

Discussion Intervention of Internal and International Merchant from Foreign Investment Law and New Draft Trade Law of Iran

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Abstract

The law makers are trying to compile special and independent commerce law pertinent to each other in the form of law for attracting foreign investment in their countries to grow foreign commerce and attract foreign investor and merchant.

Comparative discussion of law maker point of view in “foreign investment law approved 2002 of Iran” and “new draft trade law of Iran approved 2011” from legal definition of foreign investor and merchant especially in cases pertinent to intervention and referred to each other are of the most important issues of this article.

Based on result, as for necessity of attraction Iranian and Non-Iranian merchant by investment with foreign origin, criticism was taken to the new draft trade law of Iran approved 2011 as new law which fundamentally should have dynamic and reliability property based on the needs of modern business and international trade, lack of explicitly pointing to legal gap about legal discrimination between foreign investor and Iranian investor qualified is in the form of foreign investor which in these conditions Iranian investor must be have legal description merchant in discriminatory approach that it is between an Iranian and foreign investor in terms of providing documentation from Iranian and this legal description must be evaluated from a legal standpoint by new draft trade law of Iran approved 2011, to benefit from Iran’s foreign trade facilitation and the way of law enforcement is contrary to the manner of foreign investment and this is the other ambiguity cases law which is discriminate with foreign investment low and needs restoration.

Specifically suggest this article, separation, adding and determine the condition of subjects the definition of foreign investor and merchant and clarification of the relationship between foreign investment law approved 2002 of Iran and new draft trade law of Iran approved 2011 as commercial law.

Keywords: merchant, foreign investor, foreign investment law, new draft

1. Introduction

Collections of the patterns which form commerce laws are under two concepts commercial practices and merchant and commercial representative (Erfani, 1996). Due to the importance of two concepts in the legal systems of trade the definition of law by agent or person who commerce is conducted in accordance with the relevant law has Particular importance, and legally be commercializing activities causes advantages and limitations and use of facilities on someone who is consider merchant. In this article, the view of two related legislation and different of Iran in the sphere of trade that foreign investment law approved 2002 of Iran and new draft trade law of Iran 2011 been paid to conformity merchant definition or investor and it was discussed any type of interference of cases and need refer to each other about identify a person as merchant or investor.

From previous years that the commerce laws in effect international necessity from the prospective countries of law makers have been international approach. Despite of interesting in maintain national and native resources, try to consider commerce law in the form of necessities and international strategies and conclude infra-national contracts. Thus, the importance of commerce and role of rules governing on causes to is prompt promotion

welfare of the people of the countries and they are trying more compared to the past to expand the vital of discussion trans-border commerce are economic planning.

The importance of this fundamental principle cause to countries rules codification from type of commerce with literature beyond from national commerce of law limited into the country (Firuzi & Babagadri, 2010) until commerce laws in the concept of economic and legal literature today not to limit into borders and its scope to outside its borders and reach in international borders and are subject to relationship that the countries have at this level because commerce concept and lost past meaning limited in to the country (Rezzad & Hacıyev, 2001) and find its concept by tearing into internal borders and finds the key for developing economy into substantial development and attract capital (Poirson, 1998), today, the commerce which is successful and dynamic which plays vital role in order to develop country and shows qualitative commerce law for country in order to attract foreign investors (Abramovitz, 1986) and scale of foreign commerce and infra international investment is regarded as one of the steps of substantial development of countries which require special laws to cover contents of commerce law from international point of view in order to develop its aims (Rostamzadeh, 2012), in Iran, law for encouragement and protect from foreign investors in order to growth of international commerce law was approved at 2002 which this law has gaps regarding the definition Iranian merchant for this reason it cannot use the benefits of foreign investment and facilities, because of this gap, must be referred to other laws including the new draft trade law of Iran approved 2011. We try to discuss legal gap from this point of view.

Different laws of countries want to offer definition in terms of legal processing and affecting factors the issue.

