

Five Major Points on Business Organizations on the New Commercial Code

Description

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The new Commercial Code Proclamation No 1243/2013 repealed Book I, II and V of the 1960 Commercial Code of the Empire of Ethiopia Proclamation No 166/1960. The effective date of the new Commercial Code (new CC) is from the date of publication in the Federal Negarit Gazette. The repeal of Book I, II and V shall commence from the effective date. A brief discussion shall be done on Book II specifically on general provisions to business organizations.

Definition: A business organization (BO) has been defined in the old Commercial Code (old CC) as an association arising out of a partnership agreement. But now in the new CC a business organization is defined differently. A business organization is an association created by memorandum of association by persons coming together contributing for the purpose of carrying economic activities and of participating in the profits. The term partnership agreement existing in the old CC has been left out and probably substituted by memorandum of association. However, there are exceptions to the above definition. The exceptions are joint venture (JV) and a one-person private limited company. JV is established not by memorandum of association but by a contractual agreement. Such contractual agreement should not be revealed to third parties. The other exception is a one-person private limited company. Association requires two or more persons. However as an exception, a company can be established by a single person. The existence of the exceptions are mentioned in the new CC.

Memorandum of Association: Memorandum of Association (MoA) serves as the formation document of BOs except JV. Template MoA can be prepared by government entities including Ministry of Trade and Industry. However content of the MoA should not limit the right to agree by the partners. Any law or procedure that limit the partners to stick with the template or limit the right to agree on different matters not contrary to law, are null and void, it states. This last part is an addition in the new CC that practically solves problems faced by new entrants in forming company or partnerships.

Different Business Organizations: It used to be 6 types of BOs in the old CC. They were ordinary partnership, joint venture, general partnership, limited partnership, share company and private limited company. Now in the new CC, they became 7(seven) in number. These are general partnership, two types of liability limited partnerships, limited liability partnership, joint venture, share company, private limited company and one-person private limited company. Here in the new CC ordinary partnership is left out. On the other hand limited partnership is broadened to two types of partnerships, namely limited partnership with limited liability and two types of liability limited partnership. A new form of company is introduced namely one-person PLC.

Dissolution for Good Cause by Court: Dissolution of a BO by court happens when there is good cause. Good cause used to include in the old CC infirmity, permanent illness or any other reason

incapable of carrying out his duties or serious disagreements existing between partners. Now in the new CC, good cause is only when serious disagreement exists between partners. The rest of the reasons namely infirmity, permanent illness, incapacity to carry out duties were disregarded. Still when there is serious disagreement between the partners, the court should not go automatically to dissolution. If the disagreeing partners can take their share and leave the organization and the rest of the partners can continue the organization, then the organization should continue to exist. Such clarification in the law will enable judges to interpret the law in a more clear and easier way.

Publication of Cancellation of Registration: The old CC state that where a BO is dissolved and wound-up, the existence of the BO shall stop after cancellation has been published in the official commercial gazette. This article has been amended by Commercial Registration and Licencing Proclamation No 980/2016. On the later proclamation on Article 11(7) it is stated that cancellation of registration of BO shall come into force one month after publication of notice of cancellation on a newspaper having wider circulation at the expense of the applicant; in the case of sole proprietor, however, the cancellation shall become effective as of the date of its entry into the register and without the need to publicize. The new CC however state clearly that the legal personality of the business organization shall cease to exist the next day the cancellation of the BO is entered in the commercial register. Then the cancellation of the organization as BO will be publicized by a gazette with wide spread distribution in the locality the main office of the cancelled BO is situated. On whose, the applicant or the government, expense is the publicity by a gazette is done is not clear. Publicity by a gazette, however, is not a requirement for cancellation of registration of all types of BOs. Rather publicity in a gazette happens to simply notify the fact that such a BO has stopped existing.

To sum up, these are some of the additions and deductions that happened on the general section of business organizations in the new Commercial Code.

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Date Created

June 13, 2021

Author

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