MakTrade system and facilitated the trading of securities through a broker to broker market with automatic order, trade routing and confirmation since November 13 1995. It was named as the PSE, and recognized as self regulating organization to implement its own policies and regulations, by the Philippine Securities and Exchange Commission in 1998. It was reorganized as profit making corporation subsequently. It has begun trading in bonds since 2001 and required the listing of shares by introduction, rather than by initial public offering, since 2003. It currently runs two trading floors, one in Makati City and another in Pasig City, under a single order book and stock price system through the automated MakTrade where a customer's order is matched with the best bid/offer irrespective of the floor it was placed through. It also runs a Composite Index and six sub indices, namely the Financial Index, the Industrial Index, the Holding Firms Index, the Property Index, the Services Index, and the Mining & Oil Index.

The Stock Exchange of Singapore (SES) and the Singapore International Monetary Exchange for futures (SIMEX) existed as private companies owned by their member firms. They were merged to form the Singapore Exchange (SE) in 1999. The SE has become publicly held stock exchange company by listing its shares on its own exchange since then. It currently operates as fully electronic exchange, using a Central Limit Order Book (CLOB) system, and divides its company listings into two, namely the SGX Mainboard (which lists companies that meet requirements of market capitalization, pre-tax profit, and operating track record) and the SGX SESDAQ (which lists new companies without quantitative requirements for listing). It offers equity index futures and allows the trading of derivative securities through its SGX-DT. It moves the companies listed on the SESDAQ to the Mainboard when they meet the minimum quantitative requirements and apply for the change of their listing provided that they were listed in the SESDAQ for at least two years. Its electronic system i) permits the brokers to place online orders, ii) executes the orders (and notifies the brokers) automatically when buy and sell orders match, and iii) terminates orders that are not executed by the end of a day automatically.

1308 Ibid.
1309 Ibid.
1310 Philippine SE, 2007-10.
1311 Ibid.
1312 Ibid.
1314 Ibid.
1315 Singapore SE, 2007-10a.
1316 Ibid.
1317 Ibid.
1318 Singapore SE, 2007-10a.
1319 Ibid.
1320 Ibid.
1321 Ibid.
The Bombay Stock Exchange trades in equities and derivatives including equity futures and options, index futures and options, and weekly options.\textsuperscript{1322} It has developed an index system called BSE Sensex since 1986.\textsuperscript{1323} It has operated as an open-cry floor trading exchange until it introduced its electronic trading system in 1995.\textsuperscript{1324} The National Stock Exchange (NSE) (incorporated in 1992) operates three segments, namely a Wholesale Debt Market (WDM) (operational in June 1994), a Capital Market (CM) (opened by the end of 1994) and a Futures and Options segment (opened in 2000).\textsuperscript{1325} It is owned by the leading financial institutions of the country, including the Indian Bank and the Life Insurance Corporation of India, but operates as a demutualized exchange where its owners and management do not have right to trade (and only qualified traders can be involved in the securities trading) on it.\textsuperscript{1326} It has introduced the S&P CNX Nifty and CNX Junior Indices since 1996 and become the first exchange to start stock trading through the Internet in the country since 2000.\textsuperscript{1327} It currently operates three segments on a single platform, namely a Wholesale Debt Market (WDM), a Capital Market (CM) and a Futures & Options Market (F&O), and runs a single electronic trading platform through VSAT network that uses a satellite communication system and connects traders from 345 Indian cities.\textsuperscript{1328} The Hyderabad Stock Exchange (created in 1943) has also operated as Share and Stock Brokers Association until August 2005 and become a demutualized corporation since September 2005.\textsuperscript{1329}

The Karachi Stock Exchange has existed as registered limited company since a few years after its establishment in 1947.\textsuperscript{1330} It has allowed the membership of corporate entities and foreigners since 1990. It has:
- introduced a KSE 50 Index in the 1900s, a capital weighted KSE 100 Index (which replaced the KSE 50 index) in 1991 and a KSE All Shares Index since 1995;
- launched a computerized trading system called KATS (Karachi Automated Trading System) since 1997 (with installation of over 1000 KATS workstations until recently); and
- initiated internet trading since 2005.\textsuperscript{1331}

It currently runs the KSE 100 and KSE All Shares Indices and two markets, namely a Ready Market (that lists companies with high capital) and an Over-the-Counter (OTC) Market (that lists companies with low capital).\textsuperscript{1332}

\textsuperscript{1322} Bombay SE, 2007-10a. The Bombay Stock Exchange and the National Stock Exchange of India (NSE) exist as the biggest of 23 exchanges in India (Bombay SE, 2007-10a; and India NSE, 2007-10a).
\textsuperscript{1323} Bombay SE, 2007-10; and Bombay SE, 2007-10a.
\textsuperscript{1324} Bombay SE, 2007-10.
\textsuperscript{1325} India NSE, 2007-10.
\textsuperscript{1326} India NSE, 2007-10a.
\textsuperscript{1327} India NSE, 2007-10.
\textsuperscript{1328} India NSE, 2007-10a.
\textsuperscript{1329} Hyderabad SE, 2007-10; and Hyderabad SE, 2007-10a.
\textsuperscript{1330} Karachi SE, 2007-10.
\textsuperscript{1331} Ibid.
\textsuperscript{1332} Karachi SE, 2007-10a.
f. Oceania

The Australian Stock Exchange, which was created in 1987 through combination of the six exchanges of Australia (namely the Sydney Exchange established in 1871, the Hobart Exchange established in 1882, the Melbourne and Brisbane Exchanges established in 1884, the Adelaide Exchange established in 1887 and the Perth Exchange established in 1889), has become corporation since 1996.\textsuperscript{1333} It was demutualized and privatised through public listing of its shares in 1998.\textsuperscript{1334} It has introduced its Stock Exchange Automated Trading System (SEATS) since 1987 and closed its trading floor since 1990.\textsuperscript{1335} It currently exists as fully electronic exchange, using the SEATS which receives online trade orders by brokers and executes the trades automatically when buy and sell orders match, for the trading of stocks, warrants, fixed-interest securities, and company options and rights.\textsuperscript{1336} It also runs indices called the S&P ASX 20 (for its 20 stocks with the highest market capitalization), the S&P ASX 200 (for its 200 top shares), and the S&P ASX 300 (for the rest of its performance).\textsuperscript{1337}

The New Zealand Stock Exchange, which was created in the 1870s, has become demutualized limited liability company since May 2003.\textsuperscript{1338} It currently exists as the only securities exchange in the country, being also responsible for regulating the country’s capital markets.\textsuperscript{1339} It consists of three main markets, namely the New Zealand Alternative Market (NZAX), the New Zealand Stock Market (NZSX) and the New Zealand Debt Market (NZDX).\textsuperscript{1340} It has computerized its trading system as of June 24, 1991 and updated it to a system called FASTER in 1999.\textsuperscript{1341}

g. Latin America

Most of the Latin American securities markets exist as unincorporated markets that run oral floor trading along with electronic trading systems. Only some of them are incorporated or have become fully automated recently.

The Buenos Aires Stock Exchange of Argentina (Bolsa de Comercio de Buenos Aires (BCBA)), which was created in 1854 as forum for business and trading of stocks and bonds, exists currently as self-regulated non-profit civil association with statutory powers to admit, suspend and cancel the listing of securities and to receive annual and quarterly reports from listed companies, pursuant to its own regulations, which must be approved by the National Securities Commission.\textsuperscript{1342} It exists as market place for equities, corporate and government bonds, trusts,
certificates of deposit of foreign companies called CEDEARs, Closed-End Funds, and Deferred-Payment Checks.\textsuperscript{1343} It has introduced electronic trading system in the period between 1997 and 2001 in cooperation with the London Stock Exchange and currently runs both floor and electronic trading through i) open outcry in the trading floor by stockbrokers and stockbrokerage firms, and ii) an electronic system called SINAC which receives and matches bids and orders through terminals.\textsuperscript{1344} It is assisted by indices called Merval and Burcap, Bolsa General (Bolsa-G), M.AR, Indol and Wholesale.\textsuperscript{1345} It also runs a simplified listing regime for small and medium enterprises and an SME Department which advises these enterprises.\textsuperscript{1346}

The São Paulo Stock Exchange (BOVESPA) of Brazil operated as public market place run by government appointed brokers until the mid 1960s.\textsuperscript{1347} It became non-profit making self-regulated entity operated by brokerage companies as of 1965 when the country allowed its exchanges to exist as self-regulated entities, with administrative and financial autonomy, and required replacement of the traditional government brokers by brokerage firms to be established as joint stock or private limited liability companies by a Securities Act of 1965.\textsuperscript{1348} It took over the Rio de Janeiro Stock exchange in 2000 and exists currently as integrated stock exchange operating as self-regulated entity composed of Brokerage Members that operate through an electronic trading system called Mega Bolsa.\textsuperscript{1349} It started to run online and real-time information display system for its trading sessions via computer terminal network as of 1972 and established its options market in the late 1970s.\textsuperscript{1350} It has introduced on-line service network for brokerage firms and a Private Telephone Operations System called SPOT since the 1980s.\textsuperscript{1351} It has implemented its Computerized Trading System called CATS since 1990 and its new electronic trading system called Mega Bolsa since 1997.\textsuperscript{1352} It has launched Home Broker and After-Market systems since 1999 to enable small and medium-sized investors to participate in the market.\textsuperscript{1353} It currently operates as fully electronic market through the Mega Bolsa system.\textsuperscript{1354} The country also runs an

\textsuperscript{1343} Ibid.
\textsuperscript{1344} Ibid.
\textsuperscript{1345} The Merval and Burcap determine the market value of a stock portfolio. The Bolsa General (Bolsa-G) weighs the stocks of companies established in the country for stock market capitalization. The M.AR reflects the performance of Argentine corporations within the stock market. The Indol and Wholesale calculate the future retail and wholesale dollar value of the Argentine Peso and indicate potential exchange rate risks. The Merval index is considered as the most important index. It is provided by the Mercado de Valores de Buenos Aires S.A. (Buenos Aires SE, 2007-10; and Buenos Aires Merval S.A., 2007-10).
\textsuperscript{1346} Ibid.
\textsuperscript{1347} São Paulo SE, 2007-10.
\textsuperscript{1348} Ibid.
\textsuperscript{1349} The Brazilian Securities and Exchange Commission (the CVM) supervises the brokers and the Mega Bolsa. Ibid.
\textsuperscript{1350} Ibid.
\textsuperscript{1351} Ibid.
\textsuperscript{1352} Ibid.
\textsuperscript{1353} The Home Broker system allowed investors to transmit their buy and sell orders directly to the Mega Bolsa through the brokerage firms’ websites and the After-Market enabled evening electronic trading by both professionals and small and medium sized investors. Ibid.
\textsuperscript{1354} Ibid.
Electronic Quotation System called SOMA and a national commodities and futures market called Brazilian Mercantile & Futures Exchange (BM&F) (which exists as integrated private non-profit association).  

The Santiago Stock Exchange of Chile exists as public market consisting of seven segments, namely a stock market, a fixed income securities market, a futures market, an options market, an investment Fund Quotes market, a Currency and Precious Metals Market and a money market. It exists as market for domestic and foreign equities, fixed income securities, options, futures, investment fund quotes, foreign mutual fund quotes, and currency and money market instruments. It has computerized its main processes beginning 1981 and operates currently through a network of more than 100 terminals located at local places (i.e. in the premises of the Stock Market and the offices of the stockbrokers) and at remote places (i.e. in the offices of insurance companies, other financial institutions, pension fund management institutions, mutual funds, investment funds and incorporated companies). It runs the electronic trading for the fixed income securities and the electronic and floor based auction tradings for the variable income securities. It provides real time information to its participants through three types of terminals called Consulting Terminal, Fixed Income Executive Terminal and Variable Income Executive Terminal. Its stock market segment runs three indices called General Stock Price Index (IGPA), Selective Stock Price Index (IPSA), and Inter-10 Index. The country has also introduced an electronic stock exchange called Bolsa Electronica de Chile.

The Mexican Stock Exchange (Bolsa Mexicana de Valores - BMV) was re-incorporated as Bolsa de México S.A. in 1895, as Bolsa de Valores de México S.A. in 1933 and as Bolsa Mexicana de Valores (by taking over the Guadalajara and Monterrey Stock Exchanges) in 1975. It existed as open outcry market until it started its automation in 1996. It currently exits as private company that operates under a concession granted by the Ministry of Finance of the country and is assisted by a service company incorporated on January 01 2002, by the name Corporativo Mexicano del Mercado de Valores S.A. de C.V., for purpose of handling the hiring, administration and controlling of its personnel. It has introduced an electronic trading system called BMV-SENTRA Capitales since 1996 and enabled the electronic trading of all stocks since January 11 1999. Its system is currently operated by specialists (called account executives) who are trained and authorized by the securities market regulator of the country (the

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1355 Brazilian CVM, 2007-10; and Brazilian M&F, 2007-10.
1356 Santiago SE, 2007-10; and Santiago SE, 2007-10a.
1357 Ibid.
1358 Ibid.
1359 Ibid.
1360 Ibid.
1361 BE Chile, 2007-10.
1362 Mexican SE, 2007-10.
1363 Ibid.
1364 Ibid.
1365 Ibid.
CNBV) and employed by brokerage firms.\textsuperscript{1366} It has headed to demutualization although its shareholders are currently the authorized brokerage firms.\textsuperscript{1367}

The Lima stock Exchange (Bolsa de Valores de Lima) of Peru has served as public market place for equities, bonds and certificates since the late 1980s.\textsuperscript{1368} It currently exists as public limited company, runs both on-the-exchange and over-the-counter trades, and allows the carrying out of public share offers (PSO) and cash, forward, repo and double forward spot transactions.\textsuperscript{1369} It conducts the on-the-exchange trade through both spoken bids and an electronic trading system called (ELEX) which was introduced in 1995. It uses the spoken and electronic trade systems for transactions in equity securities and the electronic trade system alone for the repo and debt instrument related transactions. The ELEX enables automated matching of buy and sale orders from terminals located both in the floor of the exchange and at the offices of participants outside the exchange.\textsuperscript{1370} It receives buy and sale orders and conducts its trade through modules for Equity Securities, Debt Instruments, Primary and Secondary Placements, Public Offerings, Special Auctions, Money Market transactions, Foreign Exchange Market transactions, Repo-transactions, and Securities Lending and Forward Transactions.\textsuperscript{1371}

The Bogotá Stock Exchange of Columbia, created in 1926, was integrated with the Medellín and Occidente Exchanges of the country on July 03 2001 to form the new Colombian Stock Exchange (Bolsa de Valores de Colombia - BVC).\textsuperscript{1372} The BVC currently operates as national market through brokerage firms registered in the former stock exchanges.\textsuperscript{1373} It operates from a single computer assisted platform that consists of stock, foreign exchange, derivative and fixed income markets and matches buy and sale orders submitted by the broker firms in trading sessions.\textsuperscript{1374} It has introduced a Centralized Information System called Inverlace S.A. since 1997 to enable the supply of information about over-the-Counter (OTC) transactions to the securities market supervisor and the market actors.\textsuperscript{1375} It has launched a centralized Colombian Electronic system called MEC since November 2001 for the fixed income market as a result of the authorization (by the country’s Ministry of Finance and Banking and Securities Supervisors) of industrial and commercial government companies, mixed economy companies, and third-party management companies to carry out treasury operations through electronic transaction systems to be managed by entities supervised by the

\begin{footnotesize}
1366  Ibid.
1367  Ibid.
1368  It existed as Commerce Exchange of Lima (Bolsa de Comercio de Lima) as of December 31 1860 upon sponsorship of the Peruvian government and the most representative businessmen of the time. It was re-established as Bolsa de Valores de Lima in 1971. Lima SE, 2007-10.
1369  Ibid.
1370  Ibid.
1371  Ibid.
1372  Colombian SE, 2007-10.
1373  Ibid.
1374  Ibid.
1375  Ibid.
\end{footnotesize}
Securities Supervisor. It also runs a General Index (which measures the evolution of the prices of its most representative stocks) and several other indices (which calculate prices for stocks by sector) namely an Industrial Sector Index (INDC), a Financial Sector Index (FINC), a Sundry Services Sector Index (VARC), an Agricultural Sector Index (AGRC), a Commercial Sector Index (COMC), a Public Services Sector Index (PUBC), and an Investment Companies Sector Index (INV). It has also worked with the central bank of the country to upgrade its trading platform for the stock, future and derivatives markets as of March 09 2005.

The Caracas Exchange of Venezuela (Bolsa de Valores de Caracas C.A.) existed as public market place for shares and other securities in competition with the Miranda exchange of the country (created in 1958) until the two merged in 1974. It was incorporated as Bolsa de Valores de Caracas C.A. (consisting of 43 shareholders) after enactment of a capital markets law in 1975. It exists currently as the only Venezuelan stock exchange running a fixed income securities market (for government and corporate bonds and commercial papers) and a variable income securities market (for shares, global depository certificates and warrants which offer options to purchase shares at future date). It is operated by licensed (individual and corporate) brokers that are recognized as stock brokerage houses. It has acquired its Automated Exchange Trading System called SATB from the Vancouver Stock Exchange of Canada and made it operational as of November 1992. It has implemented Remote Connection (SISTECOR) and Electronic Compensation and Liquidation (SECOMLI) systems since 1994. It currently operates as fully automated market with four stages, namely a pre-opening stage, a market session stage, a closing stage and a post-closing stage. It also runs an index called Indice Bursátil de Capitalización (IBC).

The Montevideo Stock Exchange (Bolsa de Valores de Montevideo) of Uruguay has existed as traditional floor based market for much of its history and introduced electronic trading system since 2005. The country has also got an Electronic Stock Exchange called Bolsa Electrónica de Valores del Uruguay S.A. (BEVSA) which was established by 26 local (public and private) financial institutions on the 15th of January 1993 and registered at the Uruguay Central Bank on the 9th of August 1994 to start operation on the 5th of September 2005.

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1376 The MEC has enabled the entities supervised by the Banking and Securities Supervisors, the public agencies, the other investors, and the natural and corporate persons that had to be represented by the brokerage firms to buy securities directly from the fixed income market (Ibid).
1377 Ibid.
1378 Ibid.
1379 Caracas SE, 2007-10.
1380 Ibid.
1381 Ibid.
1382 Ibid.
1383 Ibid.
1384 Ibid.
1385 Ibid.
1386 Montevideo SE, 2007-10.
1994. The BEVSA currently serves as market place for Securities, and FOREX and Money market businesses through twenty five operators.

The El Salvador Stock Exchange (Bolsa de Valores de El Salvador S.A (BVES)), which dates back to 1960, was incorporated as Bolsa de El Salvador Sociedad Anónima in 1963. It was automated as of 1999 and re-incorporated under its current name in 2000. It currently exists as electronic market place where securities trades are negotiated and executed through a system called SIBE.

The Jamaica Stock Exchange was incorporated as private limited company in August 1968. It has introduced its automated trading system called Sunrise since January 2000 and exists currently as automated trading floor operated by brokers who collect and match buy and sale orders from their clients at prices they think are reasonable. It serves as market place for corporate shares and bonds only since the Government Bonds are traded by the Bank of Jamaica in an over-the-counter market. The country’s capital market, accordingly, consists of: i) the Jamaica Stock Exchange (JSE) for listed shares and corporate bonds, ii) an over-the-counter (OTC) money market for short-term commercial papers issued by private issuers, iii) an OTC money market for government debt instruments, and iv) a foreign exchange market for currencies.

Most of the other stock exchanges of the Latin American region, including the Costa Rica, Guatemala, Panama, Honduras, Central America and Nicaragua exchanges, have originated in the post-1970 period and remained largely as un-automated local market places.

The Latin American countries have also experienced informal trading of (both registered and unregistered) securities outside the organized exchanges with involvement of the formal financial institutions and stock brokers. The ‘outside-the-exchange’ markets have existed not like the ‘over-the-counter markets’ for off-exchange trade, but as unregulated parallel markets about which no transaction information was available.

1387 Uruguay SE, 2007-10.
1388 Ibid.
1390 Ibid.
1392 Jamaica SE, 2007-10.
1393 Ibid.
1394 Ibid.
1395 Jamaica FSC, 2007-10.
1396 Note the information from websites of the Exchanges.
1398 Ibid.
The majority of the African stock exchanges have lived as unincorporated not-for-profit public market places driven by brokers (without presence of specialist market makers and underwriters). Only the Ghana, Nairobi, Mauritius, Uganda, Dar es Salaam, South Africa (JSE), and Lusaka exchanges are transformed into incorporated limited liability companies while the Algerian Bourse is supervised by the SGBV which is a limited liability company. These exchanges also exist as companies limited by guarantee under company laws of the countries without having share capital or profit motive with the majority of them having corporate and individual members who participate in their governance.

The Societe de Gestion de la Bourse des Valeurs - SGBV (the Stock Exchange Management Company) of Algeria was established by law number 93-10 of 23 May 1993. It was incorporated as limited liability company to be responsible for supervising transactions on listed shares. The Ghana Stock Exchange (GSE) was incorporated in July 1989 as private company limited by guarantee and officially recognised as authorised stock exchange under the Stock Exchange Act of the country in October 1990. It was reconstituted as public company limited by guarantee in April 1994 to operate under the country’s company code of 1963. It operates currently as public company limited by guarantee with no shareholders as such, but two categories of members, namely Licensed Dealer Members (that are corporate bodies licensed by the Exchange to deal in listed securities) and Associate Members (that are individuals or corporate bodies that satisfy the Exchange's membership requirements but are not licensed to act as stockbrokers on the Exchange). The Nairobi Stock Exchange originated as association for Africans on attainment of the Kenyan independence in 1963. It was established in 1991 as limited liability company under the country’s Company Act. It currently runs i) main, ii) alternative, and iii) fixed income markets for shares and bonds. The Stock Exchange of Mauritius (SEM) was incorporated as private limited company on the 30th of March 1989. It currently runs three markets, i.e. an Official Market which started its operation in 1989, a Development & Enterprise Market (DEM) which was launched on the 4th of August 2006, and an Over-the-Counter (OTC) Market which is open to locals.
only.\textsuperscript{1411} It has introduced trading on treasury bills since December 2003 as its first step to set up secondary market for government securities.\textsuperscript{1412} The Uganda Securities Exchange Ltd. (USE) was licensed as stock exchange company in June 1997.\textsuperscript{1413} It started operation in January 1998 by listing a four years bond of the East African Development Bank.\textsuperscript{1414} It currently operates on a trading floor with Continuous Open Outcry Auction Trading System.\textsuperscript{1415} It does not allow an Over-the-counter (OTC) trading of equities and corporate papers.\textsuperscript{1416} The Dar es Salaam Stock Exchange (DSE) was incorporated in September 1996 as private company limited by guarantee under the Companies Ordinance of the country.\textsuperscript{1417} It has existed as non-profit making body without share capital to facilitate the Government’s implementation of economic reforms including privatisation and the creation of private sector companies.\textsuperscript{1418} The South African JSE Limited, which was created in 1887 as the Johannesburg Stock Exchange, existed as stock broking member organization as of its inception and operated as open outcry market until it eliminated this system and closed its trading floor in 1996.\textsuperscript{1419} It allowed only South African citizens to be stockbrokers until this rule was changed in 1995 to allow foreigners and corporations to be members to it.\textsuperscript{1420} It was re-established as a JSE Securities Exchange in 2000 and incorporated as a publicly held limited company called JSE Limited on the 1st of July 2005.\textsuperscript{1421} It has acquired the South African Futures Exchange (SAFEX) since August 2001 and continued to run two markets for futures, namely the SAFEX Financial Derivatives (which was renamed as SAFEX Equity Derivatives as of 2006) and the SAFEX Agricultural Derivatives.\textsuperscript{1422} It has created a second division of stock listings, the AltX, since 2003 to allow the listing of shares by small businesses.\textsuperscript{1423} It currently makes its listings on a Mainboard (whose requirements for listing are strict) and the AltX (which lists the small companies that fail to meet the Mainboard criteria).\textsuperscript{1424} It has also formed technical alliance with the London Stock Exchange to enable the primary listing of the South African companies in both the Johannesburg and the London exchanges.\textsuperscript{1425} The Lusaka Stock Exchange (LuSE) of Zambia was established by a Securities Act of 17 December 1993 and made operational on the 21st of February 1994.\textsuperscript{1426} It was established with technical assistance from the International Finance Corporation and the World Bank to exist as non-profit making limited liability company made up of

\textsuperscript{1411} Ibid.  
\textsuperscript{1412} Ibid.  
\textsuperscript{1413} Uganda SE, 2007-10; and UNDP, 2003, at p. 110.  
\textsuperscript{1414} Ibid.  
\textsuperscript{1415} Ibid.  
\textsuperscript{1416} Ibid.  
\textsuperscript{1417} Dar es Salaam SE, 2007-10; and UNDP, 2003, at p. 99.  
\textsuperscript{1418} Ibid.  
\textsuperscript{1419} Johannesburg SE, 2007-10; and Johannesburg SE, 2007-10a.  
\textsuperscript{1420} Ibid.  
\textsuperscript{1421} Ibid.  
\textsuperscript{1422} Ibid.  
\textsuperscript{1423} Ibid.  
\textsuperscript{1424} Ibid.  
\textsuperscript{1425} Ibid.  
\textsuperscript{1426} Lusaka SE, 2007-10; and UNDP, 2003, at p. 115.
stock broking corporate members. It currently exists as central market under the Securities Act No. 38 of 1993 of the country in which both listed and unlisted securities are traded without dual market system.

The Cairo and Alexandria Exchanges were active as public market places for securities until their operations declined in the late 1950's owing to the central planning and socialist policies of the country. They have revived when the Egyptian Government adopted free market policies in the 1990s. They currently exist as unincorporated public market places. The Botswana Stock Exchange was formed in June 1989 as informal share market after representatives of public companies met to investigate the feasibility of establishing and developing a stock exchange beginning November 1986. It was officially recognized as the Botswana Stock Exchange when the country enacted new law in 1994. It has grown through the dual listing of South African based companies. The Malawian Stock Exchange, which was formed in 1994, was inaugurated as public market place in March 1995 and opened for business on the 11th of November 1996 under the aegis of the Reserve Bank of Malawi. It has come into existence following the exercise of some secondary market facility for trading in Government of Malawi bonds, Treasury Bills and Locally Registered Stocks. It currently includes corporate and individual members and imposes modest listing requirements. The Casablanca Stock Exchange of Morocco was found as public market place by banks in 1929. It was re-established in 1995 to expand its membership without changing its structure. The Khartoum Stock Exchange (KSE), which was conceived in 1962 and established in 1982, has re-started its primary market operation since October 1994 and its secondary market since the 2nd of January 1995. It currently exists as regular market for both company and government securities. It operates as public market place by matching auction orders communicated through broking companies. It has also introduced parallel market since 1999. The Namibian Stock Exchange, which was launched on the 30th of September 1992 after closure of a first Namibian exchange (opened in 1910), has become operational as public market when the shares of Nictus, a local firm listed in Johannesburg, were dually-listed.

\[1427\] Ibid.  
\[1428\] Ibid.  
\[1429\] Cairo and Alexandria SE, 2007-10; Cairo and Alexandria SE, 2007-10a; and UNDP, 2003, at p. 42.  
\[1430\] Ibid.  
\[1431\] Ibid.  
\[1432\] Botswana SE, 2007-10; and UNDP, 2003, at p. 31.  
\[1433\] Ibid.  
\[1434\] Ibid.  
\[1435\] Malawi SE, 2007-10; and UNDP, 2003, at p. 60.  
\[1436\] Ibid.  
\[1437\] Ibid.  
\[1438\] Casablanca SE, 2007-10; and UNDP, 2003, at p. 71.  
\[1439\] Ibid.  
\[1440\] Khartoum SE, 2007-10, at pp. 9-11.  
\[1441\] Ibid.  
\[1442\] Id, at p. 28.  
\[1443\] Ibid.
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in Namibia on the 1st of October 1992.\textsuperscript{1444} It currently exists under custodian of a not-for-profit Namibian Stock Exchange Association which comprises the sponsors of creation of the exchange.\textsuperscript{1445} The Nigerian Stock Exchange, which was created in 1960 as the Lagos Stock Exchange and acquired its current name in December 1977, operates as public market place with head office in Lagos and branches across cities of the country each of which has trading floor.\textsuperscript{1446} It has started its operation by listing 19 securities in 1961 and opened its second tier market in 1985 to enable small companies to raise capital.\textsuperscript{1447} It is fully owned currently by the private sector and operates through a network of Stockbrokerage Firms, Issuing Houses (Merchant Banks), practicing corporate law firms, and firms of auditors and accountants.\textsuperscript{1448} The Swaziland Stock Market was established as unincorporated public market in July 1990.\textsuperscript{1449} It exists currently as a single market for shares of listed public companies, corporate bonds, government stock options, and government guaranteed stock and non-trading mutual funds.\textsuperscript{1450} The Bourse de Tunis was established by the Tunis government as public market place in 1969.\textsuperscript{1451} It was privatised in 1994 without changing its structure to expand its membership and increase its internationalisation.\textsuperscript{1452} The Maputo Stock Exchange has started operation as physical market place in October 1999 under assistance of the Lisbon Stock Exchange and the World Bank.\textsuperscript{1453} It currently exists as market place for both government bonds and corporate securities although it suffers from lack of adequate physical and legal infrastructure for trading.\textsuperscript{1454} The Zimbabwe Stock Exchange (ZSE) was formally established as public market place for securities with head office in Harare when the country enacted the Zimbabwe Stock Exchange Act (27 of 1973) on the 18th of January 1974.\textsuperscript{1455} It currently exists as public market place without over-the-counter trading.\textsuperscript{1456} The West African Regional Bourse in Côte d’Ivoire (the BRVM), which was created on the 18th of December 1996 by replacing an old Ivorian Bourse des Valeurs d'Abidjan, has also become operational as public market place since September 1998.\textsuperscript{1457} It currently exists as regional stock exchange for the French speaking West African countries (i.e. Benin, Burkina Faso, Côte d’Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo).\textsuperscript{1458}

Only few of the aforementioned African exchanges have also become electronic trading places in the late 1990s and in this millennium, namely the Bourse d’Alger of Algerie, the BRVM in Côte d’Ivoire, the Cairo and Alexandria Exchanges of

\textsuperscript{1444} Namibian SE, 2007-10; and UNDP, 2003, at p. 77.
\textsuperscript{1445} Ibid.
\textsuperscript{1446} Nigerian SE, 2007-10; and UNDP, 2003, at p. 82.
\textsuperscript{1447} Ibid.
\textsuperscript{1448} Ibid.
\textsuperscript{1449} UNDP, 2003, at p. 94.
\textsuperscript{1450} Ibid.
\textsuperscript{1451} Bourse de Tunis, 2007-10; and UNDP, 2003, at p. 104.
\textsuperscript{1452} Ibid.
\textsuperscript{1453} Maputo SE, 2007-10.
\textsuperscript{1454} Ibid.
\textsuperscript{1455} Zimbabwe SE, 2007-10; and UNDP, 2003, at p. 120.
\textsuperscript{1456} Ibid.
\textsuperscript{1457} BRVM, 2007-10; and UNDP, 2003, at p. 36.
\textsuperscript{1458} Ibid.
Egypt, the Nairobi Stock Exchange, the Stock Exchange of Mauritius, the Casablanca Stock Exchange of Morocco, the Namibian Stock Exchange, the Nigerian Stock Exchange, the JSE Limited of South Africa and the Bourse de Tunis of Tunisia. The BRVM in Côte d’Ivoire has fully operated as electronic market place by providing securities quotation and trading services from a central site in Abidjan beginning the 16th of September 1998. It currently receives orders from brokerage firms and agents which sit at workstations located in national branch offices in WAEMU countries and executes same at prices fixed by matching bid and ask orders. The Cairo and Alexandria Exchange has automated its trading system since May 2001 and introduced indices by launching a CASE 30 Price Index since February 2003. The Nairobi Stock Exchange has outsourced its automation and Central Depository System (CDS) from the Information Technologies (MIT) of Colombo, Sri Lanka, as of the 11th of September 2006. The Stock Exchange of Mauritius (SEM) has outsourced its electronic system from the Information Technologies (MIT) of Colombo, Sri Lanka, since January 1997 and launched its Automated Trading System called SEMATS since June 2001. It currently conducts the trading of securities from workstations which are located at stock broking firms and linked to a trading engine at the exchange. The Casablanca Stock Exchange of Morocco has introduced its computerised trading since March 1997. The Nigerian Stock Exchange has launched its Internet System (CAPNET) since November 1996. It has replaced its call over trading system with an Automated Trading System (ATS) since April 2001 and enabled the matching of bids and offers by stockbrokers on the Trading Floors of the Exchange through network of computers in the subsequent years. It currently operates under prices determined by issuing houses and stock brokers for initial issues and by stockbrokers for secondary trades. The South African JSE Limited has introduced a fully electronic order based trading system called Johannesburg Equities Trading (JET) since 1996. It currently executes trades automatically when buy and sell prices match. It has adopted the London’s SETS System and uses the FTSE and Dow Jones rules to classify its companies. The Namibian Stock Exchange operates an electronic trading system based on the South African

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1460 BRVM, 2007-10; and UNDP, 2003, at pp. 26-120.
1461 Ibid.
1462 Cairo and Alexandria SE, 2007-10a; and UNDP, 2003, at pp. 26-120.
1463 Nairobi SE, 2007-10.
1464 Mauritius SEM, 2007-10; and UNDP, 2003, at p. 65.
1465 Ibid.
1466 Casablanca SE, 2007-10; and UNDP, 2003, at p. 71.
1467 Nigerian SE, 2007-10.
1468 Ibid.
1469 Ibid.
1471 Ibid.
1472 Ibid.
system called STRATE. 1473 The Bourse de Tunis has also introduced its electronic trading system in 1996. 1474

The African securities markets are, however, at rudimentary stage of development except for the South African JSE limited. 1475 An African Capital Market Forum (ACMF) was, accordingly, established in 1996 with Secretariat in Accra, Ghana, to promote their development. The Forum was established at a time when only twelve African countries formed formal stock exchanges. 1476 Its objectives were i) promoting the establishment of formal securities markets in Africa; ii) accelerating development of the existing African securities markets; iii) promoting cooperation among the African capital market institutions; and iv) providing forum for the exchange of ideas among the African capital market institutions. 1477 Its defined activities were also:

- building and maintaining database for the African capital markets;
- providing research, training and technical assistance to its members; and
- providing advisory services to the African governments, institutions and international agencies on capital market-related issues. 1478

It has received support of the major international finance and development organizations including the United Nations Economic Commission for Africa (UNECA), the United Nations Industrial Development Organization (UNIDO), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Program (UNDP) and the African Development Bank (ADB) all of which have been assisting the development of the African securities markets. 1479

The securities regulatory authorities in the continent have also signed agreements from time to time to cooperate in the areas of market development and regulation. 1480 An African Capital Markets Association is also established in Nairobi on the 13th of November 1993 to facilitate joint programs and pursue cooperation, mutual assistance and exchange of information (materials and persons) between the African Stock Exchanges that become members to it. 1481 The association currently comprises eighteen of the African Exchanges (namely the Abidjan (BRVM), Botswana, Cairo & Alexandria, Casablanca, Dar-es-Salaam, Ghana, Johannesburg, Uganda, Lusaka, Malawi, Mozambique, Nairobi, Namibian, Nigerian, Mauritius, Swaziland and Zimbabwe Stock Exchanges and the Bond Exchange of South Africa) as its members and encourages all the existing and new

1474 Bourse de Tunis, 2007-10; and UNDP, 2003, at p. 104.
1476 CIPE, 2007; and Mbendi, 2007.
1477 Ibid.
1478 Ibid.
1480 The Memorandum of Understanding signed between the Eastern African Securities Regulatory Authorities on the 5th of March 1997 was the first in the effort (EPressA, 1997).
1481 ASEA, 2007; and ASEA, 2007a.
African Stock Exchanges to join and work with it irrespective of their size and history.\textsuperscript{1482}

\textbf{ii. The Case of Ethiopia}

The Justice and Legal System Research Institute of Ethiopia has foreseen that the securities market in the country can be organized as profit-making business organization, as non-profit-making civil association or as open market place to be operated by securities brokers and dealers.\textsuperscript{1483} It has recommended that the membership of the exchange and the trading of securities in it need to be restricted to licensed securities dealers, brokers and share companies.\textsuperscript{1484} It has, through the securities and exchange proclamation it drafted in 2003, proposed that:

- the exchange has to be organized as share company having fixed capital not less than a minimum to be prescribed by the future securities market regulator;
- the actors should be prohibited from trading in securities without being licensed as securities market operator (dealer or broker) by the future securities market regulator;
- only licensed securities operators (dealers and brokers) and the share companies intending to have their securities issued and traded through the exchange should be allowed to be members of the exchange upon application to and decision by the latter;
- all securities to be offered for sale to the public other than government securities should be registered by the future securities regulator; and
- registered securities of only share companies formed under the Commercial Code of the country should be listed on the exchange.\textsuperscript{1485}

It has proposed that the intermediaries should be licensed without need for membership to the exchange as long as conditions to be prescribed by regulations to be issued under the proposed Securities and Exchange law are met.\textsuperscript{1486} It has, accordingly, proposed that the exchange has to be organized as market place for bringing together licensed sellers and purchasers of securities who should become members to it.\textsuperscript{1487}

It has not, however, proposed rules on the dealing system and automation of the exchange. It has only proposed that:

- the trading of securities without registration by the regulator and listing on the exchange should be prohibited;
- the off-exchange trading of registered and listed securities should be restricted; and

\begin{itemize}
  \item \textsuperscript{1482} Ibid.
  \item \textsuperscript{1483} JLSRI, 2001, at pp. 37-39 & 42.
  \item \textsuperscript{1484} Id., at pp. 38-39.
  \item \textsuperscript{1485} JLSRI, 2003, at arts. 3, 4, 5, 12, 16-19, 22, 25 & 31.
  \item \textsuperscript{1486} Id., at art. 24
  \item \textsuperscript{1487} JLSRI, 2003, at arts. 4 & 24.
\end{itemize}
rules should be adopted to enable the exchange to issue internal rules on trading and the regulator to conduct the overall regulation of trading.\textsuperscript{1488}

It has also proposed particular legal form for the securities market intermediaries.

The Awash International Bank S.C. and the Bank of Abyssinia S.C. were in line with the aforementioned proposals of the Institute when they made their comments on the draft Securities and Exchange Proclamation of the Institute.\textsuperscript{1489} The National Bank of Ethiopia has also agreed to the proposals of the Institute in principle and emphasized on the need for including rules that will:

- separate between the primary and secondary markets of the exchange;
- indicate the trading modes of the exchange (as electronic or open outcry market); and
- determine the over-the-counter trading of listed and unlisted securities, the representation of stakeholders other than shareholders of the exchange in the governance of the latter, the creation of guarantee fund for the exchange, and the closure and liquidation of the exchange.\textsuperscript{1490}

The Addis Ababa Chamber of Commerce has insisted, through the various studies and programmes it sponsored, on creation of the securities market as a share dealing group of the type experienced in the country in the 1960s (at the beginning) and as exchange consisting of licensed dealers whose membership to the exchange shall be mandatory (as it grows).\textsuperscript{1491} It has not proposed particular organizational structure and trading system for the exchange and particular identity or structure for the members. It has proposed automation of the exchange as it starts.\textsuperscript{1492}

The decision on how to organize the future securities market in Ethiopia needs to be made based on the short and long run needs of the country. The country needs to make the structure of the securities market consistent with the international experience in order to attract foreign investment in the long run. It also needs to maintain some structural consistency across its financial market in order to benefit from regulatory experience. It also needs to increase decentralization of trade and investment to its regions in order to ensure competition and balanced growth.\textsuperscript{1493} Hence, it needs to adopt the exchange-as-firm approach and allow the incorporation of competing exchanges.\textsuperscript{1494}

\textsuperscript{1488} Id., at arts. 8(3)(c), 19(2)(a), 29(2), 31, 32(1) & 33(1)(e).
\textsuperscript{1489} Note letter of the banks to the Institute (cited as AIB, 2002; and BA, 2002).
\textsuperscript{1490} Note letter of the Bank to the Institute (cited as NBE, 2002).
\textsuperscript{1491} ZNA, 1999; AACC, 1999; and action plans of the Private Sector Development Hub of the Chamber that went into operation as of January 2005.
\textsuperscript{1492} Ibid.
\textsuperscript{1493} Much of the trade and investment in the country is concentrated currently in Addis Ababa (Tables 3(Chap. 3), 4(Chap. 3), 8(Chap. 3); and 9(Chap. 3)).
\textsuperscript{1494} This will be contrary to the position taken by the country for the agricultural commodity exchange market. This market is established as demutualized fully government owned market where registered market operators act and management is separated from ownership and membership (FDRE, 2007;
The market and regulatory capacities of the country will, however, be limited as it starts the market.1495 It needs to avoid unnecessary flourishing of exchanges in order to unify regulatory and market capacity building efforts and enhance efficiency. Hence, it needs to start with one national exchange in the capital city (Addis Ababa) and allow the creation of competing regional exchanges as regulatory capacity and the securities and investment businesses grow. It also needs to require the birth of the exchange as demutualized incorporated share company (with share capital, limited liability, and separate ownership, membership and governance - by making the shareholding open to any one who may or may not be securities market actor) in order to maintain the structural consistency with the banking, insurance and microfinance markets and the international experience. It should not allow incorporation of the exchange as company limited by guarantee without share capital since this form of incorporation has become outdated as many of the countries of the globe have incorporated their exchanges as companies limited by shares.1496 It should not also limit the shareholding of the exchange to the trading members since the idea of monopolizing the ownership and governance of exchanges by trading members has also become outdated as the demutualization process is pursued globally in the interest of competition and efficiency.1497

The creation of only one exchange as demutualized company is, however, also prone to the danger of monopoly by few institutions. The big banks, insurers and other institutions may subscribe and dominate the ownership of the exchange. This may lead to de facto merger between the future securities market and the banking, insurance and/or other markets and eliminate competition. The country needs to prevent this and ensure separate existence of the future securities markets and the banking, insurance and other markets by imposing ownership ceilings and/or diversification requirements as this has been done in the banking, insurance and microfinance markets.1498

The country also needs to require incorporation of the securities market intermediaries with share capital (whether as public or private limited company) in order to reduce failure, build investor confidence, and be in line with the international experience.1499

FDRE, 2007a; FDRE, 2008; FDRE, 2010). Establishment of the future securities market as government monopoly will not be justified since the exchange as public market with government monopoly approach has become outdated internationally. The demutualization approach, however, needs to be retained. (Note the discussion under the preceding subtitle) 1495 Note the discussions under the ‘constraints and measures’ subtitle above and the means of enforcement chapter below.

1496 The country’s company law regime does not also know the ‘company limited by guarantee’ form of business organization. The constitution of share capital under the share company form will also enable the exchange to have fixed capital that can contribute to the sustainance of its life. Note the discussion under the ‘modelling the company law regime’ subtitle above.

1497 Note the discussions under the preceding subtitles.

1498 Note the discussion under the banking, insurance and microfinance chapter above.

1499 Several of the developing countries have done this (Table 25(Chap. 3) Continued (2 of 3)).
It also needs to create wings in the market for primary and secondary trading, for government and private securities, and for debt and equity securities since these will have separate features that will necessitate separate operation and regulation as the international experience has shown.\textsuperscript{1500} It need not, however, create wings for large and small companies as it starts since its companies do not have long track record currently and will likely be at equal footing when the market starts. It needs to do this only when it becomes necessary in the long run.

Whether the country should start the market as electronic or physical market place is, however, a question of access to technology. The experience with some of the newly created securities markets suggests that the country can start with automation if it cooperates with the advanced exchanges.\textsuperscript{1501} The experience with the agricultural commodity market of the country also needs to be considered in this regard.\textsuperscript{1502}

### 3.5.2.2 Modelling the Clearing and Settlement of Transactions

#### i. The International Experience

The ideal system of clearing and settlement of securities transactions is one where the services are provided on real time basis (i.e., at transaction plus zero time - T+0).\textsuperscript{1503} Most countries have not met this level and differ in the way they clear and settle transactions.\textsuperscript{1504} The most common settlement system in practice has been a 'rolling system' where the settlement is effected sometime after the date of making of the transaction (i.e. at T + some days).\textsuperscript{1505}

The trend in most of the developed market countries has been towards introduction of electronic clearing and settlement systems and dematerialisation of the securities (i.e. abolition of the share certificate thing) to enable the quick clearing of transactions and transfer of ownership of securities through computer book entries.\textsuperscript{1506} The need for developing electronic settlement systems was propelled when a New York–based think tank for the international financial markets published a report in 1989 on the clearance and settlement systems of the world’s securities markets and recommended their automation.\textsuperscript{1507} The global target since then has been to achieve a level of T+3 or less settlement cycle.\textsuperscript{1508} Many of the countries have, accordingly, de-materialized their securities and

\begin{itemize}
\item \textsuperscript{1500} Note the discussions under the preceding subtitles.
\item \textsuperscript{1501} Note the discussions under the preceding subtitles.
\item \textsuperscript{1502} The commodity market exists currently as open outcry market supported by automated back office aiming at full automation in the future (See the ‘company’ and ‘operations’ profiles from ECX- Ethiopia, 2010; and ECX-Ethiopia, 2010a).
\item \textsuperscript{1503} Valdez, 1993, at p. 193.
\item \textsuperscript{1504} Valdez, 1993, at pp. 173-174; Poser, 1991 at pp. 395-396, 405, 413, 423 & 438; Johan and Janet, 2005; and Alberto, 2008.
\item \textsuperscript{1505} Ibid.
\item \textsuperscript{1506} Valdez, 1993, at pp. 193-194; Benjamin, 2000, at pp. 20-30 & 189-221; and Benn Steil, 2001, at pp. 273-274.
\item \textsuperscript{1507} Benjamin, 2000, at p. 20.
\item \textsuperscript{1508} Ibid.
\end{itemize}
introduced centrally automated clearing and settlement systems as their interest for internationalization and the volume and turnover of the securities traded on their exchanges grew.\textsuperscript{1509} The US introduced a system of electronic transfer for T-bills and mutual funds as early as the 1980s.\textsuperscript{1510} It retained the system of physical delivery of share certificates for equity trades and enabled the settlement of most such transactions on a T+5 (i.e. trade date plus five days) basis in the subsequent periods.\textsuperscript{1511} London used to follow a traditional 'ticket-passing-system' for clearing and settlement of securities transactions for approximately one hundred years until the late 1970s.\textsuperscript{1512} The International Stock Exchange of London (ISE) inaugurated a 'Talisman' system for clearing and settlement of securities transactions in 1979 where a nominee stock exchange company called 'Sepon' could own the stocks on behalf of the market makers and the latter could use the securities.\textsuperscript{1513} The 'Talisman' system facilitated the clearance and settlement of securities transactions through a two-weeks accounting cycle without ending the physical delivery of share certificates.\textsuperscript{1514} It, however, applied to equities excluding transactions in options and bonds.\textsuperscript{1515} The ISE also attempted at taking the lead in the dematerialization of securities by developing an electronic system of trading and settlement of securities transactions called 'Taurus' as of 1982.\textsuperscript{1516} The 'Taurus', however, did not succeed because of resistance of those who would lose their living with the old system and reduction of market activity of the exchanges following the market crash of October 1987.\textsuperscript{1517} The ISE then proposed the establishment of a separate central clearing house to be owned jointly by the exchange, the banks, the securities firms and the institutional investors in July 1989 and headed towards adoption of transfer facilities by book entry through a rolling settlement system similar to the United States in the years between 1991 and 1993.\textsuperscript{1518} The country finally launched a central settlement system for both the UK markets and Irish equities called CREST (operated by the CREST Co. Ltd.) in August 1993; resorted to the use of the London Clearing House (LCH) (which was originally meant for non-equity trades) for the clearing of both equity and non-equity transactions (as of the first quarter of 2001); and reached a T+3 level of settlement on the 5th of February 2001 (from its T+10 and T+5 levels of July 1993 and June 1995, respectively).\textsuperscript{1519}

\textsuperscript{1509} Ibid.
\textsuperscript{1511} Ibid.
\textsuperscript{1512} Poser, 1991, at pp. 57-58.
\textsuperscript{1513} Id., at p. 59.
\textsuperscript{1514} Ibid.
\textsuperscript{1515} Ibid.
\textsuperscript{1516} Id., at p. 60.
\textsuperscript{1517} Id., at pp. 60-62.
\textsuperscript{1518} Id., at p. 62.
\textsuperscript{1519} Benjamin, 2000, at pp. 21-22, 171-186 & 202-221; and the milestone in the history of the CREST Co. Ltd. accessed on 02 July 2007 from its website (cited as Euroclear UK-Ire, 2007-10). The CREST Co Ltd. is currently integrated into the Euroclear group of international and national central securities depositories and renamed as Euroclear UK & Ireland Limited as of July 2007 to signify the integration (Euroclear UK-Ire, 2007-10).
The other countries of Europe have also improved their clearing and settlement systems in the post mid-1980s period.\textsuperscript{1520} Italy and France used to follow a monthly settlement system in which case the last five working days of the month or other specified dates could serve as periods of settlement for all the transactions that took place in the month.\textsuperscript{1521} The French Bourse started to modernize its clearing and settlement systems in 1983 and established a T+3 electronic settlement system as of 1988.\textsuperscript{1522} The Monte Titoli of Italy was developed in 1986 to centralize and speed up the settlement systems of its exchanges.\textsuperscript{1523} Belgium followed a bi-weekly 'account period' system where deals of all firms for the last two weekly accounts ending on Fridays could be netted and settled on the third week.\textsuperscript{1524} Germany and Switzerland speeded up their clearing and settlement systems through their banks which had high stake in their exchanges.\textsuperscript{1525} Germany enabled the settlement on T+2 bases through a centralized electronic data processing system and transfer of ownership by book entry at its securities clearing associations while Switzerland enabled the settlement of most 'spot' (cash) transactions on T+3 basis through the Swiss Inter-bank Clearing System (SEGA) and the settlement of other transactions on a 'forward' basis at the end of a settlement month to be specified in the transactions.\textsuperscript{1526} The Amsterdam Stock Exchange introduced the Amsterdam Securities Account System (the ASAS), and devised mechanisms from time to time, to speed up the payment and settlement of its transactions.\textsuperscript{1527} The Account System was designed to apply to American shares and extended to others including Japanese shares and Eurobonds.\textsuperscript{1528} It paved the way for quick settlement and transfer of securities transactions in the Amsterdam Stock Exchange by electronic book entry.\textsuperscript{1529} The clearing and settlement entities in Amsterdam were then centralized and reincorporated in 1997 under a subsidiary of the Amsterdam Exchanges (AEX) called the Amsterdam Securities Depository (ASD).\textsuperscript{1530} Spain also aspired to improve the clearing and settlement of its exchanges and provided for the establishment of a nationwide clearing and settlement corporation that would be owned by its service users subject to government regulation of its operation as of 1988.\textsuperscript{1531} The corporation enabled nationwide clearing and settlement of securities transactions on weekly basis.\textsuperscript{1532}

\textsuperscript{1521} Valdez, 1993, at p. 193; and Poser, 1991 at pp. 385, 405 & 411-413.
\textsuperscript{1522} Poser, 1991, at p. 385. France also followed a delivery upon payment of money (i.e., a delivery versus payment) approach for the bond and less actively traded securities markets, i.e. the OTC and the second markets, and a monthly settlement system which could be used on the Paris Bourse upon request. Valdez, 1993, at p. 193.
\textsuperscript{1523} Poser, 1991, at pp. 411 & 412.
\textsuperscript{1524} Valdez, 1993, at pp. 173-174.
\textsuperscript{1525} Poser, 1991, at pp. 395-396 & 405.
\textsuperscript{1526} Ibid.
\textsuperscript{1527} Valdez, 1993, at pp. 173-174; and Poser, 1991 at p. 423.
\textsuperscript{1528} Ibid.
\textsuperscript{1529} Ibid.
\textsuperscript{1530} Ferrarini, 1998a, at p. 249.
\textsuperscript{1531} Poser, 1991, at p. 438.
The trend in many of the Latin American, East European and Asian countries has also been towards dematerialization of securities and introduction of central clearing, custodian, and electronic (rolling) settlement systems that can enable the quick transfer of ownership of securities on computer book entries only.\textsuperscript{1533} Many of them have headed towards T+3 (and less) electronic settlement systems as the internationalization, volume and turnover of their securities markets increased and the G10 Payments and Settlement Systems Committee and the IOSCO recommended the development of rolling securities settlement systems of up to T+3.\textsuperscript{1534} The Latin American Stock Exchanges seem to be ahead of the rest in this regard by approaching a T+0 settlement cycle.\textsuperscript{1535} The Santiago Stock Exchange of Chile settles on T+0, T+1, and T+2 bases under assistance of a Securities Central Depository called DCV.\textsuperscript{1536} It requires the off-floor (over-the-counter) trades to be settled on T+0 bases and the on-floor trades on T+0, T+1 and T+2 bases as agreed.\textsuperscript{1537} The São Paulo Stock Exchange (BOVESPA) of Brazil used to run a fungible custody system for securities beginning the late 1970s until this service was taken over by a new Brazilian Clearing and Depository Corporation (the CBLC) as of November 16 1998.\textsuperscript{1538} It currently relies on clearance, settlement, depository and risk management services of the latter.\textsuperscript{1539} The CBLC currently settles most of the securities transactions on T+0 and T+1 bases through the money transfer system of the country’s central bank called STR.\textsuperscript{1540} It also extends a gross settlement service on a delivery versus payment basis where participants may specify settlement date and time on T+0 or T+1 basis for fixed income securities, T+3 basis for cash equities, T+n basis for forward equities, T+3 of the expiry date for futures, and T+1 basis for options and futures.\textsuperscript{1541} The Colombian Stock Exchange (Bolsa de Valores de Colombia) settles on T+1 (cash on delivery) basis under assistance of a central depository called DCV (which is managed by the country’s central bank: the Banco de la República since 1992) and a custodian institution called Deceval S.A. (which was created in 1993).\textsuperscript{1542} The Mexican Stock Exchange (Bolsa Mexicana de Valores) settles on T+2 and T+1 bases and uses the services of a central depository called Mexican Central Depository (S.D. Indeval).\textsuperscript{1543} The Lima stock Exchange (Bolsa de Valores de Lima) requires settlement of cash transactions on T+2 and T+3 bases and recognizes forward transactions of 30, 60, 90 and 180 days.\textsuperscript{1544} The Buenos Aires

\textsuperscript{1533} Benjamin, 2000, at pp. 20-30 & 189-221; and Massimo Cirasino, et al., 2007, at pp. 1-4, 5-18 & 105-263.
\textsuperscript{1535} Massimo Cirasino, et al., 2007, at pp. 136-138 & 205-220; and the subsequent discussion.
\textsuperscript{1536} Santiago SE, 2007-10a.
\textsuperscript{1537} It also recognizes the making of forward agreements that do not exceed 180 days for the floor trades. Ibid.
\textsuperscript{1538} São Paulo SE, 2007-10; Brazilian CBLC, 2007-10; and Brazilian CBLC, 2007-10a.
\textsuperscript{1539} Ibid.
\textsuperscript{1540} Ibid.
\textsuperscript{1541} Ibid.
\textsuperscript{1542} The country has already dematerialised securities and established the centralized custodian and management services for securities as of the date of establishment of these institutions. Colombian SE, 2007-10.
\textsuperscript{1543} Mexican SE, 2007-10.
\textsuperscript{1544} Lima SE, 2007-10.
Stock Exchange settles on T+3 basis and recognizes forward transactions subject to agreed finite number of days. The Caracas Exchange of Venezuela (Bolsa de Valores de Caracas C.A.) settles regular transactions on T+3 basis and recognizes settlement periods between one and sixty working days from the day of transaction if this is specified at the moment of entering the order in the trading system. It is assisted by a national central depository of securities called the Venezuelan Depository Trust Company (Caja Venezolana de Valores - CVV) (established in 1995). The Jamaica Stock Exchange settles on T+3 up to T+5 bases through electronic book entry system managed by a wholly-owned subsidiary of the Exchange called Jamaica Central Securities Depository (JCSD). The Uruguay Electronic Stock Exchange (BEVSA) settles transactions on T+1 and T+3 bases by using the electronic settlement and payments system network of the Central Bank of the country. The El Salvador Stock Exchange (Bolsa de Valores de El Salvador S.A (BVES)) settles transactions electronically through a central depository and custodian company called Central de Deposito de Valores, S.A. (CEDEVAL). The exchanges of the other countries of the region have also headed towards further improvement of their clearance and settlement systems.

The internationalized securities markets of Europe, East Asia and Latin America also get centralized depository and settlement services from:

- the Euroclear which, being based in Brussels, provides services for domestic and international securities transactions (covering bonds, equities and investment funds) of the leading financial institutions located in more than 80 countries; and
- the Clearstream which, being based in Luxembourg, extends international securities and settlement services to 42 markets by connecting over 100 countries.

1546 Caracas SE, 2007-10.
1547 The “Caja Venezolana de Valores” operates through a centralized electronic system and offers a wide variety of services, including the custody and administration of securities, the clearing and settlement of securities listed on the stock exchange and the over-the-counter markets, and the settlement of funds (Ibid).
1548 Clients of the JCSD have to open accounts and deposit their securities with the JCSD through their stock-brokers and the JCSD has to debit and credit each account by using the book entry system (Jamaica SE, 2007-10a).
1549 Uruguay SE, 2007-10.
1550 The country has dematerialised securities and enabled the electronic settlement of transactions in securities through this company beginning 2000. El Salvador SE, 2007-10; and El Salvador SE, 2007-10a.
1551 Massimo Cirasino, et al., 2007, at pp. 105-184 & 205-220.
1552 Euroclear was founded in 1971 as part of J.P. Morgan Trust Company of New York. It was operated by a Belgian branch of the New York State bank: Morgan Guaranty Trust Company of New York (MGT) until 2000. It was then transferred by MGT to the Euroclear Bank SA, a Belgian credit institution registered in Brussels, in 2000. It currently operates through the Brussels Office and through offices located in New York, London, Paris, Amsterdam, Tokyo, Hong Kong, Singapore and São Paulo (Brazil). The Clearstream was formed in January 2000 through merger of the Luxembourg Cedel International (formerly known as Cedelbank) and the German Deutsche Börse Clearing, whose full integration into the Clearstream was completed in July 2002. (Benjamin,
The clearing and settlement systems and laws of the regions are not, however, fully integrated and harmonized yet.\textsuperscript{1553}

The clearing and settlement systems in the majority of the African stock exchanges have, however, remained to be manual ranging between T+3 and T+7.\textsuperscript{1554} Only nine of the Exchanges (namely the Bourse d’Alger, the Bourse de Tunis, the BRVM in Côte d’Ivoire, the Cairo and Alexandria Exchanges, the Nairobi Stock Exchange, the Mauritius Stock Exchange, the Nigerian Stock Exchange, the South African JSE Limited, and the Lusaka Stock Exchange) have introduced electronic clearing and settlement systems recently.\textsuperscript{1555} The Bourse d’Alger relies on electronic clearing and settlement system along with its automated trading system without a central depository.\textsuperscript{1556} The Bourse de Tunis uses automatic clearing and settlement system and a central depository called Sticovetam Ltd. along with its electronic trading system.\textsuperscript{1557} The BRVM has run automated clearing and settlement system and a central clearing service by Dépositaire Central/Banque de Règlement S.A. (DC/BR) which was headquartered in Abidjan beginning the 16\textsuperscript{th} of September 1998.\textsuperscript{1558} The Cairo and Alexandria Exchanges have introduced electronic clearing and settlement system (with central depository service by the Egyptian clearing and settlement company) beginning the 3\textsuperscript{rd} of March 2005.\textsuperscript{1559} The Nairobi Stock Exchange assists the new electronic trading system it introduced on the 11\textsuperscript{th} of September 2006 by clearing and settlement services of Central Depository and Settlement Corporation (CDSC) (which was operational as of the 1\textsuperscript{st} of August 2000).\textsuperscript{1560} The Stock Exchange of Mauritius uses an automated clearing and settlement system (introduced in January 1997) that operates under a strict delivery versus payment requirement along with its electronic trading system and relies on a Central Depository and Settlement Co Ltd. for central depository services.\textsuperscript{1561} The Nigerian Stock Exchange relies on electronic clearing and settlement through four settlement banks that use a Delivery-Versus-Payment-Netting-Off process with a central depository called the Central Securities Clearing System Limited.

\textsuperscript{1553} Massimo Cirasino, et al., 2007; Alberto, 2008; and Scott, 2008, at pp. 381-418.

\textsuperscript{1554} Note the following and websites of the exchanges accessed in June 2007 and July 2010. See Table 24(Chap. 3) (A up to C) for specific comparison.


\textsuperscript{1556} Note website of the exchange; and UNDP, 2003, at pp. 26-120.

\textsuperscript{1557} Bourse de Tunis, 2007-10; and UNDP, 2003, at p. 104.

\textsuperscript{1558} It operates through electronic interface that connects the BRVM and DC/BR systems and transfers data following trading sessions. The Dépositaire Central/Banque de Règlement (DC/BR) also guarantees the settlement of all transactions and protects investors through a Guarantee Fund made up of mandatory and other contributions from its members. BRVM, 2007-10; and UNDP, 2003, at p. 104.

\textsuperscript{1559} Cairo and Alexandria SE, 2007-10a.

\textsuperscript{1560} Nairobi SE, 2007-10; and UNDP, 2003, at pp. 26-120.

\textsuperscript{1561} Mauritius SEM, 2007-10; and UNDP, 2003, at pp. 26-120.
The South African JSE Limited uses an electronic clearing, settlement and depository system called STRATE with its JET electronic trading system. The Lusaka Stock Exchange relies on a computerized clearing and settlement system and a Central Shares Depository (CSD) although it has not automated its trading.

The others have not automated their systems. The Casablanca Stock Exchange relies on manual transaction by transaction settlement with a central depository called Maroclear (which was introduced in October 1998). The Namibian Stock Exchange relies on manual transaction by transaction clearing and settlement through a central depository called Transfer Secretaries (Pty) Ltd. despite its automated trading system. It executes the clearing and settlement of trades in the securities of companies dually listed on it and the South African JSE Limited according to the STRATE clearing and settlement procedures of the JSE. The Dar-es-Salaam Stock Exchange relies on manual transaction-by-transaction clearing and settlement with a Central Depository System (CDS) (which also acted as bank for securities as of the 1st of June 1999). The Uganda Securities Exchange Ltd. relies on transaction-by-transaction clearing and settlement without central depository system. It has been working with the Nairobi Stock Exchange to introduce a Central Depository System. The Khartoum, Ghana, Malawi, Botswana and Swaziland Stock Exchanges also rely on manual transaction-by-transaction settlement without central depository along with their auction and call over trading systems.

ii. The Case of Ethiopia

The Justice and Legal System Research Institute of Ethiopia has not proposed rules for the clearing and settlement of securities transactions by its Draft Securities and Exchange Proclamation of 2003. The National Bank of Ethiopia has, however, proposed that the clearing and settlement services for the future securities market should be centralized in a national clearing and settlement service.

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1565 Casablanca SE, 2007-10; and UNDP, 2003, at pp. 26-120.
1566 Namibian SE, 2007-10.
1567 Ibid.
1568 It requires the depositing of all securities into the CDS and the opening of CDS accounts for every investor before trading of any such security on the exchange. Dar es Salaam SE, 2007-10.
1570 Ibid.  
1572 It has instead recommended that the future exchange needs to be authorized to issue internal regulations on the delivery of securities and settlement of claims. It has also proposed that the share registers contemplated by the Commercial Code of the country need to be established in each share company and that a rule should be imposed which will require the company registrars to issue share certificates and execute share transfers in less than a month. JLSRI, 2003, at arts. 2(10), 8(3)(d) & 30; and IGE, 1960, at art. 331.
institution and that a central depository system has to be introduced to keep and manage the transfer of securities on behalf of the owners. The Addis Ababa Chamber of Commerce has proposed that the depository, clearing and settlement functions need to be left to self-regulation of the future exchanges.

Ethiopia needs to introduce central mechanism for securities clearing, custodian, and settlement since the international experience has shown the usefulness of centralized and automated securities clearing, custodian and settlement systems to speed up securities transactions and encourage investment. It, however, needs to phase this as it currently lacks the necessary technology for automation. It needs to start by upgrading the Addis Ababa (Cheque) Clearing Office at the NBE to make it provide custodian, clearing and settlement services to the securities market to be established in Addis Ababa along with its other services and head towards the dematerialization of securities and the automation of the custodian, clearing and settlement services under a national custodian, clearing and settlement company that has to be established as the securities market and the country’s payments and telecommunication systems grow. It also needs to work with the countries and exchanges that have automated these services in order to create and enhance the automation capacity. The experience with the agricultural commodity market of the country also needs to be considered in this regard.

3.5.2.3 Modelling Regulation of the Market
3.5.2.3.1 The Approaches of Regulation

A. The Public Market or Exchange-as-Firm Approach

i. The International Experience

The way a securities market is organized generally has important consequences on the way the market has to be regulated. It affects the regulation that has to do with such supervisory issues as access to membership, listing of companies and securities, off-exchange trading of listed securities, transparency of trade, and control of insider dealing and market manipulation. All these also require decision on who should set and enforce the rules (and how this should be done)

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1573 Note the annex to the letter of the National Bank of Ethiopia to the Justice and Legal System Research Institute (cited as NBE, 2002), at p. 45.
1574 ZNA, 1999. The Awash International Bank S.C. and the Bank of Abyssinia S.C. have not commented on the matters (Note letters of the banks to the Institute (cited as AIB, 2002; and BA, 2002)).
1575 The country has already started to work on development of the national payments system (note the discussion under the ‘payments and settlement systems oversight’ subtitle of the banking, insurance and microfinance chapter above).
1576 Note the experiences discussed in the preceding subtitle.
1577 The market is working currently through a central clearing and settlement department networked with settlement teams located in seven of the commercial banks (Note the ‘operations’ profile of the market from ECX-Ethiopia, 2010a).
1579 Ibid.
and the answers can often come from both the exchange-as-public market and the exchange-as-firm approaches.1580

The regulations of securities markets were derived, since the time of Joseph de le Vega of the late 17th century, from the paradigm that they are public market places since most of them originated as mutual non-profit public markets.1581 The markets had, accordingly, to exist under strong government regulation (in many of the countries) and subject to self-regulation (in few).1582

Many of the securities markets are, however, transformed from being public markets into being demutualized profit making private companies and from being national markets requiring physical presence into being electronic markets for national and international orders in recent times.1583 These developments have created need for reshaping the approaches in the government regulation of the securities markets.1584 The transformation of the markets into competing firms with profit motive has also led to rise of problem of conflict of interest between the profit motive and the self-governance roles of the exchanges and challenged the idea of leaving them to self-regulation.1585 Hence, many of the countries have increased the government regulation of their securities markets and introduced or headed towards introduction of securities market laws that require or assume the incorporation of the markets as demutualized profit making and competing companies with electronic operations.1586 The EU has also adopted the MiFID Directive with this understanding.1587

The exchange-as-public market idea is retained only to justify government regulation of the securities markets and limit the undesirable effects of the exchange-as-firm approach.1588 Firstly, it is used to limit the unnecessary proliferation of the number of exchanges in a country under the guise of competition in the exchange-as-firm approach. Hence, the countries have continued to have only one national or some city-based exchanges as opposed to infinite number of exchanges and the exchange-as-public market approach of the past has contributed to this.1589 Secondly, it is used to balance between the profit

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1580 Ibid.
1582 Ibid.
1583 Note the discussion under the ‘modelling the market structure’ subtitle above.
1586 Kabir, 1990, at p. 27; Valdez, 1993, at p. 200; Wymeersch, 1998, at pp. 3-41; Wellons, 1999, at pp. 6, & 35-38; Karmel, 2003, at p. 270; and Hans Christiansen and Alissa Koldertsova, 2009 for the developed market countries; and Table 25(Chap. 3) Continued (1 of 3) for the transition and emerging market countries. Note also the discussions under the subtitles below.
1587 Note the discussion under the ‘modelling the market structure’ subtitle above.
1588 Ferrarini, 1998a, at pp. 247-251.
1589 The processes of incorporation and demutualization under the exchange-as-firm approach were not also derived by motive to increase the number of exchanges in a country, but by motive to separate
motive and the protection of users of the services of the exchanges. It is felt that the exchanges need only to have some cause for enhancing efficiency and the quality of their services and that the profit motive is more desirable at the exchange members’ level than the exchanges themselves. Hence, the countries also regulate the markets by reason of the public market approach and the market failure reasons in order to protect investors, consumers and the economy from destructive competition.

ii. The Case of Ethiopia

Ethiopia needs to follow the exchange-as-firm approach and maintain regulatory consistency with the international experience in order to promote decentralization, competition and foreign investment in the long run.\textsuperscript{1590} It also needs to require formation of the exchanges as demutualized share companies in order to maintain structural consistency with the banking, insurance and microfinance markets and benefit from regulatory experience.\textsuperscript{1591}

It, however, also needs to retain the exchange as public market approach and limit the number of exchanges by allowing the creation of only one national exchange at its capital (Addis Ababa) as it starts in order to unify regulatory and market capacity building efforts and efficiency.\textsuperscript{1592} It also needs to regulate the ownership of the exchange through ceilings and/or ownership diversification requirements in order to avoid monopoly and de facto merger between the exchange and the banking, insurance, microfinance and other markets and ensure competition.\textsuperscript{1593} It also needs to use the public market approach in order to require mandatory membership of the securities market actors to the exchange, allow only licensed actors to operate in the exchange, and thereby formalize the business of securities trading. It also needs to use the public market approach and the reasons of market failure in order to control the potential damages that may follow the profit motive of the exchanges and protect investors, consumers and the economy from destructive competition as this has been done in the international experience.\textsuperscript{1594}

Whether the country should prohibit open outcry and require electronic trading should also be decided as a matter of its access to technology. It needs to work with the advanced markets in this regard and encourage acquisition of technology before it makes electronic trading a regulatory requirement.\textsuperscript{1595}

\begin{footnotesize}
\textsuperscript{1590} Note the discussion under the ‘modelling the market structure’ subtitle above.
\textsuperscript{1591} Ibid.
\textsuperscript{1592} Ibid.
\textsuperscript{1593} Ibid.
\textsuperscript{1594} Ibid.
\textsuperscript{1595} The approach with the agricultural commodity market is also like this. Note the discussions under the ‘modelling the market structure’ and ‘the clearing and settlement’ subtitles above.
\end{footnotesize}
B. A ‘Merit or Disclosure’ and a ‘Government or Self’ Regulation Approach

i. The International Experience

Modelling the regulation of an emerging securities market also requires decision on whether there should be a system of merit or disclosure regulation. Merit regulation is one where the regulator screens potential securities issuers and issues based on substantive regulatory standards and prevents them from reaching investors through the market when they are risky or inappropriate. Disclosure regulation is one where the regulator ensures the disclosure of all risks to potential buyers by the issuer and lets the investors to decide on whether they have to take on the risks or not without analyzing the merit of the issuer or the issue. The question of choosing between the two approaches has to do with the general question of whether there should be a policy that centralizes regulation in the government and protects or a policy that allows market forces to govern.

Countries have differed historically on their choice between the two approaches. The US has followed a regime that i) relied much on the idea of policing the market by an ‘informed investor’; ii) required full disclosure of operations and risks to the investor; iii) regulated securities professionals, investment companies, trading markets, takeovers, acquisitions, shareholder solicitations, insider dealings, distribution of securities, and corporate disclosures by the publicly traded companies; and iv) enforced formal rules on these by the SEC. Germany, Switzerland and Japan have followed regimes that i) relied less on the idea of policing the market by the investor but much on policing through financial intermediaries, notably the banks; ii) worried less on the problem of insider trading; and iii) set less rigorous standards of disclosure. The regulation in many of the European states (in particular Italy and France) was result of government intervention with some possibility for negotiated self-regulation under government approval. UK, Ireland, the Netherlands and New Zealand used to favour industry self-regulation. The choice between the approaches was conventionally related to the relative importance of the securities market in each country’s financial system. The US, UK, Irish, Dutch and New Zealand approaches reflected a system in favour of vibrant capital market while the German, Swiss and Japanese stood for a system dominated by deposit taking and lending institutions.

1597 Ibid.
1598 Ibid.
1599 Wellons, 1999, at p. 5; and Vagts, 2006, at pp. 19-32.
1600 Ibid.
1601 Ibid.
1602 Wymeersch, 1998, at p. 6; and Vagts, 2006, at pp. 11-32.
1603 Ibid.
1604 Wellons, 1999, at p. 5.
1605 Ibid.
The merit regulations of the countries have also been one of four types. One is where the regulator used to make all the important decisions almost all the time an issuer registers to issue securities to the public or applies to list them for trading in the exchange. It existed as a system where disclosure rules were little used and substantial authority was conferred on the regulator to decide on the merit of every potential issue whether this was based on legislation or the regulator’s empowerment to impose its will. The Latin American countries relied on this approach until they switched to greater reliance on disclosure as of the 1960s. The second is where the regulator used to exercise its power very rarely. It existed as a system where little discretion was used by the regulator to slow down and kill the issuance of securities. The SEC in the US existed as example for this approach. The third is where the regulator used to exercise discretion subject to objective criteria. It existed as a system where detailed disclosure was required and quantitative and qualitative standards (such as history of paying dividends for required number of years or minimum target for profitability) were set by law so that the regulator could keep the gate by checking fulfilment of the standards. The Oregon State of USA and Taiwan existed as examples of this approach. The fourth is where the regulator used to enjoy substantial discretion but applied subjective tests. It existed as a system where external objective criteria were not imposed on the regulator but the regulator could apply its own subjective test to decide on whether a security could be issued (or listed) or not. Japan and Malaysia existed as examples of this approach.

The different approaches have, however, converged through time in terms of both substantive law and the regulatory processes. UK, the Netherlands and Japan have amended their laws beginning the second half of the 1980s (for UK and Japan) and the mid-1990s (for the Netherlands) to address matters and to incorporate rules and principles similar to those embodied in the US substantive law. Germany has strengthened its insider trading and substantive rules beginning the early 1990s both to follow the EU rules and to increase the international competitiveness of its markets. Most of the other European countries have also gone away from the use of market (private-law) based transactional and disclosure regulations to the use of prudential and public-law based regulations (despite variations on technicalities) since the introduction of the European Investment Services and Capital Adequacy Directives in 1995.

1606 Wellons, 1999, at pp. 19-24; and Vagts, 2006, at pp. 11-32.
1607 Ibid.
1608 Ibid.
1609 Ibid.
1610 Ibid.
1611 Poser, 1991; Wellons, 1999; Wymeersch, 1998; and Vagts, 2006, at pp. 11-32.
1614 Ibid.
1615 Wymeersch, 1998, at pp. 3-5 & 6-41; and Vagts, 2006, at pp. 11-32.
Many of the countries have also deregulated their markets. The SEC started this by abolishing the fixed commission system on the New York exchange in May 1975. This led to takeovers and mergers in the 1980s and paved the way for subsequent reforms including the opening up of stock exchange membership to outsiders (i.e. domestic and foreign banks and securities firms), the elimination of traditional legal and self regulatory restrictions on the types of activities that could be performed by the various categories of financial institutions, the avoidance of individual broker monopoly of routing orders, the introduction of competition in securities trading, the replacement of fixed commission rates by negotiable rates, the automation of trading and settlement systems, and the internationalisation of the national securities markets. The US Big Bang was then followed by reforms in UK, Japan and the rest of Europe in the second half of the 1980s. UK, which had to rely historically on self-regulation of its exchanges by a council of members of the exchanges, conducted its 'Big Bang' on the 27th of October 1986, adopted a new Financial Services Act in the same year, and consolidated its financial regulation in a governmental Financial Services Authority in 1998. Japan, which had tight regulation under its Ministry of Finance, loosened its regulation in the 1980s and allowed the entry of new actors into its financial markets, the cross-sectoral entry of its financial institutions, the diversification of its financial services, instruments and markets, the securitization of assets, the merger of its many small securities firms, the automation, internationalisation and intensification of competition in its financial markets, and the formation of its Financial Services Authority by its Big Bangs of 1998 and 1999. France, which historically had the tightest governmental regulation of securities markets in Western Europe, reformed its securities regulation towards the Anglo-American type, opened up its stock markets to foreigners, abolished most of its foreign exchange controls, created options and futures markets, and adopted a system of self-regulation in the 1980s. Germany, which had to rely on a voluntary 'Code of Good Conduct' for self-regulation (adopted as early as 1970) along with a Stock Exchange Act and used to supervise the Freie Maklers by the state governments and the banks by the Federal Banking Supervisory Office and to make the Freie Maklers free from supervision, strengthened its securities regulatory regime through adoption of new laws as it enforced the post-1992 EC directives on investment and securities regulation. Switzerland, which had to regulate securities dealings by cantonal laws in the past, prohibited insider trading by a law of 1987 which entered into force in July 1988, increased its disclosure requirements as of 1989, and strengthened its federal securities regulation along

1617 Valdez, 1993, at pp. 200-203; and Wellons, 1999, at p. 35.
1623 Id., at pp. 401 & 402.
the lines of the European Community in the 1990s. Italy, which had to regulate its stock exchanges through executive committees of the exchanges that had to act as self-regulatory organizations and by a government agency called CONSOB which was established in 1974 to serve as the ultimate regulator of the exchanges and lacked rules for protection of minority shareholders and prohibition of insider trading, price manipulation and other abuses for most of its history, strengthened its regulatory system by enacting a Decree in 1996 as part of its steps to implement the EC Listing Conditions, Insider Dealing and Investment Services Directives. The Netherlands, which had to rely much on self-regulation, provided for rules on corporate disclosure, securities trading, investment advice, exchange supervision and information exchange with foreign securities supervisors and balanced between the self-regulation and the governmental control of its exchanges as in UK by enacting a Securities Supervision Bill in 1988. It strengthened its insider trading prohibition by enacting a statute in 1989 and consolidated its regulations in the second half of the 1990s. Sweden increased the governmental supervision of its exchanges, allowed the foreign ownership of its brokerage firms and strengthened the insider trading control mechanisms and its ombudsman system for the protection of investors by enacting laws in 1985 and 1989. Spain strengthened the governmental regulation of its exchanges, the disclosure requirements on companies and the prohibition of insider trading and allowed a system of supervised self-regulation by enacting a Securities Market Act, and creating the Commission National del Mercado de Valores (the CNMV) for supervision of the exchanges with much discretion to adopt regulations, in July 1988. The other countries of Europe have also implemented regulatory reforms following the reform initiatives brought about by the program of integration of the European Community of January 1992. The Program has encouraged the making of reforms across the European countries by adopting a mutual recognition principle of regulation, harmonizing the core regulatory requirements, avoiding tax and legal barriers to cross-border acquisitions, creating Europe-wide financial institutions, increasing consumer choice and protection, and heading towards integration and harmonization of the securities and other markets and laws of Europe. The EC has also encouraged the reforms through issuance of the Listing, Public Offer, Investment Services, Capital Adequacy, Merger and Acquisition, and other directives. The EU has also enhanced the regulatory harmonization for the securities markets by the MiFID directive.

1624 Id., at pp. 408-410.
1629 Id., at pp. 435-441.
1633 Note the discussions under the preceding subtitles.
The use of both merit and disclosure regulation has also been important for the securities markets of the transition and emerging market countries of Eastern Europe, Asia, Latin America and Africa. On one hand, the basic assumptions of disclosure regulation failed to hold in many of these countries due to:

- failure of the issuers and intermediaries in the countries to provide reliable and sufficient information;
- lack of accounting standards and business practices for full, accurate and timely disclosure of information;
- incompetence of the investors in the countries to analyse information and assess their risks in the securities markets even if they could get information;
- absence of institutions that could assist in quick processing and effective utilization of information;
- inequitability of the security offering, presence of insider dealing and immaturity of the markets to discipline actors in many of the countries; and
- failure of the regulators and courts in the countries to help the investors expeditiously and competently.

The countries also differed from the developed market countries in the number of public companies and securities they have; the complexity and variety of their financial instruments; the number and skill of their brokers, dealers and other financial intermediaries; the volume of domestic savings; the number, competence and reliability of accountants, auditors and lawyers that are expected to discipline the markets; the competence and expediency of their regulatory and legal enforcement institutions including the courts; the resources they can make available for regulatory enforcement; and the legal culture and policy determination of their governments to let the market forces govern. Hence, merit regulation remained to be important to make the regulators of the countries act as gatekeepers to the securities markets.

On the other hand, it was feared that bureaucratic intervention for merit regulation in the countries could inhibit the development of market forces necessary for capital market since too much reliance on merit regulation could limit the chance for their market actors and professions to learn on how to carry out key roles in the securities markets. Practice also showed the abuse of powers under the guise of merit regulation by the regulators when they became more powerful. It was, therefore, also felt that disclosure regulation should be relied on in the countries, whether it is followed by empowerment for self-regulation or not, both to protect the securities markets against regulatory abuses


1635 Ibid.
1636 Ibid.
1637 Ibid.
1638 Ibid.
and to enable and increase the responsibilities of the securities market actors and the professions to play key roles in the markets.

Hence, both merit and disclosure regulations existed in the countries in practice despite variation on the exact mix. The balance between the two regulations, however, also remained to be a matter of the states of the markets and institutional developments of the countries.\textsuperscript{1639}

Both the literature and the securities market laws around the world today also recognize that the role of securities law is to:

- protect investors;
- ensure market efficiency, fairness, integrity, transparency and confidence;
- promote market development and competition; and
- reduce systemic risk, and that

these need to be done through both merit and disclosure rules as appropriate.\textsuperscript{1640}

The securities market regulators also indicate these objectives to be in their missions and believe that both full, accurate and timely disclosure of information and merit regulation are important to:

- allow investors to make informed decision about the risks they will bear;
- eliminate market abuse; and
- promote the fairness, integrity and efficiency of the securities markets.\textsuperscript{1641}

The IOSCO also indicates that countries need to put in place both disclosure and merit regulations that are appropriate to meet the objectives of investor protection; market efficiency, fairness and transparency; and systemic risk reduction.\textsuperscript{1642}

Hence, many of the countries require by their securities and related laws that securities issuers need to disclose all material information in respect of their financial and operational positions despite difference in detail.\textsuperscript{1643} They also often require that the information to be disclosed has to be prepared, audited and disclosed in accordance with accepted accounting and auditing principles.\textsuperscript{1644} They mostly differ on the extent, specificity, continuity, cost sensitivity and sanction of

\begin{thebibliography}{9}
\bibitem{1639} Ibid.
\bibitem{1640} Table 25(Chap. 3); Wellons, 1999, at pp. 4 & 10; Cesarini, 1998, at pp. 65-70; Dowers, Gomez-Acebo and Masci, 2003, at pp. 17-22; and Vagts, 2006, at pp. 3-32.
\bibitem{1641} Note the mission statements from websites of the securities market regulators indicated in Tables 1(Chap. 5) & 2(Chap. 5).
\bibitem{1642} IOSCO, 2003.
\bibitem{1644} Ibid.
\end{thebibliography}
the disclosure they require. The move in the transition and emerging market countries also seems to be towards improving on the definition and enforcement of the disclosure regulation. Many of both the developed and the transition and emerging market countries also believe that merit regulation is important to:

- control the securities issuers and intermediaries from abusive behaviour;
- protect unsophisticated investors who may not use disclosed information;
- maintain government control and leadership over the capital markets; and
- augment the disclosure regulation.

They, accordingly, let the merit regulation to exist in some mixture with the disclosure regulation they have. Hence, both merit and disclosure regulations exist today in forms of prudential and transaction regulation despite difference between the countries on technicality. The core question seems to be on how to strike balance between the merit and the disclosure requirements of regulation rather than on the making of exclusive choice between the two.

The international trend on the general question of whether regulation has to be centralized in the government or decentralized to the markets has also generally been towards the latter. The trend has not, however, ruled out the use of governmental regulation as markets are usually found to be imperfect. The case for self-regulation in securities markets has also in practice been, and seems to continue to be, influenced by the extent of prudence, capacity and ethics on the part of the market actors, which they often lack. Hence, the trend has also been, and seems to be, towards having a system of supervised, as opposed to completely free, self-regulation depending on the feasibility of the latter. The IOSCO principles on securities market regulation also seem to promote the idea that governmental securities regulators need to take the lead in ensuring that the objectives of securities market regulation are met. They, being framed largely to set responsibilities for these regulators, require that the latter have to oversee self-regulation whenever it exists.

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1645 Wellons, 1999, at pp. 11-17; and Vagts, 2006, at pp. 19-32.
1648 Tables 25(Chap. 3) Continued (1 of 3); 25(Chap. 3) Continued (2 of 3); and 25(Chap. 3) Continued (3 of 3).
1649 Practice has also shown that one can rely on disclosure regulation more than merit regulation only when markets grow and that reliance on disclosure regulation may not necessarily rule out the use of merit regulation. Wellons, 1999, at pp. 24-25; Petersen, 2004, at pp. 129-137; and Vagts, 2006, at pp. 19-32.
1651 Ibid.
1653 Ibid; and Tables 25(Chap. 3) Continued (1 of 3); 25(Chap. 3) Continued (2 of 3); and 25(Chap. 3) Continued (3 of 3).
1655 Ibid.
The 2008 financial and economic crisis has also shown the importance of i) strengthening both the merit and disclosure regulations of securities markets, ii) expanding the regulations to the markets that were hitherto unregulated (such as the derivatives market), and iii) enhancing the governmental roles in the regulations.1656

ii. The Case of Ethiopia

The mixing of merit and disclosure regulation and the governmental regulation of securities markets are also unavoidable approaches for Ethiopia. The country needs to i) adopt the objectives of competition promotion, market development, investor and consumer protection, systemic risk reduction, and enhancement of market efficiency, integrity and transparency, and ii) use both merit and disclosure regulation to enforce the objectives as this is done elsewhere. Complete reliance on merit regulation by the regulator will not be desirable as that approach will not only bureaucratise regulation in the regulator whose regulatory capacity is likely to be limited but also be detrimental to the interests of the future securities market actors and professions to learn on how to carry out key roles in the securities market. Complete reliance on disclosure regulation will not also be desirable as the country is likely to suffer from limitation of the culture, standard, maturity and infrastructure necessary for enforcement of disclosure as it has been the case with most of the transition and emerging market countries.1657 The two approaches need to be implemented together and reforms need to be made towards the approach that will serve the objectives best as the market grows through time. The adoption of self-regulation in the country's securities market should, however, be considered as a matter of prudence, capacity and ethics of the future securities market actors. The country needs to start with a principle of government regulation of the market and look for ways of allowing self-regulation by the exchange and/or association of the market actors as it proves that the prudence, capacity and ethics necessary for self-regulation are in place in the market.

3.5.2.3.2 The Regulation of Market Entry

i. The International Experience

Most of the developed countries used to sponsor or constitute their stock exchanges under the public market approach without the need for having licensing rules for them and to set nationality, legal form, qualification, behavioural integrity, and initial capital requirements on those who wanted to become market operators in the exchanges.1658 They used to restrict the membership to their exchanges to their nationals and to operate the exchanges through few individuals and unincorporated market makers or through their

1657 Note the discussion under the preceding subtitle.
banks (as was the case in Germany and Switzerland). Some like Italy also used to expressly require the market makers /stockbrokers/ to pass through a governmental examination while others like France allowed only civil servants to act as stock brokers. Many of them have, however, removed their nationality requirements and restrictions on membership to (and listing of companies in) their exchanges and encouraged wide participation in the exchanges by the reforms of the late 1980s and the 1990s. They have also encouraged or required the organization of their stock exchanges as widely owned incorporated companies as the exchange-as-firm approach was introduced. Most of them currently require the carrying out of the securities trading businesses by incorporated and unincorporated securities firms and individuals that have to be licensed upon meeting some qualification and financial requirements and need to be members of the incorporated exchanges.

