

Legal Status and Termination Procedures of Joint Ventures

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Ordinary partnership is defined in Article 520 of the Turkish Code of Obligations (“TCO”) no. 818. According to this definition, an ordinary partnership is established by two or more persons who join together to accomplish a common task by merging their capital and/or manpower and performing certain services together. Regardless of whether an articles of association document (“AoA”) is signed by and between the partners when establishing an ordinary partnership, if this partnership is not a legal entity the provisions regarding ordinary partnerships are applied to the relationship between the partners.

Not only real persons, but also legal entities may be members of an ordinary partnership. Still, the membership of a legal entity does not automatically give the ordinary partnership legal personality. Because it is an unlimited partnership, the partners are directly liable and their liability is both joint and several. Therefore, if a partner commits a tortious act while acting on the partnership’s behalf, tort liability lies solely with the tortfeasor.

Legal Status of Joint Ventures

Logically, ordinary partnerships are preferred for temporary work as they are not to be subject to obligations like conducting general assembly meetings and reserving funds, as regulated in the Turkish Commercial Code. Contractual joint ventures, common today in other countries as a type of joint venture, are defined as partnerships established by and between two or more entities for a common purpose. The most important feature of this kind of joint venture, which is a type of ordinary partnership, is that it is established for only one specified purpose. For example, the partnership of a Japanese construction firm and a Turkish construction firm for the construction of a bridge would be deemed a contractual joint venture. As demonstrated in the following Supreme Court decisions, the Turkish legal system considers contractual joint ventures to be ordinary partnerships as well and applies the same provisions that govern ordinary partnerships to them.

Ninth Chamber of the Court of Appeals Decision no. 2007/24539 E dated February 18, 2008 involved one of three joint stock companies in an ordinary partnership which had existed as an unincorporated

entity. During the case, no party assignment problem arose, leading to the conclusion that, “It is accepted that the case has been prosecuted against the companies which formed the ordinary partnership. In this dispute, since the partnership of the parties has ended, the essence of the dispute must be reviewed and a decision must be made. The case should not be dismissed,” and the case was continued.

During the dispute resolution process of the Ninth Chamber of the Court of Appeals, Decision no. 2005/28284 E dated September 8, 2005, the issue of legal personality was raised, and the Court decided that, “The employer, who was the defendant, was one of two companies that constituted an ordinary partnership. Since both companies in the ordinary partnership were involved in the dispute, each of them was included in the trial. The fact that the plaintiff chose to submit the title of the defendants’ ordinary partnership in the petition alone does not mean that the partnership has legal personality, thus the case must be reviewed and a decision made accordingly.”

Twelfth Chamber of the Court of Appeals Decision no. 2008/16739 E dated November 12, 2008 found

that “two or more persons who join together to complete a common task by combining their capital and/or manpower form an ordinary partnership, unincorporated and without legal personality.”

Establishment of an Ordinary Partnership

Ordinary partnerships are not subject to any special establishment procedure. Unlike joint stock companies, obligatory AoA clauses haven't been enacted for ordinary partnerships. The lack of any special requirements means that partners may make ordinary partnership agreements verbally. However, conditions agreed upon by and between the parties in verbal agreements are hard to prove. In the event of a dispute, parties have difficulty interpreting and proving what they intended in the agreement, and thus the issue may be brought to court. For this reason, it is expedient to make the partnership agreement in written form. The partners' respective commitments and common purposes should be clearly defined and eliminate the need for interpretation.

Ordinary partnerships may be established to manage a commercial enterprise or operate a commercial business that is not large and continuous, but rather small and temporary.