In first articles, the subjects are discussed to offer suitable image from it to render respect of citizenship law and foreigner persons accurately (Rostamzadeh & Agli, 2015), thus, necessity and importance of commerce law is so vital and in the first articles of the law, there is a legal definition merchant traders and investors (Karu & Dominik, 2004). Of course, there are issues related to foreign investment and international trade in commercial law in developed countries, however, all countries have set of rules complementary and separate under the foreign investment law and International investment agreements (Abramovitz, 1986). Due to the importance and many benefits of foreign investment compared with domestic and national investment, the legal advisors of foreign investors discuss legal environment and compare and evaluate it and then offer report for prioritizing investments in a country. Majorly, they are considered non-commercial laws before investment (Hoseinizadeh & Rostamzadeh, 2015), because foreign merchant shall involve with non-commerce laws in order to perform all affairs and take legal breadth with them (Rostamzadeh & Anabi, 2012), thus, it is natural that it is so important to discuss legal chapter more and investigate it with infra-national strategy which is regarded as necessity, unfortunately, new commercial law approved 2011 which ratified currently did not point to it and its realization should be discussed and one of the legal gaps of new commerce approved 2011 is that it needs perfect discussion and the subject needs separate research and discussion. But main subject is to discuss comparative discussion of merchant and investor from the perspective of both law of types economics, and commerce related (foreign investment law approved 2002 of Iran and new draft trade law of Iran approved 2011) from the perspective of both law of types economics, and commerce related because today is the science of comparative law for synergies and identify to the useful cases and the elimination of weaknesses and legal gap (Jalali, 2010) and it will respond that what are differences and similarities between Iran' new commerce law and foreign commerce law about merchant? And the hypothesis is that commerce law approved 2011 doesn't consider it and so the legal definition of merchant and investment from the perspective of two law is identical, which it seems that this improper and undesirable, since any law has enacted for own unique reason.

Thus, in this article, it is tried to discuss new draft trade law of Iran approved 2011 about foreign investor and merchant against foreign investment law approved 2002 of Iran, should be investigated.

Today the creation of a secure environment and providing peace of mind and legal certainty merchant, not only considered of human rights issues (Rostamzadeh & Hashempoor, 2014), but also, they are regarded as development stimulator and this variation is necessary in legal discussion of commerce.

2. Merchant and Investor from Domestic Commerce Point and New Commerce Law Approved 2011

The merchant means businessman or someone who do performs business and sale or purchase something (Amid, 2005). Necessity of commerce is to repeat commercial transactions. Scale of repetition of commercial transactions which include commerce law is depended to custom and cannot limited and it shall be saw that does the volume and scale of commercial transactions cause to regarded merchant or not so there is no specific criterion (Sutodeh Tehran, 2009). Of course, it shall be pointed that if someone is be tourist and performing in car exhibition and his main income is it, but do perform transaction repeatedly, is included commerce in terms of

Iran's law (Hasni, 2001) and the foreign tourists do perform transaction in Iran or another country are regarded as merchant.

In legal systems of countries like French, Belgium, Germany, it is written that merchant is recognized in terms of economic activity or registration on guild bureau and all actions due to merchant are regarded in terms of commercial actions. Therefore, by consideration terms, non-commerce person can do perform commercial actions and commerce laws are considered in terms of contracts between merchants. But, the personal concept was being criticized due to principle equality of citizens against the law and commercial needs and instead of concept the commerce legal subject was considered law maker, this legal approach is reflected in first article of Iran and French commerce law.

Based on first article of Iran law, the merchant is someone who does perform commercial actions. In this definition, the law maker followed concept the commerce legal subject that mean commerce law is sum of commercial actions not laws of merchant and someone who does perform commercial actions considered as merchant.

In personal point of view, contrary, commercial actions are the affairs which are done by merchant in order to use for own business (article 343 of Commerce law, Germany).

