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Original Article

Bearer Share Under Ethiopian Share Company Laws: Abolishing or the other option?

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Abstract

A company can issue shares in the form of registered or bearer. Bearer share is without indicating the identity of the owner and that information is not registered in the registry of a company issuing it. Once it is issued, it is unknown who owns the security. Such shares have benefits and risks. The risks are significantly higher than the benefits that a given economy can get. By using the anonymity created by bearer shares, there are possible illicit activities that may be committed by the owners and by the Companies themselves. The 1960 Ethiopian commercial code recognizes the issuance of bearer shares for share companies. However, it seems it is prohibited by subsequent legislation for financial share companies in the country such as banking, Insurance, and microfinancing under the new commercial code of Ethiopia. This bearer shares may open the door for some unlawful activities such as money laundering and tax evasion and it has some benefits at the same time. This paper dealt with the concept of bearer shares under the share company law of Ethiopia. It specifically focused on justifying why deny or allow the issuance of bearer shares by raising the benefits of having it and the dangers of allowing it and argued for the third option of keeping them with custodians instead of banning it. In doing so, the writer assessed provisions of the 1960s the 2021 Ethiopian Commercial Code, and laws governing Ethiopian financial institutions by employing the doctrinal research approach and qualitative data analysis. The study analyzed the experience of other countries towards bearer shares and their reason for taking it as an experience for Ethiopia.

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1. Introduction

Shares of shareholders are the sources of capital of a company. The resources that a company collects and invests are from the pockets of its shareholders. The company should appropriately utilize the accumulated wealth from shareholders to support the growth of the company and the economy as well. There should be a robust legal framework that will govern the conduct of the business environment and the actors involved. The nature of the company business is complex and confusing due to the flexible nature of the world's business activities and ideas. There should be a legal framework that can sufficiently govern the company's behavior at each step taken by the company.

One of the areas of regulation is on the forms and classes of shares company may issue. Some countries require a company to keep a registry of its shareholders and those shares issued in their name. Others allow the issuance of certificates representing shares that are not registered to any specific holder or owner.¹

The 1960 Commercial Code of Ethiopia² provides the above similar scenario. The code authorizes share companies to issue both registered and bearer share. Issuing a bearer share may give some flexibility to the owner and avail from inevitable delays and costs. At the same time, there are dangerous consequences attached to the bearer shares that is not limited to a territory of one country. To avoid or to reduce the risks, states are resorting to banning the issuance of bearer shares from

their company laws and others are resorting to the other options of managing it without banning it. The commercial code authorized share companies to restrict the issuance of bearer share under their articles of association and memorandum of association. If the companies need to issue a bearer share, they have the full right to do so. In another way, the code indicates the prohibition of issuing bearer share by law. Following this, some laws prohibit the issuance of bearer shares in share companies of specific economic sectors while no legal ban is there for other share companies. In another way, the 2021 Ethiopian commercial code has come up with provisions that prohibit the future issuance of bearer shares and gives some years for the existing bearer shares to be converted to registered shares.³

Is intended under this article to analyze the benefits and dangers of recognizing bearer share in general and opt for Ethiopia whether to uphold or abolish or apply other mechanisms of managing them by evaluating the benefits to be acquired and the risks and a close look at the trending international experiences.

This study has employed doctrinal legal research. The qualitative method of data analysis was used to critically examine the issues of bearer shares. Regarding the sources of data, both primary and secondary data were employed. Primary data were gathered from both domestic and foreign laws and the secondary data are books, journals, reports of different international organizations, and websites. Also, the experience of some selected

¹ Gainan Avilov et al., General Principles of Company Law for Transition Economies (English Version), SSRN JOURNAL, 24 (1998), <http://www.ssrn.com/abstract=126539> (last visited Nov 26, 2023).

²Commercial Code of the Empire of Ethiopia, Proclamation No. 166 of 1960, Negarit Gazeta Gazette

Extraordinary, (Known as The Ethiopian Commercial Code hereafter), Article 325 sub-article 1. It provides that, Shares are either registered in the name of the shareholder or to bearer, as required by the Shareholder.

³The Commercial Code of the Federal Democratic Republic of Ethiopia, Proclamation no.1243/2021, Article 267

jurisdictions on how they handle the case of bearer share was seen. The experiences of countries such as the USA, Switzerland, the British Virgin Islands, and Panama were examined. The reason this country are selected was that they have taken various measures on the issuance of bearer shares and it can be a lesson for Ethiopia.

2. The Concept of Share

Share is a technique through which a company may raise capital from the public. There are different approaches to defining the term share. These are judicial, juristic, and statutory⁴. The judicial approach defines share as the interest of a shareholder in the company measured by the sum of money for liability and claim but also consisting of a series of mutual covenants entered into by all shareholders⁵. The definition added that A share is not the sum of money but is an interest measured by a sum of money and made up of various rights contained in the contract including the right to a sum of money of a more or less amount.⁶

The juristic approach will showcase the definition of shares by different scholars and opinions on the meaning of 'shares' are many and varied. The Black's Law Dictionary is of the view that 'share' is "one of the substantial numbers of equal parts into which the capital stock of a corporation or Joint Stock Company is divided and represents the equity in the corporation or Joint Stock company⁷. In another way, Mozley and Whitley's Law

Dictionary conceives 'share' as "a share or proportion of the capital of a company, entitling the holder to a share in the profits of the company⁸." For others, in companies or corporations, the whole of the capital stock is usually divided into equal proportions called shares⁹.

The statutory approach tells the meaning of shares as codified in the statute books. The company laws of different states address the definition of the term share by using different languages, while others leave without defining it. The Ethiopian commercial code¹⁰ is not to precisely define the term share. The code simply discusses the nature of sharing in different forms of business organization. The Indian Company Law Act defines it as a share in the share capital of a company and includes stock¹¹. The Nigerian Company Law defines share as the interests in a company's share capital of a member who is entitled to share in the wealth or income of such company and except where a distinction between stock and shares is expressed or implied, includes stock¹². Anyways, a share is an instrument through which a person may become a shareholder in a given company and create a particular legal relationship between the shareholder and the company. This share is something determined in terms of money.

A share has some visible natures. It does not confer on its owner a right to the physical

⁴Onyekachi Wisdom Duru, *my 'Share' in the Company: What is it?* SSRN JOURNAL, 5 (2011), <http://www.ssrn.com/abstract=2140364> (last visited Nov 26, 2020).

⁵Duru, *supra* note 3.

⁶*Id.*

⁷ HENRY CAMPBELL BLACK & JOSEPH R. NOLAN, BLACK'S LAW DICTIONARY: DEFINITIONS OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH

JURISPRUDENCE, ANCIENT AND MODERN (6th ed. 1990).

