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PROTECTING MINORITY SHAREHOLDER RIGHTS: EXAMPLES FROM TURKEY TO THE HORN OF AFRICA (*)

Azınlık Pay Sahipliği Haklarının Korunması: Türkiye'den Afrika Boynuzu'na Örnekler

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ABSTRACT

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

The findings reveal that the Turkish Commercial Code (TCC) has relatively strong legal foundations to protect minority shareholders, while the Horn of Africa countries face significant challenges. While efforts have been made to enact legislation in the Horn of Africa, implementation and enforcement remain weak,

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leaving minority shareholders vulnerable to abuse. The identified gaps in legal frameworks underscore the need for legal reforms and institutional strengthening.

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

Keywords: Joint Stock Company, Minority Shareholders, Minority Shareholders' Rights, Law of the Countries of the Horn of Africa, Company Law.

ÖZET

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

Bulgular, Türk Ticaret Kanunu'nun azınlık hissedarlarını korumak için nispeten sağlam yasal dayanaklara sahip olduğunu, Afrika Boynuzu ülkelerinin ise bu alanda önemli zorluklarla karşılaştığını ortaya koymaktadır. Afrika Boynuzu ülkelerinde mevzuatın çıkarılması için çaba sarf edilmiş olsa da uygulama ve yaptırım zayıf kalmakta ve azınlık hissedarlarını suistimallere karşı savunmasız bırakmaktadır. Yasal çerçevelerde tespit edilen boşluklar, yasal reformlara ve kurumsal güçlendirmeye duyulan ihtiyacın altını çizmektedir. Türkiye'de ve diğer ülkelerde gözlemlenen en iyi uygulamalardan yola çıkan bu çalışma, Afrika Boynuzu ülkelerindeki eksikliklerin giderilmesi için tavsiyelerde bulunmaktadır. Bu öneriler arasında şirket kanunlarının değiştirilmesi, kurumsal yönetim uygulamalarının iyileştirilmesi, düzenleyici kurumların güçlendirilmesi ve hissedar aktivizminin teşvik edilmesi yer almaktadır. Bulgular ve tavsiyeler, politika yapıcılara, hukuk uygulayıcılarına ve akademisyenlere daha şeffaf ve adil bir iş ortamı yaratma, yatırımcı güvenini artırma ve Afrika Boynuzu ülkeleri ile Türkiye'de sürdürülebilir ekonomik kalkınmayı teşvik etme konularında yol gösterebilir.

Anahtar Kelimeler: Anonim Şirket, Azınlık Pay Sahipleri, Azınlık Pay Sahiplerinin Hakları, Afrika Boynuzu Ülkeleri Hukuku, Şirketler Hukuku

INTRODUCTION

Corporate governance no doubt reflects a country's legal underpinning, and proofs exist that there is a positive relationship between robust legal frameworks and effective corporate governance. Therefore, the protection of minority shareholders against the high-handed influence of the majority shareholders has remained a source of concern in developing and developed countries. Different legal systems often reveal that majority shareholders tend to view minority stakeholders as peripheral or burdensome[1]. The minority shareholders are stakeholders that do not have the voting power to control the entity's operations singly or collectively. Conversely, majority-voting shareholders, possessing a larger percentage of votes, wield significant influence and can exert control over both the board of directors and the general assembly. Friction between minority and majority shareholders is a common occurrence in many corporate situations. Such tensions mostly emanate from the tendencies of the majority shareholders to keep the company earnings to themselves without distributing them fairly among the minority shareholders[2].

The shortcomings in the legal system have allowed majority shareholders to misuse their power, often harming minority shareholders. These actions can impact not only the investors but also the company's interests and, ultimately, the national economy. To address these issues, it is crucial to offer strong protection for minority shareholders, ensuring they have proper remedies. Additionally, a solid legal framework is necessary to prevent majority shareholders from abusing their corporate powers.

A well-established framework of corporate governance requires impartial treatment of all shareholders, irrespective of the magnitude of their investment[3]. The concept of equality in joint-stock companies, which is a crucial legal principle aimed at safeguarding shareholders' rights, mandates that shareholders receive equal

1 TM Mocha, 'The Legal Protection of Minority Shareholders: A Comparative Analysis of The Regulatory Frameworks of Kenya and The United Kingdom' (Doctoral Dissertation, University of Nairobi 2014).

2 MK Kaya, 'Discussions Surrounding the Principle of Minority Shareholder Protection' (2020) 6 Ticaret ve Fikri Mulkiyet Hukuku Dergisi 265.

3 AN Licht, 'Stakeholder Impartiality: A New Classic Approach for the Objectives of the Corporation' [2019] European Corporate Governance Institute-Law Working Paper.

treatment under the same circumstances[4]. Consequently, this principle prevents any unjust domination by the majority over the minority. Drawing inspiration from German and Swiss legislation and in conjunction with European Union regulations, this principle has been recognized as a favourable legal standard[5]. Turkish law explicitly regulates this principle in Article 357 of the Turkish Commercial Code (TCC), thereby guaranteeing shareholders' right to equal treatment. Moreover, when this principle is applicable, it permits an examination of compliance with the principle of good faith.

Any company aiming for growth, research, diversification, and competitiveness must protect its shareholders. Safeguarding the rights of minority shareholders is essential for good corporate governance, as these rights could be easily overlooked if left solely to the majority. Without protection, this could lead to reduced investment, scattered ownership, lower dividends, a drop in market value, and fewer exit options and voting rights. As a result, the position of minority shareholders becomes weaker, making it crucial for them to stay informed and protect their interests. The concentration of power in the board of directors can also cause conflicts of interest and unethical practices, harming both the company and its shareholders. The company's success directly impacts the shareholders' wealth. With global economic uncertainty reducing investment activity, it's even more important for countries to implement strong legal protections for minority shareholders. By ensuring their rights are upheld in conflicts, these protections help attract smaller investors.

Recently, there has been notable progress among companies operating in the Horn of Africa nations, with a specific emphasis on ensuring the protection of minority shareholders, as the need to attract investment becomes increasingly imperative[6]. Additionally, there exists a more expansive drive toward augmenting shareholder democracy within corporations. It is posited that through the amplification of the adoption of corporate governance guidelines, the safeguarding of minority shareholders in the Horn of Africa countries will experience further enhancement[7].

We conducted this research using a variety of methodologies, including doctrinal research and a comparative approach between Turkey and the Horn of Africa, with

4 Necla Akdağ Güney, 'Anonim Şirketlerde Eşitlik İlkesi' (2014) 18 Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi 115.

5 ibid.

6 G Munisi and T Randoy, 'Corporate Governance and Company Performance Across Sub-Saharan African Countries' (2013) 70 Journal of Economics and Business 92.

7 NM Waveru and NP Prot, 'Corporate Governance Compliance And Accrual Earnings Management İn Eastern Africa: Evidence From Kenya And Tanzania' (2018) 33 Managerial Auditing Journal 171.

a specific focus on the relevant countries. A legal researcher is typically required to differentiate, analyse, and synthesize legal content[8]. The researcher must also ascertain the authority and standing of legal doctrine. To succeed in this endeavour, the researcher must employ a doctrinal legal study. The researcher cannot critically assess the law or conduct an empirical study of its operation unless they are familiar with the status of the legal doctrine under analysis. This approach aims to categorize and delineate legal rules as primary legal resources, identify the fundamental issues in the Horn of Africa legislation impacting minority shareholders in company law, and, most importantly, uncover the deficiencies in both the law and its implementation that hinder the protection of minority shareholders in the Horn of Africa, particularly in the countries under study.

This paper uses a comparative approach to examine minority shareholder protection in various locations, focusing on lessons that Horn of Africa countries can learn from Turkey. It highlights both the similarities and differences in how different legal systems address similar issues. A comparative analysis offers a deeper understanding of the complexities and development of legal frameworks. The study aims to assist with legislation, law reform, legal tools, and the understanding of legal standards. One of its key benefits is the ability to find solutions to specific or new legal issues that have already been addressed in other countries.

Horn of African countries have diverse legal systems, including both common law and civil law, similar to those in Turkey. This diversity can help improve laws by drawing from different legal traditions and strengthen the protection of minority shareholder rights. Therefore, the research will primarily focus on examining statutory business legislation, rules, legal texts, and academic literature.

I. THE NATURE OF THE PROTECTION OF MINORITY SHAREHOLDERS

The protection of minority shareholders is a cornerstone of the corporate legal framework, firmly rooted in the principles of shareholder democracy. The doctrine of majority rule, as established in the landmark case of Foss v Harbottle in the United Kingdom, underscores the dominance of majority resolutions over those of the minority (the Foss v. Harbottle Doctrine). While it is reasonable for majority shareholders—who contribute more capital and resources—to hold greater authority, unchecked power can jeopardize the interests of minority shareholders,

[8] MK Kaya, *Minority Shareholder Protection: A Comparative Analysis between the UK and Turkey* (1st edn, Oniki Levha Yayınları 2021).

hinder the progress of the enterprise, and even negatively impact the national economy[9].

The relationship between majority and minority shareholders requires a careful balance to protect both parties. The legal system should maintain this balance by allowing minority shareholders to challenge unfair practices while ensuring that majority shareholders can still manage the company effectively. As Lazarides points out, insufficient protection for minority shareholders can harm a nation's investment climate, deterring potential investors who fear misconduct by majority shareholders [10]. Similarly, Leuz and colleagues argue that inadequate legal safeguards can compromise the quality of financial reporting, thereby obstructing the development of transparent and reliable financial markets[11]. Thus, the protection of minority shareholder rights is a complex issue that extends beyond their interests, carrying broader implications for corporate governance and a nation's economic well-being.