A restrictive approach on organization and operation of both the exchanges and the market operators was not also welcomed for the transition and emerging market countries in the interest of competition and internationalization. It was felt that the countries need to remove their nationality and restrictive legal form requirements if their securities markets have to meet these objectives. It was also felt that the countries should put in place market entry and prudential requirements (including on the qualification, behavioural integrity, initial capital, guarantee fund and membership of the exchanges) that can both promote the objectives of competition and internationalization and prevent their markets from failure. A number of the transition and emerging market countries have, accordingly, adopted securities market laws that include market entry requirements in respect of both the exchanges and the market intermediaries. They have imposed incorporation, share capital, and industry guarantee (i.e. investor compensation) fund requirements on their existing and new exchanges and required them to obtain licenses or to pass through registration (or re-registration) processes through their most recent laws. The majority of them have also removed their nationality requirements and required the intermediaries to obtain license after having met incorporation, initial capital, qualification, integrity, industry guarantee fund (or insurance) and exchange membership requirements. They have adopted rules that:

- require the incorporation of not only the exchanges but also of the market intermediaries;

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1660 Id., at pp. 381-384, 401 & 413.
1661 Note the discussion under the 'modelling the market structure' subtitle above.
1662 Ibid.
1663 Ibid.
1665 Ibid.
1666 Ibid.
1667 Note the laws referred in Table 25(Chap. 3).
1668 Table 25(Chap. 3) Continued (1 of 3).
1669 Table 25(Chap. 3) Continued (2 of 3).
- allow individuals who want to be securities dealers or brokers to be licensed as such and act as employees of the intermediaries; and
- require all the intermediaries to be members of the licensed (or registered) exchanges.\textsuperscript{1670}

The countries that do not require incorporation of the intermediaries have also required all the individuals and firms that want to be licensed as market intermediaries to be members of the exchanges.\textsuperscript{1671} The IOSCO has also recommended that all countries need to have minimum market entry standards for the intermediaries and a system of authorization for establishment of the exchanges.\textsuperscript{1672}

\textbf{ii. The Case of Ethiopia}

The Justice and Legal System Research Institute of Ethiopia has proposed, through the draft Securities and Exchange Proclamation of 2003, that the future exchange of the country needs to be organized as share company subject to capital and other requirements to be set by law (and the regulator), and that the listing and trading services of the exchange need to be accessible only to share companies.\textsuperscript{1673} It has proposed that the securities market law needs to impose:

- legal form, capital and ownership (ceiling) requirements on the future exchanges;
- professional, financial, examination and guarantee fund requirements on the securities dealers and brokers; and
- legal form, capital, and disclosure requirements on the applicants for registration and listing of securities.\textsuperscript{1674}

It has also proposed that:

- the governmental regulator needs to license the exchanges and intermediaries, register the securities intended for public issuance, and impose merit and reporting requirements;
- the exchange needs to regulate its membership, the listing of securities, and the making of disclosure to the public; and
- the law should require the intermediaries to contribute to an industry guarantee (investor compensation) fund.\textsuperscript{1675}

\textsuperscript{1670} Ibid.
\textsuperscript{1671} Ibid.
\textsuperscript{1672} Note the IOSCO principles on market intermediaries and secondary markets with the explanation to them (in the IOSCO Objectives and Principles of Securities Regulation cited as IOSCO, 2003). This, together with the rise of the exchange-as-firm approach and the demutualization process, has strengthened the idea that the transition and emerging market countries need to have authorization requirements for both the exchanges and the intermediaries that can both protect the markets from failures and promote investor protection.
\textsuperscript{1673} JLSRI, 2003, at arts. 3, 12(1), 16(1), 16(3), 16(4), 20 & 23(5).
\textsuperscript{1674} Id., at arts. 3, 5, 8-13, 12(1), 14(2), 15, 16(1, 3, 4), 18, 20, 21-23, 24, 25(2), 26, 29, 33-35 & 39.
\textsuperscript{1675} Ibid.
The Institute has, however, been silent on the questions of nationality and legal form of the intermediaries and exchange owners. Ethiopia needs to protect the health of the future securities market, intermediaries, investors and the public and make its regulation consistent with the international experience in order to encourage trade and investment in the market in the long run. It, accordingly, needs to recognize the international trend towards the exchange-as-firm approach and the demutualization and incorporation of exchanges. It also needs to maintain some consistency across the financial markets in order to benefit from regulatory experience.\textsuperscript{1676} Hence, it needs to have a securities market law that will establish a system of licensing and set incorporation, initial capital, professional competence, behavioural integrity, and governance requirements for both the exchange and the intermediaries. The law needs to require the exchange and intermediaries to be incorporated as companies with minimum share capital and governance qualities (including the competence and integrity of their directors, chief executives and personnel) and the intermediaries to be members of the exchange for the reasons of protection of the health of the institutions and consistency with the international experience. It also needs to require the exchange to be incorporated as share company for the reason of consistency with the banking, insurance and microfinance markets while the intermediaries need to be private or public limited companies as this is mostly the case in the international experience. The country also needs to require the setting up of an industry guarantee (investor compensation) fund to which both the exchange and the intermediaries should contribute in order to protect investors and the public. Whether the country should remove or put in place the nationality requirement in respect of owners of the future exchange and intermediaries is, however, a public policy issue that forms part of the general question of financial market liberalization which the country faces in respect of all the segments of its financial market. The country needs to negotiate on the level of liberalization as it accedes to the WTO.\textsuperscript{1677}

3.5.2.3.3 The Ongoing Regulation

i. The International Experience

a. General Issue

The need for ongoing regulation of securities market operators has often been debated unlike the regulation of banks.\textsuperscript{1678} First, it is said that banks need to be kept as going concerns since their failure often has domino effect on other sectors of the economy while securities firms need not be kept as going concerns (but be treated to ensure that they have sufficient liquidity for creditor/investor protection) since they can fail without causing run on other firms. Secondly, it is said that the major concern with banks is credit risk (the risk that the debtor may

\textsuperscript{1676} Note also the discussion under the ‘modelling the market structure’ subtitle above.

\textsuperscript{1677} The country is processing its accession to the WTO. Note the discussion under the ‘market entry and exit requirements’ subtitle of the banking, insurance and microfinance chapter above.

\textsuperscript{1678} Wellons, 1999, at pp. 102-114; and Vagts, 2006, at pp. 3-32.
not pay on time) at value at cost and not the market value of the loan in the interim period while the concern with securities firms is portfolio/market risk since the composition of their portfolio and the market value of the securities in their portfolio change constantly. It is, therefore, argued that the regulation of banks should aim at containing credit (not market value) risks and keeping the banks as going concerns while the regulation of securities markets should aim at containing portfolio (market value) risks to ensure that the operators’ assets have enough value and liquidity to protect their creditors and investors (without worry to keep the operators as going concerns). 1679

The need for regulating securities market operators is, however, taken to be important in practice not only for purpose of ensuring their liquidity for sake of investor and creditor protection but also for purpose of controlling systemic risk as securities market crashes were encountered with domino effects in many countries. Both the IOSCO and the securities regulators around the world have also recognized the controlling of systemic risk as one among the other objectives of securities market regulation and introduced several ongoing requirements to regulate the exchanges and intermediaries. The IOSCO has expressly indicated that the objectives of systemic risk reduction, investor protection, and market efficiency, fairness and transparency need to be adopted in a country’s securities regulation and recommended that countries need to have a system of continuous oversight on securities exchanges and trading systems as well as ongoing capital, prudential, market conduct and organizational requirements on intermediaries to meet the objectives. 1680 It has also recommended that countries should put in place risk based capital adequacy requirements and supervise both the exchanges, the trading systems and the operators on ongoing basis to detect and deter manipulation and unfair trading practices, to ensure the fairness and integrity of trading, to ensure the proper management of large exposures, default risks and market disruptions, and to ensure achievement of the general objectives of regulation. 1681 Most countries have also imposed ongoing financial and non-financial (including capital adequacy, reserving, accounting, auditing, reporting, public disclosure, and other corporate governance) requirements on their exchanges and intermediaries and introduced rules that:

- restrain trading outside the recognized exchanges;
- require all securities intermediaries to be members of the exchanges;
- prohibit insider trading, price manipulation and fraud;
- allow the follow up, suspension and cancellation of trading;
- enable the ongoing supervision of listed companies and collective investment schemes; and
- centralize and regulate the clearing and settlement of securities transactions. 1682

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1679 Ibid.
1680 Note the IOSCO Objectives and Principles (on Market Intermediaries and Secondary Markets) with the explanation to them (in the document cited as IOSCO, 2003).
1681 Ibid.
The countries have, however, differed largely on the details of their regulations and the extent with which they have adopted the elements of banking and insurance regulation in their securities market laws.\textsuperscript{1683} The design of appropriate regulation for the securities markets has also remained to be difficult due to the increased integration of the banking, insurance and securities markets.\textsuperscript{1684} This has, however, also depended on the general functional and ownership separation requirements of the countries.\textsuperscript{1685}

b. The Requirement of Capital Adequacy, Reserving and Contribution to Guarantee Fund

The regulatory systems on capital requirement range between those that impose special capital adequacy rules on securities operators and those that do not have such rules at all.\textsuperscript{1686} The systems that do not have capital adequacy rules are ones that consider the securities market operators as actors different from financial market operators.\textsuperscript{1687} They do not believe in the need for regulating the securities operators as going concern like banks.\textsuperscript{1688} Most of the countries do not, however, want to see crisis in their securities markets and require the securities operators to meet some kind of ongoing capital (and reserving) requirements.\textsuperscript{1689} They require them to meet capital (and reserve) positions based on one of three approaches, namely i) a flat rate approach, ii) a formula approach, or iii) an internal model approach.\textsuperscript{1690} The flat rate approach is one where the regulator requires the securities operators to maintain minimum capital equal to a designated percentage of the operators equity position which is calculated based on either i) the sum of the equities of the operator as valued at cost or market price (a simple flat rate approach) or ii) the sum of the assets of the operator that are weighted by risk (Basle credit risk approach).\textsuperscript{1691} The formula approach relies on i) a building block approach which considers general and specific risks, ii) a comprehensive approach which focuses on liquidity, or iii) a portfolio approach which gives due attention to the portfolio risks of the operator.\textsuperscript{1692} The internal model approach lets the operator to design and apply its own system of risk analysis for the required

\begin{itemize}
  \item \textsuperscript{1683} Ibid. The securities market laws of the regions, including Europe, are not also harmonized yet despite the internationalization of the securities markets and the regulatory issues (Matthias Haentjens, 2007; Blair and Walker, (eds.), 2007; Scott, 2008; Empel, (ed.), 2008, at pp. 63-158; Albero, 2008; and René, 2008).
  \item \textsuperscript{1684} The integration between these markets has led not only to the rise of banc-assurance (all-finanz) but also to the development of insurance and bank-credit linked securities. The securitization of other assets including microfinance is also on the rise. Rietbergen, 1999; Chance, 1993; Laboul, 1992; Barrieu and Albertini, 2009; Vries Robbé, 2008, at pp. 97-295 & 349-401; and Vries Robbé, 2009.
  \item \textsuperscript{1685} Note the discussion under the ‘functional and ownership separation requirements’ subtitle of the banking, insurance and microfinance chapter above.
  \item \textsuperscript{1686} Table 25(Chap. 3); Wellons, 1999, at pp. 105-114; and Vagts, 2006, at pp. 14-32.
  \item \textsuperscript{1687} Ibid.
  \item \textsuperscript{1688} Ibid.
  \item \textsuperscript{1689} Ibid.
  \item \textsuperscript{1690} Wellons, 1999, at pp. 105-114.
  \item \textsuperscript{1691} Id., at pp. 105-107.
  \item \textsuperscript{1692} Id., at pp. 108-112.
\end{itemize}
capital. It allows the operator to design and apply its own risk analysis subject to i) regulatory guidelines, ii) pre-committed 'maximum loss exposure' targets to be promised by the operator to the regulator, or iii) judgment of the external investors in the operator's subordinated debts.

The flat rate approach was derived from the capital standards many countries used for commercial banks before the risk weighting idea came in the late 1980s. It assumed that a single percentage requirement can accommodate the different types of risk associated with the equity position of an operator. The credit risk approach was developed beginning the late 1980s by the Basle Committee for banking supervision. It was meant for calculating capital adequacy for the credit risks of banks based on risk weighted assets at value at cost approach; not for calculating capital adequacy for market risks of securities market operators at market value approach. The building block approach was introduced by the Basle committee for banks in the mid-1990s and adopted by the EU for both banks and securities companies. It has been based on a basic assumption that net long positions and net short positions of an operator can set-off in reality to determine the general risk level. The comprehensive approach was introduced by the SEC in USA and used by many countries including Japan, Australia, France, Italy, Hong Kong and the Netherlands before the coming into existence of the building block idea. The portfolio approach was in use in UK until it was replaced by the EU building block approach. The internal model (to be based on regulatory guidelines) was introduced by the Basle Committee in the late 1990s to allow sophisticated and well-run banks to use their own models provided that these models would meet minimum standards of the Basle Committee and would be subject to regular tests. The internal model (to be pre-committed to the regulator) was considered by the Federal securities regulator in the US but not implemented. The internal model (to be judged by investors) was proposed by the Basle Committee to be used in countries where subordinated debt is a key part of funding for capital market intermediaries as in USA.

The fitness of each of the aforementioned approaches to the goals of securities market regulation has to do with the debate on whether securities market actors should be regulated as going concern or not. Choosing the right capital adequacy model also becomes difficult when both banks and non-bank securities firms act as securities market operators. It becomes a two directional problem as, on one hand, the models that are originally meant for bank regulation and adopted subsequently for securities regulation may not fit to the non-bank securities

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1693 Id., at pp. 112-114.
1694 Ibid.
1695 Id., at p. 106.
1696 Ibid.
1697 Id., at pp. 108-110.
1698 Ibid.
1699 Id., at p. 112.
1700 Id., at p. 113.
1701 Id., at p. 114.
1702 Id., at pp. 102-114.
operators and, on the other, the models that may fit to the non-bank operators may not be enough to regulate the banks.\textsuperscript{1704}

The solution to the problem has also been variable in the international experience.\textsuperscript{1705} Some like Germany used to apply the same standard on the banks when they operated in both the banking and the securities markets.\textsuperscript{1706} Others like the US and Japan used to differentiate between the banking and securities businesses and to follow different capital adequacy rules for the two lines of businesses.\textsuperscript{1707} The EU used to recognize the building block approach as common standard for both the banking and the securities businesses.\textsuperscript{1708} Others used to require the banks that intend to operate in the securities markets to do this through independent subsidiaries that can fail without affecting the parent banks and then to apply common standard on all types of the securities market operators.\textsuperscript{1709} Others also solved the problem by allowing the banks and non-bank actors to apply various internal models that allow them to design their own capital adequacy standards.\textsuperscript{1710} The area of capital adequacy requirement has, accordingly, remained to be one where countries vary so greatly that even the IOSCO could not come up with a single standard except for recommending that the securities regulators of the countries need to enforce risk oriented capital requirements.\textsuperscript{1711}

The adoption of the different capital adequacy approaches for the securities market operators and exchanges in the transition and emerging market countries has also remained to be challenging for several reasons.\textsuperscript{1712} The flat rate approach appeals to them but it does not assure the liquidity needed to wind up the securities firms that may fail as it does not differentiate between the equities of the firms according to their risk levels.\textsuperscript{1713} The credit risk (Basle Accord) approach is said to be relatively simple for the countries but has the limitation that it does not base on the market risk concern of the securities operators but on the credit risk concerns of the banks.\textsuperscript{1714} The building block approach is said to be useful to address the difference in concern between the regulations of the banks and the securities operators in the countries but suffers from absence of parameter to set its ratios and the low skill base in the countries to enforce it.\textsuperscript{1715} The comprehensive approach based on liquidity is said to be helpful to the countries to curb the problems with the other approaches but suffers from the limited availability of liquid instruments in the countries.\textsuperscript{1716} The portfolio approach is

\begin{flushleft}
\textsuperscript{1704} Ibid.  \\
\textsuperscript{1705} Id., at pp. 102-114.  \\
\textsuperscript{1706} Id., at p. 105.  \\
\textsuperscript{1707} Ibid.  \\
\textsuperscript{1708} Id., at p. 110.  \\
\textsuperscript{1709} Id., at p. 104.  \\
\textsuperscript{1710} Id., at pp. 112-114.  \\
\textsuperscript{1711} Id., at pp. 102-103; and the IOSCO principles on market intermediaries with the explanation to them (in the IOSCO Objectives and Principles of Securities Regulation cited as IOSCO, 2003).  \\
\textsuperscript{1712} Wellons, 1999, at pp. 105-114.  \\
\textsuperscript{1713} Id., at p. 106.  \\
\textsuperscript{1714} Id., at p. 107.  \\
\textsuperscript{1715} It has been feared that both the Basle and the EU rates may not be useful to these countries. Id., at p. 110.  \\
\textsuperscript{1716} Id., at p. 111.
\end{flushleft}
said to be too complex for the countries to exercise.\textsuperscript{1717} The approaches that let the design of capital adequacy standards to the regulated firms themselves are also said to be unfit to the countries either because the operators in the countries do not have the level of sophistication the approaches require or because the resource base and the finance instruments (such as the instrument of subordinated debt) that enable the approaches to work do not exist in the countries.\textsuperscript{1718} It is, therefore, often advised that the transition and emerging market regulators should be conscious of their own situation and go from the simple to the complex approach as they and their financial systems mature.\textsuperscript{1719} It is also advised that they follow a risk oriented approach that can enable them to cater for the risk exposures of their intermediaries and exchanges.\textsuperscript{1720} The ISOSCO also recommends generally that countries need to i) have ongoing capital requirements on securities market intermediaries that should reflect the risks the latter undertake and ii) aim by their regulations to ensure that their exchanges have mechanisms for proper management of large exposures, default risks and market disruptions.\textsuperscript{1721}

Many of the transition and emerging market countries do also in practice leave the specific design of the capital adequacy and reserving requirements to determination by their regulators while only some of them indicate the need for linking the capital adequacy requirement with the liquidity, risk exposure and investment limit requirements.\textsuperscript{1722} They also often tend to impose the capital adequacy requirement on their intermediaries, exclude their exchanges from the capital adequacy requirement, and require the exchanges and intermediaries to contribute to industry guarantee or investor compensation fund.\textsuperscript{1723}

c. The Prohibition of Insider Trading, Price Manipulation and Fraud

Arguments have existed for and against the prohibition of insider trading. Those who argued in favour of its prohibition used to indicate that:

- insider trading undermines investor confidence in the integrity of the securities market and damages the system;
- insider trading injures corporate property and privacy by signalling plans before the company is ready to disclose them;
- insider trading increases the bid-risk spread, discourages ordinary investors from trading and, thereby, reduces the liquidity of securities markets;
- gains not based on performance targets of the company should be controlled;
- insiders may delay the release of material information and affect securities prices; and

\begin{itemize}
  \item \textsuperscript{1717} Id., at p. 112.
  \item \textsuperscript{1718} Id., at pp. 113 & 114.
  \item \textsuperscript{1719} Ibid.
  \item \textsuperscript{1720} Ibid.
  \item \textsuperscript{1721} Note the IOSCO principles on market intermediaries and secondary markets with the explanation to them (in the IOSCO Objectives and Principles of Securities Regulation cited as IOSCO, 2003).
  \item \textsuperscript{1722} Table 25(Chap. 3) Continued (2 of 3).
  \item \textsuperscript{1723} Table 25(Chap. 3) Continued (1 of 3); and Table 25(Chap. 3) Continued (2 of 3).
\end{itemize}
- unequal access to material information should be prohibited.\textsuperscript{1724}

Those who argued against its prohibition used to indicate that:

- insider trading provides valuable information about a security and increases efficiency of the securities markets by signalling what is there in the company to outside investors;
- insiders increase the tradability, hence, liquidity of securities particularly in markets dominated by uninformed investors;
- the political process in some countries (like Asia) has relied on insider information (making insider trade regulation unacceptable);
- insider trading laws do not accomplish their purpose of reducing insider trade in reality; and, hence that,
- it is better to let the markets, not the governments, to discipline the firms.\textsuperscript{1725}

It is also argued, given the debate, that a country may follow one of three approaches towards insider trading:

- leave the investment decision to investors without regulating insider trading;
- impose duty to disclose the insider trading to investors under belief that the investors need only to know the presence of insider trading; or
- prohibit and regulate insider trading under belief that investors will lose confidence in the market if insider trading occurs.\textsuperscript{1726}

The IOSCO recommends strongly that countries should have a regulatory system that is designed to promote the transparency of trading as well as to detect and deter manipulations and unfair trade practices in securities markets including insider trading.\textsuperscript{1727} It believes that manipulations and unfair trade practices (including insider trading) will distort prices and unduly disadvantage investors.\textsuperscript{1728}

Most of both the developed and the transition and emerging market countries also consider insider trading as bad and favour some form of government regulation of it in practice.\textsuperscript{1729} Their experiences show three types of approaches. In one of the approaches, the countries do not have special insider trading regulations but rely on basic rules against fraud.\textsuperscript{1730} In the second of the approaches, the countries have narrow rules (leaving the rest to the market) that require the insiders to take limited actions ranging from the disclosure of their holdings (and trades) to the disgorging of their excess profits through civil actions.\textsuperscript{1731} In the third of the

\textsuperscript{1726} Wellons, 1999, at p. 79; and Vagts, 2006, at pp. 25-28.
\textsuperscript{1727} Note the IOSCO principles on secondary markets with the explanation to them (in the IOSCO Objectives and Principles of Securities Regulation cited as IOSCO, 2003).
\textsuperscript{1728} Ibid.
\textsuperscript{1729} Table 25(Chap. 3) Continued (3 of 3); Kabir, 1990, at p. 85; Wellons, 1999, at pp. 79-81; and Vagts, 2006, at pp. 25-28.
\textsuperscript{1730} This has been true in most of the common law countries. It has also been the case in Germany until 1994 and in Hong Kong until the late 1980s. Wellons, 1999, at p. 79.
\textsuperscript{1731} The US and many common law countries used to have a practice of disgorging the profits of insider traders through action in the civil courts by persons hurt or by the securities regulator. Others like
approaches, the countries actively prohibit insider trading as criminal offence or subject it to significant civil damages. Most of the countries have followed the third approach. The US took the lead when the SEC instituted civil enforcement proceedings based on insider trading in the early 1960s and the US Department of Justice started criminal prosecution on insider trading in the 1970s. The EC adopted an Insider Trading Directive in November 1989 and the countries of Europe strengthened their rules against insider trading in the late 1980s and the 1990s. Many of the transition and emerging market countries have also strengthened their rules in about the same period to subject all forms of insider trading, price manipulation and fraud to criminal, civil and administrative sanctions.

An insider trade regulation has also to resolve several questions once a country is convinced to have it. It has to resolve questions related to the definition of the prohibition, the definition of insider, the definition of insider information, the securities subject to the insider regulation, the specification of the illegal action, the specification of the penalties, and the design of the oversight and enforcement mechanism. The question with definition of the main prohibition is on whether to prohibit and how broadly to define the matters that constitute:

- using 'unpublished price-sensitive information' to acquire or dispose of a security;
- telling a third party 'to acquire or dispose of a security'; and
- intentionally disclosing 'inside information to a third party' beyond one's job.

The question with definition of the insider is whether one should look at an official position that can make holders of the position insiders automatically or consider anyone as insider as long as he/she gets access to inside information. It is related to the question of including three classes of 'insiders', namely true insiders (such as shareholders, directors, employees and their spouses and children), quasi-insiders (such as professional advisers, financial advisers, lawyers and auditors), and tippees (i.e. persons who are given information by an insider. The question with definition of the insider information is concerned with the type of information to include in the definition (material/immaterial, fact/opinion etc.) and the indication of what constitutes inside. The question on the securities to be subject to the insider regulation is on whether to limit the regulation to the

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Zimbabwe used to require the regulation of trading (including insider trading) by the securities market itself. Id., at p. 80.

1732 This has also been true in the US since the 1960s. Ibid.
1734 Ibid.
1735 Ibid.
1736 Table 25(Chap. 3) Continued (3 of 3); and the laws indicated in Table 25(Chap. 3) (A and B).
1738 Ibid.
1739 Wellons, 1999, at p. 82.
1740 Id., at pp. 82-84.
1741 Id., at pp. 84-85.
publicly traded or listed securities or to extend it to the privately traded ones. The question of specifying the illegal action includes a number of sub-questions including the following:

- whether the regulation requires presence of fraud or extends simply to certain behaviour;
- whether actual trade is necessary or not;
- whether it is necessary to prove that the defendant was specifically motivated to trade by the inside information or it is enough to show merely that there was a general intent to trade at the time the non-public information was held;
- whether the insider has to get some benefit for the action to be illegal;
- whether the chain of tippees to be included should be short or long;
- whether activities outside the country should be included or not; and
- whether there should be exemption or not.

The specification of penalties relates to the question of using criminal sanctions (by the general criminal law prosecutor), civil (administrative) sanctions (by the regulator), and civil claims in the courts (by the affected private parties) in the enforcement of insider trade prohibitions. The question with the design of the oversight and enforcement mechanism relates to whether the insider regulation has to be enforced through government regulator, a special tribunal or a self-regulating exchange.

Countries differ much in their answers to these questions. Their choices range from narrow and liberal to most inclusive and strict approaches. The US illustrates the most inclusive and strict approach in respect of many of these questions while the other countries follow narrow approach in respect of some of the questions and wide approach in respect of the others. The countries often include the 'using', 'telling' and 'intentionally disclosing' elements in defining the main prohibition and differ on the others. The US and Germany used to limit their definitions of insider to the true and quasi-insiders and some like Australia, Singapore, Malaysia and Hong Kong used to require percentage of ownership or voting right to include shareholders in the definition while others like the post reform Italy used to include anyone who gets access to inside information. Some like Malaysia used not to be worried by trade with spouses and children while many others tended to include trade with these persons in the insider trade regulation. The Amsterdam Model Code of January 01, 1987 on insider trading

1742 Id., at p. 85.
1743 Id., at pp. 85-87.
1744 Id., at pp. 87-91; and the discussion under the 'sanctions' subtitle of the means of enforcement chapter below.
1745 It relates to the general question of enforcement of securities regulations and looks into the case for special treatment of insider regulators in light of the difficulties their enforcement poses to the regulators. Id., at pp. 91-93.
1746 Wellons, 1999, at pp. 82-93; and Vagts, 2006, at pp. 25-28.
1747 Ibid.
1748 Wellons, 1999, at p. 82.
considered securities issuers, stock exchange members, managing directors, supervisory directors, designated employees and the financial press as insiders.\textsuperscript{1751} The Swedish insider trading law covered corporate directors and major shareholders.\textsuperscript{1752} Spain used to consider all those in possession of ‘privileged information’ as insiders and to prohibit them from trading on the basis of such information, from disclosing such information to third parties, and from recommending the purchase or sale of securities on the basis of same information.\textsuperscript{1753} Many of the countries also used to refer by insider information to unpublished material information, with difference on the definition of materiality and publication.\textsuperscript{1754} Japan used to list what constitutes material information; Germany used to focus on facts to the exclusion of personal opinions and value judgements; Italy used to refer to significant materiality requiring that the effect of the non-public information on the security’s price has to be 'notable'; and the US used to base on a test that a reasonable investor is substantially likely to consider disclosure of the information significant.\textsuperscript{1755} The US often required 'widest distribution' as the indicator of publication while UK included even the information communicated to part of the public and the information available at one's own diligence or expertise even if that was for fee.\textsuperscript{1756} The Amsterdam Model Code and the International Stock Exchange in London prohibited trading based on price sensitive information.\textsuperscript{1757} Many of the countries also used to recognize the compliance with disclosure requirements as publication irrespective of whether the disclosure was towards the public or the regulator.\textsuperscript{1758} Spain used to consider information not known to the public which could have had influenced the quotation had it been publicized as 'privileged information'.\textsuperscript{1759} Many of the countries also used to impose the insider regulation on publicly traded and/or listed securities while the US imposed it on both listed and privately traded securities.\textsuperscript{1760} The US also used to specify the illegal action by requirement that the information is obtained fraudulently while many of the European countries used to specify it by looking into the use of information that is unavailable to the market no matter how legitimately it was obtained.\textsuperscript{1761} The US and Japan also used to require the conduct of trade by the insider to make the insider’s action illegal while others like Italy did not require actual trade by the insider to make tipping (or recommending a stock) illegal by itself.\textsuperscript{1762} The countries that relied on criminal enforcement used to require proof of specific intent by showing that the inside information has led to the trade while the others used to consider the existence of general intent by requiring proof of the simultaneous existence of

\textsuperscript{1752} Poser, 1991, at pp. 432-433.
\textsuperscript{1753} Poser, 1991, at pp. 440-441.
\textsuperscript{1754} Wellons, 1999, at p. 84.
\textsuperscript{1755} Ibid.
\textsuperscript{1756} Ibid.
\textsuperscript{1757} Poser, 1991, at p. 425.
\textsuperscript{1758} Hence, information disclosed to a regulator according to a disclosure rule has no more been inside information. Wellons, 1999, at pp. 84-85.
\textsuperscript{1759} Poser, 1991, at p. 440.
\textsuperscript{1760} Wellons, 1999, at p. 85.
\textsuperscript{1761} Id., at p. 86.
\textsuperscript{1762} Ibid.
Almost all of the countries (including both USA and Japan) did not require that the insider has to obtain benefit to make his/her action illegal. The US used to extend the chain of tippees to be liable under the insider trade prohibition up to the second tippee while Japan used to make only the insider and the first tippee liable. The majority of the countries also used to include extraterritorial acts in the insider trade prohibition. Many of them used to exempt the underwriters of bond markets and the investment bankers (who advise during take-overs) from their insider trade prohibitions. The US also used to expressly provide for criminal penalties, private civil suits and civil suits by the regulator (the SEC) to sanction insider trade while Germany and Japan used to provide for criminal penalty but not civil suits. Many of the other countries used to mix between criminal sanctions, administrative measures, and civil suits by recognizing the losers' rights (including the issuing company itself, the shareholders and others) to claim compensation under their general extra-contractual liability laws. The criminal (and administrative) penalties often included imprisonment and fine (of a flat amount or of an amount as multiple of the gain (or avoided loss)). The use of both criminal sanctions and civil suits in the enforcement of insider regulation has, however, been blamed for rigidity. The use of these sanctions is also considered to be difficult in the transition and emerging market countries as these countries have often suffered from poor information to trace insider trading and meet standards of proof. Hence, some of the countries have either conferred the power of detecting and sanctioning insider trading and related fraud to a special tribunal (an administrative agency) or considered self-regulation by the exchange itself as the best first means to combat insider trading. Others have preferred to rely on the securities regulator to enforce the insider trading law despite shortcomings. The recent trend in many of the countries seems to be towards strengthening the insider trading regulations and to using the regulator, the exchanges and the concerned companies in the combat against insider trading and related frauds.

The framing of insider trade regulation in the transition and emerging market countries is also generally said to be a matter of the level of investor sophistication, human and technological resources, regulatory and judicial capacities, and cultural aversion towards the prohibition of insider trading and use of the courts.
d. The Recognition of Suspension and Cancellation of Trading

The usefulness of trading suspension and cancellation is also debated. Its effectiveness assumes that:

- the authorities have the necessary ability to identify the precise moment to intervene, i.e. the moment when the market lacks the right information regarding a security;
- the suspension happens before any kind of anticipation is made by the market participants;
- the suspension will be followed by release and wide dissemination of new and material information; and
- the new information will be evaluated by the market participants and included in the prices of the securities.

Some have showed that these conditions may not be met and that trading suspension may cause a set of opportunity losses and gains (hence being not necessarily preferred means to the uninterrupted trading) as it may have the effect of i) lose to those who incurred cost to get the right information prior to the making of suspension, and ii) gain to those who did not want to spend for information but to 'free ride'. It has also been observed that the decisions on trading suspension are more devastating than the decisions on admission to the securities markets as they affect both the investors and the market makers as opposed to the issuing companies only.

Others, on the contrary, have believed that trading suspension can be useful when it happens prior to any kind of anticipation by market participants and if new and material information is revealed and widely disseminated during the suspension period. They have believed that the measure of suspension can be imprudent only if the securities market itself can tackle information dissemination efficiently and that this does not happen in practice.

It has, therefore, been argued that the usefulness of trading suspension is a matter of evaluation of its costs and benefits in a given market context for which there is no definite criteria. It has also been argued that no common effect should be expected after the suspension period is over as everything thereafter normally depends on every participant’s evaluation of the suspension and the newly released information.

The securities market laws in many of the developed market countries have, however, recognized trading suspension as a normal means to ensure that markets

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1776 Id., at pp. 29-30.
1777 Id., at p. 30.
1778 Id., at p. 25.
1779 Id., at pp. 25-30.
1780 Ibid.
1781 Id., at p. 29.
are not manipulated. The regulators and exchanges in many of them have also closely followed up and suspended trading when they felt that the investors and market actors were not fully informed of material information and, therefore, that the prices of securities have not fully reflected market information. The suspension of trading has usually occurred as sudden compulsory break in the process of buying and selling of securities on the exchanges when the authorities made decision to halt the trading of a certain security. It has occurred as temporary halt, as opposed to cancellation, of the trade. The most common reason for trading suspension has been the alleged emergence of a situation where insufficient dissemination of information has prevailed while the common effect has been alerting the concerned parties about something unusual. The suspension of trading has also often been terminated when new and material information is released according to test of the regulators.

The securities market laws of many of the transition and emerging market countries have also expressly recognized the suspension (and ultimate cancellation) of securities transactions by their regulators when market abuses and irregularities happen. The practicality and usefulness of these measures in the countries has, however, also been a matter of regulatory competence and adequacy of the experience of their regulators to enforce them.

e. The Requirement of Record Keeping, Disclosure and Corporate Governance

The development of effective accounting, auditing, disclosure and corporate governance is considered to be important within, as well as outside, the context of securities market development. The implementation of company law reforms, introduction of privately enforceable securities market law rules (such as listing rules, disclosure requirements, voluntary codes and rating criteria), adoption of domestic and international benchmarks, and encouragement of private sector initiatives are all said to be useful steps in the development of accounting, auditing, disclosure and corporate governance regimes for securities markets.

The developed market countries have, accordingly, refined their company and securities market laws and put in place market control mechanisms through time. They have already made the keeping and auditing of records; the
publication of prospectuses; the making of annual, semi-annual and ad hoc reports and disclosures to the regulators and the investing public; and the controlling of the governance of companies by the regulators as well as the market forces part of their securities market regimes.\textsuperscript{1793} Most of the transition and emerging market countries of Asia and Latin America have also put in place record keeping and disclosure requirements and undertaken corporate governance reforms following the advent of domestic and international pressures in the wake of financial crises.\textsuperscript{1794} The securities market laws of most of the transition and emerging market countries have also required the publication of prospectuses and making of ongoing disclosures by listed companies and collective investment schemes; the accounting and auditing of functions of the intermediaries and exchanges according to internationally accepted principles; and the regular and ad hoc reporting and disclosure of information by the exchanges and intermediaries as required by law and the regulators.\textsuperscript{1795} They have also ruled on the organizational and governance structures of the exchanges and intermediaries by way of complementing their company laws.\textsuperscript{1796} The rise and expansion of information communication technology and the increased automation and internationalization of the securities markets have also enhanced the disclosure of information and corporate governance in both the developed and the transition and emerging market countries although they have also brought about the question of developing new regulatory structures to be in tandem with the new market structures.\textsuperscript{1797}

The making of accounting, auditing, disclosure and corporate governance reforms is also generally considered to be important matter that has to be addressed continuously as governance inefficiencies, scandals and financial crimes are still alive everywhere.\textsuperscript{1798} The effort in most of both the developed and the transition and emerging market countries has, accordingly, been (and seems to continue to be) towards advancing the systems by shifting increasingly from a regulatory system that relies on quantitative controls only to a system that complements the quantitative controls by qualitative prudential and governance requirements, such as by defining the mechanisms for management of risks and specifying the valuation and auditing functions, board and management tasks (and responsibilities), and shareholders rights. The Global Corporate Governance Forum, the OECD, the International Accounting Standards Committee, the International Federation of Accountants, the International Corporate Governance Network, and many national institutions have also been assisting the reforms.\textsuperscript{1799} The 2008 financial and economic crisis has also increased the need for controlling abuses, enhancing corporate governance practices, and further revising the OECD

\textsuperscript{1793} Ibid.
\textsuperscript{1794} Lubrano, 2003, at pp. 437-459.
\textsuperscript{1795} Tables 25(Chap. 3) Continued (1 of 3); and 25(Chap. 3) Continued (2 of 3).
\textsuperscript{1796} Note the laws referred in Table 25(Chap. 3).
\textsuperscript{1797} Wittich, Tafara and Peterson, 2003; Aggarwal, 2003; and the discussions under the 'history and current state' and 'modelling the market structure' subtitles above.
\textsuperscript{1798} Note the discussion under the 'regulation of governance and auditing' subtitle of the banking, insurance and microfinance chapter above.
\textsuperscript{1799} Note Ibid.
corporate governance principles in the context of the securities markets.\textsuperscript{1800} The latest recommendation, as drawn from the experiences of private equity and venture capital funds and the general discussion on corporate governance systems in some countries like Germany, is also towards development of a governance system that will incorporate the relationships among all the stakeholders of the corporation (i.e. the owners, the lenders, the managers, the employees and other social groups).\textsuperscript{1801}

f. The Regulation of Clearing and Settlement of Transactions

Both the developed and the transition and emerging market countries have also rules in their securities market laws that require the centralization of clearing and settlement services for their securities markets. The developed market countries have considered the adoption of automated clearing and settlement services as crucial matters to enhance the competitiveness of their markets as of the late 1980s.\textsuperscript{1802} Most of them have then required the dematerialization and central custody of their securities, the settlement of securities transactions through computer book entries, and the centralization of the clearing and settlement services as technology grew to enable these in the aftermath of their Big Bangs.\textsuperscript{1803} Many of the transition and emerging market countries have also benefited from these developments and adopted securities market laws that require i) the dematerialisation, and central depository (custody) of securities; ii) the introduction of settlement systems by book entry; and iii) the provision of the clearing, custodian and settlement services by centrally organized custodian, clearing and settlement companies that should exist along with their exchanges.\textsuperscript{1804} The regulation of real time settlement has, however, remained to be pending question.\textsuperscript{1805}

ii. The Case of Ethiopia

The Justice and Legal System Research Institute of Ethiopia has proposed that the governmental regulation of the future exchange of the country needs to be done with recognition of self-regulation by the exchange.\textsuperscript{1806} It has, through the draft Securities and Exchange Proclamation of 2003, proposed that:

- ongoing prudential requirements need to be imposed on both the exchange and the intermediaries;
- the governmental regulator needs to register the corporate securities intended for public issuance; impose merit and reporting requirements; supervise the orderly operation of the exchange and intermediaries (including the control of

\begin{thebibliography}{99}
\bibitem{1800} Luigi, 2009.
\bibitem{1801} Schwartz, 2010; and Grossfeld, 2006, at pp. 135-141.
\bibitem{1803} Ibid.
\bibitem{1804} Tables 25(Chap. 3) Continued (3 of 3).
\bibitem{1805} Note the discussion under the ‘modelling the clearing and settlement of transactions’ subtitle above.
\bibitem{1806} JLSRI, 2001, at pp. 15-17, 36-37 & 42.
\end{thebibliography}
mergers, acquisitions, reorganizations, insider dealings and fraud), and enforce trading suspensions and cancellations;
- the exchange needs to issue and enforce internal rules and codes of conduct (on conduct of trade, disclosure of information to the public, negotiation of prices, delivery of securities, settlement of transactions and disciplinary measures) subject to overall regulation and supervision by the governmental regulator; and
- the exchange and the intermediaries need to keep records for all transactions, make quarterly and annual reports of all the records to the regulator, and disclose all material information to the public timely.\footnote{JLSRI, 2003, at arts. 8, 9-11, 14(2), 18, 21, 23(3-6), 25(2), 26, 29, 33, 34(1), 35(1, 2) & 39(2).}

It has also proposed that there should be rules which:

- require the secrecy and non-utilization (for personal benefit) of all information prohibited by law from being made public; and
- impose duty on all members of the exchange to contribute to an industry guarantee fund.\footnote{Id., at arts. 3, 12(1), 16(1, 3, 4), 20, 23(5) & 36.}

The National Bank of Ethiopia, the Awash International Bank S.C. and the Bank of Abyssinia S.C. have also supported the aforementioned proposals of the Institute in making their comments on the draft proclamation.\footnote{Note letters of the NBE and the banks to the Institute (cited as NBE, 2002; AIB, 2002; and BA, 2002).} The Addis Ababa Chamber of Commerce has, however, consistently proposed the adoption of a self-regulatory system that will enable the exchange to set rules on a number of matters including the following:

- the admission to and termination of membership to the exchange;
- the capital, prudential and disclosure requirements to be imposed on the securities dealers and brokers;
- the undertaking of the brokerage and securities businesses;
- the prohibition and sanctioning of insider trading, market manipulation and fraudulent activities;
- the suspension and cancellation of trading;
- the supervision and inspection of the securities dealers and brokers; and
- the settlement of disputes between the exchange and the members, between the members and their clients, and between the members themselves.\footnote{ZNA, 1999; and AACC, 1999.}

Like the market entry regulation, the ongoing securities market regulation in Ethiopia needs to protect the health of the future exchange, intermediaries, investors and the public and be consistent with the international experience in order to encourage trade and investment in the market.\footnote{Note the discussion under the ‘regulation of market entry’ subtitle above.} It should also maintain some consistency across the financial market in order to benefit from regulatory experience. Hence, the country needs to adopt a securities market law that will...
require both the exchange and the intermediaries to meet ongoing capital adequacy, reserving, liquidity, accounting, auditing, reporting and disclosure requirements and to contribute to an industry guarantee fund. The securities market law also needs to do the following for same reasons:

- require the exchange and intermediaries to meet corporate governance requirements;
- regulate the public issuance and trading of securities;
- prohibit the exercise of insider trading, price manipulation and fraudulent activities;
- recognize the suspension and cancellation of trading by the regulator when market abuses occur; and
- require the dematerialization and central custody of securities and the central clearing and settlement of transactions (as the infrastructure for these grows).1812

The use of self-regulation should, however, be considered as a matter of prudence, capacity and ethics on the part of the exchange and the market actors as indicated in the preceding discussion.1813 Hence, the country needs to set the legal framework and assign the task of enforcing regulation to the governmental regulator as it starts and consider the ways for delegation to the exchange, the intermediaries and their associations as the exchange and the market actors grow and the conditions for self-regulation mature.

1812 The recent agricultural commodities market regime of the country has also incorporated rules on these matters (FDRE, 2007; FDRE, 2007a; FDRE, 2008; and FDRE, 2010). Lesson needs to be drawn from it.
1813 Note the discussion under the ‘approaches of regulation’ subtitle above.
Chapter 4
The Development, Policy and Regulation of Private Pensions

4.1 History and Current State

i. The International History in Brief

Caring for the aged and the destitute existed as family, church or community business before the 19th century.\textsuperscript{1814} Mutual self-help schemes were also common among merchants and factory workers in Europe and Northern America until they vanished in the 19th century.\textsuperscript{1815} Formal pensions originated in Western Europe in that century to curb the dislocation effects of the industrial revolution.\textsuperscript{1816} They expanded in the first half of the 20th century due to the socio-economic contingencies brought about by the Second World War.\textsuperscript{1817} The first employment based pension was sponsored by the Bank of France in 1808.\textsuperscript{1818} State involvement in pensions started in 1889 in Germany under auspice of Chancellor Bismarck and grew through three eras, namely the Bismarck era (till the First World War), the social security era (1930-1952), and the social protection era (1952 and the following).\textsuperscript{1819}

The Bismarck era initiated pension to workers in industries based on contribution by the workers since the government of the time took little responsibility.\textsuperscript{1820} It started with paternalistic occupational pensions for the benefit of elite employees.\textsuperscript{1821} It expanded the occupational pensions to non-elite employees and led to welfare capitalism towards its end.\textsuperscript{1822} It introduced contributory old-age insurance as part of broad program of social insurance for Germany which served as model for Rumania, Sweden and the Netherlands until the First World War (1914-18).\textsuperscript{1823} New Zealand also introduced non-contributory pension on ground of residence in the era (i.e. 1898) which served as model for many countries other than Rumania, Sweden and the Netherlands until the First World War.\textsuperscript{1824} The War was, then, followed by boom of contributory pensions in the European and non-European countries.\textsuperscript{1825} It was followed by workmen’s compensation and sickness insurance conventions signed in the 1920’s under the auspice of I.L.O.\textsuperscript{1826}

\begin{itemize}
  \item \textsuperscript{1814} Littlewood, 1998, at p. 6.
  \item \textsuperscript{1815} Swaan and Linden, (eds.), 2006; and Degefe Duressa Obo, 2009, at pp. 1 & 16-24.
  \item \textsuperscript{1816} Shalev, 1996, at pp. 331-334; and Enrico and Armin, 2008.
  \item \textsuperscript{1817} Ibid.
  \item \textsuperscript{1818} Littlewood, 1998, at pp. 6-7.
  \item \textsuperscript{1819} Littlewood, 1998, at pp. 6-7; and Enrico and Armin, 2008, at pp. 5-7.
  \item \textsuperscript{1820} Ibid.
  \item \textsuperscript{1821} Shalev, 1996, at pp. 331-332.
  \item \textsuperscript{1822} Ibid.
  \item \textsuperscript{1823} Littlewood, 1998, at pp. 6-7.
  \item \textsuperscript{1824} Id., at pp. 6-7.
  \item \textsuperscript{1825} Littlewood, 1998, at p. 7; and Enrico and Armin, 2008, at pp. 5-7. The occupational pension schemes grew more in USA than in Europe (Shalev, 1996, at pp. 331-332)
  \item \textsuperscript{1826} See the Unemployment Indemnity (Shipwreck) Convention 8 of 1920; Workmen’s Compensation (Agriculture) Convention 12 of 1921; Workmen’s Compensation (Accidents) Convention 17 of 1925; Workmen’s Compensation (Occupational Diseases) Convention 18 of 1925; Sickness Insurance (Industry) Convention 24 of 1927; Sickness Insurance (Agriculture) Convention 25 of
\end{itemize}
The social security era (1930–1952) saw increased government involvement in the provision of pension coverage. Governments started pensions financed through employee, employer and government contributions during the era. The US introduced its occupational pension in 1935, the UK consolidated its state benefit system for the retired in 1942, and many other countries followed the trend in the era. The ILO also adopted several workmen insurance and social security conventions during the era. The International Social Security Association (ISSA) was also established in 1927 to serve as forum for international cooperation in the provision and administration of social security in the era.

The social protection era (1950’s and the following) brought about the idea of providing fully government funded social security to citizens irrespective of employment. It saw the constitutional recognition of social security as human right to citizens when state welfare programmes flourished across countries following the end of the Second World War in form of state insurance against foreseeable and unforeseeable risks. The Social Security (Minimum Standards) and other Conventions of the ILO were also adopted to set standards for old age pension benefits, invalidity benefits, survivors’ benefits, employment injury benefits, sickness benefits, medical care provisions, unemployment benefits, maternity benefits, and family allowances when members of the international community expanded their pension provisions through forms of universal provision, social insurance, social assistance, employers’ liability, provident funds and private insurance schemes in the era.

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1827 Shalev, 1996, at p. 332; and Enrico and Armin, 2008, at pp. 5-7.
1829 Ibid.
1831 The ISSA exists today as non-profit organization bringing together institutions and administrative bodies involved in the administration and regulation of social protection schemes throughout the world. It deals with all forms of compulsory social protection that, by legislation or national practice, are integral parts of a social security system. (ISSA, 2007)
1832 Shalev, 1996, at p. 332; and Enrico and Armin, 2008, at pp. 5-7.
The provision of social security has grown in the eras between two extremes, namely the occupational pension (welfare capitalism) of the US and the state social security (welfare state) of the Scandinavian countries.\textsuperscript{1835} The countries of Scandinavia and Western Europe have strengthened state social security through unfunded state pensions to meet the demands for social welfare while the US has focused on occupational pension plans in the name of social security.\textsuperscript{1836} Japan has resembled the US with public pension coverage through a National Pension Insurance (NPI) system which was combined with a system of occupational pensions in the corporate sector.\textsuperscript{1837} It has differed from the US by the Confucian tradition of familial solidarity that surrounded its occupational pension system.\textsuperscript{1838} The rest of the world had varied mixture of state social security, occupational pension and private life assurance.\textsuperscript{1839} The majority of the countries had unfunded pay-as-you-go schemes by the first half of the 1990s while some had provident funds with lump sum benefits or a blend of the state social security and the pay-as-you-go occupational pensions.\textsuperscript{1840} One country, namely Singapore, had funded state provident scheme while another, namely Chile, had compulsory funded pension that offered retirement benefit based on individual accounts (i.e. defined contributions) by 1994.\textsuperscript{1841} The use of private insurance annuities for retirement was intensified as of the late 1990s.\textsuperscript{1842} The various systems have, however, converged in the 1990s and thereafter. Many of the countries have acknowledged the possibility of providing pensions through the market as opposed to the state and adopted a public-private welfare nexus in which they run a mixture of first pillar state pensions, second pillar private pensions, and third pillar life annuities in the period.\textsuperscript{1843} The Scandinavian and

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  \item 1835 Shalev, 1996, at pp. 1-21 & 332-334; Enrico and Armin, 2008, at pp. 5-7; and Alan and Ronald, 2009, at pp. 4-11.
  \item 1836 Shalev, 1996, at p. 333; Dobbin and Boychuk, 1996, at pp. 104-130; Rein, 1996, at pp. 27-42; Jacoby, 1996, at pp. 44-69; Stevens, 1996, at pp. 73-96; overbye, 1996; Hughes and Stewart, (eds.), 2004; and Becker, 2007, at pp. 103-105. The social security system in the US has been composed of an Old-Age and Survivors Insurance Programme (introduced in 1935), a Disability Insurance Programme (introduced in 1956), and a Medical (Health Care) Insurance (Medicare) Programme (introduced in 1965) which are occupational. It has been complemented by a funded private pension system introduced and governed by the Employee Retirement Income Security Act (ERISA) of 1974. The 2010 reform has expanded the scope of application of the system to the private and personal sectors. Dobbin and Boychuk, 1996; Becker, 2007, at pp. 101-114; Bloomberg, 2009; BBC, 2009c; and BBC, 2010.
  \item 1837 Shalev, 1996, at pp. 333-334; and Harner, 2000, at pp. 94-97.
  \item 1838 Toshimistsu Shinkawa and Pempel, 1996, at pp. 280-323.
  \item 1839 Dietvorst, 1999, at pp. 15-17, 20-21 & 23-33.
  \item 1840 Fox and Palmer, 2001, at pp. 90-113; and Leo Stevens, et al., 1999, at p. 93.
  \item 1841 Fox and Palmer, 2001, at pp. 90-113; and Littlewood, 1998, at p. v. Singapore introduced the funded state pension system in the 1950s while Chile introduced the compulsory funded pension in 1981 (OECD, 2006a, at p. 198; and Alberto, et al., 2006).
  \item 1842 United Kingdom was the major exception to grow them since the mid-1980s. OECD, 2002, at pp. 79-93; and Richard, et al., 2003.
  \item 1843 Tables 8(Chap. 4); 9(Chap. 4); 10(Chap. 4); Davis, 1995, at pp. 4 & 5-6; Shalev, 1996, at pp. 327-330 & 335-337; Holzmann and Stiglitz, 2001, at pp. 1-3; Fox and Palmer, 2001, at pp. 90-113; Dixon and Hyde, 2001, at pp. ix-xiii & 1-213; OECD, 2002, at pp. 79-93; OECD, 2003, at pp. 75-93; Richard, et al., 2003; Barbara and Axel, 2003; Hughes and Stewart, (eds.), 2004; Queisser and Whitehouse, 2006, at pp. 50-55; Broeders, et al., (eds.), 2008; and Bányár and Mészáros, 2009. The World Bank has also published its ‘Averting the Old Age Crisis’ and recommended the making of reforms towards a pension system that includes three pillars (i.e., a first pillar PAYGO system, a
\end{itemize}
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European countries have reformed towards private funded pensions through defined contribution individual accounts while the US has debated on the introduction of a system that can combine defined contribution individual accounts and a government funded defined contribution program.\textsuperscript{1844} Japan has removed the management and investment restrictions on its pensions, introduced defined contribution accounts, and encouraged the birth of private pension fund managers and record keeping groups.\textsuperscript{1845} Many of these and the other countries have also created reserve funds for the pay-as-you-go pensions and encouraged the use of private insurance in the period.\textsuperscript{1846}

The rise of private pensions has also got attention of regional institutions, in particular in Europe, in the late 1980s.\textsuperscript{1847} It has also resulted in the establishment of the International Organization of Pension Supervisors (IOPS) in July 2004 which has served as world-wide forum for policy dialogue, exchange of information and standard setting on matters of private pension supervision.\textsuperscript{1848} The IOPS exists currently as specialized institution for private pension matters along with the International Social Security Association (ISSA) and the International Association of Insurance Supervisors (IAIS) which concentrate on the provision of social security and regulation of commercial insurance, respectively.\textsuperscript{1849}

### ii. The History in Ethiopia

Caring for the aged, the sick, the widow and the orphan was also customary practice in Ethiopia until the 1920s.\textsuperscript{1850} Governmental welfare service started in the country only when:

- a welfare agency was established by Emperor Haile Selassie I (Ras Tafari Mekonnen of the time) at the Dabra Libanos Monastery in June 1921 (30 May 1913 Eth. C.) to assist the destitute;
- a social welfare organization was found under patronage of the late Empress Menen with branches in Harar, Dessie, Gondar and Jimma in 1931 to educate orphans (and children of the poor) and to establish home centres for the aged and the destitute; and

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1846 OECD, 2006a, at pp. 190-199 & 210-211; Adrian Blundell-Wignall, et al., 2008; Juan Yermo, 2008; Broeders, et al., (eds.), 2008; and Banyár and Mészáros, 2009. Only the US (as of 1940) and Portugal (as of 1989) had reserve funds for the pay-as-you-go pensions until most countries introduced these funds in the 1990s and thereafter (OECD, 2006a, at pp. 210-211).
1848 IOPS, 2006; IOPS, 2007; IOPS, 2007a; and IOPS, 2007b.
1849 ISSA, 2007; and IAIS, 2007a.
- a Haile Selassie I Welfare Trust Foundation was established to look after the social welfare services of the time.\footnote{IGE-MI, 1964, at pp. 373ff; and IGE-MI, 1970, at pp. 99-100.}

The Imperial government strengthened the welfare functions through first and second five years development plans.\footnote{IGE-MI, 1970, at p. 97.} It established the Ministry of National Community Development and Social Affairs to follow up the community development matters and the first Ministry of Pensions to follow up the pension and social security matters during the first five years plan period of 1957 to 1961.\footnote{IGE-MI, 1970, at p. 97; and SSA, 1993, at pp. 9-10.} It introduced rules for private life insurance and consolidated the rules, principles and regulations on public and private employment by enacting the Civil and Commercial Codes of 1960, the Central Personnel Agency and Public Service Order of 1961 and the Public Employment Administration Order of 1962.\footnote{IGE-MI-MI, 1970, at pp. 97-99; IGE, 1961b; IGE, 1962a; IGE, 1963h; and IGE, 1963k. The number of community development centres has reached forty five by 1970 (IGE-MI, 1970, at pp. 97-99).} It also enacted labour relations and pension laws and increased the establishment of community development centres during the second five years plan period of 1962 to 1967.\footnote{IGE, 1962a, at art. 2(g).}

The labour relations law focused on the industrial peace and welfare of employees of the non-governmental and autonomous governmental institutions.\footnote{IGE-MI, 1970, at p. 97.} It recognized the voluntary provision of provident funds and authorized the Ministry of National Community Development to prescribe the general labour conditions and provident fund rules to be respected during and in the absence of collective agreement.\footnote{IGE, 1962a, at arts. 3(i), 3(j) & 2(k).} The Commercial Code of 1960 also provided for a system of voluntary private life insurance.\footnote{IGE, 1960, at arts. 654-714; and Winship, 1974, at pp. 81-83.} The pension law, however, introduced a compulsory system of retirement pension for the civil and military employees of the government (and their survivors).\footnote{IGE, 1961b. Public servants who rendered service to the government were to be provided with land and/or lump-sum benefits for their service during the period before the introduction of this pension scheme. Id., at art. 44.} It established civil and military funds that could pay three types of benefits: a retirement pension and gratuity, an incapacity pension and gratuity, and a survivor's pension and gratuity.\footnote{IGE, 1962a, at arts. 3-9, 10-14 & 15-25.} It made the pension compulsory subject to withholding of contributions from salaries of the employees and the state budget by the Ministry of Finance of the time.\footnote{IGE, 1961b, at arts. 3-9, 10-14 & 15-25.}
The Haile Selassie I Trust Foundation also coordinated the establishment of community development centres and facilitated the establishment and supervision of the following:

- five hospitals, namely the Haile Selassie I hospital (Addis Ababa), the Saint Paul's Hospital (Addis Ababa), the Gandhi Memorial Hospital (Addis Ababa), the Leul Ras Mekonen Hospital (Harar), and the Saint Mary's Hospital (Axum);
- one clinic specialized in mother and child welfare services, namely the Woizero Beletchachew Abajobir Clinic (Addis Ababa);
- two schools, namely the Haile Selassie I School for the blind (Addis Ababa) and the Abraha Bahta School for the blind (Asmara);
- two homes, namely the Haile Selassie I Children's Home (Addis Ababa) and the Abraha Bahta Home for the Aged (Harar); and
- three aid institutions, namely the Eguale Mawta Kindergarten (Addis Ababa), the Umbrella Factory for the handicapped (Addis Ababa), and the Bete Selihom (Dabra Libanos).

It conducted family planning education as part of its humanitarian activities and received contributions of money, land, machinery and other properties from national and international sources for its purposes.

The Ministry of National Community Development and Social Affairs also established a Rehabilitation and Training Centre in 1957 to facilitate the training and employment of the handicapped. Several other institutions were also established in the 1960s, including the following:

- the Armed Forces Wives' Association (established with branches in Asmara, Gondar, Harar, Dire Dawa, Negele and Guenet to care for the welfare and education of children of those who lost their lives in military service);
- the YMCA and YWCA (established to care for youth welfare);
- the Remand Home (established to care for the rehabilitation of juvenile delinquents); and
- the Red Cross Society (established to care for all welfare and humanitarian works).

The Christian Missionaries and UN agencies of the time also participated in the implementation of welfare projects while an organization called the Ethiopian Council for Social Welfare coordinated all the voluntary social welfare organizations of the time in cooperation with the Ministry of National Community Development and Social Affairs. A School of Social Works was

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1863 The Emperor and the German Evangelical Church stood as main donors to the Foundation. IGE-MI, 1970, at p. 99.
1864 Id., at p. 100.
1865 Ibid.
1866 Ibid. The Council also engaged in the initiation of research and dissemination of knowledge in the areas of social welfare by organizing seminars and sponsoring publications (ECSW, 1967).
also established in 1959 by the Ministry of Public Health and the University College of Addis Ababa of the time to train social workers who were to assist the social welfare development effort. An Employment Exchange Office was also established in Addis Ababa under the 1962 labour relations law to facilitate private employment.

The post-1974 Military Government continued with the pension system created by the Imperial Government with some adjustment on the pension laws and institutions. It expanded application of the pension scheme to permanent employees of the agricultural, commercial, industrial, transport, banking and insurance undertakings whose ownership was transferred to the government and to permanent employees of the Franco-Ethiopian Railway Company who were Ethiopian nationals (by birth or acquisition) and replaced the provident fund schemes of these institutions by an Undertakings Pension Fund. It also introduced severance pay and disability benefits to employees of the private sector by a labour law that replaced the Imperial Labour Relations Proclamation of 1963. It did not establish pension for employees of the private sector assuming that the sector was to be marginal due to the socialist policy of the time and that the voluntary provident fund schemes started during the Imperial time were to continue for the remaining parts of the sector. It also centralized the commercial insurance scheme introduced by the Imperial Government in the Ethiopian Insurance Corporation.

The post-1991 Transitional Government has adjusted the occupational benefits and severance pay schemes for employees of the private sector by enacting new labour law. It has not established pension for them as in the previous regimes.

The Federal Government has promised to enhance the pension scheme into a social security system since 1995. It has redefined the basic principles of the labour law for the private sector and consolidated the pension laws for the public sector since 2003. It has:

- re-established the governmental pension funds as i) Civil Service and ii) Military and Police Service Funds;

1867 IGE-MI, 1970, at p. 101. The School lived as department of the Faculty of Arts of the University College of Addis Ababa between 1961 and 1963; became independent unit of the Haile Selassie I University (now the Addis Ababa University) in 1963; and became member of the International Association of Schools of Social Work subsequently (Ibid.).
1868 Ibid.
1869 PMGE, 1974b; PMGE, 1974c; PMGE, 1975b; PMGE, 1975i; and PMGE, 1976j.
1870 PMGE, 1975i.
1871 PMGE, 1975k.
1872 Ibid.
1873 The pension and life annuities businesses of the Corporation were, however, negligible throughout the tenure of the Military Government compared to the general insurance business. Note the annual reports of the Corporation and the Statistical Abstracts of the Central Statistics Agency of the country for the 1970s and 1980s.
1874 TGE, 1993a.
1875 FDRE, 1995, at art. 89(8) & 90; and FDRE, 2002g, at pp. 114-118.
1876 FDRE, 2003e; and FDRE, 2003g.
- re-defined the pension benefits into five, namely: i) retirement pension and gratuity, ii) invalidity pension and gratuity, iii) incapacity pension and gratuity, iv) survivors' pension and gratuity, and v) contribution refund; and
- made the consolidated pension law applicable to permanent employees of all the wholly or partly budgeted government offices, public enterprises, and the enterprises in which the government's capital share is not less than fifty percent.1877

It has made the retirement pension available as payment for life to the public servants who:

- complete at least ten years of service and retire upon attainment of a retirement age of sixty (for both sexes) or of a retirement age as may be fixed by the defence and police force laws (for members of the military and police force);
- resign from service after twenty five years of service and attain an age of three years less than the retirement age as may be adjusted (for members of the defence force) or five years less than the retirement age as may be adjusted (for the others);
- separate from service after twenty years of service due to privatization or closure of work and attain the age of forty five;
- separate from service after twenty five years of service due to institutional transformation of the employer institution and attain the age of fifty; and
- resign from service after twenty years of service voluntarily or for causes other than those defined by law and attain the age of sixty.1878

It has made the retirement gratuity available as lump sum payment to all public servants who attain the retirement age after having served for less than ten years.1879 It has made the invalidity pension available as payment for life to public servants who:

- separate from service after ten years of service due to failure to fulfil the medical condition of service;
- resign from service after twenty five years of service and become incapable before attainment of the retirement pension age for this group; and
- resign from service after twenty years of service voluntarily or for causes other than the ones mentioned in the law and become incapable before attainment of the retirement pension age for this group.1880

It has made the invalidity gratuity available as lump sum payment to all public servants who retire because of failure to fulfil the medical conditions of service after having served for less than ten years.1881 It has made the incapacity gratuity

1877  FDRE, 2003c, at arts. 3, 2(1-2), 4, 13-16, 17-20, 21, 29-33 & 34-39; FDRE, 2003g; FDRE, 2004bd; and FDRE, 2009a.
1878  FDRE, 2003c, at arts. 13 & 12; FDRE, 2004bd; and FDRE, 2009a. The law authorizes the Council of Ministers to adjust the retirement ages (FDRE, 2003c, at art. 12(3)).
1879  FDRE, 2003e, at art. 15.
1880  Id., at art. 17(1-2), 13(5) & 18.
1881  Id., at arts. 19-20.
available as lump sum payment to public servants who sustain employment injury of not less than ten percent without losing their capacity to work and the incapacity pension available as payment for life to public servants who sustain employment injury of not less than ten percent and separate from work due to absolute incapacity.\textsuperscript{1882} It has made the survivors' gratuity available as lump sum payment to the widow or widower and children of the public servant who died before having completed ten years of service without having been separated from service and the survivors' pension payable for life to the widow or widower, children and parents of the public servant who died:

- after entitlement to retirement, invalidity or incapacity pension;
- after ten years of service without having been separated from service and before attainment of the retirement age;
- after twenty years of service and separation from service by voluntary resignation or a cause not mentioned in law, or
- after twenty five years of service and resignation from service for any cause.\textsuperscript{1883}

It has made the refunding of contributions available to the public servants who resign from work after ten years of service and to those who separate from work for any cause at any time after completion of twenty years of service.\textsuperscript{1884}

It has also integrated the finance and non-finance functions of the pension in the Social Security Authority and re-established the Authority as Social Security Agency since July 1998 and June 2006, respectively.\textsuperscript{1885}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{1882} Id., at arts. 22-28 & 30-33.
\item \textsuperscript{1883} Id., at arts. 34(1-3), 35-39 & 13(5).
\item \textsuperscript{1884} Id., at art. 21.
\item \textsuperscript{1885} SSA, 1998, at p. 4; and FDRE, 2006. The functions were assigned to different institutions until 1998. The Imperial Government enforced them through the Ministry of Finance of the time and a Minister of Pensions during the years between 1957 and 1961, through the Ministry of Finance and a Pension Commission accountable to the Ministry of Pensions from November 1961 up to April 1966, and through the Ministry of Finance and the Public Service Pensions Commission after 1966 (IGE, 1962; IGE, 1962b; IGE, 1962d; IGE, 1962e; IGE, 1962f; IGE, 1963a; IGE, 1963j; and SSA, 1993, at pp. 11 & 38-52). [The Ministry of Finance collected the contributions to the civil and military funds, paid the benefits from the funds, and managed the balances of the funds while the Ministry of Pensions and the Pension Commission controlled the decisions on the entitlements to pensioners and supervised the overall enforcement of the pension laws]. The Military Government enforced them through a Pension Authority accountable to the Ministry of Labour and Social Affairs and the Ministry of Finance (PMGE, 1975i; and SSA, 1993, at p. 11). [The Pension Authority existed as Public Service Pensions Commission, succeeding the Imperial Pension Commission, until October 15 1975, as Pension Security Organization in the years between October 15 1975 and September 09 1976, as Public Service Pensions Authority in the years between September 09 1976 and 1989, and as Pensions and Social Security Authority since 1989. It followed up the overall enforcement of the pension laws while the Ministry of Finance run the finance functions]. The Military Government also enforced the finance and non-finance functions of the Undertakings Fund (created in 1975) through the Pension Authority and the latter has paid the pension benefits through the Commercial Nominees Private Limited Company (a company owned by the Commercial Bank of Ethiopia and the Construction and Business Bank S.C.) since April 1978 (SSA (PERD), 2003, at p. 29). The post 1991 transitional government has continued with the disintegrated approach by renaming the institutions (FDRE, 1996d).
\end{itemize}
\end{footnotesize}
Two hundred non-governmental organizations (ninety of which are located in Addis Ababa) are also created in the country to deal with issues of the aged, the disabled and the people with difficult circumstances. The Ministry of Labour and Social Affairs and the Regional Labour and Social Affairs Bureaus of the country are also working on the issues of these people and coordinating the non-governmental organizations. The country does not, however, have private pension system yet and the aforementioned pension law developments have only consolidated the retirement pension system for government employees.

4.2 The Functions of Pensions

i. The International Experience

Pensions can have financial and non-financial functions. The OECD countries have used them both to ensure retirement income security and achieve labour, investment, financial market, corporate governance and other objectives. They have used the first pillar pensions to:

- substitute the traditional extended family means of caring for the aged;
- help individuals to save for retirement by providing them with the base level of benefits they need;
- overcome the problems of individuals to cater for their own retirement due to myopia;
- overcome the free-riding problems of those who do not want to save unless society forces them;
- overcome the adverse selection problems and transaction costs in private annuity markets;
- correct the market failures in private insurance including the risks of longevity, inflation and investment;
- overcome the risks of inflation and variable return across generations;
- enhance the stability of income, demand and consumption through the life cycle of the human being,
- cater for the lifetime poor (i.e. for the one who can not save not because of myopia but owing to lack of income during work age);
- redistribute income, alleviate poverty, and promote social welfare and stability; and
- encourage investment.

They have used the second pillar private pensions to:

1886 MoLSA, 2008.
1887 Ibid.
1889 Davis, 1995, at pp. 29-31; and Alan and Ronald, 2009.
- pool and share risk between employers and employees;
- protect employees from social security cuts, inadequate replacement rates, and political and inflation risks of the first pillar pension;
- overcome the fallings of the life-cycle hypothesis and alleviate retirement poverty\(^{1890}\);
- enhance private saving, investment, capital market development, and corporate finance;
- provide employers with long term fund;
- enhance information about current and future earnings of employees;
- create common interest between employers and employees; and
- establish reputation of employers in labour markets.\(^{1891}\)

The private pensions have also contributed to qualitative developments in the financial markets of the countries, including the following:

- increment of demand for financial instruments;
- reduction of transaction costs;
- introduction of new financial instruments;
- innovation of markets;
- development and restructuring of the infrastructure, regulation and corporate-financial relationships in the financial markets;
- motivation of corporate takeovers; and
- internationalization of the financial markets.\(^{1892}\)

The old public pensions in the transition and emerging market countries have existed as 'mandatory retirement saving schemes' in an intermediary form between social security and pension funds (i.e. as compulsory pension schemes that bear rights that can be transferred between jobs like social security and as pension schemes that are based on individualized actuarial accounts that avoid redistribution of resources between ages but force the young people to shift consumption to their old ages like funded pensions).\(^{1893}\) They have, however, failed to offer sustainable retirement income security due to several reasons, including the evasion of wage taxes, centralization to serve government objectives, weakness of investment returns, de-capitalization of reserves, introduction of unrealistic replacement ratios, rise of inflation, lack of indexation, lack of annuities, rise of lump-sum withdrawals, lack of sufficient saving, rise of political risks, and high demographic problem due to rapid ageing, early retirement and

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\(^{1890}\) The life-cycle hypothesis assumes that individuals plan to derive utility from smooth pattern of consumption over both working and non-working ages and that they accumulate resources during their working ages to consume during retirement. It assumes that individuals are far-sighted enough and have the ability to plan for their retirement and hence that discretionary saving will work. It suffers from the shortcoming that individuals may not plan their futures because of myopia or poverty. Davis, 1995, at pp. 11-15.


\(^{1892}\) Davis, 1995, at pp. 25, 158-183 & 203-228.

\(^{1893}\) Davis, 1995, at pp. 25, 245-258; and Alberto, et al., 2006.
other causes.\footnote{1894}{Ibid.} The private pensions in the countries are, accordingly, used to supplement the old pension systems as social security safety-net.\footnote{1895}{Davis, 1995, at pp. 25 & 245-257; and Alberto, et al., 2006. Many of the countries have introduced reforms that favoured the development of private pension funds with individualized accounts that can be invested. A number of them including Chile, Singapore, Malaysia, Korea, Cyprus, Fiji, Brazil, Indonesia, the Philippines, Jordan, India, Turkey, Egypt, Zimbabwe and Botswana have set up the funds with different sources of funding. Egypt, the Philippines, Jordan and Turkey have required their partial funding by the social security while Cyprus, Indonesia and Brazil have required their financing by company pension funds; Fiji and Malaysia by their national provident funds; Zimbabwe, Botswana and India by a combination of their provident funds and company schemes; Korea by life insurance companies; Chile by the defined-contributions of employees to be administered by private pension fund investment management companies; and Singapore by defined contributions of the employees to be administered by a government investment agency. Alberto, et al., 2006.}

The private pensions in the transition and emerging market countries have also contributed to the development of securities markets when rules and understandings relaxed in favour of portfolio investment.\footnote{1896}{Rossotto, 2003, at pp. 119-151.} They are used to spread risk, increase asset return and saving, raise the supply of long-term finance, spur financial innovation, facilitate privatization, stimulate the improvement of accounting, auditing, information disclosure and other infrastructure, and encourage labour productivity by increasing labour mobility from the informal sectors.\footnote{1897}{Ibid.} The successful development and use of the funded pensions in the countries has, however, also been a function of the following:

- the prior level of development of the financial markets (in particular the capital markets);
- the reasonable absence of political interference in economic activities (i.e. the level of free market orientation);
- the degree of efficiency in administration and regulation;
- the availability of skilled personnel;
- the protection to rights of the pension shareholders and members;
- the presence of flexible regime for investment of the pensions (such as the prudent-man rule as opposed to heavy portfolio regulation);
- the indexation of the pension benefits;
- the adoption of sound macroeconomic and regulatory framework; and
- the fiscal treatment of the pensions.\footnote{1898}{Rossotto, 2003, at pp. 119-151; Davis, 1995, at pp. 174-176 & 245-258; and Shah and Fernandes, 2001, at pp. 355-360 & 362.}

The pensions in both the OECD and the non-OECD countries are also used to serve the following additional functions:

- strengthen the revenue positions of governments;
- increase national saving;
- broaden household choice for investment (in the capital markets);
- encourage cross boarder investment;
- encourage the formalization of informal sectors and work relations; and
- enhance competition, efficiency and economic growth.1899

ii. The Case of Ethiopia

Ethiopia does not currently have comprehensive social security. It has only occupational pension for government employees, some provident fund scheme for private sector employees, and some social assistance for the old, the destitute and the needy.1900

The governmental pension is compulsory pay-as-you-go scheme where:

- the government and its employees pay contributions defined as percentages of the monthly salaries of the employees, and
- only retired government employees (and their dependents) get payments from current contributions based on their average salaries and years of services.1901

It does not serve as universal basic system that assures minimum standard of living for citizens since it provides only subsistent income to very small population of the country.1902 It does not also serve the functions of facilitating saving, employment, investment, corporate finance and capital market development since its benefit payments are small and its resources are hardly invested.1903 The private sector provident funds and social assistances do not also serve these functions since they are informal and voluntary payments.1904

4.3 The Rationale and Direction of Reform

i. The International Experience

The OECD countries have reformed their pensions due to:

- increase of demographic and labour difficulties (including aging, fertility decline and early work exit),
- non-accumulation of the funding in the old PAYG system,
- decline of the scope for government funding of social security,
- rise of efficiency concern, and

1900 Note the discussion under the ‘history and current state’ subtitle above.
1901 FDRE, 2003e; FDRE, 2004bd; FDRE, 2009a; and note the discussion under the preceding subtitle.
1902 Tables 1(Chap. 4); 1(Chap. 4) - Continued ((1 of 1); 2(Chap. 4); 3(Chap. 4); & 6(Chap. 4).
1903 Tables 5(Chap. 4); and 6(Chap. 4).
1904 Data is not available on the size and coverage of the provident funds except for the funds administered by the Commercial Nominees Private Limited Company (Table 7(Chap. 4)). It is, however, common knowledge that the funds are kept in bank accounts for payment to employees upon termination of contract of employment. Most of the social assistance is also conducted informally although some two hundred non-governmental organizations are known to the Ministry of Labour and Social Affairs of the country (Note the discussion under the ‘history and current state’ subtitle above).
Most of them have reduced their PAYG pension liabilities by changing their benefit formula, increasing the pensionable age, and tightening the link between contributions, lifetime earnings, and pension benefits. Three countries, namely UK, Australia and Sweden have increased the funding of their systems by introducing individual account systems. Some like Italy and Sweden have gone to a middle road between the traditional PAYG defined benefit system and the fully funded defined contribution financial account system by introducing a nominally defined contribution (NDC) PAYG system that has required:

- payment of contributions on earnings at fixed rates during work life,
- crediting of the contributions to individual notional accounts of the workers, and
- annual indexation of the capitals (and benefits) to the contribution base and the changes in the life expectancies of the workers.

The Netherlands has also followed middle road by developing second pillar pensions as stand-alone - capital funded - collective pensions that are between the public PAYGO system and the defined contribution individual account scheme that has replaced the defined benefit plans in the other countries. Japan has diversified the public and private pension schemes, introduced defined contribution individual accounts, and allowed the rise of private pension fund managers, investment advisors and fund record keepers. The US has debated

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1907 Ibid.

1908 Id., at pp. 98-100.

1909 The pensions are called collective since they have allowed individuals to pull and delegate their savings and investment decisions to professionals who have then linked the affairs of the individuals to the strategies of the financial markets. They have created risk sharing contracts between generations that are not traded in the financial markets. They are called stand alone since they do not have risk absorbing sponsors in form of government or corporation, but make their members owners of the assets and bearers of their risks (so that they will either share the risks among themselves or shift them to others by trading financial instruments on the capital markets through their professionals). Bovenberg, 2008.

1910 Harner, 2000, at pp. 94-110. The current Japanese public pension scheme comprises a National Pension Insurance (NPI) for all residents aged 20 to 60, an Employee Welfare Pension Insurance (EWPI) for salaried employees of corporations, and a Mutual Aid Association Plans (MAA) for public sector employees. Its private pension scheme comprises Corporate Pensions (consisting of Employee Benefit Pension Plans, Tax-Qualified Pension Plans and Non-Tax-Qualified Company Retirement Allowances), a National Annuity Fund, and Private Pensions (of the US 401(K) type individual contribution plans). The NPI stands as the core of the Japanese pension system being supplemented by the other funds. The governance structure for the public funds is transferred from the Trust Fund Bureau of the Ministry of Finance and its delegate (the Pension and Welfare Service Corporation under the Ministry of Health and Welfare) to the Pension Bureau of the Ministry of Health, Labour and Welfare (for the pensions) and the Social Insurance Agency and Regional Social
on the introduction of private individual accounts in the occupational pension system and succeeded to expand the scope of application of the occupational pension system to the private and personal sector in 2010.1911

The Latin American countries have implemented their reforms due to fiscal deficit, poor functioning of the old PAYG system, and appreciation of the Chilean private pension model as success.1912 Chile has developed an individual account second pillar pension system to offer its workers with retirement benefit in form of annuity while Argentina, Uruguay, Peru and Columbia have adopted mixed approaches by combining their first pillar PAYG pensions with a modest second pillar (Argentina and Uruguay) or offering a system that allows the making of choice between the first and the second pillars (Peru and Columbia).1913 The other countries of the region, namely Mexico, Bolivia and El Salvador, have undergone reforms towards the second-pillar funded schemes.1914 The concern with the Latin American reformers has also been on how to design and regulate the new systems in order to maximize individual equity (i.e. assure that pensioners will get benefits that are commensurate with their contributions).1915 Hence, some like Argentina have focused on the making of reform largely within the existing system of PAYG by re-regulating it (such as by relating the benefits to contributions (as opposed to wages), reducing the future benefits, and financing the pensions through tax) while others like Bolivia have gone to a second pillar pension system with new regulation for all participants.1916

The Eastern European and Central and Eastern Asian countries have made their reforms due to the change of economic policy to free market and the rise of concern on how to enhance the coverage and financing of the existing pensions.1917 They have faced the problems of high pension debt, weak pension administration, low pension contribution, low retirement age and strong legacy of special privileges to selected groups.1918 The initial phases of their pension reforms were reactive concentrating on trimming of benefit payments to meet the financial resource limitations of the pension systems while the subsequent reforms in the 1990s were proactive including steps to phase out the existing privileges to social

1914 Ibid.
1918 Ibid.
groups and steps to make systemic changes towards pillar two (individual account) pensions. The steps taken to phase out the old privileges have included the discontinuation and conversion of rights, the transfer of acquired rights to newly created occupational pensions, and the increment of the retirement age. The steps taken to introduce systemic change have included the complete phasing out of the old PAYG system in favour of pillar two pension (Kazakhstan); the introduction of mixed system of nominal defined contribution (NDC) in pillar one and compulsory individual account in pillar two (Hungary, Poland, Croatia, Latvia, Estonia and Bulgaria); and the reduction of early exit and tightening of the benefit formula in pillar one and encouragement of the development of voluntary supplementary private pension in pillar two (the rest). Many of the South East Asian countries have also introduced defined benefit (or nominal account) systems as first pillar pensions, provident funds as second pillar pensions, and a blend of these two as mixed systems since they have faced weak unfunded occupational pensions for the civil service, fragmented schemes for the private sector employees, and low coverage, weak asset management systems and strong fiscal pressures.

The Middle East and African countries have hardly engaged in pension reforms until the 21st century. They have run defined benefit unfunded public pensions for the government employees and nominally defined contribution based provident fund schemes for some of the employees of the private sector. They have faced little demographic pressure of ageing compared to the high and middle income countries of the other continents and depended on informal community caring systems. They have started to debate on the privatisation of their pensions by end of the 20th century when they learned from the reforms in the other regions. They have increased the momentum of their reforms in the 21st century due to calls i) for expansion of the coverage and benefit in their pensions, ii) for improvement of the utilization and investment of their pensions, iii) for betterment of the administrative techniques and performance of their pensions, and iv) for privatisation of their pensions. The idea of privatising pensions was pursued partly due to the social and economic developments in the regions and partly due to the growing international recognition that the private sector can play important roles in the provision of social protection and mobilization of domestic savings if it is given the responsibility to run pensions. The organization of

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1920 Ibid.
1921 Ibid.
1922 Ibid.
1926 Ibid.
sustainable pensions is, however, still challenging for the regions due to resource constraint.\textsuperscript{1929} The governments of most of the countries of the regions are also reluctant to address the matters of pension reform as the pension reforms are also part of the public sector employment and pay issue.\textsuperscript{1930}

The pension reforms around the globe have, accordingly, been on three matters:

- reforming the pension system towards private defined contribution funded schemes in individual accounts and putting the first, second and third pillar pensions together (whether that is by blending the pillars or by keeping them separately);
- lowering the administrative costs of the individual account systems (such as by centralizing the functions of collecting contributions, paying annuities, keeping accounts and clearing transactions); and
- making the remaining first pillar pension better than it was before.\textsuperscript{1931}

Hence, many of the countries have shifted:

- from collective provision of pensions by the state to private provision of same through the market, hence from a welfare state or welfare capitalism model in the provision of pensions to a public-private welfare nexus through multipillar pensions;
- from basic-income pension (where the state pays same flat rate to the retiree or differentiates between amounts based on the number of years of work without considering earning) to means-tested schemes (where the pension benefits are tested by the value of the pension income to the retiree or the level of the non-pension incomes and assets available to the retiree); and
- from defined benefit pensions (where the state or the sponsor undertakes to bear the risks with the pension funds and to pay the members a predetermined percentage of their average or final salaries) to defined contribution schemes (where the pension members make earnings-related contributions to commercially managed individual accounts, get benefits that vary with the market returns of the accounts and, hence, bear the risks in the pensions).\textsuperscript{1932}

Many of them have also required the mandatory provision of the second pillar pensions, encouraged the voluntary provision of private insurance annuities as supplementary third pillars, and created reserves that support the remaining first pillar pensions.\textsuperscript{1933} They have also raised the retirement age, linked the benefit formula to long periods of average earnings and life expectancy, increased the

\begin{itemize}
  \item \textsuperscript{1929} ISSA, 2005; and Banyár and Mészáros, 2009.
  \item \textsuperscript{1930} Fox and Palmer, 2001, at pp. 111-112.
  \item \textsuperscript{1932} Ibid.
  \item \textsuperscript{1933} Rocha, Hinz and Gutierrez, 2001, at p. 171; Fox and Palmer, 2001, at pp. 91-130; Hughes and Stewart, (eds.), 2004; OECD, 2006a, at pp. 190 & 210-211; and Becker, 2007, at pp. 101-114.
\end{itemize}
pension contributions and their fiscal incentives, reduced the number of defined benefit pension plans, increased the number of the defined contribution and fully funded personal savings accounts, and reduced the operating costs of the pensions by increasing the flexibility and competition in the provision and management of the pension funds.\textsuperscript{1934} The number and size of the funded pensions with defined contributions and the reserves for the first pillar pensions have, accordingly, grown in many of the countries after the mid 1990s.\textsuperscript{1935}

The recent concern in most of the high income OECD countries is on further development of sustainable and equity market based pension system with appropriate regulatory and fiscal environment.\textsuperscript{1936} The concern in the middle income Eastern European, Asian and Latin American countries is on expansion of system coverage, reduction of risk and uncertainty, sustenance of finance and investment, enhancement of efficiency and equity, enhancement of saving, diversification of the financial markets, enhancement of the market oriented reforms, enhancement of regulatory capacity, and reduction of poverty.\textsuperscript{1937} The poor countries are also advised to consider the development of formal private pensions as one among the many reforms that should be implemented to reduce deprivation and vulnerability.\textsuperscript{1938}

The enhancement of private funded pensions is also recommended in the aftermath of the 2008 financial and economic crisis in order to have balanced and secure pension system.\textsuperscript{1939} The World Bank also recommends adoption of a five pillar pension system by adding ‘zero pillar’ (which should be non-contributory and universal) and fifth pillar (which should include not direct monetary benefits but the provision of non-monetary benefits such as housing and health care for the retired poor) to the three pillars that exist already (i.e. the first pillar PAYGO system, the second pillar funded scheme and the third pillar insurance related voluntary saving scheme).\textsuperscript{1940}

\textsuperscript{1934} OECD, 2006a, at pp. 196-199.
\textsuperscript{1936} Some, like France, are also struggling to ensure the sustainability of their pensions by increasing the retirement and pension ages. The Netherlands is doing it both by increasing the retirement/pension age and cutting pension benefits. Fox and Palmer, 2001, at pp. 121-125; Rocha, Hinz and Gutierrez, 2001, at pp. 171-208; Arlman, 2003, at p. 240; Hughes and Stewart, (eds.), 2004; Brown, 2007; Kay and Sinha, (eds.), 2008; Bode, 2008; Broeders, et al., (eds.), 2008; Banyár and Mészáros, 2009; and EC, 2009a.
\textsuperscript{1939} Kay and Sinha, (eds.), 2008; Pablo Antolin and Fiona Stewart, 2009; Banyár and Mészáros, 2009; and EC, 2009a.
\textsuperscript{1940} Kay and Sinha, (eds.), 2008, at p. 8.
ii. The Case of Ethiopia

Ethiopia recognizes the provision of pension annuities by the long-term insurers and the payment of occupational benefits, severance pays and provident fund benefits by the private sector employers. The studies have recommended the creation of private pension which may be managed by the Social Security Agency or separate pensions. The government has not, however, implemented the recommendations for fear that the reform may create burden on the treasury.

The occupational benefits and severance pays in the private sector are, however, piecemeal and negligible while the provident funds are informal. The provision (and consumption) of life insurance and pension annuities is also very negligible. The coverage and management of the governmental pension system is also very weak. Most of both the employed and unemployed population of the country are, therefore, living without formal pension and life annuity coverage. The old are also suffering from retirement poverty. The country needs to improve on these.

The country also needs to focus on two functions which are important for the development of the financial market: i) forcing saving and ii) mobilizing the saving for investment. The Ethiopian households and individuals are reported to have very limited saving due to both their expenditure habits and the low levels of their

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1941 The occupational benefits and severance pays are compulsory schemes under the labour law of the country while the pension annuities and provident funds are voluntary schemes recognized by the insurance supervision and tax laws (TGE, 1993a; TGE, 1994b, at art. 2(16); FDRE, 2002e, at arts. 13(b) & 21(1); FDRE, 2002f, at arts. 3-4; and FDRE, 2003g). The country has also introduced some micro health insurance schemes in collaboration with the cooperative societies, savings and credit unions, and women’s associations of the regions and allowed the provision of micro insurance and fund management services by the microfinance institutions (FDRE(MOI), 2004/2005, at p. 505; and FDRE, 2009, at art. 3).

