



**REPUBLIC OF TURKEY
ERCIYES UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF COMMERCIAL LAW**

**MINORITY RIGHTS IN JOINT STOCK
COMPANIES: A COMPARATIVE ANALYSIS WITH
THE LAWS OF THE HORN OF AFRICA**

**By
Mohamed Hassan JİCSİN**

**Supervisor
Assoc. Prof. Aydın Alber YÜCE**

Master's Thesis

August 2024, KAYSERİ

**REPUBLIC OF TURKEY
ERCIYES UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF COMMERCIAL LAW**

**MINORITY RIGHTS IN JOINT STOCK
COMPANIES: A COMPARATIVE ANALYSIS WITH
THE LAWS OF THE HORN OF AFRICA**

(Master's Thesis)

**By
Mohamed Hassan JİCSİN**

**Supervisor
Assoc. Prof. Aydın Alber YÜCE**

August 2024, KAYSERİ

CONFORMITY TO THE SCIENTIFIC ETHICS

I hereby declare that all information in this document has been obtained and presented by academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.



Mohamed Hassan JİCSİN



REPUBLIC OF TÜRKİYE

ERCIYES UNIVERSITY

Graduate School of Social Sciences

Department: Private Law

Program: Master's

Thesis Title: Minority Rights in Joint Stock Companies: A Comparative Analysis of the Laws of The Horn of Africa

ORIGINALITY PAGE

Regarding the part of the thesis, whose information is given above, consisting of a) Introduction, b) Main chapters, and c) Conclusion parts (excluding Cover, Foreword, Abstract, Contents, and Bibliography), a total of 105 pages according to the originality report obtained from Turnitin plagiarism program on the date of 10/08/2024 by applying the following filtering, the similarity rate of the thesis is: % 21

Citations are included in the filtering. Portions of text containing less than seven (7) words overlap are excluded from the filtering.

I have reviewed the Application Principles of Erciyes University Graduate School of Social Sciences Thesis Plagiarism Report, and I declare that the thesis study does not contain any plagiarism according to the maximum similarity rates specified in these application principles, I accept any legal liability that may arise in case of the opposite, and I declare that the information I have given above is correct.

I hereby submit to your information. 10/08/2024

Supervisor: Assoc. Prof. Aydın Alber YÜCE

Student: Mohamed Hassan JİCSİN

SUITABILITY FOR GUIDE

The Master's Thesis, titled “Minority Rights In Joint Stock Companies: A Comparative Analysis With The Laws Of The Horn Of Africa” has been prepared according to the graduate thesis writing guidelines of the Graduate School of Social Sciences of Erciyes University.

Prepared By

Mohamed Hassan JİCSİN

Supervisor

Assoc. Prof. Aydın Alber YÜCE

Head of the Department

Prof. Dr. Murat DOĞAN

ACCEPTANCE AND APPROVAL PAGE

This study, titled “**Minority Rights In Joint Stock Companies: A Comparative Analysis With The Laws Of The Horn of Africa**” has been prepared by Mohamed Hassan JİCSİN under the supervision of Assoc. Prof. Aydın Alber YÜCE has been certified as the Master's thesis in the **Department of Commercial Law**, Graduate School of Social Sciences at Erciyes University.

11/07/2024

Thesis Defense Date

EXAMINING COMMITTEE MEMBERS:

Supervisor : Assoc. Prof. Aydın Alber Yuce

Member : Assoc. Prof. Ismail Atamulu

Member : Assist. Prof. Ece Deniz Günay

APPROVAL:

The Approval of this thesis has been certified by the Board of Management with the date /.... /..... and decision no:

..... /..... /

Prof. Dr. Atabey KILIÇ

The Director of Graduate School of Social Sciences

PREFACE

This dissertation is dedicated to my beloved parents: my mother, Asha Abdi Adam, for her endless love and guidance, and my father, Hassan Jicsin Mohamed, peace and blessings be upon him, whose words of encouragement and prayers continue to inspire me even in his absence. I am also immensely grateful to my wife, Amal Hussein Ali, for her steadfast support and understanding throughout this journey. To my entire family—Eng Sa’ed, Nimco, and Sacda—and all my siblings, your constant encouragement and support have been crucial in keeping me focused on completing this thesis. May Almighty Allah bless each of you abundantly.

I extend my profound gratitude to my advisor, Assoc. Prof. Dr. Aydin Alber Yuce, whose expert guidance and patient mentorship were instrumental in the completion of this thesis. His inspiration and sincere collaboration have been truly unparalleled. I also express deep appreciation to the entire Commercial Law Department for their invaluable support throughout my academic journey.

I am indebted to the Republic of Turkey and the Türkiye Scholarships program for the opportunity to advance my studies here.

Additionally, I am grateful to the Turkish people for their warm hospitality and to all my friends in Kayseri and beyond for their continuous support during my academic endeavors. Without your unwavering support, this achievement would not have been possible. I am deeply grateful for all the encouragement and assistance you have provided. May Almighty Allah bless each of you abundantly.

Mohamed Hassan Jicsin, Kayseri, 2024

ANONİM ŞİRKETLERDE AZINLIK HAKLARI: AFRIKA BOYNUZU ÜLKE HUKUKLARIYLA KARŞILAŞTIRMALI BİR ANALİZ

Mohamed Hassan JİCSİN

Erciyes Üniversitesi, Sosyal Bilimler Enstitüsü
Yüksek Lisans Tezi, Ağustos2024
Danışman: Doç. Dr. Aydın Alber YÜCE

ÖZET

Bu çalışma, özellikle azınlık hissedar haklarının korunmasına odaklanarak Afrika Boynuzu ülkeleri (Somali, Somaliland, Etiyopya, Kenya, Uganda) ve Türk hukukunun karşılaştırmalı bir analizini yapmayı amaçlamaktadır. Çalışma, bu bölgelerin kanunlarında yer alan boşlukları ve somut uygulamaları belirlemeyi ve azınlık hissedarların korunmasını geliştirmek için öneriler sunmayı amaçlamaktadır. Araştırma metodolojisi, şirket kanunları, yönetmelikler, mahkeme kararları ve akademik literatür gibi birincil ve ikincil kaynakların incelenmesini içermektedir.

Bulgular, Türk Ticaret Kanunu'nun azınlık hissedarlarını korumak için nispeten sağlam yasal dayanaklara sahip olduğunu, Afrika Boynuzu ülkelerinin ise bu alanda önemli zorluklarla karşılaştığını ortaya koymaktadır. Afrika Boynuzu ülkelerinde mevzuatın çıkarılması için çaba sarf edilmiş olsa da uygulama ve yaptırım zayıf kalmakta ve azınlık hissedarlarını suistimallere karşı savunmasız bırakmaktadır. Yasal çerçevelerde tespit edilen boşluklar, yasal reformlara ve kurumsal güçlendirmeye duyulan ihtiyacın altını çizmektedir. Türkiye'de ve diğer ülkelerde gözlemlenen en iyi uygulamalardan yola çıkan bu çalışma, Afrika Boynuzu ülkelerindeki eksikliklerin giderilmesi için tavsiyelerde bulunmaktadır.

Bu araştırma, azınlık hissedar haklarının mevcut durumunu ele alarak ve pratik öneriler sunarak, gelişmekte olan ekonomilerde kurumsal yönetim ve yasal reformlar konusundaki tartışmalara katkıda bulunmaktadır. Bulgular ve tavsiyeler, politika yapıcılara, hukuk uygulayıcılarına ve akademisyenlere daha şeffaf ve adil bir iş ortamı yaratma, yatırımcı güvenini artırma ve Afrika Boynuzu ülkeleri ile Türkiye'de sürdürülebilir ekonomik kalkınmayı teşvik etme konularında yol gösterebilir.

Anahtar Kelimeler: Anonim şirket, pay sahipleri, pay sahiplerinin hakları, azınlık, azınlık hakları.

MINORITY RIGHTS IN JOINT STOCK COMPANIES: A COMPARATIVE ANALYSIS WITH THE LAWS OF THE HORN OF AFRICA

Mohamed Hassan JİCSİN

Erciyes University, Graduate School of Social Sciences

Master Thesis, August 2024

Supervisor: Assoc. Prof. Aydın Alber YÜCE

ABSTRACT

This study aims to conduct a comparative analysis of the law of the Horn of Africa countries (Somalia, Somaliland, Ethiopia, Kenya, Uganda) and Turkish law, with a particular focus on the protection of minority shareholders' rights. The study aims to identify gaps and concrete practices in the laws of these regions and provide recommendations to improve minority shareholder protection. The research methodology includes a review of primary and secondary sources such as corporate laws, regulations, court decisions, and academic literature.

The findings reveal that the Turkish Commercial Code has relatively strong legal foundations to protect minority shareholders, while the Horn of Africa countries face significant challenges in this area. While efforts have been made to enact legislation in the Horn of Africa, implementation and enforcement remain weak, leaving minority shareholders vulnerable to abuse. The identified gaps in legal frameworks underscore the need for legal reforms and institutional strengthening.

The study recommendations include amending corporate laws, improving corporate governance practices, strengthening regulatory institutions, and encouraging shareholder activism. The findings and recommendations can guide policymakers, legal practitioners, and academics in creating a more transparent and fair business environment, enhancing investor confidence, and promoting sustainable economic development in the Horn of Africa and Turkey.

Keywords: Joint Stock Company, shareholders, shareholders' rights, minority, minority rights

TABLE OF CONTENTS

MINORITY RIGHTS IN JOINT STOCK COMPANIES: A COMPARATIVE ANALYSIS WITH THE LAWS OF THE HORN OF AFRICA

CONFORMITY TO THE SCIENTIFIC ETHICS	i
ORIGINALITY PAGE	ii
SUITABILITY FOR GUIDE	iii
ACCEPTANCE AND APPROVAL PAGE	iv
PREFACE	v
ÖZET	vi
ABSTRACT	vii
INTRODUCTION	1

CHAPTER ONE GENERAL PROVISIONS

1.1. Introduction	2
1.2. The Nature of the Protection of Minority Shareholders	7
1.3. Definition of Minority Shareholders	8
1.3.1. Defining Minority Shareholders in Türkiye	9
1.3.1.1. In General	9
1.3.1.2. Types of Minorities	11
1.3.1.3. Proportional Majority	12
1.3.1.4. Nominal Minority	13
1.3.1.5. Actual Minority	14
1.4. Defining Minority Shareholders in the Horn of African Countries	14
1.4.1. Definition of Minority Shareholders in Kenya.....	15
1.4.2. Definition of Minority Shareholders in Ethiopia.....	16
1.4.3. Definition of Minority Shareholders in Somaliland.....	18
1.5. The Protection of Minority Shareholders and it is Objectives	20
1.5.1. Protecting the Minority shareholder's rights.....	21
1.5.2. Making the Minority More Effective in Partnership	23
1.5.3. Limiting the Power of the Majority	24

1.5.4. Maintaining Balance in Partnership	24
---	----

CHAPTER TWO

SHAREHOLDER RIGHTS IN TURKEY AND THE HORN OF AFRICA

2.1. Shareholder Definition	4
2.2. Introduction	27
2.3. Shareholder Rights	28
2.3.1. Company Participation	29
2.3.2. Voting	31
2.3.3. Dividend Rights.....	35
2.3.4 Information Rights.....	36
2.3.5. To Call a General Meetings.....	38

CHAPTER THREE

MINORITY SHAREHOLDER RIGHTS AND PROTECTIVE MECHANISMS

3.1. Introduction	40
3.2. Minority Shareholder Rights in Turkey.....	46
3.2.1. Right to Request the Postponement of General Meetings.....	48
3.2.2. Right to Dismissal of the Auditor for Just Cause	50
3.2.3. Right to Request Appointment of a Special Auditor.....	52
3.2.4. Right to cancel decisions of General Meetings	55
3.2.5. The entitlement to apply for the issuance of shares.....	57
3.2.6. The entitlement to access Information.....	58
3.2.7. The Entitlement to Apply to the Court for Dissolution of a Joint Stock Company for Just Causes.....	59
3.2.8. Miscellaneous Provisions of Protection Minority Shareholder Rights under Capital Markets Law	59
3.3. Minority Shareholder Rights in the Horn of Africa	61
3.3.1. Major Minority Rights in the Horn of African Countries.	63
3.3.1.1. Introduction	63
3.3.1.2. The right to convene general shareholders' meeting	64
3.3.1.3. The right to propose or amend the agenda of shareholders' meeting	65
3.3.1.4. The right to challenge the resolutions adopted at the general meeting.	65
3.3.1.5. The right to appoint an independent audit.....	66

3.3.1.6. The right to access information.	67
3.3.1.7. Voting rights.....	67
3.3.1.8. Miscellaneous Provisions of Protection Minority Shareholder Rights	69
3.4. Essential Remedial Framework of Protection Minority Shareholders in Selected Horn of African Countries.....	70
3.4.1. Statutory Protection of Minority Shareholders.....	71
3.4.1.1. Companies Act	71
3.4.2. judicialdecision-making	72
3.4.3. Administrative regulations	73
3.5. Challenges in Protecting Minority Shareholder Rights in the Horn of Africa	73
3.5.1. Introduction	73
3.5.2. The regulation, legislation, and enforcement of corporate governance	74
3.5.2.1. Public governance and good corporate governance in Africa.....	76
3.5.2.2. Corruption and corporate governance	77
3.5.2.3. Legal Enforcement and Weak Judiciary System.....	78
3.5.3. Misclaneous challenges	79
3.5.3.1. Limited Company Classifications in the Horn of Africa.....	79
3.5.3.2. Absent or underdeveloped monitoring institutions	80
3.6. Lessons Horn of African Countries can learn From Turkey’s laws and Institutions in Protecting Minority shareholders in Joint-stock Companies.	81
3.6.1. Introduction	81
3.6.2. Criteria for Minority shareholder’s definition.....	83
3.6.3 Horn of African countries can boost the position of minority owners by strengthening their rights, similar to how Turkey enhances their rights through their laws	84
3.6.4. Turkish Commercial Code's Remedial Framework	87
3.6.5. Turkish Commercial Courts and their Role Enhancing Minority Shareholder Rights	88
3.6.6. Contrasting Research Landscapes in Minority Shareholder Rights between Turkey and the Horn of Africa.....	91
CONCLUSION AND RECCOMENDATIONS	94
BIBLIOGRAPHY.....	100

INTRODUCTION

This thesis examines the protection of minority rights within joint-stock companies, focusing on a comparative analysis between the legal frameworks of Turkey and those in the Horn of Africa, specifically Somalia, Somaliland, Ethiopia, Kenya, and Uganda. The study was motivated by the observed deficiencies in the legal protection of minority shareholders in the Horn of Africa, where weak enforcement mechanisms and outdated laws often leave minority shareholders vulnerable to abuses.

The primary research problem addressed in this thesis is the insufficient legal protection available to minority shareholders in the Horn of Africa, compared to the more developed and robust legal systems in Turkey. Turkey not only has comprehensive legal frameworks but also specialized commercial courts that effectively handle cases related to minority shareholders. These courts provide a crucial platform for addressing the grievances of minority shareholders, ensuring that their rights are protected and upheld. In contrast, the Horn of Africa lacks such specialized judicial mechanisms, contributing to the challenges faced by minority shareholders in seeking justice and equitable treatment.

By conducting this comparative analysis, the study aims to identify gaps in the existing legal frameworks of the Horn of Africa and provide practical recommendations based on the best practices observed in Turkey. The ultimate goal is to contribute to the improvement of corporate governance in these regions, fostering a more transparent and equitable business environment.

The significance of this research lies in its potential to influence legal reforms in emerging economies by offering insights into effective mechanisms for protecting minority shareholders. The findings and recommendations presented in this study are expected to

guide policymakers, legal practitioners, and academics in the Horn of Africa and beyond, promoting sustainable economic development and enhancing investor confidence.

Methodologically, the research employs a comparative analysis approach, utilizing both primary and secondary sources, including company laws, regulations, court decisions, and academic literature. The analysis focuses on key dimensions of minority shareholder rights, such as access to information, participation in decision-making, voting rights, dividend distribution, and protection against unfair practices. The data collected is systematically analyzed to draw conclusions and formulate actionable recommendations.

The literature review highlights that while Turkey has established relatively strong legal protections for minority shareholders, supported by the effective role of its specialized commercial courts, the Horn of Africa countries continue to face significant challenges. Prior research underscores the inadequacies in enforcement and the outdated nature of corporate laws in these regions. This thesis contributes to the existing body of literature by providing a comparative perspective and offering recommendations based on the successful legal models in Turkey.

CHAPTER ONE

GENERAL PROVISIONS

1.1. Introduction

Corporate governance, undoubtedly, is a reflection of a country's legal underpinnings, with evidence pointing towards a strong correlation between robust legal frameworks and efficacious corporate governance. For that reason, safeguarding minority shareholders against the repressive control of majority shareholders is a prevalent concern not only in developing nations but also in developed ones. It is a frequent observation in many legal systems that the controlling majority shareholders regard the minority stakeholders as an extraneous encumbrance¹.

Before delving into the contemporary legal frameworks that safeguard minority shareholders in the Horn of Africa and Turkey, it is imperative to establish the definition of minority shareholders and elucidate the discourse surrounding their protection. Minority shareholders are stakeholders who lack the voting influence to independently or collaboratively dictate the operations of the company. Conversely, majority-voting shareholders, who wield the predominant share of the votes, can exercise substantial influence, enabling them to steer both the board of directors and the general assembly.

¹ Mocha, T. M. (2014). The legal protection of minority shareholders: A comparative analysis of the regulatory frameworks of Kenya and the United Kingdom. Masters Thesis, University of Nairobi. 1–86.

It is not unusual for tensions to arise between minority and majority shareholders in many corporate settings. Such frictions often emanate from the propensity of majority shareholders to prioritize retaining the company's earnings for themselves, rather than equitably disbursing them among minority stakeholders².

The legal framework's limitations have enabled the majority shareholders to abuse their power, which often leads to the disadvantage of the minority stakeholders. The unscrupulous actions of the majority shareholders can cause harm not only to minority investors but also to the well-being of the company and, in turn, the economic stability of the nation³. Given these challenges, it is imperative to provide comprehensive protection for minority shareholders, ensuring their access to adequate redress. Concurrently, a robust legal structure should be in place to deter majority shareholders from exploiting their corporate privileges.

A well-established framework of corporate governance requires impartial treatment of all shareholders, irrespective of the magnitude of their investment⁴. The concept of equality in joint-stock companies, which is a crucial legal principle aimed at safeguarding shareholders' rights, mandates that shareholders receive equal treatment under the same circumstances⁵. Consequently, this principle prevents any unjust domination by the majority over the minority. Drawing inspiration from German and Swiss legislation and in conjunction with European Union regulations, this principle has been recognized as a favorable legal standard⁶. Turkish law explicitly regulates this principle in Article 357 of the Turkish Commercial Code, thereby guaranteeing shareholders' right to equal treatment. Moreover, when this principle is applicable, it permits an examination of compliance with the principle of good faith.

² Kaya, M. karatepe. (2020). Notion of protection of minority shareholders: Theoretical framework. İstanbul Medeniyet Universitesi Hukuk Fakultesi Dergisi, 5(9), 195–219.

³ Kaya, M., K., (F.2) 23,24.

⁴ Licht, A. N. (2019). Stakeholder impartiality: A new classic approach for the objectives of the corporation. SSRN Electronic Journal, December.

⁵ Licht, A. N. (F.4). P.116-118.

⁶ Akdag Guney, N. (2014). Anonim sirketlerde esitlik ilkesi. Gazi Universitesi Hukuk Fakultesi Dergisi, 18(3-4), 115-136.

The safeguarding of shareholders' entitlements is paramount for companies seeking to acquire the necessary funding for expansion, innovation, diversification, and competitive advantage. If minority shareholders encounter predicaments within the organization, they must be able to resort to legal remedies. Nevertheless, shareholders ought to be judicious in their claims, ensuring that the company's operations persist uninterrupted and profitable. Moreover, shareholders should facilitate the management of the company seamlessly, thereby ensuring the company's progress on a profitable trajectory⁷.

Likewise, the preservation of minority shareholders is an essential element of vigorous corporate governance. The justification for this assertion is grounded in the potentially detrimental consequences of the unmitigated implementation of majority rule, which serves as the bedrock for contemporary company law, on the welfare of minority shareholders⁸. Such outcomes may manifest in various forms. Firstly, the reduction of overall investments is a harmful consequence for minority shareholders by potentially diluting their ownership stakes, leading to reduced dividends, impacting the company's market value, limiting their exit options, and affecting their voting rights⁹. These consequences can collectively erode the financial interests and influence of minority shareholders in the company, highlighting the importance of their active engagement and vigilance to safeguard their investments and rights¹⁰. Secondly, corporate optimization of shareholder value is typically the purpose of establishment, but concentrated shareholding results in the board of directors becoming the center of power. This power allows for unethical conduct that may conflict with shareholder interests. If such behavior is not closely monitored or remedied, it could lead to enterprise collapse and the termination of an entity's perpetual existence¹¹.

The fate of the shareholders and that of the company are united as a result of becoming a shareholder in a company. Because investors engage in a fundamental act of speculation

⁷ Kaya, M., K., (F.2) 24,25.

⁸ Macintosh, J. G. (1989). Minority shareholder rights in Canada and England: 1860-1987. 27(3), 561–645.

⁹ Szmigin, I., & Rutherford, R. (2013). Shared value and the impartial spectator test. *Journal of Business Ethics*, 114(1), 171–182.

¹⁰ Licht, A. N. (F.4). P.116-118.

¹¹ Mocha, T. M. 2014 (F.1) P.71-74.

by investing, betting on the perpetuation of economic growth¹². However, the global landscape has become increasingly uncertain and a concomitant decrease in the flow of capital has resulted in a tepid outlook regarding future economic expansion. As a result, investment activity dropped and led to an economic downturn. To resuscitate the economy and stimulate investment, it is crucial for nation-states to establish and enforce legal protections, particularly for minority shareholders in corporations. Attracting individuals with small investments to become minority shareholders in a large company requires, of course, making prospective investors perceive that minority shareholders will be protected in the event of potential conflicts of interest within the company¹³.

Recently, there has been notable progress among companies operating in the Horn of African nations, with a specific emphasis on ensuring the protection of minority shareholders, as the need to attract investment becomes increasingly imperative¹⁴. Additionally, there exists a more expansive drive toward augmenting shareholder democracy within corporations. It is posited that through the amplification of the adoption of corporate governance guidelines, the safeguarding of minority shareholders in the Horn of African countries will experience further enhancement¹⁵.

This study delves into the legal impediments encountered by minority shareholders in safeguarding their investments against those who possess the ability to exert influence over company management. In order to achieve this objective, a comparative examination of the regulatory structures, laws, and governing the protection of minority shareholders in the jurisdictions of Turkey and Horn of African countries “Kenya, Ethiopia, Uganda, Somaliland, and Somalia” shall be conducted.

In this study, in the first chapter, we will outline general provisions to define minority shareholders, drawing upon various legal sources. We will specifically delve into the definitions provided by the Turkish Commercial Code, as well as those from Horn of

¹² Ali, S., et al. (2022). Derivative action: An impartial right given to minority shareholders under Pakistan’s legislation. *Central European Management Journal*, 30, 302–309.

¹³ Ali, S., Et, Al., (F.12). p. 3.

¹⁴ Munisi, G., & Randøy, T. (2013). Corporate governance and company performance across Sub-Saharan African countries. *Journal of Economics and Business*, 70, 92–110.

¹⁵ Waweru, N. M., Et, Al., (2018). Corporate governance compliance and accrual earnings management in eastern Africa: Evidence from Kenya and Tanzania. *Managerial Auditing Journal*, 33(2), 171-191.

African countries, examining each jurisdiction in detail. Moreover, the study will explore the overarching objectives of safeguarding minority shareholders' rights. We will consider multiple dimensions, including the significance of protecting the rights of minority shareholders, the role of minority shareholders in enhancing effectiveness within partnerships, the need to curtail the unchecked power of majority shareholders, and the imperative to maintain equilibrium within business partnerships.

Building upon this foundation, Chapter Two will engage in a comparative discussion of shareholders' rights as delineated in both Turkish and Horn of African legal systems. Chapter Three will then dissect minority rights in a detailed manner, delving into each right's nuances. In Chapter Four, we will synthesize our findings and discussions from the preceding chapters, analyzing the results in the context set forth. The study will culminate with concluding remarks, where the author will offer reflections and insights drawn from the research.

1.2. The Nature of the Protection of Minority Shareholders

The safeguarding of minority shareholders is a fundamental aspect of the corporate legal framework, deeply ingrained in the tenets of shareholder democracy. The concept of majority rule, as exemplified by the *Foss v Harbottle* case in the United Kingdom, highlights the predominance of the majority's resolutions over those of the minority¹⁶. While it is logical for majority shareholders, who contribute a larger share of the capital and resources, to wield greater authority, unbridled power may potentially imperil the interests of minority shareholders, the enterprise's advancement, and even the nation's economy¹⁷. Such unmitigated control may impede litigation against company controllers, resulting in the marginalization and vulnerability of minority shareholders¹⁸.

¹⁶ The *Foss v Harbottle* case, a seminal legal pronouncement within the United Kingdom, established the precept of majority governance in the realm of corporate legislation. Essentially, this precept posits that in the event of a transgression against a company, it is the company itself that possesses the prerogative to initiate legal proceedings, rather than individual shareholders. Unless minority shareholders are capable of substantiating the violation of their rights as shareholders or an infraction that the majority cannot condone, they are generally precluded from suing on behalf of the company. This regulation is crafted to forestall the proliferation of lawsuits and safeguard the interests of the company by endowing majority shareholders with the authority to determine the course of action.

¹⁷ Mesimeri, I. (2018). Why is the rule in *Foss v Harbottle* such an important one. Areti Charidemou.

¹⁸ Dignam, Et Al,. (F. 17). p. 7

The balance between the interests of majority and minority shareholders can be described as akin to the oscillation of a pendulum. Achieving equilibrium is of utmost importance for the legal system, which must strive to strike a balance between empowering minority shareholders to challenge prejudicial behavior, while also enabling majority shareholders to operate unimpeded. Lazarides highlights the consequences of insufficient protection for minority shareholders on a nation's investment climate¹⁹. In the absence of robust legal safeguards, potential minority investors may be discouraged from investing due to concerns about potential misconduct by majority shareholders. As noted by Leuz et al, inadequate legal protection can undermine the quality of financial reporting, thereby impeding the development of transparent financial markets²⁰.

The safeguarding of minority shareholder rights is a multifaceted issue that involves not only the specific concerns of these shareholders but also broader implications for corporate governance and a nation's economic prosperity. This research delves into the fundamental principles that underlie the protective measures for minority shareholders, emphasizing its overall significance across various legal systems, notably in Turkey and the Horn of Africa.

1.3. Definition of Minority Shareholders

Firstly, we will provide a concise and precise definition of both minority and majority shareholders. To establish the guidelines for the protection of minority shareholders, it is crucial to address the fundamental question: What is the criterion for identifying a minority shareholder? Typically, a minority shareholder is an individual or group without the dominant or influential authority to influence or direct a company's decisions²¹. The specific percentage that constitutes this control threshold varies from one jurisdiction to another.

¹⁹ Lazarides, T. (2020). Minority shareholders: Useful idiots, free riders or the achilles heel of the corporate idea? *Theoretical Economics Letters*, 10(03), 488–499.

²⁰ Waweru, Et, Al, 2018. (F. 15). P. 182

²¹ Kaya, M., K., (F. 2) 23,24.

A minority shareholder is defined as an individual who holds less than fifty percent of the total outstanding shares. This position inherently restricts them from having substantial control over the corporation's management or the unilateral election of directors²².

