Financial market development, policy and regulation: the international experience and Ethiopia’s need for further reform

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Chapter 3
The Development, Policy and Regulation of Securities Market

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.[793] 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.[794] 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.[795] 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.[796]

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.[797] The rise of international concern in the regulation of securities markets has also led to establishment of an international

793 Valdez, 1993, at p. 172.

794 Note the histories of the exchanges from the web pages cited as Frankfurt SE, 2007-10; London SE, 2007-10; Irish SE, 2007-10; EuronextL, 2007-10; Hoovers, 2007-10b; Borsa Italiana, 2007-10; Athens SE, 2007-10; American SE, 2007-10; Chicago ME, 2007-10; NYSE, 2007-10; NASDAQ, 2007-10; Toronto SE, 2007-10; Australian SE, 2007-10; Tokyo SE, 2007-10; Johannesburg SE, 2007-10; Hong Kong SE, 2007-10; New Zealand SE, 2007-10; Colombo SE, 2007-10; Cairo and Alexandria SE, 2007-10; Philippine SE, 2007-10; Bombay SE, 2007-10; Hyderabad SE, 2007-10; Karachi SE, 2007-10; Zimbabwe SE, 2007-10; Singapore SE, 2007-10; Nairobi SE, 2007-10; Namibian SE, 2007-10; Nigerian SE, 2007-10; Bourse de Tunis, 2007-10; and from Basch and Kybal, 1970, at p. 66; Poser, 1991, at p. 427ff; Valdez, 1993, at p. 172; Pagano, 1998, at pp. 183-184; and UNDP, 2003.

795 Poser, 1991, at pp. 173-175; Lindsay, 1992, at pp. 3-7, 31-32, 72-73, 103-106, 135, 214 & 252-253; Lampe, 1992, at pp. 1-105; and Istanbul SE, 1996.

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 Pomerleano, 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.

797 The Big Bangs have resulted in the quick transformation, automation and internationalisation of the securities markets. Poser, 1991, at pp. 12-14, 176-184 & 376-441; Valdez, 1993, at p. 186; Wellons, 1999, at p. 72; and Empel, (ed.), 2008, at pp. 47-56.

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.

799 Aggarwal, 2003; Wittich, Tafara and Peterson, 2003; Garcia and Giorgio, 2003; Rossotto, 2003; and Torre and Schmukler, 2007.

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.

801 Von Pischke, 1968.

802 IGE, 1960, at the preamble and the preface; and Winship, 1974, at p. 15.

803 IGE, 1957b; IGE, 1963g; IGE, 1963i; IGE, 1971e; IGE, 1971f; and IGE, 1972. The Business Enterprises Registration Decree No. 27 of 1957, the Unfair Trade Practice Decree No 50 of 1963 and the Investment Decree No. 51 of 1963 were proclaimed later as Business Enterprises Registration Proclamation No. 184 of 1961, Unfair Trade Practices Proclamation No. 228 of 1965 and Investment Proclamation No. 242 of 1966 (IGE, 1961d; IGE, 1965b; and IGE, 1966b).

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)(iii), 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.[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.[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 Handelsvereeninging Amsterdam) appointed it as a subscription agent for floating shares in January and March 1959.[808] It established a Share Exchange Department in 1960 and the latter listed six companies during the early years of its operation.[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.[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.[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.[812] The Group issued rules for the market through the help of a subcommittee created by its second meeting on 16 February 1965.[813] It listed twenty two companies during its life and served as primary and secondary market place for the shares issued through it.[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.[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.[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

806 Bahru Zewde, 2002, at pp. 196-201; and Araya Debesay and Tadewos Haregework, 1994, at pp. 231-232.

807 Von Pischke, 1968, at pp. 5-6 & 9.

808 The company invited Ethiopians to subscribe and own up to 20% of its capitalization. Id., at p. 6.

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.

810 IGE, 1963f; IGE, 1963d; IGE, 1963e; and Von Pischke, 1968, at p. 8.

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.

812 Von Pischke, 1968, at pp. 10-12; AACC, 1999, at p. 3; and Araya Debesay and Tadewos Haregework, 1994, at p. 232.

813 Von Pischke, 1968, at pp. 12-14; and AACC, 1999, at p. 4.

814 Table 10(Chap. 3); and Von Pischke, 1968, at pp. 61-66.

815 The public offering of government bonds started in the country on the 8th of February 1963. It was repeated until the 11th of September 1974. Table 13(Chap. 3); Von Pischke, 1968, at pp. 11-12 & 66-68; Hamelmal Teklehaimanot, 2000, at pp. 149-150; and Legal Notices IGE-MF, 1963; IGE-MF, 1963a; IGE-MF, 1964; IGE-MF, 1968; IGE-MF, 1968a; IGE-MF, 1969; IGE-MF, 1969a; IGE-MF, 1972; IGE-MF, 1973; and IGE-MF, 1974.

816 CBE, 1974, at p. 287.

meetings).[817] The weekly meetings served as trading sessions for Group members for about an hour once in a week, usually every Tuesday morning.[818] 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.[819] 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.[820]

The securities market, however, came to end due to nationalization of private economic undertakings in 1975.[821] 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).[822] The latter enacted a Socialist Economic Policy and laws which proclaimed central planning and left only marginal activities to the private sector.[823] 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.[824] 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.[825]

The Central Planning Commission Establishment Proclamation re-established the Planning Commission of the Imperial Government to make it work under the

817 Von Pischke, 1968, at pp. 14-16 & 25-31; AACC, 1999, at pp. 5-8; and Abu, 1994, at p. 213.
818 All the trading was conducted through oral outcry in two round calls and the group members could trade on spot, forward and options transaction basis. Von Pischke, 1968, at pp. 11-25.
819 Von Pischke, 1968, at pp. 25-30.
820 Von Pischke, 1968, at pp. 31-46; and AACC, 1999, at p. 9.
821 Only a department continued to exist at the National Bank of Ethiopia to facilitate the issuance and settlement of governmental bonds and treasury bills (Hamelmal Teklehaimanot, 2000, at p. 150).
822 PMGE, 1974.
823 PMGE, 1974; PMGE, 1974d; PMGE, 1975e; PMGE, 1975f; PMGE, 1975n; and PMGE, 1977.
824 PMGE, 1975e.
825 PMGE, 1975n, at the preamble & arts. 4-10 & 12.

socialist lines.[826] 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.[827]

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.[828] It then diverted its attention from the issuance of bonds and treasury bills to direct advance by the National Bank of Ethiopia.[829] 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.[830]

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.[831] 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.[832] It revived the application of the Commercial Code although the Socialist orientation of the economic policy remained untouched.[833] 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.[834] 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.[835] 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.[836] The formation of business organizations during the period was, however, discouraged by non-clarity of policy. Only one thousand seven hundred eighteen individual

826 IGE, 1970; and PMGE, 1977.
827 PMGE, 1978e); and PMGE, 1984.
828 PMGE-MF, 1975; and PMGE, 1975c, at art. 2.
829 PMGE, 1976i; PMGE, 1985; and PMGE, 1988.
830 PMGE, 1988a.
831 PMGE, 1987e; and PMGE, 1987f.
832 PMGE, 1987e, 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, 1990e.

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).[837]

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.[838] It liberalized the investment and trade regimes further by enactment of new Investment Proclamation in 1996.[839] 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.[840] 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.[841] 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.[842] 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

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, 2005e; 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.[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 6th of March 1997.[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 13th of November 2003.[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.[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.[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).[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.[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.[850] The defunct formal securities market has not, however, come back into existence.

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.

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

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

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).

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

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)).

849 Ibid; and Hamelmal Teklehaimanot, 2000, at p. 151.

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,

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 insitutional 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).

854 Ethiopia, 1998/99-2000/01.

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 *Tir* 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).[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.[860] The academia, the business community and the NBE have, however, continued to be in favour of creation of the fully fledged securities market.[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.[862] Some have shown that a well functioning securities market has two key functions, namely resource allocation and corporate control.[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

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.

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.

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).

862 Yohane Khamfula, 2005, at pp. 513-515; Dowers and Masci, 2003, at pp. xv-xvi; Dowers, Lee and Vives, 2003, at pp. 487ff; and Goodhart, 2004, at pp. 1-204. See Fikadu Digaffe, 2007, at pp. 18-25 for economic analysis of the financial sector - economic growth linkage in Ethiopia.

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.[864] 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.[865] 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.[866]

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.[867]

The question of creating securities market has also been subject of debate over bank-based (indirect) and market-based (direct) finance approaches.[868] 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.[869] 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.[870] 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.[871] The trend in Germany and Japan has also

864 Ibid.

865 Drake, 1985; Popiel, 1993; Fifield, et al., 2001, at pp. 197-212; Sener, 2001, at. pp. 213-226; Jefferis, 1995, at pp. 663-678; OECD, 2002b, at pp 43-44 & 52-53; Arlman, 2003, at pp. 237-238 & 240; Adrian Blundell-Wignall, 2007, at pp. 55-87; and OECD SGCG, 2007, at pp. 88-110.

866 Ibid.

867 See, for instance, Calamanti, 1980; Samuel and Yacout, 1981; and Singh, 1993.

868 Demirguc-Kunt and Levine, 1999; and Lapavitsas, 2005.

869 Ibid.

870 Teresa Barger, 1990; Demirguc-Kunt and Levine, 1999; Dowers and Masci, 2003, at pp. xvi-xviii; Dowers, Gomez-Acebo and Masci, 2003, at pp. 4-7; and Lapavitsas, 2005.

871 Basu, 1997, at pp. 1-27; Li Ruogu, 1997, at pp. 45-55; Dickie, 1997, at pp. 34-35; Chen, et al., 2000, at pp. 5-20; Demirguc-Kunt and Levine, 1999; Dowers and Masci, 2003, at p. xviii; Dowers, Gomez-Acebo and Masci, 2003, at pp. 3-4; Lapavitsas, 2005; OECD, 2007c; and John K. Thompson, 2009.

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

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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.[880] 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.[881] 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.[882] 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.[883] 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.[884] The cooperative societies are also investing their funds in the share companies.[885] The issuance, transferability, liquidity and proprietary value of all these securities has, however, become severely weak due to

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.[886] 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).[887] 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.[888] 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.[889] 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).

891 Note Census Report of the Central Statistics 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.

895 Note Census Report of the Central Statistics Agency of Ethiopia on Economic Establishments (cited as CSA, 2005a).

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 imrovement (FDRE, 2002d; FDRE, 2002e; FDRE, 2002f; FDRE, 2002i; FDRE, 2002j; FDRE, 2002k; 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, '*Equbs*', 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, *Equbs* 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 privatised 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 *Equbs* and *Edirs* are informal institutions for which data is not available.

six enterprises ready for privatisation in the post 2009 period.[902] 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.[903] 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.[904] 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).[905] 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

902 Table 5(Chap. 3); and the records of PPESA for 2008 and 2009. The formation of state enterprises (and their privatisation) is ongoing process (FDRE, 2002b, at arts. 3, 5 & 13(1); and FDRE, 2004b, at the preamble and arts. 3 & 5-14).

903 Table 5(Chap. 3) and the records of the Privatization and Public Enterprises Supervising Agency of the country (PPESA) for 2008 and 2009. The government has converted sixty three of the state enterprises into state owned share companies with a total share capital of 4,870,523,000.00 birr between September 01 1999 and July 01 2003; privatized fifteen of them through direct balance sheet (asset and liability) sale and lease (while liquidating one) between July 2005 and December 2006; and prepared thirty one of the remaining for privatization after December 2006 (EPA, 1999-2004; PPESA, 2006; and the unpublished data of the Privatization and Public Enterprises Supervising Agency of the country up to 2009). The practice of privatisation in the country has, therefore, been similar to the practice in the many transition and emerging market countries and contrary to the practice in the majority of the OECD countries. Most of the OECD countries have relied primarily on the public offering of shares and secondarily on trade sale and other methods for their privatisations in the 1990s. Their use of the public offering method has declined in the 2000s and thereafter only due to absence of large transactions for privatisation and slow down of their securities markets. The non-OECD transition and emerging market countries have relied on trade sales rather than the public offering method for the bulk of their privatisations due to their preferences as well as the smallness of their securities markets and assets. OECD, 2002b, at pp. 43-44 & 52-53.

