

Joint Venture under the 1960 Commercial Code of Ethiopia: A Comparative Analysis with the UK and German Legal Systems

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Abstract

The Ethiopian joint venture law is comparable with German and English laws in respect of confidentiality. In relation to nature, transfer of shares, liability of partners, and profits and losses distribution policy, the Ethiopian joint venture law is more related with the English one. Whereas, with regard to the requirement of written agreement, the Ethiopian law is more parallel with that of the German silent partnership since in both countries such requirement is waived by their respective laws. Additionally, concerning the “who manages” issue, it can be said that at least in terms of composition and structure, the Ethiopian law is more comparable with the German silent partnership. This Article comes up with some best experiences to Ethiopia drawn from the comparative analysis. It urges some prudent legal framework to be espoused for the proper practice of joint ventures, i.e. in the way it addresses the ever more pressing needs for joint venture engagements in Ethiopia. Accordingly, some legal improvements will be suggested, mainly, on issues of confidentiality, dissolution, and the need for written agreement.

Key Terms: Commercial Code, Confidentiality, Dissolution, Joint Venture, Joint Venture Agreement, Partners, Silent Partnership

Introduction

The recent trends of global business and the Ethiopian as well, have inspired the writer of this article to carry out a comparative research on phenomena known as Joint Ventures. Nowadays global economy is complex, as companies and corporations with gorgeous experience and power overload

the market.¹ The keen rivalry between the corporate entities builds insurmountable obstacles not only for individual persons or for novice companies with less competitive strength, but also for big companies intending either to enter a new market or to make a debut into the new product development.² The most efficient tool, in case individual person or company is not capable of solely handling the successful accomplishment of a business objective, is to constitute alliance with another company or person, in other words, to acquire the urgent help.³

Joint ventures continue to increase in popularity but in some jurisdictions mystery still surrounds the concept of joint venture and the obligations of a joint venturer. The structure of the joint venture can take a number of forms. It can be structured as a company and it becomes a separate entity, covered by statute. It is the unincorporated joint venture which generally poses the problems and questions. A major pitfall is the lack of a contract, or an agreement which is inadequate.



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¹Sornarajah M., *Law of International Joint Ventures*, Longman, Singapore, 1992, p. 119. Joint ventures by business entities have become increasingly common and increasingly important to the economic life of many countries in the world. They are prevalent in the construction industry for large projects such as dams, road works and public buildings (Yoshino M. Y and Rangan U.S., *Strategic Alliances: An Entrepreneurial Approach to Globalization*, Harvard University Press, Cambridge, 1995, p. 136.)

²Lim E. C and Liu Y., International Construction Joint Venture as a Market Penetration Strategy? Some case studies in developing countries. In Proc., 3rd Int. Conf. on Construction Project Management, Nanyang Technological Univ., Singapore, 2001, pp.377-389.

³Lawarree J. and Audenrode M. V., *Moral Hazard and Limited Liability*, 1999, P. 44, at <http://www.econometricsociety.org/meetings/wc00/pdf/0971.pdf>.

Under the Ethiopian Commercial Code, joint venture refers to contractual joint venture⁴ and is expressly provided not to be a separate legal entity, but instead is intended to be a separate economic entity only. The joint venture is created by an agreement between its owners who are often referred to as the joint venturers and; hence, is a legal relationship and not a legal entity and perhaps not even a person. Under the Commercial Code, joint venture is not required for registration in any governmental registry such as those which register and provide public information in respect of the legal existence of companies and partnerships.

This work attempts to construct an academically coherent and predictable analysis of joint venture, an undertaking which faces some problems under Ethiopian legal framework. The article goes beyond the common definitions and reviews of the subject in general, including drawing some best experiences for Ethiopia. This will be attained by conducting detailed comparative analyses with the German and the English jurisdictions in range of the regulatory legislation for joint ventures/silent partnership. The reasons behind the decision to view mentioned systems are, on the one hand, the diversification between these two jurisdictions and on the other hand the fact that both are the major representatives of their law systems. Generally, therefore, the aim while making the comparison with the two jurisdictions is to demonstrate each possible portrayal of the subject and then to draw best experiences that could rectify legal problems of joint venture in Ethiopia.

⁴ When the author concludes joint venture under Ethiopian Commercial Code is a contractual agreement, it is to refer that no formation of institution or association will occur; rather it is a relationship of persons connected by a mutual agreement.

1. Preliminary Remarks: Joint Venture from a Global Perspective

1.1. A Conceptual Overview of Joint Venture

There are various definitions of joint ventures that depict some features of this business arrangement. Some definitions delineate a broad range of cooperation as joint ventures; whereas, some others define a narrow range of cooperation as joint ventures.⁵ The most familiar two are the definitions depicted by Lynch and Norwood. For Lynch, a joint venture can be defined as a cooperative business activity formed by two or more separate organizations that creates an independent business entity and allocates ownership, operational responsibilities, and financial risks and rewards to each member, while preserving their separate identity/autonomy.⁶ Norwood on his part, defined joint ventures as the commercial agreements between two or more companies in order to allow greater ease of work and cooperation towards achieving a common aim, through the manipulation of the

⁵In an informal sense joint ventures are business arrangements whereby parties collaborate in a one-off enterprise usually (but not necessarily) contributing, money, property or skill in a particular trading, commercial, mining or other financial undertaking to achieve certain outcomes which might include containing costs, limiting exposure to risk, increasing market strength, generating a product which will yield each party a separate profit or otherwise more generally sharing profits, whether equally or not. The term joint venture is itself a vague one, capable of a range of applications... often used to bolster a conclusion that a fiduciary relationship exists. See *United Dominion Corporation Ltd v Brian Pty Ltd*, High Court of Australia, Judgment, 1985, Para. 157.

⁶ Lynch R.P, *The Practical Guide to Joint Ventures and Corporate Alliances*, Wiley, New York, 1989, P. 83.

appropriate resources.⁷ Other definitions are almost same as the two definitions mentioned above.⁸

In a narrow sense, a joint venture is defined as: two or more parties (they may be individuals, companies, corporation, or others) combine their resources to create a new company to carry out a special transaction/project according to their agreement. They will share the ownership, operational responsibilities, and the profits and the losses of the new company, and the new company as a separate entity undertakes liability for the debts and the third parties.⁹

Generally, the definitions can be classified into two groups: one group defines joint ventures as a separate entity created by two or more than two partners who bring together their resources and share the control right and profits. Whereas, the other group defines joint ventures as any cooperation between two or more than two companies.¹⁰

⁷ Norwood S. R and Mansfield N. R., Joint Venture Issues Concerning European and Asian Construction Markets of the 1990's, *International Journal of Project Management*, Vol.17 No. 2, 1999, p. 96.