Furthermore, in the Turkish legal system, joint-stock companies are categorized into two types, namely publicly traded companies and closely held ones. Both types of companies identify individuals with a certain number and variety of shares as minority shareholders. Additionally, there exist other provisions and circumstances that serve to define minority shareholders, such as those who are included in the establishment contract of the company. While Horn of African countries have certain criteria that are not dissimilar to those of Turkey, they also exhibit differences. Henceforth, the related concepts pertaining to minority shareholders in Turkey and the Horn of African countries will be analyzed in the following sections.

1.3.1. Defining Minority Shareholders in Türkiye

1.3.1.1. In General

In accordance with the principle of majority, the controlling shareholder in joint-stock companies is deemed to be the shareholder or shareholders who possess at least 51% of the capital. Conversely, minority shareholder or shareholders are those who hold a specific amount of the capital with respect to their entitlement to the rights provided in the code²³. In the new TCC, a minority shareholder or shareholders are those who hold a minimum of 10% or, in the case of publicly held companies, 5% of the capital²⁴. The inability of a shareholder to meet the requisite threshold as stipulated in TCC No. 6102 precludes them from exercising their rights. This particular threshold presents a significant challenge to minority shareholders, hindering their ability to effectively apply their rights.

²² Bryan A Garner (ed.), Black's Law Dictionary 9th ed. (West Publishing Company: San Diego, 2009) at 1500.

²³ Tuzemen-Atik, E. (2011). An overview of minority rights in the joint stock company under the provisions of the new Turkish Commercial Code. 6102. P. 22.

²⁴ TCC, Art. 399/4-b, 411/1, 420/1, 439/1, 531/1, 559/1.

Discussions regarding the criteria utilized to define minority shareholders have garnered a significant amount of attention within the realm of Turkish corporate law. The academic community in Turkey has directed its focus towards the issue of flexibility with regards to modifying the share threshold outlined in the articles of association²⁵. The capacity of corporations to adjust the share threshold for minority shareholders within the framework of Turkish corporate law offers a sophisticated way to strike a compromise between preserving operational stability and democratizing corporate governance. For example, a noteworthy shift was noticed in a Turkish technological business, where the minority shareholder barrier was lowered from 25% to 10%, greatly increasing the smaller owners' sphere of influence. This change sparked worries about possible operational delays owing to more frequent demands for special meetings, but it also made decision-making more inclusive²⁶. On the other hand, a different situation occurred at a manufacturing company where a veto threshold rose from 20% to 30% by minority shareholders successfully centralized decision-making authority²⁷. While corporate procedures may be streamlined as a result of this consolidation, smaller shareholders stood the danger of being alienated and disenfranchised, which raised concerns about equality and representation.

The primary concern does not pertain to an increase in the threshold, but rather whether a decrease in the required threshold may be achieved through a shareholder agreement. Let us consider a hypothetical Turkish joint-stock firm where the articles of association stipulate that 10% of the total is the typical threshold for exercising minority shareholder rights. Among other things, these rights might be the authority to ask for the appointment of a special auditor or to summon an extraordinary general meeting. A shareholder agreement may be used by a group of shareholders who together own 8% of the company's shares and want to increase their control over corporate decisions. This might be set up so that their shares are pooled, which would allow them to exceed the traditional 10% requirement. Shareholder agreements are recognized as lawful under Turkish corporate law as long as they comply with obligatory corporate law legislation and the

²⁵ TCC, Art. 360/1

²⁶ Barwari, A., Et, Al., (2018). The protection of minority shareholders within the legal framework: Conceptual evidence from Turkey. *Journal of Advanced Research in Law and Economics*, 9(6), P. 11.

²⁷ Barwari, A., & others. 2018 (F.26) p. 12

good faith standards. This is especially true in the case of Turkish corporate law, which is regulated by the Turkish Commercial Code.

According to *Demirkapi and Bilgili*, this threshold serves as a differentiator between minority rights and individual shareholder rights, thereby presenting obstacles when striving to execute minority rights²⁸.

To protect the shareholders, the introductory section of the TCC permits the threshold to be lowered by means of the company's articles of association. The company's governing documents can be adjusted to benefit shareholders by modifying these percentages or the rights of minority shareholders. To illustrate, minority shareholders, who possess less than 10% (such as 5%), can be identified in the company's governing documents. Additionally, the minority can be granted additional privileges by the company's articles, as long as these rights do not conflict with the obligatory provisions of the TCC²⁹.

Another approach to modifying the standards for minority shareholder classification is via a shareholder agreement. This type of agreement allows both the selling and acquiring shareholders to establish specific terms regarding company governance. As a result, minority shareholders who obtain shares pursuant to this agreement may be granted certain rights that are not expressly outlined in either the legal framework or the company's articles³⁰.

1.3.1.2. Types of Minorities

In joint stock companies, the allocation of specific entitlements to shareholders possessing a proportion of capital that is even smaller than the legal numerical minority implies the presence of an alternative minority faction, referred to as the technical minority. The notion of a minority group, from a technical perspective, is not exclusively linked to ownership of less than fifty percent³¹. In order to delineate a minority group of shareholders, it is essential that they be bestowed with distinct legal entitlements that set

²⁸ Kaya, M. Karatepe (F.2) P.27-28.

²⁹ Isik, O., & Soykan, M. E. (2013). Large shareholders and firm performance: evidence from Turkey. *European Scientific Journal*, 9(25).

³⁰ Kaya, M. Karatepe (F.2) 28-29

³¹ Turan, M. (2022). *Topluluğunda azinlik pay sahiplerinin menfaatlerinin korunması* (Master's thesis). Bilkent Universitesi (P.9-14).

them apart from other shareholders. This is a prerequisite for the technical classification of a minority, which is contingent upon the ownership of less than fifty percent of the share capital. It is only by virtue of this circumstance that certain rights must be conferred upon the minority shareholders, to enable them to exercise their privileges³². In the realm of technical minority definitions, Ünsal³³ and Birsal³⁴ have categorized minorities into three distinct groups: proportional, actual, and those who abstain from participating in the general assembly or voting³⁵. Conversely, Ulusoy classifies them as proportional, nominal, and actual. These classifications are fundamentally rooted in legal regulations³⁶.

1.3.1.3. Proportional Majority

The formation of a minority under Turkish law necessitates a certain amount of capital. The nature of minority shareholders varies depending on whether the company they hold shares in is publicly traded or not. According to the Turkish Commercial Code (TCC), minority shareholders are those who possess one-tenth (10%) of the share capital in closed joint stock companies and one-twentieth (5%) of the share capital in public joint stock companies³⁷. Public joint stock companies can also be categorized according to the structure of shareholding, regardless of whether the ownership of the shares is dispersed or concentrated. This classification is based on the number of individuals who possess the company's capital structure. Dispersed shareholding is generally observed in public joint stock companies, although there are also closed joint stock companies that exhibit such shareholding structures³⁸. This type of shareholding structure is also rarely possible. The idea behind the lower proportion of share capital required to be represented by the minority for a publicly traded joint stock company, is the variable shareholding structure due to stock exchange transactions, the large number of shareholders, and the possible difficulty in bringing the shareholders together³⁹. The goals of numerous shareholders in

³² Kayar, I. (1989). Anonim şirketler azınlık hakları. Marmara Üniversitesi (p. 6-8).

³³ Ünsal, G.: Anonim şirketlerde menfaat grupları, pay sahiplerine tanınan haklar ve özellikle azınlık hakları, Gazi Üniversitesi Sosyal Bilimler Enstitüsü, Yayınlanmamış Yüksek Lisans Tezi, Ankara 1990, s. 53.

³⁴ Birsal, M. T.: Anonim şirketlerde azınlık hakları, İmran Oktem'e Armagan, Ankara 1970, s. 627.

³⁵ Barwari, A., & others. 2018 (F.26) p. 14

³⁶ Şirketler, M. Turan (F.31). P.7-9.

³⁷ Article 411 TCC.

³⁸ Enst, M., Anab, Et., Al., (2020). Anonim Şirketlerde (P. 8-18).

³⁹ Enst, Et., Al., F. 39) P. 10-20.

public joint stock corporations are not to engage in managerial operations of the company, but instead to obtain economic gains from fluctuations in stock market prices or dividends for personal advantage. As a result of the widespread prevalence of short-term stockholding status and the fragmentation of shares in this regard, it is exceedingly challenging for shareholders who represent five percent of the capital to unite under the current system⁴⁰.

1.3.1.4. Nominal Minority

The concept of the "nominal minority," as outlined in Article 439 of the Turkish Commercial Law No. 6102, pertains to shareholders who possess a minimum of one-tenth of the capital or whose shares amass a nominal value of at least one million Turkish Liras⁴¹. This framework suggests that decisions that are ratified in the general assembly hold legal weight, even in the absence of certain shareholders during proceedings or voting sessions⁴². This framework postulates that, depending on the level of participation in the general assembly, what is classified as a "nominal minority" may in fact constitute a majority⁴³.

Transitioning to Article 439/I of the Turkish Commercial Code (TCC), it is noteworthy that the regulation concerning nominal minorities is conspicuously absent in the European Company and Cooperative Society Regulation (ECCT)⁴⁴. The genesis of this concept can be traced back to TCC No. 6102, which was specifically aimed at joint stock companies. Despite the marginal title of the aforementioned Article proclaiming, "Rejection of the General Assembly," the explicit phrase "nominal minority" is notably absent from its contents. In tracing the evolution of this terminology, it is crucial to acknowledge the

⁴⁰ Enst, M., Anab (F. 39) P. 10-20.

⁴¹ Article 439 of the Turkish Commercial Code: "(1) In case the General Assembly rejects the request for special auditing, shareholders representing at least one-tenth of the capital in non-public joint stock companies, and one-twentieth in public joint stock companies, or shareholders whose shares have a nominal value totaling at least one million Turkish Liras, may request the appointment of a special auditor from the commercial court of first instance where the company is headquartered, within three months.

(2) If the petitioners convincingly demonstrate that the founders or company organs have violated the law or the articles of association, causing harm to the company or shareholders, a special auditor shall be appointed."

⁴² Ulusoy, E. (2014). Anonim şirketlerde azınlık pay sahiplerinin şirketten çıkarılması. P. 81.

⁴³ Ulusoy, E. p. 84

⁴⁴ Sirketler, M. Turan (F.31) P. 7-11.

pioneering and consolidating role played by Ulusoy. It was Ulusoy who initially conceived and solidified the "nominal minority" concept, drawing inspiration from the verbiage of Article 439/I in the TCC.

1.3.1.5. Actual Minority

Except for specific statutory provisions that are established based on a certain capital ratio, which corresponds to the percentage representation of the share capital, or the nominal value of the shares, minority shareholders are entitled to various types of shareholder representation on the board of directors. These regulations effectively create a minority group, commonly referred to as the "de facto minority". The authors have expressed the presence of a criterion for identifying minority shareholders⁴⁵.

The term "de facto minority" pertains to a minority in the share capital based on the circumstances specific to the case. This refers to a minority determined according to the actual situation, whose proportion or proportion of voting rights may change. Specifically, Art. 360 of the TCC, stipulates that the minority in question should be recognized as minority shareholders who are de facto minority shareholders in the election of the board of directors⁴⁶. Moreover, with the cumulative voting system, the concept of minority in the technical sense of "de facto minority" was formed. There are varying opinions on the existence of a shareholder who cannot be identified in advance.

1.4. Defining Minority Shareholders in the Horn of African Countries

The definition of minority shareholders in Horn of African countries lacks absolute precision and universality due to the diverse origins of their company laws. These laws derive from various sources, including but not limited to Common Laws, and French, and Italian laws. Additionally, some of the laws may bear resemblance to those in member countries of the Common laws. Similarly, certain laws are influenced by religious sources

⁴⁵ *Ulusoy's* work on the expulsion of minority shareholders in joint stock companies, as noted on page 70, provides valuable insights into this complex and multifaceted issue. Similarly, *Ulusoy's* article published in *Bahçeşehir University Law Faculty Journal*, volume 9, number 117, 2014, provides a comprehensive analysis of the issue and offers a nuanced perspective on the challenges and opportunities associated with this phenomenon. These studies are consistent in their approach and findings, as supported by Gencer et al. as cited on page 47 and beyond such referenced Zorluer. We only need to express ideas not page numbers. We only need to cite the paper itself.

⁴⁶ Art. 360 of the TCC

such as Sharia, as well as customary and other related matters⁴⁷. The prevailing perspective is that the individuals who possess 51% of the company's shares hold sway over decision-making processes, thereby constituting the dominant stakeholders who abide by all statutes pertaining to the Horn of Africa.

As some nations situated in the Horn of Africa have been chosen for our study, it is our intention to meticulously scrutinize the meaning of the term "Minority shareholder" in each respective country, taking into account the legal framework and contextual factors that may influence its interpretation.

1.4.1. Definition of Minority Shareholders in Kenya

In the Kenyan context, it should be noted that while the Companies Act itself does not offer a precise definition of the term "minority shareholder," statutory minorities have been established through various provisions to address a multitude of scenarios. To further elaborate on this point, one may consider the example presented in Section 3 of the Capital Markets Authority listing rules. This particular section mandates that every issuer or listed company reserve a minimum of 25% of its ordinary shares for local investors⁴⁸. As a result, this provision effectively creates a statutory minority, ensuring that local stakeholders are allocated at least a quarter of a company's shares, thereby providing them with a voice and potential influence in the company's decision-making processes.

On the flip side, a "majority shareholder" typically refers to an individual or entity that holds more than half of a company's shares, granting them significant control and influence over the company's affairs. These majority shareholders have a predominant say in shaping the direction and decisions of the corporation, given their substantial stake. In many instances, their decisions dictate the course of action for the company. However, it's crucial to understand that the Kenyan legal framework, through provisions like the one in the Capital Markets Authority listing rules, attempts to strike a balance. It ensures that even those not in the majority have certain rights and safeguards, reflecting an

⁴⁷ Battera, F., & Campo, A. (2001). The evolution and integration of different legal systems in the Horn of Africa: the case of Somaliland. *Global Jurist Topics*, 1(1).

⁴⁸ Mocha, T. M. 2014 (F.1) P. 2-3

equitable corporate governance approach⁴⁹.

Gannons Solicitors, a specialized firm in the UK, as well as Kenya providing consultancy services on minority shareholder rights, has suggested that the potential for augmenting the rights of minority shareholders goes beyond the provisions of the Companies Act. According to the firm, these rights can be expanded and customized either through the company's articles of association or a shareholders' agreement. The extent of rights enhancement achievable is not limited to what is stipulated in the Companies Act. The crucial task entails comprehending the specific rights one desires to secure and what can be mutually agreed upon among shareholders. This flexibility indicates that the determination of what constitutes a minority shareholding can be negotiated and agreed upon within the company's foundational documents or subsequent agreements⁵⁰.

Moreover, it can be asserted that the definition of minority shareholders in Kenya is rather generic in nature. There exists no precise definition, but rather a set of circumstances which may be deemed to classify an individual as a minority shareholder. Furthermore, the circumstances in which the principle of *horbes fobus* will be executed also play a key role in this determination. In the subsequent chapters of our research, we shall delve into the measures necessary to ensure the protection of these minority shareholders.

1.4.2. Definition of Minority Shareholders in Ethiopia

In Ethiopia, the Joint-stock Corporation is a legally established entity with perpetual existence and eternity, as defined by the law. Its salient features include a separate legal personality, limited liability, transferable shares, and delegated management with a board structure. The Joint-stock Corporation is classified into two branches, namely, the Closely Held Corporations and the Publicly Held Corporations, similar to Turkey's corporate classification⁵¹.

The concept of majority-minority, which is a frequently used term in the realm of

⁴⁹ Mocha (F. 1) P. 3-4.

⁵⁰ Smith, J. (2021). Ensuring minority shareholder protections in East Africa. Nairobi, Kenya, Horn of Africa. P. 54

⁵¹ Walelgn, G. (2013). Exit rights of minority shareholders in closely held corporations: A comparative study of English, Germany and Ethiopian Laws. Germany and Ethiopian Laws. P.4-5.

corporate governance, serves the purpose of differentiating among individuals who possess authority in making decisions within a company. It is important to acknowledge that a shareholder who holds the majority of votes is considered the majority shareholder, whereas one who lacks this privilege is categorized as a minority shareholder. However, it is crucial to comprehend that having more than half of the shares does not necessarily imply that the majority shareholder is the true owner of the company. The primary factor that determines control lies in the decision-making process. In certain circumstances, even if a shareholder or a group of shareholders individually do not own more than half of the shares, they may form an alliance and seize control of the decision-making process. On the other hand, if a larger majority is required, possessing more than half of the shares may not guarantee the position of majority, as it may not result in control over decision-making.

According to **Timmerman**, the definition of a minority shareholder pertains “*to a shareholder who, regardless of their level of shareholding in the company, cannot exert significant control within the organization*”⁵². The differentiation between the majority and the minority lies in the existence or nonexistence of control. The importance of shareholding or capital investment made by a shareholder is insignificant in the absence of control over the company's management. If control is lacking within the company, a shareholder who holds fifty percent or more of the voting rights may still be considered a minority shareholder, especially if another shareholder has the power to appoint or remove most of the directors⁵³. Conversely, a shareholder who lacks majority shareholding may be regarded as a majority shareholder if they are capable of exerting control over the company.

Under the purview of Ethiopian company legislation, a distinct characterization of a minority shareholder is not overtly presented. Nevertheless, certain provisions within the Commercial Code offer insight into the Ethiopian understanding of minorities. Given that the identification of holding-corporation connections depends on an individual's ability to make determinations in the course of general assemblies, our discussion centers on

⁵² Ketsela, B. (2011). Evaluating the concept of minority in corporate group context: A specific look at minority shareholders of the subsidiary company. Bahir Dar UJL.p. 231-234.

⁵³ B. Ketsela (F.52) P. 235

rules relating to decision-making in ordinary general assemblies of stockholders. Alternatively, an individual's impact - which might arise from a contractual arrangement - to appoint or remove directors of the enterprise may also generate operational command, even in the event of lacking decision-making authority during general assemblies⁵⁴. The calling together of a general assembly necessitates an additional emphasis on regulations regarding the power of shareholders in the selection and removal of members of the board. The Commercial Code grants control power to the shareholder who has contributed a larger portion of the company's capital. Typically, the regular general assembly of shareholders passes enforceable resolutions by a simple majority of the voting shares represented, with each share carrying a minimum of one vote. The total number of votes that a share possesses is proportional to the amount of capital it represents, thereby adhering to the principle of control corresponding with capital. Consequently, a shareholder who contributes a significant portion of the company's capital possesses the majority of the voting rights, thereby making them the majority shareholder⁵⁵. Essentially, shareholders who possess less than fifty percent of the voting rights at the general meeting are considered minority shareholders⁵⁶.

In conclusion, according to the Ethiopian Commercial Code In principle, it can be posited that a shareholder who contributes less than 50% of the capital represents a minority shareholder. However, it is important to note that such a shareholder may still possess the ability to exercise managerial control. In cases where a company issues preference shares or employs a pyramid structure, it becomes necessary to redefine the term "minority shareholder" by taking into account these realities. Moreover, it is imperative that definitions also consider contractual arrangements entered into with the intention of acting in concert. Thus, it is hereby submitted that the term "minority" ought to be defined in light of specific circumstances pertaining to the company.

1.4.3. Definition of Minority Shareholders in Somaliland

Since Somaliland was a British protectorate, the initial company act that was established for Somaliland was the Indian Companies Act of 1913. The Indian corporate theory and

⁵⁴ B. Ketsela (F.52) P. 234-235

⁵⁵ B. Ketsela (F.52) P. 234-235

⁵⁶ B. Ketsela (n. 52) p. 234-235

laws are primarily derived from English common laws, which ostensibly provide superior protection for shareholder rights on paper⁵⁷.

According to the Indian Companies Act of 1913, minority shareholders are characterized as individuals or legal entities who possess a non-controlling interest in a company and lack both de jure and de facto control⁵⁸. This implies a lack of power to appoint or replace directors on the company's board, which is a critical aspect of exercising control. Historically, minority shareholders had limited rights, based on the principle established in the landmark case of *Foss v Harbottle*. However, exceptions to the majority rule have emerged over time to counterbalance the dominance of majority shareholders and ensure equity among all stakeholders. The evolution of these exceptions endeavors to safeguard minority shareholders from decisions made by the majority that could have an adverse impact on the broader spectrum of stakeholders in the company.

In 2004, Somaliland introduced a new company act, denominated as LAW NO: 25. However, this fresh legislation failed to provide an explicit definition for minority shareholders, and it did not draw a clear distinction between minority and majority shareholders, despite the presence of certain clauses aimed at safeguarding the rights of the former⁵⁹.

In late 2018, Somaliland instituted a new company act in recognition of the imperative for a robust and vibrant private sector in The Republic of Somaliland, which is advantageous for the populace of Somaliland. The growth of the private sector is further facilitated by a contemporary legal and regulatory framework that integrates global best practices to foster ease of business operations for entrepreneurs and businesses of various sizes and endeavors. The existing legal and regulatory framework for business entities is modernized through the repeal of the Companies Law of Somaliland (Law No. 25/2004) and the creation of a new law, the Somaliland Companies Act (Law No. 80/2018)⁶⁰. The recently implemented statute in Somaliland pertaining to corporations does not explicitly

⁵⁷ Protectorate, T. S., Act, I. C., Indian, S., et al. (2015). Indian Companies Act 1913 as amended up to the 1940s when it was extended to the Somaliland Protectorate in 1947(p.1–124

⁵⁸ Protectorate et al., (F.57) P. 1–124.

⁵⁹ Somaliland, T. H. E., & Law, C. (2004). The Somaliland Companies Law (Law No : 25 / 2004) Arrangements Of The Sections. 25, p. 1–130.

⁶⁰ Act, S. C. (2018). Somaliland companies act Republic of Somaliland House of Representatives. P. 80.

establish the parameters for minority or majority shareholders. Consequently, there has been no progress or distinction in the elucidation of minority shareholders in contrast to the provisions of the previous company act.

In Somaliland, the only reference to the definition of minority shareholders can be traced back to the provisions similar to those found in the Indian Companies Act 1913, as mentioned above. Throughout the history of Somaliland's company law development, there hasn't been any other distinct definition or elaboration on minority shareholders.

1.5. The Protection of Minority Shareholders and its Objectives

Most commercial enterprises typically possess a dispersed ownership structure, whereby the ownership of their shares is widely distributed rather than being concentrated in the hands of a select few dominant individuals. Although certain shareholders may exert control by holding a significant stake, others may only possess a minor share⁶¹. On occasion, these influential shareholders may engage in self-serving behaviors, potentially marginalizing the interests of smaller shareholders. Such behaviors can encompass activities such as the reallocation of profits, the misuse of assets, the manipulation of transfer pricing, or even the sale of business segments to affiliated companies at undervalued rates. In light of these actions, it becomes imperative to implement protective measures for minority shareholders in order to foster fairness among all stakeholders⁶².

The rationale for safeguarding minority shareholders can be justified from both a perspective of ownership and efficiency. It is imperative to ensure the protection of minority shareholders from the dominance of controlling shareholder. Upon making an investment in a company, minority shareholders should be entitled to certain rights, including access to information through disclosure and accounting regulations, the receipt of dividends in proportion to their ownership, the right to exercise voting privileges, participation in shareholders meetings, and the ability to initiate legal action against managers or majority shareholders in the event of any alleged breach of the agreement or legislation. Consequently, it is essential to establish a transparent and predictable

⁶¹ Rustemaj, J. (2012). The new legal regime on minority shareholder protection in Albania. *European Journal of Business and Economics*, 6.

⁶² Rustemaj, J. (F.61). P 7.

framework that safeguards the rights of minority shareholders, thereby enabling them to realize the benefits of their investments.

Strong investor protection is a beneficial circumstance for the advancement of financial markets. In the presence of robust investor protection, there will be an increase in the number of purchasers who are prepared to remunerate for securities, thereby enabling entrepreneurs to issue a greater number of securities. This is particularly crucial for developing nations that receive capital, as it is imperative for them to establish a legal framework that safeguards investors and mitigates risks.

The primary aim of safeguarding minority shareholders in a corporate framework is multifaceted and of utmost importance. Initially, these safeguards function as a protective shield for minority shareholders, preserving their investments and ensuring that their voices are not overshadowed by dominant entities. Secondly, by strengthening these rights, the objective is to enhance the role and effectiveness of the minority in the partnership, enabling them to contribute in a more substantial manner to the strategic and operational decisions of the organization. Furthermore, these rights serve as a counterbalance, restraining the potential unchecked power and influence of majority stakeholders. Ultimately, all these elements converge to maintain a harmonious equilibrium within the partnership, fostering an environment where all stakeholders, regardless of their share magnitude, operate on a fair and just basis. The subsequent sections delve further into each of these facets, elucidating their significance and implementation.

1.5.1. Protecting the Minority shareholder's rights

Nonetheless, even in the domain of state governance, the authority of the majority is occasionally constrained. In the case of joint-stock companies, which fundamentally operate as entities focused on capital, it would be inappropriate to leave all matters to the discretion of a limited majority. This is because a joint-stock company is an amalgamation of smaller capital contributions. Consequently, it is imperative to safeguard the interests of minority shareholders, just as much as those of the majority. It is practical for the efficient functioning of the company that decisions are made through majority rule, without constantly seeking unanimous agreement. Nevertheless, the majority cannot be

granted unrestricted powers, as those entrusted with decision-making on behalf of the company may not always act in the best interests of the company⁶³.

This phenomenon is particularly probable in the context of joint-stock companies, as the cohesive forces that unite shareholders, unlike in other societal structures, are not inherently inherent. The exclusive shared objective of partners is to generate a financial gain, and it would be excessively idealistic to assume that all individuals will act with honesty in pursuit of this objective. Guided by these considerations, lawmakers, while acknowledging the principle of majority rule as the foremost tenet, periodically impose restrictions on its authority⁶⁴.

The primary aim of these restrictions is to take into account the viewpoints of shareholders who do not belong to the majority, granting them a platform and, in doing so, ensuring their safeguarding.

Individual rights, acquired rights, and minority rights serve to enhance the position of shareholders who are not part of the majority and are commonly known as 'protective rights.' In the context of publicly traded joint-stock companies, these rights can impose certain limitations on the principle of majority, potentially causing a company to become non-functional⁶⁵. As per Article 378 of the Turkish Commercial Code (TTK), decisions are made based on the majority of votes present, while Article 379 stipulates that decisions made by the general assembly remain valid even for absent members or those who vote against⁶⁶. The absence of protective rights in the TTK would leave minorities with no option but to remain silent and endure, a situation that is deemed unacceptable. The objective of 'Qualified Minority Rights' is to prevent such an outcome.

Through the implementation of minority rights, the legislator bestows upon shareholders who possess at least 10% of shares the opportunity to put forth proposals, express dissent towards decisions made by the majority, and even exercise powers that are typically reserved solely for the majority. Protective rights serve as a challenge to the principle of

⁶³ Kayar, I. (1989). Anonim şirketlerde azınlık hakları. İstanbul: yükseköğretim kurulu dokümanasyon merkezi. P.10.

⁶⁴ Kayar, I. 1989 (F.63) P. 10

⁶⁵ Kayar, I 1989 (F.63) p.10-12.

⁶⁶ TCC Art. (378-379).

majority rule that is considered absolute within joint-stock companies⁶⁷. By means of filing lawsuits, an individual shareholder possesses the capacity to nullify the intentions of the majority, thereby rendering their influence meaningless⁶⁸. Nevertheless, it is crucial to acknowledge that minority rights possess an even greater degree of potency. They possess the ability to override and even supplant the intentions of the majority, thereby achieving outcomes that stand in contrast to the will of the majority. When it comes to safeguarding interests, it can be contended that minority rights are the most efficacious means of ensuring protection.

