AN INTRODUCTION TO THE LAW OF BUSINESS ORGANIZATIONS

by Everett F. Goldberg

The Commercial Code of 1960 created a new and comprehensive law of business organizations for Ethiopia. It is the purpose of this article to describe the general provisions and principles concerning business organizations, their relation to other laws and some of the problems they create. After an introductory discussion, matters considered are the classification of business organizations, legal personality (including the concepts of limited liability and capital), and the partnership agreement.[1] General formation formalities, dissolution, and operational rules, such as those pertaining to management and accounting, are not examined.

1. In General

Definition. Article 210 of The Commercial Code defines a business organization as "any association arising out of a partnership agreement." A partnership agreement is "a contract whereby two or more persons who intend to join together and to cooperate undertake to bring together contributions for the purpose of carrying out activities of an economic nature and of participating in the profits and losses arising out thereof if any."[2]

Whenever a valid partnership agreement is made and other required formalities, if any, are performed, a business organization exists. The agreement is at the heart of the organization. But the organization is more than the agreement. The law contains numerous provisions which regulate business organizations, many of which may not be modified by the agreement. Also, except for joint ventures, all business organizations have legal personality. Thus, a business organization has an institutional aspect with an existence dependent upon, but separate from, the partnership agreement.

Like any other organization or association of persons, the business organization enables people to do things which would be difficult or impossible for them to do alone. What is unique about the business organization is that its object is the making of profits. By "profits" is meant pecuniary gain, not spiritual or intellectual benefit. It includes satisfaction of the financial interests of the organization's members "by placing them in a position to save money."[3]

Business organizations are governed primarily by Book II of the Commercial Code. Articles 210-226 of Book II contain general provisions applicable to all, and

1. Although the drafters of the Code drew upon many sources in preparing the text, the overall pattern of the business organization provisions resembles most closely Book 5, Title 5, of the Italian Civil Code. See *Italian Law of Companies. Labour Enterprise and Economic Organization* (trans. V. Venturini; Deventer, Holland; Kluwer, 1967).

2. Comm.C., Art. 211.

3. Civ. C., Art. 405(2).

the subsequent articles contain special rules concerning the various kinds of business organizations, conversion and amalgamation, and foreign business organizations.

Associations Distinguished. An association is "a grouping formed between two or more persons with a view to obtaining a result other than the securing or sharing of profits."[4] Associations may be formed for a variety of non-profit purposes; examples are a sports organization, a debating club, a literary group, a charitable organization, etc. Religious groups other than the Ethiopian Orthodox Church, and organizations formed to defend their members' financial interests or to represent a particular calling, are treated as associations, except to the extent they are governed by special laws.[5]

Associations are governed by Articles 408-482 of the Civil Code. These provisions and Book II of the Commercial Code are independent of each other. One does not contain general or special rules of the other. This is true despite the fact that Article 210(1) of the Commercial Code defines a business organization as an "association" based on a partnership agreement. It means a "grouping," a more accurate translation of the term used in the original French text.[6]

Because associations do not have an object of making profits and business organizations do, they are subject to different schemes of regulation. Thus, associations are supervised by the office of associations of the Ministry of Interior.[7] Business organizations generally fall under the Ministry of Commerce and Industry.[8]

What if a grouping is formed for a non-profit purpose, but in fact regularly carries on profit-making activities? This would be a ground for judicial dissolution of the association, on the application of the association's board of management of one-fifth of the members or of the office of associations of the Ministry of Interior.[9] The Commercial Code expressly prohibits an association from carrying on a trade, one of those profit-making activities listed in Article 5 of the Commercial Code. If an association does carry on a trade, it is subject to dissolution under Article 461 of the Civil Code.[10]

Even if an association carries on a profit-making activity, it may find it difficult legally to get those profits to its members. The money and other property owned by an association may not be distributed to its members when it is dissolved.[11] No provision states whether or not such profits may be distributed to

4. Civ. C. Art. 404
5. Civ. C., Arts. 406, 407.
6. References to the French text of the Commercial Code are to *Code de commerce de L' Emire d'Ethiopie de* 1960 (Paris, LGDJ, 1965); of the Civil Code, *Code civil de l'Emiree d' Ethiopie de* 1960 (Paris, LGDJ, 1962). References to the Amharic texts are based on assistance provided by Ato Kebede Kassa and Ato Shibru Scifu.
7. Civ. C., Arts. 468-482. See also the Associations Registration Regulations, 1966, Leg. Not. No. 321, *Neg. Gaz.*, year 26, no. 1.
8. The powers of the two ministries differ. See, for example, Civ C., Art. 473, requiring the office of associations to be notified of the general meetings of an association and enabling it to prescribe measures to ensure the "good functioning" of the meeting and to send an observer to it. The Ministry of Commerce and Industry is not given such powers.
9. Civ. C., Art. 461(c).
10. Comm. C., Art. 25.
11. Civ. C., Art. 467.

members during the life of the association, but it seems inconsistent with the spirit of Articles 407, 467, and related provisions, to do so. Of course, an association may carry on particular activities from time to time in order to acquire money to help it obtain its normal non-profit objects. But it may not engage in profit-making activities on a regular basis.

Cooperatives. Article 4 of the Co-operative Societies Proclamation of 1966[12] defines a cooperative society as one which has as its "principal purposes and objects",

> the promotion, in accordance with co-operative principles and the requirements of social justice, of better living, better business and better methods of production by such means as:
>
> (1) reducing the cost of credit;
>
> (2) reducing the cost of goods and services for production and consumption;
>
> (3) minimizing and reducing the individual impact of risks and uncertainties;
>
> (4) spreading knowledge of practical technical improvements; or
>
> (5) may otherwise contribute to achieve the above-mentioned purposes and objects.

Before the adoption of the Co-operative Societies Proclamation, a co-operative would theoretically have had to be formed either as an association or as a business organization, according to its activity. It would have to be formed as a business organization if it tended to "satisfy the financial interests of their members by placing them in a position to save money."[13] This would occur in particular with those activites specified in paragraphs (1) and (2) of Article 4 of the Co-operative Societies Proclamation; reducing the cost of credit, goods or services.

One way in which the members of a co-operative might cut costs and save money is by working for the organization or acquiring items from or selling them to the organization. This eliminates the separate employer and the "middleman" in the buying and selling process.

For example assume that a person could buy beans for fifty cents per kilo in any vegetable store in Addis Ababa. Assume also that the owner of the store paid the farmer thirty cents for that kilo of beans, and out of the twenty cents remaining uses ten cents to pay for the expenses of operating his store and keeps ten cents as profit. If under these circumstances many bean consumers got together and agreed to form a cooperative to buy and sell beans, they could each save ten cents on each kilo of beans. The cooperative would buy beans from the farmer at thirty cents per kilo. It would probably have expenses similar to those of the owner of the vegetable store; say, ten cents per kilo. But since there is no store owner (the "middleman") to take a profit, the members of the cooperative can acquire the beans for forty cents per kilo instead of fifty cents. Or, the cooperative may sell at fifty cents per kilo, and divide up the surplus (representing ten cents

12. Proc. No. 241, *Neg. Gaz.*, year 25, no. 24. See also the Cooperative Societies Regulations, 1968, Leg. Not. No. 337, *Neg. Gaz.*, year 27, No. 11.

13. Civ. C., Art. 405(2).

on each bag of beans) among the members at the end of the year. The net result is the same. As another example, consider one kind of credit cooperative. The purpose of a credit cooperative is to lend money to its members at a rate of interest lower than that charged by the bank or other lending institutions. (It may also require less security.) Say the bank normaly charges individual borrowers nine per cent interest. The credit cooperative may be able to borrow from the bank at a lower rate because it is borrowing a much larger sum of money (the sum all its members would have borrowed individual combined) and can probably offer better over-all security. Let us assume that lower rate is seven per cent. The credit cooperative can then lend money to its members at, say, eight per cent. The cooperative uses the difference between the seven per cent it owes the bank and the eight per cent it receives from its borrowing members to cover its expenses. The borrowing member has saved one per cent for himself, since he only must pay eight per cent interest for an amount on which he would have had to pay nine per cent interest if he borrowed from a bank.

Any cooperative which has the purposes and objects specified in Article 4 of the Co-operative Societies Proclamation may be formed according to that proclamation.[14] A cooperative formed under the proclamation would be registered with the Registrar of Co-operative Societies of the Ministry of National Community Development and Social Affairs and become subject to the regulatory scheme of the proclamation and that Ministry. According to Article 59 of the proclamation, the provisions of the Commercial Code would not apply to such a cooperative:

> except in so far as such provisions are consistent with the purposes and provisions of this Proclamation, and, in particular, but without limitation, [cooperative] societies shall not be subject to any requirement of organization, registration or internal management otherwise applicable to trades or business organizations under the Commercial Code.

It should be noted, however, that registration under the Co-operative Societies Proclamation is optional. Persons forming a cooperative which enable its members to save money may still create it in one of the forms of business organization provided by the Commercial Code if they wish.