II. DEFINITION AND CLASSIFICATION OF MINORITY SHAREHOLDERS IN TURKEY AND HORN OF AFRICAN COUNTRIES

A. Defining Minority Shareholders in Türkiye

In typical joint-stock companies, the controlling shareholder is the one who owns at least 51 percent of the company's capital. Minority shareholders, on the other hand, own less than this percentage but still have certain rights granted by the company's regulations. In Turkey, the new Turkish Commercial Code (TCC) defines a minority shareholder as someone holding at least 10 percent of the capital in private companies or 5 percent in publicly held companies. (TCC, Art. 399/4-b, 411/1, 420/1, 439/1, 531/1, 559/1). The inability of shareholders to meet the required threshold outlined in TCC No. 6102 prevents them from fully exercising their rights. This threshold poses a significant challenge to minority shareholders, limiting their ability to assert their rights effectively. The issue of defining minority shareholders and the thresholds for their rights has sparked considerable debate in Turkish corporate law. Academics in Turkey have focused on the flexibility of adjusting these thresholds in

9 I Mesimeri, 'Why Is the Rule in Foss v Harbottle Such an Important One' [2018] Areti Charidemou.

10 T Lazarides, 'Minority Shareholders: Useful Idiots, Free Riders or the Achilles Heel of the Corporate Idea?' (2020) 10 Theoretical Economics Letters 488.

11 ibid.

a company's articles of association. The ability to modify the share threshold offers a way to balance maintaining corporate stability while democratizing governance[12].

The key issue is whether a shareholder agreement can lower the required threshold, rather than increasing the minority shareholder threshold. For instance, in a hypothetical Turkish joint-stock company where the articles of association set the threshold for exercising minority shareholder rights at 10%, these rights might include requesting a special auditor or calling an extraordinary general meeting. A group of shareholders holding 8% of the company's shares could form a shareholder agreement to pool their shares, allowing them to exceed the 10% threshold and exercise these rights. The Turkish Commercial Code (TCC), which governs corporate law in Turkey, recognizes shareholder agreements as legally valid, as long as they comply with mandatory corporate laws and good faith principles.

According to Demirkapi and Bilgili, this threshold differentiates minority rights from individual shareholder rights, creating challenges in exercising minority rights[13]. However, the TCC provides flexibility in governance by allowing the company's articles of association to lower the threshold. For instance, a company's governing documents could grant additional rights to shareholders with less than 10% ownership, such as those holding 5%. Furthermore, shareholder agreements can grant specific governance rights not explicitly outlined in the TCC or the company's articles, thereby enabling minority shareholders to exert influence beyond their shareholding.

B. Types of Minority shareholders in Turkey

In Turkish joint-stock companies, shareholders who own a smaller proportion of capital than the legal minority threshold can still receive specific rights, forming a group referred to as the "technical minority." Unlike the general understanding that a minority implies ownership of less than fifty percent of shares, the technical minority is a legal construct that bestows distinct entitlements to these shareholders[14]. To classify a group as a technical minority, they must possess legal rights that distinguish them from other shareholders, despite owning less than fifty

[12] A Barwari, L Saeed and M Aree, 'The Protection of Minority Shareholders within the Legal Framework: Conceptual Evidence from Turkey' (2018) 9 Journal of Advanced Research in Law and Economics 1884.

[13] İsmail Kayar, 'Anonim Şirketlerde Azınlık Hakları' (Yüksek Lisans Tezi, Marmara Üniversitesi 1989).

[14] Fatih Bilgili and Ertan Demirkapı, *Şirketler Hukuku Dersleri* (Dora Yayınları 2021).

percent of the share capital. This classification allows them to exercise certain privileges, even though they do not hold a controlling stake in the company.

Turkish corporate law introduces the concept of a proportional minority when it grants distinct legal rights to shareholders who hold a specific proportion of share capital—less than 50%. Art. 411 TCC defines minority shareholders as those who hold at least 10% of the share capital in closed joint-stock companies, and lowers this threshold to 5% in public joint-stock companies. Public companies typically have fluctuating ownership structures and a large number of shareholders, which necessitates a lower threshold. This reflects the need to make it easier for minority shareholders in publicly traded companies to exercise their rights, given the challenges associated with dispersed ownership. The nominal minority, as defined under Article 439 of the TCC No. 6102, pertains to shareholders who hold a minimum of one-tenth of the company's capital or shares valued at no less than one million Turkish Liras. Regardless of their presence or participation in voting sessions, their shareholding qualifies these shareholders as nominal minorities, allowing them to influence decisions ratified in the general assembly[15]. The classification of nominal minorities may, in some cases, result in a group holding a minority stake in the company being able to act as a de facto majority, depending on the level of shareholder participation in general assembly meetings[16].

The concept of the "actual minority" is another important classification in Turkish corporate law. This group includes shareholders whose capital share, though a minority, is strong enough to influence the company's decisions due to specific circumstances. The actual minority is not a fixed category and can change depending on factors such as the attendance of shareholders at meetings and the use of the cumulative voting system. The TCC tries to overcome this in its Article 360, which gives actual minorities the right to participate in the election of the board of directors. Therefore, under a cumulative voting system, the right to concentrate their votes on one candidate enhances the possibility of actual minorities influencing corporate governance decisions.

TCC applies the term "proportional majority" when granting rights of participation in governance to shareholders who own less than 50% of the share capital. This is the situation where the ownership threshold for minority shareholders in the company's articles of association allows them to significantly influence corporate

15 Erol Ulusoy, 'Anonim Şirketlerde Azınlık Pay Sahiplerinin Şirketten Çıkarılması' (2014) 9 Bahcesehir Universitesi Hukuk Fakultesi Dergisi 77.

16 ibid.

decisions. For instance, companies with dispersed shareholding may generate proportional majorities, despite not having a qualified majority. This kind of minority under the TCC is of special importance for public companies because the wide dispersion of shares makes it hard or impossible for one shareholder to have an absolute majority.

The de facto minority can be understood as shareholders whose ownership, though technically a minority, holds significant influence in practice. This influence may arise due to specific legal provisions or circumstances that grant them practical power during decisions, such as the election of the board of directors. Article 360 of the Turkish Commercial Code (TCC) recognizes the rights of such shareholders in board elections. The concept of a de facto minority is particularly relevant when companies use a cumulative voting system, allowing these shareholders to combine their voting power and exert more influence than their share of capital would indicate. Under Turkish corporate law, minority shareholders can fall into various classifications, including proportional, nominal, and actual minorities.

These classifications are not merely technical but have practical implications for corporate governance. Whether through legal thresholds or shareholder agreements, minority shareholders in Turkey can wield significant influence, even without holding a controlling stake. This flexibility in defining and empowering minority shareholders highlights the importance of corporate governance structures that accommodate both their rights and the operational needs of the company.

C. Defining Minority Shareholders in the Horn of African Countries

Our research article focuses on most Horn of Africa countries, where the definition of minority shareholders lacks absolute precision and universality due to the diverse origins of their company laws. These laws derive from various sources, including but not limited to Common Laws, French laws, and Italian laws. Additionally, some of the laws may bear resemblance to those in member countries of the Common Laws. Religious sources like Sharia, along with customary practices and other related matters, influence certain laws[17]. The prevailing perspective is that the individuals who possess 51% of the company's shares hold sway over decision-making processes, thereby constituting the dominant stakeholders who abide by all statutes about the Horn of Africa.

[17] F Battera and A Campo, 'The Evolution and Integration of Different Legal Systems in the Horn of Africa: The Case of Somaliland' (2001) 1 Global Jurist Topics.

1. Definition of Minority Shareholders in Ethiopia

In Ethiopia, the Joint-stock Corporation is a legally recognized entity with perpetual existence, as outlined by the law. Key characteristics of this structure include a separate legal personality, limited liability, transferable shares, and a management system where responsibilities are delegated through a board structure. Turkey's corporate classification categorizes the joint-stock corporation into two branches: closely held corporations and publicly held corporations[18]. The concept of majority and minority, though practiced widely in corporate governance, refers to the division between the people who hold the authority to decide on behalf of the company. We define a majority shareholder as someone who holds the majority of votes, while a minority shareholder lacks this privilege. However, it's important to understand that a majority share does not necessarily indicate ownership of the company. In reality, decision-making is the primary source of control. This means that in certain situations, shareholders or a group of shareholders who do not individually own more than half the shares can unite and take control of decision-making. In contrast, a higher majority requirement means that owning more than half the shares does not guarantee decision-making control.

The definition of a minority shareholder applies to a shareholder who, despite his amount of shareholding in the company, cannot have significant control within the company[19]. The key difference between majority and minority shareholders lies in the presence or absence of control. If a shareholder does not have control over the company's management, their shareholding or capital investment becomes insignificant. Even a shareholder owning fifty percent or more of the voting rights could be considered a minority shareholder, especially if another shareholder holds the majority power to appoint or remove most of the directors[20]. On the other hand, a shareholder who does not hold a majority shareholding could still be considered a majority shareholder if they possess the ability and strength to assert their control over the company.

Ethiopian company legislation does not provide a specific definition of a minority shareholder. However, certain provisions in the Commercial Code give insight into how minorities are understood in Ethiopia. The Commercial Code grants control to

18 G Walelgn, 'Exit Rights of Minority Shareholders in Closely Held Corporations: A Comparative Study of English, Germany and Ethiopian Laws' [2013] Germany and Ethiopian Laws 1.

19 B Ketsela, 'Evaluating the Concept of Minority in Corporate Group Context: A Specific Look at Minority Shareholders of the Subsidiary Company' [2011] Bahir Dar UJL 231.

20 ibid.

the shareholder who contributes a larger portion of the company's capital. Generally, the regular general assembly of shareholders passes binding resolutions with a simple majority of the voting shares represented, with each share carrying at least one vote[21]. The total number of votes that a share possesses is proportional to the amount of capital it represents, thereby adhering to the principle of control corresponding with capital. Consequently, the shareholder who contributes the largest share of the company's capital has the greatest number of votes and, therefore, is the majority shareholder. Put simply, every shareholder who disposes of less than fifty percent of the voting rights at the general meeting is a minority shareholder.

