

## Joint Ventures in Albanian Law: Legal Foundations and Practical Challenges

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**Abstract-**The main sources of obligations in the Civil Code of the Republic of Albania are the law and the contract, with the latter occupying a dominant position. This is due to the fact that the contract serves as the most important legal instrument for the realization of the interests of the parties and, at the same time, is the most comprehensive manifestation of the principle of autonomy of will, which is a fundamental principle of civil law.

In accordance with the provisions of the Albanian legislation, the Civil Code defines a contract as a legal act by which one or more parties undertake to establish, modify or terminate a legal relationship. A typical example of a multi-party contract is a joint venture.

In the context of Albanian legislation, a joint venture is considered as a type of cooperation or partnership between entities (which may be individuals or companies) to carry out a joint economic activity with the aim of sharing resources, risks and profits. Although it includes elements of the organization of joint activity, the simple partnership does not have legal personality, being classified by the Civil Code as a contractual relationship and not as an independent legal entity. This form of organization differs from those regulated by the Law on Commercial and Trading Companies, which establishes legal entities with separate legal personality.

The members of a joint venture are required to contribute money, assets, or services to the partnership, which constitutes their contribution. This contribution is presumed to be equal, unless the contract provides otherwise.

**Keywords:** Joint Venture, Contract, Member, Share, Withdrawal, Distribution, Liquidation.

### I. THE JOINT VENTURE AND ITS CHARACTERISTICS

The joint venture represents the most basic form of partnership, the main characteristic of which is that it is established by two or more persons - natural and/or legal persons, both Albanian and foreign - who enter

into an agreement to carry out an economic activity with the aim of sharing the profits derived from this activity.

These parties enter into an agreement to carry out an economic activity with the aim of sharing the profits derived from this activity. It is important to note that the economic activity undertaken within a simple partnership is generally not of a commercial nature but is typically focused on the development of agricultural activities (Campobasso, 2011).

The Albanian Civil Code, in Article 1074, defines the joint venture as follows: "A joint venture is a contract by which two or more persons agree to carry out an economic activity with the aim of sharing the profits derived from it".

The act of creating a joint venture is not subject to any specific formal requirements. A joint venture may be created in any form, with formal requirements being imposed only when the nature of the asset or contribution so requires. Article 1075 of the Civil Code defines this contract as an informal agreement, the existence of which may be demonstrated orally or by conclusive acts. Thus, in principle, a joint venture contract is not bound by any particular form, which means that the partnership may be formed solely by a verbal agreement or by implicit conduct (*rebus ipsis et factis*). (Nuni, Mustafaj, Vokshi, 2008).

However, a notarial deed is required if the contribution of the members of the partnership consists of immovable property or rights over immovable property.

Albanian doctrine and jurisprudence support the view that a joint venture does not have legal personality. The Civil Code itself does not attribute legal personality to this type of partnership, as it is considered to be a contractual arrangement, the legal personality of which resides with each individual member. Thus, the joint venture differs from the legal entities regulated by the Law "On Merchants and Commercial Companies", and consequently, this law does not apply to joint ventures. (Article 1075 of the Civil Code).

Furthermore, the decision of the Constitutional Court of Albania No. 85 of 29.05.2015 explicitly states that a joint venture is not considered a commercial entity, but rather a legal subject in the context of civil legal relations, especially in the context of the law of obligations. The Court of First Instance of Tirana, during the judicial review, formed the opinion that Article 3/3 of Law No. 48/2014, which resolves the issue by not including simple partnerships as subjects, is in contradiction with the Constitution of the Republic of Albania. The College judged that: "The referring court, in its reasoning, did not provide serious reasons for the incompatibility of Article 3/3 of Law No. 48/2014 with the Constitution. The failure to provide for joint ventures as the subject of legal actions leading to the enforcement of obligations does not constitute a violation of equality and economic freedom.

In the present case, the legislator has identified specific subjects, commercial companies that, through the execution of legal actions, enter into relations with other commercial entities; therefore, the legal action linked between them constitutes an enforcement title. In this case, the law has also excluded the entrepreneur as a natural person as a subject of commercial legal relations. A joint venture is not a commercial entity, but one of the subjects of civil law

Although joint ventures do not have legal personalities (since such personality belongs to each of its members individually), Article 22 of Law No. 9723/2007 "On the National Registration Center" requires their registration with this institution. In addition, Article 28 of the same law establishes the application procedure for the initial registration of a joint venture: Joint ventures shall be registered by submitting the application for initial registration, which shall include all the mandatory data required by this Law, the relevant contract, in accordance with the provisions of the Civil Code, and copies of the identification documents of the members. If the parties have not concluded a written agreement, the simple partnership may be registered simply by submitting the application, completed with all the obligatory data, copies of the identification documents and by signing a special declaration on the recognition, acceptance and application of the legal regulations in force for the organization and operation of the joint venture.