Other Organizations. If two or more persons form a group with a view to securing or sharing profits, their group is subject to the provisions of the Commercial Code concerning business organizations. If their group is formed with any other purpose in mind, it is subject to the provisions of the Civil Code concerning associations.[15] However, special laws may create groups other than associations and business organizations. Some of these laws provide rules for the formation of particular types of groups. Others are charters of specific organizations. In the Civil Code itself, we find provisions regulating syndicates of joint owners, where parts of a building are individually owned and parts jointly owned (Arts. 1293-1308); agricultural communities (Arts. 1489-1500), and official associations of landowners (Arts. 1501-1534).[16] Outside the Civil Code, there are the Co-operative Societies Proclama

14. Comm. C., Art. 212(2).
15. Civ. C., Arts. 404, 405.
16. Compare the Civil Code provisions on property with a specific destination, endowments and trusts: Title III, Chap. 3.

tion and the Imperial Savings and Home Ownership Public Association Proclamation.[17] In addition, there are several non-profit organizations chartered by His Imperial Majesty before the adoption of the Civil Code.[18]

Some authors have suggested that the codes leave a "gap" for customary cooperative organizations such as *ikub*, and that they exist outside the regulation of the codes.[19] In the opinion of the present author, this is not true. As stated above, Articles 404 and 405 of the Cvil Code provide rules governing every kind of "grouping." A cooperative organization, customary or not, is a grouping. Pursuant to Article 3347(1), any customary rules pertaining to such an organzation have been replaced by the Code, except as they may survive for previously created rights and situations under Articles 3348-3351. Such an organization falls under Articles 404 and 405 and, at least in contemplation of the code, is either an association or business organization, unless formed pursuant to the Co-operative Societies Proclamation of 1966 or some other law. Even if a customary cooperative is viewed merely as a contract, it would be governed by the Civil Code provisions on contracts and not by customary law.

2. Classification of Business Organizations

The Commercial Code classifies business organizations in two different ways: first, according to the particular form of organization; second, according to whether it is commercial or non-commercial. It may also be helpful to distinguish organizations according to how much they emphasize the role of particular individuals.

Form of Organization. The Code recognizes six forms of business organization: ordinary partnership, joint venture, general partnership, limited partnership, share company and private limited company. The following paragraphs summarize the basic characteristics of each.

(1) Ordinary Partnership (Arts. 227-270). This is an organization usually of a relatively small number of persons. It may not be a commercial business organization; that is, it may not carry out any of the activities specified in Article 5 of the Commercial Code. Since Article 5 mentions most profit-making activities, the use of the ordinary partnership form is extremely limited. The members do not have limited liability. Membership interests are not freely transferable.

(2) Joint Venture (Arts. 271-279). This organization is usually formed with a relatively small number of persons for a limited purpose or short period of time. Unlike all the other forms of business organization, the joint venture is not a legal person and its existence may not be disclosed to third persons. Membership is not freely transferable. The liability of the members depends on the memorandum of association.

17. 1962, Proc. No 188, *Neg. Gaz.*, year 21, no. 11.

18. For example, the Chamber of Commerce, Gen. Not. No. 90 of 1947, *Neg. Gaz.*, year 6, no. 8; Ethiopian Red Cross Society, Gen. Not. No. 99 of 1947, *Neg. Gaz.*, year 7, no. 2; Ethiopian Horse Racing Club, Gen. Not. No. 230 of 1957, *Neg. Gaz.*, year 17, no. 6.

19. G. Krzeczunowicz, "A New Legislative Approach to Customary Law: The Repeals Provision of the Ethiopian Civil Code of 1960," *J. Eth. Studies*, vol. 1, no. 1 (1963); J. Vanderlinden, "An Introduction to the Sources of Ethiopian Law," *J. Eth. L.*, vol. 3 (1966), p 244. For a description of ikub, see Asfaw Damte, "Ekub," *Bulletin of the Ethnological Society.*

(3) General Partnership (Arts. 280-295). This organization usually is formed with a relatively small number of persons. Membership is not freely transferable. Its members do not have limited liability. It is the most common form of business organization without limited liability. It is governed by a substantial number of the provisions concerning ordinary partnership, as well as Articles 280-295.

(4) Limited Partnership (Arts. 296-303). The Limited partnership is basically the same as the general partnership, with one exception: one or more (but not all) of its members have limited liability. Membership is not freely transferable. It is governed by a substantial number of the rules on general partnership and ordinary partnership. Articles 296-303 add to these rules modifications which are required by the presence of members with limited liability.

(5) Share Company (Arts. 304-509). The share company is fundamentally different from the forms previously discussed, in that all of its members enjoy limited liability. It may, although not necessarily, consist of many members. Membership is freely transferable. Share company is the form usually chosen to operate enterprises which require vast sums of money.

(6) Private Limited Company (Art. 510-543). This organization is a mixture of the share company and the partnership. It is like the share company in that all its members enjoy limited liability. It is like the partnership in that it usually has a small number of members and its membership interests are not freely transferable.

According to an unofficial compilation of statistics, there were about 389 business organizations registered at the Ministry of Commerce and Industry in 1965. About 108 of these were general partnership, or general partnerships and limited partnerships. (It is unclear whether limited partnerships were included or whether there were just none registered.) The total declared capital of these organizations was Eth. $7,324,000. About 106 of the registered organizations were share companies, with a total declared capital of Eth. $218,781,000. About 175 were private limited companies, with a total declared capital of Eth. $34,775,000.[20]

It should be noted that the word "partnership" is used in the names of business organizations in Article 212(1) in a manner different from that in which it is used in Article 405 of the Civil Code and Article 211 of the Commercial Code. When it is used in the name of a business organization, it is used either for want of a better word or because the form of business organization being described is closest to the type of business organization in the English-language Common Law which has that name. When it is used in Article 405 of the Civil Code and in Article 211 of the Commercial Code, it has the same meaning as the general phrase "business organization."[21]

Commercial Business Organizations. Article 10 of the Commercial Code defines a commercial business organization as one in which the "objects under the memorandum of association or in fact are to carry on any of the activities specified in Article 5 of this Code." Share companies and private limited companies are always commercial "whatever their objects." This definition is supplemented by Article 213,

20. Selamu Bekele, *Private Commercial Companies under Ethiopian Law: Their Legal and Practical Significance* (1966, unpublished, Archives, Faculty of Law, Haile Selassie I University).

21. The word consistently used in the French version for business organization, is *société*.

which provides that any of the six organizational forms specified in Article 212 may be a commercial business organization except for an ordinary partnership. The net effect of Articles 10 and 213 is that an ordinary partnership may not be a commercial business organization (and thus may not carry on any of the activities specified in Article 5); share companies and private limited companies are always commercial, whether or not their objects include any of the activities specified in Article 5; general partnerships, limited partnerships and joint ventures may or may not be commercial, depending on whether or not one of their objects according to the memorandum of association or in fact is to carry on any of the activities specified in Article 5.

If a commercial business organization is created in the form of an ordinary partnership, or if a commercial business organization is created and its form is not specified, the organization is deemed to be a commercial general partnership.[22]

The distinction between commercial and non-commercial business organizations is very important in the French version of the Commercial Code. It is less important in the English version. It is even less important in the Amharic version.

In the French version, only commercial business organizations are required to keep accounts and to register and be publicized. Only commercial business organizations may go through bankruptcy and only commercial business organizations are generally subject to the provisions governing traders.[23]

In the English version, only commercial business organizations are required to keep accounts and only they may go through bankruptcy. But all business organizations other than joint ventures must register and be publicized and all business organizations are subject to the provisions governing traders.

In the Amharic version, only commercial business organizations are required to keep accounts. But all business organizations other than joint ventures must register, all other than joint ventures may go through bankruptcy and all are subject to the provisions governing traders.

The Role of the Individual Member. In some business organizations, the participation and identity of a particular member are typically more important to the other members than they are in other business organzations. This helps explain some of the business organization provisions.

In the ordinary partnership, general partnership, limited partnership and joint venture, there are usually a relatively small number of members and the importance of a particular member is great. Except for limited partners in a limited partnership, the members normally work in or for the organization. They must get along well together if the organization is to function properly. In addition, in each of these organizations there are persons without limited liability. A person without limited liability is much more concerned about the qualifications and character of

22. Comm. C., 213(2). The French version contains the phrase "expressly or implicitly" before the word "specified." The Amharic and English versions omit it. Sound interpretation would read it in, however.

23. Comm. C., Arts. 63, 73 (accounts); 100, 219, 223 (registration and publicity); 968 (bankruptcy); 3 (provisions governing traders).

his fellow members than the person with limited liabilty. The importance of the individual member is reflected in such rules as those making it difficult to transfer membership interests, presuming a requirement of unanimous approval of the members for major decisions, and presuming dissolution of the organization when a member dies, becomes incapable or goes bankrupt.[24]

A share company may have just a few members. On the other hand, it may also sell "shares" to the public and acquire many members. In the latter situation, the identity of any member is often unimportant to the others; most members join the organization chiefly as a means of investing their money and take little or no part in the management of the organization. All members have limited liability for the company's debts. Many of the share company provisions in the Code reflect this situation. Thus, death, incapacity or bankruptcy of a member does not result in dissolution, and membership interests are freely transferable.[25]

The private limited company has some aspects of each type of organization. It normally has relatively few members. Membership interests are not freely transferable. But all members have limited liability and death, incapacity or bankruptcy of a member is not presumed to result in dissolution.[26]

The different role of the individual is reflected not only in the different rules which govern these organizations, but also in the different role the partnership agreement plays in them. The partnership agreement is very important in establishing the internal rules of an organization such as the general partnership. There are relatively few code provisions, and many of the provisions which do exist may be over-ruled by different provisions in the partnership agreement. This is so because the individual is so important, and because he can be relied on to protect his own interests. Also, creditors of the organization do not need extensive protection because they usually have one or more members whom they can sue if the organization does not pay its debts. On the other hand, the code provides many rules governing share companies, only a few of which may be modified by the partnership agreement. In companies with a large number of members, the individual member may have difficulty exercising control. Since all members have limited liability, more provisions are needed to protect creditors. And, finally, since share companies may raise huge amounts of capital, they may become more influential in the economy than the organization of persons; it becomes all the more important for the law to assure proper functioning of the organization.