2. Definition of Minority Shareholders in Kenya

While the Companies Act in Kenya lacks a precise definition of the term "minority shareholder," various provisions establish statutory minorities to address specific situations. Section 3 of the Capital Markets Authority listing rules serves as a key example, requiring every issuer or listed company to reserve a minimum of 25% of its ordinary shares for local investors[22]. This provision effectively creates a statutory minority by ensuring that local stakeholders hold at least a quarter of a company's shares. This allocation not only gives local investors a voice but also provides them with potential influence in the company's decision-making processes. Although the term "minority shareholder" is not strictly defined, provisions like this serve to safeguard the interests of smaller shareholders in Kenyan companies.

In Kenya, a "majority shareholder" typically owns more than 50% of the shares in a company, giving them significant control over its operations. With their substantial shareholding, majority shareholders often have the primary influence in shaping the company's direction and making strategic decisions. However, the Kenyan legal framework strives to balance this power, particularly through provisions like the listing rules of the Capital Markets Authority, which safeguard the rights of minority shareholders. This helps create more equitable corporate governance by ensuring that even shareholders with a smaller stake in the company have rights and protections to participate in corporate decision-making.

Consultant firms such as Gannons Solicitors have emphasized that the Companies Act's provisions do not limit the rights of minority shareholders in Kenya[23]. A company's articles of association or shareholders' agreements can enhance these

[21] ibid.

[22] Mocha (n 1).

[23] J Smith, 'Ensuring Minority Shareholder Protections in East Africa' [2021] Horn of Africa Journa 1.

rights, providing flexibility and customization. While the Companies Act provides a baseline for shareholder rights, companies can agree upon additional protections or privileges for minority shareholders through these foundational documents. Kenya lacks a strict legal definition of a minority shareholder, allowing for a more flexible interpretation. The circumstances and agreements between shareholders often determine the specific rights and protections afforded to minority shareholders.

3. Definition of Minority Shareholders in Somaliland

The definition of minority shareholders in Somaliland is influenced by the Indian Companies Act of 1913, which was in effect when Somaliland was a British protectorate. Early company law in Somaliland was based on English common law principles, which, in theory, offered significant protection for shareholders, including minority shareholders[24]. Under the Indian Companies Act, a minority shareholder was defined as any individual or legal entity with a non-controlling interest in a company[25]. Their de jure and de facto control was lacking, so they could not appoint or remove company directors, a key corporate control mechanism. Traditionally, these shareholders had very limited rights, since judgment in the leading case of Foss v. Harbottle established a rule of the majority to decide an issue. However, over time, we have carved out exceptions to this majoritarian rule to safeguard minority shareholders from the majority's unjust decisions and to enhance fairness in corporate governance.

In 2004, Somaliland promulgated its company law under Law No. 25, purporting to bring the country's corporate governance framework into the modern setting (Somaliland, 2004). Notwithstanding this much-wanted legislative reform, the law nonetheless fell short of clearly defining who a minority shareholder is or of sharply distinguishing between minority and majority shareholders. While the 2004 law did include some provisions aimed at safeguarding the rights of minority shareholders, an explicit lack of definition still somehow created ambiguity in applying these so-called safeguards. The absence of this definition, among other things, means that the legal framework in Somaliland remained conventional, without a clear articulation of the rights and corresponding protections afforded to a minority shareholder.

In 2018, Somaliland introduced a new company law, Law No. 80/2018, aimed at modernizing its corporate governance system and promoting private sector growth.

[24] TS Protectorate and S Indian, 'Indian Companies Act 1913 as Amended up to the 1940s When It Was Extended to the Somaliland Protectorate in 1947' 1.

[25] ibid.

The law sought to align Somaliland's corporate regulations with international best practices, creating a more favourable environment for business operations. However, similar to its predecessor, Law No. 80/2018 did not clearly define the role or rights of minority shareholders. Due to the lack of clear distinction between the status of minority and majority shareholders, the legal framework in Somaliland did not make significant progress on this issue. While the new law facilitated business operations, it did not specifically address the concerns of minority shareholders.

III. MINORITY SHAREHOLDER RIGHTS AND PROTECTIVE MECHANISMS IN TURKEY AND THE HORN OF AFRICA

A. General Overview of Minority Shareholder Protection

Every year, a multitude of companies emerge on the global stage, each with a group of shareholders united by a shared goal: generating profits. These shareholders' relationships and dynamics, as well as their relations with management, are of utmost importance because they can affect the performance of the company directly. Protection of the rights of minority shareholders in modern-day globally interconnected business is one of the most crucial factors that may contribute to the development of trust and confidence in the corporate sector. Several conflicts exist in the context of joint-stock corporations. The prevalent practice of majority voting grants significant power to individuals or entities possessing at least 51% of the votes, affording them substantial influence over the corporation[26]. Unfortunately, the controlling group can sometimes wield this power to the detriment of minority shareholders[27]. Shareholders in joint stock corporations often possess varying goals and expectations, which can range from seeking a passive investment with hopes of favourable returns to desiring active participation or employment within the company[28]. These investors also span a spectrum of sophistication, with some having deep financial acumen and others investing for personal reasons.

In examining the protection of these diverse shareholders, several key issues come to the forefront, including the need for a voice in corporate decisions, access to information, the ability to influence control, expectations of returns on investment,

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26 AR Pinto, 'Protection of Close Corporation Minority Shareholders in the United States' (2014) 62 American Journal of Comparative Law 361.

27 ibid.

28 J Mukwiri and M Siems, 'The Financial Crisis: A Reason to Improve Shareholder Protection in the EU?' (2014) 41 Journal of Law and Society 51.

and the option to exit the company when needed[29]. Additionally, minority shareholders frequently harbor concerns that those in control may act opportunistically, exploiting their authority for personal gain[30]. Pre-existing contractual agreements that outline protective measures can effectively address these issues. However, in the absence of such contracts, it is essential to understand how default corporate law rules handle these issues ex-post, after conflicts have arisen.

In the complex realm of corporate governance, the distribution of power within a company is a fundamental aspect. Generally, the board of directors holds significant managerial authority, while shareholders have more limited influence over the company's day-to-day operations[31]. Nevertheless, the decisions and authority held by shareholders play a pivotal role in shaping a company's course. These rights encompass critical actions such as amending articles of association, adjusting share capital, appointing directors, and approving specific transactions. While majority shareholders rightfully exercise management control in the democratic context of corporate capitalism, minority shareholders express concerns due to the potential for the "tyranny of the majority"[32]. This concept underscores the risk of the majority exploiting or suppressing the minority, revealing a conflict of interest between these two groups[33]. Effectively addressing this conflict and safeguarding minority rights is paramount for the sustained growth and viability of a company.

A non-protective legal system would result in undermining the investment climate through lost investor confidence. Undue or insufficient protection deters investors, and this lack of investment would not only dampen shareholders, but also other stakeholders like employees, governments, and society in general. The legal mechanisms established in various jurisdictions try to meet this challenge by acknowledging the right to convene shareholders, propose or amend an agenda, request information, appoint special auditors, and even dissolve the company. One of the key ways that minority shareholders can protect themselves is by challenging

29 HS Barron and others, 'Managing Closely Held Corporations: A Legal Guidebook' (2003) 58 Business Lawyer publications 1077.

30 Pinto (n 26).

31 Z Chen, B Ke and Z Yang, 'Minority Shareholders' Control Rights and the Quality of Corporate Decisions in Weak Investor Protection Countries: A Natural Experiment from China' (2013) 88 The Accounting Review 1211.

32 LA Bebchuk and RJ Jackson, 'Corporate Political Speech: Who Decides?' (2010) 124 Harvard Law Review 83.

33 ibid.

shareholder resolutions with the relevant recognition of their rights through the courts.

B. Overview of Minority shareholder protection in Turkey and Horn of Africa

In recent years, there has been an increasing focus on minority shareholder interest protection in Turkey, both due to regulatory needs and to attract investment[34]. In this regard, shareholder democracy has gained importance, and the improvement of corporate governance in Turkey has taken a course of enhancing the protection of minority shareholders. The enactment of the new TCC No. 6102 on July 1, 2012, constituted a milestone in the development of these protections. Although minority rights were present in the previous code, the updated TCC explicitly addresses and enhances the legal framework for safeguarding minority shareholder rights, ensuring that these shareholders have more robust tools to protect their interests.

The principle of majority rule governs corporate governance in Turkey, as it does in most other countries[35]. In general assembly meetings, a majority of votes typically determine decisions, except for some special provisions that necessitate a higher threshold. With this arrangement, the majority shareholders control the direction of the company. But acknowledging the possibility of majority abuse, the Turkish legislators brought provisions to safeguard minority shareholders against the eventuality of such abuses. Article 366 of the TCC, for example, enumerates the relevant procedural matters for the appointment or election of members of the board of directors and does not exclude minority shareholders.

In contrast, the legal frameworks in Horn of Africa countries like Ethiopia, Kenya, Somaliland, and Somalia allow for different scopes of protection for minority shareholders. For instance, in the case of Ethiopia, there is no accurate definition of minority shareholders in its Commercial Code; therefore, there is limited scope to protect them under the code. Though the code contains all the provisions to protect minority shareholders, because of the vagueness of the classification, it cannot effectively function[36].

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[34] MK Kaya 'Notion of Protection of Minority Shareholders: Theoretical Framework' (2020) 5 İstanbul Medeniyet Universitesi Hukuk Fakultesi Dergisi 195.

[35] Kaya, 'Discussions Surrounding the Principle of Minority Shareholder Protection' (n 2).

[36] TW Shamana and MW Ossa, 'The Legal Protection of Minority Shareholders under Ethiopian Law: Comparative Analysis' [2019] JL Pol'y & Globalization.

