



COMMERCIAL COURTS AND THEIR JURISDICTION IN THE BILL OF COMMERCIAL CODE

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ABSTRACT

Commercial courts are among the most important specialized courts. The idea of establishment of specialized legal authorities for arbitration on the commercial issues has always been highlighted in human societies since time immemorial. The existence of scuh courts of arbitration on commercial issues, and the speed and facilitation of legal procedures and inexpensiveness have convinced the countries to include this institution into their judiciary system along with other authorities. In our country's judiciary system due to certain shortcomings and difficulties in the course of enforcement of the laws regarding commercial claims including delay in trial that in most cases is caused by the absence of the court members from trial sessions as well as delay in the verdict announcement and their inconsistency with the principle of the speed in trial, the legislator decided to abrogate this court despite the existence of laws that commercial court was founded based on them. However, today due to the evolution of complicated relations between the businesspersons and arbitration of the significant and sensitive commercial complaints and lack of these courts, the necessity of such courts has been noticed inside the country. Thus, study of the positive and negative aspects of the commercial courts in the bill of commercial code can be effective on the national legislation. In the current essay we have used a descriptive and analytic method and library sources to assay this issue. We hope the issues discussed in this research can increase the knowledge of the ones who are interested in law.

Keywords: Commercial Courts, Commercial Claims, Bill of Commercial Code.

INTRODUCTION

Commercial courts are essentially established to arbitrate on commercial claims within the central jurisdiction areas of every province. Inquiring such affairs as claims related to commercial actions, commercial firms' issues, foreign investment and international commercial contracts, lies within the jurisdiction of the commercial courts which can be considered to be among the most significant specialized courts. It is noteworthy that despite the fact that the need for commercial court was felt inside the country even before the establishment of cases because of which along with the general courts a specialized court for commercial disputes was founded to arbitrate on the commercial issues. Unfortunately, however, legislation for commercial court and the special legal procedure of this court was not taken into earnest account by the legislator. Upon the understanding of this necessity the bill of commercial code was brought to the parliament (the reception date of the bill of commercial code: 661; term: 8) in order to found a new establishment in the country. It is needless to say that the existence of a commercial court is necessary because of the particular features of the commercial disputes and the urgent need for the high speed of trial and the specialized nature of commercial issues that should be

addressed by the professionals. To better explain the issue one needs first to study these special features of commercial trial.

In this research, we seek to assay the structure of the commercial courts focusing on the bill of commercial code and thus study the necessities of these courts as well as the probable shortcomings and gaps that exist in the structure and organization of the aforementioned economic authority. Then here a set of questions and hypotheses are guiding the research that are as follows.

1. What structure is proposed for commercial courts in the bill of commercial code?
2. To what extent is this proposed structure in the bill of commercial code harmonious with the emerging commercial needs?
3. Given the specialized nature of the commercial trials in these courts has the legislator predicted the necessary professional prerequisites for these trials?

Research Hypotheses

1. It seems that the need for professional judges in trials related to the commercial disputes has been highlighted in the bill.
2. It appears that the codifiers of the bill had been highly concerned with the professional nature of these courts though the speed of trial has not been sufficiently considered.
3. There are no new shortcoming in the thematic orientation of the bill but in judgemental aspects the bill is defected and seems to need more consult.

MAJOR FEATURE OF COMMERCIAL LAW

Security

Security in this context also referred to as “credit” means that those people who enter the commercial sphere and trade expect the legislator to support them against the possible dangers and commercial hazards. It is this very support that encourages the creditor to trade and this in fact endows the other side with credit.

Such rules as joint responsibility of the signatories of commercial documents and the principle of the equality of the creditors of the bankrupted businessperson are all in line with this credit maxim in commercial law (Samavati, 1999: 13).

Speed:

In commercial law contrary to civil law time is of considerable importance. The basis of the speed principle should be traced back to the overall objective of the commercial law. Basically, the major objective of the commerce is earning profit and this concept is hidden in the concept of commerce.