⁸ E. Ivanmy, *Mozley and Whiteley's Law Dictionary*, Tenth Edition (London: Buterworths, 1988) at 437.

⁹ The law.com law dictionary & black's law dictionary 2nd ed.

¹⁰ Avilov et al., *supra* note 1.

¹¹ Indian Companies Act of 2013, Sub-section 84, Act NO. 18 of 2013, 29th August, 2013.

¹²Duru, *supra* note 3 at 8–9.

possession of anything¹³. The shares or other interests of a member in a company are personal property and are not like real estate¹⁴. As a general principle, shares are freely transferable and sold or purchased in the share market¹⁵. The transferability of company shares is an added advantage to both share company and the investor. The share company's share capital becomes a permanent and stable feature of the company because the shareholders cannot withdraw anything from it. The shareholder gets marketable security. The other component of share is its indivisibility. It means several persons cannot be the owner of a single share. When such a scenario happens, those persons have to appoint a representative to exercise their rights as shareholders. The issuance of the share is inevitable for the formation of a given company. It is a stepping stone since it is a means to raise capital and make the public a member of the company. Issuance creates a binding contract between the parties. Till such issuing is completed, shares as such do not exist. It is only by the process in this sense that share comes into existence. A company issues a share certificate, a document, stating that the person named therein is the registered holder of a specified number of shares of some classes and that they are fully paid up or paid up to a stated amount. A share certificate has to be issued whether the shares are partly paid up or fully paid up. The share certificate enables the shareholder to deal more quickly in the market.

3. Classes and Forms of Shares Under Ethiopian Share Company Laws

There is no definition of the term share under the Ethiopian Commercial Code. By setting aside the question of meaning, the code describes the nature of share and its classes and forms. Article 304(1) of the 1960 Commercial Code and Article 245 of the 2020 Commercial Code define a share company as a company whose capital is fixed in advance and divided into shares and whose liabilities are met only by the assets of the company¹⁶. From the definition, one can infer that the company capital is divided into a so-called share without having a clear explanation of the term under the code.

Book II, Title VI, and Chapter 3 of the Ethiopian Commercial Code provide issues related to share and the rights and duties of shareholders.

Both Commercial codes recognize classes of shares. Setting up several types of shares with different rights is a matter left to the memorandum of association of a company or determination by the general meeting¹⁷. The code does not stick to a mono class of shares; instead, it gives the green light for the issuance of different types of shares. The code recognizes three classes of shares. These are Ordinary shares, Preference shares, and Dividend shares¹⁸. Preference shares and ordinary shares are the primary forms of shares

¹³ JANET DINE & MARIOS KOUTSIAS, *COMPANY LAW* 67 (8. Ed Ed. 2014).

¹⁴ DINE AND KOUTSIAS, *supra* note 12.

¹⁵For Instance, from Article 333(1) of the Ethiopian Commercial Code, one can simply understand that unless otherwise prohibited under articles of association, the share of a share company is freely transferable.

¹⁶ The 1960 Commercial Code of Ethiopia, Article 304(1) and the 2021 Commercial Code of Ethiopia, Article 245

¹⁷The 1960 Commercial Code of Ethiopia, Article 335(1) and the 2021 Commercial Code of Ethiopia, Article 278(1)

¹⁸The 1960 Commercial Code of Ethiopia, Article 335,336,337, the 2021 Commercial Code of Ethiopia, Article 278, 279, 280.

issued by companies¹⁹. Both classes of shares bestow legal rights such as income rights (right to payment of dividends), voting rights, and capital rights (right to the return of capital in case of a reduction of capital or on a winding-up) upon their holders²⁰. In the case of dividend share, a company may repay, from profits or reserve funds, without reducing the capital, to shareholders the par value of their shares²¹.

A company can issue all the above classes of shares in two forms. Article 334(1) stipulates that shares are registered shares or bearer shares as required by the shareholder, not by the company²². A shareholder is at freedom to choose among registered and bearer and has a right to convert it from one form to another²³. But liberty has certain restrictions. If the form of shares is fixed by the memorandum of association or articles of association or when it is prohibited by the law, the liberty of the shareholders will be restricted²⁴.

When a shareholder of a bearer share wants to transfer its share to a third party, mere delivery of it is sufficient without further requirements. Article 340(1) provides that the assignment of a bearer share is by delivery and no other conditions related to registration²⁵. Book IV of the Ethiopian commercial code which governs negotiable instruments is directly related to the concept of shares since share is a negotiable instrument. Article 721 of the commercial code used similar language provided under article 340(1). An instrument of bearer shall be

transferred by the delivery of the instrument, and the holder establishes his right to the entitlement as expressed in the instrument by the sole fact of presentment of the said instrument²⁶. The presumption is that the holder of the share is the real shareholder and will be allowed to take part in profit-sharing(dividend), redemption and participation in the general meeting²⁷. But the presumption is subjected to rebuttal. Unless the contrary is proved, there is no ground to challenge the holder of the instrument, whether he/she is the real shareholder of the company²⁸. As its name indicates, for registered shares transfer is only successful if and only if the assignment enters the registry. Ownership of a registered share is only proved upon the entry into the registry of the company²⁹. Unlike bearer shares, ownership of the registered share is not automatic; taking some action is necessary to claim ownership over the registered share. Similarly, the law that governs negotiable instruments provides the requirement of entry into the registry when the specified name issues the instrument. Article 723 stipulates that:³⁰

Instruments in a specified name may be transferred by the entry or the name of the transferee in the instrument and in the register held by the person issuing the said instrument. They may also be transferred by delivery of a new instrument in the name of the new holder. Such delivery shall be entered in the register.

¹⁹Assefa Aregay Sefara, Preferred Shares under Ethiopian Company Law. The Ignored Vehicles of Corporate Finance? 19, 64, Available on <https://heionline.org>.

²⁰ Sefara, *supra* note 31.

²¹ Commercial Code of Ethiopia, Article 337(1)

²² Commercial Code of Ethiopia, Article 325(1)

²³ The 1960 Commercial Code of Ethiopia, Article 325(2), 325(3)

²⁴ The 1960 Commercial Code of Ethiopia, Article 325(2), 325(3)

²⁵The 1960 Commercial Code of Ethiopia, Article 340(1)

²⁶The 1960 Commercial Code of Ethiopia, Article 721(1), 721(2)

²⁷ The 1960 Commercial Code of Ethiopia, Article 340(2)

²⁸ The 1960 Commercial Code of Ethiopia, Article 340(2)

²⁹ Commercial Code of Ethiopia, Article 341

³⁰Commercial Code of Ethiopia, Article 723

Accordingly, both the transferee and the transferor are expected to be registered to transfer ownership of a registered share. There is stringent formality followed by the law regarding the assignment of registered shares whereas the mere handing over of the instrument transfers ownership in the case of bearer share.

