

Lecture 8

Joint Venture

1. Samuel Asfaw, *Some Issues on Ethiopian “Joint Venture” Laws and Practices*, Ethiopian Business Law Series, Vol. IV, 2011, pp 112-148
2. Federal Supreme Court Cassation Decisions
 1. Volume 9, File No 33470
 2. Volume 10, File No 46358
 3. Volume 14, File No 76394
3. Paul McCarthy, *‘De Facto’ and Customary Partnership in Ethiopian Law*, Journal of Ethiopian Law, Vol. 5, No. 1, June 1968

Definition of Joint Venture (JV)

Art. 271: JV is an *agreement* between partners on terms *mutually agreed* and is subject to the general principles of law relating to partnerships.

The partners may agree as they wish on terms related to contribution, administration, sharing of profit and loss, liability, dissolution, etc.

Peculiar Characteristics of JV in Ethiopia

1. JV has **no** legal personality. Art. 272(3)
 - JV may not necessarily be in written form. Meaning it may be through oral, custom,... E.g. Civil FN 1942/81, between *W/o Bizunesh Wube v Ato Yigebawal G/maryam*, Ginbot 13, 1983 EC.
 - In this case the existence of JV is proved by oral witnesses.

Characteristics... cont'd

- JV need not involve *registration*. Art. 272(2). However, Arts. 275(4), 276(2), 278(1)(a) and (i), (2), and 279(2) talk about MOA.
- The MoA here shall be understood to mean the **agreement** since agreement need not be in written form.

Characteristics...cont'd

- In Belgium, joint ventures are not subject to any rules of form or of publication and its existence may be proved in any manner, e.g. witnesses
- In Germany, France, England and Italy joint venture does not constitute a separate category of BO.
- In Ethiopia, a joint venture may be formed to carry out *any* form of activity, be specific or general, or long lasting (unlimited) or whose life span is determined either by agreement or by nature of the task.

Characteristics...cont'd

2. JV is **not** disclosed to third parties (secret or clandestine). Art. 272(1)

This is owing to the fact that it is not registered.

Further, the law deliberately does not need JV to be registered.

Even third parties who deal with the manager of JV does not know its existence.

- It is common in other countries too. For example,
 - In Germany: Silent Partnership (Stille Gesellschaft)
 - In Belgium: Temporary Partnership and Sleeping Partnership

Characteristics...cont'd

Other general characteristics of JV include:

- Joint management by partners;
- Personal nature of the relationship;
- Fiduciary relationship;
- Informality;
- Non-continuity;

Effects of absence of legal personality

- Partners deal ***on their own behalf*** unlike in case of Partnerships where the manager(s) act on behalf of the Partnership.
- JV doesn't own property.
- JV can't be sued, can't sue. (the parties may sue against the wrongdoer in their own name without the need of disclosing the existence of BO.)
- JV may not have a head office.
- JV cannot be declared bankrupt (Art. 968(1) and 1155(1) of Com. C)

Effects of non-disclosure of JV

- Creditors can *only* claim their right against the partner with whom they deal.
- Therefore, the partner who is liable may recourse against undisclosed partners of JV. As a result, it *reduces* the liability of undisclosed partners than limiting their liability. This is in so far as it is not disclosed.
- On the other hand, JV can be taken as one method of limiting the liability of partners. Like OP (255(2)), the liability of undisclosed partners of JV can be limited by the *MoA* (Art. 276(2)).

Effects of non-disclosure

- **Effects of disclosure** of JV to third parties: it will be regarded as actual partnership (Art. 272(4), i.e. it became general partnership (213(2))).
- In Germany, undisclosed partners are considered as creditors or financiers.

Types of JV

- 1. Contractual JV:** is a relationship based on a contract between two or more parties and is governed by the general principles of contract law.
- 2. Partnership JV:** exists between parties, partners being both jointly and individually liable to the full extent of the partnership's liabilities, implying that in cases where no manager(s) is/are appointed, each party acts as a representative of the venture and as such will bind the other participants to transactions concluded with outside parties.

Types of JV

3. Corporate JV: involves the creation by the participants of a separate legal entity through which to pursue the venture. E.g. a venture provided under Art. 5(2) of Investment Proc No 280/02. However, this article is corrected as *joint investment* under the present Investment Proc 769/12. So, no more issue about the name 'joint venture' under this Proclamation.

Administration of JV

- Every partner in JV **owns** his contribution. (Art. 273)
- Therefore, unless otherwise provided, at the time of dissolution of JV partners take only their own contribution. W/o *Ejigayehu Tadesse v Megersa Gudeta*, FSCCD FN 33470, Vol. 9, Hidar 2, 2001 EC.

Administration of JV

- **Managers, Art. 275**

- JV may be managed by managers similar to partnerships (rights, duties, responsibilities is the same as that of partnership managers **except** that manager of joint venture *acts in his own name* (276(5)) as undisclosed agent.)
- Managers are personally responsible for any claim to persons who deal with him.
- After satisfying the claims of third parties, manager can require co-ventures to share expenses or fully reimburse him depending on the terms of agreement.

Dissolution of JV

Art. 278(1): the grounds of dissolution include:

1. the expiry of the term fixed by the MOA, unless there is provision for its extension;
2. the completion of the venture;
3. failure of the purpose or impossibility of performance;
4. a decision of all the partners for dissolution taken at any time;

Dissolution of JV

5. a request for dissolution by one partner, where no fixed term has been specified;
6. dissolution by the court for good cause at the request of one partner;
7. the acquisition by one partner of all the shares;
8. death, bankruptcy or incapacity of a partner, unless otherwise lawfully agreed;
9. a decision of, the manager, if such power is conferred upon him in the memorandum of association.