Regulation of Ordinary Partnership under the Ethiopia law: A Comparative Analysis with the Franco-Germany Civil Code Partnership and Thailand Ordinary Partnership Regime

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Abstract

Civil/ordinary partnership as non-commercial entities is playing vital role in making some activities to conduct in a structured and organized manner. Though the issue regarding to where they shall be regulated is getting non-sense in the recent times, it is being wise to have well-structured legal framework which regulates these entities. This article aimed to conduct a comparative analysis of regulation of Ethiopia ordinary partnership with the Franco-Germany civil code partnership and Thai ordinary partnership. The comparative analysis made showed that in many issues of regulation, the Ethiopia law has more commonalities with that of the Thailand and French ordinary/civil partnerships. However, it is also found out the areas in which the Ethiopia law has to improve and this article argues that Ethiopia law of ordinary partnership shall makes improvement on issues of transfer of share related to ascendants and descendants; on how distribution of profits and losses is to be made; on the role of partners in dissolution of partnership; and on expulsion of partner.

Key Terms: Ordinary Partnership, Regulation, Civil Code partnerships, Dissolution, Management, Expulsion, Transfer of Share, Comparative

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1. Introduction

The Ethiopian Commercial Code recognize six types of business organizations namely general partnership, limited partnership, ordinary partnership, joint venture, share companies and private limited companies.\(^1\) These six types of business organizations are categorized into commercial and non-commercial depending on the form and object of their engagement. On ground of form of business organizations, Share Company and private limited company are always commercial regardless of their object of engagement. On the other hand, an ordinary partnership is always non-commercial.\(^2\) In addition the remaining three forms of business organization that are joint venture, general partnership and limited partnership can be commercial and non-commercial depending on what activities they are engaged.\(^3\) Hence, under Ethiopia law ordinary partnership is recognized as non-commercial corporation regardless of its object of engagement.

Although there is difference across jurisdictions, most of the time in the civil law legal system non-commercial corporations are regulated under their civil code.\(^4\) Ethiopia is different from its sister civil law countries as Non-commercial Corporation, mainly ordinary partnership is regulated under the commercial code, which is not the case under other civil law countries.

The paper aims to make detailed comparative analysis on the regulation of Ethiopia ordinary partnership as non-commercial corporation with other jurisdictions civil code partnerships. The comparative analysis under this work is with the French civil code partnership law, German civil code partnership law and the Thailand ordinary partnership law. The justifications for selecting the French and German civil code partnership is by the fact that most of Ethiopia laws are ancestral from those jurisdictions and the justification for selecting the Thai ordinary partnership is the fact that Thailand is one of the civil law countries which regulate both commercial and non-commercial corporations under a single code called Thailand civil and commercial code.

The very purpose of making the comparison with the three jurisdictions is to demonstrate

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\(^1\) Commercial Code of the Empire of Ethiopia of 1960, Negaret Gazeta, Extraordinary Issue 19 year No.3 book II, article 212 (1), (Herein after referred as commercial code of Ethiopia).

\(^2\) Id, article 10 and 213(1).

\(^3\) Ibid.

\(^4\) In French, Germany and Portugal civil partnerships are regulated under their commercial code.
each possible depiction of issues related to regulation of ordinary partnership and appeal best experiences that could help that might help in regulation of ordinary partnerships in Ethiopia. In this regard, the scope of comparison is limited to basic issues associated with regulation of civil/ordinary partnership; which among others include the formation of the partnership, transfer of share, management of the partnership, liability of partners, dissolution of partnership and expulsion of partner.