So far, Kenya has done much in the protection of minority shareholders, particularly with the enactment of the Companies Act of 2015, replacing the old Companies Act. The act consolidates and brings into line present-day requirements for the law relating to the organization and operation of companies, giving increased protection for minority shareholders (Wycliffe, 2021). A variety of amendments to the act would show that Kenya is keen on improving corporate governance standards and offering better protection for investors. Reforms such as these make a country not only more competitive in the Sub-Saharan Africa region but also one of the best investment destinations in the area.

Somaliland has amended its company laws several times to provide equal protection to all shareholders, regardless of their share in the company. Somaliland allows any shareholder, regardless of the number of shares held, to file a case in court, demonstrating shareholder activism and enhancing protection for minority shareholders. This approach has led Somaliland to craft a policy and regulatory framework for business that is decent and transparent, in which all shareholders have an opportunity to meaningfully affect the corporate governance landscape.

On the other hand, Somalia has a legal environment that is considered highly retroactive when it comes to protecting the rights of minority shareholders. The current company law does not offer extensive protection for minority shareholders, leaving them vulnerable to potential abuses by the majority stakeholders. In Somalia, it is crucial to carefully examine the legal provisions to assess how the rights of minority shareholders are actually recognized and implemented in the corporate sector.

Appreciating the rights and protection mechanisms for minority shareholders in both Turkey and the Horn of Africa is important for emulating exemplary corporate governance. The Turkish experience in improving minority shareholder protection through legal reforms provides valuable lessons for the Horn of Africa, where such legal frameworks are still evolving. The analysis of Turkey will, therefore, provide the countries in the Horn of Africa with an area of improvement that needs attention in their corporate governance systems to protect minority shareholders and enhance investor confidence.

C. Minority Shareholder Rights in Turkey

In Turkey, minority shareholders play a vital role in corporate life, with legal provisions in place to protect their interests. These rights allow minority shareholders to challenge corporate decisions and safeguard their investments. In a

joint-stock company, shareholder rights are typically divided into three categories based on how they are exercised: individual, majority, and minority rights[37]. It is crucial to emphasize that each shareholder should not misconstrue minority rights as individual rights. When a majority, comprising multiple individuals, convenes, they have a duty to protect the minority's rights, which they can collectively exercise[38]. Conversely, if a single individual represents the aforementioned majority, they have the authority to individually exercise these rights. However, in the case of single-member joint-stock companies, where there is only one shareholder, the concept of minority rights becomes irrelevant, as there is no majority to protect or exercise these rights collectively.

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

We can broadly classify the minority rights delineated in the TCC into two categories: obligatory and relatively obligatory rights[39]. Although the regulations governing the exercise of minority rights are considered obligatory rules, TCC Art. 411/1, which establishes the thresholds for shareholders to be recognized as minorities, possess a relatively obligatory nature[40]. In other words, the articles of association explicitly mention and approve any deviation from the proportions specified in this article in favor of minority shareholders. This allows for the possibility of modifying the proportions for minority rights through a provision in the articles of association.

With these legal provisions, the minority shareholder becomes involved in corporate governance and can participate in important decisions made by the corporation. In

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37 Ebru Tüzemen Atik, 'An Overview of Minority Rights in the Joint Stock Company under the Provisions of the New Turkish Commercial Code' <https://core.ac.uk/download/pdf/159313722.pdf>.

38 ibid.

39 Cem Veziroğlu, 'Buy-Out of the Oppressed Minority's Shares in Joint Stock Companies: A Comparative Analysis of Turkish, Swiss and English Law' (2018) 19 European Business Organization Law Review 527.

40 ibid.

this regard, such laws can balance the interests of both majority and minority stakeholders in developing transparency, equity, and accountability in Turkish corporations. Throughout the life of joint-stock companies, from incorporation to dissolution, TCC minority rights endure, symbolizing the legally imbued and therefore inalienable rights of their shareholders. he articles of association can also grant additional minority rights, providing enhanced protection and increased opportunities for the minority to shape corporate governance.

1. Right to Request the Postponement of General Meetings

In Turkey, protecting the rights of minority shareholders plays a crucial role in corporate governance. One of the key mechanisms to safeguard their interests and promote transparency, accountability, and responsible governance in joint-stock companies is the right to request a postponement of general meetings. Article 420 of the Turkish Commercial Code (TCC) grants this right but differentiates between publicly traded and non-publicly traded companies. For minority shareholders in non-public companies, this right requires owning at least one-tenth of the total share capital, while for publicly traded companies, this ownership threshold does not apply[41].

To exercise this right, minority shareholders must submit a formal request to the chairman of the general assembly. The TCC mandates that the chairman cannot refuse this request if the required shareholding threshold is met[42]. This gives minority shareholders a dependable way to guarantee the resolution of their concerns. While the TCC doesn't explicitly list agenda items for postponement, the general consensus is that this right encompasses financial statement-related matters like auditor selection and dividend distribution[43]. This broader interpretation not only achieves the goal of enabling minority shareholders to scrutinize the financial data used for decision-making, but also more closely aligns with the representations of EU legislators.

Additionally, the TCC permits minority shareholders to request multiple postponements if their initial concerns have not been addressed. This provision encourages productive dialogue between minority shareholders and company management, fostering better communication and accountability. Minority

41 D Gilvenir, 'Minority Shareholders' Right to Request the Postponement of General Meetings of Joint Stock Companies in Turkish Law' (2022) 8 Athens JL 329.

42 ibid.

43 Abdurrahman Kayıklık, 'Anonim Şirkette Azınlığın Korunması: Kim Için, Neden ve Nasıl Bir Koruma?' (2022) 80 İstanbul Hukuk Mecmuası 407.

shareholders are granted a substantial legal right to postpone general meetings in situations involving serious concerns, even against the majority's preference. This framework ultimately strengthens shareholder democracy, improves corporate governance practices, and supports the long-term sustainability of joint-stock companies in Turkey.

2. Right to Dismissal of the Auditor for Just Cause

One of the newly granted rights to minority shareholders under the updated TCC is the ability to request the removal of an auditor for valid reasons and subsequently elect a new one through legal means. The fourth and fifth sections of Article 399 of the TCC authorize minority shareholders to seek the appointment of a new auditor through a judicial process when valid grounds are present. This marks an important development in empowering minority shareholders to ensure accountability and transparency within the company's audit process.

The enactment of Law No. 6102 abolished the previous system where auditors could be corporate entities. Independent auditors now conduct audits, and the TCC uses this autonomous audit system as its main framework (Zeren, 2010). Turkish law recognizes the relationship between the joint-stock company and the independent auditor as a form of employment agreement. Initially, the TCC required all joint-stock companies, regardless of size, to be audited by independent firms or certified public accountants[44]. However, the introduction of Law No. 6335 relaxed this requirement, subjecting only certain companies defined by the Council of Ministers to mandatory independent audits.

The current system prohibits the company from dismissing an auditor once the general assembly elects them (Article 399/II of the TCC). This regulation enshrines the principle of "auditor security," preventing the board of directors from arbitrarily terminating the auditor's contract[45]. The purpose of this provision is to safeguard auditors from potential dismissal, thereby enhancing their independence. However, Article 399/IV provides both the board of directors and minority shareholders the right to request the court to appoint a new auditor if valid reasons arise, safeguarding minority shareholders' interests against potential mismanagement or conflicts with the auditor.

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[44] S Dal and YE Çalış, 'Anonim Şirketlerde Bağımsız Denetim ve Bağımsız Denetçi' [2013] Financial Analysis/Mali Cozum Dergisi.

[45] BY Zeren, 'Anonim Ortaklikta Azinligin Ozel Denetci Atanmasini Talep Hakki' (Doctoral Dissertation, Ankara Üniversitesi SBE 2010).

The company's articles of association cannot expand these criteria, as the law specifies that only a limited group of individuals, including the board and minority shareholders, can initiate this legal process[46]. Upon election, the trade registry officially registers the auditor's appointment and publishes it in the Turkish Trade Registry Gazette (TTSG) and on the company's website. Within three weeks of the appointment's publication, minority shareholders can file for the auditor's removal[47]. This period acts as a statute of limitations, though some argue that it should begin when a legitimate reason for dismissal arises, as justifiable grounds may surface after the initial three-week window.

Unless a valid reason concerning the auditor's conduct emerges, shareholders cannot file for the auditor's dismissal after the court appoints them. In such cases, the court that appointed the auditor will review the issues and decide whether to remove them. For a minority shareholder to initiate legal action to remove an auditor, they must have voted against the appointment during the general assembly and recorded their dissent in the meeting minutes. Additionally, Article 399/V of the TCC states that the shareholder also needs to be at least in possession of shares for three months before the general meeting in question. In the lawsuit, the auditor becomes the defendant, and intervention by the company may take place if the company has a vested interest. The court will review the authority of the parties to bring the lawsuit and assess whether there are valid reasons to dismiss the auditor based on their character or actions. Differences of opinion or unsubstantiated doubts do not constitute valid reasons for dismissal. The court’s decisions on the removal of an auditor and the appointment of a new one are binding.

3. Right to cancel decisions of General Meetings

In joint stock companies, the general meeting is a formal gathering of shareholders or their representatives to discuss and decide on specific agenda items. According to Article 445 of the TCC, shareholders who attended the general meeting and voted against a decision may file a lawsuit to annul the decision if it conflicts with the law or the company’s articles[48]. More importantly, no threshold of ownership is required for shareholders to object to such decisions, meaning any shareholder can sue for

46 ibid.

47 ibid.

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

the avoidance of decisions reached in general meetings. This privilege is very instrumental in preventing arbitrary or abusive decisions by persons in a majority position since such acts may lead to significant detrimental effects on the shareholders of a company.

Article 446 of the TCC further articulates the right to contest the decisions made at general meetings and describes who may file a lawsuit. The shareholders who attended the meeting and voted against such a decision and recorded their objections in the minutes have the right to contest the decision. Moreover, shareholders who assert that they did not follow their legitimate procedure without attending the meeting have the right to contest the resolution. This includes anything from improper convocation of the general meeting, nondisclosed agenda, or lack of fairness in voting and participation. The members of the board of directors have the right to oppose decisions made during general meetings, especially in instances where following the decision would lead to personal liability on the part of the board members.