In fact, profit earning requires one to outrun the rivals and this is indeed impossible without speed. Then, one of the other factors that justify the necessity of establishment of commercial courts is that in these courts besides precision and skill the commercial cases have to investigated in the shortest time frame; because nowadays given the increasing number of the cases referred to the general courts if a commercial case is referred to these courts the parties involved in the case will suffer serious economic damages due to the delay in trial as well as the lack of sufficient court branches, professional judges and facilities. Of course, one needs to mention that the fulfilment of this significant principle is for most part hinged upon the codification of the specialized commercial code not on the commercial law as an entity. Contrary to the claims of the authors of commercial law, speed principle is not a distinguishing characteristic of the

commercial law as compared to the civil law rather it is one of the requirements of the commercial code. Most writers explain the principle of speed as a basis and justification for the principle of freedom of reasons in commercial law.

As a result “if specialized courts are going to be established in the country for commercial affairs and disputes they should have different codes as compared to public laws as time is important in commercial files and in the minimum time decisions have to be made regarding commercial disputes”.

Speciality:

One of the striking features of the commercial law is its specialized nature. Speciality in this context implies that the decision-making authority has good command of the scientific and experiential aspects of the issues disputed in the case and can arbitrate with the utmost precision. As time goes by and the number of trades grows, commercial law and transactions are increasingly becoming specialized and distance themselves from the common formats of the trades mentioned in the jurisprudence and civil law and thus get involved with new issues the investigation of the claims related to them requires legal and commercial expertise. Then, as a guarantee for the speciality, one of the key features of the commercial law, in the commercial trials a number of specialized courts have to be established independent from general courts not just allocate some of the branches of general courts to the commercial cases (Ghafuri Asl, 2016). It seems that the best solution for providing the necessary ground for the fulfilment of the principle of commercial and legal speciality in commercial trials is the presence of legally knowledgeable judges along with the chosen businesspersons from every trade with an equal right of opinion to investigate the commercial cases; in a way that the final decision is the result of their joint contemplation.

Cost:

The costs of legal procedure that have to be paid first by the complainant and the refund is contingent upon his prevailment in the dispute are one of the major reasons of the people’s unwillingness for referring to the judicial authorities particularly in legal claims that usually require a determinate percentage of the claim.

This is more visible in commercial cases because the majority of commercial claims are concerned with restoration of an amount of money or with a financial issue. Given the fact that commercial courts are established for supporting businesspersons from every trade, the required facilities should also be provided for them to refer to these courts (Taremsari, 2007: 217).

In Iranian law, the bill of commercial code in no single case has determined the costs of legal procedure in an exact form. It seems that commercial claims like other claims have to follow the guidelines provided in the Article 3 of the act of collection of governmental revenues and their spending adopted on 1990-12-10 and later amendments.

Thus, in Iranian law there is no difference from this perspective between the commercial claims and other claims.

We will proceed to discuss certain alternative legal procedures in commercial courts the core of which is arbitration issue. It is noteworthy that despite various advantages of the establishment of the commercial courts in the judicial structure of a legal system there is still one issue that needs to be addressed and it is the reason for referring to commercial courts when there is an arbitrating institution for deciding on the problems related to the international commercial law? Is the arbitration not primarily contains the features of speed, speciality, precision and



inexpensiveness? Aren't these features among the reasons of the popularity of this institution? (Junejdi, 1996: 9).

Commercial courts despite their positive features do also have certain shortcomings including the lack of knowledge of the consulting judges or the representatives of the businesspersons on regulations that eventually leads to the trial extension. Insofar as in some countries like France these specialized courts have been suggested to be annulled and in 2000 and 2005 respectively 36 and 7 commercial courts were eliminated upon the order of French judicial system.

Nevertheless, the glorious records of commercial courts in France and possibility of elimination of defects via legal measures have considerably reduced the agitation resulted from the annulment of this establishment. This very issue is one of the major causes of the elimination of commercial courts from Iranian judicial system in 1930. The indifference of commercial members of the court towards participating in the trial sessions and the violation of neutrality principle on their behalf have caused the legal procedure to be extended in commercial courts more than what is expected (Matin Daftari, 1960: 74-75).