3. Legal Personality

Definition Persons are the subjects of rights and obligations. They may be compared with goods, which are objects of rights and obigations. For example, a chair may be owned or sold by a person. It cannot itself own something else; ownership is a right, which only a person may enjoy. Neither can it make a contract, a type of obligation, which only a person may incur.

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24. See Comm. C., Arts. 233, 250, 260, 283.

25. Comm. C., Arts. 333(3), 495.

26. Comm. C., Arts. 510(2), 523, 542(3).

Article 1 of the Civil Code provides: "The human person is the subject of rights from its birth to its death." In a number of situations, the law attributes personality to a thing or a group. Thus, Article 210(2) of the Commercial Code provides that "any business organization other than a joint venture shall be deemed to be a legal person." This is a way of enabling the organzation to become the subject of rights and obligations.[27]

A business organization is chiefly a collection of physical persons and of property. If the organization is not treated as a person, the members would noramlly be joint owners of the property. Any obligations incurred in the course of operating the business would noramlly be made in the name of one or more of the members, and those members would become subject to such obligations. When the law provides that the organization is a legal person, the organization itself may own the property and obligations may be made in the name of the organization. In the eyes of the aw, it is like a physical person, distinct from the persons who are its members. For example, say A, B and C are all physical persons, and that A owns land and B and C have no interest in that land. The positions of the three parties with regard to the land are clear. If the situation is changed so that A is a business organization with legal personality, and B and C are members, the result is the same. A, a legal person, owns the land. B and C do not. It may be that B and C are agents of A, and as such deal with the land; but if so, they do it on behalf of A. As members, B and C may participate in decisions which affect the land; but if so, their rights are of participation in the organization and not ownership of the land. The organization pays the taxes on the land, if any. It may sell the land, and does so in its own name when it does. A similar analysis could be applied to contractual and extra-contractual obligations, and to juridical acts in general.

The principle was applied by the High Court in Addis Ababa in the case of *Delbourgo* v. *The Inland Revenue Department*.[28] The petitioners were a share company and three members of the company. The Inland Revenue Department, in assessing the income tax of the company, had ordered the three members to produce the pass books and statements of their private bank accounts. The court held that the department had no power to make such an order, because the tax being assessed was only that of the company, and "the principle remains that a company has a completely different legal personality from the individual members or shareholders."[29]

The concept of the legal person is used in many areas other than business organizations...for example, it is applied to the State and its subdivisions, the Ethiopian Orthodox Church and associations.[30]

27. Battles have long raged as to the nature of legal personality. For a discussion of the various theories, see R. Pound, *Jurisprudence* (St. Paul, Minn.; West, 1959), vol. 4, pp. 191-261.

28. High Ct., Addis Ababa, 1961, Civil Case No. 166-53 (unpublished). The case arose before the Commercial Code came into effect, but the reasoning of the court applies as well to companies formed under the code.

29. It should be noted that since legal personality is a creature of the law, the law may in some circumstances disregard or piece through it, particularly where it is used to perpetrate fraud or other unlawful activities.

30. Civ. C., Arts. 394-403, 451-458. Different names are sometimes used—for example, "body corporate," "juridical person," artificial persons," or "corporation." Generally, when these words are used, the group to which reference is made is deemed by the law to be a person, capable of having rights and obligations.

Attributes of the Legal Person. The following paragraphs discuss some of the characteristics of legal persons, with reference to business organizations. Any reference to business organizations does not include joint ventures, of course, since they do not enjoy legal personality.

Capacity. The extent to which the law permits a person to possess and exercise rights is called his capacity. (The term "rights" when used in this sense includes its converse, the incurring of obligations). When the law deprives him of rights or of the permission to exercise rights for himself, he is said to have an incapacity.

The distinction between the enjoyment of rights and their exercise should be noted. When we speak of the capacity of a legal person, we are only concerned with its enjoyment of rights. A legal person cannot by its very nature exercise any rights by itself; it must act through agents.

Incapacities normally are imposed for one of two purposes: protection of an individual against his own indiscretion, as in the case of minors and insane and infirm persons, and protection of society against a person it distrusts or suspects, as in the case of criminals legally interdicted and foreigners.[31]

According to Article 192 of the Civil Code, a physical person "is capable of performing all the acts of civil life unless he is declared incapable by the law." The capacity of a legal person, adds Article 197, is to be regulated by the particular provisions applicable to it.

Article 22 of the Commercial Code enables a business organization "to carry on any trade," subject to legal prohibitions, valid agreements prohibiting competition and any legal provisions regulating that trade.[32] But no law deals with the capacity of a business organization to engage in activities generally (as trade is only one of those activities listed in Article 5 of the Commercial Code), to make contracts and perform other civil acts.

In this situation, the general rule provided for physical persons should be adopted for business organizations by analogy. A business organization should be capable of performing all the acts of civil life consistent with its nature unless declared incapable by law. It is a sound rule, since one to the contrary, by making the existence of capacity depend on specific laws or the content of the memorandum of association, would create uncertainty and inhibit commercial activity. Specific incapacities if desired can always be created by law, as they are in the case of physical persons. This is the basic rule regarding associations. "An association may perform all civil acts which are consistent with its nature."[33]

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31. See generally, Civ C., Arts. 192-393.

32. The English phrase in Article 22, "subject to such prohibitions or lawful restrictions regarding unfair competition as may be prescribed" is slightly inaccurate. The French and Amharic speak of legal prohibitions and legitimate agreements prohibiting competition. The typical unfair competition agreements of this nature are governed by Comm. C, Arts. 30, 158, 159, and Civ, Arts. 2589-2592.

33. Civ. C., Art 454(1). This also is the general rule for business organizations in France. G. Ripert, *Traité élémentaire de droit commercial* (5th ed. by R. Roblot, Paris, LGDJ, 1963-64), vol. 1, no. 680. For a description of a more restrictive rule and the problems it creates, see J. Escarra, "Some Points of Comparison Between the Companies Act., 1948, and the French Law of Companies," *Cambridge L.J.*, vol. 11 (1953), p. 24; Great Britain, Board of Trade, *Report of the Company Law Committee* (Cmnd. 1749) (London, HMSO, 1962), pp. 10-13. See also Ghana, Commission of Enquiry into the Working and Administration of the Present Company Law of Ghana, *Final Report* (Accra, Government Printer, 1961), pp. 36, 41, 42.

Assuming this is the general rule, a business organization has the capacity to make contracts, to sue and be sued to receive gifts, and generally to perform any civil act, subject to physical limtations imposed by its abstract nature and to restrictions imposed by law.

Naturally, a business organization, like any legal person, cannot do the things physical persons can do which depend on the human nature of the physcal person. On the other hand, it is not subject to incapacities which depend on human characteristics of physical persons; for example, those based on minority, insanity, and infirmity.

Rights and Liabilities Many attributes are directly connected with the capacity of a legal person to enjoy rights. These include, particularly with regard to business organizations, the following:[34]

(a) The organization may sue or be sued.

(b) The property of the organization is not available to satisfy judgments against its members on their personal debts. A personal creditor of a member who obtains a judgment against him may not have it executed on the property belonging to the organization, even if the property was contributed to the organization by that member. The member is not the owner of such property, either alone or jointly. On the other hand, the personal creditor may proceed against the membership interest of the member. If a creditor obtains a judgment against the organization, he may have that judgment executed on property belonging to the organization. He may proceed against property belonging to an individual member only if that member does not enjoy limited liability for the debts of the organization, and he may be required to satisfy his judgment from the property belonging to the organization. A personal creditor of a member who obtains a judgment against the member may not have it executed on the property belonging to the organization, even if the property was contributed to the organization by that member. The member is not the owner of such property, either alone or jointly. On the other hand, the judgment of the personal creditor may be executed on the membership interest of the member.

(c) There is no set-off between debts owed to third parties by the organization and debts owed by third parties to individual members (or in the converse situation).

(d) When a member dies, his heirs inherit no rights of ownership over the property belonging to the organization. Their rights only involve the membership interest of the deceased. Depending on the type of organization and the provisions of the memorandum of association, they might inherit the membership interest or be paid its value by the organization. Even if the organization is dissolved upon a member's death, the heirs do not inherit its property; they are paid the value of the proportionate share of the deceased member just as if dissolution occurred while the member lived. An important result of this is that if the law or the memorandum of association so provides, an organization may have a "life" which survives that of its members.

34. See. G. Ripert, cited above at note 33, no. 679

(e) A business organization may be put into bankruptcy or employ a scheme of arrangement.[35]

(f) The business organization is primarily liable to pay the taxes on its property, income and taxable activities.