904 PPESA(PPFD), 2006, at p. 18.

905 Valdez, 1993, at pp. 172-184; Poser, 1991, at pp. 427ff; Basch and Kybal, 1970, at pp. 67-76 & 119; UNIDO, 1991, at pp. 50-62; and the formation histories of the Frankfurt, London, Irish, Borsa Italiana, Athens, American, Chicago, New York, NASDAQ, Toronto, Australian, Tokyo, Johannesburg, Hong Kong, New Zealand, Colombo, Cairo and Alexandria, Philippine, Karachi, Bombay, Hyderabad, and Singapore stock exchanges from the web pages cited as Frankfurt SE, 2007-10; London SE, 2007-10; Irish SE, 2007-10; Borsa Italiana, 2007-10; Athens SE, 2007-10; American SE, 2007-10; Chicago ME, 2007-10; NYSE, 2007-10; NASDAQ, 2007-10; Toronto SE, 2007-10; Australian SE, 2007-10; Tokyo SE, 2007-10; Johannesburg SE, 2007-10; Hong Kong SE, 2007-10; New Zealand SE, 2007-10; Colombo SE, 2007-10; Cairo and Alexandria SE, 2007-10; Philippine SE, 2007-10; Karachi SE, 2007-10; Bombay SE, 2007-10; Hyderabad SE, 2007-10; and Singapore SE, 2007-10.

institutional savers, and introduction of new macro-economic conditions and incentives by governments.[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.[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.[908]

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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 Horman, 2007, at pp. 241-273; and Eric Gonnard, et al., 2008.

907 Lindsay, 1992, at pp. 3-7, 31-32, 72-73, 103-106, 135, 214 & 252-253; Lampe, 1992, at pp. 1-105; Basu, 1997, at pp. 20-26; Chen, et al., 2000, at pp. 12-18; Shang-Jin Wei, 2000, at pp. 221-239; Petersen, 2004, at pp. 122-123 & 125-126; Yohane Khamfula, 2005, at pp. 515-516; and Al Janabi, 2008.

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:

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909 Basch and Kybal, 1970, at pp. 3-43, 66-84 & 99-156; Dowers, Gomez-Acebo and Masci, 2003, at pp. 8-17; Grosse, 1997, at pp. 1-172; Hausmann and Reisen, 1997, at pp. 13-276; Petersen, 2004, at pp. 122-123 & 125-126; Torre and Schmukler, 2007; Al Janabi, 2008; and John K. Thompson, 2009. See Table 21(Chap. 3) for comparison of the sizes of the markets of the continent during their formative years.

910 Urrutia, 1988; Baro, et al., 1989, at pp. 1-388; Neal, 1993, at pp. 1-230; Sikorski, 1996; Kindleberger, 1998, at pp. 1-27 (with focus on pp. 13-19); Harner, 2000, at pp. 10 & 54-60; Sharma, 2000, at pp. 47-51; Haggard, 2000, at pp. 130-144; Alberto, et al., 2000, at pp. 1051-1055; Tsurumi, 2001; Stallings and Studart, 2002, at pp. 1-20; Gray, 2003, at pp. 17-18; Santiso, 2003, at pp. 46-70 & 146-186; Dowers, Gomez-Acebo and Masci, 2003, at p. 13; Crockett, 2004, at pp. 37-45; and Chapman, 2010, at pp. 1-67.

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]

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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; Chinyanta, 2003, at pp. 15-17; Tadewos Harege-Work, 2000, at pp. 47-48; and Calamanti, 1983, at pp. 93-208.

913 Ky Cao, 1996, at pp. 1-201; Basu, 1997, at pp. 15-27; Dowers and Masci, 2003, at pp. xv-xvi; Dowers, Lee and Vives, 2003, at pp. 487ff; Goodhart, 2004, at pp. 1-204; Yohane Khamfula, 2005, at pp. 513-516; Charles A. Yartey and Charles K. Adjasi, 2007, at pp. 3-6, 10-16 & 27-28; OECD, 2007c; and John K. Thompson, 2009.

914 UNIDO, 1991, at pp. 28-70 & 77-78; Ky Cao, 1996, at pp. 1-201; and Dowers, Gomez-Acebo and Masci, 2003, at p. 17.

915 Basch and Kybal, 1970; UNIDO, 1991, at pp. 77-78; Lindsay, 1992, at pp. 3-7, 31-32, 72-73, 103-106, 135, 214 & 252-253; Lampe, 1992; Ky Cao, 1996; Benn Steil, 2001; UNITAR, 2002; Dowers, Gomez-Acebo and Masci, 2003; Dowers, Lee and Vives, 2003; Gray, 2003; Aggarwal, 2003; Wittich, Tafara and Peterson, 2003; Garcia and Giorgio, 2003; Rossotto, 2003; Lee, 2003; Masci and

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.[916] The securities markets of the regions have also continued to exist amidst the 2008 financial and economic crises with the lessen 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.[917]

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.[918] 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.[919] 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.[920] Fourthly, most

Sotomayor, 2003; Hook, 2003; Karmel, 2003; Valle, 2003; Corcoran, et al., 2003; Takacs and Korcsmaros, 2003; Agatiello, 2003; Lubrano, 2003; Chandler-Crichlow, 2003; Petersen, 2004, at p. 120; Yohane Khamfula, 2005; UNDP, 2003; Manuel, 2003; Kansteiner, 2003; Ahmed Bahgat, 2003; Tom Lawless, 2003; Chinyanta, 2003; Charles A. Yartey and Charles K. Adjasi, 2007; Torre and Schmukler, 2007; OECD, 2007c; and John K. Thompson, 2009. Note also the discussion under the 'modelling the market structure and regulation' subtitle below. The South and East Asian region has even become home for the largest stock market capitalization and trading to GDP ratio in the world in the early part of this millennium (Dowers and Masci, 2003, at p. xviii).

916 Urrutia, 1988; Sikorski, 1996; Dickie, 1997, at pp. 35-45; Djiwandono, 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.

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.[921] Fifthly, 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.[922] 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.[923] 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.[924] Eighthly, the level of income and saving capacity of most individuals and households is reportedly low to establish dependable demand for securities.[925] 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.[926] Tenthly, the financial regulator in the country (the NBE) lacks the capacity to provide strong supervisory framework for a securities market although

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shareholders due to lack of regulatory check for separation between their management and shareholding.

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 remaing 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, 2002e, at arts. 37(1)(b), 9, 21(1)(e), 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, 2002e, 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.[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.[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.[933]

It has, however, grown as popular knowledge and interest in it and government support grew.[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.[935] The international

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.

932 Von Pischke, 1968, at pp. 3 & 5-6.

933 Id., at p. 4.

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.

935 The banking and insurance supervision departments of the National Bank of Ethiopia were not even 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]

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; Djiwandono, 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. 62-70; Alberto, et al., 2000, at pp. 1051-1055; Yilmaz 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).

938 Grosse, 1997a, at pp. 135-153; Gentry, 1998, at pp. 1-54; Alberto, et al., 2000, at pp. 1035-1038; Santiso, 2003, at pp. 55-66; UNDP, 2003, at p. 6; UNCTAD, 2006; and UNCTAD, 2006-07. See Table 23(Chap. 3) (A and B) for specific comparison.

939 Fifield, et al., 2001, at pp. 197-212; and Sener, 2001, at pp. 213-226.

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

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1998, at pp. 1-54; Manzocchi, 1999, at pp. 10-30; UNDP, 2003, at p. 6; UNCTAD, 2006; and UNCTAD, 2006-07. See Tables 23(Chap. 3) (A and B) and 24(Chap. 3) (A up to C) for specific comparison of the capital flows and the measures in the securities markets.

941 Tables 1(Chap. 3) up to 6(Chap. 3); and the records of the Ethiopian Investment Agency for 2008 and 2009.

942 Curci and Jaramillo, 1997, at pp. 85-111; Dowers, Gomez-Acebo and Masci, 2003, at pp. 14-15; UNDP, 2003, at pp. 16-21; Scott, 2008, at pp. 671-686; and Vries Robbé, 2008, at pp. 250-252. The use of credit derivatives, depository receipts (DRs), collateralized loan, debt and bond obligations (CLOs, CDOs and CBOs), managed funds, and other securities to pool and manage international investments and the reliance on international custodian and automated settlement arrangements to keep, administer and settle the interests in these securities has spread from the Anglo-American to the rest of the developed world in the 1980s and 90s and become almost a norm for handling international investments in this millennium (Benjamin, 2000, at pp. xvii, 19-30, 189-202, 223-247 & 251-299; Scott, 2008, at pp. 381-418, 421-443 & 503-640; Vries Robbé, 2008, at pp. 97-401; and Vries Robbé, 2009, at pp. 79-87 & 102-103).

943 Urrutia, 1988; Sikorski, 1996; Dickie, 1997, at pp. 35-45; Djiwandono, 1997, at pp. 57-69; Helleiner, 1998, at pp. 1-219; Stiglitz, 2000; Haggard, 2000, at pp. 130-144; Tsurumi, 2001; Stallings and Studart, 2002, at pp. 1-20; Gray, 2003; Sharma, 2000, at pp. 62-70; Alberto, et al., 2000, at pp. 1051-1055; Wilson 2004, at pp. 156-180; Irwin, et al., 2004, at pp. 181-206; and Feldstein, 2003a, at pp. 10-29.

unlikely that market crisis will arise in Ethiopia due to huge capital inflow (and sudden repatriation) in the near future.[944]

Hence, the country needs to create the market primarily to facilitate domestic saving and investment and secondarily to encourage foreign portfolio investment.[945] 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 outstanting government bonds that can be circulated in a fully fledged securities market.[946]

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.[947] 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.[948] They, then, allow the public issuance of securities only by the publicly incorporated companies.[949]

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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944 Reuters, 2009; WTO, 2009; World Bank, 2008a; World Bank, 2009; World Bank, 2009b; World Bank, 2010b; World Bank, 2010c; and IMF, 2010g.

945 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.

946 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).

947 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.

948 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.

949 Ibid.

spheres of law, namely the private and the public spheres, respectively.[950] 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.[951]

The borderline between the two laws is not, however, often clear cut as the two laws usually complement to one another.[952]

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.[953] They do this partly to protect creditors and partly to preserve the public company form for certain types of investment.[954] 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.[955] 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.[956]

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.[957] 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.[958] The civil law countries prohibit the issuance of equity shares of the company for prices lower than their par or stated value and require

950 Ommeslaghe, 1990; Ryn, 1990; UNIDO, 1991, at pp. 94-96; Dorresteijn, et al., 1994; Maitland-Walker, 1997; Ferrarini, 1998; Boris Martor, et al., 2002, at pp. 62-151; and Conard and Vagts, 2006, chapters 2-5 & 10.

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.

953 Ommeslaghe, 1990, at pp. 3-5 & 8-12; Lucas and Maltsev, 1996, at pp. 381-384; ONG and Baxter, 1999, at pp. 95-96, 98-103 & 118; and Ommeslaghe, 2006, at pp. 3 -12.

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.

