

Commercial Law no.32 of 1991

As amended by Law no.6 of 1998

The following is based on the above mentioned law which focuses mainly on domestic trade and the commercial banking system. However, Articles reproduced hereafter are deemed mostly of direct and in some cases indirect concern with external trade procedures.

In its detailed presentation, the Law encompasses provisions for all commercial operations and transactions and commercial operators as they prevail in the Republic of Yemen. This includes, among a comprehensive set of provisions, legal measures dealing with:

- Obligations;
- Conditions of operations;
- Interaction and legal and commercial relationships between commercial operators as individuals or legal persons and their respective administrative and legal connections with national institutions administering the trade sector; and
- Relationship with trade support sector: services, mainly banking and insurance, as well as trade logistics.

As regards specific items related to foreign trade, this document will concentrate on legal framework of competition, some aspects of international trade logistics, commercial representation/branches, commercial banking, and bankruptcy since these are, as indicated above, of direct concern to foreign trade.

This issue is covered by Chapter 3 entitled illegal competition.

Article 63 gives legal dispositions concerning the use of trade names and trademarks, the general conditions of its publication and use as well as its record in the Register of Commerce.

Article 64 deals mainly with the legal implication of unfair use and counterfeit of commercial title and logo which entails loss and harm affecting competitors. It also states the conditions of compensations....

Article 65 focuses on the trader's solicitation of another's employees to mislead the latter's customers, which shall be deemed unfair competition entailing compensation due to the former.

Article 66 concerns the case where a trader gives a good-manners certificate to an ex-employee whereby he misleads another trader and causes him harm. This entitles the latter for compensation.

Article 67 relates to those working on the provision of business houses with data about traders. It also imposes compensation for the provision of wrong data.

Logistics of Trade with Special Emphasis on Air Transport:

This issue is covered by Chapter 4 titled Air Transport. The set of articles which goes from Article 188 to 214 states the liabilities in case of damage and mishandling. Initially it deals with accompanied freight and goods. It also fixes respective liabilities of carriers and passengers. Though it is not directly linked with foreign trade it suggests in its main outlines some legal measures that might govern Air freight connected with international trade operations.

Commercial Representation:

It is stipulated under Chapter 2 which covers this particular issue that will be considered a legal trade agent he who shall be requested by trader to act on his behalf for the execution of specific operations be they within his own premises or in a different place.

Article 189 provides that the operations to be executed by the agent on behalf of the trader. It also states the responsibilities of both the agent and his client vis a vis their commercial partner depending on the nature of commercial operations and transactions. In case activities of the agents are precisely defined, it is to be considered that the representation is of a comprehensive type.

Under Article 291 the hired agent is supposed to carry out all commercial operations on behalf of his client. In all trade documents to be signed, his signature should appear together with that of his client/trader supplemented by the legal address adding the phrase “Acting for”.

Under Articles 293 to 299, the levels of representation are defined in terms of accreditation for transaction on behalf of the client/trader. Within this series of articles there is also mention of the distinction to be legally made between subcontracting (i.e. services provider) and formal agent contractually hired and authorized.

Chapter Three regulates the roles and functions and contractual arrangements binding the Commission Agent and his client/trader. It is to be observed that in this particular case except when specified under this chapter, rules and regulations applicable to the Commercial representation are those of a trading entity.

Paragraph (1) under this Chapter comprises 19 Articles running from 301 to 319. They deal with the obligations of the Broker to his client/trader. Amongst the major clauses the following can be highlighted:

- While fulfilling his duties the broker is expected to act as a regular trader. In the meantime he should keep his client/trader informed about the details and progress of the transactions. He should also fully abide by the instructions of his client/trader;
- In case the Broker commits any anomaly affecting the commercial interest of his client/trader the latter is legally entitled to financial compensation;
- Likewise if the Broker obtains more profitable conditions than those previously fixed by the client/trader, he is required to make a detailed account to the latter;
- The broker can not speak on behalf of the client/trader unless otherwise instructed to do so by the latter.

As regards the rights of the Broker which are described in the second paragraph, the following can be stressed particularly inasmuch as rights can be claimed by the Broker:

- Once the transaction is finalized the Broker is entitled to his emoluments in accordance with financial clauses inscribed in the contract;
- The transaction fees due to the Broker is considered a priority payment of the client/trader and is deemed final except when a transaction incurs legal or judicial procedures with financial commitments;

Brokerage:

Brokerage is a contract whereby the Broker engages in exploration for a business partner leading to a business deal against fees.

In case fees are not contractually or legally prefixed, their calculation is based upon expenses incurred by the Broker and the level of effort required by the finalization of the transaction.

In case the Broker is designated by the two parties, he is entitled for emoluments from both sides. Each party is responsible toward the Broker regardless of any agreement between them about payment of fees due to the Broker even if they previously convened that only one side will be unilaterally responsible for payment.

Articles 331 to 338 state obligations of the Broker regarding modes and conditions of financial settlement between him and his client(s). Along the same line this very set of Articles puts legal and commercial boundaries within which the Broker should act technically and financially in order to fully comply with legal and commercial dispositions contained in the Law.

According to Article 339, when a group of Brokers is assigned under one contract, they are to be considered collectively responsible for the work for which they have been hired unless authorized to operate individually.

In the same line of thought, Yemeni trade Law imposes on the Broker adequate bookkeeping and proper organization of transaction documentation. The Broker is requested by law to copy all the documents in a certified form to his client. In this respect the processing and the dissemination of the above documentation is subject to the legal provisions made in the official trade documents.

Finally, it is stipulated under the last article (342) that brokerage connected with financial services is governed by specific legislation and regulations.

