

MEMORANDUM

Joint Ventures under Turkish Law

1. Introduction- What is a Joint Venture

Joint venture is a partnership established by two or more persons for the execution of a specific project and to gain and share profit out of such project. The components of a joint venture concept may therefore be described as follows:

- (i) a partnership having an independent organization than its members,
- (ii) agreement between the members of the joint venture for such partnership,
- (iii) a common aim for the execution of a specific project and to gain profit thereof;
and
- (iv) common management.

In practice, joint ventures in Turkey are used mainly in the construction sector among construction companies for the purposes of undertaking of a specific project and in business cooperations between foreign investors and local companies in various sectors.

A joint venture may be established with or without legal personality. In case it is intended to have a legal personality, members may choose from a variety of options under Turkish corporate law including but not limited to joint stock companies or limited liability companies; such establishment will accordingly be subject to the provisions of the corporate law. This section however, will focus on the joint ventures without legal personality and their legal standpoint under Turkish law.

2. Joint Ventures as Ordinary Partnerships

The joint ventures without legal personality are defined as “ordinary partnerships” from the legal perspective under Turkish law; they are regulated under the Code of Obligations.

Articles 620-645 of the New Code of Obligations numbered 6098 and dated 04.02.2011 (“**TCO**”) (corresponding to Articles 520-541 to the Former Code of Obligations numbered 818 and dated 22.04.1926 “**pTCO**”) regulate the ordinary partnerships under Turkish law. The very provisions generally structure the ordinary partnership unless the partners agree

ÇETİNEL

otherwise. There are, however, mandatory clauses that any agreement on the contrary will be null and void.

2.1. Definition

The law describes the “ordinary partnership” as any form of partnership that is not specifically regulated under the Turkish Commercial Code. The partnership is by principle incorporated by a partnership agreement; however, there is no requirement for the agreement to be in writing. Each member of the partnership has the duty of care towards its partners and is liable for its faults.

2.2. Contribution of the Partners

It is established that the partners may contribute financially as well as with their know-how, skills and/or experience. Each member has equal shares in the profit of the partnership. The TCO expressly regulates that in case a member of the partnership strives for a specific issue that is not within the scope of its responsibility, such member may request for an adequate compensation in return thereof; unlike the former provision which suggested that none of the members may request consideration for the “personal efforts” put for the purposes of the partnership. Non-contribution by a member to the loss or any damage suffered by the partnership may only be possible in case such member contributes to the partnership solely with their know-how, skills and/or experience.

2.3. Management of the Partnership

In case otherwise agreed by the partners, the decisions within the partnership shall be adopted unanimously and each member has the right to manage the partnership. The partners may however choose to assign the management duty to one or some of the partners or to a third person(s). The managing partners or the third party(s) shall account before the other partners at least once annually. Each of the partners has the right to be informed on the financial status of the partnership and to investigate such matters. None of the members of the partnership may carry out any acts or actions for their own benefits or any third persons’ benefits causing detrimental effects on the partnership.

2.4. Representation

The managing partner is also considered as the partner authorized to represent the partnership towards third parties. However, the TCO obliges that such authorization should be unanimously be granted in writing in case the representing partner will carry out fundamental transaction on behalf of the partnership. The partners are jointly liable vis-à-vis the creditors proportionate to their shares in the partnership unless otherwise agreed. It is specifically regulated that such liability remains the same during post-termination process of the partnership.

2.5. Termination

The partnership shall be terminated in case (i) it accomplishes its goal of establishment, (ii) it is unanimously decided by the partners to that effect, (iii) the agreed term has lapsed, (iv) one of the partners is dead or liquidated, (v) one of the partners gives the termination notice in

case it has been granted such right and (vi) of a termination decision by the court. It should however be noted that, even if partners are granted the termination right in the partnership agreement, such right for termination notice may not be used on a *mala fides* basis, in an inappropriate timing for the purposes of the partnership. The liquidation of the partnership may be carried out by the partners or by a third person appointed for the very reason.

3. Taxation of Joint Ventures

The taxation of the joint ventures is a point of discussion especially for the joint ventures without legal personality. The joint ventures established as companies are taxed in accordance with the corporate taxation regulations. On the other hand, it has long been discussed whether the joint ventures without any legal personality may be taxed separately from its members or not. In conclusion, the practice has been established as to enable the joint ventures as ordinary partnerships to become tax payers.

Moreover, the Corporate Tax Law numbered 5520, dated June 13, 2006 Article 2/7 provides for a definition of “business partnership”; thus including such partnerships to the scope of the corporate tax even though they do not have legal personality. The definition, however, sets forth that the business partnership shall be established (i) for a common purpose of performing a specific project, (ii) for a common purpose of sharing profit and/or damage and (iii) with at least a legal person partner. The last requirement inserted by the Corporate Tax Law is the item that specifies which joint ventures in the form of ordinary partnership are subject to Corporate Tax Law. In other words, joint ventures established between solely real persons, are not subject to the Corporate Tax Law and therefore not bound by its provisions even though such joint ventures may be considered as ordinary partnerships.

In accordance with the foregoing, the joint ventures established by legal persons, although they do not have a separate legal personality, are subject to the taxation measures. They may be registered before the tax authorities and they may keep their accounting books registered before the tax office. The profit of the partnership is, accordingly, subject to corporate tax.