957 Ryn, 1990, at pp. 67 & 109-111; and Ryn, 2006, at pp. 67 & 109-111.

958 Ryn, 1990, at pp. 72-79 & 103-108; and Ryn, 2006, at pp. 72-79 & 103-108.

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

959 Ommeslaghe, 1990, at pp. 12-14 & 22-25; and Ommeslaghe, 2006, at pp. 12-14 & 22-25.
960 Ommeslaghe, 1990, at pp. 15-22; and Ommeslaghe, 2006, at pp. 15-22.
961 Ryn, 1990, at pp. 85-87; and Ryn, 2006, at pp. 85-87.
962 Ommeslaghe, 1990, at pp. 25 & 27-28; and Ommeslaghe, 2006, at pp. 25 & 27-28.
963 Ommeslaghe, 1990, at pp. 25 & 28-29; Valdez, 1993, at p. 195; and Ommeslaghe, 2006, at pp. 25 & 28-29.
964 Ommeslaghe, 1990, at pp. 25-28; and Ommeslaghe, 2006, at pp. 25-28.
965 Ommeslaghe, 1990, at pp. 25 & 29-30; and Ommeslaghe, 2006, at pp. 25 & 29-30.
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

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.
970 Ommeslaghe, 1990, at pp. 43-46 & 54-61; and Ommeslaghe, 2006, at pp. 43-46 & 54-61.
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, debt 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.

979 Pandey, 1994, at pp. 832 & 835; and Horne, 2002, at pp. 615-634 & 645-668.

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.

982 Ryn, 1990, at pp. 122-124; Valdez, 1993, at pp. 206-254; Benjamin, 2000, at pp. xvii, 19-30, 189-202, 223-247 & 251-299; Ryn, 2006, at pp. 122-124; Scott, 2008, at pp. 421-443; Empel, (ed.), 2008, at pp. 17-20; and Vries Robbé, 2008, at pp. 97-329.

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, 2008c; 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.[985] 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.[986] 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.[987] 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.[988]

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.[989] No securities market law was also enacted when the market grew in the 1960s and 70s.[990] 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.[991] 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.[992] It recognizes freedom of choice to the companies and the subscribers on the types of shares to issue and subscribe, respectively.[993] It prohibits the issuance of shares for prices below par

985 Ryn, 1990, at pp. 66-67 & 111-113; and Ryn, 2006, at pp. 66-67 & 111-113.

986 Pandey, 1994, at pp. 5-9; and Horne, 2002, at pp. 6-8.

987 Pandey, 1994, at pp. 9-12 & 598-610; Horne, 2002, at pp. 3-8; Armando and Gordon, 2005; and Isil, et al., 2009.

988 Ibid.

989 Winship, 1974, at pp. 25-26.

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).[994] 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.[995] 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.[996] 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.[997] 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.[998]

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.[999] It prohibits the acquisition by a company of its own shares as payment in kind for shares.[1000] 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.[1001]

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.[1002] It also makes the founders

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

996 IGE, 1960, at arts. 315, 321(3), 338 & 339.

997 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).

998 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.

999 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.[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.[1004] It also authorizes the companies to limit the free transferability of their shares through their instruments of association and extraordinary shareholders meetings.[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.[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.[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).[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

1003 IGE, 1960, at arts. 308-309, 462-482, 479 & 364.

1004 Id., at arts. 338(1) & 339(2).

1005 Id., at art. 333.

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)).

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.

1008 Ibid.

meeting of its shareholders.[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.[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.[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.[1012]

It also recognizes the constitution of loan capital and issuance of debentures by the share companies.[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.[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.[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.[1016] It also recognizes the possibility of issuing secured and unsecured debentures.[1017] It also allows the debenture holders to act in group to protect their common rights.[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

1009 Id., at art. 332.
1010 Id., at art. 334.
1011 Id. at art. 337.
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).
1013 Id., at arts. 429-444.
1014 Id., at arts. 432-433.
1015 Id., at art. 434.
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).
1017 Id., at arts. 433(f) & 430.
1018 Id., at arts. 435-444.

ordinary general meetings of the shareholders when they are other debentures.[1019] It allows the issuance of debentures only by companies whose capital is fully paid and have operated at least for one financial year.[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.[1021] It also requires registration of the decisions of the companies to issue debentures in the commercial registers that have registered their formation principally.[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.[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.[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.[1025] The secondary markets exist as wings for resale of, and trade in, the securities issued in the primary markets.[1026] The

1019 Id., at arts. 474, 419(2) & 433(d). It does not regulate the borrowing powers of the company other than through debenture issuance.

1020 Id., at art. 429.

1021 Id., at art. 430.

1022 Id., at art. 433(d).

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.

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.

1025 Poser, 1991, at pp. 176-184; Benjamin, 2000, at pp. 8-19; UNDP, 2003, at pp. 13-15; UNIDO, 1991, at pp. 29-30, 36-45, 50-52, 63-65 & 75-76; Rossotto, 2003, at pp. 119-151; and Charles A. Yartey and Charles K. Adjasi, 2007, at pp. 24-25.

1026 Benjamin, 2000, at pp. 9-11, 13-15 & 17-19; UNIDO, 1991, at pp. 52-54; and Basch and Kybal, 1970, at p. 65.

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

1027 Benjamin, 2000, at pp. 8-9; and UNIDO, 1991, at pp. 51 & 77-79.

1028 Valdez, 1993, at pp. 194-196; Pennington, 1979, at pp. 212ff; Poser, 1991, at pp. 304-309; Horne, 2002, at pp. 565-582; Benjamin, 2000, at pp. 9-10; and UNIDO, 1991, at pp. 50-51.

1029 These issuance methods originated and expanded largely from the Anglo-American world (Ibid).

1030 Pennington, 1979, at pp. 212ff; Valdez, 1993; at p. 194; Poser, 1991, at pp. 306-307; and Benjamin, 2000, at p. 9.

1031 Pennington, 1979, at pp. 212 & 219-222; and Poser, 1991, at pp. 319-322 & 570.

1032 Pennington, 1979, at pp. 212ff; Ryn, 1990, at pp. 117-119; UNIDO, 1991, at pp. 50-51; Poser, 1991, at pp. 319-322; Valdez, 1993, at p. 195; Pandey, 1994, at pp. 832 & 835; Horne, 2002, at pp. 570 & 619-627; and Ryn, 2006, at pp. 117-119.

1033 Valdez, 1993, at p. 195; and Poser, 1991, at pp. 320ff.

1034 Ibid.

1035 Pennigton, 1979, at pp. 219-222; Poser, 1991, at p. 306; and Benjamin, 2000, at p. 9.

1036 Pennigton, 1979, at pp. 219-222; Poser, 1991, at p. 307; and Horne, 2002, at pp. 565-568.

identity (and prospects) and invites the public to subscribe to its securities on terms set out in the prospectus.[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.[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.[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.[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, remunerations, audits, invitations and dividends of the companies among others.[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.[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.[1043] The adoption of good transparency and

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).

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.

1039 Wellons, 1999, at pp. 94-97; and Vagts, 2006, at pp. 3-6 & 11-32.

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).

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).

1042 Wellons, 1999, at pp. 98-101; Petersen, 2004, at pp. 120 & 129-137; Vagts, 2006, at pp. 3-6 & 11-32; Marc, et al., 2009; and Barrieu and Albertini, 2009, at pp. 65-100 & 207-217.

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.

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.[1044] 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.[1045] The IOSCO recommendations are also supported by the OECD Principles of Corporate Governance on disclosure and transparency.[1046]

ii. The Case of Ethiopia

Ethiopia recognizes the formation of share companies and the increase of their capitals through both private and public subscriptions.[1047] 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.[1048] 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).[1049] 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.[1050] It also regulates the public issuance of debentures in the same way as it regulates the issuance of shares through the public subscription method.[1051]

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.[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.[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.[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).[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.[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.[1057] It has

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.

1053 The companies usually exercise the methods of private placing and rights issue for a number of reasons including the pre-emptive 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).

1054 IGE, 1960, at art. 62.

1055 JLSRI, 2001, at p. 40.

1056 JLSRI, 2003, at arts. 12(1), 13, 22, 25, 31 & 32(2).

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.[1058] It has recommended that the government securities should be issued without need for registration by the future securities market regulator.[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.[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.[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

1058 Id., at art. 23(5) & 20.
1059 Id., at art. 31.
1060 Id., at arts. 12-32.
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 Februrary 18 2002 (English version), and the letter of the Abyssinia Bank S.C. (to the Institute) of Megabit 26 1994 Eth. C. (Amharic version).

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

1062 Note the discussion under the 'modelling structure of the market and its intermediation' subtitile below.

1063 Valdez, 1993; Ferrarini, 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.

1065 Wellons, 1999, at pp. 65-69; Poser, 1991, at p. 401; and Ferrarini, 1998a, at pp. 251-255.

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.[1068] They were characterized by restricted memberships, fixed commissions and open outcries until the Big Bangs of the late 1980s.[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.[1070] The dealing systems of the markets were also order driven, quote driven or hybrid of the two.[1071]

Many of the securities markets have, however, undergone structural reforms following the Big Bangs of the late 1980s.[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.[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.[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.[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).[1076]

A number of the securities markets in the transition and emerging market countries have also followed the trend as international competition necessitated

1068 Kabir, 199, at pp. 28 & 61-62; Poser, 1991, at pp. 376-441; and the discussion below.

1069 Poser, 1991, at pp. 12-14 & 376-441; Valdez, 1993, at p. 186; Wymeersch, 1998, at pp. 10-14; and Pagano, 1998, at pp. 177-204.

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.

1071 Valdez, 1993, at pp. 186-193; Pagano, 1998, at pp. 177ff; and the discussion below.

1072 Benn Steil, 2001, at pp. 261-266; Karmel, 2003, at pp. 269-292; Arlman, 2003, at pp. 236-237 & 239-240; Pagano, 1998, at pp. 177-204; Schaefer, 1998, at pp. 205-212; Röell, 1998, at pp. 213-224; and Onado, 1998, at pp. 225-24.

1073 Ibid; and note the discussion below.

1074 Benn Steil, 2001, at pp. 261-266; Karmel, 2003, at pp. 269-292; Ferrarini, 1998a, at pp. 247-258 & 266-268; Pagano, 1998, at pp. 177-204; Röell, 1998, at pp. 213-224; and Wellons, 1999, at p. 72.

1075 Ibid.

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).

this.[1077] 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.[1078] 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.[1079] The non-transformed exchanges are also advised to consider their demutualization and incorporation.[1080]

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.[1081]

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 Ciliver vs. New York Stock Exchange in 1963.[1082] The New York Stock Exchange (NYSE) introduced the concept of specialist and implemented a continuous auction floor trading system from 1872 onwards.[1083] 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.[1084]

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

1077 Ferrarini, 1998a, at pp. 247-258 & 266-268; Pagano, 1998, at pp. 177-204; Röell, 1998, at pp. 213-224; Wellons, 1999, at pp. 64 & 72; Benn Steil, 2001, at pp. 261-266; and Karmel, 2003, at pp. 269-292. Note also the discussion below.

1078 Ibid; and Table 25(Chap. 3) Continued (1 of 3) (A and B).

1079 Table 25(Chap. 3) Continued (1 of 3) (B); and note the discussion below.

1080 Karmel, 2003, at pp. 269-292; and Charles A. Yartey and Charles K. Adjasi, 2007, at pp. 19-21.

1081 Valdez, 1993; at pp. 186-188 & 192; Pagano, 1998, at pp. 177-204; Schaefer, 1998, at pp. 205-212; Röell, 1998, at pp. 213-224; Onado, 1998, at pp. 225-241; Arlman, 2003, at pp. 236-237 & 239-240; Aggarwal, 2003; and Wittich, Tafara and Peterson, 2003. Note also the discussion below.

1082 Poser, 1991, at pp. 14-15 & 18.

1083 NYSE, 2007-10.

1084 NYSE, 2007-10a.

indoors in 1921.[1085] 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.[1086] 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.[1087]

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.[1088] It existed as a publicly owned company which traded its shares on its own exchange.[1089] 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.[1090] 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.[1091] 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.[1092] 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.[1093]

The Chicago Mercantile Exchange existed as a public market place for futures and options on interest rates, stock indexes, foreign currencies and agricultural commodities.[1094] It became a demutualized for-profit organization in 2000.[1095] It runs an open outcry system of trading where all traders gather on the trading floor and call out their bids and offers.[1096] It has two main trading floors, one for foreign currency and interest rate derivatives and another for agricultural commodities and stock index derivatives.[1097] It also runs a 24 hour electronic trading without physical presence by using an electronic trading system called GLOBEX2.[1098]

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

1085 American SE, 2007-10.
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.
1094 Chicago ME, 2007-10a.
1095 American SE, 2007-10.
1096 Chicago ME, 2007-10a.
1097 Ibid.
1098 It introduced the GLOBEX electronic trading system in 1992 for use alongside the traditional open outcry system and improved it into GLOBEX2 in 1998. American SE, 2007-10.