Article 343 of the code provides temporary warrants as a bearer and registered. These warrants are instruments that confer upon the holder of the instrument the right to buy a particular stock at a predetermined price within a specified time frame³¹. Nevertheless, to gain this right, the buyer of such warrants usually needs to make an upfront payment to the warrant's issuer. On exercise of such warrants, new shares are issued by the issuer company³². According to the Ethiopian share company law, temporary bearer warrants shall only be issued in respect of fully paid bearer shares.³³ When the bearer share is not fully paid, it will not have any effect³⁴. The issued temporary registered warrants are issued in respect of bearer shares, they may only be transferred under the provisions relating to the assignment of debts³⁵. A temporary warrant in respect of registered shares shall be registered and its transfer follows the same as that of the registered share³⁶.

In another way, the new commercial code of Ethiopia is reflecting some new positions regarding the type of shares that are allowed to be issued by share companies. Many of the provisions governing the classes of shares are

the same as in the 1960 commercial code. However, it indicates that there should not be a new bearer share that will be issued by the Share Companies and the previous bearer share should be converted into the registered shares within three years³⁷. This indicates that there are no more bearer share issues by share companies in the country. In another way, the code has given recognition to an incorporeal form of shares, which is a share created electronically by a financial institution licensed by the National Bank of Ethiopia, which is a reference to shares traded in stock markets.³⁸ Article 284 the new code says that A bearer instrument share shall be transferred by mere delivery of the document evidencing such share. No other requirement is needed. It adds that unless proved to the contrary, the holder of a bearer instrument share shall be regarded as an owner of such share for payment of dividends, redemption, and right to vote in a general meeting or benefiting from other rights arising out of the share.

From the above discussion, it is visible that the 1960 Ethiopian commercial code recognizes both registered and bearer shares to be issued by share companies. Similarly, the 2021 commercial code of Ethiopia adopted both forms of shares and uses similar rules that were used by the 1960s.³⁹ But this new code has tried to abolish the issuance of bearer shares while introducing a new type of share which is known as incorporeal share.

³¹ Definition taken from The Economic Times, Available online on <https://economictimes.indiatimes.com/> accessed at 23 August, 2023,

³² Ibid

³³ Commercial Code of Ethiopia, Article 343(1)

³⁴ Commercial Code of Ethiopia, Article 343(1)

³⁵ Commercial Code of Ethiopia, Article 343(2)

³⁶ Commercial Code of Ethiopia, Article 343(3)

³⁷ The 2021 Commercial Code of Ethiopia, Article 267(1), (2), (3), (4)

³⁸ The 2021 Commercial Code of Ethiopia, Article 273

³⁹ The 2021 Commercial Code of The Federal Democratic Republic of Ethiopia, Article 267-280.

4. Bearer shares benefits and flop sides

The usage of bearer shares has different justifications. When a given legal system and companies permit the issuance of bearer shares, there are expected advantages from such an arrangement. The significant benefits of bearer shares will be discussed as follows.

Since business needs simplicity and speed, bearer share is the best device. The instrument is utilized for the provision of a fast, easy, cost-effective, and non-bureaucratic means of transferring ownership⁴⁰. It is known for its quick and easy nature to transfer since only handing over the share certificate is sufficient enough to transfer ownership from a transferee to a transferor. Such types of shares avoid costs and bureaucracies such as the cost of producing newly registered share certificates, payments for using a notary and stamp duty, also transferring assets for the inheritance which can be imposed on registered shares⁴¹.

Privacy is another critical advantage of bearer share. It facilitates privacy in such instances where corporate secrecy can help to restrict sensitive information from being accessed by inappropriate competitors and potentially hostile buyers and is also used to provide asset protection in securities deals where there is a demand for security by shareholders⁴². The level of anonymity of bearer shares is also responsible for securing privacy during certain corporate business transactions for areas involving company trademark secrets or intellectual property⁴³. Shareholders may need not to disclose their shareholding in a given

company and the number of shares the shareholder has for some other reason. In business, such type of secrecy may be taken as an essential instrument for success and support to win competitors in a given business environment. Not only for competition; also, but there may also be individuals who do not want their identity to be disclosed to the community because of their reputation or the nature of their profession. For instance, Priests and judges may need the anonymity of their identity, though legally not prohibited, morally or spiritually they do not need.

A bearer share is also used to provide asset protection in securities deals where there is a demand for security by financiers⁴⁴. When there is a need to hide property and self from gangs and others, it is an excellent therapy to give protection for such individuals.

Though there are significant bearer share benefits, share the issuance of such types of shares has some dark sides.

The secrecy nature of bearer shares listed as a benefit can be taken as a significant danger in another direction. Such type of privacy brought about by bearer shares makes locating shareholders impracticable, leading to difficulty communicating liquidation rights and dividends⁴⁵. The residence of a shareholder is unknown whether he or she is available at the place at which the company makes communication can reach him or not. Or the medium of communication used by the company may not be accessible by the bearer shares holder. Accordingly, a lack of

⁴⁰ Andre Vanterpool, the fall of bearer shares and how to use them today: A Company Law comparison between the UK and some offshore jurisdictions, Institute of Advanced Legal Studies, School of Advanced Study University of London 7.

⁴¹OECD Report Behind the Corporate Veil using corporate entities for illicit purposes. Page 30.

⁴² The Control of BVI-Issued Bearer Shares | British Virgin Islands Financial Services Commission,, <https://www.bvifsc.vg/publications/control-bvi-issued-bearer-shares> (last visited Dec 4, 2023).

⁴³Andre Vanterpool, *supra* note 51 at 8.

⁴⁴ *Id.* at 8.

⁴⁵Andre Vanterpool, *supra* note 51.

communication can be created between the company and the bearer shareholder, and this may result in affecting the rights and interests of the shareholder mainly.

Management difficulty is another risky side of issuing a bearer share. It is something related to the absence of communication which is discussed above. Essential information like the name and contact address in general of a bearer share is not known, it is challenging for the company to know who is holding the certificate of share and who should be contacted if required for administrative purposes. It also affects the corporate command by management due to difficulty in maintaining management control through the proxy system as an essential way of communicating between a corporation and the presently unknown is through publication⁴⁶.