1942 Note annual report of the Social Security Agency for the years between 1994 and 2004; the study reports archived in the Agency; SSA (PID), 1999; SSA (PID), 2004, at pp. 40-41; and FDRE(MOI), 2004/2005, at p. 505.

1943 Ibid.

1944 The fear of the government was not published officially. It was, however, common knowledge among officials of the Social Security Agency.

1945 Data is not available on the exact size of both. The Commercial Nominees Private Limited Company manages some of the provident funds (Table 7(Chap. 4)).

1946 The total long term insurance is less than 6% of the total insurance business in the country. It is also only the Ethiopian Insurance Corporation which has attempted at running pension business as part of its long term insurance business. The pension business of the corporation is, however, also negligible. Tables 7(Chap. 2); 8(Chap. 2); and annual reports of the Corporation.

1947 The coverage of the system is less than 1% of the total population (which is less than 2% of the total employed or less than 69% of the total permanently employed population of the country) (Table 1(Chap. 4) - continued (1 of 1)). The contribution collection, benefit payment and investment functions of the system were also disintegrated until they were assigned to the Social Security Agency in June 1998 (FDRE, 1996d; SSA, 1998, at p. 4; and FDRE, 2006). The pension resources are also hardly invested to earn good return (Tables 4(Chap. 4) & 5(Chap. 4) with the notes to them). A new pension investment office is established under the Social Security Agency only recently to curb the situation.
incomes.\textsuperscript{1948} The direct mobilization of saved resources from the households and non-households to investment is also weak due to absence of formal institutional savers and the market mechanism for direct resource mobilization.\textsuperscript{1949} The development of private pensions is necessary for these reasons along with the improvement of the governmental pension system, the encouragement of private insurance, the creation of securities market, and the taking of other developmental measures.

Hence, the country needs to implement five sets of measures in order to enable the creation of formal private pensions.

First, it needs to make the pension reform part of its poverty reduction strategy.\textsuperscript{1950} It needs to have clear vision on the reform measures to be taken to materialize the poverty reduction goal in respect of both the formal and the informal sectors of the urban and rural societies and consider the introduction of private occupational pensions as appropriate measure for the formal sector. The private pensions can serve as tools for the general poverty reduction goal of the country since the extended family system is still strong.\textsuperscript{1951}

Secondly, it needs to make the pension reform part of its saving and investment promotion and financial market development policy. The private pensions can serve as means to promote the objectives of saving and investment which are included in the country's investment laws.\textsuperscript{1952} The presence of institutional savers in form of pensions will also contribute to the development of the securities market which the country needs to have.\textsuperscript{1953}

Thirdly, it needs to compel the employers and the employees in the formal private sector to participate in the private pension system as this has been done for the governmental pension. The private sector has not developed sustainable provident fund schemes under the voluntary approach let alone a private pension system and it is important that the government takes the initiative to compel participation of the employers and the employees in the private pension system.\textsuperscript{1954} This needs to begin by institutionalising the existing provident fund schemes into private pension. The schemes have the immediate potential to grow into private pension if the government requires the development of retirement funds by the private sector as opposed to the provision of temporary saving schemes.

\textsuperscript{1948} Tables 15(Chap. 3) up to 19(Chap. 3); CSA, 1998; CSA, 2001; and CSA, 2007.
\textsuperscript{1949} Note the discussion under the securities market chapter above.
\textsuperscript{1950} The development and poverty reduction plans of the country (known as Sustainable Development and Poverty Reduction Program (SDPRP) 2002-2005 and Plan for Accelerated and Sustained Development to End Poverty (PASDEP) 2006-2010) have not considered the development of private pension as instrument of poverty reduction despite the promises of the government to widen the scope of the country's pension system. FDRE, 2002g, at pp. 114-118; Ethiopia, 2002; Ethiopia, 2004; Ethiopia, 2006; FDRE (MoFED), 2006; FDRE (MoFED), 2006a; FDRE (MoFED), 2007 and FDRE (MoFED), 2007a.
\textsuperscript{1951} CSA, 1998; CSA, 2001; and CSA, 2007.
\textsuperscript{1952} FDRE, 1996c; FDRE, 1998a; FDRE, 1999; FDRE, 2002e; and FDRE, 2003ej.
\textsuperscript{1953} Note the discussion under the ‘potential functions and need for development of the market’ subtitle of the securities market chapter above.
\textsuperscript{1954} Note the discussion in the preceding paragraphs.
Fourthly, it needs to enact a retirement law for the private sector. It does not currently have retirement law for the sector since the labour laws focus on regulation of the occupational (illness and injury) benefits and severance payments to employees.\textsuperscript{1955} The post-retirement employment of the old can, of course, serve as safety net against retirement poverty (and the enactment of a retirement law for the private sector may be taken as bar to this). The use of post-retirement employment as safety net for retirement poverty is, however, unsustainable approach partly because the retiree will become old soon and partly because the usefulness of the safety net depends on accessibility of the employment opportunity in the private sector to the retiree. The best approach is to expand the pension coverage for the benefit of the retired and reserve the employment opportunity for the young population.

Fifthly, it needs to promote the pension annuity businesses of the insurance companies through interventions on both the supply and the demand sides. It, on the supply side, needs to encourage the insurance companies to engage in the provision of long term insurance with significant pension annuity services through the tax incentives. Its current tax regime makes the pension payments and investment profits of the existing Pension Funds and the employers' contributions to the existing pension, provident and similar retirement funds (that are made up to fifteen percent of the employees' monthly salaries) free from taxation.\textsuperscript{1956} It also makes the employers' contributions to the pension, provident and similar retirement funds (that are made up to the fifteen percent limit) deductible from the taxable business incomes of the employers.\textsuperscript{1957} It has done these to encourage the development of its current pension system and the same measures need to be extended to the pension annuity businesses of the insurance companies and the future private pensions. It, on the demand side, needs to stimulate the employers, employees and households to consume the products of the insurers by giving them tax incentives as well as raising their awareness about the usefulness of life insurance and pension annuities.

The country also needs to take the following two measures which will contribute to the aforementioned:

1. The saving institutions of society (such as the \textit{Edir} and \textit{Equb}) and the saving and credit cooperatives in the labour market of the country have remained to be informal and piecemeal.\textsuperscript{1958} Developing these institutions and transforming them into formal companies will contribute to the aforementioned functions of enhancing and mobilizing private saving since these are the closest institutions

\textsuperscript{1955} PMGE, 1975k; TGE, 1993a; and FDRE, 2003g.
\textsuperscript{1956} FDRE, 2002e, at arts. 13(b), 21(1)(c) & 30(1)(c); FDRE, 2002f, at arts. 3-4; and FDRE, 2003e, at art. 51. The exemptions do not include life insurance annuities and provident fund payments.
\textsuperscript{1957} FDRE, 2002e, at arts. 20 & 21(1)(c).
\textsuperscript{1958} Table 18(Chap. 3); Degefe Duressa Obo, 2009, at pp. 77-83; CSA, 1998; CSA, 2000; CSA, 2001; CSA, 2006; CSA, 2007; FDRE(MOI), 2004/2005, at pp. 171 & 173-181; and FDRE(MOI), 2005/2006, at pp. 83, 349, 373, 395-396, 431-432, 472, 509, 521-523, 553, 571, 587 & 598. Note also the discussions under the 'potential functions and need for development of the market' and 'constraints and measures to develop the market' subtitles of the securities market chapter above.
to households and individuals. The country needs to enact a law that will require the formal incorporation of the institutions as mutual companies and give them tax incentives.\textsuperscript{1959} This will also mean revolutionizing a sector which has lived for long as informal and unknown.

2. Both the private sector employers and the government enjoy full discretion in determining salary in the absence of minimum wage law. This has led to many cases of low payment to the detriment of the saving potentials of employees.\textsuperscript{1960} The country needs to enact minimum wage law in order to cure this and enhance the saving potentials of employees.

These two measures need not, however, be considered as pre-conditions for creation of the private pensions. They are peripheral measures that can contribute to the enhancement and mobilization of saving and, hence, the creation and development of the private pensions.

### 4.4 Modelling the Pension Structure and Its Regulation

#### 4.4.1 Modelling the Pension Structure

i. The International Experience

a. The Rise of Pensions as Competing Market Institutions

The pensions in many countries have exited in the past as unfunded monopolies sponsored by employers and governments, hence eliminating the role of competition.\textsuperscript{1961} The post 1990 reforms have, however, resulted in the decentralization of pensions, the rise of multipillar pensions (in which funded private pensions have become dominant), the increment of individual responsibilities in the funding (and control) of pensions, and the rise of flexibility in the management of pensions.\textsuperscript{1962} The role of competition in the pension sector to ensure good pension provision is also increasingly recognized as the pension systems are privatised and made flexible.\textsuperscript{1963} Hence, both the funded and unfunded pensions have become market institutions subject to competition along with the other financial institutions.\textsuperscript{1964}

b. Organization of the Pensions

The first pillar pensions in the countries have existed in one of three forms:

\textsuperscript{1959} The country does not currently have rules for the mutual company form of organization. It only has laws for cooperatives and non-mutual business organizations which are not used well for organizing the saving institutions of society and the labour market (IGE, 1960; FDRE, 1998f; FDRE, 2004ab; FDRE, 2004ac; and FDRE, 2010a). Enacting a law that will require and encourage the formation of these saving institutions as mutual companies is necessary to cure the problem.

\textsuperscript{1960} Note Table 15(Chap. 3). Most of the private sector employers do not also have collective agreements under the labour law which can check this (FDRE, 2003g).

\textsuperscript{1961} Note the discussion under the ‘history and current state’ subtitle above.

\textsuperscript{1962} Note the discussion under the ‘rationale and direction of reform’ subtitle above.

\textsuperscript{1963} Drabbe, 1999, at pp. 5-14; Littlewood, 1998; OECD, 2006, at p. 207; and OECD, 2006a, at pp. 207-209.

\textsuperscript{1964} Ibid.
- as universal basic system which offers flat-rate pension financed by general taxes on PAYG basis,
- as insurance based funded system which offers earnings-related defined benefit pension financed by earnings-based contributions, or
- as hybrid system involving the PAYG basic system and the insurance based funded system.\textsuperscript{1965}

The second pillar pensions have grown as financial intermediaries which collect and invest funds on pooled basis for eventual payment as pensions.\textsuperscript{1966} They have existed as funds backed by assets accumulated by or on behalf of the plan members to pay for their own pensions without implying intergenerational transfer of resources unlike the first pillar PAYG social security pensions where current contributions of the employed population are paid directly to the pensioners.\textsuperscript{1967} Hence, they have existed as funded occupational or personal pensions that complement the first pillar social security.\textsuperscript{1968} They have existed as defined benefit or defined contribution funds with the difference between the two being on assignment of the investment risk to members and sponsors of the funds.\textsuperscript{1969} They have existed as legally separate pools of assets without legal personality or as incorporated entities with legal personality, in one of the following four broad types:

- as accounts held in banks or insurance companies without legal personality,
- as participation endowment insurance funds without legal personality,
- as mutual pension funds run by management companies without legal personality, or
- as foundations, trusts or mutual companies with legal personality.\textsuperscript{1970}

The first three types have existed as funds managed by the financial or management companies that sponsor them because of their non-personality.\textsuperscript{1971}

\textsuperscript{1965} Table 11(Chap. 4); Davis, 1995, at pp. 28, 40, 43, 59 & 60-76; øverbye, 1996, at pp. 159-181; Dietvorst, 1999, at pp. 36-38 & 16-33; Leo Stevens, et al., 1999, at pp. 92-98; Queisser and Whitehouse, 2006, at pp. 56-59 & 61-63; Becker, 2007, at pp. 103-104; and Turner, 2007, at pp. 84-86.

\textsuperscript{1966} Tables 8(Chap. 4); 9(Chap. 4); 10(Chap. 4); 12(Chap. 4); and Davis, 1995, at pp. 5, 53-75 & 124.

\textsuperscript{1967} Tables 9(Chap. 4); 10(Chap. 4); 12(Chap. 4); Davis, 1995, at pp. 7, 28 & 53-76; Dietvorst, 1999, at pp. 16-33 & 39-41; Leo Stevens et. al., 1999, at pp. 92-98 & 126; Becker, 2007, at pp. 103-104; Queisser and Whitehouse, 2006, at pp. 56-63.

\textsuperscript{1969} Ibid.

\textsuperscript{1968} The sponsors of a defined-benefit pension fund often undertake to bear the investment risks and to pay the members with pension amount related to career earning as a predetermined percentage of final or average salary subject to years of service or a flat benefit as per years of service. The sponsors of a defined-contribution pension undertake to pay benefits to the members according to market return and subject to payment of fixed contributions by them, hence making the members bear the investment risk. Ibid.

\textsuperscript{1970} Rocha, Hinz and Gutierrez, 2001, at pp. 177-182; OECD, 2006a, at p. 189; OECD, 2007a; and Hans Blommestein, et al., 2009.

\textsuperscript{1971} Their governance has, for instance, been delegated to banks and insurance companies in Japan; to life insurance companies or pension fund managers in Portugal and Spain; to pension and portfolio management companies in Turkey; and to pension fund management companies in Czech Republic, Poland and many Latin American countries. OECD, 2006a, at p. 189; and Rocha, Hinz and Gutierrez, 2001, at pp. 177-178.
The first types have exited in many of the OECD countries as defined contribution individual accounts managed by the financial companies without representation of the plan members.\textsuperscript{1972} They have existed under the regulatory frameworks for the banks and insurers that run them.\textsuperscript{1973} The second types have existed in some of the OECD countries as separate joint stocks with participation of the plan members and their shareholders in their governance.\textsuperscript{1974} They have existed under the regulatory frameworks for joint stock companies.\textsuperscript{1975} The third types have exited in the Latin American and some of the East European countries as defined contribution funds without boards and voting rights to the plan members.\textsuperscript{1976} They have existed under the regulatory frameworks for the management companies.\textsuperscript{1977}

The foundations and trusts (in the fourth type) have existed in Europe as defined contribution or defined benefit occupational pensions with varied management and governance structures (that are largely subject to the regulatory frameworks meant for occupational pensions).\textsuperscript{1978} The defined contribution pensions have existed as institutions that shift risk to employees and have been subjected to split representations to limit the principal-agent problem they face while the defined benefit pensions have existed as institutions that shift risk to the employer or the sponsor and have often been required to contribute to a guarantee fund.\textsuperscript{1979} The mutual companies have exited in some of the European countries as non-profit making or employer-based funds whose board members are in principle to be selected from the pension members.\textsuperscript{1980}

The third pillar schemes have existed as private life insurance savings.\textsuperscript{1981} The size of these and the second pillar pensions has generally been influenced by the value attached to them, the size of the first pillar pension and the level of development of the commercial insurance sector in the countries.\textsuperscript{1982}

\section*{ii. The Case of Ethiopia}

Ethiopia needs to consider the following market and governance related issues in developing the private pensions:

- the issue of separating the pensions from the existing governmental pension system and the financial institutions;

\begin{itemize}
\item 1972 Rocha, Hinz and Gutierrez, 2001, at pp. 177-178; OECD, 2007a; and Hans Blommestein, et al., 2009.
\item 1973 Ibid.
\item 1974 Rocha, Hinz and Gutierrez, 2001, at p. 178.
\item 1975 Ibid.
\item 1976 Ibid.
\item 1977 Ibid.
\item 1978 Rocha, Hinz and Gutierrez, 2001, at p. 179; OECD, 2007a; and Hans Blommestein, et al., 2009.
\item 1979 Ibid.
\item 1980 This has been the case, for instance, in Hungary. Rocha, Hinz and Gutierrez, 2001, at pp. 181-182.
\item 1982 Ibid.
\end{itemize}
- the issue of organising the pensions as consolidated or set of independent funds;
- the issue of organising the pensions as incorporated or unincorporated institutions;
- the issue of organizing the pensions as funded or unfunded institutions;
- the issue of organising the pensions as defined benefit or defined contribution schemes; and
- the issue of organising the pensions as competing or public good institutions.

The separation of the private pensions from the existing governmental pension system has already become issue when the study group of the Social Security Agency of the country tried to consult members of the private sector on the modalities of introducing pension for the employees of the sector. Members of the private sector have reacted against expansion of the governmental pension system to the private sector despite their wishes for development of private pension system. The answer to the issue also needs to be a matter of efficiency consideration. The existing governmental pension system has not been efficient in the tasks of collecting contribution, generating income and paying benefits. The tasks were disintegrated across the pension and other institutions of the country for many years while the income generation has been limited to collection of interest from bank accounts and few government securities. The Social Security Agency is also working currently as a hardly experienced pension fund manager. The country needs to separate the existence and management of the private pensions from the existing governmental pension system for this reason.

The business of pension need not also be unified with the insurance and microfinance businesses in the country since the existing insurers and microfinance institutions are not engaged in pension business despite their authorization to do so by the insurance and microfinance supervision laws. The experience in many of the other countries has also shown that pension is not insurance although insurers can engage in it. It has also shown that the existence of pensions as individual accounts held in banks (or insurance companies) (as this was practiced in the developed and some of the transition and emerging market countries) has the disadvantage of putting the funds in the hands of the existing banks (and insurers) to the detriment of competition although it can be useful to diversify the risks in pensions through the businesses of the banks

1983 Note the study mentioned in the ‘rationale and direction of reform’ subtitle above and the reports archived in the Agency.
1984 Some have even withdrawn their provident funds from their accounts in the banks and the Commercial Nominees Private Limited Company for fear that the government will force them to join the existing governmental pension system. Note unpublished reports of the banks and the Commercial Nominees Private Limited Company.
1985 Tables 4(Chap. 4); and 5(Chap. 4) with the notes to them. Note also the discussion under the ‘rationale and direction of reform’ subtitle above.
1986 Ibid.
1987 Note the discussion under the ‘rationale and direction of reform’ subtitle above.
1988 Both history and the current practice in the countries has shown the separate existence of the state social security, private pension and insurance annuity schemes as first, second and third pillar pensions despite consideration of the three as complementary schemes (Note the discussions under the ‘history and current state’, ‘functions of pensions’ and ‘direction of reform’ subtitles above).
and the insurers.\textsuperscript{1989} It is also found that the separation of pensions from the other financial institutions is useful to diversify the channels for resource mobilization, encourage saving and investment, and trigger innovation.\textsuperscript{1990}

Organisation of the private pensions as unincorporated funds to be managed by each employer (or sponsor) can trigger competition (hence, better management) and the competition (and better management) so triggered can have positive effect on the development of the pensions and the financial and labour markets of the country. The employers and the financial institutions of the country do not, however, have experience as pension fund managers. The employers have not been better than the Social Security Agency in their management of the provident funds since they have kept the provident funds in ordinary savings accounts.\textsuperscript{1991}
The banks, insurers and microfinance institutions do not also have the experience of running pension funds. Only the Commercial Nominees Private Limited Company (owned by the Commercial Bank of Ethiopia and the Construction and Business Bank of the country) has tried to act as (pension and provident fund) manager. The company has, however, also acted as watchdog of the saving accounts of the provident funds and simple facilitator of the pension payments of the Social Security Agency in practice.\textsuperscript{1992}

Hence, the best approach for the country is to require institutionalisation of the pensions as incorporated companies with their own governance. Requiring the share company form is also appropriate since this form is the commonest and preferred structure for organization of the financial institutions in the country.\textsuperscript{1993}
The share company form has also the advantage of combining capital, reserve, limited liability, professional management, shareholder participation (in governance), accounting, external auditing (and control), and information disclosure.\textsuperscript{1994} This will also allow the pensions to live with and manage their own assets and liabilities as corporate entities instead of as pool of assets that are prone to external management and abuse.

The share company is, however, also a demutualized profit making commercial business organization.\textsuperscript{1995} It may be considered as inappropriate to the nature of pensions since pensions are not necessarily (and need not necessarily) be profit

\textsuperscript{1989} Rocha, Hinz and Gutierrez, 2001, at pp. 177-178.
\textsuperscript{1990} Ibid.
\textsuperscript{1991} Note the discussions under the 'functions of pensions' and 'rationale of reform' subtitles above.
\textsuperscript{1992} The provident funds administered by the company were never invested (Table 7(Chap. 4)). The company's pension payment services were also limited to execution of the decisions of the Social Security Agency.
\textsuperscript{1993} TGE, 1994a, at art. 4(2); FDRE, 2008b, at art. 9; TGE, 1994b, at arts. 2(3) & 4(1)(a); FDRE, 1996g, at arts. 2(2) & 4(1)(b); FDRE, 2009, at arts. 2(3) & 5(1)(c); and note the discussion under the banking, insurance and microfinance chapter above.
\textsuperscript{1994} It is an organization form under the commercial code and commercial registration laws of the country that can maintain capital, absorb risk, sustain funds, limit liability, protect members and allow participatory governance all of which are important for a private pension fund. IGE, 1960, at arts. 306, 325-428 & 445-509; and FDRE, 2010a.
\textsuperscript{1995} IGE, 1960, at art. 10.
motivated institutions as the international experience has shown.\textsuperscript{1996} Pensions need also to have the non-business goals of social protection, resource redistribution, and poverty reduction even if they have to exit as market institutions (and their resources need to be invested to earn returns).\textsuperscript{1997} The non-profit mutual company forms may, therefore, be most appropriate for the future pensions in the country. The decision should, however, be made as a matter of response to demand. The country has not seen formal movement to creation of non-profit mutual companies in any of its sectors so far.\textsuperscript{1998} There is also no government policy for creation of mutual companies in any of the sectors. The business organization and commercial registration laws of the country do not also have specific rules for the mutual company form.\textsuperscript{1999} Whether the employees in the formal sector will prefer to have the demutualized or mutual company form of incorporation for the private pensions is also matter to wait and see. Hence, the country needs to start with the demutualized share company form and consider the mutual company form of incorporation when it becomes necessary.\textsuperscript{2000}

The choice of organising the pensions as funded or unfunded and as defined benefit or defined contribution schemes has to be made by taking into account the advantage of each option over the other. The funded defined contribution scheme excels the unfunded (pay-as-you-go) defined benefit scheme by its ability to accumulate assets before maturity of the obligation to pay benefits. It has also the advantage of shifting risk from the pension funds to the individual pension members and hence of sustaining the pensions. The recent international experience is also towards this.\textsuperscript{2001} These justify that Ethiopia needs to follow the funded defined contribution approach. The country should, however, also take care of the danger of risk shifting to the individual pension members. This can make the pension members losers particularly when fund management experience is low, the market for pension fund investment and return is weak, and the choice and consciousness of the pension members are limited all of which are and will be the case in Ethiopia for some time. These justify that the country needs to go for the unfunded defined benefit approach since this approach can avoid the problem by placing the risk in the pension funds. The protection of pension members in this way is, however, also unsustainable as the international experience has shown.\textsuperscript{2002} The best choice for the country is to follow the funded defined

\textsuperscript{1996} Rocha, Hinz and Gutierrez, 2001, at pp. 177-182; and Platteau, 1991, at pp. 155-163. Note also the discussion under the ‘functions of pensions’ subtitle above.


\textsuperscript{1998} There are only Edirs and Iqubs in the informal social sector and saving and credit cooperatives in the formal labour market which can grow into the mutual company form. Table 18(Chap. 3); Degefe Duressa Obo, 2009, at pp. 77-83; CSA, 1998; CSA, 2000; CSA, 2001; CSA, 2006; CSA, 2007; FDRE(MOI), 2004/2005, at pp. 171 & 173-181; and FDRE(MOI), 2005/2006, at pp. 83, 349, 373, 395-396, 431-432, 472, 509, 521-523, 553, 571, 587 & 598. Note also the discussions under the ‘rationale and direction of reform’ subtitle and the securities market chapter above.

\textsuperscript{1999} IGE, 1960; and FDRE, 2010a. Note also the discussion under the ‘rationale and direction of reform’ subtitle above.

\textsuperscript{2000} The mutual company can then be formed as share company having the pension plan members as its shareholders under the future pension regulation.

\textsuperscript{2001} Note the discussion under the ‘rationale and direction of reform’ subtitle above.

\textsuperscript{2002} Note the discussion under the ‘rationale and direction of reform’ subtitle above.
contribution approach and to adopt mechanisms through which it will protect the individual pension members. The mechanisms may include minimum pay, industry fund guarantee and similar regulatory requirements.

The decision on organising the pensions as competing or public good institutions should also be made based on the advantage of each approach over the other. The competition approach has the advantages of:

- maximizing individual want (i.e. enabling the pension members to act according to their own preferences);
- increasing the incentives for pension members to seek information about the performance of their pensions;
- encouraging the pension members to participate in the management of their pensions;
- enhancing the quality of management and investment of the pensions; and
- improving efficiency in the allocation of resources.2003

It is also argued that the old pension system as protected monopoly has led to more distortions than benefits and hence that countries need to develop voluntary private saving schemes that operate under the free market principle.2004

It is, however, also argued that the increment of flexibility and competition in pensions has the following disadvantages:

- increasing the financial cost of information (since widening choice and increasing competition will increase the need for information on pension and investment options);
- increasing the time cost of decision making (since widening choice and competition will increase the need to spend time to make decisions);
- decreasing the optimality of pension decisions (since the aforementioned costs can make people go for low cost and inappropriate pension and investment alternatives); and
- undermining the making of effective decision by pension members (since pension flexibility and competition can lead to choice overload that may be unmanageable by consumers).2005

The applicability of competition policies and laws on pensions is also debated since pensions have existed in the past as public goods exempted from competition.2006

The international trend has, however, been towards eliminating the idea of running pensions as protected monopolies. Many countries have decided to run their pensions as competing market institutions with flexible governance,

2003  OECD, 2006, at p. 207.  
2005  OECD, 2006, at p. 207.  
investment choice, and control of too much risk taking because of the aforementioned advantages of competition. Ethiopia needs to learn from this and organize the private pensions as competing institutions with the necessary regulation.

4.4.2 Modelling the Regulation
4.4.2.1 The Reasons and Objectives of Regulation

i. The International Experience

The regulation of pensions is justified by reasons within and outside finance and the risks involved in pensions. The reasons that justify pension regulation within the domain of finance are the problems of market failure and the need for resource redistribution. The former includes the problems of:

- information asymmetry (to the users of pension funds),
- negative externality (to the state - as leader of the pension fund development or guarantor of the pension fund liabilities in times of failure), and
- monopoly (that may result in large discretion to fund managers and lead to the risk of fund bankruptcy).

The latter includes the issue of fairness of the resource distribution between generations (i.e. between those who pay to the pensions and those who receive the benefits as retiree currently).

The reasons that justify pension regulation outside the domain of finance are the need to control tax misuse (when tax benefits are recognized for the pension funds); the need to enhance the coverage, adequacy and security of the retirement income; and the need to enhance competition, labour mobility and efficiency in the economy.

The risks involved in pension that justify regulation include investment, agency, and systemic risks. The investment risks include risks that arise due to market fluctuation and non-diversification of assets. The agency risks include risks that arise due to non-alignment of the interests of pension managers and pension members given the long-term horizons of pensions, the informational asymmetries between fund managers and members, the low level of legal and financial sophistication of fund members, and the room for fraud, malfeasance and theft of assets. The systemic risks include risks that arise due to connection of the pension industry with the other segments of the financial market and the economy. Pensions are, of course, little prone to the liquidity risk of the type

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2007 OECD, 2006; Littlewood, 1998; Drabbe, 1999; and note the discussion under the ‘rise of pensions as competing market institutions’ subtitle above.
2008 Davis, 1995, at pp. 91-93.
2009 Ibid.
banks face. They are, however, prone to the risks of collapse in asset price, capital erosion, and spill-over effects that may result from banking crisis, insurance failure and general economic downturn.2011

The design and regulation of private pensions is, therefore, mostly aimed at meeting the following objectives:

- enhancing the coverage, adequacy and sustainability of the pensions;
- assuring the prudence (i.e. health, stability and efficiency) of the pensions;
- promoting and maintaining competition;
- protecting the pension consumers from the dangers of information asymmetry, pension failure and abuse;
- protecting the state and society against the burden and side effects of pension (such as the burden of fund guarantee on the state and the moral hazard problem of protection on society); and
- achieving the social policy objectives of poverty reduction and redistributive equity.2012

The prioritisation of these objectives, however, differs from country to country since the countries differ in their domestic contexts and the values they attach to the objectives.2013

ii. The Case of Ethiopia

Ethiopia does not have private pension regulation currently. It needs to develop it from the scratch as it allows the birth of private pensions. In doing so, it needs to define and prioritise the objectives of the pension regulation according to its immediate and long term needs.

The immediate needs are expanding coverage, reducing retirement poverty, enhancing saving, and making the pension contributory to the development of the financial market since the majority of the population are living without retirement pension and there is no enough long term saving to finance investment.2014 The pension regulation needs to give priority to these as it starts.

The long term needs are:

- enhancing adequacy, sustainability, competitiveness and prudence of the pensions;

2011  Ibid. The 2008 financial and economic crisis has also shown the likelihood of these effects although the pension funds around the world are not hit by the crisis as much as the banks and the insurers (Adrian Blundell-Wignall, et al., 2008; Broeders, et al., (eds.), 2008; Alan and Ronald, 2009; Alan, et al., 2009; Banyár and Mészáros, 2009; EC, 2009; and EC, 2009a).

2012  Most of the pension regulators include these in their regulatory objectives. See websites of the pension regulators listed in Table 1(Chap. 5).

2013  Ibid.

2014  Note the discussions under the ‘rational and direction of reform’ subtitle and the securities market chapter above.
assuring the protection of consumers; and
- eliminating the information asymmetry and moral hazard problems that may exist behind the pensions.

The pension regulation needs to give attention to these as the private pensions grow.

4.4.2.2 The Instruments, Contents and Approaches of Regulation

i. The International Experience

a. The Types of Instruments

The regulation of pension funds has three building blocks like the regulation of banking and insurance markets, namely i) the licensing (ex-ante control) block, ii) the ongoing monitoring block, and iii) the ex-post supervision (problem resolution) block.2015 The pension funds are, accordingly, subject to licensing, asset segregation, capital, reserve, governance, investment, asset custodian, external audit, actuarial valuation, reporting, public disclosure and fund guarantee requirements that are implemented through prior approval, off-site surveillance, on-site inspection and punitive or remedial measures by the regulators.2016

The adoption and specific content of the instruments of regulation is subject to several factors, including the historical evolution and particular legal structure of the pensions, the political and cultural environment for the pensions, the institutional and regulatory development for capital markets, and the level of economic development of the countries.2017 Hence, the countries that have funds operated by management companies have often focused on capital and professional credentials of the management companies in setting their licensing requirements while the countries that have followed the trust and foundation approaches have focused on trust law based liability rules and rules for board composition, responsibilities and voting.2018 The countries that have pension plans operated by banks and insurers have relied on the banking and insurance prudential rules to protect the assets of the pension members.2019

Many of the countries also have capital, reserving, and external custodian rules to limit the agency risks in fund management and to help the overall enforcement of prudential regulations.2020 They also require the valuation of assets and disclosure

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2016 Ibid.
2018 Id., at p. 184. UK has followed the trust law approach while many of the other European countries have relied on the system of split representation in boards. Ibid.
2019 Id., at p. 185.
2020 Ibid. Hungary also imposes these requirements on its mutual companies while the Latin American countries impose them in respect of their fund management companies. Id., at pp. 190-191.
of information (including on capitals, reserves, costs and returns) to the fund members and the general public. They also impose external audit and actuarial requirements to control abuse and make the funds sustainable. They also impose investment regulations to diversify and minimize the agency, portfolio and systemic risks in pensions. The investment regulations often exit as Prudent Person Rule in the Netherlands and the Anglo-Saxon countries and as investment ceilings in most of the other OECD countries.

Many of the Latin American and Central and Eastern European countries also impose guarantee requirements to ensure minimum returns to the pension funds. The Latin American countries require the constitution of central guarantee funds to guarantee the agency as opposed to the market risks in pensions while the Central and Eastern European countries require this as means to guarantee the agency and market risks.

b. The Contents of Regulation

Given the varieties of instruments indicated in the preceding subtitle, the pension regulations of the countries are related to three content areas:

- the assets of the pensions,
- the liabilities of the pensions, and
- the organization of the pensions.

The asset related regulations focus on the distribution of portfolios, the funding of benefits, and the ownership of surpluses of the pensions. The liability related regulations focus on the compulsion of employers and employees to membership, the insurance of benefits, the relationship between the pension funds and the general social security, the choice between annuities and lump sum withdrawals, the indexation of benefits, the vesting and portability of benefits, the equality of treatment between pensioners, and the treatment of dependents. The organization related regulations focus on the protection of pensioners against fraud, the supply of information to fund members, the representation of employees in management of the funds, and the general organization of the management and regulations of the funds.

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2021 Id., at pp. 185-186.
2022 Id., at p. 186.
2023 Id., at pp. 186-187.
2024 Id., at pp. 187-188.
2025 Id., at pp. 188-190.
2026 Ibid.
2027 Table 13(Chap. 4); Queisser and Whitehouse, 2006, at pp. 56-59 & 61-63; Becker, 2007, at pp. 103-104; Turner, 2007, at pp. 84-86; OECD, 2005a, at p. 216; OECD, 2006, at p. 226; OECD, 2006a, at p. 199; Dietvorst, 1999, at pp. 36-38 & 16-33; overbye, 1996, at pp. 159-181; and Davis, 1995, at pp. 60-76.
2028 Ibid.
2029 Ibid.
2030 Ibid.
The portfolio regulations exist as quantitative limits on asset holding and investment. They exist in the continental European countries and rarely in the Anglo-Saxon countries. They are often used to avoid concentration of risk and thereby to protect the pension fund beneficiaries from the risks of fund failure. They are sometimes used to ensure the existence of demand for government bonds. The Anglo-Saxon countries regulate the portfolio discretion of managers by a ‘prudent person rule’ which requires the pension fund managers to diversify the pension fund investments and to be prudent, diligent and loyal (to the funds and the fund members). The recent trend in many of the countries is, however, also towards liberalizing the quantitative regulations in favour of the Anglo-Saxon ‘prudent person rule’.

The funding regulations exist since private pensions based on pay-as-you go are less credible because of the risks of failure inherent in the life cycle of a private firm. Many of the countries have, accordingly, considered the desirability of:

- forbidding unfunded pensions;
- imposing minimum standard of vesting;
- requiring funding up to defined levels (such as ABO (defined accumulated obligation), PBO (projected benefit obligation based on indexation up to retirement), and IBO (indexed benefit based on indexation after retirement));
- imposing ceilings on under-funding (to avoid inadequacy of the funds) and over-funding (to avoid abuse of tax privileges);
- introducing guarantee schemes (to be funded by contributions from the pension plans (usually for defined-benefit schemes)); and
- setting the asset return, interest and discount rates the pension funds have to assume in the calculation of their funding levels.

The trend and advice has also been towards risk based regulation of the funding of private pensions.

The regulation of ownership of surpluses exists to control abuse of tax privileges and maximize the surplus funds as back-up to the benefit promises of the pensions. Hence, many of the countries have regulations that:

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2032 Davis, 1995, at pp. 96-98; and OECD, 2002a, at pp. 41-68.

2033 Davis, 1995, at pp. 96-98.

2034 Davis, 1995, at pp. 96-98.

2035 OECD, 2002a, at pp. 41-68.

2036 Davis, 1995, at pp. 97 & 262-265; OECD, 2002a, at pp. 41-68; and OECD, 2006a, at pp. 207-208.


- assign ownership of the surpluses to the body that bears the responsibility to run the pension fund,
- entitle the beneficiaries with the pension benefits as opposed to the surpluses and other means to finance the pension fund, and
- limit the uses that can be made from the surpluses by the body that bears the responsibility to run the pension fund.2041

The compulsion of membership in the private funds is justified by the advantages it offers, namely the potential relief to the first pillar social security, the coverage of low-income workers who would be uncovered if membership were voluntary, the enhancement of labour mobility and efficiency, the fair distribution of tax advantages, and the overcoming of market failures that are common in annuities markets.2042 Only few countries, namely Australia, Switzerland and France have, however, recognized these justifications and imposed statutory compulsions for membership in practice.2043 Most of the other countries do not force membership by law as they recognise compulsion only at the company or occupation level by collective agreement.2044

Many of the countries require insurance in the defined-benefit pension schemes.2045 The insurance of pensions is, however, also prone to the moral hazard problem which is common to deposit insurance and fund guarantee schemes. Hence, many of the countries also impose rules that:

- regulate the market valuation and auditing of assets of the pensions;
- restrict the asset choices of the pensions; and
- require the setting up of risk-based premiums by the insurers.2046

The recommendation in the aftermath of the 2008 financial and economic crisis has also been towards development of appropriate pension fund guarantee schemes along with capital adequacy requirements and international risk sharing mechanisms.2047

The integration of pension funds and social security is made to ensure the adequacy and equitability of the pension services to the pension members and to realize the savings necessary for social security.2048 Some of the OECD countries

2043 Some of the countries (like the Netherlands and Sweden) have also attained a high level of coverage without compulsion, hence making the compulsion of membership less determinant of coverage. Ibid.
2047 Davis, 1995, at p. 112.
have, accordingly, adopted substitution rules and formula that integrate the private pensions and the first pillar social security benefits.2049

The choice between annuities and lump-sum payments has been a function of the merits of the approaches in practice. The use of lump-sum payments has been blamed for failing to address the myopia problems of individuals, requiring the presence of more liquid short term assets, undercutting the protection to pensioners, and making the private pensions less preferable.2050 Hence, some of the OECD countries have either restricted the use of lump sum payments or encouraged the pension annuities by imposing taxes on the lump sum payments.2051

The indexation of pensions has been used to manage inflation.2052 Many of the countries have, however, avoided it because of its technicality and tended to protect the pensions against inflation by imposing final-salary-based defined-benefit schemes as opposed to career averages and requiring the real returns on the pension assets to exceed the growth rates of the real earnings.2053 The transition and emerging market countries do not also impose it since it requires the existence of securities markets with high indexation and electronic trades and manpower with sufficient skill in modern financial economics.2054

The regulation of vesting and portability of pension rights is done to manage labour mobility and equity.2055 The countries, however, differ on their requirements. Some of them like France and Sweden allow immediate acquisition of rights while others like USA impose vesting for fifteen years.2056 Many of them allow the portability of pension rights when workers change employers provided that some actuarial requirements are met.2057 Some of them also make the portability of rights easy by using transfer circuits and arrangements while others make it easy by the national nature of their pension systems.2058

The equal treatment issue is related to the transfer of benefits between early leavers and others, between managers and workers, between high-income and

2050 Davis, 1995, at p. 113.
2051 Id., at pp. 113-114.
2053 Only few including UK, Canada, Germany and Sweden have continued with the indexation requirement. Queisser and Whitehouse, 2006, at pp. 56-59 & 61-63; Leo Stevens, et al., 1999, at p. 93; and Davis, 1995, at pp. 114-115.
2055 Davis, 1995, at p. 115.
2057 Davis, 1995, at pp. 117-118.
2058 The Netherlands, Japan and USA do the former. The ATP in Sweden is example for the latter. Queisser and Whitehouse, 2006, at pp. 56-59 & 61-63; Leo Stevens, et al., 1999, at p. 93; and Davis, 1995, at pp. 117-118.
low-income earners, between permanent workers and part-timers, between women and men, and regarding the protection of dependents (survivors).\textsuperscript{2059} Many of the countries prohibit the discriminatory treatment of these groups and almost all of them (with the exception of Japan) know dependents' pensions.\textsuperscript{2060} The transition countries also give due attention to the equality issue.\textsuperscript{2061}

The protection of pensions against managerial and investment fraud is often assured through use of independent custodians and actuaries, reduction of the powers of fund trustees, use of employee trustees, limitation of the making of investment, imposition of large minimum funding requirements, undertaking of insurance against fraud, recognition of employee participation in the boards of the pensions, and conduct of private suits under trust or similar law.\textsuperscript{2062}

The participation of employees in pension fund management is useful to disseminate information about the pension funds.\textsuperscript{2063} It is appropriate when the pension system is defined-contribution as the employees in this system are bearers of the risks and the highest stakeholders in the funds.\textsuperscript{2064} The countries do, however, differ on their recognition of the participation. The Netherlands and Australia, for instance, require equal representation of the employers and employees in the boards of the pension funds while Denmark requires the participation of more employees than the employers.\textsuperscript{2065} Others like Germany and UK do not impose particular statutory requirement for employee representation in the pensions but achieve it through bodies such as Works' Councils in Germany and Members Trustees in UK.\textsuperscript{2066} The latest recommendation is towards inclusion of employees and other stakeholders in corporate governance in general.\textsuperscript{2067}

The supply of information to pension fund members is useful to make them:

- know the worth of the total remuneration of their employment,
- judge the adequacy of their contributions to the pension funds and the risks in the investment of the pension funds, and
- understand the nature of and situation with their pension rights.\textsuperscript{2068}

The countries, however, also differ on their information disclosure requirements. Some like USA, UK, Australia and Switzerland require the supply of annual financial reports and plans and individual benefit statements to members of the funds while others like the Netherlands require the supply of annual actuarial

\textsuperscript{2059} Castel and Louise Fox, 2001; and Davis, 1995, at pp. 118-119.
\textsuperscript{2060} Davis, 1995, at pp. 119-120.
\textsuperscript{2061} Castel and Louise Fox, 2001.
\textsuperscript{2062} UK and USA, for instance, rely on private suits under trust law while Denmark relies on a number of the other methods. Davis, 1995, at pp. 120-121.
\textsuperscript{2063} Davis, 1995, at p. 122.
\textsuperscript{2064} Ibid.
\textsuperscript{2065} Ibid.
\textsuperscript{2066} Ibid.
\textsuperscript{2068} Davis, 1995, at p. 121.
reports that detail the states of the funds to the fund members. Germany requires the provision of information on vesting and accrual of the pension rights to the members when they leave work while Japan recognizes the making of only occasional reports by circulars.

c. The Approaches of Regulation

The countries also implement the pension regulations through two approaches:

- a proactive approach (which emphasizes on ex-ante licensing and ongoing monitoring instruments); and
- a reactive approach (which relies on ex-post problem resolution instruments).

The adoption of the approaches has often been a function of the basic organization of the pension industry and the level of development of the country (including the level of development of the capital market, the legal system and the economy). Hence, the countries which have well-established institutions and legal system have followed the proactive approach while the others have tried to mix between the two approaches.

d. The Limitations

The regulation of pensions as market institutions is recent phenomenon. The instruments and approaches are not standardized yet. Hence, the experience of countries ranges from compulsion to voluntary membership, from requirement of funding to use of unfunded schemes, from direct regulation to use of trustee responsibilities, from strong substantive regulation to regulation by information disclosure, from use of prudent-man rule to portfolio restriction, from rapid vesting to assumption of 'lifetime employment', from direct control of fraud to use of stakeholders, from requirement of fund guarantee to self protection, and from indexation to use of actuarial valuations and other techniques. The choice of instrument is also a matter of trade-off between the goals of allowing flexibility to the pensions and assuring the presence of adequate retirement income to the pensioners. The use of competition laws is also limited since pensions were considered as public good and the private pensions are late comers to most competition legislation.

2069 Id., at pp. 121-122.
2070 Id., at p. 122.
2071 Id., at pp. 191-194.
2072 Id., at p. 192.
2073 Ibid.
2074 Tables 10(Chap. 4); 13(Chap. 4); Davis, 1995, at pp. 122-126; and Bányár and Mészáros, 2009, at pp. 154-164.
2075 Ibid.
2076 Drabbe, 1999, at pp. 8-14 & 207-209.
The pension funds in many of the countries also suffer from weak governance, transparency and investment diversification, low investment return, high capital market volatility and strong government interference although the private pensions are better than the government managed pensions in these regards.  

Hence, countries are advised to further improve on the regulatory and governance frameworks for pensions, the mechanisms for smoothing the fluctuation on pension asset returns, and the size of exposure of the pensions to market and non-market risks. They are advised to improve on the regulatory framework by adopting less restrictive rules, refining valuation and auditing requirements, using proactive instruments, assuring independence of regulators, enhancing international cooperation, and building regulatory capacities. They are advised to improve on the governance framework by adopting internal and external controlling mechanisms and tripartite representations of the government, the employers and the employees (i.e. the pension members) in the management of the pensions. They are advised to smooth the fluctuations on asset returns by imposing asset diversification requirements and increasing the use of asset management techniques, derivative instruments and the financial markets to facilitate the financing and allocation of the assets of the pension funds. They are advised to limit the exposure to market and non-market risks by allowing investment flexibility, introducing fund guarantee schemes, permitting the deferral of pension benefits, and requiring the phased withdrawals of annuities. They are also advised to reduce the direct involvement of government in the management and investment of pensions, to pursue the privatization of pensions, and to enhance competition.  

The development of private pensions and capital markets is also considered as interactive process. Hence, the transition and emerging market countries are also advised to:
- pursue the development of their pensions along with the development of active securities markets,
- guide the investment of their pensions in equities of modest liquidity, and
- enhance the fund management skills of their managers.

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2077 Tables 14 (Chap. 4); 15 (Chap. 4); Iglesias and Palacios, 2001, at pp. 229 & 225-244; Leo Stevens, et al., 1999, at pp. 100-101 & 129-130; OECD, 2004, at pp. 232-233 & 239; OECD, 2005, at p. 194; OECD, 2005a, at pp. 222-226; OECD, 2006, at pp. 213-228; OECD, 2006a, at pp. 100 & 199-212; Adrian Blundell-Wignall, et al., 2008; and Juan Yermo, 2008.


2080 Iglesias and Palacios, 2001, at p. 197; OECD, 2008d; OECD, 2008e; OECD, 2008f; Pablo Antolin and Fiona Stewart, 2009; and Alan, et al., 2009.


2082 Iglesias and Palacios, 2001, at pp. 243-244; OECD, 2006, at p. 207; OECD, 2006a, at pp. 207 & 208; Adrian Blundell-Wignall, et al., 2008; Juan Yermo, 2008; Pablo Antolin and Fiona Stewart, 2009; and Banyár and Mészáros, 2009, at pp. 154-164.

2083 Rossotto, 2003, at pp. 119-151.

The 2008 financial and economic crisis has also shown the need for increasing the good governance, financial sustainability and regulatory treatment of the pensions.\textsuperscript{2085}

ii. The Case of Ethiopia

Ethiopia does not currently have regulation for private pensions since it does not have the market for them. It needs to develop regulation from the scratch by taking into account the international experience. It needs to address the assets, liabilities and governance matters of the pensions, and regulate the funding, portfolio composition, surplus ownership, insurance, vesting, and portability of the pensions by adopting licensing, ongoing monitoring, and ex-post supervision rules in order to assure the prudence and sustainability of the pensions and protect the pension members as in the other countries. It needs to require the pensions to adhere to qualification, legal form, capital, reserve, minimum guarantee, insurance, asset segregation, investment, asset custodian, actuarial valuation, external audit, risk prevention, reporting, public disclosure, and related governance requirements and put them in competition in order to enhance their health and ensure quality. It needs to learn from the governance shortcomings of the existing governmental pension system and design the future pension regulation in a way that will enhance investment and health of the pensions.\textsuperscript{2086} It also needs to restructure the governmental pension agency and subject it to the future pension regulation in order to enhance competition and performance.

\textsuperscript{2085} OECD, 2008a; OECD, 2008b; OECD, 2008d; OECD, 2008e; OECD, 2008f; Ignazio Visco, 2009; Pablo Antolin, 2009; Pablo Antolin and Fiona Stewart, 2009; and Alan, et al., 2009.

\textsuperscript{2086} Note the discussions under the ‘rationale and direction of reform’ and ‘modelling the pension structure’ subtitles above.
Chapter 5
The Design of Means of Enforcement of Regulation

5.1 The Enforcing Organs
5.1.1 Identity of the Organs

i. The International Experience

The regulation of financial markets and institutions is a central government function in most cases because of its connection with the national monetary policy. There are instances of decentralization only in few countries where there is strong federalism or decentralization such as the United States, Canada, Germany, Australia, Spain and Switzerland.\(^\text{2087}\)

This being so, most countries have separated the financial market regulators functionally until the late 1980s. The majority of them have entrusted the banking and securities market regulations to their central banks and specialized agencies, respectively.\(^\text{2088}\) They have entrusted the insurance and pension regulations to their ministries of trade, industry, economy, health or social affairs or to ministerial committees that might have to work with the central banks.\(^\text{2089}\) The few others have entrusted the banking and securities regulations to their ministries of finance, specialized agencies or inter-ministerial committees and the insurance and pension regulations to specialized agencies.\(^\text{2090}\) The US has followed the most disintegrated approach. It has regulated:

- the banking market through the Board of Governors of the Federal Reserve System, the Comptroller of Currency, the Federal Deposit Insurance Corporation, the Federal Trade Commission (for consumer protection matters), state regulators (for small commercial banks) and several federal regulators (for the specialized savings and credit institutions);\(^\text{2091}\)

\(^{2087}\) Möschel, 1991, at pp. 26-30; Pfennigstorf, 1996, at p. 59; Carmichael and Pomerleano, 2002, at pp. 40; Meier, 1988, at pp. 33-48; Wellons, 1999 at pp. 27-32; Davis, 1995, at pp. 123-124; and Busch, 2009. The banking regulatory regime of the US has allowed the banks to follow state or federal regulation and the large banks have often followed federal regulation while the small community banks have followed state regulations (Möschel, 1991, at pp. 26-30; and AP, 2009d). Whether the insurance market should be regulated by the federal government or the states has, however, been contentious issue in the country (NAIC, 2008; NAIC, 2008a; NAIC, 2008b; NAIC, 2007; NAIC, 2007a; Klein, 2009; Coope, 2009; Zimmerman, 2008; Cooper, 2008; Powell, 2008; AP, 2010a; and Bloomberg, 2010).

\(^{2088}\) Möschel, 1991, at pp. 25-35; Pfennigstorf, 1996, at pp. 58-59; Wellons, 1999, at pp. 27-36; Carmichael and Pomerleano, 2002, at p. 37; Carmichael, Fleming and Llewellyn, 2004, at pp. 2-6 & 17-92; and Table 1(Chap. 5).

\(^{2089}\) Pfennigstorf, 1996, at pp. 58-59; Davis, 1995, at pp. 123-124; Carmichael and Pomerleano, 2002, at p. 37; Carmichael, Fleming and Llewellyn, 2004, at pp. 2-6 & 17-92; and Table 1(Chap. 5).

\(^{2090}\) Möschel, 1991, at pp. 25-26; Pfennigstorf, 1996, at p. 58; Wellons, 1999, at pp. 27-28; Davis, 1995, at pp. 123-124; Carmichael and Pomerleano, 2002, at p. 37; Carmichael, Fleming and Llewellyn, 2004, at pp. 2-6 & 17-92; and Table 1(Chap. 5). The pension funds in the Latin American countries were subject to independent regulators while those in most of the transition and the other emerging market countries were often subject to regulatory units under ministries (Rocha, Hinz and Gutierrez, 2001, at p. 194).

- the insurance market through state commissions, the Federal Department of Defence (for the sale of insurance to military installations), and the Securities Exchange Commission (for the securities aspect of the insurers’ investments);\textsuperscript{2092}
- the securities markets through the Securities and Exchange Commission, the Securities Investor Protection Corporation, the Commodities Future Trading Commission, the Federal Reserve Board, the Department of Treasury, the Department of Labor, the Office of the Comptroller of Currency, the Federal Deposit Insurance Corporation and the Pension Benefit Guaranty Corporation;\textsuperscript{2093} and
- the pensions through the Department of Labor (for the minimum funding rules, investment standards and cases of fraud), the Internal Revenue Service (for the maximum funding rules to prevent tax abuse), the Pension Benefit Guarantee Corporation (for collection of contributions and payment of benefits), and several fund trustees and a master custodian (for the adequacy of funding, the prudent management of funds and the fulfilment of pension law requirements).\textsuperscript{2094}

Some like UK, the Netherlands, New Zealand and USA have also entrusted the regulations of their insurance and securities markets to Self Regulatory Organizations (SROs).\textsuperscript{2095} Germany, Canada, France, Italy, the Netherlands, Sweden and Switzerland have also allowed the self-regulation of some of the banking matters (such as market conduct, competition or deposit protection) by associations of the banks.\textsuperscript{2096}

Most of the countries have, however, integrated their financial market regulators fully or partly after the late 1980s.\textsuperscript{2097} Few of them have made this within their central banks while the majority of them have made it outside the central banks.\textsuperscript{2098} The countries which relied on SROs have also increased the governmental regulation of their markets by the integrated regulator without eliminating the self-regulation approach completely.\textsuperscript{2099} The International Association of Insurance Supervisors (IAIS) and International Association of Securities Commissions (IOSCO) have also recognized the use of SROs to regulate aspects of the insurance and securities markets subject to regulation by the governmental regulators.\textsuperscript{2100}

\textsuperscript{2092} Caddy, 1986, at p. 1; Meier, 1988, at pp. 35-36; and Carmichael and Pomerleano, 2002, at p. 40.
\textsuperscript{2093} Wellons, 1999, at p. 32; and Vagts, 2006, at pp. 11-14.
\textsuperscript{2094} Davis, 1995, at p. 123.
\textsuperscript{2096} Möschel, at pp. 31-34.
\textsuperscript{2097} Singapore has been the first to do this between 1971 and 1984. UK, Canada, Norway, Egypt and Malawi have started to do it in the late 1980s. The rest have done it in the 1990s and thereafter. Table 2(Chap. 5); Carmichael and Pomerleano, 2002, at pp. 39-44 & 47; Carmichael, Fleming and Llewellyn, 2004, at pp. 40-80; IAIS, 2005b, at p. 10; Masciandaro, 2006, at pp. 30-32; Vagts, 2006, at pp. 11-14; and Busch, 2009.
\textsuperscript{2098} Table 2(Chap. 5).
\textsuperscript{2100} IAIS, 2003; and IOSCO, 2003.
The countries that have not integrated their regulators have continued to entrust the banking regulations to their central banks and the insurance, securities and pension market regulations to independent agencies and commissions. Some also consider the regulation of their securities markets through central banks as logical either because they take the central banks to be the most experienced, staffed and responsible institutions for this purpose or because they feel that the central banks have to act as securities regulators by default due to lack of another institution that can regulate the securities markets. The US has continued with the disintegration approach and established additional regulators (i.e. a specialized bureau for consumer protection - to be seated at the Federal Reserve, a Financial Stability Oversight Council for oversight of large firms and systemic risk - to be led by the Treasury Department, and a Federal Insurance Office for overall monitoring of insurers on top of state regulations - to be seated in the Treasury) by the 2010 financial regulatory overhauling bill.

The EU has introduced a European System of Financial Supervision consisting of a European Systemic Risk Board (ESRB), a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), a European Securities and Markets Authority (ESMA), a Joint Committee of these Authorities, and the supervisory authorities of the member countries in the aftermath of the 2008 financial and economic crises. The ESRB is responsible for macro-prudential oversight of the financial system and assurance of systemic stability. It is established as independent body and entrusted to the European Central Bank for support. The Authorities are not also meant to replace the national regulators of the member countries, but responsible for further harmonization of the national and international regulations.

The ability of central banks to deal with large crisis and ensure monetary and financial stability is, however, also questioned in the aftermath of the 2008 financial and economic crisis and this has made the location of the integrated financial market regulator a continually debated issue.

2101 Table 1(Chap. 5); Busch, 2009; and Vagts, 2006, at pp. 11-14.
2102 Wellons, 1999, at p. 27; and Vagts, 2006, at pp. 11-14.
2103 AP, 2010a; Bloomberg, 2010; and Busch, 2009, at pp. 33-74. China has also continued with the disintegration approach for the markets other than pension and insurance (Tables 1(Chap. 5); 2(Chap. 5); and Brück, 2009).
2104 It used to rely on national regulators of the member countries and three European committees, namely the Committee of European Banking Supervisors (CEBS) (established on 05 November 2003), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) (established on 05 November 2003), and the Committee of European Securities Regulators (CESR) (established on 06 June 2001). The new system (established in November 2010) has become operational in January 2011 and the authorities, i.e. the EBA, EIOPA and ESMA, have replaced the CEBS, CEIOPS and CESR, respectively. EU, 2010; EU, 2010a; EU, 2010b; EU, 2010c; EU, 2010d; ESRB, 2011; ESMA, 2011; EIOPA, 2011; and EBA, 2011.
2105 EU, 2010; and ESRB, 2011.
2106 EU, 2010d; and ESRB, 2011.
2107 EU, 2010a; EU, 2010b; EU, 2010c; EBA, 2011; EIOPA, 2011; and ESMA, 2011.
Many of the countries also enforce their competition policies and laws through independent competition authorities despite variation in their nomenclature of the authorities. Some like the US, Australia, New Zealand and the EU follow hybrid approaches. The US enforces them through the Bureau of Competition at the Federal Trade Commission, the Antitrust Division of the Department of Justice, the Courts, and the special administrative forums in which the Federal Trade commission may file competition cases. Australia and New Zealand enforce them through competition authorities and the courts. The EU enforces them through the European Parliament, the Economic and Social Committee (ECOSOC), the Council of Ministers, the European Commission, the European Court of First Instance, the European Court of Justice (assisted by Advocate General), the Advisory Committees on restrictive practices, monopolies and concentrations, and the national competition authorities and courts. It has increased the responsibilities of the national competition authorities and courts through the modernization reforms of 01 May 2004.

The issue in competition law enforcement has generally been on whether to follow a judicial or administrative enforcement approach. The use of independent competition authorities with strong powers is administrative approach. The use of more powerful courts than independent competition authorities is judicial approach. The continental competition regimes have grown from a system where the administrative approach used to be dominant to a system that recognizes the importance of the judicial approach while the Anglo-American regimes have relied more on the judicial than the administrative approach. The recent move in both groups of countries is towards increasing the use of the judicial enforcement machinery without diminishing the use of independent competition authorities.

ii. The Case of Ethiopia

Ethiopia makes the regulation of financial markets and institutions and the design of competition policy and law central government function as in most other countries. It used to subject the banks and insurers to direct government decision and concession in the period before 1963 in the absence of independent financial market regulator. It introduced separate banking, insurance and competition regulators when it enacted the Monetary and Banking Proclamation, the National Bank Charter Order and the Unfair Trade Practices Decree in 1963 and the Insurance Proclamation in 1970. It, by these laws, authorized:

2109 World Bank, 2002, at p. 142; and members list of the International Competition Network (ICN, 2010b).
2110 FTC, 2005.
2113 Ibid.
2115 Ibid.
2117 IGE, 1963d; IGE, 1963e, at art. 7; IGE, 1970b, at arts. 4 & 5; and IGE, 1963g, at arts. 3(h) & 5.
- the NBE to control and regulate the monetary, credit and banking regimes;
- the Insurance Council and the Insurance Controller’s Office (both of which were created outside of the NBE by including it as member) to regulate insurance; and
- the Ministry of Commerce and Industry to enforce the competition law.\footnote{2118}{Ibid. It subjected the securities market that emerged in the 1960s to self-regulation and made the NBE intervene only when the market needed some government assistance (Von Pischke, 1968, at pp. 10-14).}

It unified the regulation of all the financial institutions under the NBE in 1976 and required it to exercise its regulatory functions under the national plan of the time.\footnote{2119}{PMGE, 1976i, at arts. 3, 6, 44-50 & 61-67.}

It currently makes the NBE regulator of all the financial institutions under the monetary, banking, insurance and microfinance supervision laws.\footnote{2120}{TGE, 1994, at art. 7(4); FDRE, 2008a, at art. 5(7); TGE, 1994a; FDRE, 2008b; TGE, 1994b; FDRE, 1996g; and FDRE, 2009.}

It enforces the competition policy and law through a Secretariat established in the Ministry of Trade and Industry, a Federal Trade Practice Commission established under the Ministry, and regional legislative councils and trade bureaus.\footnote{2121}{TGE, 1994, at art. 7(4) & 41; FDRE, 2008a, at art. 5(7) & 14; FDRE, 2003c, at arts. 2(2), 2(3), 12-19 & 25-29.}

It does not have special competition authority that is in charge of competition enforcement in the financial markets. It only looks from the competition, monetary, banking, insurance, and microfinance supervision laws that the country opts for the separate enforcement of the competition and the financial market supervision laws through the general competition enforcement organs and the NBE, respectively, although the NBE may not be free from enforcing the competition objective in the financial markets.\footnote{2122}{TGE, 1994; FDRE, 2008a; TGE, 1994a; FDRE, 2008b; TGE, 1994b; FDRE, 1996g; FDRE, 2009; and FDRE, 2003c.}

The authorization of the NBE to regulate the future securities market of the country was discussed only when proposals were made in 2001 and thereafter for creation of the market.\footnote{2123}{The monetary and financial supervision laws of the country have purported to make the NBE securities market regulator in the absence of such discussion. They state that the NBE is to be the regulator of all financial institutions. The NBE has also issued a directive which signalled its role as securities market regulator. TGE, 1994, at art. 7(4)); FDRE, 2008a, at art. 5(7); and Directive No. SBB/12/1996, at. art. 8.}

The Justice and Legal System Research Institute has proposed, through the draft laws of 2001 and 2003, that the NBE has to be empowered to be regulator of the securities market.\footnote{2124}{JLSRI, 2001, at pp. 33-35 & 41; and JLSRI, 2003, at arts. 33-36 & 39(2).} It has also proposed that the NBE needs to be conferred with the powers of:

- registering and licensing the securities market and its actors;
- registering the securities issuers;
- supervising, inspecting, investigating and sanctioning the securities market actors and issuers;
- suspending and cancelling listings and trades;
- following up, controlling and approving mergers, acquisitions and other forms of business combinations between listed companies; and
- acquiring information and controlling abuses.\textsuperscript{2125}

The NBE has not opposed the proposals of the Institute when it commented on the draft law.\textsuperscript{2126} It has only suggested that its powers and the powers of the other institutions including the Ministry of Trade and Industry need to be demarcated clearly.\textsuperscript{2127} The Awash International Bank S. C. has favoured the setting up of a securities market regulator outside the NBE for fear that the latter is already overwhelmed by many responsibilities while lacking sufficient regulatory capacity.\textsuperscript{2128} The Bank of Abyssinia has been silent on the question.\textsuperscript{2129} None of the four institutions have, however, proposed comprehensive solution on the modalities of coordinating between the NBE, the competition enforcement organs and the future securities market regulator. The creation of pension regulator has not also been discussed so far even if the expansion of the occupational pension system for the private sector has been discussed for some time.\textsuperscript{2130} Hence, fixing the identity of regulator of the future financial markets of the country is pending question and the country needs to resolve it as it creates the securities market and private pensions.

5.1.2 The Powers and Functions of the Organs
5.1.2.1 The Traditional Powers and Functions

i. The International Experience

Many of the countries entrust their financial regulators with differing degrees of rule making, monitoring, investigating, sanctioning and dispute settling powers and operational and financial autonomy from the government.\textsuperscript{2131} They do these by general clauses, enumeration (of the powers and measures), or a mixture of the two.\textsuperscript{2132} They usually define the powers to include:

\textsuperscript{2125} JLSRI, 2003, at arts. 33-36 & 39(2).
\textsuperscript{2126} NBE, 2002 and the annex, at pp. 40, 43, 46 & 50.
\textsuperscript{2127} Ibid.
\textsuperscript{2128} AIB, 2002.
\textsuperscript{2129} BA, 2002.
\textsuperscript{2130} Note the discussion under the pension chapter above. The monetary and insurance supervision laws of the country have, however, also purported to make the NBE a pension market regulator. The monetary law has defined the NBE to be the regulator of all the financial institutions while the insurance supervision law has included the undertaking of private pension businesses in the definition of long-term insurance and implied that the NBE can be regulator of such businesses. TGE, 1994, at art. 7(4)); FDRE, 2008a, at art. 5(7); and TGE, 1994b, at art. 2(16).
\textsuperscript{2131} Möschel, 1991, at pp. 111-118; Pfennigstorf, 1996, at pp. 60 & 138-141; IAIS, 2005b, at p. 11; and Wellons, 1999, at pp. 40-46, 54-58 & 72. The specification of powers and functions and determination of degree of autonomy of the regulators are influenced by the balance between professionalism and political responsibility and the bureaucratic tradition and government structure of the countries. These factors also influence the selection of the heads of the regulatory agencies. Pfennigstorf, 1996, at pp. 58-59; and Wellons, 1999, at pp. 27-35 & 40-46.
\textsuperscript{2132} Ibid.
- the granting, denying or revoking of licenses;
- the making of market entry, operational and exit rules;
- the conduct of off-site surveillance and on-site inspection and examination;
- the issuance of enforcement orders;
- the take-over of management of the financial institutions; and
- the enforcement of sanctions and liquidation orders.\textsuperscript{2133}

They authorize their banking and insurance regulators to make the off-site surveillance through regular and special reporting requirements and to exercise the on-site inspection and examination powers at regular intervals, at any time they may feel to do so, and at any time shareholders of the financial institutions request.\textsuperscript{2134} They allow them to carry out the on-site inspection (and examination) by themselves or through independent inspectors, examiners and auditors who should work under their strict control and often impose the cost of inspection and examination on the inspected institutions.\textsuperscript{2135} They allow them to sanction the regulated institutions during non-crisis situation when the information obtained through the surveillance and inspection processes show failure of the institutions to meet the regulatory requirements and aims.\textsuperscript{2136} They authorize them to:

- implement informal procedures (such as discussion, warning and pressure through public announcement);
- impose interim orders and correction measures (short of prohibition of conduct);
- impose cease and desist orders;
- remove chief executives;
- revoke licenses;
- order cancellation of the actors from membership in associations and fund protection schemes; and
- impose financial sanctions.\textsuperscript{2137}

They also authorize them to take four types of measures in crisis situation:

- measures intended to aid the financial institutions (including the takeover of management or placement of personnel in the governing organs of the institutions as step to reorganization, the use of deposit insurance and other guarantee funds, and the use of lender of last resort);
- measures intended to rehabilitate or reorganize the financial institutions (including the ordering of temporary closure, imposition of merger, and prohibition of activities that might impede rehabilitation);

\textsuperscript{2133} Ibid.
\textsuperscript{2134} They allow them to base on the latter when \textit{prima facie} need for inspection or examination is established by request of one third of the shareholders of the institutions. Möschel, 1991, at pp. 110-112; Pfennigstorf, 1996, at pp. 60 & 101-103; and IAIS, 2005b, at p. 11.
\textsuperscript{2135} The use of external inspectors and examiners is praised for having the advantage of avoiding bureaucratic regulators. Möschel, 1991, at p. 112; and IAIS, 2005b, at p. 11.
\textsuperscript{2136} Möschel, 1991, at pp. 113-114; Pfennigstorf, 1996, at pp. 60 & 138-141; and IAIS, 2005b, at p. 11.
\textsuperscript{2137} The instrument of public announcement is rarely used to avoid panic and additional damages to the financial institutions. Ibid.
- measures intended to wind-up the financial institutions; and
- measures intended to rectify a crisis situation that transcends an individual financial institution to affect the economy.\textsuperscript{2138}

Many of the countries have also seen the usefulness of broad formulation of the legal bases for official intervention of their regulators, the use of graduated catalogue of administrative measures in non-crisis situation, and the implementation of rehabilitation and reorganization measures in crisis situation as opposed to winding-up.\textsuperscript{2139}

The powers of the securities market regulators often range between two extremes.\textsuperscript{2140} Some of the countries, at one of the extremes, entrust them with negligible enforcement powers while others, at the other extreme, entrust them with the full powers of rule making, investigating and sanctioning.\textsuperscript{2141} Several others fall in between the two by entrusting them with the powers of inspecting and publishing the inspection results without power to sanction.\textsuperscript{2142} Each approach has, however, advantages and limits.\textsuperscript{2143} The negligible enforcement approach allows the market to develop best practices flexibly, decentralises power from the government, reduces the cost of regulatory enforcement, and increases enforcement efficiency. It, however, fails to work in markets where there are no substantial private financial institutions, the business community does not share common values, the market leaders tend to protect their own interests, insider trading is common, and reputation is not vital to do business.\textsuperscript{2144} The inspection without sanction approach assumes that the government agencies actively inspect and publicize the outcome and that publicity can sanction the inspected institutions.\textsuperscript{2145} It fails to work when the government agencies lack adequate resource (and inclination to inspect) and publicity does not create serious problem to the inspected institutions.\textsuperscript{2146} The regulator with extensive powers approach is useful when the other two approaches do not hold.\textsuperscript{2147} It is, however, also prone to regulatory abuse unless controlled through strong judicial review and other mechanisms.\textsuperscript{2148} The making of choice between the approaches also depends on the stage of development of the securities market, the kind of securities market a country wants to have and the structure of a country’s legal system.\textsuperscript{2149} The global trend seems to be towards greater empowerment of the securities market

\textsuperscript{2138} Möschel, 1991, at pp. 115-118; Pfennigstorf, 1996, at pp. 60 \& 138-144; and IAIS, 2005b, at p. 11.
\textsuperscript{2139} Ibid.
\textsuperscript{2140} Wellons, 1999, at pp. 40-46, 54-56 \& 72; and Vagts, 2006, at pp. 11-14.
\textsuperscript{2141} The former has been true with the countries that used to rely on self regulation such as UK, the Netherlands, New Zealand and others like Hong Kong. Ibid.
\textsuperscript{2142} Ibid.
\textsuperscript{2143} Ibid.
\textsuperscript{2144} Ibid.
\textsuperscript{2145} Ibid.
\textsuperscript{2146} These problems are common in many developing countries. Ibid.
\textsuperscript{2147} Ibid.
\textsuperscript{2148} These problems are also common in many developing countries. Ibid.
\textsuperscript{2149} Ibid.
\textsuperscript{2149} Note the discussion under the ‘legal protection’ subtitle below.
Most of the OECD countries empower their pension regulators to check the annual accounts and audit and actuarial reports of the regulated pension institutions. Few of them require the use of direct inspection and investigation at intervals. The International Organization of Pension Supervisors (IOPS) recommends that both the OECD and other countries should entrust their pension market regulators with all the necessary investigating and enforcing powers so that they can fulfil their functions and achieve the objectives of their regulations effectively.

A number of the countries also entrust their competition enforcement organs with differing degrees of decision and rule making, monitoring, investigating, sanctioning and dispute settling powers and operational and financial autonomy from the government. Many also feel that the decision making, investigating, dispute settling, and law enforcing powers and the leadership and budgetary independence of the organs from government need to be strengthened in the transition and emerging market countries.

ii. The Case of Ethiopia

Ethiopia authorized the NBE to do the following during the pre-revolution (1974) period:

- regulate the supply of money;
- license and supervise the commercial banking operations;
- regulate the reserve and liquidity positions of the banks and insurers;
- control the direction, duration, purpose and amount of credit of the financial institutions;
- provide credit to the banks and other financial institutions;
- issue the conditions for its credit and the credit of the banks and other financial institutions; and

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2150 A number of the transition and emerging market countries in Asia and Africa have entrusted their regulators with extensive regulatory enforcement powers. The countries that historically followed the self regulation approach including UK, the Netherlands and New Zealand have also increased the powers of their securities market regulators as they conducted their big bangs and their regulators were integrated after the late 1980s. Ibid.
2153 Some like the Netherlands require the conduct of on-the-spot inspection in every ten years while others like the US require regular computer checks to identify pension plans that need investigation. Investigations may also be triggered in the US by complaints of the pension members. Id., at pp. 124-125.
2154 IOPS, 2006.
- fix the interest rates with which it, the banks and other financial institutions extend credit.\textsuperscript{2157}

It authorized and required it to do the following during the post-revolution period:

- control the money supply;
- plan, coordinate and direct all the banking and non-banking financial activities;
- guide the allocation of credit and foreign exchange;
- set the interest rates of the financial institutions and its own credits; and
- execute the central plan of the country.\textsuperscript{2158}

It authorizes it to do the following under the current monetary and banking law:

- license, supervise and regulate the banks, insurers and other financial institutions;
- create favourable conditions for the expansion of the banking, insurance and other financial services;
- regulate the supply and availability of money and credit;
- issue debt and payment instruments;
- fix the standard and discount rates of interest and charges with which it will accept commercial instruments;
- regulate the supply and availability of money and credit and the interest rates and charges of the banks, insurers and other financial institutions;
- govern its credit transactions with the banks and other financial institutions;
- administer the international reserves of the country;
- formulate and implement the exchange rate policy of the country;
- authorize the banks, other financial institutions and dealers to engage in gold and foreign exchange transactions;
- set limits on the gold and foreign exchange assets of the banks, other financial institutions and dealers;
- regulate the gold and foreign exchange transactions of the banks, other financial institutions and dealers;
- set the net foreign exchange positions and the terms and amounts of external indebtedness of the banks and other financial institutions;
- establish and manage a deposit insurance fund;
- provide payment and clearing services to the banks and other financial institutions;
- establish, modernize and regulate the payment, clearing and settlement systems of the country;
- act as banker, fiscal agent and financial advisor of the government;
- conduct periodic economic studies useful for formulation of monetary, saving and foreign exchange policies of the country; and
- exercise the powers and functions that are common to central banks.\textsuperscript{2159}

\textsuperscript{2157} IGE, 1963e, at arts. 3, 5 & 7.
\textsuperscript{2158} PMGE, 1976i, at arts. 3, 6, 30-43, 44(1), 44(2), 45-50 & 61-67.
\textsuperscript{2159} TGE, 1994, at art. 7; and FDRE, 2008a, at arts. 5, 14 & 16(1)(c).
It authorizes it to inspect and examine the financial institutions periodically, at any time it may wish to do so, and when examination is requested by one fifth of the total number of depositors of the financial institutions or by any number of depositors or creditors who hold not less than one-third of the deposits or liabilities of the institutions.\textsuperscript{2160} It authorizes it to carry out the inspection and investigation processes through its own officers or external inspectors under its control.\textsuperscript{2161} It, by the inspection and examination powers, authorizes it to check the soundness of the financial institutions and the observance of substantive and procedural requirements of regulation by them.\textsuperscript{2162} It authorizes it to examine all facts that may come to notice of the inspectors and investigators as possible jeopardy to the position of creditors and to do the following:

- discuss with the boards of directors and officers of the inspected institutions;
- call, and participate in, meetings of the shareholders, boards of directors and management committees of the institutions;
- order the taking of corrective actions by the institutions;
- order dismissal or suspension of the directors and officers of the institutions;
- prohibit acceptance of new deposits and service orders by the institutions;
- suspend the whole or part of the business of the institutions;
- restrict, suspend or prohibit the payment of dividends by the institutions;
- prohibit the opening of new branches by the institutions;
- put the institutions (which it may find to be unsound, imprudent, unlawful or detrimental to the interests of creditors) under receivership or temporary takeover; and
- impose other sanctions as appropriate.\textsuperscript{2163}

It authorizes it to implement the measure of receivership against the banks and microfinance institutions when any of the following happens:

i) their licenses are revoked for reason of issuance based on false or wrong information;
ii) they
   - become insolvent;
   - engaged in unsafe and unsound practices that constitute significant danger to their depositors;
   - violate applicable laws, regulations and limitations of the NBE;
   - refuse to be inspected by the NBE;

\textsuperscript{2160} TGE, 1994a, at art. 20(1); FDRE, 2008b, at art. 29(1)-(2); TGE, 1994b, at arts. 26 & 44; FDRE, 1996g, at art. 24; and FDRE, 2009, at arts. 18 & 28(1).
\textsuperscript{2161} TGE, 1994a, at art. 20(2)(a); FDRE, 2008b, at art. 29(3); TGE, 1994b, at art. 26; FDRE, 1996g, at art. 24; and FDRE, 2009, at art. 18(3) & 28(1).
\textsuperscript{2162} TGE, 1994a, at arts. 20(2)(b) & 20(3); FDRE, 2008b, at art. 29(2); TGE, 1994b, at arts. 26, 30 & 44; FDRE, 1996g, at art. 24; and FDRE, 2009, at art. 18(2).
\textsuperscript{2163} TGE, 1994a, at arts. 20(2)(b), 20(3) & 22-25; FDRE, 2008b, at arts. 31, 33-48 & 58; TGE, 1994b, at arts. 26, 27-28, 30-31, 42 & 44; FDRE, 1996g, at art. 24; and FDRE, 2009, at arts. 18(5-7). Note also the discussion under the ‘sanctions’ subtitle below.
- become undercapitalized (i.e. have capital below the requirements of the NBE), dissipate their assets substantially, or incur losses that are to deplete their capitals substantially;
- are unlikely to fulfil their obligations in the normal course of business;
- pursue policies that endanger the general economic interest of the country or the public;
- merge with another financial institution without prior authorization of the NBE;
- fail to appoint directors and executives who fulfil the requirements of the NBE; or
- cease to operate as legally independent entity; or

iii) their owners decide to put them under receivership or liquidate them.\textsuperscript{2164}

It authorizes it to takeover the long-term insurers when they are on the brink of failure or have violated applicable laws, regulations and limitations.\textsuperscript{2165}

It, by the receivership and takeover powers, also authorizes it to:

- take measures that may aid the failing institution;
- order reorganization, merger or acquisition of the institution by another financial institution; or
- liquidate and wind up the institution.\textsuperscript{2166}

It also authorizes it to require the inspected and examined financial institutions to bear the costs of inspection, receivership and other measures.\textsuperscript{2167}

The country, therefore, confers the NBE with rule making, inspecting, sanctioning and rehabilitating powers. It also confers it with some operational and financial autonomy from the government in exercising the aforementioned powers and functions.\textsuperscript{2168}

It also authorizes the competition enforcement organs to investigate and decide on competition cases, issue rules and directives that facilitate the enforcement of the competition law, and enforce sanctions (with assistance of the police).\textsuperscript{2169}

It does not, however, confer the NBE with regulatory dispute-adjudication powers although the NBE sometimes tries to exercise this.\textsuperscript{2170} It does not also indicate the measures the NBE may have to take during crisis situation which may

\textsuperscript{2164} FDRE, 2008b, at art. 33; and FDRE, 2009, at art. 18.
\textsuperscript{2165} TGE, 1994a, at arts. 20(2)(b), 20(3) & 22-25; and TGE, 1994b, at arts. 26, 27-28 & 44.
\textsuperscript{2166} TGE, 1994a, at arts. 22-26; FDRE, 2008b, at arts. 33-48; TGE, 1994b, at arts. 27, 28, 39 & 44; and FDRE, 2009, at art. 19.
\textsuperscript{2167} TGE, 1994a, at art. 20(4); FDRE, 2008b, at arts. 35 & 51; TGE, 1994b, at art. 26(5); and FDRE, 2009, at art. 19(3).
\textsuperscript{2168} TGE, 1994, at arts. 3 & 9; and FDRE, 2008a, at art. 3(1).
\textsuperscript{2169} FDRE, 2003c, at arts. 15-19.
\textsuperscript{2170} It, for instance, plays as arbitrator to settle disputes between the banks that participate in the interbank foreign exchange market (Directives No. IBM/01/1998, at art. 12; and IBFEM/02/2001, at art. 10).
transcend an individual financial institution to affect the financial sector or the economy as a whole. It also makes the autonomy of the NBE fragile by authorizing the Prime Minister and the Council of Ministers to administer it directly.\footnote{171} It also puts the competition enforcement organs under direct control of the executive (i.e. the Minister of Trade and Industry) and makes the Trade Practice Commission not anything more than a dispute investigation office.\footnote{172}

The NBE also fails to use the tools of off-site surveillance and on-site examination properly in practice.\footnote{173} Its supervision departments, of course, recognize the importance of developing system for macro-prudential analysis that will allow evaluation of the financial institutions based on macro prudential and macro economic indicators.\footnote{174} They do not, however, do this in practice.\footnote{175} They hardly evaluate the assets, liabilities, balance sheets, off-balance sheet items, accounting, governance, internal control, customer treatment and other performances of the banks, insurers and microfinance institutions against the macro-prudential criteria.\footnote{176} They often focus their examinations on verification of transactions and regulatory compliance of the inspected institutions instead of assessing their risk management functions and future risk exposures.\footnote{177} They do not also collect and make use of public information about the financial institutions in making their examinations. They also carry out their examinations very slowly.\footnote{178}

\footnote{171} TGE, 1994, at arts. 16(1), 19 & 20(1); FDRE, 1995, at art. 77(4); and FDRE, 2008a, at art. 3(4-5). The NBE sometimes gives up its regulatory functions when the government wants to enforce measures on the government owned banks and insurer that are not compatible with its existing regulations. It does not also enforce some of its regulations on the government banks and insurer as seriously as on the private banks and insurers (Note the annual reports of some of the private banks and insurers regarding the complaint).

\footnote{172} FDRE, 2003c, at arts. 16 & 12ff. Most of the activities of the commission have, in practice, been dispute resolution (Note annual reports of the commission).

\footnote{173} NBE BSD, 2005, at p. 51; and NBE ISD, 2005, at p. 67 as revised.

\footnote{174} They have intended to assess the overall health and vulnerability of the financial institutions and their counter parties according to IMF recommendations. The IMF has recommended the use of macro-prudential and macro economic indicators, including aggregate banking data (i.e. aggregate capital adequacy, liquidity, asset quality, earning and profitability), aggregate borrower data (i.e. average debt-equity ratio, indebtedness, profitability, and market risk sensitivity of the borrowing sector), and macroeconomic data (i.e. overall economic growth, inflation, interest, exchange rate and external sector development) in making macro-prudential analysis of the financial institutions. NBE BSD, 2005, at pp. 3-4; and NBE ISD, 2005, at pp. 96 & 103-104 as revised.

\footnote{175} NBE BSD, 2005, at pp. 3-4, 35, 38-40, 42-44 & 61; and NBE ISD, 2005, at pp. 96 & 103-104.

\footnote{176} They don't also conduct on-site examinations regularly. NBE BSD, 2005, at p. 63; and NBE ISD, 2005, at pp. 57-58, 67-95 & 115-119 as revised.

\footnote{177} Their examiners often focus on assessment of the historical performance of the financial institutions. They examine samples of the reports of the institutions to the NBE and check the assets (as reported in the balance sheets), policies, procedures and management minutes of the institutions for regulatory compliance. The examiners of the banks attempt at evaluating the financial statements, capital adequacy, earning performance, fund management, internal control mechanism and risk exposure of the banks. Much of their focus has, however, been on the loan recovery performance of the banks. NBE BSD, 2005, at pp. 53-54, 57, 60 & 63; and NBE ISD, 2005, at p. 115 as revised.

\footnote{178} The banking supervision department, for instance, used to complete a single examination in about three months and a half while the insurance supervision department used to make it in about eight months. This was largely due to limited experience, skill and motivation of the staff of the departments, non-standardization of the processes, poor management and leadership of the departments, poor teaming culture in the departments, poor supply of facilities, and information
the country has also limited the adequacy of the accounting, internal control and external auditing of the financial institutions and disabled the supervision departments of the NBE from enhancing their off-site surveillance and on-site examination functions.\textsuperscript{2179}

The NBE does not also enforce its penalties and corrective measures strictly although it, in practice, issues directives that subject the financial institutions to financial and non-financial penalties.\textsuperscript{2180} Its supervision departments do not also discuss their off-site surveillance and on-site examination findings with the management of the financial institutions.\textsuperscript{2181} It does not also regulate the saving institutions and cooperatives although it is authorized by law to promote the development and regulation of these institutions along with the formal financial institutions.\textsuperscript{2182}

The competition enforcement organs have also limited their functions to adjudication of disputes in practice. They do not act proactively to promote competition as independent competition authorities.\textsuperscript{2183}

The country, therefore, needs to refine the powers of both the NBE and the competition enforcement organs and that both the NBE and the competition enforcement organs need to eliminate their weaknesses. It needs to entrust the NBE with dispute adjudicating powers without, of course, ruling out the possibility of making recourse to the judiciary. It needs to indicate the measures the NBE should take during crisis situation and pay due attention to the international experience on reorganization and rehabilitation of a financial institution in crisis. It needs to establish the competition enforcement organs as independent competition authorities and entrust them with the complete powers of rule making, inspecting, examining, intervening, adjudicating and sanctioning. It needs to increase the leadership, operational and financial autonomy of both the NBE (as the financial market regulator) and the competition enforcement organs (as the general competition authorities) from the government.

It also needs to re-define the grounds for receivership of the banks and microfinance institutions. First, the 'pursuit of policy by a bank or microfinance institution that will endanger the general economic interest of the country or the public' is too general to be a cause for receivership. Its enforcement requires defining the general economic interest of the country or the public and testing whether the policy and practice of the concerned financial institution violates this interest. This is prone to interpretation and abuse. It needs to be made specific by delay by the inspected institutions. NBE BSD, 2005, at pp. 58, 59, 62 & 65; and NBE ISD, 2005, at p. 94.

\textsuperscript{2179} NBE BSD, 2005, at pp. 53-54 as revised.
\textsuperscript{2180} Directives No. SBB/20/96; SBB/14/96; SBB/24/99; SIB/14/96; SIB/19/98; SIB/27/2004; and MFI/14/2002. Also Degefu Duressa Obo, 2009, at pp. 207-208 for a general finding that the enforcement of the microfinance regulations is lenient even if the rule making is strict.
\textsuperscript{2181} NBE BSD, 2005, at pp. 56, 61-62 & 64; and NBE ISD, 2005 as revised.
\textsuperscript{2182} TGE, 1994, at art. 7(9); FDRE, 2008a, at art. 5(8); FDRE, 1996g, at art. 12(3); FDRE, 2009, at the preamble & art. 28(1); and annual reports of the NBE up to 2009.
\textsuperscript{2183} Note the discussion above and the unpublished annual reports of the organs.
defining the policies and practices that constitute danger to the country's economic interest or the public in the law itself. Secondly, the "pattern of unsafe and unsound practices that constitute significant danger to ... depositors" is too vague to be cause for receivership. It is also interpretable and prone to abuse. It needs to be narrowed by listing the practices that can constitute danger to the depositors. Thirdly, the cause of 'non-compliance with applicable laws, regulations and limitations imposed by the NBE' is too general to be ground for receivership. The country needs to refer only to the most serious violations that will lead to license revocation as it is only these that will matter. Fourthly, the causes of 'substantial dissipation of assets and incurring of losses that will deplete capital' are qualitative and difficult for enforcement. They need to be defined with quantitative indicators so that the level that will constitute substantial dissipation of asset or depletion of capital for purpose of the receivership measure can be known. Fifthly, the 'cessation of operation as a legally independent entity' is not clear to be ground for receivership. Either the features that lead to this conclusion need to be defined in the law or the ground has to be deleted.

The country does not also define the powers and functions of the securities and pension market regulators. It needs to institutionalise them as independent regulators and confer them with the following powers and functions among others by taking the international experience into account:

- rule making and adjudicating cases;
- inspecting, investigating and sanctioning abuse and violations;
- evaluating, preventing and correcting institutional failures;
- enforcing disclosure requirements;
- encouraging the making of ratings;
- keeping and publishing data about the market institutions and operations;
- conducting research;
- building their own capacities and the capacities of the market actors;
- advising the government on policy matters; and
- working with domestic and foreign regulators.

5.1.2.2 The New Roles

i. The International Experience

The financial market regulators and competition authorities around the world have been more reactive than proactive and were taken to be law enforcement bodies rather than contributors in the formulation of economic policy. Many of both the developed and the transition and emerging market countries have, however, developed interest in proactive approach and altered the roles of their financial regulators and competition authorities as crises, anti-competitiveness and

2184 Note the discussion under the 'identity of regulators' subtitle above.
2185 Note also the discussion under the 'coordination between the organs' subtitle below.
illegal actions recurred and market based systems grew. They have felt that the regulators and competition authorities need to be authorized to participate in the formulation of economic policies and to influence governments so that the latter will eliminate (or minimize) policies and interventions that adversely affect competition and the soundness of markets. They have also felt that the proper implementation of regulatory and competition objectives and laws requires the building of capacity and education of the government officials, the regulated market actors, the business people and the general public.