In this concept, the merchant is someone who registered his name in special bureau (for example, commercial registration bureau). Separation between two concepts were not as implicit in court and by studying some of new laws, we can appear its symbols.

In new commerce law, the merchant is not someone who has normal job to be trade deals, but must determine his job according to one of the clauses of article 1 new commerce law approved 2011, and it is broader than article 2 of the present law commerce and in article 91 new commerce law approved 2011, such as article 6 of the current commerce law the law maker has maintained same previous terms but in new commerce law approved 2011, the partial merchants are regarded as merchant and their actions are regarded as legal terms to be merchant and they must have commercial bureau which is not exception unlike the current commerce law (Same, 378).

It is important to identify commercial and merchant actions and we can point to some of them, including native or professional commercial actions which identify merchant and the said actions are repeated by merchant or the actions are done by merchant or non-merchant, thus they are regarded as commercial actions. Of course, such definition conforms to subject concept of the Law commerce commercial practices subordinated by merchant for your business need or because it is done (Erfani, 2010).

If a person was considered a legal standpoint merchant all actions in his life such as civil actions will describe the commercial rights (Skini, 2004). Of course, merchant's transactions with together Non-commercial transactions are not regarded as commercial actions (Hatami, Garaee, & Dmrchyly, 2005), at sum, it can be claimed that in new world, different relations between people exited from limitation of personal region and customized to all. Cheque, drafts, promissory notes and so on are pertinent to interventions of government pertain to economic laws. Given these developments basically people's private lives has very closed relationship with commerce, commercial Law lost Professional property and own job, slowly and becomes to law governing the commercial practice or commercial transactions. It is seen in the new commerce law approved 2011.

3. Merchant and Investor from Commerce Laws and Foreign Investment

The states in which commercial court separates from civil ones, merchant identification is essential to determine the competent court, it is useful to know the subordinated commercial practices (Safari, 1964). Article 1 of French law refer: the merchants are persons who do perform commercial actions and use them as their normal occupation, meanwhile, article 2 of current Iran law and article 622 of French commercial practices are recognized and mentioned but however, in some cases, the law and judicial procedural of Iran has accepted personal concept commercial law.

The law maker recited new draft in commerce law by citation main transactions (Ressayee Neya, 1994) which exist in current article 2 Commercial Law, they have similar and equal strategy and by deleting article 1, point to definition of foreign investor and merchant and the law approved 2002 says: real or legal identities as Iranian and non-Iranian nationality who obtain investment permission article 6 shall be regarded as merchant (law and regulations on encouraging and protecting foreign investment, 2002). The most prominent point is that based on above article, an Iranian identity can be merchant and uses its advantages but shall do situations this Iranian person? The first discussion is about origin of capital of investor shall be foreigner. Article 1 of law for encouraging and protect Iranian investment follow international patterns. From its regard, foreign investment means to apply foreign investment in new economic firm after obtaining investment permission (Dehdar, 2006). The most important point is that non-Iranian source financial plays vital role and not nationality of investor, even

Iranian company which its source capital is not Iran considered as foreign investment. Thus, foreign capital means cash or non-cash revenue which has been entered by foreign investor and necessarily, it shall be non-Iranian origin to include on advantages and facilities foreign investment law of Iran. The definition of foreign capital and foreign investment from law makers perspective is very board. In the definition of “foreign investor”, the difference between Iranians and non-Iranians cannot be seen in law, this is unlike the previous law (enacted in 1954) and it was not referred to possibility of Iranian investor domiciled abroad but definition offered in article 1 is includes facilities law to Iranian investors domiciled abroad and in new law, foreign investor is someone who (weather Iranian or not) entering his capital into Iran the origin of the foreign financial and perform in economic sections. The only condition in this field article 5 of the law on foreign investment regulations is the situations which stipulated which cited that: real and legal persons in Iran in order to be considered a foreign investor must provide legal documentation of economic activity and merchant in the out country in this situation must refer to the commercial law to determine be regarded as merchant and its conditions which shall be investigated next. In most countries, foreign investment laws are merely for foreigners and considered foreign citizenship as a term of to be foreign investors.

