

NEW COMMERCIAL CODE OF IRAN

New development

The number of economic laws of Iran is very limited. A major reason for this shortcoming is that the general principles of the civil and commercial law of Iran are believed to respond to all possible questions in the field of international trade and economic law. In other words, the Civil Code and the Commercial Code of Iran are considered by majority of the Iranian lawyers as *jus communes* of the Iranian legal system. This understanding in its turn is based on a basic rule of Islamic law that *fiqh* (teachings of *Sharia*) shall respond to all legal queries forever.

The old Commercial Code of Iran dated back to 1920s. During the last 20 years, different projects were initiated in order to prepare an up-to-date version of the Code but to no avail. Finally, two decades of continuous efforts resulted in adopting a new Commercial Code in April 2014.

What are the impacts of the new Commercial Code on the economic and international trade law of Iran? This Newsletter tries to share with you a brief response to the above question, covering the following seven subjects.

Definition of commercial activities

Section 1(8-14) of the Code includes the following ICT-related matters in the scope of commercial activities: “issues related to information and communication technology including offering of national or public domain names; rendering services of access to communication or the Internet-based networks; rendering of hosting or data center services as well as the issues related to providing electronic contents or computer soft wares.”

This provision amounts to legal recognition of an already established practice. This means that legally speaking, section 1(8-14) just makes it easier for Iranian lawyers to convince the courts that ICT activities are commercial in nature.

Definition of legal persons in commercial law

Section 124 of the new Code states that concept of domestic ‘legal person’ includes government, government institutions, chartered companies, public and non-governmental associations and entities, non-profit making institutions, corporations and Islamic charity trusts (*moqofat*). Section 126 mentions that government institutions, public and non-governmental associations, and chartered companies that are established under a special law acquire their legal personality at the moment that the special law becomes enforceable. This means that registration of these entities is not required.

Some basic and useful concepts of business law needed to be mentioned in the new Code. For example, the Code refers to mother, subsidiary and affiliated companies. These three concepts could be found in different laws and regulations of Iran but it is the new Commercial Code that for the first time puts these three terms together in its sections 268, 307 and 371(4-5). Section 307 prescribes that corporations shall not appropriate their own share with the exception that public joint stock companies are authorized to appropriate 5% of their share indirectly through their subsidiary or affiliated companies. It is also forbidden to transfer shares of a company that is wound up to its mother, subsidiary or affiliated companies (section 371 (4-5)).

Electronic trade

In line with the general policy of Iran that encourages and promotes application of electronic trade both in public and private sectors, the new Commercial Code requires that tradesmen respect the following provisions:

1. All commercial companies must prepare the books set out in Section 91 of the Code electronically (Note of Section 102 of the Code).
2. All merchants must indicate their specific trade code in all of their documents, receipts, notices, announcements and other writings, whether in handwriting, printing or electronic format (Article 108 of the Code).
3. Transfer of registered shares must be indicated in the Electronic Share Registry Book of each company. Both the transferor and the transferee or their agents must sign the book and include their exact identity and address in it. In case of any change of residence or domicile, it must also be indicated in the book (Section 416 of the Code).
4. Database of each company must also have an indication of the joint plan of amalgamation or division of companies. Where a company lacks a database, the required information must be registered in the database of the Corporate Registry of Iran (Section 600 of the Code).

Amalgamation, division and transformation of companies

Companies may get into certain joint or individual operations to change their content and form. Three main operations used by companies are amalgamation, division, and transformation. In amalgamation, two companies are mixed together to create a new legal personality. Division is the reverse side of amalgamation: one company can be divided to two or more distinct legal persons. Transformation, on the other hand, is a process during which a company changes its legal form to avail itself of the advantages that law provides to other forms of corporations. The new Commercial Code has specific rules for each of the above operations:

- a. Amalgamation or division may result in annihilation of legal personality of the original company (section 309(4)).

