

# **Pre-Incorporation Management under Ethiopian Company Law: *The Need to Redefine the Provisions Defining Founders***

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## **Abstract**

*Companies are important devices that may be incorporated to operate business activities that demand involvement of many entrepreneurs. Companies do not emerge by themselves. Before a company comes into the reality, grounds for valid formation have to be leveled by pre-formation managers. The founders carry out feasibility study, brings out contributions, collect money by promising to give shares of the proposed company. Founding process is susceptible to frauds and false statements that may induce member of the public to purchase share of the proposed company. The founders may sell their own property to the company at an exaggerated price or commit fraud on the subscribers. As stated in the Commercial Code of Ethiopia, founders are jointly and severally responsible for all the faults and wrongs that may be committed before the legal existence of the company. During the pre-incorporation management, many people with diverse capacity may involve. These people may be members of the company or may be outsiders. It is doubtful to suppose all the people as founder and make responsible for all pre-incorporation faults and wrongs. This article examines persons that may be regarded as founders under the Commercial Code of Ethiopia. The problems that may be encountered in defining persons called and taken as founders are disclosed, foreign experiences are stated and possible solutions for the problem are pointed out.*

## **I. Introduction**

*This is an era where multinational companies are getting momentum in all sectors of economy bringing the world together. Globalisation has been an important issue of politics: to resist the challenges of commerce, nowadays, business in organized way is almost indispensable. Business people may chain themselves by a 'business tie' for various reasons and in diverse ways. The most dominant form of business organization is share*

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*company Some areas of business demand huge capital that may not be easily financed by a sole proprietor or with capitals of few businesspersons. Greater unity is required when an area of investment is very capital intensive. In this state, the most appropriate form of business organization is Share Company.<sup>1</sup>*

*Business people "tie themselves" under a company-chain and tackle commercial hurdles through collective efforts, merging economic power. In developing economies collective effort by using small saving of individuals may be taken as the only way out to 'evade' the huge capital requirement otherwise hard to realize. Accordingly, present-day witnessed proliferation of tremendous companies in all vicinities of business in Ethiopia: companies are not uncommon even in a very remote area of the country.*

*The purpose of this article is not to expose reasons for the emergence of companies or importance of companies, but to show the need for redefining the provision defining founders of Share Company under the Commercial Code of Ethiopia.*

### **Founding Share Company**

Companies do not emerge by themselves. Before coming into existence, the basis for valid formation has to be levelled by other persons. "Sketch" to form a company may be set by any member of the public; the idea of forming a company may be communicated to like persons who may agree to involve in the company founding. These people conduct feasibility-study and do whatever venture that would make the proposed company a reality.

The plan has to be tested with an objective reality prevailing at a given targeted environment. If the feasibility study is taken positive, the next step is bringing additional persons, if important, and collecting necessary capital and property to the proposed company.<sup>2</sup> These processes may be levelled in three headings: discovery, investigation and assembly.<sup>3</sup> The people doing pre-formation management of company are called

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<sup>1</sup> Through share company, by selling shares to the members of public, it possible to collect a large sum of money until it comes sufficient to maneuver a projected venture.

<sup>2</sup> After founders agreed to form a company, they will purchase property necessary for the founding process. They may purchase, for example, building, vehicles, and lease land, employ persons who may work for the proposed company or those who may assist merely the formation process of the company.

<sup>3</sup> Henn and Alexander, *Law of Corporation* (1983), pp 237

founders (the Anglo-American expression, “promoter”, is equivalent to the expression “founder”.)

During the promotional stage the company is merely “conceived”; may be “born” and be viable or may be “kicked off” by law. In other words, at the promotional stage, the company does not come into the legal existence.<sup>4</sup> Thus, for all wrongs and faults that may be committed before the legal existence of the proposed company, pre-formation managers (founders) will be answerable.<sup>5</sup>

Persons founding a company, however, may enter into different commitments, which at last may be transferred to the company. They may enter into pre-incorporation contracts; for example, purchase properties for the conceived company; employ persons who will serve the founding process; make expenditure expecting to be refunded by the company when it comes into existence. Further, incorporation managers (founders) employ their knowledge, time and energy anticipating to acquire some economic benefit having their plan realized. Organizers of a company may carry out the foundation process having assistance of professional experts such as lawyers, accountants, engineers or bankers and so forth, and pay out money in consideration for the services of these people to be reimbursed when the company comes up into existence.