⁸ Authors such as, Johnson defined joint ventures as the separate entities owned jointly by two or more firms that represent a partial combination of their resources entity. See Johnson S. A and Houston M. B., A re-examination of the motives and gains in joint ventures, *Journal of Financial and Quantitative Analysis*, Vol.35, No. 34, 2000, p. 64. His definition is almost same as the one defined by Harrigan, joint ventures involve two or more legally distinct organizations, each of which invests in the ventures and actively participates in the decision-making activities of the jointly owned entity. See Harrigan K. R., *Strategies for Joint Ventures*, Lexington Books, Lexington, 1985, p. 49.

⁹ Geringer J. M and Hebert L. Control and Performance of International Joint Ventures. *Journal of International Business Studies*, Vol.20, No. 3, 1989, p. 41.

¹⁰ Just as Hennart summarized, joint ventures can be distinguished into equity joint ventures and non-equity joint ventures. Equity joint ventures arise whenever two or more sponsors bring given assets to an independent legal entity and are paid for some or all of their contributions from the profits earned by the entity, or when a firm acquires partial ownership of another firm. The non-equity joint ventures describe a wide array of contractual arrangements, such as licensing, distribution and supply agreements, or technical assistance

1.2. Types of Joint Ventures

Globally, the issues that affect the form of joint venture are among others-tax, limited liability, regulatory, banking, labor and employment, benefits, third party consents and exit strategies.¹¹ Generally, joint ventures in a broad sense can be categorised as i) contractual joint venture; ii) corporate joint venture; and iii) unincorporated joint venture.

1.2.1. Contractual Joint Ventures

The contractual or non-equity joint venture can either be a co-ownership model or simply a contract between the parties whereby they retain all their own assets and agree as to their separate rights and obligations.¹² Most partnering arrangements, strategic alliances and outsourcing services arrangements fall into this category. It is this category that also gives rise to structuring concerns to ensure that the actions of the parties do not result in it being, in fact, a partnership.¹³ A contractual joint venture may be a good choice for a short-term relationship between two businesses. Particularly, if the relationship will be focused on combined services, sales, or marketing,

and management contacts . See Hennart J., Transaction Costs Theory of Equity Joint Ventures. *Strategic Management Journal*, Vol.9, No. 4, 1988, p. 53.

¹¹ Structuring a joint venture, particularly a global joint venture, can have a substantial impact on its economic success. A threshold decision focuses on the type of joint venture: (i) contractual joint venture; (ii) corporate joint venture; or (iii) unincorporated joint venture. This joint venture or partnership decision impacts the joint venture structure. The management of a joint venture, how it is capitalized, and joint venture taxation all play a role in joint venture structures. Additionally, how one exit the business, or joint venture dissolution, can also affect its economic success. See Child, J., D. Faulkner, and Tallman S., *Strategies of Cooperation: Managing Alliances, Networks, and Joint Ventures*, Oxford University Press, Oxford, 2005, p.9.

¹²Kogut B., Joint Ventures and the Option to Acquire, *Journal of Management Science*, Vol.37, 1991, p. 71.

¹³Peter Nayler, *Business Law in the Global Marketplace*, Butterworth-Heinemann, Oxford, 2006, P. 181.

and few if any hard assets are involved, co-venturers may prefer a contractual joint venture.¹⁴

1.2.2. Corporate Joint Ventures

A corporate joint venture involves the set-up of a new corporation that is separate and independent from the co-venturers respective businesses. The new corporation will be the legal and business vehicle through which the co-venturers grow the business joint venture.¹⁵ A corporate joint venture involves the creation by the participants of a separate legal entity through which to pursue the venture. The parties to the joint venture will be the parent shareholders in the entity.¹⁶

1.2.3. Unincorporated Joint Ventures

Unincorporated ventures are similar to corporate joint ventures in that they involve the set-up of a legal entity that is separate and independent from the co-venturers' respective businesses. They differ from the corporate joint venture in the type of legal entity they are.¹⁷ An unincorporated joint venture is typically structured as limited partnership or possibly a limited liability

¹⁴ Ibid, P. 182.

¹⁵ Robert Wallace L., *Strategic Partnerships: An Entrepreneur's Guide to Joint Ventures and Alliances*.

New York: Kaplan Publishing, 2004, p. 18.

¹⁶ Bamford, James, David Ernst, and David G. Fubini, *Launching a World-Class Joint Venture*. *Harvard Business Review*, Vol. 3, 2004, P. 95, at: hbr.harvardbusiness.org/2004/02/launching-a-world-class-joint-venture/ar/1.

¹⁷ Shishido Z., *Conflicts of Interests and Fiduciary Duties in the operation of a Joint venture* November, 1987, 39 *Hastings Law Journal*, Vol. 63 No. 4, 1987, P. 39. The various approaches to a definition of a joint venture are discussed, including that of an economist and that used in the antitrust context. See Duncan W.D., *Joint Ventures Law in Australia*, 2nd edition, the Federation Press, Australia, 2005, P. 28.

partnership. With sufficient safeguards, the general partnership may also be employed as a vehicle in lieu of the corporate joint venture.¹⁸

Generally, it is possible to say that no particular business structure is mandated for joint ventures. They are implemented through any of a series of interlocking contracts, partnerships, companies, or trusts, or by way of agency or joint ownership.¹⁹ There is usually some form of contractual arrangement that governs the way the joint venture is to be carried out but the absence of a formal agreement is not fatal to the existence of a joint venture.²⁰ Ultimately, whether a joint venture can (or indeed should) ever be classified as a discrete form of legal relationship which has its own particular rights and duties, distinct from a contract, partnership or any other form of established and recognised legal relationship, depends on the nature of the obligations that the joint venture parties have assumed. If such obligations or duties require the parties to act at most only with due care and/or in good faith towards each other that puts an end to further enquiry.²¹

¹⁸ Unincorporated Joint Ventures include Unit Trusts, Partnerships, and Unincorporated Joint Ventures which are not Partnerships. See Marcus Beveridge, *Joint Ventures in their most Narrow Sense*, Queen City Law, Auckland, New Zealand, 2011, p.3.

¹⁹ *United Dominion Corporation Ltd v Brian Pty Ltd*, *supra* note 5.

²⁰ *John Alexander's Clubs Pty Ltd v White City Tennis Club Ltd*, High Court of Australia, Judgment, 2010, Para. 241.