Representation and Civil Liability Since a legal person cannot act by itself, Article 216 of the Commercial Code provides that "a business organization shall acquire rights and incur liabilities by its agents in accordance with the provisions relating to agency." Title XIV of the Civil Code contains the general rules of agency in Ethiopia. Particular rules regarding business organzations are provided in the parts of the Commercial Code dealing with each organization. These rules deal chiefly with managers. Each organization has one or more managers, who have general powers to represent the organization. In share companies, the management function is split between a board of directors and a general manager. Articles 28-62 of the Commercial Code, which contain particular rules dealing with commercial employees, managers of traders, commercial travellers and representatives, commercial agents, commercial brokers and commission agents, also apply to business organizations, except to the extent they are expressly or impliedly modified by the provisions on business organizations.[36]

In general pursuant to the rules of agency, a business organization is bound by any contracts or other act made in its name by an agent acting within the scope of his powers.[37] It may also be bound in certain other circumstances; for example, in a general partnership, when a manager acts in his own name but for the benefit of the partnership.[38]

A business organization is subject to extra-contractual liability when one of its agents or employees incurs a liability in the discharge of his duties. In such a case, the organization and the agent or employee are jointly and severally liable.[39] The organization will not be liable if the person who incurs the liability is not subject to its control or is deemed to have retained his independence. The liability is presumed to have occured in the discharge of duties if the damage is caused at the place where or during the time when the agent or employee is normally employed; this presumption is rebuttable by evidence to the contrary.[40]

Penal Liability. It is unclear whether a legal person is subject to penal liability, in the absence of an express provision making it liable.[41] Doubt as to liability

35. Comm. C., Art. 968(1). But see note 23 above and accompanying text.

36. Comm. C., Art. 3.

37. Comm. C., Art. 216(1); Civ. C., Art. 2189(1). See W. Church, "A Commentary on the Law of Agency-Representation in Ethiopia" *J. Eth. L.*, vol. 3 (1966), p. 303.

38. Comm. C., Art. 290(2).

39. The English version of Civ. C., Art. 213(2) says "jointly liable." The French and Amharic are more accurately translated as "jointly and severally liable." The distinction and its importance are discussed in W. Church, cited above at note 37, p. 315.

40. Civ. C., Arts. 2129-2134, 2136.

41. P. Graven, *An Introduction to Ethiopian Penal Law* (Addis Ababa, Haile Sellassie I Univ., Faculty of Law, 1965) p. 58.

arises from at least four sources. First, being without mind or limbs, a legal person cannot have the intent or negligence in action which must exist for a person to be guilty of a crime.[42] Second, there is no provision in the Penal Code similar to Article 2129 of the Civil Code, which makes legal persons civilly liable for the acts of their agents and employees. Third, Article 689 of the Penal Code states that if an economic or commercial offense defined in Article 671-688 is committed in the management of a body corporate, punishment is imposed on the managers, agents, members, directors, auditors or liquidators who committed the offense.[43] Fourth, punishments such as death and restriction of liberty cannot be imposed on a legal person. Yet a punishment such as a fine *can* be imposed on a legal person. And restricting liability to physical persons would ignore the reality that the facilities of an organization may be used in, or benefit from, the perpetration of a crime; punishing the organization may be the best way to deter the crime.

The Penal Code does provide that a court may order closed or suspended any "undertaking or establishment" used to commit or further the commission of an offense which endangers public security.[44] If the offender has been punished with sentence of rigorous imprisonment exceeding one year, the undertaking or establishment may be dissolved and wound up.[45] Since legal persons engage in undertakings and have establishments, these articles in effect impose liability on them. But they do not completely solve the problem of liability of legal persons. In the first place, they only contemplate crimes where a natural person is also liable. Article 147 expressly provides that it applies in addition to the penalty imposed on the offender. In the second place, closing the undertaking may be ordered only after crimes endangering public security. Finally, an order under Article 147 is a drastic remedy, even if limited in time and place. In many situations, a fine may be more appropriate.

Whatever the case in general, a legal person may be deemed to have committed a crime where expressly so stated. Only one Penal Code provision appears to do this.[46] Article 576 provides for the levying of a fine on a legal person committing an offense against honor or reputation. Closing or dissolution under Article 147 may also be ordered, and the officers and other natural persons who commited the offense may be punished as well.

Name. A legal person usually has a name. The name of a business organization is chosen by the members, subject to any legal requirements. There are no specific requirements for the name of an ordinary partnership. The name of any the other types of business organization must contain the type of organization it is — "General Partnership," "Share Company," etc. In addition, the name of a general partnership must consist of the names of at least two partners and the name of a limited partnership may only consist of the names of general partners. The names of a share company and private limited company may be freely chosen;

42. Pen. C., Arts. 23, 57.

43. This also applies to petty offences. Pen. C., Art. 820.

44. Pen. C., Art. 147. The scope of offences for which an order may be made under Article 147 is vague. However, some provisions, such as Article 689, expressly provide for its application. Some others, such as Article 364, provide for the punishment of closing or suspension without mentioning Article 147.

45. Pen C., Arts. 147, 148.

46. P. Graven, cited above at note 41, p. 58.

for example, with the names of one or more members, a term of fantasy, an indication of the purpose of the business, or a combination of these.[47]

Article 305 of the Commercial Code prohibits the choice of a share company name which offends public policy or the rights of third parties. This is the only place a specific requirement of this nature is established, but the principle would seem applicable to every business organization. In-sofar as public policy is concerned, it is embodied in Article 2030 of the Civil Code, which prohibits anyone from acting in a manner which offends morality or public order.

Various provisions deal with specific rights of third parties, or wrongs which may be done by the use of a name. In general, a name may not be chosen for a business organization which would tend to create confusion among customers with the name of a competing business organization or trader. If such a name is chosen, the rules concerning unfair competition would apply.[48] In this sense, the name of a business organization is like a trade name, which is the "name under which a [trader] operates his business and which cleary designates the business."[49]

A physical person may not use his own name in the name of a business organization connected with his occupation if it has "the object or effect of causing prejudice, by means of a harmful confusion, to the credit or to the reputation of a third person." The offender is subject to an action in unfair competition or defamation.[50] A business organization may not usurp the name of any physical person in such manner that he suffers harm thereby.[51]

Head Office. The place of its head office has consequences for the legal person similar to those of domicile for the physical person. The term "head office" is not defined in the codes. In French law, it means the place where the principal organs of administration and management of the organization are found.[52]

The location of the head office is important in procedural matters, particularly insofar as court jurisdiction and service of process are concerned.[53] It also is important in matters related to nationality.

Nationality. One may hear business organizations, particularly share companies, referred to as "Ethiopian" or "foreign." In a way, it is inaccurate to speak of nationality in this situation, since a legal person cannot feel the sense of allegiance and does not enjoy certain rights of citizenship (such as the right to vote) which are usually connected with nationality. But some laws do speak of legal persons or business organizations which are "foreign" or have "nationality," and the rights and obligations of an organization may be different if it is connected in some way with a foreign country. Particularly important are the laws governing the formation

47. Comm. C., Arts. 281(1), 297(2), 305, 514.

48. Comm. C., Art. 133(2) (a).

49. Comm. C., Art. 135, 137(2), 138(2). See also Civ. C., Art. 2057, and Pen. C., Art. 673, dealing with civil and penal unfair competition.

50. Civ. C., Art. 45.

51. Civ. C., Art. 46.

52. G. Ripert, cited above at note 33, no. 676; L. Becker, "The Société Anonyme and the Société à Responsabilité Limitée in France," *New York Univ. L. Rev.*, vol. 38 (1963), p. 842.

53. See, for example, Civ. Pro. C., Arts. 22, 97; Comm. C., Art. 216(3).

and operation of a business organization, the right generally to carry on activities in Ethiopia and specific rights reserved to Ethiopan citizens.[54]

In principle, a legal person with its head office in a foreign country has such nationality as is given to it by the laws of that country.[55] It follows that a legal person with its head office in Ethiopia is of Ethiopian nationality, although no law expressly so provides. This abstract principle is limited by concrete rules concerning the enjoyment of rights in Ethiopia of legal persons in general and the formation and operation of business organizations in particular.[56] To summarize: Insofar as the formation and operation of a business organization and its enjoyment of rights in Ethiopia are concerned, three factors are taken into account: the location of its head office, the place of its principal object of business and the country under whose law it is formed. A business organization with its head office in Ethiopia is subject to Ethiopian law with respect to its formation and operation. An organization with its head office abroad is subject to Ethiopian law if it is formed in accordance with Ethiopian law or if its principal object of business is in Ethiopia.[57] An organization formed abroad (and, presumably, with its head office and principal object of business abroad) must register in Ethiopia and is subject to Ethiopian law with respect to its Ethiopian offices.[58] Wherever its head office is, a business organization is defined as "foreign" under the Business Enterprises Registration Proclamation if it is "organized or existing under" the law of another country. Such organizations are required to register before engaging in activities in Ethiopia, with somewhat different requirements from those imposed on "domestic" organizations.[59] In addition to the factors mentioned above, the existence of foreign interests (for example, in membership or management) may be taken into account by special laws.

54. For brief discussions of nationality, see H., L. and J. Mazeaud, *Lecons de droit civil* (3d ed., Paris, Editions Montchrestien, 1963), vol. I. no. 617; E. Church, *Business Associations under French Law* (London, Sweet & Maxwell, 1960), no. 677. As to the capacity of foreigners to join Ethiopian business organizations, see notes 100-107 and accompanying text, below.

55. Civ. C., Art. 547(2).

56. Civ. C., Arts. 545-549; Comm. C., Arts. 555-560. These articles are substantially more detailed than the summary in the text.

57. Comm. C., Art. 455, states in the English version that firms incorporated abroad are subject to the Code if their head office or principal place of business is in Ethiopia. The French and Amharic speak of the principal purpose of the business, not the place. Regarding the capacity of foreigners to join Ethiopian business organizations, see notes 100-107 below and accompanying text.

