

Court appoints former partner as gratuitous bailee to preserve company books

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Introduction

Under Article 82 of the Commercial Code (6102/2011), merchants are obliged to preserve company books and records, such as daybooks, inventories, general ledgers and general assembly decision books. The obligation to preserve a company's books extends to post-liquidation, as per Article 544 of the Commercial Code, which provides that a company's books and records must be preserved following the end of the liquidation process in accordance with Article 82. Article 82(8) applies to the preservation of a company's books after liquidation and sets out that if a legal entity has ceased to exist, its books and other documents will continue to be preserved for 10 years by a civil court of peace. However, this relatively new clause was seldom enforced, due to a lack of case law.

Background

Under the abrogated Commercial Code (6762/1956), the books of collective and commandite companies following liquidation were entrusted and deposited with a company partner or a notary public upon a court order and the books of other companies were entrusted and deposited to the notary upon a court order. However, under the updated Commercial Code, the courts of peace have become the authority that must preserve company books, rather than the body that designates which party should preserve them.

The large number of legal entities in Turkey and the limited storage space available to the courts of peace rendered their preservation of company books physically impossible in practice. As a result, the enforcement of Articles 544 and 82(2) of the Commercial Code remained unclear and liquidation officers were reluctant to apply to the courts of peace.

Facts

The plaintiff company began a voluntary liquidation process in 2012 and later completed the necessary steps in the process. The company was dissolved following registration of a dissolution notice, including a declaration from the general assembly that the liquidation process had been finalised. Conversely, the liquidation officer was left with the company's books and applied to a court of peace with a written statement from a former partner who had offered to look after them.

Decision

The court appointed the former partner as a gratuitous bailee to maintain the company's books. It decided that the former partner of the dissolved company would preserve the books "on behalf of the Court of Peace". As a result, the company's books would be legally preserved by the court of first instance, as per Article 544 of the Commercial Code.

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Comment

The decision introduced an alternative approach to the preservation of company books and addressed concerns regarding the courts of peace's lack of physical storage space to preserve company books. The new approach is expected to lead to similar court decisions and reduce violations of Article 544 of the Commercial Code.

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