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.[1099] 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.[1100]

The Toronto Stock Exchange (TSX) also existed as a trading floor throughout most of its history.[1101] It started to run electronic trade in the 1990s and closed its trading floor to become a fully electronic exchange in 1997.[1102] It has become a for-profit company since 2000 and lived as a TSX Group by acquiring the Canadian Venture Exchange since 2001.[1103] 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.[1104] It, as a TSX Group, allows the companies in the Venture Exchange to move to it when they meet its listing requirements.[1105]

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.[1106]

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.[1107] 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.[1108] 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.[1109] 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.[1110] It used to be market for gilt-edged (UK government) securities more than for equities.[1111] It grew as international financial centre for

1099 Poser, 1991, at pp. 36 & 39-41.
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.
1106 Ferrarini, 1998a, at pp. 245-258; Pagano, 1998, at pp. 177-193; and Karmel, 2003, at pp. 269-292.
1107 London SE, 2007-10; Irish SE, 2007-10; and Poser, 1991, at pp. 18-54.
1108 London SE, 2007-10; Irish SE, 2007-10; and Valdez, 1993, at p. 172.
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.
1111 Poser, 1991, at pp. 18-19.

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.[1112] 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.[1113] It also removed its foreign exchange controls as of 1979.[1114] It did not separate between the banking and securities markets unlike the Glass-Steagall Act of the US.[1115] 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.[1116] 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.[1117]

It implemented its Big Bang in 1986 due to the accumulated effect of three factors, namely competitive necessity, government pressure and good leadership.[1118] 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.[1119] 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.[1120] The ISRO then merged with the London and Irish Stock Exchanges in September 1986.[1121] 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).[1122] 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.[1123] 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.[1124] The UK government also pushed the London Stock Exchange to changes as the Director of Fair Trading of UK lodged

1112 Id., at p. 20.
1113 Id., at pp. 20-23.
1114 Id., at pp. 21 & 22.
1115 Ibid.
1116 Id., at p. 24.
1117 The Act led to regulation of the financial services by the Financial Services Authority of 1988. Id., at pp. 21-22.
1118 Id., at pp. 24-26 & 29-30.
1119 Id., at pp. 24 & 29-30.
1120 Id., at pp. 32-33.
1121 Id., at p. 33.
1122 Id., at pp. 34-35.
1123 Id., at pp. 28 & 34.
1124 Ibid.

law suit against the London Stock Exchange in 1977 for violation of the Restrictive Practices Act of the country of 1976.[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.[1126] All the changes on the London Stock Exchange had also to be backed by the forward-looking leadership of the Exchange.[1127] The country's Big Bang also resulted in four accomplishments: it 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.[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.[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.[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.[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.[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.[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.[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.[1135] It operates as electronic market which allows i) the trading of highly liquid shares under a SETS

1125 Id., at pp. 25-26.
1126 Id., at pp. 32-33.
1127 Id., at p. 30.
1128 Id., at pp. 28-57.
1129 Id., at pp. 43-47 & 77.
1130 Id., at pp. 21, 22 & 24.
1131 The Unlisted Securities Market and the Third Market used to serve as market places for shares of small companies that could not meet the listing requirements of the Listed Market. Kabir, 1990, at p. 28; & Poser, 1991, at pp. 43-44 & 76-77.
1132 Poser, 1991, at pp. 45-46.
1133 Id., at pp. 47 & 52-54.
1134 London SE, 2007-10.
1135 London SE, 2007-10a.

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.[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.[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.[1138]

UK also used to issue and regulate the issuance of gilt-edged (UK government) securities through the Bank of England.[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.[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.[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.[1142] It relied on the SEAQ system and computerized its back-office work when the equities market underwent the Big Bang in 1986.[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.[1144] The Bank of England and the ISE have also introduced a Central Gilt Office for the settlement of all gilt transactions.[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.[1146] The exchanges used to serve as market places for shares and bonds of foreign and domestic companies.[1147] They existed as incorporated public law institutions (companies) under a stock exchange Act.[1148] Their development used to be slow because of the preference of German's investors and institutions to keep their savings in fixed-

1136 Ibid.
1137 Irish SE, 2007-10.
1138 The IEX currently competes with the London's Alternative Investment Market. Irish SE, 2007-10; and Irish SE, 2007-10.
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.
1140 Id., at p. 63.
1141 Id., at pp. 64-65.
1142 Ibid.
1143 Id., at p. 69.
1144 Id., at pp. 70-71.
1145 Id., at pp. 76-77.
1146 Poser, 1991, at p. 394; and Pagano, 1998, at p. 184.
1147 Poser, 1991, at pp. 393 & 394-395.
1148 Poser, 1991, at p. 401; and Ferrarini, 1998a, at p. 248.

income securities as opposed to shares.[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.[1150] They formed a federation in 1986 to strengthen their competition with the London and New York exchanges.[1151] Their trading was dominated by the German banks because of the central position of the latter in the business landscape of Germany.[1152] They used to trade in two hours sessions around noon at standard prices fixed by the *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.[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.[1154] The *Freie Maklers* also traded in the listed stocks in the floors of the exchanges as intermediaries between member banks.[1155] The *Kursmakler* and the *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.[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.[1157] The country introduced additional securities markets to the official exchanges in 1987 as part of its stock exchange reform program.[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.[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.[1160] Its banks also introduced an Inter Banken Information

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1149 Poser, 1991, at p. 401.

1150 Ibid.

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.

1152 Pagano, 1998, at p. 184; and Poser, 1991, at p. 395.

1153 Poser, 1991, at p. 396.

1154 The banks also traded with German and foreign brokers (and banks) outside the trading hours. Id., at pp. 396-397.

1155 Ibid.

1156 The *Kursmaklesr* had to match orders channelled to them by the banks and the *Freie Makler* to trade on the floors of the exchanges. Id., at pp. 395, 397 & 400.

1157 Id., at p. 397.

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.

1159 Id., at p. 399.

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.[1161] The Frankfurt Stock Exchange, which existed as the leading among the eight exchanges, also launched its electronic trading system called *Xetra* (and diminished the importance of its traditional broker-supported floor trading) as of 1997.[1162] It also runs the largest range of index funds in Europe.[1163]

Switzerland used to have three large stock exchanges in Zurich, Geneva and Basel and four small ones in Lausanne, Bern, St. Gall and Neuchâtel.[1164] 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.[1165] The exchanges used to serve as market places for both shares and bonds of domestic and foreign companies.[1166] They also used to include bank and non-bank members but were dominated by the Swiss banks as in the case of Germany.[1167] 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.[1168] The Zurich exchange introduced continuous auction trading in the more active issues as of 1986.[1169] 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.[1170] 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.[1171] The SOFFEX started operation in 1988 and automated the entire stock market process (including the trading and clearing of transactions) as of that year.[1172] 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.[1173] The Swiss companies also allowed the foreign ownership of their registered shares with Nestlé's initiative in November 1988.[1174] The exchanges

1161 Poser, 1991, at pp. 399-400; and Pagano, 1998, at pp. 184-185.

1162 It currently allows the market entery 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.

1163 Ibid.

1164 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.

1165 Ibid.

1166 Ibid.

1167 Ibid.

1168 Id., at p. 404.

1169 Ibid.

1170 Id., at pp. 406-407.

1171 Id., at p. 407.

1172 Ibid.

1173 Id., at p. 407.

1174 Id., at p. 406.

also replaced their fixed commission systems by negotiated commissions as of 1989.[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.[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.[1177] They were modelled like the Paris Bourse to operate through monopoly of government appointed stockbrokers.[1178] The large banks and other institutions used to trade in securities over the telephone outside the exchanges much more than the official exchanges.[1179] Most of the listed securities in the exchanges were also owned by insiders hence making the number of tradable shares limited.[1180] The government bond market between the banks was much more significant than the stock exchanges.[1181] The official stockbrokers in the exchanges had to be Italian citizens who passed competitive examination by the Ministry of Treasury.[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.[1183] They had to act as brokers without taking positions in the trading of securities.[1184] The banks and commission dealers could not also trade on the floors but only had observation posts.[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.[1186] They did not discount and offer special rates for large orders.[1187] The shares and bonds traded in the exchanges were also subject to stamp duty at differentiated rates.[1188] The transactions in the exchanges were settled on a monthly basis (i.e. from mid-month to mid-month).[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.[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.[1191] The second impact was the development of an automated system (the BORSAMAT) as of 1985 to enable the routing of orders between the

1175 Ibid.
1176 Borsa Italiana, 2007-10; and Poser, 1991, at p. 411.
1177 Poser, 1991, at p. 410.
1178 Id., at pp. 410-411.
1179 Id., at p. 412.
1180 Ibid.
1181 Ibid.
1182 Id., at p. 413.
1183 Ibid.
1184 Ibid.
1185 Ibid.
1186 Id., at p. 414.
1187 Ibid.
1188 Ibid.
1189 Id., at p. 413.
1190 Id., at pp. 411 & 414.
1191 Id., at pp. 411 & 412.

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

1192 Ibid.

1193 Id., at p. 415.

1194 Ferrarini, 1998a, at p. 250.

1195 Poser, 1991, at p. 412.

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.

1202 Poser, 1991, at p. 433.

and bonds) with little involvement of foreign investors.[1203] They were, like the French and Italian exchanges, dominated by small number of government appointed individual brokers (known as agents).[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.[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.[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.[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.[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.[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.

1203 Id., at pp. 433 & 434.
1204 Id., at p. 434.
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.
1206 Id., at p. 434.
1207 Ibid.
1208 Id., at p. 434.
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]

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.

1212 Pagano, 1998, at p. 183.

1213 Poser, 1991, at pp. 381-382; and Pagano, 1998, at pp. 182-183.

1214 Ibid.

1215 Ibid.

1216 Poser, 1991, at p. 384.

1217 Poser, 1991, at p. 383; and Pagano, 1998, at pp. 182-183.

1218 Ibid.

1219 Poser, 1991, at p. 384.

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.[1222] It has introduced a French style société de bourse in 1990 and automated its market beginning 1989.[1223]

The Lisbon and Porto exchanges of Portugal existed as public market places for business men.[1224] 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.[1225] 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.[1226] It has made the BVLP responsible for the management of the regulated cash and derivatives markets and the unregulated markets beginning February 10 2000.[1227] 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.[1228] The BVLP has also signed Memorandum of Understanding with the Euronext N.V. on 13 June 2001 and merged with the latter eventually.[1229]

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.[1230] The ASE used to have a number of individual members and three categories of corporate members, namely banks, broker firms and hoekmen (jobber) firms.[1231] The hoekmen stood at its centre like the specialist in the major U.S. stock exchanges.[1232] They could not deal with investors directly but could act as intermediaries for floor transactions between other members to the exchange.[1233] 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.[1234] They could not own more than five percent interest in the hoekmen firms.[1235] The hoekmen were also permitted to trade on their own accounts without direct contact with customers.[1236] They had to set trading prices

1222 Pagano, 1998, at pp. 183-184.
1223 Ibid.
1224 EuronextL, 2007-10.
1225 Ibid.
1226 Ibid.
1227 Ibid.
1228 Ibid.
1229 Ibid.
1230 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.
1231 Poser, 1991, at p. 418; and Kabir, 1990, at p. 61.
1232 Poser, 1991, at p. 418.
1233 Kabir, 1990, at pp. 61-62.
1234 Poser, 1991, at p. 418.
1235 Id., at p. 419.
1236 Ibid.

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).