Moreover, pre-incorporation managers (founders) may commit fraud on the general public at the promotional stage. The founders, for example, may communicate a false statement

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<sup>4</sup> It seems possible to analogize this state of the company as a conceived child that may be born and acquire the title of person if born alive and viable. The company will be regarded as a person where all the procedures of formation are complied with and certificate of registration is given.

<sup>5</sup> After all the processes of founding companies are completed and all the shares of the company are subscribed, persons who have subscribed share of the company will meet and evaluate whether the company has to be formed. If all of the procedures of company formation are met, constitutional documents (memorandum and articles of the company) will be deposited in the office of registration and important provisions of these documents will be published in the newspaper. From the moment of publication, the process of company formation is said to be complete and the company acquires separate legal existence. From this moment onwards it is possible to say that the company is formed. As evidence for acquiring legal personality, the office of registration submits certificate of registration. For all acts and wrongs that may be committed in the name or on behalf of the proposed company, the company may not be responsible as one may enjoy rights and incur liabilities if conferred with legal personality. Put differently, before all the process of registration and publication are completed, the company cannot be questionable for all liabilities that may happen during the founding process. Unless the company, after formation, consents to take up the commitments entered before its valid existence, the company cannot be answerable and hence, persons that have incorporated the company will be jointly and severally liable for any wrong (Art. 308 of the Comm. Code). Thus, it is very important to identify, without doubt, persons who incorporated a company.

that may induce to subscribe shares of the proposed company or sell their own property to the company at an exaggerated price or even cause damage to one or more of the subscribers or the company through faulty management. Founders who commit fault at the promotional stage will be responsible for the fraudulent act.<sup>6</sup>

Various people, with diverse degree and different capacity, may partake in the formation of a company. Should all these people be 'put in the same basket' for the purpose of enjoying the benefits of founding or for the responsibility of faults that may occur in promoting the company? For all consequences of incorporation, persons regarded, as founders have to be clearly distinguished from other sorts of people that may contribute to the foundation process of a company.

Identification of persons called founders, however, is one of the perplexing questions in the law of company, not yet free from doubt in most legal systems. Article 307 of the Commercial Code defines the term "founders", but it also lacks clarity. It appears to confer the title of founding to all the persons who may participate in the founding process of a company. But there should be a limit to the persons that may be regarded as founders. The theme of this article is to shade light on the extent of persons that may hold the position of founders.

#### Who is a founder?

There is no consensus as to the definition of the term 'founder'. The term, 'founder' "... is never clarified] either judicially or legislatively, despite the fact that frequently used both in decisions and statutes."<sup>7</sup> The notion of 'founder' may be understood in different senses. "The difficulties in defining the term led the judges to state that the term promoter is not a term of art, nor a term of law, but of business."<sup>8</sup> The only possible way out to perceive and discern persons called and categorized as founders, today, will be to depend upon the nature of the activity and circumstance of each case." Whether a person is a promoter or not is a question of fact in each case. Much depends upon the

<sup>6</sup> Persons leveled as founders may be jointly and severally liable for faults and wrongs that may result in injury on the company or on the third parties. See Arts.308, 309 of the Commercial Code of Ethiopia.

<sup>7</sup> Joseph H. Gross, "Who is company promoter?" 86 *LQR* 493 (1970); Lindley, HJ. In *Emma Silver Mining Co. v. Lewis* (879) 4 CPD 396,407; Davies and Prentice (ed.) *Gower's Principles of Modern company Law* (1997 pp. 132

<sup>8</sup> *Ibid* at pp.506

nature of the role played by a given person in the promotion of the business.”<sup>9</sup> A founder therefore may be a person who forms a company satisfying all the requirements of incorporation. As has been pointed out, a founder brings persons that may cooperate in incorporating the proposed company into existence and so forth. To categorize a person as a founder thus we have to examine the extent of the participation in the founding process. In Anglo American legal system, the first move to define the notion of ' founder' (promoter) was made by the famous case *Re Great Wheals Polgoth*<sup>9b</sup>

The ruling of this case was ascertained and re-clarified by the land marking case *Twycross v. Grant*<sup>10</sup> In this case, action was brought against a person who agreed to become a member of the provisional committee of an intended railway company in respect of advertising services. He merely decided to become a member of the interim working group of a planned railway company in respect to publicity deal supplied on substances to be advertised to an advertising agency by the order of the attorney of the company. He was held to be a founder.<sup>11</sup> When disposing the Case, Chief Judge, Cockburn, Concluded:

*A promoter, I apprehend, is one who undertakes to form a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose. That the defendants were the promoters of the company from the beginning can admit of no doubt. They framed the scheme; they not only provisionally formed the company, ...they prepared the prospectus; they paid for printing and advertising and the expenses incidental to bringing the undertaking before the world.... All the things I have just referred to were done with a view to the formation of the company and so long as the work of formation continues, those who carry on that work must, I think, retain the character of promoters.*<sup>12</sup>

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<sup>9</sup> Singh A., *Company Law* (1998). pp. 104; Davies and Prentice (ed.) *Gower's Principles of Modern Company Law*(1997) pp. 132

<sup>9b</sup> (1883) 53L.J.Ch 42 Noted in Palmer's Company Law pp. 138

<sup>10</sup> Reported by Hahlo and Trebilcock, *Hahlo's Casebook on Company Law*, (1977) pp. 172

<sup>11</sup> Ibid

<sup>12</sup> Ibid

Thus, any act that may be performed before the legal existence of a company is an act of founding and persons acted for the proposed company may be taken as founders. A person thus may be viewed as a founder though he takes on moderately a minor portion in the endorsement actions of a company. The Ethiopian Commercial Code exposes the expression 'founder', in Art. 307. In the words of the Code founders are persons who:

- sign on memorandum and articles of association and subscribe shares;
- sign on a prospectus;
- bring contributions in kind;
- are billed with a special share in profits;
- being not member of company ( outside company), but makes the first move to the formation of a company or persons who facilitate the formation of the company ( Art. 307(4)).

The requirements are not cumulative. If anyone of these requirements is satisfied, a given person may be supposed as a founder.

A share company in Ethiopia may be founded in two ways. The first one is a closed share company.<sup>13</sup> In this case, though a company is not legally prohibited to look hands of the public for financing its business through share subscription process, the whole authorized shares of the company distributed among the founders. Persons who found the company, at least, at the inauguration stage, motivated by various reasons, may opt not to tender the shares to the public. In the way similar to the formation of private limited companies, these people alone subscribe the whole approved and issued capital of the company.<sup>14</sup>

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<sup>13</sup> Article 316 of the Commercial Code of Ethiopia sets forth instances in which a share company may be formed without shares are offered for public subscription. In this form of company the whole shares issued at the formative stage of the company will be allocated among the initial members. Apart from the initiators of the company an outsider cannot be a member. Thus, all of the members would be taken as founders.

<sup>14</sup> A share company that may be formed among the founders only is akin to the American closed company. This kind of company, however, is different from a private limited company. In the case of the private limited company, unless the nature of the company is changed, there is no possibility to offer shares for public subscription. But with regard to companies that may be formed among the founders only, if the founders wish so, can increase capital and offer shares to the public. By doing so, the nature of the company can easily be changed to a public company.

The other way of forming a share company is through public subscription. This is analogous to the promotion of public companies in England and other Anglo American oriented countries. In this method, founders invite members of public to purchase share of the proposed company. This is the only way in which shares will be accessible to the public at the promotional stage of the company.

Unless an outsider rendered assistance of some sort, to the formation of a closed company, detection of founders in companies formed between founders themselves may not be tricky as such. In a closed share company, all of the persons who turn out to be constituent at the formation stage will be assumed as founders. Unless a particular founder sells his shares or parts of his possession, or the company increases its capital issuing additional shares, no outsider may be an associate.

Yet, in this case too, some individuals may initiate plans for the formation of company and 'vanish' after setting up of the company; such people too, take the position of founders. Hence, in a company formed among the founders only, founders may be members or persons who simply initiate plans or those who facilitate the progress of the formation of the company. The only intricacy that may arise in identifying founders in this situation lays in the latter case.

In a public company (a share company that is formed by public subscription of shares), in Ethiopia, the following persons may hold the position of founders:

**i. Persons who Sign on Memorandum of Association**

In the manner alike to persons founding the company among themselves, some people may, at least 5 individuals, are required to sign on the memorandum of association and these people are viewed as founders.<sup>15</sup> They ought not merely put their signature on the legitimate document -- the memorandum of association. But they have to be members of the company subscribing at least a single share. Where a person contracted to be a

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<sup>15</sup> To form a company the first move is to draft a constitutional document on which the company and its constituents will be governed. The persons who agreed to purchase shares will sign on the memorandum of association. Where shares are offered for public subscription, the main provisions of the memorandum of association will be sent with the offer to sell shares. The person who signed on the formative memorandum of association are taken as founders.

member of the proposed company and promised to purchase one or more of the shares and paid up at least a minimum amount of money in accordance with the requirements of the formative documents of the company, and signs on the document, he is supposed to be a founder.