2. Regulation of Ordinary Partnership under Ethiopia Law: A comparative Analysis with the Franco-Germany Civil Code Partnership and Thailand Ordinary Partnership Regime

2.1. Definition and nature

To start with the naming itself, in Ethiopia and Thailand it is named as ordinary partnership whereas in German and French laws, it is named as civil code partnership. Coming to the definition, under all the three legal system except the Thailand civil and commercial code, there is no direct definition for the respective civil code partnership or ordinary partnership. The Ethiopia and the French civil code tried to define by employing negative definition that is as any business organization that does not properly conform to the rest forms of business organizations. Similarly, German Civil Code indirectly tried to define it as partnership of persons in pursuit of a common purpose. Coming to the Thailand ordinary partnership, it provides direct definition and defines as a kind of partnership in which all the partners are jointly and severally liable for all the obligations of the partnership. Regarding the nature of these corporate structure, in German law, civil code partnership is one of the practically important corporate structure when no trade activity proper is pursued. It is used for the joint

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5 Commercial code of Ethiopia, article 227.
8 The civil and commercial code of Thailand, which can be accessed @ <https://www.samuiforsale.com/law-texts/thailand-civil-code-part-1.html>, Section 1025, (hereinafter referred as civil and commercial code of Thailand).
exercise of free professions but not limited to it. Correspondingly, in French, Thailand as well as Ethiopia, this partnership has noncommercial nature and limited to certain regulated professions, such as medical personnel, lawyers, certain types of expert like agricultural, forestry providing a consultancy service, commissaries aux competes, and industrial property consultants.

### 2.2. Formation

In all of the four jurisdictions, both civil code partnership and ordinary partnership are founded by conclusion of partnership agreement. In French civil code partnership and Thailand ordinary partnership registration is also a formation requirement. But, the Germany civil code partnership is not required to be registered as well as does not have legal personality.

Coming to the case of amount of contribution and capital, in all of the four jurisdictions, it is presumed that there is equal contribution unless there is otherwise agreement. Regarding what to be contributed, in case of French, Ethiopia and Thailand ordinary/civil partnership money, property, use of property, debt as well as skill can be contributed. However, coming to the Germany civil code partnership, there is no room for contribution of debt and skill. The fate of the partner who fails to deliver his contribution is not regulated under the German and Ethiopian legal system. This issue is regulated under Thailand law, it provides that if the one failed to deliver his contribution a written notice must be given him by a registered letter to deliver it within a reasonable time. If he fails to do so again, he may be excluded from the

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9 French civil code, as translated by Georges ROUHETTE, Professor of Law, with the assistance of Dr Anne ROUHETTER-BERTON, Article1835, [Here in after referred as civil code of France ], can be accessed at, <https://www.google.com.et/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=0ahUKEwimp eqlyMPRAhUE0xoKHb4dD0AQFggzMAU&url=http%3A%2F%2FError! Hyperlink reference not valid. 2F20%2F12%2FCodigo-Civil-Frances-French-Civil.; German Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I p. 42, 2909; 2003 I p. 738), last amended by Article 2 (16) of the statute of 19 February 2007 (Federal Law Gazette [Bundesgesetzblatt] I p. 122), Section 705, (hereinafter referred as civil code of Germany), commercial code of Ethiopia, article 210 (1) and 212(1) (a).

10 Civil Code of France, article 1842,

11 Commercial code of Ethiopia. Article 222.

12 Civil and commercial code of Thailand, Section 1064.

13 Commercial Code of Ethiopia, Article 229(3); civil code of Germany, article 706(1); civil and commercial code of Thailand, Section 1027.

14 Commercial Code of Ethiopia, article 229 (1) and (2); Civil and Commercial Code of Thailand, Section 1026;

15 Civil Code of Germany, article 706.

16 Civil and Commercial code of Thailand, Section 1031.
partnership by a decision of all the other partners, or of such majority as provided in their agreement.17

2.3. Transfer of Share

In case of French civil code partnership transfer of share is possible either to the partner or third party with the approval of the remaining partners, but transfer of share for the ascendants and descendants does not need approval.18 In this regard the position taken by Ethiopia19 and Thailand20 law is somewhat different, though it is possible to introduce third party as a partner with the consent of the remaining partners, there is no difference as to who is the third part. Unlike the French case, there is no exception on transfer of shares to ascendants and descendants. The German law is silent on issue of assignment of share. The position taken by French law appears to better. Although the nature of partnership requires strict regulation of withdrawal and coming in of a partner, it should not be absolute; at least there should be exception for ascendants and descendants of the partners.