1238 Kabir, 1990, at p. 62.

1239 Poser, 1991, at pp. 419-420; and Kabir, 1990, at p. 62.

1240 Kabir, 1990, at p. 62.

1241 Poser, 1991, at pp. 420-421 & 422.

1242 Poser, 1991, at p. 419; and Kabir, 1990, at p. 62.

1243 Kabir, 1990, at p. 62.

1244 Poser, 1991, at pp. 421-423; and Kabir, 1990, at p. 62.

1245 Poser, 1991, at p. 421; and Pagano, 1998, at p. 185.

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.[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).[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).[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).[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 Lisboan e Porto) and the London's International Financial Futures and Options Exchange (LIFFE) in 2002 to form a larger group of Euronext N.V.[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.[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.[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.[1255] It enjoyed government-

1248 It started to reform the fee/commission/ system in 1986 by abolishing it for transactions above 1 million Dutch Florins (Poser, 1991, at p. 419; and Kabir, 1990, at p. 62).
1249 Pagano, 1998, at p. 185.
1250 Ferrarini, 1998a, at p. 249.
1251 The clearing and settlement entities in Amsterdam were also centralized and re-incorporated in the same period under a subsidiary of the Amsterdam Exchanges (AEX) called the Amsterdam Securities Depository (ASD) (Ferrarini, 1998a, at p. 249).
1252 The Amsterdam, Brussels, Paris and Lisbon Exchanges were re-incorporated as Euronext Amsterdam N.V., Euronext Brussels S.A./N.V., Euronext Paris S.A., and Euronext Lisbon between 2000 and 2002 to become part of the European Euronext N.V. by 2002 and the latter included the London-based LIFFE in 2002 to grow into the second-largest stock exchange in Europe behind the London Stock Exchange (Hoovers, 2007-10; Hoovers, 2007-10a; Hoovers, 2007-10b; Hoovers, 2007-10c; EuronextL, 2007-10; Euronext Amsterdam, 2007-10; Euronext N.V., 2007-10; Euronext N.V., 2007-10a; and Euronext N.V., 2007-10b).
1253 Hoovers, 2007-10; Euronext N.V., 2007-10; Euronext N.V., 2007-10a; Euronext N.V., 2007-10b; and NYSE-Euronext, 2007-10.
1254 Poser, 1991, at p. 427.
1255 Id., at pp. 427-428.

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.[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.[1257] It suffered from restricted share trading and prohibition of foreign ownership of shares (of the Swedish companies) until the late 1980s.[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.[1259] It privatised its ownership, allowed foreign competition and benefited from tax reforms between 1989 and 1990.[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.[1261]

The Helsinki Stock Exchange was found in 1984 as company known as HEX plc.[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.[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.[1264] It runs its equity trading through an electronic trading system called SAXESS and its derivative trading through a system called CLICK XT.[1265] It also disseminates information to investors through a system called TARGIN.[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.[1267] It became

1256 Id., at p. 428.
1257 Ibid.
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.
1259 Poser, 1991, at p. 431; and Karmel, 2003, at p. 285.
1260 Poser, 1991, at pp. 429-430.
1261 Poser, 1991, at p. 431; and Karmel, 2003, at pp. 285-287.
1262 OMX SE, 2007-10.
1263 Ibid.
1264 OMX SE, 2007-10; and OMX SE, 2007-10a.
1265 Ibid.
1266 Ibid.
1267 Athens SE, 2007-10.

limited company to serve as mediator and regulator of its members in 1995.[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).[1269] It has opened its ownership to outsiders since 2002 and is currently operated as hybrid company by a council of seven administers 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.[1270]

e. Asia and the Pacific

Japan created the oldest and biggest of its exchanges, the Tokyo Stock Exchange, as public market in 1878.[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.[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.[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.[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.[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.[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.[1277]

1268 Ibid.
1269 Ibid.
1270 Athens SE, 2007-10a.
1271 Tokyo SE, 2007-10.
1272 Ibid.
1273 Ibid.
1274 Ibid.
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
1276 Tokyo SE, 2007-10a.
1277 Ibid.

The country had tight regulation of its financial markets under its Ministry of Finance until the 1980s.[1278] 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)).[1279] 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.[1280] 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.[1281]

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).[1282] 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.[1283] It acts as:

1278 Harner, 2000, at pp. 20-22.

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-established 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.[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.[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.[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.[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.[1300]

The Stock Market of Sri Lanka was run by the Colombo Share Brokers Association from 1896 up to 1985.[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.[1302] Its current members are corporate bodies which are licensed to act as stock brokers.[1303] It has introduced a Central Depository System (CDS) and automated its settlement system for share transactions since 1991.[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.[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).[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.[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

1296 Hong Kong SE, 2007-10; and Hong Kong SE, 2007-10a.
1297 Moscow MICEX, 2007-10a.
1298 Ibid.
1299 Ibid.
1300 Ibid.
1301 Colombo SE, 2007-10.
1302 Ibid.
1303 Colombo SE, 2007-10a.
1304 Colombo SE, 2007-10.
1305 Ibid.
1306 Colombo SE, 2007-10a.
1307 Philippine SE, 2007-10; and Philippine SE, 2007-10a.

systems since March 25 1994.[1308] 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.[1309] 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.[1310] It was reorganized as profit making corporation subsequently.[1311] It has begun trading in bonds since 2001 and required the listing of shares by introduction, rather than by initial public offering, since 2003.[1312] 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.[1313] 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.[1314]

The Stock Exchange of Singapore (SES) and the Singapore International Monetary Exchange for futures (SIMEX) existed as private companies owned by their member firms.[1315] They were merged to form the Singapore Exchange (SE) in 1999.[1316] The SE has become publicly held stock exchange company by listing its shares on its own exchange since then.[1317] 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).[1318] It offers equity index futures and allows the trading of derivative securities through its SGX-DT.[1319] 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.[1320] 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.[1321]

1308 Ibid.
1309 Ibid.
1310 Philippine SE, 2007-10.
1311 Ibid.
1312 Ibid.
1313 Philippine SE, 2007-10a.
1314 Ibid.
1315 Singapore SE, 2007-10.
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.[1322] It has developed an index system called BSE Sensex since 1986.[1323] It has operated as an open-cry floor trading exchange until it introduced its electronic trading system in 1995.[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).[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.[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.[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.[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.[1329]

The Karachi Stock Exchange has existed as registered limited company since a few years after its establishment in 1947.[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.[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).[1332]

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).
1323 Bombay SE, 2007-10; and Bombay SE, 2007-10a.
1324 Bombay SE, 2007-10.
1325 India NSE, 2007-10.
1326 India NSE, 2007-10a.
1327 India NSE, 2007-10.
1328 India NSE, 2007-10a.
1329 Hyderabad SE, 2007-10; and Hyderabad SE, 2007-10a.
1330 Karachi SE, 2007-10.
1331 Ibid.
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.[1333] It was demutualized and privatised through public listing of its shares in 1998.[1334] It has introduced its Stock Exchange Automated Trading System (SEATS) since 1987 and closed its trading floor since 1990.[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.[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).[1337]

The New Zealand Stock Exchange, which was created in the 1870s, has become demutualized limited liability company since May 2003.[1338] It currently exists as the only securities exchange in the country, being also responsible for regulating the country's capital markets.[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).[1340] It has computerized its trading system as of June 24, 1991 and updated it to a system called FASTER in 1999.[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.[1342] It exists as market place for equities, corporate and government bonds, trusts,

1333 Australian SE, 2007-10; Australian SE, 2007-10a; and Karmel, 2003, at pp. 287-288.
1334 Ibid.
1335 Ibid.
1336 Ibid.
1337 Ibid.
1338 New Zealand SE, 2007-10.
1339 New Zealand SE, 2007-10a.
1340 Ibid.
1341 Ibid.
1342 Buenos Aires SE, 2007-10.

certificates of deposit of foreign companies called CEDEARs, Closed-End Funds, and Deferred-Payment Checks.[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.[1344] It is assisted by indices called Merval and Burcap, Bolsa General (Bolsa-G), M.AR, Indol and Wholesale.[1345] It also runs a simplified listing regime for small and medium enterprises and an SME Department which advises these enterprises.[1346]

The São Paulo Stock Exchange (BOVESPA) of Brazil operated as public market place run by government appointed brokers until the mid 1960s.[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.[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.[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.[1350] It has introduced on-line service network for brokerage firms and a Private Telephone Operations System called SPOT since the 1980s.[1351] It has implemented its Computerized Trading System called CATS since 1990 and its new electronic trading system called Mega Bolsa since 1997.[1352] It has launched Home Broker and After-Market systems since 1999 to enable small and medium-sized investors to participate in the market.[1353] It currently operates as fully electronic market through the Mega Bolsa system.[1354] The country also runs an

1343 Ibid.
1344 Ibid.
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).
1346 Ibid.
1347 São Paulo SE, 2007-10.
1348 Ibid.
1349 The Brazilian Securities and Exchange Commission (the CVM) supervises the brokers and the Mega Bolsa. Ibid.
1350 Ibid.
1351 Ibid.
1352 Ibid.
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.
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).[1355]

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.[1356] 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).[1357] It runs the electronic trading for the fixed income securities and the electronic and floor based auction tradings for the variable income securities.[1358] 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.[1359] Its stock market segment runs three indices called General Stock Price Index (IGPA), Selective Stock Price Index (IPSA), and Inter-10 Index.[1360] The country has also introduced an electronic stock exchange called Bolsa Electronica de Chile.[1361]

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.[1362] It existed as open outcry market until it started its automation in 1996.[1363] 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.[1364] 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.[1365] Its system is currently operated by specialists (called account executives) who are trained and authorized by the securities market regulator of the country (the

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.[1366] It has headed to demutualization although its shareholders are currently the authorized brokerage firms.[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.[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.[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.[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.[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).[1372] The BVC currently operates as national market through brokerage firms registered in the former stock exchanges.[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.[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.[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

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.

Securities Supervisor.[1376] 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 (INVC).[1377] 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.[1378]

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.[1379] It was incorporated as Bolsa de Valores de Caracas C.A. (consisting of 43 shareholders) after enactment of a capital markets law in 1975.[1380] 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).[1381] 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.[1382] It has implemented Remote Connection (SISTECOR) and Electronic Compensation and Liquidation (SECOMLI) systems since 1994.[1383] 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.[1384] It also runs an index called Indice Bursátil de Capitalización (IBC).[1385]

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.[1386] 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

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.[1387] The BEVSA currently serves as market place for Securities, and FOREX and Money market businesses through twenty five operators.[1388]

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.[1389] It was automated as of 1999 and re-incorporated under its current name in 2000.[1390] It currently exists as electronic market place where securities trades are negotiated and executed through a system called SIBE.[1391]

The Jamaica Stock Exchange was incorporated as private limited company in August 1968.[1392] 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.[1393] 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.[1394] 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.[1395]

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.[1396]

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.[1397] 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.[1398]

1387 Uruguay SE, 2007-10.
1388 Ibid.
1389 El Salvador SE, 2007-10.
1390 Ibid.
1391 El Salvador SE, 2007-10a.
1392 Jamaica SE, 2007-10.
1393 Ibid.
1394 Ibid.
1395 Jamaica FSC, 2007-10.
1396 Note the information from websites of the Exchanges.
1397 Basch and Kybal, 1970, at p. 72.
1398 Ibid.

h. Africa

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).[1399] 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.[1400] 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.[1401]

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.[1402] It was incorporated as limited liability company to be responsible for supervising transactions on listed shares.[1403] 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.[1404] It was reconstituted as public company limited by guarantee in April 1994 to operate under the country's company code of 1963.[1405] 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).[1406] The Nairobi Stock Exchange originated as association for Africans on attainment of the Kenyan independence in 1963.[1407] It was established in 1991 as limited liability company under the country's Company Act.[1408] It currently runs i) main, ii) alternative, and iii) fixed income markets for shares and bonds.[1409] The Stock Exchange of Mauritius (SEM) was incorporated as private limited company on the 30th of March 1989.[1410] 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