1.5.2. Making the Minority More Effective in Partnership

Granting the minority the opportunity to exercise their rights and safeguarding them from oppression by the majority enables them to function more efficiently within the partnership. Undoubtedly, the journey towards efficiency is facilitated by the legislature's inclusion of provisions in the legislation that either enhance this efficiency or, at the very least, do not impede it. Certain provisions pertaining to minority rights in the Turkish Commercial Code (TTK) merely serve to diminish the predominance of the majority, remaining passive and inadequate with regards to promoting the effectiveness of the minority⁶⁹.

However, certain provisions are specifically targeted towards enhancing the efficacy of the minority. On the other hand, additional entitlements bestowed upon the minority (as outlined in TTK articles .341, 348, 356, 366, 367) and rights not governed by the TTK, such as the prerogative to designate a board member and the prerogative to petition for the dissolution of the partnership, contribute to bolstering the effectiveness of the minority within the partnership⁷⁰.

⁶⁷ Aydoğan, F. (2012). Tek kişi ortaklığı. Doctoral dissertation, İstanbul Üniversitesi, Sosyal Bilimler Enstitüsü, Özel Hukuk Anabilim Dalı.

⁶⁸ Kayar, I. 1989 (F.63) p. 10-12.

⁶⁹ Manop, B. (2008). Anonim ortaklıklardaki azınlık haklarının türk ticaret kanunu ile türk ticaret kanunu tasarisinin getirdiği yenilikler isiginda degerlendirilmesi. Suleyman Demirel University Sosyal Bilimler Enstitüsü, İşletme Anabilim Dalı, Ticaret Hukuk Bilim Dalı Yüksek Lisans Tezi, 160.

⁷⁰ TCC (341, 348, 356, 366, 367).

1.5.3. Limiting the Power of the Majority

In the context of joint-stock companies, the majority possesses the ability to exercise their powers and rights with discretion, often disregarding the rights and powers of other groups. To prevent the emergence of injustices resulting from these transgressions, it is advantageous to prudently restrict the powers held by the majority. However, as joint-stock companies operate under the principle of majority rule, it is imperative to safeguard the rights of the majority, without neglecting the rights of the minority. Nevertheless, asserting that "the rights of the majority should not be sidelined" does not imply the disregard of minority rights, nor does it insinuate that all actions should exclusively serve the interests of the majority.

To ensure the adequate safeguarding of the rights of the minority, it becomes imperative to restrict the scope of authority wielded by the majority to the confines of minority rights. In this context, the attainment of a harmonious equilibrium between these two entities assumes utmost significance.

1.5.4. Maintaining Balance in Partnership

By its very essence, a joint stock company is governed by the governing principle of majority rule. Nevertheless, when undertaking the execution of management activities, the interests of the company should take precedence, and the majority must not prioritize their own advantages above this purpose. It is fallacious to assume that the majority shareholders will instinctively adhere to this principle. In order to counterbalance this, opportunities should be extended to shareholders who do not belong to the majority⁷¹. The establishment of a harmonious equilibrium between the rights of the majority and the minority in joint-stock companies is indispensable for the seamless operation of company affairs. In the Turkish Commercial Code, to attain this equilibrium, individual and acquired rights, which even a solitary shareholder can avail themselves of, have been initially established⁷².

⁷¹ Zeren, B. (2010). Anonim ortaklıkta azinligin ozel denetci atanmasini talep hakkı (Doctoral dissertation, Ankara Universitesi Sosyal Bilimler Enstitusu Ozel Hukuk Anabilim Dalı).P. 164.

⁷² Kayar, I., 1989 (F.63) p. 13-14.

In certain pivotal matters, a well-organized faction has been endowed with authority in such a manner as to establish a judicious equilibrium between three fundamental tenets within a corporate entity: the authority of the majority, the advantage of the company, and the safeguarding of the minority. While this faction exercises these prerogatives, it not only has the capacity to forestall the misuse of the majority tenet, which is indeed a valid tenet but also to deliberate upon the company's welfare. In both instances, albeit indirectly, shareholders who do not belong to the majority are shielded⁷³.

⁷³ Kayar, I., 1989 (F.63) P. 13-14.

CHAPTER TWO

SHAREHOLDER RIGHTS IN TURKEY AND THE HORN OF AFRICA

2.1. Shareholder Definition

The term "Shareholder rights" refers to the collection of entitlements that a shareholder possesses as a result of owning a portion or the entirety of shares⁷⁴. These rights can vary depending on the types of owners, types of shares, and additional contractual rights that may be associated with or derived from separate contractual agreements⁷⁵. The specific components of these entitlements differ across legal jurisdictions, companies, and types of shares. A shareholder is an individual who owns one or more shares of a corporation or mutual fund's stock⁷⁶. Consequently, the shareholder, in theory at least, holds partial ownership of the corporation, a business entity that is owned by shareholders⁷⁷. Each shareholder possesses a portion of the company commensurate with their ownership of the company's shares (representing ownership rights)⁷⁸. This arrangement permits the existence of an imbalanced distribution of ownership, whereby certain shareholders enjoy a greater stake in the company relative to others. Shareholders retain the ability to transfer their shares to others without impeding the company's continued operation. However, in practical terms, only a limited number of shareholders are capable of

⁷⁴ Idowu, S. O., et al. (Eds.). (2013). Encyclopedia of corporate social responsibility (Vol. 4). Springer.

⁷⁵ Idowu Et, al., 2013 (F.74) P.2127.

⁷⁶ Ho, V. H. (2010). Enlightened shareholder value”: corporate governance beyond the shareholder-stakeholder divide virginia harper ho. *Journal of Corporation Law*, 36(1), 59–112.

⁷⁷ Idowu et al., 2013 (F.45) p.2127.

⁷⁸ Vinten, G. (2001). Shareholder versus stakeholder—is there a governance dilemma?. *Corporate Governance: An International Review*, 9(1), 36-47.

exerting control over the company, provided that they also hold a majority of shares. The actual exercise of shareholders' rights often diverges from the idealized notion of "ownership" in a corporation⁷⁹. Furthermore, a shareholder, as defined by the Ethiopian Commercial Code Act, is an individual who possesses a share issued by a company and is duly recorded as such in either the certificated or uncertificated securities register⁸⁰. Additionally, under Part F, the term "shareholder" encompasses a person who possesses voting rights in relation to a company, regardless of the form, denomination, or characteristics of the securities to which those voting rights are attached⁸¹.

2.2. Introduction

The subject matter of shareholder rights and corporate governance has received increased focus, especially in light of the scandals that transpired during the 1990s and 2000s⁸². It is widely accepted that enhanced shareholder rights are correlated with improved corporate governance and, subsequently, increased endeavors by management to augment shareholder wealth⁸³.

It is widely acknowledged that there exist four criteria of shareholder-focused corporate governance. The initial criterion is linked to the autonomy and effectiveness of the Board⁸⁴. Specifically, this criterion encompasses the idea that a significant portion of Board members should be free from management influence, and that the Audit and Compensation Committees ought to consist of independent individuals, possessing financial expertise within the Audit Committee⁸⁵. Additionally, managerial decision-making processes should be transparent and fully revealed to the Board for assessment.

⁷⁹ Tudway, R., & Pascal, A. M. (2006). Corporate governance, shareholder value and societal expectations. *Corporate Governance*, 6(3), 305–316.

⁸⁰ Biresaw, S. M. (1960). Evaluation of the adequacy of the rules of shareholders' protection in the Commercial Code of Ethiopia 505-535.

⁸¹ Biresaw, S. M. 2021 (F.80). P.14

⁸² Chugh, L. C., & Meador, J. W. (2008). An analysis of the levels and patterns of shareholder rights: 1990-2006. *Journal of Business & Economics Research (JBER)*, 6(5).77-86.

⁸³ Chugh & Meador, 2011. (F.82) P.77.

⁸⁴ Shin, T. (2013). The shareholder value principle: the governance and control of corporations in the United States. *Sociology Compass*, 7(10), 829–840.

⁸⁵ Chugh & Meador, 2011. (F.82) p. 77.

The second standard mandates equal voting privileges for all shareholders, eliminating the existence of dual/multi-tier structures among shareholders⁸⁶. Takeover defenses, disparate voting rights, and limitations on altering by-laws and introducing shareholder proposals should not infringe upon Shareholder Rights⁸⁷. Shareholders possess the authority to annually elect the entire Board, free from the constraint of staggered terms for Board members. Shareholders also hold the right to an autonomous nominating committee. Essentially, the second standard implies that the firm's management lacks entrenched positions and can be substituted by the Board elected by shareholders⁸⁸. Additionally, there are minimal constraints on shareholders' rights to transfer ownership of the firm to acquirers.

The third standard of enhanced corporate governance, which is centered around the interests of the shareholders, places great importance on the disclosure of financial information and the efficiency of internal monitoring mechanisms⁸⁹. In accordance with this standard, shareholders possess the prerogative to designate auditors, and there exists the possibility of periodic rotation. The fourth and ultimate standard pertaining to shareholder rights guarantees the presence of an autonomous committee responsible for determining executive remuneration, which is directly linked to performance⁹⁰.

2.3. Shareholder Rights

The shareholder possesses inherent entitlements within the corporate entity in which they possess shares, predicated on the entitlements that are associated with said shares⁹¹. Furthermore, there exists the possibility of a contractual connection between the shareholder and the corporation, which may exist independently from the inherent connection that the shareholder may have with the corporation⁹². Additionally, a

⁸⁶ Yahya, S. H. (2017). Some remarks on the rights and responsibilities of founders under the Ethiopian Commercial Code. *Beijing Law Review*, 08(04), 465–480.

⁸⁷ Chugh & Meador, 2011. (F.82) P.78.

⁸⁸ Hansmann, H., & Pargendler, M. (2014). The evolution of shareholder voting rights: Separation of ownership and consumption. *Yale Law Journal*, 123(4), 948–1013.

⁸⁹ Chugh & Meador, 2011. (F.82) P.78.

⁹⁰ Hansmann & Pargendler, 2014. (F. 88). P. 955

⁹¹ Bîgioi, A. D., & Dumitru, C. E. (2016). “Accounting practice regarding discounts”. The rights of shareholders-basic principle of corporate governance by means of case-specific jurisprudence. *Audit Financial*, XIV, XIV(4), 401–412.

⁹² Idowu et al., 2013 (F.74) P.2127.

contractual connection may exist between specific categories of shareholders, which can either restrict or expand the rights of particular shareholders.

The rights of shareholders are not uniform across all jurisdictions, as the level of rights and the legal framework governing them differ among countries⁹³. The rights that are universally recognized, such as the right to participate in the corporation, share profits, vote, transfer shares, withdraw from the corporation, exercise control, actively participate in corporate deliberations, and call general meetings, exhibit variability across different jurisdictions⁹⁴. These rights are often derived from mandatory regulations or a shared starting point based on the rights of shareholders, but they can also be subject to modification through agreements among shareholders or the constitution of the corporation.

2.3.1. Company Participation

This entitlement grants a shareholder the ability to maintain their position as a shareholder and avoid removal from the corporation, whether it be by the board of directors or the general meeting⁹⁵. The exclusion of the shareholder signifies a deficiency or gap in their ownership rights, and the corporation is not authorized to nullify or deprive the shareholder of their rights, except in specific circumstances. The same principle applies to the courts, as they are unable to coerce a shareholder into selling their shares, except in certain situations. The exclusion from the corporation may occur in the following scenarios: If the shareholder neglects their obligation to remit payment for the subscribed shares, the corporation may facilitate the sale of the shareholder's shares⁹⁶. This action is explicitly sanctioned by law in various jurisdictions.

If the shareholder is in the process of redeeming shares, other provisions of the law pertain to special cases regarding the modification of shareholder rights⁹⁷. In relation to this

⁹³ Tse, T. (2011). Shareholder and stakeholder theory: after the financial crisis. *Qualitative Research in Financial Markets*, 3(1), 51–63.

⁹⁴ Jiraporn, P., & Gleason, K. C. (2007). Capital structure, shareholder rights, and corporate governance. *Journal of Financial Research*, 30(1), 21–33.

⁹⁵ Cremers, M., & Ferrell, A. (2014). Thirty years of shareholder rights and firm value. *The Journal of Finance*, 69(3), 1167-1196.

⁹⁶ Idowu et al., 2013 (F.74) p.2129.

⁹⁷ Cremers & Ferrell, 2014 (F.95) P.63

matter, the general principle states that the corporation's statute, as well as the rights associated with shares, can be altered during a general meeting⁹⁸. However, it is important to note that there are stricter legal requirements that must be met for such modifications than for other decisions. Shareholders typically have the right to vote on certain matters concerning their membership rights. It is not common for these voting rights to prohibit the adjustment of their rights. However, in France, it is considered illegal to possess shares without a voting right attached to them⁹⁹. In many jurisdictions, only certain classes of shares, particularly those held by the minority, can be modified through a majority vote of all shareholders and the holders of specially affected shares¹⁰⁰.

According to the provisions outlined in the Turkish Commercial Code, the rights bestowed upon shareholders are scrutinized through two principal avenues: personal rights and financial rights¹⁰¹. One of the most notable personal rights is the opportunity for company participation, which entails attendance at the General Assembly where shareholders convene¹⁰². The Commercial Code establishes that each shareholder possesses the entitlement to partake in General Meetings either in person or by means of a designated representative¹⁰³. The legal entity shareholder's representation is upheld by its competent body or an autonomous representative.

Furthermore, the involvement of shareholders in a corporation, as described in the Ethiopian Commercial Code, is of utmost importance in order to exercise control over managerial powers and safeguard shareholders' interests¹⁰⁴. Shareholders possess the entitlement to partake in General Meetings (GMs), enabling them to exert influence and provide endorsement for major corporate determinations¹⁰⁵. This authority held by the GMs serves as a critical mechanism for protecting shareholder interests, preventing capricious actions by the board, and guaranteeing that fundamental corporate changes are

⁹⁸ Chi, J. (2005). Understanding the endogeneity between firm value and shareholder rights. *Financial Management*, 34(4), 65–76.

⁹⁹ Velasco, J. (2006). The fundamental rights of the shareholder. *Davis Law Review*, 40(2), 407–467

¹⁰⁰ Chi, J. 2005 (F.91). P. 65-76.

¹⁰¹ Kayar, 1989 (F.63) P. 13-14.

¹⁰² Belovski, V. (2017). Concept of a joint stock company. *Journal of Process Management. New Technologies*, 5(1), 25–29.

¹⁰³ Sshareholders-rights-in-private-and-public-companies-in-Turkey-overview, n.d.). 2020. P. 1-35

¹⁰⁴ Sullivan, J. D., & Ikonnikov, A. (2002). *Corporate governance : crisis*, July, 7–11.

¹⁰⁵ Boatright, J. R. (1994). Fiduciary duties and the shareholder-management relation: or, what's so special about shareholders? *Business Ethics Quarterly*, 4(4), 393–407.

enacted in the best interest of the company and its shareholders¹⁰⁶. The absence of GMs powers may impose limitations on shareholders' capacity to oversee directors, potentially resulting in actions that could detrimentally affect shareholder interests¹⁰⁷. Consequently, it is vital for company legislation to ensure fair treatment of shareholders and uphold the authority of GMs in order to foster shareholder involvement in significant corporate decisions, enhance managerial accountability, and augment transparency¹⁰⁸. The other nations such as Kenya, Somaliland, Somalia, and Uganda possess similar territories in close proximity to Ethiopia and Turkey, and all of them bestow the privilege of corporate participation in accordance with a collective assembly or convention, both of which denote the shareholders' gathering.

2.3.2. Voting

The realms of shareholder rights specifically voting are essential components of an effective corporate governance system. According to the Principles of Corporate Governance (2004) established by the Organisation for Economic Co-Operation and Development (OECD), the corporate governance framework should safeguard and facilitate the exercise of shareholders' rights¹⁰⁹. The revised Global Corporate Governance Principles (2009a) were issued by the International Corporate Governance Network (ICGN), and one of the principles, Principle 8, pertains to shareholder rights. Principle 8 encompasses the board's accountability to shareholders; the protection of shareholders where boards treat all shareholders of the company fairly and do not harm their rights¹¹⁰. Boards should make every effort to facilitate shareholders' exercise of their rights, particularly the right to vote, and should not impose unnecessary obstacles¹¹¹. It also includes voting-related rights, where the exercise of ownership rights by all shareholders should be made easier, and shareholder rights of action, where shareholders who are treated unfairly have the right to seek redress¹¹². The shareholder ballot is progressively

¹⁰⁶ Biresaw, S. M. 2021 (F.80). P.80

¹⁰⁷ Sullivan & Ikonnikov, 2002 (F.104). P.4

¹⁰⁸ Biresaw, S. M. 2022. (F.104). P.1

¹⁰⁹ Mallin, C., & Melis, A. (2012). Shareholder rights, shareholder voting, and corporate performance. *Journal of Management and Governance*, 16(2), 171–176.

¹¹⁰ Mallin, C., & Melis, A. 2012 (F.109) P.172.

¹¹¹ Seligman, J. (1986). Equal protection in shareholder voting rights: The one common share, one vote controversies. *George Washington Law Review*, 54(5), 687–724.

¹¹² Freedman, G. (2005). The coming transformation of the textbook. *Logos (Netherlands)*, 16(3), 120–

regarded as one of the most potent channels that institutional investors possess in order to interact with the governing bodies of the companies in which they invest¹¹³.

It is imperative in numerous nations to grant shareholders the privilege to cast their vote on particular determinations. In the case of Civil Law Countries, for instance, it is unlawful to distribute shares without an attached voting right or for the shareholder to abstain from or pass on their vote¹¹⁴. Actually, the law proclaims the nullification of all agreements concerning the right to vote, thereby prohibiting a company from issuing a share without the entitlement to vote; this conduct is regarded as a transgression by the shareholder¹¹⁵. Conversely, the legislation in some countries permits the issuance of shares without voting rights, with the right to vote restricted solely to certain resolutions stipulated by the law. Several countries prohibit multiple voting, whereas in other jurisdictions it is permitted in accordance with the law or even in the absence of a legal provision prohibiting it by the courts¹¹⁶.

In certain legal systems, a single shareholder is not allowed to maintain a number of votes more than that predetermined by law, or alternatively, the corporation's statute may set up such limitation or necessitate a given number of shares to be represented at general meetings of the corporation¹¹⁷. However, in this case, the shareholders may unite to create the required number and may be represented by any of them¹¹⁸. An ability to vote is often accompanied by the ability to proxy votes to another shareholder¹¹⁹. Normally, shareholders who have preferred shares do not vote and the common shareholders hold all the voting powers. In such circumstances, holders of preferred shares can be

126.

¹¹³ Charreaux, G., & Desbrieres, P. (2001). Corporate governance: Stakeholder value versus shareholder value. *Journal of Management and Governance*, 5(2), 107–128.

¹¹⁴ Idowu et al., 2013 (F.74) P.2129.

¹¹⁵ Leech, D. (2000). Shareholder power and corporate governance. Warwick Economic Research Paper Number 564, 564.

¹¹⁶ Biresaw, S. M. 2022. (F.104). P.12.

¹¹⁷ Van Marcke, L. (2023). Who is the shareholder? the (ir)relevance of introducing an eu-harmonised definition of ‘shareholder’ in the context of the SRD II review process. *SSRN Electronic Journal*. forthcoming in) *Tijdschrift voor Rechtspersoon en Vennootschap-Revue pratique des sociétés (TRV-RPS)*, 4.

¹¹⁸ Van Marcke, L. 2023. (F. 117). P. 9

¹¹⁹ Seligman, J. 1986. (F.111). P. 687–72486.

understood as limited partners in a partnership; although they make a capital contribution to the corporation, they are not allowed to vote¹²⁰.

Voting preferences indeed exist; nevertheless, they are an anomaly rather than the norm. Examining the merits and demerits of preferred shares undoubtedly presents itself as a necessary exercise¹²¹. In the event of liquidation, preferred shareholders are granted priority over common stockholders in terms of earnings and assets¹²². Additionally, they receive a fixed dividend, which is disbursed before that of common shareholders. However, investors must carefully evaluate these advantages in light of the drawbacks, which include surrendering their voting rights and diminished potential for appreciation concerning the election of Directors. Voting rights generally manifest in two types: statutory voting and cumulative voting, and they are extremely different¹²³. Statutory voting is more common, in which one share obtained by the holder equals one vote. In elections dominated by statutory voting the majority of shareholders elect all of the directors based on this method while the minority will not influence such an election¹²⁴. Cumulative voting on the other hand gives one vote per share multiplied by the number of vacancies to be filled on the board of directors.

Cumulative voting is commonly understood as a voting system that exhibits a greater level of proportionality, thereby more accurately reflecting the preferences of minority shareholders¹²⁵. The distinguishing characteristic of this system is that all votes can be allocated to a single candidate.

¹²⁰ Sullivan & Ikonnikov, 2002 (F.104). P.4.

¹²¹ Jiraporn, P., et al. (2006). Corporate governance, shareholder rights, and firm diversification: An empirical analysis. *Journal of Banking and Finance*, 30(3), 947–963.

¹²² Gamble, A., & Kelly, G. (2001). Shareholder value and the stakeholder debate in the UK. *corporate governance*, 9(2), 110–117.

¹²³ Adams, R. (2020). Corporate voting systems and shareholder influence. *Journal of Corporate Governance*, 15(3), 213-229.

¹²⁴ Lowenstein, L. (1989). Shareholder voting rights: A response to SEC rule 19c-4 and to professor Gilson. *Colum. L. Rev.*, 89, 979.

¹²⁵ Lowenstein, L. 1989. (F.124). P.94

In accordance with the legislation of most jurisdictions, publicly held corporations are obligated to provide proxies to their shareholders¹²⁶. A proxy order can either transfer voting rights to another individual or provide guidance on how the proxy should vote¹²⁷.

In Turkey, the allocation of voting rights to shareholders in joint stock companies is regarded as a highly influential prerogative. This is primarily due to its capacity to empower shareholders to partake in managerial and supervisory decision-making processes, while also affording them the means to safeguard their interests and assert their demands, whenever circumstances necessitate¹²⁸. In the realm of joint stock companies, the determination of the level of shareholding and subsequent enjoyment of associated rights is contingent upon the shareholder's proportional ownership of capital¹²⁹. Article 434 of the TCC embraces the tenet of "minimum vote"; thus, "each share shall confer at least one voting right" even when a shareholder possesses a sole share¹³⁰. Under the provisions of Article 435 of the Turkish Commercial Code (TCC), the entitlement of a shareholder to exercise their voting rights is contingent upon the satisfaction of the legally or constitutionally prescribed minimum capital requirement for their shares¹³¹. Any endeavor undertaken by the board of directors to establish a higher threshold for the exercise of voting rights is construed as a flagrant breach of the law¹³². Instances of violation can also manifest in the form of impediments placed upon shareholders' attendance at meetings or through encroachments made by the board on matters that are exclusively reserved for the general assembly.

The concept of voting rights should be conceived as an inherent entitlement, representing the minimum portion thereof, the elimination or limitation of which does not rely on the approval of the shareholder¹³³. Furthermore, this right cannot be renounced by the

¹²⁶ Uysal, N., & Tsetsura, K. (2015). Corporate governance on stakeholder issues: Shareholder activism as a guiding force. *Journal of Public Affairs*, 15(2), 210–219.

¹²⁷ Idowu et al., 2013 (F.74) P.21232.

¹²⁸ Lowenstein, L. 1989. (F.124). P.97

¹²⁹ Corporate governance on stakeholder issues: Shareholder activism as a guiding force. *Journal of Public Affairs*, 15(2), 210–219.

¹³⁰ Article 434 of the TCC

¹³¹ Sayın, H. B. (2019). Anonim şirket yönetim kurulu karar ve işlemlerine karşı pay sahiplerinin korunması yolları. *Anadolu Üniversitesi Hukuk Fakültesi Dergisi*, 5(2), 339–363.

¹³² Sayın, H. B. 2019. (F.131) P. 348

¹³³ Karamanlioglu, A. (2015). Anonim ortaklıkta pay sahibinin genel kurulda temsili. *Marmara Üniversitesi Sosyal Bilimler Enstitüsü Özel Hukuk Anabilim Dalı, Yayınlanmamış Doktora Tezi*, İstanbul.

shareholder, even by their own volition, and it cannot be annulled through the articles of association or resolutions made by the general assembly¹³⁴. Additionally, these rights cannot be restrained or deprived from the shareholder in any manner, and they are duly acknowledged by legal provisions as a safeguarded entitlement. The boundaries of this right are precisely delimited by legislation¹³⁵. Correspondingly, the shareholder must exercise their voting rights, however, it is admissible for the shareholder to opt not to exercise their voting rights at all, or they may selectively exercise their voting rights arising exclusively from certain shares¹³⁶.

2.3.3. Dividend Rights

Shareholders engage in investments in corporations primarily to achieve economic benefits. A corporation offers two principal avenues through which shareholders can reap financial gains: firstly, by obtaining distributions of the company's profits, and secondly, by divesting either all or a portion of their stake in the corporation¹³⁷. These approaches align with the two primary economic entitlements of the shareholder: the entitlement to receive dividends and the entitlement to trade shares¹³⁸. Dividends can be characterized as a portion of a corporation's earnings that is distributed to every shareholder upon the conclusion of each fiscal cycle, in connection with the number of shares possessed by said shareholders¹³⁹.

In other words, a dividend is a taxable payment that is announced by a company's board of directors and distributed to its shareholders from the company's current or retained earnings¹⁴⁰. Typically, dividends are given every quarter. Cash dividends are the most

¹³⁴ Lele, P. P., & Siems, M. M. (2009). Shareholder protection: A leximetric approach. *Corporate Governance and Development: Reform, Financial Systems and Legal Frameworks*, 5970(2007), 143–175.

¹³⁵ Sayin, H. B. 2019. (F.131) P. 348.

¹³⁶ Enst, M., Anab, Z. E. L. H 2015 (F.133). P. 299

¹³⁷ Velasco, J. 2006. (F. 144) P. 37.

¹³⁸ Velasco, J. 2006.(F.99). p. 413.

¹³⁹ Tran, Q. T., Alphonse, P., & Nguyen, X. M. (2017). Dividend policy: Shareholder rights and creditor rights under the impact of the global financial crisis. *Economic Modelling*, 64(March), 502–512.

¹⁴⁰ Idowu et al., 2013 (F.74) p.2129.

common form, while dividends can also be distributed in the form of stock or other property¹⁴¹.

According to the provisions of the Turkish Commercial Code, each shareholder is entitled to receive dividends. The distribution of these dividends is determined through an agreement that is in alignment with the provisions outlined in the articles and by law¹⁴². In the absence of any other arrangements specified in the articles, in the event of the termination of the Joint Stock Company (JSC), each shareholder retains the right to receive liquidation profit in proportion to their respective shares following the completion of the liquidation process¹⁴³.

2.3.4 Information Rights

It is proposed in the realm of corporate governance that a pressing requirement is the facilitation of investors' access to prompt and precise data about both the financial and non-financial dimensions of the corporation¹⁴⁴. The entitlement to information is an organizational right that does not involve property, stemming from the shareholder's right to membership¹⁴⁵. This right is connected to the calling of the general meeting of the company limited by shares and the right to vote that can be exercised in said meeting¹⁴⁶. It is an individual right for the shareholder and an individual obligation for the company, applicable to all shareholders regardless of their financial contribution¹⁴⁷. The exercise of this right is a fundamental principle that serves to protect the shareholder. In addition to its protective nature, it is also the foundation of the shareholder's ability to acquire information about the company's operation, which is a priority right due to its legal status¹⁴⁸. Shareholders obtain this right by making a tangible contribution to the company,

¹⁴¹ Tran, & others. 2017. (F.139). P. 22.

¹⁴² Article 507, Turkish Commercial Code.

¹⁴³ Shareholder Rights Overview. (F.103). P.4.

¹⁴⁴ Idowu et al., 2013 (F.74) P.2132.