²¹ If an examination of the duties that the parties have assumed reveals that, in addition to any duties of care and/or good faith, they are mutually required to put the other's or their joint interest ahead of their own individual interest (in other words, that their duty is to act with utmost loyalty towards their fellow venturer/s), then their relationship will be a joint venture that involves fiduciary duties. The issue in that context will be to determine to which aspect of the parties' joint venture such fiduciary duties extend. See *Chirnside v Fay*, New Zealand, Supreme Court, 2007, Para. 68. For a discussion of this decision, together with *Paper Reclaim Ltd v Aotearoa International Ltd*, New Zealand, Supreme Court, 2007, Para. 26 and *Amaltal Corporation Ltd v Maruha Corporation*, New Zealand Supreme Court, 2007, Para.40; See also Maree Chetwin and Phillip Joseph *Joint Ventures Law*, eds, Centre for Commercial and Corporate Law Inc, University of Canterbury, 2008, p. 81; The content of the fiduciary duty compels complete loyalty. The high court of Australia described it in the

1.3. Features of Joint Ventures

1.3.1. Sharing Rights between the Partners

Joint ventures will share the ownership, operational responsibilities, and the control right, the profits and the losses of the entity, and the entity as a separate entity undertakes liability for the debts and the third parties.²² This characteristic of sharing risks, profits and rights makes joint venture very difficult to manage and bring many conflicts during the operation of the joint venture.²³ To which degree that each partner can achieve his/her goals depends on the shares of each partner in the joint venture. The partners define how to share the risks, the profit and control right by negotiating with each other. The result of the negotiation depends on the relative bargaining power of the partners.²⁴

1.3.2. Quasi-Hierarchies

All forms of cooperative arrangement represent a middle ground between market and hierarchy.²⁵ Joint venture structure can be viewed as

following way: The distinguishing obligation of the fiduciary is loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or for the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary. See *Bristol and West Building Society v Mothew*, High Court of Australia, 1998, para. 18.

²² Lynch, *supra* note 6, p. 83.

²³ Rugman A. M., *Internalization and Non-equity Forms of International Involvement, New Theories of the Multinational Enterprise*. New York: St Martin's Press, 1981, p. 112.

²⁴ Harrigan, *supra* note 8, p.4.

²⁵ Buchel B., Prange C., Probst G. and Ruling C., *International Joint Venture Management Learning to Cooperated and Cooperation to Learn*, John Wiley and Sons (Asia) Pte Ltd, Singapore, 1998, P. 23.

quasi- hierarchical structure.²⁶ Hierarchical internal organization will become the preferred operating mode under conditions of substantial uncertainty and complexity. Hierarchical organization is less flexible and it is very difficult to adjust with the change of the market.²⁷ However, it is more efficient to deal with complex conditions and uncertainties, because it can make decisions by authority.²⁸

Parties' sharing in the profits or losses attained through the venture's performance serves to align the interests of the parent firms, reducing the opportunism that may arise in contractual agreements.²⁹ The joint venture form may also allow for a superior monitoring mechanism, since joint venture owners may be legally entitled to independently verify financial information as well as information acquired through direct observation.³⁰

1.3.3. Relations between the Partners

Joint venturers cooperate with each other to achieve certain goals that neither partner can achieve on their own.³¹ The two kinds of relations between

²⁶Osborn N. and Baughn C., Forms of Interorganizational governance for Multinational Alliances, *Academy of Management Journal*, Vol.33 No.3, 1990, p. 100.

²⁷Williamson E., Transaction-Cost Economics: the Governance of Contractual Relations, *Journal of Law and Economics*, University of Chicago Law School, Vol.22, 1979, p. 245.

²⁸ Ibid (as of Williamson, the contractual agreements cannot solve the problems which are called moral hazard or adverse selection. Joint ventures, on the other hand, can be seen as quasi-hierarchies. Joint ventures provide joint ownership and control over the use and the fruits of assets. They may be used to bypass market inefficiencies due to uncertainties or complexity).

²⁹ Hennart J., Transaction Costs Theory of Equity Joint Ventures. *Strategic Management Journal*, Vol.9, 1988, p. 52.

³⁰ Stuckey J., *Vertical Integration and Joint Ventures in the Aluminum Industry*, Cambridge, Mass: Harvard University Press, 1983, p. 122.

³¹Kogut B., Joint ventures: Theoretical and empirical perspectives. *Strategic Management Journal*, Vol. 6, No. 3, 1988, p.71; On the other hand, the difference of parties own goals or their own self-interest will make them to compete with each other. See G. Hamel G., Competition for competence and inter-partner learning within international strategic alliances. *Strategy Management Journal*, Vol.12, 1991, p. 48.

the joint venture partners are called as cooperative dilemma or joint venture dilemma.³² Many researchers have used prisoners' dilemma to model cooperative and competitive behaviour in both economics and psychology.³³ Because of the characteristics of the special relations between the partners in the joint venture, it also brings about some special problems. Instability or high failure rate is one of the most important problems.³⁴

1.4. The Joint Venture Agreement

The joint venture partners enter into a joint venture agreement - a contractual agreement that is very often the only document governing the relationship between the partners. The purpose of the joint venture agreement is for the joint venture partners to set out their understanding of how the relationships in the joint venture will be governed.³⁵

In a well-drafted joint venture agreement, it is usual to provide a clause to the effect that the joint venture partners' positions are defined in the event that unexpected circumstances arise.³⁶

³²Tiessen H., The joint venture dilemma: Cooperating and competing in Japanese- North American and Japanese-Japanese joint ventures. Unpublished PHD Thesis, York University, Canada, 1996, p. 125.

³³Axelrod R., *The Evolution of Cooperation*, New York, 1984, p.6; Dawes M., Social Dilemmas, *Annual Reviews Psychology*, Vol.31, 1980, p. 32; Rapport A and Chammah A., *Prisoners' Dilemma: a Study in Conflict and Cooperation*. University of Michigan Press, Ann Arbor, 1965, p. 107.

³⁴Millington I. and Bayliss T., Instability of Market Penetration Joint Ventures: A Study of UK Joint Ventures in the European Union. *International Business Review*, Vol.6, No.1, 1997, p.92; Gill J. and Butler J., Managing Instability in Cross-Cultural Alliances. *Long Range Planning*, Vol.36, 2003, p. 42; Pekar P. and Allio R., Making Alliances Work Guideline for Success. *Long Range Planning*, Vol.127, 1994, p. 102.