You must file an action challenging a general meeting decision within three months of the decision's date. Article 445 provides reasons for annulment, which include improper representation of the agenda of such meeting, unauthorized persons taking part in that meeting, and unequal treatment of shareholders as regards their voting rights. These are some of the major causes that may give rise to annulment; however, in light of specific facts and circumstances, the courts can consider other factors. This legal framework ensures that shareholders and board members can take action to protect their interests and uphold proper corporate governance practices.

4. Right to Access Information

Regardless of the number of shares held, every shareholder has the right to access key company documents, including the company's books of account, consolidated financial statements, the board of directors' annual activity report, audit reports, and the board's profit distribution proposal. According to Article 437 of the TCC, the company headquarters and its subsidiaries must make these documents available at least fifteen days before the general meeting. This right ensures that shareholders, particularly minority shareholders, are well-informed and able to exercise their rights effectively. No decision made by the board, nor any provision in the company’s articles, can limit or exclude this right.

The company can only deny shareholder requests for information if granting them would harm the company or expose its trade secrets. A shareholder may apply with the court if they receive an unjustifiable denial, postponement, or disregard of their information request. Article 437 states that, in case of refusal within ten days—or a reasonable period if no formal refusal has taken place— This provision gives shareholders, especially the minority, a legal opportunity to ensure judicial assistance in cases of infringement of their information rights.

These are provisions directed to protect the minority shareholders, who may not have the same amount of company information as the majority shareholders would, since they mostly have control or are in close contact with the management. Previous agreements, arrangements, and policies of the company cannot fetter the basic and inalienable right to receive information, as it is a matter of public policy. This would ensure greater transparency and accountability, thereby providing minority shareholders with tools for their protection in the company.

5. The Entitlement to Apply for the Issuance of Shares

Under Article 486 (3) of the TCC, a company has a responsibility for issuing registered share certificates and delivering them to the shareholders upon request, especially in the case of minority shareholders. The failure of the company to meet such an obligation may result in the minority shareholders' right to sue the company. Joint stock corporations may issue two kinds of shares: registered and bearer shares[49]. The company's memorandum and articles of association specify the kinds of shares that may be established during or after its organization and existence. The company must issue and provide certificates for bearer shares to the shareholders within three months of full payment. While the TCC does not mandate issuing certificates for registered shares, the law requires companies to issue them if minority shareholders request them.

Article 486 (3) grants minority shareholders in non-public companies the right to request the issuance of shares in their name. The company's board of directors must issue nominative shares and distribute them by the request[50]. However, the board does not have to issue such certificates unless the minority shareholders request it. The provision ensures that the minority shareholders have a mechanism of formalizing their shareholding through documented ownership, thereby enhancing their legal and financial status within the company. The law encourages the

[49] Y Akbulak, 'TTK Işığında Anonim Şirketlerde Pay Senetleri' (2016) 1 Ankara Barosu Dergisi 506.
[50] Soner Altaş, 'Anonim Şirketlerde Pay Senedi Bastırma Yükümlülüğü' [2014] Mali Çözüm Dergisi 105.

participation of minority shareholders in the management of the company and enhances the general stability of their investment by ensuring that it provides them with the right to request share certificates. All registered shareholders, including minority shareholders, have this prerogative, which allows them to demand written certificates from the board of directors.

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

The dissolution of the corporation for good reason is a crucial corrective measure for the protection of minority shareholders. The TCC Article 531 imposed this right[51]. Before the new Code went into effect, minority shareholders who felt wronged had no way to get a corporation dissolved for good reason. Nonetheless, it was acknowledged that, according to doctrine, shareholders could exercise the right of termination included in the articles of company.

Kaya argued according to Article 531, a court may be asked to rule on a company's dissolution if there are reasonable grounds and shareholders own at least ten percent of the capital of a joint stock company or twenty percent of the capital in a publicly traded business[52]. It does not, however, specify what these just causes might be; this must be determined case-by-case. If minority shareholders choose to do this, they must go to the court that oversees the incorporation's location. According to the last sentence of Article 531, if a minority shareholder asks a court to dissolve a corporation for legitimate reasons, the court may determine that the applicant shareholders' shares should be purchased for their actual value or that a fair and reasonable solution has been found[53].

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

[52] Hayrettin Çağlar and Erdem Kaşak, 'Anonim Şirketin Haklı Sebeple Feshine İlişkin TTK m. 531 Hükmünün Zaman Bakımından Uygulanması' (2016) 65 Ankara Universitesi Hukuk Fakultesi Dergisi 659.

[53] Kaya (n 8).

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

To comprehend the framework for minority shareholder protection in Turkey, it is also essential to provide a comprehensive understanding of the safeguards granted to minority stakeholders under the Turkish Capital Markets Law. The Capital Markets Law's primary objective is to safeguard investors' interests, particularly about publicly traded corporations. This law encourages self-regulation among market participants while creating, preserving, and regulating honest and efficient securities markets. Furthermore, it is responsible for safeguarding the interests of investors and minority owners, a duty that supersedes conflicting legal requirements[54].

Turkish law offers a thorough framework for managing the basic rights of shareholders. For example, in publicly traded companies, stockholders with 5% of the capital are entitled to call general meetings and suggest agenda topics. Agendas, meeting materials, and notices are sent to shareholders promptly through online platforms. Furthermore, large corporate changes sometimes require a supermajority vote due to shareholders' broad right to scrutiny and prevention[55]. Even though Turkish law allows for varying degrees of voting rights, the organization's articles govern whether minority shareholders have cumulative voting rights.

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

The Capital Market Board regulations allow publicly traded firms to establish an internal organization through the corporate governance committee. This internal body helps the board of directors and shareholders communicate. They must try and keep the records of shareholders as up-to-date and accurate as possible; when possible, consult them on matters relating to the firm that are not confidential; prepare materials required for the meeting; and give important public notices.

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54 Burak Adıgüzel, 'Türk Sermaye Piyasasinda Yeni Sermaye Piyasası Kanununun Getirdikleri' [2017] Proceedings of the Mediterranean International Conference 53.

55 Kaya (n 8).

D. Minority Shareholder Rights in the Horn of Africa

This would guarantee the fair and equitable execution of all operations by companies in the Horn of Africa, with the protection of minority shareholders' rights being a fundamental aspect of modern corporate governance concepts, as outlined in various countries' Companies Acts. The protection afforded has been very instrumental in balancing powers within corporate organizations, stemming abuses of their majority shareholders, and placing accountability and, to a certain extent, transparency within those corporations. Such protection is very important in the Horn of Africa, where market dynamics and corporate structures may be very different from elsewhere.

For instance, the Companies Act in Kenya has established a complex system of rights for general meetings, proxies, and financial reports, which serves to safeguard the interests of minority shareholders by providing them with information on corporate resolutions. These are fundamental methods by which minority shareholders can exercise oversight and participate in the management of their companies, primarily to prevent mismanagement or fraud by the majority. The Act grants access to basic information that the minority shareholders might use to secure their investment and make suitable decisions.

The Ethiopian Commercial Code of 1960 incorporates basic elements of corporate governance, including security in share registration and transfer, timely access to relevant information, participation in shareholder meetings, board member election and removal, and profit sharing. The control rights confer shareholders with the right to participate in the decision-making procedures; financial rights refer to profit and asset distribution. Both are essential for safeguarding a fair corporate environment.

The minority shareholder protections in countries like Somaliland and Somalia are remarkably similar to those in Kenya and Ethiopia, indicating the potential application of a regional approach to corporate governance. These countries prioritize the fundamental rights of secure share registration, access to clear and adequate corporate information, and participation in shareholder meetings. Additionally, in these countries, minority shareholders have the right to elect and remove board members, which would give them more say in the strategic orientation of the company. This also ties their financial interests to corporate success by giving them a share of the profits.

However, in practice, enforcing the rights of a minority shareholder can be challenging, if not impossible, as decisions made by the majority will always prevail.

The constraints of contractarian theory, which emphasizes freedom of contract over regulatory oversight, also present hurdles in ensuring effective corporate governance. These difficulties highlight the need for ongoing legislative and regulatory reforms to strengthen minority shareholder rights and ensure fair and inclusive corporate governance throughout the Horn of Africa. Some of the major minority shareholder rights in the Horn of Africa are listed below.

1. The Right to Convene General Shareholders' Meeting

One of the most important safeguards for minority shareholder owners in the Horn of Africa is the ability to call general shareholders' meetings[56]. Usually, an officer of the court, the directors, the auditors, or the liquidators summon these meetings. Shareholder meetings come in two flavors: special and general[57]. A significant occasion, the annual general meeting is where shareholders discuss business matters and decide on things like dividends, director compensation, and possible board member replacements.

Minority shareholders in nations like Ethiopia, however, have the right to ask the court to call a meeting if the directors decline to call one. For example, the court may designate an official to convene a meeting according to Ethiopia's commercial code (Article 391(2)) if shareholders representing at least one-tenth of the share capital indicate the necessity[58]. This clause is essential for shielding minority investors from possible wrongdoing by directors or majority owners.

Notwithstanding these provisions, difficulties exist. Minority shareholders, especially those in large, publicly traded companies, may find it burdensome to meet the requirement of owning 1/10 of the voting shares to call a meeting[59]. By classifying these stockholders as majorities, this criterion frequently weakens the protections meant for actual minorities. The law's uncertainty about the circumstances in which shareholders might ask a judge to convene a meeting creates additional obstacles. This ambiguity can spark debates and make it more difficult for minority shareholders to assert their rights.

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56 W Fentie, 'Strengthening Shareholders Control of Companies in Ethiopia: Minimizing Agency Cost' (2018) 2 Hawassa UJL.