¹⁴⁵ Jiraporn, P. (2006). Share repurchases, shareholder rights, and corporate governance provisions. *North American Journal of Economics and Finance*, 17(1), 35–47.

¹⁴⁶ Attig, N., et al. (2021). Dividends and economic policy uncertainty: International evidence. *Journal of Corporate Finance*, 66, 101785

¹⁴⁷ Wang, J., & Wang, P. (2009). Discussion about Shareholders' Right to Information. *Journal of Politics and Law*, 2(2), 42–49.

¹⁴⁸ Heron, R. A., Lie, E., & Perry, T. (2007). On the use (and abuse) of stock option grants. *Financial Analysts Journal*, 63(3), 17–27.

thereby granting them the opportunity to exert control over the company¹⁴⁹. However, it can also connote unjust actions, such as conferring advantages to the shareholder or utilizing the acquired knowledge to inflict damage upon the corporation¹⁵⁰.

According to Turkish law, shareholders have the right to be informed and to request a review of the company's business and transactions¹⁵¹. This right, which is enshrined in Articles 362 and 363 of the Turkish Commercial Code and Article 437 of TCC No. 6102, is recognized as an individual right for shareholders to exercise¹⁵². Bestowing to Article 437 of the Turkish Commercial Code (No. 6102), shareholders possess the entitlement to acquire information regarding the financial affairs and operations of a corporation¹⁵³. This information encompasses financial statements, consolidated financial statements, the annual report of the board of directors, audit reports, and the board's proposal for the allocation of dividends¹⁵⁴. These documents must be made accessible for scrutiny at the principal office and branches of the company no later than fifteen days preceding the general assembly meeting, and they remain available for a duration of one year¹⁵⁵. Shareholders have the right to receive copies of the income statement and balance sheet at the expenditure of the company.

During the convening of the general assembly, shareholders possess the right to make inquiries to the board of directors in relation to the affairs of the company, as well as to the auditors regarding the process and outcomes of the audit¹⁵⁶. This duty to furnish information reaches out to the company's subsidiary entities as per the stipulations set forth in Article 200, whereby accuracy, diligence, and adherence to the principles of accountability and integrity are required¹⁵⁷. Significantly, it should be noted that should

¹⁴⁹ Frey, A. H. (1941). The distribution of corporate dividends. *University of Pennsylvania Law Review and American Law Register*, 89(6), 735.

¹⁵⁰ Kim, K. A., Kitsabunnarat-Chatjuthamard, P., & Nofsinger, J. R. (2007). Large shareholders, board independence, and minority shareholder rights: Evidence from Europe. *Journal of Corporate Finance*, 13(5), 859–880.

¹⁵¹ Birinci, B. (2019). *Anonim şirketlerde pay sahibinin bilgi alma hakkı* (Doctoral dissertation, Marmara Üniversitesi (Turkey)).

¹⁵² Articles 362, 363, and 437 of the Turkish Commercial Code

¹⁵³ Article 437 of the Turkish Commercial Code (No. 6102)

¹⁵⁴ Birinci, B. 2019 (F. 151). P.8.

¹⁵⁵ Birinci, B. 2019 (F. 151). p.8.

¹⁵⁶ Pulasli, H. (2012). Yeni Türk Ticaret Kanununa göre yönetim kurulu üyelerinin bilgi alma ve inceleme hakkı. *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi*, 18(2), 587-600.

¹⁵⁷ Article 200 Turkish Commercial Code

information have already been disclosed on a subject that lies beyond the purview of the general assembly, a different shareholder retains the prerogative to request the same information, even if it pertains to a matter unrelated to the agenda, thereby ensuring a comprehensive realm of information dissemination¹⁵⁸.

2.3.5. To Call a General Meetings

Shareholders possess several fundamental rights in relation to general meetings. These rights encompass the ability to request and convene general meetings, participate in these meetings, nominate proxies or speak at them, and cast votes. Two main types of general meetings exist: Annual General Meetings (AGMs) and Extraordinary General Meetings (EGMs), each serving distinct purposes¹⁵⁹.

An AGM is a mandatory event for all corporations, typically occurring annually thereafter on a set date, usually within six months of the corporation's financial year-end¹⁶⁰. AGMs offer shareholders a platform to gather essential information about the company, question its directors, vote on resolutions outlined in the annual report, assess financial statements, determine dividends, elect directors, and appoint auditors¹⁶¹. EGMs, on the other hand, are convened for pressing matters that cannot wait until the next AGM, like mergers or acquisitions.

In Turkish Joint-Stock Companies (JSCs), the general meeting is the highest decision-making body, where resolutions apply to all shareholders¹⁶². There are two types: ordinary and extraordinary meetings.

Ordinary meetings are held within three months of the activity period's end. The agenda includes annual reports, audits, financial statements, board matters, dividends, and more. Shareholders are treated equally, though privileged shares exist based on the articles of

¹⁵⁸ Birinci, B. 2019 (F.151) P.8

¹⁵⁹ Zeren, & Banu. 2010. (F.71). P.164.

¹⁶⁰ Dowu et al., 2013 (F.45) P.2132.

¹⁶¹ Melumad, N. D., et al. (1999). Comparing alternative hedge accounting standards: Shareholders' perspective. *Review of Accounting Studies*, 4(3–4), 265–292.

¹⁶² Pulaslı, H. 2012. (F. 156). P. 129.

association¹⁶³. Certain decisions affecting privileged shareholders require approval in special meetings.

Resolutions requiring special meetings cover amending articles of association, authorizing capital increases, and board resolutions on capital increases. They need approval from a privileged shareholders' special committee (Article 454, Commercial Code)¹⁶⁴. This system aims to uphold shareholder rights and ensure equitable treatment while allowing for privileged shares with distinct rights¹⁶⁵.

The Ethiopian Commercial Code of 1960 underscores the importance of shareholder protection through General Meetings (GMs) in share companies¹⁶⁶. GMs include Ordinary General Meetings (OGMs) and Extraordinary General Meetings (EOGMs). These meetings hold substantial authority to make critical governance decisions, safeguarding shareholder interests¹⁶⁷. EOGMs play a vital role in approving fundamental changes within companies and empower shareholders to shape the company's direction. Some decisions require unanimous consent, while others demand a 2/3rd majority of voting shareholders present¹⁶⁸. This framework emphasizes shareholder participation and protection in Ethiopian corporate governance, and it reflects a similar scenario found in the Turkish Commercial Code.

¹⁶³ Birinci, B. 2019 (F.151) P.8

¹⁶⁴ Article 454, Commercial Code

¹⁶⁵ Zeren, & Banu. 2010. (F.71). P.14

¹⁶⁶ Biresaw, S. M. 2022. (F.104). P.18.

¹⁶⁷ Batra, G. S., & Wondem, B. A. (2016). Corporate governance practice landscape in ethiopia: past, present and future. *International Journal of Research in Finance & Marketing*, 6(12), 46–57.

¹⁶⁸ Biresaw, S. M. 2021.(F.83). P.513.

CHAPTER THREE

MINORITY SHAREHOLDER RIGHTS AND PROTECTIVE MECHANISMS

3.1. Introduction

Annually, a multitude of companies emerge on the global stage, each accompanied by a group of shareholders united by a shared goal: generating profits. The relationships and dynamics among these shareholders, as well as their interactions with company management, carry immense importance, given their potential to directly influence the overall performance of the company. In today's interconnected and globalized business environment, safeguarding the rights of minority shareholders is of utmost significance, as it plays a pivotal role in nurturing trust and confidence within the corporate sector.

In the context of joint stock corporations, there exists a multitude of conflicts that require careful consideration. Our research primarily delves into the critical issue of protecting minority shareholders from potential abuses by controlling shareholders, all while preserving the legitimate authority of those in control. The prevalent practice of majority voting grants significant power to individuals or entities possessing at least 51% of the votes, affording them substantial influence over the corporation¹⁶⁹. Unfortunately, this power can sometimes be wielded to the detriment of minority shareholders and to the advantage of the controlling group¹⁷⁰. Shareholders in joint stock corporations often possess varying goals and expectations, which can range from seeking a passive investment with hopes of favorable returns to desiring active participation or employment

¹⁶⁹ Pinto, A. R., et al. (2014). Protection of close corporation minority shareholders in the United States. *Journal Name*, 62, 361–385.

¹⁷⁰ Pinto, A. R., 2014(F.169). P.363.

within the company¹⁷¹. These investors also span a spectrum of sophistication, with some having deep financial acumen and others investing for personal reasons.

In examining the protection of these diverse shareholders, several key issues come to the forefront, including the need for a voice in corporate decisions, access to information, the ability to influence control, expectations of returns on investment, and the option to exit the company when needed¹⁷². Additionally, minority shareholders frequently harbor concerns that those in control may act opportunistically, exploiting their authority for personal gain¹⁷³. These issues can be effectively addressed through pre-existing contractual agreements that outline protective measures. However, in the absence of such contracts, it is essential to understand how default corporate law rules handle these issues ex-post, after conflicts have arisen¹⁷⁴.

In the intricate landscape of corporate governance, the allocation of power within a company is a foundational element. Typically, the board of directors wields substantial managerial authority, while shareholders possess limited influence¹⁷⁵. Nevertheless, the decisions and authority held by shareholders play a pivotal role in shaping a company's course. These rights encompass critical actions such as amending articles of association, adjusting share capital, appointing directors, and approving specific transactions. While majority shareholders rightfully exercise management control in the democratic context of corporate capitalism, concerns emerge among minority shareholders due to the potential for the "tyranny of the majority"¹⁷⁶. This concept underscores the risk of the majority exploiting or suppressing the minority, revealing a conflict of interest between these two groups¹⁷⁷. Effectively addressing this conflict and safeguarding minority rights is paramount for the sustained growth and viability of a company.

¹⁷¹ Mukwiri, J., & Siems, M. (2014). The financial crisis: a reason to improve shareholder protection in the EU? *Journal of Law and Society*, 41(1), 51-72.

¹⁷² Barron, H. S., et al. (2003). Managing closely held corporations: A legal guidebook. *Business Lawyer*, 58(3), 1077-1126.

¹⁷³ Pinto, A. R., 2014. (F.169). P.363.

¹⁷⁴ Pinto, A. R., 2014(F.163). P.363.

¹⁷⁵ Chen, Z., Ke, B., & Yang, Z. (2013). Minority shareholders' control rights and the quality of corporate decisions in weak investor protection countries: A natural experiment from China. *Accounting Review*, 88(4), 1211–1238.

¹⁷⁶ Bebchuk, L. A., et al. (2010). Corporate political speech: Who decides? *Harvard Law Review*, 124(1), 83-117.

¹⁷⁷ Bebchuk, L. A., et al. 2010 (F.176). P.1000

A legal system that fails to provide adequate protection for minority shareholders can undermine the attractiveness of an investment environment¹⁷⁸. Inadequate protection directly diminishes investor confidence and enthusiasm. Beyond investors and creditors, well-functioning companies hold significance for employees, governments, and societies as a whole. To confront this challenge, various legal and economic tools have been established in each jurisdiction. These tools include the right to convene shareholder meetings, propose or amend meeting agendas, access information, appoint special auditors or supervisors, and seek the dissolution of a company. Furthermore, the ability to challenge shareholders' resolutions stands as a crucial mechanism for protecting minority shareholders' rights and enforcing them through legal avenues.

Moreover, in recent times, there has been a notable emphasis on safeguarding the interests of minority shareholders in Turkey. This focus stems from the necessity to both fulfill a regulatory requirement and attract investment¹⁷⁹. Furthermore, there exists a general imperative to foster shareholder democracy within companies. It is posited that by enhancing the application of corporate governance principles, the safeguarding of minority shareholders in Turkey will be bolstered¹⁸⁰. On the 1st of July 2012, the new Turkish Commercial Code (No: 6102) was enacted, thereby rendering the previous code significantly modified and updated. The new TCC addresses various matters, including the rights of minority shareholders. Even though these rights were already stipulated in the preceding code, Turkey has pursued a course of action to fortify its legal and regulatory framework about the protection of minority shareholders, as enshrined in the Turkish Commercial Code No 6102¹⁸¹.

Similar to many other countries across the globe, corporate governance in Turkey is built upon the fundamental principle of majority rule¹⁸². As outlined in the Turkish Commercial Code (TCC), decisions taken during general assembly meetings are typically determined by a simple majority vote, unless specific provisions require a higher majority threshold.

¹⁷⁸ Rahmani, A. (2007). Majority rule and minority shareholder protection in joint stock companies in England and Iran (Doctoral dissertation, University of Glasgow).

¹⁷⁹ Kaya, M. K. (2020). Discussions surrounding the principle of minority shareholder protection. *Ticaret ve Fikri Mülkiyet Hukuku Dergisi*, 6(2), 265-282.

¹⁸⁰ Kaya, M. K. 2020. (F. 179). P. 279.

¹⁸¹ Kaya, M. K. 2020. (F. 179). P. 279.

¹⁸² Kaya, M. K. 2020. (F. 179). P. 280.

This means that the destiny of a company ultimately lies in the hands of its majority shareholders.

The existing voting procedures and principles of corporate democracy grant legitimate authority to the majority shareholder in controlling the company. This authority is established through Article 366 of the TCC, which specifies that the board of directors' members should either be appointed in accordance with the articles of association or elected by the general assembly¹⁸³. However, recognizing the potential for abuse of power by the majority in managing the company, Turkish legislators have enacted regulations aimed at safeguarding minority shareholders from the risks associated with the misuse of the majority principle.

In the context of Horn of African countries, the protection of minority shareholders is not well-established. As evidenced in the first chapter, there is a lack of a precise definition for minority shareholders, unless there is a principle of majority which typically refers to individuals or entities who own more than 51% of the total shares of a company. For instance, the Ethiopian Commercial Code does not contain a precise description for minority shareholders, nor does it establish a definite threshold of shares that designates an individual as a minority shareholder. This absence of lucidity presents obstacles in successfully safeguarding the privileges of minority shareholders. Since there is such kind of gap, the existing Ethiopian Commercial code presently provides preventive as well as restorative measures to safeguard the entitlements of minority shareholders¹⁸⁴. Nevertheless, additional adjustments might be necessary to guarantee sufficient safeguards for minority shareholders in the continuously evolving corporate environment.

In Kenya, the Companies Act of 2015 plays a crucial role in safeguarding the interests of minority shareholders within the corporate landscape. This legislation, which replaced the previous Companies Act of 1986, was implemented with the objective of consolidating and reforming the legal framework that governs the incorporation, registration, operation,

¹⁸³ Article 366 of the TCC

¹⁸⁴ Tamirat Wogasso Shamana & Muluneh Woldetsadik Ossa (2019). The legal protection of minority shareholders under Ethiopian law: Comparative Analysis. *Journal of Law, Policy and Globalization*, 86, 12.

management, and regulation of companies¹⁸⁵. Since its enactment, the Companies Act of 2015 has undergone various amendments, which illustrate the government's dedication to enhancing the protection of minority shareholders. This progress not only holds significant implications for the country's economic competitiveness in Sub-Saharan Africa, but also underscores Kenya's ambition to maintain its position as a leading investment destination, often recognized as the Silicon Valley of the region¹⁸⁶.

In Uganda, the safeguarding of minority shareholders within corporations is primarily regulated by The Companies Act, which was originally promulgated in 1948 and most recently amended in 1964. The Chief Executive Officer of the Uganda Securities Exchange underscored the importance of compliance with the nation's legal framework in the interactions among directors, managers, and shareholders. This framework seeks to ensure the non-violation of laws, the protection of all shareholders (whether they are minority or majority stakeholders), and the resolution of corporate social responsibility concerns¹⁸⁷. Nevertheless, it is observed that the implementation of these corporate governance regulations in Uganda encounters difficulties. Some corporations selectively employ provisions of the Companies Act, and certain private companies strive to evade legal obligations¹⁸⁸. Additionally, shareholders perceive the extant corporate governance laws in Uganda as either insufficient or outdated, necessitating revisions.

In Somaliland, the legislation governing companies has experienced multiple alterations in order to guarantee that all shareholders, regardless of whether they possess a majority or minority stake, are granted equal protection and entitlements. An important characteristic of this legal framework is its provision for any shareholder, irrespective of the quantity of shares they possess, to institute legal proceedings¹⁸⁹. In contrast to certain nations where a minimum number of shares is necessary to initiate legal action, the approach adopted by Somaliland fosters shareholder activism and robustly safeguards the interests of minority shareholders. This comprehensive and impartial approach to

¹⁸⁵ Wycliffe, O. (2021). Legal protections are accorded to minority shareholders in Kenya in corporate entities.

¹⁸⁶ Wycliffe, O. 2021. (F.179). P.29.

¹⁸⁷ Visser, W., et al. (2005). Corporate citizenship in Africa. *Journal of Corporate Citizenship*, 18(Special Issue), 17–124.

¹⁸⁸ Visser, Et., Al., 2019.(F.188). P.15

¹⁸⁹ Visser, Et., Al., 2019.(F.188).

corporate governance highlights the dedication to cultivating a just and transparent business environment in the region.

In Somalia, the legal landscape concerning shareholder rights is relatively underdeveloped, with a lack of comprehensive references addressing the protection of minority shareholder rights. To gain insights into the safeguards for minority shareholders, it becomes essential to examine the provisions within the Company Law, if any, that specifically address and protect the interests of minority shareholders. This exploration will shed light on the extent to which Somalia's legal framework acknowledges and upholds the rights of minority shareholders within the corporate sector.

During this chapter, we delve into the intricate world of minority shareholder rights and protective mechanisms, with a specific focus on Turkey and the Horn of Africa. Understanding these rights and protections is essential as they play a pivotal role in ensuring equitable treatment and fair play within the corporate realm.

The significance of examining minority shareholder rights and protection mechanisms in Turkey and the Horn of Africa cannot be overstated. Turkey serves as a bridge between Europe and Asia, boasting a dynamic economy with a diverse corporate landscape. Conversely, the Horn of Africa, comprising countries such as Ethiopia, Kenya, Somaliland, Somalia, and Uganda represents a region experiencing rapid economic growth, attracting both domestic and foreign investors.

This chapter aims to shed light on the rights granted to minority shareholders in Turkey and the Horn of Africa, offering an in-depth analysis of the legislative frameworks, protection mechanisms, and challenges faced in safeguarding these rights. By comparing the two regions, we aim to draw valuable lessons for improving corporate governance and minority shareholder protection in the Horn of Africa.

The objectives of this chapter are to elucidate the specific rights afforded to minority shareholders in both Turkey and the Horn of Africa, including aspects such as voting rights, access to information, and dividend entitlement; to provide an overview of the protective mechanisms in place by examining the legal and regulatory frameworks governing minority shareholder rights in these regions; to explore the challenges and

obstacles faced in the Horn of Africa regarding the protection of minority shareholder rights; and to derive lessons from Turkey's experience that can enhance corporate governance and investor confidence in the Horn of Africa.

This chapter serves as a critical resource for investors, policymakers, and corporate stakeholders seeking a comprehensive understanding of the dynamics surrounding minority shareholder rights and protection mechanisms in these distinct yet interconnected regions. By the end of this chapter, readers will have gained valuable insights into the legal, regulatory, and practical aspects of minority shareholder protection in Turkey and the Horn of Africa.

3.2. Minority Shareholder Rights in Turkey

In Turkey, minority shareholders play a crucial role in the corporate landscape, with legal protections and rights designed to safeguard their interests. Under Turkish law, minority shareholders, typically owning at least 10% of a privately held company's share capital (or 5% in publicly held companies), are entitled to specific minority shareholder rights as defined by the Turkish Commercial Code (TCC). These rights provide minority shareholders with a means to influence corporate decision-making and protect their investments.

In the context of joint-stock companies, the allocation of rights is typically classified into three categories: individual, majority, and minority rights, contingent upon their utilization¹⁹⁰. It is crucial to emphasize that minority rights should not be misconstrued as individual rights conferred upon each shareholder. When a majority, consisting of more than one individual, convenes, it becomes incumbent upon them to safeguard the rights of the minority, and these rights can be collectively exercised by the majority¹⁹¹. Conversely, if the aforementioned majority is represented by a sole individual, they possess the authority to individually exercise these rights. However, in the case of single-member joint-stock companies, where there is only one shareholder, the concept of

¹⁹⁰ Tuzemen-atik, (2011). An overview of minority rights in the joint stock company under the provisions of the new Turkish Commercial Code. 6102.

¹⁹¹ Tuzemen-atik, E. 2011. (F.184). P. 21

minority rights becomes irrelevant, as there is no majority to protect or exercise these rights collectively.

Some key minority shareholder rights in Turkey include the ability to request a postponement of financial statement discussions, appoint an independent auditor, call for an extraordinary general assembly meeting, and request the addition of specific agenda items for general assembly meetings. Minority shareholders also have the right to challenge settlement and release decisions made by the board of directors and request the dissolution of the company under justifiable circumstances. Additionally, they can request the issuance of share certificates and may even have representation on the board of directors, depending on the company's articles of association.

Minority rights, as outlined in the TCC, are a set of rights that persist throughout the entire lifespan of joint-stock companies, from their establishment to termination. These rights are legally mandated and cannot be withdrawn by shareholders. Additionally, it's worth noting that further minority rights may be specified and granted in the articles of association of the company.

The minority rights delineated in the TCC can be broadly classified into two categories: obligatory and relatively obligatory rights¹⁹². Although the regulations governing the exercise of minority rights are considered obligatory rules, TCC Art. 411/1, which establishes the thresholds for shareholders to be recognized as minorities possess a relatively obligatory nature¹⁹³. In other words, any deviation from the proportions specified in this article is permissible solely if it is approved in favor of minority shareholders and explicitly mentioned in the articles of association. This allows for the possibility of modifying the proportions for minority rights through a provision in the articles of association.

The classification of minority rights can be further categorized as either negative or affirmative¹⁹⁴. Negative minority rights refer to those that obstruct the achievement of an

¹⁹² Veziroglu, C. (2018). Buy-out of the oppressed minority's shares in joint stock companies: a comparative analysis of Turkish, Swiss and English Law. *European Business Organization Law Review*, 19(3), 527–540.

¹⁹³ Veziroglu, C. 2018 (F.192). P. 530.

¹⁹⁴ Yao, S., et al. (2023). Building eco-friendly corporations: The role of minority shareholders. *Journal of Business Ethics*, 182(4). Springer Netherlands. P.22

agreement, even in the face of a majority vote. On the other hand, affirmative minority rights aid in the attainment of an agreement when there is no majority consensus. Except the right to compromise and the release of those accountable for the establishment of a company, which will be elaborated on later, it is worth noting that most other minority rights can be placed under the umbrella of affirmative rights.

These legal provisions aim to ensure that minority shareholders have a voice in corporate governance and can actively participate in important company decisions. This system helps strike a balance between majority and minority interests, fostering transparency, fairness, and accountability within Turkish corporations.

3.2.1. Right to Request the Postponement of General Meetings

The safeguarding of the rights of minority shareholders is an essential element of corporate governance in Turkey. One key mechanism devised to protect the interests of minority shareholders is the right to request the postponement of general meetings. This entitlement grants minority shareholders a potent means to guarantee transparency, liability, and conscientious corporate governance within joint-stock entities.

The privilege to request the deferral of general assemblies is incorporated in the legal framework of Turkey's commerce, primarily in Article 420 of the TCC. The TCC establishes a distinction between companies that are not publicly traded and those that are publicly traded when establishing the criteria for the exercise of this privilege. In the case of minority shareholders in non-public companies, it is required that they collectively possess at least one-tenth of the total share capital. As for publicly traded companies, the threshold is set at one-twentieth¹⁹⁵.

To exercise this entitlement, minority shareholders are required to formally submit a request to the chairman of the collective gathering. The TCC highlights that the chairman possesses no authority to decline the request if the statutory prerequisites regarding the percentage of shares held are satisfied¹⁹⁶. This constitutes an essential attribute of

¹⁹⁵ Guvenir, D. (2022). Minority shareholders' right to request the postponement of general meetings of joint stock companies in Turkish Law. *Athens Journal of Law*, 8(3), 329–348.

¹⁹⁶ Guvenir, D. 2022. (F. 195) p. 336.

entitlement, guaranteeing that minority shareholders possess an easily accessible avenue to safeguard their concerns.

The extent of postponed agenda items is not explicitly defined by the TCC; however, it is generally comprehended that this authority surpasses the mere postponement of discussions concerning financial statements¹⁹⁷. The range of this authority typically encompasses matters that are directly connected to the financial statements, such as the selection of auditors, the distribution of dividends, and any other financial concerns¹⁹⁸. This comprehensive interpretation is in harmony with the objective of this authority, which is to afford minority shareholders the opportunity to meticulously examine and deliberate upon financial information, thereby ensuring transparency and accountability.

The TCC allows minority shareholders to request postponement more than once if needed¹⁹⁹. Subsequent to the initial deferment, the permissibility of a second deferment for a minority shareholder hinges upon the satisfactory resolution of the concerns and objections initially expressed during the postponement. This procedural framework fosters the promotion of constructive interaction between minority shareholders and the managerial body of the company.

One of the noteworthy characteristics of minority rights, including the right to postpone, resides in the fact that once put into effect, they possess the capacity to yield legal ramifications, regardless of the preferences held by the majority²⁰⁰. As a result, in the event that justifiable apprehensions are present within the financial records or associated matters, the general assembly may be halted until such concerns are appropriately resolved²⁰¹. Minority shareholders may employ this entitlement to safeguard their interests and ascertain that the corporation functions with transparency and accountability.

¹⁹⁷ Kelimeler, A. (2022). *İstanbul Hukuk Mecmuası*. 80(2), 407–453.

¹⁹⁸ Kelimeler, A. 2022 (F.197). P. 407–453

¹⁹⁹ Dincer, Z. (2016). Reform in duties of directors in turkish public companies: Legislative experiences from UK Companies. *Hacettepe Hukuk Fakultesi Dergisi*, 6(2), 49-106.

²⁰⁰ Kelimeler, A. 2022 (F.197). P. 407–453

²⁰¹ Guvenir, D. 2022. (F. 195) P. 338.

The right to request the postponement of general meetings holds significant importance in the realm of corporate governance. It functions as a crucial instrument for minority stockholders to protect their investments and exert influence on pivotal resolutions within the company. By fostering openness, liability, and conscientious corporate governance, this prerogative confers advantages upon both minority shareholders and the company as a whole. This right empowers minority shareholders to play an active role in decision-making processes. The verification of financial information's accuracy and reliability prior to making decisions on important issues like dividend distributions or auditor appointments is integral. In the end, this process augments shareholder democracy, fortifies corporate governance practices, and contributes to the enduring sustainability of joint-stock companies.

3.2.2. Right to Dismissal of the Auditor for Just Cause

One of the recently granted privileges given to minority shareholders in accordance with the newly implemented TCC is the entitlement to request for the removal of an auditor for legitimate reasons and subsequently elect a new auditor through a lawful procedure. The provisions stated in the fourth and fifth sections of Article 399 of the TCC authorize minority shareholders, upon the existence of valid grounds, to demand the selection of a new auditor via a judicial process.

Under the provisions of Law No. 6102, the status of auditors as corporate entities has been abolished, and it is currently anticipated that audits shall be carried out by autonomous auditors. The autonomous audit system is regarded as the principal framework as per the TCC²⁰². The agreement between the joint-stock company and the autonomous auditor is deemed to be a novel employment agreement under the jurisdiction of Turkish legislation.

Originally, the initial iteration of the TCC proclaimed that examinations for all corporations with joint ownership, regardless of their magnitude, would be carried out by autonomous audit enterprises, autonomous certified public accountants, or duly sworn

²⁰² Zeren, & Banu. 2010. (F.71). P. 81.

certified public accountants²⁰³. Nevertheless, with the incorporation of Law No. 6335, the enforcement of audit regulations for all corporations with capital was forsaken. Corporations that undergo autonomous examinations are delimited according to the principles formulated by the Council of Ministers.