³⁵Omalu K, Pre-contractual Agreements in the Energy and Natural Resources Industries – Legal Implications and Basis for Liability, *Journal of Business Law*, Vol. 303 2000, p. 312.

³⁶Whilst it appears, in some ways, to contradict the joint venture agreement in respect of their respective financial interests in the joint venture, it nevertheless provides a safeguard for the injured partner(s) in the event of default by another of the partners. In addition, matters such

Joint venturers must be in agreement as to which structure is appropriate if they are to reach the consensus necessary for a contract, since very different legal and financial outcomes may result from the structure adopted. If there is a well drafted agreement, it is straight forward as to the type of structure which governs the relationship and the rights and obligations of the parties.³⁷

There is no single standard form of joint venture agreement because there can be a range of characteristics.³⁸ But general consideration of joint venture agreement should bear in mind important issues as follows:³⁹ defines the parties to the agreement; defines the purposes and objectives of the joint venture; defines the monetary and non-monetary contributions to be made by each of the parties; defines the management and structure of the joint venture and the associated appointment mechanism; defines the vehicle under which the joint venture will be carried on; defines the basis on which the participants share in the profits and losses of the joint venture; defines the liabilities of the joint venture partners; provides for a conflict resolution mechanism, and

as bonds and insurances arrangements may be dealt with, identifying which party is to be responsible and to what extent. See McPherson J, Joint Ventures as cited in Finn D., *Equity and Commercial Relationships*, Sydney: Law Book Company, 1987, p 21.

³⁷ Maree Chetwin, The Broad Concept of Joint Venture: Should It Have A Fixed Legal Meaning? University of Canterbury, New Zealand, EABR (Business) & ETLC (Teaching) Conference Proceedings Ljubljana, Slovenia, 2007, p.3.

³⁸ Thwala, W.D., A study of joint venture formation between construction organization in Tanzania, Australasian Journal of Construction Economics and Building, Conference Series, Vol. 1 No. 2, 2012, p. 34.

³⁹ Rowan, V., How joint ventures are organized, operated on international construction projects, An outline used in the presentation to the Overseas Construction Association of Japan, Inc. 2005.

provides for termination mechanisms. Here, it should be known that joint venture agreements depend on the form of joint venture adopted.⁴⁰

1.5. Benefits and Risks of Joint Ventures

1.5.1. Benefits of Joint Ventures

There are many good businesses and accounting reasons to participate in a joint venture. Partnering with a business that has complementary abilities and resources, such as finance, distribution, channels, or technology, make good sense. These are just some of the reasons partnerships formed by joint venture are becoming increasingly popular.⁴¹ Joint ventures can offer an array of benefits to partner firms through access to new and/or greater resources including markets, distribution networks, capacity, staff, purchasing, technology/intellectual property, and finance. Often, one firm supplies a key resource such as technology, while the other firm(s) might provide distribution or other assets.⁴²

A joint venture can also be very flexible. For example, a joint venture can have a limited life span and only cover part of what to do; thus, limiting the commitment for both parties and the business' exposure.⁴³ Joint ventures

⁴⁰Ibid, Rowan indicates three forms of joint ventures which are: joint venture in form of company; joint venture in form of partnership; and joint venture on contractual basis (unincorporated joint venture).

⁴¹ Ian Hewitt, *Joint Ventures*, (4th ed.), Sweet & Maxwell, August 2008, P.41.

⁴² Ibid; Chi T. and McGuire J., Collaborative ventures and value of learning: Integrating the transaction cost and strategic option perspectives on the choice of market, *Journal of International Business Studies*, Vol.28 No.2, 1996, p. 28.

⁴³ In short, the following are key resources that can be shared: access to new markets and distribution networks; increased capacity; sharing of risks and costs with a partner; access to greater resources, including specialised staff, technology and finance. And when explained- Access to markets: Joint Ventures (JVs) can facilitate increased access to customers. One JV partner might, for example, enable the partner to sell other goods/services to their existing

are especially popular with businesses in the transport and travel industries that operate in different countries.⁴⁴

1.5.2. The Risks of Joint Ventures

There are a number of risks related to joint ventures that can result in loss of control, lower profits, and conflict with partners, and transferability of key assets.⁴⁵ Problems are probable to arise if, for instance: the objectives of the venture are not totally clear and communicated to everyone involved; the partners have different objectives for the joint venture; there is an imbalance in levels of expertise, investment or assets brought into the venture by the different partners; different cultures and management styles result in poor integration and co-operation; and the partners don't provide sufficient leadership and support in the early stages.⁴⁶

customers. International JVs involve partners from different countries, and are frequently pursued to provide access to foreign markets. Distribution networks: Similarly, JV partners may be willing to share access to distribution networks. If one partner was previously a supplier to the other, then there may be opportunities to strengthen supplier relationships. Capacity: JV partners may take advantage of increased capacity in terms of production, as well as other economies of scale and scope. Staff: JVs may share staff, enabling both firms to benefit from complementary, specialized staff. Staff may also transfer innovative management practices across firms. Purchasing: As a result of their increased resource requirements, JV partners may be able to collectively benefit from better conditions (for example, price, quality, or timing) when purchasing. Technology/intellectual property: As with other resources, JV partners may share technology. A JV may also enable increased research, and the development of new innovative technologies. Finance: In a joint venture, firms also pool their financial resources, potentially eliminating the need to borrow funds or seek outside investors. See Milton R. Stewart and Ryan D., *International Joint Ventures*, a Practical Approach, Davis Wright, 2011, p.3.

⁴⁴ Deborah E. Bouchoux, *Business Organizations for Paralegals*, 3rd ed., Aspen Publishers, New York, 2004, P. 41.

⁴⁵ Peter Nayler, *Business Law in the Global Marketplace*, Butterworth-Heinemann, Oxford, UK, 2006, P. 183.

⁴⁶ Scott V. Derco, *The Benefits and Pitfalls of the Joint Venture*, Sax Macy Fromm & Co., 2010, p.3.

2. Joint Venture under the 1960 Commercial Code of Ethiopia: A Comparative Analysis with the Laws of UK Joint Venture and Germany Silent Partnership

2.1. Definition and Nature

As per the 1890 Partnership Act of England and Wales, a joint venture is a way of structuring a business venture. It is a contractual relationship and involves two or more businesses pooling to carry out an entrepreneurial plan and achieve a particular goal.⁴⁷ Correspondingly, as per the Commercial Code of Ethiopia, a joint venture is an agreement between/among partners on terms mutually established.⁴⁸ Hence, comparably with that of England, joint venture in Ethiopia is a contractual relationship between/among individuals or entities.