Many of them have, accordingly, made the financial market regulators and competition authorities responsible for the following functions on top of their traditional powers and functions:

- building their own capacities and the capacities of the financial markets and actors;
- advocating competition;
- attacking the adoption of institutional arrangements, government policies, public attitudes and private actions that interfere with the free market principle;
- fighting illicit behaviour and financing; and
- participating in the general formulation of economic policies.

Hence, many of the developed market countries have either expressly conferred the aforementioned powers and functions on their regulators and competition authorities or implied them from the existing powers and functions of the authorities. Many of the transition and emerging market countries have also found the importance of entrusting their regulators and competition authorities with the advocacy, market enhancing and crime fighting functions in their efforts to:

- promote privatisation;
- eliminate market concentration;
- reduce barriers to market entry and exit;
- discourage anticompetitive business practices;
- encourage pro-competitive government policies and interventions;
- control illicit activities;

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2188 Ibid.
2189 World Bank and OECD, 1999, at pp. v & 99-100; and Pradeep S. Mehta, 2002, at pp. 80 & 84. The OECD has also often shown that the level of financial understanding and awareness of consumers has been low due to the increased sophistication of the financial markets and services and hence that the financial regulators and competition authorities need to make the building of public awareness among their priorities (OECD, 2005b; and OECD, 2008h).
- educate consumers, the business community and policy makers on the uses of free market and competition;
- build public support for their reforms; and
- develop free markets.2192

Many have also found the usefulness of the aforementioned functions of the regulators and competition authorities to assist the carrying out of functions in non-financial policy.2193 They have found their uses:

- in the area of trade policy formulation, to ensure that both policy makers and the public are fully informed of the benefits of liberalized trade, competition and consumer welfare;
- in the area of economic regulation, to ensure that competition rules are properly and consistently included in new legislation and regulation, that competition is promoted in industries that were considered to be monopolies such as the infrastructure industry, and that industry standards by government (such as safety and environmental standards and license requirements) are transparent, non-discriminatory and non-restrictive of competition;
- in the area of state aid, to eliminate government discrimination between domestic and foreign companies, state owned and private firms, and large and small enterprises so that there will be equal condition for all market operators;
- in the area of local governance, to eliminate conflict between government and citizen interests that may arise due to ownership of services by local government authorities as the competition authority may advocate privatisation; and
- in the area of privatisation, to ensure that the privatisation is not simply transfer of the position of market dominance from the public to private hands.2194

Hence, it is often felt that the regulators and competition authorities in the transition and emerging market countries need to be conferred with extensive proactive powers and functions so that they will have the legal base and firm responsibility to promote the development of free market and regulate both the governments and other groups that tend to restrain competition.2195

There is, however, also fear that the combination of the regulatory, advocacy and market enhancing functions may lead to conflict of interest in the regulators and competition authorities since the regulators and competition authorities may loose the neutrality they need to enforce regulation.2196 Hence, it is also advised that the countries need to develop mechanisms for balancing between the different roles of the regulators and competition authorities.2197

2192 Pradeep S. Mehta, 2002, at p. 84; World Bank and OECD, 1999, at pp. 93-94; Wellons, 1999, at p. 39; and IAIS, 2005b, at p. 11.
2194 Id., at pp. 94-97.
2195 Ibid.
2196 This problem was observed in some countries like Indonesia in the 1980s (Wellons, 1999, at p. 39).
2197 Ibid.
The regulators and competition authorities are also advised to get public support for their regulatory and competition enforcement functions and to cooperate with other domestic and foreign regulators once they are entrusted with the functions of advocating competition, enhancing market and fighting illicit behaviour. They are also advised to cooperate with the international institutions including the G-7 Financial Action Task Force on Money Laundering (FATF) in their function of fighting illicit financing.

The 2008 financial and economic crisis has also shown that the risk prevention, stress testing and failure resolution functions and proactive roles of the financial market regulators need to be strengthened in order to ensure that there are sound, stable and efficient financial systems.

ii. The Case of Ethiopia

Ethiopia authorizes the competition investigation commission to conduct professional studies and the department of the Ministry of Trade and Industry to exercise competition advocacy roles. It also makes the approach of its competition law enforcement both proactive and reactive. It, however, fails to make it clear if, on the one hand, the competition enforcement organs can participate in the formulation of general economic policy in order to control anti-competitive government decisions and, on the other, the NBE has to enforce its rules proactively, engage in the function of competition and regulatory advocacy, and stimulate the creation and development of the future securities market and private pensions. It does not also define the roles of the NBE fully in the fight against illicit financing. It needs to bridge these deficiencies.

2199 Yılmaz Akyüz, 2002, at pp. 53-55. Note also the discussion under the ‘use of international cooperation’ subtitle below.
2200 McIlroy, 2008; Marcelo, et al., 2008; Gert Wehinger, 2008; Gert Wehinger, 2009; Gert Wehinger, 2009a; Adrian Blundell-Wignall, et al., 2009; Christoph Ohler, 2009; J. Balvin Hannibalsson, 2009; Garcia, 2010; OECD, 2009f; World Bank, 2009b; IMF, 2009; WTO, 2009; G-20, 2009; AP, 2009; AP, 2009a; AP, 2009b; AP, 2009c; and Bloomberg, 2010.
2201 FDRE, 2003c, at arts. 15(1)(f), 18(1)(d), 2(9) & 2(2).
2202 Id., at arts. 3, 15 & 16.
2203 The monetary and banking law expressly authorizes the NBE to disseminate the banking and insurance services in the country. It is, however, not clear if the law authorizes the NBE to promote the creation and development of the future securities market and private pensions. One can only rely on the authorization of the NBE to promote sound financial system and the inclusion of pension in the definition of long-term insurance to imply a role to the NBE that it should promote the development of formal securities market and private pensions. The involvement of the NBE in the formulation of economic policies is already made clear under the monetary and banking law. The Bank is expressly authorized to conduct economic studies and to participate in the formulation of financial, monetary, saving and exchange policies of the country although the government has the final say on these. The NBE and its supervision departments also intend to make their regulatory enforcement functions proactive. FDRE, 2003c, at arts. 15(1)(f) & 15(2); TGE, 1994, at arts. 6, 7(9) & 7(10); FDRE, 2008a, at arts. 4, 5(8) & (13); FDRE, 1995, at arts. 51(4), 55(10), 77(4) & 77(6); NBE BSD, 2005, at pp. 48, 50, 61 & 63-64; and NBE ISD, 2005, at pp. 106 & 115-119 as revised.
2204 It has introduced special enforcement machinery to enhance implementation of the criminal code provisions on money laundering and terrorist financing and recognized some roles to the NBE (regarding the issuance of directives on identification of customers and indication of the cautionary measures to be taken by the financial institutions) (FDRE, 2009d, at art. 3 - the NBE has also issued directive on identification of customer and due diligence of the banks: SBB/46/2010). It does not
It needs to require and fully empower the NBE to design and enforce its regulation proactively, promote and encourage financial market diversification (including the creation of the securities markets and private pensions), build its own capacity and the capacities of the financial institutions, raise regulatory awareness, advocate the importance of competition in the financial market (in cooperation with the competition organs), and work with national and international networks of cooperation in both systemic crisis prevention and the fight against illicit financing. It also needs to enhance the proactive and competition advocacy roles of the competition enforcement organs (in order to enhance enforcement of the competition policy) and authorize them to participate in the formulation of economic policies by the government (in order to check the consistency between the competition and other policies).

2205 The NBE has in fact started to exercise some of these functions by implication from its existing powers. It has developed a Financial Sector Capacity Building Project in cooperation with the International Development Association (IDA) of the World Bank which focuses on building capacity of the NBE, strengthening the financial sector infrastructure of the country, developing new financial products, and enhancing the professional skills in the financial market of the country. The project is approved by the Board of Executive Directors of the World Bank on 22 June 2006 to be effective on 19 December 2006 and run for a period of three years as of 01 January 2007. The NBE capacity building component of the project focuses on development of the banking and insurance supervision; economic research, policy formulation and implementation; and other capacities of the NBE. The financial sector infrastructure component focuses on modernization of the payments, credit information and asset registration systems of the country and on development of capital market including government and corporate bond and stock exchange markets. It aspires to develop a national payments system framework (legal and institutional); to upgrade and automate the Addis Ababa clearing house; to introduce electronic payments system and credit cards; to strengthen the credit information centre at the NBE; to develop the regulatory and infrastructure framework for bond and equity markets; to develop depository, clearance and electronic settlement mechanisms for the bond and equity markets; and to improve the lending services and collateral system of the country. The financial products component focuses on the development of housing finance, leasing finance, small and medium enterprises finance, agriculture risk insurance, and venture capital fund for the country. The professional skills component focuses on introduction of continuing education, training and certification programs for professionals of the financial sector of the country; development of the research capacities of the professional associations in the financial sector of the country; and provision of training in banking, insurance and microfinance. (Note the information from website of the NBE accessed in September 2007 and August 2010). The country needs to strengthen these works of the NBE. It also needs to fully define the powers, functions and preventive roles of the NBE in the fight against illicit financing and require it to work on its own initiative (as the regulator of financing) as well as in collaboration with the domestic criminal law enforcement machinery and the international organizations. The special law of the country on money laundering and terrorist financing also recognizes the need for cooperation with the international community on the matter and this needs to be strengthened (FDRE, 2009d, at arts. 4 & 12-13).
5.1.3 The Coordination between the Organs

i. The International Experience

The traditional approach in most countries was to have financial market regulators separated by function. The internationalization and cross-sectoral integration of the financial markets have, however, called for regulatory neutrality and challenged the traditional approach in the 1990s and thereafter. Hence, three major models have been adopted to meet the need:

1. The majority of the countries have adopted integrated regulator model where the regulator combines jurisdiction over a range of institutions. The integration has ranged from one where any two of the banking, insurance, securities and pension market regulators are combined to one where all the regulators are combined to form a ‘super regulator’.

2. Others have adopted a lead regulator model where one of the traditional institutional regulators takes the responsibility to coordinate the group of regulators and becomes a de facto conglomerate regulator. UK has followed this before the full integration of its regulators in 2001.

3. The third group of countries have followed a functional model where separate institutions regulate the competition, market conduct, asymmetric information and systemic stability functions across the banking, insurance, securities, pension and other markets. Australia is the most cited example for this. It has adopted the functional model since July 1998 by introducing the Australian Competition and Consumer Commission to be responsible for competition and consumer protection matters throughout the economy; the Australian Securities and Investments Commission to be responsible for the market integrity and consumer protection in the financial system; the Australian Prudential Regulation Authority to be responsible for the prudential soundness of all the deposit-taking, insurance and private pension institutions; and the Reserve Bank of Australia to be responsible for the stability of the financial system, the control of monetary policy and the payments system.

The Netherlands has followed a mixture of the integrated and functional models in its twin-peaks model by integrating the prudential regulation of all the financial institutions in the Central Bank and putting the regulation of quality of businesses (market conduct) of the financial institutions in the Authority for Financial

2206 Note the discussion under the ‘identity of regulators’ subtitle above.
2208 Note the discussion under the ‘identity of regulators’ subtitle above; and Table 2(Chap. 5).
2209 Ibid.
2210 Table 2(Chap. 5); Carmichael and Pomerleano, 2002, at p. 42; Laboul, 1992, at pp. 34-38; and Wellons, 1999, at p. 34.
Markets for the reason that the two regulatory functions will conflict if assigned to a single regulator. The US has also included elements of the functional regulator model in the disintegrated regulatory structure. The super-regulators in the integrated model have also replicated the functional model when they establish their functional units.

Some of the countries have also adopted other mechanisms to meet the need. France has, for instance, recognized a right of pursuit to the banking and insurance regulators to enable them to examine the activities of the institutions affiliated to a bank or insurer under consideration. Others have used coordinating committees staffed with members of the concerned regulators or imposed requirements of harmonization, specialization and networking. Others have also tried to handle the matter by restricting the linkage in the market, by empowering the sectoral regulators to regulate aspects of the activities of the institutions that traditionally belonged to another sector according to rules of that other sector, or by requiring the exchange of information between the regulators.

The international experience has also shown the following lessons:

1. All the three models have advantages and disadvantages. The integrated regulator model has the advantage of addressing the problems of conglomeration and regulatory arbitrage. It, however, creates misconception among consumers that all financial services and products are regulated and supported alike. It does not also eliminate conflict between the objectives of

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2212 See Tables 1(Chap. 5); 2(Chap. 5); and the information from websites of the Central Bank of the Netherlands (De Nederlandsche Bank) and the Netherlands Authority for Financial Markets (DNB, 2010; and AFM, 2010, respectively).

2213 The Board of Governors of the Federal Reserve System, the Comptroller of Currency, the Federal Deposit Insurance Corporation, the Federal Trade Commission (for consumer protection matters), the state commercial banking regulators and the specialized regulators for the federal savings and credit institution, for instance, share the task of regulating banks. The State Commissions and Commissioners regulate the insurance industry and the Department of Defence regulates the sale of insurance to military installations. The Securities Exchange Commission regulates the securities market and the securities aspect of bankers' and insurers' investments. It also regulates the separation and unification of insurance, banking and securities businesses through Federal Acts. The Bureau of Competition of the Federal Trade Commission, the Antitrust Division of the Department of Justice, the Courts, and the special administrative forums to which the Federal Trade Commission may file competition cases also share the responsibility of enforcing the competition policies and laws. Carmichael and Pomerleau, 2002, at pp. 44-47; Carmichael, Fleming and Llewellyn, 2004, at pp. 40-80 & 93-113; Möschel, 1991, at pp. 29-31; Meier, 1988, at pp. 35-36; Caddy, 1986, at p. 1; and FTC, 2005.

2214 Many of the countries have retained the functional separations as departments while integrating them in one super-regulator (Carmichael and Pomerleau, 2002, at p. 46; Hall, 2003, at pp. 45-51 & 55; and Carmichael, Fleming and Llewellyn, 2004, at pp. 40-80).

2215 Laboul, 1992, at pp. 34-38. Germany and the Netherlands have also done this for the insurance regulator and UK and Denmark for the banking and insurance regulators during the time before the integration of their regulators (ibid.).

2216 France and Canada are examples. France has done the former and Canada the latter for the securities markets (Wellons, 1999, at p. 34).

2217 Laboul, 1992, at pp. 34-38.

sectoral regulatory functions and departments. The lead regulator model has the advantage of eliminating conflict of regulatory interest between the different regulators. It is, however, inadequate to address the problems of conglomeration and regulatory arbitrage since it does not achieve regulatory uniformity across institutions. The functional regulator model has the advantages of bringing same functions under one roof; allowing regulatory neutrality, specialization and efficiency; and minimizing regulatory arbitrage. It, however, also lets the financial actors to multiple functional regulators whose objectives and regulations are not entirely free from conflict. The integrated regulator model is, however, most favoured in practice for the reason that it is easier to handle inter-departmental conflicts within a regulator than conflicts between separate regulators. The integration outside the central bank is also most favoured for the reason that the central bank will be overwhelmed by the regulatory functions if the full integration is made in it.

2. The choice of appropriate regulatory structure is a function of the financial market development and specific context in a country despite the general trend towards the integrated regulator model.

3. The choice should not be between full integration and total fragmentation but from a spectrum of forms of integration.

4. The transition from the fragmented to the integrated regulatory structure requires time and careful planning.

5. The choice of particular regulatory structure should be based on the best way of achieving the objectives of regulation.

6. The new regulatory structure should be backed by change of legal framework, creation of strong governance structures, careful management of the working habits, skills and insecurities of staffs of the regulators, and enhancement of the communication mechanisms with stakeholders.

   ii. The Case of Ethiopia

Ethiopia has followed the traditional institutional regulator model with an element of the functional model when, in the 1960s and 70s, it authorized:

- the NBE to control and regulate the monetary, credit and banking regimes and institutions;
- the Insurance Council and the Insurance Controller’s Offices to regulate its insurers; and
- the Ministry of Commerce and Industry to enforce the competition law.2219

It followed the integration approach when it nationalized the financial institutions and authorized the NBE to supervise, control and direct the "banks and other

2219 IGE, 1963d; IGE, 1963e, at art. 7; IGE, 1970b, at arts. 4 & 5; and IGE, 1963g, at arts. 3(h) & 5.
financial institutions' under a national plan in 1976. It currently integrates the banking, insurance, and microfinance regulations in the NBE. It does not, however, integrate the competition law enforcement organs as it entrusts the responsibility of enforcing the competition policy and laws to the Secretariat in the Ministry of Trade and Industry, the Trade Practice Commission, and the regional legislative councils and trade bureaus. It does not also define the work relationship between the NBE as the financial market regulator and the competition enforcement organs. Its future securities market and pension regulators are not also institutionalised and located yet.

The integration of the financial regulators in the country is commendable in view of the limited regulatory capacity of the country and the international experience towards this. It will enable the country to unify the regulatory capacity building efforts without, of course, excluding the possibility of building specialized regulatory functions in the integrated regulator. It will also enable the country to deal with the less serious problem of inter-departmental regulatory conflict instead of the more challenging inter-regulatory-agency conflict. It will also ease the future effort of the country to deal with financial conglomeration and regulatory arbitrage.

Whether the integration has to be done within or outside the NBE is, however, pending issue. The integration within the NBE is justified by:

- the responsibility of the NBE to manage the monetary policy objectives of the country and the role of financial regulation to transmit these policy objectives,
- the need to coordinate between the objectives of monetary policy and the other objectives of financial regulation,
- the infancy of the current financial market of the country, and
- the facilitation the NBE can make in the institutionalisation and growth of the different segments of the financial market as regulator and central bank.

The integration of the regulatory functions in the NBE can also be more beneficial than the other models if the financial system of the country continues to be bank-dominated.

The country, however, needs to consider the case for integrated financial market regulator outside the NBE as housing all the financial regulatory objectives and functions in the NBE is likely to burden it with more functions than its functions as central bank. The integration of the functions outside the NBE will also be

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2220 PMGE, 1974d; and PMGE, 1976i, at arts. 3, 6, 43, 44-50 & 61-67.
2221 TGE, 1994, at art. 7(4); FDRE, 2008a, at art. 5(7); TGE, 1994a; FDRE, 2008b; TGE, 1994b; FDRE, 1996g; and FDRE, 2009.
2222 FDRE, 2003c; and note the discussion under the 'identity of the organs’ subtitle above.
2223 FDRE, 2008a; and FDRE, 2003c.
2224 Note the discussion under the 'identity of the organs’ subtitle above.
2225 These are likely to be regulatory issues when the country recognizes cross-sectoral market integration and international liberalization of the financial markets in the future. Note also the discussions under the ‘market entry and exit’ and ‘functional and ownership separation’ requirements subtitles of the banking, insurance and microfinance chapter above.
beneficial approach if the country chooses to foster competing markets including the securities market and private pensions in the future. The decision has, however, to be made as a matter of value and experiential judgment based on the future financial development, legislative environment and range of regulatory responsibilities and skills.2226

The country also needs to form its competition enforcement organs as independent federal and regional competition authorities that will cooperate and work together and with the integrated financial market regulator. It need not integrate the financial market regulator and the competition enforcement authorities as the roles of the latter surpass the financial market to address the competition situation in the other sectors. It only needs to make the integrated financial market regulator responsible for the enforcement of the competition objective in the financial market and define the work relationship and coordination between the financial market regulator and the competition enforcement organs.

5.2 The Sanctions
5.2.1 Administrative Sanctions

i. The International Experience

Both regulatory and competition enforcement are followed by administrative (regulatory), civil and criminal sanctions.2227 The administrative (regulatory) sanctions often include a range of measures indicated by law and enforced by the regulator or the competition authority.2228 Most of the countries use the following measures:

- formal warning,
- pressure on the management of the affected financial institution through public disclosure of intended measures,
- interim orders (short of prohibition of certain conduct),
- cease and desist orders,
- administrative fine,
- removal of chief executives,
- takeover of management,
- cancellation of membership of the concerned financial institution from associations and fund guarantee schemes, and
- cancellation of licenses.2229

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2226 This is also the internationally recommended approach (Carmichael and Pomerleano, 2002, at pp. 47-48).
2227 Möschel, 1991, at pp. 113-114; Pfennigstorf, 1996, at pp. 60 & 138-141; Wellons, 1999, at pp. 54-58; World Bank and OECD, 1999, at pp. 53-56; and IAIS, 2005b.
2228 Most of the countries leave substantial discretion on the choice of the particular measure to the regulator or the competition authority. Ibid.
2229 Ibid.
They also recognize the enforcement of regulation through mediation and arbitration (when the problem is between regulated parties). The use of these powers, however, depends on the balance adopted between the administrative, civil and criminal enforcement approaches and the overall legal structure and culture in a country's legal system.

A number of the countries also subject anti-competitive mergers and abuse of dominant positions to structural and behavioural measures of the competition authority. The structural measures include:

- prevention of the merger, and

- dissolution or break up of the merged entity or partial divestiture of its assets and operations to the extent that will eliminate the anti-competitive effect when the merger has already occurred.

The behavioural measures include orders that regulate or modify the conduct of the merged firm to prevent the feared anti-competitive effect such as the following:

- order to supply a product or to serve a certain class of customers for a period of time,

- order to refrain from entering into certain types of contracts,

- order not to raise prices by more than a specified amount for a period of time, and

- order that the merged enterprise licenses a relevant portion of its technology to other firms as a means of introducing new competition.

The countries usually prefer the structural measures to the behavioural in their regulations of mergers. They recognize the difficulty to undo a merger once it has occurred and follow a “fix-it-first” policy – i.e. a policy that the care should be implemented before consummation of the proposed merger. Hence, their merger laws and competition authorities usually require pre-merger notification to the competition authority so that the latter can investigate and make decision before rise of the complication. The notification requirement, however, also differs from country to country depending on the economic and political objectives the countries want to address. Many of the countries usually consider large mergers above a certain threshold (as defined by the law or their regulators) to be dangerous and,

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2230 Ibid.
2231 Hence, some like Japan used to rely on mediation, arbitration and administrative guidance more than others while some like USA and UK used to provide wide opportunity for regulators to obtain court orders for the regulatory enforcement purposes. Others like Malaysia also used to empower the regulators to investigate and prosecute market related crimes without going to court provided that they obtain consent of the public prosecutors office. The other transition and emerging market countries have increasingly relied on the use of administrative sanctions. Ibid.
2232 They often subject anti-competitive agreements to criminal sanctions. World Bank and OECD, 1999, at pp. 53-56 & 70.
2233 Id., at p. 56.
2234 Ibid.
hence, to be notified to the competition authority.\textsuperscript{2235} Their merger control laws also often determine the scope of application of the notification requirement, specify the content of the notice, and allow further investigation by the competition authority when the latter feels necessary.\textsuperscript{2236}

ii. The Case of Ethiopia

Ethiopia authorizes the NBE to take the following measures against the banks, insurers and microfinance institutions when it finds that they have violated regulation:

- propose corrective actions to be implemented by them;
- order the dismissal of their directors and officers;
- prohibit them from accepting new deposits and policy subscriptions;
- prohibit them from opening new branches;
- suspend the whole or part of their businesses temporarily;
- put them under receivership or takeover process; and
- impose financial sanctions on them.\textsuperscript{2237}

It subjects the anticompetitive agreements, practices and abuse of market dominance to administrative measures of the Ministry of Trade and Industry and the Trade Practice Commission and authorizes the Ministry and the Commission to:

- impose financial penalties;
- suspend, correct or eliminate the anticompetitive practice in question;
- suspend or cancel the business license of the violator; and
- take measures that will reinstate the competitive position of the victims.\textsuperscript{2238}

It leaves the choice of particular sanction to the NBE and the competition organs.

It also prohibits the making of merger between the financial institutions without prior approval of the NBE and authorizes the NBE to sanction violators of this

\textsuperscript{2235} Ibid.
\textsuperscript{2236} The matters they require to be notified often include the names and address of the parties, the description and timing of the merger transactions, the financial situations of the firms, the organizational and ownership structures of the firms, the descriptions of the products and services of the firms, the descriptions of the relevant markets served by the firms, the description of the market share of the firms, the reasons and expected benefits of the merger, and the documents prepared for the corporate decision makers. Id., at pp. 56-57.
\textsuperscript{2237} TGE, 1994a, at arts. 20(3) & 22-25; FDRE, 2008b, at arts. 31, 33ff & 58; TGE, 1994b, at arts. 26(4) & 27-28; FDRE, 1996g, at art. 24; and FDRE, 2009, at arts. 18(7), 19 & 25. The NBE has also subjected the banks, insurers, microfinance institutions and insurance intermediaries to financial penalty for failure to comply with its directives (Directives No. SBB/14/96; SBB/20/96; SBB/24/99; SIB/14/96; SIB/19/98; SIB/21/2001; SIB/27/2004; SIB/29/2007; and MFI/14/2002).
\textsuperscript{2238} FDRE, 2003c, at arts. 15(2), 25, 26 & 27.
by the measure of receivership or takeover and its general regulatory enforcement and sanctioning powers.\textsuperscript{2239}

The aforementioned measures of the country are commendable since they enable the NBE and the competition enforcement organs to be flexible in their enforcement of the sanctions. Both the NBE and the competition enforcement organs are, however, reluctant in their use of the sanctions to enforce regulation. They need to improve on this.

The country also needs to define the measures the future securities and pension market regulators can take against the securities market and pension operators during regulatory violation and crisis. It also needs to scale the measures and leave discretion to the regulators on the choice of particular measure as these are done in respect of the banking, insurance and microfinance markets.

5.2.2 Civil Sanctions

i. The International Experience

Many of the countries subject the regulated institutions that violate regulatory and competition laws to civil liabilities within the general regime of extra-contractual liability. They, in principle, impose extra-contractual liability on ground of fault and include violation of any law, hence violation of any regulatory or competition rule, in the definition of fault as long as that is done intentionally or with negligence.\textsuperscript{2240} Accordingly, they entitle all third parties whose interest is damaged due to regulatory or competition law violation to claim compensation from the regulated institutions through individual or class action suits.\textsuperscript{2241} They take this as means of both sanctioning the regulated institutions and consumer protection.\textsuperscript{2242}

The use of private civil suits is useful in regulatory enforcement when regulators lack the resource and market information necessary to enforce regulation and when countries want to limit the hands of their governments and encourage powerful players in the market to be active in the enforcement of regulation.\textsuperscript{2243} Most of the transition and emerging market countries, however, rely little on it and the lack of data to meet burden of proof requirements, the weakness of the institutions to make it work (including the courts) and the underdevelopment of

\textsuperscript{2239} TGE, 1994a, at art. 27(2)(a); FDRE, 2008b, at arts. 3(3)(c), 31, 33(1)(n) & 58; TGE, 1994b, at art. 40; FDRE, 1996g, at Arts. 13 & 17(1); and FDRE, 2009, at arts. 17(1) & 19(1)(j). Note also the discussions under the ‘market entry and exit requirements’ and ‘competition regulation’ subtitles of the banking, insurance and microfinance chapter above.


\textsuperscript{2241} Some like the US recognize class action law suits. David Smith and Su Sun, 2001, at p. 3.

\textsuperscript{2242} Ibid.

\textsuperscript{2243} David Smith and Su Sun, 2001, at p. 3; and Wellons, 1999, at pp. 50-52. Some like the US use it for the second reason (Möschel, 1991, at pp. 113-115 & 118-120; Pfennigstorf, 1996, at pp. 62-63; and Wellons, 1999, at pp. 50-52).
the corporate governance, extra-contractual liability and consumer protection regimes that can protect individuals are said to have contributed to this.2244

The countries that use private civil suit for regulatory enforcement allow it to be exercised against the regulated institutions.2245 They do not allow it against the regulators and competition authorities since they believe that the main concern of regulation and competition law is protection of consumers as a group and, hence, that the decisions of the regulators and competition authorities are in the realm of public interest which should be controlled through judicial review and other control mechanisms instead of through individual civil suit.2246

ii. The Case of Ethiopia

Ethiopia makes violation of any law, including the regulatory and competition law rules, civil fault when it is done intentionally or as a result of negligence.2247 Hence, it makes all the regulated financial institutions liable for compensating the losses that may arise from violation of regulatory and competition law rules and individuals can lay claims against these institutions in the courts.2248

The country does not, however, make it clear if individuals can claim compensation from the financial regulator and competition enforcement organs. One can argue on the basis of the existing extra-contractual liability law, which makes any violation of law a civil fault, that such claim is possible as long as the regulator and competition enforcement organs have violated law. An opponent can also argue, based on the regulatory discretion left to the regulator and the competition enforcement organs and the international experience, that such claim should not be recognized against them as long as they are making their decisions for the public interest. The position on the issue needs to be taken based on the nature of the extra-contractual liability law of the country and the scope of authorization and discretion left to the financial regulator and competition enforcement organs. The extra-contractual liability law does not exclude institutional violators in defining the concept of fault.2249 The laws establishing the financial regulator and the competition enforcement organs do not also let them to act outside the bound of the law under guise of public interest.2250 Hence, the financial regulator and the competition enforcement organs are likely to be subject to individual suit for extra-contractual liability. The establishment of mental responsibility is, however, also difficult to make the institutions liable.2251 The

2244 Some like Korea, Taiwan, Bulgaria, Kazakhstan, China, Kenya and Zambia have, however, used private civil suits to enforce regulation. Ibid.
2246 Ibid.
2247 IGE, 1960a, at arts. 2035 & 2029.
2248 Ibid.
2249 Ibid.
2250 They define the scope of powers and functions of the institutions and limit their discretions up to the defined powers and functions. They do not allow them to make their mandates limitless although they recognize discretion. TGE, 1994; FDRE, 2008a; and FDRE, 2003c.
2251 Note the discussion under the ‘critique’ subtitle below.
country needs to set clear rule on the question, allow individual tort action against the financial regulator and the competition enforcement organs when the latter violate the scope of their discretion, enhance the protection of consumers, and encourage the participation of individuals in the control of proper enforcement of regulation.2252

5.2.3 Criminal Sanctions

i. The International Experience

A number of the countries subject serious violations of their financial market regulations and cartel agreements to heavy criminal sanction.2253 They subject non-cartel agreements to criminal sanction when there is good reason, on balance, to believe that they are seriously harmful to competition.2254 They often exclude the use of criminal sanction from the measures against abuse of market dominance and merger for a reason that firms often engage in these without criminal or anti-competitive intent.2255

The criminal sanction, when imposed, normally forms part of the general criminal law and requires the fulfilment of the material, legal and mental requirements of the latter. Criminal law normally requires that:

- there is action or omission by a person capable of bearing criminal responsibility (material element);
- there is law that makes the action or omission crime or petty offence at the time of its happening (legal element); and that
- the actor has intended or was negligent at the time of action (mental element).2256

Hence, the civil law countries subject the regulatory criminal sanctions to the general principles of incrimination under their criminal laws while the Anglo-American countries have introduced some strict liability cases that can be prosecuted without the requirement of mental responsibility since the late nineteenth century.2257 The use of criminal sanctions for regulatory and competition law enforcement is also praised for its more severity and deterrence than the civil sanctions.2258

2252 This will not be against the BCBS and IAIS core principles which expect that regulators need to be given legal protection in order to encourage their enforcement of regulation since the BCBS and IAIS do not also expect that the regulators will be allowed to act beyond the bounds of their legal authorizations. BCBS, 2006, at Principles 1(1) & 1(5); and IAIS, 2003, at Principles 1, 2 & 3.
2255 Id., at pp. 53-56 & 83-84.
2256 Williams, 1961; Allen, 2005; Fletcher, 2007; Ashworth, 2006; and Ormerod, 2008.
2257 Ibid.
ii. The Case of Ethiopia

Ethiopia also requires fulfilment of mental, material and legal elements of incrimination to establish all kinds of criminal liability.\textsuperscript{2259} It also requires that the sanctions have to take into account the degree of guilt of the criminal.\textsuperscript{2260} It applies these principles on all incriminating clauses even if these are not in the Criminal Code itself unless express exception is made in the laws that incorporate the incriminating clauses.\textsuperscript{2261} It also makes regulatory contraventions petty offence (except in cases where the criminal law makes them ordinary crime) and applies both the intention and negligence elements on them (except when the particular criminal law expressly excludes the negligence element). It also includes several incrimination clauses relating to the financial market in both the ordinary crimes and petty offences parts of the criminal code and the competition, banking, insurance and microfinance supervision laws and directives without excluding applicability of the general criminal law principles.\textsuperscript{2262} Hence, the authorities that sanction the crimes indicated in the banking, insurance, microfinance and competition laws of the country need to establish the mental, material and legal elements of the criminal law.

5.2.4 The Problem with the Civil and Criminal Sanctions and the Solution

i. The International Experience

The use of civil (extra-contractual liability) and criminal sanctions to enforce regulatory and competition rules faces several problems.\textsuperscript{2263}

First, both regulatory and competition laws require only wrongful act and make mental responsibility irrelevant since both are result of \textit{mala prohibita} (specific prescription).

Secondly, both types of laws predominantly apply to business entities and make the proof and location of responsibility within the corporate structure difficult. The use of both tort claim and criminal sanction to enforce regulation also faces the problem of locating the responsible person in the market such as in the case of money laundering.

\textsuperscript{2259} It allows the establishment of ordinary crimes in principle based on intention (and exceptionally based on negligence when the criminal law expressly makes negligence ground for criminal responsibility). It allows the establishment of petty offences based on both intention and negligence in principle (unless the law expressly excludes the negligence element from being ground for liability). It also backs the rules by the principle of “presumption of innocence until guilt is proved”. IGE, 1957, at arts. 23, 57, 59, 690-692 & 697 (as amended by FDRE, 2005); and FDRE, 1995, at art. 20(3).

\textsuperscript{2260} IGE, 1957, at art. 86 (as amended by FDRE, 2005).

\textsuperscript{2261} Id., at arts. 3 & 690 (as amended by FDRE, 2005).

\textsuperscript{2262} IGE, 1957, at arts. 354-365, 671-673, 689 & 742-743 (as amended by FDRE, 2005); TGE, 1994, at art. 59; FDRE, 2008a, at art. 26; TGE, 1994a, at arts. 7(2), 8, 16(3), 16(4), 21 & 29; FDRE, 2008b, at art. 58; FDRE, 1996g, at art. 24; FDRE, 2009; at arts. 25 & 28(1); FDRE, 2003e, at arts. 26-27; SBB/20/1996; SIB/14/1996; and MFI/14/2002.

\textsuperscript{2263} Ogus, 1996, at pp. 79-89; and Wellons, 1999, at pp. 48-56.
Thirdly, contraventions of regulatory and competition rules cannot be sanctioned in the way criminal and civil liabilities are normally sanctioned. The criminal sanction of imprisonment is of no use when the violator is a business firm and the civil sanction of compensating losses may not have any punitive effect on the firms and individuals since they may act after working out the cost-benefit of their actions.

Fourthly, the use of criminal law suffers from being:

- heavy-handed when regulatory infractions are modest;
- too simplistic when sophisticated financial scams are involved;
- cumbersome when regulatory speed is necessary;
- inflexible when regulators and competition authorities want to be implemented in a way that will promote their objectives;
- general when regulators and competition authorities require it to locate and deter specific infractions; and
- reactive when regulators and competition authorities need to implement specific preventive and proactive measures.

Fifthly, the use of both sanctions may be constrained by lack of sufficient knowledge of the sophistication involved in financial regulation and competition matters by the judges and prosecutors.

The solution adopted for the first problem has usually been to use separate terminology and procedure for the ordinary crimes and the regulatory and competition law offences.2264 The solutions adopted for the second (i.e. the problem of proof and locating responsibility within the corporate structure) have been one of three:

- implicating the brain of the physical person acting on behalf of the business entity into the entity itself;
- excluding the notion of mental responsibility and adopting strict liability; or
- compromise between the two by recognizing prima facie strict liability for a proved action or omission and allowing defences that make the conduct lawful.2265

The solution adopted for the third has been using instruments other than those used in the mainstream criminal law, such as fines, court injunctions and orders, for regulatory and competition law enforcement.2266 The solutions to the fourth and fifth problems have been a matter of effective coordination between the enforcement organs.2267 The solution for the problem of locating the responsible person in the market such as in the case of money laundering has also been a matter of developing the criminal tracing mechanism.

2264 Ogus, 1996, at pp. 80-81.
2265 Ogus, 1996, at pp. 81-86; and Allen, 2005, at pp. 112-113.
2266 Ogus, 1996, at pp. 87-89.
2267 Wellons, 1999, at pp. 48-56.
Two additional solutions have also been used sometimes to solve the problems.\(^{2268}\) One is the injection of redistribution and correctional goals into the policies and processes of the regulatory and competition law systems by imprisoning corporate managers whose corporate strategy resulted in great harm.\(^{2269}\) Another is the adoption of ‘corporate probation’ instead of individual criminal liability so that the corporate entity is monitored and advised through officials appointed by courts or be subject to duty to issue shares to the government equivalent to the cash fine (that would be imposed on it) under assumption that the shareholders of the entity will hate this measure and activate the managers to ensure regulatory compliance.\(^{2270}\)

The decision on use of strict criminal and tort liability to enforce regulation has, however, also been a matter of value judgment based on socio-economic and political context. The major concern of the continental legal systems has been legal protection while the common law systems were concerned with the balancing of the interests of ensuring compliance to regulation and legal protection.\(^{2271}\) The design of sanctions for regulatory violation has also been a function of ideology. The capitalistic ideology that encouraged entrepreneurial spirit and individualism has led to less strict civil and administrative punishment for fear of discouraging those values (as it has been the case in the UK) while the ideology that encouraged collectivism (or looked for severe deterrence) has considered regulatory violations as violations against the state interest which lead to strict criminal sanction (as it has been the case in China, USA and Romania, for instance).\(^{2272}\)

The problem with the civil sanction has also been less serious than the problem with the criminal law sanction tool. Tort law has historically been more liberal than criminal law in terms of its grounds and strict liability principles are more easily adopted in the notion of tort than in the notion of crime.\(^{2273}\) The aim of tort law is also making loss good and this aim matches with the consumer protection goal of regulatory and competition law enforcement.

Some have also found that the use of criminal and tort laws to stop white collar crimes in the financial services sector (including money laundering, market manipulation and insider dealing) has been only symbolic due to both the problems in the nature of the two laws and the reluctance of enforcement organs of the countries.\(^{2274}\) Hence, countries have been advised to:

- refine their national solutions to the incompatibility between the criminal and tort law sanctions and the regulatory and competition law rules;
- reduce the reluctance of their enforcement organs; and

\(^{2268}\) Ogus, 1996, at p. 97.
\(^{2269}\) Id., at p. 97.
\(^{2270}\) These have been tried in the UK. Id., at pp. 97-98.
\(^{2271}\) Ogus, 1996, at pp. 79-89; and Fletcher, 2007.
\(^{2272}\) ONG and Baxter, 1999, at pp. 102-103; Wellons, 1999, at p. 47; and Fletcher, 2007.
\(^{2273}\) Hall, 1943, at pp. 986-995.
The 2008 financial and economic crisis has also shown the need for strengthening regulatory enforcement and avoiding reluctance in the exercise of regulatory discretion by the regulators in order to prevent abuse and crisis.2276

ii. The Case of Ethiopia

Ethiopia also needs to be considerate of the problems criminal and tort sanctions face in connection with regulatory and competition law enforcement. It needs to balance between the need for:

i) ensuring compliance to its regulatory and competition rules through adoption of strict criminal and tort liability, and

ii) legal protection of defendants through recognition of basic human rights (such as the presumption of innocence until fault is proved).

It, of course, needs to ensure strict compliance to its regulatory and competition laws in order to meet the demands of its transition to market economy if not for the sake of ideology. This begs for adoption of strict criminal and tort liability regime for the regulatory and competition law contraventions. Strictness may, however, also result in uncertainty and frustration among the business entities and adversely affect their efficiency. Legal protection is also equally important. The regulatory and competition laws can, however, also be defeated if guilt has to be proved beyond doubt to sanction them for sake of ensuring legal protection. Proving the existence of guilt beyond doubt is difficult in Ethiopia partly because of the very difficult nature of proving the mental situation behind contravention of regulatory and competition laws and partly because of the less advancement of the machinery and techniques for collection of evidence in the country.

Hence, it needs to do the balancing by:

- limiting the use of criminal law and its guilt requirement to the most serious contraventions;2277
- making the imprisonment of corporate managers, fine and forced closure of business the main forms of criminal sanction for the most serious contraventions (since corporate probation is not feasible in the current legal situation of the country);
- making all the regulatory and competition law contraventions civil fault that will result in strict civil (tort) liability without need to prove mental situation;
- subjecting the majority of the regulatory and competition law contraventions to strict administrative (regulatory) sanction; and
- subjecting the regulatory and administrative sanctions to judicial review for the reason of legal protection.2278

2275  Id., at pp. 183-209.
2277  Degrees of contravention may be defined by taking into account the impact or importance of the contravention to the regulatory and competition law objectives.
2278  Most of the transition and emerging market countries have also recognized the use of regulatory and competition enforcement organs with substantial administrative powers since this offers great
5.3 The Legal Protection against Regulatory Flaw

5.3.1 The Ground for Protection

i. The Theory and International Experience

The enforcement of regulatory and competition rules needs to be governed by statutory goals and principles. It needs to be limited by substantive and procedural laws and principles as public policy and action should pay respect to the law in a legal system and public discretionary power is not absolute freedom but legal commission to serve the public interest after balancing with citizens' interests. Hence, countries often require their regulators and competition authorities to adhere to general principles of administrative law and account financially, substantively and procedurally. They require them:

- financially, to meet standards of financial management to achieve productive efficiency (i.e. to maximize their outputs relative to the costs of their inputs);
- substantively, to make their rules and decisions within the bounds of the economic and social objectives of regulation and to justify them by public interest goals; and
- procedurally, to make their actions according to principles of administrative law, resist undue influences of market actors, and balance the public interest behind the regulatory and competition systems with the private interests.

The 2008 financial and economic crisis has also shown the need for strengthening transparency, accountability and liability of the financial market regulators.

ii. The Case of Ethiopia

Ethiopia also subjects the regulators and competition authorities to general principles of administrative law. The current regime of the country is, however, incomplete.

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flexibility and speed in enforcement, allows to enhance enforcement skills, and increases the chance to protect the fragile infant markets from abuse. They have, however, also seen the undesirability of concentrating too much power in the regulator and the importance of using the judicial review mechanism to mitigate strict sanctions although they also hopped to have less powerful courts. Some have also recommended the use of proactive preventive enforcement (instead of reactive criminal and civil enforcement) as alternative to the use of the 'strong regulatory power vis-à-vis judicial review' approach. Note the discussion under the 'powers and functions' subtitle above; and Wellons, 1999, at pp. 57 & 58.

2279 Pierce and Gellhorn, 1994, at p. 10; Pfennigstorf, 1996, at p. 60; Möschel, 1991, at p. 114; and Ogus, 1996, at pp. 22 & 111.

2280 Ibid.

2281 Dempegiotis, 2008; OECD, 2009f; Dijkstra, 2009; and Dijkstra, 2010.

2282 Note the discussions under the following subtitles.
5.3.2 The Means of Protection

5.3.2.1 Control by the Legislature and Chief Executive of Government

i. The Theory and International Experience

As technical operators in a democratic society, regulators and competition authorities have to account to the public through the legislature and chief executive of government although they should enjoy operational and financial autonomy. Hence, the law makers and chief executives of governments of the many countries define the powers and functions, lay down the policies, frame the organizational structures, and state the standards of actions of the regulators and competition authorities by law and exercise political control over their operations based on the powers delegated to them. The law makers control them through their legislative, budgeting and hearing powers while the chief executives of government do this through their administration and policing powers based on the constitutional system of delegation of powers and checks and balances.

ii. The Case of Ethiopia

Ethiopia also subjects both the financial regulator (the NBE) and the competition enforcement organs to legislative as well as executive control. It:

- defines their establishment, organization, powers and functions by law of the legislature;
- puts the NBE under control of the Prime Minister and the Council of Ministers;
- puts the competition enforcement organs under control of the Ministry of Trade and Industry; and
- subjects both the NBE and the competition enforcement organs to annual calls of the legislature.

These are good in terms of control of the regulator and competition enforcement organs. They do not, however, balance between autonomy and accountability. The country needs to redefine them in order to increase independence of both the NBE as the financial market regulator and the competition enforcement organs from the executive in government and indicate the grounds and mechanisms of their accountabilities to the legislature and the chief executive of government.


2284 Ibid.

2285 TGE, 1994, at arts. 3-23; FDRE, 2008a, at arts. 3(4)-(5) & 24; FDRE, 1995, at arts. 55(17) & 77(4); and FDRE, 2003c, at arts. 12, 15(2) & 16.
5.3.2.2 Control by Courts

i. The International Experience

Many of the countries that have developed or are developing administrative law tradition also exercise legal control over the operations of their financial market regulators and competition authorities through judicial review despite difference on technicalities. They often define the concept of administrative act widely to include quasi-legislation, delegated legislation, policy rule and regulatory action, decision or contract and make the general legal remedies behind administrative acts available against the financial market regulators and competition authorities although they vary regarding the review power they entrust to the courts. They, however, apply the rules of judicial review to the financial market regulators and competition authorities with modifications inspired by the concepts of "public interest in acceleration of proceedings" (which means that the use of the remedies should not suspend the effect of regulatory decisions unnecessarily) and 'legal certainty' (which means that the review of the merits of certain regulatory measures has to be either severely limited or excluded since financial market regulation and competition promotion have quasi-political character).

The review is often carried out by:

- the ordinary courts of law in the countries that follow unique system;
- specialized administrative courts or tribunals in the countries that follow dual court system; and
- both the ordinary courts and specialized administrative courts (or tribunals) in the countries that follow hybrid system.

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2286 Several of them (including United Kingdom, Austria, Germany, Switzerland, Portugal, Denmark, Finland, Sweden, France, Italy, Spain, Greece, Cyprus, Turk, Azerbaijan, Belarus, Bulgaria, Chechnya, Croatia, Czech Republic, Estonia, Georgia, Bosnia and Herzegovina, Hungary, Kazakhstan, Poland, Romania, Russia, Slovakia, Slovenia, Serbia and Montenegro, China, Taiwan, Thailand, Vietnam, India, Indonesia, the Philippines, Iran, Bahrain, Qatar, Yemen, Egypt, Tunisia, Angola, Cameroon, Cape Verde, Congo (Brazzaville), Ghana, Equatorial Guinea, Guyana Republic, South Africa, Argentina, Brazil, Chile, Costa Rica, Cuba, Dominican Republic, Antigua and Barbuda, Haiti, Jamaica, Paraguay and Suriname) expressly provide for the judicial review of administrative (and regulatory) actions in their constitutions (See the constitutions of the countries accessed through the Constitution Finder database of the T.C. Williams School of Law of the University of Richmond available at http://confinder.richmond.edu/). Many of the others allow the judicial review of actions of the financial market regulators and other authorities without having express provisions for this in their constitutions. Möschel, 1991, at pp. 118-120; Pfennigstorf, 1996, at p. 60; Pradeep S. Mehta, 2002, at p. 82; Wellons, 1999, at pp. 57-58; Weber, 1997, at pp. 237-238; and Solomon Abay, 2001). The European competition regime also allows the review of actions of the European Commission and the national competition and regulatory authorities by the Court of First Instance of the Union and the National courts, respectively, and the making of appeals from the Court of First Instance of the Union and the national courts to the European Court of Justice on questions of law (Whish, 2001, at pp. 50-52).


2288 Ibid.

2289 The unique system is common law tradition while the dual system is common in the continental countries. France is the most cited example for the dual system. The hybrid system is least common. Jacobini, at pp. 25 - 37, 75, 88, 101-103, 113 & 125-132; Gorden, 1996; Brown and Bell, 1993, at pp.
The subject matter of review is often action derived from law or doctrine. Some of the systems make all the regulatory actions reviewable while others indicate the exceptions to review. The grounds of review are general principles of good administration consisting of substantive and procedural requirements. They include the following:

- duty not to exceed the statutory bounds of discretion,
- duty to act in good faith,
- duty not to be influenced by considerations and motives irrelevant to the objectives of regulation,
- duty to hear and treat equally,
- duty to involve public participation,
- duty to give reason,
- duty to be consistent,
- duty to act reasonably and with fairness, and
- duty to compensate.

The procedure of review varies from country to country depending on whether the system is dual, unique or mixed. The countries following the dual system have separate civil and administrative law procedures while those following the unique system often adapt their civil law procedures to the administrative litigations. The countries also require that the solutions available within the regulators and the competition authorities need to be exhausted before the matter is taken to judicial review.

The remedies also often include:

- annulling, revising and/or modifying the regulatory action retroactively or prospectively;
- awarding compensation;
- ordering new decisions to be taken; and
- granting temporary relief.

However, the extent of intervention of the courts in the works of the reviewed institutions varies from country to country. The reviewers either:

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2290 Ibid.
2291 Ibid.
2292 Ibid.
2293 Ibid.
2294 Ibid.
2295 Ibid.
2296 Ibid.
2297 Ibid.
2298 Ibid.

- substitute decisions of the regulator or competition authority by their decisions and order the latter to behave in a certain way, or
- make their decisions and stop there by leaving the compliance decision to discretion of the regulator or competition authority.\textsuperscript{2299}

Most of the countries follow the latter approach.\textsuperscript{2300}

\section*{ii. The Case of Ethiopia}

Ethiopia also subjects all the actions of its governmental organs, including the financial market regulator and the competition enforcement organs, to judicial review as long as there is question of legality that makes them 'justiciable'.\textsuperscript{2301} It allows the financial institutions against which the NBE passes a decision of receivership or takeover of management, reconstruction, winding up or dissolution and the parties aggrieved by the administrative measures and penalties of the competition organs to petition to the Federal High Court.\textsuperscript{2302} It recognizes a number of substantive and procedural principles of good administration in both its constitution and the various pieces of laws including the commercial registration, investment, labour, civil service and taxation laws.\textsuperscript{2303} It also allows the initiation of judicial review after exhaustion of all possible internal remedies and obtaining of final decision of the regulators and administrative organs.\textsuperscript{2304} It requires the courts to conduct the review under the civil and criminal procedure laws.\textsuperscript{2305} The usual remedies the courts provide also include confirmation, modification or annulment of the regulatory action; award of pecuniary compensation; injunction; publication of pardon; and order for execution.\textsuperscript{2306} The country also follows the unique system of judicial review.\textsuperscript{2307}

It, however, lacks administrative procedure law and the actions of the NBE and the competition enforcement organs are not reviewed against their legal and public interest grounds in practice. The principles of good administration are also scattered in the various pieces of laws and this makes their enforcement difficult.
The courts also often retreat from reviewing the regulators and administrative institutions for fear that they will interfere in their discretions.2308

Hence, the country needs to implement five sets of measures. First, it needs to define the accountabilities of the financial market regulator and the competition enforcement organs clearly. Secondly, it needs to require the financial market regulator and the competition enforcement organs to exercise their powers according to defined substantive and procedural principles of good administration (including the principles of respecting the statutory bounds of discretion, good faith, good motive, fair hearing, public participation, reasoning, consistency, reasonableness, fairness and compensation). Thirdly, it needs to subject all the rules, decisions and actions of the financial market regulator and the competition enforcement organs to judicial review expressly.2309 Fourthly, it needs to indicate the applicants and the judicial organs that will have the power to make the judicial review; collect and standardize the substantive and procedural grounds of review; define the procedure and remedies of review; and demarcate the line of jurisdiction between the reviewer and the financial market regulator and competition enforcement organs. The list of applicants may include the regulated financial institutions and actors, a defined number of the consumers as a group, and other interested parties including the government. Fifthly, it needs to adopt comprehensive administrative procedure law that can guide the judicial review of all regulatory and administrative actions.2310

5.3.2.3 Control by Peripheral Institutions

i. The International Experience

A number of countries also use different types of peripheral institutions to check the operations of their regulatory and competition authorities and make the

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2308 The pieces of laws also purport to discourage interference. IGE, 1961a, at art. 56 & 57; IGE, 1962c, at art. 105; IGE, 1965c, at arts. 182-184 & 371ff; TGE, 1993a, at art. 17(3); and FDRE, 2003g, at arts. 38, 43(5), 138 & 154(2).

2309 Judicial review of a regulatory action is necessary for a number of reasons. Firstly, the modern principle of separation of powers or divisions of functions recognizes it provided that the reviewing judge shall balance between the need to control the regulator's discretion from arbitrary exercise substantively and procedurally and the need not to interfere in the exercise of discretion of the regulator. Secondly, the principle of rule of law dictates that the carrying out of regulatory action is legitimate only if the empowerment of the action and the substantive and procedural requirements for it are complied with. Thirdly, the judicial review of regulatory actions is not necessarily undemocratic and the reality in many countries is that it is recognized despite arguments against it. Fourthly, the judicial review of regulatory actions ensures the protection of constitutionally recognized human rights of the subjects of regulation. Fifthly, the regulators or the state must compensate the subjects of regulation for injuries to their rights irrespective of the legality of the regulatory action. Baldwin and Houghton, 1986, at pp. 267-283, 239 & 269; Asimow, 1983, at pp. 253-276; Galligan, 1976; Harlow, 1976; Daintith, 1979; Jaffe and Henderson, 1956, at pp. 345-364; Sheltema, 1997, at p. 2; Zhang, 1997b, at pp. 258 & 261; Grey, 1979, at pp. 108-109 & 114-132; Galligan 1982, at pp. 257-263 & 270; Jacobini, 1991, at pp. 5, 7-10 & 15-16; Fuke, 1997, at pp. 21-22; and FDRE, 1995, at arts. 13, 50, 53, 84 & the preamble.

2310 The country has been considering a draft federal administrative procedure law since 2002 although it has not enacted it yet.
regulatory processes participatory through non-binding advises and recommendations. They use the institutions of:
- ombudsman (Scandinavia),
- complaint registering machineries (England),
- mediation offices (the Netherlands and Switzerland),
- censorship offices (China), and
- advisory bodies representing interest groups such as in insurance (Australia, Belgium, Finland, France, Germany, Italy, Norway, Portugal, Spain, Turkey, United Kingdom and Japan). \(^{2311}\)

Many countries also provide for the peripheral institutions of Ombudsman, Human Rights Commission, Judicial Protectorate, Procurator Office, Comptroller General, and Inspectorate by their constitutions. \(^{2312}\)

   ii. The Case of Ethiopia

Ethiopia has also introduced Ombudsman Office that can check the operations of governmental authorities as a federal peripheral administrative control mechanism. \(^{2313}\) It does not, however, define the exact roles of the Office against the financial market regulator and the competition enforcement organs. It needs to define these so that the office can also control the financial market regulator and competition enforcement organs and contribute to consumer protection.

5.3.2.4 Control by the Public

   i. The International Experience

The countries that have strong hold of the principles of good administration and public consultation such as the United States and the EU member countries also often rely on the mechanism of controlling regulators and competition authorities


\(^{2312}\) See the 1929 Constitution of Austria; the 1999 constitution of Finland; the constitution of Sweden (as last amended in 1979); the 2005 constitution of Swaziland; the 1976 constitution of Portugal; the 1982 constitution of Turkey (as last amended in 2004); the 1997 constitution of Poland; the 1991 constitution of Romania; the 1991 constitution of Slovenia (as amended in 2000); the 1977 constitution of Soviet Union; the 1994 constitution of Tajikistan; the 1996 constitution of Ukraine; the 1994 constitution of Belarus; the 1982 constitution of China (as amended in 1988, 1993, 1999, and 2004); the constitution of North Korea; the constitution of Sri Lanka (as amended in 2000); the 1997 constitution of Thailand; the 1983 Constitution Act of Vanuatu; the 1992 constitution of Vietnam; the 1992 constitution of Angola; the 1992 Constitution of Ghana; the 1995 constitution of Uganda; the 1979 constitution of Zimbabwe (as last amended in 1993); the 1996 constitution of South Africa; the 1980 constitution of Guyana (as amended in 1996); the 1976 constitution of Trinidad and Tobago (as amended in 2000); the 1853 constitution of Argentina (as amended in 1860, 1866, 1898, 1957 and 1994); the 1980 constitution of Chile; and the 1981 Constitution Order of Antigua and Barbuda accessed through the Constitution Finder database of the T.C. Williams School of Law of the University of Richmond available at http://confinder.richmond.edu/.

\(^{2313}\) FDRE, 1995, at art. 55(15); and FDRE, 2000a.
by the public while others have also worked towards this.\textsuperscript{2314} Hence, the regulators and competition authorities are also socially controlled by public opinion as consequence of their accountability to the public and the principle of participatory decision making by giving the public opportunity to participate in the policy formulation, rule making, adjudication and non-adjudication decisions of the regulators and competition authorities.

ii. The Case of Ethiopia

Ethiopia does not oblige its financial market regulator and competition enforcement organs legally to include public consultation during the making of their decisions, rules and actions. It only invites public comment during parliamentary hearing of their annual reports and establishing laws. It needs to require them to include public consultation in their regulatory and competition enforcement processes in order to check their operations as well as enable public participation in the development and enforcement of the regulatory and competition regimes.

5.3.3 The Treatment of Individual Consumers

i. The International Experience

Most of the countries focus on the consumer as a group and protect the individual consumer only indirectly. They make it clear in their supervisory laws that their financial regulators and competition authorities are to be guided by the interests of the public, not of the individual, and take the position that the individual consumer of a financial service can not be 'aggrieved party' for purpose of challenging decisions and orders of the regulators and competition authorities in the courts.\textsuperscript{2315} They involve the individual consumer in the process only when he/she is invited as source of information, member of decision-making or advisory body, party in class action, or complainant against decisions and financial situations of the regulated institutions.\textsuperscript{2316}

Some of the countries also allow the individual consumer to take his/her grievance against the regulators and the competition authorities to peripheral institutions.\textsuperscript{2317}


\textsuperscript{2315} Pfennigstorf, 1996, at p. 62; and Möschel, 1991, at pp. 113-115.

\textsuperscript{2316} Ibid.

\textsuperscript{2317} Some states of the US, for instance, have special offices within the insurance department (and outside) that represent the interests of the insured individual (such as during rate review). UK, the Scandinavian countries and some others also provide for similar protection. The peripheral institutions in most countries, however, make non-binding but influential decisions. Only the UK institutions make binding decisions. Pfennigstorf, 1996, at p. 63; and note the discussions under the preceding subtitles.
ii. The Case of Ethiopia

Ethiopia allows all parties aggrieved by measures of the competition enforcement organs to take appeals to the Federal High Court.\textsuperscript{2318} It does not, however, make it clear if it allows the individual consumer of financial service to challenge the decisions and orders of the financial market regulator in court. It looks, from practice, that the individual consumer does not have the right to do so unless he/she has direct tort claim under the extra-contractual liability law of the country.\textsuperscript{2319} The country needs to have clear rule on the matter. It needs to strengthen the complaint handling, judicial review and public consultation mechanisms and encourage the regulated institutions and consumers to participate in the design and implementation of regulation and control of regulatory legality as these have been done in the other countries.\textsuperscript{2320} It need not, however, suffocate the financial market regulator and competition enforcement organs by individual suits for judicial review. It only needs to allow suits for extra-contractual compensation when the regulators and competition enforcement organs violate the bounds of their legal authorizations and cause extra-contractual damage on individuals.

5.4 The Regulatory Backing

5.4.1 The Political Support

i. The Theory and International Experience

Regulatory and competition policies are functions of the overall policy framework of a government.\textsuperscript{2321} They are also features of a free market oriented economic system. Their enforcement, therefore, necessitates the presence not only of a government that owns and supports this kind of economic system but also of one that has the necessary determination to pursue competition and regulatory policy.\textsuperscript{2322} It is also important that the government, the regulator and the competition authority follow common philosophy on the objectives to promote and the roles to play; shoulder common responsibility to materialize the objectives; and have open channels of communication and clear lines of accountability to monitor each other's progress.\textsuperscript{2323}

It is also important that the government supports the regulators and competition authorities to avoid jurisdictional conflicts, coordinate their functions, and link these with the functions of the other bodies of government.\textsuperscript{2324} The effectiveness of regulatory and competition enforcement also necessitates the existence of government that bears the challenges with the regulators and competition enforcement organs.

\textsuperscript{2318} FDRE, 2003c, at art. 17.
\textsuperscript{2319} IGE, 1960a, at arts. 2035 & 2029. Note also the discussion under the ‘sanctions’ subtitle above.
\textsuperscript{2320} Note the discussion under the preceding subtitle.
\textsuperscript{2321} Carmichael and Pomerleano, 2002, at pp. 48-49.
\textsuperscript{2322} Ibid.
\textsuperscript{2323} Ibid.
\textsuperscript{2324} Ibid.
authorities and quickly extends support to them. The countries that have this commitment on the part of the government have succeeded in practice to enhance regulation and competition in their financial markets.

ii. The Case of Ethiopia

Ethiopia has already committed to reduce the roles of its government in the economy, further free market, promote domestic and foreign private investment, decentralize economic management, and enhance public participation in the design and implementation of its development plans. It has also taken a number of deregulatory measures to promote and strengthen its transition from centrally planned to free market economy and re-established the financial market regulator and competition enforcement organs with new powers and functions. It has also implemented restructuring measures in the financial market to:

- promote private investment and competition;
- allow market based interest and premium rates;
- abolish control on credit;
- increase the flow of credit and financial services to the private sector;
- liberalize trade in foreign exchange;
- manage the monetary and foreign exchange system;
- control inflation;
- ensure financial security and stability;
- encourage information flow to consumers; and
- accelerate financial development.

Hence, it has showed some determination to pursue financial regulation and competition commensurate with the free market economic policy. It has, however, failed to:

- clearly state the goals of its financial market regulation in the specific supervision laws;
- clearly define the functional linkage between its competition organs and the financial market regulator;
- restructure and transform its financial market from bank based to market based system (that will include securities market and private pensions); and
- further the international liberalization of the financial market.

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2325 Ibid.
2326 Ibid.
2327 PDTCE, 1991; TGE, 1991; EPRDF, 2000; FDRE, 2001b; and FDRE, 2002e.
2328 TGE, 1994; TGE, 1994a; TGE, 1994b; and FDRE, 2003c. Note also the discussions under the ‘enforcing organs’ subtitle and the ‘banking, insurance and microfinance’ and ‘securities market’ chapters above.
2330 Note the discussions under the securities market and pension chapters above.
The government needs to correct these shortcomings in order to fully encourage participation of the financial regulator (the NBE), the competition authorities, the business community and the other stakeholders in the furtherance of development of the financial system.

5.4.2 The Legislative Backing

i. The Theory and International Experience

Like the political support, the effectiveness of regulatory and competition law enforcement necessitates the presence of government that:

- backs the financial market regulator and the competition authorities with sufficient enforcement powers depending, of course, on the objectives to be promoted, and
- stands willing and acts quickly to support the financial market regulator and competition authorities in the event of need for legislative change to cope with developments in the financial system.2331

The regulator and competition authorities also need to have rule-making, investigating, adjudicating and sanctioning powers in order to enable them to act proactively and reactively depending on the type of market failure they have to prevent or correct.2332 The government may also need to choose between 'black letter law' approach where it leaves little regulatory discretion to the regulators and the competition authorities and 'guideline' approach where it leaves broad regulatory power to them.2333 The 'guideline' approach is useful to afford flexibility to the regulator and competition authorities so that they can issue and amend technical rules without need to pass legislation in parliament.2334 Most countries tend to follow the 'black letter law' approach in non-banking regulation and the 'guideline' approach in banking regulation.2335 The advice from regulatory flexibility point of view is to follow the 'guideline' approach.

ii. The Case of Ethiopia

Ethiopia seems to follow the 'black letter law' approach. It leaves regulatory discretion to both the financial market regulator (the NBE) and the competition enforcement organs within a list of powers and functions.2336 It also delegates the rule-making power to the regulator and the competition enforcement organs only in respect of technical and implementation matters. The approach promotes regulatory stability and certainty during the transition. The country, however, also needs to increase the regulatory autonomy, powers and discretions of both the financial market regulator and the competition enforcement organs as the regulatory capacities of the latter grow so that they can stimulate and respond to

2332 Ibid.
2333 Ibid.
2334 Ibid.
2335 Id., at p. 52.
2336 Note the discussion under the ‘powers and functions’ subtitle above.
the changes in the financial market without waiting for parliamentary legislation.\textsuperscript{2337}

5.4.3 The Funding

i. The Theory and International Experience

Effective regulatory enforcement also requires adequate funding. Regulators and competition authorities are mostly funded, in the international experience, through government budget or industry levy.\textsuperscript{2338} Each financing approach has shown advantages and disadvantages.\textsuperscript{2339} The budgetary approach has the advantage of distributing the cost of regulatory and competition enforcement to the tax payers while the industry levy approach puts the burden on the regulated institutions and their customers.\textsuperscript{2340} The budgetary approach has also the risk of unstable funding since the regulators and competition authorities have to compete with other budgetary institutions and programmes for funding while the industry levy approach can ensure consistent funding.\textsuperscript{2341} The budgetary approach has also the risk of making the regulators and competition authorities dependent on the government while the industry levy approach can ensure autonomy.\textsuperscript{2342} The industry levy approach may not, however, also work when the market in which it is implemented is thin.

ii. The Case of Ethiopia

Ethiopia finances the financial market regulator (the NBE) and the competition enforcement organs by state allocated capital and annual budgetary allocations, respectively.\textsuperscript{2343} It authorizes the NBE to:
- operate like profit making bank by using initial capital allocated to it by the government;
- maintain integrity of the allocated capital at all times;
- generate income and profit;
- finance some of its operations by industry levy;
- draw audited annual balance sheet and profit and loss statements;
- transfer some of its annual profits to a general reserve fund that supplements its capital; and
- transfer its net annual profits in excess of the general reserve fund and other expenses to the government.\textsuperscript{2344}

\textsuperscript{2337} The 2008 and 2009 banking and microfinance supervision laws are better than the 1994 and 1996 laws in this regard (Compare the powers and functions of the NBE in TGE, 1994; FDRE, 2008a; TGE, 1994a; FDRE, 2008b; TGE, 1994b; FDRE, 1996g; and FDRE, 2009). Note also the discussion under the ‘powers and functions’ subtitle above.
\textsuperscript{2339} Carmichael and Pomerleano, 2002, at pp. 52-53.
\textsuperscript{2340} Ibid.
\textsuperscript{2341} Ibid.
\textsuperscript{2342} Wellons, 1999, at pp. 38-39.
\textsuperscript{2343} TGE, 1994, at arts. 9-14; and FDRE, 2008a, at art. 6.
\textsuperscript{2344} TGE, 1994, at arts. 9-14; and FDRE, 2008a, at arts. 6, 7 & 8. It has re-established the NBE with initial capital of five hundred million Birr (TGE, 1994, at art. 9; and FDRE, 2008a, at art. 6(1)). The
It also expects it to finance the regulatory functions by using its own funds except in the cases where it is fixed by law that the funding has to be borne by the regulated institutions.\textsuperscript{2345}

It makes the federal competition enforcement organs part of the ministry of trade and industry which is financed by budgetary allocation.\textsuperscript{2346} It does not make them live by their own finances although it authorizes them to levy fees on users of their services.\textsuperscript{2347}

The position of Ethiopia on funding of the NBE is commendable in light of:

- the need to ensure autonomy of the NBE,
- the need not to burden tax payers with the costs of financial regulation,
- the thinness of the financial market to sustain funding by industry levy,
- the need to have stable source of regulatory funding,
- the need to increase regulatory responsibility and efficiency of the NBE,
- the need to share the cost of regulation with the regulated financial institutions and make them watch-dogs of regulatory efficiency, and
- the need to charge the regulated financial institutions with the cost of regulatory incompliance.

The approach needs to be extended to the financing of the competition enforcement organs and the future securities market and pension regulators in order to obtain similar advantages.

However, the supervision departments of the NBE suffer from fund constraint. The NBE allocates fund to them as units sharing with its other departments hence making them get no adequate funding for purpose of their regulatory design and enforcement functions. It does not also authorize them to finance their operations through separate industry levy. The fees they impose on the regulated institutions are accounted to the consolidated fund of the NBE and the supervision departments can not access this for direct use. The NBE needs to recognize financial independence of the supervision departments.

The competition enforcement organs also need to be re-established as authorities with financial and operational autonomy from the government with accountability to parliament.

\textsuperscript{2345} The banking, insurance, microfinance and insurance auxiliary supervision laws require the banks, insurers, microfinance institutions and insurance auxiliaries to finance the costs of their initial registration and licensing, license renewal, branching appraisal (and permission), inspection, examination, and receivership or takeover. TGE, 1994a, at arts. 5(7-8), 20(4) & 22(5); FDRE, 2008b, at arts. 35 & 51; TGE, 1994b, at arts. 6(4), 25(2-3), 26(5), 31, 38 & 44; FDRE, 1996g, at art. 24; and FDRE, 2009, at arts. 5(1)(a), 6(2), 7, 18, 19(3) & 28(1).

\textsuperscript{2346} FDRE, 2003c.

\textsuperscript{2347} Ibid.
5.4.4 The Skill Base

i. The Theory and International Experience

The effectiveness of regulatory and competition enforcement is also dependent on the regulatory culture and skill of the staff of the regulators and competition authorities.\textsuperscript{2348} Culture wise, it is important that the staff have full awareness and commitment to implement the objectives and philosophy of the regulatory and competition authorities and put more attention on output than input.\textsuperscript{2349} Skill wise, it is important that the staff have full training and experience to deal with complex issues of regulatory and competition policies and laws.\textsuperscript{2350}

The governments and regulators around the world appreciate this and pursue a ‘private-sector-style’ structure in the management of their regulatory and competition authorities as opposed to the traditional ‘public-service-style’ in order to reward staff excellence, commitment and output orientation.\textsuperscript{2351} However, the regulators and competition authorities also often face staff constraint since most of the highly qualified and committed staffs usually prefer to work for the regulated industries rather than for the regulators due to varieties of reasons, including the salary differentials between the regulators and the regulated industries.\textsuperscript{2352}

ii. The Case of Ethiopia

The supervision departments of the NBE also suffer from staff constraint.

First, all of them are understaffed for the responsibility they shoulder. The Banking Supervision Department had only nineteen staffs (excluding the department manager) by the time of the writing of this study one of whom was principal inspector while three were senior inspectors, four were inspectors, seven were junior inspectors, two were clerks and other two were secretaries.\textsuperscript{2353} The insurance supervision department had seventeen staffs (excluding the department manager) two of whom were principal inspectors, one was senior inspector, ten were inspectors and junior inspectors, three were secretaries and one was office boy.\textsuperscript{2354} Only fifteen of the staffs of the banking supervision department (excluding the department manager, the two clerks and the two secretaries of the department) have handled the regulatory work on the fifteen banks that have over six hundred seventy six branches while also only thirteen of the staffs of the insurance supervision department (excluding the department manager, the three secretaries and the one office boy of the department) have handled the regulatory work on the twelve insurers that have over two hundred five branches and the

\textsuperscript{2348} Carmichael and Pomerleano, 2002, at p. 53.
\textsuperscript{2349} Ibid.
\textsuperscript{2350} Ibid.
\textsuperscript{2351} Ibid.
\textsuperscript{2352} Ibid.
\textsuperscript{2353} Note the human resource record of the department.
\textsuperscript{2354} Note the human resource record of the department.
insurance auxiliaries which are over one thousand in number. The microfinance supervision department has also relied on fourteen staffs (excluding the department manager and the secretaries of the department) to conduct the supervision work on the thirty microfinance institutions scattered across the country. Secondly, the staffs in the departments are less experienced and motivated to conduct off-site and on-site examinations on the financial institutions, to assess and forecast the risks in the financial market, and to design regulatory policy. Most of them are accountants by profession who have few years of regulatory work experience while very few are economists or managers. One of the staffs of the banking supervision department had second degree in economics (banking and finance) while another one had second degree in business administration, one was certified accountant, eight had first degree in accounting, two had first degree in management, one had diploma in business administration and another one had diploma in banking by the time of the writing of this study. Ten of the staffs had less than two years of work experience in regulatory matters while the other five had four up to eight years of experience. Seven of the staffs of the insurance supervision department had first degree in accounting while five had first degree in management and another one had first degree in economics. Five of them had additional diploma in insurance from the Ethiopian Insurance and Banking Institute (EIBI) while three were attending their studies at the Chartered Insurance Institute of London (CII). Five of the staffs of the microfinance supervision department had second degrees (two in economics, two in business administration and one in microfinance) while the rest had first degrees (one in economics, two in accounting, and six in management). Four of the staffs had nearly ten years of regulatory work experience in the department while the rest had less than two years of experience as microfinance regulators. The heads of the insurance and microfinance supervision departments had also less than two years of regulatory experience while the heads of the banking supervision department and the financial market supervision division of the NBE (which consists the banking, insurance and microfinance supervision departments) had more than ten years of experience in the departments. They were also economists while one was manager.

Thirdly, the departments suffer from low employee retention rates due to reasons including the non-competitiveness of the salary structure and working conditions

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2355 Note the human resource records of the departments; and Table 1 (Chap. 2).
2356 Note the human resource record of the department; and Table 1 (Chap. 2).
2357 Note the human resource records of the departments. Also NBE BSD, 2005, at p. 53; NBE ISD, 2005, at p. 88; and Degefe Duressa Obo, 2009, at p. 208 for general assessment of the limitation.
2358 Ibid.
2359 Note the human resource record of the department.
2360 Ibid.
2361 Note the human resource record of the department.
2362 Ibid.
2363 Note the human resource record of the department.
2364 Ibid.
2365 Note the human resource records of the departments.
of the NBE (compared to the private sector). The government has recognized this problem and enacted a special law for administration of the employees of the NBE in December 2008. The NBE has also started to award its employees with long time service certificates and medals in 2009 with a view to encouraging the employees who serve it for more than ten years.

The competition enforcement organs of the country also suffer from similar problems. They have employees with less than seven years of work experience in competition matters.

Hence, the departments of the NBE hardly analyse the off-site reports and on-site examinations of the financial institutions while the actions of the competition enforcement organs have been more reactive and adjudicatory than proactive.

The country needs to rectify the situation in order to materialize effective regulation.

5.5 The Use of International Cooperation and Principles
5.5.1 The Use of International Cooperation

i. The International Experience

The national laws of many of the countries have become inadequate when their financial markets are increasingly diversified, internationalized, become to be dominated by institutional investors, and affected by illegal activities including tax evasion and money laundering for illicit purposes. The regulatory inadequacy has been compounded by failures of the national financial markets to regulate themselves, incompleteness and incompatibilities of the national procedures and solutions to solve international problems, and absence of coherent international regulation to fill in the gap. The use of international cooperation has, accordingly, become increasingly important to coordinate regulatory rules, practices and enforcement.

Hence, the Bank for International Settlements (BIS), the IMF, the World Bank, the WTO, the UNCTAD, the OECD, the World Savings Banks Institute (WSBI),

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2366 FDRE, 2008d.
2367 Note the NBE news cited as NBE, 2009-10.
2368 Note the human resource records of the Trade Practice Commission and the Competition Secretariat of the Ministry of Trade and Industry of the country. See also Booz Allen Hamilton, 2007, at pp. 58-65.
2369 NBE BSD, 2005, at p. 40 (as revised); NBE ISD, 2005, at p. 88 (as revised); Booz Allen Hamilton, 2007, at pp. 58-65; and unpublished annual reports of the supervision departments of the NBE and the competition enforcement organs. Note also the discussion under the 'powers and functions' subtitle above.
the International Accounting Standards Committee (IASC) (renamed later as International Accounting Standards Board), the International Federation of Accountants (IFAC), the BIS Committee on Payment Settlement Systems (CPSS), the G-7 Financial Action Task Force on Money Laundering (FATF), the G-7 Financial Stability Forum (FSF), the International Corporate Governance Network (ICGN), the Global Corporate Governance Forum (GCGF), the Basle Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), the International Organization of Securities Commissions (IOSCO), the International Organization of Pension Supervisors (IOPS), the International Association of Deposit Insurers (IADI), the International Competition Network (ICN), and the G-20 have served as forums for international cooperation.2373

The IMF, World Bank, OECD, IASC, IFAC, CPSS, FATF, BCBS, IAIS, IOSCO, IOPS and IADI have developed a number of principles and standards for the financial systems, including the following:

- 'Code of Good Practices on Transparency in Monetary and Financial Policies' (IMF);
- 'Code of Good Practices on Fiscal Transparency' (IMF);
- 'Special Data Dissemination Standard' (IMF);
- 'General Data Dissemination System' (IMF);
- 'Principles and Guidelines on Effective Insolvency Systems' (World Bank);
- 'Principles of Corporate Governance' (OECD);
- 'International Accounting Standards' (IASC);
- 'International Standards on Auditing' (IFAC);
- 'Core Principles for Systemically Important Payment Systems' (CPSS);
- 'Forty Plus Nine Recommendations of the Financial Action Task Force on Money Laundering' (FATF);
- 'Core Principles for Effective Banking Supervision' (BCBS);
- 'Core Principles for Insurance Supervision' (IAIS);
- 'Objectives and Principles of Securities Regulation' (IOSCO);
- ‘Principles of Private Pension Supervision’ (IOPS); and
- ‘Core Principles of Deposit Insurance’ (IADI).2374

A number of regional institutions, organizations and committees have also assisted the coordination of the national financial market rules, practices and enforcements through regional technical cooperation, advisory services, information exchange arrangements, conferences, dialogues, and training programs. They include the following:

- the Caribbean Group of Banking Supervisors (CGBS) (established in 1983);


2374 Yılmaz Akyüz, 2002, at pp. 28-116; IOPS, 2006; BCBS-IADI, 2009; websites of the institutions (accessed in May 2007 and August 2010); and the discussion under the 'use of international principles' subtitle below.
- the Association of Securities and Exchange Commissions of the Americas (COSRA) (created in 1992);
- the Association of Supervisors' of Banks of the Americas (created in May 1999);
- the Inter-American Development Bank (IDB) (created in 1959);
- the European Savings Banks Group (established in 1963 as the 'Savings Banks Group of the European Economic Community' and renamed as the European Savings Banks Group in 1988);
- the Banking Supervision Committee (BSC) of the European System of Central Banks (ESCB) (established in 1998);
- the Committee of European Securities Regulators (established in June 2001);
- the Committee of European Banking Supervisors (CEBS) (established in November 2003);
- the European Insurance and Occupational Pensions Committee (EIOPC) (created in November 2003 replacing the EC Insurance Committee that was created in December 1992);
- the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) (established in November 2003);
- the Asian Development Bank (ADB) (created in 1966);
- the Offshore Group of Banking Supervisors (OGBS) (formed in 1980);
- the Association of Financial Supervisors of Pacific Countries (AFSPC) (created in late 2002);
- the EMEAP Working Group on Banking Supervision (WGBS) (operational as of July 2004);
- the Islamic Financial Services Board (IFSB) (created in November 2002 and operational as of 10 March 2003);
- the Regional Group on Banking Supervision of Transcaucasia, Central Asia and the Russian Federation (operational as of 2005);
- the Group of French-Speaking Banking Supervisors (Groupe des Superviseurs Bancaires Francophones - GSBF) (established in 2004);
- the SEANZA Forum of Banking Supervisors (operational as of September 2004);
- the African Development Bank (ADB) (created in 1964);
- the Committee of Banking Supervisors of West and Central Africa (CBSWCA) (created in April 1994);
- the African Capital Markets Forum (created in 1996);
- the SADC Subcommittee of Bank Supervisors (SSBS) (created in 2004 under the Committee of the Central Bank Governors (CCBG) of the Southern African Development Community (SADC)); and
- the African Stock Exchanges Association (ASEA) (registered in Nairobi on 13 November 1993).2375

The WTO, IMF, World Bank and UNCTAD have also promoted the principle of competition along with their trade liberalization (WTO), international financial

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2375 Alexander, et al., 2006; BCBS, 2006, at pp. 27-72; EC, 2004a; EC, 2004b; EC, 2004c; EC, 2005a; Degefe Duressa Obo, 2009, at pp. 1-3; and the websites of the organizations and committees (accessed in May 2007 and August 2010).
stability (IMF), and economic development (World Bank and UNCTAD) related objectives although they have not developed an international competition regime yet.2376

The BCBS, IAIS, IOSCO, IOPS and ICN are serving as the most specialized institutions for international cooperation in the fields of banking, insurance, securities and pension regulation and competition law enforcement.2377

The BCBS, formed in 1974, serves as forum for international cooperation by:

- exchanging information on national supervisory arrangements;
- studying the effectiveness of techniques for supervising international banking businesses; and
- setting minimum supervisory standards.2378

It encourages cooperation between the banking supervisory authorities in the G-20 and other countries.2379 It circulates recommendation and advice to the supervisory authorities around the world and organizes international conferences for the banking supervisors.2380 It works with a number of banking supervisory groups including the Offshore Group of Banking Supervisors and the supervisory groups of the Americas, Caribbean, Middle East, Central Asia and Transcaucasia, SEANZA (South-East Asia and Australasia), Central and Eastern Europe, and Africa.2381 It also conducts training programmes on banking supervisory issues.2382 It has also set up a Financial Stability Institute (FSI) since 1999 in cooperation with the BIS to conduct multi-level training programmes.2383

The IAIS, formed in 1994, serves as global forum for cooperation to promote insurance regulation and financial stability.2384 It holds annual conferences to enable insurance supervisors, industry representatives and other professionals to discuss on developments in the insurance sector and on topics affecting insurance regulation.2385 It trains insurance supervisors in cooperation with the World Bank Group.2386 It has also developed Multilateral Memorandum of Understanding

2376  Note the objectives and principles in the GATS, the Articles of Agreement of the IMF, and the constitutions of the World Bank and UNCTAD. Particular international competition rules and authority are not developed yet although there has been discussion on the matter within these institutions and others including the OECD and the International Competition Network (ICN) (Note the competition pages in websites of the organizations).

2377  Note the histories, works and memberships of the institutions (which are growing from time to time) from BIS, 2007; BCBS, 2007; IAIS, 2007a; IOSCO, 2007; IOPS, 2007a; ICN, 2010; ICN, 2010a; ICN, 2010b; and ICN, 2010d.


2379  Id., at pp. 4-5.

2380  Ibid.

2381  Ibid.

2382  Id., at p. 6.

2383  Ibid.

2384  IAIS, 2007a.

2385  Ibid.

2386  Ibid.
(MMoU) since February 2007 to enhance cooperation and information exchange among insurance regulators.\footnote{2387}{Note the IAIS Multilateral Memorandum of Understanding on Cooperation and Information Exchange (IAIS MMOU) (February 2007) and the IAIS MMOU (as modified on 18 November 2009) from IAIS, 2007 and IAIS, 2009.}

The IOSCO, formed in 1983, serves as forum for international cooperation to:

- standardize regulation of securities markets;
- exchange information on regulatory experience; and
- provide assistance in the application of international standards in the regulation of securities markets.\footnote{2388}{IOSCO, 2007.}

It has developed multilateral memorandum of understanding (IOSCO MOU) since 2002 to facilitate cross-border exchange of information among the securities market regulators, endorsed the IOSCO MOU in 2005 as benchmark for international cooperation, and expanded the signatories of the IOSCO MOU by 2010.\footnote{2389}{Ibid.} It has also adopted consultation policy to facilitate continuous interaction among the securities markets, the regulators and the international community.\footnote{2390}{Ibid.}

The IOPS, formed in July 2004, serves as forum for policy dialogue and exchange of information for promoting good practices in the regulation of private pensions.\footnote{2391}{IOPS, 2007a.} It serves as:

- standard-setting body for pension regulation;
- forum for international co-operation between pension supervisors, policy makers, researchers and the private sector; and
- forum for statistical collection and analysis.\footnote{2392}{Ibid.}

The ICN, formed in October 2001, serves as forum for international cooperation to address competition concerns.\footnote{2393}{Ewing, 2006, at pp. 296-313 & 653-673; ICN, 2010; ICN, 2010a; and ICN, 2010c.} It works to:

- encourage the dissemination of competition law experience and best practices,
- develop procedural and substantive principles and standards for competition law enforcement;
- promote the advocacy roles of competition authorities;
- increase international cooperation among competition authorities, practitioners and others;
- increase international convergence in competition law and practice;
- facilitate the work relationship between firms and competition authorities; and
- achieve better competition law enforcement and advocacy.\footnote{2394}{Ibid.}
It does this by making its membership open to national and multinational bodies entrusted with the enforcement of competition law; organizing projects, seminars, workshops and annual conferences; inviting participation of competition experts from the consumer, business and academic communities and the legal profession; and disseminating its work products and documents through its website and an ICN public email distribution list.2395

The international institutions also cooperate and work together on cross sectoral matters. The BCBS, IAIS and IOSCO have developed Joint Forum for purpose of this.2396 The BCBS also works with the International Association of Deposit Insurers (IADI) on matters of deposit insurance.2397 It also works with the regional organizations across the Americas, Europe, Asia and Africa on matters of banking and related regulation.2398 The IOPS works with the other international organisations involved in pension policy development and dialogue, including the OECD, World Bank, IAIS, IMF and the International Social Security Association (ISSA).2399 The ICN also works with the bodies working in the competition field including the WTO, UNCTAD, and the OECD.2400 The IMF and World Bank have also developed a joint Financial Sector Assessment Program (FSAP) to assess the financial systems of their member countries.2401 The World Savings Banks Institute (WSBI) and the European Savings Banks Group (ESBG) also work with savings and retail banking institutions and the BCBS to encourage the expansion and appropriate regulation of microfinance and corporate social responsibility.2402

The G-20 is also serving as forum for strengthening the international financial architecture and fostering sustainable economic growth and development.2403 It has served as forum for international cooperation among the developed and the transition and emerging market countries in finding out the solutions to the 2008 financial and economic crisis.2404

A new organization of emerging market countries called BRIC is also established to coordinate the financial and economic developments in its member countries.2405

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2395 ICN, 2010c; ICN, 2010d; and ICN, 2010e.
2396 BCBS, 2006, at pp. 4-5; and the information about history, mandate and publications of the Forum from IOSCO, 2007b.
2397 BCBS-IADI, 2009; and IADI, 2007-10.
2398 BCBS, 2006, at pp. 27-72.
2399 IOPS, 2007a.
2400 ICN, 2010c.
2401 The FSAP was launched in 1999. Participation to it is voluntary. More than two-thirds of the members of the institutions have participated in it. IMF, 2005; IMF, 2007-10; and IMF, 2007-10a.
2402 Degefe Duressa Obo, 2009, at pp. 1-3; and websites of the institutions (accessed on May 29 2007 and August 23 2010).
2404 G-20, 2009; BBC, 2009; BBC, 2009a; BBC, 2009b; AP, 2009b; AP, 2009c; Reuters, 2009a; and Wikipedia, 2010a.
2405 The first official meeting of the organisation was on 16 June 2009. Its current members are Brazil, Russia, India, China and South Africa. Its membership is expected to rise in the future. Wikipedia, 2011.
The international and regional institutions have, accordingly, been useful to develop the financial markets and regulatory and competition law systems in the developed and transition and emerging market countries. A global regulatory and governance structure that can regulate systemic risk in the financial markets is not, however, developed yet. The 2008 financial and economic crisis has increased the need for this.

ii. The Case of Ethiopia

Ethiopia cooperates with the IMF and the World Bank and tries to see if its financial regulatory actions are in line with the internationally accepted principles and standards. It, however, does this outside the Financial Sector Assessment Program (FSAP) of the IMF and the World Bank. It also lacks formal membership and cooperation with the international organizations working in the area of financial market regulation and competition including the BCBS, IAIS, IOSCO, IOPS and ICN.