Across the globe, especially today, bearer shares are closely connected with tax evasion. Evasion of taxes may happen as the anonymous nature of bearer shares contributes to the difficulty in collecting and assessing income, transferring shares, inheritance taxes, and also capital gains⁴⁷. Tax evasion is one of the major reasons for the popularity of bearer shares nowadays and it is becoming a strong justification to abolish bearer shares in different countries and lobby others to do the same (this is the case, especially in countries with the same economic community). Let us see an example of tax evasion below.

A U.S. company called "A" established a company called "S" in Panama. "A" holds 95% of

shares in "S" however, the shares have been issued as bearer shares. S commercially operates in the U.S. but the money is paid into its account in Panama. Panama has a territorial taxation system, which establishes that the income produced outside the territory of the Republic of Panama will not be taxed. Consequently, the earnings of A through the operation of S are almost free of taxation⁴⁸.

Moreover, because their cloudy structure can effectively obscure ownership, thereby providing maximum anonymity, it reduces the amount of information accessible to law enforcement and regulatory bodies in the event of an investigation⁴⁹. As a consequence, bearer shares are vulnerable to misuse by the ethically challenged⁵⁰. There is a growing body of evidence that the high level of anonymity provided by bearer shares makes them particularly susceptible to use for evil purposes such as money laundering, fraud, and terrorism⁵¹. It gives maximum anonymity and makes such corporate vehicles more susceptible to misuse for illicit purposes⁵². For example, companies issuing bearer shares are usually exempt from having to maintain a share register concerning those shares. This reduces the amount of information that the authorities may access in the event of an investigation⁵³. Nowadays, because of such features, corporate vehicles are increasingly attractive to criminals to disguise their identity and distance themselves from their illicit assets.

Money laundering is the processing of assets generated by criminal activity to obscure the link between the funds and their illegal origins.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ José Maria Lezcano Navarro, *The Panamanian Bearer Shares; Is it Necessary to Eliminate Them?* Page 10.

⁴⁹ Navarro, *supra* note 59.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Andre Vanterpool, *supra* note 51.

⁵³ Financial Action Task Force (FATF), *GUIDANCE ON TRANSPARENCY AND BENEFICIAL OWNERSHIP*, Page 42 (2014), Available on www.fatf-gafi.org.

At the same time, terrorism financing involves raising funds to support terrorist activities⁵⁴. While these two phenomena differ in many ways, they often exploit the same vulnerabilities in financial systems that allow for an inappropriate level of anonymity and capacity in carrying out transactions⁵⁵. The harm that money laundering and or terrorist financing may cause includes the effect of the underlying criminal and terrorist activity on financial systems and institutions, as well as the economy and society more generally⁵⁶. It may consist of short- or long-term consequences in nature and also relate to populations, specific communities, the business environment, or national or international interests, as well as the reputation and attractiveness of a country's financial sector⁵⁷.

Corporate vehicles may also be misused in bribery or corruption transactions. According to the financial action task force, shell companies and nominees are frequently misused by bribe donors and recipients to facilitate their illicit transactions⁵⁸. For example, French oil company *Elf Aquitaine* was alleged to have funneled bribes to Gabon President El Hadj Omar Bongo through his Swiss bank accounts opened in the names of offshore shell corporations⁵⁹. In another way, money earned through corruption can enter into the market because of the secret nature of bearer shares. Corrupted officials can enjoy the secrecy found in bearer shares and invest the money that they have earned through

corruption. It may have the power to motivate corrupted officials to further similar unlawful acts and make them benefit from malicious activity.

The existence of bearer shares may also make a corporate vehicle to hide and shield assets from creditors and other claimants, such as spouses and heirs⁶⁰. The obscurity provided by bearer shares can be exploited to conceal the existence or ownership of assets to keep them out of the reach of creditors and other claimants and pose a problem in some bankruptcy cases⁶¹.

Another danger that is attached to the bearer's share is that it might be stolen or lost. Since the shareholder's name is not indicated on the share and its transferability is upon possessing the certificate, it is very exposed to being stolen or lost.

So, it is evident that bearer shares have benefits, but there are dangerous fallouts attached to it.

5. Bearer shares in Ethiopia: Resort to Abolish?

Share Company is one of the types of business organizations recognized under the Ethiopian Commercial Code. Nowadays, a considerable number of Share Companies are being formed. These companies are permitted by law to engage in different commercial activities, including but not limited to essential activities such as Banking and Insurance activities. The share companies in Ethiopia are allowed to issue both bearer and registered shares when

⁵⁴ IMF and the Fight Against Money Laundering and the Financing of Terrorism, <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism> (last visited Dec 7, 2020). Page 1

⁵⁵ *Id.*

⁵⁶ Financial Action Task Force (FATF), *National Money Laundering and Terrorist Financing Risk Assessment*, Page 7 (2013).

⁵⁷ Financial Action Task Force (FATF), *supra* note 67.

⁵⁸ Financial Action Task Force (FATF), *supra* note 64 at 37.

⁵⁹ Financial Action Task Force (FATF), *supra* note 64.

⁶⁰ *Id.* at 35.

⁶¹ Financial Action Task Force (FATF), *supra* note 64.

offering shares to the public unless otherwise there may be restrictions.⁶² The issuance of bearer shares can be restricted in two scenarios. The first is that a memorandum of association or articles of association of a company may ban the issuance of bearer shares and opt only for the registered one. The second situation is when issuing a bearer share is prohibited by law. This law may be the law that applies to a specific business area. There are laws of financial institutions that are indirectly or impliedly banning bearer shares without precisely stating the term bearer shares. One of the rules under which bearer shares are prohibited is the banking business proclamation of Ethiopia.

Article 10 (2) of the proclamation stipulates that every bank shall keep a register of shares and shall show the names and voting rights of shareholders, and it should be open to the public without charge.⁶³ From this provision, it may be argued that providing the name of a shareholder refers to registered shares. Sub article 3 of the same article added that when the share is transferred to an influential shareholder,⁶⁴ such transfer shall be approved by the National Bank before such transfer is recorded in the register of shares.⁶⁵ This sub-article is also touching upon the existence of registration. The most important provision

related to bearer shares is sub-article 4 of article 10 of the proclamation. According to this sub-article, any type of transfer of shares should be recorded and if not recorded such type of transfer is null and void.⁶⁶ Transfer by delivery is the character of bearer shares and such type of shares and transfer shall be null and void under the banking proclamation of Ethiopia.

Likewise share companies engaging in insurance businesses are prohibited from issuing a bearer share. Precisely the same language used under the above banking business proclamation is used for the insurance business. Article 11(3) of the Insurance business proclamation of Ethiopia provides that, a transfer of shares not registered is null and void⁶⁷. The proclamation added any transfer of shares, which is recorded in the register, shall be binding on both the transferor and transferee and provide conclusive evidence of the transaction and transfer of title and the registry should be disclosed to the public for inspection⁶⁸. These provisions have indirectly banned the issuance of bearer shares by insurance companies since registering every transfer and revealing it to the public is mandatory.