Whereas under the German law, unlike the English and Ethiopian laws of joint ventures, there is no business organization that is named as joint venture. Rather the organization that has some shared attributes with the Ethiopian and English joint ventures is known as silent partnership. Silent partnership is defined in the Commercial Code of Germany as a *personalistic* entity in which the silent partner participates in the commercial enterprise conducted by the active partner in such a way that an investment is made by it in the assets of the active partner, and the silent partner participates in the profits of that undertaking.⁴⁹ Therefore now, it is possible to draw that,

⁴⁷England and Wales, Partnership Act, 1890, CH. 39, S. 1.

⁴⁸Commercial Code of Ethiopia, Proclamation No. 166 of 1960, Negarit Gazeta, Extraordinary Issue, No. 3, Addis Ababa, 1960, Article 271.

⁴⁹ German Commercial Code, Paras. 230(1) and 231(2), Translated And Briefly Annotated By A. F. Schuster, of the Inner Temple, Barristek-At-Law. With An Introduction by E. J. Schuster (L I.D. Munich), of Lincoln's Inn, Baeistee-At-Law, London: Stevens And Sons,

principally in terms of nature, no such (a silent partnership) corresponding entity is provided for under the English and Ethiopian legal frame works.

2.2. The Requirement of Written Agreement

Under the German law, silent partnership need not be in writing.⁵⁰ It is because as it has no external relations, such entitles are not entered in the commercial registry. Equally, this requirement has also waived in Ethiopia. As provided in the Commercial Code, a joint venture agreement need not be in writing.⁵¹ Whereas, under the English law, a joint venture needs to file its articles of association and the constitution of the entity in the registrar of companies; and it is also a legal requirement to put the agreement in writing.⁵² Here, the writer of this article suggests to Ethiopia that the English experience should be taken as an important lesson to improve legal problems on joint venture arrangement. Accordingly, the suggestion is that the requirement of written agreement should be contained in the draft commercial code of Ethiopia.

The Commercial Code of Ethiopia provides a clue as to the existence of memorandum of association. It states that “the powers of the manager shall

Limited, 119 & 120, Chanceey Lane, 1911. It is sometimes difficult to distinguish a silent partnership from a contractual arrangement involving the exchange of benefits (*Austauschvertrag*). However, if a natural person, a legal person or an entity which is collectively owned by its members participates in the profits or losses of the relevant undertaking, the arrangement will be treated as a silent partnership. A similar approach may be taken where the relevant person or entity is given extensive rights of supervision or control over, or the right to give assent to changes in the objects of, the undertaking. The relevant contract has to be considered as a whole in order to determine its nature. A distinction is often made between typical and atypical silent partnership. A typical silent partnership is thought of as having only two members, the undertaking or active partner and the silent partner. Such an arrangement only gives the silent partner the right contained in paragraphs 230-37 of the Commercial Code.

⁵⁰ Germany Commercial Code, *supra* note 49.

⁵¹ Commercial Code of Ethiopia, *supra* note 48, article 272(2).

⁵² UK Company Act, 2006, S. 18 and 14.

be specified in the memorandum of association. [And] the provisions relating to these powers may not be set up against third parties.”⁵³ Moreover, while dealing about expulsion of partner, the law provides that “the memorandum of association may provide for expulsion.”⁵⁴ Likewise, articles 278(1) (a) of the draft commercial code appears to suggest that there is a memorandum of association. It is thus important to clarify this matter and make it mandatory that a joint venture agreement be in writing.

It is obvious that lack of written agreement, eventually, can be a cause of disagreement between/among partners because one cannot produce written evidence as to the terms of the agreement.⁵⁵ Hence, whatever the size and nature of the proposed venture, it is desirable to commit to writing at the outset what the aims of the venture will be, how these are achieved, what each party is to put into the venture and how any profits derived from the venture are to be disposed of, how the proposed venture is to begin, how it is to be operated and how certain likely eventualities are to be dealt with; for example termination. The exercise of formulating such a mechanism and committing it to writing very often disciplines the parties to turn their mind to a number of points about their proposed relationship which they had not previously considered. This document is intended as a useful check list of some of the points which might ordinarily be expected to be covered in a joint venture

⁵³Commercial Code of Ethiopia, *supra* note 48, article 275(4).

⁵⁴Commercial Code of Ethiopia, *supra* note 48, article 279(2).

⁵⁵A Team of Fourteen National Experts, Recommendations And Position Paper of the Business Community on the Revision of the Commercial Code of Ethiopia, Addis Ababa Chamber of Commerce & Sectoral Associations, July 2008, p. 22. The team suggested that “the question whether the agreement should be attested by two witnesses which will be repugnant to the secret nature of the agreement or organization. The ripple effects of the change to be made would need to be examined carefully.”

agreement and to which parties proposing to enter into such a relationship ought to apply their minds.⁵⁶

The fact that the joint venture agreement is in writing may, of course, compromise the secret nature of the joint venture but does not cause it to be so much public as it would be, were it to be registered as required by Article 219 of the Commercial Code.⁵⁷

2.3. Confidentiality

In all of the three jurisdictions, joint ventures/silent partnerships are not made known to third parties.⁵⁸ Under Ethiopian law, we can simply understand that secrecy is one legal attribute of joint venture. This is because the Commercial Code clearly states that joint venture should not be disclosed to third parties.⁵⁹ The code also provides that if a joint venture is disclosed to third parties then it is no more joint venture but will be considered as actual

⁵⁶A written Joint Venture Agreement should cover: The parties involved, The objectives of the joint venture, Financial contributions each make whether to transfer any assets or employees to the joint venture, Intellectual property developed by the participants in the joint venture, Day to day management of finances, responsibilities and processes to be followed., Dispute resolution, how any disagreements between the parties will be resolved, How if necessary the joint venture can be terminated. The use of confidentiality or non-disclosure agreements is also recommended to protect the parties when disclosing sensitive commercial secrets or confidential information.

⁵⁷ A Team Of Fourteen National Experts , supra note 55. The team added that “As such, the Ethiopian joint venture would be likened to what is called “Société en participation” under Organization for the Harmonization of Business Law in Africa, which is not secret like our joint venture, but which has almost the same characteristics as ours.”