It does not also work with regional associations on the matters of financial market regulation. This does not happen for two reasons. Firstly, no regional organization of financial market regulators is active currently in the Eastern African Region. Both the Common Market for Eastern and Southern Africa (COMESA) and the Intergovernmental Authority on Development (IGAD) are overwhelmed by general economic integration and regional peace matters as opposed to financial market regulation issues. The monetary cooperation realm of COMESA and the COMESA Bankers’ Association are not also working on matters of financial market regulation although they have started their operations by promising to work on banking practices and regulations among others. The Eastern and Southern African Banking Supervisors Group (ESAF) is also dissolved as of November 2004 by decision of the Committee of the Central Bank Governors (CCBG) of the Southern African Development Community (SADC) so that the CCBG will have subcommittee on banking supervision in line with the SADC regional integration process only. Secondly, the peace and policy situation in the Eastern African Region is not conducive for the financial market regulators of the region to initiate direct cooperation on financial market regulatory issues. The countries of the region suffer from recurring political disagreements and policies of non-liberalized financial markets.

2408 Note the country reports of the IMF and World Bank for Ethiopia from their websites; and NBE BSD, 2005 & NBE ISD, 2005 as revised.
2409 Note the IMF-FSSA Country Reports from IMF, 2007-10; and IMF, 2007-10a.
2410 COMESA, 2006; and IGAD, 2007.
2411 Note the COMESA Monetary Cooperation Programme and the works of the COMESA Bankers’ Association from COMESA, 2007 and COMESA-BA, 2007.
2412 BCBS, 2006b, at p. 68.
2413 Note the conflict situations surrounding Ethiopia, Eritrea, Somalia, Sudan and Egypt.
The country needs to appreciate the importance of cooperation with the international organizations in order to build its regulatory capacity, enhance its regulatory functions and fight against illicit financing, and encourage membership and cooperation of the financial market regulator (i.e. the NBE) to the BCBS, the IAIS and the other relevant international organizations in the short run and to the IOSCO and IOPS when it creates the securities market and private pension regulators in the future. It also needs to encourage the membership and cooperation of its competition enforcement organs with the ICN in order to build its competition law enforcement capacity and functions.

5.5.2 The Use of the Basel and IAIS Principles

i. The International Experience

The BCBS has pursued principles and standards in the areas of international supervisory coverage, capital adequacy, and effective banking supervision as part of its effort to foster international monetary and financial stability under the BIS. 2414

It has pursued two basic principles in its effort to close the gaps in international supervisory coverage, namely that no foreign banking establishment should escape supervision; and that supervision should be adequate. 2415 It has issued several documents to meet the principles as of 1975, including the following:

- the May 1983 Principles for Supervision of Banks' Foreign Establishments that laid down the principles for consolidated supervision of international banking groups (known as the 1983 Concordat);
- the April 1990 Supplement to the 1983 Concordat that was issued to improve the flow of prudential information among the banking supervisors in different countries;
- the July 1992 Minimum Standards for consolidated supervision of international banking groups; and
- the June 1996 document for overcoming impediments to conducting effective consolidated supervision of the cross-border operations of international banks. 2416

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2414 The BIS was established on 17 May 1930. It served as forum to promote discussion and policy analysis among central banks and the international financial community; centre for economic and monetary research; and counter-party, agent or trustee for central banks in international financial transactions. It exists as forum for international monetary and financial cooperation. The BCBS was established under the BIS by the central-bank Governors of the Group of Ten countries. Its members are the central banks (and banking regulators) of Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, United Kingdom and the United States. Its secretariat is at the BIS in Basel. It reports to the central bank Governors and heads of the banking supervisory authorities of the Group of Ten countries. It also acts under their endorsement of its initiatives. BIS, 2007; and BCBS, 2007.


2416 Ibid.
It has developed a Capital Adequacy Accord and a Revised Capital Adequacy Framework in its effort to develop multinational capital adequacy measurement standard. It proposed the first capital measurement system in 1987 and this was approved by the G-10 Governors in July 1988 as the Basel Capital Accord to provide for the implementation of credit risk measurement with a minimum capital standard of 8% by 1992.\(^{2417}\) It initiated amendments on the Accord between 1991 and 1996 to give it greater precision and expand its coverage from credit risk to market risk.\(^{2418}\) It proposed the revised Capital Adequacy Framework in June 1999 to improve on the way regulatory capital requirements reflect the underlying risks in the banking book, better address the recent financial innovations, and thereby replace the 1988 Capital Accord with a system that consists of the following three pillars:

- minimum capital requirements (that seek to refine the standardized rules of the 1988 Capital Accord and expand them to credit, market and operational risks);
- supervisory review requirements (that seek to assist the banks’ internal assessment processes); and
- disclosure principles (that seek to strengthen the use of market discipline as complement to the supervisory efforts).\(^{2419}\)

It issued the Framework on 26 June 2004 after interaction with banks, industry groups and supervisory authorities that are both members and non-members to the Committee.\(^{2420}\) It also published a consensus document governing the treatment of banks’ trading books under the new Framework in July 2005 after having worked with the International Organization of Securities Commissions (IOSCO) and integrated this with the June 2004 text by document released in June 2006.\(^{2421}\) The 1988 Capital Accord and the Revised Capital Adequacy Framework have served as benchmarks for national rule-making and bank performance in both the BCBS member and non-member countries.\(^{2422}\)

It has developed 'core supervisory principles and methodology' in its effort to assist the development of effective banking supervision.\(^{2423}\) It developed the first Core Principles for Effective Banking Supervision in 1997 in collaboration with the G-10 and non-G10 supervisory authorities and the first Core Principles Methodology in October 1999 to facilitate the implementation and assessment of the core principles.\(^{2424}\) It has issued the core principles to set minimum standards for sound supervisory practices in the following seven areas:

- preconditions for effective banking supervision (Principle 1);
- licensing and structure of banks (Principles 2 to 5);

\(^{2417}\) Ibid.
\(^{2418}\) Id., at p. 3.
\(^{2419}\) Ibid.
\(^{2420}\) Ibid.
\(^{2421}\) Ibid.
\(^{2422}\) Id., at pp. 3-4
\(^{2423}\) Id., at p. 5.
\(^{2424}\) BCBS, 1997; BCBS, 1999; and BCBS, 2007, at p. 5.
- prudential regulation and requirements (Principles 6 to 15);
- methods of ongoing supervision (Principles 16 to 20);
- information disclosure requirements (Principle 21);
- powers of supervisors (Principle 22); and
- cross-border banking (Principles 23 to 25).  

It has issued the Core Principles Methodology to provide guidance for assessment of the compliance of national systems to the core principles by different parties including the IMF, the World Bank, regional supervisory groups, regional development banks and consulting firms.  

It has revised both the Core Principles and the Methodology in October 2006 after consultation with representatives from its member countries, the non-member central banks and supervisory authorities, the IMF, the World Bank, the IAIS, the IOSCO, the FATF, the CPSS, the regional groups of supervisors, the international trade associations, the academia, and other parties. The revised 'Core Principles' currently defines 25 principles in the following seven areas:

- objectives, independence, powers, transparency and cooperation (principle 1);
- licensing and structure (principles 2 to 5);
- prudential regulation and requirements (principles 6 to 18);
- methods of ongoing banking supervision (principles 19 to 21);
- accounting and disclosure (principle 22);
- corrective and remedial powers of supervisors (principle 23); and
- consolidated and cross-border banking supervision (principles 24 and 25).  

It also elaborates on the following as preconditions for effective banking supervision and requires the banking supervisors to react against their shortcomings:

- sound and sustainable macroeconomic policy;
- well developed public infrastructure;
- effective market discipline; and
- appropriate level of systemic protection (or public safety net).  

The revised Methodology sets the techniques, criteria and considerations for assessment of compliance with the principles. It is, like the first methodology, meant for multiple use, including the making of:

- self-assessment by the banking supervisors themselves;
- the IMF and World Bank assessments of the quality of supervisory systems under the Financial Sector Assessment Program;

2425 BCBS, 1997.
2426 BCBS, 1999.
2427 BCBS, 2006; BCBS, 2006a; and BCBS, 2007, at p. 5.
2428 BCBS, 2006, at pp. 2-5.
2429 Id., at pp. 6-7.
2430 BCBS, 2006a, at pp. 2-42.
- review by private third parties such as consultants and researchers; and
- peer review such as by the regional banking supervisory groups.\textsuperscript{2431}

The Committee has also issued principles and standards on questions relating to the following:

- credit risk and securitization;
- liquidity and operational risks;
- risk management;
- transparency and disclosure; and
- money laundering and terrorist financing.\textsuperscript{2432}

It has published papers on:

- supervision and management of banks' interest and foreign exchange risks, international lending and country risks, and off-balance-sheet exposures;
- implementation of customer due diligence;
- supervision of large exposures;
- use of risk management guidelines (such as for derivatives);
- adoption of sound practices for loan accounting and disclosure;
- enhancement of corporate governance;
- valuation of loans; and
- supervision of electronic banking.\textsuperscript{2433}

It has also worked on a number of technical banking and accounting issues in cooperation with the International Accounting Standards Committee, the International Auditing Practices Committee of the International Federation of Accountants, and the International Chamber of Commerce.\textsuperscript{2434} It has also worked on issues common to the banking, insurance and securities markets and developed principles for supervising financial conglomerates, among others, in collaboration with the IAIS and IOSCO.\textsuperscript{2435}

It has also issued the following principles and consultative documents in the aftermath of the 2008 financial and economic crisis:

- ‘Principles for Sound Liquidity Risk Management and Supervision’ (September 2008);
- ‘Principles for Sound Stress Testing Practices and Supervision’ (May 2009);
- ‘Core Principles for Effective Deposit Insurance Systems’ (June 2009, issued in cooperation with the International Association of Deposit Insurers - IADI);
- Consultative Document on Microfinance Activities and the Core Principles for Effective Banking Supervision (February 2010);

\textsuperscript{2431} Id., at pp. 1-2.
\textsuperscript{2432} Note the BCBS ‘Publications by category’ from BCBS, 2010c.
\textsuperscript{2433} BCBS, 2007, at p. 4; BCBS, 2009a; and the BCBS ‘Publications by category’ from BCBS, 2010c.
\textsuperscript{2434} Ibid.
\textsuperscript{2435} BCBS, 2007; BCBS, 2009a; and the history, mandate and works of the joint forum of the BCBS, IAIS and IOSCO from BCBS, 2010d; BCBS, 2010c; and BCBS, 2010e.
The IAIS has assisted the development of sound insurance markets, the improvement of domestic and international supervision of insurance markets, and the maintenance of global financial stability as of its establishment in 1994.2437 It has done this by issuing principles, standards and guidance papers on various issues; providing training and support on issues related to insurance supervision; and organising meetings and seminars for insurance supervisors.2438 Its principles, standards and guidance papers have focused on the:

- organization and practice of insurance supervision;
- corporate governance, internal control, prudential regulation, and conduct-of-business of insurance companies; and
- supervision of re-insurance, cross-border insurance and insurance on the internet.2439

It has issued a 'Core Principles and Methodology' for effective insurance supervision and assessment in October 2003 and six sets of principles on the following areas:

- supervision of international insurers, insurance groups and cross-border operations (Insurance Concordat, December 1999);
- conduct of insurance business (December 1999);
- supervision of insurance activities on the Internet (October 2004);
- capital adequacy & solvency (January 2002);

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2436 BCBS, 2008; BCBS, 2009; BCBS-IADI, 2009; BCBS, 2010; BCBS, 2010a; and BCBS, 2010b. The crisis has also triggered discussion on the need for revising the 2004 (Basel II) Capital Framework. The 1988 Capital Accord (Basel I) was recognition of the international expansion of the financial services in the 1980s and 1990s. The 2004 Framework (Basel II) was endorsement of the expansion of the trading of credit and derivatives by banks. The post 2008 call is for adoption of a Basel III capital regime that, as response to the 2008 financial and economic crisis, will i) modify the Basel II risk-weighted asset framework and the requirements on operational risk; ii) introduce new capital buffers, leverage ratios, provisioning requirements, liquidity rules and a principle of equal regulatory treatment of the financial markets; and iii) create regime for the concentration (conglomeration) problem. McIlroy, 2008; Moosa, 2008; Adrian Blundell-Wignall, et al., 2009a; Christoph Ohler, 2009; Goodhart, 2009, at pp. 98-112; Moosa, 2010; Adrian Blundell-Wignall and Paul Atkinson, 2010; Chapman, 2010, at pp. 192-197; and the 2008 up to 2010 publications of the Basel Committee on Banking Supervision posted in the 'banking problems' and the 'Basel II framework' publication categories of the website cited as BCBS, 2010c.

2437 It was established as association of regulators and supervisors of insurance markets. It currently represents insurance regulators and supervisors of more than 180 jurisdictions in more than 130 countries around the world. It includes more than 100 observers representing industry associations, professional associations, insurers, re-insurers, consultants and international financial institutions. IAIS, 2007a.

2438 Ibid.

- minimum requirements for supervision of re-insurers (October 2002); and
- group-wide supervision (October 17 2008).2440

It has issued the standards on the following seventeen areas of particular issue:

- licensing (October 1998);
- on-site inspection (October 1998);
- derivatives (October 1998);
- asset management by insurance companies (December 1999);
- group coordination (October 2000);
- exchange of information (January 2002);
- evaluation of reinsurance cover of primary insurers & security of re-insurers (January 2002);
- supervision of re-insurers (October 2003);
- disclosures concerning technical performance and risks for non-life insurers and re-insurers (October 2004);
- fit and proper requirements and assessment for insurers (October 2005);
- disclosures concerning investment risks and performance for insurers and re-insurers (October 2005);
- disclosures concerning technical risks and performance for life insurers (October 2006);
- asset-liability management (October 2006);
- structure of regulatory capital requirements (October 17 2008);
- risk measurement for capital adequacy and solvency purposes (October 17 2008);
- Internal Models for regulatory capital purposes (October 17 2008); and
- structure of capital resources for solvency purposes (November 02 2009).2441

It has issued the guidance papers (as adjunct to the principles and standards) on the following:

- insurance regulation and supervision for emerging market economies (September 1997);
- model memorandum of understanding (to facilitate the exchange of information between financial supervisors) (September 1997);
- fit and proper principles and their application (October 2000);
- public disclosure by insurers (January 2002);
- anti-money laundering and combating the financing of terrorism (October 2004);
- solvency control levels (October 2003);
- use of actuaries as part of supervisory model (October 2003);
- stress testing by insurers (October 2003);
- investment risk management (October 2004);

2440  IAIS, 1999; IAIS, 1999a; IAIS, 2002; IAIS, 2002a; IAIS, 2003; IAIS, 2004; and IAIS, 2008.
2441  IAIS, 1998; IAIS, 1998a; IAIS, 1998b; IAIS, 1999b; IAIS, 2000; IAIS, 2002b; IAIS, 2002c; IAIS, 2003a; IAIS, 2004a; IAIS, 2005; IAIS, 2005a; IAIS, 2006; IAIS, 2006a; IAIS, 2008a; IAIS, 2008b; IAIS, 2008c; and IAIS, 2009a.
- combating the misuse of insurers for illicit purposes (October 2005);
- risk transfer, disclosure and analysis of finite reinsurance (October 2006);
- preventing, detecting and remedying fraud in insurance (October 2006);
- structure of regulatory capital requirements (October 17 2008);
- risk measurement for capital adequacy and solvency purposes (October 17 2008);
- internal models for regulatory capital purpose (October 17 2008);
- mutual recognition of reinsurance supervision (October 17 2008);
- regulation and supervision of captive insurers (October 17 2008);
- roles and responsibilities of group-wide supervisors (October 17 2008);
- use of supervisory colleges in group-wide supervision (October 26 2009);
- structure of capital resources for solvency purposes (November 02 2009); and
- treatment of non-regulated entities in group-wide supervision (May 11 2010).2442

The specific principles serve as fundamentals to effective insurance supervision and form the basis for the standards while the standards describe and elaborate on the best and most prudent practices on the particular issues.2443 The principles and standards set and describe the practices for a supervisory authority (and well managed insurer) so that the supervisors may use them in assessing the practices of the insurance companies in their jurisdictions.2444 The guidance papers are issued to assist the supervisors’ efforts to raise the effectiveness of supervision.2445 The 'Core Principles and Methodology' define the essential principles that need to be in place for an insurance supervisory system to be effective; the techniques and criteria for assessing practice against the principles; and the factors that need to be considered in implementing the principles.2446 They are, like the Basel Core Principles and Methodology on banking supervision, meant for use in the making of:
- self-assessment by the banking supervisors themselves;
- the IMF and World Bank assessments under the Financial Sector Assessment Program (FSAP);
- review by private third parties such as consulting firms; and
- peer review such as by regional groupings.2447

The BCBS and IAIS do not, however, possess formal supranational supervisory authority and their conclusions do not have legal force.2448 They only formulate and recommend broad supervisory principles, standards, guidelines and statements of best practices for implementation by the national regulatory authorities and encourage convergence towards common approaches and

2442 IAIS, 2007d.
2443 IAIS, 2007b; and IAIS, 2007c.
2444 Ibid.
2445 IAIS, 2007d.
2446 IAIS, 2003. They are expected to be implemented according to the domestic context, industry structure and stage of development of the financial system and the overall macroeconomic conditions of the country in question (IAIS, 2003, at Annex 2).
2447 Id., at pp. 5 & 50.
2448 BCBS, 2007, at p. 1; and IAIS, 2007a.
standards.\textsuperscript{2449} Hence, their standards and principles serve as non-binding, but universally applicable, minimum frameworks for improving domestic and international financial stability and providing bases for further development of effective supervisory and market practices.\textsuperscript{2450} Their core principles and the essential criteria for assessment of the principles also serve as base-line for assessing the existence of sound prudential regulation and supervision in a country.\textsuperscript{2451}

Countries also use the Basel and IAIS core principles, methodologies, standards and guidelines in practice as minimum benchmarks for assessing the qualities of their supervisory systems and practices and identifying the works to be done to achieve a level of sound supervisory practice.\textsuperscript{2452} The IMF and World Bank also use them for their Financial Sector Assessment Program (FSAP) to assess the financial supervision systems and practices across their member countries.\textsuperscript{2453}

ii. The Case of Ethiopia

The NBE is not member to the BCBS and IAIS.\textsuperscript{2454} The country has not also joined the IMF-World Bank Financial Sector Assessment Program.\textsuperscript{2455} The banking and insurance supervision regimes of the country also comply little with the BCBS and IAIS core principles on effective banking and insurance supervision.\textsuperscript{2456} The weaknesses are mostly in the risk orientation, corporate governance, enforcement and infrastructure of the regulations although a lot has also to be improved in respect of the other aspects of the principles.\textsuperscript{2457} The weaknesses of the microfinance supervision regime are not also different from the weaknesses of the banking and insurance supervision regimes.\textsuperscript{2458}

Hence, the banking, insurance and microfinance supervision departments of the NBE need to:
- make their supervisory approaches more risk oriented than they are now;
- enhance the corporate governance structures and working environments of the banks; insurers and microfinance institutions;
- increase the effectiveness of their regulatory enforcement; and

\textsuperscript{2449} Ibid.
\textsuperscript{2450} BCBS, 2006, at p. 2; BCBS, 2006a, at pp. 1-2; and IAIS, 2003, at pp. 4-6.
\textsuperscript{2451} Ibid.
\textsuperscript{2452} BCBS, 2006, at pp. 1-2; BCBS, 2006a, at p. 1; BCBS, 2009a; IAIS, 2003, at pp. 5 & 50; and IAIS, 2009, at pp. 9-12.
\textsuperscript{2453} IMF, 2005; IMF, 2007-10; and IMF, 2007-10a.
\textsuperscript{2454} BCBS, 2007; BCBS, 2009a; and IAIS, 2007e.
\textsuperscript{2455} Note the IMF-FSSA Country Reports from IMF, 2007-10; and the discussion under the ‘use of international cooperation’ subtitle above.
\textsuperscript{2456} Tables 3(Chap. 5) & 4(Chap. 5).
\textsuperscript{2457} Note Tables 3(Chap. 5) & 4(Chap. 5); NBE, 2010; and the discussions under the preceding subtitles of this chapter and the various subtitles of the banking, insurance and microfinance chapter above.
\textsuperscript{2458} Note the discussions under the various subtitles of the banking, insurance and microfinance chapter above and compare the country’s microfinance supervision regime with the BCBS ‘Consultative Document on Microfinance Activities and the Core Principles for Effective Banking Supervision’ (BCBS, 2010).
- align the objectives and instruments of their regulations with the international principles.

5.5.3 The Use of the IOSCO, IOPS, ICN and Other Principles

i. The International Experience

The IOSCO has issued Objectives and Principles of Securities Regulation in September 1998 and indicated three major objectives of securities regulation:
- protecting investors;
- assuring market fairness, efficiency and transparency; and
- reducing systemic risk.2459

It has issued thirty principles of achieving these objectives in the following areas:
- responsibilities of securities regulators (Principles 1 to 5);
- self-regulation of securities markets (Principles 6 and 7);
- enforcement of securities regulation (Principles 8 to 10);
- domestic and international cooperation in securities regulation (Principles 11 to 13);
- responsibilities of securities issuers (Principles 14 to 16);
- rules and standards for collective investment (Principles 17 to 20);
- rules and standards for secondary markets (Principles 25 to 29);
- requirements for market intermediaries (Principles 21 to 24); and
- systems for clearance and settlement of securities transactions (Principle 30).2460

The principles focus on the fairness, efficient functioning and stability of the securities markets themselves excluding the broader issues of macroeconomic and financial policy that are associated with systemic instability.2461

The IOSCO has also issued an IOSCO Principles Assessment Methodology in 2003 to enable the objective assessment of the level of implementation of its Objectives and Principles in the jurisdictions of its member countries and the development of action plans to correct deficiencies.2462 It has issued a Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and Exchange of Information among its members on the matters of securities regulation.2463 It has also enhanced its activities following the 2008 financial and economic crisis to contribute to the resolution of the issues that affect the

2459  IOSCO, 2003; and IOSCO Resolution No. 41 of September 1998.
2460  Ibid.
2461  Yılmaz Akyüz, 2002, at pp. 50-51. The development of more comprehensive and representative set of principles that cover the latter and aspects of policy towards capital account liberalization and commercial presence of foreign investors in securities markets is also seen to be important for actions of the IOSCO and others.
2462  IOSCO, 2003a.
2463  IOSCO, 2010; IOSCO, 2010a; and IOSCO, 2010b.
securities markets and revised its strategic direction in order to increase its roles to:
- enhance the international regulatory framework for securities markets through international standards;
- identify and address the systemic risks to fair and efficient functioning of markets; and
- advance the implementation of its Objectives and Principles of Securities Regulation.\textsuperscript{2464}

The IOPS has issued Principles of Private Pension Supervision for effective regulation of occupational and personal pension plans.\textsuperscript{2465} It has addressed three major objectives of pension supervision by the principles:
- promotion of pension (and financial) stability, security and good governance,
- protection of the interests of pension fund members and beneficiaries, and
- encouragement of pension provision. \textsuperscript{2466}

It has issued the principles in the following areas:
- objectives, powers, resources and independence of the pension regulator (Principles 1 to 4);
- risk orientation, proportionality and consistency of the pension regulation (Principles 5 & 6);
- consultation of the regulated pensions (Principle 7);
- cooperation between the pension and other regulators (Principle 7);
- confidentiality of information (Principle 8); and
- transparency, governance and accountability of the pension regulators (Principles 9 & 10).\textsuperscript{2467}

It has also developed the following guidelines and methodology during and in the aftermath of the 2008 financial and economic crisis:
- OECD-IOPS Guidelines on Licensing of Pension Entities (March 2008);
- IOPS Guidelines for Supervisory Assessment of Pension Funds (December 2008);
- IOPS Guidelines for Supervisory Intervention, Enforcement and Sanctions (November 2009); and
- Methodology for Review of Supervisory Systems Using the IOPS Principles of Private Pension Supervision.\textsuperscript{2468}

\textsuperscript{2464} IOSCO, 2008; and IOSCO, 2009. It has set its future operational priorities to be i) building the regulatory capacities of its members, ii) enhancing the ongoing development of international regulatory standards to deal with emerging risks and the inadequate functioning of markets, iii) supporting the development of the international enforcement and surveillance framework, iv) improving its liaison with other international financial standard setters, v) enhancing its representation in global decision making forums, vi) strengthening its communications with stakeholders including investors and bodies that represent industries, and vii) promoting international cooperation in the fields of securities market and other financial market regulations (IOSCO, 2009).

\textsuperscript{2465} IOPS, 2006.

\textsuperscript{2466} Ibid.

\textsuperscript{2467} Ibid.

\textsuperscript{2468} IOPS, 2008; IOPS, 2008a; IOPS, 2009; IOPS, 2010; and IOPS, 2010c.
It has also been working to develop an OECD-IOPS Good Practices framework for Pension Funds’ Alternative Investments and Risk-Management Systems starting from 2008.\footnote{IOPS, 2008b; IOPS, 2008d; IOPS, 2009a; IOPS, 2010a; IOPS, 2008c; IOPS, 2010b; and IOPS, 2010c.} Its work program for the period from 2008 up to 2011 has also included revision of the 2006 Principles, updating of the Methodology for their Assessment, and development of guidelines for the risk-based regulation and supervision of pensions.\footnote{It has, accordingly, launched i) a project on Risk-based Supervision (RBS) Toolkit (in 2008) whose goal is to provide guidance for supervisory authorities on how to introduce and develop a risk-based system of supervision for pension funds by 2010 and thereafter; ii) a project on supervising DC pensions (in 2009) whose aim is to draw on previous work and reports of the IOPS and provide an overview of the issues which are particularly important when supervising defined contribution pension systems by 2010 and thereafter; and iii) a project on Regulation and Supervision of Alternative Investments Risk Management (in 2010) whose aim is to examine how the good practices operate and are applied in its member countries. It has also planned i) a project on Information for DC Scheme Members (to be launched in 2011) to examine how supervisory authorities themselves can act as sources of comparative and objective information for pension fund members; ii) a project on Financial Education (to be launched in 2011) whose aim is to make the IOPS participate in the OECD work in the areas of financial education where pension supervisors play an important role; and iii) a project on issues surrounding the coverage of pension fund systems in the context of developing countries (to be presented in 2011). IOPS, 2008b; IOPS, 2008d; IOPS, 2009a; IOPS, 2010a; and IOPS, 2010b.} It has also issued document on IOPS Consultation Process and made several publications on technical matters relating to the supervision of private pensions during and after the crisis.\footnote{IOPS, 2006a; and the list of press releases, guidelines, working papers and other publications from IOPS, 2010c and IOPS, 2010d.}

The ICN has issued the following principles, recommendations and manuals:\footnote{ICN, 2010d.}
- Guiding Principles for Merger Notification & Review Procedure (2002);
- Recommended Practices for Merger Notification & Review Procedures (2002-2005);
- Best Practices: An Increasing Role for Competition in the Regulation of Banks (2005);
- The Role for Competition in the Telecommunications Services Sector: Suggested Best Practices (2006);
- Recommended Practices for Dominance/Substantial Market Power Analysis (2008);
- Recommended Practices on State Created Monopolies (2008);
- Recommended Practices for Merger Analysis (2008-2010);
- Anti-Cartel Enforcement Manual - Chapters 1 to 6 (2008-2010); and
- Competition Agency Practice Manual - Chapter 1: Strategic Planning and Prioritization (SPP) (2010)

It has also issued several study reports, discussion papers and reference materials for general, substantive and procedural issues including workbooks and handbooks in the fields of cartel, merger, unilateral conduct (market dominance), competition advocacy, agency effectiveness (competition policy implementation), capacity building, and competition enforcement in regulated sectors (including...
banking and telecommunications) until September 2010.\footnote{ICN, 2010d; and ICN, 2010e.} It currently works through an advocacy working group, an agency effectiveness working group, a cartel working group, a merger working group, a unilateral conduct working group, and an advocacy and implementation network.\footnote{ICN, 2010d; and ICN, 2010f.}

The IMF, World Bank, OECD, International Accounting Standards Committee (IASC) (renamed later as International Accounting Standards Board), International Federation of Accountants (IFAC), BIS Committee on Payment Settlement Systems (CPSS), and G-7 Financial Action Task Force on Money Laundering (FATF) have also issued principles and standards many of which pre-dated the financial crises of the 1990s and are incorporated recently into a global programme of coordination covering both the financial sector per se and the aspects of macroeconomic and disclosure policy.\footnote{Yilmaz Akyüz, 2002, at pp. 28ff.}

The IMF has issued a Code of Good Practices on Transparency in Monetary and Financial Policies that requires:

- clear indication of the roles, responsibilities and objectives of the central banks and financial market regulators other than the central banks;
- creation of open process for the formulation and reporting of decisions on monetary and financial policy;
- publicity of information concerning monetary and financial policies;
- definition of accountability of the central banks and financial market regulators other than the central banks; and
- assurance of integrity of the central banks, other financial market regulators and their staff.\footnote{Id., at p. 33.}

It has issued a Code of Good Practices on Fiscal Transparency to require:

- transparency of the fiscal roles and responsibilities of governments through clear legal and administrative framework for fiscal management;
- commitment of governments to public disclosure of comprehensive and reliable information on fiscal activities;
- openness of the process of budget preparation, execution and reporting; and
- public and independent scrutiny of fiscal information.\footnote{Id., at pp. 33-34.}

It has issued:

- a Special Data Dissemination Standard (SDDS - 1996) to prescribe the data to be made public concerning the fiscal, financial, non-financial, and external sectors of the economy by countries that intend to use the international capital markets and to lay down the minimum benchmark to be met on the periodicity and timeliness of the information;
- a General Data Dissemination System (GDDS - 1997) to guide countries in the provision of comprehensive, timely, accessible and reliable economic, financial, and socio-demographic data to the public; and
- a Data Quality Reference Site (DQRS) and Data Quality Assessment Framework (DQAF) to require the improvement of the quality of data to be disclosed by all member countries of the IMF.2478

It has also been revising the codes of good practices and data dissemination standards to contribute to improvement of the financial market operations and attainment of global financial stability in the post 2008 period.2479

The World Bank has issued Principles and Guidelines on Effective Insolvency Systems that are intended to complement the legal and commercial systems of the transition and emerging market countries by international best practices; help the countries to tackle issues of cross-border dimension; and facilitate access of the countries to the international financial markets.2480

The OECD has issued Principles of Corporate Governance that focus on the definition of business objectives and the relationship among shareholders, board of directors, management, employees, creditors, customers and stakeholders of businesses and the community in the setting up of business objectives and monitoring of performances.2481 It has addressed general principles on the following matters:
- protection of the rights of shareholders and the efficiency, transparency and fairness (to shareholders) of the markets for corporate control;
- equitable treatment of shareholders including minority and foreign shareholders through disclosure of material information and prohibition of abusive self-dealing and insider trading;
- recognition and protection of legally established rights of stakeholders and encouragement of cooperation between corporations and stakeholders in creating wealth, jobs and financially sound enterprises;
- transparency, timeliness and accuracy of disclosure and annual audits of company performance, ownership and governance by independent auditors; and
- strategic guidance of companies by management, monitoring of management by board, and accountability of the latter to the companies and their shareholders.2482

Its intention has not been to harmonize the national differences on matters of corporate governance but to indicate general guidelines on the matters to take care of.2483 It has also issued Methodology for Assessing Implementation of the

2480  Yılmaz Akyüz, 2002, at pp. 49-50; World Bank, 2001; World Bank, 2009c; World Bank, 2010d; and World Bank, 2010e.
2481  Yılmaz Akyüz, 2002, at pp. 47-48; OECD, 2004b; and OECD, 2004c.
2482  Ibid.
2483  Ibid.
OECD Principles on Corporate Governance in 2006 and undertaken works under action plan launched in 2008 to address the weaknesses in corporate governance that were discovered during the 2008 financial crisis.\textsuperscript{2484}

The International Accounting Standards Committee (IASC) (renamed later as International Accounting Standards Board) and the International Federation of Accountants (IFAC) have issued International Accounting and Auditing Standards (respectively) with a view to harmonizing accounting and auditing practices and meeting the needs of cross-border businesses.\textsuperscript{2485} The IASC has focused on the development of standards acceptable both to the United States and its other member countries.\textsuperscript{2486} It was concerned with the reconciliation between the standards it wanted to develop for accounting and financial reporting worldwide and the specific Generally Accepted Accounting Principles of the United States.\textsuperscript{2487} The IFAC has focused on the development of standards for internal auditing (i.e. the assessment of the extent and effectiveness of a firm’s management, accounting and efficient use of assets) and external auditing (i.e. the auditing of financial statements and supporting evidence of the firm to determine their conformity with applicable standards) although much of its international initiative has been on the harmonization of the external auditing processes because countries often consider the internal auditing processes to be matters for domestic laws and the firms.\textsuperscript{2488}

The BIS Committee on Payment Settlement Systems (CPSS) has developed CPSS Core Principles for Systemically Important Payments Systems (2001) and CPSS-IOSCO Recommendations for Securities Settlement Systems (2001) and Central Counterparties (2004) (in cooperation with the IOSCO) to address: the transfer and settlement of funds between financial institutions on their own behalf and on behalf of their customers, the payment and settlement systems for securities and foreign exchanges, and the clearing arrangements for exchange-traded derivatives.\textsuperscript{2489} Its initiative has been to develop internationally agreed framework for the design, operation and oversight of the payment and settlement systems and reduce the credit, liquidity, legal, operational and systemic risks associated with the rising volumes of international payments. It has, accordingly, made its principles focus on the following:

- the legal basis for the payments system (first core principle);
- the rules and procedures to enable participants to have clear understanding of the impact of the payments system on financial risks and the management of credit and liquidity risks (second and third principles);

\textsuperscript{2484} OECD, 2006b; OECD, 2009; OECD, 2009a; OECD, 2009b; OECD, 2009c; OECD, 2009d; OECD, 2010; and OECD, 2010a.
\textsuperscript{2485} Yılmaz Akyüz, 2002, at pp. 44-47; IASB, 2010; IASB, 2010a; IASB, 2010b; IFAC, 2010; IFAC, 2010a; IFAC, 2010b; IFAC, 2010c; and IFAC, 2010d.
\textsuperscript{2486} Ibid.
\textsuperscript{2487} Ibid.
\textsuperscript{2488} Ibid.
- the need for settlement of assets with little or no credit risk and for prompt settlement (fourth and sixth principles);
- the robustness of multilateral netting systems (fifth principle);
- the minimization of operational risks through high degree of security and operational reliability (seventh principle); and
- the efficiency and practicality of the payments system (including the trade-off between safety and efficiency), the need for objective and publicly disclosed criteria for participation, the need for fair and open access, and the need for effective, accountable and transparent governance arrangements for the system (eighth, ninth and tenth principles).2490

It has also issued Assessment Methodology for ‘Recommendations for Securities Settlement Systems’ (November 2002), Central Bank Oversight of Payment and Settlement Systems (May 2005), General Guidance for National Payment System Development (January 2006), and General Principles for International Remittance Services (January 2007).2491

The G-7 Financial Action Task Force on Money Laundering (FATF) has also issued Forty plus Nine Recommendations that focus on the use of money for drug dealing, terrorism and corruption.2492 It has addressed the following:

- incrimination of the use of proceeds of serious crimes;
- keeping of records;
- identification of customers;
- reporting of suspicious transactions to competent national authorities;
- development of programmes that can counter money laundering;
- development of internal control systems;
- training of employees;
- exercise of adequate supervision;
- sharing of expertise by supervisors with judicial and law enforcement authorities; and
- strengthening of international cooperation through information exchange, legal assistance, and bilateral and multilateral agreements.2493

It has also issued Methodology for Assessing Compliance with the Recommendations and adopted Key Principles for Mutual Evaluation and Assessment (which were prepared in collaboration with FATF Style Regional Bodies (FSRBs), the IMF and the World Bank).2494 It has also issued guidance documents and best practice papers that are meant to assist the enhancement of mutual evaluations and combating of money laundering and terrorist financing.2495

2490  Ibid.
2493  Ibid.
2494  FATF, 2009; FATF, 2009c; and FATF, 2010.
2495  FATF, 2009a; FATF, 2010b; FATF, 2010c; and FATF, 2010d.
The principles and standards of the aforementioned institutions have, accordingly, served as international catalogue of national rules for the financial sector and competition by covering both the financial sector per se and the aspects of macroeconomic, disclosure and competition policy. The IOSCO Objectives, Principles and Methodologies for Securities Regulation, the IOPS Principles and Methodologies for Private Pension Supervision, and the ICN guiding principles, recommendations and manuals for aspects of competition policy are recognized as non-binding minimum international regulatory benchmarks for the securities and pension markets and regulators and the competition authorities. The principles and standards of the other institutions have also been used as benchmarks to promote international financial strength, integrity and stability and as preconditions for mutual assistance between countries (including the lending facilities of the IMF).2496

The institutions have also been working to help their member countries in the recovery from the 2008 financial and economic crisis and to assist the G-20 industrialized and emerging market countries and others to reshape their systems of regulation, governance and competition.2498

ii. The Case of Ethiopia

Ethiopia does not apply the aforementioned principles, standards and recommendations because of the absence or underdevelopment of the markets and institutions for their application. It only tries to follow some of the IMF codes of good practices and FATF recommendations on money laundering.

It needs to enhance and align its system with the international approach in order to encourage trade, investment and stability in the financial and non-financial markets. It needs to consider the IMF, World Bank, OECD, IASC, IFAC, CPSS and FATF principles, standards and recommendations as it develops the monetary and financial policy, corporate governance, accounting, auditing, payments, settlement and insolvency systems for the existing and future markets. It also needs to consider the IOSCO and IOPS principles and standards as it creates the securities market and private pensions and the ICN guiding principles, recommendations and manuals as it develops its competition regime.

2496  Note the ‘introduction’ to the IOSCO principles in the Objectives and Principles document (IOSCO, 2003); the remark about use of the IOSCO principles in the brief history of IOSCO (IOSCO, 2007); the introductory statements to the IOPS principles (IOPS, 2006, at pp. 2-3); Ewing, 2006, at pp. 296-313 & 653-673; and the ‘introduction’ to the ICN Work Products Catalogue (ICN, 2010d).

2497  Yılmaz Akyüz, 2002, at p. 28.

2498  IMF, 2008; IMF, 2009; IMF, 2010c; IMF, 2010d; IMF, 2010f; IMF, 2010g; IMF, 2010i; IFAC, 2010e; IFAC, 2010f; IFAC, 2010g; IFAC, 2010h; IFAC, 2010i; IFAC, 2010j; IFAC, 2010k; IASB, 2010c; IASB, 2010d; IASB, 2010e; IASB, 2010f; IASB, 2010d; IFAC, 2010e; FATF, 2008; FATF, 2009a; FATF, 2009b; FATF, 2009c; FATF, 2009d; and ICN, 2010g.
Chapter 6
Summary and Conclusion

The questions for this research were the following:

1. What do the current structure, operation, policy and regulation of the financial market in Ethiopia and the reforms in the past look like?

2. a. Is there need for further reform of the structure, policy and regulation of the financial market in the country and what should the reform be, if any?

   b. What are the lessons that can be drawn from the international experience and recommendations in this respect?

The chapters have discussed the history, current state, structure, policy and regulation of the financial market of the country and shown that there are needs for further reform in light of both the international experience and recommendations and the domestic situation. The second chapter has discussed these and indicated the measures that need to be taken in respect of the existing banking, insurance and microfinance markets and institutions in the country. The third and fourth chapters have made the discussions in respect of the future securities market and private pensions and indicated the needs and measures that need to be taken to create these markets and institutions in the country and design their structures and regulations. The fifth chapter has discussed the regulatory enforcement mechanism in respect of both the existing banking, insurance and microfinance markets and institutions and the future securities market and private pensions and indicated the measures for further action. The following sections gather the major findings and the measures that need to be taken by the country. The last section indicates the general lessons that can be drawn from the chapters and which need to be taken into account by the country in pursuing the financial market regulatory reform.

6.1 The Development, Policy and Regulation of the Banking, Insurance and Microfinance Markets

   i. The International Experience

The developed market countries have used their banking and insurance regulations to:

- enforce monetary policy objectives;
- promote domestic and international competition;
- enhance efficiency;
- maintain financial stability and security;
- protect consumers;
- encourage information flow and prudential decision making; and
- achieve general economic and social policy objectives.
Their use of the regulations to achieve the last set of objectives has, however, declined through time. They enforce this set of objectives through financial regulation only when the objectives are determined outside the realm of monetary and financial policy and can be coordinated with it.

The transition and emerging market countries of Asia, Latin America and Africa have also tried to target their banking and insurance policies and regulations at the aforementioned types of monetary and financial policy objectives although with difference on prioritization. The reasons of their regulations have come from the very nature of the financial markets and businesses, the development objective, and the dynamics of their transitions to free market. Hence, they have used their regulations to:

- develop their financial markets;
- expand and disseminate the financial services;
- achieve monetary policy goals;
- promote competition;
- enhance efficiency;
- encourage information flow;
- prevent and contain systemic failure;
- create the conditions for economic development; and
- enforce goals that are contributory to their transitions to free market.

They have also used their microfinance regulations to encourage expansion of service, enhance financial inclusion of the poor, promote commercial business approach, mitigate the risk of failure of the microfinance institutions, protect consumers, and create the conditions for economic development.

The BCBS and IAIS have also encouraged them to prioritise and enforce objectives similar to the ones promoted in the developed market countries according to the preconditions for effective enforcement that can be available in their domestic situations.

Both the developed and the transition and emerging market countries also subject their banks and insurers to varieties of market entry, ongoing, and exit requirements. They subject them to prudential, competition, market conduct and systemic stability related requirements despite variation on technicalities and the specific rules and instruments they endorse. The prudential regulations include licensing, capital adequacy, reserving, accounting, valuation, liquidity, solvency, functional and ownership separation, risk diversification, risk transferring, information exchanging and fund guarantee requirements. The competition regulations include prohibitions of anti-competitive mergers, agreements and practices, and abuse of dominant positions that are often done through the general competition laws and sometimes through financial market specific rules. The market conduct regulations include regulations of insider dealing and market manipulation, regulation of contract terms, regulation of product distribution, regulations of governance and auditing, and requirements of information
disclosure. The systemic stability regulations include interest, foreign exchange and premium regulations, payments and settlement systems oversights, emergency liquidity support rules, lender of last resort measures, and failure resolution mechanisms.

They also subject the microfinance institutions to regulations that are more or less fashioned like the regulations of the banking and insurance markets with difference on technicalities and strength of regulation due to the special characteristics of the microfinance operation and institutions.

The BCBS and IAIS also recommend that the banking, insurance and microfinance market regulations in the countries need to use the aforementioned varieties of instruments based on their local contexts.

The 2008 financial and economic crisis has also indicated that the major goals of regulations of the modern financial markets need to be prevention and containment of systemic failure (i.e. assurance of financial stability) and protection of consumers and investors. It has also shown that the aforementioned varieties of instruments of regulation need to be strengthened in order to increase their risk prevention and containment ability, enhance the protection of consumers and investors, and balance between the achievement of these and the other goals of financial regulation. The recent recommendation regarding microfinance regulation is also towards further balancing between the objectives of expanding availability and increasing the benefits of microfinance, on the one hand, and promoting the commercial business approach (i.e. competition), enhancing sustainability, preventing failure, and protecting consumers, on the other.

ii. The Case of Ethiopia

Ethiopia has conducted financial sector reform following the change in government and economic policy in 1991. It has re-established the National Bank of Ethiopia (NBE) as central bank and financial market regulator and opened the banking and insurance sectors for domestic private investment through monetary, banking and insurance supervision laws that are enacted in 1994 and amended in 2008. It has made inter-bank money and foreign exchange markets operational as of 1998. It has also introduced a regulatory regime for microfinance, required the formal establishment of the microfinance institutions within the financial system, and required the NBE to promote development of the traditional savings institutions of the society along with the microfinance institutions and to encourage participation of the banks and other financial institutions in the provision of microfinance by a law enacted in July 1996 and amended in 2009. It currently subjects the banks, insurers and microfinance institutions to supervision laws that are similarly fashioned and complementary to one another. It also allows the transformation of the microfinance institutions into formal banks and the direct engagement of the formal banks and insurers in the provision of microfinance. It has licensed twelve private banks, eleven private insurers, thirty
microfinance institutions and more than one thousand insurance auxiliaries under this regime. There are also government owned three banks and one insurer.

The country has not, however, achieved desirable level of banking, insurance and microfinance services. All the services are at their beginning stage of development and a substantial size of the Ethiopian population still lives without them. The banks, insurers and microfinance institutions are also weak in their fixed capitals, service types, governance and competitiveness. They have not diversified, modernized, automated and networked their services. The banks, other than the Development Bank of Ethiopia, also concentrate on short and medium term trade finance while the insurers concentrate on short term general insurance making the total long-term insurance less than six percent of the total insurance business in the country. The microfinance institutions also concentrate on short-term deposit taking and lending with very small section of the society despite their extensive authorization to stimulate the development of micro and small scale operations. All these, added to the absence of formal securities market and private pensions in the country, have also made the country lack dependable domestic long-term finance. The payments system of the country has also remained largely to be based on the cash mode of payment. The country needs to improve on all these.

The banking, insurance and microfinance supervision laws of the country do not also define and prioritize their specific objectives. The NBE does not also link its directives and regulatory measures to specific objectives consistently in practice. The country does not also have comprehensive financial regulatory policy which defines and prioritizes between the specific objectives of the banking, insurance and microfinance regulations. The objectives of regulation are, therefore, only inferred in practice from the powers and objectives of the NBE as central bank, the monetary policy framework of the NBE, the country's general economic policy, and the pieces of principles included in the competition and other laws of the country.

The country needs to define and prioritize the specific objectives of its regulations in the supervision laws clearly and the NBE needs to link its directives and regulatory measures to the specific objectives consistently so that there will be no overlooking and abuse of regulation during enforcement. This will also enable the financial institutions, consumers and stakeholders to clearly know about the reasons and objectives of financial regulation, appreciate the importance and legality of the instruments used, and contribute to the enforcement of regulation.

Being a transition economy heading to free market, the country needs to take into account the experience of both the developed and the transition and emerging market countries and make the objectives like the ones in the latter. It needs to link the regulations to the following objectives:

- developing the markets;
- disseminating, diversifying and modernizing the financial services;
- promoting competition, efficiency and innovativeness in the financial system;
- maintaining financial market health, stability and security;
- preventing systemic failure;
- protecting consumers, the public and the economy from abuse and financial failure;
- increasing information disclosure and prudential decision making;
- meeting monetary policy objectives; and
- achieving economic and social policy objectives contributory to its development and transition to free market.

It, however, also needs to learn from the international experience and enforce the last set of objectives through the instruments of financial market regulation by formulating them outside the realm of monetary and financial policy and to the extent that they can be coordinated with the other objectives of financial regulation. It also needs to enhance the competition regime for the financial markets and enforce the other objectives of regulation without endangering the competition objective.

The monetary policy of the country also needs to continue to focus on the objectives of controlling inflation, influencing the cost and availability of financial services, maintaining price and exchange rate stability, and achieving balance of payments equilibrium since these are ongoing problems in the country.

The current banking, insurance and microfinance regulatory instruments of the country also have elements from the international experience. They have also evolved through time. A number of them are, however, incomplete, restrictive or inappropriate to the domestic situation and needs of the country. Several of them do not also comply with the latest recommendations of the international organizations (including the BCBS and IAIS) in terms of both content and enforcement. They fail much in their risk orientation, use of corporate governance techniques, and enforcement infrastructure. They need to be improved. The following need to be done among others:

1. The licensing regulation needs to be improved to:

   - promote geographic diversification of branching;
   - decentralize the formation of banks, insurers and microfinance institutions to the regions with regulation by the NBE from the centre and one-stop-shop service of the NBE at the regional state level;
   - remove the licensing and prior permission requirements for branching and change of place of business and focus on regulation of the overall health of the financial institutions;
   - fix maximum number of branching or branching ratio in the law to restrain the further expansion of the largest banks, insurers and microfinance institutions in order to i) make them concentrate more on efficiency and competitiveness than on size and ii) correct the existing market dominance.
- make clear distinction between the initial capital requirement for market entry and the ongoing capital adequacy requirement for operation in the banking and microfinance supervision laws and enforcement;
- fix the initial capital requirements on the banks and microfinance institutions in the law (as in the case of the insurers) and leave the ongoing capital requirements on both institutions to decision of the regulator (i.e. the NBE);
- make the ownership spreading requirements on the banks, insurers and microfinance institutions less restrictive on investment choice and ability of the financial institutions to raise capital;
- make the NBE exercise pre-business commencement examinations on applicants for license in order to make sure that the disclosures and proposals made by the applicants are appropriate and practical;
- remove the licensing rules that require the insurance auxiliaries to start afresh annually;
- list the grounds for license refusal and make the obtaining of license legal right expressly;
- regulate the procedure of licensing by requiring the NBE to adhere to principles of administrative law including the conduct of hearing, the reasoning of decisions, the making of decisions transparent, and the proper handling of complaints during licensing;
- increase the speed of licensing;
- require the NBE to keep register of licensees in which it has to record the particulars about the licensees that are useful for the conduct of prudential and other supervision; and
- remove the annual license (and registration) renewal requirement from the financial regulatory regime and allow the NBE to focus on the use of the license revocation and other instruments for its prudential regulation.

2. The nationality requirement needs to be reconsidered so that the country will:

- give attention to the roles foreign financial institutions can play in the enhancement of competition and the development of the quality and types of the financial services;
- build its regulatory and market capacities;
- open the financial market for foreign investment gradually and in a way that will not necessitate capital account liberalization until it becomes able to absorb international risks; hence, following the steps of:
  - first, develop fiscal and monetary control (i.e. limit government spending, have broad based tax system, reduce tax rates, control inflation, and stabilize prices);
  - second, enhance banking, insurance and microfinance regulation and develop domestic capital market (with institutional investors and the necessary regulation);
  - third, liberalize the banking and capital markets without opening up of the international capital account; and
  - fourth, open the international capital account and allow free convertibility of foreign exchange;
- make the liberalization to the financial institutions of the countries with which it has the largest trading relation (until it becomes member to the WTO and liberalizes fully under the GATS); and
- design a regulatory system that can discourage the potential problem of hit and run and encourage the contribution of the foreign financial institutions to the development of its financial system.

3. The capital adequacy, reserving, provisioning, liquidity and solvency regulations need to be improved to:

- relate all the ongoing capital adequacy requirements to risk types in accordance with recommendations of the BCBS;
- require the insurers to maintain a risk weighted capital adequacy level in the fashion this is done for the banks and the microfinance institutions and in accordance with the international recommendations of the IAIS, and thereby ensure the continued growth of the risk absorption capacity, competitiveness and stability of the insurers;
- include liquidity rules in the solvency requirement on insurers in accordance with recommendation of the IAIS; and
- make the NBE take into account the compliance situations of the banks, insurers and microfinance institutions in setting the reserving and provisioning requirements.

4. The accounting, balance sheet and valuation rules need to be improved to:

- expressly prohibit the creation of hidden reserves through undervaluation of assets and overvaluation of liabilities; and
- standardize and enact the accounting and valuation rules which the banks, insurers and microfinance institutions have to follow instead of making general reference to internationally accepted accounting principles.

5. The functional and ownership separation regulation needs to continue to separate the banking, insurance, microfinance, securities, pension and other markets in the short run and the case for financial market conglomeration needs to be considered in the long run in order to make the financial market consistent with the international experience as the banking, insurance, microfinance, securities and pension markets grow.

6. The risk diversification regulation needs to be improved to:

- make the rules on investments of the financial institutions less restrictive; and
- set regional, sectoral and deposit diversification requirements that will enhance both the diversification of risks and the dissemination of services of the financial institutions.

7. The risk transferring regulation needs to be improved to:
- require the commercial banks and microfinance institutions to insure themselves against the insurable risks associated with their operations;
- regulate the terms and conditions of collaterals of the banks and microfinance institutions in order to prevent abuse and enhance prudence;
- require the insurers to re-insure a defined threshold of their liabilities; and
- promote and regulate the undertaking of domestic re-insurance.

8. The information acquisition and exchange regulations need to be strengthened to:

- require and empower the credit recording and information exchange centre at the NBE to collect, record, analyse and disseminate information on the general financial circumstances of borrowers on top of the indebtedness reports from the banks;
- make the insurers and microfinance institutions members to the credit recording and information exchange centre at the NBE;
- subject the businesses in the non-financial sector to accounting and auditing requirements as part of the effort to formalize and regulate them and the financial services; and
- require the banks and microfinance institutions to review the financial statements of all the businesses before they extend credit facilities of any size to them.

9. The competition regulation needs to be improved to:

- fully enable the making of market based interest and foreign exchange rates by the banks and microfinance institutions;
- take measures against the conscious parallelism of the banks and insurers and the market division tendencies of the microfinance institutions;
- correct the market dominance already created in the financial market and strictly enforce the general competition law rule that prohibits the creation of market dominance;
- enhance competition by imposing geographic diversification requirements;
- make the banking, insurance and microfinance markets more contestable;
- permit foreign competition;
- enforce codes of conduct and incentives for competitively desirable behaviours; and
- adopt specific rules for the financial market that will remove the shortcomings in the general competition law regime (such as the non-definition of market share, non-regulation of anti-competitive merger, non-determination of choice between the per se and the rule-of-reason approaches, and non-proactiveness of enforcement) until the general competition law and enforcement are improved to remove these shortcomings.

10. The insider dealing and market manipulation regulations need to be improved to:
11. The contract terms regulation needs to be strengthened to cover not only the long-term insurance contracts but also the general insurance, banking and microfinance contracts.

12. The product distribution regulation needs to be improved to:

- remove the rule that restricts the introduction of new services by the banks by a requirement of prior authorization by the NBE;
- include product diversification, automation and networking and regional and sectoral service distribution requirements; and
- make the product distribution regulation applicable on all the financial institutions and auxiliaries.

13. The governance and auditing regulations (and the licensing requirements related to them) need to be improved to:

- set the minimum standards and principles for governance and auditing in line with the international recommendations of the OECD, IFAC and others;
- avoid the use of restrictive governance rules (such as the requirements on office terms of members of the boards of the banks);
- make the managerial qualification and experience requirements more stringent than they are now and applicable on all the managers other than the chief executives of the financial institutions;
- make the limits on outside managerial engagement applicable on all members of the boards of directors, executives and managers of all the financial institutions and ensure undivided attention of the leadership of all the financial institutions;
- set maximum age limit on the board members, executives and managers of the financial institutions and enhance governance quality;
- institutionalize capacity building program and a national testing or certification centre which will examine, and check continuity of, the competence of existing and future leaders of the financial institutions;
- make the supervision departments of the NBE consider the legality, need and feasibility of the instruments they use whenever they implement requirements on the shareholding and leadership of the financial institutions;
- allow participation of employees and stakeholders in the governance of the financial institutions in line with the international recommendations;
- strengthen the financial criminal tracing mechanism and bar all criminals and unreliable persons from managing and owning the financial institutions; and
- make the NBE follow a proactive as opposed to reactive approach of regulation in order to make the banks, insurers and microfinance institutions improve on their limitations.

14. The information disclosure regulation needs to be improved to:

- require the banks, insurers and microfinance institutions to make sufficient, reliable and timely reporting and disclosure of all information not restricted by law;
- require the NBE and the financial institutions to automate the off-site reporting processes;
- require the NBE to publish its supervisory reports to the public except for information restricted by law;
- define the information that should be restricted from public disclosure for the reason of privacy or public interest; and
- encourage the creation of information processing and rating agencies that will assist the public disclosure of information.

15. The interest, foreign exchange and premium regulations need to be improved to:

- encourage the NBE to continue to shift its roles from direct to indirect controls of interest, foreign exchange and premium;
- make the interest, foreign exchange and premium determinations market based;
- urge the NBE and the banks, insurers and microfinance institutions to build their interest, foreign exchange and premium risk absorption capacities;
- make the premium regulations applicable on the premiums of both the long-term and the general insurers; and
- formalize and regulate the hitherto existing informal foreign currency exchange market which is often known as black or parallel market.

16. The payments and settlement systems regulation needs to be improved to:

- make the NBE and its supervision departments act proactively and work with the banks and other financial institutions in order to develop the national payments and settlement systems;
- require the banks, insurers and microfinance institutions to plan and work on modernization of the country’s payments and settlement systems (including the spread of commercial instruments and development of electronic payment and settlement systems) more actively than they do now; and
- upgrade the Cheque Clearing Office in Addis Ababa to a National Clearing Office to facilitate the use and clearance of all commercial instruments across the financial institutions as long as these instruments continue to be important.
17. The fund guarantee, liquidity support, lender of last resort and state ownership regulations need to be improved to:

- subject the banks, insurers and microfinance institutions to fund guarantee and deposit insurance requirements;
- enable (and require) the NBE to exercise the role of lender of last resort during crisis situation;
- establish (and regulate the scope, nature and adverse effects of) the deposit insurance, fund guarantee and lender of last resort schemes according to international experience;
- enhance the use of the current inter-bank lending and emergency liquidity support schemes for temporary illiquidity problems;
- build the problem resolution capacity of the NBE; and
- remove government ownership of the banks, insurers and microfinance institutions in the long run and gradually and focus on the use of indirect instruments of regulation.

6.2 The Development, Policy and Regulation of Securities Market

i. The International Experience

The Netherlands, Germany, France, UK, Ireland, Portugal and New York have created the Amsterdam, Frankfurt, Paris, London, Irish, Lisbon and New York exchanges in the 17th and 18th centuries. A number of the other developed and some Latin American, Asian and African countries have created and developed their securities markets in the 19th and 20th centuries. A number of the transition and emerging market countries of Eastern Europe, Asia, Latin America and Africa have also introduced securities markets after they have adopted their free market policies in the late 1980s and thereafter.

Most of the developed market countries have also enhanced the activities of their securities markets through reforms implemented as of the late 1980s. They have lowered transactions costs, introduced negotiated (as opposed to fixed) commission systems, replaced the open outcry and call methods of trading by electronic systems, opened up the membership and listing of the exchanges to domestic and foreign investors, encouraged the participation of institutional savers and market makers, and internationalised the markets by the reforms. They have also shifted from an exchange-as-public market to an exchange-as-firm approach and incorporated the exchanges as competing demutualized companies (i.e. as companies with profit goal and separate ownership, membership and governance). They have also introduced electronic clearing and settlement systems and required the dematerialization and central custodian of securities as technology grew. They have also organized the exchanges to serve as market places for both government and private and small and big company securities. Germany and Japan (which used to rely much on bank based finance system) have also increased the roles of their securities markets in the same period.
The transition and emerging market countries have also followed the trend by incorporating and demutualizing their exchanges, dematerializing securities, centralizing the clearing, settlement and custodian services, and automating the exchanges and the clearing and settlement services. Some of them have also required incorporation of the securities market intermediaries as dealer or broker companies with capital and employment of the individual market actors by these companies. They have also encouraged the exchanges to have market wings for government and private and small and big company securities.

Both the developed and the transition and emerging market countries have also made the protection of investors, reduction of systemic risk, and development of efficient, fair and transparent market as the major objectives of their securities market regulations.

They have also implemented securities market laws that mix merit and disclosure regulation and require the exchanges, intermediaries, collective investment schemes, and securities custodian, clearing and settlement institutions to meet initial and ongoing financial and non-financial requirements to meet these objectives. They have required them to meet requirements on company form, initial capital, qualification, professional integrity, capital adequacy, reserving, fund guarantee (or insurance), accounting, auditing, reporting, public disclosure and other corporate governance matters. They have also introduced rules that restrain trading outside the recognized exchanges; require all the securities intermediaries to be members of the recognized exchanges; sanction insider trading, price manipulation and fraud; allow follow up, suspension and cancellation of trading; enable the ongoing supervision of collective investment schemes and listed companies; and require provision of the securities custodian, clearing and settlement services by centrally incorporated companies. The countries that used to rely much on self-regulation (such as UK, the Netherlands and New Zealand) have also revised their approaches and increased governmental regulation.

ii. The Case of Ethiopia

Ethiopia had a securities market in the 1960s and 70s. The market was closed because of change of policy in 1974. The country does not have a securities market currently. It has created only an agricultural commodity market which is owned fully by the government and operated outside the financial market.

The creation of securities market is justified in the country by the following functions:

- providing long term finance which the banks are not doing;
- meeting the growing need for domestic resource to finance investment;
- providing market place and thereby enhancing the transferability, liquidity and proprietary value of existing securities;
- curing the excess reserve and liquidity positions of the banks;
- enabling the NBE to enforce monetary and financial policy objectives through indirect and open market instruments;
- encouraging the creation of institutional savers and investors, diversifying the financial market and increasing competition;
- motivating companies to go public and widen their ownership bases;
- enhancing information flow and corporate management, accounting and control;
- assisting individuals, households, business firms and the financial institutions to diversify their income and investment portfolios; and
- facilitating future privatisation.

It, however, also faces challenges including the following:

- short track record of the share companies in the country to attract buyers for their securities;
- reluctance of a number of the companies in the country to go public and freely float their securities;
- lack of separation of ownership and management of most of the share companies in the country;
- lack of financial and investment experience and conservative attitude towards money of most members of the business community;
- little experience of managers of companies in corporate portfolio management and underdevelopment of the accounting and auditing professions;
- more attention of the investment regime and practice of the country to direct investment than portfolio investment through company securities;
- non-issuance of shares other than ordinary shares by the share companies, including the banking, insurance and microfinance companies that could take the lead in the issuance and trading of securities;
- low level of the income and saving of most individuals and households to establish dependable demand for securities;
- fragility of the macro and political situation of the country to attract investment and enable sufficient supply and demand for securities;
- lack of capacity of the financial regulator (the NBE) to provide strong supervisory framework for a securities market; and
- failure of the tax regime of the country to encourage creation of securities market.

These challenges do not, however, justify retreat from creation of the securities market since many of them are results of either the hitherto absence of the securities market or government policy itself. Most of the other countries of the world have also developed their securities markets in the presence of these types of challenges (and sometimes market crashes) and the country needs to learn that the creation of securities market can happen in the presence of challenges. They, however, indicate the magnitude of the problem the country has to face in creating and developing the securities market.
Ethiopia also needs to learn from the history of its own share market of the 1960s. This market originated in the absence of dependable number of companies, experience on public offering, and a law that would regulate it. It was, however, successful until it was closed because of policy change in 1974.

The country need not also be in fear of the perceived problems of regulatory incapacity, pressure for rapid liberalization, and economic crisis due to rapid in and outflow of foreign capital. First, the international experience also shows that regulatory capacity is something that grows along with development of a market. Secondly, the international community has become cognizant of the need for gradual liberalization of financial markets and control of the potential problems of huge capital inflow, economic overheating, sudden repatriation and crisis through prudential regulatory requirements and capital transfer controls until full liberalization is viable. Thirdly, international portfolio investment is made these days through internationalised depository certificates that have to be managed by international custodian companies and Africa’s experience shows that only few international investors are interested in portfolio equity investment in the continent despite the development of securities markets with elimination of foreign exchange controls, removal of restrictions on foreign participation, and institutionalisation of securities custodian services. Ethiopia’s investment data also shows that domestic investment is much more significant than foreign investment and it is unlikely that the situation will change suddenly as the country creates the securities market. The 2008 financial and economic crisis has also slowed down the flow of international capital to developing countries and it is unlikely that huge capital inflow and sudden repatriation (hence, crisis) will occur in the near future.

The country need not also make the creation of corporate bond market condition precedent to creation of the fully fledged securities market. This is not valid given that there are no corporate bonds issued and circulated in the country while there are lots of equity shares and outstanding government bonds that can be circulated in a fully fledged securities market.

Hence, the country needs to create the market and do the following in designing its structure and regulation.

1. It needs to design the market and its regulation based on the exchange-as-firm approach in line with the international trend; make the market structure consistent with the structure of the existing banking, insurance and microfinance markets; and align the regulation with the international approach in order to benefit from regulatory experience and attract foreign investment in the long run. It needs to retain the exchange-as-public-market approach and the market failure grounds of regulation in order to allow creation of limited number of exchanges and regulate the potential damages that may follow the profit motive. It needs to allow the creation of only one national exchange in the capital city in order to concentrate on market and regulatory capacity building as it starts; and allow the creation of competing regional exchanges in order to increase decentralization and achieve balanced economic development as regulatory
capacity and the securities and investment businesses grow. It also needs to
organize the securities market with wings for primary and secondary trading, for
government and private securities, and for debt and equity securities since these
will need separate treatment as the international experience has shown.

2. It needs to make the company law more complete than it is now in order to set
the rules for the varieties of securities of the share companies and enhance the
corporate financing, governance, accounting and auditing regimes. It also needs
to eliminate the rules in its current regime that discourage the issuance and
trading of securities such as the restrictions on portfolio investments of the
banks, insurers and microfinance institutions and the rule of the NBE that
requires the trading of securities through subsidiary companies of the banks.

3. It needs to enact a securities market law that will do the following among others
by way of learning from the international experience:

i. Make competition promotion, market development, investor and consumer
   protection, systemic risk reduction, and enhancement of market efficiency,
   integrity and transparency the main objectives of regulation;
   ii. Mix between merit and disclosure regulation;
   iii. Introduce and regulate the modalities of public issuance and trading of
       securities without ruling out the possibility of issuing securities through the
       methods other than the public issuance method;
   iv. Require the securities market and its intermediaries to meet licensing
       requirements, including incorporation, initial capital, professional competence,
       behavioural integrity, ownership spreading, and governance quality;
   v. Require:

       - the securities market to be incorporated as demutualized share company
         whose shareholding will be open to any one who may or may not be
         securities market actor;
       - the intermediaries to be incorporated as private or public limited
         companies with share capital, to be members of the recognized
         (incorporated) securities market, and to have staff that need to meet
         competence and integrity related requirements; and
       - the individual securities market actors to be employees of the
         incorporated intermediaries;
   vi. Control the danger of monopoly of the securities market by the financial and
       other companies and ensure its separate existence from the other financial
       markets such as by imposing ownership ceilings and/or diversification
       requirements;
   vii. Require the securities market and the intermediaries to meet ongoing
       financial and non-financial requirements, including capital adequacy, reserving,
       accounting, auditing, reporting, public disclosure, and contribution to industry
       guarantee fund;
viii. Require separate registration of the public and private issues by the securities market regulator and others;

ix. Require registration and listing of the companies and securities that use the public issuance method by the regulator and the securities market; and restrain trading of the listed securities outside the recognized market;

x. Sanction insider trading, price manipulation and fraud; allow the follow up, suspension and cancellation of trading; and enable ongoing supervision of the listed companies and securities, the securities market, and the intermediaries by the securities market regulator;

xi. Require compulsory accounting and auditing of all the companies that use the securities market;

xii. Require disclosure of all material information to the regulator, the securities market and the public through publication of prospectus (during initial issuance) and reporting (during subsequent trading) by all issuers of securities that will use the public issuance method; and

xiii. Regulate the trading of securities issued outside the public issuance method on the securities market.

Automation of the securities market is, however, a matter of access to technology. The country needs to work on it. The experience with some of the newly created securities markets suggests that the country can start with automated trading if it cooperates with the advanced exchanges. The country also needs to upgrade the Addis Ababa Check Clearing Office at the NBE to make it provide centralized securities custodian, clearing and settlement services as it starts the securities market; and require the dematerialization and central custodian of securities and automation of the clearing and settlement services by a national company to be incorporated outside the securities market as the securities businesses and the communication infrastructure of the country grow. It also needs to consider the experience with the agricultural commodity market in these regards.

The adoption of self-regulation in the securities market of the country is also a matter of prudence, capacity and ethics of the future market actors as this has also been the case in the other countries. The country needs to start with a principle of government regulation and consider the case for self-regulation as these conditions mature.

It also needs to make its tax regime non-discriminatory and contributory to the development of the securities market. It needs to reconsider the current exorbitant capital gains tax on sale of shares and treat the equity market in the way the debt market and the existing financial services (and transactions) are treated. It also needs to treat the interest incomes from debt securities of the private companies in the way it treats the incomes from government bonds and treasury bills.
6.3 The Development, Policy and Regulation of Private Pensions

i. The International Experience

Pensions have originated as occupational benefits when the Bank of France sponsored them as early as 1808. They have begun to grow as state sponsored occupational schemes when Chancellor Bismarck promoted them in Germany in 1889. They have grown into contributory and non-contributory schemes for the employed until the First World War and into social security systems for the citizenry in the 1930s and thereafter through the help of international conventions sponsored by the ILO. Most of the developed countries have expanded the provision of social security through state sponsored occupational and welfare schemes in the period after the 1930s. The pension systems of these countries have ranged generally between the occupational pension (welfare capitalism) of the US and the state social security (welfare state) of the Scandinavian countries. Hence, most of them had unfunded, defined benefit, pay-as-you-go social security or occupational pensions until the mid 1990s. A number of the developing countries have also attempted at introducing pensions following adoption of the different international conventions although they have lacked adequate social security systems.

Most of the developed market countries have, however, privatised their pensions after the mid-1990s and introduced multi-pillar pensions due to demographic changes and efficiency concerns. They have seen the possibility of providing pensions through the market and adopted a public-private welfare nexus where they run a mixture of first pillar basic social security, second pillar private occupational pensions, and third pillar private life insurance annuities. Most of them have developed the second pillar pensions as defined contribution based individual accounts as opposed to the traditional pay-as-you-go system while some like Italy, Sweden and the Netherlands have followed a middle road between the pay-as-you-go and the individual account approaches by introducing a nominally defined contribution (NDC) pay-as-you-go system (Italy and Sweden) and a stand-alone-capital funded-collective pension system (the Netherlands). A number of them have also introduced reserve funds for the remaining pay-as-you go first pillar pensions. Most of them have also used the pensions to carry out functions within and outside the financial system. They have used them to provide for retirement income security, enhance saving, promote investment, facilitate corporate financing, and assist the development of the capital and labour markets. They have enhanced these roles of the pensions through the reforms of the post-mid 1990.

A number of the transition and emerging market countries have also encouraged the development of private pensions and life annuities after the mid-1990s because of the pressure of demographic change, diminishment of the extended family systems to care for the retired, and growth of domestic demand and international pressure for pension coverage. They have also encouraged the private pensions to play roles similar to the roles the pensions in the developed
market countries have played (including the provision of retirement income and contribution to the development of their securities markets) by the reforms since their old public pensions did not offer sustainable retirement income security and achieve the other goals. Some like Chile have also stood as examples of successful pension privatization.

The developed and the transition and emerging market countries have also organized the private pensions as legally separate pools of assets without legal personality or as incorporated entities with legal personality and subjected them to regulations that are justified by reasons within and outside finance and the risks involved in pensions (including investment, agency, and systemic risks). The regulations have aimed at the objectives of:

- enhancing pension coverage, adequacy and sustainability;
- assuring pension prudence;
- promoting and maintaining competition;
- protecting the pension consumers from the dangers of information asymmetry, pension failure and abuse;
- protecting the state and society from the burden and side effects of pension (such as the burden of fund guarantee on the state and the moral hazard problem of protection on society); and
- achieving the social policy objectives of poverty reduction and redistributive equity.

They have addressed the assets, liabilities and organizations of the pensions and regulated their funding, portfolio composition, surplus ownership, insurance, vesting and portability through licensing, initial and ongoing capital, reserve, asset segregation, governance, investment, asset custodian, external audit, actuarial valuation, reporting, public disclosure and fund guarantee requirements. They have also used prior approval, off-site surveillance, on-site inspection, punitive and remedial measures, and proactive and reactive actions of the regulators for enforcement.

The regulations and approaches are not, however, standardized yet. The pensions in many of the countries also suffer from weaknesses in regulation, governance, transparency and investment. Hence, the countries are advised to further improve on the regulatory and governance frameworks for their pensions, smooth the fluctuations on pension asset returns, and reduce the exposure of the pensions to market and non-market risks.

The recent concern in most of the high income countries is also on the further development of sustainable and equity market based pension systems with appropriate regulatory and fiscal environment. The concern in the middle income countries is on expansion of system coverage, reduction of risk and uncertainty, sustenance of finance and investment, enhancement of efficiency and equity, enhancement of saving, diversification of the financial markets, enhancement of the market oriented reforms, enhancement of regulatory capacity, and reduction
of poverty. The poor countries are also advised to consider the development of formal private pensions as one among the many reforms that should be implemented to reduce deprivation and vulnerability.

The enhancement of private funded pensions is also recommended in the aftermath of the 2008 financial and economic crisis in order to have balanced and secure pension systems. The World Bank also recommends adoption of a five pillar pension system by adding ‘zero pillar’ (which should be non-contributory and universal) and fifth pillar (which should include not direct monetary benefits but the provision of non-monetary benefits such as housing and health care for the retired poor) to the three pillars (i.e. the first pillar PAYGO system, the second pillar funded scheme, and the third pillar insurance related voluntary saving scheme).

ii. The Case of Ethiopia

Ethiopia does not have comprehensive social security. It has only occupational pension for government employees, some provident fund scheme for private sector employees, and some social assistance for the old, the destitute and the needy. The occupational pension for the government employees does not serve as universal basic system since it provides only subsistent income to very small population of the country. It does not also serve the functions of facilitating saving, employment, investment, corporate finance and capital market development since its benefit payments are small and its resources are hardly invested. The private sector provident funds and social assistances do not also serve these functions since they are informal and voluntary payments. The occupational benefits and severance pays in the private sector are also piecemeal and negligible. The provision (and consumption) of life insurance and pension annuity is also very negligible. The country needs to expand its pension coverage in order to curb these problems and reduce retirement poverty.

The country also needs to focus on two functions which are important for the development of the financial market: i) forcing saving and ii) mobilizing the saving for investment. The Ethiopian households and individuals are reported to have very limited saving due to both their expenditure habits and the low levels of their incomes. The direct mobilization of saved resources from the households and non-households to investment is also weak due to absence of formal institutional savers and the market mechanism for direct resource mobilization.

Hence, the development of private pensions is necessary along with the improvement of the governmental pension system, the encouragement of private insurance, the creation of securities market, and the taking of other developmental measures. The country needs to enable this by:

i) making the pension reform part of its poverty reduction strategy and the saving and investment promotion and financial market development policy;
ii) compelling the employers and employees in the formal private sector to participate in the private pension system as this has been done for the governmental pension; and
iii) enacting a retirement law for the private sector.

It also needs to consider the issues of organising the private pensions:

- as entities separate or unified with the existing governmental pension system and the financial institutions;
- as consolidated or set of independent funds;
- as incorporated or unincorporated institutions;
- as funded or unfunded institutions;
- as defined benefit or defined contribution schemes; and
- as competing or public good institutions.

It needs to separate them from the existing governmental pension system since the latter has not been efficient in the tasks of collecting contribution, generating income and paying benefits. It needs to separate them from the insurance and microfinance institutions since i) the insurers and microfinance institutions are not engaging in pension business despite their authorization to do so and ii) the merger of the pension, insurance and microfinance sectors will have the disadvantage of eliminating alternative channels and competition for saving, resource mobilization and investment. It needs to require institutionalisation of the pensions as incorporated share companies with their own governance since there is no management experience for unincorporated pension funds in the country and the share company form is the commonest and preferred structure for organization of the financial institutions in the country with the advantages of combining capital, reserve, limited liability, professional management, shareholder participation (in governance), accounting, external auditing (and control), and information disclosure. It needs to start with the demutualized profit making share company form and consider the mutual company form of incorporation when it becomes necessary since its current company law regime knows the demutualized profit making company form and there is no public movement for creation of non-profit making mutual companies. It needs to follow the funded defined contribution approach and adopt mechanisms (including minimum pay, industry fund guarantee and similar regulatory requirements) through which it will protect the individual pension members from the risk shifting effect of the approach since this is the international trend. It needs to organize the private pensions as competing institutions with the necessary regulation since the international experience (and the country’s own experience with the current government pension system) also show that the protected monopoly approach leads to distortions and weaknesses instead of benefits.

It also needs to adopt a pension regulation that will do the following by way of learning from the international experience and addressing the domestic situation:
1 Make the immediate objectives of regulation to be i) expanding coverage, ii) reducing retirement poverty, iii) enhancing saving, and iv) making the pension contributory to the development of the financial market (including the future securities market) since the majority of the population are living without retirement pension and there is lack of long term saving to finance investment;

2. Make the long run objectives of regulation to be i) enhancing adequacy, sustainability, competitiveness and prudence of the pensions; ii) assuring protection of consumers; and iii) eliminating the information asymmetry and moral hazard problems that may follow the pension provision since the international experience also shows that these are also important when private pensions grow; and

3. Make the content of regulation to be related to the assets, liabilities and governance matters of the pensions in order to regulate the funding, portfolio composition, surplus ownership, insurance, vesting, and portability of the pensions by licensing, ongoing monitoring, and ex-post supervision rules that will:

- include qualification, legal form, initial and ongoing capital, reserve, minimum guarantee, insurance, asset segregation, investment, asset custodian, actuarial valuation, external audit, risk prevention, reporting, public disclosure, and related governance requirements; and

- be enforced through proactive and reactive measures of the regulator by way of learning from the international experience.

It also needs to restructure the governmental pension agency and subject it to the future pension regulation in order to enhance competition and performance.

It also needs to encourage creation of the private pensions through the tax regime by treating the private pension contributions, benefit payments and investment returns in the same way as the existing pension and provident fund contributions, benefits and returns are treated.

It also needs to promote the pension annuity businesses of the insurance companies through interventions in both the supply and the demand sides (including compulsion, tax incentives and raising awareness).

The country also needs to take the following two additional measures which will contribute to the aforementioned:

1. It needs to develop and transform the informal saving institutions of society (such as the Edir and Equb) and the saving and credit cooperatives in the labour market into formal mutual companies by enacting a law that will require this and giving them tax incentives. This will contribute to the functions of enhancing and mobilizing private savings since these institutions are closest to
households and individuals. It will also mean revolutionizing a sector which has lived for long as informal and unknown.

2. It needs to enact minimum wage law. This will cure the cases of low payment by the private sector employers and the government and thereby enhance the saving potentials of individuals for deployment to the private pensions.

These two measures need not, however, be considered as pre-conditions for creation of the private pensions. They are peripheral measures that can contribute to the enhancement and mobilization of saving and, hence, the creation and development of the private pensions.

6.4 The Design of Means of Enforcement of Regulation

i. The International Experience

Many of the countries have integrated their financial market regulators in and outside their central banks in the post 1990s period. The majority of them have made the integration outside their central banks. The countries that have not integrated their regulators have also looked for ways of coordinating between the separate regulators. They have followed either a lead regulator model where one of the traditional institutional regulators takes the responsibility to lead the group of regulators and becomes a de facto conglomerate regulator or a functional model where separate institutions regulate the competition, market conduct, asymmetric information and systemic stability functions across the banking, insurance, securities, pension and other markets. The Netherlands has employed a mixture of the integrated and functional models by integrating the prudential regulation of all the financial institutions in the Central Bank and putting the regulation of the quality of businesses (market conduct) of the financial institutions in the Authority for Financial Markets. The US has included elements of the functional regulator model in its most disintegrated regulatory structure.

The international experience has also shown that all the three (i.e. the integration, lead regulator and functional) models have advantages and disadvantages and that the integrated regulator model is favoured in the majority of the countries for the reason that it is easier to handle inter-departmental conflicts within a regulator than conflicts between separate regulators. It has also shown that:

- the choice of appropriate regulatory structure is a function of the financial market development and specific context in a country despite the general trend towards the integrated regulator model;
- the choice should not be between full integration and total fragmentation but from a spectrum of forms of integration;
- the transition from the fragmented to the integrated regulatory structure requires time and careful planning;
- the choice of particular regulatory structure should be based on the best way of achieving the objectives of regulation; and
- the new regulatory structure should be backed by change of legal framework, creation of strong governance structures, careful management of the working habits, skills and insecurities of staffs of the regulators, and enhancement of the communication mechanisms with stakeholders.

The integration outside the central bank is also favoured for the reason that the central bank will be overwhelmed by the regulatory functions if the integration is made in it. The ability of central banks to act as super regulators to prevent crisis in the financial market is also questioned in the aftermath of the 2008 financial and economic crisis.

Many of the countries also enforce their competition policies and laws through independent competition authorities and the courts. The issue in competition enforcement has been on whether to follow an administrative or a judicial approach. The continental countries have moved from a system where the administrative approach used to be dominant to a system that recognizes the importance of the judicial approach. The Anglo-American countries have relied more on the judicial than the administrative approach. The recent move in both groups of countries is towards increasing the use of the judicial enforcement machinery without diminishing the use of independent competition authorities.

Many of the countries also entrust their financial market regulators and competition authorities with differing degrees of rule making, monitoring, investigating, sanctioning and dispute settling powers. They authorize them to grant, deny and revoke licenses; make market entry, operational and exit rules; require reports for off-site surveillance; conduct on-site inspection and examinations; issue enforcement orders; takeover the management of the financial institutions; and enforce liquidation orders and other sanctions.

They have also increased the independence of their regulators and competition authorities from political and bureaucratic interference and made them more proactive than reactive as crises, anti-competitiveness and illegal actions recurred and market based systems grew. They have made them increasingly responsible for building their own capacities and the capacities of the financial markets and actors, advocating competition, fighting illicit financing, and contributing to general formulation of economic policy on top of their traditional functions.

They also subject the financial institutions and actors to different degrees of civil (tort), administrative and criminal sanctions. The use of the tort and criminal sanctions for regulatory and competition law enforcement has, however, also faced limitations and the countries have been looking for ways of solving this. The solutions have varied from country to country. The trend has been towards imposing strict liability with ways of balancing between the interests of ensuring compliance and legal protection. The advice has also been towards enhancing the criminal tracing mechanism, reducing the reluctance of enforcement organs, and increasing international cooperation.
The regulators and competition authorities in many of the countries are also subject to varieties of principles of administrative law and degrees of control through the legislature, the chief executive in government, the judiciary, some peripheral institutions and the public. Several of the countries also expressly provide for the judicial review of administrative (and regulatory) actions in their constitutions while others do it without express provisions in their constitutions. Most of the countries, however, also apply the rules of judicial review to the financial market regulators and competition authorities with modifications inspired by interest not to encroach upon the strictness and quasi-political character of financial market regulation and competition promotion. Most of the countries do not also allow individual consumer action to challenge the decisions of the regulators and competition authorities under reason that the latter are acting for public interest. They recognize and enforce the interest of consumers as group.

Many of the countries have also made the regulators and competition authorities work with national, regional and international institutions that have stake in the financial market and competition matters including the Bank for International Settlements (BIS), the IMF, the World Bank, the WTO, the UNCTAD, the OECD, the World Savings Banks Institute (WSBI), the International Accounting Standards Committee (IASC), the International Federation of Accountants (IFAC), the BIS Committee on Payment Settlement Systems (CPSS), the G-7 Financial Action Task Force on Money Laundering (FATF), the G-7 Financial Stability Forum (FSF), the International Corporate Governance Network (ICGN), the Global Corporate Governance Forum (GCGF), the Basle Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), the International Organization of Securities Commissions (IOSCO), the International Organization of Pension Supervisors (IOPS), the International Association of Deposit Insurers (IADI), the International Competition Network (ICN); the G-20, and several other regional institutions, organizations and committees. They have also used the recommendations and standards of these organisations as minimum benchmarks for their regulatory and competition law instruments and enforcements. They have also seen the importance of increasing regional and international cooperation in the fight against illicit financing, containing financial market crisis, and building regulatory and competition law enforcement capacity before and after the 2008 financial and economic crisis.

ii. The Case of Ethiopia

Ethiopia makes the NBE regulator of all the financial institutions, markets and auxiliaries and enforces the existing regulations through banking, insurance and microfinance supervision departments organized in it. It confers it with the powers of licensing, inspecting, examining and sanctioning the financial institutions, markets and auxiliaries. It also confers it with some discretion and autonomy from the government. It also authorizes it to finance its regulatory functions by its own funds except in cases where it has been fixed by law that the
funding has to be borne by the regulated institutions. It enforces the competition policy and law through a Secretariat established in the Ministry of Trade and Industry, a Federal Trade Practice Commission established under the Ministry, and regional legislative councils and trade bureaus. It also enforces the enforcement of civil, administrative and criminal sanctions against regulatory violations. It also generally subjects the actions of the NBE and the competition enforcement organs to judicial review under the unique system and allows the financial institutions against which the NBE passes decision of receivership or takeover of management, reconstruction, winding up or dissolution to petition to the Federal High Court. It also recognizes substantive and procedural principles of good administration in its constitution and other laws. It has also established Ombudsman Office that checks the operation of governmental authorities as peripheral administrative control mechanism. It also works with the IMF and the World Bank. The banking and insurance supervision departments of the NBE also sometimes attempt at assessing their regulatory and supervisory practices against the core principles of the Basle Committee on Banking Supervision (BCBS) and the International Association of Insurance Supervisors (IAIS).

The country does not, however, confer the NBE with regulatory dispute-adjudication powers. It does not also prescribe the measures the NBE may have to take during crisis situation that may transcend an individual financial institution to affect the financial sector or the economy as a whole. It also makes the regulatory independence of the NBE fragile by authorizing the Prime Minister and the Council of Ministers to administer it directly. It also puts the competition enforcement organs under direct control of the Ministry of Trade and Industry and makes the Trade Practice Commission not anything more than dispute investigation office. It does not also clearly define the work relationship between the NBE as the financial market regulator and the competition enforcement organs. The NBE does not also fully enforce the tools of off-site surveillance and on-site examination. It does not also enforce its penalties and corrective measures strictly although it, in practice, issues directives that subject the financial institutions to financial and non-financial penalties. The country also lacks administrative procedure law and the actions of the NBE and the competition enforcement organs are not judicially reviewed against their legal and public interest grounds in practice. It does not also define the exact roles of the Ombudsman Office vis-à-vis the NBE and the competition enforcement organs. It does not also oblige the NBE and the competition enforcement organs to conduct public consultation during the making of their decisions, rules and actions. The principles of good administration recognized by the country are also scattered in the different laws making enforcement difficult. The supervision departments of the NBE and the competition enforcement organs also suffer from staff and fund constraint. Both are not also members to regional and the international organizations working in the area of financial market regulation. The regulatory enforcement regime of the country also complies little with the core principles of the BCBS and IAIS. The country needs to improve on all these in order to enhance both regulatory and competition enforcement and legal protection. The following need to be done among others:
1. The existing regulatory enforcement machinery needs to be enhanced by:

- entrusting the NBE with dispute adjudicating powers regarding regulatory matters between the regulated institutions without, of course, ruling out the possibility of making recourse to the judiciary;
- indicating the measures the NBE should take during crisis situation;
- refining the grounds for receivership of the banks and microfinance institutions;
- requiring and empowering the NBE to:
  - design and enforce its regulation proactively,
  - promote diversification of the financial market,
  - raise regulatory awareness,
  - build its own capacity and the capacities of the financial institutions,
  - advocate the importance of competition in the financial market (in cooperation with the competition organs), and
  - avoid reluctance in the enforcement of regulation;
- defining and strengthening the powers, functions and roles of the NBE in the fight against illicit financing;
- increasing the leadership, operational and financial autonomy of the NBE from the executive in government (as the financial market regulator);
- enhancing the funding, staff capacity, and financial and operational independence of the supervision departments of the NBE; and
- defining the grounds and mechanisms for accountability of the NBE (as the financial market regulator) to the legislature and the chief executive of government; and
- enabling and requiring the NBE to work with national and international networks of cooperation including the BCBS and IAIS in order to enhance the tasks of building capacity, refining regulation, preventing systemic crisis, and controlling illicit financing.