Again, the Micro-financing business proclamation of Ethiopia stipulated the requirement of registration of shares and

⁶² The 1960 Commercial Code of Ethiopia, Article 325(1)

⁶³ Banking Business Proclamation of The Federal Democratic Republic of Ethiopia, Proclamation No. 592/2008, A Proclamation to Provide for Banking business, Published on Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 14th Year No. 57 Addis Ababa 25th August, 2008 (Referred as Banking Business Proclamation hereafter), Article 10(2), Article 10(5)

⁶⁴ For the banking business proclamation of Ethiopia, Influential shareholder means, a person who holds directly or indirectly two percent or more of the total

subscribed capital of a bank (See article 2 Sub article 11 of the Proclamation)

⁶⁵ Banking Business Proclamation, Article 10(3)

⁶⁶ Banking Business Proclamation, Article 10(4)

⁶⁷ Insurance Business Proclamation of The Federal Democratic Republic of Ethiopia, Proclamation No. 746/2012, A Proclamation to Provide for Insurance Business, Published on Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 18th Year No. 57 Addis Ababa 22nd August, 2012 (Referred as Insurance Business Proclamation hereafter), Article 11(3)

⁶⁸ Insurance Business Proclamation, Cumulative reading of Article 11(1) and 11(5)

shareholders. According to this proclamation, every micro-financing institution shall maintain a register that shall show the list of shareholders with voting rights, and any transfer of shares, which is recorded in the register, shall have legal effect.⁶⁹ That means the non-registered transfer of shares does not have a legal meaning.

The above laws indicate that the non-financial share companies of Ethiopia are impliedly not allowed to issue bearer shares. However, the word bearer is not directly stated in the provisions since the requirement for the transfer of shares is stringent. The reason why the legislature is incredibly restricting the issuance of bearer shares in banking, Insurance, and Microfinancing institutions is that the sectors are essential for the country's financial and economic stability.

The question that can be raised at this juncture is that what about non-financial share companies shares? Does the law prohibit them from issuing a bearer share or is it left to these company's memos and articles of association? Unlike financial share companies, non-financial share companies do not have a specific proclamation that governs the issuance of shares. Instead, they have to adhere to the provisions of the commercial code. Accordingly, the 1960 commercial code indicates that determining the forms of shares is left to the company's memorandum and article of association. However, the new commercial code has banned the issuance of bearer shares.

When share companies issue bearer shares, certain benefits can be acquired. One of the

benefits is its quick transferability nature. Since business is a matter of time and speed, bearer shares can play a pivotal role in making a business environment smooth and comfortable. Ownership of such type of share can simply be acquired through transfer of the bearer shares certificate without further processing of change of name and registration. So, bearer share will assist the Ethiopian business environment by creating a conducive and attractive market. The existence of bearer shares is another advantage in terms of avoiding registration costs and unnecessary bureaucracies. The cost of registration is not there; the transferor and transferee of shares cannot worry about how much to incur for the change of name and other requirements. Not only cost but bureaucracy is a very challenging matter in different organizations. There is no easy-going in Ethiopia regarding business-related issues or others. Company-related issues such as getting a business license and renewal of it are fraught with a lot of bureaucracy, lack of efficiency, and time-consuming processes in Ethiopia today.⁷⁰ The same complex bureaucratic issues may happen for the change and registry of the name of shareholders. Accordingly, bearer shares enable the shareholder to avoid such difficulty and help them manage their time and resources.

Issuance of bearer shares may have some advantages in the capital market. They increase liquidity since they can be easily transferred, without complicated procedures for filling out documents and registering formality interfering with the quick action of the securities market. They can also attract foreign investment by

⁶⁹ Micro-financing business Proclamation of The Federal Democratic Republic of Ethiopia, Proclamation No.626 /2009, A Micro-financing Business Proclamation, Published on Federal Negarit Gazeta of The Federal Democratic Republic of Ethiopia, 15th

Year No.33 ADDIS ABABA 12th May, 2009, Article 10 (2)

⁷⁰ Company Registration in Ethiopia, Research Team Amha Bekele and Zemedeneh Negatu, D.C.PSD Hub Publication No.6, August 2005, Page 98

refusing to register them to simplify many technical and administrative procedures that follow the trail of their owners and open them to a whole new layer of potential clients.

Even though bearer shares can supply benefits to the improvement of markets by avoiding some challenges, there are several disadvantages that the Ethiopian government may face by maintaining the issuance of bearer shares by companies.

The first problem with the bearer share is tax evasion. The tax collection system of Ethiopia is poor and disorganized. There is no powerful institution equipped with modern technologies, experts, and legal framework that can enable one to collect taxes properly. This loophole creates a golden opportunity and leads the country to lose a massive amount of money which ought to be collected from the taxation of businesses. Recently, the Ethiopian Ministry of Revenue officially charged 65 people out of the 105 placed under custody suspected of tax fraud and evasion activities.⁷¹ The ministry has taken measures on a total of 135 companies concerning tax fraud and evasion amounting to 14 billion birr.⁷² It was disclosed that a thorough investigation and assessment into the tax payment history of these companies, dating back five years, has revealed some interesting findings and also revealed that the suspected organizations had been engaged in specific businesses such as manufacturing, import and export, distribution, wholesaling, and construction.⁷³ From the investigation, one can

conclude that evasion is a virus that is hindering a country's revenue. Such a situation will add fuel to the existing problem since the nature of bearer shares is convenient to evade tax.

Globally, banning bearer shares helps to recover billions of evaded taxes. Many countries are abolishing the application of bearer shares to enhance the transparency of a company's system for tax purposes. For instance, about 90% of Global Forum members on transparency and exchange of information for tax purposes do not permit the issuance of bearer shares or have in place arrangements for identifying the owners.⁷⁴ As a result, over 40 jurisdictions have either abolished bearer shares or introduced adequate custodial or non-custodial arrangements for identifying their owners since 2009.⁷⁵ The abolishment is to reduce the tax evasion scenario that can be created because of the issuance of bearer shares. From this, we can understand that there is a strong link between tax evasion and bearer share globally. In the case of Ethiopia, since the number of share companies is increasing and the country is moving towards joining the World Trade Organization, allowing the issuance of bearer shares may lead the country to lose revenues. There is no empirical evidence that shows the amount of tax evaded because of the existence of bearer share in Ethiopia. But this does not mean that there is no tax evaded. The experience of other countries even with advanced technologies and

⁷¹ The Reporter Magazine, Reported by Yonas Abiye, March 2019, Available on <https://www.thereporterethiopia.com/article/ministry-charges-65-business-organizations-tax-fraud-evasion> Accessed on August 2023.