⁵⁸Frank Wooldridge, *The German Limited and Silent Partnerships* , Amicus Curiae Issue 80, 2009, pp. 30-32; Ashurst, Joint Ventures in England and Wales, International Investor Series No. 6, February 2012, p4.Ashurst LLP and its affiliates operate under the name Ashurst. Ashurst LLP is a limited liability partnership registered in England and Wales under number OC330252. It is a law firm authorised and regulated by the Solicitors Regulation Authority of England and Wales under number 468653. The term "partner" is used to refer to a member of Ashurst LLP or to an employee or consultant with equivalent standing and qualifications or to an individual with equivalent status in one of Ashurst LLP's affiliates. Further details about Ashurst can be found at www.ashurst.com.

⁵⁹ Commercial Code of Ethiopia, supra note 48, article 272(1).

partnership.⁶⁰ Here, the reason of the law may be as much of the information sought through the due diligence process will be commercially sensitive, the parties may not be prepared to make it available to each other without confidentiality undertakings being given. There may be some market or other information which the other parties are not prepared to make available at all.

From the above paragraph one can comprehend that the Commercial Code gives more weight to the confidentiality element of joint venture. This obviously paves a way for any aspect of subversive dealings between/among individuals devoid of fulfilling required legal duties from business people. Therefore, there must be a re-consideration on the law regarding the strict secrecy approach resting on joint venture arrangements. Put it in other words, a wise approach should be followed to strike a balance between the need for secrecy of a joint venture entity and the mandatory legal obligations that should be discharged by every business person.

2.4. Transfer of Share

In English law, it is possible for the parties to prohibit the other parties from transferring their shares in the joint venture vehicle to a third party without first obtaining their consent.⁶¹ Otherwise, if the shares were freely transferable, a party may find itself participating in a joint venture with a third party on whom it has not had an opportunity to carry out due diligence.⁶² Under the Ethiopian law, transferability of shares is generally restricted.

⁶⁰ Commercial Code of Ethiopia, *supra* note 48, article 272(4).

⁶¹ England and Wales Partnership Act, *supra* note 47, S.31.

⁶² *Ibid*; parties will often want to retain some flexibility. For example, it is common to find provisions which allow exceptions to the absolute restriction on the transfer of shares by allowing transfers to other members of the same group of companies or transfers to third parties after the shares have been offered to the other joint venture parties on a pro rata basis.

According to the Commercial Code, shares may be assigned only with the agreement of all the partners in the absence of an agreement to the contrary.⁶³

Whereas, in the case of German law, since the assets are owned by the active partner, the right of transfer of share is not entitled to the silent partner rather it is the right of the former in the part of his contribution, that is, without demanding the consent of the other partner.⁶⁴

Generally, with regard to transfer of share, the Ethiopian joint venture law is more related with that of the English one since in both countries' legal frameworks the consent of the other partners is required to transfer once share. In this connection, the positions of those two countries' laws appear to be better. Since joint ventures are associations of persons instead of being associations of capital, the withdrawal and coming in of a partner is very essential for the performance and even existence of the partnership. Hence, some critical issues, like transfer of one's share, should get the consent of the others members.

2.5. Management

In case of the English law, the responsibility for the supervision and management of the venture and its business lies with the joint ventures's Board, except for those matters which UK company law requires to be decided by participants or which the venture has reserved for its participants.⁶⁵ Decision will need to be made as to whether the Board is to be

⁶³ Commercial Code of Ethiopia, *supra* note 48, article 274(2).

⁶⁴ Germany Commercial Code, *supra* note 49, Para. 230.

⁶⁵ UK Company Act, *supra* note 52, S 154-156. In English law, since all the parties to the joint venture will probably have contributed valuable assets in one way or another and will be making a commitment to contribute resources throughout the lifetime of the joint venture, each of them may want to be able to influence the ongoing management of the venture. It is usual to include, in the joint venture agreement, a list of actions which cannot be taken by the

actively involved in the managerial decisions of the venture or operating in a more strategic/supervisory role.⁶⁶

Under the German law, the management of the partnership is entrusted to the active partner: according to the Commercial Code, the silent partner has only a limited right to receive information.⁶⁷ However, in certain untypical silent partnerships the silent partner is given the right to object to or approve proposed actions of the management, and give instructions to the managers.⁶⁸ An active partner in a silent partnership is only required to exercise the same degree of care as that a partner would exercise in the conduct of its own affairs.⁶⁹

company without the approval of each of the parties. These matters are usually those things which would change the nature or scope of the joint venture or which would involve financial exposure in excess of that which would be expected in the ordinary course of business. See Ashurst *supra* note 58.

⁶⁶ UK Company Act, *supra* note 55, 171-77. If the Board is to have an active executive role, then it should need to include individuals with the appropriate skills. If however the board is to have a supervisory role, reviewing overall strategy and key decisions, it will consist mainly of representatives of the participants. An executive management committee may need to be established to whom the supervisory Board can delegate conduct for the day-to-day running of the joint venture. The structure of the venture will influence how it is to be managed. For example, a 50:50 JV is often deliberately structured so that both parties have equal representation on the board and equal voting rights. This structure has inbuilt potential for deadlock where no decision can be made if each party takes an opposing view. Where the participants hold unequal shares, a majority shareholder will usually expect to have a final say on matters to be decided at the board and may have greater reserved decision making-rights, whilst a minority shareholder will have more limited rights as appropriate in order to protect its position, at Public Sector Business Cases using the Five Case Model available at: [www.hm-treasury.gov.uk/d/1\(3\).pdf](http://www.hm-treasury.gov.uk/d/1(3).pdf).

And; [www.hm-treasury.gov.uk/d/2\(3\).pdf](http://www.hm-treasury.gov.uk/d/2(3).pdf).

⁶⁷ Germany Commercial Code, *supra* note 49, Para. 233.

⁶⁸ *Ibid.*

⁶⁹ Sometimes the silent partner is entrusted with management functions itself. An active partner in a silent partnership is only required to exercise the same degree of care as that which that partner would exercise in the conduct of its own affairs (see Germany Civil Code, para 708). It is doubtful however whether this rule would apply where the silent partnership had the character of a large entity inviting subscriptions from the public.

With regard to the management aspect of Ethiopian law of joint venture, as provided under the commercial code, a joint venture may be managed by one or more managers, who need not be a party to the venture.⁷⁰ However, in the absence of a selected manager, each partner shall have the position of a manager.⁷¹

When the management aspect of the three jurisdictions' joint venture/silent partnership laws is compared, the governance composition and the who manages issues somewhat contrast in those jurisdictions. In Germany, the management of the partnership is mainly entrusted to the active partner. This is a different approach from that of the Ethiopian law because, according to the Commercial Code, each partner shall have the status of manager in the absence of an appointed manager. Besides, unlike the German silent partnership, under the Ethiopian law, manager can be from outside the partners. With regard to the English law, unlike both under the Ethiopian and German laws, the governance composition can constitute board and executive management committee.⁷²

Generally, the writer of this article concludes that the approach taken in the management of joint venture under Ethiopian law is different from that of the English and German laws. Nonetheless, at least in terms of

⁷⁰ Commercial Code of Ethiopia, *supra* note 48, article 275(1).