Paragraph J of article 1 of law dated 11 August 1993 of Saudi Arabia cited that foreign investor is someone who is the person foreign national or the company that all its shareholders are foreigners (Piran, 2010). Thus, it is foreign origin to regard foreign investor without limited domicile and can provide more complexities so that it is so difficult to find foreign origin and each Iranian can exit his capital to abroad and after some moments, returned it with Iranian origin although, it has much advantages in present law. Of course, the law cites reasons for economic and commercial activities in the out country in article 5 and in this step, the scale for economic activity is to evaluate of it new commercial law approved 2011. But it seems that the subject cannot solve the problem, because, firstly, it was not difficult to establish one company in the out country and secondly, this term plays limited role so that many Iranian save much money by performing different methods or professions which there are not documents about it to regard as foreign capital in terms of article 1 of new commerce law approved 2011, it was worthy that the law maker considers the residence term of in the outside the country in this legal article. His attitude to the lack of difference between Iranian and non-Iranian foreign investor is one of the highlights and important foreign investment law.

Which this important point not observed in the law other countries such as relevant law and same neighboring country (Turkey) (Rostamzadeh, 2012).

Law maker for prevent of abuse of matter special article Iranian nationals has predicted in article 5 executive regulations for Foreign Investment.

At the end of this article referring to documentation and documents that is confirmed and license economic and commercial activities the applicant is outside the country which can be investigated from different aspects first of this submitted documents must what be properties? And what official documents be included such as commercial offices or ... and unofficial, as well as sense of this article: foreigner investor and non-Iranian does not need to be under commercial law of Iran or their country (businessmen) regarded as merchant from a legal standpoint because of this article is for Iranian who wants to invest in the form of foreign investment. Another point is that whether means of law maker is the Iranian nationals which origin of capital and his commerce. In the form of foreign capital that investing in Iran according to the definition of the commercial law of country where achieved its capital must be regarded as merchant. Or the criterion of the law will be the same definition of article 1 or not at all to be merchant is meant intended new bill commerce law or was not considered the other country and merely any activity which can be outside the country on behalf Iranian nationals money earned and invest in Iran. In this form can be considered him as merchant? And using from the benefits of predicted in law. Regulations of this law separately to the foreign investor and non-Iranian to be not referred at all and merely has been codification for Iranians. So based on the concept of this article, it seems non-Iranian nationals for considered as foreign investor from perspective of Iran law does not need to consider as merchant and businessmen from view of no law even new bill commerce law and merely just with entering own foreign capital to Iran from perspective of law maker considered investor. and commerce in formats, forms and different subjects in the Iran Commerce law (which in the new bill Commerce law is to be stipulated more very broad and general). Commercial practices do not need, but activity. In the form in which foreign investment law approved for necessary of purpose this law and it is more general. As foreign investor is considered and law for the Iranians which based article 1 have capital with foreign origin and identify them as foreign investor benefits and incentives has granted to them. There is a term in article 5 of regulation which seems merchant character should be, in accordance with article 1 bill however, the question that arises here is that is the criterion base on new bill? Or law of the country which capital has been achieved there? It seems according to the criterion of unity that exists in the country's commerce law this criteria is the same in generalities. There is no significant difference together, another point is that the law maker wants to discriminate Iranian investor who invests in the form of