58. Articles 545-549 of the Civil Code require "bodies corporate" with their head offices abroad to obtain the approval of the Ministry of Interior before engaging in any activities in Ethiopia. Once such approval is obtained, it enjoys civil rights as if it were of Ethiopian nationality, except that the Ministry of Interior may impose restrictions on its activities and it cannot own immovable property in Ethiopia without an Imperial Order. It is unclear whether these provisions apply to business organizations. Business organizations are bodies corporate, and the Commercial Code contains no provisions dealing with such matters as ownership of immovable property by foreigners. On the other hand, Civ. C., Art. 405(1), provides that business organizations are generally subject to the Commercial Code, and that code does not speak of such approval. Also, foreign business organizations doing business in Ethiopia are required to register with the Ministry of Commerce and Industry, pursuant to the Business Enterprises Registration Proclamation (see note 59 below) and Comm. C., Arts. 556, 559.

59. Art. I(2), Proc. No. 184 of 1961, *Neg. Gaz.*, year 21, no. 3.

Limited Liability. Suppose a business organization incurs a contractual or extra-contractual obligation, and the organization does not have sufficient funds to perform its obligation. May the members be made to fulfill it?

In some business organizations, the members may be held liable for a debt of the organization, if the organization fails to pay the debt itself. This is true for all members of the general partnership, for the general partners in a limited partnership and normally (but not necessarily) for all members of an ordinary partnership. In other business organizations, the members are not liable. Creditors may sue the organization and seek payment from the assets of the organization. The members may be made to pay the organization any amount of their contributions remaining unpaid, but they may not be asked to pay more. The liability of the members for debts of the organization is limited to the amount of their contributions. They are said to have limited liability. This is true for all members in a share company and private limited company and for the limited partners in a limited partnership.

Limited liability is a great advantage to a businessman. He may operate his business without the fear of losing all his personal property if the business fails. In such a case, he will lose only what he contributed to the business organization. It also makes it easier for him to obtain more money to run the business, by obtaining new members who make contributions. Such new members may not be willing to invest their money if they themselves will become liable for debts of the business.

Limited liability contains obvious dangers for creditors of business organizations and the law contains a variety of provisions to protect them. Organizations in which the members enjoy limited liability either must have a specified minimum capital (share companies and private limited companies) or must have at least one member without limited liability (limited partnership). The share company is subject to a large number of rules imposed for the protection of creditors, such as limitation on distribution of corporate assets to shareholders. The private limited company has fewer such rules, but may find it more difficult to obtain credit without the personal guarantee of one or more members.

Capital. The concept of capital plays a large role in the law of business organizations, particularly those with limited liability. Its ramifications are complex and require greater discussion, but a brief explanation is appropriate here.[60]

Article 80(1) of the Commercial Code defines capital as "the original value of the elements put at the disposal of the undertaking by the . . . partners by way of contributions in cash or in kind." Every business organization is formed with contributions. Each member must transfer to the organization something of value, be it money, land, other corporeal or incorporeal property, or services. For example, assume five men wish to form a business organization with cash contributions. They draw up the necessary documents, complete whatever registration and publicity is necessary, and transfer the money to the organization. The money will usually be put in a bank account in the name of the organization. Assume each member

60. Regarding the meaning of capital, see G. Ripert, cited above at note 33, no. 718; J. Escarra, *Cours de droit commercial* (Nouvelle ed.; Paris, Sirey, 1952), no. 514.

contributed Eth.$10,000. The organization will have in the bank on the day it is formed Eth.$50,000. This is its capital.

What if only four members contributed money and the fifth contributed land worth Eth.$10,000? The same result occurs. The total value of the contributions of the members is Eth.$50,000. The capital of the organization is Eth. $ 50,000.

Certain parts of the defintion of capital should be noted. First, when we speak of capital, we do not speak of cash or property as such, but of its value. The capital of an organiztion is the same whether it is made up of Eth. $ 50,000 in cash, or Eth. $ 50,000 in land, or Eth. $ 50,000 in a combination of things. Likewise, it makes no difference if property originally contributed by a member is sold by the organization. The capital remains the same—in the above example, Eth.$50,000. Second, in the case of property which fluctuates in value, the calculation of capital is made on the basis of the value when contributed to the organization. This is called its "original value." For example, say we wish to calculate the capital of an organization formed one year ago, in which one of the contributions was land, That land was worth Eth.$10,000 when the organization was formed, and Eth.$12,000 today. The calculation of the capital is made on the basis of land worth Eth.$10,000, its value when contributed. Third, only contributions in cash or kind (property, debts, etc.) are taken into account in calculating capital. In the ordinary, general and limited partnerships the contribution may be made in the form of services to be rendered to the organization.[61] But such contributions do not form part of the capital. Only contributions in cash or kind do.

The capital must be distinguished from the assets of the organization. The term "assets" normally means the value of all the cash, corporeal and incorporeal property and rights which the organization, in a general sense, "owns." (The term is defined more technically in Articles 74-85 of the Code.) The capital may be more or less than the assets. Say the organization begins with a capital of Eth.$50,000 and that this also is its beginning assets. Assume that after the first year of operation, the organization has a net profit of Eth.$2,000. That money or the property purchased with it is part of its assets, which would now be Eth.$52,000. But it is not part of its capital, since capital only represents the value of contributions by the members. That value remains Eth.$50,000. On the other hand, if there was a net loss of Eth. $ 2,000, the assets would only be Eth. $ 48,000; but again the capital would remain Eth,$50,000.

The capital of an organization may be increased during its life time by additional contributions by the members. In certain circumstances it may be increased or reduced by other means. This is particularly important with regard to share companies, for which specific rules are provided in this regard.

The capital of an organization is deemed to be a general security for the payment of the debts of the organization. No legal provision expressly states this. It is reflected in two types of rules. The first is that which prohibits fictitious dividends. Generally speaking, a fictitious dividend is a distribution by the organization to the members of money or other property which does not represent profits from the operation of the organization. It is called "fictitious" because dividends normally should only be paid out of profits. The second kind of rule is that which enables

61. Comm., C., Arts. 229(1), 295, 303.

creditors or liquidators of the organization to require members to pay up any amount of their contributions remaining unpaid.

Any money or property distributed by an organization to its members reduces the amount of its assets available to pay its creditors. But the law cannot require all the assets of the organization to be reserved for creditors. The reason people form an organization is to make profits. They would not form one if they could not receive distributions of the profits made by the organization. Therefore, a compromise is reached. Genuine profits may be distributed. But an amount of money or property equal to the capital must be retained by the organization and not be distributed to the members while the organization is in existence (of course, the organization may lose the money or property equivalent to its capital as a result of normal business operations. This is a risk of the business which must be accepted by members and creditors alike).

The principle is extremely important in the organization in which all the members have limited liability: the share company and private limited company. The property of the organization is the only place a creditor may look to satisfy an unpaid debt of the organization. Complex rules are provided for these organizations concerning distributions of dividends to members. Additional rules are provided enabling creditors or liquidators to maintain actions to require a member who has not yet fully paid in his contribution to the organization to do so.[62]

If the members do not have limited liability, the principle is not very important since an unpaid creditor can always sue the members. This is true, for example, of the members of a general partnership and the general partners in a limited partnership. Even here, however, the principle is given some recognition in Article 294, which enables an action by a creditor to be brought directly against the members without the necessity for a demand on the partnership if it is an action to force the members to repay fictitious dividends to the partnership. Normally, a creditor must make a demand against the partnership before proceeding against a member for an unpaid debt of the partnership.

The principle also has some importance for the limited partners in the limited partnership. They may be compelled by a creditor of the firm to pay their contributions if not yet fully paid in. They also may be required to repay fictitious dividends, unless accepted by them in good faith after approval of the partnerships' balance sheet.[63]

4. The Partnership Agreement.

At the heart of every business organization is a partnership agreement, which is a contract.[64] This means:

(1) A business organization is not created unless the parties have a contract which fulfills the elements of the definition of the partnership agreement in Article 211. Even a grouping "formed with a view to securing or sharing profits," which, under Article 405 of the Civil Code, is subject to the provisions of the Commercial

62. See Comm. C., Arts. 452, 456-459, 499(4), 501, 540, 541, 1162.
63. Comm. C., Arts. 294, 301, 303.
64. Comm. C., Arts. 210(1), 211.

Code relating to business organizations, is not a business organization unless it is formed out of a valid partnership agreement.[65]

(2) The rules of the Commercal Code dealing with the partnership agreement are special applications of the general rules of contract set out in Title XII of the Civil Code.

As suggested above, the rules of contract are much more important in partnerships, joint ventures and private limited companies than in share companies. The rules governing the formation, operation and dissolution of a general partnership are more related to the general rules of contract than are the rules governing the formation, operation and dissolution of a share company, particularly a company with many members. For example, in a share company of one hundred members, it is difficult thinking of the individual shareholder as a party to the fundamental contract of the organization. He probably became a member by subscribing to an offer to sell shares by the founders of the organization or by buying someone else's shares, and his rights are governed much more by the provisions of law concerning share companies than by the fundamental contract. Yet even in a share company, there must be a partnership agreement at its base, and the agreement performs many of the same functions which are performed by the agreement at the heart of any other organization.

Several provisions of the Commercial Code speak of a "memorandum of association." The terms "memorandum of association" and "partnership agreement" refer to the same thing: the fundamental contract at the heart of a business organization. There is no substantive distinction. One does not make a separate partnership agreement and memorandum of association when creating a business organization. The term "memorandum of association" is used by the code in reference to the fundamental contract underlying any business organization other than an ordinary partnership.[66] The term "partnership agreement" is used in two ways: in reference to the basic contract underlying an ordinary partnership and in reference generally to the contract at the heart of any business organization.[67]

Some provisions of the Commercial Code speak of "articles of association." The Code uses this term to denote the detailed regulations governing the operation of a share company or private limited company. The articles of association are drawn up in essentially the same manner as the memorandum of association, and are deemed to form part of the memorandum of association.[68]

Elements of the Partnership Agreement

According to Article 211:

A partnership agreement is a contract whereby two or more persons who

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65. But see P. McCarthy, "De Facto and Customary Partnership in Ethiopian Law" *J. Eth. L.*, vol. 5 (1965), p. 105.