⁷¹ Commercial Code of Ethiopia, *supra* note 48, article 275(2). The law further provides that where there is a statutory manager, his/her powers should be specified in the memorandum of association. Nonetheless, a statutory clause restricting the powers of the manager may not be set up against third parties. This is so, because the memorandum of association, otherwise known as joint venture agreement, is not required to be registered. Besides, third parties are divested of the opportunity to have access to such information. And, a statutory manager may not be revoked without good cause. See Commercial Code of Ethiopia, *supra* note 48, article 275(3-4).

⁷² UK Company Act, *supra* note 52 (an executive management committee may need to be established to whom the supervisory Board can delegate conduct for the day-to-day running of the joint venture).

composition, there is a minor similarity with that of German silent partnership since both countries' laws provide for the governance matters to be by managerial set up. In relation to the who manages issue, the approach of our law could be valued more. It is because, specially, unlike that of the German one, the Ethiopian law of joint venture allows the partners to appoint a manager outside the members. This obviously enables the partners to appoint a more qualified professional than the members, if needed.

2.6. Liability of Partners

Both in Ethiopian⁷³ and English⁷⁴ laws, partners are jointly and severally liable. Yet, as a slight difference under the Ethiopian joint venture law, liability of non-manager partners may be limited in the memorandum.⁷⁵ Conversely, in the case of the German silent partnership, the partners are not jointly and severally liable. The active partner, as opposed to the silent partner, is liable for the trade debts.⁷⁶ The active partner is required to conduct the business in the general interest and to pay the silent partner an annual dividend; and when the partnership has terminated this active partner has to pay the silent partner the appropriate credit balance.⁷⁷

Generally, in relation to liability, all of the positions of the legal frameworks are convincing. In case of the Ethiopian and English laws, since all of the partners can involve in the transaction of the venture and in decision making process, it is appropriate to make them jointly and severally liable.

⁷³ Commercial Code of Ethiopia, supra note 48, article 276(4).

⁷⁴ England and Wales Partnership Act, supra note 47, S. 12.

⁷⁵ Commercial Code of Ethiopia, supra note 48, article 276(2)

⁷⁶ Germany Commercial Code, supra note 49, Para. 232(1). A silent partnership in essence involves contractual relationships between the participants. It is required to make the promised contributions to the assets of the active partner.

⁷⁷ Germany Commercial Code, supra note 49, Para. 235(1)).

Whereas, with regard to the German law, it will not be fair if the silent partner is made jointly and severally liable for the silent partnership where only the active partner runs the entity's transactions without the involvement of the former, i.e. mainly in decision making.

2.7. Profits and Losses Distribution Policy

In English law, the parties will need to decide a general policy for how any available profits and losses of the venture are to be distributed.⁷⁸ The joint venture agreement should include a provision setting out the principles of the distribution policy.⁷⁹ Comparably, also under the Ethiopian law, profits and losses distribution is mandatory. As provided in the Commercial Code, “any provision giving all the profits to one partner shall be of no effect; and any provision relieving one or more of the partners of his share in the losses shall be of no effect.”⁸⁰

Under the German law, the silent partner must participate in the profits of the partnership, and in its losses, unless there is an agreement to the contrary.⁸¹ Hence, in opposite to what the Ethiopian and English laws provide, under the German law, the partnership agreement may provide that the silent partner shall not participate in losses; however, his share in profits cannot be excluded.⁸²

When the distribution policies are analysed, unlike the German law, the Ethiopian and English laws appear to be more logical. If one of the

⁷⁸ England and Wales Partnership Act, *supra* note 47, S. 24 (In forming a joint venture, not only are the resources and expertise of the businesses shared, but the risks and rewards are also shared).

⁷⁹ *Ibid.*

⁸⁰ Commercial Code of Ethiopia, *supra* note 48, article 215.

⁸¹ Germany Commercial Code, *supra* note 49, Para. 251 (1).

⁸² *Ibid.*

partners waived from sharing of losses, and unfortunately when maximum losses face the entity, this may paralyse the economic capacity of the other partner who shoulders the whole losses. Such partner may be forced to withdraw from the membership and ultimately discouraged from entering into an agreement of a joint venture. The consequence may also wind up the entity before achieving its objectives. Hence, to the opinion of the writer, it is the above justification why profits and losses sharing policy are made mandatory in the joint venture laws of Ethiopia and England.

2.8. Dissolution

As of the English law, the ground of dissolution of joint venture is mainly by the parties' decision at any time and when the duration and expiry issues related to any contract(s) come to an end.⁸³ The parties will often wish to lock each other into the joint venture for at least a limited period by restricting the transfer of shares. However, it is likely that they will each want to be able to bring the joint venture to an end in certain circumstances in accordance with an agreed exit strategy.⁸⁴ By way of example, the following

⁸³ England and Wales Partnership Act, *supra* note 47, S. 12. All joint ventures come to an end at some point when the original purpose for which the entity was established is complete, or as a result of differences between the joint venture participants. Unless it is clear that there is such policy and commercial stability that commonality of interests will be sustained on a long-term basis, the public sector should contemplate an end state where it is no longer involved in the entity, where either the joint venture has been successful in its own right or its job is done. See Guide to the establishment and operation of Trading Funds, Treasury Central Accountancy Team, January (2001), available at:

www.hm

treasury.gov.uk/d-

Guide_to_the_Establishment_and_Operation_of_Trading_Funds.pdf.