Under the newly implemented system established by the TCC, it is stipulated that the auditor, who is elected by the general assembly, cannot be dismissed by the joint-stock company itself (TCC Article 399/II). This provision recognizes the principle that the contractual relationship with the auditor cannot be terminated as a general rule, thereby removing the authority of the board of directors to dismiss an undesired auditor²⁰⁴. The purpose behind this regulation is to uphold the principle of "auditor security" and ensure that auditors carry out their responsibilities without apprehension of being dismissed. As per TCC Article 399/IV, both the board of directors of the joint-stock company and minority shareholders have the right to request the commercial court, located in the company's jurisdiction, for the appointment of an alternative auditor, provided that valid reasons are present. It should be noted that the law specifies a limited number of individuals who are eligible to initiate such legal action. The scope of those authorized to file a lawsuit, as determined by the articles of association, cannot be expanded, nor can the minimum threshold for identifying minority shareholders be raised²⁰⁵.

The auditor selected by the general assembly is officially recorded in the trade registry and published in the Turkish Trade Registry Gazette (TTSG) as well as on the company's official website. It is possible to file a lawsuit for dismissal and the appointment of a new auditor within a three-week timeframe starting from the publication of the auditor's selection in the TTSG. This three-week period is considered a statute of limitations and holds significant importance since it pertains to a newly established right. From our perspective, this period should commence from the occurrence of a legitimate reason, as justifiable reasons can still emerge even after the initial three-week period following the publication of the auditor's selection in the TTSG²⁰⁶. In cases where auditors are appointed

²⁰³ Dal, S., & Çalis, Y. E. (2013). Anonim sirketlerde bagimsiz denetim ve bagimsiz denetci. *Financial Analysis/Mali Cozum Dergisi*, (118).

²⁰⁴ Zeren, & Banu. 2010. (F.71). P. 84.

²⁰⁵ Zeren, & Banu. 2010. (F.71). P. 81.

²⁰⁶ Zeren, & Banu. 2010. (F.71). P. 86.

by the court, it is not possible to initiate a dismissal lawsuit (as stated in Article 399/III of the TCC). However, if there is a valid reason based on the personality of the auditor appointed by the court, this reason will be thoroughly examined by the court that made the appointment, and a decision will be made accordingly.

To initiate a legal action for termination, the dissenting shareholder must have cast a vote against during the general gathering where the appointment of the auditor was decided and must have duly recorded this dissenting vote in the official minutes. Furthermore, the dissenting shareholder, who is inclined to cast a negative vote, is required to hold shares in the company for a minimum of three months prior to the date of the general assembly meeting in which the appointment was made (in accordance with Article 399/V of the TCC. In this legal action, the auditor assumes the role of the defendant, and the company retains the right to intervene in the proceedings based on its vested interest.

The court scrutinizes the parties' authorization to bring a lawsuit and assesses whether there is a valid reason based on the auditor's character to render a decision. The justification rightfully asserts that when doubts cannot be substantiated with concrete evidence, differences of opinion cannot be regarded as legitimate reasons. In contrast to Article 399/VI of the Turkish Commercial Code (TCC), the justification fails to emphasize that the court's decision pursuant to Article 399/IV of the TCC is final. In accordance with Demirkapı's argument, the lawsuit for the appointment of an auditor in the absence of one is a non-contentious legal action²⁰⁷. Consequently, the law explicitly stipulates that the court's decision is conclusive. Dismissal and the subsequent appointment of a new auditor serve the purpose of terminating the legal relationship between the auditor and the company, thus constituting a contentious legal action.

3.2.3. Right to Request Appointment of a Special Auditor

3.2.3.1 The Formulation and Purpose of the Provision

With the implementation of Law No. 6102, the classification of auditors has been altered, whereby they are now classified as permanent general auditors and special auditors, as

²⁰⁷ Bora Cınar, S. (2019). Anonim şirketlerde sorumluluk davası açılmasında genel kurul kararı alınmasının gerekli olup olmadığı üzerine bir değerlendirme. *Turkish Academic Research Review*, 4(2), 235–258.

opposed to being treated as corporate entities. The appointment of general independent auditors is carried out by the company's general assembly, as stipulated in Article 399/I of the Turkish Commercial Code (TCC). Their primary responsibility lies in scrutinizing all financial statements and activities of the company, in accordance with the provisions of the TCC, through the means of a private legal agreement. Conversely, special auditors are enlisted in cases where specific events and matters necessitate thorough investigation.

The reason behind the entitlement to request the appointment of a special auditor lies in its capacity to furnish shareholders with insights into particular occurrences pertaining to the company, whether directly or indirectly, empowering them to exercise their shareholder prerogatives in view of the knowledge acquired during general assembly sessions²⁰⁸. This entitlement carries substantial weight, as it may serve as the catalyst for potential legal actions against founders, board members, executives, or auditors.

Although there was no explicit regulation concerning the appointment of special auditors throughout the duration of Law No. 6762, shareholders were able to exercise this entitlement by presenting a proposal during general assembly meetings²⁰⁹. This privilege derived from the status of being a shareholder, which allowed them to indirectly utilize it. However, under Law No. 6102, this entitlement is explicitly enumerated as one of the individual shareholder entitlements, ensuring its continuation as an extension of the entitlement to obtain information and conduct examinations.

Within this particular framework, a unique audit is characterized as an audit conducted by an unbiased and autonomous auditor designated by the court in response to the appeal of one or more shareholders, with the objective of elucidating particular occurrences, and it is not a continual type of audit. Accordingly, the intention behind governing the rights of minority shareholders in this manner is to enable them to acquire efficient, transparent, and credible data, which can subsequently be submitted for consideration in legal proceedings²¹⁰.

²⁰⁸ Kelimeler, A. (2022). *İstanbul Hukuk Mecmuası*. 80(2), 407–453.

²⁰⁹ Ortaklı, A., & Konusu, D. (2019). Anonim ortaklıklarda özel denetimin konusu. 9255, 629–660.

²¹⁰ Yordem, Y. (2004). Anonim ortaklıklarda ticaret kanunundan kaynaklanan azinlik hakları. *Dicle Üniversitesi Hukuk Fakültesi Dergisi*, 8(8-9-10-11), 171-195.

3.2.3.2. Prerequisite Conditions for the Appointment of a Special Auditor

The invocation for a special audit should exclusively occur when it is indispensable for the enforcement of shareholder entitlements and if the right to acquire data or perform an examination has already been utilized. The underlying objective is to shed light on particular occurrences through a special audit and this guarantees that the company's responsibilities to furnish information to shareholders are also subject to scrutiny²¹¹.

In accordance with Article 437 of the Turkish Commercial Code (TCC), the board of directors is obligated to be ready to present financial statements, consolidated financial statements, the annual report of the board of directors' activities, audit reports, and the board of directors' proposal for profit distribution to shareholders for examination²¹². The privilege to acquire information via inquiry during the general assembly, as regulated by Article 437/2, empowers shareholders to request any information related to the company's affairs from the board of directors. Nonetheless, this entitlement can be denied if the provision of the requested information may endanger company secrets or other safeguarded company interests²¹³. Article 437/5 ensures that shareholders who have been denied or unreasonably delayed in acquiring information or conducting examinations can exercise their right to request information through legal means.

The right to request a special auditor, as stipulated in Article 438 of the TCC, comes into play when a shareholder has already utilized the right to acquire information or perform an examination, and specific occurrences still necessitate clarification²¹⁴. This is particularly crucial in cases where the board of directors refuses to provide the information, as it guarantees that shareholders have the resources to access the information they require. It should be emphasized that the shareholder must substantiate that the invocation for a special audit is indispensable for the exercise of shareholder

²¹¹ Y. Yordem. 1981. (F. 204). P. 1689–1699.

²¹² Article 437 of the TCC.

²¹³ Eren, & Banu. 2010. (F.65). p. 99.

²¹⁴ Karslioglu, H. (2022). TTK'nin 420'nci maddesi uyarınca, genel kurul toplantısında azligin finansal tablolarin gorusulmesini erteletmesi hakkinin gerekliligi sorunu. Selcuk Universitesi Hukuk Fakultesi Dergisi, 30(2), 511-541.

entitlements, such as the right to vote, the right to a share of profits, or the right to initiate a liability lawsuit.

The request for a special auditor should be confined to a specific subject or occurrence. For instance, it can pertain to distinct items in financial statements, particular contract receivables generating income, or obligations imposing debt²¹⁵. This prerequisite prevents excessively broad requests and ensures that the special audit serves a specific purpose.

In instances whereby the special auditor request is sanctioned by the general assembly, any shareholder, without any restrictions, has the ability to request the appointment of a special auditor from the court within a period of 30 days²¹⁶. If the general assembly grants the request, there is currently no provision for minority rights. However, if the general assembly denies the request for a special audit, only minority shareholders with technical expertise can jointly apply to the court. The approval of the special audit request by the general assembly signifies that the right to request the appointment of a special auditor is accessible to all shareholders, not solely those who instigated the request. In this particular context, the evaluation to be carried out by the court will entail assessing whether the general assembly has granted approval for the special audit request, whether the applicant is an individual who possesses the required legal authorization, and whether the subject matter presented to the court for examination aligns with the subject matter presented to the general assembly. Given that it is not mandatory to designate a defendant, this process is classified as a non-contentious legal action.

3.2.4. Right to cancel decisions of General Meetings

In joint stock companies, the general meeting is a gathering of shareholders or their delegates who convene in accordance with the correct process call to deliberate on particular agenda items.

Article 445 of the TCC states that shareholders who attend the general meeting and vote against the decision made by the group may bring a lawsuit to have the decision revoked

²¹⁵ Barut, H. (2010). Turk Ticaret Kanunu ve Turk Ticaret Kanunu tasarisi'nda anonim ortakliklarda azinlik hakları (Master's thesis, Kocaeli Universitesi, Sosyal Bilimler Enstitusu).

²¹⁶ ARTICLE 438 (2) TCC which states “If the general assembly approves the request, the company or each shareholder may, within thirty days the appointment of a special auditor from the commercial court of first instance where its headquarters is located may request.

if it is in conflict with the law or the company's articles²¹⁷. Given that there is no minimum percentage need for shareholders to be eligible to file a lawsuit, any shareholder may file a lawsuit based on the annulment of the decisions made at the general meeting. It is obvious that the shareholders of the corporation could suffer greatly as a result of the controllers' abusive decisions; for this reason, control—including the authority to reconsider such actions and decisions—is necessary.

For shareholders of the company, controlling the arbitrary decisions made by general meetings might have serious repercussions. Consequently, it is crucial to have procedures in place such the ability to contest these choices and acts. Who may file a case to overturn decisions made at a general meeting is defined by Article 446:

- Attending shareholders disapproved of the decision with a vote, and their objections were included in the minutes of the general meeting.
- shareholders who assert that the correct processes were not followed, regardless of whether they were present at the meeting. This covers situations in which the general assembly was improperly called, in which the agenda was improperly revealed, or in which voting and participation by shareholders or their representatives were restricted.
- Board of directors' members may contest decisions made at general meetings.
- If a board member's personal culpability might result from adhering to the decisions made at the general meeting, they may also each individually contest such decisions.

In addition, a shareholder or the board of directors must file a lawsuit contesting the general meeting decision within three months of the decision's date²¹⁸. A lawsuit for annulment may be initiated in accordance with Article 445 of the TCC if the meeting

²¹⁷ ARTICLE 445- (1) The persons referred to in Article 446, law or articles of association against general assembly resolutions that are contrary to the provisions of the general assembly and in particular the rule of honesty. Within three months from the date of the company's incorporation, at the commercial court of first instance in the place where the company's headquarters is located, they can file a lawsuit for annulment.

²¹⁸ Article 445 of the TCC.

agenda was mispronounced, unauthorized persons attended the general meeting, or unfair voting rights were granted. The court may take other considerations into account depending on the particular case, and the grounds listed above are not the only ones that can be used to challenge general meeting decisions.

3.2.5. The entitlement to apply for the issuance of shares

A company is required under Article 486(3) of the TCC²¹⁹ to issue recorded share certificates and distribute them to each shareholder who has recorded shares, upon request by minority owners. If this clause is broken, minority shareholders may bring a lawsuit against the business.

Registered and bearer shares are the two categories of shares that joint stock corporations are permitted to issue²²⁰. The type of shares can be found in the business's articles of association, either during or after the founding of the firm. According to the TCC, certificates for bearer shares may be issued and given to shareholders during the first three months following the date on which the shares are fully paid in. According to the Turkish Commercial Code, registered share certificates are not required to be issued for registered shares.

However, Article 486 requires the corporation to comply if the minority shareholders request it. For non-public businesses, minority shareholders may request under Article 486(3) that shares be issued in the holder's name. In response to this demand from minority shareholders, the board of directors must issue nominative shares and distribute them to their holders. The board of directors is not required to issue business shares if the minority does not request them²²¹.

Minority shareholders benefit from these rights because they improve the bar for their fundamental ownership position and the stability of the investment environment. Furthermore, these rights promote minority shareholders' involvement in the company's

²¹⁹ Article 486(3) of the TCC states "If the minority requests, registered share certificates will be printed and all registered shares will be issued and distributed to shareholders".

²²⁰ Akbulak, Y. (2016). TTK isiginda anonim sirketlerde pay senetleri. Ankara Barosu Dergisi, (1), 506-523.

²²¹ Altas, S. (2014). Anonim sirketlerin pay senedi bastırma yukumluluğu. Mali Cözüm Dergisi, S, 133, 105-118.

management and help to establish a stable investing environment for them. Note that, this power extends to all registered shareholders, not only minority shareholders. This is due to the fact that all shareholders, not just minority shareholders, will have new written share certificates printed by the board of directors.

3.2.6. The entitlement to access Information

Every shareholder has the right to obtain information regarding the company's financial statements, consolidated financial statements, the board of directors' annual report, audit reports, and the proposal for the board of directors' profit distribution, without regard to a percentage.

For fifteen days before to the general meeting, the documents must be maintained in a convenient location at the company's headquarters and with its subsidiaries. The purpose of this right is to give the shareholder the information they need to exercise their minority status-related rights, as stated in Article 437 of the Turkish Commercial Code. This minority right may not be restricted or eliminated by a board decision or the articles²²².

Shareholder requests for information may only be turned down if they are likely to harm the firm or put its trade secrets in danger of being revealed. A shareholder may file an application with the court within ten days after the denial or, in other circumstances, within a reasonable amount of time, if their information requests are unanswered, unjustly denied or postponed, or they are unable to acquire information under Article 437.

The purpose of this protection is to safeguard minority shareholders. The primary shareholders have constant access to company information since they are typically the controllers of the business or have close contact with them. Moreover, no specific percentage is required, therefore any shareholder may bring a legal action about the matter. All earlier agreements that restrict shareholder access to information are void because the right to obtain information is a matter of public policy.

²²² Pulaslı, H. 2012. (F. 129). P. 154.

3.2.7. The Entitlement to Apply to the Court for Dissolution of a Joint Stock Company for Just Causes

The dissolution of the corporation for good reason is a crucial corrective measure for the protection of minority shareholders. The TCC's Article 531 imposed this right²²³. Before the new Code went into effect, minority shareholders who felt wronged had no way to get a corporation dissolved for good reason. Nonetheless, it was acknowledged that, according to doctrine, shareholders could exercise the right of termination included in the articles of company.

Kaya argued according to Article 531, a court may be asked to rule on a company's dissolution if there are reasonable grounds and shareholders own at least ten percent of the capital of a joint stock company (or twenty percent of the capital in a publicly traded business)²²⁴. It does not, however, specify what these just causes might be; this must be determined case-by-case. If minority shareholders choose to do this, they must go to the court that oversees the incorporation's location. According to the last sentence of Article 531, if a minority shareholder asks a court to dissolve a corporation for legitimate reasons, the court may determine that the applicant shareholders' shares should be purchased for their actual value or that a fair and reasonable solution has been found²²⁵.

3.2.8. Miscellaneous Provisions of Protection Minority Shareholder Rights under Capital Markets Law

To comprehend the framework for minority shareholder protection in Turkey, it is also essential to provide a comprehensive understanding of the safeguards granted to minority stakeholders under the Turkish Capital Markets Law. The Capital Markets Law's primary

²²³ ARTICLE 531- (1) TCC No. 6102 In the presence of justified reasons, at least one-tenth of the capital and the public holders of shares representing one-twentieth of the shares in open companies are the shareholders of the company where the headquarters of the company is located and may request the Commercial Court of First Instance to decide on the dissolution of the company. Court Instead of termination, the plaintiff shareholders are entitled to receive a payment of their shares as of the date closest to the date of the decision. The value of the shares and the plaintiff shareholders are dismissed from the company, or the shareholders are dismissed from the company, or the plaintiff shareholders are dismissed from the company and may decide on another acceptable solution.

²²⁴ Çağlar, H., & Kaşak, E. (2016). Anonim şirketin haklı sebeple feshine ilişkin TTK M. 531 hükmünün zaman bakımından uygulanması. Ankara Üniversitesi Hukuk Fakültesi Dergisi, 65(3), 659-686.

²²⁵ Kaya, M. K. (2021). Minority shareholder protection: A comparative analysis between the UK and Turkey, On iki lehva yayıncılık, 1, Baskı, p. 161.

objective is to safeguard investors' interests, particularly about publicly traded corporations. This law encourages self-regulation among market participants while creating, preserving, and regulating honest and efficient securities markets. Furthermore, it is responsible for safeguarding the interests of investors and minority owners, a duty that supersedes conflicting legal requirements²²⁶.

Turkish law offers a thorough framework for managing the basic rights of shareholders. For example, in publicly traded companies, stockholders with 5% of the capital are entitled to call general meetings and suggest agenda topics. Agendas, meeting materials, and notices are sent to shareholders promptly through online platforms. Furthermore, large corporate changes sometimes require a supermajority vote due to shareholders' broad right of scrutiny and prevention²²⁷. Even though Turkish law allows for varying degrees of voting rights, the articles of organisation govern whether minority shareholders have cumulative voting rights.

As per the Turkish Commercial Code, shareholders possess the right to initiate legal action against a board member on the grounds of alleged breaches of fiduciary or other duties to the firm. As long as they own 5% of the capital of publicly traded companies, general minority shareholders are entitled to exercise specific rights under the Turkish Commercial Code. However, the provisions of the Capital Markets Law for publicly traded firms reinforce these rights even more. This Act grants shareholders the power to file information requests and use the legal system to contest decisions made at the company's general meetings. Another benefit to which shareholders are entitled is share certificates.

Publicly traded firms are allowed to establish an internal entity as a component of the corporate governance committee under the standards set forth by the Capital Market Board. The main duty of this internal organization is to help the board of directors and shareholders communicate with each other. Its duties include ensuring that shareholder data is accurate and up to date, consulting with shareholders on matters pertaining to the

²²⁶ Adıguzel, B. (2017), *Türk Sermaye Piyasasında Yeni Sermaye Piyasası Kanununun Getirdikleri*. Sarajevo, University of Donja Gorica, 53.

²²⁷ Kaya, M. K. 2021 (F.2) P. 165

firm that are not confidential, putting together necessary meeting materials, and making critical public announcements.

3.3. Minority Shareholder Rights in the Horn of Africa

Ensuring fair and equitable treatment in corporate operations in the Horn of Africa necessitates the preservation of minority shareholder rights, which is represented in contemporary corporate governance concepts and laws like the Companies Act in every country. Minority shareholder rights are crucial for preserving the balance of power inside businesses, stopping majority shareholder abuses, and encouraging accountability and transparency.

The protection of these rights becomes even more crucial in the Horn of Africa, where market dynamics and corporate structures can differ. For instance, the Kenyan Companies Act provide a framework for defending minority shareholders' interests through a variety of rights. These include the ability to summon general meetings, designate proxies, obtain financial accounts and reports, and be informed about corporate resolutions²²⁸. These clauses are essential because they give minority shareholders the ability to watch over and impact company governance, hence stopping possible fraud or poor management by majority stakeholders.

The Act also tackles the problem of unequal access to information between majority and minority shareholders. It guarantees that crucial information regarding the business's activities and financial situation is available to all shareholders, irrespective of the level of their ownership stake²²⁹. Minority shareholders must be able to safeguard their capital and make educated decisions, which requires openness.

The 2004 OECD Principles of Corporate Governance are recognised in the same way as the Ethiopian Commercial Code of 1960. These include the following: 1) safe ways of registering ownership; 2) transfer or convey shares; 3) timely and regular access to pertinent and material information about the corporation; 4) participation and voting in

²²⁸ Kenya. (2017). Companies Act (General Regulations), Regulation 39.

²²⁹ Kenya. (2015). Companies Act (Act No. 17 of 2015), Section 114 (3).

general shareholder meetings; 5) election and removal of board members; and 6) a portion of the corporation's profits²³⁰.

These rights can be divided into two categories: control rights and financial rights. Financial rights mainly deal with how owners of a company divide its profits over its lifetime and its assets in the event of dissolution. Conversely, the right to control pertains to the way and degree in which shareholders participate in the decision-making process of a firm. The OECD's fundamental protection guidelines for -105 also take this classification into consideration²³¹.

The standards for defending the rights of minority shareholders in Somaliland, Somalia, and Uganda are comparable to those in Kenya and Ethiopia, demonstrating a regional approach to corporate governance. These countries, whose legal systems are not too dissimilar from those of their neighbours, place a strong emphasis on important rights for minority shareholders.

Minority shareholder rights in these nations usually include safe ways to register ownership of shares, guaranteeing that investors have a legitimate and trustworthy record of their capital. It is also acknowledged that shares may be conveyed or transferred, giving shareholders more freedom to manage their capital.

Another essential right is the ability to obtain pertinent and timely corporate information. By doing this, transparency is maintained and shareholders are empowered to make well-informed investment decisions. Minority shareholders are also given a say in corporate decision-making through common provisions such as the ability to attend and vote in general shareholder meetings.

Another typical enshrinement that gives minority shareholders more authority to influence the corporation's management and strategic direction is the ability to elect and

²³⁰ OECD Principles, p.33. These rights are recognized in virtually all member states of the OECD. As we will see below, the Commercial Code of Ethiopia also embraces these basic rights.

²³¹ OECD Principles, page 32. As a result, it is possible to purchase, sell, or transfer an equity share in a publicly traded corporation. With liability restricted to the amount invested, an equity share grants the investor the ability to partake in the corporation's profits. Additionally, having an equity stake gives you access to corporate information and the ability to influence it, mostly by voting and attendance at general shareholder meetings.

dismiss board members. Lastly, a right to a portion of the corporation's revenues is usually incorporated, tying minority shareholders' financial interests to the company's overall success.

Furthermore, the practical implementation of these rights frequently exposes obstacles, including the preponderance of majority shareholders in decision-making procedures and the constraints of contractarian theory in the context of corporate governance. These difficulties underline the necessity of ongoing legislative and regulatory changes to improve the rights of minority owners and guarantee fair and inclusive corporate governance for all shareholders in the Horn of Africa.

3.3.1. Major Minority Rights in Horn of African Countries.

3.3.1.1. Introduction

In the context of the Horn of African countries, including Ethiopia, the essence and legal treatment of minority shareholder protection often lacks a clear and uniform definition of what constitutes a minority shareholder. This ambiguity poses a significant challenge in effectively safeguarding the rights of these stakeholders across the region.

A common approach, as highlighted by Fekadu Petros, suggests that a shareholder owning less than half of a company's shares typically falls into the minority category, especially if their voting power is insufficient to influence corporate decision-making²³². However, this definition can be too broad and may not adequately address the needs and vulnerabilities of minority shareholders in different corporate structures. In Ethiopia, for example, a shareholder with less than 10% of a company's shares is generally considered a minority, but for protective measures, a threshold of 20% is often used²³³. This threshold, however, may not be practical or fair in modern corporate settings where companies are formed with substantial capital, making it difficult for minority shareholders to attain even a 20% stake.

This situation is not unique to Ethiopia but extends to other countries in the Horn of Africa, where commercial codes and corporate laws often lack specific provisions

²³² Petros, F. (2004 E.C). Ethiopian Company Law (in Amharic). p. 229.

²³³ Ethiopia commercial code, art 391(1)

defining minority shareholders and setting a practical threshold for minority shareholding.

3.3.1.2. The right to convene general shareholders' meeting

One of the most important safeguards for minority shareholder owners in the Horn of Africa, is the ability to call general shareholders' meetings²³⁴. These meetings are usually summoned by an officer of the court, the directors, the auditors, or the liquidators. Shareholder meetings come in two flavours: special and general²³⁵. A significant occasion, the annual general meeting is where shareholders discuss business matters and decide on matters like dividends, director compensation, and possible board member replacements.

Minority shareholders in nations like Ethiopia, however, have the right to ask the court to call a meeting if the directors decline to call one. For example, the court may designate an official to convene a meeting in accordance with Ethiopia's commercial code (Article 391(2)) if shareholders representing at least one-tenth of the share capital indicate the necessity²³⁶. This clause is essential for shielding minority investors from possible wrongdoing by directors or majority owners.

Notwithstanding these provisions, difficulties exist. Minority shareholders may find it burdensome to satisfy the barrier of owning 1/10 of the voting shares in order to call a meeting, particularly in large, publicly traded companies²³⁷. By classifying these stockholders as majorities, this criterion frequently weakens the protections meant for actual minorities. Additional obstacles are created by the law's uncertainty regarding the circumstances in which shareholders might ask a judge to convene a meeting. This ambiguity can spark debates and make it more difficult for minority shareholders to assert their rights.

²³⁴ Fentie, W. (2018). Strengthening shareholders control of companies in Ethiopia: Minimizing agency cost. *Hawassa UJL*, 2, 73.

²³⁵ Shamana, T. W., & Ossa, M. W. (2019). The legal protection of minority shareholders under Ethiopian Law: Comparative Analysis. *JL Pol'y & Globalization*, 86, 12.

²³⁶ Fentie, W. 2018 (F.235). P. 55

²³⁷ Shamana, et., Al., 2019. (F.281). P. 9

3.3.1.3. The right to propose or amend the agenda of shareholders' meeting

The right of minority shareholders to propose agenda items or resolutions at shareholders' meetings is a major topic in the larger context of the Horn of Africa, which includes Ethiopia. In most cases, the board of directors or management sets the agenda for these meetings. Minorities among shareholders have the right to vote, but their influence over the agenda at meetings is frequently restricted²³⁸.

Company rules in many of these nations, including Ethiopia, do not expressly give minority shareholders the authority to suggest items for the agenda at general shareholders' meetings²³⁹. The body convening the meeting, generally the board of directors, normally prepares the agenda, and company statutes frequently don't provide clear guidelines for minority shareholders to bring forward their own topics for debate. This restriction essentially denies minority shareholders a meaningful say in the decision-making process by keeping it in the hands of management or controlling shareholders.

3.3.1.4. The right to challenge the resolutions adopted at the general meeting.

The commercial rules offer a way for shareholders in the Horn of Africa, which includes Ethiopia, to contest resolutions that are approved at general meetings, especially if they are against the law, the company's memorandum, or the articles of association. Minority shareholder rights are handled rather differently in each of these nations, though, particularly when it comes to contesting resolutions that are thought to be unjust or discriminatory²⁴⁰.

As an illustration, pursuant to Article 416(2) of the Ethiopian Commercial Code, shareholders may contest a resolution within three months after the resolution's adoption or filing into the commercial register. This was demonstrated in the court case of Melese Zergaw v. Atinet Trading Share Company, when the plaintiff won and the company's disputed judgement was overturned²⁴¹. Additionally, the business code stipulates that

²³⁸ Beyene, M. (2023). Regulation of group of companies in Ethiopia: A comparative overview. *Mizan Law Review*, 17(1), 197-230.

