



*Original Contribution*

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## USUAL AND UNUSUAL WORK DISTRIBUTION IN COLLECTIVE COMPANY

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### ABSTRACT

Collective company is an open company. It is constituted at least with two natural entities. Partners are severally liable for company debts in the second degree with unlimited assets. In collective company, there is internal and external relationship. While the authority of administration is included in internal relationship; the authority of representation is related to the external relationship. The main subject of the company should be stated in the partnership deed. There are ordinary and extraordinary works of the company. In ordinary works, every partner can individually use their authority of administration as a rule. In ordinary works, the authority of administration might have been given to one of the partners with the partnership deed. In this case, the sole agent partner is obliged to render account to the other partners. In extraordinary works, consensus of the partners is required. In extraordinary works, it is necessary for all partners to participate in the decision and approve the operation. Extraordinary works are divided into two groups. These are extraordinary works; that necessitate shift in the agreement and the ones that does not require shift in the agreement.

**Key Words:** Usual Work, Unusual Work, Collective Company

### In General

The term company which can be considered also as partnership is a term in wider sense. It generally means the convening of more than one person (1). Company contract is the contract in which these people undertake to get together their capital in order to reach one common aim (2). Common aim may reveal itself in various forms such as social, economical, scientific etc. However, financial, commercial and industrial partnerships are subjected to the company law. Company or cooperation is a foundation constituted by the social or economical unity (3).

This issue is organised in Law of Obligations (LO) 520.

In LO 520/1 “*Company is such contracts that with which two or more people undertake to convene their own interest and property in order to reach a common aim.*”

*If a company does not comprise the distinctive qualifications of companies stated in commercial law, it will be considered as*

*ordinary company depended on head authority.*

In Turkish Commercial Law (TCL) 136; Commercial companies are stated as; collective, commandite, anonymous, limited and cooperative companies. All commercial companies gain legal entity by registering in the trade registry; in other words, they get the role of merchant (4). The important role of commercial companies in national economy is well known. Companies to carry out different commercial and industrial activities took part in the world of economy as more powerful grater components by being forgathered and be partner of each other and finally being attached to one main company (5). Companies are divided into two groups; person and capital companies. This distinction is mostly made according to weather capital or person is considered the most important in the company. In capital companies; the capital which is brought or may be brought into the company is important. But in person companies; the factor of person is important. Group of people to run a commercial company should be confiding in and knowing one another or expected to run

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the company foundation with their personal powers or prestige.

### **Definition Of Collective Company**

The word “Collective” comes from “collectiva” in Latin. The term and institution of “Collective Company” has appeared in Turkish Law at 1850 by “Kanunnâme-i Ticaret” which is partial translation of “Code de Commerce” in French (6).

Collective company is a typical type of person companies. It has been designed in 153 numbered codes of TTL. According to this code, collective company is “The Company which is formed between real entities in order to run a commercial company under a commercial name and in which assets of the company is not limited in to the responsibility of the partners”. Collective companies can be found to run a commercial company. It is impossible for collective company to run a “craftsman foundation” (7).

Collective company is constituted by a written contract between at least two real entities. Collective company can not be formed by private or legal entities of public law. Any person who is able to use his civil rights, namely who are adult, real entities being able to have the authority of appeal and who are not legally restricted can be the partner of collective companies (6).

There is no legal restriction for collective company to be the partner of any other type of company or ordinary partnership.

### **Administration In Collective Companies**

Administration of a company in Company Law is divided into two groups; namely domestic and foreign communications. Domestic communications comprise of the relations between partners or partners with the company. In this case, “The Right of Administration (Governing) brought out. From the term ‘right of administration’, the right of taking part in administrative issues of the company should be understood (8). Administration in the companies means having authority and responsibility in the company and running the company (9).

Before a collective company declares its will towards the third parties, it has to constitute its own will in this issue. The process of constituting one’s own will is within the framework of administration (10). Within the objective and subject of the company, it is

for some certain people to decide in which domestic or foreign communication the collective company is to take part in (11). As a rule, all partners undersigned in the company contract are considered the administrator of the company.

Keeping the registry, counting and sharing the profit and loss in balance between partners, reporting the necessary registrations to trade registry, routine cleaning and maintenance works are within the framework of the concept of administration

Some works are towards only to the activity of that company. Those works under the company contract which should be done in order to realise the objective and subject of the company are also included in the administration of the company (9).

In corporation to trade carpets, for instance, maintenance of carpets, even taking measures for the purpose of preventing damages in carpets against seasonal effects are fallen under the work of administration (12).

### **1. Ordinary Work**

The subject of the collective company should be stated in company’s main contract. Running of the company is inclusive of the right and duty of the company administrators. Distinction of ordinary and extraordinary work is designed in accordance with each concrete case and company. Furthermore, according to TTL 165, administrators have the authority to decide peace, abandonment, acceptance and arbitration. In ordinary affairs, each of the partners in part can use the authority of administration themselves as a rule. In ordinary affairs, the authority of administration might be given to one of the partners with contract. In this case, this only authority should render account to the other partners. Ordinary works (9);

- Keeping the company registry,
- Carrying out correspondences,
- Employing officers or workers,
- Audition and control of officers and workers,
- Suing a case for the name of the company,
- Representing the company at court, calling for pledge,

- Preparation of the company balance in the end of activity period.

## **2. Extraordinary Works (Exceptional Works)**

In extraordinary works, consensus of the partners is looked for. In extraordinary works, all partners are required to be involved in the decision and approve of the application. But some of the partners can be authorised to administer the company. Third parties should be notified about this issue. If notification is not carried out, the third parties to communicate with unauthorised partner can ask their due from the legal entity of the company (13).

Exceptional works are divided into two groups. These are; exceptional works to require change of contract and exceptional works that don not require change of contract;

### **a. Exceptional Works That Do Not Require Change Of Company Contract (9)**

- Donating,
- Selling real estate when it is out of the scope of the subject of the company,
- Collateralizing real estate,
- Deciding in the condition of complying with noncompetition requirements,
- When a commercial representative appointed for the company,
- Deciding to ask for concordat.

### **b. Exceptional Works To Require Change Of Company Contract (6,9)**

- Change of the title or type of the company,
- Widening or narrowing the subject of the company,
- Restriction or declaration of the right of administration,
- Taking a new partner or discharging one of the partners,
- Deciding to dissolve the company,

- Applications about the preparation of the communications brought out by the company contract.

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