2.3. Management

In every business organization and association, the very important issue that need to be regulated is the issue of who manage. The management of civil code partnership under the German law is entrusted to only to partners’ joint management.21 There is no room for non-partner professional manager to be manager of the partnership. The case in French law is that a partnership shall be managed by one or several persons, partners or not who are appointed either by the articles of partnership, or by a special act, or by a resolution of the partners.22 The same position is taken by Ethiopia, the commercial code provide that all partners shall have a right to act as managers unless the partner-ship agreement or a decision of the partnership has appointed one or more of the partners or a third party to be the manager.23 Under both the Ethiopia and French laws, though joint management of partners

17 Ibid.
18 Civil Code of France, article 1861.
19 Civil and Commercial Code of Thailand, section 1040 and 1041.
20 Commercial Code of Ethiopia, Article 250.
21 German Civil code, Section 709(1).
22 Civil code of France, Article 1046.
23 Commercial Code of Ethiopia, Article 236.
is presumed, there are possibility for third party to be manager of the partnership. Under both laws, partners by agreement can appoint non-partner professional manager as manager of the business.

With regard to the Thailand law, unlike both under the Ethiopia and French case, it is not clear as to whether third party can be manager or not; the law only provides that If there is no agreement between the partners as to the management of the business of the partnership, each of the partners shall become manager of the business.24 The writer of this article believed that if the intention of the Thai law maker is to open it for third party, it may provide it clearly like that of the French and Ethiopia law.

To conclude, the writer of this paper believed that, the approach taken in the management of ordinary partnership in the Ethiopian law is similar with the French civil code partnership but slightly different from that of the German civil code and Thailand ordinary partnership. The approach of Ethiopia and French law can be taken as the best approach. It is mainly by the fact that, unlike that of the German and Thailand law, the Ethiopian and French laws allows the partners to appoint a professional manager outside the members.

2.4. Liability of Partners

Both in Ethiopia25 and Thailand26 laws, partners of ordinary partnership are jointly, severally and unlimitedly liable for the acts of the partnership done while he is a partner. In the case of French civil code partnership, the lability of partners is limited to in proportion to their share in the capital of the partnership.27 Besides, the law also adopts the principle of benefit of discussions, as it provides that creditors may sue a partner for payment of the debts of the partnership only after having first sued the partnership as entity.28

Coming to the German law, there is no clear provision under the part of the German civil code which regulates civil code partnership regarding the nature of lability of partners to the outsiders. However, the very fact partners are entitled to manage jointly, may lead us to deduce that partners may have joint but not several lability for the acts of the partnership.

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24 Civil and commercial Code of Thailand, Section 1033.  
25 Commercial code of Ethiopia, Article 255(2).  
26 Civil and Commercial Code of Thailand, Section 1150.  
27 Civil Code of France, Article 1857.  
28 Id, Article 1858.
To conclude, the position taken by the Ethiopia and Thailand laws is very impressive in light of the nature and purpose of ordinary/civil code partnership. Besides, making partners jointly and severally liable for the acts done while they are partners is sound in light of the interest of third parties and sustainability of partnership. Whereas coming to the French and German law, exemption of partners form being severally liable would not be fair and justified.

2.5. Distribution of Profits and Losses

In German law, as a matter of principle partners have to wait until dissolution of the partnership is made in order to demand the statement of accounts and distribution of profits and losses.\(^{29}\) However, if the partnership is planned to exist for a prolonged period of time, the statement of accounts and the distribution of profits occur can be done at the end of every business year.\(^{30}\) Regarding how profit and loss distribution can be made, the German law provides that in case when the shares in profits and losses of the partners are not stated, then each partner, without regard to the nature and size of his contribution, has an equal share in profit and loss.\(^{31}\)

Coming to the Thailand case, the law provides that the share of each partner in the profits or losses is in proportion to his contribution.\(^{32}\) In case when the share of a partner is fixed only as to profits or only as to losses, the proportion is presumed to be the same for profits and losses.\(^{33}\)