⁸⁴ In contemplation of the termination of the joint venture agreement, provisions will often be included to determine the distribution of the assets (including any intellectual property) of the

types of provision may be included:⁸⁵ the parties may agree that the joint venture will continue for a fixed period of time, perhaps until a one-off project is completed; and one party may have the right to buy out another party, or to sell its shares to another party at a pre-determined price or at fair value determined by an expert using agreed valuation parameters. The parties should also plan what to do in the event that the joint venture is not working out as they intended.⁸⁶

Under the German Commercial Code, if insolvency proceedings are begun against the assets of a partner, the silent partnership is treated as dissolved. If the active partner becomes insolvent, the Commercial Code provides that the silent partner may prove for his credit balance (which is likely to have been diminished through losses) in its insolvency, and that partner will have the same rank as the other creditors who do not have preferential claims and will be entitled to the same insolvency quota as such creditors.⁸⁷ The partnership is not dissolved by the death of the silent partner. Moreover, termination may be made by request of one of the partners or by the creditors of a silent partner and any important reason can be a ground.⁸⁸

joint venture vehicle and the discharge of any of its outstanding obligations. See UK Public Sector Business Cases using the Five Case Model, at [www.hm-treasury.gov.uk/d/1\(3\).pdf](http://www.hm-treasury.gov.uk/d/1(3).pdf) ; and, [www.hm-treasury.gov.uk/d/2\(3\).pdf](http://www.hm-treasury.gov.uk/d/2(3).pdf).

⁸⁵ England and Wales Partnership Act, *supra* note 47, S. 32-35.

⁸⁶ For example: there may be circumstances where the joint venture will automatically terminate, perhaps where an essential regulatory approval is withdrawn or if one of the parties gets into financial difficulties; and each party may have the right to terminate the agreement if the other party commits a default by breaching a condition of the joint venture agreement or where there has been a change of control of a party. See Guide to the establishment and operation of Trading Funds, *supra* note 103.

⁸⁷ Germany Commercial Code, *supra* note 49, Para. 236 (1).

⁸⁸ Germany Commercial Code, *supra* note 49, Para. 234.

The issue of dissolution is also provided under Ethiopian commercial law. Accordingly, the commercial code mentioned different grounds for the dissolution of joint ventures.⁸⁹ These are:

- a) the expiry of the term fixed by the memorandum of association unless there is provision for its extension;
- b) the completion of the venture;
- c) failure of the purpose or impossibility of performance;
- d) a decision of all the partners for dissolution taken at any time;
- e) a request for dissolution by one partner where no fixed term has been specified;
- f) dissolution by the court for good cause at the request of one partner;
- g) the acquisition by one partner of all the shares;
- h) death, bankruptcy, or incapacity of a partner, unless otherwise lawfully agreed; and
- i) a decision of the manager, if such power is conferred upon him in the memorandum of association.

When the grounds of dissolution under the three countries' laws are compared, it is feasible to find some common elements. These are like for instance: the possibility of dissolution by decision of the partners; expiry of the duration of the contract; bankruptcy; and when the establishing purpose of the entity is achieved.

The Ethiopian law has provided more detailed grounds of dissolution that are not mentioned in the rest of two countries' laws. Particularly, as a clear discrepancy from the German law, our law provides death of a partner to be a

⁸⁹ Commercial Code of Ethiopia, *supra* note 48, article 274.

ground for dissolution as far as any agreement is not entered to the contrary. In sum, it can be said that the Ethiopian law of joint venture has some common grounds of dissolution with that of the German and English laws with an addition of some other detailed grounds.

In relation to providing grounds of dissolution, unlike the Ethiopian law, the English law approach seems sound because the law leaves to the parties' agreement to specify the detail grounds of dissolution. Here, the lesson to Ethiopia is, since a joint venture entity is established by mutual agreement, it is more appropriate to let the parties to agree on the detail terms of dissolution rather than enumerating by the law. Possibly the most important parts that should be addressed by parties' agreement are the provisions relating to how the agreement can be terminated and what is to happen after termination. Particular attention should be paid to this right at the outset especially since this is often the last thing which parties consider when they are in the full flush of optimism over the founding of a new venture.⁹⁰

2.9. Expulsion of Partner

Expulsion of a partner is permitted under the laws of all the three jurisdictions. In case of English law, a prior agreement is needed to expel a partner.⁹¹ Yet, the German law, without the need to have a prior agreement,

⁹⁰ Questions which ought to be answered in the joint venture agreement include the following: can the agreement be terminated if one party is in breach of its obligations and if so how? Is the venture such that one party should be able to terminate leaving the others to continue the venture or if one party wishes it to end it should this be binding on all? What happens if one of the parties becomes bankrupt or is liquidated? Are there to be any provisions whereby a party wishing to terminate the agreement is able to sell its share of the joint venture company to the remaining parties and if so on what terms? What is to happen if the joint venture becomes insolvent.

⁹¹ England and Wales Partnership Act, *supra* note 47, S. 25. The act provides that no majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

permits one party just to expel the other provided that circumstances arise with respect to one of them, would give the remaining partners the right to expel the other.⁹²

Under the Ethiopian law, judicial expulsion is clearly provided in the commercial code. According to the commercial code, the court may grant an order for the expulsion of the wrongful venturer in lieu of dissolution upon application by the other venturers, where dissolution is requested for reasons attributable to one venturer.⁹³ Such expulsion could also be provided for in the memorandum of association.⁹⁴

Generally, the English law made the expulsion through parties' prior agreement; whereas, in Germany, the law itself allows expulsion of a partner. Unlike those two countries' laws, the Ethiopian law has set out different mechanisms, i.e. judicial expulsion and parties can also agree to provide the issue of expulsion under their memorandum of association. Here, to the opinion of the writer, the approach taken by the Ethiopian law is more appropriate since widening the ways of expulsion secures the durability and efficient performance of a joint venture arrangement. This is mainly because a hostile partner may not be tolerated until he/she adversely affects the business of the venture.

Conclusion

⁹² Germany Commercial Code, *supra* note 49, Para. 242. The paragraph further provides that the other partner can upon application to the court obtain an order authorising him to take over the business with all its assets and liabilities without any process of liquidation.

⁹³ Commercial Code of Ethiopia, *supra* note 48, article 279(1).

⁹⁴ Commercial Code of Ethiopia, *supra* note 48, article 279(2).

From the aforementioned comparative analyses, the writer of this article found that the Ethiopian joint venture arrangement has more comparable features with that of the English one. This comparability may be, mainly, due to the similarity in the nature of the joint ventures and the role of the partners in the entity they created. While the difference in such nature and the role of the partners can be regarded as the reason for the ample deviation between the Ethiopian joint venture law and the German silent partnership.

Generally, discovering the different legal approaches of those compared jurisdictions is very important for Ethiopia to improve legal problems facing the joint venture arrangements. Accordingly, the following summarised areas can be mentioned as best experiences to be drawn from those compared jurisdictions. These are the need for: written agreement; a moderate approach for the requirement of confidentiality; and in case of dissolution, the law rather than enumerating detailed grounds of dissolution, should leave this task to the parties' agreement.