Banking

From the Chapter on Banking in general, the following excerpts deal mainly with commercial banking.

Under the heading “Banking operations”, Chapter 1 on “Deposit” is dealt with in 5 separate paragraphs. The first paragraph introduces the General considerations and is constituted of 5 Articles (from Article 353 to 357)

In the General considerations, it is specified under which conditions different types of bank accounts can be opened.

Regarding money deposits, regulations and procedures are those in force in modern banking implying obligations from both the client and the bank, assuming that the bank has the right to use the money deposited according to the rules of the financial system and is required to return the money within the limit and in the currency originally deposited.

At least once every year the bank has to notify the client of his bank situation through a standard format (balance sheet) describing the details of money movement and specifying at the end a final account balance.

All banking operations are evidenced by duly signed bank documents.

All deposits and drawings are effectuated at the bank’s branch where the bank account was opened. Special arrangements can be negotiated so that the client can be authorized to effect deposits and withdrawals at different branches of the same bank.

Article 363 makes provision for multiple accounts either at one particular branch or at different branches. The client can open more than one account taking into consideration that each account is totally independent from the others.

Articles 364 to 366 (item 1 to 3) regulate procedures pertaining to money withdrawals and client status in terms of balance and history in the case of multiple accounts of a single client and in the case of multiple clients for a single account.

Legal provisions governing current accounts:

A current account is based on a contractual arrangement whereby the client deposits his money in an account at a specific bank assuming that the latter has the authority to negotiate and make any other financial arrangements with his creditors and debtors. The bank has the obligation to enter in the client’s account all the payments and allow withdrawal from the deposits under the client’s agreement, provided that final

settlement shall be made upon the closure of his account and taking out his balance.

Opening of current account:

- The current account is opened on the specific form after advising the client of the information therein.
- The bank manager, after verifying the submitted documents, shall issue a decision whereby he agrees to open the current account.

Effects of items entry:

- Each application shall renew itself upon its entry to the current account.
- The items entered in the current account shall be undividable before the closure of account and withdrawal of balance.
- Comparison may be affected between one item in the current account and another item in the same account.
- The implementation guarantees, which belong to one of the items, shall be debited to the balance inasmuch as this guaranteed item.
- The entry of the item in the account shall not lead to the putting aside of the practice of claims and payments pertaining to the item.

Articles 370 – 378 deal with the rights of the account owner, honesty of the account owner, confidentiality of accounts, annexes to payments, bank's responsibilities, account opening, and approval of an account.

Responsibilities of the Bank:

The bank is responsible for any false credit order in favor of the client account or false withdrawal from money deposited in case the bank can not prove the credit or the withdrawal was endorsed by the client's signature.

Bank information:

Account closures are affected periodically as agreed upon by both the bank and the client. An annual balance sheet is established. The account, however, remains valid and the balance is automatically transferred to the following financial year. Endorsement of balance sheet statement is considered tacit if no opposition is stated within a reasonable time span. It is agreed that endorsement does not preclude request for correction due to printing errors, calculation errors, omissions or redundancy within one year following receipt of the balance sheet.

Closing of current account:

An account is declared closed under the following conditions:

- Termination of duration of account. It is also permitted to close the account prior to termination of the established period;
- Upon special request of one party either the bank itself or the client in case the account is open for an undetermined period;
- decease or partial or total insolvency of the account holder;
- one year's dormancy of account meaning no operations were undertaken whatsoever during the same period;

The chapter on safe deposit gives details concerning respective obligations and responsibilities. Conditions of practical operations, cancellation and confiscation when legally demanded.

Credit facilities:

Draft from overdrawn account is a mode of banking arrangement whereby the bank makes provision for the client to use a fixed amount from his overdrawn account provided it is stipulated in the initial contractual clauses. Besides it is up to the client to withdraw all or a fraction of the amount authorized by the bank. Any change in the way the cash facilities are used should be approved by the bank.

Statement of guarantee:

As a means to safeguard its interest the bank normally asks the client to present a visible guarantee. However, in the case of alteration of the original guarantee the bank has the right to demand an adjustment of value otherwise a decrease in the cash facilities or even an annulment could be decided. Interest rates and other services charges applicable to cash facilities are those established by the Central Bank.

Under the same article it is mentioned that the Bank has the latitude to cancel cash facilities whenever it deems it necessary. In that case a grace period is granted to the client so he can remedy his credit situation. Item 2 of the same article regulates the cessation of cash facilities in the case of decease, total or partial insolvency. Likewise cash facilities can be

unilaterally denied to the client if he fails to fulfill his contractual commitments in terms of solvency, abuse or misuse of cash facilities.

Documentary Credit:

In their major outlines the prevailing rules and regulations governing documentary credit in Yemen are inspired by the system in force in modern banking. Irrevocability as a prerequisite of documentary credit is defined and the conditions of its use are specified in terms of fair business conduct and acceptance by all parties of the modus operandi of documentary credit.

Documentary credit can also be subject to transfer to a third beneficiary. Likewise financial and banking regulations make provision for its fractioning in favor of another beneficiary provided it is done within the limits permitted by the terms of the documentary credit contract.

Then the law describes obligations and responsibilities although this does not encompass the liability of the bank concerning the transaction for which the letter of credit was opened.

Letter of Indemnity:

Articles 408 to 411 provide details about the conditions of indemnity, i.e. guarantee. Under this set of legal provisions, guarantee, payment and guarantee termination are also defined.

Then Articles 412 to 421 describe obligations of the guarantee seeker. The most important feature of these articles is linked to the fact that the client is compelled to use the authorized amount solely for the purpose indicated in his request to the bank.

Chapter 4 of the Trade Law deals with bankruptcy and preemptive arrangements.