Moreover, as to the costs of legal procedure despite the philosophy of existence of commercial courts no effective solution has been offered by the legal systems and thus commercial claims are investigated in courts with heavy costs.

These shortcomings the absence of which is considered an advantage in the arbitrating institution have made a powerful rival of the arbitration for commercial courts. However, arbitration in view of the features it has can never be completely replaced by commercial courts and is always dependent upon the existence of a governmental judiciary beside itself.

As to the limitations of arbitration as an alternative for the commercial courts one needs to note that such cases as exceptionality of arbitration, limitedness of the scope arbitration, lack of executive power in arbitration, inability of arbitration of fast resolving of the disputes can be mentioned as the limitations of arbitration as compared to commercial courts.

GOLAS OF CODIFICATION OF THE BILL OF COMMERCIAL CODE (LEGAL PROCEDURE)

Given the necessity of establishment of commercial courts in the cabinet meeting on 2011-11-16, the government enacted the bill of commercial code upon the request of the Judiciary and this bill was brought to the parliament by the President after passing the legal procedure. In this bill of 133 articles it has been mentioned that commercial court is to established for specialized investigation of commercial cases within the central jurisdiction of every province. Inquiry of such affairs as claims resulted from commercial actions, affairs of commercial firms, foreign investment, and international commercial contracts is within the jurisdiction of these commercial courts. This bill has 9 chapters with the following titles:

1. Organization of commercial courtl;
2. Jurisdiction of Commercial Court;
3. Litigation, trial and sentence;
4. Investigation of the reasons;
5. Complain of the opinions;
6. Derivative action;
7. Suspending action;
8. Temporary execution of the judgements;
9. Timeframe of the court.



Organization of Commercial Court

Organization of commercial court represents the administrative structure of this court including the branches and offices; in other words, what is of importance in the structure of this court is the investigation of its composition.

- ***Court of First Instance of Commercial Affairs***

Primary court or court of first instance is the court that the case has been investigated first in it and the executive order will be issued by it even if the final sentence has been decided by higher authorities. According to the Article 2 of commercial code that reads as follows “commercial court is convened in the presence of the court head or the reserve judge and at least one adviser.” One can say that here the court of first instance is meant. This article states that commercial court like the general legal court is convened in the presence of the branch head or reserve judge. Then in general court the judge does not change and all actions and investigations are conducted by the head or the reserve judge and the decision and its announcement is made by the court judge.

The flaws of the Article 2 of Commercial Code are as follows:

1. This article has compositional errors.
2. Given the philosophy of presence of adviser in the courts and the necessity of specialization of trial on the one hand, and diversity of commercial cases, on the other, the adviser requires to have a speciality that fits with the disputed subject.
3. The subject of the Article 2 is seemingly the court of first instance that needs to be mentioned.

Likewise, in the article 8 of bill of commercial code it is stated that: “commercial court is established within the central jurisdiction of every province and in other areas its establishment in necessary occasions requires the decision of the head of the Judiciary”.

- ***Appeal Court of Commercial Issues***

Lexically speaking, appeal means asking for revision and a new consideration of something (Moein, 1981: 301). The technical meaning of “appeal” is not so far from its lexical meaning and refers to the reassessment of the judgement that has been issued regarding the verdict of a particular court. Of course, appeal court has the same jurisdiction on the thematic and judgmental affairs as the public courts.

The Article 3 of bill of Commercial Code reads as follows, “The revision or any modification of the sentences issued by the commercial courts will be done by the appeal courts and the branches of the Supreme Court in the presence of at least one adviser”. Moreover, in the Article 5 of the same bill it has been mentioned that “for trial sessions and final investigation three consultants are chosen and the trial is convened at least with the presence of one of them”.

One can state that for the sake of realization of specialized investigation of commercial claims the commercial court is convened with three adviser whose number increases to 5 in appeal court and to 7 in the Supreme Court.

Flaws:

1. The arrangement of the Articles 3 and 5 is not appropriate. It was better if first the regulations of courts of first instance had been completed and then the appeal court and Supreme Court were discussed.