Capital Investment Obligation

The types of partners' capital shares may differ. However, the kinds of partners' capital investments, means of payment and portion of capital shares must be regulated in the AoA. Otherwise, all partners are deemed to have committed capital investment equally. Anything may be invested capital provided that it is not contrary to legislation, morality or customs, and is contributed with the fundamental purpose of partnership. Invested capital may include:

- Money, assets, securities and movable things;
- Patent rights;
- Any type of immovable properties;
- Right to use of movable and immovable properties;
- Personal work;
- Commercial standing;
- Commercial enterprise; and
- Rights including economic assets like copyrights, mining licenses etc.

Undertaking capital investment is sufficient to create a binding AoA; the AoA is valid whether or not the partners actually produce the pledged capital.

Sharing Profit and Loss

Until otherwise provided for in the AoA, each partner shall share any losses or profits equally, regardless of the worth or quality of its capital commitment. However, if there is a provision in the AoA regarding how profits and losses are to be shared among partners, this provision will be applied instead. Any specific agreement between the partners on the sharing of either of the loss or profit is applicable to both.

It should be noted that the partners may agree that a partner who has contributed manpower to the partnership will not be liable for any loss. However, this condition applies only to internal relations and has no binding effect on third parties. If the partner in question makes payment to a third party, the partner has the right to recover the payment made from the other partners.

Management of an Ordinary Partnership

Management of a partnership may be conducted by one or more of the partners, as well as by persons outside the partnership. As a rule, proxy privileges are applied to the relationships between managing partners and partners, regardless of whether they have been chosen from among the partners or are outside parties. If the managing partner is not specified in the AoA or partners' decisions, all the partners manage the partnership together.

Decisions about ordinary partnerships are regulated in Article 524 of the TCO. Decisions regarding amendments to the AoA or determining the managing partner are very important and will affect the partnership greatly. Therefore, these types of decisions must be taken unanimously. However, if delaying a decision poses a significant risk of harm or danger to the business, the provisions applied to ordinary matters are valid and unanimity will not be required. It is not possible to determine ordinary matters individually; however, as a rule, matters performed as part of the partnership's principle activities are considered ordinary.

Auditing the Partnership

The right and obligation to monitor and audit the partnership is mandatorily granted to all partners. Thus, provisions restricting or completely revoking the auditing rights of a partner are not valid. The right to audit may only be used to get information for internal use, review the partnership's books and documents, and/or summarize a statement about the financial situation.

Prohibition of Competition

Prohibition of competition for ordinary partnerships is a rule that prohibits all partners from dealing in business contrary to that of the partnership's purposes on their own or on behalf of third parties. Other partners in the ordinary partnership may (i) request reimbursement for losses sustained from the breach of this non-competition rule, or (ii) demand that transactions executed in breach of the rule be deemed as done in the name of the ordinary partnership. Furthermore, if violation of non-competitiveness is considered fair grounds for termination, the other partners may request a court decision regarding the termination of the partnership or expulsion of the member from the partnership.

Changes in Partners

Unanimity is required to accept a new partner in the partnership. This regulation applies both to third parties who wish to enter from outside the company and each current partner who wishes to transfer its share to a third party wholly or partially. If a partner sells its share to a third person without unanimous consent, such a transaction is only valid between the seller and buyer, but not for the partnership itself.

There may be a provision regarding the resignation of a partner in the AoA of the partnership. However, in the absence of such a provision, no partner may leave the partnership without the approval of the other partners. In this situation the only one way for partners to leave the partnership is to request dissolution of the ordinary partnership. However, this partner should have a reason providing just cause and proving the dissolution of the partnership is legitimate in order to make this request. However, the rejection of a request to leave the partnership is not considered a legitimate reason for dissolution.

Because, as a rule, a unanimous decision is needed for the procedure to expel a member and the member requested to leave also participates in this vote, it is nearly impossible to expel a partner from an ordinary partnership. Therefore, a request for the dissolution of the partnership will likely be made.