1399 Note profiles of the exchanges from Table 24(Chap. 3) (A up to C); and websities of the exchanges.
1400 UNDP, 2003, at pp. 26, 48, 54, 65 & 110; Ghana SE, 2007-10; Nairobi SE, 2007-10; Mauritius SEM, 2007-10; Uganda SE, 2007-10; and Dar es Salaam SE, 2007-10.
1401 Ibid.
1402 UNDP, 2003, at p. 26; and COSOB Algeria, 2007-10.
1403 Ibid.
1404 Trading commenced on it on the 12th of November 1990 (Ghana SE, 2007-10; and UNDP, 2003, at p. 48).
1405 Ibid.
1406 Ibid.
1407 The country had some share trading between individuals in the early 1900's and stock broking service to Europeans by professionals in the 1920's (Nairobi SE, 2007-10; and UNDP, 2003, at p. 54).
1408 The country also created its securities market regulator in 1989 (Ibid).
1409 Ibid.
1410 Mauritius SEM, 2007-10; and UNDP, 2003, at p. 65.

only.[1411] It has introduced trading on treasury bills since December 2003 as its first step to set up secondary market for government securities.[1412] The Uganda Securities Exchange Ltd. (USE) was licensed as stock exchange company in June 1997.[1413] It started operation in January 1998 by listing a four years bond of the East African Development Bank.[1414] It currently operates on a trading floor with Continuous Open Outcry Auction Trading System.[1415] It does not allow an Over-the-counter (OTC) trading of equities and corporate papers.[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.[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.[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.[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.[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.[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.[1422] It has created a second division of stock listings, the AltX, since 2003 to allow the listing of shares by small businesses.[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).[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.[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.[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

1411 Ibid.
1412 Ibid.
1413 Uganda SE, 2007-10; and UNDP, 2003, at p. 110.
1414 Ibid.
1415 Ibid.
1416 Ibid.
1417 Dar es Salaam SE, 2007-10; and UNDP, 2003, at p. 99.
1418 Ibid.
1419 Johannesburg SE, 2007-10; and Johannesburg SE, 2007-10a.
1420 Ibid.
1421 Ibid.
1422 Ibid.
1423 Ibid.
1424 Ibid.
1425 Ibid.
1426 Lusaka SE, 2007-10; and UNDP, 2003, at p. 115.

stock broking corporate members.[1427] 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.[1428]

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.[1429] They have revived when the Egyptian Government adopted free market policies in the 1990s.[1430] They currently exist as unincorporated public market places.[1431] 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.[1432] It was officially recognized as the Botswana Stock Exchange when the country enacted new law in 1994.[1433] It has grown through the dual listing of South African based companies.[1434] The Malawi 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.[1435] 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.[1436] It currently includes corporate and individual members and imposes modest listing requirements.[1437] The Casablanca Stock Exchange of Morocco was found as public market place by banks in 1929.[1438] It was re-established in 1995 to expand its membership without changing its structure.[1439] 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.[1440] It currently exists as regular market for both company and government securities.[1441] It operates as public market place by matching auction orders communicated through broking companies.[1442] It has also introduced parallel market since 1999.[1443] 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.

in Namibia on the 1st of October 1992.[1444] It currently exists under custodian of a not-for-profit Namibian Stock Exchange Association which comprises the sponsors of creation of the exchange.[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.[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.[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.[1448] The Swaziland Stock Market was established as unincorporated public market in July 1990.[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.[1450] The Bourse de Tunis was established by the Tunis government as public market place in 1969.[1451] It was privatised in 1994 without changing its structure to expand its membership and increase its internationalisation.[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.[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.[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.[1455] It currently exists as public market place without over-the-counter trading.[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.[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).[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 Alegeria, the BRVM in Côte d'Ivoire, the Cairo and Alexandria Exchanges of

1444 Namibian SE, 2007-10; and UNDP, 2003, at p. 77.
1445 Ibid.
1446 Nigerian SE, 2007-10; and UNDP, 2003, at p. 82.
1447 Ibid.
1448 Ibid.
1449 UNDP, 2003, at p. 94.
1450 Ibid.
1451 Bourse de Tunis, 2007-10; and UNDP, 2003, at p. 104.
1452 Ibid.
1453 Maputo SE, 2007-10.
1454 Ibid.
1455 Zimbabwe SE, 2007-10; and UNDP, 2003, at p. 120.
1456 Ibid.
1457 BRVM, 2007-10; and UNDP, 2003, at p. 36.
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.[1459] 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.[1460] 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.[1461] 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.[1462] 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.[1463] 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.[1464] 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.[1465] The Casablanca Stock Exchange of Morocco has introduced its computerised trading since March 1997.[1466] The Nigerian Stock Exchange has launched its Internet System (CAPNET) since November 1996.[1467] 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.[1468] It currently operates under prices determined by issuing houses and stock brokers for initial issues and by stockbrokers for secondary trades.[1469] The South African JSE Limited has introduced a fully electronic order based trading system called Johannesburg Equities Trading (JET) since 1996.[1470] It currently executes trades automatically when buy and sell prices match.[1471] It has adopted the London's SETS System and uses the FTSE and Dow Jons rules to classify its companies.[1472] The Namibian Stock Exchange operates an electronic trading system based on the South African

1459 COSOB Algeria, 2007-10; BRVM, 2007-10; Cairo and Alexandria SE, 2007-10; Nairobi SE, 2007-10; Mauritius SEM, 2007-10; Casablanca SE, 2007-10; Namibian SE, 2007-10; Nigerian SE, 2007-10; Johannesburg SE, 2007-10; Bourse de Tunis, 2007-10; and UNDP, 2003, at pp. 26-120.

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.

1470 Johannesburg SE, 2007-10; and Johannesburg SE, 2007-10a.

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

1473 Namibian SE, 2007-10.
1474 Bourse de Tunis, 2007-10; and UNDP, 2003, at p. 104.
1475 UNDP, 2003, at pp. 26-120; and Charles A. Yartey and Charles K. Adjasi, 2007.
1476 CIPE, 2007; and Mbendi, 2007.
1477 Ibid.
1478 Ibid.
1479 Cristina Müller, 2003; ACMW, 2003; ACMW, 2003a; Mbendi, 2007; and UNDP, 2003.
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.[1482]

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.[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.[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.[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.[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.[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

1482 Ibid.
1483 JLSRI, 2001, at pp. 37-39 & 42.
1484 Id., at pp. 38-39.
1485 JLSRI, 2003, at arts. 3, 4, 5, 12, 16-19, 22, 25 & 31.
1486 Id., at art. 24
1487 JLSRI, 2003, at arts. 4 & 24.

- rules should be adopted to enable the exchange to issue internal rules on trading and the regulator to conduct the overall regulation of trading.[1488]

It has not 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.[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.[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).[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.[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.[1493] Hence, it needs to adopt the exchange-as-firm approach and allow the incorporation of competing exchanges. [1494]

1488 Id., at arts. 8(3)(c), 19(2)(a), 29(2), 31, 32(1) & 33(1)(e).
1489 Note letter of the banks to the Institute (cited as AIB, 2002; and BA, 2002).
1490 Note letter of the Bank to the Institute (cited as NBE, 2002).
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.
1492 Ibid.
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)).
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). Estblishment 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.[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.[1501] The experience with the agricultural commodity market of the country also needs to be considered in this regard.[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).[1503] Most countries have not met this level and differ in the way they clear and settle transactions.[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).[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.[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.[1507] The global target since then has been to achieve a level of T+3 or less settlement cycle.[1508] Many of the countries have, accordingly, de-materialized their securities and

1500 Note the discussions under the preceding subtitles.
1501 Note the discussions under the preceding subtitles.
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).
1503 Valdez, 1993, at p. 193.
1504 Valdez, 1993, at pp. 173-174; Poser, 1991 at pp. 395-396, 405, 413, 423 & 438; Johan and Janet, 2005; and Alberto, 2008.
1505 Ibid.
1506 Valdez, 1993, at pp. 193-194; Benjamin, 2000, at pp. 20-30 & 189-221; and Benn Steil, 2001, at pp. 273-274.
1507 Benjamin, 2000, at p. 20.
1508 Ibid.

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.[1509] The US introduced a system of electronic transfer for T-bills and mutual funds as early as the 1980s.[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.[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.[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.[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.[1514] It, however, applied to equities excluding transactions in options and bonds.[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.[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.[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.[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).[1519]

1509 Ibid.

1510 Valdez, 1993, at pp. 173-174; and Poser, 1991, at p. 59.

1511 Ibid.

1512 Poser, 1991, at pp. 57-58.

1513 Id., at p. 59.

1514 Ibid.

1515 Ibid.

1516 Id., at p. 60.

1517 Id., at pp. 60-62.

1518 Id., at p. 62.

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 currentlty 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.[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.[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.[1522] The Monte Titoli of Italy was developed in 1986 to centralize and speed up the settlement systems of its exchanges.[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.[1524] Germany and Switzerland speeded up their clearing and settlement systems through their banks which had high stake in their exchanges.[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.[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.[1527] The Account System was designed to apply to American shares and extended to others including Japanese shares and Eurobonds.[1528] It paved the way for quick settlement and transfer of securities transactions in the Amsterdam Stock Exchange by electronic book entry.[1529] The clearing and settlement entities in Amsterdam were then centralized and re-incorporated in 1997 under a subsidiary of the Amsterdam Exchanges (AEX) called the Amsterdam Securities Depository (ASD).[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.[1531] The corporation enabled nationwide clearing and settlement of securities transactions on weekly basis.[1532]

1520 Valdez, 1993, at pp. 173-174 & 193; Poser, 1991 at pp. 385-438; Ferrarini, 1998a, at p. 249; Massimo Cirasino, et al., 2007, at pp. 1-3 & 5-19; and Alberto, 2008.

1521 Valdez, 1993, at p. 193; and Poser, 1991 at pp. 385, 405 & 411-413.

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.

1523 Poser, 1991, at pp. 411 & 412.

1524 Valdez, 1993, at pp. 173-174.

1525 Poser, 1991, at pp. 395-396 & 405.

1526 Ibid.

1527 Valdez, 1993, at pp. 173-174; and Poser, 1991 at p. 423.

1528 Ibid.

1529 Ibid.

1530 Ferrarini, 1998a, at p. 249.

1531 Poser, 1991, at p. 438.

1532 Valdez, 1993, at pp. 173-174; and Poser, 1991 at pp. 395-396, 405, 413 & 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.[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.[1534] The Latin American Stock Exchanges seem to be ahead of the rest in this regard by approaching a T+0 settlement cycle.[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.[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.[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.[1538] It currently relies on clearance, settlement, depository and risk management services of the latter.[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.[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.[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).[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).[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.[1544] The Buenos Aires

1533 Benjamin, 2000, at pp. 20-30 & 189-221; and Massimo Cirasino, et al., 2007, at pp. 1-4, 5-18 & 105-263.

1534 Benjamin, 2000, at pp. 20-30 & 189-221; Massimo Cirasino, et al., 2007, at pp. 1-4, 5-18, 105-263 & 249-252; and CPSS-IOSCO, 2001.

1535 Massimo Cirasino, et al., 2007, at pp. 136-138 & 205-220; and the subsequent discussion.

1536 Santiago SE, 2007-10a.

1537 It also recognizes the making of forward agreements that do not exceed 180 days for the floor trades. Ibid.

1538 São Paulo SE, 2007-10; Brazilian CBLC, 2007-10; and Brazilian CBLC, 2007-10a.

1539 Ibid.

1540 Ibid.

1541 Ibid.

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.