### ii. Persons who Sign on Prospectus

Prospectus is a declaration that may be disclosed to the members of public for purpose of selling shares of the proposed company.<sup>16</sup> It may be stated in any form that can communicate the purpose. A prospectus is usually made in writing and signed by the persons for purpose of notifying the public to invest money by purchasing or promising to purchase shares.<sup>17</sup> Persons who sign on the prospectus are considered as founders even if they do not involve in any other deed or action of bringing the proposed company into existence.

### iii. Persons who Make Contribution in Kind

Contribution is one of the requirements for membership in a share company. As opposed to partnerships, a person anticipating to be an associate in a share company has to make contribution either in cash or in kind; skill contribution cannot make a person as a member. However, if a person makes skill contribution, at the formative stage of a company, the law assumes the contributor as a founder.<sup>18</sup>

Contribution in kind is not clearly defined in the Code. It appears to be a contribution other than cash. The thing contributed in kind has to be capable of being valued in terms of

<sup>16</sup> Anyone, satisfying the requirements envisioned by the prospectus, may purchase shares of a company. Prospectus may be any circular, advertisement, or notice that may be signed and declared by the persons founding a company. No shares or debentures may be issued to the members of public unless the shares are accompanied by a public prospectus. The prospectus shall show a fair picture of the proposed company. Future plan and hopes shall be mentioned in the prospectus. A person before purchasing shares or other financial securities of the company shall read the prospectus. As the prospectus is the best reliable source of information, contents of the prospectus shall be fairly true. Misrepresentations or error in the contents of the prospectus may vitiate the contract entered for purchasing shares of the company. Whether a prospectus is offer or invitation to make an offer, in Ethiopia, it is not yet settled. But in Anglo American legal system, a prospectus is an offer and a company is not obliged to accept application for shares that is made on the basis of information disseminated to the public through a prospectus. The formation of the company shall be known to the public. The purpose of prospectus is to invite potential members that are able to purchase shares

<sup>17</sup> See Art 318 of the Comm Code

<sup>18</sup> Art 307(3) of the comm. Code does not list down skill contribution as a form of contribution. If a person assists the formation of the company by doing an act, the assistance may be taken as facilitation of the formation of the proposed company and the person may be viewed as a founder who is not a member.

money by an expert or it should possess unambiguous money-value or capable of being quoted in the market. Thus, the contribution may be tangible or intangible asset that may be converted into cash, if the need arises. Properties like machine, building, cattle, commodities etc, usually undoubtedly, constitute contributions in kind.

The question that may be posed in this regard is the status of receivables and rights on properties. As a right on a property has no difference in the eyes of law from the property it represents, may easily conceived as a contribution in kind. The status of the former however is not black and white. If money is lent, as it is a receivable, it may be easily converted into cash at any time before its maturity (if assigned to someone or converted in to cash where it is matured); this is also a feature of every asset that has money value. Thus, these properties are contributable.

Yet, it may be argued, on the contrary, that Art. 315 of the Code requires contribution in kind to be valued by expert valuers. Debts or receivables however are close to cash and need not be valued by the experts for they possess money value that may be easily and objectively ascertained without the assistance of experts.

If the incorporeal right to be contributed is a business or elements making up business, experts should value it. Whatever definition is given, for purpose of this article, contribution in kind is assumed contribution other than a liquid cash that does not necessitate any further action for depositing in a bank when applying for shares, and that is not backed by any claim behind. Negotiable instruments like cheques, if certified or could easily be honoured, may be well thought-out as cash.<sup>19</sup>

#### **iv. Beneficiaries of special Share of profit**

Special share of profit is a fraction of company's profit that may be authorized to the persons who make the first move to the coming into existence of a company. Founding a company is not a simple business. It demands expenditure of money, energy or time. Pre-