Liabilities to Third Parties

Since an ordinary partnership is not a legal entity, if a partner executes a transaction which makes the whole partnership a creditor, all the partners are deemed to be creditors. By the same token, all the partners are severally and jointly liable to third par-

ties for promissory transactions. Only the tortfeasor is responsible for debts arising from tortious acts. However, if a transaction executed in the name of partnership results in a tortious act, the joint liability of the partners remains.

Dissolution of an Ordinary Partnership

Reasons for Automatic Dissolution of the Partnership

The Common Purpose is Complete or Deemed Impossible

As legal impossibility provides an objective standard for all the partners, this reason is uniform and applies to all of them. Accomplishment of the purpose of the partnership stated in the AoA or its legal impossibility terminates the partnership, so the partnership moves to the dissolution process automatically. The term purpose, regulated in the relevant article, does not refer to all the partners' purposes of making or sharing profit, but rather the ordinary partnership's fundamental purpose in a broad sense.

Garnishment of Shares, Bankruptcy or Interdiction of a Partner

The partnership does not dissolve if a lien is established on the shares of one of the partners in the ordinary partnership. The share should be liquidated according to the provisions of the Execution and Bankruptcy Law for the dissolution of a partnership. The person acquiring the share of a partner through compulsory execution is not deemed a partner of the dissolved ordinary partnership.

An ordinary partnership does dissolve upon the bankruptcy of a partner. However, the remaining partners may choose to continue the partnership by paying the cost of the shares of the bankrupt partner to the estate thereof and resolving that the partnership is not dissolved. Such a resolution can be rendered implicitly. In other words, payment of the cost of the shares of the bankrupt partner to its estate also means the cancellation of the dissolution process. Thus, it is not required to issue an open and written resolution.

Since an interdiction limits the disposition authority of a partner, an ordinary partnership dissolves in that instance as well. However, the other partners may carry on the partnership by obtaining the approval of a peace court. Authorization of a court of first instance to continue the partnership is not required, as the ordinary partnership is not liquidated and the

interdicted partner does not enter into a partnership requiring personal liability. The other partners are only requesting to carry on the existing partnership under the present liability system.

Expiry of the Term Stated in the AoA

If the AoA contains a specific time period, the partnership will dissolve upon expiry of the term stated. However, if the partnership continues to conduct their transactions despite the expiration, the once limited term partnership will be deemed indefinite.

Reasons for Voluntary Dissolution (Termination)

Unanimously by All Partners

An ordinary partnership may be terminated by a unanimous decision of the partners. However, no specific format is required for such a decision. The partnership can be terminated with an implicit, oral, or written partnership decision. However, in such cases, it may be difficult to conclude and demonstrate that the company has been dissolved unilaterally, since each partner's wish to terminate the partnership must be proven. If a partner leaves the ordinary partnership and starts working at another company and the other partners do not object to this situation, this can be shown as a proof. If the partnership has resolved to take decisions by majority rule, a termination decision may also be rendered by a majority vote.

Upon the Notification of the Termination by One of the Partners

According to the law, an ordinary partnership terminates upon the notification of termination by one of the partners if (i) the relevant partner is authorized to give such notification by the AoA of the partnership or (ii) the ordinary partnership is established for an indefinite term. If an ordinary partnership is established for an indefinite term, each partner is entitled to unilaterally declare the termination of the partnership under the law. An ordinary partnership that is established for the lifetime of any one of the partners is deemed as established for an indefinite term under the law. Interpretation may be difficult if the term is dependent on particular conditions. Some provisions state that the ordinary partnership will continue to be active for the term of another partnership, i.e. that of a joint partnership. In practice, in addition to the AoA of a joint partnership that is established for a

definite or indefinite term, generally a shareholders' agreement is also executed, the term of which is dependent on the joint partnership. If the term of the joint partnership is limited, the ordinary partnership is deemed as limited by the same term, that is, it is deemed as established for a definite term.