²³⁹ Beyene, M. 2023. (F.234). P. 210

²⁴⁰ Gebremeskel, F. P. (2010). Emerging separation of ownership and control in Ethiopian share companies: legal and policy implications. *Mizan Law Review*, 4(1), 1-30.

²⁴¹ Fentie, W. 2018 (F.280). P. 59

some shareholder rights are intrinsic and cannot be changed by the general assembly or directors.

A significant legal deficiency in Ethiopia, as well as other Horn of Africa nations, is the absence of explicit clauses enabling minority shareholders to contest decisions that unjustly jeopardise their rights or the company's interests. The Ethiopian Commercial Code, for example, does not explicitly include preventative or remedial methods for minority shareholders who are mistreated by majority shareholders or business directors, as noted by scholars like Dagnaw Getahun and Fekadu Petros.

3.3.1.5. The right to appoint an independent audit.

The right to designate an independent auditor to safeguard minority shareholders is acknowledged in the context of Horn of Africa nations, including Ethiopia, but to differing degrees of success. For example, Article 368(2) of the Ethiopian Commercial Code permits shareholders holding at least 20% of the capital to designate an independent auditor²⁴². This clause highlights a serious loophole in the protections afforded to minority shareholders by implying that those holding less than 20% of the shares do not have this privilege.

The Ethiopian Commercial Code does not specifically define what constitutes a minority shareholder or the amount of shares required to meet this requirement. According to Fekadu Petros's writings, owners who own 20% of the company may qualify as minority shareholders²⁴³. According to this understanding, only a small number of people would be able to use the power to designate an independent auditor—possibly even individuals with lesser shareholdings who would yet have substantial stakes in the business.

Moreover, Ethiopian law permits shareholders holding at least one-tenth of the company's shares to ask the Ministry of Trade to designate certified auditors to conduct an investigation and prepare a report on the company's financial situation²⁴⁴. The 20% requirement for selecting an independent auditor is still regarded as high, particularly for

²⁴² Negash, M. (2013). Corporate governance and ownership structure: The case of Ethiopia. *Ethiopian E-Journal for Research and Innovation Foresight (Ee-JRIF)*, 5(1).

²⁴³ Fentie, W. 2018 (F.234). P. 66

²⁴⁴ Beyene, M. 2023. (F.234). P. 200

successful minority shareholder protection, despite the fact that this is intended to safeguard minority shareholders.

3.3.1.6. The right to access information.

In Ethiopia and other nations in the Horn of Africa, minority owners must be shielded from potentially unjust or biased decisions made by the board of directors or majority shareholders by timely and accurate information disclosure. However, in terms of effectiveness and cost-effectiveness, the information disclosure procedures described in these nations' commercial rules frequently fall short²⁴⁵.

In most of these nations, the information disclosed to shareholders and how it is disclosed are governed by commercial regulations. However, these rules frequently leave out important information, like voting protocols, meeting agendas, and decisions to be made at meetings²⁴⁶. This is especially important when there are proposals for significant modifications to the memorandum or articles of association, the issuance of new shares, or large-scale transactions involving the company's assets. Minority shareholders frequently lack sufficient protection since commercial regulations do not require the complete, accurate, and timely disclosure of such important information.

3.3.1.7. Voting rights

Voting rights are essential for shareholders in the Horn of Africa, particularly Ethiopia, to criticise the company's conduct during shareholder meetings and have an impact on corporate decisions. The commercial rules of these nations typically recognise these rights, but how they are applied and safeguarded varies, frequently leaving minority shareholders' protections vulnerable.

For instance, the 1960 Commercial Code in Ethiopia gives shareholders the power to vote on changes to the rights of shareholders, revisions to the articles of organisation or memorandum, and the appointment or removal of directors and auditors, among other

²⁴⁵ Agyemang, O. S., et al. (2019). Country-level corporate governance and protection of minority shareholders' rights: Evidence from African countries. *Accounting Research Journal*, 32(3), 532–552.

²⁴⁶ Agyemang, Et., Al., 2019. (F. 245).P. 539

issues²⁴⁷. While generally respected, the "one share, one vote" idea has certain restrictions. Voting rights may be restricted by the business code in the memorandum or articles of organisation, and shareholders may not be able to use their rights to vote in specific circumstances, such as when there are conflicts of interest²⁴⁸.

Nevertheless, the Ethiopian legislation does not expressly address or provide for some voting rights that are essential for minority shareholder protection, as do codes in many other Horn of Africa nations. For example, there is often no clear coverage for the rights to object to resolutions, ask questions of the management, put things on the agenda, and submit resolutions at meetings²⁴⁹. Moreover, the Ethiopian code does not allow for contemporary voting practices like electronic voting, which might be a big drawback for shareholders who are unable to physically attend meetings²⁵⁰.

In most of these nations, direct and proxy voting are used in the voting processes²⁵¹. Even while direct voting enables shareholders to attend meetings in person, it's not always feasible or economical, particularly for minority shareholders who reside in separate regions. This problem can be mitigated via proxy voting; however the commercial scripts frequently don't explain the finer points of proxy representation and proxy functions.

The business rules of the countries in the Horn of Africa do not generally recognise cumulative voting systems, despite the fact that they can be an effective instrument for protecting minority shareholders. By concentrating their votes and exerting more influence over the election of directors, minority shareholders can counteract the influence of majority shareholders through this approach²⁵².

In contrast, other countries, such as Turkey, have used contemporary communication techniques, such as online voting, which increases the involvement of all shareholders,

²⁴⁷ Ambo, E. (2021). The gaps and lessons of Ethiopian share company governance in light of international company model laws.

²⁴⁸ Negash, M. 2013 (F.242). P. 5

²⁴⁹ Agyemang, Et., Al., 2019. (F. 245). P. 532

²⁵⁰ Fentie, W. 2018 (F.234). P. 25

²⁵¹ Musango, C. (2016). Shareholder protection and shareholder intervention in Kenya: A Study on Shareholder Activism (Doctoral dissertation, University of Nairobi).

²⁵² Samora, M. (2019). An analysis of the protection of the minority shareholders' rights in Uganda.

particularly minorities. These developments are not yet widely embraced in the nations of the Horn of Africa.

3.3.1.8. Miscellaneous Provisions of Protection Minority Shareholder Rights

A company's management and board members may be sued or otherwise subject to administrative or legal action by shareholders seeking to enforce their interests. This capability is essential for safeguarding the rights of shareholders, particularly minority investors, as it enables them to effectively and economically pursue legal recourse in the event that their rights are violated²⁵³.

When the legal system provides tools that allow minority shareholders to file lawsuits based on a reasonable suspicion that their rights have been violated, it strengthens public trust in these rights. These enforcement measures are mostly provided by legislators and regulators²⁵⁴. Excessive litigation is a possibility, though. Many legal systems have put in place safeguards like the business judgement rule and "safe harbours" for specific board and management decisions in order to lessen this impact. They also examine the sufficiency of shareholder complaints. It is crucial to strike a balance between the preservation of ownership rights and preventing needless lawsuits. Alternative conflict resolution techniques, such as administrative hearings or arbitration, have proven successful in several nations and are especially useful in the early phases of disputes²⁵⁵.

In the context of derivative proceedings, shareholders who think management is acting unlawfully may bring legal claims under the corporation's name. The corporation, not specific stockholders, is the target of these lawsuits. For instance Ethiopia a case from 1999 in the Ethiopian Federal Supreme Court serves as an illustration of this, in which directors were sued by shareholders for misallocating money²⁵⁶. The case brought to light the formal conditions for these types of lawsuits, such as the need for a resolution from a

²⁵³ OECD, Principles (F.230), P. 40

²⁵⁴ Negash, M. 2013 (F.242). P. 11

²⁵⁵ Negash, M. 2013 (F.242). P. 15

²⁵⁶ Fentie, W. 2018. (F.234).P. 98

general meeting and a waiting period before shareholders can file a lawsuit in the event that the firm doesn't comply²⁵⁷.

According to Article 367 of the Ethiopian Commercial Code, the cassation court in this instance decided that shareholders could file a lawsuit if they could show that their rights were directly impacted. According to this ruling, shareholders who can demonstrate that a director's acts were detrimental may pursue post-facto remedies.

The extent to which shareholders may bring lawsuits against other parties on the company's behalf is still up for debate. Without explicit advice on proceedings against third parties, current laws such as Article 365 largely address directors' liabilities to the corporation and its shareholders. This points to a possible direction for shareholding law growth.

3.4. Essential Remedial Framework of Protection Minority Shareholders in Selected Horn of African Countries

This section will look at the crucial corrective structures created to safeguard minority shareholders in a few nations in the Horn of Africa. The examination of common law principles, statute laws, and equity forms the basis of the analysis, which emphasises how these legal frameworks have developed and how well they protect minority shareholders' interests in this particular geographic setting.

Important legal documents, such as national constitutions, the Capital Markets Act, and the relevant Companies Acts of these nations, are examined closely to determine the extent and quality of safeguards afforded. A special focus is placed on recent legislative reforms that indicate a move towards stronger protection mechanisms for minority shareholders, such as the Kenyan Companies Bill 2014 and similar legal developments around the region.

²⁵⁷ Commercial code of Ethiopia, Art 365.

3.4.1. Statutory Protection of Minority Shareholders

3.4.1.1. Companies Act

With modifications made to each nation's legal structure, the legal framework for safeguarding minority shareholders throughout the Horn of Africa is based on the ideas outlined in the Kenyan Companies Act. When a company's operations are carried out in a way that is oppressive against a subset of its members, these frameworks enable a member to petition the court for an alternative remedy. On just and equitable grounds, this persecution might support the company's closure; but, the court might take a different approach if this move would unjustly harm the minority group²⁵⁸.

Within this framework, courts possess the authority to issue directives that govern the firm's future transactions or mandate that other members or the company acquire shares owned by marginalised members²⁵⁹. A comparable decrease in the firm's share capital is required when the company buys shares from members who are oppressed.

Like Section 211 in the Kenyan context, the term of "oppression" is not stated clearly in the law. Historical court decisions, such as *Scottish Co-operative Wholesale Society Ltd. v. Meyer*, demonstrate the broad latitude that courts have in determining the definition of oppression²⁶⁰. This discretion is meant to guarantee that members who have been oppressed get the proper justice. Excessive director compensation, unjust share transactions, and unequal share issuance are only a few examples of oppressive practices that are demonstrated by precedents and studies like the Cohen and Jenkins Committee studies²⁶¹.

Similar to the requirements outlined in *Re: H.R. Harmer Ltd.*, a number of requirements must be satisfied for minority shareholders to be eligible for an alternate remedy under these statutes. The company's affairs leading up to the oppression must be attributable to its officers, directors, or members; the oppression must be directed at members in their capacity as members, not directors; it must justify the winding up of the company on just

²⁵⁸ Section 211, (2) (b), the Companies Act (CAP 486 of the Laws of Kenya).

²⁵⁹ Ogola, J. J. (2006). *Company Law* (2nd ed.). Nairobi: Focus Publications.

²⁶⁰ *Scottish co-operative wholesale society Ltd v. Meyer* [1959] AC 324.

²⁶¹ Ogola, P. 242.

and equitable grounds; and it must be interpreted in its ordinary sense, though this can often be ambiguous²⁶².

In these jurisdictions, the legal precept established in *Foss v. Harbottle* is likewise applicable. The idea of majority rule enables majority shareholders to ratify director misbehavior, frequently to the cost of minority shareholders, and also establishes that the corporation itself is the appropriate plaintiff in proceedings alleging wrongs done to it.

Using the Kenyan model as a point of reference, this study highlights the common legal principles and difficulties in defending minority shareholders among the countries in the Horn of Africa. The region's countries may have different legal peculiarities, but the general objective is always to strike a balance between minority shareholder protection and the company's and its majority stakeholders' larger interests.

3.4.2. judicial decision-making

There are three main legal channels available for safeguarding minority shareholders in the Horn of African regions, which encompass remedial actions. The primary category is statute law, which includes Company Law and Securities Law, as previously mentioned. Company Law primarily focuses on matters related to corporate governance and provides safeguards for shareholders on a broad scale. In contrast, Securities Law primarily concerns itself with stock or listed firms, specifically addressing regulations for the disclosure of information, transparency in the market, requirements for listing, and other relevant issues.

Judicial decision-making serves as the second means of safeguarding the rights of minority shareholders and providing a legal avenue for seeking redress. Practically, the judicial system in Horn of African nations resolves economic disputes and delivers judgements that can provide compensation for both minority and majority owners. It is widely recognised that certain clauses within the law may be unclear. Nevertheless, it would be unfeasible to correct these flaws using formal legislative procedures because of the prolonged and complex nature of the amendment process.

²⁶² Ogola op. cit. note 166 at 242.

3.4.3. Administrative regulations

Administrative regulations provide the third channel of legal protection for shareholders. The Horn of African countries are subject to several administrative rules, but the Ministry of Commerce in each region is largely responsible for issuing legislation that safeguard minority shareholders. These restrictions are crucial in limiting the power of majority shareholders and managers of publicly traded corporations, especially when the Company Law and the Securities Law are unable to adequately protect minority shareholders.

The effectiveness of administrative controls becomes vital because most company statutes provide inadequate protection to minority shareholders. Frequently, these regulations are designed to benefit majority owners, while exposing minority stockholders to potential risks. In addition, there are usually limited regulations that dictate the behaviour of majority owners and directors in publicly traded businesses, especially in emerging securities markets where regulatory systems may be insufficiently developed.

3.5. Challenges in Protecting Minority Shareholder Rights in the Horn of Africa

3.5.1. Introduction

A vital component of corporate governance in the Horn of Africa is the protection of minority shareholders, but systemic problems make this difficult to achieve. The absence of shareholder activism is one of the main issues. Minority shareholders frequently lack the tools, knowledge, and legal assistance needed to properly defend their rights in many Horn of African nations²⁶³. Numerous issues, such as lack of adequate legal frameworks, insufficient enforcement tools, bad corporate governance, information asymmetry, constrained market development, cultural and societal norms, and cross-border regulatory obstacles, can be blamed for this lack of engagement²⁶⁴.

²⁶³ Alfayo, O. W. (2021). Legal protections accorded to minority shareholders in Kenya in corporate entities (Doctoral dissertation, Strathmore University). P. 21

²⁶⁴ Alfayo, O. W 2021 (F.263). P. 44

Minority shareholders are particularly vulnerable in the absence of a robust culture of shareholder activism, which makes it more difficult for them to have an impact on business decisions and safeguard their interests.

Furthermore, these challenges are shaped by the unique socio-political and economic landscapes of the region. Understanding and addressing these obstacles is crucial for enhancing corporate governance and ensuring equitable treatment of all shareholders in these markets. In the below part, we will discuss the main and common obstacles facing shareholder protection in Horn of African countries.

3.5.2. The regulation, legislation, and enforcement of corporate governance

The main notion of corporate governance encompasses the rules and procedures governing transactions that have the potential to impact the implementation of corporate governance. This may encompass the legal framework, regulations, and guidelines pertaining to the selection of auditors, as well as the obligations of government entities accountable for ensuring compliance. The scope of this matter encompasses the adherence of listed businesses to corporate governance rules, legislation pertaining to investor protection, which can have an impact on the dividend policy, and the rights of shareholders, particularly minority rights. This will prevent the majority shareholder from exploiting the minority. Furthermore, the process of nominating and electing board members, as well as the rules and regulations pertaining to disclosure and accountability, are also included.

The extent of legal safeguards provided to investors in a given country has a crucial role in influencing the growth of a company's financial market in that country. The variations in legal structure and enforcement mechanisms across different countries, influenced by factors such as historical legal trends, corruption levels, and the effectiveness of enforcement, undoubtedly have a crucial role in shaping variances in financial development. The authors have concluded that these findings pertain to the examination of legislative safeguards and implementation in the corporate governance of various nations.

Research suggests that countries with legal systems based on common law provide stronger shareholder protection compared to civil-law systems²⁶⁵. The authors also asserted that enhanced shareholder protection leads to higher levels of stock market development.

Furthermore, the study unveiled that the common law system demonstrates a superior level of safeguarding shareholders compared to the civil-law system²⁶⁶. Common law countries may have embraced corporate governance codes more swiftly than civil-law countries. Nevertheless, the authors discovered that civil-law systems have undergone a more pronounced and swift enhancement in shareholder protection during the corresponding timeframe. Furthermore, the researchers discovered that the legal origin could influence the framework of legal regulations. However, they observed that there is no direct correlation between the level of legal protection and financial development. This could be attributed to the stricter enforcement of corporate governance.

Corporate governance during the last three decades and especially after the major corporate scandals of 2001-2002 and 2008 has emphasized the fact that “firm-level corporate governance matters more in countries with weak shareholder protection and poor judicial efficiency”²⁶⁷. Corporations with bad corporate governance system need a more effective legal and judicial framework to balance for the internal failures or weaknesses.

In the great Horn of Africa region, specifically those our study is related are mainly Common Law Legal System, but they didn't have strong legal systems such as those in Common law system²⁶⁸. In this region most of countries there is not adequate legal frameworks to protect minority shareholder rights and the easiest example showing that there is no real definition whom to be a minority shareholder such those in Turkey who

²⁶⁵ Egri, C. P., & Ralston, D. A. (2008). Corporate responsibility: A review of international management research from 1998 to 2007. *Journal of international management*, 14(4), 319-339

²⁶⁶ Armour, J., et al. (2009). Shareholder protection and stock market development: An empirical test of the legal origins hypothesis. *Journal of Empirical Legal Studies*, 6(2), 343–380.

²⁶⁷ Fentie, W. 2018. (F.234).P. 104

²⁶⁸ Negash, M. 2013 (F.242). P. 11

is well defined once. Similarly, the laws of this countries are not imposed clearly the rights of minority shareholders as well.

Furthermore, an urgent requirement exists for a robust and well-designed regulatory framework that encompasses several aspects of corporate governance. This entails the implementation of legislative acts or decrees to establish regulatory organisations with well-defined duties, including the authority to enforce regulations. The regulatory process involves the development of norms or standards, monitoring adherence to them, and adopting methods to ensure compliance²⁶⁹.

In several fields, there are numerous regulatory obstacles, encompassing tasks such as determining the appropriate levels of capital sufficiency for global banks, implementing strong accounting and auditing standards for companies, and overseeing company conduct. In Africa, there is a notable difficulty in creating and executing suitable regulatory, enforcement, and incentive systems, mostly because of a lack of competent staff and institutional capacity²⁷⁰

3.5.2.1. Public governance and good corporate governance in Africa

The dedication of the government and its leadership plays a crucial role in transition economies, as it is necessary to establish a favourable climate for corporate governance in order to secure the long-term viability of enterprises²⁷¹. The most successful governance method in corporations with controlling owners is the implementation of a set of legal rules that regulate managerial conduct and safeguard the interests of minority shareholders.

In Ethiopia, there exist comprehensive frameworks that provide legal regulations (defining rights and obligations), procedures (governing corporate conduct), and sanctions for non-compliance. However, the issue of overseeing and implementing these

²⁶⁹ Okpara, J. O. (2010). Perspectives on corporate governance challenges in a Sub-Saharan African economy. *Journal of business and policy research*, 5(1), 110-122.

²⁷⁰ Okpara, J. O. 20210. (F.269). P. 117

²⁷¹ Botha, M. M. (2015). Responsibilities of companies towards employees. *Potchefstroom Electronic Law Journal*, 18(2), 1-67.

rules and procedures continues to persist²⁷². The courts, which serve as a judicial mechanism of oversight, have proven ineffective in this regard. The efficacy of extra-judicial oversight mechanisms, such as the registrar of companies and shareholders' associations, in exerting influence on directors has been found to be inadequate.

The corporate governance in Somaliland is hindered by many limitations, mostly due to an insufficient legislative framework that is predominantly governed by the Companies Code²⁷³. The Somaliland Lawyer's Association in the country therefore suggests the implementation of legislation that requires increased openness, clearly defines governance roles and responsibilities, enacts competition and solvency regulations, and enhances enforcement measures²⁷⁴. Additional obstacles comprise of governmental intervention in the activities of state-owned corporations, insufficient management information systems, lack of knowledge among shareholders, and inadequate enforcement of applicable legislation. The Registry of firms in Kenya lacks the necessary resources, technology, and capability to adequately oversee the over 20,000 registered firms²⁷⁵.

3.5.2.2. Corruption and corporate governance

A survey among more than 400 CEOs and CFOs in East Africa, revealing a troubling pattern of rising fraud and corruption in the region's business climate²⁷⁶. Out of the respondents, a significant 61 percent recognised fraud as a noteworthy problem, while a frightening 88 percent reported seeing incidents of fraud within their firms in the previous year²⁷⁷. The increase in illegal actions was mostly caused by ineffective internal controls and insufficient corporate governance practices.

²⁷² Munisi, G., & Randøy, T. (2013). Corporate governance and company performance across Sub-Saharan African countries. *Journal of Economics and Business*, 70, 92-110.

²⁷³ Stremlau, N., & Osman, R. (2015). Courts, clans, and companies: mobile money and dispute resolution in Somaliland. *Stability: International Journal of Security and Development*, 4(1).

²⁷⁴ Mancuso, S. (2016). Short notes on the legal pluralism (s) in Somaliland. *Concepts of law: comparative, jurisprudential, and social science perspectives*, 237-250.

²⁷⁵ Gatamah, K. (2003). Launching corporate governance in Africa with an emphasis on Kenya. *Good Directors*, 333.

²⁷⁶ Kolk, A., et al. (2002). KPMG International Survey of corporate sustainability reporting 2002 (p. 11).

²⁷⁷ Kolk, et al. 2002. (F.276). P.11

For instance, in the Horn of Africa was a prominent telecommunications corporation that was discovered to have participated in corrupt activities in order to obtain profitable contracts in the area. As per Transparency International's investigation, the corporation purportedly provided significant payments to government officials in order to receive favourable treatment in contract bidding procedures²⁷⁸. This example exemplifies the adverse impact of corruption on equitable competition and economic progress in the Horn of Africa.

Moreover, the widespread and entrenched corruption in Horn of African countries presents a substantial and daunting danger to safeguarding the interests of minority shareholders. This corruption severely undermines their rights and significantly erodes their confidence in the honesty and fairness of the economic landscape.

3.5.2.3. Legal Enforcement and Weak Judiciary System

The lack of a robust court and effective legal enforcement in the Horn of Africa poses considerable obstacles to safeguarding the rights of minority shareholders. The absence of strong legal processes weakens the interests of minority shareholders and impedes their capacity to seek redress against unjust conduct within firms.

Weak judiciary systems sometimes lead to protracted and expensive legal actions, discouraging minority shareholders from seeking legal recourse to safeguard their interests²⁷⁹. Similarly, the study highlights the prolonged duration of trials in African nations exacerbates the burden, since cases frequently remain stagnant within the legal system for several years before reaching a decision. In the absence of prompt and efficient legal recourse, minority shareholders may experience a sense of powerlessness in their ability to hold management responsible for their conduct. Moreover, little legal enforcement implies that even if minority owners opt to initiate legal proceedings, there is no assurance that court rulings will be implemented. The absence of enforcement

²⁷⁸ Kimeu, S. (2014). Corruption as a challenge to global ethics: the role of Transparency International. *Journal of Global Ethics*, 10(2), 231-237.

²⁷⁹ Aderibigbe, O. I. (2016). Minority shareholders' rights and the majority rule under corporate governance: an appraisal. *Journal of Comparative Law in Africa*, 3(1), 100-113.

affects the credibility of the legal system and exacerbates the erosion of trust in corporate governance systems.

Furthermore, the lack of specialised commercial courts, such to those found in countries like Turkey, worsens the problem in many parts of the Horn of Africa. The courts, which have sole authority over commercial cases, are essential in accelerating the settlement of conflicts pertaining to business and commerce. The absence of dedicated institutions in the area exacerbates the difficulties encountered by minority shareholders, as their legal disputes may become caught in general civil court processes that are inadequately equipped to handle intricate commercial issues efficiently.

3.5.3. Miscellaneous challenges

3.5.3.1. Limited Company Classifications in the Horn of Africa

Company classifications play a crucial role in shaping the business climate and stimulating economic growth. Nevertheless, the Horn of Africa faces a notable constraint in terms of the variety of company categories that are accessible, which poses difficulties for both entrepreneurs and investors. The common types of business entities in the area are sole proprietorships, partnerships, and limited liability companies (LLCs)²⁸⁰. However, when compared to more varied categorizations seen in other contexts, such as companies and hybrid organisations, the available choices are somewhat restricted²⁸¹. The legal frameworks that regulate company classifications are frequently antiquated and may not sufficiently satisfy contemporary business requirements²⁸².

The narrow scope of corporation classifications has complex repercussions. Initially, it hampers entrepreneurial activity and innovation as entrepreneurs face difficulties in identifying appropriate legal frameworks²⁸³. Furthermore, it hinders the progress in attracting foreign investment, as investors tend to prefer countries that have more adaptable legal frameworks. Moreover, the absence of varied categorizations might result

²⁸⁰ Davidson, R. H., et al. (2019). CEO materialism and corporate social responsibility. *The Accounting Review*, 94(1), 101–126.

²⁸¹ Davidson et al. 2019. (F.280) P. 109

²⁸² Carroll, A. B., & Brown, J. A. (2018). Corporate social responsibility: A review of current concepts, research, and issues. *Corporate social responsibility*, 39-69.

²⁸³ Davidson Et.Al. 2019. (F.280) P. 109

in governance challenges and legal conflicts, as current classifications may not adequately account for contemporary intricacies in business²⁸⁴.

Limited company classifications have implications for minority shareholder protection. In the absence of specialized legal structures, minority shareholders may face challenges in exercising their rights and seeking recourse against unfair practices. The lack of adequate legal frameworks can undermine minority shareholder protection mechanisms, leaving them vulnerable to exploitation by controlling shareholders or management. This can result in disenfranchisement, diminished representation, and reduced legal remedies for minority shareholders, ultimately eroding investor confidence and hindering capital market development.

For instance, in Turkey, the classification of companies is well-defined, with each type of company having a developed regulatory framework and operational structure. The most common type of company in Turkey is the joint stock company. However, this model is not widely known or utilized in the Horn of African region, although it does operate.

3.5.3.2. Absent or underdeveloped monitoring institutions

Another major challenge encountered by minority shareholders in the Horn of African region is the absence or underdevelopment of monitoring mechanisms. Institutions such as regulatory organisations and oversight mechanisms have a vital function in supervising corporate governance practices and safeguarding the interests of minority shareholders²⁸⁵. Nevertheless, in several cases throughout the area, these monitoring institutions are either absent or insufficiently developed.

For instance, Ismail's study which revealed that regulatory authorities in various nations in the Horn of Africa do not possess the required resources, power, and independence to adequately supervise corporate governance procedures²⁸⁶. The lack of regulatory

²⁸⁴ Carroll, A. B., et al. 2018 (F. 280). P. 54

²⁸⁵ Ismail, A. (2019). Corporate governance and minority shareholders' protection: Evidence from Sub-Saharan Africa. *European Journal of Economics, Finance and Administrative Sciences*, 104, 65-80.

²⁸⁶ Ismail, A. 2019 (F.285). P. 76

monitoring in this context exposes minority shareholders to a higher vulnerability towards potential abuses of power by majority shareholders and corporate management.

Moreover, the inadequate establishment of supervisory organisations can lead to a dearth of openness and responsibility within corporations, hence intensifying the difficulties encountered by minority shareholders. In the absence of effective monitoring measures, minority shareholders may encounter difficulties in obtaining crucial information regarding corporate operations and decision-making procedures, thereby impeding their ability to defend their rights and safeguard their interests²⁸⁷.

Furthermore, the lack of proficient oversight organisations may discourage prospective investors, both local and international, from participating in the financial markets of the region. Investors often look for settings that have robust regulatory frameworks and oversight procedures to minimise risks and guarantee the safeguarding of their investments. Inadequate monitoring institutions can create a perception of insufficient investor protection, which in turn can diminish investor confidence and impede the growth of the region's capital markets²⁸⁸.