The case under French law is that the share of each partner in the profits and his contribution to the losses are determined in proportion to his share in the capital of the partnership.\(^{34}\) However, any stipulation to allocate either the totality of the profit made by the partnership or exoneration of him from all the losses, is prohibited.\(^{35}\)

Under the Ethiopian law in relation to distribution of profits and shares, it is provided that every partner can request for the distribution of profits as soon as the management report is approved.\(^{36}\) Partners are entitled to share equally in the profits earned and shall contribute

\(^{29}\) Civil Code of Germany, Section 721 (1).
\(^{30}\) Id, Section 721(2).
\(^{31}\) Civil Code of Germany, Section 722(1)
\(^{32}\) Civil and Commercial Code of Thailand, Section 1044.n
\(^{33}\) Id, Section 1045.
\(^{34}\) Civil Code of France, Article 1844 (1).
\(^{35}\) Ibid.
\(^{36}\) Commercial Code of Ethiopia, Article 251 (2).
equally to the losses sustained by the partnership.\textsuperscript{37} Regarding the share of distribution, like the German law unless there is otherwise agreement distribution has to be made equally irrespective of partners’ contribution.\textsuperscript{38} The unique thing under Ethiopia law is the exemption of skill contributor from sharing losses of the partnership, it is privileged to take on profits.\textsuperscript{39} Generally, regarding when distribution of profit is to be made, the position taken by the Ethiopian law is more logical and fair than that of the German case. Because, it adopts mandatory distribution of profits without taking in to consideration of the protracted nature of the partnership; which in effect is very important to keep the interest of partners and may be in the long run the partnership itself. Thailand and French laws stand on the how about of distribution is more appropriate, as it prefers distribution based on contribution unlike the case in German and Ethiopia law.

\textbf{2.6. Dissolution}

In case of all the four jurisdictions, ordinary/civil code partnership can be dissolved upon expiration of the time for which it had been formed, by the achievement or the extinction of its object, by anticipated dissolution decided by the partners with an advance notice and by anticipated dissolution ordered by the court for good cause.\textsuperscript{40} However, the French\textsuperscript{41} and Thailand law\textsuperscript{42} is different from that of Ethiopia and German, by giving partners to include any further ground of dissolution in the contract of partnership.

French law is different from the remaining three by the fact that, a partnership cannot be dissolved by the death of a partner rather continues with his heirs or legatees in so far as there is no otherwise agreement.\textsuperscript{43} Under the German law, insolvency of partner and the partnership itself is recognized as another ground of dissolution of partnership.\textsuperscript{44}

\textsuperscript{37} Id, Article 252 (1).
\textsuperscript{38} Id, Article 270 (3).
\textsuperscript{39} Id, Article 254.
\textsuperscript{40} Civil Code of Germany, Section 723, 725 and 726; Civil code of France, Article 1844-7(1),(2),(4) and (5); Civil and commercial code of Thiland, Section 1055 (2)-(4), Section 1057 and Commercial Code of Ethiopia, Article 258, 217(a), 217(c), 218(1).
\textsuperscript{41} Civil Code of France, Article 1844-7(8).
\textsuperscript{42} Civil and Commercial Code of Thailand, Section 1055(1).
\textsuperscript{43} Civil Code of France, Article 1870.
\textsuperscript{44} Civil Code of Germany, Section 728.
regard the case in Ethiopia\textsuperscript{45} and Thailand\textsuperscript{46} is slightly different as it recognizes only bankruptcy or incapacitation of partner not insolvency of partnership as grounds of dissolution. Again unlike the Ethiopia and Thailand law, in the case of French civil code partnership only insolvency of partnership is recognized as grounds of dissolution of partnership.\textsuperscript{47}

To conclude, the position of French and Thailand law that leaves to the parties ‘agreement to include other grounds of dissolution is more plausible than that of the Ethiopia and German laws which listed out ground of dissolution. In addition the approach of French law regarding to death of partner is more logical and plausible. Because, it would be illogical and may affect the interest of both the heirs and the partnership itself to dissolve the partnership because of death of the partner; unless there is a prior agreement to do so.