2. The competition enforcement machinery needs to be enhanced by:

- re-establishing the general competition law enforcement organs as independent competition authorities with the complete powers of rule making, inspecting, examining, intervening, adjudicating and sanctioning; and defining their accountabilities to the legislature and the chief executive of government;
- enhancing the proactive and competition advocacy roles of these organs; and authorizing their participation in the formulation of economic policies by the government in order to check the consistency between the competition and other policies;
- making the financial market regulator responsible for enforcement of the competition objective in the financial market (along with the general competition law enforcement organs);
- defining the work relationship and coordination between the financial market regulator and the general competition law enforcement organs; and
- enabling and requiring the competition law enforcement organs to work with national and international networks of cooperation including the ICN in order to enhance the tasks of building capacity, refining the competition law, increasing advocacy, and strengthening the competition law enforcement.

3. The regulatory sanction and legal protection mechanisms need to be improved by:

- giving attention to the problems criminal and tort sanctions face in connection with regulatory and competition law enforcement and balancing between the need for ensuring compliance and legal protection;
- limiting the use of criminal law and its guilt requirement to the most serious contraventions;
- making the imprisonment of corporate managers, fine and forced closure of business the main forms of criminal sanction for the most serious contraventions (since corporate probation is not feasible in the current legal situation of the country);
- making all the regulatory and competition law contraventions civil fault that will result in strict civil (tort) liability without need to prove mental situation;
- subjecting the majority of the regulatory and competition law contraventions to strict administrative (regulatory) sanction;
- requiring the financial market regulator and the competition enforcement organs to exercise their powers according to defined substantive and procedural principles of good administration;
- requiring the financial market regulator and competition enforcement organs to include public consultation in their regulatory and competition enforcement processes;
- subjecting the rules, decisions and actions of the financial market regulator and the competition enforcement organs to judicial review expressly; and

- indicating the applicants and the judicial organs that will have the power to make review;
- including the regulated financial institutions and actors, a defined number of the consumers as a group, and other interested parties including the government in the list of applicants for judicial review;
- collecting and standardizing the substantive and procedural grounds of review;
- defining the procedure and remedies of review;
- demarcating the line of jurisdiction between the reviewer and the financial market regulator and competition enforcement organs; and
- adopting a comprehensive administrative procedure law for the judicial review;

- allowing individual suits for extra-contractual compensation against the regulators and competition enforcement organs when the regulators and
competition enforcement organs violate the bounds of their legal authorizations and cause damage on individuals;
- defining the roles of the Ombudsman Office against the financial market regulator and the competition enforcement organs; and
- building the mechanism for tracing violators of regulation.

The country also needs to empower and encourage the NBE, the competition enforcement organs, the business community and the other stakeholders to contribute to the development and diversification of the financial system (including development of the future securities market and private pensions). It also needs to do the following in respect of the future securities market and private pensions:

1. It needs to create the securities market and pension regulators with financial and operational autonomy from the executive in government and the following powers and functions:

   - making rules and adjudicating cases;
   - inspecting, investigating and sanctioning abuse and violations;
   - evaluating, preventing and correcting institutional failures;
   - enforcing disclosure requirements;
   - encouraging the making of ratings;
   - keeping and publishing data about the market institutions and operations;
   - conducting research;
   - building their own capacities and the capacities of the market actors; and
   - advising the government on policy matters.

2. It needs to define and scale the measures the securities market and pension regulators will take against the securities market and pension operators during regulatory violation and crisis situation and leave discretion to the regulators on the choice of particular measure as in the case of the banking, insurance and microfinance markets.

3. It needs to make the securities market and pension regulators work with the international organizations working in the respective fields including the IOSCO and IOPS in order to facilitate the enhancement of their regulatory functions and align the regulatory enforcement regimes with the principles and standards of the international organizations.

It also needs to consider the case for integrating the financial market regulators outside the NBE when the securities market and pension regulators are created so that the existing and future regulatory functions will be coordinated and the NBE will not be suffocated by integrating the regulatory functions in it.
6.5 General Lesson

The discussions and conclusions made in this study towards development of the policy and regulation of the banking, insurance and microfinance markets and institutions and creation of securities market and private pensions in Ethiopia and the data and international experiences which substantiate them also show the following. Ethiopia needs to take these into account as well in pursuing its financial market regulatory reform.

1. The development and regulation of a country’s financial system is a matter of policy determination and coordination between its market and government institutions. It is important that a country possesses clear vision about the targets of its reforms; clearly defines, prioritizes and links between the objectives and instruments of its regulation; makes its reforms holistic as opposed to piecemeal; sequences its reforms clearly by taking into account both domestic and international context; and possesses strong determination in the pursuit and implementation of its reforms.

2. The presence of diversified financial markets, institutions, instruments and services (in particular, the presence of a financial market that allows the interaction of both debt and equity finances and encourages the development of institutional savers like pensions) is important for a country although small its economy is.

3. A country whose foreign capital inflow is at very low level needs to see the diversification of its financial markets, institutions, instruments and services and the creation of securities market and private pensions primarily as means to enhance domestic saving and mobilize domestic resource for long term finance and related functions and secondarily as means to facilitate foreign investment.

4. A country need not expect to have its regulatory capacity fully grown in respect of a particular market before making the market itself operational since regulatory and market capacities are matters that influence each other and grow together through time. It needs to put in place both proactive and reactive measures (that can encourage development and reduce risk) in the regulation of its financial markets, institutions and services; and refine the regulatory regime through time according to developments in the markets. Working with the regional and international organizations which specialize in the fields of financial market regulation is also important to enhance the development of regulatory capacity and enforcement.

5. A country also needs to enhance the development, diversification and regulation of its financial markets, institutions and services by making its tax regime non-discriminatory and contributory to development.
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<th>Author(s)</th>
<th>Title and Details</th>
</tr>
</thead>
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Annex
Tables to Chapter Two
Table 1(Chap. 2) – Population to Financial Institutions Ratio of Ethiopia during the last One-and-a-Half Decades
End of June Positions by One Year Interval
(Source: Computed based on Population Statistics of CSA and Annual and Quarterly Reports of the Banks, Insurers and the NBE for the Years)

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Population (In Millions) (Official Estimate for the Year)</th>
<th>1997</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
<th>2010 End of 3rd Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Population (In Millions)</td>
<td>58.10</td>
<td>61.70</td>
<td>65.30</td>
<td>69.10</td>
<td>73.10</td>
<td>77.13</td>
<td>80.30</td>
<td>80.00</td>
<td></td>
</tr>
</tbody>
</table>

### Population to Bank Ratios

#### Total
- Total Number of Banks: 7 → 9 → 9 → 9 → 10 → 11 → 13 → 15
- Total Number of Bank Branches: 252 → 279 → 315 → 339 → 387 → 403 → 636 → 676
- Total Population to Total Bank Branches Ratio: 230,556 : 1 → 221,147 : 1 → 207,302 : 1 → 203,835 : 1 → 188,889 : 1 → 156,444 : 1 → 126,258 : 1 → 118,343 : 1

#### Commercial Banks
- Total Number of Commercial Banks: 6 → 8 → 8 → 8 → 9 → 10 → 12 → 14
- Total Number of Commercial Bank Branches: 220 → 247 → 283 → 307 → 355 → 461 → 604 → 644
- Total Population to Total Commercial Bank Branches Ratio: 264,091 : 1 → 249,798 : 1 → 230,742 : 1 → 225,081 : 1 → 205,915 : 1 → 167,304 : 1 → 132,947 : 1 → 124,224 : 1

#### Development Banks
- Total Number of Development Banks: 1 → 1 → 1 → 1 → 1 → 1 → 1 → 1
- Total Number of Development Bank Branches: 32 → 32 → 32 → 32 → 32 → 32 → 32 → 32
- Total Population to Total Development Bank Branches Ratio: 1,815,625 : 1 → 1,928,125 : 1 → 2,040,625 : 1 → 2,159,375 : 1 → 2,284,375 : 1 → 2,410,219 : 1 → 2,509,375 : 1 → 2,500,000 : 1

### Population to Insurance Ratios

#### Total
- Total Number of Insurance Companies: 8 → 9 → 9 → 9 → 9 → 9 → 12 → 12
- Total Number of Insurance Branches: 57 → 82 → 93 → 106 → 129 → 149 → 194 → 205
- Total Population to Total Number of Insurance Branches Ratio: 1,019,298 : 1 → 1,928,125 : 1 → 2,040,625 : 1 → 2,159,375 : 1 → 2,284,375 : 1 → 2,410,219 : 1 → 2,509,375 : 1 → 2,500,000 : 1

### Population to MFI Ratios

#### Total

**Note:** The row for public commercial banks includes the Commercial Bank of Ethiopia and the Construction and Business Bank S.C.
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Table 2(Chap. 2) – Country Distribution of Branches of the Banks in Ethiopia by Percent Share
(Exclude head offices, sub-branches and offices that had no full branch status)
(Source: Annual and Quarterly Reports of the Banks and the NBE for the Years End of June 2008)

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>Total Number of Branches</th>
<th>Percent Share of Addis Ababa and the Regions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Addis Ababa</td>
</tr>
<tr>
<td>1. The Commercial Bank of Ethiopia</td>
<td>205</td>
<td>23.9</td>
</tr>
<tr>
<td>2. The Construction &amp; Business Bank of Ethiopia</td>
<td>27</td>
<td>44.4</td>
</tr>
<tr>
<td>3. The Development Bank of Ethiopia</td>
<td>32</td>
<td>54.7</td>
</tr>
<tr>
<td>4. Awash International Bank S.C.</td>
<td>53</td>
<td>54.7</td>
</tr>
<tr>
<td>5. Dashen Bank S.C.</td>
<td>48</td>
<td>50.0</td>
</tr>
<tr>
<td>6. Abyssinia Bank S.C.</td>
<td>42</td>
<td>54.8</td>
</tr>
<tr>
<td>7. Wegagen Bank S.C.</td>
<td>40</td>
<td>45.0</td>
</tr>
<tr>
<td>8. United Bank S.C.</td>
<td>36</td>
<td>63.9</td>
</tr>
<tr>
<td>9. Nib International Bank S.C.</td>
<td>42</td>
<td>61.9</td>
</tr>
<tr>
<td>10. Cooperative Bank of Oromia S.C.</td>
<td>20</td>
<td>10.0</td>
</tr>
<tr>
<td>11. Lion International Bank S.C.</td>
<td>17</td>
<td>35.3</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>562</strong></td>
<td><strong>37.9</strong></td>
</tr>
</tbody>
</table>

July 2008 up to end of March 2010


114 additional branches are also opened in the period by the existing and new banks raising the total number of branches to 676:


24 of the new branches are located in Addis Ababa and the other 90 in the regions. The total percent share of Addis Ababa has stood at 35.06 with the little improvement having gone to the regions. Region 4 (Oromia) has continued to take the largest regional share.
Table 3(Chap. 2) – Location of Branches of the Banks in Ethiopia in the Regions by Major Town
(Exclude head offices, sub-branches and offices that had no full branch status) (Source: Annual and Quarterly Reports of the Banks and the NBE for the Years)

End of June 2008

<table>
<thead>
<tr>
<th>Region 1(Tigray)</th>
<th>Region 2 (Afar)</th>
<th>Region 3 (Amhara)</th>
<th>Region 4 (Oromia)</th>
<th>Region 5 (SNNP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mekelle</td>
<td>Meam</td>
<td>Malar</td>
<td>Sherif</td>
<td>Dire Dawa</td>
</tr>
<tr>
<td>Comm. Bank of Ethiopia</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Const. &amp; Business Bank of Ethiopia</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Dev. Bank of Ethiopia</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Awash Int. Bank S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Dashen Bank S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Abyssinia Bank S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Wegagen Bank S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>United Bank S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Nib Int. Bank S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Coop. Bank of Oromia S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Lion Int. Bank S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>July 2008 up to end of March 2010</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Ninety of the new 114 branches opened in the period by the existing and new banks (note Table 2(Chap. 2) above) are located in the above and some other towns of the regions. Region 4 (Oromia) has taken the largest share.

Note: Most branches are found in Nathreth, Dire Dawa, Jimma, Bahir Dar, Awassa, Gonder and Mekele.
Table 4(Chap. 2) – Country Distribution of Branches of the Insurers in Ethiopia by Percent Share
(Exclude head offices and offices that did not have branch status)
(Source: Annual and Quarterly Reports of the Insurers and the NBE for the Years)

End of June 2008

<table>
<thead>
<tr>
<th>Insurer</th>
<th>Total Number of Branches</th>
<th>Addis Ababa</th>
<th>Dire Dawa (Tigray)</th>
<th>Region 1 (Afar)</th>
<th>Region 2 (Amhara)</th>
<th>Region 3 (Oromia)</th>
<th>Region 4 (Sooma)</th>
<th>Region 5 (B. Gumuz)</th>
<th>Region 6 (SNNPR)</th>
<th>Region 7 (Gambela)</th>
<th>Region 8 (Harari)</th>
<th>Region 9 (Hamer)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Ethiopian Insurance Corporation</td>
<td>37</td>
<td>29.7</td>
<td>2.7</td>
<td>5.4</td>
<td>2.7</td>
<td>10.8</td>
<td>32.4</td>
<td>2.7</td>
<td>2.7</td>
<td>10.8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2. Awash Insurance S.C.</td>
<td>21</td>
<td>57.1</td>
<td>4.8</td>
<td>2.7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>33.3</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>3. Africa Insurance S.C.</td>
<td>13</td>
<td>46.2</td>
<td>7.7</td>
<td>7.7</td>
<td>-</td>
<td>23.1</td>
<td>7.7</td>
<td>-</td>
<td>-</td>
<td>7.7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>4. National Insurance S.C.</td>
<td>14</td>
<td>57.1</td>
<td>7.1</td>
<td>7.1</td>
<td>-</td>
<td>14.3</td>
<td>14.3</td>
<td>-</td>
<td>-</td>
<td>7.1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>5. United Insurance S.C.</td>
<td>19</td>
<td>68.4</td>
<td>5.3</td>
<td>5.3</td>
<td>10.5</td>
<td>5.3</td>
<td>-</td>
<td>-</td>
<td>5.3</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>6. Global Insurance S.C.</td>
<td>7</td>
<td>57.1</td>
<td>14.3</td>
<td>-</td>
<td>-</td>
<td>14.3</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>14.3</td>
<td>-</td>
</tr>
<tr>
<td>7. Nile Insurance S.C.</td>
<td>19</td>
<td>52.6</td>
<td>5.3</td>
<td>5.3</td>
<td>15.8</td>
<td>10.5</td>
<td>-</td>
<td>-</td>
<td>10.5</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>8. Nyala Insurance S.C.</td>
<td>16</td>
<td>50.0</td>
<td>6.3</td>
<td>6.3</td>
<td>-</td>
<td>18.8</td>
<td>12.5</td>
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<td>-</td>
<td>6.3</td>
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<td>-</td>
</tr>
<tr>
<td>9. Nib Insurance S.C.</td>
<td>16</td>
<td>62.5</td>
<td>6.3</td>
<td>6.3</td>
<td>-</td>
<td>6.3</td>
<td>6.3</td>
<td>-</td>
<td>-</td>
<td>12.5</td>
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<tr>
<td>10. Lion Insurance S.C.</td>
<td>10</td>
<td>60.0</td>
<td>-</td>
<td>-</td>
<td>10.0</td>
<td>10.0</td>
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<td>-</td>
<td>10.0</td>
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</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>172</strong></td>
<td><strong>51.2</strong></td>
<td><strong>5.2</strong></td>
<td><strong>4.5</strong></td>
<td><strong>0.6</strong></td>
<td><strong>11.0</strong></td>
<td><strong>17.4</strong></td>
<td><strong>0.6</strong></td>
<td><strong>0.6</strong></td>
<td><strong>8.1</strong></td>
<td><strong>0.0</strong></td>
<td><strong>0.6</strong></td>
</tr>
</tbody>
</table>

July 2008 up to end of March 2010

Two private insurers, namely Ethio-Life Insurance Company S.C. and Oromia Insurance Company S.C., are formed in this period.

33 additional branches are also opened in the period by the existing and new insurers raising the total number of branches to 205:


14 of the new branches are located in Addis Ababa and the other 19 in the regions. The total percent share of Addis Ababa has stood at 49.8 with the little improvement having gone to the regions. Region 4 (Oromia) has continued to take the largest regional share.
### Table 5(Chap. 2) - Location of Branches of the Insurers in Ethiopia in the Regions by Major Town

(Exclude head offices and offices that did not have branch status)

(Source: Annual and Quarterly Reports of the Insurers and the NBE for the Years)

#### End of June 2008

<table>
<thead>
<tr>
<th>Insurer</th>
<th>Dire Dawa</th>
<th>Region 1 (Tigray)</th>
<th>Region 2</th>
<th>Region 3 (Amhara)</th>
<th>Region 4 (Oromia)</th>
<th>Region 5</th>
<th>Region 6</th>
<th>Region 7 (SNNPR)</th>
<th>Region 8</th>
<th>Region 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Ethiopian Insurance Corporation</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>Awash Insurance S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>Africa Insurance S.C.</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>National Insurance S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>United Insurance S.C.</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>Global Insurance S.C.</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>Nile Insurance S.C.</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>Nyala Insurance S.C.</td>
<td>✓</td>
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<td>✓</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>Nib Insurance S.C.</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<td>✓</td>
</tr>
<tr>
<td>Lion Insurance S.C.</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

**July 2008 up to end of March 2010**

Nineteen of the new 33 branches opened in the period by the existing and new insurers (note Table 4(Chap. 2) above) are located in the above and some other towns of the regions. Region 4 (Oromia) has taken the largest share.

**Note:** Most branches are found in Nathreth, Dire Dawa, Jimma, Bahir Dar, Awassa, Gonder and Mekele.
### Table 6 (Chap. 2) - Service Types of the Banks in Ethiopia: End of June Positions 2009 - 2010

(Source: Annual and Quarterly Reports and Brochures of the Banks and the NBE)

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>The Government Banks</th>
<th>The Private Banks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Deposit of Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Saving account</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>- Demand Deposit account</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>- Time (Fixed) deposit account</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>- Current account</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>- Non-Resident Foreign Currency Account</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>- Non-Resident Non-Transferable Birr Account</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>- Non-Resident Transferable Birr Account</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>- Diaspora account in Foreign currency</td>
<td>✓ (in US Dollar, Pound Sterling, Euro and Yen)</td>
<td>✓</td>
</tr>
<tr>
<td>2. Deposit and administration of securities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Domestic credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Short-Term (&lt; One Year)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>- Medium-Term (&gt; One Year and ≤ Five Years)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>- Long-Term (&gt; Five Years)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>4. Export Credit</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>5. Overdraft</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>6. Letter of Guarantee (Suretyship)</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

**Note:** The four new private banks formed in the period from July 2008 up to end of March 2010, namely Oromia International Bank S.C., Zemen Bank S.C., Bunna International Bank S.C. and Bethan International Bank S.C. (note Table 2 (Chap. 2) above), render almost the same services as the existing banks. Only the Zemen Bank S.C. has attempted at making its services electronic.
Table 6(Chap. 2) - continued (1 of 2):

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>7 Money Transfer (Domestic)</td>
<td>-</td>
<td>-</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>Between Accounts in a Branch</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Between Branches (Usually through telegram, airmail, draft and C.P.O.)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>To other Banks</td>
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<td>From other Banks</td>
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<tr>
<td>8 Money Transfer (International)</td>
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</tr>
<tr>
<td>From Abroad</td>
<td>✓ (Through Western Union)</td>
<td>✓ (Through Western Union)</td>
<td>✓ (Through MoneyGram)</td>
<td>✓ (Through Western Union)</td>
<td>✓ (Through Ethiopian Money Transfer, E.M.T.)</td>
<td>✓ (Through different money transfer agencies)</td>
<td>✓ (Through MoneyGram)</td>
<td>✓ (Through Swift)</td>
<td>✓ (Through Swift)</td>
<td>✓ (Through Swift)</td>
<td>✓ (Through Swift)</td>
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<tr>
<td>To Abroad</td>
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</tr>
<tr>
<td>9 Electronic Payment and Access to Accounts</td>
<td>✓ (Through VISA Cr. Cards &amp; ATMs in Addis Ababa – Currently eight)</td>
<td>-</td>
<td>✓ (Electronic inter-branch access to accounts from branches located in Addis Ababa)</td>
<td>✓ (Through VISA &amp; Dashen Cr. Cards; 20 ATMS in AA. &amp; Awassa; &amp; 250 POS Terminals at branches &amp; shops)</td>
<td>✓ (Through Abyssinia Cr. Cards)</td>
<td>-</td>
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<td>Electronic credit</td>
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<td>-</td>
<td>✓ (Through Cr. Cards)</td>
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<td>10 Internet Banking</td>
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<td>Tele Banking</td>
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<td>Mobile Banking</td>
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<tr>
<td>Safe Hiring</td>
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<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>15 Documentary (Letter of Credit)</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<td>✓</td>
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<tr>
<td>16 Dealing in Foreign Currency</td>
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<td>Buying</td>
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</tr>
<tr>
<td>17 <strong>Dealing in Negotiable Instruments Denominated in Local Currency (issuing, paying, buying, selling, discounting)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>* Buying, Selling and Underwriting Shares</td>
<td>✔ (Through the Commercial Nominees)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>✔ (Buying from the Central Bank to get benefits)</td>
<td>✔ (Buying from the Central Bank to get benefits)</td>
<td>✔ (Buying from the Central Bank to get benefits)</td>
</tr>
<tr>
<td>* Buying, selling and discounting Government Securities</td>
<td>✔ (Only buying from the Central Bank to get benefits)</td>
<td>✔ (Only buying from the Central Bank to get benefits)</td>
<td>✔ (Only buying from the Central Bank to get benefits)</td>
<td>✔ (Buying from the Central Bank to get benefits)</td>
<td>✔ (Buying from the Central Bank to get benefits)</td>
<td>✔ (Buying from the Central Bank to get benefits)</td>
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<td>✔ (Buying from the Central Bank to get benefits)</td>
<td>✔ (Buying from the Central Bank to get benefits)</td>
<td>✔ (Buying from the Central Bank to get benefits)</td>
<td></td>
</tr>
<tr>
<td>* Issuing and paying domestic commercial instruments (i.e. Bills of Exchange, Cheques, Payment Orders, Promissory Notes, and Warehouse Certificates)</td>
<td>✔ (Cheques, Cashier's Payment Orders and Demand Drafts)</td>
<td>✔ (Cheques, Cashier’s Payment Orders and Demand Drafts)</td>
<td>✔ (Cheques, Cashier’s Payment Orders and Demand Drafts)</td>
<td>✔ (Cheques, Cashier’s Payment Orders and Demand Drafts)</td>
<td>✔ (Cheques, Cashier’s Payment Orders and Demand Drafts)</td>
<td>✔ (Cheques, Cashier’s Payment Orders and Demand Drafts)</td>
<td>✔ (Cheques, Cashier’s Payment Orders &amp; Demand Drafts)</td>
<td>✔ (Cheques, Cashier’s Payment Orders &amp; Demand Drafts)</td>
<td>✔ (Cheques, Cashier’s Payment Orders &amp; Demand Drafts)</td>
<td>✔ (Cheques, Cashier’s Payment Orders &amp; Demand Drafts)</td>
<td></td>
</tr>
<tr>
<td>* Buying, selling and discounting domestic commercial instruments</td>
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<td>18 <strong>Dealing in Negotiable Instruments Denominated in Foreign Currency</strong></td>
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</tr>
<tr>
<td>* Buying and selling Foreign Government Securities</td>
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<td>19 Pension Payment Facilitation</td>
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<tr>
<td>20 Provident Fund Account Administration</td>
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<td>✔</td>
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<td>✔</td>
<td>✔</td>
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<td>✔</td>
<td>-</td>
<td>✔ (Children’s trust fund)</td>
<td>✔ (Youth Account)</td>
<td>-</td>
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<td>21 Trust Fund Account Administration</td>
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<td>-</td>
<td>-</td>
<td>✔ (Youth Account)</td>
<td>✔</td>
<td>✔ (Children’s trust fund)</td>
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<td>22 Real Estate Administration</td>
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<td>23 Corporate Advice</td>
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<td>✔</td>
<td>✔</td>
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<td>-</td>
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<td></td>
</tr>
<tr>
<td>24 Cash management/ networked balance retrieval/ service</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
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</tbody>
</table>
Table 7(Chap. 2) – Service Types of the Insurers in Ethiopia: End of June Positions 2009 - 2010
(Source: Annual and Quarterly Reports and Brochures of the Insurers and the NBE)

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>The Government Insurers</th>
<th>The Private Insurers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Aviation Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.2 Aeroplane Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.3 Marine Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.4 Land Transportation / Goods in Transit Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.5 Motor Vehicle (Private, Commercial) Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.6 Engineering Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.7 Money (in safe, in transit) Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.8 Fire, Lightening and allied Perils Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.9 Burglary and Housebreaking Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.10 Plate Glass Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.11 Computer Risks Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.12 Household Properties Insurance (Householder’s Comprehensive)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.13 Valuables Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.14 Liability Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.15 Breach of Trust (Fidelity) Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.16 Accident, Health, Medical Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.17 Workmen’s Compensation Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.18 Workmen’s Income Disruption Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.19 Iquib (Ethiopian Communities Saving) Protection</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1.20 Horticulture, Livestock and/or Crop Insurance</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Note: One of the two private insurers formed in the period from July 2008 up to end of March 2010, namely the Oromia Insurance Company S.C. (now Table 4(Chap. 2) above), renders general insurance services that are almost like the services of the existing insurers. The other, namely the Ethio-Life Insurance Company S.C., operates as fully long term (life) insurer.
Table 7(Chap. 2) - continued (1 of 1):

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Long Term Insurance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Industrial (Group) Life Assurance</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
<td>✓</td>
<td>-</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2.2 Ordinary (Individual) Life Assurance</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
<td>✓</td>
<td>-</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2.3 Endowment</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
<td>✓</td>
<td>-</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2.4 Pension</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2.5 Idir (Funeral Expenses) Cover</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2.6 Education Endowment</td>
<td>✓</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>✓</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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Table 8(Chap. 2) - Size of the Long Term (Life) Insurance Business in Ethiopia since the Start of Private Insurance in the Country: End of June Positions by One Year Interval

<table>
<thead>
<tr>
<th>Year</th>
<th>The Total Gross Premium Written in the Market</th>
<th>The Long Term (Life) Premium Written by the Insurers as Percent of the Total Gross Premium Written in the Market</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>344,712,126.00</td>
<td>55,149,528.20</td>
</tr>
<tr>
<td>1997</td>
<td>375,474,612.00</td>
<td>57,759,104.71</td>
</tr>
<tr>
<td>1999</td>
<td>442,580,739.00</td>
<td>58,923,558.33</td>
</tr>
<tr>
<td>2001</td>
<td>489,128,615.00</td>
<td>58,733,728.19</td>
</tr>
<tr>
<td>2003</td>
<td>597,975,829.00</td>
<td>69,686,842.76</td>
</tr>
<tr>
<td>2005</td>
<td>698,636,395.00</td>
<td>80,750,409.74</td>
</tr>
<tr>
<td>2007</td>
<td>1,032,189,719.66</td>
<td>117,370,310.28</td>
</tr>
<tr>
<td>2009</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

Note: The Ethio-Life Insurance Company S.C. and Oromia Insurance Company S.C. are new comers to this table (Note Table 4(Chap. 2) above). The long term (life) insurance business of the Ethio-Life Insurance Company S.C. has not brought about substantial change to the small size of the long term premium writing in the country yet.
Table 9(Chap. 2) - Size and Location of the Micro-Finance Institutions in Ethiopia since the Start of Formal Micro-Financing Business in the Country
End of June Positions by One Year Interval

Source: The MFI Supervision Department and Annual Reports of the NBE.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>Capital (in thousands of birr)</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Addis Ababa</td>
<td>Outside Addis Ababa</td>
<td>Total</td>
</tr>
<tr>
<td>1997</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>1999</td>
<td>5</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>2001</td>
<td>8</td>
<td>11</td>
<td>19</td>
</tr>
<tr>
<td>2003</td>
<td>10</td>
<td>12</td>
<td>22</td>
</tr>
<tr>
<td>2007</td>
<td>11</td>
<td>17</td>
<td>28</td>
</tr>
<tr>
<td>2009</td>
<td>12</td>
<td>18</td>
<td>30</td>
</tr>
</tbody>
</table>
Table 10(Chap. 2) - Ownership Structure and Performance of the Micro-Finance Institutions in Ethiopia
Source: Annual Reports of the NBE (2008 & 2009); MFI Supervision Department of the NBE; and Wolday Amha, 2006.

<table>
<thead>
<tr>
<th>MFIs</th>
<th>Year of License</th>
<th>Ownership Structure (by Percentage)</th>
<th>Saving Deposit Mobilized in millions of birr</th>
<th>Credit in millions of birr</th>
<th>Total Asset in millions of birr</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amhara Credit &amp; Saving Ins. S.C.</td>
<td>1996/7</td>
<td>25</td>
<td>75</td>
<td>-</td>
<td>695.47</td>
</tr>
<tr>
<td>Dedebit Credit &amp; Saving Ins. S.C.</td>
<td>1997/8</td>
<td>25</td>
<td>75</td>
<td>-</td>
<td>352.90</td>
</tr>
<tr>
<td>Oromia Credit &amp; Saving S.C.</td>
<td>1997/8</td>
<td>25</td>
<td>70</td>
<td>5</td>
<td>232.18</td>
</tr>
<tr>
<td>Omo Credit &amp; Saving Ins. S.C.</td>
<td>1997/8</td>
<td>80</td>
<td>19.5</td>
<td>0.5</td>
<td>105.84</td>
</tr>
<tr>
<td>Gasha Micro-fin. Ins. S.C.</td>
<td>1996/7</td>
<td>-</td>
<td>61.9</td>
<td>38.1</td>
<td>5.98</td>
</tr>
<tr>
<td>Wisdom Micro-financing Ins. S.C.</td>
<td>1997/8</td>
<td>-</td>
<td>-</td>
<td>100</td>
<td>19.55</td>
</tr>
<tr>
<td>African Village Financial Service S.C.</td>
<td>1998/9</td>
<td>-</td>
<td>-</td>
<td>100</td>
<td>3.49</td>
</tr>
<tr>
<td>Peace Micro-finance Ins. S.C.</td>
<td>1999/0</td>
<td>-</td>
<td>16</td>
<td>84</td>
<td>8.68</td>
</tr>
<tr>
<td>Mekel Micro-finance Ins. S.C.</td>
<td>1999/0</td>
<td>-</td>
<td>-</td>
<td>100</td>
<td>0.56</td>
</tr>
<tr>
<td>Addis Credit &amp; Saving Ins. S.C.</td>
<td>1999/0</td>
<td>96.7</td>
<td>3.3</td>
<td>-</td>
<td>61.82</td>
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<tr>
<td>Meklit Micro-finance Ins. S.C.</td>
<td>1999/0</td>
<td>91.9</td>
<td>9</td>
<td>-</td>
<td>5.89</td>
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<tr>
<td>Eshet Micro-finance Ins. S.C.</td>
<td>1999/0</td>
<td>-</td>
<td>20</td>
<td>80</td>
<td>5.64</td>
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<tr>
<td>Wasasa Micro-finance Ins. S.C.</td>
<td>2000/1</td>
<td>-</td>
<td>20</td>
<td>80</td>
<td>11.31</td>
</tr>
<tr>
<td>Benishangul-Gumuz MFI S.C.</td>
<td>2000/1</td>
<td>40</td>
<td>60</td>
<td>-</td>
<td>11.64</td>
</tr>
<tr>
<td>Shashemene Idir Yelmat Agar MFI S.C.</td>
<td>2000/1</td>
<td>-</td>
<td>-</td>
<td>100</td>
<td>0.91</td>
</tr>
<tr>
<td>Metemenem MFI S.C.</td>
<td>2001/2</td>
<td>-</td>
<td>-</td>
<td>100</td>
<td>1.49</td>
</tr>
<tr>
<td>Dire MFI S.C.</td>
<td>2002/3</td>
<td>97</td>
<td>2.5</td>
<td>0.5</td>
<td>4.35</td>
</tr>
<tr>
<td>Agar MFI S.C.</td>
<td>2003/4</td>
<td>-</td>
<td>0.2</td>
<td>99.8</td>
<td>2.49</td>
</tr>
<tr>
<td>Harbu MFI S.C.</td>
<td>2004/5</td>
<td>-</td>
<td>na</td>
<td>na</td>
<td>3.63</td>
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<tr>
<td>Leta MFI S.C.</td>
<td>2004/5</td>
<td>-</td>
<td>na</td>
<td>na</td>
<td>0.08</td>
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<tr>
<td>Digaf MFI S.C.</td>
<td>2004/5</td>
<td>-</td>
<td>na</td>
<td>na</td>
<td>0.66</td>
</tr>
<tr>
<td>Ghiyon MFI S.C.</td>
<td>2005/6</td>
<td>-</td>
<td>na</td>
<td>na</td>
<td>0.03</td>
</tr>
<tr>
<td>Harar MFI S.C.</td>
<td>2005/6</td>
<td>-</td>
<td>na</td>
<td>na</td>
<td>0.19</td>
</tr>
<tr>
<td>Lefayeda Credit and Saving MFI S.C.</td>
<td>2005/6</td>
<td>-</td>
<td>na</td>
<td>na</td>
<td>0.01</td>
</tr>
<tr>
<td>Tesfa MFI S.C.</td>
<td>2007/8</td>
<td>-</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Gambella MFI S.C.</td>
<td>2008/9</td>
<td>-</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Dynamic MFI S.C.</td>
<td>2008/9</td>
<td>-</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,560.07</td>
</tr>
</tbody>
</table>

Note:
1. Two MFIs, i.e. Aser MFI S.C. & Mecqedela MFI S.C., were established as fully private owned MFIs in 1998 and 2002, respectively, and closed in 2006/7 and 2004/5, respectively, because of financial problems.
2. The Harbu, Leta, Digaf, Ghiyon, Harar, Lefayeda, Tesfa, Gambella and Dynamic MFIs are essentially private but data is not available for their ownership structure.
### Table II(Chap. 2) - Sectoral Distribution of the Loans and Collections of the Commercial Banks in Ethiopia by Relative Percentage during the Last Two Decades

#### End of June Positions by One Year Interval

| Source: Computed based on Annual Reports of the NBE for the Years. |

#### Average for the Full Period

<table>
<thead>
<tr>
<th>Sectors</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>13.3</td>
<td>8.0</td>
<td>13.4</td>
<td>15.1</td>
<td>23.1</td>
<td>16.5</td>
<td>10.9</td>
<td>16.5</td>
<td>16.8</td>
</tr>
<tr>
<td>Industry</td>
<td>21.6</td>
<td>27.3</td>
<td>7.9</td>
<td>8.7</td>
<td>11.9</td>
<td>13.5</td>
<td>12.4</td>
<td>11.5</td>
<td>9.8</td>
</tr>
<tr>
<td>Domestic Trade</td>
<td>26.8</td>
<td>24.4</td>
<td>56.3</td>
<td>33.1</td>
<td>24.9</td>
<td>28.7</td>
<td>29.6</td>
<td>20.2</td>
<td>19.2</td>
</tr>
<tr>
<td>International Trade</td>
<td>12.4</td>
<td>17.3</td>
<td>7.4</td>
<td>13.5</td>
<td>13.2</td>
<td>21.3</td>
<td>23.8</td>
<td>31.2</td>
<td>28.3</td>
</tr>
<tr>
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<td>8.5</td>
<td>8.1</td>
<td>3.2</td>
<td>5.3</td>
<td>3.2</td>
<td>7.4</td>
<td>13.2</td>
<td>14.4</td>
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<td>4.2</td>
<td>8.2</td>
<td>10.0</td>
<td>13.5</td>
<td>14.6</td>
<td>20.2</td>
<td>19.2</td>
</tr>
<tr>
<td>Housing &amp; Construction</td>
<td>9.9</td>
<td>2.4</td>
<td>0.5</td>
<td>9.1</td>
<td>3.0</td>
<td>4.7</td>
<td>9.6</td>
<td>6.6</td>
<td>10.8</td>
</tr>
<tr>
<td>Transport &amp; Communication</td>
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<td>10.5</td>
<td>7.0</td>
<td>5.2</td>
<td>8.2</td>
<td>5.9</td>
<td>9.2</td>
<td>6.3</td>
</tr>
<tr>
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<td>3.9</td>
<td>4.4</td>
<td>6.4</td>
<td>4.0</td>
<td>2.3</td>
<td>2.3</td>
<td>1.0</td>
<td>0.5</td>
<td>1.1</td>
</tr>
<tr>
<td>Mine, Power &amp; Water</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Personal</td>
<td>3.8</td>
<td>1.5</td>
<td>0.8</td>
<td>0.0</td>
<td>0.8</td>
<td>0.7</td>
<td>1.1</td>
<td>0.9</td>
<td>1.2</td>
</tr>
<tr>
<td>Other</td>
<td>1.6</td>
<td>1.6</td>
<td>10.7</td>
<td>5.5</td>
<td>13.1</td>
<td>6.6</td>
<td>8.0</td>
<td>8.6</td>
<td>3.8</td>
</tr>
<tr>
<td>Inter-bank Lending</td>
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<td>0.7</td>
<td>2.9</td>
<td>3.0</td>
<td>2.5</td>
<td>0.5</td>
<td>0.0</td>
<td>0.0</td>
<td>0.4</td>
</tr>
<tr>
<td>Total (In Millions of Birr)</td>
<td>543.90</td>
<td>1,365.80</td>
<td>3,438.90</td>
<td>3,863.80</td>
<td>4,297.40</td>
<td>4,399.50</td>
<td>4,097.90</td>
<td>9,433.10</td>
<td>18,559.00</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Sectors</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>15.0</td>
<td>6.4</td>
<td>14.3</td>
<td>15.3</td>
<td>16.3</td>
<td>16.5</td>
<td>11.9</td>
<td>16.7</td>
<td>16.7</td>
</tr>
<tr>
<td>Industry</td>
<td>15.0</td>
<td>22.2</td>
<td>12.6</td>
<td>8.5</td>
<td>10.5</td>
<td>8.9</td>
<td>9.3</td>
<td>11.1</td>
<td>10.7</td>
</tr>
<tr>
<td>Domestic Trade</td>
<td>25.9</td>
<td>32.5</td>
<td>43.0</td>
<td>35.8</td>
<td>29.0</td>
<td>25.9</td>
<td>24.5</td>
<td>22.6</td>
<td>18.7</td>
</tr>
<tr>
<td>International Trade</td>
<td>13.2</td>
<td>12.1</td>
<td>11.3</td>
<td>14.1</td>
<td>16.7</td>
<td>15.1</td>
<td>22.3</td>
<td>31.2</td>
<td>29.9</td>
</tr>
<tr>
<td>Export</td>
<td>8.5</td>
<td>7.0</td>
<td>3.9</td>
<td>5.2</td>
<td>4.2</td>
<td>3.6</td>
<td>2.3</td>
<td>1.0</td>
<td>1.0</td>
</tr>
<tr>
<td>Import</td>
<td>7.8</td>
<td>5.1</td>
<td>7.3</td>
<td>8.9</td>
<td>11.5</td>
<td>9.2</td>
<td>8.7</td>
<td>15.1</td>
<td>16.6</td>
</tr>
<tr>
<td>Housing &amp; Construction</td>
<td>15.9</td>
<td>11.8</td>
<td>4.0</td>
<td>4.9</td>
<td>5.5</td>
<td>6.4</td>
<td>9.2</td>
<td>7.1</td>
<td>13.7</td>
</tr>
<tr>
<td>Transport &amp; Communication</td>
<td>3.8</td>
<td>3.7</td>
<td>4.3</td>
<td>9.7</td>
<td>8.9</td>
<td>10.5</td>
<td>9.0</td>
<td>5.3</td>
<td>6.3</td>
</tr>
<tr>
<td>Hotel &amp; Tourism</td>
<td>3.3</td>
<td>4.8</td>
<td>4.6</td>
<td>3.3</td>
<td>3.5</td>
<td>9.2</td>
<td>3.5</td>
<td>3.5</td>
<td>2.8</td>
</tr>
<tr>
<td>Mine, Power &amp; Water</td>
<td>0.7</td>
<td>0.6</td>
<td>0.5</td>
<td>0.3</td>
<td>0.2</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Personal</td>
<td>3.5</td>
<td>2.7</td>
<td>1.5</td>
<td>0.9</td>
<td>1.0</td>
<td>1.1</td>
<td>2.7</td>
<td>1.0</td>
<td>0.8</td>
</tr>
<tr>
<td>Other</td>
<td>1.5</td>
<td>2.9</td>
<td>4.2</td>
<td>5.0</td>
<td>3.2</td>
<td>1.2</td>
<td>1.0</td>
<td>9.2</td>
<td>8.3</td>
</tr>
<tr>
<td>Inter-bank Lending</td>
<td>0.2</td>
<td>0.3</td>
<td>0.1</td>
<td>2.0</td>
<td>1.2</td>
<td>3.3</td>
<td>1.8</td>
<td>1.3</td>
<td>0.5</td>
</tr>
<tr>
<td>Total (In Millions of Birr)</td>
<td>510.80</td>
<td>666.70</td>
<td>2,264.30</td>
<td>3,526.50</td>
<td>4,166.80</td>
<td>4,379.90</td>
<td>4,638.10</td>
<td>7,146.10</td>
<td>13,488.72</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Sectors</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>39.9</td>
<td>34.2</td>
<td>32.4</td>
<td>18.9</td>
<td>15.9</td>
<td>13.6</td>
<td>8.0</td>
<td>12.9</td>
<td>10.9</td>
</tr>
<tr>
<td>Industry</td>
<td>29.4</td>
<td>24.8</td>
<td>4.3</td>
<td>6.8</td>
<td>7.2</td>
<td>5.7</td>
<td>5.2</td>
<td>7.0</td>
<td>9.3</td>
</tr>
<tr>
<td>Domestic Trade</td>
<td>8.5</td>
<td>12.2</td>
<td>11.6</td>
<td>12.8</td>
<td>11.4</td>
<td>10.3</td>
<td>10.6</td>
<td>17.7</td>
<td>15.8</td>
</tr>
<tr>
<td>International Trade</td>
<td>2.1</td>
<td>5.3</td>
<td>13.3</td>
<td>16.0</td>
<td>10.4</td>
<td>8.6</td>
<td>6.8</td>
<td>9.2</td>
<td>8.6</td>
</tr>
<tr>
<td>Export</td>
<td>3.2</td>
<td>5.1</td>
<td>7.9</td>
<td>7.0</td>
<td>6.4</td>
<td>4.2</td>
<td>3.0</td>
<td>5.0</td>
<td>5.3</td>
</tr>
<tr>
<td>Import</td>
<td>2.8</td>
<td>6.7</td>
<td>8.9</td>
<td>11.7</td>
<td>11.2</td>
<td>8.3</td>
<td>5.9</td>
<td>10.8</td>
<td>9.4</td>
</tr>
<tr>
<td>Housing &amp; Construction</td>
<td>10.3</td>
<td>8.1</td>
<td>10.1</td>
<td>10.9</td>
<td>8.5</td>
<td>6.9</td>
<td>6.8</td>
<td>7.6</td>
<td>8.6</td>
</tr>
<tr>
<td>Transport &amp; Communication</td>
<td>1.3</td>
<td>1.9</td>
<td>5.3</td>
<td>7.4</td>
<td>3.6</td>
<td>3.8</td>
<td>2.1</td>
<td>3.6</td>
<td>5.3</td>
</tr>
<tr>
<td>Hotel &amp; Tourism</td>
<td>0.5</td>
<td>1.0</td>
<td>2.7</td>
<td>2.7</td>
<td>2.3</td>
<td>1.6</td>
<td>1.5</td>
<td>1.1</td>
<td>1.5</td>
</tr>
<tr>
<td>Mine, Power &amp; Water</td>
<td>1.3</td>
<td>0.9</td>
<td>0.0</td>
<td>0.2</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
<td>0.0</td>
<td>0.1</td>
</tr>
<tr>
<td>Personal</td>
<td>0.2</td>
<td>0.2</td>
<td>0.1</td>
<td>0.1</td>
<td>0.1</td>
<td>0.2</td>
<td>0.1</td>
<td>0.2</td>
<td>0.3</td>
</tr>
<tr>
<td>Other</td>
<td>0.2</td>
<td>0.3</td>
<td>5.5</td>
<td>4.3</td>
<td>17.8</td>
<td>31.4</td>
<td>19.8</td>
<td>11.9</td>
<td>5.3</td>
</tr>
<tr>
<td>Inter-bank Lending</td>
<td>0.4</td>
<td>1.4</td>
<td>1.9</td>
<td>4.0</td>
<td>3.0</td>
<td>2.2</td>
<td>1.6</td>
<td>1.2</td>
<td>0.8</td>
</tr>
<tr>
<td>Total (In Millions of Birr)</td>
<td>6,591.00</td>
<td>8,105.40</td>
<td>9,257.20</td>
<td>13,372.70</td>
<td>18,270.60</td>
<td>25,540.90</td>
<td>28,855.80</td>
<td>29,026.50</td>
<td>44,317.50</td>
</tr>
</tbody>
</table>

| Loan Collection to Disbursement Ratio (aggregate) | 93.9 | 42.6 | 65.8 | 89.0 | 97.0 | 111.2 | 115.2 | 75.8 | 86.7 | 80.2 | 85.7 |
**Table 12(Chap. 2) - Interest Rate Rules of Ethiopia (Comparison of Directives of the NBE)**

*Source: Directives of the NBE*

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate on demand deposits</td>
<td>Fixed at nil</td>
<td>Previous rule not amended</td>
<td>Fixed at nil</td>
<td>Fixed at nil</td>
<td>Fixed at nil</td>
<td>Delegated to boards of the banks subject to anti-discrimination rule</td>
</tr>
<tr>
<td>Rate on saving and time deposits</td>
<td>Time deposit for:</td>
<td>&lt; 6 months = fixed at 10.5%</td>
<td>&gt; 6 &amp; &lt; 12 months = fixed at 11%</td>
<td>&gt; 1 &amp; &lt; 2 years = fixed at 11.5%</td>
<td>&gt; 2 years = fixed at 12%</td>
<td>Delegated to boards of the banks subject to minimum (10% for INT/3/94; 11% for INT/4/95; 10% for INT/5/96) and anti-discrimination rule</td>
</tr>
<tr>
<td>Rate on lending of commercial banks to the government</td>
<td>Fixed at 12% for short-term lending and at 13% for long-term lending*</td>
<td>12% for short-term lending and 13% for long-term lending*</td>
<td>No rule</td>
<td>No rule</td>
<td>No rule</td>
<td>No rule</td>
</tr>
<tr>
<td>Rate on loans and advances of commercial banks and other financial institutions to all other sectors</td>
<td>Agriculture, housing &amp; construction = fixed at 11% for short-term, at 11.5 for med. term &amp; at 12% for long-term lending*, Manufacturing, mining, energy, transport, communication, export = fixed at 13% for short-term, at 13.5 for med. term &amp; at 14% for long-term lending*, Domestic &amp; import trade, hotel, tourism, personal loans = fixed at 14% for short-term, at 14.5 for med. term &amp; at 15% for long-term lending*</td>
<td>Fixed at 14% for short-term, at 14.5% for medium-term and at 15% for long-term lending* without grouping by sector</td>
<td>Delegated to boards of the banks subject to maximum (13% for INT/3/94; 16% for INT/4/95; 15% for INT/5/96) and anti-discrimination rule</td>
<td>Delegated to boards of the banks subject to maximum of 10.5% and anti-discrimination rule</td>
<td>Wholly delegated to boards of the banks; No anti-discrimination rule except that form of ownership of a bank can not be criterion for inter-bank lending without sufficient cause</td>
<td></td>
</tr>
<tr>
<td>Rate on direct advance/lending of NBE to the government</td>
<td>No rule</td>
<td>No rule</td>
<td>Fixed at 12%</td>
<td>No rule</td>
<td>No rule</td>
<td>No rule</td>
</tr>
<tr>
<td>Rate on loans and discount facilities of NBE to commercial banks and other financial institutions</td>
<td>Fixed at 10.5% for loans and discount facilities to commercial banks and at 10% for loans and discount facilities to other financial institutions</td>
<td>Fixed at 10.5%</td>
<td>To be determined by the NBE from time to time</td>
<td>To be determined by the NBE from time to time</td>
<td>To be determined by the NBE from time to time</td>
<td>To be determined by the NBE from time to time</td>
</tr>
<tr>
<td>Rate on Inter-bank lending</td>
<td>No rule</td>
<td>Fixed at 10%</td>
<td>Negotiable between the banks</td>
<td>Negotiable between the banks</td>
<td>Negotiable between the banks</td>
<td>Negotiable between the banks</td>
</tr>
<tr>
<td>Penalty rate over and above the rate on loans and advances</td>
<td>Left to decision of the banks subject to maximum of 3%</td>
<td>Previous rule not amended</td>
<td>Delegated to the banks subject to maximum of 3%</td>
<td>Delegated to banks subject to maximum of 3%</td>
<td>Wholly delegated to the banks</td>
<td>Wholly delegated to the banks</td>
</tr>
</tbody>
</table>

*Short-term lending refers to lending for a period up to 12 months; medium-term to lending for a period of over 12 months and up to 5 years and long-term to lending for a period over 5 years.*
### Table 13(Chap. 2) - Capital Adequacy Formula of the NBE

Source: Directive No. SBB/9/95

#### 1. The Asset Risk Weighting Formula

<table>
<thead>
<tr>
<th>Assets</th>
<th>Amount</th>
<th>Weight (Per Cent)</th>
<th>Weighted Balance (A X B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>B</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>1. Cash On Hand (Local and Foreign Currency)</td>
<td>0</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>2. Cash items in process of collection</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Claims on NBE</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Claims on other banks (domestic &amp; foreign)</td>
<td>20</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>- Up to 1 year maturity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Over 1 year maturity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Claims on central government</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Claims on regional governments</td>
<td>20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Securities (Non-Government)</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Residential mortgage loans</td>
<td>50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Loans and advances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Less loan loss provisions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Net loans and advances (9 - 10)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Secured by cash, by central government securities</td>
<td>0</td>
<td>20</td>
<td>100</td>
</tr>
<tr>
<td>or by the central government</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Secured/guaranteed by regional governments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Others</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. Investments</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Fixed assets (net)</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Other assets</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. Total off-balance sheet items (credit equivalence - Table 2)</td>
<td>100</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Total risk weighted assets (Column c)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### 2. The Credit Equivalence of Off-Balance Sheet Items Formula

<table>
<thead>
<tr>
<th>Off-Balance Sheet Items Face Value</th>
<th>OFF Balance Sheet Item</th>
<th>Credit Conversion Factor (%)</th>
<th>Amount (A x B)</th>
<th>Weight* (%)</th>
<th>Credit Equivalent (C/D)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D</td>
<td>E</td>
</tr>
<tr>
<td>1. Commitments to Purchase and /or Sell Foreign Currency</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Standby Letters of Credit</td>
<td></td>
<td></td>
<td></td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>3. Loan Commitments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Original Maturity over One Year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Original Maturity up to One Year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Guarantees (Bid Bonds, Performance Bonds and so on)</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Commercial Letters of Credit</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Others**</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Total Off-Balance-Sheet Items (Column E)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* The weights to be applied are the following: 0% - if the other party is central government; 20% - if the other party is regional government; 20% - if the other party is a bank, whether domestic or foreign; and 100% - for all other parties.

** The factors for these are to be determined on case-by-case basis.

#### 3. The Adequacy Calculating Formula

\[
\text{Capital Adequacy} = \frac{\text{Total Capital (of the Concerned Institution)}}{\text{Total risk weighted assets (Table 1)}} \times 100
\]

Note: Composition of the "Total Capital" of the institution has to be as defined by the NBE in the directive.

\[
\text{Capital excess or shortfall from the minimum adequacy requirement} = \text{Total Capital} - (\text{Total risk weighted assets} \times 0.08)
\]

Note: Positive results show the extent of excess; negative results show the extent of shortfall.

Note: The formula for the microfinance institutions follow the same approach as shown in this table with modification of the assets and risks to be considered and change of the 0.08 requirement to 0.12 (See Directive No. MFI/16/2002).
### Table 14 (Chap. 2) - Capital Adequacy Ratios of the Banks in Ethiopia during the Last Decade: End of June Positions by One Year Interval

(Source: Banking Supervision Department of the NBE)

<table>
<thead>
<tr>
<th>Year</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Required Level</td>
<td>8% of risk weighted assets</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>The Government Banks</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial Bank of Ethiopia</td>
<td>9.0%</td>
<td>8.5%</td>
<td>12.1%</td>
<td>9.1%</td>
<td>27.70%</td>
<td>na</td>
</tr>
<tr>
<td>Construction and Business Bank</td>
<td>17.7%</td>
<td>17.5%</td>
<td>18.5%</td>
<td>9.59%</td>
<td>11.71%</td>
<td>na</td>
</tr>
<tr>
<td>Development Bank of Ethiopia</td>
<td>NA</td>
<td>8.1%</td>
<td>11.0%</td>
<td>8.7%</td>
<td>NA</td>
<td>na</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>12.1%</td>
<td>11.1%</td>
<td>16.3%</td>
<td>10.9%</td>
<td>19.71%</td>
<td>na</td>
</tr>
<tr>
<td><strong>The Private Banks</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Awash International Bank S.C.</td>
<td>13.4%</td>
<td>17.3%</td>
<td>16.2%</td>
<td>16.8%</td>
<td>10.83%</td>
<td>na</td>
</tr>
<tr>
<td>Dashed Bank S.C.</td>
<td>18.6%</td>
<td>12.4%</td>
<td>18.0%</td>
<td>19.6%</td>
<td>10.53%</td>
<td>na</td>
</tr>
<tr>
<td>Bank of Abyssinia S.C.</td>
<td>13.5%</td>
<td>20.5%</td>
<td>18.0%</td>
<td>14.96%</td>
<td>na</td>
<td></td>
</tr>
<tr>
<td>Weggagen Bank S.C.</td>
<td>22.0%</td>
<td>16.2%</td>
<td>16.2%</td>
<td>18.1%</td>
<td>10.64%</td>
<td>na</td>
</tr>
<tr>
<td>United Bank S.C.</td>
<td>52.1%</td>
<td>43.4%</td>
<td>30.7%</td>
<td>21.2%</td>
<td>17.52%</td>
<td>na</td>
</tr>
<tr>
<td>Nib International Bank S.C.</td>
<td>NA</td>
<td>25.4%</td>
<td>19.5%</td>
<td>17.7%</td>
<td>16.07%</td>
<td>na</td>
</tr>
<tr>
<td>Cooperative Bank of Oromia S.C.</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>70.70%</td>
<td>na</td>
<td></td>
</tr>
<tr>
<td>Lion International Bank S.C.</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>94.43%</td>
<td>na</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>12.6%</td>
<td>12.2%</td>
<td>16.0%</td>
<td>13.2%</td>
<td>20.15%</td>
<td>na</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td>12.6%</td>
<td>12.2%</td>
<td>16.0%</td>
<td>13.2%</td>
<td>20.15%</td>
<td>na</td>
</tr>
</tbody>
</table>

### Table 15 (Chap. 2) - Reserve and Liquidity Positions of the Commercial Banks of Ethiopia during the Last One-and-a-Half Decades: End of June Positions by One Year Interval

(Source: Annual and Quarterly Reports of the NBE for the Years)

<table>
<thead>
<tr>
<th>Year</th>
<th>1995</th>
<th>1997</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Total Deposits with the Commercial Banks (In Millions of Birr)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Central Government Deposits Excluded</td>
<td>8574.7</td>
<td>11375.5</td>
<td>14202.6</td>
<td>22478.2</td>
<td>30185.8</td>
<td>42943.5</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Central Government Deposits Included</td>
<td>9172.1</td>
<td>12195.7</td>
<td>14202.6</td>
<td>22478.2</td>
<td>30185.8</td>
<td>42943.5</td>
<td>50676.4</td>
<td>50676.4</td>
</tr>
<tr>
<td>Reserve Requirement (% of the Net Total Deposits with the Commercial Banks)</td>
<td>458.6</td>
<td>609.8</td>
<td>763.4</td>
<td>1485.8</td>
<td>1239.0</td>
<td>1765.5</td>
<td>2533.8</td>
<td>42943.5</td>
</tr>
<tr>
<td>(Central Government Deposits Included)</td>
<td>1524.2</td>
<td>2136.7</td>
<td>2414.2</td>
<td>2899.7</td>
<td>3179.6</td>
<td>3179.6</td>
<td>11734.0</td>
<td>11734.0</td>
</tr>
<tr>
<td>Aggregate Reserve Position of the Commercial Banks (In Millions of Birr)</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deposit with the NBE</td>
<td>196.5</td>
<td>390.9</td>
<td>331.1</td>
<td>445.3</td>
<td>621.7</td>
<td>935.8</td>
<td>1466.8</td>
<td>50676.4</td>
</tr>
<tr>
<td>Cash in hand (Local Currency)</td>
<td>1720.7</td>
<td>1727.6</td>
<td>2747.4</td>
<td>2945.2</td>
<td>4438.6</td>
<td>1367.5</td>
<td>13300.8</td>
<td>na</td>
</tr>
<tr>
<td>Total</td>
<td>1262.1</td>
<td>1117.8</td>
<td>1983.9</td>
<td>1459.4</td>
<td>3179.6</td>
<td>11910.0</td>
<td>10667.0</td>
<td>na</td>
</tr>
<tr>
<td>Excess Reserve (5-2)</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>3</td>
<td>7</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Fold of the Excess Reserve Over the Required (6/2)</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Net Foreign Assets of the Commercial Banks (In Millions of Birr)</td>
<td></td>
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</tr>
<tr>
<td>Net Foreign Assets (Total) plus Net Foreign Assets of the Commercial Banks (In Millions of Birr)</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Actual Reserve (Total) plus Net Foreign Assets of the Commercial Banks (In Millions of Birr)</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Aggregate Liquidity Position of the Commercial Banks</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actual Ratio</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excess over the Required (15%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Excesses on Average for the Fifteen Years | 30.0 |
### Table 16(Chap. 2) - Provisions of the Banks in Ethiopia as percentages of their total outstanding loans during the last Decade: End of June Positions by One Year Interval (Source: Banking Supervision Department of the NBE)

<table>
<thead>
<tr>
<th>The Government Banks</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Bank of Ethiopia</td>
<td>13.8%</td>
<td>18.4%</td>
<td>29.0%</td>
<td>21.2%</td>
<td>14.2%</td>
<td>na</td>
</tr>
<tr>
<td>Construction and Business Bank of Ethiopia S.C.</td>
<td>NA</td>
<td>7.4%</td>
<td>11.3%</td>
<td>12.8%</td>
<td>12.9%</td>
<td>na</td>
</tr>
<tr>
<td>Development Bank of Ethiopia</td>
<td>20.9%</td>
<td>22.4%</td>
<td>35.5%</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>14.0%</td>
<td>18.4%</td>
<td>29.1%</td>
<td>14.7%</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The Private Banks</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awash International Bank S.C.</td>
<td>1.3%</td>
<td>3.4%</td>
<td>5.5%</td>
<td>6.2%</td>
<td>4.3%</td>
<td>na</td>
</tr>
<tr>
<td>Dashen Bank S.C.</td>
<td>4.7%</td>
<td>3.2%</td>
<td>3.9%</td>
<td>3.2%</td>
<td>2.6%</td>
<td>na</td>
</tr>
<tr>
<td>Bank of Abyssinia S.C.</td>
<td>1.6%</td>
<td>2.6%</td>
<td>7.7%</td>
<td>4.9%</td>
<td>3.0%</td>
<td>na</td>
</tr>
<tr>
<td>Wegagen Bank S.C.</td>
<td>1.5%</td>
<td>4.4%</td>
<td>5.1%</td>
<td>5.1%</td>
<td>4.4%</td>
<td>na</td>
</tr>
<tr>
<td>United Bank S.C.</td>
<td>0.0%</td>
<td>0.7%</td>
<td>2.4%</td>
<td>3.9%</td>
<td>3.0%</td>
<td>na</td>
</tr>
<tr>
<td>Nib International Bank S.C.</td>
<td>-</td>
<td>0.0%</td>
<td>4.0%</td>
<td>4.1%</td>
<td>3.4%</td>
<td>na</td>
</tr>
<tr>
<td>Cooperative Bank of Oromia S.C.</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>0.7%</td>
<td>na</td>
</tr>
<tr>
<td>Lion International Bank S.C.</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.3%</td>
<td>na</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2.2%</td>
<td>2.8%</td>
<td>5.0%</td>
<td>4.5%</td>
<td>2.8%</td>
<td>na</td>
</tr>
</tbody>
</table>

**Grand Total**          | 13.1% | 15.9% | 22.6% | 11.2% | 8.9%  | na    |
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>1994</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>1995</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<td>Balance from investment in ...</td>
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<tr>
<td>1996</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>1997</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>1998</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>1999</td>
<td>Balance from investment in ...</td>
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<tr>
<td>2000</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>2001</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>2002</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<td>Balance from investment in ...</td>
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<tr>
<td>2003</td>
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<td>Balance from investment in ...</td>
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<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>2004</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<td>2005</td>
<td>Balance from investment in ...</td>
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<tr>
<td>2006</td>
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<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>2007</td>
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<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>2008</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>2009</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
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<tr>
<td>2010</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
<td>Balance from investment in ...</td>
</tr>
</tbody>
</table>
Table 18(Chap. 2) - Equity (Share) Investments of the Insurers in Ethiopia during the last One-and-a-Half Decades (Source: Annual Reports of the Insurers for the Years)

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>Investment in African Reinsurance Corporation, Ethio-Investment Company, African Import and Export Bank, United Investors S.C. and Motor Engineering Company of Ethiopia (MOENCO)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
<td>1995</td>
<td>&gt;&gt;</td>
<td>None</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1996</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>3,600,000 in Wegagen Bank S.C.</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>-</td>
<td>&gt;&gt;</td>
<td>none</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1997</td>
<td>&gt;&gt;</td>
<td>500,000 in Life Line Solutions S.C.</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>283,000 birr in the two</td>
<td>-</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1998</td>
<td>Additional Investment in the Ethiopian Sugar Industry Support Center</td>
<td>587,500 in same plus in Finfine Printing and Publishing S.C.</td>
<td>7,200,000 in Same</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>4,110,000 birr in the two</td>
<td>None</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>-</td>
</tr>
<tr>
<td>1999</td>
<td>&gt;&gt;</td>
<td>2,250,000 in Nib International Bank S.C., Awash International Bank S.C., and Life Line S.C.; No more in Finfine Printing and Publishing S.C.</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>4,610,000 in the two</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>&gt;&gt;</td>
<td>4,250,000 in Same</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>Investment in Nib International Bank S.C. and Abyssinia Bank S.C.</td>
<td>5,582,500 in the two</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>-</td>
</tr>
<tr>
<td>2001</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>8,490,000 in Same</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>8,850,000 in the two</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>-</td>
</tr>
<tr>
<td>2002</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>-</td>
<td>-</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>-</td>
</tr>
<tr>
<td>2003</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>10,592,000 in Same</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>-</td>
</tr>
<tr>
<td>2004</td>
<td>17,443,585 balance in Same</td>
<td>11,720,000 in Same</td>
<td>3,377,000 balance in same ($45,500 = capitalization of dividends in Nib Int Bank S.C.)</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>&gt;&gt;</td>
<td>13,077,000 in both</td>
<td>-</td>
</tr>
<tr>
<td>2005</td>
<td>17,243,585 balance in Same</td>
<td>11,397,500 balance in same &amp; in Ethiopian Food Products &amp; Animal Feed S.C.</td>
<td>12,523,000 balance in Same</td>
<td>3,377,000 balance in both</td>
<td>15,850,000 balance in the two</td>
<td>&gt;&gt;</td>
<td>48,473,673 balance in both</td>
<td>10,000,000 in Dashen Bank S.C.</td>
<td>16,870,000 balance in both</td>
<td>-</td>
</tr>
<tr>
<td>2006</td>
<td>17,243,585 balance in Same</td>
<td>13,339,500 balance in Same</td>
<td>16,756,000 balance in Same</td>
<td>3,662,975.40 balance in same ($41,225 = capitalization of dividends in Abyssinia Bank S.C.)</td>
<td>18,125,000 in United Bank S.C.</td>
<td>0</td>
<td>22,955,624 in Abyssinia Bank S.C.</td>
<td>10,000,000 in Desk Bank S.C.</td>
<td>19,864,500 balance in both</td>
<td>-</td>
</tr>
<tr>
<td>2007</td>
<td>17,243,585 balance in Same</td>
<td>18,788,833 balance in Same</td>
<td>25,394,000 in Same</td>
<td>4,538,757.40 balance in same ($57,000 = capitalization of dividends in Nib Int Bank S.C.)</td>
<td>24,750,000 in same</td>
<td>0</td>
<td>36,098,449 in same</td>
<td>10,000,000 in same</td>
<td>23,408,000 in same</td>
<td>-</td>
</tr>
<tr>
<td>2008</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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**Table 19 (Chap. 2) - Market Share of the Banks in Ethiopia during the Last One-and-a-Half Decades: End of June Positions by One Year Interval**

(Source: Computed based on Annual Reports of the Banks for the Years)  

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<th>Year</th>
<th>Total of the Markets</th>
<th>% Share of the Banks</th>
<th>By Number of Branches</th>
<th>By Paid Up Share Capital</th>
<th>By Reserves and Retained Surplus</th>
<th>By Deposits</th>
<th>By Lending (Loans &amp; Advances + Letters of Credit + Overdraft)</th>
<th>By Total Liabilities</th>
<th>By Gross Income</th>
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<td>96.2</td>
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<td>1.8</td>
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*Note:* The four new private banks formed in the period from July 2008 up to end of March 2010, namely Oromia International Bank S.C., Zemen Bank S.C., Bunna International Bank S.C. and Berhan International Bank S.C. (note Table 2, Chap. 2 above), are too new to be considered here. Their market shares are very small (See Annual and Quarterly Reports of the banks and the NBE for 2009 and 2010).
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<th>Year</th>
<th>By Number of Branches</th>
<th>Nyala Global National Insurance</th>
<th>By Total Assets</th>
<th>By Gross Premium Writing</th>
<th>By Current Liabilities</th>
<th>By Paid Up Share Capital</th>
<th>By Gross Income</th>
</tr>
</thead>
</table>
| 1995 | 23                   | 91.3 NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA NA 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**Table 21 (Chap. 2): Comparison of Performance of the Government and Private Banks in Ethiopia by their Resource Mobilization since the Start of Private Banking**

**Sources:** Computed based on Annual Reports of the Banks and the NBE for the Years.

1. By Deposit Taking and Loan Disbursement

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**Financial Market Development, Policy, and Regulation**
Table 21 (Chap. 2) – Continued (1 of 1)

2. By Loan Collection and Outstanding

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<th>Loans Collected</th>
<th>The Gov. Banks</th>
<th>Excluding Inter-Bank Lending</th>
<th>The Private Banks</th>
<th>Total</th>
<th>The Number of Folds</th>
<th>Increased</th>
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<th>Loans Outstanding</th>
<th>The Gov. Banks</th>
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<th>The Private Banks</th>
<th>Total</th>
<th>The Number of Folds</th>
<th>Increased</th>
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Grand 9,257.2 13,372.7 18,270.6 25,540.9 28,855.8 29,026.5 44,317.5 51,633.6 55.8
Table 22(Chap. 2) - Comparison of Performance of the Government and Private Insurers in Ethiopia by their Premium Underwriting: End of June Positions by One Year Interval since the Start of Private Insurance in the Country

Sources: Computed based on Annual Reports of the Insurers for the Years.

(Premiums in millions of Birr)

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Table 23(Chap. 2) - Direction of Ethiopia’s External Trade and Inward Foreign Investment during the Last One-and-a-Half Decades: End of June Positions by Percent Share out of the Totals of Each Year (by One Year Interval)


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Tables to Chapter Three
Table 1(Chap. 3) - Total Number and Relative Percentages of the Investment Projects (Approved and Operational) in Ethiopia during the Last Two Decades - Country Total

**Source:** Calculated based on Statistical Reports of the Ethiopian Investment Agency numbers 3, 6 and 8 (cited as EIC2, 2001; EIC2, 2003 and EIC2, 2006) and unpublished data of the Agency.

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**Note:**

1. The Ethiopian Investment Agency revises the data for the years retroactively to show subsequent changes on the status of investment. This and the subsequent tables on investment are based on the unrevised data of the Agency to show the true closing positions of the years. They also exclude the investment projects whose initial capitals are below Birr 250,000 and the investment projects in the mining, energy and financial services sectors of the country. The latter are included in Tables 8(Chap. 3) and 9(Chap. 3) below.
2. The rows for foreign investment include the wholly foreign owned investments and the foreign investments made jointly with domestic investors.
### Table 2(Chap. 3) - Total Capital and Relative Percentages of the Investment Projects (Approved and Operational) in Ethiopia during the Last Two Decades - Country Total

**Source:** Calculated based on Statistical Reports of the Ethiopian Investment Agency numbers 3, 6 and 8 (cited as EIC2, 2001; EIC2, 2003 and EIC2, 2006) and unpublished data of the Agency.

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<td>0.3</td>
<td>0.5</td>
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<td>na</td>
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</table>

**Note:**
1. See Note 1 to Table 1(Chap. 3) above.
2. The US$ equivalents are calculated by using the end of year average marginal rates of the foreign exchange auction market of Ethiopia for the years from 1995 up to 2001 and the end of year average weighted rates of the inter-bank foreign exchange market of the country for the years from 2003 up to 2007.
Table 3(Chap. 3) - Regional Distribution of the Investment Projects (Approved and Operational) in Ethiopia during the Last Two Decades: by Relative % of the Number of Projects

Source: Calculated based on Statistical Reports of the Ethiopian Investment Agency numbers 3, 6 and 8 (cited as EIC2, 2001; EIC2, 2003 and EIC2, 2006) and unpublished data of the Agency.

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<thead>
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<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
<th>Total</th>
<th>Share of the Domestic &amp; Foreign</th>
</tr>
</thead>
<tbody>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Domestic</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Private</td>
</tr>
<tr>
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<td>60.0</td>
<td>71.9</td>
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<td>na</td>
<td>51.1</td>
<td>44.2</td>
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<td>9.8</td>
<td>5.1</td>
<td>3.4</td>
<td>2.8</td>
<td>1.9</td>
<td>na</td>
<td>2.7</td>
<td>2.5</td>
</tr>
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<td>2.8</td>
<td>2.4</td>
<td>2.3</td>
<td>4.1</td>
<td>3.0</td>
<td>5.9</td>
<td>na</td>
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<td>4.7</td>
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<td>1.0</td>
<td>0.9</td>
<td>0.7</td>
<td>0.4</td>
<td>na</td>
<td>0.8</td>
<td>0.7</td>
</tr>
<tr>
<td>Region 3 (Amhara)</td>
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<td>7.4</td>
<td>4.9</td>
<td>2.6</td>
<td>3.3</td>
<td>8.7</td>
<td>10.3</td>
<td>na</td>
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</tr>
<tr>
<td>Region 4 (Oromia)</td>
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<td>20.5</td>
<td>8.2</td>
<td>13.6</td>
<td>na</td>
<td>17.9</td>
<td>14.4</td>
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</tr>
<tr>
<td>Region 5 (Somali)</td>
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<td>0.1</td>
<td>0.4</td>
<td>0.3</td>
<td>0.1</td>
<td>0.1</td>
<td>na</td>
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<tr>
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<td>0.6</td>
<td>0.2</td>
<td>0.1</td>
<td>1.5</td>
<td>na</td>
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<td>0</td>
</tr>
<tr>
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<td>4.9</td>
<td>8.6</td>
<td>9.8</td>
<td>na</td>
<td>10.7</td>
<td>10.3</td>
</tr>
<tr>
<td>Region 8 (Gambella)</td>
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<td>0.1</td>
<td>0</td>
<td>0.1</td>
<td>0.2</td>
<td>0.2</td>
<td>na</td>
<td>0.1</td>
<td>0.1</td>
</tr>
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<td>Region 9 (Harari)</td>
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<td>2.2</td>
<td>2.2</td>
<td>3.0</td>
<td>2.0</td>
<td>0.5</td>
<td>na</td>
<td>1.6</td>
<td>1.6</td>
</tr>
<tr>
<td>Multi-Regional</td>
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<td>0</td>
<td>0.1</td>
<td>0.6</td>
<td>0.1</td>
<td>1.7</td>
<td>3.7</td>
<td>na</td>
<td>1.8</td>
<td>0.5</td>
</tr>
<tr>
<td>Total Approved</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>na</td>
<td>100</td>
<td>87.2</td>
</tr>
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</table>

Percent of the Regional Operational out of the Country Total Operational

| Addis Ababa | 12.7 | 13.7 | 15.0 | 66.1 | 41.4 | 47.7 | 55.9 | na   | 30.6  | 22.4 | 0.1 | 8.2 |
| Dire Dawa   | 0.4  | 1.3  | 2.5  | 16.1 | 3.1  | 0.6  | 0.0  | na   | 1.6   | 1.4 | 0.1 | 0.1 |
| Region 1 (Tigray) | 49.1 | 4.7  | 8.0  | 14.5 | 3.7  | 2.8  | 12.7 | na   | 11.9  | 11.9 | 0 | 0 |
| Region 2 (Afar) | 0   | 0    | 0    | 0    | 0.6  | 0    | 0    | na   | 0.6   | 0.5 | 0 | 0.1 |
| Region 3 (Amhara) | 7.5  | 15.4 | 4.5  | 0    | 9.9  | 15.9 | 16.1 | na   | 9.2   | 8.8 | 0.1 | 0.4 |
| Region 4 (Oromia) | 25.0 | 40.6 | 24.5 | 1.6  | 35.8 | 13.6 | 5.1  | na   | 25.7  | 22.9 | 0.3 | 2.5 |
| Region 5 (Somali) | 0   | 0    | 0    | 0    | 0.6  | 0    | 0    | na   | 0.5   | 0.5 | 0 | 0 |
| Region 6 (Ben-Gumz) | 0   | 3.0  | 1.0  | 0    | 0    | 2.8  | 5.1  | na   | 1.3   | 1.3 | 0 | 0 |
| Region 7 (SNNPR) | 5.3  | 20.5 | 42.4 | 0    | 1.2  | 14.2 | 1.7  | na   | 16.8  | 16.6 | 0 | 0.2 |
| Region 8 (Gambella) | 0   | 0.4  | 0    | 1.6  | 0    | 0.6  | 0    | na   | 0.3   | 0.3 | 0 | 0 |
| Region 9 (Harari) | 0   | 0    | 2.2  | 0    | 3.7  | 0    | 0    | na   | 0.8   | 0.8 | 0 | 0 |
| Multi-Regional | 0    | 0    | 0    | 0    | 1.7  | 3.4  | 0.6  | na   | 0.2   | 0.2 | 0 | 0.4 |
| Total Operational | 100  | 100  | 100  | 100  | 100  | 100  | 100  | na   | 100   | 87.6 | 0.5 | 11.9 |

Note: See Note 1 to Table 1(Chap. 3) above.
### Table 4(Chap. 3) - Regional Distribution of the Investment Projects (Approved and Operational) in Ethiopia during the Last Two Decades: by Relative % of the Investment Capital

**Source:** Calculated based on Statistical Reports of the Ethiopian Investment Agency numbers 3, 6 and 8 (cited as EIC2, 2001; EIC2, 2003 and EIC2, 2006) and unpublished data of the Agency.

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<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
<th>Total</th>
<th>Percent of the Regional Approved out of the Country Total Approved</th>
<th>Share of the Domestic &amp; Foreign Capital</th>
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<td>1.0</td>
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<td>1.6</td>
<td>0.1</td>
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<td>0.4</td>
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<td>0.3</td>
<td>0.3</td>
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<td>Multi-Regional</td>
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<td>15.7</td>
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</tr>
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<td>100</td>
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<td>100</td>
<td>na</td>
<td>100</td>
<td>55.1</td>
<td>12.1</td>
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<tr>
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<td>Addis Ababa</td>
</tr>
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<td>Dire Dawa</td>
</tr>
<tr>
<td>Region 1 (Tigray)</td>
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<tr>
<td>Region 2 (Afar)</td>
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<td>Region 3 (Amhara)</td>
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<tr>
<td>Region 4 (Oromia)</td>
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<td>Region 5 (Somali)</td>
</tr>
<tr>
<td>Region 6 (Ben-Gumz)</td>
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<tr>
<td>Region 7 (SNNPR)</td>
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<td>Region 8 (Gambella)</td>
</tr>
<tr>
<td>Region 9 (Harari)</td>
</tr>
<tr>
<td>Multi-Regional</td>
</tr>
<tr>
<td>Total Operational</td>
</tr>
</tbody>
</table>

**Note:**
See Note 1 to Table 1(Chap. 3) above.
Table 5(Chap. 3) - The Number of State Enterprises (and Branches) Privatized in Ethiopia during the Last One-and-a-Half Decades by Modality of Privatization, Type of Asset Transfer and Type of Buyer  

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<td>Total Privatized (Transferred)</td>
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<td>127</td>
<td>27</td>
<td>16</td>
<td>9</td>
<td>16</td>
<td>6</td>
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<td>4</td>
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<td>17</td>
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<td>Percentage out of Grand Total Privatized</td>
<td>0.085</td>
<td>0.205</td>
<td>0.070</td>
<td>0.085</td>
<td>0.045</td>
<td>0.070</td>
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<td>0.015</td>
<td>0.015</td>
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<td>By Modality of Privatization</td>
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<td>Sale</td>
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<td>Management and Employee Buyout (MEBO)</td>
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<td>Public-Private Partnership Total</td>
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<tr>
<td>By Type of Asset Transferred</td>
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<td></td>
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</tr>
<tr>
<td>Business of the Enterprise</td>
<td>2</td>
<td>75</td>
<td>10</td>
<td>2</td>
<td>4</td>
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<td>-</td>
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<td>-</td>
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<tr>
<td>Fixed Assets of the Enterprise</td>
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<td>-</td>
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</tr>
<tr>
<td>Business and Fixed Assets of the Enterprise</td>
<td>3</td>
<td>36</td>
<td>8</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
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<tr>
<td>Equity Share of the Enterprise</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.7</td>
</tr>
<tr>
<td>The Enterprise in Totality (100%)</td>
<td>-</td>
<td>16</td>
<td>8</td>
<td>12</td>
<td>3</td>
<td>14</td>
<td>6</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>12</td>
<td>7</td>
<td>89</td>
</tr>
<tr>
<td>By Type of Buyer</td>
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</tr>
<tr>
<td>Sold to Individual Buyers</td>
<td>3</td>
<td>26</td>
<td>8</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>-</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>56</td>
</tr>
<tr>
<td>Sold to Institutional Buyers</td>
<td>2</td>
<td>101</td>
<td>19</td>
<td>13</td>
<td>5</td>
<td>11</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>16</td>
<td>14</td>
<td>193</td>
</tr>
</tbody>
</table>

Total Sale Price (Exclude the Privatizations by modalities other than Sale)

<table>
<thead>
<tr>
<th>In Millions of Birr</th>
<th>4.60</th>
<th>472.84</th>
<th>1,430.30</th>
<th>581.86</th>
<th>235.65</th>
<th>369.12</th>
<th>369.12</th>
<th>153.55</th>
<th>9.70</th>
<th>4.84</th>
<th>13.86</th>
<th>142.99</th>
<th>50.37</th>
<th>166.27</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Millions of US$</td>
<td>0.74</td>
<td>74.84</td>
<td>220.51</td>
<td>84.55</td>
<td>31.37</td>
<td>45.34</td>
<td>45.34</td>
<td>18.84</td>
<td>1.14</td>
<td>0.56</td>
<td>1.84</td>
<td>5.80</td>
<td>18.91</td>
<td>503.24</td>
</tr>
</tbody>
</table>

The US$ equivalent is calculated by using the end of year average marginal rate of the foreign exchange auction market of Ethiopia for the years from 1995 up to 2001 and the end of year average weighted rate of the inter-bank foreign exchange market of the country for the years from 2002 up to 2007.
Table 6(Chap. 3) - Nationality of Buyers of the State Enterprises (and Branches) Privatized in Ethiopia during the Last One-and-a-Half Decades
(The Level by June 30 2007)

Source: Records of the Privatization and Public Enterprises Supervising Agency (PPESA) of Ethiopia.

<table>
<thead>
<tr>
<th>Sold To</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethiopians</td>
<td></td>
</tr>
<tr>
<td>Saudis</td>
<td></td>
</tr>
<tr>
<td>Arabs</td>
<td></td>
</tr>
<tr>
<td>Yemenites</td>
<td></td>
</tr>
<tr>
<td>French</td>
<td></td>
</tr>
<tr>
<td>Turkish</td>
<td></td>
</tr>
<tr>
<td>Czechoslovaks,</td>
<td></td>
</tr>
<tr>
<td>Chinese and British</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Total Number of Enterprises (and Branches) Privatized</td>
<td>219</td>
</tr>
<tr>
<td>Sold To Foreigners</td>
<td></td>
</tr>
<tr>
<td>Ethiopians</td>
<td></td>
</tr>
<tr>
<td>Saudis</td>
<td></td>
</tr>
<tr>
<td>Arabs</td>
<td></td>
</tr>
<tr>
<td>Yemenites</td>
<td></td>
</tr>
<tr>
<td>French</td>
<td></td>
</tr>
<tr>
<td>Turkish</td>
<td></td>
</tr>
<tr>
<td>Czechoslovaks,</td>
<td></td>
</tr>
<tr>
<td>Chinese and British</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Total Number of Enterprises (and Branches) Privatized</td>
<td>23</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Total Number of Enterprises (and Branches) Privatized</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Total Number of Enterprises (and Branches) Privatized</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Total Number of Enterprises (and Branches) Privatized</td>
<td>3 (1 each)</td>
</tr>
<tr>
<td>Total</td>
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</tr>
<tr>
<td>Total Number of Enterprises (and Branches) Privatized</td>
<td>30</td>
</tr>
</tbody>
</table>

Table 7(Chap. 3) - The Sale Price and Post-Privatization Investment on State Enterprises (and Branches) Privatized in Ethiopia during the Last One-and-a-Half Decades (The Level by June 30 2007)

Source: Records of the Privatization and Public Enterprises Supervising Agency (PPESA) of Ethiopia.

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number of Enterprises (and Branches) Privatized</th>
<th>Sale (Purchase Price)</th>
<th>Post-Privatization Investment</th>
<th>Total Sale (Purchase Price) and Post-Privatization Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>In Millions of Birr</td>
<td>In Millions of US$</td>
<td>Percent Share out of the Total Sale Price</td>
</tr>
<tr>
<td>Wholesale and Retail</td>
<td>133</td>
<td>199.82</td>
<td>28.75</td>
<td>5.7</td>
</tr>
<tr>
<td>Hotel and Tourism</td>
<td>24</td>
<td>54.73</td>
<td>7.87</td>
<td>1.6</td>
</tr>
<tr>
<td>Industry</td>
<td>60</td>
<td>1,007.63</td>
<td>144.97</td>
<td>28.8</td>
</tr>
<tr>
<td>Agriculture and Agro-Industry</td>
<td>31</td>
<td>943.14</td>
<td>135.98</td>
<td>27.0</td>
</tr>
<tr>
<td>Mining</td>
<td>1</td>
<td>1,290.43</td>
<td>185.66</td>
<td>36.9</td>
</tr>
<tr>
<td>Total</td>
<td>249</td>
<td>3,497.75</td>
<td>503.24</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Note: The US$ equivalents are calculated by using the average foreign exchange rate of the country for the year.
Table 8(Chap. 3) - The Number of Traders and Business Organizations Registered in Ethiopia during the Last Two Decades: the New Registrations by Year

Source: The Commercial Register at the Ministry of Trade and Industry of Ethiopia and the annual and quarterly reports of the National Bank of Ethiopia.