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<sup>19</sup> Contribution in the form of a ready money (cash) cannot be ground for making the contributor a founder, unless escorted with one or more of other requirements. If a person who made a cash contribution, for example, has signed on the memorandum or association or articles of association or on a prospectus or acted in any capacity other than a professional capacity or gave any kind of assistance to the formation of a company, he may be taken as a founder

incorporation managers when founding a company may plan to have remunerated for their services from the earnings the company makes.<sup>20</sup> To enjoy this privilege, the pre-incorporation managers (founders) have to contemplate the intention to participate in the share of the profit of the company in the memorandum of association.<sup>21</sup> The special share of profit cannot exceed one-fifth of the profit reported in the balance sheet. The right to enjoy the special share of profit may be reserved whether a particular founder is a member or an outsider. The phrase, " ...in addition to their rights as shareholders..." indicates that a founder member can enjoy fruits of founding a company in addition to the other benefits of the membership.

A founding member thus can take part in the distribution of dividend and can claim a special share of profit that may be paid for sole reason of founding the company. If a founder opts not to be member of the company, prices of incorporation may be paid.<sup>22</sup> A founder need not be a member for a period stated in the formative documents of the company.

Persons, who enjoy this special right or made to exercise the right, are termed as founders. In this instance, identification of founders is not a difficult task. A persons named in the memorandum or in articles of association to collect a special share of profit automatically hold the position of a founder.

#### **V. Persons who Initiate Plans for the Formation of Company or Make Formation Possible**

Article 307(4) of the Commercial Code of Ethiopia regards persons who initiate plans and facilitate the formation of company as founders. Initiators are persons who originate the idea of company--founding. Founding process may be pursued as a profession. Certain group of people may incorporate a company and sell its share to anyone desiring to invest money in the company. The profession of founding a company may be pursued

<sup>20</sup> This right is expressed in Art 310 of the Comm Code.

<sup>21</sup> Art 307 (3) of the Comm. Code assumes persons who enjoy a special share of profit as founders.

<sup>22</sup> This right may only be enjoyed for 3 years. The exact moment, the three years period may commence, however is not disclosed in the Code. One may argue for the first three years, but these years, usually may be unprofitable as receipts may not cover incorporation expenditures. Further, it is not clear whether this period may be consecutive or any period during the life of the company. Thus, one may argue that founders may exercise the right of enjoying a special share of profit at 5<sup>th</sup>, 10<sup>th</sup> or 15<sup>th</sup> year of formation of a company.

individually or in-group with other likeminded people forming a company. After all the shares of the company are sold, the organizers (founders) may call subscribers meeting and 'surrender' the company to the persons appointed to direct (directors).

Further, certain persons may facilitate the founding process rendering assistance of some kind. Initiators of founding process may enter in to different kinds of pre-incorporation contracts. They may appoint a lawyer to draft documents forming a company; agree with an accountant to structure books and accounts, or employ an engineer to value property contributed for the formation of the company. The initiators may also employ officers that may administer the founding process. Should all these people be taken as founders? One may, for instance, ask the status of a lawyer who formulates memorandum and articles of association when invited by a founder (s) thorough payment. What is the position of an accountant who performed a professional activity for remuneration at the request of originators of a company? The Commercial Code Ethiopia does not, undoubtedly, clarify the status of these people; however their assistance contributes a lot to the coming into existence of the company. Shall we 'put them in the same basket' to the initial organizers by virtue of Art. 307(4) of the Code which states "... facilitate formation of the company"? Hence, this concept may be source of confusion and litigation in Ethiopia.<sup>23</sup>

The issue may be handled in two ways. One may argue taking literal meaning of Art. 307(4) and may regard persons that render whatever assistance to the formation of the company as founders. If this line of argument is pursued, it may be possible to conclude that Art. 307 (4) of the Commercial Code makes no distinction between persons that have contributed to the formation of a company in any capacity; whatever touch they make or whatever assistance they contribute; any slight assistance, in this regard may be taken as a facilitation and make its doer a founder. The other way of expounding the term founder or limiting the scope of persons founding a company is excluding persons that have assisted the formation under guidance or request of initiators for fee. If we go in this line,

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<sup>23</sup> Art. 304(4) of the Comm Code seems to encompass all persons who facilitate formation of a company as founders. Persons who assist the formation of a company facilitate the incorporating process though the assistance may be very miniature. It, however, seen unfair to regard a person that has rendered a very minor venture under guidance and control of the initiators. The main theme of this article is to save these people from shouldering faults and liabilities that may be caused by the initiators of the company formation.

employees and other persons who have facilitated the formation in a professional or employment capacity may not be taken as founders.