2. Article 10 renders the articles 3 and 5 pointless and the only point of these articles is the phrase “with the presence of at least one adviser” that can be added to article 10 or be mentioned as a note.
3. The term “judgements” in article 3 has not been precisely chosen because “judgements” is the plural form of “judgement” that has its own particular sense in legal parlance. We suggest that it is better the word “opinions” is used instead in order to include the decisions too.

- **Judicial Members of Commercial Court**

In Iran the commercial court is composed of the head, board of advisers, and the office of the court that we study hereunder.

- **Head of Commercial Court**

One can state that the term judicial member of the commercial court is driven from the Article 2 of the bill of commercial code and it refers to the head and advisers of the commercial court who should not only have the general conditions included in the “act of qualifications of judiciary judges” adopted on 1982-5-4 as well as later amendments they should also have the qualifications mentioned in the Article 11 of commercial code.

The Article 11 of the bill of commercial code states: “the judges of commercial courts have to be chosen from among the individuals who have following qualifications:

1. Having at least 5 years judgement experience in legal courts.
2. Passing all specialized training course of the Judiciary.

Note: For the applicants who hold a doctoral degree in private law or related areas two years of judicial experience and for the masters degree holders three years of experience are enough.

One can say that in Iran contrary to France the judges are appointed not chosen. “The law has chosen the Supreme Judicial Assembly as the authority over the determination of the rank of judges”. Of course, this appointment is done in a regulated fashion and based on the eight judicial ranks as stipulated in “the guidelines of determination of occupational classes and regulations of promotion of the judges” adopted in 1995.

Moreover, it is necessary to pay attention to the point that the article 2 of the bill highlights the necessity of presence of two judges as the head and adviser in the commercial court in the first instance form and in appeal cases the appeal court and Supreme Court with the same composition will make decisions on civil claims.

- **Advisers**

For the sake of realization of specialized investigation of commercial claims, the commercial court is convened with three adviser whose number increases to 5 in appeal court and to 7 in the Supreme Court.

As regards the qualifications of the advisers the article 12 states: “The adviser is chosen from among the active businesspersons who are the members of the chambers of commerce, industries and mines, agriculture and cooperation of Islamic Republic of Iran or other official organizations of private sector and who are known as committed persons and also have good command of the commercial regulations and customs. They are chosen for three years’ term by the Judiciary using the suggestions of the experts and commercial men of ideas and academics”. One can say that the requirements of the advisers to the commercial courts are of two affirmative and negative types:

- **Affirmative Requirements**

- The adviser should be from among the active members of the chamber of commerce and industries and mines of Islamic Republic of Iran.
- He should be an accepted figure.
- He should be well versed in the commercial regulations and customs (Article 12).
- He should have the minimum age of 30 years (Clause 1 of Article 13).
- He should have passed the training course of advisory (Article 14).

- **Negative Requirements**

By negative requirements the legislator mean the conditions in the presence of which the businessperson can be chosen as the adviser to the commercial court and they are of 2 permanent and temporary types:

1. Permanent:

- He should not have the history of intentional bankruptcy due to personal faults or cheating.
- He should not have any major criminal record.

2. Temporary:

When the businessperson is ordinary bankrupt only after reclaiming his credit he can be an adviser to the commercial court.

One can state that the article 12 has the following defects:

1. It is compositionally flawed.
2. The selection process has not be delineated in clear form. The phrase “he is chosen by the Judiciary” does not determine who is exactly the authority in charge? This is also the case with the article 16 where it is noted that this task is done by the head of the Supreme Court and the Head of Provincial Judiciaries. Is there any difference between the selection and appointment of the advisers?
3. Jurisprudentially speaking, the advisers are better to be chosen and monitored under the supervision of the head of the Judiciary. Anyway, in this code the general regulations of the selection of advisers should be outlined in a clear way and all details should be mentioned.¹

- **Office of Commercial Court**

The bill of commercial code has only dedicated one article to the office of commercial code.

The article 21 reads:

“Every branch of the commercial court has an office composed of a manager, a secretary, an administrative expert, an archivist, and a postman. In emergency cases other staff can be added”.