<table>
<thead>
<tr>
<th>Year</th>
<th>Individual Traders and Partnerships</th>
<th>Private Limited Companies</th>
<th>Share Companies</th>
<th>Total Business Organizations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 1991</td>
<td>2,153</td>
<td>1653</td>
<td>65</td>
<td>178</td>
</tr>
<tr>
<td>1992</td>
<td>7,735</td>
<td>6639</td>
<td>974</td>
<td>7613</td>
</tr>
<tr>
<td>1993</td>
<td>4,790</td>
<td>3428</td>
<td>1210</td>
<td>4638</td>
</tr>
<tr>
<td>1994</td>
<td>1,183</td>
<td>939</td>
<td>109</td>
<td>1084</td>
</tr>
<tr>
<td>1995</td>
<td>939</td>
<td>729</td>
<td>80</td>
<td>899</td>
</tr>
<tr>
<td>1996</td>
<td>914</td>
<td>655</td>
<td>114</td>
<td>769</td>
</tr>
<tr>
<td>1997</td>
<td>1,601</td>
<td>1266</td>
<td>105</td>
<td>1371</td>
</tr>
<tr>
<td>1998</td>
<td>3,928</td>
<td>3150</td>
<td>266</td>
<td>3416</td>
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<tr>
<td>1999</td>
<td>4,494</td>
<td>3686</td>
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<td>4067</td>
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<tr>
<td>2000</td>
<td>6,818</td>
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<td>973</td>
<td>6236</td>
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<tr>
<td>2001</td>
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<td>4037</td>
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<td>2002</td>
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<td>4617</td>
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<td>2003</td>
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<td>4582</td>
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<td>5184</td>
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<td>5149</td>
<td>1111</td>
<td>6213</td>
</tr>
<tr>
<td>2005</td>
<td>5,221</td>
<td>3618</td>
<td>873</td>
<td>4491</td>
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<tr>
<td>2006</td>
<td>4,067</td>
<td>2833</td>
<td>579</td>
<td>3412</td>
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<tr>
<td>2007</td>
<td>5,428</td>
<td>3,499</td>
<td>824</td>
<td>4323</td>
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<tr>
<td>2008</td>
<td>7,710</td>
<td>5584</td>
<td>902</td>
<td>6218</td>
</tr>
<tr>
<td>2009</td>
<td>7,398</td>
<td>5289</td>
<td>982</td>
<td>6356</td>
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<tr>
<td>G. No.</td>
<td>71,854</td>
<td>54,865</td>
<td>9,484</td>
<td>64,349</td>
</tr>
</tbody>
</table>

Note:
1. The grand total number of partnerships is only thirty seven.
2. The table includes the traders and business organizations whose investment and formation was approved by the Ministry of Trade and Industry, the Ethiopian Investment Agency and the Sectoral and regional trade and investment offices (as these were finally registered in the central trade register of the Ministry of Trade and Industry); the finance companies registered by the National Bank of Ethiopia; and the state enterprises registered by the Ministry of Trade and Industry to the exclusion of the enterprises that were not registered by it.
Table 9 (Chap. 3) - The Subscribed & Paid Up Capital of the Traders and Business Organizations Registered in Ethiopia during the Last Two Decades: The New Registrations by Year

<table>
<thead>
<tr>
<th>Year</th>
<th>Total of the Year</th>
<th>Individual Traders and Partnerships</th>
<th>Private Limited Companies</th>
<th>Joint Ventures</th>
<th>State Enterprises (Including the Gov. Banks &amp; Insurer)</th>
<th>(In Millions of Birr and US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1991</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1992</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1993</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1994</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
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<td></td>
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<tr>
<td>1995</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
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<td></td>
</tr>
<tr>
<td>1996</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1997</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
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<tr>
<td>1998</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
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<td></td>
</tr>
<tr>
<td>1999</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
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<tr>
<td>2009</td>
<td>1,598.5</td>
<td>104.0</td>
<td>220.8</td>
<td>173.6</td>
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</tbody>
</table>

Note:
1. The US$ equivalent is calculated by using the end of year average marginal rate of the foreign exchange auction market of the Ethiopia for the years from 1993 up to 2001 and the end of year average weighted rate of the inter-bank foreign exchange market of the country for the years from 2002 up to 2007.
2. The table includes the traders and business organizations whose investment and formation was approved by the Ministry of Trade and Industry, the Ethiopian Investment Agency and the Sectoral and regional trade and investment offices (as these were finally registered in the central trade register of the Ministry of Trade and Industry); the finance companies registered by the National Bank of Ethiopia; and the state enterprises registered by the Ministry of Trade and Industry to the exclusion of the enterprises that were not registered by it.
Table 10 (Chap. 3) - Government and Company Securities Issued in Ethiopia before and during the life of the Securities Market in the Country (1956 through 1974)


<table>
<thead>
<tr>
<th>Date of Issue</th>
<th>Denomination</th>
<th>Total Issue (in Millions of Eth Brr)</th>
<th>Interest</th>
<th>Subscriptions (in Millions of Brr)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>National Bank of Ethiopia</td>
<td>State Bank of Ethiopia</td>
</tr>
<tr>
<td>08 Feb. 1963</td>
<td>Ten Years Bearer Savings Bonds at par of Eth $ 100</td>
<td>6.0</td>
<td>6.5% per annum from date of issue</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Five Years Bearer Premium Bonds (Series A: 08 Feb., Series B: 12 Oct., Series C: 11 Nov., and Series D: 11 Dec. 1963) each at par of Eth $ 25</td>
<td>4.0</td>
<td>4% per annum from date of issue (with semi-annual premium price drawings ranging from Eth. $ 25 - 5000)</td>
<td>3.0 (Series B,C,D)</td>
</tr>
<tr>
<td>11 Sep. 1964</td>
<td>Ten Years Bearer Savings Bonds each at Par of Eth$100</td>
<td>10.0</td>
<td>6.5% per annum from date of issue</td>
<td>-</td>
</tr>
<tr>
<td>Aug. 1966</td>
<td>Ten Years Bearer Savings Bonds each at Par of Eth$100</td>
<td>1.0</td>
<td>6.5% per annum from date of issue</td>
<td>1.0 (not issued to the Public)</td>
</tr>
<tr>
<td>09 Feb. 1968</td>
<td>Five Years Bearer Premium Bonds (Series E: 09 Feb., Series F: 12 Oct., Series G: 11 Nov., Series H: 11 Dec.) each at par of Eth $ 25</td>
<td>4.0</td>
<td>4% per annum (with semi-annual premium price drawings ranging from Eth. $ 25 - 5000)</td>
<td>-</td>
</tr>
<tr>
<td>11 Sep. 1968</td>
<td>Ten Years Bearer Savings Bonds each at par of Eth $ 100</td>
<td>6.0</td>
<td>6.5% per annum from date of issue</td>
<td>-</td>
</tr>
<tr>
<td>08 July 1969</td>
<td>Ten Years Bearer Savings Bonds each at par of Eth $ 100</td>
<td>20.0</td>
<td>7% per annum from date of issue</td>
<td>-</td>
</tr>
<tr>
<td>11 Oct. 1969</td>
<td>Five Years Bearer Premium Bonds (Series E: 11 Oct., Series J: 10 Nov.) each at par of Eth $ 25</td>
<td>2.0</td>
<td>4% per annum (with semi-annual premium price drawings ranging from Eth. $ 25 - 5000)</td>
<td>-</td>
</tr>
<tr>
<td>07 August 1972</td>
<td>Ten Years Bearer Savings Bonds each at par of Eth $ 1000</td>
<td>10.0</td>
<td>7% per annum from date of issue</td>
<td>-</td>
</tr>
<tr>
<td>11 Oct. 1973</td>
<td>Ten Years Bearer Savings Bonds each at par of Eth $ 1000</td>
<td>10.0</td>
<td>7% per annum from date of issue</td>
<td>-</td>
</tr>
<tr>
<td>11 Sep. 1974</td>
<td>Ten Years Bearer Savings Bonds each at par of Eth $ 1000</td>
<td>20.0</td>
<td>7% per annum from date of issue</td>
<td>-</td>
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<tr>
<td>Total</td>
<td></td>
<td>93.0</td>
<td>9.0</td>
<td>84.0</td>
</tr>
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</table>
### Table 10(Chap. 3) - Continued (1 of 1)

<table>
<thead>
<tr>
<th>Date of Issue</th>
<th>Issuing Company</th>
<th>Total Issue (In Millions of Birr)</th>
<th>Subscriptions (In Millions of Birr)</th>
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<tr>
<td></td>
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<td>State Bank of Ethiopia</td>
<td>Commercial Bank of Ethiopia</td>
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<tr>
<td>1956</td>
<td>Ethiopian Abattoirs S.C.</td>
<td>1.0</td>
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<tr>
<td>1957</td>
<td>Bottling Company of Ethiopia</td>
<td>0.665</td>
<td>0.015</td>
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<tr>
<td>1958</td>
<td>Indo-Ethiopian Textiles</td>
<td>4.5</td>
<td>1.960</td>
</tr>
<tr>
<td>1959</td>
<td>HVA Ethiopia (as consideration for existing facilities)</td>
<td>22.4</td>
<td>-</td>
</tr>
<tr>
<td>Jan-Mar. 1959</td>
<td>HVA Ethiopia (cash offer for Ethiopian Nationals only)</td>
<td>5.6</td>
<td>3.09</td>
</tr>
<tr>
<td>April 1961</td>
<td>Société du Tedji d’Ethiopiè Saba</td>
<td>1.79</td>
<td>0.29</td>
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<tr>
<td>July-Oct. 1961</td>
<td>Tendaho Plantations</td>
<td>2.25</td>
<td>0.15</td>
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<tr>
<td>Sept. - Dec. 1962</td>
<td>The National Meet Corporation of Ethiopia</td>
<td>2.5</td>
<td>0.01</td>
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<tr>
<td>May 1963</td>
<td>Société du Tedji d’Ethiopiè Saba (Second Issue)</td>
<td>0.25</td>
<td>-</td>
</tr>
<tr>
<td>Sep. 1963 - Mar. 1964</td>
<td>The Addis Ababa Bank S.C.</td>
<td>1.8</td>
<td>-</td>
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<tr>
<td>Dec. 1963 - Feb. 1964</td>
<td>The Ethiopian Drug Manufacturing S.C.</td>
<td>1.248</td>
<td>-</td>
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<tr>
<td>Mar. - May 1965</td>
<td>The Rubber and Canvas Shoe S.C.</td>
<td>4.2</td>
<td>-</td>
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<tr>
<td>June - July 1965</td>
<td>The Ethiopian Fabrics S.C.</td>
<td>2.301</td>
<td>-</td>
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<tr>
<td>Nov. 1965 - Feb. 1966</td>
<td>The Ethiopian Pulp and Paper S.C.</td>
<td>4.608</td>
<td>0.11</td>
</tr>
<tr>
<td>April - Sep. 1966</td>
<td>The African Solidarity Insurance Company (Offer to Ethiopian Nationals)</td>
<td>0.2</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>72.172</td>
<td>6.827</td>
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</table>
Table 11(Chap. 3) – Total Value of Government and Company Securities Issued and Outstanding in Ethiopia since Adoption of the Free Market Approach in 1991

Sources: Annual Reports of the National Bank of Ethiopia; the Commercial Register at the Ministry of Trade and Industry of the Country; and Annual Reports of the Banks, Insurers and Micro-Finance Institutions.

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<td>Outstanding by End of Year (July 07)</td>
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<td><strong>G-Bonds</strong></td>
<td><strong>Outstanding by June 30 of the Year</strong></td>
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<td>Amount Sold</td>
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<tr>
<td>With the National Bank of Ethiopia</td>
<td>1,298.1</td>
<td>2,605.1</td>
<td>2,607.3</td>
<td>2,889.1</td>
<td>2,272.5</td>
<td>2,152.9</td>
<td>2,089.8</td>
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<td>Outstanding by End of Year (June 30)</td>
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<td>With the National Bank of Ethiopia</td>
<td>1,298.1</td>
<td>2,605.1</td>
<td>2,607.3</td>
<td>2,889.1</td>
<td>2,272.5</td>
<td>2,152.9</td>
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Note:
1. Sale of treasury bills started in January 1995 following the change of government in 1991. The data for 1995 includes only the amounts for the bills auctioned and sold in the last six months of the year (i.e. from January to June 1995). See Annual Report of the NBE for the year (Cited as NBE, 1995/1996), at pp. 22-23.
2. The sold bond amount for 2000 (i.e. 70.8) represents special bonds issued to the Ministry of Finance in late 1999 to transfer part of the outstanding loans of the Development Bank of Ethiopia from the NBE. No public bond auction was conducted in 1999.
3. Bond auctions were conducted twice in November 2000 and January 2001. They were conducted mainly for purpose of mopping up the excess reserves of the banks. Only the auction held in November 2000 was successful and the sold bond amount indicated in this table for 2001 (i.e. 3,018.0) represents the bonds issued in 2000. The bonds were 2-years bonds. They matured in November 2002 and were replaced by 91 days T-bills in that year. No sale was made in the auction held in January 2001 due to absence of bidders. No bond auction is conducted after 2001.
4. The sold bond amount for 2003 (i.e. 635.0) represents special bonds all of which were issued to the Commercial Bank of Ethiopia in the year outside auction for purpose of transferring the bad debts of former public enterprises to the federal government.
5. The sold bond amount for 2004 (i.e. 440.6) includes the following:
   a. Special bonds of 275.6 million Birr issued in the year to the Commercial Bank of Ethiopia and the Development Bank of Ethiopia outside auction for purpose of transferring the bad debts of former public enterprises and government co-financed projects to the federal government.
   b. Bonds of 165.0 million Birr issued and sold to the Commercial Bank of Ethiopia in the year by the Development Bank of Ethiopia.
6. The issuance of bonds to the commercial bank of Ethiopia has continued after 2007. All the issues are made by public enterprise and regional governments outside auction.

The total outstanding bond holding has, accordingly, grown to 24.6 billion birr (1.87 billion US$ at the average weighted exchange rate of the quarter) by end of March 2010 (Note annual and quarterly reports of the NBE for 2008 up to third quarter of 2010).
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<tr>
<td>Company Securities</td>
<td>New Issues and Outstanding by June 30 of the Year</td>
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<td>Issued by the Share Companies (SCs)</td>
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<tr>
<td>Number of Issuing Companies (Outstanding by End of Year)</td>
<td>47</td>
<td>59</td>
<td>65</td>
<td>77</td>
<td>84</td>
<td>97</td>
<td>116</td>
<td>140</td>
<td>211</td>
<td>229</td>
<td>256</td>
<td>274</td>
<td>300</td>
<td>321</td>
<td>337</td>
<td>370</td>
</tr>
<tr>
<td>New Shares Issued by Year (millions of Birr)</td>
<td>6.2</td>
<td>291.9</td>
<td>125.1</td>
<td>306.5</td>
<td>165.5</td>
<td>297.8</td>
<td>364.3</td>
<td>622.9</td>
<td>2488.7</td>
<td>345.6</td>
<td>1298.3</td>
<td>410.2</td>
<td>568.6</td>
<td>404.7</td>
<td>623.1</td>
<td>946.1</td>
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<td>Total Shares Outstanding by End of Year (millions of Birr)</td>
<td>256.5</td>
<td>548.4</td>
<td>673.5</td>
<td>980.0</td>
<td>1,145.3</td>
<td>1,443.3</td>
<td>1,807.6</td>
<td>2,430.5</td>
<td>4,919.2</td>
<td>5,264.8</td>
<td>5,636.1</td>
<td>5,973.3</td>
<td>5,394.2</td>
<td>4,186.3</td>
<td>6,869.7</td>
<td>9,515.8</td>
</tr>
<tr>
<td>Issued by the Private Limited Companies (PLCs)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Issuing Companies (Outstanding by End of Year)</td>
<td>441</td>
<td>562</td>
<td>668</td>
<td>774</td>
<td>906</td>
<td>1,115</td>
<td>1,537</td>
<td>1,914</td>
<td>2,380</td>
<td>2,791</td>
<td>3,159</td>
<td>3,643</td>
<td>4,415</td>
<td>5,121</td>
<td>5,777</td>
<td>6,545</td>
</tr>
<tr>
<td>New Shares Issued by Year (millions of Birr)</td>
<td>430.8</td>
<td>104.3</td>
<td>475.0</td>
<td>569.0</td>
<td>2,186.4</td>
<td>470.0</td>
<td>1,500.7</td>
<td>2,227.8</td>
<td>2,259.4</td>
<td>1,152.2</td>
<td>2,465.3</td>
<td>1,742.8</td>
<td>3,626.3</td>
<td>1,290.8</td>
<td>5,110.0</td>
<td>11,487.6</td>
</tr>
<tr>
<td>Total Shares Outstanding by End of Year (millions of Birr)</td>
<td>1,006.9</td>
<td>1,111.2</td>
<td>2,586.2</td>
<td>2,147.0</td>
<td>4,330.70</td>
<td>4,800.70</td>
<td>6,311.40</td>
<td>8,539.20</td>
<td>10,798.60</td>
<td>11,950.80</td>
<td>14,416.40</td>
<td>16,159.20</td>
<td>19,785.50</td>
<td>21,076.30</td>
<td>26,187.30</td>
<td>37,674.89</td>
</tr>
<tr>
<td>Total Securities</td>
<td>Outstanding by June 30 of the Year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(In Millions of Birr)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Securities</td>
<td>5,028.4</td>
<td>6,525.5</td>
<td>7,134.6</td>
<td>8,684.0</td>
<td>11,482.5</td>
<td>11,782.9</td>
<td>13,294.0</td>
<td>17,850.2</td>
<td>22,140.7</td>
<td>36,984.7</td>
<td>41,242.0</td>
<td>45,259.2</td>
<td>52,995.6</td>
<td>48,338.8</td>
<td>58,935.6</td>
<td>73,063.2</td>
</tr>
<tr>
<td>All Non-T-Bills</td>
<td>5,028.5</td>
<td>6,725.5</td>
<td>7,134.6</td>
<td>8,684.0</td>
<td>11,482.5</td>
<td>11,782.9</td>
<td>13,294.0</td>
<td>17,850.2</td>
<td>22,140.7</td>
<td>36,984.7</td>
<td>41,242.0</td>
<td>45,259.2</td>
<td>52,995.6</td>
<td>48,338.8</td>
<td>58,935.6</td>
<td>73,063.2</td>
</tr>
<tr>
<td>All G-bonds</td>
<td>3,765.7</td>
<td>4,756.9</td>
<td>4,740.3</td>
<td>12,436.5</td>
<td>4,436.5</td>
<td>4,471.4</td>
<td>15,996.4</td>
<td>15,784.3</td>
<td>13,026.7</td>
<td>22,140.7</td>
<td>36,984.7</td>
<td>41,242.0</td>
<td>45,259.2</td>
<td>52,995.6</td>
<td>48,338.8</td>
<td>58,935.6</td>
</tr>
<tr>
<td>All the Non-T-Bills</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The T-bills</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The G-bonds &amp; all Securities of the SCs</td>
<td>109.5</td>
<td>116.6</td>
<td>156.8</td>
<td>220.0</td>
<td>223.6</td>
<td>604.1</td>
<td>632.2</td>
<td>850.9</td>
<td>918.5</td>
<td>1082.0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>As % of GDP</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note:
1. Only some of the share companies have raised loan capital through issuance of corporate bonds (debentures). The Calub Gas Share Company and the Cheleleka’ Animal Feed Processing Plant Share Company are examples (See their prospectuses of March 1994 and November 1998). Data is not, however, available about the bonds issued by the companies. The private limited companies are legally prohibited from issuing bonds (debentures).
2. The US$ equivalents are calculated by using the yearly average marginal rates of the foreign exchange auction market of the country for the years from 1993 up to 2001 and the yearly average weighted rates of the inter-bank foreign exchange market of the country for the years from 2002 up to 2007.
Table 12 (Chap. 3) - Company Shares Issued through the Commercial Nominees Private Limited Company of Ethiopia during the Last Two Decades

Source: Marketing Department of the Commercial Nominees Private Limited Company of Ethiopia.

<table>
<thead>
<tr>
<th>Year</th>
<th>Issuing Company</th>
<th>Shares Intended for Issue through the Commercial Nominees P.L.C.</th>
<th>Shares Actually Issued through the Commercial Nominees P.L.C.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Number of Shares Intended for Issue</td>
<td>Par Value of the Shares Intended for Issue (in Birr)</td>
<td>Capitalization (Total Value of the Shares Intended for Issue</td>
</tr>
<tr>
<td></td>
<td>In Birr</td>
<td>In US$</td>
<td>In Birr</td>
</tr>
<tr>
<td>1992</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1993</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1994</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1995</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1996</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1997</td>
<td>Calub Gas Share Company</td>
<td>35,700,000.00</td>
<td>35,700,000.00</td>
</tr>
<tr>
<td>1998</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1999</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2000</td>
<td>'Yenegew Sew' Education Share Company</td>
<td>68,000</td>
<td>250.00</td>
</tr>
<tr>
<td>2001</td>
<td>'Cheleleka' Animal Feed Processing Plant Share Company</td>
<td>24,962</td>
<td>400.00</td>
</tr>
<tr>
<td>2002</td>
<td>'Esthe' Food Product and Animal Feed Share Company</td>
<td>NA</td>
<td>200.00</td>
</tr>
<tr>
<td>2003</td>
<td>Calub Gas Share Company</td>
<td>31,470</td>
<td>1,000.00</td>
</tr>
<tr>
<td>2004</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2005</td>
<td>FANA Education Share Company</td>
<td>5,000</td>
<td>500.00</td>
</tr>
<tr>
<td>2006</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2007</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2008</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2009</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Total</td>
<td>-</td>
<td>165,132</td>
<td>3,350.00</td>
</tr>
</tbody>
</table>

Note:
The US$ equivalents are calculated by using the end of year average marginal rates of the foreign exchange auction market of Ethiopia for the years from 1997 up to 2001 and the end of year average weighted rates of the inter-bank foreign exchange market of the country for the years from 2002 up to 2005.
### Table 13(Chap. 3) - Demand, Saving and Time Deposits in the Banks in Ethiopia during the Last Two Decades: June 30 Positions by one Year Interval

**Source:** Annual and Quarterly Reports of the National Bank of Ethiopia

<table>
<thead>
<tr>
<th>Year</th>
<th>Net Total Deposits</th>
<th>Net Non-Central Government Deposits</th>
<th>Net Central Government Deposits</th>
<th>By Relative Percentages out of Net Total Deposits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 = 2+6</td>
<td>Total 2 (3+4+5)</td>
<td>Total 7 (1/1)</td>
<td>Net Total Deposits 8 (2/1) Net Demand Deposits 9 (3/1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Net Demand (Current Account) Deposits 3</td>
<td></td>
<td>Net Demand Deposits 10 (4/1) Time Deposits (30 Days and over) 11 (5/1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Savings Deposits 4</td>
<td></td>
<td>Net Central Government Deposits 12 (6/1) Demand, Saving &amp; Central Gov't Deposits 13 (9+10+12)</td>
</tr>
<tr>
<td>1993</td>
<td>5,578.4</td>
<td>5253.5</td>
<td>254.8</td>
<td>100</td>
</tr>
<tr>
<td>1995</td>
<td>9,172.1</td>
<td>8574.7</td>
<td>597.4</td>
<td>94.2</td>
</tr>
<tr>
<td>1997</td>
<td>12,195.7</td>
<td>11375.5</td>
<td>4088.6</td>
<td>85.7</td>
</tr>
<tr>
<td>1999</td>
<td>15,268.5</td>
<td>14302.6</td>
<td>1065.9</td>
<td>86.8</td>
</tr>
<tr>
<td>2001</td>
<td>29,715.4</td>
<td>2762.1</td>
<td>933.3</td>
<td>87.9</td>
</tr>
<tr>
<td>2003</td>
<td>25,179.60</td>
<td>2472.8</td>
<td>2501.4</td>
<td>89.3</td>
</tr>
<tr>
<td>2005</td>
<td>35,310.60</td>
<td>30185.8</td>
<td>5124.8</td>
<td>90.7</td>
</tr>
<tr>
<td>2007</td>
<td>50,676.40</td>
<td>42943.5</td>
<td>7732.9</td>
<td>95.5</td>
</tr>
<tr>
<td>2009</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

**The Relative Percentages on Average for the two decades**

<table>
<thead>
<tr>
<th>Year</th>
<th>Net Total Deposits</th>
<th>Net Non-Central Government Deposits</th>
<th>Net Central Government Deposits</th>
<th>By Relative Percentages out of Net Total Deposits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 = 2+6</td>
<td>Total 2 (3+4+5)</td>
<td>Total 7 (1/1)</td>
<td>Net Total Deposits 8 (2/1) Net Demand Deposits 9 (3/1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Net Demand (Current Account) Deposits 3</td>
<td></td>
<td>Net Demand Deposits 10 (4/1) Time Deposits (30 Days and over) 11 (5/1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Savings Deposits 4</td>
<td></td>
<td>Net Central Government Deposits 12 (6/1) Demand, Saving &amp; Central Gov't Deposits 13 (9+10+12)</td>
</tr>
<tr>
<td>1995</td>
<td>94.2</td>
<td>48.4</td>
<td>40.3</td>
<td>3.5, 5.8</td>
</tr>
<tr>
<td>1997</td>
<td>93.3</td>
<td>46.6</td>
<td>42.2</td>
<td>6.7, 6.5</td>
</tr>
<tr>
<td>1999</td>
<td>93.0</td>
<td>40.5</td>
<td>46.9</td>
<td>5.6, 7.6</td>
</tr>
<tr>
<td>2001</td>
<td>96.8</td>
<td>34.3</td>
<td>48.4</td>
<td>4.1, 13.2</td>
</tr>
<tr>
<td>2003</td>
<td>89.3</td>
<td>35.1</td>
<td>49.7</td>
<td>4.5, 10.7</td>
</tr>
<tr>
<td>2005</td>
<td>85.5</td>
<td>31.9</td>
<td>49.0</td>
<td>4.6, 14.5</td>
</tr>
<tr>
<td>2007</td>
<td>84.7</td>
<td>31.4</td>
<td>46.8</td>
<td>6.5, 15.3</td>
</tr>
<tr>
<td>2009</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

Note

The figures for the years up to 1995 represent the deposits in the government owned banks. Those for the years after 1996 represent the deposits in the government owned and private banks. The deposits in the National Bank of Ethiopia are excluded for all the years.
### Table 14(Chap. 3) - Indebtedness of the Government of Ethiopia to the National Bank, the Commercial Banks and the Non-Bank Public due to Securities Issuance and Direct Borrowing during the last Two Decades (June 30 Positions by One Year Interval)

Source: Computed Based on Quarterly Reports of the National Bank of Ethiopia for the years.

<table>
<thead>
<tr>
<th>Year</th>
<th>Due to Direct Borrowing (From the NBE)</th>
<th>Due to T-Bills and G-Bonds</th>
<th>Sum</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>To the National Bank of Ethiopia due to G-Bonds</td>
<td>To the Commercial Banks due to T-Bills and G-Bonds</td>
<td>To the Non-Bank Public due to T-Bills and G-Bonds</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non-Interest Bearing</td>
<td>Interest Bearing</td>
<td>T-Bills</td>
</tr>
<tr>
<td>1993</td>
<td>10,745.5</td>
<td>5,145.0</td>
<td>1,305.0</td>
<td>1,300.1</td>
</tr>
<tr>
<td>1995</td>
<td>11,671.9</td>
<td>6,383.9</td>
<td>985.0</td>
<td>1,304.1</td>
</tr>
<tr>
<td>1997</td>
<td>12,359.0</td>
<td>6,686.0</td>
<td>913.5</td>
<td>1,239.4</td>
</tr>
<tr>
<td>1999</td>
<td>14,700.3</td>
<td>8,636.0</td>
<td>783.0</td>
<td>1,143.2</td>
</tr>
<tr>
<td>2001</td>
<td>23,126.1</td>
<td>3,848.9</td>
<td>9,446.5</td>
<td>1,047.0</td>
</tr>
<tr>
<td>2003</td>
<td>27,575.3</td>
<td>5,480.0</td>
<td>9,185.5</td>
<td>998.9</td>
</tr>
<tr>
<td>2005</td>
<td>33,849.5</td>
<td>14,753.9</td>
<td>9,185.5</td>
<td>902.7</td>
</tr>
<tr>
<td>2007</td>
<td>49,421.7</td>
<td>23,562.0</td>
<td>9,417.1</td>
<td>534.3</td>
</tr>
<tr>
<td>2009</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
</tbody>
</table>

By % out of the Total Annual Indebtedness of the Government (Total Average for the Two Decades)

|      | 100 | 43.8 | 17.2 | 7.1 | 11.4 | 14.7 | 3.3 | 2.4 | 14.7 | 41.4 | 56.2 |
Table 15(Chap. 3) - Relative Percentages of the Households in Ethiopia by Annual Income and Expenditure Groups (Survey Results during the last One-and-a-Half Decades)


<table>
<thead>
<tr>
<th>Survey Year</th>
<th>Total Number of Households</th>
<th>Relative Percentages of the Households</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>By Income Range Per Household Per Annum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 2000 Birr</td>
</tr>
<tr>
<td>Country Level</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>10,538,453</td>
<td>16.9</td>
</tr>
<tr>
<td>2000</td>
<td>11,464,685</td>
<td>25.6</td>
</tr>
<tr>
<td>2005</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td>21.3</td>
</tr>
<tr>
<td>Urban Households</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>1,617,938</td>
<td>26.5</td>
</tr>
<tr>
<td>2000</td>
<td>1,663,149</td>
<td>43.0</td>
</tr>
<tr>
<td>2005</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td>34.8</td>
</tr>
<tr>
<td>Rural Households</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>8,920,515</td>
<td>15.1</td>
</tr>
<tr>
<td>2000</td>
<td>9,801,536</td>
<td>22.7</td>
</tr>
<tr>
<td>2005</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td>18.9</td>
</tr>
</tbody>
</table>

Note:
The US$ equivalents are calculated at the average rate for the years (i.e. 7.115).
Table 16(Chap. 3) - Income Composition of the Households in Ethiopia by Relative Percentages of the Income Sources of the Households out of their Declared Total Annual Incomes (Survey Results during the last One-and-a-Half Decades)


<table>
<thead>
<tr>
<th>Survey Year</th>
<th>Total Income in Billions of Birr Annual Average</th>
<th>Percentage of Income Components out of Total Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Income from Agriculture and Related Activities</td>
<td>Income from Non-Agricultural Household Enterprises</td>
</tr>
<tr>
<td>1996</td>
<td>65.13 (100%)</td>
<td>52.95 17.88 6.95</td>
</tr>
<tr>
<td>2000</td>
<td>71.93 (100%)</td>
<td>60.65 13.94 10.35</td>
</tr>
<tr>
<td>2005</td>
<td>81.82 (100%)</td>
<td>52.41 14.03 10.42</td>
</tr>
<tr>
<td>Average</td>
<td>55.34 15.28 9.24</td>
<td>0.69 1.22 0.02 3.93 0.10 0.04 8.22 6.11 2.00 0.13</td>
</tr>
<tr>
<td>Country Level</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>16.82 (100%)</td>
<td>41.7 51.19 19.53</td>
</tr>
<tr>
<td>2000</td>
<td>16.31 (100%)</td>
<td>4.08 41.87 35.90</td>
</tr>
<tr>
<td>2005</td>
<td>108.74 (100%)</td>
<td>4.55 35.69 36.99</td>
</tr>
<tr>
<td>Average</td>
<td>4.27 42.92 30.81</td>
<td>2.81 2.72 0.04 4.90 0.08 0.08 8.93 0.78 2.85 0.06</td>
</tr>
<tr>
<td>Urban Households</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>48.32 (100%)</td>
<td>69.93 6.28 2.57</td>
</tr>
<tr>
<td>2000</td>
<td>55.62 (100%)</td>
<td>77.23 5.75 2.86</td>
</tr>
<tr>
<td>2005</td>
<td>76.71 (100%)</td>
<td>65.28 8.21 3.27</td>
</tr>
<tr>
<td>Average</td>
<td>70.81 6.75 2.90</td>
<td>0.10 0.73 0.01 3.60 0.10 0.03 8.12 7.60 1.70 0.15</td>
</tr>
</tbody>
</table>
Table 17(Chap. 3) - Expenditure Composition of the Households in Ethiopia by Relative Percentages of the Expenditure Components of the Households out of their Declared Total Annual Expenditures (Survey Results during the last One-and-a-Half Decades)


<table>
<thead>
<tr>
<th>Survey Year</th>
<th>Total Expenditure in Billions of Birr Annual Average</th>
<th>% of Consumption Expenditure</th>
<th>% of Non-Consumption Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Country Level</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>69.52 (100%)</td>
<td>53.20 0.40 9.60 15.60 4.70 1.10 1.50 0.60 1.40 4.70 92.80 7.20</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>79.06 (100%)</td>
<td>52.80 0.40 7.90 14.40 4.00 1.00 1.60 1.00 0.80 2.20 86.10 13.90</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>81.82 (100%)</td>
<td>51.80 0.16 7.50 18.88 4.26 0.73 2.25 1.43 1.27 2.08 90.36 9.65</td>
<td></td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td></td>
<td>52.60 0.32 8.33 16.29 4.32 0.94 1.78 1.01 1.16 2.99 89.75 10.25</td>
<td></td>
</tr>
<tr>
<td><strong>Urban Households</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>14.58 (100%)</td>
<td>47.50 0.40 9.50 14.90 4.70 1.20 3.20 1.60 1.40 4.20 88.60 11.40</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>18.25 (100%)</td>
<td>36.20 0.30 8.60 17.00 6.00 1.10 4.20 2.50 1.20 1.40 78.50 21.50</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>108.74 (100%)</td>
<td>39.01 0.10 7.80 17.40 8.10 1.00 7.10 3.29 1.54 1.96 87.30 12.72</td>
<td></td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td></td>
<td>40.90 0.27 8.63 16.43 6.27 1.10 4.83 2.46 1.38 2.52 84.80 15.21</td>
<td></td>
</tr>
<tr>
<td><strong>Rural Households</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>1996</td>
<td>54.59 (100%)</td>
<td>54.60 0.40 9.60 15.80 4.70 1.10 1.10 0.40 1.30 4.90 93.90 6.10</td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>60.21 (100%)</td>
<td>57.60 0.50 7.70 13.60 3.40 0.90 0.90 0.50 0.70 2.50 88.30 11.70</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>76.71 (100%)</td>
<td>55.21 0.16 7.40 19.28 3.22 0.66 0.94 0.93 1.32 2.09 91.21 8.82</td>
<td></td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td></td>
<td>55.80 0.35 8.23 16.23 3.77 0.89 0.98 0.61 1.11 3.16 91.14 8.87</td>
<td></td>
</tr>
</tbody>
</table>
Table 18(Chap. 3) - Non-Consumption Expenditure Composition of the Households in Ethiopia by Relative Percentages of the Non-Consumption Expenditure Components of the Households out of their Declared Total Annual Expenditures (Survey Results during the last One-and-a-Half Decades)


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</tr>
<tr>
<td>1996</td>
<td>7.20</td>
<td>1.64</td>
<td>0.65</td>
<td>0.89</td>
<td>0.01</td>
<td>0.78</td>
<td>0.02</td>
<td>0.08</td>
<td>0.57</td>
<td>0.28</td>
<td>0.06</td>
<td>0.18</td>
<td>1.53</td>
<td>0.09</td>
<td>1.11</td>
<td>0.07</td>
<td>0.02</td>
<td>1.73</td>
</tr>
<tr>
<td>2000</td>
<td>13.90</td>
<td>0.91</td>
<td>0.16</td>
<td>0.64</td>
<td>0.08</td>
<td>0.07</td>
<td>0.00</td>
<td>0.07</td>
<td>0.36</td>
<td>0.10</td>
<td>0.04</td>
<td>0.03</td>
<td>0.05</td>
<td>1.11</td>
<td>0.07</td>
<td>0.02</td>
<td>0.02</td>
<td>1.73</td>
</tr>
<tr>
<td>2005</td>
<td>9.65</td>
<td>0.85</td>
<td>0.31</td>
<td>0.48</td>
<td>0.01</td>
<td>0.28</td>
<td>0.02</td>
<td>0.05</td>
<td>0.21</td>
<td>0.09</td>
<td>0.10</td>
<td>0.02</td>
<td>0.02</td>
<td>0.20</td>
<td>0.04</td>
<td>0.01</td>
<td>1.41</td>
<td>5.24</td>
</tr>
<tr>
<td>Average</td>
<td>10.25</td>
<td>1.12</td>
<td>0.37</td>
<td>0.67</td>
<td>0.03</td>
<td>0.38</td>
<td>0.01</td>
<td>0.07</td>
<td>0.47</td>
<td>0.20</td>
<td>0.06</td>
<td>0.11</td>
<td>0.04</td>
<td>0.95</td>
<td>0.06</td>
<td>0.04</td>
<td>1.57</td>
<td>6.73</td>
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<tr>
<td>Urban</td>
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<tr>
<td>1996</td>
<td>11.40</td>
<td>4.60</td>
<td>1.02</td>
<td>1.14</td>
<td>0.03</td>
<td>0.43</td>
<td>0.01</td>
<td>0.09</td>
<td>0.85</td>
<td>0.11</td>
<td>0.18</td>
<td>0.18</td>
<td>1.16</td>
<td>0.29</td>
<td>0.02</td>
<td>0.35</td>
<td>0.01</td>
<td>1.07</td>
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<tr>
<td>2000</td>
<td>21.50</td>
<td>2.59</td>
<td>0.17</td>
<td>0.43</td>
<td>0.17</td>
<td>0.10</td>
<td>0.00</td>
<td>0.07</td>
<td>0.62</td>
<td>0.06</td>
<td>0.11</td>
<td>0.09</td>
<td>0.06</td>
<td>0.68</td>
<td>0.06</td>
<td>0.01</td>
<td>1.07</td>
<td>14.97</td>
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<tr>
<td>2005</td>
<td>12.72</td>
<td>2.19</td>
<td>0.32</td>
<td>0.38</td>
<td>0.02</td>
<td>0.81</td>
<td>0.02</td>
<td>0.06</td>
<td>NA (Included in others)</td>
<td>0.20</td>
<td>0.34</td>
<td>0.10</td>
<td>0.03</td>
<td>0.15</td>
<td>0.02</td>
<td>0.04</td>
<td>1.69</td>
<td>5.39</td>
</tr>
<tr>
<td>Average</td>
<td>15.21</td>
<td>3.13</td>
<td>0.50</td>
<td>0.65</td>
<td>0.07</td>
<td>0.45</td>
<td>0.01</td>
<td>0.07</td>
<td>0.74</td>
<td>0.12</td>
<td>0.21</td>
<td>0.12</td>
<td>0.05</td>
<td>0.66</td>
<td>0.04</td>
<td>0.11</td>
<td>1.38</td>
<td>10.18</td>
</tr>
<tr>
<td>Rural</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>6.10</td>
<td>0.80</td>
<td>0.55</td>
<td>0.82</td>
<td>0.00</td>
<td>0.87</td>
<td>0.02</td>
<td>0.07</td>
<td>0.49</td>
<td>0.32</td>
<td>0.03</td>
<td>0.18</td>
<td>1.63</td>
<td>0.04</td>
<td>0.02</td>
<td>1.80</td>
<td>6.20</td>
<td>0.22</td>
</tr>
<tr>
<td>2000</td>
<td>11.70</td>
<td>0.40</td>
<td>0.10</td>
<td>0.70</td>
<td>0.05</td>
<td>0.05</td>
<td>0.00</td>
<td>0.06</td>
<td>0.20</td>
<td>0.10</td>
<td>0.02</td>
<td>0.03</td>
<td>0.50</td>
<td>1.20</td>
<td>0.07</td>
<td>0.02</td>
<td>1.80</td>
<td>6.20</td>
</tr>
<tr>
<td>2005</td>
<td>8.82</td>
<td>0.50</td>
<td>0.30</td>
<td>0.51</td>
<td>0.00</td>
<td>0.14</td>
<td>0.01</td>
<td>0.05</td>
<td>NA (Included in others)</td>
<td>0.21</td>
<td>0.02</td>
<td>0.10</td>
<td>0.02</td>
<td>0.22</td>
<td>0.05</td>
<td>0.01</td>
<td>1.34</td>
<td>5.19</td>
</tr>
<tr>
<td>Average</td>
<td>8.87</td>
<td>0.57</td>
<td>0.32</td>
<td>0.68</td>
<td>0.02</td>
<td>0.35</td>
<td>0.01</td>
<td>0.06</td>
<td>0.35</td>
<td>0.21</td>
<td>0.02</td>
<td>0.10</td>
<td>0.26</td>
<td>1.02</td>
<td>0.06</td>
<td>0.02</td>
<td>1.57</td>
<td>5.70</td>
</tr>
</tbody>
</table>
Table 19(Chap. 3) - Annual Saving Levels of the Households in Ethiopia by Percentage of Saving out of Total Earnings (Survey Results during the last One-and-a-Half Decades)


<table>
<thead>
<tr>
<th>Survey Year</th>
<th>Country Level</th>
<th>Urban Households</th>
<th>Rural Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>4.6</td>
<td>8.6</td>
<td>3.6</td>
</tr>
<tr>
<td>2000</td>
<td>4.0</td>
<td>5.1</td>
<td>3.6</td>
</tr>
<tr>
<td>2005</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Average</td>
<td>4.3</td>
<td>6.9</td>
<td>3.6</td>
</tr>
</tbody>
</table>
Table 20(Chap. 3) - Size of the Securities Markets (Stock Exchanges) in Asia and the Pacific by 1989


<table>
<thead>
<tr>
<th>Indicator</th>
<th>Hong Kong</th>
<th>India</th>
<th>Indonesia</th>
<th>Republic of Korea</th>
<th>Malaysia</th>
<th>Philippines</th>
<th>Singapore</th>
<th>Taiwan</th>
<th>Thailand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Listed Companies</td>
<td>298</td>
<td>25 (+)</td>
<td>56</td>
<td>626</td>
<td>251</td>
<td>144</td>
<td>136</td>
<td>181</td>
<td>175</td>
</tr>
<tr>
<td>Total Market Capitalization (of Listed Companies) in Billions of US$</td>
<td>77.6</td>
<td>38.2</td>
<td>2.5</td>
<td>140.5</td>
<td>39.8</td>
<td>11.6</td>
<td>35.9</td>
<td>237.0</td>
<td>25.9</td>
</tr>
<tr>
<td>Annual Turnover (Trading) Value in Billions of US$</td>
<td>34.6</td>
<td>32.0</td>
<td>0.5</td>
<td>119.3</td>
<td>6.9</td>
<td>2.3</td>
<td>14.1</td>
<td>965.8</td>
<td>14.7</td>
</tr>
</tbody>
</table>

Table 21(Chap. 3) - Size of the Securities Markets (Stock Exchanges) in Latin America during their Formative Stages in the 1960s


<table>
<thead>
<tr>
<th>Country</th>
<th>Stock Exchange</th>
<th>Number of share issues listed and traded</th>
<th>Paid-in Capital of the Listed Companies in Millions of US$</th>
<th>Total Volume of Transactions in Millions of US$</th>
<th>Percentage of the Types of Securities Traded out of the Total Volume of Trade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>Buenos Aires</td>
<td>539</td>
<td>739</td>
<td>171</td>
<td>45</td>
</tr>
<tr>
<td>Brazil</td>
<td>Río de Janeiro</td>
<td>Together: 40 (Out of 8,000 listed)</td>
<td>Together: 200</td>
<td>256</td>
<td>78</td>
</tr>
<tr>
<td>Chile</td>
<td>Santiago</td>
<td>340</td>
<td>161</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Colombia</td>
<td>Bogota</td>
<td>130</td>
<td>148</td>
<td>74</td>
<td>64</td>
</tr>
<tr>
<td>Mexico</td>
<td>Mexico City</td>
<td>416</td>
<td>1,249</td>
<td>2,817</td>
<td>4</td>
</tr>
<tr>
<td>Monterrey</td>
<td>-</td>
<td>-</td>
<td>255</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Guadalajara</td>
<td>-</td>
<td>-</td>
<td>105</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Peru</td>
<td>Lima</td>
<td>104</td>
<td>206</td>
<td>6</td>
<td>46</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Caracas and State of Miranda together</td>
<td>96</td>
<td>689</td>
<td>108</td>
<td>7</td>
</tr>
</tbody>
</table>
Table 22(Chap. 3) - Size of the Securities Markets (Stock Exchanges) in Africa during their Formative Stages, 1992-2004


**A - By Number of Listed Companies (End of Year Levels)**

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>23 May 1993</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>3</td>
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<td>3</td>
<td>3</td>
<td>3</td>
<td>na</td>
<td></td>
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<tr>
<td>Botswana</td>
<td>June 1989; Recognition by law 1994</td>
<td>11</td>
<td>11</td>
<td>11</td>
<td>12</td>
<td>12</td>
<td>14</td>
<td>15</td>
<td>16</td>
<td>16</td>
<td>19</td>
<td>18</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Cote d’Ivoire</td>
<td>December 18 1996; Operational September 16 1998</td>
<td>27</td>
<td>24</td>
<td>27</td>
<td>31</td>
<td>31</td>
<td>35</td>
<td>35</td>
<td>38</td>
<td>41</td>
<td>38</td>
<td>38</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>Alexandria Exchange: 1888; Cairo Exchange 1903</td>
<td>656</td>
<td>674</td>
<td>700</td>
<td>746</td>
<td>649</td>
<td>654</td>
<td>861</td>
<td>1033</td>
<td>1076</td>
<td>1110</td>
<td>1151</td>
<td>792</td>
<td>792</td>
</tr>
<tr>
<td>Ghana</td>
<td>July 1989; Officially recognised October 1990; Operational 12 November 1991</td>
<td>15</td>
<td>15</td>
<td>17</td>
<td>19</td>
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<td>21</td>
<td>22</td>
<td>22</td>
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<td>24</td>
<td>29</td>
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<tr>
<td>Kenya</td>
<td>1954; re-established as company in 1991</td>
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<td>56</td>
<td>56</td>
<td>56</td>
<td>58</td>
<td>58</td>
<td>57</td>
<td>57</td>
<td>55</td>
<td>50</td>
<td>50</td>
<td>47</td>
<td></td>
</tr>
<tr>
<td>Malawi</td>
<td>March 1995; Operational 11 November 1996</td>
<td>-</td>
<td>3</td>
<td>6</td>
<td>6</td>
<td>7</td>
<td>7</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
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</tr>
<tr>
<td>Mauritius</td>
<td>1989</td>
<td>22</td>
<td>30</td>
<td>35</td>
<td>40</td>
<td>40</td>
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<td>Created by banks 1929; expanded for others 1995</td>
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<td>June 1997; Operational January 1998</td>
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<td>Re-created in Bulaway in 1946; moved to Harare on 18 January 1974</td>
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<td>64</td>
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# Financial Market Development, Policy and Regulation

**B - By Stock Market Capitalization (End of Year Levels in Millions of US$)**

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<td>1,492</td>
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<td>1,824</td>
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<td>842</td>
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<td>1,562</td>
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<td>8,705</td>
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<td>15,676</td>
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<td>473</td>
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<td>429</td>
<td>691</td>
<td>311</td>
<td>151</td>
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<td>3,646</td>
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<td>2,940</td>
<td>4,237</td>
<td>5,404</td>
<td>5,989</td>
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<td>262,478</td>
<td>204,952</td>
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<td>339</td>
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<td>85</td>
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<td>-</td>
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<td>236</td>
<td>181</td>
<td>233</td>
<td>398</td>
<td>695</td>
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<td>3,927</td>
<td>4,263</td>
<td>2,321</td>
<td>2,268</td>
<td>2,706</td>
<td>2,828</td>
<td>2,303</td>
<td>1,810</td>
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<td>34</td>
<td>52</td>
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<td>195</td>
<td>705</td>
<td>301</td>
<td>280</td>
<td>236</td>
<td>217</td>
<td>231</td>
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<td>1,828</td>
<td>2,038</td>
<td>3,635</td>
<td>1,969</td>
<td>1,310</td>
<td>2,514</td>
<td>2,432</td>
<td>7,972</td>
<td>11,689</td>
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</table>

**Compared to the Rest of the World**

| Africa's Share from the Total Emerging Markets | 11.6% | 11.1% | 13.2% | 16.3% | 12.7% | 13.2% | 12.7% | 11.0% | 10.0% | 7.6% | na |
| Africa's Share from the World Total | 1.0% | 1.3% | 1.6% | 1.7% | 1.4% | 1.2% | 0.8% | 0.9% | 0.8% | 0.7% | na |
Table 23(Chap. 3) - Long Term Financial Resource Flow to Developing Countries

A. By Type of Finance (End of Year Levels in Millions of US$)


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<tr>
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<tr>
<td>Official Development Assistance</td>
<td>25,953</td>
<td>29,137</td>
<td>33,220</td>
<td>34,007</td>
<td>34,268</td>
<td>43,619</td>
<td>44,299</td>
<td>41,571</td>
<td>46,180</td>
<td>45,004</td>
<td>38,789</td>
<td>33,806</td>
<td>37,897</td>
<td>43,591</td>
<td>38,088</td>
<td>39,766</td>
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<td>Official Concession Loans</td>
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<td>13,233</td>
<td>16,385</td>
<td>15,078</td>
<td>15,426</td>
<td>15,703</td>
<td>13,819</td>
<td>13,240</td>
<td>13,462</td>
<td>12,225</td>
<td>10,708</td>
<td>7,208</td>
<td>9,928</td>
<td>13,311</td>
<td>8,137</td>
<td>10,566</td>
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<tr>
<td>Private flows</td>
<td>31,542</td>
<td>23,436</td>
<td>24,806</td>
<td>38,985</td>
<td>38,192</td>
<td>42,154</td>
<td>62,050</td>
<td>99,360</td>
<td>167,574</td>
<td>176,374</td>
<td>206,140</td>
<td>276,241</td>
<td>300,673</td>
<td>283,252</td>
<td>224,492</td>
<td>225,846</td>
<td>159,970</td>
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<td>Private Loans</td>
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<td>13,447</td>
<td>10,718</td>
<td>18,592</td>
<td>11,706</td>
<td>14,292</td>
<td>18,832</td>
<td>38,168</td>
<td>50,002</td>
<td>51,182</td>
<td>63,262</td>
<td>96,531</td>
<td>98,085</td>
<td>89,408</td>
<td>5,636</td>
<td>8,235</td>
<td>26,796</td>
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<tr>
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<td>9,399</td>
<td>13,398</td>
<td>19,293</td>
<td>23,114</td>
<td>24,119</td>
<td>35,665</td>
<td>47,135</td>
<td>66,556</td>
<td>90,027</td>
<td>106,817</td>
<td>130,780</td>
<td>178,263</td>
<td>184,353</td>
<td>166,691</td>
<td>168,238</td>
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<td>690</td>
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<td>3,743</td>
<td>7,552</td>
<td>14,057</td>
<td>51,016</td>
<td>35,165</td>
<td>36,060</td>
<td>48,929</td>
<td>30,094</td>
<td>15,567</td>
<td>34,456</td>
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<td>18,527</td>
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### B. By Direction of Flow (In Millions of US$ by Five Years Intervals)


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<th>2000</th>
<th>2005</th>
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</tr>
<tr>
<td>Total (net)</td>
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<td>68,631.1</td>
<td>51,384</td>
<td>103,235</td>
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<td>25,328.5</td>
<td>14,488.1</td>
<td>35,061.1</td>
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<tr>
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<td>13,580.8</td>
<td>8,096.8</td>
<td>11,255.3</td>
<td>3,046.3</td>
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<tr>
<td>Asia and Oceania</td>
<td>25,889.1</td>
<td>26,283.8</td>
<td>14,624.8</td>
<td>50,088.6</td>
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<td>8,921.9</td>
<td>11,015.4</td>
<td>15,038.5</td>
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<tr>
<td>Africa</td>
<td>25,312.0</td>
<td>21,958.7</td>
<td>15,732.4</td>
<td>35,211.9</td>
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<tr>
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<td>6,461.3</td>
<td>5,161.2</td>
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<td>19,374.4</td>
<td>16,494.8</td>
<td>44,984.9</td>
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<td>8,508.4</td>
<td>9,070.7</td>
<td>14,614.3</td>
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<td><strong>Others (net) (i.e., export credits, investment, and debt reorganisation)</strong></td>
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<td>Loans</td>
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<td>54,361</td>
<td>56,194</td>
<td>106,562</td>
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<td>756</td>
<td>2,191</td>
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<td>Net Transfers (i.e., New Disbursements during the year minus debt service payments in the year) (Guaranteed and non-guaranteed)</td>
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<td>55,241</td>
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<td>4,758</td>
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<td>33,000</td>
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<td>6,065</td>
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Table 24(Chap. 3) - Profile of the Securities Markets (Stock Exchanges) in Africa


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<th>Country</th>
<th>Stock Exchange</th>
<th>Date of creation</th>
<th>Market Regulator</th>
<th>Monetary Authority</th>
<th>Governing Law</th>
<th>Securities Traded</th>
<th>Market Segments</th>
<th>Trading System</th>
<th>Number of Brokers</th>
<th>Clearing &amp; Settlement</th>
<th>Settlement Cycle</th>
<th>Central Depository</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>Bourse d'Alger (c/o Société de Gestion de la Bourse de Valeurs - SGBV (The Stock Exchange Management Company)</td>
<td>23 May 1993</td>
<td>Commission d'Organisation et de Surveillance des Opérations de Bourse (COSOB)</td>
<td>Banque Extérieure d'Algerie (BEA)</td>
<td>Act 93-10 (1993)</td>
<td>Ordinary shares and corporate bonds</td>
<td>Ordinary shares and corporate bonds</td>
<td>Automated</td>
<td>4</td>
<td>Electronic</td>
<td>T+4</td>
<td>None</td>
</tr>
<tr>
<td>Kenya</td>
<td>Nairobi Stock Exchange</td>
<td>Created as association in 1954; re-established as company in 1991</td>
<td>Capital Markets Authority</td>
<td>Central Bank of Kenya</td>
<td>Capital Markets Authority Act of 1989</td>
<td>Ordinary shares, Preference shares, Treasury bonds, Corporate bonds</td>
<td>Main, alternative, fixed income</td>
<td>Automated as of 11 September 2006</td>
<td>17</td>
<td>Automated; handled by the Central Depositor</td>
<td>T+5</td>
<td>Central Depository and Settlement Corporation</td>
</tr>
</tbody>
</table>

Note: The BRVM of Côte d'Ivoire exists as the regional stock exchange for French speaking West Africa (Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo). It was created in 1998 to replace the old Ivorian Bourse des Valeurs d'Abidjan.
<table>
<thead>
<tr>
<th>Country</th>
<th>Index Used</th>
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<th>Restriction on Foreign Participation</th>
<th>International Custodian</th>
<th>Foreign Exchange Control</th>
<th>Reporting Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>LA All Share (Dec 2001 = 100)</td>
<td>Food, Pharmaceuticals, and Hotel and Tourism</td>
<td>No restrictions</td>
<td>None</td>
<td>None</td>
<td>Half year unaudited and full year audited</td>
</tr>
<tr>
<td>Botswana</td>
<td>BSE Domestic (Jun 1989 = 100)</td>
<td>Banks, Insurance, Beverages, Real Estate, Oil and Gas, and Retail and Distribution</td>
<td>No restrictions on foreign ownership in any of the listed securities. Non-residents not allowed to invest in government debt.</td>
<td>Barclays Bank Botswana Ltd and Stanbic Bank Botswana Ltd</td>
<td>None</td>
<td>Half year unaudited and full year audited accounts.</td>
</tr>
<tr>
<td>Côte d’Ivoire</td>
<td>BRVM 10 (Sep 1998 = 100)</td>
<td>Banks, Telecommunications, Utilities, Beverages, Food, Household and Personal Products, Tobacco, Textile, Oil and Gas</td>
<td>No restrictions</td>
<td>Société Générale de Bourse</td>
<td>None</td>
<td>Half year unaudited and full year audited accounts.</td>
</tr>
<tr>
<td>Egypt</td>
<td>CMA General (Jan 1992 = 100)</td>
<td>Banks, Telecommunication, Media, Cement, Construction, Chemicals, Tobacco, and Textile</td>
<td>No restrictions</td>
<td>HSBC</td>
<td>None</td>
<td>Half year unaudited and full year audited accounts.</td>
</tr>
<tr>
<td>Ghana</td>
<td>GSE All Share (Nov 1990 = 100)</td>
<td>Banks, Household and Personal Products, Agricultural Products, Capital Goods, Beverages, Oil &amp; Gas, Tobacco, and Pharmaceuticals</td>
<td>Cap on ownership (74% in general)</td>
<td>Stanbic Bank Ghana Ltd and Barclays Bank Ghana Ltd</td>
<td>None</td>
<td>Half year unaudited and full year audited accounts.</td>
</tr>
<tr>
<td>Kenya</td>
<td>NSE 20 Share (Jan 1966 =100)</td>
<td>Banks, Cement, Beverages, Tobacco, Media, Oil &amp; Gas, Airlines, and Agricultural Products</td>
<td>Cap on ownership (80% in general)</td>
<td>Stanbic Bank Kenya Limited and Barclays Bank Kenya Limited</td>
<td>None</td>
<td>Half year unaudited and full year audited accounts.</td>
</tr>
</tbody>
</table>
Table 24(Chap. 3)

<table>
<thead>
<tr>
<th>Country</th>
<th>Stock Exchange</th>
<th>Date of creation</th>
<th>Market Regulator</th>
<th>Monetary Authority</th>
<th>Governing Law</th>
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<th>Market Segments</th>
<th>Trading System</th>
<th>Number of Brokers</th>
<th>Clearing &amp; Settlement</th>
<th>Settlement Cycle</th>
<th>Central Depository</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sudan</td>
<td>Khartoum Stock Exchange (KSE)</td>
<td>Created 1982;</td>
<td>Sharia Advisory Board</td>
<td>Bank of Sudan</td>
<td>Stock Exchange Act of 1982; re-enacted as Khartoum Stock</td>
<td>Shares, private investment funds (Sukuk) and government</td>
<td>Primary Market; Secondary market (Regular, Parallel)</td>
<td>Written Auction through Brokers</td>
<td>Not available</td>
<td>Manual</td>
<td>Not available</td>
<td>None</td>
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</tr>
<tr>
<td>Malawi</td>
<td>Malawi Stock Exchange</td>
<td>Inaugurated March 1995; Operational 11 November 1996</td>
<td>Stock Exchange Committee composed of representatives of the central bank, the government and the private sector</td>
<td>Reserve Bank of Malawi</td>
<td>Capital Market Development Act 1990 and Companies Act 1984</td>
<td>Ordinary shares, Preference shares, Corporate bonds, Treasury bonds</td>
<td>Domestic, Foreign</td>
<td>Call over, floor based</td>
<td>3</td>
<td>Transaction by transaction</td>
<td>T+7</td>
<td>None</td>
</tr>
<tr>
<td>Morocco</td>
<td>Bourse de Casablanca</td>
<td>Created by banks 1929; expanded for others 1995</td>
<td>Conseil Deontologique des Valeurs Mobilières (CDVM)</td>
<td>Bank Al-Maghrib</td>
<td>Not available</td>
<td>Stocks, government bonds and other securities</td>
<td>First market, new market</td>
<td>Automated as of March 1997</td>
<td>14</td>
<td>Manual, transaction by transaction</td>
<td>T+3</td>
<td>Maroclear</td>
</tr>
<tr>
<td>Mozambique</td>
<td>Maputo Stock Exchange</td>
<td>Operational October 1999</td>
<td>Not available</td>
<td>Not available</td>
<td>Not available</td>
<td>Not available</td>
<td>Not available</td>
<td>Not available</td>
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<tr>
<td>Country</td>
<td>Index Used</td>
<td>Sector of Top Listed Companies</td>
<td>Restriction on Foreign Participation</td>
<td>International Custodian</td>
<td>Foreign Exchange Control</td>
<td>Reporting Requirement</td>
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<tr>
<td>Sudan</td>
<td>Khartoum Index (with listing in the Arab Monetary Fund and Sudatel in Abu Dhabi)</td>
<td>Banks and Telecom and Commercial Companies</td>
<td>Rules not available</td>
<td>None</td>
<td>Rules not available</td>
<td>Rules not available</td>
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<tr>
<td>Malawi</td>
<td>MSE Domestic Share (Nov 1996 = 100)</td>
<td>Banks, Insurance, Hotel &amp; Tourism, Sugar, Industrial conglomerates, and Packaging</td>
<td>Cap on ownership (40% in general)</td>
<td>None</td>
<td>None</td>
<td>Half year and full audited annual accounts. International Accounting and Auditing Standards</td>
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<tr>
<td>Mauritius</td>
<td>SEMDEX (Jul 1989 = 100)</td>
<td>Banks, Hotel &amp; Tourism, Sugar, Airlines, Oil &amp; Gas, and Retail &amp; distribution</td>
<td>No restrictions</td>
<td>HSBC</td>
<td>None</td>
<td>Half year and full audited annual accounts. International Accounting and Auditing Standards</td>
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<tr>
<td>Morocco</td>
<td>Morocco All Share (Dec 1991 = 1000)</td>
<td>Banks, other financial services, beverages, and industrial conglomerates</td>
<td>No restrictions</td>
<td>BMCE Bank, ABN Amro, Citibank, HSBC</td>
<td>None</td>
<td>Half year and full audited annual accounts. International Accounting and Auditing Standards</td>
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<tr>
<td>Mozambique</td>
<td>Not available</td>
<td>Not available</td>
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<tr>
<td>Namibia</td>
<td>NSX Local Companies (Jun 1995 = 100)</td>
<td>Banks, other financial services, beverages, mining &amp; metals, food, agricultural products, and retail &amp; distribution</td>
<td>No restrictions; But, not allowed to take over a bank without central bank approval</td>
<td>Standard Bank of Namibia Ltd</td>
<td>None</td>
<td>Half yearly income statements and audited balance sheets</td>
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<tr>
<td>Nigeria</td>
<td>NSE All Share (Jan 1984 = 100)</td>
<td>Banks, Beverages, Food, Cement, Oil and Gas</td>
<td>No restrictions</td>
<td>Stanbic Nigeria Ltd</td>
<td>None</td>
<td>1st tier company’s: Quarterly unaudited and full year audited. 2nd tier company’s: Half year unaudited and full audited annual accounts. International Accounting and Auditing Standards</td>
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Table 24(Chap. 3)  
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<table>
<thead>
<tr>
<th>Country</th>
<th>Stock Exchange</th>
<th>Date of creation</th>
<th>Market Regulator</th>
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<th>Securities Traded</th>
<th>Market Segments</th>
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<th>Number of Brokers</th>
<th>Clearing &amp; Settlement</th>
<th>Settlement Cycle</th>
<th>Central Depository</th>
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<tbody>
<tr>
<td>Swaziland</td>
<td>Swaziland Stock Market</td>
<td>July 1990</td>
<td>Capital Markets Development Unit of the Central Bank of Swaziland</td>
<td>Central Bank of Swaziland</td>
<td>Financial institutions order (1975)</td>
<td>Equities, government and government guaranteed bonds and debentures</td>
<td>Ordinary shares</td>
<td>Call over, floor based</td>
<td>2</td>
<td>Manual transaction by transaction</td>
<td>T+5</td>
<td>None</td>
</tr>
<tr>
<td>Tunisia</td>
<td>Bourse de Tunis</td>
<td>Created 1969; Privatised 1994</td>
<td>Conseil de Marché Financier</td>
<td>Banque Centrale de Tunisie</td>
<td>Not available</td>
<td>Equities, Unit Trusts, Corporate Bonds, Government Bonds</td>
<td>Public, non-public</td>
<td>Fully electronic on a continuous or fixed quoting system depending on company size as of 1996</td>
<td>24</td>
<td>Automatically</td>
<td>T+5</td>
<td>Sticredevalu Ltd.</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>Zimbabwe Stock Exchange</td>
<td>Re-created in Bulaway 1946 (after closure of a previous market opened in 1896); moved to Harare 18 January 1974</td>
<td>Reserve Bank of Zimbabwe</td>
<td>Zimbabwe Stock Exchange Act (1973) (Revised in 1996)</td>
<td>Ordinary shares, Preference shares, Corporate bonds, Treasury bonds, Warrants</td>
<td>Ordinary shares, preference shares</td>
<td>Call over, floor based</td>
<td>Transaction by transaction</td>
<td>12</td>
<td>Transaction by transaction</td>
<td>T+7</td>
<td>None</td>
</tr>
<tr>
<td>Country</td>
<td>Index Used</td>
<td>Sector of Top Listed Companies</td>
<td>Restriction on Foreign Participation</td>
<td>International Custodian</td>
<td>Foreign Exchange Control</td>
<td>Reporting Requirement</td>
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<tr>
<td>South Africa</td>
<td>JSE All Share FTSE/JSE Indices reclassified according to FTSE/Dow Jones Industry Classification Benchmark (ICB)</td>
<td>Banks, insurers, Beverages, Mining, Oil &amp; Gas, Household Appliances, &amp; Housewares</td>
<td>No restriction</td>
<td>Most large international custodians</td>
<td>None</td>
<td>Half yearly income statements and balance sheets</td>
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</tr>
<tr>
<td>Swaziland</td>
<td>SSX All Share (Jul 1990 = 100)</td>
<td>Sugar, Real Estate, Banks, Other Financial Services Hotel and Tourism</td>
<td>No restrictions</td>
<td>Standard Bank Swaziland</td>
<td>Prior permission needed from the central bank</td>
<td>Half year and full audited annual accounts. International Accounting and Auditing Standards</td>
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<tr>
<td>Tanzania</td>
<td>LA All Share (Dec 2001 = 100)</td>
<td>Beverages, Tobacco, Cement, Food and Chemicals</td>
<td>Not allowed</td>
<td>None</td>
<td>None</td>
<td>Half year and full audited annual accounts. International Accounting and Auditing Standards</td>
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<tr>
<td>Tunisia</td>
<td>TUNIINDEX (Dec 1997 = 1000)</td>
<td>Banks and Beverages</td>
<td>Cap on ownership (49.9% in general)</td>
<td>Not available</td>
<td>Under responsibility of the central bank</td>
<td>Annual and semi-annual audited financial results</td>
<td></td>
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<tr>
<td>Uganda</td>
<td>LA All Share (Dec 2001 = 100)</td>
<td>Banks, Tobacco, Capital Goods</td>
<td>No restrictions</td>
<td>None</td>
<td>None</td>
<td>Half year and full audited annual accounts. International Accounting and Auditing Standards</td>
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</tr>
<tr>
<td>Zambia</td>
<td>LuSE All Share (Jan 1997 = 100)</td>
<td>Banks, Sugar, Industrial Conglomerates, Cement, Beverage, Tobacco, Hotel and Tourism, Real Estate, Consumer Goods</td>
<td>No restriction</td>
<td>Stanbic Bank Zambia Ltd and Barclays Bank Zambia Ltd</td>
<td>None</td>
<td>Half year and full audited annual accounts</td>
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<tr>
<td>Zimbabwe</td>
<td>ZSE Industrial (Dec 1966 = 100)</td>
<td>Banks, Industrial Conglomerates, Hotel and Tourism, Tobacco, Agricultural Products, Food, and Capital Goods</td>
<td>Cap on ownership (40% in general)</td>
<td>Barclays Bank Zimbabwe Ltd and Stanbic Bank Zimbabwe Ltd</td>
<td>Investment proceeds freely remitted if the shares were originally purchased with foreign currency on the ZSE</td>
<td>Half year and full audited annual accounts. International Accounting and Auditing Standards</td>
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</tbody>
</table>
### Table 25(Chap. 3) - Coverage of the Securities Market Laws around the Transition and Emerging Market Countries

**Source:** Laws of the countries published through websites of their securities market regulators (accessed in July 2007 and August 2010 through the IOSCO Link) (√ = Yes)

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<tr>
<th>Country</th>
<th>Law</th>
<th>Stated Objective of Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Argentina</td>
<td>Public Offerings Law 17:811 (July 16, 1968) &amp; Law 22:169</td>
<td>-</td>
</tr>
<tr>
<td>2. Bahamas</td>
<td>Securities Industry Act 1999 (as amended in 2001); Regulations 2000</td>
<td>√</td>
</tr>
<tr>
<td>3. Brazil</td>
<td>Securities Law 6.385/76 (amended by Law 10.303/01); Corporation Act 6.404/76 &amp; CVM rules</td>
<td>√</td>
</tr>
<tr>
<td>4. Costa Rica</td>
<td>Stock Market Law no 7732 of 08 Dec. 1997</td>
<td>√</td>
</tr>
<tr>
<td>5. Jamaica</td>
<td>Securities Act 1993 (amended in 1996, 1999 &amp; 2001) (as elaborated by the securities regulator)</td>
<td>√</td>
</tr>
<tr>
<td>6. T. &amp; Tobago</td>
<td>Securities Industry Act No. 32 of 1995; &amp; by-laws of 1997 &amp; 2005</td>
<td>-</td>
</tr>
<tr>
<td>7. Bulgaria</td>
<td>Law on public offering of securities no. 114 of 1999 as amended till 2006</td>
<td>√</td>
</tr>
<tr>
<td>8. Croatia</td>
<td>Securities Market Law of July 2002</td>
<td>-</td>
</tr>
<tr>
<td>9. Cyprus</td>
<td>Capital Market Laws 1993-2005</td>
<td>√</td>
</tr>
<tr>
<td>10. Czech R.</td>
<td>Capital Market Act CXX of 2001</td>
<td>√</td>
</tr>
<tr>
<td>12. Hungary</td>
<td>Capital Market Act CXX of 2001</td>
<td>√</td>
</tr>
<tr>
<td>13. Poland</td>
<td>Capital Market Laws 183(1537-38) &amp; 184(1539) of 2005; &amp; 157(1119) of 2006</td>
<td>√</td>
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<tr>
<td>14. Romania</td>
<td>Capital Market Law no.297/2004</td>
<td>√</td>
</tr>
<tr>
<td>15. Slovenia</td>
<td>Securities Market Act (ZTVP-I) (No. 56 of 1999 as amended in 2004)</td>
<td>√</td>
</tr>
<tr>
<td>16. Bangladesh</td>
<td>Securities and Exchange Ordinance, 1969 as amended and Rules of 1987-2001</td>
<td>√</td>
</tr>
<tr>
<td>17. China</td>
<td>Securities law 1998</td>
<td>√</td>
</tr>
<tr>
<td>18. India</td>
<td>The securities and exchange board of India Act, 1992 (as amended); Securities Contracts (Regulation) Act, 1956 (amended up to 2007); Depositories Act 1996; Stock Brokers and Sub-Brokers Rules, 1992 (amended up to 25 Sep 2006); Criteria For Fit and Proper Person Regulations, 2004</td>
<td>√</td>
</tr>
<tr>
<td>19. Korea</td>
<td>Securities Regulations (consolidated up to 2004)</td>
<td>√</td>
</tr>
<tr>
<td>20. Malaysia</td>
<td>Securities Commission Act 1993 (amended up to 2006); Securities Industry Act 1983 (amended up to 2003); Securities Industry (Central Depositories) Act 1991 (amended up to 2003); Demutualisation (Kuala Lumpur Stock Exchange) Act 2003</td>
<td>√</td>
</tr>
<tr>
<td>21. Philippines</td>
<td>The Securities Regulation Code No. 8799 of July 19 2000</td>
<td>√</td>
</tr>
<tr>
<td>22. Singapore</td>
<td>Securities and Futures Act 2001 (amended up to 2005) &amp; Exchanges (Demutualisation and Merger) Act of 1999 (amended in 2001)</td>
<td>√</td>
</tr>
<tr>
<td>24. Thailand</td>
<td>Securities and Exchange Act, B.E. 2535 amended by Acts 2542 &amp; 2546</td>
<td>√</td>
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<tr>
<td>27. Bahrain</td>
<td>Bahrain Stock Exchange Law No.4 of 1987 &amp; Central Bank and Financial Institutions Law 2006</td>
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<tr>
<td>28. Israel</td>
<td>Securities Law, 5728-1968 &amp; Regulations under it</td>
<td>V</td>
</tr>
<tr>
<td>29. Jordan</td>
<td>Securities Law No. 76 2002</td>
<td>V</td>
</tr>
<tr>
<td>30. Pakistan</td>
<td>Securities and Exchange Ordinance No. XVII 1969 (as amended up to 2006); Central Depositories Act, 1997 (as amended up to 2006); Securities and Exchange Commission of Pakistan Act, 1997; Companies Ordinance, 1984; Securities and Exchange Rules, 1971 (as amended); Stock Exchange Members (Inspection of Books and Record) Rules, 2001; Brokers and Agents Registration Rules, 2001; Clearing Houses (Regulation and Registration) Rules, 2005</td>
<td>V</td>
</tr>
<tr>
<td>31. UA Emirates</td>
<td>Federal Law no. 4 of 2000 &amp; SCA Regulations No. 1 2000 up to Regulations No. 32 2007</td>
<td>-</td>
</tr>
<tr>
<td>32. Egypt</td>
<td>CMA Establishment Decree No. 520 of 1979; Capital Market Law No. 95/1992 &amp; Depository and Central Registry Law No 93/2000 (with Executive Regulations under them)</td>
<td>V</td>
</tr>
<tr>
<td>34. Kenya</td>
<td>Capital Markets Authority Act (Amended up to April 2007); Central Depository System Act 2000; Licensing Requirements General Regulations 2002; Securities, Public offers and disclosures Regulations 2002; Capital Markets (Collective Investments Scheme) Regulations 2001 (as amended); &amp; Central Depositories (Operational) Rules, 2004</td>
<td>V</td>
</tr>
<tr>
<td>35. Malawi</td>
<td>Capital Market Development Act Chapter 46/16 of June 1990</td>
<td>V</td>
</tr>
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<td>37. Nigeria</td>
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Table 25(Chap. 3) Continued (1 of 3): Regulation of the Stock Exchanges, Public Offering and Collective Investment

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4. Costa Rica
5. Jamaica
6. T. & Tobago
7. Bulgaria
8. Croatia
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11. Estonia
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Financial Market Development, Policy and Regulation
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### Table 25 (Chap. 3) Continued (3 of 3): Regulation of Trading, Market Conduct, Clearing and Settlement

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</table>
Tables to Chapter Four
### Table 1 (Chap. 4) – Coverage of the Government Pension Administered in Ethiopia during the Last One-and-a-Half Decades: By Number of Pensioners (End of June Positions by One Year Interval)

**Source:** The Planning and Actuarial Departments of the Social Security Agency of Ethiopia.

<table>
<thead>
<tr>
<th>By Fund Type</th>
<th>1993</th>
<th>1995</th>
<th>1997</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Pensioners of the Civil Fund</td>
<td>101,412</td>
<td>120,387</td>
<td>103,511</td>
<td>98,364</td>
<td>116,070</td>
<td>131,642</td>
<td>143,862</td>
<td>153,685</td>
<td>+ 89,967</td>
</tr>
<tr>
<td>Total Pensioners of the State Undertakings Fund</td>
<td>45,847</td>
<td>57,858</td>
<td>58,379</td>
<td>63,466</td>
<td>72,406</td>
<td>81,816</td>
<td>+ 233,829</td>
<td>+ 245,800</td>
<td>na</td>
</tr>
<tr>
<td>Total Pensioners of the Military Fund</td>
<td>322,670</td>
<td>341,921</td>
<td>269,786</td>
<td>243,213</td>
<td>263,293</td>
<td>301,709</td>
<td>359,168</td>
<td>375,537</td>
<td>375,537</td>
</tr>
<tr>
<td>Total</td>
<td>469,929</td>
<td>520,166</td>
<td>431,676</td>
<td>405,043</td>
<td>451,769</td>
<td>515,167</td>
<td>592,997</td>
<td>621,337</td>
<td>621,337</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>By Tenure of Payment</th>
<th>1993</th>
<th>1995</th>
<th>1997</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Recipients of Annuity (Life Pension)</td>
<td>467,693</td>
<td>517,616</td>
<td>427,821</td>
<td>402,193</td>
<td>450,072</td>
<td>513,575</td>
<td>591,966</td>
<td>619,745</td>
<td>na</td>
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<tr>
<td>Total Recipients of Lump Sum (Gratuity and Contribution Refund)</td>
<td>2,236</td>
<td>2,550</td>
<td>3,855</td>
<td>2,850</td>
<td>1,697</td>
<td>1,592</td>
<td>1,031</td>
<td>1,592</td>
<td>na</td>
</tr>
<tr>
<td>Total</td>
<td>469,929</td>
<td>520,166</td>
<td>431,676</td>
<td>405,043</td>
<td>451,769</td>
<td>515,167</td>
<td>592,997</td>
<td>621,337</td>
<td>621,337</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>By Class of Pensioners</th>
<th>1993</th>
<th>1995</th>
<th>1997</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular Pensioners</td>
<td>174,882</td>
<td>192,991</td>
<td>213,798</td>
<td>198,063</td>
<td>218,058</td>
<td>251,932</td>
<td>253,093</td>
<td>262,907</td>
<td>262,907</td>
</tr>
<tr>
<td>Survivor Pensioners</td>
<td>295,047</td>
<td>327,175</td>
<td>217,878</td>
<td>206,980</td>
<td>233,711</td>
<td>263,235</td>
<td>339,904</td>
<td>358,430</td>
<td>358,430</td>
</tr>
<tr>
<td>Total</td>
<td>469,929</td>
<td>520,166</td>
<td>431,676</td>
<td>405,043</td>
<td>451,769</td>
<td>515,167</td>
<td>592,997</td>
<td>621,337</td>
<td>621,337</td>
</tr>
</tbody>
</table>

**Grand Total** | 469,929    | 520,166    | 431,676    | 405,043    | 451,769    | 515,167    | 592,997    | 621,337    | 621,337    |

**Note:**

1. The Civil Fund includes the funds meant for 1) employees (and survivors) of the budgetary institutions of the government (the civil service proper); and 2) for employees (and survivors) of the budgeted but autonomous institutions of the government (known by the Social Security Agency as civil autonomous institutions). It does not include the civil fund that was managed by the Agency for employees of the peoples' organizations (of the socialist time). This component of the Civil Fund existed only until 1999 (1991 Eth. F. Y.) and was segregated from the Civil Fund (with a balance of Birr 1,134,548.15) to be closed as of 2000 (1992 Eth. F. Y.) due to dissolution of the organizations.

2. The State Undertakings Fund was created by the Military Government of the Country and managed by the Social Security Agency as a separate fund as of the 9th of September 1975 due to the nationalization of private undertakings by the Military Government (See PMGE, 1975i, at arts. 2(1), 2(2) and 4). The Post 1995 Federal Government has merged this Fund with the Civil Fund as of the 8th of June 2003 due to its promise to privatize state enterprises (See FDRE, 2003e, at arts. 4-9).

3. The Military Fund covers the Military, the Police and the Patriots of the Imperial time (who were not included in the Civil and Undertakings Funds). It has existed as a Military Fund until the 8th of June 2003 and as a Military and Police Service Fund as of this date (See FDRE, 2003e, at arts. 4-9).
### As percent of the Total Population of the Country

<table>
<thead>
<tr>
<th></th>
<th>1993</th>
<th>1995</th>
<th>1997</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>By Fund Type</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pensioners of the Civil Fund</td>
<td>0.19</td>
<td>0.22</td>
<td>0.18</td>
<td>0.16</td>
<td>0.16</td>
<td>0.18</td>
<td>0.19</td>
<td>0.32</td>
<td>0.32</td>
</tr>
<tr>
<td>Pensioners of the State Undertakings Fund</td>
<td>0.09</td>
<td>0.11</td>
<td>0.10</td>
<td>0.10</td>
<td>0.11</td>
<td>0.12</td>
<td>0.32</td>
<td>0.32</td>
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<tr>
<td>Pensioners of the Military Fund</td>
<td>0.61</td>
<td>0.63</td>
<td>0.46</td>
<td>0.39</td>
<td>0.40</td>
<td>0.44</td>
<td>0.49</td>
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<tr>
<td><strong>By Tenure of Payment</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recipients of Life Pension (Annuity)</td>
<td>0.88</td>
<td>0.95</td>
<td>0.74</td>
<td>0.65</td>
<td>0.69</td>
<td>0.74</td>
<td>0.81</td>
<td>0.80</td>
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<tr>
<td>Recipients of Lump Sum (Gratuity and Contribution Refund)</td>
<td>0.004</td>
<td>0.0047</td>
<td>0.0066</td>
<td>0.0046</td>
<td>0.0026</td>
<td>0.0023</td>
<td>0.0014</td>
<td>0.0021</td>
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<tr>
<td>Regular Pensioners</td>
<td>0.33</td>
<td>0.35</td>
<td>0.37</td>
<td>0.32</td>
<td>0.33</td>
<td>0.36</td>
<td>0.35</td>
<td>0.34</td>
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<tr>
<td>Survivor Pensioners</td>
<td>0.55</td>
<td>0.60</td>
<td>0.38</td>
<td>0.34</td>
<td>0.36</td>
<td>0.38</td>
<td>0.46</td>
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<tr>
<td><strong>Total</strong></td>
<td>0.88</td>
<td>0.95</td>
<td>0.74</td>
<td>0.66</td>
<td>0.69</td>
<td>0.75</td>
<td>0.81</td>
<td>0.81</td>
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</tr>
</tbody>
</table>

#### Note:
1. This table bases on the survey results of CSA under the Usual Status Approach to show the situation during the twelve months periods of the survey years. It excludes the age ten years and above population of the country whose economic status is not known.
2. The total employed population includes government and government enterprise employees, private organization employees, NGO employees and paid household employees.
Table 2(Chap. 4) – The Economically Active Population and Number of Salaried & Non-Salaried Employees of Ethiopia as % out of the Total Age 10 Years and Above Population of the Country during the Last One-and-a-Half Decades


<table>
<thead>
<tr>
<th>Type of Employment</th>
<th>Salaried Employees</th>
<th>Others</th>
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<tbody>
<tr>
<td></td>
<td>Government Employees (Civil Service)</td>
<td>Government Enterprise Employees</td>
</tr>
<tr>
<td>Country Total</td>
<td>2.0</td>
<td>0.4</td>
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<tr>
<td>Urban</td>
<td>1.4</td>
<td>0.2</td>
</tr>
<tr>
<td>Rural</td>
<td>0.6</td>
<td>0.3</td>
</tr>
</tbody>
</table>

Table 3(Chap. 4) – The Number of Salaried Employees of Ethiopia by Permanence of Employment as % of the Total Age 10 Years and above Population of the Country during the Last One-and-a-Half Decades


<table>
<thead>
<tr>
<th>Type of Employment</th>
<th>Permanent Employees</th>
<th>Temporary Employees</th>
<th>Independent Contract Employees</th>
<th>Casual Workers</th>
<th>Others</th>
<th>Unknown</th>
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</thead>
<tbody>
<tr>
<td>Country Total</td>
<td>2.1</td>
<td>2.5</td>
<td>0.6</td>
<td>0.5</td>
<td>0.07</td>
<td>0.15</td>
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<tr>
<td>Urban</td>
<td>1.6</td>
<td>1.4</td>
<td>0.3</td>
<td>0.2</td>
<td>0.05</td>
<td>0.04</td>
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<tr>
<td>Rural</td>
<td>0.5</td>
<td>1.2</td>
<td>0.4</td>
<td>0.3</td>
<td>0.03</td>
<td>0.11</td>
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Table 4(Chap. 4) – The Number of Salaried Employees of Ethiopia by Permanence of Employment as % of the Total Age 10 Years and above Population of the Country during the Last One-and-a-Half Decades


<table>
<thead>
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<th>Type of Employment</th>
<th>permanent Employees</th>
<th>Temporary Employees</th>
<th>Independent Contract Employees</th>
<th>Casual Workers</th>
<th>Others</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country Total</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<tr>
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<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Rural</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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Table 4(Chap. 4) - Relative Percentages of the Income Sources to the Government Pension Administered in Ethiopia during the Last One-and-a-Half Decades: End of June Positions by One Year Interval


<table>
<thead>
<tr>
<th>Contributions</th>
<th>1993</th>
<th>1995</th>
<th>1997</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
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<tbody>
<tr>
<td>The Civil Fund</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Civil Auto</td>
<td>7.5</td>
<td>10.2</td>
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<tr>
<td>Civil Proper</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>30.4</td>
<td>43.6</td>
<td>45.9</td>
<td>65.8</td>
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<td>na</td>
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<tr>
<td>The State Undertakings Fund</td>
<td>28.1</td>
<td>37.1</td>
<td>31.9</td>
<td>15.9</td>
<td>12.3</td>
<td>14.6</td>
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<tr>
<td>The Military Fund</td>
<td>na</td>
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<td>na</td>
<td>30.6</td>
<td>34.0</td>
<td>24.8</td>
<td>25.1</td>
<td>23.5</td>
<td>na</td>
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<tr>
<td>The Civil (Proper) and Military Funds together</td>
<td>62.2</td>
<td>41.4</td>
<td>41.1</td>
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</tr>
<tr>
<td><strong>Sub Total</strong></td>
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<td><strong>88.8</strong></td>
<td><strong>83.6</strong></td>
<td><strong>75.3</strong></td>
<td><strong>89.9</strong></td>
<td><strong>85.3</strong></td>
<td><strong>90.8</strong></td>
<td><strong>96.1</strong></td>
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<table>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>The Civil Fund</td>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil Auto</td>
<td>1.0</td>
<td>1.6</td>
<td>3.8</td>
<td>3.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil Proper</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3.8</td>
<td>4.8</td>
<td>4.0</td>
<td>3.2</td>
<td>na</td>
</tr>
<tr>
<td>The State Undertakings Fund</td>
<td>1.1</td>
<td>9.6</td>
<td>12.6</td>
<td>5.0</td>
<td>3.9</td>
<td>4.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Military Fund</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>na</td>
</tr>
<tr>
<td>The Civil (Proper) and Military Funds together</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sub Total</strong></td>
<td><strong>2.1</strong></td>
<td><strong>11.2</strong></td>
<td><strong>16.4</strong></td>
<td><strong>9.1</strong></td>
<td><strong>7.8</strong></td>
<td><strong>8.8</strong></td>
<td><strong>4.0</strong></td>
<td><strong>3.2</strong></td>
<td><strong>na</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Administrative, Penalty and Other Incomes</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Civil Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil Auto</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.7</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil Proper</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>12.8</td>
<td>1.4</td>
<td>5.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The State Undertakings Fund</td>
<td>0</td>
<td>0</td>
<td>0.005</td>
<td>0.5</td>
<td>0.4</td>
<td>0.3</td>
<td>0.05</td>
<td>0.6</td>
<td>na</td>
</tr>
<tr>
<td>The Military Fund</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1.7</td>
<td>0</td>
<td>0.7</td>
<td>5.1</td>
<td>0.03</td>
<td>na</td>
</tr>
<tr>
<td>The Civil (Proper) and Military Funds together</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sub Total</strong></td>
<td><strong>0</strong></td>
<td><strong>0</strong></td>
<td><strong>0.005</strong></td>
<td><strong>15.7</strong></td>
<td><strong>2.3</strong></td>
<td><strong>5.9</strong></td>
<td><strong>5.1</strong></td>
<td><strong>0.6</strong></td>
<td><strong>na</strong></td>
</tr>
</tbody>
</table>

| Total in Millions of BIRR            | 208.86 | 182.65 | 208.27 | 412.64 | 601.87 | 568.85 | 929.14 | 1,274.67 | na   |
| Total in Millions of US$             | 41.70  | 29.22  | 32.04  | 54.94  | 72.27  | 66.29  | 107.39 | 146.54  | na   |

**Note:**
The Civil Fund (proper) for the employees of the budgetary institutions of the government (the civil service proper) and the Military Fund for the military and the police were managed by the Ministry of Finance of the Country until 1998 (1990 Eth. F. Y.). The Social Security Agency had only to manage a civil fund for employees of the budgeted but autonomous institutions of the government (known by the Agency as civil autonomous) with the Undertakings Fund and to determine the pension entitlements to pensioners of all the Funds for execution by itself as well as the Ministry of Finance during those years. The management of the Civil (proper) and Military Funds, and the task of collecting the contributions to them, was transferred to the Social Security Agency as of 1998 (1990 Eth. F. Y.). The Agency collected the contributions to the Funds as of that year through the finance bureaus of the country. It kept the civil fund for employees of the civil autonomous (i.e. budgeted but autonomous) institutions of the government separately from the Civil Fund (proper) until 2000 (1992 Eth. F. Y.). It merged it with the Civil Fund (proper) as of 2001 (1993 Eth. F. Y.). The Agency also collected contributions to a civil fund for employees of the peoples’ organizations (of the socialist time) until 1999 (1991 Eth. F. Y.). These contributions are not included in this table as this component of the Civil Fund was segregated from the latter (with a balance of BIRR 1,134,548.15) to be closed as of 2000 (1992 Eth. F. Y.). Accordingly, the amounts indicated in the Civil Auto and the Undertakings Fund rows of this table up to 1999 represent the contributions collected by the Social Security Agency for employees of the budgeted but autonomous institutions of the government (known by the Agency as civil autonomous) and for employees of State Undertakings of the time, respectively, while the amounts indicated in the row for the 'Civil (proper) and the Military Funds together (up to 1997)' represent the total contributions collected by the Ministry of Finance to the Civil (proper) and the Military Funds. The contributions collected by the Ministry of Finance to the Civil (proper) and the Military Funds up to 1997 are not available separately. The amounts indicated for the Funds as of 1999 represent the contributions collected by the Social Security Agency in respect of each Fund after the Agency became in charge of the management of all the Funds.
Table 5(Chap. 4) - Relative Percentages of the Investments Made out of the Government Pension Administered in Ethiopia during the Last One-and-a-Half Decades by Area of Investment: End of June Positions by One Year Interval

Source: Computed Based on Data available from the Fund Management Department of the Social Security Agency of Ethiopia.