The mandatory information required for the registration of a joint venture is defined in Article 31 of Law No. 9723/2007 and includes the following:

- a) duration, if specified;
- b) scope of activity, if specified;
- c) place of business;
- d) identification data of the members;
- e) value and type of contributions of the members;
- f) identification data of the persons responsible for the management and representation of the joint venture in relation to third parties, their powers of representation and the duration of their appointment;
- g) specimens of the signatures of the persons authorized to represent the joint venture in relation to third parties.

With regard to other contractual characteristics of the joint venture, the founding act or contract is the instrument by which the members define key aspects such as:

- the nature of the economic activity to be carried out,
- their contributions,
- the criteria for the distribution of profits and losses,
- the powers of the managers,
- the events leading to the dissolution, withdrawal or termination of the partnership,
- and any other provisions they deem necessary.

Unless otherwise agreed, a joint venture may be modified only with the unanimous consent of all partners. (Art. 1077, Albanian Civil Code). Just as unanimous consent is required for the formation of a partnership, unanimous consent is also required for the modification of a partnership.

## II. MANAGEMENT OF THE JOINT VENTURE: INTERNAL AND EXTERNAL RELATIONS

Because the members of a joint venture are required to contribute money, goods, or services to the partnership, such contributions are presumed to be equal unless the contract provides otherwise. A fundamental characteristic of the joint venture is the joint and several liability of all partners for the obligations of the partnership. Members who have acted on behalf of and for the account of the partnership are personally or jointly liable for the partnership's debts.

In addition, if there is an agreement to this effect, other members may also be held liable. Consequently, the administrators are jointly and severally liable to the partnership for the performance of their obligations under the law or the partnership agreement, unless they can prove the absence of fault (Article 1083 of the Albanian Civil Code). The rights and obligations of the administrators are governed by the provisions of the agreement.

Members who do not participate in the management retain the right to be informed by the managers about the affairs of the partnership, to inspect the documents related to the management and to receive a report on the accomplishment of the purpose of the partnership. If the activity of the partnership exceeds one year, the members have the right to receive an annual management report, unless the contract provides for different reporting (Nuni, Mustafaj, Vokshi, 2008).

A special agreement may limit the liability of the members or exclude them from joint and several liability. However, such an agreement must be communicated to third parties in an appropriate manner. Otherwise, in the absence of notification, such limitation of liability cannot be invoked against third parties who were not aware of it (Article 1089 of the Albanian Civil Code).

The representation and management of the joint venture is usually the responsibility of each member separately from the others. However, agreements to the contrary are permitted, which allow the administration to be exercised jointly by all members. It is also possible to assign the management only to certain members. If the administration is assigned exclusively to certain members, each of them has the right to object to an action that another administrator intends to carry out before it is carried out.

The rights of the members of a joint venture include the following:

- The right to manage the partnership.
- The right to control the activities of the administrators if the member is not an administrator.
- The right to request the removal of administrators.
- The right to participate in the making of the will of the partnership.
- The right to participate in the distribution of the partnership's assets.
- The right to determine the method of liquidation of the joint venture, if not specified in the joint venture agreement.
- The right to appoint and remove the liquidator.
- The right to amend the joint venture.
- The right to receive liquidation of their share (in case of their withdrawal from the partnership). (Art. 1085, Albanian Civil Code).
- The right to participate in the profits of the partnership.

If the parties enter into an agreement that excludes one or more members from participating in profits or losses, such an agreement is invalid (Article 1087 of the Albanian Civil Code).

- Regarding the obligations of the members, it can be stated that, among others, the members are obliged to
- Achieve the objective of the partnership and contribute the share that each member has undertaken to provide.
- Not to engage in activities that compete with the joint venture or to become partners in competing partnerships, except with the consent of the other members.
- Not to use the assets that are the subject of the partnership agreement and that constitute the capital of the partnership for purposes other than those related to the purpose of the joint venture, unless the other members have given their consent.
- The members of a commercial partnership, in addition to managing the partnership, also have the right to represent it. This means, among other things, the right to enter into legal transactions with third parties on behalf of the partnership and the right to represent the partnership in court if the partnership is a party to the case.