In Ethiopia, there is no legislative or judicial exposition to this issue. It may however seem unfair to mingle persons who rendered a slight contribution to the coming into being of the company. As the Code supposes facilitation as promotion, one cannot exclude persons who assisted founding process categorically. But it seems possible to make distinction between persons assisting the founding process. Before ruling of the famous case, *Re Great Wheals Polgoth*<sup>24</sup>, there was no authority regulating this issue in English or other Anglo-American legal system. As later clarified by *Twycross vs. Grant*<sup>24b</sup>, the present position is that persons who assisted the formation of a company in a professional and employment capacity cannot be taken as founders, though their assistance contributes to the foundation of a company. This people render professional duty under guidance and control of the initiators of the company. They act in a way ordered by the initiators and may be fired out where the initiators do not like their service or after discharging their promise.

This time, both Indian and English companies' laws are inspired by the disposition of the famous case *Twycross vs. Grant*.<sup>25</sup> Pursuant to Section 62 (6) of the Indian companies Act, a person who merely acts in a professional capacity on behalf of a founder, such as solicitor who draws up an agreement or articles of accountant or an accountant or an expert who value contribution in kind and paid by the person for whom he acts whether a company comes in to existence as result or not will not find himself being a founder.

Section 43(5)(a) of English Company's Law adopt the same position. It specifically excludes persons who act in a professional capacity from category of promoters. This conception is also true with regard to the position of clerks and employees of organizers of company, as they are merely servants of initiators of the company are excluded from the purview of the position of founding.<sup>26</sup>

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<sup>24</sup> (1883) 53L.J.Ch 42 Noted in Palmer's Company Law pp. 138

<sup>24b</sup> Supra, at note 10

<sup>25</sup> Ibid

<sup>26</sup> Thompson S. (ed), *Palmer's Company Law* (1968) pp. 138; Davies and prentice, *Gower's Principles of Modern Company Law* (1997) pp 132

However, if professional persons or clerks and other employees, act outside their professional or employment capacity in the promotion process, they will find themselves being founders. If a lawyer, for example, serves as cashier or secretary values a property etc, or an engineer drafts constitutional documents, may be viewed as a founder.

Art. 307 (4) of the Commercial Code of Ethiopia, declares that persons, without being member of a proposed company, facilitate the promotion to have the status of founders. It is not doubtful that persons who drafted memorandum or articles of association or engineers who valued property contributed in kind or clerical employees who operate office work for initiators of the company or a guard who looks after properties of the proposed company facilitate the promotion. The problem is whether these people should be answerable for wrongs that may happen during founding a company as founder is a doubtful issue. Professionals and employees facilitate the formation under the guidance or control of the initial framers of the company. To be fair and just, we should interpret the law in a way it would avoid undesired consequences.

Shall we regard these people as founders or apply the analogy of Anglo American system? The answer would seem affirmative to the latter. However, it is not trouble-free to say, "yes" without having clear authority to this effect. Hence, the solution until the apparent confusion is clarified either by a court decision or by the legislature, appears to analogise the doctrines of foreign systems: either Indian or English companies Act may be one of such authorities. If we agree to analogise such authorities, then persons who act in a professional capacity in forming companies or clerks and employees who take action in discharge of their duties cannot be taken as founders.

### **Conclusion**

Any act that may be carried out before the legal existence of a company is an act of founding. It is pointed out that various people with diverse degree may partake in the founding process. It is doubtful to regard all the people that participate in the founding process founders.

In Ethiopia, Art. 307 of the Commercial Code attempts to delimit boundaries of persons who may be regarded as founders. The definitional provision however does not virtually avoid trouble of defining the notion of 'founder'. The last phrase of Art. 307(4) mingles all of the persons who assisted the founding process and makes them founders. If all the persons that facilitate formation of a company, without distinction, taken as founders, mischievous initiators may easily hoodwink innocent people who act in a professional or employment capacity. This in turn would affect public interest, as these people may not be willing to render their professional assistance for the formation of a company.

Thus it is suggested to follow the English or Indian method to relieve professionals and employees from pre-incorporation faults and wrongs. The expression "...facilitated the formation..." that is enshrined in Art.307(4) of the Comm. Code of Ethiopia therefore suggested not to be viewed as including persons who facilitate formation of the company in a professional or employment capacities.