57 Shamana and Ossa (n 36).

58 Fentie (n 56).

59 Shamana and Ossa (n 36).

2. The Right to Propose or Amend the Agenda of Shareholders' Meeting

From a broader perspective, a significant issue within the Horn of Africa region, which includes Ethiopia, pertains to the rights of minority shareholders to propose agenda items or resolutions during shareholder meetings. Most often, the board of directors or management runs an agenda for such meetings. While minority shareholders possess the right to vote, their ability to shape the agenda during meetings is often limited[60]. Company rules in many of these nations do not expressly give minority shareholders the authority to suggest items for the agenda at general shareholders' meetings[61]. Typically, the board of directors, the body convening the meeting, prepares the agenda, and company statutes often lack clear guidelines for minority shareholders to propose topics for debate. This restriction essentially denies minority shareholders a meaningful say in the decision-making process by keeping it in the hands of management or controlling shareholders.

3. The Right to Challenge the Resolutions Adopted at the General Meeting

In the Horn of Africa, including Ethiopia, commercial laws provide shareholders with the means to challenge resolutions passed at general meetings, particularly when they violate the law, the company's memorandum, or articles of association. However, the treatment of minority shareholder rights varies across these nations, especially regarding the ability to contest resolutions deemed unjust or discriminatory[62]. For instance, Article 416(2) of the Ethiopian Commercial Code allows shareholders to challenge a resolution within three months of its adoption or entry into the commercial register. In the case of *Melese Zergaw v. Atinet Trading Share Company*, the plaintiff successfully challenged a company decision, leading to the reversal of the contested resolution. The Ethiopian Commercial Code also guarantees that the general assembly or directors cannot alter certain fundamental shareholder rights.

Despite these protections, Ethiopia and other Horn of Africa nations face a legal gap in explicitly providing minority shareholders with the ability to contest decisions that unfairly harm their rights or the company's interests. The Ethiopian Commercial Code, for example, lacks clear preventative or remedial measures for minority

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60 M Beyene, 'Regulation of Group of Companies in Ethiopia: A Comparative Overview' (2023) 17 Mizan Law Review 197.

61 ibid.

62 FP Gebremeskel, 'Emerging Separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications' (2010) 4 Mizan Law Review 1.

shareholders who may be mistreated by majority shareholders or company directors. Legal scholars such as Dagnaw Getahun and Fekadu Petros have pointed out this deficiency, emphasizing the need for clearer legal frameworks to safeguard minority shareholders from abuses of power within companies.

4. The Right to Appoint an Independent Audit

The right to appoint an independent auditor in the interest of minority shareholders is recognized within the Horn of Africa nations, including Ethiopia, but its success rate does vary. For example, Article 368 (2) of the Ethiopian Commercial Code permits shareholders holding at least 20% of the capital to designate an independent auditor[63]. This clause highlights a serious loophole in the protections afforded to minority shareholders by implying that those holding less than 20% of the shares do not have this privilege.

The Ethiopian Commercial Code does not specifically define what constitutes a minority shareholder or the amount of shares required to meet this requirement. According to Fekadu Petros's writings, owners who own 20% of the company may qualify as minority shareholders[64]. According to this understanding, only a small number of people would be able to use the power to designate an independent auditor—possibly even individuals with lesser shareholdings who would yet have substantial stakes in the business.

Moreover, Ethiopian law permits shareholders holding at least one-tenth of the company's shares to ask the Ministry of Trade to designate certified auditors to investigate and prepare a report on the company's financial situation[65]. Despite its intended safeguarding of minority shareholders, the 20% requirement for selecting an independent auditor is still considered high. Close situations are available in Kenya.

5. Access to Information and Voting Rights

In the Horn of Africa, timely and accurate information disclosure is crucial to protect minority shareholders from potentially unfair or biased decisions by the board of directors or majority shareholders. However, the commercial regulations in these nations often fall short in terms of the effectiveness and comprehensiveness of their

63 M Negash, 'Corporate Governance and Ownership Structure: The Case of Ethiopia' (2013) 5 Ethiopian E-Journal for Research and Innovation Foresight (Ee-JRIF).

64 Fentie (n 56).

65 Beyene (n 60).

information disclosure processes[66]. Commercial laws, which regulate the disclosure of information to shareholders, often overlook crucial details like voting protocols, meeting agendas, and crucial decisions at shareholder meetings. This omission becomes particularly problematic when significant modifications to the memorandum or articles of association, the issuance of new shares, or large-scale transactions involving company assets are on the table. Without full, accurate, and timely disclosure, minority shareholders are left without adequate protection, undermining their ability to make informed decisions and safeguard their interests[67].

Voting rights are another critical aspect of shareholder protection in the Horn of Africa. Voting rights allow shareholders to have their say in corporate matters and question the company during shareholder meetings. The Commercial Code of Ethiopia, 1960, has given shareholders the right to vote on important matters like the alteration of rights of shareholders, alteration of articles of association, and appointment and removal of directors and auditors[68].

Generally, we maintain the principle of "one share, one vote," albeit with some limitations. It restricts voting rights, and the shareholders themselves cannot vote in cases of conflict of interest[69]. Furthermore, the Commercial Code does not comprehensively address certain voting rights essential for protecting minority shareholders, such as the right to object to resolutions, ask management questions, or submit items for discussion at meetings.

Despite these voting rights, the Ethiopian Commercial Code and similar laws in other Horn of Africa nations do not provide for modern voting practices, such as electronic voting, which could greatly benefit shareholders who are unable to attend meetings in person. Most countries in the region rely on direct and proxy voting[70]. While direct voting grants shareholders the right to participate in meetings and to vote in person, this system is often impracticable or expensive for a minority shareholder, especially if located in another region. Proxy voting does provide a possible avenue in which shareholders can give their voting rights to a representative.

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66 OS Agyemang and others, 'Country-Level Corporate Governance and Foreign Direct Investment in Africa' (2019) 19 The International Journal of Business in Society 1133.

67 ibid.

68 E Ambo, 'The Gaps and Lessons of Ethiopian Share Company Governance in Light of International Company Model Laws' [2021] International Journal of African and Asian Studies 1.

69 Negash (n 63).

70 X Musango, 'Shareholder Protection and Shareholder Intervention in Kenya: A Study on Shareholder Activism' (Doctoral Dissertation, University of Nairobi 2016).

Moreover, the lack of cumulative voting systems in certain countries presents a significant challenge for minority shareholders. Cumulative voting enables the minority shareholders to concentrate their votes to enhance their influence, particularly in the election of directors, as it gives them a counterbalance against the power of the majority shareholders. Unfortunately, most countries from the Horn of Africa, including Ethiopia, do not recognize cumulative voting systems in their commercial laws[71]. In comparison, some countries have moved to more modern kinds of corporate governance practices, such as online voting, which greatly increases shareholder participation, especially for minority shareholders.

E. Challenges and Opportunities Facing Minority Shareholders in the Horn of Africa

1. Opportunities and Protections Available to Minority Shareholders

This section discusses critical opportunities and protections for minority shareholders in selected countries in the Horn of Africa. Legal frameworks based on both common law principles, statutory law, and administrative regulations provide opportunities and avenues that would afford the protection of interests and influence corporate governance by minority shareholders. These protections, through either national constitutions, the Capital Markets Act, or relevant Companies Acts, are open to a variety of interpretations. Recent legislative reforms, such as Kenya's 2014 Companies Bill, also point to a shifting trend in the development of mechanisms for the protection of minority shareholder rights across the region.

Legal frameworks similar to Kenya's Companies Act often serve as a model for statutory protections for minority shareholders in the Horn of Africa. These legal systems offer minority shareholders a chance to challenge unfair corporate actions through the courts. When they believe a company's actions are oppressive or unfairly detrimental to a particular group of shareholders, they can petition the courts for remedies. Under Section 211(2)(b) of the Companies Act, courts may dissolve the company on just and equitable grounds or provide alternative remedies to protect the minority from further harm without necessarily dissolving the company.

In practice, these protections allow minority shareholders to seek compensation or prevent harmful actions by majority shareholders or company directors. Courts have

[71] Fentie (n 56).

the power to issue orders that influence the company's future conduct, such as mandating the purchase of minority shares or directing changes in governance. This judicial authority ensures that minority shareholders can have their interests represented in corporate governance without causing undue disruption to the company's operations. Even in the Horn of Africa, the principle of majority rule, established in Foss v. Harbottle, not only grants majority shareholders the power to ratify the actions of directors but also provides safeguards for minority shareholders against unfair actions by the majority. These statutory remedies ensure that minority shareholders can challenge decisions that significantly affect them, preserving their rights by seeking judicial intervention when the majority seeks to dominate corporate decision-making.

The courts in this region exhibit significant flexibility in interpreting laws related to oppression, thereby providing a crucial avenue for minority shareholders. Cases like Scottish Co-operative Wholesale Society Ltd. v. Meyer indicate that the courts are ready to provide a just result for the minority shareholders once the oppression is located. Thus, this judicial discretion gives the minority shareholders the freedom to challenge unjust actions and guarantee the preservation of their interests.

In principle, judicial decision-making serves as a primary method to guarantee protection for the rights of minority shareholders. The courts in the Horn of Africa also play an important role in the resolution of corporate disputes, especially when the legal framework has failed to provide adequate protection for minority shareholders. Through the interpretation and administration of fair remedies in statutes, the courts afford much-needed protection to minority shareholders to challenge unfair treatment and hence achieve an equitable solution. Indeed, in most cases, minority shareholders might depend on the judiciary because other protection mechanisms, such as legislative reform, tend to be slow or inadequate. Therefore, judicial decisions offer a timely avenue to safeguard minority shareholders' rights and prevent the risks of majority rule. Such reliance on the judiciary will ensure that minority shareholders can play active roles in corporate governance and influence key decisions.