66. Comm. C., Arts. 275(4), 284, 298, 313, 517. It also denotes the basic contract of a civil association. Civ. C., Art. 408.

67. Comm. C., Arts. 211, 233, Articles 221(2) and 224 speak only of the memorandum of association as the contract to be deposited in the commercial registry; but this is probably because only commercial business organizations, all of which have memorandum of association, were originally intended to be subject to the registration requirement. See note 23 above and accompanying text.

68. Comm. C., Arts. 314, 518.

> intend to join together and to cooperate undertake to bring together contributions for the purpose of carrying out activities of an economic nature and of participating in the profits and losses arising out thereof, if any.

The elements of this definition are discussed in the following paragraphs.

Two or More Persons. At least two persons must be parties to a partnership agreement. This is true for all business organizations except the share company, for which there must be at least five.[69]

The minimum requirement of two persons means that one person cannot form a business organization by himself. The idea of a one-man organization may seem illogical anyway, but some advantages of organizations with legal personality may be very desirable to the individual businessman. This is particularly true of limited liability and the ability of the business to survive his death.[70] In order for a businessman to obtain these benefits, he must secure at least one associate. A businessman might obtain an associate only to fulfill the minimum membership requirement, with the associate taking little part in the operation of the business. However, if the organization formed is one in which the primary businessman has limited liability, he must be cautious. If he operates the organization as if it were his own, without due regard for the appropriate operational rules, and if the organization goes bankrupt he may lose the benefit of limited liability.[71]

There is no limit on the number of persons who may be members of a business organization, except in the private limited company where the number of members may not exceed fifty.[72] As a practical matter, the number of members in a partnership or joint venture will normally be small, because of the close personal relationship involved. On the other hand, the number of members of a share company may be huge.

Intent to Join Together and Cooperate. In order for a contract to be a valid partnership agreement, the parties to it must have intended "to join togetheer and to cooperate." In a sense, this means that they intend to form business organization. More specifically, however, they must have a community of interest and an

69. Comm. C., Art. 307(1).

70. Since a business is a type of incorporeal property which may be sold and, presumably, inherited, it may appear that there is no need to create a business organization in order that the business will survive the trader's death. A business organization has certain advantages in this regard that the business alone does not, however. For example, a trader may fear that when he dies, the parts of the business may be sold separately without taking the goodwill into account. This is particularly a danger if persons inexperienced in commercial affairs are handling the succession. The goodwill may be destroyed, resulting in a smaller amount of proceeds going to the heirs and the loss to the economy of the value of the goodwill. This may also happen if the business is operated by a business organization, but is less likely. Since there must be at least two members of a business organization, the other is there even if the organization is dissolved at the death of one to be sure the value of the business is protected. Arrangements may be made in the partnership agreement to assure that the organization continues even if one member dies, his share perhaps being taken by an heir. (This will automatically occur in a share Company and private limited company even if no provision is made for it in the partnership agreement.) See Ghana, Commission of Enquiry, cited above at note 33, p. 7; L.C.B. Gower, "Company Law Reform," *Malaya L. Rev.*, vol. 4 (1962), p. 39.

71. Comm. C., Arts. 531, 1160.

72. Comm. C., Art. 510(2).

intent to collaborate on an equal footing.[73] This is normally reflected in their right of control which each party has over the operation of the organization.

The collaboration intended by the parties need not be active in the sense that they all intend to work in or for the business organization. This would not account for those limited partners of a limited partnership or shareholders of a share company or private limited company who become members only for the purpose of investing money. Also, the collaboration need not be equal in an absolute sense, since that would not account for legitimate schemes of control in some organizations, particularly share companies, wherein different groups of members have different rights. It must be equal, subject to regimes of control permitted by law.

The requirement exists chiefly because of its aid in distinguishing contracts which contain the other elements of the partnership agreement.[74] Examples are the contract of employment in which the employee is paid a share of the profits, if any, and not a fixed salary or wage; the contract of loan in which the lender is paid a share of the profits, if any, rather than a fixed amount of interest; and the contract of sale of a business in which the seller agrees to take a share of the future profits of the business, if any, instead of a fixed sum. Missing from these contracts is the intent to join together and to cooperate. The employee is subject to the control of the employer in making decisions affecting the business. The lender and the seller of the business usually take no part in the operation of the business.

Contributions. In order to have a valid partnership agreement, each party must undertake to make a contribution to the business organization. Contributions are those things put at the disposal of the organization for its use in carrying out its activities, in return for which the contributor receives a membership interest in the organization. Each contribution must be something of value. In the case of any business organization other than a share company and private limited company, the contribution may consist of cash, kind or services.[75] Contributions to a share company or private limited company may only be in cash or kind.[76]

Contributions in kind are contributions of corporeal or incorporeal property, including debts owed to the contributor, or the use of property. Examples are immovable property, movable property, rights of literary or artistic ownership, industrial property (trademarks, patents, designs or models), a business, lease of movable or immovable property, etc. The Code contains special rules governing the transfer of such property to the organization. See, for example Arts. 229-232 (contributions to ordinary, general and limited partnersihps) and Arts. 206-209 (contribution of a business to any business organization).

The value of each contribution in kind is as agreed upon by the parties and written in the partnership agreement. In the share company and private limited company, where all members have limited liability, creditors of the organization

73. See G. Ripert, cited above at note 33, nos. 700, 701; J. Escarra, cited above at note 60, nos. 506-512.

74. See the discussion on this point of the Commission of Reform of the French Commercial Code: *Travaux de la Commission de Réforme du Code de Commerce et du droit des sociétés* (Paris, LGDJ, 1950-58), vol. 2, pp. 393, 394; also, the discussion of the sub-commission vol. 2, p. 114.

75. Comm. C., Arts. 229, 271, 295, 303.

76. Comm. C., Arts 206, 312, 338, 339, 512.

need additional protection to assure that the value of the contributions in kind is reasonably accurate. This protection is also needed by shareholders in a share company formed by public subscription, since they may not have easy personal access to the property or its contributor. In the case of a contribution in kind to a share company, the Code provides a special procedure for evaluation.[77] In a private limited company, all the members of the organization are guarantors to third persons of the valuation fixed in the partnership agreement.[78]

The person who contributes his services or skill works for the organization, but is not paid a fixed salary or wage for the services he contributes. Instead, he receives a share in the profits. He is more than an "employee," since he has rights of control over the organization employees do not have.

Contribution in cash or kind are owned by the business organization, unless the organization does not have legal personality or only the use of the property is contributed. In the case of a joint venture, each partner owns his own contribution unless otherwise provided.[79] (Provisions "otherwise" would include joint ownership by the members or ownership by the manager of the joint venture.)

Purpose: Economic Activities. The parties to a valid partnership agreement must intend to carry out "activities of an economic nature". This phrase is quite broad and would seem to cover almost any activity which is or might be profitable. The activities which the parties to a partnership agreement intend the organization to carry out constitute the business purposes of the organization. Generally, a business organization may have as its purpose any activity which is possible of achievement and which is not unlawful or immoral.[80]

Purpose: Profits and Losses. The parties to the agreement must also intend to participate in profits and losses, if any. Of course, when the agreement is being formed, the parties usually think only of profits, not losses. By an intent to share losses, the Code really requires an intent to share the risks of the enterprise.[81]

The shares of the members in profits and losses need not be equal. There may be inequality not only between members, but also between one member's share in the profits and his share in the losses. However, the partnership agreement may not award all the prospective profits to one partner, or relieve one or more partners of their share in the losses. Any stipulation in the agreement providing for this is null and void.[82]

General Contract Requirements. As a contract the partnership agreement is subject to the general provisions of Title XII of the Civil Code. Insofar as formation of the contract is concerned, this means that the parties to it must be capable of contracting and give their consent free of defects, that the object of the contract is sufficiently defined and is possible and lawful, and that the contract is made

77. Comm. C., Art. 315.
78. Comm. C., Art. 519.
79. Comm. C., Art. 273.
80. See Comm. C., Art. 217(2); Civ. C., Arts. 1718 1808(2), 1809; notes 109-113 below and accompanying text.
81. *Travaux*, cited above at note 74, vol. 7, p. 8.
82. Comm. C., Art. 215.

in the form prescribed by law. The following sections describe these elements, insofar as special problems may be posed concerning business organizations.

Parties and Capacity. In general, the following persons may not enter into contracts: minors, notoriously insane persons, persons with notorious infirmities affecting their ability to consent, persons judicially interdicted and persons interdicted by law. A contract made by such a person is null and void. However, this nullity may only be declared by a court at the request of the incapable person or his representative or heirs. (A contract made by a person interdicted by law may be invalidated at the request of the incapable, the other contracting party or the public prosecutor.)[83]

These incapacities deprive the persons concerned of the right to make contracts or themselves, but not the right to have contracts made in their names by their representatives. Thus, the tutor of an incapable may enter into a contract in the name of the incapable. If the tutor has acted within the scope of his powers, the contract will not be affected by the incapacity of the person in whose name it was made.[84]

The validity of a partnership agreement is affected by the incapacity of a party to it in the same manner as any other contract. The Commercial Code adds some rules. These arise out of the provisions of the Code prohibiting incapables from becoming traders. The provisions dealing with the incapacity to become a trader also apply to the incapacity to become a member of a business organization in which one has the status of a trader. A general partner in a commercial general partnership or commercial limited partnership is deemed to be a trader.[85] The manager of a commercial joint venture also would have the status of a trader.