- b. Non-joint stock cooperatives need to get approval of the Ministry of Labor and Social Welfare for any decision concerning their amalgamation, division, and transformation.
- c. Two forms are prescribed for amalgamation of companies: simple and complex. In simple amalgamation, one or more companies are absorbed in an existing corporation. After this absorption, they lose their legal personality. In complex amalgamation, two companies are combined with each other to form a new company. After combination, the two companies lose their legal personality (section 590 of the Code).
- d. Amalgamation of companies must result in easing of competition and prohibition of monopoly. Therefore, it is required to get a permit from the Competition Council before initiating an amalgamation process (section 591 of the Code).
- e. Division has two distinct forms: partial and complete. In partial division, part of patrimony (property and debt) of a company is transferred to one or more companies. In complete division, all patrimony of a company is transferred to at least two companies. As a result, the transferring company becomes annihilated (section 592 of the Code).
- f. Amalgamation or division of companies does not negate responsibility of partners who have guaranteed debts of the company. They remain responsible for those debts up to the time of amalgamation or division (section 594 of the Code).
- g. Where a company is wound up or a new company is created as a result of amalgamation or division, it is not required to respect provisions of the new Code concerning establishing or winding up of a company (section 606 of the Code).
- h. It is permissible to transform a company to any other form authorized by law. Transformation of company shall have no impact on previous debts or obligations of the company or its partners (section 617 of the Code).
- i. In their joint plan for amalgamation or division of companies, directors of the companies must not include any incorrect information. The sanction provided in section 667 of the code for violating this duty is payment of fine.

Electronic government

Under policy-related documents such as Economic Development Plans, government of Iran is required to promote, encourage and expand establishing of an electronic government. Following the same trend, the new Commercial Code has set out specific rules to ensure that Iranian authorities respect and apply this policy:

a. The Corporate Registry of Iran must keep the information concerning corporate registry in electronic format to ensure an online, electronic and instantaneous access to it. The Corporate Registry shall keep the information in its website for the period of thirty years (sections 141 and 142 of the Code).

b. Those who are responsible for winding up a company must hand over an electronic copy of books and documents of the company to the Corporate Registry so that it could become accessible later for those who might have an interest in the information included in the books and documents. They will be kept by the Corporate Registry of Iran for the period of ten years after the company is wound up (section 369 of the Code).

c. The Stock Exchange of Iran is required to put notices of public companies inviting the public to purchase their shares on its website during 15 days after getting the needed permit (section 471 of the code).

Registration of trade names

a. The old Commercial Code was silent about registration of trade names. The new Code has taken two steps to fill this gap. Under section 112 of the Code, registration of trade names is not mandatory. The Deed Registry Organization shall draft regulations concerning trade names that shall be approved by the Head of Judiciary. If it is necessary to register trade names, failure in registration results in payment of a fine equal to three times amount of the registration fee.

b. It is prohibited for Iranian natural or legal persons to choose a foreign word as a trade name. Foreign persons, however, are not subject to this prohibition (section 138 of the Code).

Commercial usage

Usage is an important source of law, both in commercial and in civil law. The new Commercial Code has few provisions concerning commercial usage:

a. In case of silence in contracts concluded between tradesmen, the rule of law must be found first in commercial usage, then in general custom, and finally in complementary rules provided by law (section 121 of the Code).

b. More technical forms of commercial usage include local usage (section 29), banking usage (sections 794 and 882), documentary usage (section 856), sale usage (section 1100), and trade usage (section 1200(2)).

International bankruptcy

One of the interesting initiatives of the new Code is to regulate international bankruptcies.

International bankruptcy refers to a situation in which a tradesperson has properties both in Iran and at least in one foreign country. A bankruptcy process must start or already has started in at least two jurisdictions. It is reasonable that in such circumstances, the bankruptcy authorities in at least two countries must cooperate with each other to protect interests of creditors. At least four forms of cooperation are set out in section 1151 of the Code:

1. A foreign court or authority requests a competent court of Iran for a mutual cooperation in a bankruptcy procedure.
2. In a reverse situation, a competent court of Iran requests a foreign court to extend its cooperation towards a court of Iran.
3. Two courts, one in Iran and the other in a foreign country, are dealing with the same bankruptcy process.
4. Foreign creditors or interested persons apply for participation in a bankruptcy process in Iran.

In all of the above cases, the new Code provides for easy access of foreign parties to the courts of Iran to ensure that their rights could be protected both in Iran and in their country of origin.

Executive summary

The old Commercial Code of Iran that dated back to 1920s was outdated and counterproductive. After two decades of hard work, perseverance, and awareness-raising, finally the Islamic Consultative Assembly (the *Majlis*) approved that a new Commercial Code be applied temporarily for a period of 4 years.

The new Code is not ideal because it is silent about some vital issues such as international commercial contracts. However, it fills some important gaps, *inter alia*, in the fields of international bankruptcy, commercial usage, registration of trade names, three important forms of corporate change which are amalgamation, division, and transformation, and finally electronic trade.

It seems to us that the new Code needs to be connected to internationally accepted legal texts in order to stand on a solid basis. In the field of international commercial contracts, UNIDROIT's Principles of International Commercial Contracts that is translated by our lawyers is the best possible choice.

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