⁷² Ibid

⁷³ Ibid

⁷⁴ Report of Global Forum members on transparency and exchange of information for tax purposes, Transparency

and Exchange of Information for Tax Purposes, Multilateral Co-operation Changing the World, 10th ANNIVERSARY REPORT, OECD, Available on <https://www.oecd.org/tax/10th-anniversary-global-forum-on-tax-transparency.htm> accessed at August 2023.

⁷⁵ Ibid

expertise in tax collection area shows that there is tax evasion by bearer shares owners. Maintaining the provision that allows bearer shares issuance may negatively affect the country's revenue.

Managing bearer shares is a difficult task for share companies in Ethiopia. There is no advanced technology that will facilitate communication and other supportive means through which companies in the country can communicate to their unknown shareholders who are holding bearer shares in case needed. The whereabouts of the shareholders, their identity, and the number of shares they have may not be known. Such unclarity can pose a difficulty for the administration of the companies since it is easily transferable. Traditionally, in Ethiopia call to the company's shareholders can be carried out by using newspapers which will only cover a few major cities, and through broadcast media. These means of communication are not fully effective since bearer shareholders might not get access to information through the above means of communication because of barriers attributable to the country's underdeveloped means of communication or to the bearer shareholder itself. But for registered shares, there is no secrecy of shareholders as to their name, exact address, and other necessary information needed. The problem of management can be more difficult when the securities market is established in Ethiopia. Though there is no securities market in Ethiopia today, it is inevitable to set it in the future. One thing is that the issuance of bearer shares may help the securities market, but since a single share can be transferable to different individuals at

different times, managing and communicating with these shareholders will be cumbersome. As a result, for countries like Ethiopia, issuing a registered share is more manageable than bearer shares since the required infrastructures are not developed.

There is a possibility that bearer shares may pose a problem of money laundering and terrorist funding to Ethiopia. According to the OECD, money laundering can, and does, occur practically in all jurisdictions.⁷⁶ Money launderers, however, prefer using jurisdictions that enable them to avoid detection through strict secrecy laws, lax regulatory and supervisory regimes, and the availability of corporate vehicles with impenetrable anonymity features in particular companies attract money launderers to these jurisdictions.⁷⁷ Terrorist funding might be employed by using the secret nature of bearer shares. According to the IMF, these illicit activities can discourage foreign investment and distort international capital flows.⁷⁸ They may also result in welfare losses, draining resources from more productive economic activities, and even have destabilizing effects on other countries. ⁷⁹In an increasingly interconnected world, the harm done by these activities is global. Money launderers and terrorist financiers exploit the complexity inherent in the global financial system as well as differences between national laws; jurisdictions with weak or ineffective controls are especially attractive for moving funds undetected.⁸⁰ Belgium had taken measures aimed at preventing the use of legal persons and arrangements for money laundering and terrorist funding purposes.⁸¹ Among these, it is

⁷⁶ OECD Report, supra note 58, Page 34

⁷⁷ Ibid

⁷⁸ The IMF Fact sheet, supra note 71,

⁷⁹ Ibid

⁸⁰ The IMF Fact sheet, supra note 71

⁸¹ FATF (2015), "Legal persons and arrangements" in Anti-money laundering and counterterrorist financing measures- Belgium, Fourth Round Mutual Evaluation

essential to note in particular the elimination of bearer shares, which became fully effective on 1 January 2014. To reduce these illicit acts, the Belgium government abolished bearer shares.⁸² Money laundering and terrorist financing are among the growing criminal activities in the Horn of Africa in general and in Ethiopia, specifically. Statistical reports from the former Ministry of Justice (today's Office of Attorney General) revealed that between 2009-2010 and 2011-2012, 126 cases of terrorism financing had been investigated and mostly prosecuted. There were also about 141 cases of money laundering in the same year.⁸³ This shows that this criminal act of Money laundering and terrorist funding is something that requires due attention. Letting bearer shares to be issued in the future may attract illicit acts in the country since the company's business is increasing from time to time and there is a possibility of an increase of foreign companies that will enter into the country in one way or another.

Bribe donors and recipients may misuse companies to facilitate their illicit transactions. To hide their illegal activities, companies may enter into corruption arrangements with concerned government officials. This will lead to the continuation of unlawful acts (e.g. tax evasion) by the company and bribery to the officials. Furthermore, the presence of bearer shares may create an opportunity for money earned through corruption to enter into business. This is the case when government

officials engage in corruption activities and become shareholders by investing the money made by bribery. A bearer share is the best device for such officials to hide their identity from the public or their relationship with the company is unknown to the public. This is because there is a strong relationship concerning illegal activity and the absence of transparency in the control and ownership of companies. The World Bank-UN Office for Drugs and Crime Stolen Asset Recovery Initiative conveyed that a large number of the cases of corruption investigated include using corporate vehicles to obscure the actual funding source and beneficial ownership.⁸⁴ From these cases, the overall takings of corruption amounted to some 56.4 billion dollars.⁸⁵

The recent best example of this matter of corruption is the Panama Paper Scandal. The paper provided that abuse of anonymous shell companies is among the reasons why many countries are facing challenges today.⁸⁶ The investigation started with 11.5 million documents that were leaked from Panamanian law firm Mossack Fonseca.⁸⁷ Copies of contracts, bank transactions, and emails showed how the firm had sold and serviced anonymous offshore companies around the world.⁸⁸ The results were shocking, implicating 12 national leaders, celebrities, and other public figures in a dark web of global financial secrecy, prompting public outrage and formal

Report, FATF.
www.fatfgafi.org/topics/mutualevaluations/document/s/mer-belgium-2015, Page 131

⁸² Ibid

⁸³ Tu'emay Aregawi Desta, "The Anti-Money Laundering and Countering Terrorist Financing Regime in Ethiopia," Center on Global Counterterrorism Cooperation, February 2013, Page 5

⁸⁴ 'Barriers to Asset Recovery', 2011: [http://star.worldbank.org/star/publication/barriers-](http://star.worldbank.org/star/publication/barriers-asset-recovery)

[asset-recovery](http://star.worldbank.org/star/publication/barriers-asset-recovery)
accessed August 2023

⁸⁵ Ibid

⁸⁶ Panama papers four years on: anonymous companies and global wealth, 09 April 2020, Available on <https://www.transparency.org/en/news/panama-papers-four-years-on-anonymous-companies-and-global-wealth#> accessed on August 2023

⁸⁷ Ibid

⁸⁸ Ibid

inquiries.⁸⁹ Different government officials were sentenced to imprisonment after the leakage for corruption or bribery.⁹⁰ By 2019, the Panama Papers data on real owners of companies had helped governments recover over US\$1.2 billion in assets through seizures, fines, and audits.⁹¹ These things have happened under the shadow of the secret identity of shareholders which is arranged by bearer shares nature. This shows that recognizing bearer shares in a given company has the power to create a golden opportunity for corrupted officials to negotiate with companies by using their governmental authority and help them to benefit from their evil actions by hiding their identity.