If the ordinary partnership is established for an indefinite term or for the lifetime of any of its partners, each partner is entitled to request that the partnership be terminated by serving the other partners with a notice at least six (6) months in advance. This rule entitling each partner to serve a termination notice is included in Article 536 of the TCO under the reasons for termination of the partnership. However, the rules for the notification are also regulated in Article 536 of the TCO, requiring that the notice be made in good faith and be served at a "proper" time. In the same provision, if the accounts of the partnership are reviewed once annually, termination may only be requested at the end of the accounting year.

If There Is Just Cause

If there is a reasonable justification, each partner is entitled to request the termination of the ordinary partnership. This request shall be made to the other partners and is not subject to any format requirements. However, if the ordinary partnership is established for an indefinite term, the notice must be in writing. This notice and the termination request generally are declarations of intention that must be considered by the partnership. If the termination request of a partner is unanimously accepted, the ordinary partnership is deemed terminated by the decision of all the partners, in other words, unanimously. If any one or more of the other partners does not accept the request, the partner requesting termination is entitled to file a termination lawsuit in a court, as prescribed in Article 535 of the TCO. If the termination grounds are justified, the court will resolve that the ordinary partnership is terminated. The ordinary partnership will be terminated on the date when the court decision is finalized. Just cause can either be objective grounds such as non-fulfillment of commitments by the partners, circumstances damaging confidence, continuous loss, acceptance of the object as inadequate or failure to achieve the joint purpose even though it is not impossible, or subjective grounds such as a conflict between the partners, perversity of any one of the partners, incompetency of some of the partners, fraud, senility or dissatisfaction.

Liquidation Transactions

Upon the dissolution of the partnership, the liquidation process, which is the final stage, begins. At the end of this process, the joint purpose ends and the company dissolves. Normally, the liquidation transactions are completed by all the partners unless there are other regulations regarding the liquidation process. However, if agreed upon by all the partners, the liquidation process may also be completed by one or more partners alone. The partners authorized by such a decision are called liquidators. The remaining partners determine whether the partners appointed as liquidators will act jointly or separately. The partner(s) appointed as the liquidator is entitled to represent the ordinary partnership, and thus all the partners, before third persons for liquidation purposes. If the partners cannot reach an agreement and any one of them applies to a court, the court will appoint one or more liquidators and complete the liquidation process.

According to Thirteenth Chamber of the Court of Appeals Decision no. 2005/12983 E dated December 29, 2005,

“If the court finds that the ordinary partnership has been terminated, the liquidation of the partnership’s properties will be determined by the court. The court will establish whether the parties agree on the liquidation and decisions will be rendered accordingly, as written in Article 538 and the following articles of the TCO. If the parties cannot reach an agreement on the division of the existing goods and fixtures or transfer of property for compensation, the court will appoint an officer to sell these goods, pay the debts of the partnership, if any, calculate the advances paid

or costs incurred by the partners for the partnership, deduct the receivables of the partners and divide the remaining amount, if any, among the partners in proportion to their shares.”

The assets and liabilities of the partnership shall be converted into cash on a date close to that of the liquidation decision if the liquidation process is completed by the partners, or close to the date of the ruling if the liquidation process is completed by the court. First an external and then an internal liquidation shall be made. If any of the partners contributed the ownership of a property as the capital, it will not be returned during the liquidation. The partner will be entitled to claim the value of the property on the date when the capital was contributed. If the partner did not attribute any value to the property, its value on the date when the capital was contributed will be used.

The partnership’s commitments to third persons do not change. Thus, the liquidators are to fulfill these commitments and terminate any permanent commitments in the agreement or general terms and collect the receivables of the company. If a positive amount remains following the external liquidation, it will be considered profit. This profit shall be distributed among the partners in accordance with the agreement. If there is no relevant provision in the agreement, it shall be distributed equally, regardless of the ratio of capital contribution of the partners. However, if as a result of the external liquidation the partnership’s debts exceed its assets, the partners shall pay these debts with their own assets, as they are individually and severally liable for the debts of the partnership.