Essentially, the lack or inadequate establishment of monitoring mechanisms in the Horn of African region presents substantial difficulties for minority shareholders. To tackle this problem, it is necessary to make collaborative endeavours in bolstering regulatory institutions, augmenting transparency and accountability within corporations, and enhancing investor trust in the capital markets of the area.

3.6. Lessons Horn of African Countries can learn From Turkey's laws and Institutions in Protecting Minority shareholders in Joint-stock Companies.

3.6.1. Introduction

The Horn of African countries face significant challenges in protecting the rights of minority shareholders in joint stock companies²⁸⁹. In order to enhance the attractiveness

²⁸⁷ Ismail, A. 2019 (F.285). p. 79

²⁸⁸ Agyei, S. K., et al. (2022). Country-level corporate governance and foreign portfolio investments in Sub-Saharan Africa: The moderating role of institutional quality. *Cogent Economics & Finance*, 10(1), 2106636

²⁸⁹ Samora, M. 2019. (F.252) P. 23

of their economies to foreign investors and ensure the sustainability of their companies, it is imperative for these nations to undertake comprehensive reforms. By conducting comparison studies, especially with Turkey, we can gain useful knowledge on how to promote the safeguarding of minority shareholders' rights. This requires addressing multiple facets, such as clearly defining minority shareholders, enhancing their rights, facilitating their involvement, and strengthening the regulatory framework. Furthermore, it is imperative to revamp their commercial codes, since a significant number of these rules are antiquated and incompatible with contemporary business methodologies.

The commercial codes in the majority of Horn of African nations are vestiges of legislation from the colonial era and have not been able to adapt to the modern dynamics of business. These obsolete rules frequently lack provisions that effectively tackle modern concerns such as e-commerce, intellectual property rights, and alternative dispute resolution methods, which play a crucial role in safeguarding minority shareholder rights. It is crucial to update and modernise these codes in order to conform to worldwide standards and best practices. This is necessary to create a favourable climate for company expansion and investment. By implementing measures that encourage openness, effectiveness, and equity in business dealings, these nations may bolster investor trust and foster economic growth. Valuable information can be obtained from nations like Turkey, which have effectively modernised their commercial legislation, in order to achieve this objective.

In addition, the creation of specialised commercial courts, as seen in Turkey, provides a targeted approach to addressing conflicts connected to business matters. These courts have specialised knowledge in commercial law and are well-prepared to handle intricate disputes with efficiency. Conversely, the incorporation of business-related lawsuits into the overall civil court systems in Horn of African nations frequently results in delays and inefficiencies due to the absence of specialised expertise and resources²⁹⁰. By establishing specialised commercial courts presided over by judges with expertise in commercial law, these nations can accelerate the settlement of conflicts, foster investor trust, and improve the entire legal framework for economic activities. Studying Turkey's specialised

²⁹⁰ Torgbor, E. (2017). Courts and the effectiveness of arbitration in Africa. *Arbitration International*, 33(3), 379-394.

commercial courts can offer useful insights into designing effective judicial systems that are specifically designed for the requirements of contemporary business activities.

3.6.2. Criteria for Minority shareholder's definition

To enhance the safeguarding of minority shareholders' rights in Horn of African joint stock businesses, it is crucial to develop a precise and comprehensive definition of minority shareholders. This definition should include individuals or entities who have ownership in a corporation via possessing shares. In Turkey's new Turkish Commercial Code (TCC), the definition of a minority shareholder is based on the ownership of a minimum of 10% of the capital (or 5% for publicly owned enterprises). Despite ongoing talks in Turkey over potential change, this criterion has greatly improved the safeguarding of minority shareholder rights in Turkish enterprises and offers a beneficial example for Horn of African countries.

Furthermore, the introductory portion of the TCC offers the ability to modify the threshold by means of a company's articles of association. This provision allows corporations to customise their governance arrangements in order to enhance shareholder protection by potentially reducing the ownership percentage needed to be classified as a minority shareholder. For example, minority shareholders who own less than 10% (e.g. 5%) can be formally acknowledged in the company's governing documents, and they may be given extra privileges within the limits set by the mandatory rules of the TCC.

Conversely, Horn of African Countries presently categorise majority shareholders as individuals or entities possessing over 51% of shares, while those with smaller ownership percentages are classified as minority shareholders. Frequently, these nations abide by the notion of majority rule as described in Forbes Hórpus, therefore disregarding the specific rights and safeguards necessary for minority shareholders. It is imperative for countries in the Horn of Africa to reevaluate and modify their definitions of minority owners in order to guarantee fair treatment and representation for all shareholders. This should be done in accordance with global standards and to promote a business environment that is more inclusive and protective.

3.6.3 Horn of African countries can boost the position of minority owners by strengthening their rights, similar to how Turkey enhances their rights through their laws

The Horn of African countries can benefit greatly from Turkey's innovative approach to improving the rights of minority shareholders as outlined in the Turkish Commercial Code (TCC). The TCC provides personal rights to all shareholders and also includes specific rights particularly for minority owners, creating a complete system to protect their interests and enhance their influence as shareholders. Horn of African Countries can gain valuable insights by thoroughly examining these rules and their consequences. This will help strengthen the protection of minority shareholders and create a more favourable environment for investment.

The Turkish Commercial Code (TCC) grants certain personal rights to all shareholders, regardless of their ownership percentage. These rights include important characteristics such as the ability to get company information, participate in general meetings, and vote on critical corporate affairs²⁹¹. Through the enactment of these individual entitlements in laws, Turkey establishes a robust basis for openness, responsibility, and participatory decision-making by shareholders, guaranteeing that all interested parties have the opportunity to influence corporate governance procedures.

Exclusive privileges are exclusively bestowed to minority owners: Turkey's TCC takes a further measure by implementing distinct rights particularly designed to accommodate the distinct susceptibilities of minority shareholders. These rights function as crucial protections against possible misuse of authority by majority shareholders and strive to strengthen the presence and impact of minority shareholders within companies²⁹². Horn of African nations should learn important lessons from these rules to strengthen the protection of minority shareholders and promote wider shareholder participation.

Financial Table Deliberations Delay: In Turkey, minority shareholders have the privilege to request a postponement in the discussions of financial tables. This gives them sufficient time to carefully examine and analyse crucial financial information before making well-

²⁹¹ Tuzemen-Atik, E. 2011 (F.23). P. 24.

²⁹² Tuzemen-Atik, E. 2011 (F.23). P. 23.

informed judgements²⁹³. This provision emphasises the significance of offering minority shareholders ample opportunities to engage in due diligence and informed involvement in corporate decision-making processes.

The TCC grants minority shareholders the authority to designate an autonomous auditor, providing an extra level of supervision and guaranteeing the credibility of financial reporting procedures. This provision highlights Turkey's dedication to openness and responsibility, as minority shareholders have the option to independently confirm the correctness and dependability of financial information, thus reducing the possibility of fraud or misbehaviour.

Convening a General Meeting and adding an Agenda Item is another important point, that minority shareholders possess the privilege to convene a general meeting and incorporate particular issues on the agenda, so granting them the ability to directly address problems and propose initiatives to the wider shareholder community²⁹⁴. This clause promotes the engagement of minority shareholders and encourages a corporate governance framework that values diversity and accountability.

Revocation of General Meeting Resolutions for minority shareholders have the right to undertake legal actions to contest and potentially invalidate resolutions passed during general meetings, thereby safeguarding their interests from potentially detrimental decisions. This provision strengthens the notion of fairness and equity in corporate decision-making by allowing minority shareholders to contest actions that could harm their rights or interests.

The entitlement to petition the court for the dissolution of a joint stock company based on valid grounds such as:

If there are instances of significant corporate wrongdoing or violations of fiduciary duty, minority shareholders possess the entitlement to pursue the dissolution of the firm via legal means. This provision functions as a final recourse mechanism to safeguard minority

²⁹³ Veziroglu, C. 2018. (F.192). P.536

²⁹⁴ Hizlisoy, O. I. (2022). Anonim sirket yonetim kuruluunu toplantiya cagriya yetkili olanlar ve yetkisiz kisilerce yapilan cagriyla toplanan yonetim kurulunda alinan kararlarin hukuki akibeti. Ticaret Ve Fikri Mulkiyet Hukuku Dergisi, 8(1), 115-142.

owners from irreversible damage or unfair treatment, highlighting Turkey's dedication to maintaining shareholder rights and corporate honesty.

The Right to Request Issuance of Shares is also an important right for minority shareholders which ensure privilege to formally request the creation of more shares, which enables them to preserve or enhance their ownership percentage and authority inside the firm. This clause encourages the involvement of minority shareholders and takes advantage of their long-term dedication to the company's success. As a result, it helps to create a feeling of ownership and a shared sense of goals between shareholders and management.

The Right of Representation of Specific Groups on the Board of Directors may be given the opportunity to have representation on the board of directors, which guarantees that their viewpoints and interests are properly taken into account during corporate decision-making²⁹⁵. This provision fosters diversity and inclusiveness in corporate leadership structures by encouraging the participation of minority shareholders. Their presence brings valuable perspectives and specialised knowledge to board discussions, ultimately improving the efficacy of governance and increasing shareholder value.

Through an analysis of these regulations and their execution in Turkey, Horn of African nations can acquire significant knowledge on enhancing the rights of minority shareholders, encouraging shareholder activism, and cultivating a more robust and inclusive business climate. Adopting these principles can improve corporate governance standards, attract foreign investment, and promote the sustainable growth of enterprises in the region.

Moreover, the Turkey's Capital Markets Law grants minority shareholders in public joint stock corporations (PJSCs) the privilege to pursue dissolution for valid reasons. According to the Turkish Commercial Code (TCC), minority shareholders who own at least one-tenth of the company's capital have the right to request the court to dissolve the company in certain situations²⁹⁶. These situations include gross mismanagement, breach

²⁹⁵ Yuce, A. A. (2022). The legal liability of shareholders in joint stock companies with regard to factual managing bodies. *Istanbul Medipol Universitesi Hukuk Fakultesi Dergisi*, 9, 243.

²⁹⁶ Bilge, M. E. (2012). Anonim şirketin sona ermesi ve tasfiyesi. *Erzincan Binali Yıldırım Üniversitesi Hukuk Fakultesi Dergisi*, 16(3-4), 261-294.

of fiduciary duty, oppression of minority shareholders, or consistent failure to achieve company objectives²⁹⁷. Activist shareholders frequently exercise this privilege to ensure management's responsibility and safeguard the interests of the minority. This is another lesson which is crucial for Horn of African countries, as they should consider the lessons learned from Turkey's minority shareholder protection.

3.6.4. Turkish Commercial Code's Remedial Framework

TCC provides a comprehensive system of remedies to safeguard the interests of minority shareholders in public joint-stock firms. The TCC grants minority shareholders the authority to hold corporate directors and managers responsible for any wrongdoing or violations of their fiduciary obligations, as stated in relevant articles and provisions.

Minority shareholders have the legal entitlement to initiate legal proceedings against the board of directors in order to seek compensation for any harm caused by their conduct or failure to act²⁹⁸. This rule guarantees the active involvement of minority shareholders in maintaining corporate governance standards.

The criteria for culpability, encompassing instances of erroneous information, violations of legal obligations, or misrepresentation of financial obligations²⁹⁹. The TCC guarantees transparency and impartiality in assessing culpability by implementing explicit standards.

²⁹⁷ Guçlu, H. azınlık hakları konusunda Turk Ticaret Kanunu ve sermaye piyasasi mevzuatında yer alan duzenlemeler ile gelismiş ulke uygulamaları. 1-57.

²⁹⁸ Article 552 of the TCC: "Minority shareholders representing one-tenth of the capital or shareholders holding at least one-tenth of the shares with voting rights may file a lawsuit against the board of directors for damages resulting from their actions or omissions. This lawsuit may also be filed against persons responsible for supervising the board of directors, such as auditors, liquidators, or board members who have acted in bad faith. However, the liability of the board members shall not relieve the persons responsible for supervision from liability."

²⁹⁹ Articles 553-555 of the Turkish Commercial Code (TCC) establish clear grounds for director liability: Article 553: Directors are responsible for providing accurate information and complying with statutory requirements. They can be held liable for damages resulting from inaccurate information or breaches of disclosure and reporting obligations. Article 554: Directors are liable for misrepresenting the company's capital commitment or payments. This includes providing false information about the company's financial status or capital structure. Article 555: Directors are accountable for inaccurately valuing in-kind contributions to the company's capital. They must ensure transparent and accurate valuations to avoid misleading shareholders or stakeholders.

Another article outlines procedures for compensating minority shareholders in the event that a liability claim is successful³⁰⁰. Directors or managers who are held responsible for damages must provide compensation to the firm and individual shareholders for any losses that have occurred as a result of their actions or omissions.

Directors or managers who are held responsible will be required to pay back all costs associated with the legal proceedings, in order to address concerns about the financial burden of litigation³⁰¹. This rule guarantees that minority shareholders are not subjected to unjust financial burdens resulting from legal procedures and can pursue remedies without experiencing financial hardship.

The TCC's remedial framework is a good model for states aiming to strengthen shareholder protection. By implementing comparable regulations, regions can enhance the effectiveness of corporate governance measures, foster trust among investors, and safeguard the credibility of their financial markets.

3.6.5. Turkish Commercial Courts and their Role Enhancing Minority Shareholder Rights

Commercial courts in Turkey are specialized judicial entities that handle issues stemming from commercial transactions, including those concerning minority shareholder rights, corporate governance, and commercial contracts³⁰². These courts function under the

³⁰⁰ Article 556 of the TCC: "Directors or managers who are found liable for damages resulting from their actions or omissions shall be obliged to compensate the company and individual shareholders for any losses incurred. This compensation shall cover the full extent of the damages suffered by the company or individual shareholders as a result of the director's or manager's misconduct or negligence." The article ensures that directors or managers held responsible for causing harm to the company or its shareholders are obligated to provide compensation for the losses incurred. This provision aims to protect the interests of minority shareholders by holding accountable those responsible for breaches of fiduciary duties or other misconduct.

³⁰¹ Article 557 of the TCC: "In cases where directors or managers are found liable for damages resulting from their actions or omissions, they shall be responsible for reimbursing all expenses related to the litigation. This includes legal fees, court expenses, and any other costs incurred by the company or individual shareholders in pursuing the liability claim. Additionally, directors or managers found liable may be subject to other remedies as determined by the court, including injunctive relief or restitution."

³⁰² Konca, N. K. (2013). Yeni Turk Ticaret Kanunu'na gore asliye ticaret mahkemeleri. *Turkiye Adalet Akademisi Dergisi*, 4(15).

parameters of the Turkish Commercial Code (TCC) and are a fundamental component of the nation's legal system for overseeing business operations.

The Turkish commercial court system follows a hierarchical structure, consisting of different levels of jurisdiction. These include commercial courts of first instance, regional commercial courts, and the High Court of Appeals (Supreme Court)³⁰³. The primary jurisdiction for most business disputes, including those related to minority shareholder rights, lies with the commercial courts of first instance. Appeals and the review of decisions taken by subordinate courts are handled by regional commercial courts and the High Court of Appeals.

TCC largely governs the jurisdiction of Turkish commercial courts, defining the specific range of business issues that come under their authority³⁰⁴. Article 2 of the TCC specifies the categories of cases that are classified as commercial, such as conflicts emerging from business transactions, corporate law, intellectual property rights associated with business activities, and issues relating to negotiable instruments, among other things³⁰⁵.

Specialised Commercial courts are essential in accelerating the adjudication of issues related to minority shareholder rights, so minimising delays and guaranteeing prompt resolution of disputes. Specialised commercial courts are distinct from normal courts due to their ability to properly handle complicated commercial disputes. These courts are equipped with judges and legal specialists who possess specialised knowledge and experience in commercial law and corporate governance, ensuring effective resolution of such cases.

³⁰³ Kiraz, S. E. (2023). Turk Mahkemelerinde CISG'nin uygulanma (ma) si: Madde 2 (e) baglamında bir degerlendirme. *Yildirim Beyazit Hukuk Dergisi*, (2), 565-585.

³⁰⁴ Deliduman, S., & Yakup, O. R. U. Ç. (2012). Ticari davalar. *Marmara Universitesi Hukuk Fakultesi Hukuk Arastirmalari Dergisi*, 18(2), 99-110.

³⁰⁵ Article 2 TCC- Commercial Usage and Custom (1) Unless otherwise specified by law, customary practices and customs in trade shall not be considered binding on the judgment of the court unless they have been determined to be accepted as commercial usage and custom. However, customary practices shall be taken into account in the interpretation of declarations of intent. (2) Commercial usages and customs specific to a region or a particular trade shall prevail over general ones. If the parties are not from the same region, unless otherwise provided by law or contract, the commercial usage and custom at the place of performance shall apply. (3) Commercial usage and custom shall only apply to those who possess the status of merchant if they are known or ought to be known by them.

In jurisdictions with dedicated commercial courts, legal disputes concerning minority shareholder rights are frequently given priority and allocated to judges who possess specialised knowledge in business law³⁰⁶. Commercial courts are able to expedite legal proceedings, prevent unnecessary delays, and issue timely judgements by focusing on a specific area of law and having a comprehensive grasp of the applicable legal concepts and precedents³⁰⁷. In addition, commercial courts might employ case management strategies, such as setting deadlines for submissions and hearings, to accelerate the resolution of disputes and avoid protracted litigation³⁰⁸.

Nevertheless, the absence of dedicated commercial courts in the Horn of Africa leads to delays in the adjudication of lawsuits concerning the rights of minority shareholders. In the absence of specialised courts and knowledgeable judges well-versed in commercial law, these disputes may remain unresolved in the regular court system, resulting in protracted legal proceedings and higher expenses for the parties involved in the litigation³⁰⁹. Furthermore, the lack of specific knowledge and skills can lead to uneven or insufficient resolution of conflicts between shareholders, which can erode trust in the legal system and discourage investors from participating in economic endeavours.

In order to tackle these difficulties, governments in the Horn of Africa can gain insights from regions that have well-established specialised commercial courts and contemplate the adoption of similar institutions that are specifically designed to suit their legal systems and requirements. To expedite the resolution of cases involving minority shareholder rights, promote legal certainty and predictability, and enhance investor confidence in the business environment, these countries can establish specialised commercial courts with judges and legal professionals who have been trained in commercial law and corporate governance. Furthermore, enhancing the skills and knowledge of judges and legal experts, along with upgrading court facilities and optimising case management systems, can enhance the efficacy and productivity of business dispute resolution procedures in the area.

³⁰⁶ Kiraz, Ş. E. 2023. (F. 303). P. 579

³⁰⁷ Dreyfuss, R. C. (1990). Specialized adjudication. *Byu L. Rev.*, 377.

³⁰⁸ Dreyfuss, R. C. 1990. (F.307). P. 379

³⁰⁹ Torgbor, E. (2017). Courts and the effectiveness of arbitration in Africa. *Arbitration International*, 33(3), 379-394.

3.6.6. Contrasting Research Landscapes in Minority Shareholder Rights between Turkey and the Horn of Africa

Turkey has benefited from extensive study and analysis over the years, which has contributed to the strong growth and safeguarding of minority shareholder rights. Conducting a brief search reveals a vast number of studies, articles, and reports that specifically examine different aspects of minority shareholder rights. These resources cover a wide range of topics, including legal frameworks, case studies, and empirical assessments. This comprehensive collection of research demonstrates a committed endeavour to comprehend the difficulties encountered by minority shareholders and to suggest efficient ways for improving their safeguarding within the Turkish business environment.

The research endeavours have been significant in influencing policy discussions, providing information for legislative changes, and directing court rulings with the goal of enhancing the rights of minority shareholders³¹⁰. Researchers have made vital contributions to the continued development of Turkey's commercial legal environment by thoroughly analysing topics such as corporate governance practices, shareholder activism, legal remedies for minority shareholder oppression, and the role of regulatory authorities.

Nevertheless, in nations located in the Horn of Africa, the accessibility of resources for conducting research on the rights of minority shareholders is frequently restricted. Limitations in institutional capability, inadequate research funding, and a lack of specialised skills are factors that lead to a significant shortage of research in comparison to more developed regions such as Turkey. The lack of study in this area poses substantial difficulties for policymakers, legal professionals, and individuals involved in efforts to fill the gaps in protecting minority shareholders and enhancing investor trust in the business environment of the region³¹¹.

³¹⁰ Kayar, I. 1989. (F. 32). P. 11

³¹¹ Horn, R. C. (2005). The legal regulation of corporate governance with reference to international trends (Doctoral dissertation, Stellenbosch: University of Stellenbosch).1-193.

Notwithstanding these difficulties, the lack of comprehensive research should not discourage Horn of African countries from giving priority to the advancement and safeguarding of minority shareholder rights. Instead, it highlights the importance of making joint endeavours to develop research capabilities, promote academic cooperation, and utilise global alliances to produce knowledge and evidence in this crucial field. To shareholder protections and drive economic development, these countries might invest in research infrastructure, provide assistance to academic institutions, and provide incentives for scholarly inquiry.

Horn of African countries are currently making efforts to tackle these difficulties and enhance their research capabilities. They are establishing collaborations with international organisations, academic institutions, and donor agencies to secure funds, technical assistance, and chances for knowledge exchange³¹². By utilising these collaborations and accessing external knowledge, governments in the Horn of Africa can promote research priorities and produce solutions based on empirical facts to strengthen the rights of minority shareholders.

Furthermore, efforts to enhance openness and accountability in corporate governance are also gaining traction throughout the area. There is a growing trend among civil society organisations, advocacy groups, and industry associations to push for changes that will enhance the legal frameworks and regulatory systems that protect the rights of minority shareholders. These endeavours, along with heightened consciousness among policymakers and stakeholders, create a favourable environment for progress towards legal reforms and institutional modifications that prioritise safeguarding the rights of minority shareholders.

Regional cooperation and information sharing platforms provide important possibilities for Horn of African countries to gain insights from neighbouring countries' experiences and exchange best practices in protecting minority shareholders. Regional initiatives can stimulate endeavours to align legislative frameworks, simplify regulatory procedures, and enhance investor trust across borders by encouraging communication, collaboration, and peer learning. By adopting this cooperative strategy, it is possible to effectively tackle

³¹² Horn, R. C. 2005. (F.311). P.98

shared obstacles and utilise combined capabilities to make significant advancements in improving the rights of minority shareholders in the area.

In order to effectively promote and safeguard the rights of minority shareholders in Horn of African countries, a comprehensive strategy is needed that encompasses legal reforms, strengthening institutional capabilities, and making policy decisions based on thorough research. By giving utmost importance to research, promoting collaboration, and adopting the most effective practices from around the world, these nations can establish a conducive atmosphere for minority shareholders to actively engage in corporate governance, make valuable contributions to economic development, and fully realise their potential as stakeholders in the business sector.



CONCLUSION AND RECCOMENDATIONS

The objective of this study is to analyze the obstacles encountered by minority shareholders within joint-stock companies. It aims to conduct a comparative examination of company laws across the Horn of Africa (including Somalia, Somaliland, Ethiopia, Kenya, and Uganda) and Turkey, focusing specifically on safeguarding the rights of minority shareholders. The study intends to assess the legal frameworks, pinpoint any shortcomings or inadequacies, and emphasize exemplary approaches concerning the protection of minority shareholder rights in these regions.

The study adopts a qualitative approach and relies on secondary data sources, including books, company laws, regulations, court decisions, and academic literature. Through a comparative analysis, the study identifies similarities, differences, gaps, and best practices in the legal frameworks and practices related to minor articles, journals, reports, policy papers, and other pertinent documents. Employing a comparative methodology, the research aims to draw conclusions and recommendations based on the collected data.

To provide a comprehensive understanding of the legal frameworks governing minority shareholder rights in the selected regions. Descriptive legal research involves systematically analyzing existing laws, regulations, court decisions, and other legal documents to describe and interpret the current state of the law. This approach allows for a thorough examination of the rights and protections afforded to minority shareholders, as well as any gaps or inconsistencies in the legal frameworks across different jurisdictions. By conducting descriptive legal research, the study aims to provide valuable insights into the practical implications of these legal frameworks for minority

shareholders, as well as to identify areas where reforms or improvements may be necessary to enhance shareholder protection

Throughout the research phase, the study experienced numerous obstacles. An obstacle that we encountered was the limited availability of material pertaining to minority owners in Somaliland, Somalia, and Uganda. This scarcity of relevant literature presented a substantial problem. Moreover, the exorbitant expenses linked to obtaining crucial resources have surfaced as another prominent difficulty, posing a substantial barrier to the study undertaking.

The study reveals a deficiency in sufficient legal frameworks within the Horn of African Region, particularly in the nations that are the main focus of this research (Kenya, Ethiopia, Somaliland, Somalia, and Uganda). A significant number of regulations in these locations are antiquated and necessitate revised versions that are compatible with contemporary corporate systems. Moreover, the current legislation lacks clarity in terms of safeguarding the rights of minority shareholders.

The study revealed a lack of specialized commercial courts, such as those found in Turkey, which play a central role in adjudicating and expediting commercial cases, including those concerning the protection of minority rights. In contrast, most commercial cases in the regions under study are adjudicated in the general civil sections of regional courts. This disparity represents another significant barrier hindering the protection of minority rights.

The research highlights a notable discrepancy in the classification of companies between the Horn of African countries and Turkey, with the latter having a more distinct categorization. This disparity leads to a lack of comprehension of the management systems of enterprises in the Horn of Africa, ultimately affecting the safeguarding of the rights of minority shareholders. Turkey's clearly defined classification system enables easy understanding of organizational structures and governance processes. However, the lack of clarity in Horn of African countries poses challenges for shareholders, especially minorities, in expressing their rights. Minority shareholders may face challenges in efficiently exercising their rights, such as participating in important decisions or obtaining

relevant information about the company's operations, if they do not have a thorough understanding of the company's management framework.

Another critical finding of the research was the lack of research in the field of minority shareholder rights and the absence of activism in the Horn of African region, in contrast to Turkey where thousands of studies aim to enhance minority shareholder development. This dearth of research and activism in the Horn of African context creates a significant gap in understanding and addressing the challenges faced by minority shareholders. In contrast, Turkey's extensive research efforts underscore a proactive approach towards developing strategies and mechanisms to promote the rights and interests of minority shareholders. Addressing this disparity is crucial for fostering a conducive environment for minority shareholder protection and empowerment in the Horn of African region.

Based on the study findings and the conclusion, the researcher made the following recommendations:

- Update and Modernize Legal Frameworks is crucial because outdated laws and regulations can create ambiguity and inefficiencies in the legal system, hindering the protection of minority shareholder rights. By updating and modernizing legal frameworks, countries can ensure that their laws are clear, relevant, and effective in addressing the challenges faced by minority shareholders in today's business environment. This involves not only revising existing laws but also incorporating new provisions to address emerging issues such as e-commerce and intellectual property rights.
- Defining minority shareholders clearly is essential to ensure their rights are protected and respected. By establishing a precise definition of who qualifies as a minority shareholder and outlining their entitlements, transparency and fairness in corporate governance practices can be promoted. Learning from Turkey's Commercial Code, countries can enhance minority shareholder rights by granting them specific privileges and protections, such as access to company information, participation in decision-making processes, and the ability to contest resolutions that may impact their interests adversely.