1543 Mexican SE, 2007-10.

1544 Lima SE, 2007-10.

Stock Exchange settles on T+3 basis and recognizes forward transactions subject to agreed finite number of days.[1545] 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.[1546] It is assisted by a national central depository of securities called the Venezuelan Depository Trust Company (Caja Venezolana de Valores - CVV) (established in 1995).[1547] 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).[1548] 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.[1549] 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).[1550] The exchanges of the other countries of the region have also headed towards further improvement of their clearance and settlement systems.[1551]

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.[1552]

1545 Buenos Aires SE, 2007-10.

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, Singpore 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.[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.[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.[1555] The Bourse d'Alger relies on electronic clearing and settlement system along with its automated trading system without a central depository.[1556] The Bourse de Tunis uses automatic clearing and settlement system and a central depository called Sticodevam Ltd. along with its electronic trading system.[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 16th of September 1998.[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 3rd of March 2005.[1559] The Nairobi Stock Exchange assists the new electronic trading system it introduced on the 11th of September 2006 by clearing and settlement services of Central Depository and Settlement Corporation (CDSC) (which was operational as of the 1st of August 2000).[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.[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

2000, at pp. 23-25; and websites of the two institutions cited as Euroclear, 2007-10 and Clearstream, 2007-10).

1553 Massimo Cirasino, et al., 2007; Alberto, 2008; and Scott, 2008, at pp. 381-418.

1554 Note the following and websities of the exchanges accessed in June 2007 and July 2010. See Table 24(Chap. 3) (A up to C) for specific comparison.

1555 COSOB Algeria, 2007-10; BRVM, 2007-10; Cairo and Alexandria SE, 2007-10; Cairo and Alexandria SE, 2007-10a; Nairobi SE, 2007-10; Mauritius SEM, 2007-10; Johannesburg SE, 2007-10; Dar es Salaam SE, 2007-10; Bourse de Tunis, 2007-10; Lusaka SE, 2007-10; and UNDP, 2003, at pp. 26, 36, 65, 87, 99, 104 & 115.

1556 Note website of the exchange; and UNDP, 2003, at pp. 26-120.

1557 Bourse de Tunis, 2007-10; and UNDP, 2003, at p. 104.

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.

1559 Cairo and Alexandria SE, 2007-10a.

1560 Nairobi SE, 2007-10; and UNDP, 2003, at pp. 26-120.

1561 Mauritius SEM, 2007-10; and UNDP, 2003, at pp. 26-120.

(CSCS).[1562] The South African JSE Limited uses an electronic clearing, settlement and depository system called STRATE with its JET electronic trading system.[1563] 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.[1564]

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).[1565] 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.[1566] 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.[1567] 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).[1568] The Uganda Securities Exchange Ltd. relies on transaction-by-transaction clearing and settlement without central depository system.[1569] It has been working with the Nairobi Stock Exchange to introduce a Central Depository System.[1570] 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.[1571]

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.[1572] 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

1562 It incorporated the Central Securities Clearing System Limited, as subsidiary of the Stock Exchange in 1992. The Central Securities Clearing System Limited also offers custodian services. Nigerian SE, 2007-10; and Nigerian CSCS, 2007-10.

1563 Johannesburg SE, 2007-10; and Johannesburg SE, 2007-10a.

1564 Lusaka SE, 2007-10; and UNDP, 2003, at p. 115.

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.

1569 Uganda SE, 2007-10; and UNDP, 2003, at p. 110.

1570 Ibid.

1571 Khartoum SE, 2007-10, at pp. 25 & 28; Ghana SE, 2007-10; Malawi SE, 2007-10; Botswana SE, 2007-10; and UNDP, 2003, at pp. 26-120.

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.[1573] 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.[1574]

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 to be established as the securities market and the country's payments and telecommunication systems grow.[1575] It also needs to work with the countries and exchanges that have automated these services in order to create and enhance the automation capacity. [1576] The experience with the agricultural commodity market of the country also needs to be considered in this regard.[1577]

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.[1578] 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.[1579] All these also require decision on who should set and enforce the rules (and how this should be done)

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 strated 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).

1578 Wellons, 1999, at pp.72-75; and Wymeersch, 1998, at pp. 10-14.

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 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.

1581 Kabir, 1990, at p. 27; Valdez, 1993, at p. 200; Wellons, 1999, at p. 72; Arlman, 2003, at p. 237; and Vagts, 2006, at pp. 3-10.

1582 Ibid.

1583 Note the discussion under the 'modelling the market structure' subtitle above.

1584 Arlman, 2003, at pp. 238 & 240; Wellons, 1999, at p. 72; Wymeersch, 1998, at pp. 10-14; Karnel, 1998, at pp. 269-270; and Vagts, 2006, at pp. 3-32.

1585 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.

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; Agatiello, 2003, at pp. 415-431; Lubrano, 2003, at pp. 442-444; Dowers, Gomez-Acebo and Masci, 2003, at p. 17; Vagts, 2006, at pp. 11-32; 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.[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.[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.[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.[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. [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.[1595]

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the membership and ownership of the exchanges, de-monopolize their ownership, and encourage competition and efficiency (Note the discussion under the 'modelling the market structure' subtitle above).

1590 Note the discussion under the 'modelling the market structure' subtitle above.

1591 Ibid.

1592 Ibid.

1593 Ibid.

1594 Ibid.

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.

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.[1596] 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.[1597] 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.[1598]

Countries have differed historically on their choice between the two approaches.[1599] 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.[1600] 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.[1601] 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.[1602] UK, Ireland, the Netherlands and New Zealand used to favour industry self-regulation.[1603] The choice between the approaches was conventionally related to the relative importance of the securities market in each country's financial system.[1604] 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.[1605]

1596 Wellons, 1999, at p. 9.
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.[1606] 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.[1607] 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.[1608] 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.[1609] 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.[1610]

The different approaches have, however, converged through time in terms of both substantive law and the regulatory processes.[1611] The US has regulated insider trading since 1961 and strengthened its substantive regulation through the 1990s.[1612] 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.[1613] 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.[1614] 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.[1615]

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.
1612 Poser, 1991, at p. 402.
1613 Wellons, 1999, at p. 6; and Wymeersch, 1998, at pp. 10-11, 21-22 & 26-30. [Note UK's Financial Services Act of 1986, Japan's Big Bang of 1998, and the Netherland's post-1995 reforms]
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.[1616] The SEC started this by abolishing the fixed commissions system on the New York exchange in May 1975.[1617] 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.[1618] The US Big Bang was then followed by reforms in UK, Japan and the rest of Europe in the second half of the 1980s.[1619] 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.[1620] 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.[1621] 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.[1622] 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 *Krusmaklers* 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.[1623] 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

1616 Kabir, 1990; Poser, 1991; Valdez, 1993; Pagano, 1998; Röell, 1998; Ferrarini, 1998a; Wymeersch, 1998; Wellons, 1999; Harner, 2000; Arlman, 2003; and Vagts, 2006, at pp. 3-32.

1617 Valdez, 1993, at pp. 200-203; and Wellons, 1999, at p. 35.

1618 Poser, 1991, at pp. 376-377; Valdez, 1993, at pp. 200-203; and Wellons, 1999, at p. 35.

1619 Poser, 1991, at pp. 376-378; Valdez, 1993, at pp. 200-203; Pagano, 1998, at pp. 177-204; Röell, 1998, at pp. 213-224; Wellons, 1999, at p. 35; Harner, 2000, at pp. 9-263; and Vagts, 2006, at pp. 3-32.

1620 Kabir, 1990, at p. 27; Poser, 1991, at pp. 377-378; Valdez, 1993, at pp. 200-203; and Wellons, 1999, at pp. 35-38.

1621 Wellons, 1999, at p. 35; and Harner, 2000, at pp. 9-28, 54-73, 217-225, 249-251 & 263.

1622 Poser, 1991, at pp. 379-386.

1623 Id., at pp. 401 & 402.

the lines of the European Community in the 1990s.[1624] 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.[1625] 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.[1626] It strengthened its insider trading prohibition by enacting a statute in 1989 and consolidated its regulations in the second half of the 1990s.[1627] 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.[1628] 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.[1629] 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.[1630] 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.[1631] The EC has also encouraged the reforms through issuance of the Listing, Public Offer, Investment Services, Capital Adequacy, Merger and Acquisition, and other directives.[1632] The EU has also enhanced the regulatory harmonization for the securities markets by the MiFID directive.[1633]

1624 Id., at pp. 408-410.
1625 Poser, 1991, at pp. 415-416; Ferrarini, 1998a, at p. 250; and Wymeersch, 1998, at pp. 13 & 23-24.
1626 Poser, 1991, at pp. 424-425; and Wymeersch, 1998, at pp. 6, 11 & 21-23.
1627 Poser, 1991, at p. 426; and Wymeersch, 1998, at pp. 10-11 & 21-30.
1628 Poser, 1991, at pp. 432-433.
1629 Id., at pp. 435-441.
1630 Poser, 1991, at p. 378.
1631 Ferrarini, 1998; Arlman, 2003, at pp. 237-238; and Empel, (ed.), 2008, at pp. 47-56.
1632 Valdez, 1993, at pp. 203-205; Wymeersch, 1998; Ferrarini, 1998a; and Empel, (ed.), 2008, at pp. 47-56.
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.[1634] 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.[1635]

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.[1636]

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.[1637] Practice also showed the abuse of powers under the guise of merit regulation by the regulators when they became more powerful.[1638] 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

1634 Table 25(Chap. 3); Wellons, 1999, at pp. 6, 11, 17-18 & 25; UNIDO, 1991, at pp. 94-96; Lindsay, 1992, at pp. 3-7, 31-32, 72-73, 103-106, 135, 214 & 252-253; Yohane Khamfula, 2005; Basch and Kybal, 1970, at pp. 65-84 & 99-156; Dowers, Gomez-Acebo and Masci, 2003, at pp. 7-28; Kansteiner, 2003; Tom Lawless, 2003; and Chinyanta, 2003.

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.[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.[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.[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.[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.[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.[1644] They mostly differ on the extent, specificity, continuity, cost sensitivity and sanction of

1639 Ibid.
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.
1641 Note the mission statements from websites of the securities market regulators indicated in Tables 1(Chap. 5) & 2(Chap. 5).
1642 IOSCO, 2003.
1643 Wellons, 1999, at pp. 11-15; Dowers, Lee and Vives, 2003, at pp. 500-501; Lubrano, 2003, at pp. 440-459; Vagts, 2006, at pp. 11-32; and Tables 25(Chap. 3) Continued (1 of 3) & 25(Chap. 3) Continued (2 of 3).
1644 Ibid.

the disclosure they require.[1645] The move in the transition and emerging market countries also seems to be towards improving on the definition and enforcement of the disclosure regulation.[1646] 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.[1647]

They, accordingly, let the merit regulation to exist in some mixture with the disclosure regulation they have.[1648] 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.[1649]

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.[1650] The trend has not, however, ruled out the use of governmental regulation as markets are usually found to be imperfect.[1651] 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.[1652] 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.[1653] 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.[1654] They, being framed largely to set responsibilities for these regulators, require that the latter have to oversee self-regulation whenever it exists.[1655]

1645 Wellons, 1999, at pp. 11-17; and Vagts, 2006, at pp. 19-32.

1646 Wellons, 1999, at pp. 11-16; Dowers, Lee and Vives, 2003, at pp. 493-494 & 500-501; and Lubrano, 2003, at pp. 440-459.

1647 Wellons, at pp. 9-10, 17 & 19-24; Petersen, 2004, at pp. 129-137; 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.

1650 Solomon Abay, 2010.

1651 Ibid.

1652 Dowers, Gomez-Acebo and Masci, 2003, at p. 17; Wymeersch, 1998, at pp. 38-39; Agatiello, 2003, at pp. 415-431; Lubrano, 2003, at pp. 442-444; and Vagts, 2006, at pp. 11-32.

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).

1654 IOSCO, 2003.

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

1656 Van Berkel, 2008; OECD, 2008c; Hans Blommestein, 2009; Hans Blommestein and Arzu Gok, 2009; Ayadi and Behr, 2009; Luigi, 2009; AP, 2010a; and Bloomberg, 2010.