Article 11 is the first article in the chapter of the Code dealing with the problem. It does nothing more than re-state the basic rules stated above: a person incapable under the Civil Code may not carry on a trade; if he does, any of his acts, presumably, related to the trade may be invalidated pursuant to the provisions of the Civil Code described at the beginning of this section.

Article 12 prohibits the tutor of a minor or interdicted person from carrying on a trade in the name and on behalf of the minor or interdicted person, except in the cases provided in Article 288 of the Cvil Code. This would prohibit the tutor from entering, in the name of a minor or interdicted person, a business organization which would make the minor or interdicted person a trader. Under Article 288 of the Civil Code, a tutor may carry on commercial, industrial or other enterprises forming part of the estate of the incapable if he is so instructed by the family council. The family council must instruct him whether to carry on the enterprise or to liquidate it, taking into account the time for which the tutorship is to last, the abilities and potentialities of the tutor and the interests of the incapable. It seems clear from this article that the family council may not authorize a tutor to enter into a trade (and, therefore, a partnership agreement whereby the incapable will become a trader). It may only authorise him to retain or to liquidate a trade already part of the estate of the incapable. For example, in the

83. Civ. C., Arts. 199(3), 313-319, 343-349, 373, 381, 387, 1808.
84. Civ. C., Arts. 319, 358, 381.
85. Comm. C., Arts. 280(2), 300.

case of membership in a business organization a trade might become part of the estate of an incapable if: a general partner in a commercial partnership dies, the partnership agreement provides that his son shall take his place and his son is a minor. Also, Article 288 specifies that the authorization of the family council is required where the tutor is "not the father or mother of the child." If the tutor is the father or mother, it would appear that he has complete authority to retain or liqudate enterprises forming part of the estate of the incapable. However, it would seem that the prohibtion against entering into a new enterprise would apply to a tutor who is the mother or father as well as to one who is not, although this is less clear. A tutor who enters into a partnership agreement in violation of these provisions exceeds his power.[86]

Article 13 adds a restriction to the normal rules concerning emancipated minors. It prohibits an emancipated minor from carrying on a trade unless authorized to do so in writing by the family council. This added restriction prohibits an emancipated minor without such written authorization from becoming a party to a partnership agreement forming a business organization whereby he becomes a trader. Any partnership agreement to which an emancipated minor becomes a party without the necessary authorization is subject to the same nullity for incapacity of a party as if the minor were not emancipated.

The rules concerning incapacity are designed chiefly to protect the incapable. This is why generally only the incapable may have his contracts invalidated. However the security of commercial transactions requires that third parties receive legal protection against the hazards of dealing with incapables. Articles 14 and 15 of the Commercial Code give some protection, utilizing the device of the commercial registry. Under Article 14, if a minor who carries on a trade has himself entered in the commercial register as though he were of age, his minority does not affect third parties. Thus, the minor may not have his contracts annulled under these circumstances. Article 15 contains a similar rule for judicially interdicted persons. Their incapacity does not affect third persons unless notice of the incapacity is entered in the commercial registry.[87]

Parties: Husband and Wife. It seems clear that husband and wife may be members of a business organization as if they were not married. This general proposition must be modified in two respects, however. First, one spouse may object "in the interest of the household" to the other spouse becoming a member of an organization which imposes upon the latter the status of trader. The effect of this objection is to restrict the liability for the business debts of the trader spouse to his personal property; normally, such debts are deemed to be of the marriage, and recoverable against the personal property of each spouse and common property. (The objection does not prevent the trader spouse from becoming a member of the organization). An objection is effective against third parties only if entered in the commercial register. If the trader spouse believes the objection is unjustified, he

86. See Civ. C., Art. 320.

87. May a third party who is not in good faith (that is, who knows of the incapacity or interdiction) take advantage of Articles 14 or 15? Those articles make clear they are applications of Article 121, in which only third parties in good faith remain unaffected by facts not entered in the register. That is in the English version. The French version of Article 121 omits the words "in good faith".

may apply to the family arbitrators to have it set aside; if it is set aside, a notice to this effect must be registered.[88]

The second respect in which the general proposition concerning spouse must be modified concerns the situation in which both spouses are parties to the same partnership agreement. The Civil Code permits spouses, before marriage, to establish by contract the personal and pecuniary effects of their marriage. If no "contract of marriage," as it is called, is made, the code provides rules to govern their personal and pecuniary relations. During marriage, no contract concerning their pecuniary relations may be made by the spouses without the approval of the family arbitrators or a court.[89]

If the spouses are parties to the same partnership agreement, the approval of the contract by the family arbitrators or by a court may be necessary for it to be valid. Arguably, Article 633 does not cover the partnership agreement at all; or, if it does, only agreements between the two spouses alone or partnership agreements forming certain types of business organizations. Such approval should not be required for any agreement where the relationship between the spouses in the business organization is not in serious conflict with their relationship under the marital regime established by the Civil Code.[90] The solution to the question is not without doubt, however.[91]

Parties: Legal Persons. Whether or not a legal person may become a member of a business organization depends to some extent on what kind of legal person it is and what kind of business organization it intends to become a member of.

In general, nothing prohibits a business organization from becoming a member of another business organization.[92] An association may not become a general partner of a commercial general partnership or commercial limited partnership, since it "may not carry on any trade."[93] Whether it may become a member of another business organization depends on whether it thereby acquires as one of its purposes the making of profits. If it does, it may not become such a member. However, there would seem to be nothing to prohibit an association from joining a share company or private limited company as a means of investing extra funds or of acquiring more funds to carry out its legitimate purposes.

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88. Comm. C., Arts. 16-20, 280(2), 300; Civ. C., Arts. 645, 659.

88. Comm. C., Arts. 16-20, 280(2), 300; Civ. C., Arts. 645, 659.

89. Civ. C., Arts. 627, 632-634.

90. See Civ. C., Arts. 647-661.

91. In France there has been much controversy as to whether two spouses may be members of the same business organization. See E. Church, *Business Associations under French Law* (London. Sweet & Maxwell, 1960), no 62; *Travaux*, cited above at note 74, vol. 2, pp. 131-136, 397, vol. 7, pp. 27, 28, 282. The maior question has been whether or not the marital regime is modified by the partnership agreement.

Note that Art. 633, is somewhat different in the English than in the French version of the Ethiopian code. A more accurate translation of the French would be:

(1) Contracts concerning their pecuniary relations made between spouses during marriage shall be of no effect under the law, unless they have been approved by the family arbitrators or by the court.

(2) Nothing in this Article shall affect the contracts expressly provided in this Code.

92. As to the capacity of business organizations and associations generally see notes 31-33 above and accompanying text.

93. Comm C., Art. 25.

Whether an endowment may become a member of a business organization would also seem to depend on whether it acquires thereby the purpose of making profits. In general, the endowment has the same capacity as an association (although no law expressly prohibits it from carrying on a trade).[94] As a practical matter, shares in share companies and private limited companies can be expected to make up part of the "property" out of which an endowment is formed. There seems to be no limitation on whether or not a trust may become a member of a business organization. Like an endowment, the property out of which a trust is formed may very well, contain shares in share companies and private limited companies.

As a general rule, the State has the right to enter into a partnership agreement and become a member of a business organization, to the extent that this is consistent with its nature.[95] This is subject to certain limitations, however. First territorial subdivsions of the State, the Ministries of the Imperial Ethiopian Government, and public administrative authorities and establishments have only such rights as are "vested in them by the administrative law." This also is true of the Ethiopian Orthodox Church and its dioceses, parishes and monasteries.[96] This means that the right of these bodies to enter into a partnership agreement and to become a member of a business organization must be derived from some right granted by an administrative law. Presumably, the right does not have to be expressly granted, but may be taken as included in a general grant of the capacity of a physical person, or as an implied right with relation to the carrying out of rights or powers expressly granted. Theoretically, the matter is unclear; as a practical matter, public administrative authorities, ministries, etc., do become members of business organizations particularly share companies, in furtherance of their purposes. The second limitation is found in Article 27 of the Commercial Code: an administrative or religious institution or any other public undertaking may only carry on a trade in the cases prescribed by special laws.[97] Even if an administrative or religious institution or any other public undertaking does carry on a trade, it does not thereby incur the status of trader.[98]

A business organization organized under the Commercial Code does not become a body corporate under public law merely because the government or one of its agencies is a member of it even if the government has virtually all of the membership interest. It remains regulated by the provisions of the Commercial Code, and the government or agency is a member like any other member. There is no law at this time dealing specifically with government participation in business organizations organized under the Commercial Code.[99]

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94. Civ. C., Arts. 483, 501.

95. See Civ. C., Art. 394.

96. Civ. C., Arts. 395-397.

97. The English version omits the words "by special laws". It merely states that the cases "shall be prescribed." The term "by special laws" is in the French and Amharic.

98. Comm. C., Art. 4.

99. Compare Civ. C., Title XIX, which governs administrative contracts. Compare also Comm. C., Art. 352, which provides that in share companies comprising "several groups of shareholders with a different legal status," each group must have the right to elect at least one representative to the board of directors." This presumably assures that companies with both governmental and non-governmental shareholders have at least one director representing each. For a description of the special problems and their solutions of governmental participation in business organizations in France, where such participation has been substantial. See A. de Laubadère, *Traité élémentaire de droit administaratif* (Paris, LGDJ, 1966) vol. 3, nos. 939-956.