### III. DISSOLUTION OF THE JOINT VENTURE. EXPULSION AND WITHDRAWAL OF A PARTNER.

The provisions of the Albanian Civil Code concerning the joint venture also provide for the cases in which this partnership is dissolved. According to Article 1094, the partnership is dissolved in the following cases:

1. Upon the expiration of the term;
2. Upon the achievement of the joint objective or the impossibility of achieving it;

3. Upon the mutual agreement of all partners;
4. For other reasons specified in the joint venture contract (Tabucchi, 1995).

If the contract has a certain term and this term expires, but the partners continue to perform joint actions, the contract is automatically extended (Art. 1095, Albanian Civil Code). In case of dissolution of the partnership, a liquidator may be appointed to collect the remaining debts or to pay the obligations of the partnership, to liquidate the partnership by distributing the assets among the partners and to request the cancellation of the registration in the records of the National Registration Center.

Liquidators may be dismissed by a unanimous decision of all partners and, in any case, by a court decision following a justified request by one or more partners (Article 1097 of the Albanian Civil Code). Liquidators are prohibited from distributing the partnership's assets, even partially, to the partners until all creditors' debts have been paid or the necessary amounts have been reserved for their payment.

If the available funds are insufficient to meet the partnership's obligations, the liquidators may require additional contributions from the partners in proportion to their respective shares and, if necessary, within the limits of their liability and based on their share of the losses. The liability of a partner who is unable to pay shall be distributed among the remaining partners in proportion (Article 1102 of the Albanian Civil Code). Partners who have contributed assets for the use of the partnership have the right to recover these assets in the condition in which they were provided.

If these assets are lost or damaged as a result of actions attributable to the administrators, the partners are entitled to claim compensation from the assets of the partnership, unless a separate claim is made against the administrators. After the debts of the partnership have been paid, any remaining assets are distributed to the partners according to their shares. Any surplus is distributed among the partners in proportion to their share in the profits (Article 1104 of the Albanian Civil Code).

As for the withdrawal of a partner from the partnership, each partner may withdraw under the following conditions

- If the joint venture is established for an indefinite period or for the entire lifetime of one of the partners, the partner wishing to withdraw must give at least three months' notice to the other partners.
- A partner may withdraw in accordance with the terms set forth in the joint venture agreement.
- A partner may withdraw for good cause.
- In the event of the death of a partner, the remaining partners are obliged to liquidate the deceased partner's share.

A partner may be expelled for the following reasons

- Material breach of obligations under the law or the partnership agreement.
- Incapacity or criminal conviction, including suspension, even temporary, from official duties.
- If the partner has contributed his work or the enjoyment of an asset, he can be excluded due to his immediate inability to perform the work or if the asset is lost for reasons beyond the control of the managers.
- If a partner has contributed by transferring the ownership of an asset that is lost before the asset is acquired by the partnership (Art. 1108, Albanian Civil Code).

The exclusion is decided by the majority of the partners, excluding the excluded partner, and lasts 30 days from the date of notification to the excluded partner. During this period, the excluded partner may appeal to the court, which may suspend the execution of the decision (Article 1109 of the Albanian Civil Code).

If the joint venture consists of two members, the exclusion of one of them is decided by the court at the request of the other (Malltezi, Rystemaj, Kromiçi, 2015). Other cases of exclusion include:

- If a partner is declared bankrupt.
- If a creditor of the partner has succeeded in obtaining the right to liquidate his share.

#### IV. CONCLUSIONS

The joint venture, as interpreted from Articles 1074-1112 of the Albanian Civil Code, does not possess the distinguishing features of a commercial company as regulated by the Law "On Merchants and Commercial Companies". It differs from such entities due to its specific characteristics.

A joint venture is established between two or more persons who agree to carry out an economic activity with the aim of sharing the profits derived therefrom. A joint venture does not have legal personality and is different from the companies that are subject to the Law on Merchants and Commercial Companies. Therefore, this law does not apply to the Joint Venture.

The Joint Venture will not be registered in the Commercial Register or any other register, except for tax registers. It does not have a statute, regulations or any other act validating its establishment. The joint venture is governed by the law of obligations, among other contracts.

A joint venture does not require a special form for its creation, except when the assets contributed to the joint venture are immovable. In this case, the agreement must be executed and registered by a notary. Just as the consent of all partners is required for its creation, the consent of all partners is also required for any changes to the partnership.

In the event of dissolution of the joint venture, a liquidator is appointed to liquidate the partnership by distributing the assets among the members and requesting the cancellation of the registration from the records of the National Registration Center.

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