Apart from judicial remedies, administrative regulations provide minority shareholders with further avenues to protect their interests. Regulatory bodies, such as ministries of commerce, supervise corporate governance practices and make sure companies adhere to laws that protect minority shareholders. These administrative regulations are particularly important in sectors where statutory protections may not be comprehensive, such as in publicly traded companies or emerging markets.

2. Major Challenges in Protecting Minority Shareholder Rights

A vital component of corporate governance in the Horn of Africa is the protection of minority shareholders, but systemic problems make this difficult to achieve. The absence of shareholder activism is one of the main issues. Minority shareholders frequently lack the tools, knowledge, and legal assistance needed to properly defend their rights in many Horn of Africa nations[72]. Numerous issues, including inadequate legal frameworks, insufficient enforcement tools, poor corporate governance, information asymmetry, constrained market development, cultural and societal norms, and cross-border regulatory obstacles, contribute to this lack of engagement[73]. The majority of African minority shareholders face the major challenges listed below, which we observed during our research.

a. Regulation, Legislation, and Enforcement of Corporate Governance

Corporate governance encompasses rules and procedures that govern transactions that impact corporate decision-making. These rules include legal frameworks related to shareholders' rights, auditor selection, and guidelines concerned with the responsibilities of governmental entities that oversee corporate compliance. Good governance is critical in terms of preventing majority shareholders from taking advantage of minority shareholders. However, the majority of countries in the Horn of Africa lack robust legal frameworks, which results in inadequate protection for minority shareholders.

The effectiveness of investor protections, including the enforcement of corporate governance laws, plays a significant role in shaping the development of financial markets. Variations in legal structure and enforcement mechanisms—due to historical legal trends and enforcement efficiency—affect financial development in the region. Research shows that countries with common law systems tend to provide stronger shareholder protection than those with civil law systems[74]. In the Horn of Africa, primarily a common law jurisdiction, the legal structure still lacks adequate frameworks to protect minority shareholders.

Despite the adoption of corporate governance codes in the region, these codes, derived from common law jurisdictions, lack effective legal force and enforcement

[72] OW Alfayo, 'Legal Protections Accorded to Minority Shareholders in Kenya in Corporate Entities' (Doctoral Dissertation, Strathmore University 2021).

[73] Alfayo (n 78).

[74] CP Egri and DA Ralston, 'Corporate Responsibility: A Review of International Management Research from 1998 to 2007' (2008) 14 Journal of International Management 319.

mechanisms to meaningfully protect shareholders' interests[75]. Countries like Ethiopia, Somaliland, and Kenya should institute regulatory frameworks that provide a necessary balance between majority and minority investors, enabling transparent and accountable corporate governance.

b. Lack of Adequate Legal Enforcement and an Ineffective Judiciary System

The lack of adequate legal enforcement and an ineffective judiciary system in the Horn of Africa create significant challenges for minority shareholders seeking redress for unfair practices. In many countries, legal processes are slow and costly, discouraging minority shareholders from pursuing justice. Lengthy trial durations exacerbate the burden, leaving cases unresolved for years, during which minority shareholders remain vulnerable to exploitation by majority shareholders[76].

In addition to slow legal processes, the lack of specialized commercial courts in the region hinders the effective resolution of corporate disputes. Unlike countries such as Turkey, which have dedicated commercial courts for business-related cases, the Horn of Africa lacks such institutions. This forces minority shareholders to rely on general civil courts, which are often not equipped to handle complex corporate matters. Even if minority shareholders win court cases, there is no guarantee that the rulings will be enforced due to the lack of proper enforcement mechanisms. This undermines the credibility of the legal system and further diminishes trust in corporate governance.

c. Limited Company Classifications in the Horn of Africa

The limited range of company classifications in the Horn of Africa poses challenges for both entrepreneurs and investors. Sole proprietorships, partnerships, or limited liability companies (LLCs) form the majority of businesses in the region, providing limited flexibility for more complex corporate structures[77]. The absence of varied company classifications hinders innovation and foreign investment, as investors prefer environments with more adaptable legal frameworks[78]. Limited company classifications also impact minority shareholders. Without specialized legal

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75 Fentie (n 56).

76 OI Aderibigbe, 'Minority Shareholders' Rights and the Majority Rule under Corporate Governance: An Appraisal.' (2016) 3 Journal of Comparative Law in Africa 100.

77 RH Davidson, A Dey and AJ Smith, 'CEO Materialism and Corporate Social Responsibility' (2019) 94 The Accounting Review 101.

78 ibid.

structures, minority shareholders may find it difficult to exercise their rights or seek legal recourse against unfair practices[79] This narrow scope weakened the protection framework for minority shareholders in general, making them quite vulnerable to controlling shareholders or managerial exploitation.

d. Absent or Underdeveloped Monitoring Institutions

The absence of institutions monitoring corporate conduct poses a significant challenge for minority shareholders in the Horn of Africa. Institutions and their regulatory mechanisms have played a crucial role in monitoring corporate governance practices, and safeguarding the interests of shareholders. However, most countries lack these institutions, and those that do exist are often inadequately developed. For example, studies indicate that regional regulatory bodies lack the necessary resources, authority, and autonomy to regulate corporate governance effectively[80]. This lack of regulatory monitoring exposes minority shareholders to potential abuses of power by majority shareholders and company management. Without effective monitoring mechanisms, minority shareholders struggle to access critical information about corporate decisions, hindering their ability to protect their rights. The absence of proficient oversight also discourages potential investors, further stunting the growth of the region's financial markets[81].

IV. CONCLUSION AND RECCOMENDATIONS

The aim of this research is to explore the challenges faced by minority shareholders in joint-stock companies by conducting a comparative analysis of company laws in the Horn of Africa (Somalia, Somaliland, Ethiopia, and Kenya) and Turkey. The study also aims to examine the legal frameworks that protect minority shareholders, highlighting any gaps and weaknesses, and offering recommendations on best practices to enhance the protection of their rights. Utilizing a qualitative approach and secondary data sources such as company laws, regulations, court rulings, and academic literature, the research offers valuable insights into the implementation of minority shareholder protections and identifies areas that need improvement.

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79 AB Carroll and JA Brown, 'Corporate Social Responsibility: A Review of Current Concepts, Research, and Issues' [2018] Corporate Social Responsibility 39.

80 Agyemang and others (n 66).

81 SK Agyei and others, 'Country-Level Corporate Governance and Foreign Portfolio Investments in Sub-Saharan Africa: The Moderating Role of Institutional Quality' (2019) 10 Cogent Economics & Finance 2106636.

The research reveals that legal frameworks in the Horn of Africa are outdated and lack clarity in defining minority shareholder rights, making it difficult for these shareholders to exercise their rights effectively. On the other hand, while Turkey, under the TCC, provides more specific protection for minority shareholder rights, the Horn of Africa lacks specialized commercial courts and ambiguous company classifications. The Horn of Africa region, unlike Turkey, lacks a well-structured legal system that includes self-protective provisions such as challenging corporate decisions and participating in company governance. Moreover, the study found that, in contrast to Turkey, which has numerous research studies focused on enhancing the rights of minority shareholders, the Horn of Africa has relatively little research and activism on these rights.

Our conclusion and recommendations, based on these findings, serve as lessons for the Horn of Africa countries to learn from Turkey. The identified lessons below underline the harmonization of the legal frameworks and practices of the best states. Through the adoption of the following recommendations, the Horn of Africa countries will be in a position to enhance their corporate governance systems, improve the protections afforded minority shareholders, and establish a promising environment for investment and economic growth.

A. Lessons Horn of African Countries can Learn from Turkey's Laws and Institutions in Protecting Minority Shareholders in Joint-Stock Companies

In the Horn of Africa countries, protecting the rights of minority shareholders in joint-stock companies remains a significant challenge (Samora, 2019). These nations must undergo comprehensive restructuring to create a more attractive environment for foreign investors and ensure the continuity of companies. Comparative studies, particularly with Turkey, offer valuable insights on how to improve the protection of minority shareholders. This includes clearly defining who minority shareholders are, strengthening their rights, improving their representation, and enhancing the regulatory framework. Furthermore, there is a need to modernize their commercial codes, as many of these laws are outdated and fail to align with contemporary business practices.

Most commercial codes in the Horn of Africa countries are leftovers from the colonial era and have never been able to keep up with modern-day business dynamics. These outdated laws often lack the necessary provisions to adequately address contemporary issues such as e-commerce, intellectual property rights, and alternative dispute resolution methods, which are crucial for safeguarding the rights

of minority shareholders. We must revise and update these codes to align with global standards. All this is also crucial for offering a conducive climate for company growth and investment. To instill investor confidence and, thus, economic development, these countries shall establish policies leading to transparency, efficiency, and fairness in corporate activities. Additionally, these countries aim to achieve their goals by acquiring valuable information from countries like Turkey, which has successfully modernized its commercial legislation.

In addition, the establishment of specialized courts for commercial purposes, just like in Turkey, provides a focused approach toward conflict resolution associated with business. These courts are in a position to develop expertise in commercial law and may handle and dispose of complex disputes in less time. Conversely, the incorporation of business-related lawsuits into the overall civil court systems of the Horn of Africa nations frequently results in delays and inefficiencies due to the absence of specialized expertise and resources [82]. By establishing specialized commercial courts presided over by judges with expertise in commercial law, these nations can accelerate the settlement of conflicts, foster investor trust, and improve the entire legal framework for economic activities. The research on the system of specialized commercial courts in Turkey may prove instructive in developing an effective judicial framework that is relevant to modern business operations.

B. Redefining Criteria for Minority Shareholders

A proper and comprehensive definition of minority shareholders is a prerequisite to ensuring adequate protection of their rights in the joint stock businesses in the Horn of Africa. The definition should encompass individuals or entities who own shares in a corporation. In the new TCC of Turkey, the concept of a minority shareholder is defined as one possessing at least 10% of the capital, while 5% is sufficient in the case of publicly owned enterprises. Although the requirement has been subject to debate in Turkey to change it, it has nonetheless considerably enhanced the protection of minority shareholder rights in Turkish companies and provides a useful model for the Horn of Africa countries.