Parties: Foreigners. Physical persons of foreign nationality generally enjoy and may exercise civil rights as if they were Ethiopian. The term "civil rights" embraces all rights of which the exercise does not imply participation in the government.[100] Thus, a foreigner may enter into a partnership agreement as if he were an Ethiopian.

Bodies corporate whose head office is in a foreign country and endowments, trusts and committees constituted in a foreign country possess and may exercise civil rights as if they were bodies corporate, endowments, trusts or committees "established in Ethiopia," if they have been authorized by the Ministry of Interior to carry out activities in Ethiopia.[101] Thus, if authorized to carry out activties, these bodies corporate, endowments, trusts and committees have the same right to enter into a partnership agreement that they would have if they were established in Ethiopia. However, the Ministry of Interior may prohibit or regulate the carrying out of regular activities in Ethiopia by particular foreign bodies corporate, endowments, trusts or committees, or by classes of them.[102] Also, an authorization to carry out activities in Ethiopia may be revoked for good cause.[103]

The position of the foreign body, which wishes merely to become a member of a business organization in Ethiopia without carrying out other activities is unclear. Is entering into a partnership agreement the carrying out of "activities," such that Ministry approval is required? Must there be something more, such as active participation in the affairs of the organization? Does it depend on the kind of business organization formed? As a practical matter, these questions may not be too important at this stage since foreign investors are likely to participate in controlling the activities of organizations in which they invest. But the situation conceivably could arise where an Ethiopian share company sells shares to foreigners who take little part in its activities, other than voting at annual membership meetings and receiving profits.

Some laws impose restrictions on the right of foreigners, whether physical or legal persons to engage in specific activities in Ethiopia. These do not necessarily restrict the right to enter into a partnership agreement but may be important to a foreigner if he does so. For example, even if he is a member of a business organization, a foreigner presumably may not be an employee of that organization unless he has a work permit.[104] A foreigner may not own land in Ethiopia unless permitted to do so by Imperial Order or by the terms of special laws, such as the Investment Proclamation of 1966.[105] A business organization may not be licensed to operate a bank in Ethiopia unless it is of Ethiopian nationality and unless at least fifty-one per cent of its capital is owned by Ethiopians.[106]

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100. Civ. C., Art. 389.

101. Civ. C., Arts. 545-547. See also note 58 above and accompanying text. These provisions specify that approval for bodies corporate is to be given by the office of associations and approval for the other institutions by the Ministry of Interior. The office of associations is part of the Ministry of Intirior. According to Arts 545(2) and 546(2) authorization may be withheld if the proposed activities are "contrary to the law or morals." It is unclear whether authorization may be withheld on other grounds.

102. Civ. C., Art. 548(1). The French version attributes this power to "imperial decree," not the Ministry.

103. Civ. C., Art. 549. Such a decision is expressly made subject to court review.

104. See Civ. C., Art. 389(3); Public Employment Administration Order, 1962. Art. 15, Order No., 26, *Neg. Gaz.*, year 21, no. 18. See also the Foreign Nationals Employment Regulations, 1964, Leg. Not. No. 295, *Neg. Gaz.*, year 23, no 25.

105. Civ. C., Arts. 390-393, 548(2); Investment Decree, 1963, Art. 10, Decree No. 51, *Neg. Gaz.* year 23, no. 1; Investment Proclamation, 1966, Proc. No. 242, *Neg. Gaz.*, year 26, no. 2.

106. Monetary and Banking Proclamation, 1963, Art. 32, Proc. No. 206, *Neg. Gaz.*, year 23, no 6.

Finally, a foreigner wishing to become a member of an Ethiopian business organization must take into account exchange control regulations, which restrict his rights to take profits, property on dissolution, etc., out of Ethiopia.[107]

Consent. Each party to a contract must give his consent free of defects; that is, without mistake, fraud or duress. These defects may arise in various ways in the formation of a business organization. For example, a party may be mistaken as to the type of organization being formed, or he may be deceived as to the business to be carried on by the organization. If a partnership agreement is substantially less favorable to one party than to the others and the consent of this party was obtained by taking advantage of his want, simplicity of mind, senility or manifest business inexperience, the agreement may be invalidated as an unconscionable contract if justice requires. A contract which is affected by a defect in the consent of a party may be invalidated only at his request.[108]

Object. Like any contract, the partnership agreement must have a sufficiently defined, possible and lawful object. In discussing "object," the Civil Code talks primarily of the reciprocal obligations of the parties.[109] In a partnership agreement, these consist chiefly of the undertakings of the parties to make contributions and other obligations regarding the performance of the agreement. But the object of a partnership agreement also may be interpreted to include the purposes of the business organization, thus requiring that such purposes be defined, possible and lawful.[110]

The object of a contract is distinguished from the motive of the parties who make it. By "motive" is meant the reason why or purpose for which the parties enter into the contract. Arguably, in a partnership agreement, this too could be interpreted to include the organization's business purposes. The Civil Code prohibits a court from investigating the parties' motives in order to determine whether the object of the contract is unlawful or immoral. However, if the motive of one or all the parties is unlawful or immoral, and the contract or some other document shows this, the contract may be invalidated at the request of any contracting party or interested third party.[111] The distinction between object and motive probably is made to assure that the stability of contracts will not depend on the uncertainties of judicial investigation into the state of mind of the contracting parties. These

107. See the Foreign Exchange Proclamation, 1963, Proc. No. 211, *Neg. Gaz.*, year 23, no. 6; Investment Decree, 1963, Art. 8, Decree No. 51, *Neg. Gaz.*, year 23, no 1; Investment Proclamation, 1966, Proc No. 242, *Neg. Gaz.*, year 26, no. 2.

108. Civ. C., Art. 1808(1). In general, regarding consent, see Arts. 1696-1710, 1808-1818. Note that in a share company formed by public subscription, a defect in the consent of a subscriber is more directly related to the validity of the subscription agreement than to the memorandum of association.

109. See Civ. C., Arts. 1711-1716.

110. G. Ripert, cited above at note 33, no. 711 (French Law). The problem is somewhat different in Ethiopia because the business organization is defined as a grouping arising out of a contract, rather than a contract *per se* (as in France), and because the Civil Code provisions concerning object of contracts emphasize the reciprocal obligations of the parties. It does not seem that the object provisions should be so limited however, at least where business organizations are concerned.

111. Civ. C., Arts. 1717, 1718, 1808(2). Article 1808(2) in the English version speaks only of invalidation for an unlawful or immoral object, or for absence of the prescribed form. It does not mention motive. However, the Amharic and French versions refer to both. Their effect is to permit invalidation for unlawful or immoral motive in the same manner as for unlawful or immoral object.

difficulties are eliminated when the motives are reflected in the terms of the contract or some document, as they normally would in the case of business purposes.

Some Code provisions deal specifically with activities which may or may not be carried out by business organizations. Articles 22 and 26 of the Commercial Code provide that a business organization may carry on any of the activities specified in Article 5 of the Code as long as it complies with any special requirements for carrying on that trade and is not prohibited from carrying it on.[112] Private limited companies are expressly forbidden by Article 513 of the Code to "undertake banking, insurance or any business of a similar nature." Ordinary partnerships may not have as their object any of the activities specified in Article 5 of the Commercial Code. However, the sanction for violating this prohibition is not nullity of the organization, but treatment of the organization as a general partnership rather than an ordinary partnership.[113] (Nullity of the organization may still result if the partnership agreement does not satisfy the requirements of Article 284, or if the necessary registration and publicity has not been made.) Other prohibitions may be provided by special laws.

Form. In general, no special form is required for the formation of a valid contract unless expressly provided by law or by stipulation of the parties. If a special form is required, a valid contract is not made unless that form is observed.[114]

Technically, no special form is required for the formation of a partnership agreement. However, the Commercial Code requires that the formation of a business organization (other than a joint venture) be in writing and publicized in newspapers and by registration. Failure to comply with these formalities renders the business organization null and void; it does not come into existence.[115]

The absence of the required writing or publicity in the formation of a business organization has the same effect as the absence of a required contract form: invalidation of the organization or contract sought to be formed. There are no provisions stating what happens when a business organization is declared invalid. However, the effect of invalidity of a business organization in many ways is like the effect of invalidity of a long-term contract. Thus, it would seem appropriate to apply the Civil Code provisions dealing with invalidation of contracts to the invalidation of business organization for lack of form, at least when there is no meaningful distinction between invalidation of the organization and invalidation of the partnership agreement.

CONCLUSION

The provisions described above are only a legal skeleton which will be fleshed out over time with commercial and administrative practice, judicial decision and scholarly interpretation before becoming a living, truly Ethiopian law. This article has been written in the hope that a preliminary description of some general principles will facilitate this process.

112. The English version of Article 26 says little more than Article 22. The French version states that a business organization which carries on a trade prohibited to it or for which it has not fulfilled the legal requirements is null. Thus, like Articles 23 and 24 for physical persons and Article 25 for associations, it provides a sanction. The Amharic version is closer to the English. It is somewhat ambiguous, but clearly provides no sanction.

113. Comm. C., Arts. 10, 213. Compare Art. V(2) of the Business Enterprises Registration Proclamation, 1961, Proc. No. 184, *Neg. Gaz.*, year 21, no. 3, which prohibits registered business organizations from engaging in "unauthorized business."

114. Civ. C., Arts. 1719, 1720(1), 1726.

115. Comm. C., Arts. 214, 219, 223.