\textbf{2.7. Expulsion of Partner}

Expulsion is the forceful withdrawal of a member from a partnership. Expulsion may not be always fault based; a member can be expelled even in the absence of fault. A member who joins in the formation or after the formation of the partnership is not a permanent member who could not be expelled rather his membership depends upon his own conduct, the partnership agreement and what the law says.

Regarding expulsion/ withdrawal of partner, the French law provides that a partner may withdraw totally or partially from the partnership subject to the conditions provided under the partnership agreement or the authorization given by a unanimous resolution of the other partners or by a judicial decision.\textsuperscript{48} Regarding the fate of the withdrawing partner the French law provides that he is entitled to reimbursement of the value of his rights in the partnership.\textsuperscript{49}

Coming to the case of German law, expulsion of partner is possible only if they agreed to do so under the partnership agreement.\textsuperscript{50} In such case, the partnership will be carried on by the remaining partners and the partner in whose person a circumstance occurs which entitles the

\textsuperscript{45} Commercial Code of Ethiopia, Article 260.
\textsuperscript{46} Civil and Commercial Code of Thiland, Section 1055 (5).
\textsuperscript{47} Civil Code of France, Article 1844-7(7).
\textsuperscript{48} Civil code of France, Article 1869.
\textsuperscript{49} Ibid.
\textsuperscript{50} Civil Code of Germany, Article 737.
remaining partners to give notice may be excluded from the partnership.\textsuperscript{51} Under the Thailand ordinary partnership law, if a given partner made faults which result for dissolution of partnership through court, in such case the court may upon the application of the remaining partners instead of dissolution order the expulsion of the partner in question.\textsuperscript{52} Regarding expulsion of partner, the Ethiopia ordinary partnership law provides that the court may order the expulsion of a partner for good cause and the partnership shall continue as between the remaining partners.\textsuperscript{53} Here the law fails to provide what amounts to good cause. In addition partners who are given notice for dissolution of partnership can expel that particular partner in order to prevent dissolution of the partnership.\textsuperscript{54} However, while they are doing so, they have to pay out his share.\textsuperscript{55} Generally, under all jurisdictions, the grounds of expulsion of partner is not provided with the exception of the Thailand case. Besides, the issue relating to remedies of unlawful expulsion partner is not addressed. Taking in to the fact that the personality of members’ matter, the position taken by French law is more appropriate as it opens authorization given by a unanimous resolution of the other partners and authorization by judicial decision as further ways of expulsion of a partner in addition to prior agreement of partners.

3. Conclusion

The comparative analysis made in this paper found out that, regulation of ordinary partnership of Ethiopia has more commonalities with that of the Thailand and French ordinary/civil partnerships. However, it is also found out the areas in which the Ethiopia law has to improve. The first area is regarding to transfer of share, Ethiopia has to take the experience of French law which adopts liberal approach on transfer of share for ascendants and descendants. The second one that needs improvement is on how distribution of profits and losses is to be made, in this regard, it would be sound if Ethiopia adopts the approach of French and Thailand which is distribution based on contribution. The third area that needs improvement is regulation of dissolution of partnership, the experience of French and Thailand law that leaves to the parties

\begin{itemize}
  \item \textsuperscript{51} Ibid.
  \item \textsuperscript{52} Civil and Commercial Code of Thailand, Section 1058.
  \item \textsuperscript{53} Commercial Code of Ethiopia, Article 261.
  \item \textsuperscript{54} Id, Article 259.
  \item \textsuperscript{55} Ibid.
\end{itemize}
agreement to include other grounds of dissolution should be adopted. In addition, Ethiopia also shall rewrite the provision of the commercial code which deals about dissolution of partnership because of death of partner and it shall adopt the position of French law as it leaves for the parties to determine whether death of partner can be a cause for dissolution of civil partnership or not. The last but not the least area that needs improvement is regarding expulsion of partner. In this regard, the Ethiopia law shall regulate remedies of unlawful expulsion of partner and should come up with listed grounds of expulsion of partner.