Furthermore, the introductory section of TCC grants a company the ability to modify the threshold through its articles of association. Companies can customize governance arrangements to enhance shareholder protection by treating minority shareholders with lower percentage ownership. For example, the company's statutes

[82] E Torgbor, 'Courts and the Effectiveness of Arbitration in Africa". Arbitration International' (2017) 33 Arbitration International 379.

can formally recognize other minority shareholders with less than 10%—such as 5%—and grant them special privileges within the statutory boundaries of the mandatory rules of the TCC.

On the contrary, the Horn of Africa currently defines majority shareholders as individuals or corporations that own more than 51% of shares, while minor shareholders have smaller ownership percentages. Often, these countries adopt the concept of majority rule as outlined in the Forbes Handbook, thereby disregarding the special rights and protections applicable to minority shareholders. In this regard, the countries of the Horn of Africa must reexamine their definition of a minority owner and align it with global standards to ensure equitable treatment and representation, thereby fostering a more inclusive and protective business environment.

C. Enhancing Minority Shareholder Rights

The Horn of Africa countries could potentially learn from the innovative approach of the TCC of Turkey in enhancing the rights of minority shareholders. Though the TCC extends general rights to all shareholders, it also provides special protection to minority shareholders. Thus, the TCC creates a complete system for protecting and strengthening the position of the minority shareholder by providing both general and special protection. In this regard, the Horn of Africa countries could benefit from taking useful initiatives to protect minority shareholder rights and, consequently, become more investment-friendly.

Some of the most important personal rights granted by the TCC to all shareholders, regardless of the size of ownership, are to receive information about the company, to attend and speak at general meetings, and to vote on key corporate decisions[83]. By fixing these rights under the law, Turkey affords transparency, accountability, and shareholder participation in corporate management. These rights constitute a sounder framework for effectively allowing shareholders, also from minorities, to participate in most corporate decision-making processes.

In addition to general rights, the TCC extends specific privileges to minority shareholders. Such provisions protect the minority owners from possible abuses of power by the majority shareholders, thus empowering them to have greater influence in the companies[84]. In these examples, a minority shareholder can request a delay in the consideration of financial statements, allowing them ample time to

[83] Tüzemen Atik (n 37).
[84] Tüzemen Atik (n 37).

scrutinize crucial financial data and make an informed decision. This approach allows the minority shareholder to fully engage in due diligence, fostering more informed and balanced corporate governance. The TCC also grants authority to the minority shareholders by way of appointing an independent auditor. This gives rise to additional oversight and assures integrity for the financial reporting processes. Allowing minority shareholders independently to verify that their financial data is correct reduces fraud or mismanagement; therefore, it provides more transparency and accountability within the company.

Another important right of minority shareholders is to call for a general meeting and propose the agenda items. Such a provision's underlying corporate governance ethos enables minority shareholders to voice their opinions, propose various initiatives, and foster accountability[85]. Additionally, minority shareholders can object to and request the nullity of resolutions passed during general meetings if they perceive these decisions to be detrimental to their interests. The right further upholds the proportionality of the principles of fairness and equity in corporate decisions and provides minority shareholders with a legal opportunity to safeguard their rights.

In such a case of grave corporate misbehaviour or fiduciary duty violation, minority shareholders have the right to petition the court for dissolution against the joint-stock company in Turkey. It is an ultimate choice that the minority shareholder can opt for when his rights are seriously threatened. In this context, the mentioned legal arrangement highlights Turkey's role in safeguarding shareholder interests and promoting ethical corporate management.

Another key provision in the TCC allows minority shareholders to have representation on the board of directors[86]. This would ensure that their views and interests are duly considered in corporate decision-making processes and thus promote inclusiveness and diversity in corporate leadership. Minority shareholders bring pluralistic perspectives and specialized expertise, which enhances the general effectiveness of governance.

Furthermore, the Capital Markets Law grants minority shareholders of a Publicly traded Joint Stock Company the right to request the company's dissolution for

[85] Özlem İlbasmış Hızlısoy, 'Anonim Şirket Yönetim Kurulunu Toplantıya Çağrıya Yetkili Olanlar Ve Yetkisiz Kişilerce Yapılan Çağrıyla Toplanan Yönetim Kurulunda Alınan Kararların Hukuki Akıbeti' (2022) 8 Ticaret ve Fikri Mülkiyet Hukuku Dergisi 115.

[86] Aydın Alber Yüce, 'The Legal Liability Of Shareholders İn Joint Stock Companies About Factual Managing Bodies' (2022) 9 Istanbul Medipol Universitesi Hukuk Fakultesi Dergisi 243.

justifiable reasons, including gross mismanagement, fiduciary relationship violations, or oppression of minority shareholders[87]. The legal framework in Turkey has provided activist shareholders with the necessary support to mobilize management and encourage greater respect for the interests of minority shareholders. This approach offers valuable lessons for Horn of Africa countries, as they can implement stronger protections to safeguard minority shareholders and uphold their interests in corporate governance practices.

D. Remedial Framework and Specialized Commercial Courts

The TCC has a robust remedial system aimed at the protection of minority shareholders in public joint-stock companies and therefore provides a comprehensive legal system for the redress of corporate wrongs committed by its directors and managers. One of the important elements of this system is that a minority shareholder may be entitled to make corporate directors account for their wrongful acts against such shareholders' fiduciary duties[88]. This legal right enables minority shareholders to sue the board of directors when their actions or actions have harmed the company or the shareholders. Through the enforcement of such provisions, the TCC makes sure that minority shareholders are effective in corporate governance to protect their interests.

The TCC outlines the criteria for culpability, such as the dissemination of erroneous information, failure to fulfil legal obligations, or misrepresentation of financial data[89]. These standards ensure transparent and impartial accountability of directors and managers. If minority shareholders successfully bring a liability claim, the framework provides compensation, mandating responsible directors or managers to reimburse both the company and individual shareholders for any losses caused by their misconduct[90]. Additionally, the TCC mandates that those held liable must also cover

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87 Mehmet Emin Bilge, 'Anonim Şirketin Sona Ermesi ve Tasfiyesi' (2012) 16 Erzincan Binali Yildirim Universitesi Hukuk Fakultesi Dergisi 261.

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

89 Article 553: Directors are responsible for providing accurate information and complying with statutory requirements. They can be held liable for damages resulting from inaccurate information or breaches of disclosure and reporting obligations.

90 Article 556 of the TCC: "Directors or managers who are found liable for damages resulting from their actions or omissions shall be obliged to compensate the company and individual shareholders

all legal costs[91], ensuring that the litigation process does not financially burden minority shareholders. This provision is crucial in enabling minority shareholders to pursue legal remedies without facing prohibitive financial hardships. His provision is crucial in enabling minority shareholders to pursue legal remedies without facing prohibitive financial hardships.

Other countries, including those in the Horn of Africa, can use the TCC's remedial framework as a model to develop stronger shareholder protection mechanisms. By adopting Turkey's approach, these countries can improve their corporate governance, increase investor confidence, and enhance their reputation as credible financial markets. This could lead to more robust legal protections for minority shareholders and create a more attractive environment for both local and foreign investment.

Another important factor in reinforcing the rights of minority shareholders is the specialized commercial courts of Turkey. The TCC established these courts to handle commercial disputes related to corporate governance, business transactions, and minority shareholder protection[92]. The hierarchy of the Commercial Courts in Turkey begins with the Commercial Court of First Instance and extends to the Regional Commercial Court and the High Court of Appeals[93]. Typically, the Commercial Court of First Instance adjudicates most business disputes, including those affecting minority shareholders, and the higher courts hear appeals against these decisions.

The TCC defines the jurisdiction of commercial courts, specifying the types of business disputes they handle, including corporate law, intellectual property rights,

for any losses incurred. This compensation shall cover the full extent of the damages suffered by the company or individual shareholders as a result of the director's or manager's misconduct or negligence." The article ensures that directors or managers held responsible for causing harm to the company or its shareholders are obligated to provide compensation for the losses incurred. This provision aims to protect the interests of minority shareholders by holding accountable those responsible for breaches of fiduciary duties or other misconduct.

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

92 Nesibe Kurt Konca, 'Yeni Türk Ticaret Kanunu'na Gore Asliye Ticaret Mahkemeleri' (2013) 4 Türkiye Adalet Akademisi Dergisi.

93 Şerife Esra Kiraz, 'Türk Mahkemelerinde CISG'nin Uygulanmaması: Madde 2 (E) Bağlamında Bir Değerlendirme' [2023] Yıldırım Beyazıt Hukuk Dergisi 565.

and financial transactions[94]. These courts specialize in handling complex commercial issues, and ensuring efficient and fair resolution of disputes related to minority shareholder rights. Equipped with judges and legal experts who possess extensive knowledge in commercial law and corporate governance, these courts are well-positioned to address the intricate legal challenges that arise in such cases[95].

Despite the existence of a system of specialized courts in most countries in the Horn of Africa, general courts have greatly delayed and left many minority shareholder legal disputes undecided[96]. A lack of such specialization lengthens litigation and increases the cost of seeking legal redress from shareholders. This lack of specialization in commercial law may also result in an incoherent or improper outcome, which would weaken the confidence of market actors and undermine the integrity of the legal system.

Given these challenges, establishing specialized commercial courts in the Horn of Africa, focused on corporate governance and the rights of minority shareholders, would be highly beneficial. By drawing on Turkey's experience, the countries in the region could improve the efficiency of their judicial systems and increase investor confidence. These courts, with judges trained in corporate law and equipped with modern case management systems, could accelerate the resolution of business disputes and provide greater legal certainty. This would not only protect minority shareholders' rights more effectively but also contribute to a more stable and attractive business environment.

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95 Kiraz (n 93).

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