In Ethiopia, the extent of corruption is very high, starting from lower officials to high-level officials. It ranges from petty to grand and acts as an impediment to its development and further aggravating poverty. Lack of accountability and transparency, low levels of democratic culture and tradition, lack of clear regulations, low level of institutional control, absence of punishment, and others are some of the factors that contribute to corruption thriving in the country.⁹² According to the Transparency International Report 2019, Ethiopia ranks 96 out of 180 countries in the Corruption Perceptions Index by scoring 37 points.⁹³ This shows that there is a high level of corruption in the country. No research and concrete evidence show the corruption act related to bearer shares so far in Ethiopia since

due attention has not been given to the matter. However, the level of corruption in the country and the suitable nature of bearer shares possibly allow the corrupted officials to become shareholders by investing the money acquired through corruption and getting a profit. Not only this but also such type of company's share can help these individuals to hide their identity from the public and criminal investigation. With the increasing number of share companies and foreign companies entering the country, the possibility of committing act corruption by using a bearer share as a shield is feared to increase. So, the existence of bearer shares may contribute to the commission of corruption. The experience of other countries shows the same.

The risk of loss or theft is a severe disadvantage of bearer shares. Since it is easily transferable and the name of a shareholder is not indicated on it, once lost or stolen it is challenging to recover. This may pose a dilemma as to whether the holder of the instrument is the real and the face shareholder. Recovering the stolen or lost bearer share may be difficult in developed countries themselves let alone underdeveloped countries like Ethiopia in which the system of police investigation is underdeveloped or in which investigation is conducted traditionally.

When we see the experience of countries of the world, most of them are reforming their company laws since its drawbacks are creating

⁸⁹ Ibid

⁹⁰ For example, In 2018, for example, the former Prime Minister of Pakistan Nawaz Sharif was sentenced to 10 years in prison and fined US\$10.6 million on corruption charges following the revelations that his children were linked to offshore companies that owned luxury apartments in London. That same year, high-level public officials and executives were arrested in Ecuador after leaked documents exposed their links to the Petro Ecuador bribery scheme. (Received from:

<https://www.transparency.org/en/news/panama-papers-four-years-on-anonymous-companies-and-global-wealth#>)

⁹¹ Ibid

⁹² Kaunain Rahman with contribution from: Abdulatif Idris, Overview of corruption and anti-corruption in Ethiopia, U4 Anti-Corruption Helpdesk, October 2018, Page 4

⁹³ Transparency International Report, 2019, Available on www.transparency.org/cpi Accessed on August 2020, Page 3

many problems for the bearer share and the benefits of bearer share. So, different concerned organizations are recommending states obliterate bearer shares or pave the way on how to regulate them. In the USA, the registered share is only recognized. Because of its difficulties, corporation laws in the United States generally provide for only registered equity shares.⁹⁴ In Switzerland, as of 1 January 2020, Swiss companies that so far can issue bearer shares under their articles of association will no longer be able to do so.⁹⁵ Any company able to issue bearer shares should display to amend their articles of association during the transition period leading up to 1 July 2022.⁹⁶ If not done by this deadline, any other modifications to the articles of association will be banned by the commercial register.⁹⁷ At the time of the amendment, the issued bearer shares will also be changed into registered shares.⁹⁸

The other Alternative: Custodian

In most jurisdictions, bearer-share statutes have generally been undergoing a process of reform such as immobilization and employment of custodians. The immobilization of bearer shares is another alternative to abolishing it. This practice of immobilization is believed to reduce the misuse of bearer shares to a certain extent and is also practiced by countries such as the British Virgin Islands, Cayman Islands, and Panama.⁹⁹ Immobilization is restricted to

avoid its mobility nature share through the custodian. The holders of bearer shares in existing companies are required to employ a custodian.¹⁰⁰ The custodian can be a registered agent, bank, or trust company.¹⁰¹ The objective of introducing this requirement is to establish a record where the details of the person who deposited the bearer shares are kept.¹⁰² This avoids the anonymity of identity, and the custodian should register the name of the shareholder. It is believed that by immobilizing shares, tax evasion and other illicit activities can be eliminated.

The use of custodians for bearer shares offers benefits

In the first place, recording who owns what assets makes things clearer. Custodians keep records of who truly owns the bearer shares and track all trades and the public does not know who holds the share; it is only known if needed to the buyer when they change hands. A report from the International Organization of Securities Commissions says custodians play an important role. Providing accurate data on who owns securities improves transparency for financial markets.¹⁰³

Secondly, custodians can assist with avoiding risks linked to unlawful acts. The verification procedures employed by custodians may help prevent illegal activities, for instance, money laundering and tax evasion related to bearer shares. Financial action task forces stresses

⁹⁴ Gerald M. Amero, Corporations Bearer Shares in the United States Civil Law Contrast Connecticut and Montana Statutes Authorizing Issuance, 48 Cornell L. Rev. (1962) Available at: <http://scholarship.law.cornell.edu/clr/vol48/iss1/5>, Page 174

⁹⁵ Lukas Glanzmann and Philip Spoerlé, Baker McKenzie's Corporate Finance Practice Group in Zurich, De facto abolition of bearer shares and new criminal sanctions for board members and shareholders of Swiss companies, International Briefing, Butterworths Journal of International

Banking and Financial Law, November 2019, Page 709

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Andre Vanterpool, supra note 57

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Ibid

¹⁰³ International Organization of Securities Commissions (IOSCO), "Custodian and Third-Party Broker Relationships, 2012

robust customer due diligence is vital, facilitated by custodians, mitigating money laundering risks within the financial sector.¹⁰⁴ Additionally, custodians are important for following rules and government oversight. They help people follow regulations and give information to officials who monitor things. A report by the Institute of International Finance says custodians play a key role in assisting companies with regulation compliance and reporting requirements.¹⁰⁵

Lastly, custodians build confidence and trust in investors. They guard investors' assets with security measures. Moreover, custodians assist in lowering the dangers tied to owning securities. As a result, they add to the trust in the system. The World Bank Group highlights this by pointing out that custodians offer safe custody services that nurture trust. Their task is to limit dangers for investors who hold securities.