foreign capital and based on definition of it, it shall confirm to merchant principles. The generalities of the main principles show that because of economic situations, it can be conferred that they are located on the form of law and it is regarded as investor. It seems that the terms of to being merchant can be reached by the capital and it seems that is there new draft for it and it seems that as for scale which is derived from legal and economic view, there is legal gap in commerce law which is regarded as another aspect. For example, in paragraph 8 of article 1 of commerce law, there are many problems. And in section 14 which is pertinent to information technology, there are limitations which are seen in paragraph D of article 2 of entourage and protect law in goods and law making services the commerce law approved 2011 and investment law, there are differences and points which can be made problems in internal investment. But in case of the difference certainly the criterion considered law maker is new draft trade law of Iran approved 2011 why so approved documentation referred to in law must have legal concept and supporting in terms of Iran law. Although this article from legal and economic standpoint is gap of draft trade law 2011 and even the current commerce law. According to new bill merchant is someone who has for himself employment to any of trade acts which expressed in Article and may be commerce law introduce someone as merchant and is permissible actions for his employment base on law but be limited from perspective of foreign investment law due to observe the condition of national interest and at the time of utilization of the facilities profits or at any other stage created problems for example paragraph 8 of article 1 of the new draft law on commerce. And its sub-sectors paragraph topic setting up news agencies or under section 14 title related to information technology and provide national domain in action for foreign investment and subject to its there are many restrictions and may even be prohibited or in paragraph (d) of article 2 foreign investment law approved 2002 in topic production of goods and services law maker according to the national interests and its conservation (especially when doing them by persons who has foreign citizenship or two nationalities Iranian) has placed percent and limitations which it was not raised in domestic trade law. But in related cases two laws “foreign investment law approved 2002 of Iran” and “new draft trade law of Iran approved 2011” the effects and differences and points which has foreign investment relative to domestic investment can be caused contradictions and problems.

4. Conclusion

Today, commerce discussion is regarded as basic step of development of different countries and the law dominant on it is used in order to utilize the law and it is cited that foreign commerce and foreign investment is regarded as one of the most important commerce discussion in infra-national domain and today, the said subjects will be attracted by the law makers and they approved foreign investment which are necessary actions, in this regard, merchant and investor are seen as one of the similar significance (it is necessary to say that in terms of law for attraction of foreign investor, there are simulations from advantages and facilities).

Today, the countries plan systematic and targeted systems for developing businesses and the aim of law maker is to collect foreign investment in any tool and form and today, one of the main solutions in order to it, is to attract foreign investment and at same time, the law maker try to attract different investments and don't forget it, so that it is so valuable from foreign investment, foreign capital citizens into the country in comparison with capitals foreign investment are more enduring and stable and realization attracting the foreign investment is the main task of law (Rostamzadeh, Nekkah, & Reza Zadeh, 2012). And thus, Iranian citizenship was not merchant in terms of new commerce law approved 2011. When “because of not considered as merchant from the perspective of the new draft trade law of Iran 2011 and lack of features contained in the law as merchant and because of not having the legal conditions” is not considered foreign investor, this criticism was notable and should be modified as noted earlier, as for necessity of attraction Iranian and Non-Iranian merchant by investment with foreign origin, and given the importance of attracting inward investment by the foreign financial resources compared with foreign investors. It is necessary to be considered seriously criticism new draft trade law of Iran approved 2011 as new law which fundamentally should have dynamic and reliability property based on the needs of modern business and international trade, lack of explicitly pointing to legal gap about legal discrimination between foreign investor and Iranian investor qualified is in the form of foreign investor which in these conditions Iranian investor must be have legal description merchant in discriminatory approach that it is between an Iranian and foreign investor in terms of providing documentation from Iranian and this legal description must be evaluated from a legal standpoint by new draft trade law of Iran approved 2011, to benefit from Iran's foreign trade facilitation and the way of law enforcement is contrary to the manner of foreign investment and this is the other ambiguity cases law which is discriminate with foreign investment low and needs restoration.

Identified proposed of this study predicting the position of foreign investment, the definition of investor and specify legal clear in the case of interference and referring to each other two law of discussion subject are in “new draft trade law of Iran approved 2011”, especially that Iranian law with broad approach Iranian nationals who basically, is coverage commerce law with a specific legal conditions is considered as foreign investor.

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