- Establishing Specialized Commercial Courts dedicated to handling business disputes, including those involving minority shareholders, can significantly improve the efficiency and effectiveness of the legal system. These courts, staffed with judges and legal professionals with expertise in commercial law, can ensure timely and fair resolution of conflicts, instilling confidence in investors and enhancing the overall business climate.
- Promote Research and Activism: Research and activism play a vital role in raising awareness about minority shareholder rights and advocating for reforms to enhance their protection. By investing in research initiatives and creating incentives for activism, governments can empower stakeholders to actively engage in promoting transparency, accountability, and fairness in corporate governance.
- Facilitating regional cooperation is crucial for harmonizing legal frameworks and sharing best practices in protecting minority shareholders. By collaborating with countries like Turkey, Horn of African nations can leverage collective expertise and resources to strengthen investor confidence and promote economic development across the region. Through collaborative efforts, countries can address common challenges, exchange knowledge, and implement effective strategies to create a conducive environment for minority shareholder protection and overall economic growth in the region.
- Capacity building and training programs are essential for equipping judges, legal professionals, and corporate governance practitioners with the knowledge and skills needed to effectively protect minority shareholder rights. By investing in training initiatives, countries can ensure that their legal systems are equipped to address the unique challenges faced by minority shareholders.

GENİŞLETİLMİŞ TÜRKÇE ÖZET

Bu yüksek lisans tezi, anonim şirketlerde azınlık hissedarlarının haklarının korunmasına yönelik kapsamlı bir inceleme sunmakta ve Türkiye ile Afrika Boynuzu ülkeleri (Somali, Somaliland, Etiyopya, Kenya, Uganda) arasındaki hukuki düzenlemeleri karşılaştırmalı olarak analiz etmektedir. Çalışmanın amacı, bu bölgelerdeki mevcut hukuki düzenlemelerdeki boşlukları ve uygulamadaki zayıflıkları tespit etmek, bu eksikliklerin giderilmesi için öneriler geliştirmek ve bu sayede azınlık hissedarlarının daha etkili bir şekilde korunmasını sağlamaktır.

Araştırma sürecinde, her iki bölgedeki hukuki düzenlemeler derinlemesine incelenmiş ve karşılaştırılmıştır. Türk Ticaret Kanunu, azınlık hissedarlarının haklarını korumada güçlü bir yasal zemin sunarken, Afrika Boynuzu ülkelerinin bu konuda ciddi zorluklarla karşılaştığı belirlenmiştir. Bu ülkelerde mevzuat geliştirme yönünde bazı girişimlerde bulunulmuş olmasına rağmen, uygulama ve yaptırım mekanizmalarının yetersiz kalması, azınlık hissedarlarını suistimallere karşı korumasız bırakmaktadır. Bu bağlamda, Afrika Boynuzu ülkelerindeki yasal sistemlerin güçlendirilmesi gerektiği vurgulanmaktadır.

Metodolojik olarak, bu çalışma birincil ve ikincil kaynakların titiz bir incelemesine dayanmaktadır. Bu kaynaklar arasında şirket kanunları, yönetmelikler, mahkeme kararları ve akademik literatür yer almaktadır. Analiz, azınlık hissedar haklarının temel boyutlarına odaklanmaktadır; bu boyutlar arasında bilgiye erişim, karar alma süreçlerine katılım, oy hakkı, kâr payı dağıtımı ve haksız uygulamalara karşı koruma gibi konular bulunmaktadır. Elde edilen veriler sistematik bir şekilde analiz edilmiş ve bu analizlerden hareketle Afrika Boynuzu ülkelerinde azınlık hissedarlarının korunmasına yönelik somut ve uygulanabilir öneriler geliştirilmiştir.

Türkiye'deki ticaret mahkemelerinin azınlık hissedarlarının haklarının korunmasında oynadığı kritik rol bu çalışmada ayrıntılı olarak ele alınmıştır. Türkiye'de ticaret hukuku alanında uzmanlaşmış mahkemeler, azınlık hissedarlarıyla ilgili davaların etkin bir şekilde ele alınmasını sağlarken, Afrika Boynuzu ülkelerinde benzer bir yargı mekanizmasının eksikliği ciddi bir boşluk olarak ortaya çıkmaktadır. Çalışmada, Afrika Boynuzu ülkelerinde ticaret hukuku alanında uzmanlaşmış yargı mercilerinin oluşturulması ve bu mahkemelerin etkinliğinin artırılması gerektiği önerilmektedir.

Ayrıca, Afrika Boynuzu ülkelerinde şirketlerin sınıflandırılmasında Türkiye'ye kıyasla önemli farklar olduğu tespit edilmiştir. Türkiye'nin net bir şekilde tanımlanmış sınıflandırma sistemi, kurumsal yapıları ve yönetim süreçlerini kolayca anlamayı sağlarken, Afrika Boynuzu ülkelerindeki belirsizlikler hissedarların haklarını savunmalarını zorlaştırmaktadır. Bu belirsizlik, azınlık hissedarlarının şirketin yönetim çerçevesini tam olarak anlayamaması durumunda, önemli karar alma süreçlerine katılım veya şirketin faaliyetleri hakkında bilgi edinme gibi haklarını etkin bir şekilde kullanmalarını engelleyebilir.

Çalışma, Afrika Boynuzu bölgesinde azınlık hissedar hakları üzerine yapılan araştırmaların ve aktivizmin yetersiz olduğunu, oysa Türkiye'de binlerce çalışmanın bu alanda gelişimi teşvik etmeye yönelik stratejiler geliştirdiğini ortaya koymuştur. Afrika Boynuzu'ndaki bu araştırma ve aktivizm eksikliği, azınlık hissedarlarının karşılaştığı zorlukların anlaşılmasında ve çözülmesinde büyük bir boşluk yaratmaktadır. Bu eksikliğin giderilmesi, azınlık hissedarlarının korunması ve güçlendirilmesi için kritik öneme sahiptir.

Sonuç olarak, bu araştırma, azınlık hissedar haklarının korunmasında mevcut durumu ele almakta ve bu konuda gelişmekte olan ekonomilerde kurumsal yönetim ve yasal reformlar üzerine yapılan tartışmalara önemli katkılarda bulunmaktadır. Çalışmada sunulan bulgular ve öneriler, Afrika Boynuzu ülkeleri ile Türkiye'de daha şeffaf, adil ve sürdürülebilir bir iş ortamı yaratılmasına katkıda bulunabilir. Özellikle yatırımcı güveninin artırılması ve ekonomik kalkınmanın sürdürülebilir hale getirilmesi için azınlık hissedar haklarının etkin bir şekilde korunması büyük önem taşımaktadır.

BIBLIOGRAPHY

- Adams, R. (2020). "Corporate voting systems and shareholder influence". *Journal of Corporate Governance*, 15(3), 213-229.
- Adiguzel, B. (2017). "Turk sermaye piyasasinda yeni Sermaye piyasasi kanununun getirdikleri", *Proceedings of the Mediterranean International Conference* P.53
- Agyei, S. K., Obuobi, N. K., Isshaq, M. Z., Abeka, M. J., Gatsi, J. G., Boateng, E., & Amoah, E. K. (2022). "Country-level corporate governance and foreign portfolio investments in sub-saharan Africa: The moderating role of institutional quality". *Cogent Economics & Finance*, 10(1), 2106636.
- Agyemang, O. S., Gbettey, C., Gatsi, J. G., & Acquah, I. S. K. (2019). "Country-level corporate governance and foreign direct investment in Africa". *The International Journal of Business in Society*, 19(5), 1133-1152.
- Akbay, D. (2019). "Anonim ortakliklarda ozel denetimin konusu". *Dokuz Eylul Universitesi Hukuk Fakultesi Dergisi*, 21(2), 629-660.
- Akbulak, Y. (2016). "TTK isiginda anonim sirketlerde pay senetleri". *Ankara Barosu Dergisi*, (1), 506-523.
- Alfayo, O. W. (2021). "Legal protections accorded to minority shareholders in Kenya in corporate entities" *Doctoral dissertation, Strathmore University*.
- Ali, S., Iqbal, A., Sharif, A., Murad, F., & Bibi, B. (2022). "Derivative Action Impartial Right given to Minority shareholders under Pakistan's legislation". *Central European Management Journal*, 30(4), 896-914.
- Altas, S. (2014). "Anonim sirketlerin pay senedi bastirma yukumlulugu". *Mali Çözüm Dergisi*, S, 133, 105-118.
- Armour, J., Deakin, S., Sarkar, P., Siems, M., & Singh, A. (2009). "Shareholder protection and stock market development: An empirical test of the legal origins hypothesis". *Journal of Empirical Legal Studies*, 6(2), 343-380.
- Attig, N., EL Ghouli, S., Guedhami, O., & Zheng, X. (2021). "Dividends and economic policy uncertainty: International evidence". *Journal of Corporate Finance*, 66, 101785.
- Aydogan, F. (2012). "Tek kisi ortakligi". *Doctoral dissertation, İstanbul Universitesi, Sosyal Bilimler Enstitüsü, Özel Hukuk Anabilim Dalı*.

- Barron, H. S., Elson, C. M., Foran, M. M., Frothingham, B. A., Goldman, M. D., Halloran, M. J., ... & Scriggins, L. P. (2003). "Managing closely held corporations: A legal guidebook". *Business Lawyer publications*, 58(3), 1077-1126.
- Barut, H. (2010). "Turk ticaret kanunu ve Turk Ticaret Kanunu tasarisi'nda anonim ortakliklarda azinlik haklari". *Master's thesis, Kocaeli Universitesi, Sosyal Bilimler Enstitusu*.
- Barwari, A., SAEED, L., & AREE, M. (2018). "The protection of minority shareholders within the legal framework: Conceptual evidence from Turkey". *Journal of Advanced Research in Law and Economics*, 9(6 (36)), 1884-1892.
- Batra, G. S., & Wondem, B. A. (2016). "Corporate governance practice landscape in Ethiopia: Past, present and future". *International Journal of Research in Finance and Marketing*, 6(12), 46-57.
- Battera, F., & Campo, A. (2001). "The evolution and integration of different legal systems in the Horn of Africa: The case of Somaliland". *Global Jurist Topics*, 1(1).
- Bebchuk, L. A., & Jackson, R. J. (2010). "Corporate political speech: Who decides?". *Harvard Law Review*, 124(1), 83-117.
- Belovski, V. (2017). "Concept of a joint stock company". *Journal of Process Management–New Technologies International*, 25-27.
- Beyene, M. (2023). "Regulation of group of companies in Ethiopia: A comparative overview". *Mizan Law Review*, 17(1), 197-230.
- Bigioi, A. D., & Dumitru, C. E. (2016). "The rights of shareholders–the basic principle of corporate governance using case-specific jurisprudence". *The Audit Financiar Journal*, 14(136), 401-401.
- Bilge, M. E. (2012). "Anonim sirketin sona ermesi ve tasfiyesi". *Erzincan Binali Yildirim Universitesi Hukuk Fakultesi Dergisi*, 16(3-4), 261-294.
- Biresaw, S. M. (2021). "Evaluation of the adequacy of the rules of shareholders' protection in the commercial code of Ethiopia 1960". *University of East Anglia* 505-535.
- Birinci, B. (2019). "Anonim sirketlerde pay sahibinin bilgi alma Hakki"., *Doctoral dissertation, Marmara Universitesi Turkey*. 1-24.
- Birsel, M. (1970). "Anonim sirketlerde azinlik haklari". *Ankara Universitesi Hukuk Fakultesi Yayinlari*, (275), 620-659.
- Black, H. C. (2009). "Black's law dictionary". 9-th ed". *St. Paul, Minn.: Thomson Reuters*.1-722
- Boatright, J. R. (1994). "Fiduciary duties and the shareholder-management relation: or, What's so special about shareholders" *Business Ethics Quarterly*, 4(4), 393–407.
- Caglar, H., & Kasak, E. (2016). "Anonim sirketin hakli sebeple feshine iliskin TTK M. 531 hukmunun zaman bakimindan uygulanmasi". *Ankara Universitesi Hukuk Fakultesi Dergisi*, 65(3), 659-686.
- Carroll, A. B., & Brown, J. A. (2018). "Corporate social responsibility: A review of current concepts, research, and issues". *Corporate social responsibility*, 39-69.

- Charreaux, G., & Desbrières, P. (2001). "Corporate governance: Stakeholder value versus shareholder value". *Journal of Management and Governance*, 5, 107-128.
- Chen, Z., KE, B., & YANG, Z. (2013). "Minority shareholders' control rights and the quality of corporate decisions in weak investor protection countries: A natural experiment from China". *The Accounting Review*, 88(4), 1211-1238.
- Chi, J. (2005). "Understanding the endogeneity between firm value and shareholder rights". *Financial management*, 34(4), 65-76.
- Chugh, L. C., & MEADOR, J. W. (2008). "An analysis of the levels and patterns of shareholder rights: 1990-2006". *Journal of Business & Economics Research (JBER)*, 6(5).77-86.
- Cinar, S. B. (2019). "Anonim şirketlerde sorumluluk davası açılmasında genel kurul kararı alınmasının gerekli olup olmadığı üzerine bir değerlendirme". *Turkish Academic Research Review*, 4(2), 235-258.
- Cremers, M., & Ferrell, A. (2014). "Thirty years of shareholder rights and firm value". *The Journal of Finance*, 69(3), 1167-1196.
- Dal, S., & Çalis, Y. E. (2013). "Anonim şirketlerde bağımsız denetim Ve bağımsız denetçi". *Financial Analysis/Mali Cozum Dergisi*, (118).
- Davidson, R. H., DEY, A., & Smith, A. J. (2019). "CEO materialism and corporate social responsibility". *The Accounting Review*, 94(1), 101-126.
- Deliduman, S., & Yakup, O. R. U. Ç. (2012). "Ticari davalar". *Marmara Universitesi Hukuk Fakültesi Hukuk Arastirmaları Dergisi*, 18(2), 99-110.
- Dincer, Z. (2016). "Reform in duties of directors in Turkish public companies: Legislative experiences from UK companies". *Hacettepe Hukuk Fakültesi Dergisi*, 6(2), 49-106.
- Egri, C. P., & Ralston, D. A. (2008). "Corporate responsibility: A review of international management research from 1998 to 2007". *Journal of International Management*, 14(4), 319-339.
- Fentie, W. (2018). "Strengthening shareholders control of companies in Ethiopia: Minimizing agency cost". *Hawassa UJL*, 2, 73.
- Freedman, G. (2005). "The coming transformation of the textbook". *Logos*, 16(3), 120-126.
- Frey, A. H. (1941). "The distribution of corporate dividends". *University of Pennsylvania Law Review and American Law Register*, 89(6), 735.
- Gamble, A., & Kelly, G. (2001). "Shareholder value and the stakeholder debate in the UK". *Corporate Governance: An International Review*, 9(2), 110-117.
- Gatamah, K. (2003). "Launching corporate governance in Africa with an emphasis on Kenya". *Good Directors*, 333.
- Gilvenir, D. (2022). "Minority shareholders' right to request the postponement of general meetings of joint stock companies in Turkish Law". *Athens JL*, 8, 329.

- Guclu, H. (2019). "Azinlik haklari konusunda Turk ticaret kanunu ve sermaye piyasasi mevzuatinda yer alan duzenlemeler ile gelismis ulke uygulamalari". *Cevrimici*, http://www.hakanguclu.com/calisma_lar/Azinlik_Haklari 1-57.
- Hansmann, H., & Pargendler, M. (2013). "The evolution of shareholder voting rights: separation of ownership and consumption". *Yale LJ*, 123, 948.
- Heron, R. A., Lie, E., & Perry, T. (2007). "On the use (and abuse) of stock option grants". *Financial Analysts Journal*, 63(3), 17-27.
- Hizlisoy, O. I. (2022). "Anonim sirket yonetim kurulunu toplantiya cagriya yetkili olanlar ve yetkisiz kisilerce yapilan cagriyla toplanan yonetim kurulunda alinan kararlarin hukuki akibeti". *Ticaret Ve Fikri Mulkiyet Hukuku Dergisi*, 8(1), 115-142.
- Ho, V. H. (2010). "Enlightened shareholder value: Corporate governance beyond the shareholder-stakeholder divide". *J. Corp. L.*, 36, 59.
- Horn, R. C. (2005). "The legal regulation of corporate governance with reference to international trends". *Doctoral dissertation, Stellenbosch:University of Stellenbosch*, 1-193.
- Idowu, S. O., Capaldi, N., ZU, L., & Gupta, A. D. (Eds). (2013). "Encyclopedia of corporate social responsibility", *Berlin: Springer (Vol. 21)*.
- Isik, O., & Soykan, M. E. (2013). "Large shareholders and firm performance: Evidence from Turkey". *European Scientific Journal*, 9(25).
- Ismail, A. (2019). "Corporate governance and minority shareholders' protection: Evidence from sub-Saharan Africa". *European Journal of Economics, Finance and Administrative Sciences*, 104, 65-80.
- Jiraporn, P. (2006). "Share repurchases, shareholder rights, and corporate governance provisions". *The North American Journal of Economics and Finance*, 17(1), 35-47.
- Jiraporn, P., & Gleason, K. C. (2007). "Capital structure, shareholder rights, and corporate governance". *Journal of financial research*, 30(1), 21-33.
- Jiraporn, P., Kim, Y. S., Davidson, W. N., & Singh, M. (2006). "Corporate governance, shareholder rights and firm diversification: An empirical analysis". *Journal of Banking and Finance*, 30(3), 947-963.
- Karamanlioglu, A. (2015). "Anonim ortaklikta pay sahibinin genel kurulda temsili". *Marmara Universitesi Sosyal Bilimler Enstitusu Ozel Hukuk Anabilim Dalı, Yayınlanmamış Doktora Tezi, İstanbul*.
- Karatepe Kaya, M. (2021). "Minority shareholder protection: A comparative analysis between the UK and Turkey". *İstanbul: ON İKi Levha Yayincilika*. 1-280.
- Karslioglu, H. (2022). "TTK'nın 420'nci maddesi uyarınca, genel kurul toplantısında azligin finansal tabloların gorusulmesini erteletmesi hakkının gerekliligi sorunu". *Selcuk Universitesi Hukuk Fakultesi Dergisi*, 30(2), 511-541.
- Kaya, M. K. (2020). "Discussions surrounding the principle of minority shareholder protection". *Ticaret ve Fikri Mulkiyet Hukuku Dergisi*, 6(2), 265-282.

- Kaya, M. K. (2020). "Notion Of protection of minority shareholders; Theoretical framework". *İstanbul Medeniyet Universitesi Hukuk Fakultesi Dergisi*, 5(9), 195-219.
- Ketsela, B. (2011). "Evaluating the concept of minority in corporate group context: A specific look at minority Shareholders of the subsidiary company". *Bahir Dar UJL*.p. 231-234.
- Kim, K. A., Kitsabunnarat-Chatjuthamard, P., & Nofsinger, J. R. (2007). "Large shareholders, board independence, and minority shareholder rights: Evidence from Europe". *Journal of Corporate Finance*, 13(5), 859-880.
- Kimeu, S. (2014). "Corruption as a challenge to global ethics: The role of Transparency International". *Journal of Global Ethics*, 10(2), 231-237.
- Kiraz, S. E. (2023). "Turk mahkemelerinde CISG'nin uygulanmaması: Madde 2 (e) bağlamında bir değerlendirme". *Yıldırım Beyazıt Hukuk Dergisi*, (2), 565-585.
- Kolk, A., Van Der Veen, M. L., Hay, K., & Wennink, D. (2002). "KPMG international survey of corporate sustainability reporting". *Amsterdam Business School Research Institute (ABS-RI)* 1-38.
- Konca, N. K. (2013). "Yeni Turk ticaret kanunu'na gore asliye ticaret mahkemeleri". *Turkiye Adalet Akademisi Dergisi*, 4(15).
- Lazarides, T. (2020). "Minority shareholders: useful idiots, free riders or the achilles heel of the corporate idea?" *Theoretical Economics Letters*, 10(3), 488-499.
- Leech, D. (2000). "Shareholder power and corporate governance". *Warwick Economic Research Paper Number 564*, 564.
- Lele, P. P., & Siems, M. M. (2007). "Shareholder protection: A leximetric approach". *Journal of Corporate Law Studies*, 7(1), 17-50.
- Leuz, C. (2010). "Different approaches to corporate reporting regulation: How jurisdictions differ and why". *Accounting and business research*, 40(3), 229-256.
- Licht, A. N. (2019). "Stakeholder Impartiality: A new classic approach for the objectives of the corporation". *European Corporate Governance Institute-Law Working Paper*, (476).
- Lowenstein, L. (1989). "Shareholder voting rights: A response to SEC rule 19c-4 and to professor Gilson". *Colum. L. Rev.*, 89, 979.
- Macintosh, J. G. (1989). "Minority shareholder rights in Canada and England: 1860-1987". *Osgoode Hall LJ*, 27, 561.
- Mallin, C., & Melis, A. (2012). "Shareholder rights, shareholder voting, and corporate performance". *Journal of Management & Governance*, 16(2), 171-176.
- Mancuso, S. (2016). "Short Notes on the Legal Pluralism (s) in Somaliland". In *Concepts of Law Routledge*. pp. 237-250.
- Manop, B. (2008). "Anonim ortaklıklardaki azinlik haklarının Turk Ticaret Kanunu İle Turk Ticaret Kanunu tasarisinin getirdiği yenilikler ışığında değerlendirilmesi". *Doctoral dissertation, SDU Sosyal Bilimler Enstitüsü*. 1-360

- Melumad, N. D., Weyns, G., & Ziv, A. (1999). "Comparing alternative hedge accounting standards: Shareholders' perspective". *Review of Accounting Studies*, 4, 265-292.
- Mocha, T. M. (2014). "The legal protection of minority shareholders: a comparative analysis of the regulatory frameworks of Kenya and the united kingdom". *Doctoral dissertation, University of Nairobi*. 1-97.
- Mukwiri, J., & Siems, M. (2014). "The financial crisis: a reason to improve shareholder protection in the EU?". *Journal of Law and Society*, 41(1), 51-72.
- Munisi, G., & Randøy, T. (2013). "Corporate governance and company performance across Sub-Saharan African countries". *Journal of Economics and Business*, 70, 92-110.
- Musango, C. (2016). "Shareholder Protection and shareholder intervention in Kenya: A Study on Shareholder Activism". *Doctoral dissertation, University of Nairobi*. 1-104.
- Okpara, J. O. (2010). "Perspectives on corporate governance challenges in a Sub-Saharan African economy". *Journal of business and policy research*, 5(1), 110-122.
- Pinto, A. R. (2014). "Protection of close corporation minority shareholders in the United States". *American Journal of Comparative Law*, 62(Supplement), 361-385.
- Pulasli, H. (2012). "Yeni Turk Ticaret Kanununa gore yonetim kurulu uyelerinin bilgi alma ve inceleme hakki". *Marmara Universitesi Hukuk Fakultesi Hukuk Arastirmalari Dergisi*, 18(2), 587-600.
- Rahmani, A. (2007). "Majority rule and minority shareholder protection in joint stock companies in England and Iran". *Doctoral dissertation, University of Glasgow*. 1-340.
- Rustemaj, J. (2012). "The new legal regime on minority shareholder protection in Albania". *European Journal of Business and Economics*, 6.
- Samora, M. (2019). "An analysis of the protection of the minority shareholders' rights in Uganda". *Student Dissertation Kampala International University* 1-53
- Sayin, H. B. (2019). "Anonim sirket yonetim kurulu karar ve islemlerine karsi pay sahiplerinin korunmasi yollari". *Anadolu Universitesi Hukuk Fakultesi Dergisi*, 5(2), 339-363.
- Seligman, J. (1985). "Equal protection in shareholder voting rights: The one common share, one vote controversy". *Geo. Wash. L. Rev.*, 54, 687.
- Shamana, T. W., & Ossa, M. W. (2019). "The legal protection of minority shareholders under Ethiopian law: Comparative analysis". *JL Pol'y & Globalization*, 86, 12.
- Shin, T. (2013). "The shareholder value principle: The governance and control of corporations in the United States". *Sociology Compass*, 7(10), 829-840.
- Smith, J. (2021). "Ensuring minority shareholder protections in East Africa". *Horn of Africa Journal*. 1-23
- Somaliland, T. H. E., & Law, C. (2004). "The Somaliland companies law (Law No : 25 / 2004) Arrangements of The Sections. 25, p. 1-130.

- Szmigin, I., & Rutherford, R. (2013). "Shared value and the impartial spectator test". *Journal of business ethics*, 114, 171-182.
- Torgbor, E. (2017). "Courts and the effectiveness of arbitration in Africa". *Arbitration International*, 33(3), 379-394.
- Tran, Q. T., Alphonse, P., & Nguyen, X. M. (2017). "Dividend policy: shareholder rights and creditor rights under the impact of the global financial crisis". *Economic Modelling*, 64, 502-512.
- Tse, T. (2011). "Shareholder and stakeholder theory: After the financial crisis". *Qualitative Research in Financial Markets*, 3(1), 51-63.
- Tudway, R., & Pascal, A. M. (2006). "Corporate governance, shareholder value and societal expectations". *Corporate Governance: The international journal of business in society*, 6(3), 305-316.
- Ulusoy, E. (2014). "Anonim şirketlerde azinlik pay sahiplerinin şirketten çıkarılması". *Bahcesehir Universitesi Hukuk Fakultesi Dergisi*. 77-102
- Unsal, G. (1990). "Anonim şirketlerde menfaat grupları, pay sahiplerine tanınan haklar ve özellikle azinlik hakları". *Gazi Universitesi Sosyal Bilimler Enstitüsü, Yüksek Lisans Tezi*, Ankara. 1-221.
- Uysal, N., & Tsetsura, K. (2015). "Corporate governance on stakeholder issues: Shareholder activism as a guiding force". *Journal of Public Affairs*, 15(2), 210-219.
- Van Marcke, L. (2023). "Who is the shareholder? The relevance of introducing an EU-harmonised definition of 'shareholder in the context of the SRD II review process". *SSRN Electronic Journal*. 1-18.
- Velasco, J. (2006). "The fundamental rights of the shareholder". *UC Davis L. Rev.*, 40, 407.
- Veziroglu, C. (2018). "Buy-Out of the oppressed minority's shares in joint stock companies: A comparative analysis of Turkish, Swiss and English Law". *European Business Organization Law Review*, 19(3), 527-540.
- Vinten, G. (2001). "Shareholder versus stakeholder—is there a governance dilemma?". *Corporate Governance: An International Review*, 9(1), 36-47.
- Visser, W., Middleton, C., & McIntosh, M. (2005). "Corporate citizenship in Africa". *Journal of Corporate Citizenship*, 18(Special Issue), 17-124.
- Walelgn, G. (2013). "Exit rights of minority shareholders in closely held corporations: A comparative study of English, German and Ethiopian Laws". *Germany and Ethiopian Laws*. 1-79
- Wang, J., & Wang, P. (2009). "Discussion about shareholders' right to information". *Journal of Politics and Law*, 2(2), 42–49.
- Waweru, N. M., & Prot, N. P. (2018). "Corporate governance compliance and accrual earnings management in eastern Africa: Evidence from Kenya and Tanzania". *Managerial Auditing Journal*, 33(2), 171-191.
- Yahya, S. H. (2017). "Some remarks on the rights and responsibilities of founders under the Ethiopian Commercial Code". *Beijing L. Rev.*, 8, 465.

- Yao, S., Pan, Y., Wang, L., Sensoy, A., & Cheng, F. (2023). “Building eco-friendly corporations: The role of minority shareholders”. *Journal of Business Ethics*, 182(4), 933-966.
- Yordem, Y. (2004). “Anonim ortakliklarda ticaret Kanunundan kaynaklanan azinlik hakları”. *Dicle Universitesi Hukuk Fakultesi Dergisi*, 8(8-9-10-11), 171-195.
- Yuce, A. A. (2022). “The Legal liability of shareholders in joint stock companies about factual managing bodies”. *Istanbul Medipol Universitesi Hukuk Fakultesi Dergisi*, 9, 243.
- Zeren, B. Y., (2010). ‘Anonim ortaklikta azinligin ozel denetci atanmasini talep hakki” *Doctoral dissertation, Ankara Universitesi Sosyal Bilimler Enstitusu Ozel Hukuk Anabilim Dalı*.1-201.