Jurisdiction of Commercial Courts

The articles 25 to 28 are addressing the issues related to the jurisdiction of the commercial courts.

We first deal with the general jurisdiction of the court and continue to discuss the essential, relative and local jurisdictions:



¹ The Deputy of Research of Research Center of Islamic Parliament; released on the official website of the parliament in 2012.

Jurisdiction is defined as the right and obligation that judicial authorities have to investigate the cases that are brought to them (Shams, 2016: 383). Determination of the scope of this jurisdiction is assigned to the law according to the Article 159 of Constitution.

- ***Essential Jurisdiction***

In Iran the article 1027 of the bill of commercial code has outlined the essential jurisdiction of the commercial court: “The commercial court has the jurisdiction over the commercially relevant issues. The Judiciary is obligated to provide the regulations of the legal procedure for this court within one year since the adoption of this law. Until the establishment of the commercial court the relevant commercial cases will be investigated in the branches allocated to them.”

Then, in Iran commercial court has been noticed as an independent authority by the codifiers of the bill of commerce and there is no occasion for the special branches to investigate the commercial cases. As previously mentioned, article 8 of the bill of commercial code states that “commercial court will be established in the central judicial district and its establishment in other districts should be decided by the head of the Judiciary upon emergencies”.

Note: In every judicial district where there is no independent commercial court the cases will be investigated in the legal court according to the regulations stipulated in this bill and with the presence of an adviser.

Therefore, in the absence of commercial courts Iranian legislator a la French legislators has assigned the prosecution to the legal court. According to the bill, essential jurisdiction for investigation of commercial cases belongs to the first instance stage and the appeal concerning the opinion of the court of first instance will be within the jurisdiction of the appeal courts and Supreme Court. However, this does not make this jurisdiction an exclusive right of the allocated branches.

The article 10 of the bill of commercial code states: “the head of the Judiciary will allocate some branches of appeal courts and the Supreme Court to investigate the appeals over the issued verdicts based on the experience and expertise of the judges”.

One can say that in essential jurisdiction the primacy is with decision making regarding the referable files.

Note: Allocation of a branch or a number of branches of appeal court or Supreme Court to the investigation of the appeals does not give them jurisdiction over other court’s decisions.

In Iran, the commercial court is established with the jurisdiction only over the issues related to private law too, because:

Firstly, article 11 of bill of commercial code has stipulated the necessity of having experience of judgement in the legal courts for the judges of commercial courts and the note of the same article reveals that having graduate degrees in private law can reduce the experience term. Paying attention to the expertise and experience of the judge of commercial court who is the chief pillar of the court shows that in practice there is no room for any jurisdiction over the criminal cases related to commercial issues.

Anyway, although the debate of the distinction between legal and criminal jurisdictions and the way that criminal cases related to commercial issues should be investigated is not rewardless it still lies outside the scope of current essay and needs to be addressed in its own place.

- ***Relative Jurisdiction***



After determination of the essential jurisdiction of the commercial court we now should turn to the relative jurisdiction of these authorities. Relative jurisdiction is propounded when a case due to its having a determinate subject or value or because of observation of the regulations related to the local jurisdiction should be investigated in one of the commercial courts. In fact, determination of the relative jurisdiction of the commercial court is subordinate to its essential jurisdiction. There might be a dispute over the jurisdiction of the commercial courts but the legislator would prefer based on certain discretions allow it to be within the jurisdiction of one or a number of commercial courts. One of these discretions could be the necessity of observation of the regulations of the local jurisdiction. Then, local jurisdiction is a special extension of the relative jurisdiction.

However, we should first see if any regulation exists in Iranian law regarding relative jurisdiction or all commercial courts have the jurisdiction to investigate all cases?

There are two instances of relative jurisdiction in Iran regarding commercial claims:

1. Act of registration of signs and inventions adopted in 1931-6-23 in articles 6 and 7 has declared Tehran General Court competent to register or decline the sign and invention declarations. After the annulment of the act of 1931 and the adoption of the act of registration of inventions and industrial and commercial signs in 2007 only in one case the reference to Tehran General Court has been proposed.

