BULLETIN

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Liquidation in Ordinary Partnerships (Joint Venture) in Türkiye

What is an Ordinary Partnership?

The 3rd Civil Chamber of the Court of Cassation defines an ordinary partnership agreement as a contract in which two or more individuals or legal entities undertake to combine their efforts, assets, and capital for a common purpose. An ordinary partnership can be formed between two or more companies, or between two or more natural persons. Although ordinary partnerships do not have legal personality, it is possible to liquidate and terminate these partnerships.

Liquidation, although subject to specific conditions, generally involves determining the entire assets of the ordinary partnership, cutting off all relationships of the partners arising from the partnership, terminating the partnership, and distributing or disposing of the assets, either by sharing or through sale. If the conditions for terminating the ordinary partnership are not regulated in the partnership agreement, liquidation is carried out according to the relevant provisions of the law.

Essentially, to liquidate an ordinary partnership, all partners must jointly decide to liquidate. However, if even one partner does not agree to this decision, the liquidation of the ordinary partnership can always be decided by the court. Valid reasons, such as the completion of the business subject and purpose of the partnership or the partnership becoming unmanageable, are required for the termination of an ordinary partnership.

The method of termination of the ordinary partnership can be decided either by contract or as prescribed by law. It should be noted that if the method of termination of the partnership does not violate the rights of any of the partners, liquidation is initially carried out as stipulated in the contract. According to Article 643 of the Turkish Civil Code, liquidation is carried out as follows:

Firstly, the debts of the partnership are paid off, advances, expenses, and participation shares provided by the partners are refunded. Then, the remaining profit or loss is distributed among the partners according to their partnership shares.

What are the partners Liabilities after liquidation?

One of the most important aspects of the liquidation of an ordinary partnership is liability. According to the Turkish Civil Code, after the partnership is terminated or liquidated, the obligations of the partners regarding debts do not cease. Their responsibilities towards third parties continue jointly and severally. In this case, the responsibility is not calculated according to the proportion of debt shares. Therefore, notifying third parties, clearing responsibilities, and minimizing potential risks are important for liability mitigation. If liquidation is not properly conducted, all partners will continue to be liable.

In the liquidation of an ordinary partnership, accounts and transactions are examined, balance sheets are prepared, and the difference between assets and liabilities is determined. All of these procedures can be carried out according to the partnership agreement if the partners have drafted one; otherwise, they can be conducted as specified in the Turkish Civil Code.

If the partners cannot agree on liquidation, a lawsuit is filed to request the liquidation of the partnership. In this case, the court firstly determines whether there is a partnership agreement, whether there are provisions regarding liquidation in the contract, and whether these provisions violate the law. If there are provisions for liquidation and there is no violation of the law, then liquidation proceeds as specified in the contract. If a procedure for liquidation could not be determined in advance, the court appoints one or three liquidators if the partners cannot agree, and completes the liquidation process. On October 31, 2023, the 3rd Civil Chamber of the Court of Cassation, with its decision numbered 2022/7419 and 2023/2989, explained the liquidation process and stated that until the liquidation is completed, the legal relationship between the partners does not terminate, defining liquidation as a statutory procedure aimed at terminating the partnership relationship. Therefore, the Court of Cassation explained the procedures carried out during the liquidation process as follows:

"With liquidation, the assets of the partnership will be converted into cash, debts will be paid off, capital values will be returned to the partners, and the remaining amount will be distributed among the partners according to the principle of sharing profits and losses.

The liquidation of an ordinary partnership is either done by mutual agreement of the parties or by the court itself. If the parties cannot agree on the liquidation, the liquidation of the partnership by the court must be in accordance with the provisions of Articles 642 et seq. of Law No. 6098.

According to the result balance sheet of the liquidation process, the judge must determine the rights and obligations of the parties in accordance with Article 297 of the Code of Civil Procedure No. 6100, conclude the liquidation process, and make a judgment accordingly."

Therefore, when preparing ordinary partnership agreements, the conditions and procedures for liquidation must be determined under the freedom of contract.

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Levent Mah. Manolyalı Sok. No: 12
Beşiktaş / İSTANBUL

+90 212 282 65 66

cagri.hatip@bshkhatip.com