Some jurisdictions have rules to control the transaction of bearer shares. Often, they need a third party called custodians to be a part of it. Custodians work between the person who holds the bearer shares and the firm that gives them, keeping the share papers for the holder. Their main job is to make sure that bearer share trades are honest and legal. This means they must check who the holder is, do checks to stop crime and keep precise records of who owns the shares.¹⁰⁶

The British Virgin Island Companies Act 2004, in its Part III, Division 5 immobilized bearer shares.¹⁰⁷ The legislation addresses all the

aspects regarding the immobilization of bearer shares; *inter alia*, those who can be considered a custodian, duties and obligations of the custodian, and beneficial owner of the bearer shares. The amended Company Law of Cayman Island in 2001 restricted the circulation of bearer shares through establishing custodians.¹⁰⁸ Panama also immobilized its bearer shares after intense debate and providing different proposals.¹⁰⁹ OECD and other international institutions have put pressure on countries to avoid the issuing of bearer shares. As a result, it looks like the end of the bearer share. Financial Action Task Force (FATF) provided recommendation 24, which requires countries to take measures to prevent the misuse of bearer shares and bearer share warrants.¹¹⁰ The Interpretive note to the recommendation provides that the misuse of bearer shares should be avoided by applying one or more mechanisms. There are mechanisms such as prohibiting them and/or converting them into registered shares or share warrants and/or immobilizing them by requiring them to be held with a regulated financial institution or professional intermediary and/or requiring shareholders with a controlling interest to notify the company, and the company to record their identity.¹¹¹

Thus, using a custodian system for bearer shares can help keep the good parts of bearer shares and deal with the risks. Instead of getting rid of bearer shares completely, regulators can think about making strict custodian rules to

¹⁰⁴ The Financial Action Task Force (FATF) Customer Due Diligence for Banks", 2001

¹⁰⁵ Institute of International Finance (IIF) "Securities Custody: Market Developments and Financial Stability Considerations", 2017

¹⁰⁶ Swiss Federal Act on Intermediated Securities (FISA) - <https://www.admin.ch/opc/en/classified->

[compilation/20123565/index.html](https://www.oecd.org/dataoecd/21/56/49982221.pdf) (Accessed on June 2023)

¹⁰⁷ British Virgin Island Companies Act 2004, in its Part III, Division 5, articles 68 and 70

¹⁰⁸ Andre Vanterpool, *supra* note 57

¹⁰⁹ *Ibid*

¹¹⁰ Financial Action Taskforce *Supra* note 70, Page 10

¹¹¹ *Ibid*, Page 17

make sure that transactions with bearer shares are honest and safe. The custodian of bearer shares can be a good way to deal with worries about transparency, accountability, and security in bearer share transactions. By using a custodian system, regulators can be proactive in dealing with the risks of bearer shares while preserving the privacy and anonymity afforded by bearer shares. This careful way of doing things can help keep the financial system healthy by balancing new ideas with accountability, which can help investors and the economy as a whole. When such a measure is employed, it is possible to avoid the dark side of bearer share and enjoy the positive side of such type of share.

Generally, it can be understood that globally there is a reform towards bearer share from every jurisdiction since it is opening a door for illicit activities and other drawbacks and its effect is cross-boundary. In Ethiopia, the 1960 commercial code recognizes the issuance of bearer shares by share companies. Subsequently issued proclamations of financial institutions require registration transfer of shares to have a legal effect without making a clear indication about bearer share. The newly issued 2021 commercial code provides the abolishment of the issuance of bearer shares though bearer transfer of instruments and incorporeal shares are recognized. Unlike other jurisdictions, Ethiopian law does not recognize the concept of immobilizing or keeping the custodian bearer shares. However, Capital Market Proclamation no.1248/2021 has introduced the issue of custodians to keep customers' securities.¹¹² So, this indicates that it is logical to add the keeping of bearer shares

by the custodians by giving recognition to bearer shares. The recognition of such bearer shares is also important for the recently established capital market in Ethiopia since it can easily be transacted without a complex process of transfer. To increase the number of foreign companies in Ethiopia through foreign direct investment and to promote individuals who do not want to disclose their identity because of their lawful and acceptable personal reasons to buy a share.

6. Conclusion

From the above discussion, it can be concluded that the issuance of bearer shares has both advantages and disadvantages. Privacy and the absence of registration costs and bureaucracy are among the benefits of bearer shares. The advantage of privacy is the problem of inciting the owner to engage in some illicit criminal activities such as money laundering and terrorist funding, corruption, tax evasion, and other similar activities by taking advantage of the lack of transparency. The possibility of being stolen and loss and difficulty of administration are among the drawbacks of bearer shares.

Controlling such shares is becoming difficult because of its complex nature and convenience it for some criminal activities. Some jurisdictions are abolishing bearer shares from their company laws while others are innovating ideas to control them by compromising obscurity to some extent. Also, an international organization such as OECD, World Bank, and IMF are recommending and putting countries under pressure to make a reform towards bearer share management. Countries like the USA allow only the issuance of bearer shares from

¹¹²Capital Market Proclamation, Proclamation No. 1248/2021, Published on the Federal Negarit Gazette of

The Federal Democratic Republic of Ethiopia, 27th Year No.33 ADDIS ABABA, 23rd July, 2021, Article 2(16).

the very beginning while most European countries previously gave recognition for bearer shares started to see other options or banning it. Some dematerialize, while others immobilize the bearer shares by amending their company laws to cope with the existing situation of tackling the danger born.

In Ethiopia, the 1960 Commercial Code recognizes the issuance of bearer shares though there are some indications under the proclamations of financial institutions. Even these proclamations do not directly avoid the issuance of bearer shares by share companies. Instead, they provide that all shares and its transfer should be registered. That means, that when the share is registered at the beginning and its transfer is registered as well, there is no unregistered share. Impliedly, bearer share is eliminated from banking, Insurance, and Microfinance Institutions share companies. For non-financial share companies, the new commercial code of Ethiopia has eliminated bearer shares and has given some period for the existing bearer shares to be converted to registered shares.

The writer believes the introduction of the third option which is keeping with the custodian is the best option instead of simply keeping it or abolishing it. Issuance of bearer shares has some benefits for the development of company business and the securities market of a country. At the same time, there are some shortcomings of such a type of share. So, to balance the two dimensions, allowing the issuance of bearer shares and keeping them with custodians is the smart way of enjoying the benefits and closing doors for the dark sides.