Clause (T) of the Article 17 of the latter act has jurisdictioned Tehran General Court in the clause (A) of the same article to investigate the objection to the commission's opinion. Then as regards these claims Tehran Commercial Court has relative jurisdiction as of compared to other commercial courts based on the clause (T) of the Article of the Act of Registration of Inventions and the clause of the article of the bill of commercial code. Though in other cases of the Act of Registration of Inventions some allusions have been made to the possibility of the litigation². But none of them has introduced any authorized jurisdiction. Then, in each one of these cases one of the commercial courts will have the local jurisdiction according to the regulations.

2. Article 9 of the bill of commercial code has endowed the right of creation of specialized branches of commercial courts for investigation of particular issues to the head of the Judiciary.

Article 9: "The head of the Judiciary can allocate some branches of the commercial courts for the investigation of special kinds of disputes including transportation, insurance, bankruptcy, intellectual property and the international commercial claims".

- ***Local Jurisdiction***

In Iran the bill of commercial code in articles 26, 27 and 28 deals with the local jurisdiction of the commercial court. Although a major part of these articles are the repetition of the regulations of the civil code there are still innovations that can be highlighted:

Article 26: "Investigation of cases related to financial issues is within the jurisdiction of the court that has issued the verdict".

Prediction of such a rule seems logical because various articles of the commerce law including the article 419 of the same act endorses the possibility of litigation without specifying the competent authority.

² Including the clause C of Article 28, Article 29, Article 41, Article 60.



Article 419 of Commercial Code reads as follows: “Any person contemplating proceedings in respect of movable or immovable property against the bankrupt, after declaration of bankruptcy, must notify the Liquidator or bring his action against him. The same rule applies to the execution of a judgment.” Moreover, in the the article 26 of the bill it is stipulated that in liquidation process there is always the possibility of litigation; for example, according to article 468, “If a debt is contested, the official receiver may submit the dispute to the court.” But it is not still clear which court has the jurisdiction on this issue. As a result, upon the adoption of the bill such litigations will be passed to the courts that have first issued the disputed verdict.

Article 27: “registration of the defendant foreign company in Iran is not in conflict with the litigation against this company and its prosecution by the commercial courts of Iran”.

Litigation, Proceeding and Judicial Opinion

In this part of the bill that covers the article 29 to 60 the legal procedure starting with litigation to judicial opinion is discussed. In the civil code litigation takes place with signing a petition (article 48 of civil code adopted in 2000) while in the article 29 of the bill it is stated that: “the complainant before litigation should write his request in official form or petition otherwise he will not have the right to ask for the damages.” Then before litigation an official declaration must be sent by the complainant.

Investigation of Evidences and Ways of Protesting to the Opinions

In this part that includes the articles 60 to 80 the issues concerning evidence of the disputing parties are discussed. In the articles 80 to 90 the ways through which one can object to the opinions are debated. In fact, first the protestation (articles 80 to 81 of the bill) and then the appeal and its conditions and timeline (articles 82 to 85 of the bill) and finally the final appeal (articles 86 to 88) are discussed. The other difference that can be seen between the bill and the civil code is the fact that firstly, in the latter the protestation process has been shortly discussed without any further detail and secondly, no word has been mentioned of the retrial and protesting to the third party.

Derivative and Suspending Actions

Derivative action is taken by the firm to reclaim its commercial rights. The major target of this legal institution is supporting the firm against the faults of managers in the appropriate administration of the firm. Legal systems based on their different approaches have adopted different measures regarding this action.

In Iranian law the possibility of taking derivative action has been clearly stipulated in the article 276 of the amended version of the Commercial Code. Moreover, the legal procedure proper to this action has also been noted in the commercial code. Articles 90 to 94 of the bill have shortly discussed this type of claims. Of course we need to mention that there are still certain shortcomings as compared to other countries' legal systems and this needs speculation. The articles 94 to 112 concern the issue of suspension. According to the article 412 of commercial law suspension is concerned with the payment of sums due to the bankrupt businessperson. Bankruptcy is indeed the result of the suspension that is proven by the court verdict. In these articles a detailed discussion has been provided of the legal procedure of suspension litigation whether by the true person or legal person and this is itself a promising sign of evolution in commercial law.