<table>
<thead>
<tr>
<th></th>
<th>1993</th>
<th>1995</th>
<th>1997</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
<th>The Total Average for the 15 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Investment in Government (Saving) Bonds</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Civil Fund</td>
<td>37.9</td>
<td>27.3</td>
<td>21.2</td>
<td>19.4</td>
<td>15.9</td>
<td>12.4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Undertakings Fund</td>
<td>32.4</td>
<td>23.3</td>
<td>18.1</td>
<td>16.6</td>
<td>13.6</td>
<td>10.6</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Military Fund</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>70.3</td>
<td>50.6</td>
<td>39.4</td>
<td>36.0</td>
<td>29.5</td>
<td>23.0</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Investment in Treasury Bills</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Civil Fund</td>
<td>-</td>
<td>3.2</td>
<td>3.1</td>
<td>5.5</td>
<td>17.8</td>
<td>32.0</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Undertakings Fund</td>
<td>-</td>
<td>27.8</td>
<td>15.4</td>
<td>14.2</td>
<td>12.6</td>
<td>9.9</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Military Fund</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>-</td>
<td>31.0</td>
<td>18.5</td>
<td>19.7</td>
<td>33.4</td>
<td>41.9</td>
<td></td>
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</tr>
<tr>
<td><strong>Deposit in Bank (Time Deposit Accounts)</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Civil Fund</td>
<td>28.9</td>
<td>17.8</td>
<td>28.1</td>
<td>27.0</td>
<td>21.0</td>
<td>18.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Undertakings Fund</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Military Fund</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>28.9</td>
<td>17.8</td>
<td>41.7</td>
<td>43.9</td>
<td>36.7</td>
<td>35.0</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td><strong>Investment in Company Equities (Shares)</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Civil Fund</td>
<td>0.4</td>
<td>0.3</td>
<td>0.2</td>
<td>0.2</td>
<td>0.2</td>
<td>0.1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Undertakings Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Military Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>0.4</td>
<td>0.3</td>
<td>0.2</td>
<td>0.2</td>
<td>0.2</td>
<td>0.1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Loans</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Civil Fund</td>
<td>0.4</td>
<td>0.3</td>
<td>0.2</td>
<td>0.2</td>
<td>0.2</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Undertakings Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From the Military Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>0.4</td>
<td>0.3</td>
<td>0.2</td>
<td>0.2</td>
<td>0.2</td>
<td>-</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>The Total Investment in Millions of Birr</td>
<td>537.53</td>
<td>747.22</td>
<td>960.07</td>
<td>1,049.96</td>
<td>1,194.93</td>
<td>1,423.22</td>
<td>1,701.53</td>
<td>2,522.40</td>
<td>na</td>
<td>1,701.53</td>
</tr>
<tr>
<td>The Total Investment in Millions of US $</td>
<td>107.31</td>
<td>119.55</td>
<td>147.09</td>
<td>139.79</td>
<td>143.49</td>
<td>165.86</td>
<td>196.67</td>
<td>289.98</td>
<td>na</td>
<td>-</td>
</tr>
</tbody>
</table>

Note:
1. The amounts indicated in the Civil Fund rows up to the year 1997 represent only the investments made by the Social Security Agency from the civil fund for employees of the budgeted but autonomous institutions of the government (known by the Agency as civil autonomous). The Ministry of Finance did not invest the Civil Fund (for the civil service proper) during the years up to 1998. The Military Fund was never invested due to its frequent deficit positions.
2. The government promised to repay the total investment in bonds and all the benefits thereto to the Agency in fifteen years as of December 2001 (1994 Eth. F.Y.) and started paying it as of the indicated year. The figures indicated in the 'Bonds' row show the balances unpaid by the government to the Agency by each year.
3. The time deposit accounts were opened by the Social Security Agency in the Development Bank of Ethiopia and the Construction and Business Bank S.C. (both owned by the government). The Agency used to keep much of its deposits in the Development Bank of Ethiopia. It withdrew the balance in the Construction and Business Bank fully as of November 2002 (1994 Eth. F. Y.) and continued only to keep its deposits in the Development Bank.
4. The equity investment row in the table shows investments that were made by the Agency in equities of state enterprises by order of the Military Government in the 1970s. They are no more active investments as the enterprises in which the investments were made do not exist any more. The balances are shown by year only because they are not written off by the Agency.
5. The loans row includes amounts granted from the civil autonomous fund to the Air Force of the country and to the Savings and Credit Union and the Administration of the Social Security Agency itself with and without interest. The amounts lent to the Air Force were fully repaid to the Agency by June 2002 (1994 Eth. F. Y.).
### Table 6 (Chap. 4) - The Average Monthly Life Pension Payments Made per Person from the Government Pension Administered in Ethiopia during the Last One-and-a-Half Decades (End of June Positions by One Year Interval)


<table>
<thead>
<tr>
<th>Year</th>
<th>1993</th>
<th>1995</th>
<th>1997</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Birr</td>
<td>6.79</td>
<td>8.03</td>
<td>14.09</td>
<td>39.32</td>
<td>85.47</td>
<td>86.32</td>
<td>91.17</td>
<td>88.37</td>
<td>na</td>
</tr>
<tr>
<td>In US $</td>
<td>1.36</td>
<td>1.28</td>
<td>2.17</td>
<td>5.24</td>
<td>10.26</td>
<td>10.06</td>
<td>10.54</td>
<td>10.16</td>
<td>na</td>
</tr>
</tbody>
</table>

**Note**
The benefit payments from the Civil and Military Funds were made by the Ministry of Finance of the Country until the task was transferred to the Agency as of 1998 (1990 Eth. F. Y.). They are currently done by banks, the micro-finance institutions, the Post Office and the finance bureaus of the country by representation of the Agency. The payments from the State Undertakings Fund were done by the Agency through the Commercial Nominees Private Limited Company (a company owned by the Commercial Bank of Ethiopia and the Construction and Business Bank S.C.) as of the 9th of April 1978 (Ginbot 01 1970 Eth. F. Y.) under a contract signed between the Commercial Bank of Ethiopia and the Agency (known at the time as Pension Commission) on the 9th of March 1978 (Megabit 01 1970 Eth. F. Y.). The Commercial Nominees Private Limited Company is still in charge of making the payments by representation of the Agency.

### Table 7 (Chap. 4) - The Private Provident Funds Administered in Ethiopia by the Commercial Nominees Private Limited Company during the Last Decade: End of June Accumulated Positions by One Year Interval


<table>
<thead>
<tr>
<th>Year</th>
<th>1999</th>
<th>2001</th>
<th>2003</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>End of Year Coverage of the Funds</td>
<td>16</td>
<td>27</td>
<td>36</td>
<td>50</td>
<td>46</td>
<td>na</td>
</tr>
<tr>
<td>Number of Organizations Keeping the Funds</td>
<td>3,342</td>
<td>4,386</td>
<td>4,413</td>
<td>5,625</td>
<td>4,888</td>
<td>na</td>
</tr>
<tr>
<td>Number of Employees included in the Funds</td>
<td>As % of the Economically Active Population of the Country in the Non-Government Sector (based on the March 2003 and the March 1999 National Labour Force Surveys)</td>
<td>0.013</td>
<td>-</td>
<td>0.017</td>
<td>-</td>
<td>na</td>
</tr>
<tr>
<td>As % of the Population of the Country Employed in the Non-Government Sector (based on the March 2005 and the March 1999 National Labour Force Surveys)</td>
<td>0.014</td>
<td>-</td>
<td>-</td>
<td>0.018</td>
<td>-</td>
<td>na</td>
</tr>
<tr>
<td>The End of Year Balances of the Funds (In millions of birr)</td>
<td>53.46</td>
<td>60.29</td>
<td>54.49</td>
<td>69.84</td>
<td>41.42</td>
<td>na</td>
</tr>
<tr>
<td>The End of Year Balances of the Funds (In millions of US $)</td>
<td>7.12</td>
<td>7.24</td>
<td>6.35</td>
<td>8.07</td>
<td>4.76</td>
<td>na</td>
</tr>
</tbody>
</table>

**Note**
1. Data is not available for the years beyond 1999 (1991 Eth. F. Y.) though the company used to engage in the provident fund management functions as of its establishment during the Imperial time.
2. The Commercial Nominees Private Limited Company only used to keep the provident funds in bank time deposit accounts to earn interest payments.
Table 8(Chap. 4) – The Pension Reforms in the OECD and Non-OECD Countries (By 1994 and after 1999)


<table>
<thead>
<tr>
<th></th>
<th>First Pillar Only</th>
<th>Second Pillar Only</th>
<th>Blend (Combined Pillars 1 and 2 available for both the public and the private sectors as mandatory or for choice)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Defined Benefit</td>
<td>Nominal Defined Contribution</td>
<td>Provident Fund (Mostly with Lump Sum Benefits)</td>
</tr>
<tr>
<td>1994</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OECD (rest.)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Latin America (rest)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Central and Eastern Europe and Former Soviet Union</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Middle East and Northern Africa; Africa (most)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Cambodia, China, Mongolia, Rep. of Korea, Laos, Philippines, Vietnam, Malaysia (public), Indonesia (public), Thailand (public), India (public) and Sri Lanka (public)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1999</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OECD (rest.)</td>
<td>Italy</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Latin America (rest.)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Central and Eastern Europe and Former Soviet Union (rest)</td>
<td>Kyrgyz Republic</td>
<td>Kazakhstan</td>
<td>-</td>
</tr>
<tr>
<td>Middle East and Northern Africa; Africa (rest)</td>
<td>Gambia, Kenya, Tanzania, Uganda, Zambia and Swaziland</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Cambodia, Rep. of Korea, Laos, Philippines, Vietnam, Malaysia (public), Indonesia (public) and Sri Lanka (public)</td>
<td>China and Mongolia</td>
<td>Asian Islands, Papua New Guinea, Singapore, Malaysia, Indonesia, Brunei, Thailand, India, Nepal, and Sri Lanka</td>
<td>-</td>
</tr>
</tbody>
</table>

Australia, Switzerland and UK

Argentina, Colombia, Peru and Uruguay

Croatia, Hungary, Latvia and Poland

Hong Kong (PRC), Thailand and India
Table 9(Chap. 4) - Composition of the Pension Plans in the OECD countries 2005
Source: OECD, Global Pension and Insurance Statistics in Financial Market Trends, No. 91 (cited as OECD, 2006a) at p. 190

<table>
<thead>
<tr>
<th>Country</th>
<th>First Pillar Pay-as-you-go Plan (Universal or Occupational)</th>
<th>Reserve Fund for the First Pillar Unfunded Pay-as-you-go Plan</th>
<th>Second Pillar Funded Pension</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mandatory and Quasi Mandatory</td>
<td>Voluntary</td>
<td>Mandatory</td>
</tr>
<tr>
<td>Australia</td>
<td>√</td>
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<tr>
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<td>Finland</td>
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<tr>
<td>France</td>
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<tr>
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<tr>
<td>Mexico</td>
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<td>Slovak Republic</td>
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<td>Spain</td>
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<td>Turkey</td>
<td>√</td>
<td>√</td>
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<tr>
<td>United Kingdom</td>
<td>√</td>
<td>√</td>
<td>√</td>
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<tr>
<td>United States</td>
<td>√</td>
<td>√</td>
<td>√</td>
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</tbody>
</table>
### Table 10(Chap. 4) – Total Size of the Funded Pensions in the OECD and Non-OECD Countries 2002 and 2005 (As % of GDP)

Source: OECD, Financial Market Trends, No. 89 (OECD, 2005a), at p. 216; No. 90 (cited as OECD, 2006), at p. 226; No. 91 (cited as OECD, 2006a), at p. 199.

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Australia</td>
<td>58.1</td>
<td>58.0</td>
<td>Ukraine</td>
<td>-</td>
<td>0.0</td>
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<tr>
<td>Austria</td>
<td>3.9</td>
<td>4.7</td>
<td>Indonesia</td>
<td>2.6</td>
<td>0.1</td>
</tr>
<tr>
<td>Belgium</td>
<td>4.9</td>
<td>4.2</td>
<td>Lithuania</td>
<td>-</td>
<td>0.4</td>
</tr>
<tr>
<td>Canada</td>
<td>47.8</td>
<td>50.4</td>
<td>China</td>
<td>-</td>
<td>0.5</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>2.8</td>
<td>4.1</td>
<td>Taiwan</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Denmark</td>
<td>25.5</td>
<td>33.6</td>
<td>Dominican Republic</td>
<td>-</td>
<td>0.7</td>
</tr>
<tr>
<td>Finland</td>
<td>8.0</td>
<td>66.1</td>
<td>Latvia</td>
<td>-</td>
<td>1.7</td>
</tr>
<tr>
<td>France</td>
<td>6.6</td>
<td>5.8</td>
<td>Russia</td>
<td>-</td>
<td>0.7</td>
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<tr>
<td>Germany</td>
<td>3.5</td>
<td>3.9</td>
<td>Slovenia</td>
<td>0.4</td>
<td>2.4</td>
</tr>
<tr>
<td>Greece</td>
<td>-</td>
<td>-</td>
<td>Estonia</td>
<td>14.7</td>
<td>3.2</td>
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<td>Hungary</td>
<td>4.5</td>
<td>8.5</td>
<td>Bulgaria</td>
<td>1.0</td>
<td>2.8</td>
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<tr>
<td>Iceland</td>
<td>85.7</td>
<td>123.2</td>
<td>Costa Rica</td>
<td>0.9</td>
<td>1.9</td>
</tr>
<tr>
<td>Ireland</td>
<td>35.1</td>
<td>52.8</td>
<td>Croatia</td>
<td>-</td>
<td>3.0</td>
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<tr>
<td>Italy</td>
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<td>2.8</td>
<td>Kazakhstan</td>
<td>7.1</td>
<td>4.1</td>
</tr>
<tr>
<td>Japan</td>
<td>14.1</td>
<td>18.8</td>
<td>Thailand</td>
<td>8.0</td>
<td>4.9</td>
</tr>
<tr>
<td>Korea</td>
<td>1.5</td>
<td>1.9</td>
<td>India</td>
<td>-</td>
<td>5.3</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>-</td>
<td>0.4</td>
<td>Pakistan</td>
<td>-</td>
<td>1.4</td>
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<tr>
<td>Mexico</td>
<td>5.2</td>
<td>7.2</td>
<td>Colombia</td>
<td>0.1</td>
<td>15.3</td>
</tr>
<tr>
<td>Netherlands</td>
<td>85.5</td>
<td>124.9</td>
<td>Peru</td>
<td>8.1</td>
<td>12.0</td>
</tr>
<tr>
<td>New Zealand</td>
<td>13.0</td>
<td>113</td>
<td>Brazil</td>
<td>9.3</td>
<td>-</td>
</tr>
<tr>
<td>Norway</td>
<td>4.0</td>
<td>6.8</td>
<td>Argentina</td>
<td>11.3</td>
<td>4.7</td>
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<tr>
<td>Poland</td>
<td>4.0</td>
<td>8.7</td>
<td>Uruguay</td>
<td>9.3</td>
<td>12.8</td>
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<td>Portugal</td>
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<td>129</td>
<td>El Salvador</td>
<td>7.4</td>
<td>9.0</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>0.0</td>
<td>0.6</td>
<td>Bolivia</td>
<td>15.5</td>
<td>9.2</td>
</tr>
<tr>
<td>Spain</td>
<td>5.7</td>
<td>9.1</td>
<td>Kenya</td>
<td>-</td>
<td>23.0</td>
</tr>
<tr>
<td>Sweden</td>
<td>7.6</td>
<td>14.5</td>
<td>Hong Kong</td>
<td>17.0</td>
<td>19.1</td>
</tr>
<tr>
<td>Switzerland</td>
<td>96.7</td>
<td>117.4</td>
<td>Israel</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Turkey</td>
<td>-</td>
<td>0.3</td>
<td>South Africa</td>
<td>-</td>
<td>33.9</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>68.9</td>
<td>70.1</td>
<td>Malaysia</td>
<td>-</td>
<td>56.7</td>
</tr>
<tr>
<td>United States</td>
<td>84.1</td>
<td>98.9</td>
<td>Singapore</td>
<td>64.0</td>
<td>62.6</td>
</tr>
<tr>
<td><strong>Total OECD</strong></td>
<td><strong>75.5</strong></td>
<td><strong>87.6</strong></td>
<td><strong>Average</strong></td>
<td><strong>7.5</strong></td>
<td><strong>11.5</strong></td>
</tr>
</tbody>
</table>
Table 11(Chap. 4) - Main Features of the First Pillar Social-Security Systems in the Major OECD Countries (as the century turned)


<table>
<thead>
<tr>
<th>Country</th>
<th>Main Feature</th>
<th>Beneficiaries</th>
<th>Method of Financing</th>
<th>Payment of Premiums</th>
<th>Retirement Age</th>
<th>Possibility of Early Retirement</th>
<th>Benefit Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>Insurance</td>
<td>Employees and Self-Employed; children; Spouses; and survivors</td>
<td>PAYG: Payroll and Social Security benefit Taxes</td>
<td>Employers &amp; Employees</td>
<td>Between 65 and 67</td>
<td>Possible at 62 with reduction of benefits</td>
<td>Earnings-related</td>
</tr>
<tr>
<td>UK</td>
<td>Mixed</td>
<td>Employees and Self-Employed</td>
<td>PAYG</td>
<td>Employers &amp; Employees</td>
<td>65(m); 60(w)</td>
<td>Not possible</td>
<td>Basic Pension = Not earning-related, SERPS = Earning related</td>
</tr>
<tr>
<td>Austria</td>
<td>Insurance</td>
<td>Employees and Self-Employed</td>
<td>PAYG</td>
<td>Employers &amp; Employees</td>
<td>65(m); 60(w)</td>
<td>Early &amp; deferred retirement - possible, Partial retirement - possible</td>
<td>Earnings-related</td>
</tr>
<tr>
<td>Belgium</td>
<td>Insurance</td>
<td>Employees, Civil Servants and Self-Employed</td>
<td>PAYG, except for civil servants</td>
<td>Employers &amp; Employees = no maximum</td>
<td>60-65</td>
<td>Possible from 60</td>
<td>Earnings-related</td>
</tr>
<tr>
<td>Germany</td>
<td>Insurance</td>
<td>Employees, Civil Servants, Sailors, Certain Self-Employed Groups, and Professionals</td>
<td>PAYG, except for professionals</td>
<td>Employers &amp; Employees Self-employed = Whole premium</td>
<td>65(m); 60(w)</td>
<td>Possible</td>
<td>Earnings-related</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Insurance</td>
<td>All Residents</td>
<td>Premium paid fully by individuals over the first NLG (1997)</td>
<td>Not Available</td>
<td>65</td>
<td>Not possible</td>
<td>Life, not earnings-related</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Insurance (Complemented by Mandatory Occupational Pensions)</td>
<td>All Residents</td>
<td>PAYG</td>
<td>Employers &amp; Employees = 50/50</td>
<td>65(m); 60(w)</td>
<td>Early (2 years) retirement with reduction of 6.8% - possible; Deferred retirement (with increase of 5.2% per annum) - possible</td>
<td>Earnings-related</td>
</tr>
<tr>
<td>Sweden</td>
<td>Insurance</td>
<td>Not Available</td>
<td>Not Available</td>
<td>Not Available</td>
<td>61</td>
<td>Not Available</td>
<td>Not Available</td>
</tr>
</tbody>
</table>

Note:
1. Basic = a universal basic system which offers flat-rate pension financed by general taxes.
2. Insurance = an insurance-based system which offers earnings-related pensions financed by earnings-based contributions.
3. Mixed = a hybrid system involving both basic and insurance-based pensions.
<table>
<thead>
<tr>
<th>Country</th>
<th>Main Feature</th>
<th>Beneficiaries</th>
<th>Method of Financing</th>
<th>Payment of Premiums</th>
<th>Retirement Age</th>
<th>Possibility of Early Retirement</th>
<th>Benefit Determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>Mixed</td>
<td>All Residents</td>
<td>Basic Pension</td>
<td>Basic pension: from general government revenues; Supplementary pension: 2/3rd employer &amp; 1/3rd Employee up to specified maximum</td>
<td>67</td>
<td>Partial retirement – possible between 60 and 67</td>
<td>Supplementary pension = earnings-related</td>
</tr>
<tr>
<td>Norway</td>
<td>Insurance</td>
<td>Employees and Self-Employed</td>
<td>PAYG</td>
<td>Employers &amp; Employees</td>
<td>67</td>
<td>Early retirement - not possible Deferred retirement - possible</td>
<td>Earnings-related</td>
</tr>
<tr>
<td>Finland</td>
<td>Insurance</td>
<td>All Residents</td>
<td>PAYG</td>
<td>Employers &amp; Employees; No maximum</td>
<td>65</td>
<td>Possible from 60 with reduction in benefits of 0.5% per month</td>
<td>Benefits dependent on place of living, family circumstances and pension</td>
</tr>
<tr>
<td>France</td>
<td>Insurance (Complemented by Mandatory Occupational Pensions)</td>
<td>Employees, Civil Servants and Self-Employed</td>
<td>PAYG</td>
<td>Employers &amp; Employees up to specified maximum</td>
<td>60</td>
<td>Not possible</td>
<td>Benefits independent of income but earnings-related</td>
</tr>
<tr>
<td>Italy</td>
<td>Insurance</td>
<td>Not Available</td>
<td>Not Available</td>
<td>Not Available</td>
<td>60(m); 55(w)</td>
<td>Not Available</td>
<td>Not Available</td>
</tr>
<tr>
<td>Spain</td>
<td>Mixed</td>
<td>Employees and Self-Employed</td>
<td>PAYG</td>
<td>Employers &amp; Employees up to specified maximum</td>
<td>65</td>
<td>Early retirement - possible from 60 with reduction of 8% per annum Deferred retirement - possible with increase of 2% per annum</td>
<td>Basic Pension = Not earning-related Supplementary pension = Earning related</td>
</tr>
<tr>
<td>Japan</td>
<td>Insurance</td>
<td>Not Available</td>
<td>Not Available</td>
<td>Not Available</td>
<td>60</td>
<td>Not Available</td>
<td>Not Available</td>
</tr>
<tr>
<td>Australia</td>
<td>Basic (Complemented by Mandatory Occupational Pensions)</td>
<td>Not Available</td>
<td>Not Available</td>
<td>Not Available</td>
<td>65 (m); 61.5 (w)</td>
<td>Not Available</td>
<td>Not Available</td>
</tr>
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</table>
Table 12 (Chap. 4) - Main Features of the Second Pillar Funded Pensions in the Major OECD Countries (as the century turned)


<table>
<thead>
<tr>
<th>Country</th>
<th>Main Features</th>
<th>Compulsion</th>
<th>Supplementary/Compulsory Arrangements (for Groups of Employees or Sectors)</th>
<th>Method of Financing</th>
<th>Form of Benefit Commitment</th>
<th>Account Taken of the State Social Security</th>
<th>Retirement Age</th>
<th>Forms of Benefits</th>
<th>Coverage (As % of Labour Force)</th>
<th>Maturity</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA (ERISA)</td>
<td>Occupational; Established by employer choice</td>
<td>Voluntary</td>
<td>NA</td>
<td>Funded</td>
<td>Calculated based on the worker’s average monthly earnings during the 35 highest earning years of his life time work</td>
<td>No</td>
<td>Between 65 and 67</td>
<td>Largely defined benefit; defined-contribution plans growing</td>
<td>46%</td>
<td>Mature</td>
</tr>
<tr>
<td>Canada</td>
<td>NA</td>
<td>Voluntary</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>41%</td>
<td>Mature</td>
</tr>
<tr>
<td>UK</td>
<td>Funded</td>
<td>Voluntary</td>
<td>No</td>
<td>Mainly Funded</td>
<td>2/3rd of final salary</td>
<td>No</td>
<td>65(m); 60(w) Early retirement possible from age of 50</td>
<td>Largely defined benefit based on years of service and final salary</td>
<td>50% (Company); 25% (Personal)</td>
<td>Mature</td>
</tr>
<tr>
<td>Austria</td>
<td>Funded</td>
<td>Voluntary</td>
<td>No</td>
<td>Funded</td>
<td>NA</td>
<td>No</td>
<td>65(m); 60(w)</td>
<td>NA</td>
<td>Very low (&gt; 93% of the total pensions = first pillar)</td>
<td>NA</td>
</tr>
<tr>
<td>Belgium</td>
<td>Pension funds and group insurance</td>
<td>Voluntary</td>
<td>No</td>
<td>Partly PAYG &amp; partly funded</td>
<td>Usually 60% of final salary</td>
<td>Yes</td>
<td>65(m); 60(w); increasing flexibility</td>
<td>NA</td>
<td>31%</td>
<td>NA</td>
</tr>
<tr>
<td>Germany</td>
<td>Partly book-reserved &amp; partly funded by Pensionkassen, support funds &amp; collective insurance</td>
<td>Voluntary</td>
<td>No</td>
<td>Self-administered and funded</td>
<td>No clear line</td>
<td>No</td>
<td>65; early retirement possible</td>
<td>Largely defined benefit with flat-rate benefit based on years of service; some schemes based on career earnings or final salary</td>
<td>66% - industry 28% - trade</td>
<td>Immature</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Company, industry wide funds through collective bargaining</td>
<td>Voluntary</td>
<td>Yes</td>
<td>Funded</td>
<td>Mainly 70% of salary; but increasing number of schemes based on average salary</td>
<td>Yes</td>
<td>65; early retirement possible</td>
<td>Almost exclusively defined benefit based on final salary</td>
<td>91%</td>
<td>Mature</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Compulsory</td>
<td>Compulsory</td>
<td>No</td>
<td>Funded</td>
<td>60% of average salary</td>
<td>Yes</td>
<td>65(m); 62(w)</td>
<td>Majority of schemes defined contribution but with replacement ratio target to which contributions adjust</td>
<td>100%</td>
<td>Mature (before introduction of the occupational pension BVG in 1985); Immature (after introduction of the BVG)</td>
</tr>
</tbody>
</table>
## Table 12(Chap. 4) - Continued (1 of 1)

<table>
<thead>
<tr>
<th>Country</th>
<th>Main Features</th>
<th>Compulsion</th>
<th>Supplementary / Compulsory Arrangements (for Groups of Employees or Sectors)</th>
<th>Method of Financing</th>
<th>Form of Commitment</th>
<th>Account Taken of the State Social Security</th>
<th>Retirement Age</th>
<th>Forms of Benefits</th>
<th>Coverage (As % of Labour Force)</th>
<th>Maturity (The span of contributing to benefiting members)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sweden</td>
<td>NA</td>
<td>ATP</td>
<td>Compulsory; ITP / STP Voluntary</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Defined benefit based on best-income years</td>
<td>90% Mature</td>
</tr>
<tr>
<td>Denmark</td>
<td>NA</td>
<td>Company and professional funds through collective bargaining</td>
<td>Voluntary</td>
<td>Largely funded</td>
<td>60-70% of final salary</td>
<td>No</td>
<td>Between 65 and 67</td>
<td>Largely defined contribution</td>
<td>80%</td>
<td>Mature</td>
</tr>
<tr>
<td>Norway</td>
<td>NA</td>
<td>NA</td>
<td>No</td>
<td>Partly PAYG &amp; partly funded</td>
<td>60-66% of final salary</td>
<td>Yes</td>
<td>Early retirement possible from 64</td>
<td>NA</td>
<td>NA</td>
<td>Very low as all residents are entitled to the first pillar pension</td>
</tr>
<tr>
<td>Finland</td>
<td>NA</td>
<td>NA</td>
<td>Yes, equivalent to general compulsory pensions</td>
<td>Partly PAYG &amp; partly funded</td>
<td>60% of final salary; up to 66% in certain exceptional cases</td>
<td>Yes</td>
<td>65; early retirement possible from 60</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>France</td>
<td>NA</td>
<td>NA</td>
<td>Collective Bargain plus voluntary funded schemes</td>
<td>Compulsory schemes = PAYG Voluntary Schemes = Funded</td>
<td>Usually 80% of final salary</td>
<td>No</td>
<td>65; early retirement possible</td>
<td>ARRCO/AGIRC defined benefit and pay-as-you-go</td>
<td>90%</td>
<td>Mature</td>
</tr>
<tr>
<td>Italy</td>
<td>Partially funded</td>
<td>Voluntary</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Negligible scope</td>
<td>5%</td>
<td>Immature</td>
</tr>
<tr>
<td>Spain</td>
<td>Partially funded &amp; mainly book reserves</td>
<td>Voluntary</td>
<td>NA</td>
<td>No</td>
<td>Funded</td>
<td>No information on levels</td>
<td>65</td>
<td>Largely defined benefit based on years of service and career earnings or final basic salary</td>
<td>90%</td>
<td>Immature</td>
</tr>
<tr>
<td>Japan</td>
<td>NA</td>
<td>Voluntary</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Immature</td>
</tr>
<tr>
<td>Australia</td>
<td>NA</td>
<td>Compulsory</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Large defined contribution</td>
<td>92%</td>
</tr>
</tbody>
</table>

**Note:**
1. The ATP in Sweden is a publicly directed funded 'National Supplementary Pension Scheme' that complements the basic, flat-rate, pay-as-you-go social security scheme. The ITP and STP are private schemes arranged through collective bargaining; the ITP for white-collar workers and the STP for blue-collar ones. They cover virtually the entire labour force. See Davis, 1995, at p. 69.
2. The ARRCO and AGIRC in France are supplementary occupational pensions; the ARRCO for ordinary employees and the AGIRC for middle managers. See Davis, 1995, at p. 73.
### Table 13 (Chap. 4) - Main Regulations of the Second Pillar Funded Pensions in the Major OECD Countries (as the century turned)


<table>
<thead>
<tr>
<th>Country</th>
<th>The Regulation of Assets</th>
<th>The Regulation of Liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Portfolio Regulations</td>
<td>The Regulation of Funding</td>
</tr>
<tr>
<td>USA (ERISA)</td>
<td>Prudent-man rule; 10% self-investment limit for defined-benefit funds.</td>
<td>Funding of ABO obligatory. Maximum 50% over-fund of the ABO. Higher insurance premium if under-funded.</td>
</tr>
<tr>
<td>Canada</td>
<td>Prudent-man concept; tax on foreign assets over 10%; 7% limit on property.</td>
<td>Maximum 5% over-fund of PBO. Funding obligatory.</td>
</tr>
<tr>
<td>UK</td>
<td>Prudent-man rule; 5% self-investment limit; and Concentration limit for defined contribution plans.</td>
<td>Maximum 5% over-fund of PBO or IBO. Funding only obligatory for contracted-out part of social security.</td>
</tr>
<tr>
<td>Germany</td>
<td>Guidelines; Maximum 30% EU equity, 25% EU property, 6% non-EU shares, 6% non-EU bonds, 20% overall foreign assets and 10% self-investment limit.</td>
<td>Funding obligatory (and tax free) up to PBO. Option of book-reserve funding.</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Prudent-man rule; 5% self-investment limit.</td>
<td>Funding obligatory for PBO. IBO usually funded.</td>
</tr>
</tbody>
</table>

Note:

ABO (Accumulated Benefit Obligation) refers to the solvency level at which the pension firm can meet all its current obligations. PBO (Projected Benefit Obligation) refers to the indexation of rights up to retirement. IBO (Indexed Benefit Obligation) refers to the indexation of rights after retirement. See Davis, 1995, at p. 100.
## Table 13(Chap. 4) - Continued (1 of 1)

<table>
<thead>
<tr>
<th>Country</th>
<th>The Regulation of Assets</th>
<th>The Regulation of Liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Portfolio Regulations</td>
<td>Regulation of Funding</td>
</tr>
<tr>
<td>Sweden</td>
<td>Majority to be held in listed bonds, debentures and reverse loans to contributors.</td>
<td>IBO funded. Contribution rate adjusted five yearly to balance fund.</td>
</tr>
<tr>
<td>Denmark</td>
<td>Property, shares and investment trust holdings limited to 40%; foreign assets up to 20%; 60% of investment to be in domestic debt. No self-investment.</td>
<td>Irrelevant as pension funds are defined contribution. Benefits must be funded externally.</td>
</tr>
<tr>
<td>Switzerland</td>
<td>50% limit on domestic shares, 50% on property and 20% on foreign-currency assets.</td>
<td>Funding obligatory only for ABO. PBO usually funded. 4% to be credited to accounts annually.</td>
</tr>
<tr>
<td>France</td>
<td>At least 50% of assets to be invested in EU government bonds and less than 33% in loans to sponsors.</td>
<td>Funded company schemes forbidden. Book-reserve funding subject to tax discrimination.</td>
</tr>
<tr>
<td>Italy</td>
<td>No pension law. But, investment policy determined by boards of directors and usually restricted to government bonds, bank deposits, insurance policies and properties.</td>
<td>No Pension law.</td>
</tr>
<tr>
<td>Japan</td>
<td>Guidelines; Minimum 50% in bonds and Maximum 30% in equity, 20% property, 30% foreign, 10% in one country.</td>
<td>Tax exempt up to ABO only. Option of book-reserve funding.</td>
</tr>
<tr>
<td>Australia</td>
<td>Prudent-man rule.</td>
<td>Irrelevant as pension funds are defined contribution. Minimum contribution rate enforced.</td>
</tr>
</tbody>
</table>
Table 14(Chap. 4) - Investment of the Publicly Managed Pensions in the OECD and Non-OECD Countries in the 1980s and 1990s (As Percent of Total)


<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Area of Investment</th>
</tr>
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<tbody>
<tr>
<td>Canada</td>
<td>1991</td>
<td>100</td>
</tr>
<tr>
<td>Egypt</td>
<td>1995</td>
<td>100</td>
</tr>
<tr>
<td>Pakistan</td>
<td>1981</td>
<td>100</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>1997</td>
<td>100</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1997</td>
<td>100</td>
</tr>
<tr>
<td>USA</td>
<td>1997</td>
<td>100</td>
</tr>
<tr>
<td>Yemen</td>
<td>1996</td>
<td>100</td>
</tr>
<tr>
<td>Columbia</td>
<td>1982</td>
<td>100</td>
</tr>
<tr>
<td>India</td>
<td>1995</td>
<td>100</td>
</tr>
<tr>
<td>Venezuela</td>
<td>1981</td>
<td>100</td>
</tr>
<tr>
<td>Niger</td>
<td>1980</td>
<td>96</td>
</tr>
<tr>
<td>Senegal</td>
<td>1980</td>
<td>93</td>
</tr>
<tr>
<td>Jamaica</td>
<td>1987</td>
<td>91</td>
</tr>
<tr>
<td>Tanzania</td>
<td>1996</td>
<td>90</td>
</tr>
<tr>
<td>Korea</td>
<td>1997</td>
<td>89</td>
</tr>
<tr>
<td>Rwanda</td>
<td>1980</td>
<td>82</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>1987</td>
<td>79</td>
</tr>
<tr>
<td>Burundi</td>
<td>1981</td>
<td>78</td>
</tr>
<tr>
<td>Peru</td>
<td>1988</td>
<td>76</td>
</tr>
<tr>
<td>Kenya</td>
<td>1994</td>
<td>73</td>
</tr>
<tr>
<td>Uganda</td>
<td>1994</td>
<td>68</td>
</tr>
<tr>
<td>Japan</td>
<td>1995</td>
<td>63</td>
</tr>
<tr>
<td>Malaysia</td>
<td>1996</td>
<td>63</td>
</tr>
<tr>
<td>Togo</td>
<td>1981</td>
<td>59</td>
</tr>
<tr>
<td>Morocco</td>
<td>1994</td>
<td>58</td>
</tr>
<tr>
<td>Cameroon</td>
<td>1989</td>
<td>57</td>
</tr>
<tr>
<td>Mauritius</td>
<td>1996</td>
<td>56</td>
</tr>
<tr>
<td>Jordan</td>
<td>1995</td>
<td>52</td>
</tr>
<tr>
<td>Philippines</td>
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<td>44</td>
</tr>
<tr>
<td>Tunisia</td>
<td>1990</td>
<td>43</td>
</tr>
<tr>
<td>Sweden</td>
<td>1996</td>
<td>42</td>
</tr>
<tr>
<td>Sudan</td>
<td>1982</td>
<td>26</td>
</tr>
<tr>
<td>Ecuador</td>
<td>1986</td>
<td>10</td>
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</table>
Table 15(Chap. 4) - Investment of the Funded Private Pensions in the OECD Countries (2002 & 2005)
(As percent of Total)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Austria</td>
<td>2.0</td>
<td>74.5</td>
<td>-</td>
<td>0.5</td>
</tr>
<tr>
<td>Belgium</td>
<td>4.4</td>
<td>13.6</td>
<td>3.2</td>
<td>0.3</td>
</tr>
<tr>
<td>Canada</td>
<td>4.9</td>
<td>26.6</td>
<td>0.8</td>
<td>0.8</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>14.8</td>
<td>49.9</td>
<td>na</td>
<td>6.2</td>
</tr>
<tr>
<td>Denmark</td>
<td>0.4</td>
<td>26.8</td>
<td>40.0</td>
<td>0.4</td>
</tr>
<tr>
<td>Finland</td>
<td>-</td>
<td>-</td>
<td>33.3</td>
<td>0.2</td>
</tr>
<tr>
<td>France</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Germany</td>
<td>2.3</td>
<td>41.4</td>
<td>na</td>
<td>25.6</td>
</tr>
<tr>
<td>Hungary</td>
<td>4.4</td>
<td>68.1</td>
<td>5.2</td>
<td>0.0</td>
</tr>
<tr>
<td>Iceland</td>
<td>2.2</td>
<td>39.6</td>
<td>15.9</td>
<td>14.8</td>
</tr>
<tr>
<td>Italy</td>
<td>9.1</td>
<td>33.0</td>
<td>0.5</td>
<td>na</td>
</tr>
<tr>
<td>Korea</td>
<td>1.3</td>
<td>6.0</td>
<td>39.3</td>
<td>5.0</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Mexico</td>
<td>0.2</td>
<td>85.4</td>
<td>1.44</td>
<td>0.0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>3.0</td>
<td>0.0</td>
<td>44.0</td>
<td>8.1</td>
</tr>
<tr>
<td>Norway</td>
<td>4.6</td>
<td>28.8</td>
<td>33.8</td>
<td>3.9</td>
</tr>
<tr>
<td>Poland</td>
<td>4.2</td>
<td>66.8</td>
<td>1.2</td>
<td>na</td>
</tr>
<tr>
<td>Portugal</td>
<td>12.0</td>
<td>25.2</td>
<td>23.5</td>
<td>na</td>
</tr>
<tr>
<td>Spain</td>
<td>4.7</td>
<td>37.2</td>
<td>20.9</td>
<td>0.0</td>
</tr>
<tr>
<td>Switzerland</td>
<td>9.9</td>
<td>29.3</td>
<td>0.0</td>
<td>5.0</td>
</tr>
<tr>
<td>Turkey</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>United</td>
<td>2.6</td>
<td>14.5</td>
<td>4.7</td>
<td>0.5</td>
</tr>
<tr>
<td>Kingdom</td>
<td>10.6</td>
<td>65.0</td>
<td>7.4</td>
<td>0.3</td>
</tr>
<tr>
<td>United States</td>
<td>28.9</td>
<td>18.8</td>
<td>3.2</td>
<td>21.8</td>
</tr>
</tbody>
</table>

Source: OECD, Financial Market Trends:
No. 88 (cited as OECD, 2005), at p. 194;
No. 89 (cited as OECD, 2005a), at p. 224;
No. 90 (cited as OECD, 2006), at pp. 218 & 228; and
No. 91 (cited as OECD, 2006a), at p. 200.
**Table 16(Chap. 4) - Investment of the Funded Private Pensions in Some of the Non-OECD Countries (2002 & 2005)**

(As Percent of Total)

Source: OECD, Financial Market Trends: No. 88 (cited as OECD, 2005), at p. 194; No. 89 (cited as OECD, 2005a), at p. 224; No. 90 (cited as OECD, 2006), at pp. 218 & 228; and No. 91 (cited as OECD, 2006a), at pp. 201 & 206.

<table>
<thead>
<tr>
<th>Country</th>
<th>Cash and Deposits</th>
<th>Gov. Bills and Bonds</th>
<th>Corp. bonds</th>
<th>Loans</th>
<th>Shares</th>
<th>Land and Buildings</th>
<th>Mutual Funds</th>
<th>Unallocated Insurance Contracts</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2002</strong></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>Bulgaria</td>
<td>27.8</td>
<td>62.2</td>
<td>7.0</td>
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<td>0.2</td>
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<td>na</td>
<td>na</td>
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<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Estonia</td>
<td>14.9</td>
<td>34.0</td>
<td>26.1</td>
<td>na</td>
<td>11.4</td>
<td>na</td>
<td>13.5</td>
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<td>0.1</td>
</tr>
<tr>
<td>Slovenia</td>
<td>21.9</td>
<td>54.7</td>
<td>19.5</td>
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<td>0.0</td>
<td>1.4</td>
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</tr>
<tr>
<td>Indonesia</td>
<td>70.9</td>
<td>0.1</td>
<td>11.9</td>
<td>0.7</td>
<td>4.1</td>
<td>6.0</td>
<td>1.3</td>
<td>0.0</td>
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</tr>
<tr>
<td><strong>2005</strong></td>
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<tr>
<td>Bulgaria</td>
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<td>50.1</td>
<td>19.0</td>
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<tr>
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<td>1.8</td>
<td>0.0</td>
<td>1.1</td>
</tr>
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<td>44.2</td>
<td>14.9</td>
<td>2.2</td>
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<td>15.9</td>
<td>6.7</td>
<td>11.6</td>
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<td>0.6</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>30.4</strong></td>
<td><strong>43.7</strong></td>
<td><strong>11.1</strong></td>
<td><strong>0.8</strong></td>
<td><strong>5.7</strong></td>
<td><strong>2.6</strong></td>
<td><strong>4.6</strong></td>
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<table>
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<tr>
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<th>Cash and Deposits</th>
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<th>Corp. bonds</th>
<th>Loans</th>
<th>Shares</th>
<th>Land and Buildings</th>
<th>Mutual Funds</th>
<th>Unallocated Insurance Contracts</th>
<th>Others</th>
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<td><strong>2002</strong></td>
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Tables to Chapter Five
Table 1(Chap. 5) - The Integrated and Non-integrated Financial Market Regulators around the World that are Members to the BIS, IAIS, IOSCO and IOPS

Source: Legislation and websites of the regulators accessed in May 2007 and July 2010 through hyperlinks of:
- The BIS: http://www.bis.org/cbanks.htm
- The IOPS: http://www.iopsweb.org/document/14/0230/en_35030657_35030370_35152654_1_1_1_1,00.html
- The IOSCO: http://www.iosco.org/lists/display_members.cfm?memID=1&orderBy=jurSortName; & http://www.iosco.org/lists/display_members.cfm?memID=2&orderBy=jurSortName; and
- The IAIS: http://www.iaisweb.org/index.cfm?pageID=31

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<td>The states &amp; the National Association of Insurance Commissioners (NAIC)</td>
<td>The Securities and Exchange Commission</td>
<td>The Department of Labor, the Internal Revenue Service, the Pension Benefit Guarantee Corporation, &amp; the Fund Trustees and Master Custodians</td>
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Western Europe

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<th>Insurance Regulator</th>
<th>Securities M. Regulator</th>
<th>Pension Regulator</th>
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<tr>
<td>85. Japan</td>
<td>Financial Services Agency</td>
<td></td>
<td></td>
<td>Pension Bureau of the Ministry of Health, Labour and Welfare for pensions; the Social Insurance Agency; and Regional Social Insurance Bureaus for pension insurance</td>
</tr>
<tr>
<td>86. Korea</td>
<td>Financial Supervisory Service</td>
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<td>88. Labuan, Malaysia</td>
<td>Labuan Offshore Financial Services Authority</td>
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<td>89. Macau, China</td>
<td>Monetary Authority of Macao</td>
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<tr>
<td>90. Mongolia</td>
<td>Bank Negara Malaysia (The Central Bank of Malaysia) in collaboration with the Ministry of Finance of Malaysia</td>
<td>Securities Commission</td>
<td></td>
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<tr>
<td>91. Philippines</td>
<td>The Bank of Mongolia</td>
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<td>Financial Regulatory Commission</td>
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<td>92. Russia</td>
<td>Central Bank of the Russian Federation (Bank of Russia)</td>
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<td>Securities and Exchange Commission</td>
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<tr>
<td>93. Singapore</td>
<td>Monetary Authority of Singapore</td>
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<tr>
<td>94. Sri Lanka</td>
<td>Central Bank of Sri Lanka</td>
<td>Insurance Board of Sri Lanka</td>
<td>Securities and Exchange Commission</td>
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<tr>
<td>95. Thailand</td>
<td>The Bank of Thailand</td>
<td>Ministry of Commerce</td>
<td>Securities and Exchange Commission</td>
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<tr>
<td>96. Turkey</td>
<td>Banking Regulation and Supervision Agency</td>
<td>General Directorate of Insurance</td>
<td>Capital Markets Board</td>
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</tr>
<tr>
<td>97. Uzbekistan</td>
<td>Central Bank of the Republic of Uzbekistan</td>
<td>Ministry of Finance</td>
<td>Center for Coordination and Control over Functioning of Securities Markets</td>
<td>Managed by the Ministry of Finance; no separate regulator</td>
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<td>98. Vietnam</td>
<td>The State Bank of Vietnam in cooperation with the Ministry of Finance</td>
<td>Ministry of Finance</td>
<td>State Securities Commission</td>
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<td><strong>Oceania</strong></td>
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<td>100. Australia</td>
<td>Australian Prudential Regulation Authority; Motor Accidents Authority for the NSW Motor Accidents Scheme; Private Health Insurance Administration Council (PHIAC) for the private health insurance industry</td>
<td>Australian Securities and Investments Commission</td>
<td>Australian Prudential Regulation Authority</td>
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<tr>
<td>101. Fiji</td>
<td>Reserve Bank of Fiji (Fiji Ministry of Finance and National Planning for non-bank financial institutions like the Fiji Development Bank and Housing Authority)</td>
<td>Capital Markets Development Authority; Not Member of IOSCO</td>
<td>Reserve Bank of Fiji</td>
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<td>102. New Zealand</td>
<td>Reserve Bank of New Zealand</td>
<td>Ministry of Economic Development</td>
<td>Securities Commission in collaboration with the Ministry of Economic Development</td>
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<td>104. Vanuatu</td>
<td>Reserve Bank of Vanuatu</td>
<td>Vanuatu Financial Services Commission</td>
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<tr>
<td>Country</td>
<td>Banking Regulator</td>
<td>Insurance Regulator</td>
<td>Securities M. Regulator</td>
<td>Pension Regulator</td>
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<td>Middle East</td>
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<td>105. Bahrain</td>
<td>Central Bank of Bahrain</td>
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<tr>
<td>106. Israel</td>
<td>Bank of Israel</td>
<td>Capital Markets, Insurance and Savings Division of Ministry of Finance; Securities Market Authority to account to and work with this division</td>
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<tr>
<td>108. Oman</td>
<td>The Central Bank of Oman</td>
<td>The Capital Market Authority</td>
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<td>109. Pakistan</td>
<td>The State Bank of Pakistan</td>
<td>Securities and Exchange Commission</td>
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<td>110. United Arab Emirates</td>
<td>Dubai IFC</td>
<td>Dubai Financial Services Authority</td>
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<td></td>
<td>Federal</td>
<td>Central Bank of the UAE</td>
<td></td>
<td>Securities and Commodities Authority</td>
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<td>Africa</td>
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<td>111. Algeria</td>
<td>Banque d'Algérie</td>
<td>Direction des Assurances, Ministère des Finances</td>
<td>Commission d'organisation et de surveillance des opérations de bourse</td>
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<td>112. Egypt</td>
<td>Central Bank of Egypt</td>
<td>Egyptian Insurance Supervisory Authority</td>
<td>Capital Market Authority</td>
<td>Egyptian Insurance Supervisory Authority</td>
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<td>115. Malawi</td>
<td>Reserve Bank of Malawi</td>
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<tr>
<td>116. Mauritius</td>
<td>Bank Of Mauritius (Central Bank)</td>
<td>Financial Services Commission Mauritius</td>
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<tr>
<td>117. Morocco</td>
<td>Bank Al-Maghrib (Bank of Morocco)</td>
<td>Ministre des Finances et de la Privatisation</td>
<td>Conseil déontologique des valeurs mobilières</td>
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<td>118. Namibia</td>
<td>Bank of Namibia</td>
<td>Namibia Financial Institutions Supervisory Authority (NAMFISA)</td>
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<td>120. South Africa</td>
<td>Reserve Bank of South Africa</td>
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<td>121. Sudan</td>
<td>Bank of Sudan</td>
<td>The Insurance Supervision &amp; Control Public Corporation</td>
<td>Bank of Sudan</td>
<td></td>
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<tr>
<td>122. Tanzania</td>
<td>Bank of Tanzania</td>
<td>Insurance Supervisory Department, Ministry of Finance</td>
<td>Capital Markets and Securities Authority</td>
<td></td>
</tr>
<tr>
<td>123. Tunisia</td>
<td>Banque Centrale de Tunisie</td>
<td>Direction Générale des Assurances, Ministère des Finances</td>
<td>Conseil du marché financier</td>
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</tr>
<tr>
<td>126. Zambia</td>
<td>Bank of Zambia</td>
<td>Pensions and Insurance Authority</td>
<td>Securities and Exchange Commission</td>
<td>Pension and Insurance Authority</td>
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</tbody>
</table>
Table 2(Chap. 5) - The Level and Date of Integration of the Integrated Financial Market Regulators around the World that are Members to the BIS, IAIS, IOSCO and IOPS

**Source**: Legislation and websites of the regulators accessed in May 2007 and July 2010 through hyperlinks of:
- The BIS: http://www.bis.org/cbanks.htm
- The IOPS: http://www.iopsweb.org/document/14/0,2340,en_35030657_35030370_35152654_1_1_1,00.html
- The IOSCO: http://www.iosco.org/lists/display_members.cfm?memID=1&orderBy=jurSortName; & http://www.iosco.org/lists/display_members.cfm?memID=2&orderBy=jurSortName; and
- The IAIS: http://www.iaisweb.org/index.cfm?pageID=31

<table>
<thead>
<tr>
<th>Country</th>
<th>Regulator</th>
<th>Integrated Functions</th>
<th>Date of Integration</th>
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</thead>
<tbody>
<tr>
<td>Northern America</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Bermuda</td>
<td>Bermuda Monetary Authority</td>
<td>Regulation of deposit-taking, insurance, investment and trust businesses</td>
<td>1990</td>
</tr>
<tr>
<td>2. Canada, Federal</td>
<td>Office of the Superintendent of Financial Institutions</td>
<td>Regulation of banks, other deposit taking institutions, insurers and pension plans</td>
<td>July 1987</td>
</tr>
<tr>
<td>3. Canada, Quebec</td>
<td>Autorité des marchés financiers</td>
<td>Regulation of insurance, securities, deposit institutions (other than federal chartered banks) and the distribution of financial products and services</td>
<td>February 1, 2004</td>
</tr>
<tr>
<td>Central and Southern America</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Aruba</td>
<td>Centrale Bank van Aruba</td>
<td>Regulation of credit institutions, insurance companies and pension funds</td>
<td>1998</td>
</tr>
<tr>
<td>5. Brazil</td>
<td>The Superintendence of Private Insurance in the National Council of Private Insurance (SUSEP)</td>
<td>Regulation of insurance and pension markets</td>
<td>2001</td>
</tr>
<tr>
<td>6. British Virgin Islands</td>
<td>Financial Services Commission</td>
<td>Regulation of banking, insurance, securities and other financial services</td>
<td>1990 &amp; 1996; Insolvency Services added in 2003; Corporate Services added in 2005</td>
</tr>
<tr>
<td>7. Cayman Islands</td>
<td>The Cayman Islands Monetary Authority</td>
<td>Regulation of banking, insurance and securities businesses</td>
<td>1st January, 1997</td>
</tr>
<tr>
<td>8. Chile</td>
<td>The Securities and Insurance Supervisor (Superintendencia de Valores y Seguros - SVS)</td>
<td>Integration of regulatory tasks: May 22, 1931; creation of SVS: Dec. 23, 1980</td>
<td></td>
</tr>
<tr>
<td>9. Colombia</td>
<td>Superintendencia Financiera de Colombia (Office of the National Superintendent of Financial Institutions)</td>
<td>Regulation of banking, insurance, securities, pensions and other financial services. Cooperation with the Banco de la República (the Central Bank) on matters of concern to the latter</td>
<td>Between 1991 and 2005</td>
</tr>
<tr>
<td>10. Ecuador</td>
<td>Superintendencia de Bancos y Seguros</td>
<td>Banking, insurance and pensions regulation</td>
<td>May 2006</td>
</tr>
<tr>
<td>11. El Salvador</td>
<td>Superintendencia del Sistema Financiero</td>
<td>Banking, insurance and pensions regulation</td>
<td>Between 1991 and 2001</td>
</tr>
<tr>
<td>12. Guatemala</td>
<td>Superintendencia de Bancos</td>
<td>Banking, insurance and securities regulation</td>
<td>NA</td>
</tr>
<tr>
<td>13. Honduras</td>
<td>Comision Nacional de Bancos y Seguros</td>
<td>Regulation of banks, insurers, securities firms, pensions and other financial institutions</td>
<td>June 2001</td>
</tr>
<tr>
<td>15. Netherlands Antilles</td>
<td>Bank van de Nederlandse Antillen</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>Between 1994 and 2003</td>
</tr>
</tbody>
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### Table 2 (Chap. 5) - Continued

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<th>Country</th>
<th>Regulator</th>
<th>Integrated Functions</th>
<th>Date of Integration</th>
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<tbody>
<tr>
<td>Central and Southern America Contd.</td>
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<td></td>
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<tr>
<td>16. Nevis</td>
<td>Nevis Financial Services Department in collaboration with the Ministry of Finance</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>Between 2002 and 2004</td>
</tr>
<tr>
<td>17. Peru</td>
<td>Bancos, Financieras y Otras</td>
<td>Banking and insurance regulation</td>
<td>Between 1996 and 2005</td>
</tr>
<tr>
<td>18. Suriname</td>
<td>Centrale Bank van Suriname</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>(Adaptation of the Law on Supervision of Banks and Credit Unions of 1968)</td>
</tr>
<tr>
<td>19. Trinidad &amp; Tobago</td>
<td>Central Bank of Trinidad and Tobago</td>
<td>Banking, insurance and pensions regulation</td>
<td>1993 banking &amp; insurance regulation; May 25, 2004 pension regulation</td>
</tr>
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<td>20. Uruguay</td>
<td>Banco Central del Uruguay</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>Between 1995 and 1996</td>
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<tr>
<td>Western Europe</td>
<td></td>
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<tr>
<td>21. Austria</td>
<td>Financial Market Authority (FMA)</td>
<td>Regulation of banking, insurance, Pension Fund and Securities Markets</td>
<td>1 April 2002</td>
</tr>
<tr>
<td>22. Belgium</td>
<td>Banking, Finance and Insurance Commission</td>
<td>Banking Insurance, and all other financial services</td>
<td>1 January 2004</td>
</tr>
<tr>
<td>23. Denmark</td>
<td>Finanstilsynet (The Danish Financial Services Authority)</td>
<td>Regulation of banking, insurance, securities, pension and other financial institutions and markets</td>
<td>1 January 1998</td>
</tr>
<tr>
<td>24. Germany</td>
<td>Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht - known as BaFin)</td>
<td>Banking, insurance, securities and pensions regulation</td>
<td>May 2002</td>
</tr>
<tr>
<td>26. Finland</td>
<td>Financial Supervisory Authority</td>
<td>Regulation of banks, investment firms, management companies and stock exchanges</td>
<td>27 June 2003</td>
</tr>
<tr>
<td>27. Guernsey</td>
<td>Guernsey Financial Services Commission</td>
<td>Regulation of banks, insurers, investment and securities firms and fiduciary businesses</td>
<td>Between 1994 and 2002</td>
</tr>
<tr>
<td>28. Iceland</td>
<td>Financial Supervisory Authority</td>
<td>Banking, insurance, securities and pensions regulation</td>
<td>16 June 1998</td>
</tr>
<tr>
<td>29. Ireland</td>
<td>Irish Financial Services Regulatory Authority</td>
<td>Banking, insurance, securities and pensions regulation</td>
<td>1 May 2003</td>
</tr>
<tr>
<td>32. Luxembourg</td>
<td>Commission de surveillance du secteur financier</td>
<td>Banking, securities, pensions and related financial regulation; Insurance regulated by the Commissariat aux Assurances</td>
<td>1 June 1998</td>
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<th>Integrated Functions</th>
<th>Date of Integration</th>
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<td>Western Europe contd.</td>
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<tr>
<td>34. Norway</td>
<td>Financial Supervisory Authority of Norway (Kreditkår)</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>Between 1985 and March 1986</td>
</tr>
<tr>
<td>35. Portugal</td>
<td>Instituto de Seguros de Portugal</td>
<td>Insurance and pensions regulation</td>
<td>Between 13 November 2001 and January 2006</td>
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<tr>
<td>36. Spain</td>
<td>Dirección General de Seguros y Fondos de Pensiones (Directorate General for Insurance and Pensions Funds)</td>
<td>Insurance and pension regulation</td>
<td>26 June 2004</td>
</tr>
<tr>
<td>37. Sweden</td>
<td>Swedish Financial Supervisory Authority (Finansinspektionen)</td>
<td>Banking, insurance, securities and other financial regulation</td>
<td>1991</td>
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<tr>
<td>Northern, Central, Eastern and Southern Europe</td>
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<tr>
<td>39. Albania</td>
<td>Financial Supervisory Authority</td>
<td>All non-bank financial regulation</td>
<td>October 11, 2006</td>
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<tr>
<td>40. Bulgaria</td>
<td>Financial Supervision Commission</td>
<td>Regulation of investment, insurance and social insurance markets</td>
<td>March 1st, 2003</td>
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<tr>
<td>41. Croatia</td>
<td>Croatian Financial Services Supervisory Agency (HANFA)</td>
<td>All non-bank financial regulation</td>
<td>1 January 2006</td>
</tr>
<tr>
<td>42. Czech Republic</td>
<td>Czech National Bank</td>
<td>Banking, insurance, securities and pension regulation. Inspection of state contributions to pension schemes, still in the competence of the Ministry of Finance.</td>
<td>1 April 2006</td>
</tr>
<tr>
<td>43. Estonia</td>
<td>Financial Supervision Authority</td>
<td>Banking, insurance, securities and pensions regulation</td>
<td>1 January 2002</td>
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<tr>
<td>44. Hungary</td>
<td>Hungarian Financial Supervisory Authority</td>
<td>Banking, insurance, securities and pensions regulation</td>
<td>2000</td>
</tr>
<tr>
<td>45. Kazakhstan</td>
<td>The Agency of Kazakhstan on Regulation and Supervision of Financial Market and Financial Organizations</td>
<td>Banking, insurance, securities and pensions regulation; National Bank to regulate only over certain questions of banking</td>
<td>2005</td>
</tr>
<tr>
<td>46. Kosovo</td>
<td>Central Banking Authority of Kosovo</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>Between 1999 and 2006</td>
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<tr>
<td>47. Latvia</td>
<td>Financial and Capital Market Commission</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>1 July 2001</td>
</tr>
<tr>
<td>48. Liechtenstein</td>
<td>Financial Market Authority</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>1 January 2005</td>
</tr>
<tr>
<td>49. Malta</td>
<td>Malta Financial Services Authority</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>23 July 2002</td>
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<tr>
<td>50. Montenegro</td>
<td>Central Bank of Montenegro</td>
<td>Regulation of banks and other financial institutions</td>
<td>March 15, 2001</td>
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<tr>
<td>51. Poland</td>
<td>Insurance and Pension Funds Supervisory Commission (KNUiFE)</td>
<td>Insurance and pensions regulation</td>
<td>1 April 2002</td>
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<th>Integrated Functions</th>
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<td>Northern, Central, Eastern and Southern Europe contd.</td>
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<td>52. Serbia</td>
<td>National Bank of Serbia</td>
<td>Banking, insurance and pensions regulation</td>
<td>Between 2003 and 2004</td>
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<td>53. Slovakia</td>
<td>National Bank of Slovakia</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>Between January 1st 1993 and 2004</td>
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<td>Asia</td>
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<td>54. Brunei</td>
<td>Ministry of Finance</td>
<td>Banking, insurance and securities regulation</td>
<td>na</td>
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<tr>
<td>56. China, Taiwan</td>
<td>Financial Supervisory Commission Executive Yuan</td>
<td>Banking, insurance and securities regulation</td>
<td>1 July 2004</td>
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<td>57. China, Macau</td>
<td>Monetary Authority of Macao</td>
<td>Banking, insurance, securities, pensions and other financial regulation</td>
<td>1999</td>
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<td>59. Japan</td>
<td>Financial Services Agency</td>
<td>Banking, insurance and securities regulation</td>
<td>July 2000</td>
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<td>60. Korea</td>
<td>Financial Supervisory Service</td>
<td>banking, insurance, securities and pensions regulation</td>
<td>January 2, 1999</td>
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<td>61. Labuan, Malaysia</td>
<td>Labuan Offshore Financial Services Authority</td>
<td>Banking, insurance, securities, trust and other financial regulation</td>
<td>Between 1996 and 1998</td>
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<td>62. Malaysia</td>
<td>Bank Negara Malaysia (central bank for Malaysia) in collaboration with the Ministry of Finance of Malaysia</td>
<td>Banking and insurance regulation</td>
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<td>64. Singapore</td>
<td>Monetary Authority of Singapore</td>
<td>Banking, insurance and securities regulation</td>
<td>Between 1 January 1971 and September 1984</td>
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<td>65. Thailand</td>
<td>Securities and Exchange Commission</td>
<td>Securities and provident fund (pension) regulation</td>
<td>May 16, 1992</td>
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<td>Oceania</td>
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<td>66. Australia</td>
<td>Australian Prudential Regulation Authority</td>
<td>Regulation of banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies, and the superannuating industry except for the NSW Motor Accidents Scheme (regulated by the Motor Accidents Authority) and the private health insurance industry (regulated by the Private Health Insurance Administration Council (PHIAC))</td>
<td>1 July 1998</td>
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<td>67. Fiji</td>
<td>Reserve Bank of Fiji</td>
<td>Banking, Insurance and National Provident Fund Regulation</td>
<td>Between 1983 and 2003</td>
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<td>68. Papua New Guinea</td>
<td>Bank of Papua New Guinea</td>
<td>Banking, insurance and pensions regulation</td>
<td>2000</td>
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<td>Country</td>
<td>Regulator</td>
<td>Integrated Functions</td>
<td>Date of Integration</td>
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<td>Middle East</td>
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<td>70. Bahrain</td>
<td>Central Bank of Bahrain</td>
<td>Regulation of banking, insurance, Pension Fund and Securities Markets</td>
<td>August 2002</td>
</tr>
<tr>
<td>73. Oman</td>
<td>Capital Market Authority</td>
<td>Insurance and securities regulation</td>
<td>March 1979</td>
</tr>
<tr>
<td>75. United Arab Emirates</td>
<td>Dubai Financial Services Authority (For the Dubai International Financial Centre)</td>
<td>Banking, insurance, securities and other financial regulation</td>
<td>16 September 2004</td>
</tr>
<tr>
<td>Africa</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>76. Egypt</td>
<td>Egyptian Insurance Supervisory Authority</td>
<td>Insurance and pension supervision</td>
<td>Between 1981 and 1998</td>
</tr>
<tr>
<td>77. Malawi</td>
<td>Reserve Bank of Malawi</td>
<td>Banking, insurance and securities regulation</td>
<td>1 MAY, 1989</td>
</tr>
<tr>
<td>78. Mauritius</td>
<td>Financial Services Commission Mauritius</td>
<td>Regulation of Non-bank financial institutions.</td>
<td>15 May 2001</td>
</tr>
<tr>
<td>79. Namibia</td>
<td>Namibia Financial Institutions Supervisory Authority (NAMFISA)</td>
<td>Regulation of Non-bank financial institutions (Other than the Post Office Savings Bank, the Agricultural Bank, the Development Fund of Namibia, the National Development Corporation, the National Housing Enterprises, the Social Security Commission and the Motor Vehicle Accident Fund that are governed by their own boards)</td>
<td>20 April 2001</td>
</tr>
</tbody>
</table>
### Table 3 (Chap. 5) - Assessment of the Ethiopian Banking Regulation against the October 2006 Basel Core Principles for Effective Banking Supervision

#### (1 of 4)

<table>
<thead>
<tr>
<th>Principle and Criteria</th>
<th>Assessment</th>
<th>Remark</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principle 1(1): Responsibilities and objectives</strong>&lt;br&gt;An effective system of banking supervision will have clear responsibilities and objectives for each authority involved in the supervision of banks.</td>
<td>✓</td>
<td>Regulatory objectives are not specifically defined.</td>
</tr>
<tr>
<td><strong>Principle 1(2): Independence, accountability and transparency</strong>&lt;br&gt;Each such authority should possess operational independence, transparent processes, sound governance and adequate resources, and be accountable for the discharge of its duties.</td>
<td>✓</td>
<td>Independence is fragile because of direct involvement of government in regulator's functions. Regulators work is not transparent enough.</td>
</tr>
<tr>
<td><strong>Principle 1(3): Legal framework</strong>&lt;br&gt;A suitable legal framework for banking supervision is also necessary, including provisions relating to authorisation of banking establishments and their ongoing supervision.</td>
<td>✓</td>
<td>Law needs to be improved further.</td>
</tr>
<tr>
<td><strong>Principle 1(4): Legal powers</strong>&lt;br&gt;A suitable legal framework for banking supervision is also necessary, including powers to address compliance with laws as well as safety and soundness concerns.</td>
<td>✓</td>
<td>Powers of regulator need to be defined further.</td>
</tr>
<tr>
<td><strong>Principle 1(5): Legal protection</strong>&lt;br&gt;A suitable legal framework for banking supervision is also necessary, including legal protection for supervisors.</td>
<td>✓</td>
<td>Legal protection for supervisors is scattered in general laws.</td>
</tr>
<tr>
<td><strong>Principle 1(6): Cooperation</strong>&lt;br&gt;Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.</td>
<td>✓</td>
<td>Banking, insurance and microfinance regulators are integrated in the central bank (NBE). Law does not define work relationship between the financial market regulators and competition enforcement organs. Cooperation with other domestic and international regulators is also weak. Law does not also define the level of confidentiality of information.</td>
</tr>
<tr>
<td><strong>Principle 2: Permissible activities</strong>&lt;br&gt;The permissible activities of institutions that are licensed and subject to supervision as banks must be clearly defined and the use of the word “bank” in names should be controlled as far as possible.</td>
<td>✓</td>
<td>Law defines the permissible activities of banks and controls the use of the word ‘Bank’.</td>
</tr>
</tbody>
</table>

**Note**<br>**C** = Compliant = All essential criteria applicable for the country are met without any significant deficiencies.<br>**LC** = Largely Compliant = The system does not meet all essential criteria, but the overall effectiveness is sufficiently good, and no material risks are left unaddressed. Only minor shortcomings are observed which do not raise any concerns about the authority’s ability and clear intent to achieve full compliance with the Principle through time.<br>**MNC** = Materially Non-Compliant = There are severe shortcomings, despite the existence of formal rules, regulations and procedures, and there is evidence that supervision has clearly not been effective, that practical implementation is weak, or that the shortcomings are sufficient to raise doubts about the authority’s ability to achieve compliance.<br>**NC** = Non-Compliant = There has been no substantive implementation of the Principle, several essential criteria are not complied with and/or supervision is manifestly ineffective.<br>**NA** = Not Applicable = The Principle does not apply given the structural, legal and institutional features of the country.
<table>
<thead>
<tr>
<th>Principle and Criteria</th>
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<th>Remark</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principle 3: Licensing criteria</strong>&lt;br&gt;The licensing authority must have the power to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the ownership structure and governance of the bank and its wider group, including the fitness and propriety of Board members and senior management, its strategic and operating plan, internal controls and risk management, and its projected financial condition, including its capital base. Where the proposed owner or parent organisation is a foreign bank, the prior consent of its home country supervisor should be obtained.</td>
<td>✓</td>
<td>Law and regulator list licensing requirements. Law and regulator do not define the grounds for license refusal. Regulator does not have standardized licensing procedure.</td>
</tr>
<tr>
<td><strong>Principle 4: Transfer of significant ownership</strong>&lt;br&gt;The supervisor has the power to review and reject any proposals to transfer significant ownership or controlling interests held directly or indirectly in existing banks to other parties.</td>
<td>✓</td>
<td>Law requires prior approval of transfer of significant ownership by regulator. Regulator does not check compliance.</td>
</tr>
<tr>
<td><strong>Principle 5: Major acquisitions</strong>&lt;br&gt;The supervisor has the power to review major acquisitions or investments by a bank, against prescribed criteria, including the establishment of cross-border operations, and confirming that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.</td>
<td>✓</td>
<td>Law requires prior approval of major acquisitions by regulator. Law does not allow foreign ownership of the financial institutions. Law does not set criteria for review of investments of the financial institutions. Regulator imposes quantitative restrictions on investments of the financial institutions.</td>
</tr>
<tr>
<td><strong>Principle 6: Capital adequacy</strong>&lt;br&gt;Supervisors must set prudent and appropriate minimum capital adequacy requirements for banks that reflect the risks that the bank undertakes, and must define the components of capital, bearing in mind its ability to absorb losses. At least for internationally active banks, these requirements must not be less than those established in the applicable Basel requirement.</td>
<td>✓</td>
<td>Law requires continuous maintenance of unimpaired minimum capital. Regulator defines capital adequacy ratio and the components of capital for calculation. Approach follows the oldest (i.e. 1988) Basel recommendation.</td>
</tr>
<tr>
<td><strong>Principle 7: Risk management process</strong>&lt;br&gt;Supervisors must be satisfied that banks and banking groups have in place a comprehensive risk management process (including Board and senior management oversight) to identify, evaluate, monitor and control or mitigate all material risks and to assess their overall capital adequacy in relation to their risk profile. These processes should be commensurate with the size and complexity of the institution.</td>
<td>✓</td>
<td>Banks are required by law to develop risk management techniques. Risk management techniques of banks are not well developed. Regulator does not set standards for risk management techniques of banks.</td>
</tr>
<tr>
<td><strong>Principle 8: Credit risk</strong>&lt;br&gt;Supervisors must be satisfied that banks have a credit risk management process that takes into account the risk profile of the institution, with prudent policies and processes to identify, measure, monitor and control credit risk (including counter-party risk). This would include the granting of loans and making of investments, the evaluation of the quality of such loans and investments, and the ongoing management of the loan and investment portfolios.</td>
<td>✓</td>
<td>Regulator sets single borrower, related party, provisioning and investments limits. Regulator does not set standards for credit policy and risk management techniques of banks. Regulator follows restricting as opposed to risk prevention oriented approaches.</td>
</tr>
<tr>
<td><strong>Principle 9: Problem assets, provisions and reserves</strong>&lt;br&gt;Supervisors must be satisfied that banks establish and adhere to adequate policies and processes for managing problem assets and evaluating the adequacy of provisions and reserves.</td>
<td>✓</td>
<td>Regulator sets provisioning and reserving requirements and checks compliance. Regulator does not assess adequacy of provisions and reserves vis-à-vis problem assets per individual bank.</td>
</tr>
<tr>
<td>Principle and Criteria</td>
<td>Assessment</td>
<td>Remark</td>
</tr>
<tr>
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</tr>
<tr>
<td>Principle 10: Large Exposure Limits</td>
<td>√</td>
<td>Regulator sets single borrower limits and checks compliance. Regulator does not set standards for credit and risk exposure policies of banks.</td>
</tr>
<tr>
<td>Principle 11: Exposures to related parties</td>
<td>√</td>
<td>Regulator sets limits on transactions with related parties. Identification of related party is left to discretion of banks. Regulator lacks standardized mechanism to check compliance.</td>
</tr>
<tr>
<td>Principle 12: Country and transfer risks</td>
<td>Banks do not engage in foreign lending and investment. Regulation does not also foresee foreign lending and investment by banks.</td>
<td></td>
</tr>
<tr>
<td>Principle 13: Market risk</td>
<td>Regulator does not check adequacy and accuracy of risk policies and processes of banks. It only imposes investment, loan and asset provisioning, single borrower, related party, and liquidity requirements.</td>
<td></td>
</tr>
<tr>
<td>Principle 14: Liquidity risk</td>
<td>Law and regulator impose liquidity requirements. Banks do not have comprehensive liquidity management strategy. There are inter-bank lending market and discount window facilities. Regulator imposes daily open foreign currency position limits on foreign exchange businesses and requires the making of general liquidity reports.</td>
<td></td>
</tr>
<tr>
<td>Principle 15: Operational risk</td>
<td>Regulator does not check adequacy of operational risk management policies and processes of banks. It only imposes investment, loan and asset provisioning, single borrower, related party, and liquidity requirements.</td>
<td></td>
</tr>
<tr>
<td>Principle 16: Interest rate risk in the banking book</td>
<td>Regulator authorizes boards of banks to fix lending and deposit interest rates subject to minimum rate on deposits fixed by supervisor. It leaves the risk measurement and management techniques to discretion of banks. It does not check adequacy of the risk management systems and strategies of banks.</td>
<td></td>
</tr>
</tbody>
</table>
### Table 3 (Chap. 5) - continued

(4 of 4)

<table>
<thead>
<tr>
<th>Principle and Criteria</th>
<th>Assessment</th>
<th>Remark</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principle 17: Internal control and audit</strong></td>
<td>√</td>
<td>Regulator requires banks to have auditing, internal control, and organizational arrangements. It does not check adequacy.</td>
</tr>
<tr>
<td>Supervisors must be satisfied that banks have in place internal controls that are adequate for the size and complexity of their business. These should include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding the bank's assets; and appropriate independent internal audit and compliance functions to test adherence to these controls as well as applicable laws and regulations.</td>
<td></td>
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</tr>
<tr>
<td><strong>Principle 18: Abuse of financial services</strong></td>
<td>√</td>
<td>Law authorizes regulator to define “know-your-customer” standards for the banks. Law also requires banks not to engage in money laundering and illicit financing activities. Regulator has not defined the “know-your-customer” standard yet. It does not also check adequacy of the banks’ policies and standards.</td>
</tr>
<tr>
<td>Supervisors must be satisfied that banks have adequate policies and processes in place, including strict “know-your-customer” rules, that promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Principle 19: Supervisory approach</strong></td>
<td>√</td>
<td>Regulator requires regular off-site reports and conducts on-site inspections occasionally. Regulator focuses on compliance checking. It does not analyse results adequately due to staff constraint.</td>
</tr>
<tr>
<td>An effective banking supervisory system requires that supervisors develop and maintain a thorough understanding of the operations of individual banks and banking groups, and also of the banking system as a whole, focusing on safety and soundness, and the stability of the banking system.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Principle 20: Supervisory techniques</strong></td>
<td>√</td>
<td>Regulator relies more on off-site supervision than on-site inspection due to funding and staff constraints. It conducts meetings with managers of banks only occasionally.</td>
</tr>
<tr>
<td>An effective banking supervisory system should consist of on-site and off-site supervision and regular contacts with bank management.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Principle 21: Supervisory reporting</strong></td>
<td>√</td>
<td>Regulator requires and sanctions periodic reports both on solo and consolidated basis. It verifies reports using only its own staff. Verification is limited to compliance checking due to staff constraint.</td>
</tr>
<tr>
<td>Supervisors must have a means of collecting, reviewing and analysing prudential reports and statistical returns from banks on both a solo and a consolidated basis, and a means of independent verification of these reports, through either on-site examinations or use of external experts.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Principle 22: Accounting and disclosure</strong></td>
<td>√</td>
<td>Law and regulator generally require accounting and auditing according to internationally accepted principles. Law and regulator do not indicate the particular internationally accepted principles to be followed. Law also requires banks to publish and post audited financial statements annually. Banks make publication only occasionally. Regulator does not ensure compliance.</td>
</tr>
<tr>
<td>Supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with accounting policies and practices that are widely accepted internationally, and publishes, on a regular basis, information that fairly reflects its financial condition and profitability.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Principle 23: Corrective and remedial powers of supervisors</strong></td>
<td>√</td>
<td>Regulator is fully authorized to take measures that range from consultation up to license revocation and to take over or put the banks under receivership. Enforcement of sanctions and corrective measures is weak in practice.</td>
</tr>
<tr>
<td>Supervisors must have at their disposal an adequate range of supervisory tools to bring about timely corrective actions. This includes the ability, where appropriate, to revoke the banking licence or to recommend its revocation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Principle 24: Consolidated supervision</strong></td>
<td>√</td>
<td>Law authorizes regulator to conduct consolidated supervision. There are no banking groups and financial conglomerates yet. Regulator imposes unnecessary regulations on branches.</td>
</tr>
<tr>
<td>An essential element of banking supervision is that supervisors supervise the banking group on a consolidated basis, adequately monitoring and, as appropriate, applying prudential norms to all aspects of the business conducted by the group worldwide.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Principle 25: Home-host relationships</strong></td>
<td>√</td>
<td>Law does not allow foreign banks yet.</td>
</tr>
<tr>
<td>Cross-border consolidated supervision requires cooperation and information exchange between home supervisors and the various other supervisors involved, primarily host banking supervisors. Banking supervisors must require the local operations of foreign banks to be conducted to the same standards as those required of domestic institutions.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 4 (Chap. 5) - Assessment of the Ethiopian Insurance Regulation against the October 2003 IAIS Core Principles and Methodology for Insurance Supervision

<table>
<thead>
<tr>
<th>Principle and Criteria</th>
<th>Assessment</th>
<th>Remark</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ICP 1 Conditions for effective insurance supervision</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance supervision relies upon:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- a policy, institutional and legal framework for financial sector supervision</td>
<td>√</td>
<td>Law is in place. There is no comprehensive financial market policy yet. Financial market infrastructure is weak.</td>
</tr>
<tr>
<td>- a well developed and effective financial market infrastructure</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>- efficient financial markets.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 2 Supervisory objectives</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The principal objectives of insurance supervision are clearly defined.</td>
<td>√</td>
<td>Law does not define objectives of regulation specifically. Objectives are only inferred in practice.</td>
</tr>
<tr>
<td><strong>ICP 3 Supervisory authority</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The supervisory authority:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- has adequate powers, legal protection and financial resources to exercise its functions and powers</td>
<td>√</td>
<td>Powers of regulator need to be defined further. Regulator suffers from financial and staff constraints. Regulator's autonomy is fragile due to direct government involvement.</td>
</tr>
<tr>
<td>- is operationally independent and accountable in the exercise of its functions and powers</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>- hires, trains and maintains sufficient staff with high professional standards</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>- treats confidential information appropriately.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 4 Supervisory process</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The supervisory authority conducts its functions in a transparent and accountable manner.</td>
<td>√</td>
<td>Regulator’s work procedure is not fully transparent.</td>
</tr>
<tr>
<td><strong>ICP 5 Supervisory cooperation and information sharing</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The supervisory authority cooperates and shares information with other relevant supervisors subject to confidentiality requirements.</td>
<td>√</td>
<td>Banking insurance and microfinance regulators are integrated in the central bank (NBE). Law does not define work relationship between the financial market regulators and competition enforcement organs. Cooperation with other domestic and international regulators is also weak.</td>
</tr>
</tbody>
</table>

**Note:**
- O = Observed = All essential criteria for the principle are met without any significant deficiencies.
- LO = Largely Observed = The system does not meet all essential criteria, but the overall effectiveness is sufficiently good, and no material risks are left unaddressed. Only minor shortcomings are observed which do not raise any concerns about the authority’s ability and clear intent to achieve full compliance with the Principle.
- PO = Partly Observed = There are severe shortcomings, despite the existence of formal rules, regulations and procedures, and there is evidence that supervision has clearly not been effective, that practical implementation is weak, or that the shortcomings are sufficient to raise doubts about the authority’s ability to achieve compliance.
- NO = Not Observed = There has been no substantive implementation of the Principle, several essential criteria are not complied with and/or supervision is manifestly ineffective.
- NA = Not Applicable = The Principle does not apply given the structural, legal and institutional features of the country.
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</thead>
<tbody>
<tr>
<td><strong>ICP 6 Licensing</strong></td>
<td>√</td>
<td>Law and regulator list licensing requirements. Law and regulator do not define the grounds for license refusal. Regulator does not have standardized licensing procedure.</td>
</tr>
<tr>
<td>An insurer must be licensed before it can operate within a jurisdiction. The requirements for licensing are clear, objective and public.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 7 Suitability of persons</strong></td>
<td>√</td>
<td>Regulator sets suitability criteria for board members, senior management, auditors and actuaries. It does not have mechanism for compliance checking.</td>
</tr>
<tr>
<td>The significant owners, board members, senior management, auditors and actuaries of an insurer are fit and proper to fulfil their roles. This requires that they possess the appropriate integrity, competency, experience and qualifications.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 8 Changes in control and portfolio transfers</strong></td>
<td>√</td>
<td>Law requires prior approval of changes in control and portfolio transfers by regulator.</td>
</tr>
<tr>
<td>The supervisory authority approves or rejects proposals to acquire significant ownership or any other interest in an insurer that results in that person, directly or indirectly, alone or with an associate, exercising control over the insurer. The supervisory authority approves the portfolio transfer or merger of insurance business.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 9 Corporate governance</strong></td>
<td>√</td>
<td>Law defines and protects shareholders' rights. There are no corporate governance standards.</td>
</tr>
<tr>
<td>The corporate governance framework recognises and protects rights of all interested parties. The supervisory authority requires compliance with all applicable corporate governance standards.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 10 Internal control</strong></td>
<td>√</td>
<td>Boards and auditors control operations. Regulator leaves internal control mechanisms to discretion of the regulated institutions.</td>
</tr>
<tr>
<td>The supervisory authority requires insurers to have in place internal controls that are adequate for the nature and scale of the business. The oversight and reporting systems allow the board and management to monitor and control the operations.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 11 Market analysis</strong></td>
<td>√</td>
<td>Regulator does not analyze market risks.</td>
</tr>
<tr>
<td>Making use of all available sources, the supervisory authority monitors and analyses all factors that may have an impact on insurers and insurance markets. It draws conclusions and takes action as appropriate.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 12 Reporting to supervisors and off-site monitoring</strong></td>
<td>√</td>
<td>Law and regulator oblige reporting. Regulator does not analyse reports adequately due to staff constraint.</td>
</tr>
<tr>
<td>The supervisory authority receives necessary information to conduct effective off-site monitoring and to evaluate the condition of each insurer as well as the insurance market.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 13 On-site inspection</strong></td>
<td>√</td>
<td>Regulator relies more on off-site reports than on-site inspection due to staff constraint.</td>
</tr>
<tr>
<td>The supervisory authority carries out on-site inspections to examine the business of an insurer and its compliance with legislation and supervisory requirements.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 14 Preventive and corrective measures</strong></td>
<td>√</td>
<td>Regulator takes corrective measures. It does not act proactively to take preventive measures.</td>
</tr>
<tr>
<td>The supervisory authority takes preventive and corrective measures that are timely, suitable and necessary to achieve the objectives of insurance supervision.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 15 Enforcement or sanctions</strong></td>
<td>√</td>
<td>Law and regulator define sanctions. Enforcement is weak.</td>
</tr>
<tr>
<td>The supervisory authority enforces corrective action and, where needed, imposes sanctions based on clear and objective criteria that are publicly disclosed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Principle and Criteria</td>
<td>Assessment</td>
<td>Remark</td>
</tr>
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<td>-----------------------------------------------------------</td>
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<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>ICP 16 Winding-up and exit from the market</strong></td>
<td>√</td>
<td>Law allows winding up and market exit only upon permission of regulator. General commercial law defines the procedure for insolvency. Law does not give priority to protection of policyholders.</td>
</tr>
<tr>
<td>The legal and regulatory framework defines a range of options for the orderly exit of insurers from the marketplace. It defines insolvency and establishes the criteria and procedure for dealing with insolvency. In the event of winding-up proceedings, the legal framework gives priority to the protection of policyholders.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 17 Group-wide supervision</strong></td>
<td></td>
<td>Law authorizes regulator to conduct consolidated supervision. There are no insurance groups and financial conglomerates yet. Regulator imposes unnecessary regulations on branches.</td>
</tr>
<tr>
<td>The supervisory authority supervises the insurers on a solo and group-wide basis.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 18 Risk assessment and management</strong></td>
<td>√</td>
<td>Regulator leaves risk assessment and management discretion to individual insurers. Regulator does not have standard to check compliance.</td>
</tr>
<tr>
<td>The supervisory authority requires insurers to recognise the range of risks that they face and to assess and manage them effectively.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 19 Insurance activity</strong></td>
<td>√</td>
<td>Regulator leaves the premium setting, reinsurance and risk management functions to discretion of individual insurers.</td>
</tr>
<tr>
<td>Since insurance is a risk taking activity, the supervisory authority requires insurers to evaluate and manage the risks that they underwrite, in particular through reinsurance, and to have the tools to establish an adequate level of premiums.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 20 Liabilities</strong></td>
<td></td>
<td>Regulator has the authority to impose and imposes provisioning requirements. It does not have standardized mechanism to check adequacy of provisions per risk of individual insurer.</td>
</tr>
<tr>
<td>The supervisory authority requires insurers to comply with standards for establishing adequate technical provisions and other liabilities, and making allowance for reinsurance recoverables. The supervisory authority has both the authority and the ability to assess the adequacy of the technical provisions and to require that these provisions be increased, if necessary.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ICP 21 Investments</strong></td>
<td></td>
<td>Regulator imposes quantitative restrictions on portfolios. It does not have standardized mechanism for assessment of portfolio risks per the individual insurer.</td>
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<tr>
<td>The supervisory authority requires insurers to comply with standards on investment activities. These standards include requirements on investment policy, asset mix, valuation, diversification, asset-liability matching, and risk management.</td>
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<tr>
<td><strong>ICP 22 Derivatives and similar commitments</strong></td>
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<td>There are no derivative markets and instruments.</td>
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<tr>
<td>The supervisory authority requires insurers to comply with standards on the use of derivatives and similar commitments. These standards address restrictions in their use and disclosure requirements, as well as internal controls and monitoring of the related positions.</td>
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<tr>
<td>Principle and Criteria</td>
<td>Assessment</td>
<td>Remark</td>
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<td><strong>ICP 23 Capital adequacy and solvency</strong>&lt;br&gt;The supervisory authority requires insurers to comply with the prescribed solvency regime. This regime includes capital adequacy requirements and requires suitable forms of capital that enable the insurer to absorb significant unforeseen losses.</td>
<td>√</td>
<td>Law imposes initial capital, solvency and provisioning requirements. The solvency regime does not include capital adequacy and liquidity requirements.</td>
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<tr>
<td><strong>ICP 24 Intermediaries</strong>&lt;br&gt;The supervisory authority sets requirements, directly or through the supervision of insurers, for the conduct of intermediaries.</td>
<td>√</td>
<td>Regulator sets requirements on intermediaries directly.</td>
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<tr>
<td><strong>ICP 25 Consumer protection</strong>&lt;br&gt;The supervisory authority sets minimum requirements for insurers and intermediaries in dealing with consumers in its jurisdiction, including foreign insurers selling products on a cross-border basis. The requirements include provision of timely, complete and relevant information to consumers both before a contract is entered into through to the point at which all obligations under a contract have been satisfied.</td>
<td>√</td>
<td>Regulator does not set requirements for consumer protection. Law requires annual disclosure of audited financial statements to the public generally. Regulator does not check compliance.</td>
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<td><strong>ICP 26 Information, disclosure &amp; transparency towards the market</strong>&lt;br&gt;The supervisory authority requires insurers to disclose relevant information on a timely basis in order to give stakeholders a clear view of their business activities and financial position and to facilitate the understanding of the risks to which they are exposed.</td>
<td>√</td>
<td>Law requires regular reporting to regulator and annual disclosure of audited financial statements to the public generally. Regulator does not check compliance.</td>
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<tr>
<td><strong>ICP 27 Fraud</strong>&lt;br&gt;The supervisory authority requires that insurers and intermediaries take the necessary measures to prevent, detect and remedy insurance fraud.</td>
<td>√</td>
<td>Regulator leaves discretion to individual insurers.</td>
</tr>
<tr>
<td><strong>ICP 28 Anti-money laundering, combating the financing of terrorism (AML/CFT)</strong>&lt;br&gt;The supervisory authority requires insurers and intermediaries, at a minimum those insurers and intermediaries offering life insurance products or other investment related insurance, to take effective measures to deter, detect and report money laundering and the financing of terrorism consistent with the Recommendations of the Financial Action Task Force on Money Laundering ( FATF).</td>
<td>√</td>
<td>Money laundering and financing of terrorism are crimes under general and special criminal laws of the country. Regulator does not check compliance with the FATF Recommendations.</td>
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</tbody>
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