1657 Note the discussion under the preceding subtitle.

1658 Poser, 1991, at pp. 379-437; and Vagts, 2006, at pp. 11-32.

banks (as was the case in Germany and Switzerland).[1659] 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.[1660] 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.[1661] 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.[1662] 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.[1663]

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.[1664] 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.[1665] 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.[1666] 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.[1667] 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.[1668] 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.[1669] They have adopted rules that:

- require the incorporation of not only the exchanges but also of the market intermediaries;

1659 Poser, 1991, at pp. 379, 381-382, 394-395, 403, 413, 418-419, 422, 428 & 434.
1660 Id., at pp. 381-384, 401 & 413.
1661 Note the discussion under the 'modelling the market structure' subtitle above.
1662 Ibid.
1663 Ibid.
1664 Wellons, 1999, at pp. 65-69 & 105.
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.[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.[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.[1672]

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.[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.[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.[1675]

1670 Ibid.

1671 Ibid.

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.

1673 JLSRI, 2003, at arts. 3, 12(1), 16(1), 16(3), 16(4), 20 & 23(5).

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.

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.[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.[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.[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

1676 Note also the discussion under the 'modelling the market structure' subtitle above.
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.
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]

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.

1682 Table 25(Chap. 3); Poser, 1991, at pp. 402-441; Wellons, 1999, at pp. 76-93 & 105-114; Kabir, 1990, at pp. 25-99; Wymeersch, 1998; Ferrarini, 1998a; Lubrano, 2003, at pp. 437-459; and Vagts, 2006, at pp. 3-32.

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.[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 scurities markets.[1684] This has, however, also depended on the general functional and ownership separation requirements of the countries.[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.[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.[1687] They do not believe in the need for regulating the securities operators as going concern like banks.[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.[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.[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).[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.[1692] The internal model approach lets the operator to design and apply its own system of risk analysis for the required

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; Alberto, 2008; and René, 2008).

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.

1685 Note the discussion under the 'functional and ownership separation requirements' subtitle of the banking, insurance and microfinance chapter above.

1686 Table 25(Chap. 3); Wellons, 1999, at pp. 105-114; and Vagts, 2006, at pp. 14-32.

1687 Ibid.

1688 Ibid.

1689 Ibid.

1690 Wellons, 1999, at pp. 105-114.

1691 Id., at pp. 105-107.

1692 Id., at pp. 108-112.

capital.[1693] 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.[1694]

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.[1695] 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.[1696] 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.[1697] 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.[1698] The portfolio approach was in use in UK until it was replaced by the EU building block approach.[1699] 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.[1700] The internal model (to be pre-committed to the regulator) was considered by the Federal securities regulator in the US but not implemented.[1701] 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.[1702]

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.[1703] 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

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 Ibid.
1703 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.[1704]

The solution to the problem has also been variable in the international experience.[1705] Some like Germany used to apply the same standard on the banks when they operated in both the banking and the securities markets.[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.[1707] The EU used to recognize the building block approach as common standard for both the banking and the securities businesses.[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.[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.[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.[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.[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.[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.[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.[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.[1716] The portfolio approach is

1704 Ibid.
1705 Id., at pp. 102-114.
1706 Id., at p. 105.
1707 Ibid.
1708 Id., at p. 110.
1709 Id., at p. 104.
1710 Id., at pp. 112-114.
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).
1712 Wellons, 1999, at pp. 105-114.
1713 Id., at p. 106.
1714 Id., at p. 107.
1715 It has been feared that both the Basle and the EU rates may not be useful to these countries. Id., at p. 110.
1716 Id., at p. 111.

said to be too complex for the countries to exercise.[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.[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.[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.[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.[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.[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.[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

1717 Id., at p. 112.
1718 Id., at pp. 113 & 114.
1719 Ibid.
1720 Ibid.
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).
1722 Table 25(Chap. 3) Continued (2 of 3).
1723 Table 25(Chap. 3) Continued (1 of 3); and Table 25(Chap. 3) Continued (2 of 3).

- unequal access to material information should be prohibited.[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.[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.[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.[1727] It believes that manipulations and unfair trade practices (including insider trading) will distort prices and unduly disadvantage investors.[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.[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.[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.[1731] In the third of the

1724 Wellons, 1999, at pp. 76-78; Kabir, 1990, at p. 86; and Vagts, 2006, at pp. 25-28.

1725 Kabir, 1990, at pp. 86-87 & 98-99; Wellons, 1999, at p. 78; and Vagts, 2006, at pp. 25-28.

1726 Wellons, 1999, at p. 79; and Vagts, 2006, at pp. 25-28.

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).

1728 Ibid.

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.

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.

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.[1732] Most of the countries have followed the third approach.[1733] 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.[1734] 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.[1735] 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.[1736]

An insider trade regulation has also to resolve several questions once a country is convinced to have it.[1737] 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.[1738] 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.[1739]

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.[1740] 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.[1741] The question on the securities to be subject to the insider regulation is on whether to limit the regulation to the

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.

1733 Poser, 1991, at pp. 353-357; Wellons, 1999, at pp. 80-81; and Vagts, 2006, at pp. 25-28.

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).

1737 Wellons, 1999, at pp. 81-93; and Vagts, 2006, at pp. 25-28.

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.[1742] 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.[1743]

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.[1744] 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.[1745]

Countries differ much in their answers to these questions.[1746] 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.[1747] The countries often include the 'using', 'telling' and 'intentionally disclosing' elements in defining the main prohibition and differ on the others.[1748] 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.[1749] 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.[1750] 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 regulations 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.
1749 Poser, 1991, at p. 402; and Wellons, 1999, at pp. 82-83.
1750 Wellons, 1999, at pp. 83-84.

considered securities issuers, stock exchange members, managing directors, supervisory directors, designated employees and the financial press as insiders.[1751] The Swedish insider trading law covered corporate directors and major shareholders.[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.[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.[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.[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.[1756] The Amsterdam Model Code and the International Stock Exchange in London prohibited trading based on price sensitive information.[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.[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'.[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.[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.[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.[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

1751 Kabir, 1990, at p. 85; and Poser, 1991, at pp. 425-426.
1752 Poser, 1991, at pp. 432-433.
1753 Poser, 1991, at pp. 440-441.
1754 Wellons, 1999, at p. 84.
1755 Ibid.
1756 Ibid.
1757 Poser, 1991, at p. 425.
1758 Hence, information disclosed to a regulator according to a disclosure rule has no more been inside information. Wellons, 1999, at pp. 84-85.
1759 Poser, 1991, at p. 440.
1760 Wellons, 1999, at p. 85.
1761 Id., at p. 86.
1762 Ibid.

trade and inside information.[1763] 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.[1764] 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.[1765] 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.[1766] 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.[1767] 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)).[1768] The use of both criminal sanctions and civil suits in the enforcement of insider regulation has, however, been blamed for rigidity.[1769] 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.[1770] 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.[1771] Others have preferred to rely on the securities regulator to enforce the insider trading law despite shortcomings.[1772] 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.[1773]

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.[1774]

1763 Ibid.
1764 Id., at p. 87.
1765 Only some like Hong Kong fail to do so. Ibid.
1766 Id., at pp. 88-91.
1767 Ibid.
1768 Id., at p. 88; and Poser, 1991, at pp. 426 & 433.
1769 Wellons, 1999, at pp. 88 & 90.
1770 Ibid.
1771 Hong Kong's Insider Dealing Tribunal (of 1974) illustrates the former. Wellons, 1999, at pp. 92-93; and Table 25(Chap. 3) Continued (3 of 3).
1772 This has been true in Hong Kong (in the 1970s) and in Malaysia, Singapore and Poland. Wellons, 1999, at p. 93; and Table 25(Chap. 3) Continued (3 of 3).
1773 Wellons, 1999, at p. 92; Kabir, 1990, at p. 85; Vagts, 2006, at pp. 25-28; and Table 25(Chap. 3) Continued (3 of 3).
1774 Wellons, 1999, at p. 91.

d. The Recognition of Suspension and Cancellation of Trading

The usefulness of trading suspension and cancellation is also debated.[1775] 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.[1776]

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'.[1777] 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.[1778]

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.[1779] 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.[1780] 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.[1781]

The securities market laws in many of the developed market countries have, however, recognized trading suspension as a normal means to ensure that markets

1775 Kabir, 1990, at pp. 25-53.
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.[1782] 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.[1783] 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.[1784] It has occurred as temporary halt, as opposed to cancellation, of the trade.[1785] 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.[1786] The suspension of trading has also often been terminated when new and material information is released according to test of the regulators.[1787]

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.[1788] 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.[1789]

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.[1790] 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.[1791]

The developed market countries have, accordingly, refined their company and securities market laws and put in place market control mechanisms through time.[1792] They have already made the keeping and auditing of records; the

1782 Kabir, 1990, at p. 63; and Vagts, 2006, at pp. 11-14 & 25-28.
1783 Kabir, 1990, at pp. 25-80; and Vagts, 2006, at pp. 11-14, 19-21 & 25-28.
1784 Kabir, 1990, at p. 25; and Vagts, 2006, at pp. 11-14, 19-21 & 25-28.
1785 Ibid.
1786 Kabir, 1990, at p. 29; and Vagts, 2006, at pp. 11-14, 19-21 & 25-28.
1787 Ibid.
1788 Table 25(Chap. 3) Continued (3 of 3).
1789 Kabir, 1990, at pp. 25ff.
1790 Lubrano, 2003, at pp. 437-459; Vagts, 2006, at pp. 3-10 & 19-25; and René, 2008.
1791 Ibid.
1792 Davis, 1995, at pp. 185-191; Gilligan, 1999, at pp. 9-11; Wheeler, 1993; Teubner, 1993; Eisenberg, 1993; ONG and Baxter, 1999; Wymeersch, 1998, at pp. 37-38; Grossfeld, 2006, at pp. 83-84; and Vagts, 2006, at pp. 3-10 & 19-25.

publication of prospectuses; the making of annual, semi-annual and adhoc 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.[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.[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.[1795] They have also ruled on the organizational and governance structures of the exchanges and intermediaries by way of complementing their company laws.[1796] The rise and expansion of information communication technology and the increased automation and internationalisation 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.[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 every where.[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.[1799] The 2008 financial and economic crisis has also increased the need for controlling abuses, enhancing corporate governance practices, and further revising the OECD

1793 Ibid.
1794 Lubrano, 2003, at pp. 437-459.
1795 Tables 25(Chap. 3) Continued (1 of 3); and 25(Chap. 3) Continued (2 of 3).
1796 Note the laws referred in Table 25(Chap. 3).
1797 Wittich, Tafara and Peterson, 2003; Aggarwal, 2003; and the discussions under the 'history and current state' and 'modelling the market structure' subtitles above.
1798 Note the discussion under the 'regulation of governance and auditing' subtitle of the banking, insurance and microfinance chapter above.
1799 Note Ibid.

corporate governance principles in the context of the securities markets.[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).[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.[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.[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.[1804] The regulation of real time settlement has, however, remained to be pending question.[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.[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

1800 Luigi, 2009.
1801 Schwartz, 2010; and Grossfeld, 2006, at pp. 135-141.
1802 Valdez, 1993, at pp. 173-194; Benjamin, 2000, at pp. 20-30, 171-186 & 202-221; Poser, 1991, at pp. 57-62 & 385-438; and Harner, 2000, at pp. 9-28.
1803 Ibid.
1804 Tables 25(Chap. 3) Continued (3 of 3).
1805 Note the discussion under the 'modelling the clearing and settlement of transactions' subtitle above.
1806 JLSRI, 2001, at pp. 15-17, 36-37 & 42.

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.[1807]

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.[1808]

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.[1809] 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.[1810]

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.[1811] 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

1807 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).
1808 Id., at arts. 3, 12(1), 16(1, 3, 4), 20, 23(5) & 36.
1809 Note letters of the NBE and the banks to the Institute (cited as NBE, 2002; AIB, 2002; and BA, 2002).
1810 ZNA, 1999; and AACC, 1999.
1811 Note the discussion under the 'regulation of market entry' subtitle above.

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.