Temporary Execution of the Judgement and Passage of Time in Commercial Court

In this part that contains the articles 112 to 114 the execution of judgements regarding commercial affairs is discussed. One can state that Iranian commercial law before the bill, did not contain any general rule of the passage of commercial time and only in some articles the passage of time was determined in a special way. Of course, these times were relatively observed in courts until 1982 when the Gaurdian Council announced that passage of time is against religious rules. These disputes seem to have come to their end by the bill. In this chapter the articles 114 to 133 define the passage of time and the framework of action.

DISCUSSION AND CONCLUSION:

In the current research we sought to demonstrate the necessity of establishment of the commercial courts in Iran. Accordingly, we enumerated the features of commercial law including security, speed and spciality and alluded to the necessity of establishment of specialized courts for realization of these features and we found out that a commercial court is useful when it covers these features in the best form.

Therefore, such commercial courts are established not merely for adding another organization to the previous ones rather besides these superficial features these legal entities are expected to use professional judges benefiting from the consults of sepcialized advisers to tackle the commercial disputes in concrete form.

Moreover, arbitration will not make us needless of the commercial courts due to its limitations, as our investigations suggest. Consequently, due to the extent and complicatedness of commercial relations the judgements need to be more specialized to overcome the possible hazards. On the other hand, arbitration is not accepted at least in internal law and the establishment of commercial courts can be declared a positive step.

Even if the bill of commercial code is adopted the current structure and organization of the judicial system does not allow any new specialized court as commercial court to come to existence and the establishment of these courts will face problems in practice due to such affairs as lack of facilities, budget deficits, or lack of specialized professional judges. Therefore, we should not so optimistic about the immediate establishment of commercial courts in Iran merely based on the adoption of commercial code rather there are serious impediments that need to tackled in advance in order to plug up the gaps and provide the required grounds inside the Judicial System as a whole though these practical concerns do not overshadow the necessity of establishment of commercial courts.

Then given the important and effective role of commercial courts in the expansion of safe commercial relations and transactions and the improvement of economic conditions of society we should seek to overcome the difficulties that are in the way of establishment of these courts. Although the costs that are paid in this path might not be returned in short time the task is rewarding and has long term positive effects.

Given the importance of specialized trial in commercial disputes, until the time when the judiciary has not provided the professional human resources required for such specialized trials the only solution is just allocation of some of the branches of general courts to commercial cases. Even in these chosen branches the judges should be trained in order to have an acceptable command of commercial issues and make more intelligent decisions and this of course needs taking specialized courses in commerce.



Presence of advisers from among the businesspersons beside the judges can also be helpful and fill the existing professional gaps provided the judges are required to observe these advisers' ideas. It should be also noted that if certain branches of general courts are allocated for commercial cases the principle of speed has to be observed in the trials due to the possible financial losses that can be imposed to the parties if the trial extends. Here we need some formal rules in addition to the essential ones in order to address the situation.

In the end some suggestions are offered as follows:

1. The articles of this bill are similar more than the ordinary regulations and there is no occasion for including the laws that have already been discussed in the civil regulations of the commercial law like the affairs of liquidation and bankruptcy. Adding repetitive articles not only would be rewardless it can also bring about duality in legal procedure. While unity of legal procedure is desirable unless in certain unavoidable cases.
2. Using advisers in the court is a good idea and there is no jurisprudential problem due to the fact that their opinions are not binding. However, it is suggested that some regulations are defined for taking advantage of their professional opinions in special binding manner so that their role is not just reduced to a formal presence. Thus the judges should be asked to consider the professional opinions given by the experts in their final judgments. More importantly, the place and effect of the professional opinion of the adviser should be clearly determined in the legal procedure. It is suggested that a law is passed that obligates the judge to include the professional opinion in the judgement. It is not also clear if the adviser comments on positive issues or judgemental ones.
3. The aforementioned bill does not include any chapter devoted to the general points. If there was such a chapter some articles like article one would have been put under that chapter.

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